SB 1074

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON HEALTH

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, February 18, 2009
3:15 p.m.

TESTIMONY ON SENATE BILL NO. 1074 – RELATING TO MEDICAL MALPRACTICE.

TO THE HONORABLE DAVID IGE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). Thank you for hearing this bill. The Department supports this bill, but prefers Senate Bill No. 938.

The purpose of this bill and Senate Bill No. 938 is to provide a more rational atmosphere for the practice of medicine in Hawaii. However, Senate Bill No. 938 also provides needed reforms to the statutory definitions of "economic damages" so that those injured by medical errors will get full and appropriate compensation.

Both bills propose the establishment of limitations on noneconomic damages in medical tort actions.

Specifically, this bill proposes a $1 million limit on an award for noneconomic damages; a $3 million limit applies, where the court makes a specific finding that the injury was catastrophic.

Placing a limit on non-economic damages ends the litigation lottery, where there are no limits and no standards for these types of damages. The result of the current system is that doctors often they will be sued whether they have committed an error or not. As a result, doctors are leaving Hawaii. Four more doctors left the Big Island last year leaving only full time and part time orthopedists on the entire island.

Senate Bill No. 938 also expands economic damages to make sure the injured get full and appropriate compensation. Currently, the Hawaii Revised Statutes do not clearly define the economic damages a person may collect. As a result, the injured parties and their families often complain that their award does not cover the medical expenses necessary for their care. Injured parties should be entitled to all their economic damages.

This measure will stabilize the medical malpractice insurance market by allowing medical malpractice carriers to better predict the amount of claims and losses. Increased certainty will have the effect of decreasing or moderating premium costs. A study completed last year by the State of Hawaii's actuary, Martin Simon, determined that the reforms proposed last year would reduce medical malpractice insurance premiums by 12-18%.

We need doctors for our citizens. Kahuku Hospital stopped delivering babies, Wahiawa Hospital quit delivering babies, HMC West quit delivering babies. People with just a simple broken bone cannot find a doctor on the entire island of Maui or Hawaii and have to endure a flight to Queen's Hospital on Oahu with an 8 hour delay. On Oahu, Queen's used to have over 20 orthopedists on call and now have only two. We need to keep or doctors and bring in new doctors. The doctors are going to the states that have enacted these reforms. We need to enact these reforms now, before our healthcare system is so broken it will take a generation to fix.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

February 18, 2009

The Honorable David Ige, Chair
The Honorable Josh Green M.D., Vice Chair
Senate Committee on Health

Re: SB 1074 – Relating to Medical Malpractice

Dear Chair Ige, Vice Chair Green and Members of the Committee:

My name is Rick Jackson and I am President of the Hawaii Association of Health Plans ("HAHP"). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare
Hawaii Medical Assurance Association
HMSA
Hawaii-Western Management Group, Inc.
MDX Hawai'i
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in support of SB 1074 which would lower medical malpractice insurance premiums by adopting legislation that directly affects elements impacting medical malpractice insurance rates. HAHP supports the intent of this bill as a good first step toward helping to contain the spiraling cost of medical malpractice insurance.

We agree with statements made by local physician organizations that the current medical tort system drives significant "defensive medicine" costs and has led to Neighbor Island shortages in key surgical specialties. The members of HAHP see these facts daily in our medical claims costs and in limitations in the numbers and types of our contracted physicians on neighbor islands.

Thank you for the opportunity to offer comments today.

Sincerely,

Rick Jackson
President

February 18, 2009, 3:15 p.m. in Room 016

To: Senate Committee on Health
Senator David Y. Ige, chair
Senator Josh Green, M.D., Vice Chair

By: Hawaii Medical Association
Gary A. Okamoto, MD, President
Philip Hellreich, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Richard C. Botti, Government Affairs
Lauren Zirbel, Government Affairs

Re: SB 1074 RELATING TO MEDICAL MALPRACTICE

In Support

Chairs & Committee Members:

We believe everyone agrees that we are currently experiencing an access to health care crisis in Hawaii. Hawaii Medical Association has been working for years to identify solutions to present to the Legislature. This measure addresses two of the options we have identified: partial medical tort reform and tax credits on malpractice insurance. Combined, these measures should have a considerable impact in controlling malpractice insurance premiums.

We have included in our testimony a chart addressing the various options that we have identified. While there are others, these options are direct and relatively immediate. We realize it is the Legislature's responsibility to establish policy and law; we also hope that our input will help you in your decision making to find the solution.

We believe the two main prescriptions to cure the crisis are either direct payment or tort reform. Both of these are controversial issues that generally lead to a standoff.

For each option, the chart shows the HMA assessment on what would be accomplished, along with what we believe will be the economic impact involved.

Thank you for the opportunity to provide this testimony.

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ACCESS TO MEDICAL CARE CRISIS–OPTIONS

1	2	3	4	5	6
Medical Tort Reform that includes at minimum: • Non-economic Caps • Modified Joint & Several Liability to %age of Liability • Sliding Scale of Attorney Contingency Fees	**Direct Payment from Insurance Plans to Physicians** so they can recover costs that are not currently allowed to be passed on to patients because of contracts or laws.	**Create an Allowable Surcharge** to allow physicians to pass on excessive medical insurance premiums. This would be similar to the fuel surcharge allowed for electric utilities.	**Create a Government Subsidy with a Tax Credit for Physicians' Malpractice Insurance** to prevent physicians from leaving due to the high costs.	**Provide Tuition Waivers for Medical Students** contracting to stay in Hawaii to practice medicine where needed.	**Do Nothing** - This is the road to destruction of our health care system as we have known it. Once lost, it will take many years to recreate.
Why?	**Why?**	**Why?**	**Why?**	**Why?**	**Why?**
Because the insurance pool is small, a few large claims affect all physicians in the pool, even though they were not part of the claim. Attorneys' contingency fees (1/3 of the award) and legal fees generally take the first 40% of any award. It is a major incentive for attorneys to accept such fees when their award can be in the millions.	Physicians are not allowed to pass on their higher costs because their fees are either set by government laws, or by provider contracts. The higher costs of doing business are akin to an unfunded mandate that can't be passed on to patients. The only way they can increase revenue is to accept more patients, which is wearing out many professionals.	The same justification exists as it does for our electric bills. The provider has no control over the costs. The provider does not have to be the one involved in an award to have his/her insurance skyrocket. It is simply an uncontrollable cost that is either passed on to the customer/patient, or the financial burden creates a financial crisis.	Physicians can't pass on legitimate costs of doing business and only the government can resolve this issue. If the Legislature chooses not to address the issue with other options, then it must be addressed as an economic issue.	We must prepare for a new generation of physicians, and it must be done while experienced physicians are still here.	Because we already see the destruction happening. The only issue that is questionable is the extent of the crisis.
Economic Impact	**Economic Impact**	**Economic Impact**	**Economic Impact**	**Economic Impact**	**Economic Impact**
The injured individual will receive full compensation for economic and care costs and/or losses, but is limited on non-economic losses to a designated amount. Designed properly, it will reduce attorney fees while increasing payments to the injured person and reducing costs to physicians, at the same time reducing the costs involved with defensive medicine.	All individuals who now pay co-pay will have it increased to cover the costs of services. Government may be required to increase fee schedules in order to maintain healthcare needs for those patients covered by government.	Those individuals who now pay a co-pay will be required to pay an additional fee if serviced by a high-risk practitioner or facility. A law can be drafted to cover only those physicians in high risk areas of health care, thus providing some controls over the surcharge.	All taxpayers pay, as this would be an indirect subsidy from government. Providing such a tax credit keeps physicians in business, creates employment, and protects all citizens that work and pay taxes. The benefit of protecting the health of our citizens is offset by the savings government will realize from health consumers that can hold jobs and pay taxes rather than draw benefits from government and insurance.	All taxpayers pay, while all taxpayers will benefit from having a sustainable health care system statewide.	All citizens and taxpayers pay. Many will be forced to utilize emergency facilities for more than emergency care, which will drain the state of far more funds than it would cost to address the crisis head on. Individuals that can afford to fly to the mainland for health care will do so, thus depriving Hawaii of tax revenues and health care jobs. Those in need of immediate care may die for lack of immediate care.

From: Tina Desuacido [tina500@juno.com]
Sent: Tuesday, February 17, 2009 1:25 PM
To: HTHTestimony
Subject: Tax Foundation Testimony
Attachments: s1074-09.pdf

Categories: Blue Category

TRANSMISSION OF TESTIMONY

Date: Tuesday, February 17, 2009

To: Senate Committee on Health

From: Tax Foundation of Hawaii

TOTAL PAGES: 1

For: Sen. David Ige, Chair

Testifier: Lowell L. Kalapa, President - Tax Foundation of Hawaii

(Mr. Kalapa will not appear in person at the hearing)

Date of Hearing: February 18, 2009

Time of Hearing: 3:15 pm

SB 1074 - Relating to Medical Malpractice (1 page)

Number of Copies: 1

Thank you.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Medical malpractice insurance premium tax credit

BILL NUMBER: SB 1074

INTRODUCED BY: Green, Chun Oakland, 2 Democrats and 1 Republican

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow each qualified taxpayer who is a physician or surgeon licensed under HRS chapter 453 or an osteopathic physician or surgeon licensed under HRS chapter 460 to claim a medical malpractice insurance premium tax credit of 50% of the cost of the premium.

To be eligible for the credit, the taxpayer shall: (1) practice in a recognized medical specialty that has a shortage in the number of practitioners, as determined by the board of medical examiners or the board of osteopathic examiners; or (2) have practiced continuously in the state in any specialty or as a general practitioner or family practitioner for the preceding five-year period.

Every claim for the credit, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Directs the director of taxation to adopt rules pursuant to HRS chapter 91.

This act shall be repealed on July 31, 2014.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This measure proposes a tax credit of 50% of the malpractice insurance paid by a physician or surgeon licensed under HRS chapter 453 or an osteopathic physician or surgeon licensed under HRS chapter 460. It should be noted that the tax credit proposed in this measure does not have any bearing on the physician-taxpayer's ability to pay state income taxes that might be due. Thus, this measure would merely use the tax system to hand out a subsidy to employ such individuals.

The proposed tax credit amounts to nothing more than an appropriation of taxpayer dollars through the back door by way of the tax credit. It represents an uncontrolled cost to state government for a program over which lawmakers will have no opportunity to review and approve the level of these "back door" expenditures. Due to the current fiscal condition of the state, the adoption of this measure cannot be justified.

Just handing out a tax credit to compensate physicians for the cost of their medical malpractice insurance premiums does not address the systemic problem that would be better resolved with reform of the tort system. The high cost of practicing medicine in Hawaii would be merely shifted from patients and doctors to all taxpayers. This is not in the best interest of the community, as it maintains the costly environment in which all taxpayers including physicians and patients must struggle to survive.

Digested 2/17/09

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Maui: 877-7500
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TO: **Senate Sergeant-At-Arms Office, via facsimile, 586-6659**

DATE: February 17, 2009

FROM: Michael K. Livingston

RE: **Testimony of Michael Livingston in opposition to SB No. 1074**
Hearing Date: Wednesday, February 18, 2009
Time: 3:15pm
Room: 016

To the Senate Committee on Health:

My name is Michael Livingston. I represent patients who are injured through the negligence of health care providers and failures in our health care delivery system.

I would like to discuss our case involving an orthopedic surgeon who despite losing his license in other states, was nonetheless permitted to practice medicine here in Hawaii. This doctor implanted a screwdriver in our client's spine instead of a surgical rod. The screwdriver broke in his spine. He suffered greatly and died.

This case highlights the commonsense notion that our efforts should be addressed at preventing malpractice instead of limiting recoveries of those who are injured. Efforts to penalize the injured patient are unfair and detract from the real solution of preventing malpractice. Reduce malpractice and you reduce malpractice claims, while preventing unnecessary injury and improving patient safety.

I support the tax credit for doctors to defray their medical malpractice insurance cost.

