



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 669, RELATING TO MEDICAL MALPRACTICE.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Tuesday, January 29, 2019 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Clare E. Connors, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Mizuno and Members of the Committee:

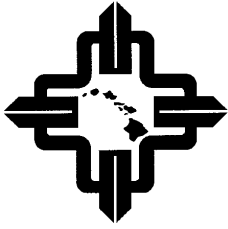
The Department of the Attorney General provides the following comments on this bill.

The stated purpose of this bill is to address physician shortages by encouraging postgraduate resident physicians to apply to Hawaii-based residency programs and remain in Hawaii by providing postgraduate resident physicians and fellows in a graduate medical education program limited immunity while acting under the supervision of a fully-licensed faculty or volunteer physician.

The bill seeks to amend chapter 663, Hawaii Revised Statutes, by adding a new section with three subsections. Subsection (a) states that a postgraduate resident physician or fellow participating in a graduate medical education program and practicing under the direction of a duly licensed physician “shall not owe an independent duty of care to a patient, nor shall the resident or fellow be liable for any civil damages resulting from the person’s acts or omissions, except for such damages as may result from the person’s gross negligence or wanton acts or omissions.”

However, the following subsection (b) starting on page 4, line 3, creates the potential for a supervising physician to be wholly liable for any and all acts of the postgraduate resident physician or fellow, including criminal, intentional, and wanton acts or omissions. A person is generally not liable for the unforeseeable criminal or intentional acts of another. Because subsection (a) makes an exception for “gross

negligence or wanton acts or omissions,” it would be logical to include the same exception in subsection (b). Moreover, if licensed physicians can be held personally liable for criminal or intentional and wanton acts of others, physicians and hospitals may be less likely to accept postgraduate resident physicians and fellows into their medical residency programs, which would achieve a result contrary to the intent of this bill.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

House Committee on Health
Rep. John M. Mizuno, Chair
Rep. Bertrand Kobayashi, Vice Chair

January 29, 2019
Conference Room 329
8:30 a.m.
Hawaii State Capitol

**Testimony Supporting House Bill 669
Relating to Medical Malpractice.
Limits medical malpractice liability for residents and fellows in accredited
residency and fellowship programs acting under the supervision of a licensed
physician.**

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health System Corporation Board of Directors, we are in **strong support** of HB669. If enacted, this measure will provide a more appropriate environment for medical resident education than the current environment which is discouraging, as it exposes residents to individual liability even though they are still in training.

While physician residents provide a great deal of patient care it is always under the supervision of faculty members. This measure would not protect medical residents who commit gross negligence, wanton acts or omissions nor would it prevent patients for seeking relief in situations that may involve medical malpractice. The purpose of this measure is to clearly place the liability for patient care with the faculty member who is responsible for the resident's supervision, rather than treating the resident separately.

Data show that patient safety is generally *enhanced* where there is participation with medical education programs. Passage of this measure supports Hawaii's medical

Page 2
January 29, 2019
HB 527

residency training programs and will allow them to attract and retain the best physician residents who will become our future workforce.

Thank you for the opportunity to testify.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

LATE

Testimony Presented Before the
House Committee on Health
Tuesday, January 29, 2019

By

Jerris Hedges, MD, MS, MMM
Professor and Dean

Lee E. Buenconsejo-Lum, MD, FAAFP
Designated Institutional Official and GME Director

John A. Burns School of Medicine

And

Michael Bruno

Vice Chancellor for Research
University of Hawai'i at Mānoa

HB 669 – RELATING TO MEDICAL MALPRACTICE

Chair Mizuno, Vice Chair Kobayashi, and members of the committee:

Thank you for the opportunity to provide testimony in support of HB 669 which would limit medical malpractice liability for medical residents and fellows participating in accredited residency and fellowship programs acting under the supervision of a licensed physician.

At the University of Hawai'i John A. Burns, School Of Medicine (JABSOM) we strive to teach and train high-quality physicians, biomedical scientists, and allied health workers for Hawai'i and the Pacific by providing an opportunity for a medical education previously unavailable to residents of Hawai'i and other Pacific nations. Our mission is to train the next generation of doctors in Hawai'i for Hawai'i. One of JABSOM's fundamental goals is to increase the supply of highly qualified physicians to serve the people of Hawai'i. Achieving this goal requires: 1) attracting highly qualified recent medical school graduates to JABSOM's residency and fellowship programs; and 2) expanding the number of positions in JABSOM's residencies and fellowships, which is in turn dependent on Medicare funding (capped by law since 1997), and hospital funding (which is limited by the financial status of our partner hospitals).

JABSOM residents and fellows are mandated by our accreditation organizations to be trained under the supervision of an appropriately qualified licensed physician for all program related activities. Supervision, as defined by the Accreditation Council for Graduate Medical Education includes direct, indirect and oversight supervision. The type of supervision varies based on resident's level of training and ability, as well as patient complexity, acuity and type of procedure, as appropriate to the clinical situation. In recent years, the number of instances in which our residents and fellows are named

in law suits has increased significantly. As a result, defense costs have increased dramatically because of the need to substantively defend the residents who are in training.

