



# THE LEAGUE OF WOMEN VOTERS OF HAWAII

February 12, 2011

Committee on Health

Senator Josh Green, M. D. chair

Senator Clarence K. Nishihara, Vice Chair

Wednesday February 16, 2011

2:45 p. m.

Conference Room 229

State Capitol

Testimony on SB 592

The League of Women Voters of Hawaii stands in support of Medical Tort reform, and the intent of this bill

The Leagues Policy on health care cost containment is included in their public policy as follows The League believes that efficient and economical delivery of care can be enhanced by such cost control methods as the reduction of administrative costs, and malpractice reform

Thank you for allowing me to testify

Joy A Marshall R.N

Chair, Health Care Reform

LWV-Hawaii

Testimony of  
John M. Kirimitsu  
Legal & Government Relations Consultant

Before:  
Senate Committee on Health  
The Honorable Josh Green, M.D., Chair  
The Honorable Clarence K. Nishihara, Vice Chair

February 16, 2011  
2:45 pm  
Conference Room 229

**Re: SB 592 Relating to Medical Torts**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on SB 592 relating to medical torts.

**Kaiser Permanente Hawaii supports this bill, with a suggested amendment.**

In 1976, the legislature went to great lengths to create the Medical Claims Conciliation Panel (MCCP) as a process to assist in resolving medical malpractice claims and screen frivolous claims. As an added preventive measure, the legislature enacted an additional merit screening prequalification by codifying § 671-12.5 which requires claimants to file a certificate of consultation, authenticating the validity of a claim from an independent medical professional, along with the MCCP complaint. By enacting these legislative measures, the legislature sought to effectuate a more streamlined process to resolve medical claims in a more efficient, expeditious and inexpensive manner.

This bill allowing the imposition of sanctions against the non-prevailing party, who rejects the MCCP decision in favor of costly trial, will help protect the integrity and efficiency of the MCCP process. Without such sanctions, the MCCP process loses effectiveness, as the non-prevailing party may choose to completely disregard the MCCP decision making process without consequence.

There is already in place, a similar statutory imposition of sanctions for claimants in non-medical cases who must first go through a mandatory Court Annexed Arbitration Process (CAAP) prior to proceeding to trial. The CAAP rules allow the imposition of sanctions for parties who appeal the CAAP award and fail to improve their positions by a 30% benchmark. However, this remedy only applies to the CAAP process under Chapter 601.

To be consistent, this legislature should impose the same sanctions for parties rejecting an MCCP decision. These statutory remedies need to be consistent in order to be effective.

Additionally, by imposing sanctions to screen frivolous malpractice claims, this bill may help to contain the spiraling cost of medical malpractice insurance.

For these reasons, Kaiser supports this bill, but would like to offer an amendment to include all "binding arbitration", not only trials, within the scope of the remedy. Therefore, page 1, line 8, should read "medical claim conciliation panel resulted in trial or any binding arbitration."

Thank you for the opportunity to comment.



## HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814  
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

**Wednesday, February 16, 2011 2:45 p.m. Conference Room 229**

To: COMMITTEE ON HEALTH  
Senator Josh Green, M.D., Chair  
Senator Clarence K. Nishihara, Vice Chair

From: Hawaii Medical Association  
Dr. Morris Mitsunaga, 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: SB 592 Relating to Medical Torts

In Support

Chairs & Committee Members:

This measure doesn't hurt good lawyers or good doctors - it is a compromise that will help improve access to care in Hawaii by reducing the cost of malpractice insurance and unnecessary lawsuits. Something must be done to encourage doctors to move back to Hawaii if we don't want to see the projected 50% shortage of doctors in the next decade become a reality. With malpractice rates increasing by 50-70% every two years and totaling around \$70,000 a year for specialists our state is the most short on it is no surprise that Hawaii is not attracting younger physicians.