Sincerely,

Michael Livingston

Trecker & Fritz
Attorneys At Law

Collin M. (Marty) Fritz
Allen K. Williams
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Memo

To: Chair, Senate Health Committee

From: Marty Fritz

Date: February 18, 2009, Wednesday at 3:15 p.m.

Re: **SB 1074**

Honorable Chair and Committee Members. My name is Marty Fritz. I am a lawyer who represents a small number of medical malpractice victims who suffer horrific injuries or death from doctors errs.

The bill your committee is hearing relating to tort reform have one basic assumption--- there is a need for some change. The arguments I have heard supporting these bill are primarily that there is an explosion in medical malpractice verdicts in the State of Hawaii which is leading large numbers of physicians to leave the state. There are no specifics presented, rather emotional non specific allegations of the negative effects of the current system. The reason why these arguments are non specific is because they are unable to be supported by relating on evidence and analysis.

As a former member of the bipartisan committee appointed by the legislature in the late 1990's to make a two year study of the tort system, I am quite aware of how faulty perceptions combined with emotions and publicity can powerfully impact the legislative process. In the 1990's there was a perception that the costs of the tort system were out of control. The study, which thoroughly reviewed actual cases and filings, found to nearly everyone's surprise that just the opposite was true i.e. *there had been a significant drop in accidents and court filings.*

Of Counsel:
Steven J. Trecker

From: Linda J. Rasmussen [lindamd1@juno.com]
Sent: Monday, February 16, 2009 8:23 PM
To: HTHTestimony
Subject: SB 1074 Senate Health committee, 2/18, 3:15pm

Categories: Green Category, Blue Category

Linda J. Rasmussen, MD
Windward Orthopedic Group, Inc
30 Aulike St. #506
Kailua, HI 96734
(808) 261-4658

Feb. 16, 2009

SENATE COMMITTEE ON HEALTH
Senator David Ige, Chair
Senator Josh Gree, Vice Chair

NOTICE OF HEARING
DATE: Wed. Feb. 18th, 3:15pm

Conference Room 016
State Capitol

RE: SB 1074 Support of medical tort reform

Dear Senators Ige, Green and committee members,

The access to health care crisis affects us all. In these rough economic times, passage of medical tort reform is critical. It will not cost the tax payers a dime and will actually decrease the State's financially obligations by decreasing the amount we pay for medical malpractice insurance at the UH medical school and all the state run hospitals, HHSC. In addition, it will decrease the expenses for medical care by decreasing the costs of defensive medicine (ordering tests to avoid being sued).

- The cost of defensive medicine is $1,700-2,000/year for each American family.
- In Mississippi, after passage of medical tort reform, the number of malpractice cases decreased from 1,475 to 192.
- Malpractice premiums dropped 30-50% in Mississippi
- In Texas after passage of medical tort reform in 2003, lawsuits dropped from 745 to 49 and have leveled off at an average of 175.
- Texas has added critical specialists, 24 neurosurgeons, 124 orthopedic surgeons (including one from Hawaii, Dr. Michael Hahn) and 125 ob/gyn physicians.
- Malpractice premiums have also decreased 30-50%. www.protectpatientsnow.org
- The emotional toll that a non-meritorious lawsuit causes for the physician often results in them leaving medicine, leaving the state, depression and sometimes suicide.
- HMSA and other insurers could increase the reimbursement to providers with the money they would save from unnecessary tests not being ordered to avoid being sued.
- The State is paying the cost for trying to find physicians to replace those who leave.

Something needs to be done this year to prevent further physicians from leaving, the decrease the burden on the taxpayers and to improve access to health care for all.

Sincerely,

Linda Rasmussen, MD Past-President, HMA; President, Western Orthopedic Assoc.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 16, 2009 8:17 PM
To: HTHTestimony
Cc: geesey@hawaii.edu
Subject: Testimony for SB1074 on 2/18/2009 3:15:00 PM

Categories: Green Category, Blue Category

Testimony for HTH 2/18/2009 3:15:00 PM SB1074

Conference room: 016
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Yvonne Geesey
Organization: Individual
Address: PO Box 62245 HI
Phone: (808) 227-9361
E-mail: geesey@hawaii.edu
Submitted on: 2/16/2009

Comments:
Aloha Members of the Senate Health Committee;

Senate Bill 1074 proposes to limit the amount of non-economic damages that may be awarded by judges and juries. Based on my experience as a nurse practitioner, health care providers do make mistakes with catastrophic outcomes. Not all rise to the level of malpractice, but certainly some do.

Our victims are individuals and to seek to limit the amount of non-economic damages that can be awarded hurts children, retirees, disabled, homemakers--everyone without a high paying job that can show great economic loss.

These arbitrary restrictions may result in these victims of medical errors becoming burdens on our safety net of services when their money runs out because of arbitrary caps on damages.

Mahalo for this opportunity to oppose SB 1074.

From: Jan Shields [Information@AIHM-Maui.org]
Sent: Monday, February 16, 2009 8:08 PM
To: HTHTestimony
Subject: Strongly support SB1074
Attachments: image001.jpg

Categories: Green Category, Blue Category

On behalf of the Association for Improved Healthcare on Maui **(AIHM)** and **AIHM-Hawaii Island (AIHM-H): Strongly support SB1074**

From:

Jan Shields L.V.T., B.S.N., R.N.C.-NIC
Executive Director
AIHM
Association for Improved Healthcare on Maui
Jan@AIHM-Maui.org
808-250-9060

Hearing to be held at 3:15 p.m.
Conference Room 016
Six copies, one for each member of the health committee please

SB1074 will attract physicians to our state. With low reimbursement, high cost of living, we need any incentive we can get to attract doctors. We are dangerously short of physicians. For example, we only have one pediatric surgeon in the entire state.

Aloha,

Jan Shields L.V.T., B.S.N., R.N.C.-NIC
Executive Director

Association for Improved Healthcare on Maui
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Jan@AIHM-Maui.org

Cell: 808-250-9060
Fax: 808-667-6655

From: Doug Suhm [dandesuhm@earthlink.net]
Sent: Monday, February 16, 2009 7:01 PM
To: HTHTestimony
Cc: 'Linda J. Rasmussen'
Subject: Hawaii Medical test.

Categories: Green Category, Blue Category

Douglas Suhm
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Tacoma, WA 98445
(253) 531-4285
e-mail: dandesuhm@earthlink.net

February 18, 2009

Senate Health Committee
Senator David Ige, Chair
Senator Josh Green, Vice Chair

Dear Senators Ige, Green and committee members

RE: SB 1074 Relating to Medical Tort Reform

My name is Douglas Suhm an active 80 year-old tennis player, mountain hiker, swimmer cently, a golf enthusiast. I live in Tacoma, Washington.

In March 2007 my wife Elaine and I were vacationing on the Big Island of Hawaii and staying eek in Kailua Kona. On a weekday afternoon, I was challenging the nearby Makalew Golf Cour hen suddenly I felt nauseated for several moments. That passed but then I felt strangely dizzy a ıfocused. I thought I should quit playing but soon those symptoms passed and I felt better. The a heart attack occurred to me, but there was no chest pain or shortness of breath.

When I arrived back at our condo, I explained to my wife that I thought I was coming down w e flu and needed to get to bed. By that evening, my right knee was swollen and painful and I w ıable to walk or put any weight on it. Now my suspicion was that I had some problem in the kn at had a replacement prosthesis put in two years before.

The first thing the next morning, we telephoned my knee surgeon in Seattle and described the mptoms. He said we should get to an emergency hospital as quickly as possible for a diagnosis.

We were advised that the closest was in Waimea at the North Hawaii Community Hospital. T
e met Dr. Jerry Gray, the emergency room doctor in charge. Several syringes of fluid were take
om the swollen knee for analysis. A short time later, Dr. Gray returned to say that it was seriou
:cause it appeared to be a staf infection and needed attention right away. However, there was
cility or surgeon on the Island of Hawaii to do that. We said that we could be prepared to retu
:attle as soon as possible. Dr. Gray explained that there wasn't time and the surgery needed to
)ne very soon. I agreed with him since I was aware that a staf infection is fast moving and can l
tal if not treated quickly.

Dr. Gray got on the phone to contact hospitals and surgeons to take me. It was several hours
ıd into the evening when Dr. Gray told us that he had tried Queens Hospital in Honolulu and tl
)uld not take me because they had absolutely no bed available. He said he had phoned every su
ıd every orthopedic surgeon he knew of and could not find anyone to see me. He then asked if,
ıy chance, we had any contacts in Hawaii since in his experience sometimes family members ca
ıggest help.

We told him that, in fact, our daughter who lives in Seattle has a college friend who is a docto
'thopedic surgeon living in Hawaii. It was unusual and lucky that we contacted our daughter at
)me that evening who contacted her friend, Dr. Linda Rasmussen, in Kailua. Dr. Rasmussen a
r. Gray talked by phone about what was required. Dr. Rasmussen said to put me on a Med-Ev
ane that night and take me to Castle Hospital in Kailua, and she would be prepared for surger
00 am the next morning.

The surgery involved removing the metal and plastic knee joint and replacing it with a tempo
ıee joint, then daily antibiotic infusions and learning to walk with crutches during the next wee
astle Hospital.

After returning to Tacoma, there were eight weeks of daily antibiotic infusions and four mont
utches until the new permanent knee could be put in. That was followed by two months of
habilitation.

At this time, I am about 100% recovered and back to normal activity. I am eternally grateful
e excellent and professional care and concern of Dr. Gray, Dr. Rasmussen and all of the staff a
astle Hospital for rescuing me during this trying experience.

I have been asked whether I was worried or frightened during the height of the uncertainty. I
call being frightened because my attitude is generally that things will turn out okay. But lookı
ıck on it now, I realize that, but for some very good fortune and some very caring and skilled
)ctors, things may have had a very different outcome.

I am not going to comment on the benefits or merits of this bill before this committee, because
for the doctors, the legislature and the citizens of Hawaii to determine. But if my experience a
ory help to support the medical services in the Islands, I will consider it worthwhile.

Thank you.

From: frannie haws [frannieh@prodigy.net]
Sent: Wednesday, February 11, 2009 2:46 PM
To: HTHTestimony
Cc: Honolulu Adver
Subject: Medical Tort Reform
Attachments: stat9510.jpg

Categories: Green Category, Blue Category

----- Forwarded Message ----
From: frannie haws <frannieh@prodigy.net>
To: HTHtestomony@capitol.hawaii.gov; Honolulu Adver <letters@honoluluadvertiser.com>
Sent: Wednesday, February 11, 2009 2:35:51 PM
Subject:

I strongly disagree with the recent statement made by Marty Fritz of the Hawaii Association for Justice. It was a totally irresponsible statement for him to say "The reasons why they(Doctors) are leaving is because the reimbursement rates are relatively low in Hawaii and they don't make as much money here as they would in other places". I have volunteered at Castle Medical Center for many years and have had a lot of surgeries there as every "ancient" athlete can also say the same. I personally know at least two of Orthopedic surgeons who have operated on me and are great Doctors who moved to Texas because Texas has lowered there medical insurance rates and yes they do make more money. However if they had the choice they never would have left our Islands. The Orthopedic surgeons and all our Doctors are totally over loaded with patients. I literally see them running to and from the hospital to take care of their patient loads. Ob-Gyn's, Internists, you name it they are all struggling under the burden of their medical insurance and it is unfair to these fine dedicated men and women. It's just not just the windward side, it's all of Oahu and all other islands. I'm begging you as a patient with a large family here and on Maui to please wake up and take a particular interest in this bill.

Please come to our "SAVE OUR DOCTORS" legislative Information Luncheon on THURSDAY, FEBRUARY 19TH, NOON TO 2 P.M. It will be a good chance to find all about Medical Tort Reform. Dr. David Teusher, an Orthopedic surgeon from Texas will give a talk "On the results of Medical Tort Reform in Texas". If you do not come, many, with major concerns for our Doctors will be very disappointed and you will not have properly done your homework.

Thank you for your time and we will look forward to seeing you all at the luncheon.