Consequences from the increase in residents and fellows being named in lawsuits include: 1) potentially fewer applicants to JABSOM's residencies and fellowships; 2) fewer highly qualified applicants accepting positions in JABSOM's residencies and fellowships; 3) fewer residents and fellows deciding to establish a medical practice in Hawai'i after completing their program; and 4) increases in malpractice cost which is seen as a further financial burden by our hospital partners making them much less likely to increase funding needed to expand the number of residency or fellowship positions that would assist in closing the physician shortage gap. The funds directed toward defending and settling the lawsuits are resources that could be otherwise applied to strengthening the graduate medical education opportunities in the state.

We request minor amendments regarding the residents' or fellows' duty of care and to clarify that the supervision provided by the licensed physician is in accordance with Accreditation Council for Graduate Medical Education Common Program Requirements and Definitions.

(a) Any postgraduate resident physician or fellow participating in a graduate medical education program and practicing under the supervision ~~[direction]~~ of a physician duly licensed pursuant to chapter 453 shall not ~~[owe an independent duty of care to a patient, nor shall the resident or fellow]~~ be liable for any civil damages resulting from ~~[the person's]~~ their acts or omissions, except for such damages as may result from ~~[the person's]~~ their gross negligence or wanton acts or omissions.

(b) Nothing in this section shall be construed to limit the supervising physician's liability for their own actions or for the actions of the postgraduate resident physician or fellow.

(c) For purposes of this section, "graduate medical education program" shall have the same meaning as in section 304A-1701.

(d) For purposes of this section, "under supervision" shall mean under the direction of a duly licensed and credentialed physician who is directing and has ultimate responsibility for the patient care related activities of a resident or fellow in an accredited graduate medical education program, including all levels and methods of supervision as specified by the Accreditation Council for Graduate Medical Education Common Program Requirements.

Mahalo for the opportunity to testify on this matter.



HAWAII MEDICAL ASSOCIATION

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

To:
HOUSE COMMITTEE ON HEALTH
Rep. John Mizuno, Chair
Rep. Bertrand Kobayashi, Vice Chair

Date: January 29, 2019
Time: 8:30 a.m.
Place: Room 329
From: Hawaii Medical Association
Jerry Van Meter, MD, President
Christopher Flanders, DO, Executive Director

Re: HB 669 – Relating to Medical Malpractice
Position: SUPPORT

On behalf of Hawaii's physician and student members, the HMA is in strong support of HB 669 dealing with the important issue of medical malpractice lawsuits involving those within a supervised training program.

Medical residents are medical school graduates in a post-medical school training program necessary to gain full licensure and specialty board certification. These programs are nationally accredited and include a requirement that residents be under the supervision of a fully licensed faculty physician. Resident physicians are closely monitored by faculty and receive continual review and evaluation.

A medical liability suit is a trying, lengthy process, in most cases dragging on for years. The impact on all physicians exacts a significant toll mentally, but for young, early career physicians the impact can interfere with employability or acceptance to fellowship or advance specialty training.

The HMA is of the opinion that because of the degree of supervision, and the vital function resident physicians fill in Hawaii's health care system and the future of that system, that the bar of liability for civil damages should be raised to that of gross negligence or wanton disregard.

Thank you for allowing testimony on this issue.

HMA OFFICERS

President – Jerry Van Meter, MD President-Elect – Michael Champion, MD Secretary – Thomas Kosasa, MD
Immediate Past President – William Wong, Jr., MD Treasurer – Elizabeth A. Ignacio, MD
Executive Director – Christopher Flanders, DO

HB-669

Submitted on: 1/27/2019 3:31:24 PM

Testimony for HLT on 1/29/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Julie Tulang	Individual	Support	No

Comments:

HB-669

Submitted on: 1/27/2019 8:02:27 PM

Testimony for HLT on 1/29/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Crystal Costa	Individual	Support	No

Comments:

Written Testimony Submitted to the
House Committee on Health

January 29, 2018

By

Kelley Withy, MD, PhD

HB 669 – RELATING TO MEDICAL MALPRACTICE

Chair Mizuno, Vice Chair Kobayashi, and members of the committee:

Thank you for the opportunity to provide testimony in support of HB 669 which would limit medical malpractice liability for medical residents and fellows participating in accredited residency and fellowship programs acting under the supervision of a licensed physician.

I am a family physician and family medicine faculty at the medical school.

The University of Hawai'i John A. Burns, School Of Medicine (JABSOM) strives to teach and train high-quality physicians, biomedical scientists, and allied health workers for Hawai'i and the Pacific by providing an opportunity for a medical education previously unavailable to residents of Hawai'i and other Pacific nations. Its mission is to train the next generation of doctors in Hawai'i for Hawai'i. One of JABSOM's fundamental goals is to increase the supply of highly qualified physicians to serve the people of Hawai'i through its ongoing efforts to reduce the physician shortages in the state. This entails attracting medical school graduates to its residency programs and retaining those medical residents and fellows who may likely practice in Hawai'i.

