


# ADVOCATES

## MEMO

**To:** Representative Scott Nishimoto

**From:** Bob Toyofuku 

**Date:** January 28, 2010

**Re:** HB 2095 – Relating to Emergency Physicians

Attached is my testimony in support of HB 2095 scheduled for January 29, 2010 at 9:30 a.m.

**Robert S. Toyofuku, Esq.**

GOVERNMENT AFFAIRS CONSULTING

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**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF  
THE HAWAII ASSOCIATION FOR JUSTICE (HAJ)  
IN SUPPORT OF H.B. NO. 2095**

February 10, 2009

To: Chairman Ryan Yamane and Members of the House Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in SUPPORT of H.B. No. 2095.

HAJ supports measures to encourage emergency and critical care specialists to serve in hospital emergency rooms or on-call status which do not adversely impact patient safety or rights. This measure provides a tax credit "bonus" of 5% of the professional liability premiums paid by emergency room physicians. It should be noted that emergency room doctors, like all other physicians, are already entitled to a full tax deduction for the entire amount of their professional liability insurance policy premiums. This tax credit is in addition to the full tax deduction. A doctor paying a \$20,000 insurance premium will thus be entitled to a \$20,000 tax deduction, plus receive an additional \$1,000 tax credit.

HAJ supports this tax incentive to assist hospitals in meeting their staffing needs for emergency room physicians.

Thank you for the opportunity to testify in support of this measure. Please feel free to contact me should there be any questions.

**Friday, January 29, 2010, 9:30a.m., Conference Room 329**

To: House Committee on Health  
Rep. Ryan I. Yamane, Chair  
Rep. Scott Y. Nishimoto, Vice Chair

From: Hawaii Medical Association  
Gary A. Okamoto, MD, Legislative Co-Chair  
Linda Rasmussen, MD, Legislative Co-Chair  
April Donahue, Executive Director  
Lauren Zirbel, Government Affairs  
Dick Botti, Government Affairs

Re: HB2095 RELATING TO EMERGENCY PHYSICIANS

In Support

Chairs & Committee Members:

Hawaii Medical Association supports HB2095 Relating to Emergency Physicians. By providing a tax credit to physicians who regularly work in the emergency room on an on-call basis, Hawaii can address the challenges the state faces in recruiting physicians to take call. This is particularly necessary when competing with hospitals across the nation for a dwindling supply of physicians to support the increasing need.

On-call, emergency care is by nature high-risk, and physicians who agree to be on call typically pay higher malpractice insurance premiums, see more traumatic patient cases, and make many personal sacrifices. Some of Hawaii's current on-call physicians often take on a significantly higher burden of coverage, due to on-call shortages in some specialties. In a state where the proportion of expenses and reimbursements from public and private insurers is often woefully inadequate, this tax credit could help provide an incentive to physicians who can provide on-call care.

Thank you for your consideration and the opportunity to testify.

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# THE QUEEN'S MEDICAL CENTER

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Representative Ryan Yamane, Chair  
House Committee on Health

Friday, January 29, 2010; 9:30 AM  
State Capitol, Conference Room 329

## Re: HB 2095 – RELATING TO EMERGENCY PHYSICIANS

Chair Yamane, Vice Chair Nishimoto, and Members of the Committee:

My name is Dr. Gerard Akaka, Vice President of Medical Affairs for the Queen's Medical Center (Queen's), **testifying in strong support of HB 2095** which provides a tax credit for emergency room physicians who work a minimum of 576 on-call hours in a state-approved emergency room.

Queen's has a severe shortage of orthopedic surgeons, neurosurgeons, and hand and face (plastic) surgeons willing to take emergency call due to concerns about adequate liability coverage. The problem is more acute on the neighbor islands. This measure seeks to encourage physicians to take call and ensure the availability of quality emergency medical care statewide.

