



HAWAII MEDICAL ASSOCIATION

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Tuesday, January 24, 2012

10:00 a.m.

Conference Room 329

To: **COMMITTEE HEALTH**
Rep. Ryan I. Yamane, Chair
Rep. Dee Morikawa, Vice Chair

From: Hawaii Medical Association
Dr. Roger Kimura, MD, President
Linda Rasmussen, MD, Legislative Co-Chair
Dr. Joseph Zobian, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: **HB 1967 RELATING TO MEDICAL CLAIM CONCILIATION**

In Support

Chairs & Committee Members:

For over a decade HMA has been attempting to legislatively address the fact that our doctor shortage in Hawaii is caused in part by high malpractice insurance costs and an unfriendly liability system. This bill represents a compromise that all parties can agree to. HMA supports this measure and is hopeful that it will reduce Hawaii's medical liability costs and thus help aid the effort to provide greater access to care to Hawaii's residents.

Thank you for the opportunity to testify.

OFFICERS

PRESIDENT - ROGER KIMURA, MD

**SECRETARY - THOMAS KOSASA, MD IMMEDIATE PAST PRESIDENT – DR. MORRIS MITSUNAGA, MD TREASURER
– STEPHEN KEMBLE, MD EXECUTIVE DIRECTOR – CHRISTOPHER FLANDERS, DO**

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF H.B. NO. 1967**

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

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in support of H.B. No. 1967, relating to Medical Claim Conciliation.

Beginning in late 2010, individuals interested in improving Hawaii's health care claims environment began meeting at the John A. Burns School of Medicine.

Participants included faculty from the medical and law schools, attorneys representing both plaintiffs and defense, and representatives of the Hawaii Medical Association. The meetings were initiated and led by Dr. David Sakamoto, Deputy Director of Health, and Dr. Kelly Withy, associate professor of medicine and Director of the Hawaii/Pacific Basin Area Health Education Center (AHEC). I was one of the participants representing the plaintiff's perspective.

H.B. No. 1967 is a consensus proposal for amendments to the current Medical Claims Conciliation Panel (MCCP) law to reduce the current adversarial nature of the process and instead to emphasize its originally intended conciliation role. These amendments will make the process of addressing and resolving questions related to medical treatment that is associated with patient injuries or deaths more efficient and less intimidating for both patients and doctors, while reducing unintended consequences created by the current adversarial process. These consequences include the emotional toll that the adversarial process extracts from its participants, the perception on the part of doctors that the process is unfriendly, the potential that an adversarial proceeding early in

the claim process may make it harder to resolve claims amicably between doctors and patients, and the unnecessary need for doctors to live with the stigma of malpractice claims when such claims are actually in the nature of inquiries. The proposed amendments therefore emphasize communication and conciliation, rather than adversarial proceedings which tend to polarize the parties and their positions.

Recent years have seen the development of alternative dispute resolution (ADR) procedures, such as mediation and arbitration, into an important means of resolving claims in place of or in conjunction with traditional litigation. These amendments recognize that many, if not most, major medical claims now involve mediation or arbitration as an integral part of the process and permits the use of ADR in lieu of participation in the MCCC process. In part this is because there is now a well developed and highly trained supply of skilled mediators available in Hawaii. As a result, many parties now prefer to use professional mediators instead of volunteer MCCC panelists who tend to lack specialized ADR training. This recognizes what is happening in actual practice and eliminates the need for DCCA to administer and conduct MCCC proceedings where they are redundant and unnecessary because the parties will utilize ADR to accomplish the same purpose.

The successful use of mediation principles to resolve legal claims supports the change in emphasis of the MCCC to conciliation. The focus of the MCCC will no longer be as a decision-maker, but will instead be as a peace-maker. The decision-making function of the MCCC is replaced with a conciliation function. The purpose of the MCCC will no longer be to determine blame, but instead to facilitate communication and encourage amicable resolution of disputes between doctors and patients.

The participants in the meetings which culminated in these proposed changes recognize that a heavy burden will fall on them to educate doctors, patients and legal representatives of the new role of the MCCP and reduced burden on DCCA. They have already begun to discuss what the Hawaii Medical Association, medical and law school faculty, private attorneys and administration must do to assure successful implementation of these amendments.

Much time, thought and effort has been put into these amendments and your favorable consideration in hearing this matter is appreciated. We look forward to working with you in improving the MCCP process. Thank you very much for allowing me to testify in Support of this measure. Please feel free to contact me should you have any questions or desire additional information.

**TESTIMONY OF BERT SAKUDA
IN SUPPORT OF H.B. NO. 1967**

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

My name is Bert Sakuda and I am submitting testimony in support of H.B. No. 1967, relating to Medical Claim Conciliation. I am an attorney who has represented plaintiffs in personal injury cases for over 30 years.

Beginning in late 2010, individuals interested in improving Hawaii's health care claims environment began meeting at the John A. Burns School of Medicine. Participants included faculty from the medical and law schools, attorneys representing both plaintiffs and defense, and representatives of the Hawaii Medical Association. The meetings were initiated and led by Dr. David Sakamoto, Deputy Director of Health, and Dr. Kelly Withy, associate professor of medicine and Director of the Hawaii/Pacific Basin Area Health Education Center (AHEC). I was one of the participants representing the plaintiff's perspective along with Bob Toyofuku.

I support this measure for the reasons explained by Bob Toyofuku in his written testimony.

Much time, thought and effort has been put into these amendments and your favorable consideration in hearing this matter is appreciated. We look forward to working with you in improving the MCCP process. Thank you very much for allowing me to testify in Support of this measure. Please feel free to contact me should you have any questions or desire additional information.