Specialty	2001-2002 Period	2004-2005 Period	% Increase
General Surgery	\$24,528	\$37,012	50.9%
Neurosurgery	\$44,170	\$77,104	74.6%
OB/GYN	\$40,662	\$62,515	53.7%
Orthopedics	\$24,049	\$34,881	45.0%

### OFFICERS

PRESIDENT - MORRIS MITSUNAGA, MD PRESIDENT-ELECT - ROGER KIMURA, MD  
SECRETARY - THOMAS KOSASA, MD IMMEDIATE PAST PRESIDENT - DR. ROBERT C. MARVIT, MD TREASURER  
- STEPHEN KEMBLE, MD EXECUTIVE DIRECTOR - CHRISTOPHER FLANDERS, DO

The Medical Claims and Conciliation Panel (MCCP) is treated as no more than a speed bump because it has no teeth.

It is a panel of a lawyer, a doctor, and a lay person (who 99% of the time is a lawyer). The doctor, according to statute, should be of the same specialty as the doctor on trial. The panel makes a determination on the merits of the claim.

Let's look at the Deposition of Claims Heard in 2008:

MCCP Findings:

Hearings conducted.	43
Actionable negligence found	5
Some Respondents negligent	6
No negligence found	32
Total Damages Recommended by Panels	\$6,848,500

If we could remove those 32 no negligence cases from the court system it would save many of our hard working doctors a lot of unnecessary time and emotional suffering. This measure will not hurt our hard working plaintiffs attorneys who had the foresight to get a medical evaluation of their case before they proceeded.

**By saving malpractice insurance companies from expenses related to taking no negligence cases to court, this bill would lower malpractice premiums and thus help convince young doctors to practice in Hawaii.**

The second part of this bill gets rid of a loophole in the Certificate of Consultation requirement. This change ensures that claims filed do in fact have a Certificate of Consultation. If claimants are not represented by attorneys (pro se claimants) and are having trouble with the Certificate of Consolation, HMA, would be more than happy to facilitate nameless evaluations free of charge.

Thank you for the opportunity to testify.



# Hawaii Association of Health Plans

February 16, 2011

The Honorable Josh Green, M.D., Chair  
The Honorable Clarence Nishihara, Vice Chair  
Senate Committee on Health

**Re: SB 592 – Relating to Medical Torts**

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

My name is Howard Lee and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of eight (8) member organizations:

- |                                       |                            |
|---------------------------------------|----------------------------|
| AlohaCare                             | Kaiser Permanente          |
| Hawaii Medical Assurance Association  | MDX Hawai‘i                |
| HMSA                                  | University Health Alliance |
| Hawaii-Western Management Group, Inc. | 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 HB 592 which could 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. We respectfully urge the Committee’s passage of SB 592.

Sincerely,

Howard Lee  
President

**green1 - Karen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 15, 2011 12:38 PM  
**To:** HTHTestimony  
**Cc:** josephpollarddo@yahoo.com  
**Subject:** Testimony for SB592 on 2/16/2011 2:45:00 PM

Testimony for HTH 2/16/2011 2:45:00 PM SB592

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Joseph Pollard  
Organization: Individual  
Address:  
Phone:  
E-mail: [josephpollarddo@yahoo.com](mailto:josephpollarddo@yahoo.com)  
Submitted on: 2/15/2011

Comments:

**green1 - Karen**

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**From:** Laurence G Rotkin [rotkin@hawaii.edu]  
**Sent:** Monday, February 14, 2011 1:01 PM  
**To:** HTHTestimony  
**Cc:** All Senators  
**Subject:** SB592

Dear Senators Green and Nishihara & Committee Members:

As a hospitalist physician, I have seen at first hand the declining number of specialists available to treat my patients on the windward side. At my hospital we have no neurosurgeons, no vascular surgeons, only one ENT surgeon, only one gastroenterologist, and a very limited panel of interventional cardiologists available for emergencies.

I support the passage of medical tort reform. This is needed to keep physicians in Hawaii. We have a difficult time attracting young physicians due to our malpractice risks here. Physicians avoid the specialties that are higher risk for malpractice such as ob/gyn. To decrease the cost of medicine, there needs to be controls on the defensive medicine costs.

Access to medical care is a real issue here in Hawaii.

Please support SB 592 which would give the medical claims conciliatory panel more weight and avoid claims with no merit from proceeding to trial.