Frances P. Haws

From: Dr. Bobby C. Baker [BB@cancerMD.net]
Sent: Wednesday, February 11, 2009 4:12 AM
To: HTHTestimony
Subject: Support for amended SB 1074 relating to medical tort reform

Bobby C. Baker, MD
President
Pacific Cancer Institute of Maui
Wailuku, Hawaii

February 11, 2009

Senate Health Committee
Senator David Ige, Chair
Senator Josh Green, Vice Chair

RE: Support for amended SB 1074 relating to medical tort reform

Dear Senators Ige, Green and committee members,

I support tort reform and the bills that are being submitted on Tuesday, February 18th with a change to match the House version that limits damages in medical malpractice claims to $250,000 for noneconomic damages, with an aggregate of $750,000 and to $3,000,000 for noneconomic damages arising from injuries found to be catastrophic by a court. . I am sorry that I can't be there, but I live and practice medicine in Maui.

I have served the cancer patients in Maui for 15 years. I have also been chief of staff of Maui Memorial Hospital in 1999 and 2000. I can honestly say that I have never seen our medical community so stressed and fragile. The number of doctors who are leaving or who are simply not moving here is crippling our system.

I know there are many factors that contribute to this, including poor reimbursement, but the lack of Medical Tort Reform is a significant reason. States like Texas and Indiana who have passed this type of Tort Reform legislature have seen physician retention improve a great deal. If we are going to save Hawaii from this severe doctor shortage, we need to offer some relief. Medical Tort Reform is a great way to show that you and our legislature really do understand and care about our survival.

Thank you very much for your help.

Sincerely,

Dr. Bobby Baker

Sincerely,

Bobby C. Baker, MD | President
Pacific Cancer Institute of Maui

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From: John Bellatti [johnbellatti@gmail.com]
Sent: Tuesday, February 17, 2009 2:02 PM
To: HTHTestimony
Subject: SUPPORT 1074 Health Committee

Categories: Green Category, Blue Category

John Bellatti MD
81-958 halekii St
Kealakekua HI 96750

Feb 17, 2009

Senate Health Committee
Senator David Ige, Chair
Senator Josh Green, Vice Chair

RE: SUPPORT 1074 relating to medical tort reform

Dear Senators Ige, Green and committee members,

I am an Orthopedic Surgeon, formerly practicing in Kealakekua on the Big Island.

I have closed my practice here after 21 years continuously trying to make it work. I am not ready to retire and am looking for employment on the mainland. My leaving Kona has produced some difficulties for many patients, for which I am sorry. However the environment for practicing Orthopedics, with its frequent exposure to cases of emergency or urgency, in the midst of the medical-legal climate is no longer worth it.

I am looking for work in several states with License applications in for California (Tort reform in the 70's), Washington (Tort Reform in 2004) and Mississippi (Tort Reform 2008). I think you can see how important Tort Reform is to me.

It is not that I have a bad record in Hawaii. In 21 years I have had 5 complaints registered with the Medical Claims Conciliation Panel. Two were just dropped by the plaintiff (ridiculous shot-gun approach of lawyer led to these completely frivolous actions). For the other 3 the MCCP found no actionable negligence. None of these would have had any merit if reviewed prior by an ethical Orthopedic Expert. In one case the plaintiff's expert had difficulty constructing good English sentences. In another the expert was not really himself dealing with emergency trauma. And in the 3rd, the plaintiff's attorney showed up without any Expert testimony to support his case. He was clearly not prepared, but it took a day out of my practice to go to the hearing, and several full day equivalents to get prepared for the case, and several months of worry.

In 3 out of 5 cases, the plaintiff's were engaging in obvious reckless, dangerous activities. Their lives and limbs were saved at Kona hosital, but we got "sued" anyway.

If we had had Tort Reform, where the plaintiff's attorney would not have the golden pot at the end of the rainbow, I am certain that only one of the cases would have been brought MCCP, and I would have been dropped from that at some point.

We need Tort Reform to attract physicians, It will put us on the map in a good color. It will help to retain physicians who otherwise might leave.

Tort Reform will save the State of Hawaii money. The State hospital system, HHSC, has to pay for malpractice insurance. Big Bucks. And as you know the HHSC is chronically in the red, and the Legislature is chronically being asked to bail them out. Why is the legislature not more attuned to this waste of money. The patients of Hawaii get no benefit. In fact the patients cost of medical care, much of it born by the State (Medicaid and Quest programs, medical insurance premiums for state workers), at many points in the course of treatment.

While the cost of malpractice insurance premiums is noticeable, this cost is not what this battle is about. The true cost of not passing Tort Reform is wasted diagnostics and procedures done to cover the physician from complaint of failure to diagnose, or failure to treat. I am a physician who comes to the Emergency Room to see patients after the ER MD is finished, I am in a great position to see some of this waste. I assure you it is real. But if I were an ER MD in Hawaii now, what would I do? I would continue the wasteful practice. One malpractice case can ruin your whole decade. It can ruin your personal life. It can ruin your professional life. It can ruin your health.

Practicing general Orthopedics in a non Tort Reform state such as Hawaii is just not worth it, when there are so many good alternatives

Please move Bill 1074 forward. Please vote aye and place this bill before the full Senate with recommendation to PASS.

Sincerely

John Bellatti MD

From: lindamd1@juno.com
Sent: Tuesday, February 17, 2009 3:07 PM
To: HTHTestimony
Cc: sportdoctor@gt.rr.com
Subject: SB1074, hearing 2/18, room 016, 3:15pm Health committee

---------- Forwarded Message ----------
David Teuscher, MD
Beaumont Bone and Joint Institute
3650 Laurel Ave
Beaumont, Texas 77707
(409) 838-0346

Feb. 17, 2009

Senate Health Committee
Senator David Ige, Chair
Senator Josh Green, Vice Chair

RE: **Support for SB 1074 relating to medical tort reform**

Dear Senators Ige, Green and committee members,

I am a physician that was involved in the passage of medical liability reform in 2003 in Texas. The crisis in access to care that our broken liability system was causing has been quelled as thousands of new doctors have received new licenses and opened practices across the state. It has been especially effective with gains in emergency specialties staffing our emergency rooms such as neurosurgeons, obstetricians, and orthopaedic surgeons. In five short years we have more and more doctors avaialbe to provide critical access to care. All objective analyses attests to the positive effects that medical tort reform has had in Texas.
The reforms were multifaceted but the foundation of the reforms is a cap on non-economic damages such as pain and suffering, with absolutely no cap on economic damages which can objectively be quantified on past and future medical and diability costs and all lost wages. Real damages are never capped. The non-economic cap is $250,000 for physicians, $250,000 for hospitals and $250,000 for other health care facilities, providing for up to $750,000 in non-economic damages that could be added to economic damages that have no limit. There are many other important aspects of the reforms such as an affadavit of merit by an expert that certifies negligence, interlocutory appeals if the trial judge refuses to treat the defendants fairly, periodic payments that provide resources for real victims in the future years when they need it, and burden of proof at gross negligence for emergency medical care. The result is lawyers are more carefully evaluating cases, but those cases that appear to have negligence are still being filed as they should. This has lead to more early settlements in truly meritorious cases, with a higher percentage of the settlement going to the injured patients since lawyers have incurred less expenses than if they have to go to trial.
Hawaii can benefit from these same types of reforms especially for emergency conditions, restoring access to care for Hawaiians and their guests.

The details of the results of the reform can be found at http://www.protectpatientsnow.org/site/pp.aspx?c=8oIDJLNnHlE&b=2267659, or at http://www.texmed.org/Template.aspx?id=780.

Sincerely,
David Teuscher, MD

February 18, 2009

TO: Senator David Ige, Chair
Senator Josh Green, Vice Chair
Health Committee Members

FROM: Kathy F. Campbell
1946 Lunaai Street
Kailua, HI 96734
261-5049

RE: SB1074

I strongly support medical malpractice reform. This bill will reduce medical malpractice premiums paid by physicians and, in turn, increase patient's access to physician care in Hawaii.

I have attended many malpractice hearings and heard all the comments about Doctors vs. Attorneys in this issue. However, the third group comcerned about this issue is the Patients. I feel we are the forgotten group in this issue. We are the endangered species in this issue. When doctors leave, as many have in the past couple of years, we are the ones who take the hit. We are the ones who get left behind and are hurt. So as you consider this issue today I hope you will keep us, the patients, foremost in your mind and do the right thing to help us keep our doctors and improve the access to care in this state.

I am a volunteer advocate for this third group, and probably the most important, concerned with the medical malpractice issue. PATIENTS!!! I am voluntarily representing thousands of patients in this state who have lost their doctors or have not been able to get timely medical care. The Save Our Doctors coalition is composed of consumers, patients and constituents who have all had doctors close their practice while we were their patients. We have all had trouble finding new doctors. Many of us are patients and/or senior citizens who are on medication. When a doctors closes their practice where do we get our medications?

I lost two of my doctors last year. My internist closed her practice with one month notice. Her husband is a cardiologist and has been sued twice. They have young children and my Doctor told me she could not sleep at night due to the stress these suits have caused in their family. She was worried about getting sued herself and she told me this caused her to close her practice. She has been doing paper work for her husband in his practice and in a note she sent me she said, "now he can come home and have dinner with the family two nights a week instead of only one." This is insane! Doctors should be able to have lives too.

My other Doctor was Dr. Michael Hahn, a board certified orthopedic hand specialist. He also left due to high malpractice premiums. He went to Texas where they have passed major malpractice reform legislation. He e-mailed his former partner here and said he can now practice medicine as he was trained to do in medical school. He no longer orders unnecessary tests for patients to protect himself from malpractice suits. He doesn't have to practice defensive medicine. His stress is gone and he enjoys going to work each day. In February 2006 Dr. Hahn diagnosed me with carpal tunnel in both of my hands and was treating me for this problem. In the summer of 2007 I read in the paper that he had gone to Texas. I was upset! In October 2007 my right thumb went to sleep. It didn't wake up. I went to see a new Doctor and decided to have surgery on November 28, 2007. My new Doctor is an orthopedic surgeon but not a board certified hand specialist. I had to take my chances because there wasn't anyone else to help me. I couldn't just wait until my whole hand went to sleep, never woke up and I had permanent nerve damage. My current doctor is originally from Hawaii and recently returned. His wife is a radiologist and the only way they could come home was if she could keep her practice. So she continues her practice to the mainland via the internet as a radiologist..

This is the reason I volunteered to become involved in this issue. This is not a partisan issue. This is not a doctor vs. attorney issue. THIS IS NOT EVEN A MONEY ISSUE. The state doesn't have to pay for anything. That's the best news I've heard all year! THIS IS A PEOPLE ISSUE. THIS IS A PATIENT ISSUE. Since I have been involved I have heard one horror story after another from patients and your constituents. Story after story from neighbor island people who have lost an eye, lost a foot, lost a leg because it took 10 or more hours to medevac them to Oahu. Every time I talk to someone they tell me about losing their doctor. My good friend was also Dr. Hahn's patient. Another friend had arthoscopic surgery by another doctor who went back to the mainland. My surgery nurse lost two doctors. A couple I met at a windward legislative meeting both went to my internist. My internist had 3,000 patients. Where are 3,000 patients going to go in Kailua? The couple has been unable to find a new doctor. Every doctor they call said they are not taking new patients and/or will not take Medicare patients. Senior citizens are usually on some kind of medication, and if you stop it on a moments notice it can be life threatening. This happened to me. I had to get my OB/Gyn to refill my prescriptions from my internist.

This issue is not about eliminating the option to obtain damages for negligence in catastrophic cases. When definite malpractice and permanent damages/disabilities occur people have the right to remuneration. My son was born with cerebral palsy. He is spastic quadriplegic, has never walked one step and has spent his entire life in a wheelchair. There were malpractice issues when he was born. That was 42 years ago before machines and monitors. I did not sue anyone. I have lived with his disability for 42 years so I know how hard it can be. I have walked the walk.

