

JAN 18 2019

A BILL FOR AN ACT

RELATING TO POSTGRADUATE RESIDENT PHYSICIANS AND FELLOWS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawai'i is facing a
2 critical shortage of primary care as well as specialty
3 physicians. The total statewide physician shortage is estimated
4 at seven hundred ninety-seven. In the case of primary care
5 physicians, the shortage is calculated to be two hundred sixty-
6 three physicians. This shortfall is projected to worsen with
7 the increased demand for health care from an aging population
8 and the retirement of an aging physician population creating
9 access issues on O'ahu and the neighbor islands. Even with team
10 based care practices using other health care providers to help
11 deliver primary care, physicians trained in primary care will be
12 needed to help coordinate services and appropriate care
13 referrals. The need to educate and train, as well as retain,
14 more doctors to care for Hawai'i's citizens is a critical key
15 component to meeting the health care needs of the State's
16 communities now and in the future.



1 The legislature further finds that many Hawai'i citizens are
2 unable to obtain timely and appropriate health care due to
3 shortages of primary health care providers in the State. These
4 shortages threaten individual health and cumulatively affect the
5 State's health care costs. A significant barrier to increasing
6 the pool of health care providers is the exposure of post-
7 graduate medical or resident physicians to medical malpractice
8 litigation. Resident physicians are graduates of medical school
9 who are pursuing "postgraduate residencies or fellowships" to
10 become specialists, e.g. - in family medicine, pediatrics,
11 surgery or psychiatry.

12 The increasing frequency at which resident physicians are
13 named as parties in lawsuits alleging medical negligence
14 discourages the Hawai'i's medical school graduates to continue
15 their education in Hawai'i and to remain in the State to
16 practice. The post-medical school training the resident
17 physician participates in is a necessary component to completing
18 the requirements of a medical education leading to full
19 licensure and specialty Board Certification. Throughout their
20 training, resident physicians participate in a nationally-
21 recognized accredited program that includes the care of patients



1 under the supervision of a fully-licensed faculty or volunteer
2 physician. The resident physicians are closely monitored and
3 the treatment they provide is subject to continual review by a
4 fully-licensed faculty or volunteer physician, as well as their
5 educational program.

6 Accordingly, the purpose of this Act is to encourage
7 postgraduate resident physicians to apply to Hawai'i-based
8 residency programs and remain in Hawai'i for the good of the
9 community by providing the postgraduate residents with limited
10 immunity while under the supervision of a fully-licensed faculty
11 or volunteer physician who is teaching and supervising clinical
12 care in the context of a nationally-recognized accredited
13 graduate medical education training program.

14 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
15 amended by adding a new section to part IV to be appropriately
16 designated and to read as follows:

17 "§304A- Immunity from liability for postgraduate
18 resident physicians and fellows. (a) A postgraduate resident
19 physician or fellow participating in a nationally-recognized
20 accredited residency or fellowship training program and who is
21 part of a supervised practice shall not be liable in a medical



1 malpractice action for injury that occurs during or as a result
2 of care that is provided while the postgraduate resident
3 physician or fellow is in the program and is learning under the
4 supervision of a fully-licensed faculty or volunteer physician,
5 unless gross negligence is established by clear and convincing
6 evidence.

7 (b) A postgraduate resident physician or fellow
8 participating in a nationally-recognized accredited residency
9 and fellowship training program shall not owe an independent
10 duty of care to a patient if the resident or fellow is
11 participating in patient care and learning under the supervision
12 of a fully-licensed faculty or volunteer physician.

13 (c) This section shall not eliminate any responsibility of
14 the supervising licensed health care provider for the actions of
15 the postgraduate resident physician or fellow.

16 (d) For the purposes of this section, "nationally-
17 recognized accredited residency and fellowship training program"
18 includes "graduate medical education program" as that term is
19 defined in section 304A-1701."



S.B. NO. 903

1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

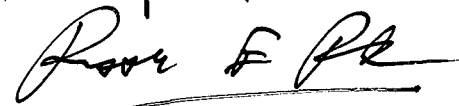
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INTRODUCED BY:

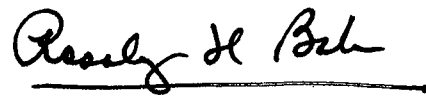














S.B. NO. 903

Report Title:

Medical Education; Postgraduate Resident Physicians and Fellows;
Immunity from Liability

Description:

Provides immunity from liability for postgraduate resident physicians and fellows for medical malpractice claims arising from injury that occurs as a result of care that is provided while the resident physician or fellow is participating in an accredited training program under the supervision of a licensed faculty or volunteer physician.

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