In 2006, the Hawaii Legislative Reference Bureau published a report, "On-Call Crisis in Trauma Care: Government Responses," which details the causes of the on-call physician specialist shortage. It concludes that, *"Rising malpractice liability insurance premiums, in combination with lower reimbursement rates, render the practice of certain specialties less and less cost effective. There is increasing pressure from malpractice insurers for physicians not to provide emergency room coverage. Several liability insurers have simply stopped providing medical liability coverage for certain physician specialties. During malpractice crises, concerns are expressed that liability costs will drive high-risk specialist physicians from practice, creating access-to-care problems. While the problem is multi-factorial, with reimbursement and managed care arrangements contributing significantly, physician specialists perceive liability to be the strongest driver."*

The study also notes, *"With trauma injuries, seconds count; the chances of survival significantly decrease and the side effects of injury significantly increase if appropriate care is not given in the first hour immediately following the injury. A shortage of physician specialists can jeopardize a trauma team's ability to provide care. It also increases the risk of delay in patient treatment which in turn increases patients' risk of harm."*

The Queen's Medical Center appreciates the Legislature's support of emergency medical physicians and hospitals that provide care to trauma patients.

Thank you for the opportunity to testify.

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** INCOME, Emergency room physician tax credit

**BILL NUMBER:** HB 2095

**INTRODUCED BY:** Yamane, Evans, Nishimoto and 5 Democrats

**BRIEF SUMMARY:** Adds a new section to HRS chapter 235 to allow a taxpayer licensed to practice medicine under HRS chapter 453 to claim an income tax credit provided the taxpayer: (1) works as an emergency room physician in a state-approved hospital emergency room on an on-call basis; (2) has worked a minimum of 576 on-call hours in the year the tax credit is claimed; and (3) does not owe the state delinquent taxes, penalties, or interest.

The credit shall be 5% of the amount of the medical malpractice insurance premium paid by the taxpayer for the taxable year the credit is claimed. Tax credits in excess of income tax liability shall be refunded to the taxpayer provided such amounts are in excess of \$1. Allows the director of taxation to adopt necessary rules and forms pursuant to HRS chapter 91 to carry out this section. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year.

**EFFECTIVE DATE:** Tax years beginning after December 31, 2009

**STAFF COMMENTS:** This measure proposes a tax credit for taxpayers who are emergency room physicians. This credit would merely result in a handout of state funds through the state tax system regardless of a taxpayer's need for tax relief. While the amount of the proposed credit is 5% of the amount of malpractice insurance premiums paid for a taxable year by the physician, apparently the sponsors of this measure believe that medical malpractice insurance is a key cost to such physicians and, therefore, the credit should be based on a percentage of the premium for such insurance. If indeed medical malpractice insurance premiums are a financial barrier to attracting physicians to become emergency room physicians, then attacking the problem with a rebate in the form of a tax credit is inane.

If lawmakers truly believe the cost of medical malpractice insurance deters physicians from becoming emergency room physicians, then the attack should be on what causes the high insurance premiums. As the professional community has pointed out time and again, the high cost of medical malpractice begs tort reform with limits placed on how much can be sought in damages for various types of malpractice. With the sky is the limit approach for any litigation, how can one doubt the high cost of those premiums?

On the other hand, if lawmakers believe that their only alternative is to subsidize the cost of the premiums, then an outright subsidy of those premiums should be put in place staffed by persons who can verify the amount of insurance, the premium that is appropriate to subsidize, and to whom the subsidy should be granted based on the need for medical care throughout the state. Using the state tax system makes absolutely no sense, contributes to complexity of the system which in turn increases the cost of

HB 2095 - Continued

administration and compliance.

This measure is a reflection of the lack of understanding on the part of lawmakers about the state's tax system, its purpose, functions and limitations. If adopted, the measure would result in a lack of accountability as there is no way to determine the cost of the credit to the state's revenue resources. This makes about as much sense as imposing a special tax on trial lawyers who bring such malpractice suits to fund the tax credit proposed in this measure.

Digested 1/28/10