In answer to the attorneys arguments against this reform this bill DOES NOT deny anyone the right to sue when there is definite malpractice involved and life changing injuries occur. Of course, those kinds of damages should be compensated. Also, I have heard attorneys say that doctors won't relocate to the neighbor islands and other rural areas. An article in the Honolulu Star Bulletin, October 7, 2007 stated, ".....doctors are responding as supporters predicted, arriving from all parts of the country to swell the ranks of specialists at Texas hospitals and bring professional health care to some long-underserved rural areas." I'm sure that rural areas on the neighbor islands are much more appealing than rural areas in Texas!

The following Doctors from the windward side of Oahu have closed their practice and/or left Hawaii in the past two years: Dr. Kerry Hubbs, orthopedic surgeon; Dr. Terry Smith, the only orthopedic back surgeon; Dr. Neil Katz, orthopedic surgeon; Dr. Richard Rose, orthopedic surgeon; Dr. Michael Hahn, the only board certified orthopedic hand surgeon; Dr. Helen Ing, internist; Dr. Jeffrey Ryan, family practice; Dr. Cynthia Mosbrucker, OB/Gyn; Dr. Theodore Teruya, vascular surgeon; Dr. Sam Smith, anesthesiologist, only here six months. Dr. James F. Pierce, a neurologist at Queens, retired November 30, 2007. In his Star Bulletin notice of retirement he said, "I tried unsuccessfully for 1 1/2 years to find someone to continue my practice. Cost of living in Hawaii, ever-rising costs in the medical practice and inadequate reimbursements..... do not cover these needs" The Doctors who have left have relocated to states that have passed malpractice reform.

OB/Gyn is in chaos in the state right now. There is not a hospital Ewa of Queens and Kapiolani that delivers babies. That is where the majority of young families who are of child bearing age live on Oahu. An OB/Gyn who practices in Wahiawa sends his patients to Kapiolani as soon as they begin contractions. He says if they wait and there are traffic problems they won't make it. There is only one OB/Gyn delivering babies on Maui. Molokai and Lanai have NONE. A mother cannot give birth on these islands. These patients have to come to Oahu 1-2 weeks before their due date and stay here until they give birth to make sure they are here when they go into labor. Once you are in labor the airlines won't let you on an airplane. You're not suppose to fly in your last month of pregnancy either. The OB/Gyn in the Kahuku area has discontinued delivering babies. She said she can no longer drive back and forth between Kahuku and Castle Medical Center to do the deliveries. Kahuku Hospital closed its obstetrics department. When mothers are forced to deliver babies in unsafe circumstances the chances of developmental disabilities increases drastically and developmental disabilities becomes another cost to the state.

We must embrace change and forget the politics. Malpractice insurance must be changed in such a way to reduce the malpractice premiums so that our Doctors will stop leaving the state and we will have quality of care. The Texas model is an excellent example for us to follow. It has solved Texas' problem with malpractice. I hope you will create change in the malpractice area and improve our lives.

The health care situation is scary, really scary. In fact it scares me to death. However, it might be a good thing if we all got scared to death, because that would solve our crisis. Seriously, it's not just about us patients, it's about you legislators also. You are being affected the same as us. If you haven't felt the impact of the malpractice problem yet, your turn will come, it's only a matter of time. You are the only ones who can help us and yourselves. I am putting my trust in you to solve the physician shortage in our state this session. I have heard Doctors testify that the system is broke, in crisis and chaos. By passing malpractice reform this year it will be a big step in solving the health crisis in this state. Will you please help because this is a situation in which we can not help ourselves. Again this is not a partisan issue, nor an attorney vs. doctor issue. The Legislature needs to take care of their constituents by solving this problem NOW. Please help us and thank you for listening.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS OF HAWAII (CLH) IN OPPOSITION TO S.B. NO. 1074

February 18, 2009

LATE

To: Chairman David Ige and Members of the Senate Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to S.B. No. 1074.

"In state after state, patients continue to be told that the silver bullet for improving healthcare is to enact severe and arbitrary limits on patient access to the legal system. The arguments made by insurance and medical industry lobbyists are that, in essence, allowing the epidemic of medical errors to go unchecked by legal accountability will improve the quality of healthcare." *See Texas Watch, Patient Justice, January 2008.*

Although this measure focuses on limits on compensation for injured persons and tax credits, and which issues I will address, I will also discuss some of the primary arguments that have been raised over the past several years concerning the limitations being sought against patients injured by medical malpractice.

I am therefore presenting this written testimony in sections to first focus on the issues at hand, then to set forth specific information to illustrate why this bill is harmful to the public and consumers who are injured or die due to medical negligence, and why it will not solve the problems facing our state and the health care industry as proffered by this administration, the insurance commissioner and the Hawaii Medical Association among others.

ISSUES AND ALLEGATIONS

I. Extent of medical errors and malpractice

II. Capping Recoveries will hurt the victims

III. Allegations

a. Too many Lawsuits and Frivolous Claims

b. Medical Malpractice Insurance Premiums are too high

c. Doctors are leaving the State

d. Hospitals cannot get enough doctors to go on-call

IV. Medical Malpractice "Reform" will not solve these problems

V. The Rollback of Insurance Rates

The presentation below is not in the order listed above because of the priority of the allegations being made for "reform".

I. THE ISSUE OF DOCTORS LEAVING THE STATE

The HMA has made statements that doctors, especially specialists, are leaving the state because of malpractice premiums and the risk of medical malpractice lawsuits in general. The implication is that they are leaving in droves and the health care system is on the verge of collapse.

Although HAJ has no specific information as to who is leaving and in what specialty of practice or the primary reason for any doctor leaving the state, we also maintain that neither does the HMA or those who testify that this is true. However, the following data will at least give you an overview of the number of doctors currently with Hawaii addresses and the increase of physicians over the past few years. We used information gathered from the Hawaii Data Book and the DCCA.

The Hawaii data indicates that the number of physicians in Hawaii increased each year from 2000 to 2009. *See Attachment 1.* The information up to 2006 was determined from the resources mentioned above. The information obtained for the number of physicians for 2007 and 2009 was obtained from the DCCA Professional and Vocational Licensing Division on-line information for current licenses for physicians. The information is as follows:

Year	Physicians/Surgeons
2000	3,044
2001	3206
2002	3251
2003	3363
2004	3445
2005	3616
2006	3680
2007	3735
2008	3917
2009	3925

In 2006 during a hearing in the House on SB 3279, Relating to Medical Liability, a doctor who was leaving for the mainland testified that the high cost of living in Hawaii and the costly medical malpractice insurance premiums were the reasons why she was leaving. One of the House Judiciary Committee members during the question portion of the hearing asked if she would consider staying in Hawaii if the state paid her insurance

premium. The doctor said "No" because she had a unique opportunity to work with a renown physician on the mainland in her specialty.

There also have been several articles and letters to the editor where it has been mentioned by doctors that a major reason to relocate is the **low reimbursements** in Hawaii. In an article that appeared in the Honolulu Advertiser on December 21, 2008, Dr. Jordan Popper, a neurologist, stated that "This state is in serious, serious trouble. The reimbursement issue is killing us. Doctors will not come out here when they can make two to three times as much for the same work anywhere else and the cost of living is so high."

II. ISSUE OF DOCTORS MOVING TO RURAL AREAS IN HAWAII

The proponents of limitations on compensation for victims is that it will be an incentive to cause doctors, especially certain specialists, to move to rural areas and in particular, neighbor island locations. The Hawaii Medical Association (HMA) has more recently pointed to the situation in Texas in an attempt to argue that medical malpractice tort reform has created an influx of physicians into the rural areas in Texas. HAJ would like to set forth some of the facts that are not being presented to the public or to the legislature.

The HMA refers to this situation in Texas as an example of why Hawaii should pass medical malpractice tort reform. So let us first look at the specific information as to whether doctors moved to rural areas.

In an article written by freelance writer Suzanne Batchelor for the Texas Observer publication, she observed that the far-reaching change "was built on a foundation of mistruths and sketchy assumptions. The number of doctors in the state was not falling; it

was steadily rising, according to Texas Medical Board data." She also observed that the population in Texas grew 12.7 percent between 2000 and 2006 compared with 6.4 percent in the country as a whole. Also, her research revealed that there were 152 counties in Texas that did not have an obstetrician prior to 2003, and that four years later, there are still 152 counties in Texas without an obstetrician. She then stated that "The campaign's promise, that tort reform would cause doctors to begin returning to the state's sparsely populated regions, has now been tested for four years. It has not proven to be true." Her article, entitled *Baby, I Lied,* is attached to this testimony for your reference as a resource as *Attachment 2.*

There is no established causal connection between "caps" and doctors moving to rural areas. The fact is that doctors generally prefer to live in urban rather than in rural areas because of greater professional opportunities, access to modern facilities and equipment, better schools for their children, availability of cultural, artistic, sports, shopping, dining, and other recreational activities, and of course, higher incomes.

I will now return to the other issues mentioned in the introduction to this testimony.

III. EXTENT OF MEDICAL ERRORS AND MEDICAL MALPRACTICE

It is undisputed that medical errors occur and there is medical malpractice committed where patients are injured or die. It occurs in every state in the country.

In 1999, a credible book published by the Institute of Medicine estimated that medical errors contribute to as high as 98,000 deaths per year, making it the eighth leading cause of deaths, higher than motor vehicle accidents, breast cancer, and AIDS. It went further to state that the annual cost to hospitals stemming from these errors has been

estimated to range from 17 to 29 billion dollars. (The reference was to deaths and did not include other injuries). The obvious conclusion is that if the incidents of medical error and malpractice are reduced, the specific issue that health providers complain about, the cost of malpractice insurance premiums, would be substantially reduced.

Instead of focusing on patient safety or studying the medical system to prevent medical errors and medical malpractice and the resulting injuries to patients, the advocates of the so-called medical malpractice "reform" have always tried to: (1) reduce potential recovery for the injured patient (cap damages); and (2) reduce attorney's fees for the attorneys who represent these injured patients.

The primary question that faces legislators as the policy decision makers is **whether capping damages and limiting attorney's fees will solve the problems set out above**. The following information and arguments will shed light on why CLH strongly feels that it will not.

IV. CAPPING DAMAGES WILL HURT VICTIMS

Two of the major purposes of tort law are compensation for the victim and deterrence of negligent behavior. The suggested cap on non-economic damages (i.e. – pain and suffering, loss of enjoyment of life), as evidenced in this bill, clearly will adversely impact the right to recover adequate compensation by the victims who suffer injury as a result of medical malpractice. **Caps are unfair, arbitrary, and unnecessary and unfairly punish the most severely affected victims**, whose quality of life has been destroyed in many instances. The arbitrary nature of a cap also takes away the right of a jury to determine the proper damages for a particular injury. It should also be pointed out

that where a victim has no economic damages, that injured person is clearly unfairly limited by an arbitrary cap.

Example: An elderly person who is no longer employed is injured because of medical malpractice. There is no wage loss as compared to a working adult and any recovery for medical expenses or long term care goes to third parties who provide these services. The devastation to this person and his or her family is enormous in terms of the grief experienced and the fact that they must live with this situation for the rest of their lives. Capping non-economic damages for this kind of victim is especially unfair.

Further, HAJ has always urged that before drastic changes are made to the civil justice system, it is necessary that the legislature be provided with good reliable data and information in order to properly analyze the need for "reform".

V. TOO MANY LAWSUITS AND FRIVOLOUS CLAIMS

1. The Number of Claims Filed In Hawaii Have Declined

The number of medical malpractice claims filed in Hawaii fell from 173 in 2001 to 100 last year – about a 42% reduction.

The MCCP Annual Reports to the Legislature document the fact that the number of claims filed has steadily and dramatically dropped during the past eight years.

Year	Claims Filed
2001	**173**
2002	**166**
2003	**132**
2004	**128**
2005	**105**

2006	**123**
2007	**105**
2007	**100**

The MCCP data confirms that there is **no litigation explosion** in medical malpractice claims in Hawaii as the medical profession and the insurance industry would like you to believe. Consider this data in this way – out of the millions of instances where Hawaii residents have contact with physicians, hospitals and other medical personnel, only 100 claims were filed in 2008.