JABSOM residents and fellows are mandated by accreditation organizations to be trained under the supervision of an appropriately qualified licensed physician for all program related activities. Supervision, as defined by the Accreditation Council for Graduate Medical Education includes direct, indirect and oversight supervision. The type of supervision varies based on resident's level of training and ability, as well as patient complexity, acuity and type of procedure, as appropriate to the clinical situation. In recent years, the number of instances in which medical residents and fellows are named in law suits has increased significantly. As a result, defense costs have increased dramatically because of the need to substantively defend the residents who are in training. Between 2002-2015, there was approximately \$2 million in payouts or settlements. In 2016-2017, there was \$4 million in payouts.

Consequences from the increase in residents and fellows being named in lawsuits include: 1) potentially fewer applicants to JABSOM's residencies and fellowships; 2) fewer highly qualified applicants accepting positions in JABSOM's residencies and fellowships; 3) fewer residents and fellows deciding to establish a medical practice in Hawai'i after completing their program; and 4) increases in malpractice cost which is seen as a further financial burden by our hospital partners making them much less likely to increase funding needed to expand the number of residency or fellowship positions

that would assist in closing the physician shortage gap. The funds directed toward defending and settling the lawsuits are resources that could be applied to JABSOM's efforts in addressing the physician shortages such as training medical residents in certain high-need specialties as well as developing programs in high-need specialties and providing for additional faculty positions to increase residency and fellowship slots.

Mahalo for the opportunity to testify on this matter.

LATE

HB-669

Submitted on: 1/28/2019 9:43:03 PM

Testimony for HLT on 1/29/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nahelani Webster	Hawaii Association for Justice	Oppose	Yes

Comments:

LATE

HB-669

Submitted on: 1/29/2019 6:52:55 AM
Testimony for HLT on 1/29/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Rantz	Hilo Medical Center Foundation	Support	No

Comments:

LATE

HB-669

Submitted on: 1/29/2019 6:54:21 AM
Testimony for HLT on 1/29/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Rantz	Hawaii State Rural Health Association	Support	No

Comments:

LATE TESTIMONY

TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. 669

Hearing: Tuesday, January 29, 2019
Committee: Health
Room: Conference Room 329

LATE

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in strong opposition to H.B. 699, Relating to Medical Malpractice. For the reasons below, we oppose this bill, which seeks to provide immunity from liability to postgraduate resident physicians and fellows.

The issue of a statewide shortage of physicians cannot be resolved by granting immunity. Medical malpractice remains an important mechanism for protecting patients when medical errors are made, and patients are injured. HAJ strongly supports keeping that protection in place. This bill would prevent just compensation for the injured patient by allowing postgraduate and fellows to have no accountability if mistakes are made when treating patients. This will not result in more physicians, but will lower the standard of care resident physicians are subject to provide.

Why does HAJ object to this type of legislation? As a policy, the focus should be on protecting the patients, properly compensating the injured patients, studying the medical system and trying to determine causes of these medical errors and resulting medical malpractice in order to deter future negligent acts. The suggested limitation of liability for post-graduates and fellows, clearly will adversely impact the adequate compensation to victims who have suffered injury as a result of medical malpractice by these doctors. HAJ advocates that before drastic changes are made to the civil justice

system, it is necessary that the legislature review reliable data and information in order to properly analyze the need for this drastic measure.

There has been no showing that there are an excessive number of lawsuits against post-graduate residents and fellows that would warrant the need for this immunity.

The number of claims filed in Hawaii has been dropping. According to the 2017 Annual Report on the Medical Inquiry and Conciliation Panel (“MICP”), it was noted that the number of medical malpractice claims filed in Hawaii actually fell from 121 in 2014 to 72 in 2017 - - a dramatic 40% reduction.

The MICP Annual Report to the 2017 Legislature documents the fact that the number of claims filed has steadily and dramatically dropped during the past four years.

<u>Year</u>	<u>Claims filed</u>
2014	121
2015	101
2016	91
2017	72

This confirms that there is no “increasing frequency at which resident physicians are named as parties in lawsuits” as the medical profession and the insurance industry would have you believe. In review of this data, out of the millions of instances where Hawaii residents have had contact with physicians, hospitals and other medical personnel, only 72 claims were filed in 2017, of which 8 were not represented by an attorney. Therefore, with the number of claims going down, the question is, why is there a need to grant immunity? Respectfully requesting the committee to consider all credible data before taking such a drastic measure that will affect patients permanently and detrimentally.

Finally, this bill does not address the reality that a “physician in training” must be held to the same standard of care as all physicians. These post-graduate residents and fellows undertook this career with the understanding and expectation that their conduct would be subject to a reasonable care standard. This is a protection that patients who entrust their health and lives should expect.

We urge the committee, to look to alternative ways of addressing physician shortage before removing necessary protections for patients. Because of the reasons stated above, HAJ strongly opposes this bill and requests that it not pass out of this committee. Thank you for the opportunity to testify.