Thank you for this opportunity to testify,

Laurence Rotkin, MD, PhD



## green1 - Karen

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**From:** Malcolm Ing, M.D. [malcolmingmd@hotmail.com]  
**Sent:** Monday, February 14, 2011 1:57 PM  
**To:** HTHTestimony  
**Subject:** FW: Undeliverable: SB 592  
**Attachments:** ATT00001

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**From:** [postmaster@capitol.hawaii.gov](mailto:postmaster@capitol.hawaii.gov)  
**To:** [malcolmingmd@hotmail.com](mailto:malcolmingmd@hotmail.com)  
**Date:** Mon, 14 Feb 2011 12:05:44 -1000  
**Subject:** Undeliverable: SB 592

### Delivery has failed to these recipients or distribution lists:

[hthttestimony@capitol.hawaii.gov](mailto:hthttestimony@capitol.hawaii.gov)

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X-Spam-Score: 1.1

X-Spam-Checker-Version: Pauspam 2.0 - <http://www.pauspam.net/>

X-Spam-Status: No, hits=1.1 tests=DNS\_FROM\_OFENWHOIS,HTML\_MESSAGE, J\_CHICKENPOX\_48 autolearn=no

Received: from col0-omc1-s3.col0.hotmail.com (col0-omc1-s3.col0.hotmail.com [65.55.34.13]) by smtp1.pauspam.net (Postfix) with ESMTP id D0CBC29BCC509 for <[hthttestimony@capitol.hawaii.gov](mailto:hthttestimony@capitol.hawaii.gov)>; Mon, 14 Feb 2011 12:05:29 -1000 (HST)

Received: from COL112-W9 ([65.55.34.8]) by col0-omc1-s3.col0.hotmail.com with Microsoft SMTPSVC(6.0.3790.4675); Mon, 14 Feb 2011 14:04:25 -0800

Message-ID: <COL112-W978CEA5415F1FF8ADC919CBD00@phx.gbl>

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boundary="\_fdbae5f6-d2b1-4edf-b9dd-3a5732ea7865\_"

X-Originating-IP: [74.203.83.250]

From: "Malcolm Ing, M.D." <[malcolmingmd@hotmail.com](mailto:malcolmingmd@hotmail.com)>

To: <[hthttestimony@capitol.hawaii.gov](mailto:hthttestimony@capitol.hawaii.gov)>

CC: Linda Rasmussen <[lindamd1@juno.com](mailto:lindamd1@juno.com)>

Subject: SB 592  
Date: Mon, 14 Feb 2011 12:04:25 -1000  
Importance: Normal  
MIME-Version: 1.0  
X-OriginalArrivalTime: 14 Feb 2011 22:04:25.0428 (UTC) FILETIME=[0477C940:01CBCC93]  
Return-Path: [malcolmingmd@hotmail.com](mailto:malcolmingmd@hotmail.com)

--Forwarded Message Attachment--

From: [malcolmingmd@hotmail.com](mailto:malcolmingmd@hotmail.com)  
To: [hthtttestimony@capitol.hawaii.gov](mailto:hthtttestimony@capitol.hawaii.gov)  
CC: [lindamd1@juno.com](mailto:lindamd1@juno.com)  
Subject: SB 592  
Date: Mon, 14 Feb 2011 12:04:25 -1000

Dear Senators,  
I support SB 592.

Frankly, **support and passage of this bill occurs, or it is more "business as usual" (greater loss of high risk MDs and physicians in general for the State of Hawaii.**

Sincerely, Malcolm R. Ing, M.D.

**green1 - Karen**

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**From:** F. Don Parsa [fdparsa@yahoo.com]  
**Sent:** Saturday, February 12, 2011 7:50 AM  
**To:** HTHTestimony  
**Subject:** SB 592 Relating to Medical Torts  
**Attachments:** Testimony.doc

**Senate COMMITTEE ON HEALTH**

**Senator Josh Green, M.D., Chair**

**Senator Clarence K. Nishihara, Vice Chair**

**Re: Support for SB 592 Relating to Medical Torts**

Dear Senators Green and Nishihara & Committee Members:

**I support the passage of medical tort reform. This is needed to keep physicians in Hawaii. We have a difficult time attracting young physicians due to our malpractice risks here. Physicians avoid the specialties that are higher risk for malpractice such as ob/gyn. To decrease the cost of medicine, there needs to be controls on the defensive medicine costs.**

Access to medical care is a real issue here in Hawaii.