With the number of claims going down, the question is why premiums are supposedly escalating significantly. Proponents may say it is because the awards are increasing. Yet the data confirms that claims payments are significantly declining along with the number of claims. The current Report of the Insurance Commissioner shows a 19% decline in the amount paid for claims. This follows a 53% reduction in claims payments reported by the commissioner last year. The largest insurer for private practice doctors, MIEC, has reported a steady and dramatic drop in claims payments from $8.2 million in 2004 to $2.8 million. The Insurance Commissioner Reports list MIEC claims payments of $8.2, $4.8, $3.7, and $2.8 million respectively for the past four years since claimants have been required to consult with a doctor to determine the merits of their claims before filing with the MCCP.

While proponents continue to repeat the mantra that a litigation explosion is responsible for escalating premiums and only tort reform can rein in claims, they are unable to explain why both the number of claims and the amounts paid for claims have

decreased significantly without any change in tort laws. Neither are proponents able to explain why premiums are so high when claims are so low.

2. The Myth of the Frivolous Lawsuit – the Medical Claims Conciliation Panel (MCCP) and Merit Screening Process

Hawaii was one of the first states to implement a claims screening process to prevent the filing of frivolous claims. Claims must first be submitted to the MCCP before a lawsuit can be filed.

Further, the Legislature enacted an additional merit screening procedure in 2003. Medical malpractice claims must first be reviewed by a doctor in the same specialty involved in the claim. The claim cannot be filed unless there is a certificate of consultation filed with the claim that the claim has merit. The measure was codified as HRS section 671-12.5 and applied to claims filed after 2003. The effectiveness of the procedure is reflected by the fact that only two of the claims heard during the past four years was found to be frivolous. The 2005 MCCP Annual Report, for the 2004 year, specifically states: "there were no claims in which the Panel found the underlying claim to be frivolous." The 2006 MCCP Annual Report states that "there was one claim in which the Panel found the underlying claim to be frivolous." The 2007 MCCP report found no frivolous claims filed, the 2008 MCCP report found one frivolous claim filed, and the 2009 MCCP report found no frivolous claims filed.

VI. MEDICAL MALPRACTICE INSURANCE IS TOO HIGH

The Hawaii Medical Association (HMA) has always maintained that the premiums of physicians are too high and have increased tremendously over the past few years. What this committee needs are specific facts and information to make a reasoned

decision on actually how costly the premiums are for individual doctors and for what specialties; for example: (1) what is the amount of the premiums and does it vary from physician to physician in Hawaii; (2) what is the amount of gross income that these physicians make; (3) what is their net income; (4) what percentage of their gross income is the premium cost; and (5) what is the net cost because these premiums are fully tax deductible so its impact is reduced considerably when it is deducted from both federal and state taxes?

1. Hawaii Insurance Premiums vs. California Insurance Premiums

We mentioned this situation in past legislative sessions but I thought it was important to reiterate what happened in a committee hearing. A chart was submitted to the Senate Judiciary Committee at a hearing held in March 2005 to show premiums in Hawaii as compared to other locations. However, it only showed a comparison between Hawaii and Northern California where it is indicated that the premiums in Hawaii were higher. Please keep in mind that these bills are proposing the adoption of basically the California model of medical malpractice tort reform, which was adopted in California in 1975 and found constitutional by the California Supreme Court in 1985.

During the question portion of the hearing, the chairperson of the Senate Judiciary committee asked whether MIEC insured physicians in Southern California to which the answer was "yes." The follow-up question inquired as to the rates in southern California to which the answer was that it was higher than Northern California, and in fact about 40% to 70% higher. The chair noted that the substance of the bill before the committee was the California model (MICRA) of medical malpractice reform and their own data indicates that the California premiums would be equal to those in Hawaii or higher in

some instances. The conclusion reached by the committee was Hawaii should not pass such a law because after 30 years since MICRA was passed in California, the premiums in California were not significantly lower, and in many instances were higher than in Hawaii which does not have a MICRA model of "reform."

Our recent research shows that the highest MIEC rates in Los Angeles in 2009 are much higher than the highest rates in Hawaii. Here are some examples:

Specialty	Hawaii	Los Angeles
Neurosurgery	$73,248	$107,936
OB/GYN	$58,600	$86,348
Orthopedic Surgery	$48,832	$71,956
Family Practice	$9,768	$15,832

Further, the rates in Hawaii are lower in 2009 than in 2007 but the Los Angeles rates remain the same with no reduction. Also, although the rates in Northern California are slightly lower than the rates in Hawaii, the average rates in California are higher than in Hawaii.

2. Tort Reform Has No Significant Impact on Malpractice Premiums

The insurance industry and independent studies on the impact of tort reform on medical malpractice insurance premiums confirm that there is no significant relationship.

Following the medical malpractice "crisis" of the mid 1970's in California, the doctors formed their own member insurance companies that insure about 60% of the doctors. The second largest of these was SCPIE (Southern California Physicians Insurance Exchange). After almost 30 years of experience with MICRA, the insurance company declared under oath in connection with its contested rate filing:

"While MICRA was the legislature's attempt at remedying the medical malpractice crisis in California in 1975, it **did not substantially reduce the relative risk of medical malpractice insurance** in California."

VII. HOSPITALS CANNOT GET ENOUGH DOCTORS TO GO ON-CALL

Pursuant to Senate Concurrent Resolution No.150 (2006), the report of the task force stated, in summary, that it identifies "reimbursement" as the principal cause of the on-call crisis.

VIII. THE ROLLBACK OF INSURANCE RATES

This bill does not provide for a rollback of medical malpractice insurance rates. The question for you as policy makers is: what will the savings be to the physicians and will the specialists then move to underserved areas, volunteer to be on-call physicians at hospitals, and make quality health care more accessible to all of our citizens? If implemented, the reduction of rate should be tied to a percentage of the current premiums. If the medical profession is so certain that capping damages will reduce premiums then there should be a provision in this bill calling for a rollback and it should be at a significant reduction of current premiums.

IX. MEDICAL MALPRACTICE "REFORM" WILL NOT SOLVE THE PROBLEMS

The **dots do not connect** between capping damages and lowering premiums, keeping doctors in the State, giving them the incentive to take on call duty at hospitals, move to rural communities, and reduce medical errors. This is a major objection to these bills. Ask yourself: how will capping damages on victims stop medical errors? It has no

impact on making doctors more careful. What is the relationship between capping damages and a neurologist moving to Kona? This bill does not solve the problem.

X. INSURANCE PREMIUM TAX CREDIT

HAJ has had introduced a tax credit bill in prior sessions and we support this concept as a positive alternative to address some of the issues before this committee.

Because malpractice insurance premiums are already fully deductible, the addition of tax credits could result in a net offset (and perhaps even a small gain) for physicians who practice in rural areas for the long term. This will essentially make malpractice insurance free for rural doctors.

If the claim is that it is the high cost of malpractice insurance which is the cause of the doctor shortage in rural areas and that the reduction of premiums as the cure is true, then this measure alone should solve the doctor shortage problem because it will eliminate the cost of insurance through tax incentives.

VII. CONCLUSION

This bill is a radical change in social policy and I urge this committee to do a thorough analysis before you vote to strip away consumer rights. Because of the reasons stated above, HAJ opposes this bill. Thank you for the opportunity to testify.

Attachment 1

Medical Malpractice Data – Licensed Physicians

Place of Address	2000 Physicians/ Surgeons (Hawaii Data Book) DCCA	2001 Physicians/ Surgeons (Hawaii Data Book) DCCA	2002 Physicians/ Surgeons (Hawaii Data Book) DCCA	2003 Physicians/ Surgeons (Hawaii Data Book) DCCA	2004 Physicians/ Surgeons (Hawaii Data Book) DCCA	2005 Physicians/ Surgeons (Hawaii Data Book) DCCA	2006 Physicians/ Surgeons (Hawaii Data Book) DCCA	2007 Physicians (MD) (Geographic Report) DCCA – Current License	2008 Physicians/ Surgeons Geographic Report) DCCA – Current License
Total Licensed	**5,481**	**6,118**	**5,970**	**6,483**	**6,413**	**7,073**	**6,869**	**7,073**	**7,564**
Total Hawaii Addresses	**3,044**	**3,206**	**3,251**	**3,363**	**3,445**	**3,616**	**3,680**	**3,735**	**3,917**
Hawaii	278	291	303	313	327	338	369	370	382
Maui	233	238	251	262	272	277	285	287	315
Lanai	2	2	2	2	2	2	2	2	2
Molokai	6	5	7	8	10	10	10	10	11
Oahu	2,414	2,556	2,566	2,652	2,697	2,852	2,870	2,919	3,049
Kauai	111	114	122	126	137	137	144	147	158
Mainland U.S. Addresses	2,384	2,860	2,672	3,067	2,918	3,394	3,126	3,275	3,573
Foreign Addresses	53	52	47	53	50	63	63	62	158
Total Not Hawaii Addresses	**2,437**	**2,912**	**2,719**	**3,120**	**2,968**	**3,457**	**3,189**	**3,337**	**3,731**
Other	n/a	n/a	n/a	n/a	n/a	n/a		1	
Percentage of Licensed – Not Hawaii Addresses	44%	48%	46%	48%	46%	49%	46%	47%	49%

TABLE 3

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
CURRENT LICENSES AS OF JANUARY 28, 2009

Board, License Type	Location	Total	Individual	Corporation, Partnership	Sole Owner	Other
EMTP		424	424			
	OAHU	230	230			
	HAWAII	86	86			
	MAUI	42	42			
	KAUAI	20	20			
	MOLOKAI	5	5			
	LANAI					
	MAINLAND	41	41			
	FOREIGN					
	OTHER					
MD		7515	7515			
	OAHU	3069	3069			
	HAWAII	375	375			
	MAUI	315	315			
	KAUAI	153	153			
	MOLOKAI	11	11			
	LANAI	2	2			
	MAINLAND	3523	3523			
	FOREIGN	67	67			
	OTHER					
MDG		4	3		1	
	OAHU	2	1		1	
	HAWAII					
	MAUI	1	1			
	KAUAI					
	MOLOKAI					
	LANAI					
	MAINLAND	1	1			
	FOREIGN					
	OTHER					
MDR		456	456			
	OAHU	330	330			
	HAWAII	1	1			
	MAUI					
	KAUAI					
	MOLOKAI					
	LANAI					
	MAINLAND	97	97			
	FOREIGN	2	2			
	OTHER	26	26			

The Texas Observer

Attachment 2

Baby, I Lied

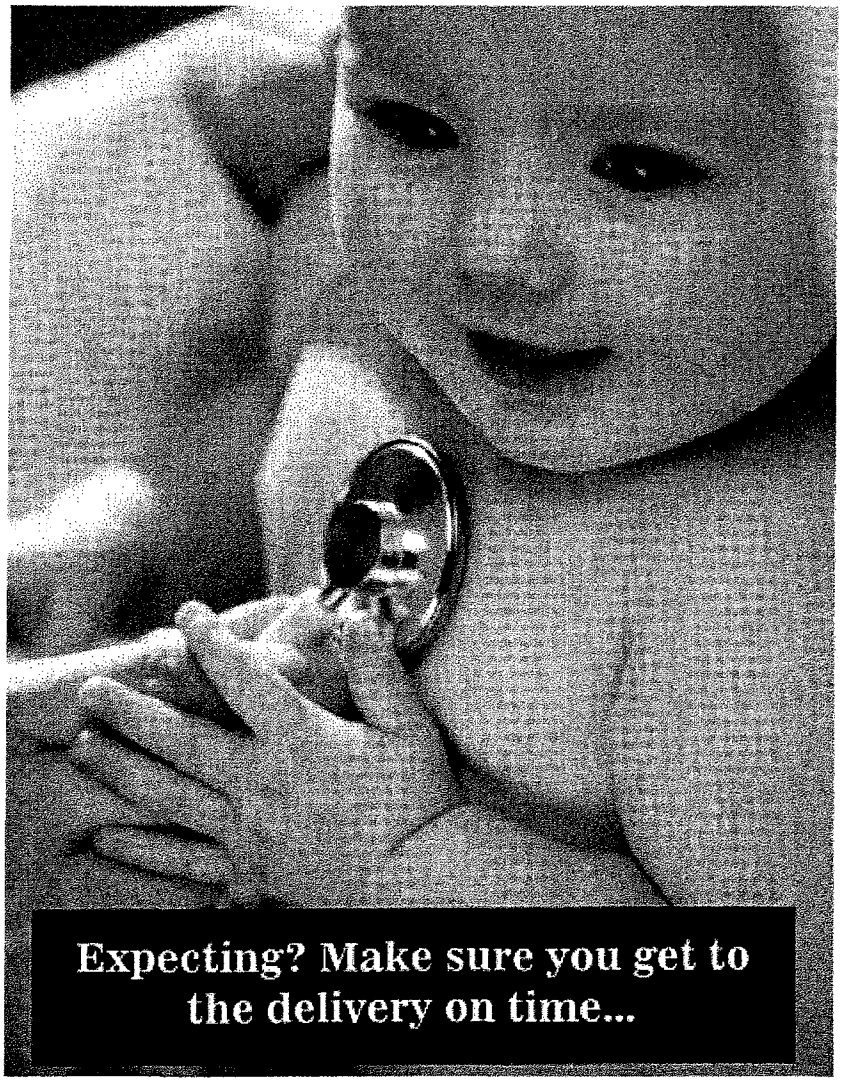
Rural Texas is still waiting for the doctors tort reform was supposed to deliver.

Suzanne Batchelor | October 19, 2007 | Features

The flood of beguiling baby photographs began cascading into mailboxes across Texas as the 2003 fall election drew near. Gracing the cover of a slick brochure, the infant smiled as a stethoscope—held by an unseen but presumably kind physician—was pressed to its chest. "Who Will Deliver Your Baby?" the mailer asked.

The direct-mail pitch was one of many churned out by insurance and medical interests as they spent millions urging voters to pass Proposition 12, a constitutional amendment that would limit the amount of money patients or their survivors could recover in medical malpractice lawsuits.

Swaddled in the glossy brochures was a dire threat. Greedy lawyers were besieging doctors with unwarranted lawsuits that were making malpractice insurance rates skyrocket. Doctors were fleeing Texas, leaving scores of counties with no obstetricians to deliver babies, no neurologists or orthopedic surgeons to tend to the ill. Without Proposition 12, the ad campaign warned, vast swaths of rural Texas would go begging for health care.



Choosing between greedy trial lawyers and cuddly babies was no contest for most Texas voters. Proposition 12 passed. Four years later, vast swaths of rural Texas are going begging for health care.

Proposition 12, and the far-reaching changes in Texas civil law that it dragged behind it, was built on a foundation of mistruths and sketchy assumptions. The number of doctors in the state was not falling, it was steadily rising, according to Texas Medical Board data. There was little statistical evidence showing that frivolous lawsuits were a significant force driving increases in malpractice premiums.

Perhaps the most insidious sleight of hand employed by Proposition 12 backers was their repeated insistence that medical malpractice insurance rates were somehow responsible for doctor shortages in rural Texas.

"Women in three out of five Texas counties do not have access to obstetricians. Imagine the hardship this creates for many pregnant women in our state," Gov. Rick Perry told a New York audience in October 2003 at the pro-tort-reform Manhattan Institute for Policy Research. "The problem has not been a lack of compassion among our medical community, but a lack of protection from abusive lawsuits."

The campaign's promise, that tort reform would cause doctors to begin returning to the state's sparsely populated regions, has now been tested for four years. It has not proven to be true.

Since Proposition 12 passed, insurance companies—many grudgingly—have lowered their rates. More doctors are coming to Texas, as a recent *New York Times* article trumpeted. That is proof, say Proposition 12's backers, that so-called tort reform is working.

"Texas has seen a tremendous success in luring doctors to practice in our state thanks to tort reform passed in 2003," says Krista Moody, Perry's deputy press secretary. Moody noted that the Texas Medical Board is having to add staff to handle a backlog of doctors applying for state licenses.

Those doctors are following the Willie Sutton model: They're going, understandably, where the better-paying jobs and career opportunities are, to the wealthy suburbs of Dallas and Houston, to growing places with larger, better-equipped hospitals and burgeoning medical communities.

On a Texas map inside the beguiling-baby mailer, blood red marked the 152 counties in Texas that did not have obstetricians in 2003. Rural doctor shortages were kept front and center as the state's physicians, led by the Texas Medical Association and the Texas Association of Obstetricians and Gynecologists, campaigned for Proposition 12.

A flier printed by the TMA in English and Spanish and posted in waiting rooms across the state told patients that "152 counties in Texas now have no obstetrician. Wide swaths of Texas have no neurosurgeon or orthopedic surgeon. ... The primary culprit for this crisis is an explosion in awards for non-economic (pain and suffering) damages in liability lawsuits. ... vote "YES!" on 12!"

As of September 2007, the number of counties without obstetricians is unchanged—152 counties still have none, according to the *Observer*'s examination of county-by-county data at the state Medical Board.

Nearly half of Texas counties—124, or 49 percent—have no obstetrician, neurosurgeon, or orthopedic surgeon. Those specialists aside, 21 Texas counties have no physician of any kind. That's one county worse than before Proposition 12 passed, when 20 counties had no doctor.

The TMA counts 186 new obstetricians in Texas since Proposition 12 passed, and President Dr. William Hinchey offers that as proof of tort reform's effectiveness.

No independent study has shown what caused the increase, though Texas medical schools have graduated increasing numbers, by the hundreds, of physicians every year since 1997, the earliest year for which TMB posts data. And the state's growth probably played some part. According to the U.S. Census Bureau, Texas' population grew 12.7 percent between 2000 and 2006, compared with 6.4 percent for the country as a whole. The number of obstetricians in Texas increased only 4.27 percent over the same six years, including three years under tort reform.

More telling is where the new obstetricians—and neurosurgeons and orthopedic surgeons—decided to go.

The Medical Board's latest obstetrician data for the 254 Texas counties reveals that several counties led the gains.

Collin County, the Dallas suburb that is the wealthiest in Texas in terms of per capita income, gained the most obstetricians. Its 34 new ones increased its obstetrician ranks by an impressive 45 percent since Proposition 12 passed.

In second place is Montgomery County, Houston's northern neighbor along the booming Interstate 45

corridor, and the state's fourth-fastest growing county, according to the U.S. Census 2006 estimate. Montgomery gained 19 obstetricians. Tarrant County followed with 17.

Next, at 12 each, are Galveston and Hidalgo counties. Among the rest, a few counties gained in single digits, a few lost, and the majority of counties—two thirds—remained the same.

With well-equipped, well-staffed hospitals, plenty of colleagues, and insured patients, it's not hard to see why Collin County would attract the most obstetricians or offer them the most jobs. Collin's population grew 42.1 percent from 2000 to 2006; the county encompasses Plano, Carrollton, and a small part of Dallas.

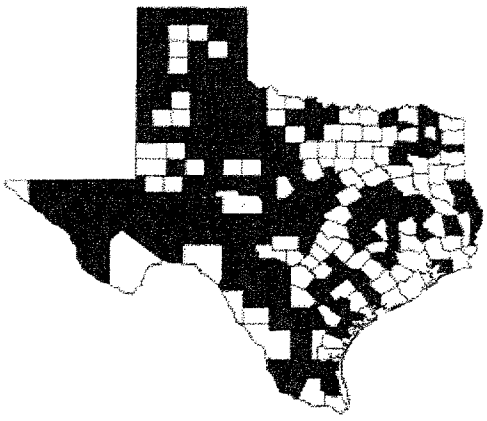
The county's Presbyterian Hospital of Plano alone has 73 obstetricians and 30 neonatologists for newborns. Two allied hospitals serve nearby Allen and Dallas, and the three are far from Collin's only hospitals.

Margot and Ross Perot gave $6 million last October to the Presbyterian Hospital of Plano for maternal and infant care. The Margot Perot Center for Women and Infants has been named "Best Place to Have a Baby" by *DallasChild* magazine 11 years in a row. The Presbyterian system has even been honored locally for its baby sign-language classes.

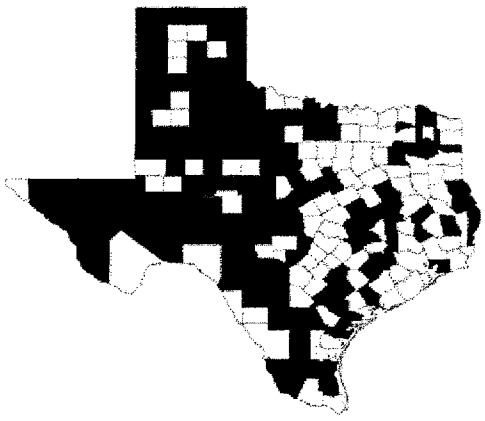
The pattern of doctors' opting to practice in more affluent, urban areas holds true for Texas' overall gains in neurosurgeons (36) and orthopedic surgeons (185) since 2003.

The number of neurosurgeons statewide increased 8.8 percent in the past four years. The biggest share, again, went to Collin County, which gained seven. Bexar and Harris counties each gained five, while Lubbock gained four, and Tarrant, three. At last count 216 counties, or 85 percent, have no neurosurgeon.

Texas has added 185 orthopedic surgeons since 2003, a 10.3 percent increase. Harris County gained the most with 25, followed by Dallas County with 21, Tarrant County with 19, Travis County with 16, and Collin County with 15. There are no orthopedic surgeons in 169 Texas counties.



Texas counties without obstetricians in 2003 before Proposition 12 passed.



Texas counties without obstetricians four years after Proposition 12 passed.

Source: Texas Medical Board

Surely, state leaders and the TMA knew that tort reform wouldn't deliver doctors and specialists to rural Texas.

The persistent struggle to get rural, underserved Texans care by obstetricians, brain surgeons—any specialists—has little to do with lawsuits or high premiums.

Rural health care has been strained by a steady, decades-long migration of Texans from rural to urban areas. Rural areas have fewer hospitals and facilities, and tend to have higher concentrations of patients on Medicaid. "The enormity of Texas ... can serve as a great obstacle for those seeking and providing health care," TMA's own Web site notes. "Approximately 15 percent of Texas' population lives in rural counties, yet only 9 percent of primary care physicians practice there."

It's hard for an obstetrician to make a living in Deaf Smith County in the Panhandle, or Pecos County out west. Understandably, most specialists choose financial security over scraping anxiously by—if for no other reason than to pay back medical school loans. They like to practice near a large community of colleagues, have access to more elaborately equipped hospitals, and treat patients with private insurance coverage.

Yet some of those who pitched Proposition 12 as a cure for rural health care woes now seem surprised that doctors aren't surging into the countryside.

"You limited your line of questioning to a single issue we have not yet revisited," said an e-mail sent by Jon Opelt, spokesman for the pro-Proposition 12 Texas Alliance for Patient Access, when asked about the rural obstetrician situation. The alliance represents more than 200 insurance companies, hospitals, medical clinics, doctors' associations, and nursing homes. It donated $500,000 to the political action committee, Yes on 12, in 2003, according to the *Houston Chronicle*.

Dr. Charles W. Bailey Jr., a plastic surgeon who was TMA president during the Proposition 12 campaign, said he wonders if perhaps new doctors aren't out there and the Medical Board simply hasn't been able to keep up its count. "They have a lot of stuff to do, and maybe they haven't really reassessed all the counties," Bailey said. "We have to realize that many of these counties have so few people in them, they won't support a specialist. They'll have family practice physicians delivering babies. Like many towns won't support a neurosurgeon or plastic surgeon or cardiologist. I would just, I don't know if they've really, with all the applications they're processing, if they have the time and manpower to really determine, to do another head count. From all I've heard, they can be hard pressed to keep their head above water."

Medical Board spokeswoman Jill Wiggins expressed confidence in the agency's count. Fortunately, she said, the 2003 Legislature boosted its funding and allowed the agency to add staff. When the board's license applications became backlogged in 2006, Wiggins said, the agency received even more new funding and now has about 142 full-time employees, compared with 101 seven years ago, a 41 percent increase.