Please support SB 592 which would give the medical claims conciliatory panel more weight and avoid claims with no merit from proceeding to trial.

Thank you for this opportunity to testify,

F. Don Parsa, MD, FACS  
Professor of Surgery,  
University of Hawaii,  
John A. Burns School of Medicine.

**F. Don Parsa, M.D., F.A.C.S.**  
Certified, American Board of Plastic Surgery

**Senate COMMITTEE ON HEALTH**

**Senator Josh Green, M.D., Chair**

**Senator Clarence K. Nishihara, Vice Chair**

**Re: Support for SB 592 Relating to Medical Torts**

Dear Senators Green and Nishihara & Committee Members:

**I support the passage of medical tort reform. This is needed to keep physicians in Hawaii. We have a difficult time attracting young physicians due to our malpractice risks here. Physicians avoid the specialties that are higher risk for malpractice such as ob/gyn. To decrease the cost of medicine, there needs to be controls on the defensive medicine costs.**

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F. Don Parsa, MD, FACS  
Professor of Surgery,  
University of Hawaii,  
John A. Burns School of Medicine.

**green1 - Karen**

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**From:** jz [jzobian@yahoo.com]  
**Sent:** Saturday, February 12, 2011 8:28 AM  
**To:** HTHTestimony  
**Cc:** All Senators  
**Subject:** testimony SB 592

Joseph M. Zobian, M.D.  
94-307 Farrington Highway, B7a  
Waipahu, HI 96797  
808-678-0622

**To:** COMMITTEE ON HEALTH  
Senator Josh Green, M.D., Chair  
Senator Clarence K. Nishihara, Vice Chair

**Re:** SB 592 Relating to Medical Torts

Chairs & Committee Members:

### **In Support.**

The physician shortage is bad and getting worse. The only way to increase the supply of physicians in Hawaii is to provide an adequately attractive environment which will pull them away from the higher reimbursement rates on the mainland.

While we may not be willing to pay doctors more, we can protect them from the frivolous lawsuits which cost them valuable time, money and peace of mind. We must also keep in mind that the 'defensive medicine' many doctors feel compelled to practice adds enormous expenses to our medical system with no real benefit.

Our current medical system fails to adequately reward good physicians. Ironically, those physicians who make themselves most available to our citizens are also the ones most vulnerable to frivolous lawsuits.

Specialists such as obstetricians, neurosurgeons, trauma surgeons and orthopedic surgeons regularly leave Hawaii to practice on the mainland, even some of those born and trained here. Anything we can do to support these physicians must be done.

Thank you for the opportunity to testify.

Joseph M. Zobian, M.D.

**green1 - Karen**

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**From:** Diane and Fred Holschuh [triplef80@gmail.com]  
**Sent:** Sunday, February 13, 2011 4:57 PM  
**To:** HTHTestimony  
**Cc:** All Senators; lindamd1@juno.com; Christopher Flanders  
**Subject:** SB 592 Relating to Medical Torts

TO: Senator Josh Green, M.D., Chair; Senator Clarence K. Nishihara, Vice Chair; and Members, Senate Committee on Health

FROM: Dr. Fred C. Holschuh  
P.O. Box 2004, Honokaa, Hawaii 96727

SUBJECT: SB 592 Relating to Medical Torts

DATE: Feb. 16, 2011, 2:45 p.m., Conference Room 229

Chair Green, Vice Chair Nishihara and Members,

Thank you for allowing me to testify in strong support of SB 592. Medical tort reform is one of the critical steps in solving the shortage of doctors in our state, especially on the neighbor islands. I am a retired emergency physician with 30 years of experience statewide, mostly in Hilo. I am also a past president of the Hawaii Medical Association, but am writing this as an individual.

Shortages or absences of certain specialty physicians in neighbor island communities can cause long delays in emergency care and necessitate costly and uncomfortable transfers to other islands. The costs of malpractice insurance, as well as the terrible burden placed on a practicing physician by an unnecessary lawsuit discourages physicians from starting practices in Hawaii. This is especially true on the neighbor islands. The end result affects the patients by decreasing access to health care.

I respectfully urge passage of SB 592. Thank you.

Aloha,

Fred C. Holschuh, M.D.