Dr. Ralph Anderson, a University of North Texas obstetrics and gynecology professor and legislative adviser in 2003 with the obstetricians and gynecologists association, said the overall statewide increase in obstetricians might still yield a trickle-down effect in rural areas.

"If you bring more obstetricians to the state, a portion of those are going to go into the underserved areas, the Rio Grande Valley. If you have a lot of personalities coming in, they will disperse themselves to the area where they feel comfortable," he said. "The more people interested, the more chance you'll find somebody who's looking for that kind of opportunity. Those communities have benefited because of the increased numbers of people coming into the state."

So how did doctors become poster children for the sweeping tort-reform agenda pushed by the business

and insurance lobbies in 2003?

Former TMA lobbyist Kim Ross recalled his firing just before the 2003 legislative session. Ross, who now runs his own public relations firm for national and regional medical clients, said he was canned in December 2002 by the TMA under pressure from Perry.

"There was a strongly held belief that I was personally responsible for TMA endorsing (Democratic nominee) Tony Sanchez over Rick Perry," said Ross. "I definitely took the fall on that."

The doctors' Democratic endorsement had resulted from Perry's earlier, unexpected veto of a bill they had supported requiring prompt payment from health maintenance organizations. "Perry vetoed that in an ambush without any warning. There was a huge response from physicians," Ross said. The governor also was unhappy, Ross said, because he and other TMA staff were then negotiating with trial lawyers over what they would and would not support in 2003 tort-reform legislation.

Though they fired him under political pressure, Ross said, he doesn't believe TMA supported tort reform's claims of bringing health care to rural areas just to gain Perry's favor. "There's always been an article of faith, even among OB-GYNs themselves and family practitioners, who are the mainstay of rural practice, that if we just had some liability relief and less fear of lawsuits, that would translate into a restoration of access," Ross said. He characterized that belief as an "urban myth. "

Yet "the cost of liability is a relative fraction of rural healthcare cost—it's a high part of trauma [emergency] costs—but access is driven by reimbursement," Ross said. "Reimbursement from Medicare, Medicaid, commercial managed care ... You need some liability stability, but the primary driver is the economics of reimbursement. For all its emotional charge of fairness, liability cost for the most part is not the issue."

Why did physicians readily believe it when insurance companies blamed greedy, out-of-control plaintiff's lawyers for high liability rates in 2003? One reason may be that the largest malpractice insurer in Texas is their own.

The TMA and the Legislature created the Texas Medical Liability Trust in 1978 as a self-insured trust solely for TMA members. The trust's doctor-insureds elect a board of directors via mail-in ballot every three years. Besides insurance, the trust provides defense attorneys to doctors who are sued, and pays doctors' expenses when the investigators of the Medical Board fine them.

The trust is not regulated by the Texas Department of Insurance. As former Insurance Department Associate Commissioner Birnie Birnbaum noted, the trust can charge what it chooses, while regulated companies must charge the rates they file with the department. (The trust isn't Texas' only unregulated malpractice insurer; "risk retention" insurers are also free of state oversight. There's no federal regulation of insurance companies.)

Since 2003, the trust has reduced its insurance premiums: 12 percent in 2004; 5 percent in 2005; 5 percent in 2006; 7.5 percent this year; and 6.5 percent for 2008. In 2008, the trust will charge doctors 68.7 percent of the charge before tort reform.

Dr. Donald A. Behr, head of TMA's rural physician group, speaks enthusiastically about his rural practice in Graham, seat of Young County in North Central Texas. Behr and his wife, a nurse, left Fort Worth six years ago and say they love treating the smaller community of neighbors and friends, "not just insurance cards."

Graham's hospital is better off than most rural facilities, said Behr, a general surgeon. An old oil town, Graham was flush with millionaires 25 years ago; their philanthropy keeps the hospital afloat.

Of the five counties bordering Young, only one has an obstetrician. Graham has one, but no neurosurgeon, orthopedic surgeon, or cardiologist. Specialists ride in weekly or monthly, like pioneer circuit riders, from Wichita Falls, Mineral Wells, and Abilene.

Graham Regional Medical Center draws from Jack, Stevens, Throckmorton, and Archer counties. "Part of that is because of our obstetrician, part probably because of me," Behr said.

A frantic edge comes to Behr's otherwise confident voice when he describes the hospital's financial fragility despite philanthropy.

"Most of the obstetrics patients in rural Texas are Medicaid," which pays rural physicians less than urban ones, he said. Just to offer obstetrics, Graham's hospital has to jump through a few hoops.

First, the hospital has to have a minimum of two doctors who deliver babies and accept Medicaid, Behr said. Fortunately, Graham has three family practice physicians who also provide obstetrics to back up its lone obstetrician.

"A little hospital with one doctor doesn't fly," Behr said. "You've got to have anesthesia, and if you don't have enough volume for a full-time anesthetist, you can't have obstetrics, basically."

Graham's hardworking obstetrician sees patients six days a week, traveling to five towns, and his nurse-practitioner sees the women at other times.

In an interview, Behr scarcely mentions liability insurance as a factor facing rural health care. Adequate reimbursement—getting paid—by Medicare, Medicaid, and private insurers to cover costs topped Behr's concerns, expressed in a long conversation.

"The only way to keep doctors in rural Texas and anyplace is, somehow we have to find a way to practice medicine cheaper," he said. "We spend too much, yet there's a lot of doctors who can't make a living."

Tort reform may have failed to brighten health care for rural Texans, but two state agencies are trying to lure physicians and other health care professionals to underserved areas.

The seven-year-old Office of Rural Community Affairs gives doctors stipends of up to $15,000 a year for residency practice after medical school in underserved areas. A separate program in the state office uses $112,500 a year in interest from the state's share of the massive tobacco lawsuit settlement to recruit and retain licensed nonphysicians, such as nurses and physical therapists, in underserved areas. Another $2 million in tobacco money is distributed by the office to small rural hospitals.

The 2007 Legislature increased funding for a doctor education-loan repayment program administered by the Texas Higher Education Coordinating Board. For the current biennium, the program will hand doctors $1 million annually.

Loan program Director Lesa Moller said doctors willing to practice in underserved areas can receive up to $9,000 for each year they complete. After two years, the doctor becomes eligible for federal matching funds of up to $18,000.

"Unfortunately, there's been way more applicants than there's been dollars," said TMA lobbyist Helen Kent Davis of the assistance programs, adding that the TMA has advocated for the rural programs at the Legislature for many years.

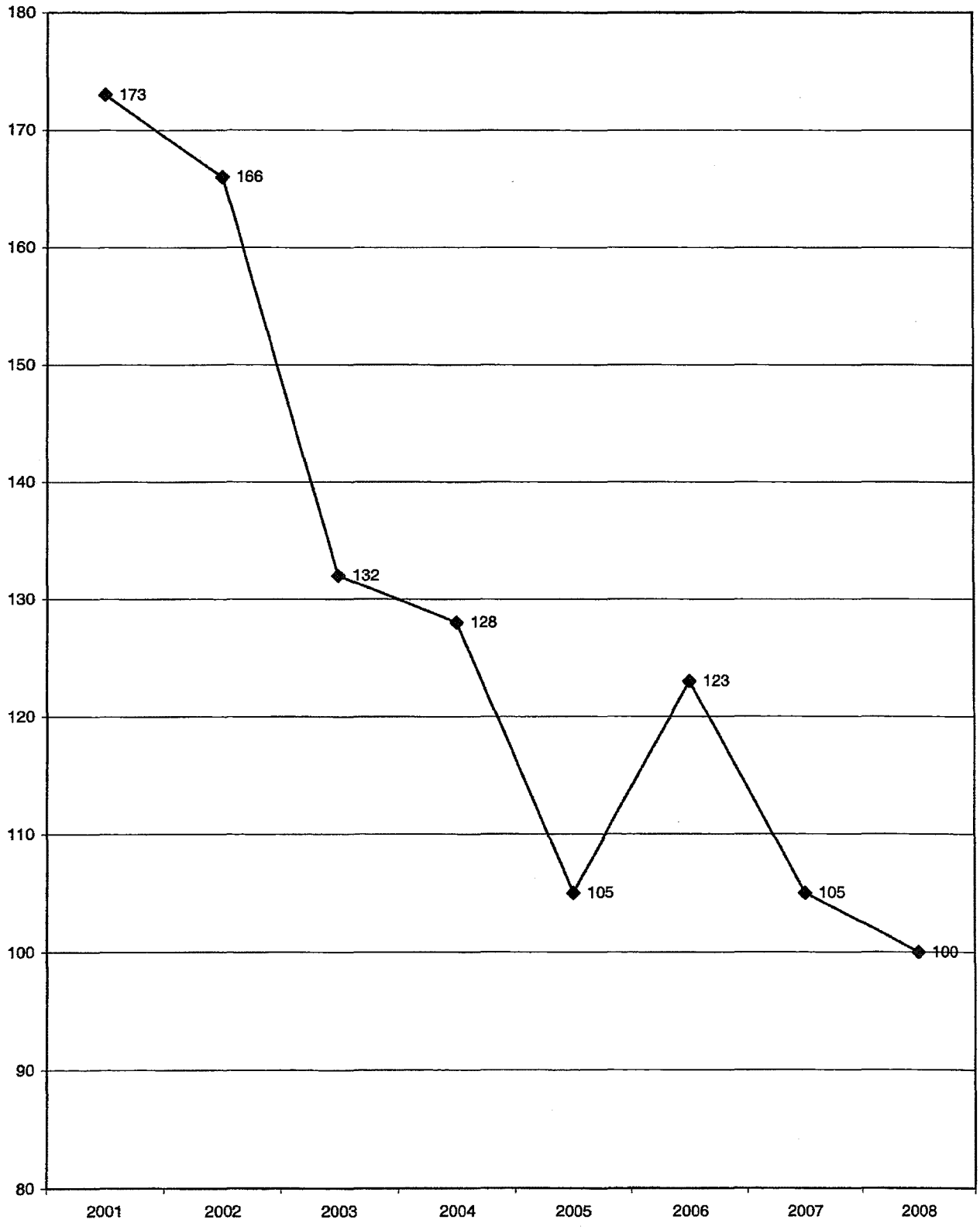
TMA does not fund any rural doctor programs, Davis said.

The irony that tobacco-settlement money is put to work year after year sustaining rural health care professionals and hospitals should not be lost on Texas physicians who campaigned for Proposition 12.

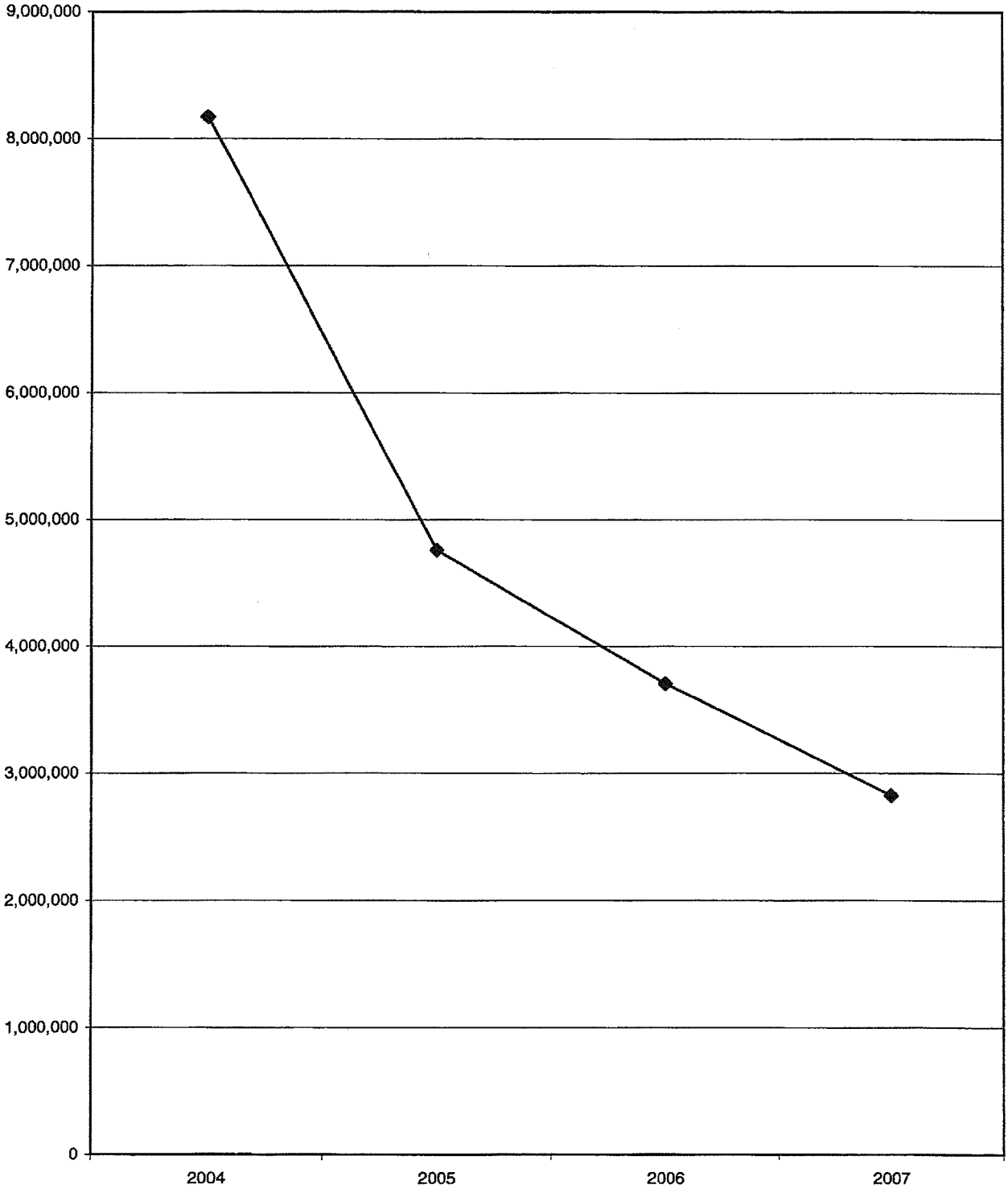
The massive tobacco settlement was the work of trial lawyers, the very folks TMA leaders demonized in their quest for cheaper insurance and fewer lawsuits.

Suzanne Batchelor is a freelance writer in Austin.

MCCP Claims
Number of Claims Filed



MIEC Claims Paid



LATE

Testimony Submission

From:
William K. Wong, Jr. MD
President, Hawaii Vision Clinic, Inc.
99-128 Aiea Heights Drive Suite 703
Aiea, HI 96701
808 487-7938

To: COMMITTEE ON HEALTH
Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair

Wednesday February 18, 2009, 3:15 PM, Conference Room 016

RE: Support for SB 1074 relating to medical malpractice

Dear Senators Ige, Green and committee members,

I would like to submit testimony in favor of Tort Reform. Precedent has shown irrefutably in other states that Tort Reform greatly reduces the costs of medical care both directly and indirectly. In Hawaii we are facing a grave shortage of physicians in multiple specialties. The neighbor islands in particular have been affected the worst.

As an on-call physician in Ophthalmology at Queen's Medical Center, I have personally answered distress calls from outer island emergency rooms unable to find a local Ophthalmologist to care for their patients. Some individuals have waited in the ER for 8 hrs or more while the staff struggle to find a specialist to care for their patient. As a last resort, they contact Queen's for assistance. I have accepted multiple patients on transfer from Maui and Hawaii due to lack of adequate care. These patients must endure not only the pain and suffering during transport, and delay of care, but often times must bear the extra expense of travel and lodging for the duration. Often times, EMS and Air ambulance are utilized for these cases. Many of these patients do not have medical insurance because the premiums are too high. All together, these significant drains on our insurance carriers and public resources drive up health care costs.

Tort Reform is a proven method of reducing healthcare costs. Through the reduction of frivolous litigation and excessive judgement awards, medical malpractice insurance premiums decrease, allowing physicians to stay solvent and to remain in their practices to treat patients. That is what we are here to do. Too many good physicians are lost to the mainland where they can focus on patient care, without the worry of staying solvent and the threat of bankruptcy.

It is long overdue for Hawaii to initiate Tort Reform and evolve with the rest of the nation in order to provide our citizens with adequate healthcare.

Respectfully submitted.

William K. Wong, Jr. MD

Leolinda L. K. Parlin

2604 Pauoa Road
Honolulu, HI 96813

Phone: (808)282-6348 **leolinda@resqconsultants.com** **Fax: (808)531-3595**

Date: February 17, 2009

LATE

To: COMMITTEE ON HEALTH
Senator David Ige, Chair
Senator Josh Green, MD, Vice Chair

Fr: Leolinda Parlin, Private Citizen

Re: SB1074 - RELATING TO MEDICAL MALPRACTICE. SUPPORT THE INTENT w/POINTS OF DISCUSSION FOR CONSIDERATION

Thank you for this opportunity to provide testimony on SB1074. There are two segments of the bill. I support whole heartedly the first segment which relates to the tax credit.

It is the second segment of the measure which needs further discussion to insure that the proposed law is clear and truly identifies the population that it sets out to protect.

Discussion Point 1: <u>The definition of catastrophic should include not just injury but death</u>
It is a false assumption that the families of victims are fully compensated through economic damages in the wrongful death of a loved one. For example, a parent who engages fully and shoulders a significant load of providing care for the entire family who dies because of malpractice may not necessarily be the large wage earner in the family. Consequently, the hardship that ensues because of the loss of the "parental/support resource" to the household is both a tremendous emotional burden and financial burden as surviving family members seek to shore up their resources.

Discussion Point 2: <u>The definition of severe brain and spinal cord injury should be expanded to include "resulting in severe functional disability"</u>
While the word "severe" in and of itself is open to wide interpretation, functional disability should not only be limited to paralysis, but should be expanded to include the functional limitations associated with brain injury. While a survivor of brain injury may be able to walk and talk they may not have the capacity to function fully in society. Too often the cognitive damage of such injuries are more debilitating and make require more care that individual with paralysis, even though they have "physical abilities".

Discussion Point 3: <u>The evaluation of the effectiveness needs to be codified in specific terms and measurement parameters, specifically as it relates to limitations on damages</u>
As the legislature moves towards defining a middle ground for compensation to families who are victims of malpractice, it is only fair to identify up front the measurement indicators on the caps. I ask that the legislature determine the outcomes it wants to measure and then define them. For example, a comparison of the potential award amount and the actual capped amount awarded to the victim. Parameters of such reporting could include number of claims awarded, by amount, by injury type, by functional disability, by island, by age victim, type of award (court, jury, and settlement), etc.

Thank you for your time and consideration of my testimony.

From: bernierob1@aol.com
Sent: Tuesday, February 17, 2009 7:35 PM
To: HTHTestimony
Subject: Testimony regarding SB 1074

Categories: Green Category, Blue Category

LATE

Dr. Bernard Robinson
91-2139 Ft. Weaver Road
Suite 210
Ewa Beach, Hawaii 96706
2/18/2009

To: COMMITTEE ON HEALTH
Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair

Wednesday February 18, 2009, 3:15 PM, Conference Room 016

RE: Support for SB 1074 relating to medical malpractice Dear Senators Ige, Green and committee members, I support medical tort reform because my practice overhead is so high that I cannot20afford to continue working as a private neurosurgeon in Hawaii. My malpractice insurance premium has doubled in less than two years. Insurance carriers, including Medicare, have continually cut their fees to physicians and often use innovative ways to delay payment to providers. I am a board certified neurosurgeon and the United States has fewer than 4000 board certified neurosurgeons. Our country graduates about 125 new neurosurgeons per year while 225 neurosurgeons retire per year. Some limit their practices and do not operate on children or perform complex cases (brain or spine) because malpractice insurance carriers often charge a higher premiums for these categories of work. High cost of living areas like Hawaii will be unable to compete with other states for quality neurosurgical and other specialist unless legislative relief makes Hawaii more attractive financially.

I close by advising that legislative relief in the form of effective tort reform now will possibly keep Hawaii from losing so many quality physicians that the citizens of Hawaii will not have safe and sufficient healthcare even if they have healthcare insurance.

Thank you for the opportunity to testify.

Sincerely,

Bernard Robinson, M.D.

With much Aloha!

From: Brent Tamamoto [btamamoto@gmail.com]
Sent: Wednesday, February 18, 2009 5:41 AM
To: HTHTestimony
Subject: RE: Support for SB 1074 relating to medical malpractice

Categories: Green Category, Blue Category

LATE

Brent Tamamoto
98-1065 Kaamilo Street
Aiea, HI 96701

To: COMMITTEE ON HEALTH
Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair

Wednesday February 18, 2009, 3:15 PM, Conference Room 016

RE: Support for SB 1074 relating to medical malpractice

Dear Senators Ige, Green and committee members,

I support medical tort reform. I have written the committee before, and even came to listen to testimony last year as a resident physician after working all night the night before. Now that I have completed my residency and have witnessed first hand the costs of medical malpractice insurance, I can say with even more urgency that we must pass legislation regarding medical tort reform now. While I realize and agree that tort reform is certainly not a panacea to the many ills eroding our current medical system, it is a key piece of the puzzle which has been proven to work in other states and is looked at by physicians as a barometer of the willingness of a states legislators to pass meaningful legislation to assist physicians.

In the past 7 months, I have spent time filling in for pediatricians in many different private practices. I can tell you first hand that even in some of the most basic medical fields such as Pediatrics, that there is a physician shortage here in Hawaii. Pediatricians practicing much farther west than Pearl City are seeing an obscene number of patients in order to fill the need presented by their communities. While in theory, this should help their practices bring in more revenue, it is bad for patient care, and these physicians often have no idea whether or not insurance companies are paying them for the services that they are providing because they place a greater priority on taking care of their patients than running a business. In the medical sub-specialties, the problem is even worse, and there are many sub-specialties where we are 1-2 physicians away from being unable to provide even the most basic pediatric care in General Surgery, Cardiology, Pulmonology, Infectious Disease, Gastroenterology, Neurology, Urology, Ear/Nose/Throat, and Cardiothoracic Surgery to name a few. The waiting lists are often 3-4 months to get an appointment to see those sub-specialists. If the current environment persists, more and more of our most vulnerable population, our keiki, will find themselves unable to receive the medical care that they need.

Thank you for the opportunity to testify.

Sincerely,
Brent K. Tamamoto, MD

Pediatrician / Neonatal Hospitalist
--
Home: (808) 485-8375
Cell: (808) 754-4212
E-mail: btamamoto@gmail.com

From: doctor@hawaii.rr.com
Sent: Wednesday, February 18, 2009 6:47 AM
To: HTHTestimony
Subject: support for SB 1074 relating to medical malpractice

Categories: Green Category, Blue Category

LATE

To: Committee on Health
Senator David Ige, Chair
Senator Josh Green, M.D., Vice chair

Wednesday February 18, 2009 @ 3:15 pm Conference room 016

Re: support for SB 1074 relating to medical malpractice

Dear Senators Ige, Gree and committee members:

I support medical tort reform. I am a practicing pediatrician and have experienced the frustrations of referring my patients to a specialist in a timely manner. There is definitely a shortage of pediatric specialists on the island. My patients usually have a minimum of 1 month waiting period before an appointment which forces us to admit the patient to the hospital to expedite the process. Likewise, when the patient is in the hospital awaiting specialist consultation it may be several days before they are seen by that specialist which delays discharge. The hospital then notifies the physician that the hospitalization may not be covered beyond that specific date. If my child were in that situation I would definitely seek care on the mainland. The problem of limited access to care does affect the children of hawaii and because I would not like to be personally liable for that I do often refer to specialist on the mainland which sadly enough can accomodate my patients sooner than the specialists here.

Thank you for allowing me this opportunity to testify.

Sincerely,
Amy Tamashiro, M.D.