

SB825

Measure Title: RELATING TO MEDICAL MALPRACTICE.

Report Title: Medical Malpractice; Residents and Fellows; Limited Liability

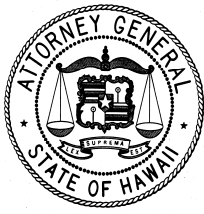
Description: Limits medical malpractice liability for residents and fellows in accredited residency and fellowship programs acting under the supervision of a licensed physician.

Companion:

Package: None

Current Referral: CPH, JDC

Introducer(s): BAKER, S. CHANG, RUDERMAN



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

ON THE FOLLOWING MEASURE:

S.B. NO. 825, RELATING TO MEDICAL MALPRACTICE.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Thursday, January 31, 2019 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229

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

Chair Baker and Members of the Committee:

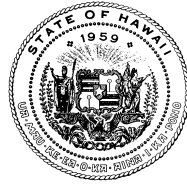
The Department of the Attorney General provides the following comments on this bill.

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.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
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Testimony in SUPPORT of SB825
RELATING TO MEDICAL MALPRACTICE.

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMITTEE ON COMMERCE, CONSUMER
PROTECTION, AND HEALTH

Hearing Date: January 31, 2019

Room Number: 229

1 **Fiscal Implications:** N/A.

2 **Department Testimony:** The Department of Health (DOH) supports SB825, which limits
3 medical malpractice liability for residents and fellows in accredited residency and fellowship
4 programs acting under the supervision of a licensed physician.

5 Hawaii's worsening physician shortage is affected by many factors, some of which are less in the
6 control of policymakers and residents than others. Limiting medical malpractice for residents
7 under certain circumstances is a proactive measure the state can take to improve recruitment and
8 retention of physicians.

9 **Offered Amendments:** N/A.

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UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Consumer Protection And Health
Tuesday, January 31, 2019

By

Jerris R. Hedges, MD, MS, MMM
Professor and Dean

Lee E. Buenconsejo-Lum, MD, FAAFP
Designated Institutional Official and Graduate Medical Education Director

John A. Burns School of Medicine
And

Michael S. Bruno, PhD
Interim Vice Chancellor for Academic Affairs and
Vice Chancellor for Research
University of Hawai'i at Mānoa

SB 825 – RELATING TO MEDICAL MALPRACTICE

Chair Baker, Vice Chair Chang, and members of the committee:

Thank you for the opportunity to provide testimony in support of SB 825 which would limit medical malpractice liability for medical residents and fellows. Residents and Fellows are medical school graduates who have been accepted into and are now participating in accredited residency and fellowship programs that provide them with the training needed to become fully licensed physicians and specialists in one of medicine's many areas of specialization. While training in an accredited program, residents and fellows act under the supervision of a licensed physician. Residents are granted a limited and temporary license under Hawaii Revised Statutes Section 453-3 which is only valid while the resident is in training.

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 medical education, biomedical education, and allied health education that were previously unavailable to residents of Hawai'i and other Pacific nations. JABSOM's mission for its medical education program is to train the next generation of physicians 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 or fellow'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/ fellows have been named in law suits has increased significantly. As a result, malpractice defense costs have increased dramatically because of the need to substantively defend the residents/fellows who are in training.

Consequences from the increase in residents/fellows being named in malpractice 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 residency or fellowship program; and 4) increases in malpractice defense cost which discourages JABSOM's teaching hospital partners from increasing the funding needed to expand the number of residency or fellowship positions that would assist in closing the physician shortage gap in Hawai'i. The funds directed toward defending the residents/fellows in malpractice lawsuits by the Hawai'i consortium of teaching hospitals are funds that could be otherwise applied to strengthening and increasing the graduate medical education residency and fellowship opportunities in the state.

We request minor amendments to the bill for clarity and to specify that the supervision provided by the licensed physician is in accordance with Accreditation Council for Graduate Medical Education Common Program Requirements.

(a) Any [~~postgraduate~~] resident [~~physician~~] or fellow participating in a graduate medical education program and practicing while 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.

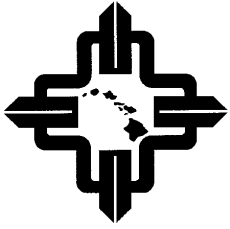
(b) Nothing in this section shall be construed to limit the supervising physician's liability for their own actions or for the actions of the postgraduate resident physician or fellow.

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

"Quality Healthcare For All"

Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

January 31, 2019
Conference Room 229
9:30 a.m.
Hawaii State Capitol

**Testimony Supporting Senate Bill 825
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 SB825. 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

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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.



HAWAII MEDICAL ASSOCIATION

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www.hawaiimedicalassociation.org

To:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND
HEALTH

Sen. Rosalyn Baker, Chair

Sen. Stanley Chang, Vice Chair

Date: January 31, 2019

Time: 9:30 a.m.

Place: Room 229

From: Hawaii Medical Association

Jerry Van Meter, MD, President

Christopher Flanders, DO, Executive Director

Re: SB 825 – Relating to Medical Malpractice

Position: SUPPORT

On behalf of Hawaii's physician and student members, the HMA is in strong support of SB 825 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 advanced specialty training.

The HMA is of the opinion that because of the degree of supervision, and the public interest in 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



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Executive Director – Christopher Flanders, DO

SB-825

Submitted on: 1/30/2019 8:21:06 AM

Testimony for CPH on 1/31/2019 9:30:00 AM

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

Comments:

Limiting Resident and Fellow malpractice liability in Hawaii removes a major barrier to training and makes post graduate medical training in Hawaii more conducive to learning. Training doctors in rural areas builds their network and allows them to experience what it would be like to live, work and raise a family in rural Hawaii, This bill is critical to supporting the health career workforce pipeline that will reduce our physician shortages.

**TESTIMONY OF ROBERT TOYOFUKU AND NAHELANI WEBSTER ON
BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN
OPPOSITION TO S.B. 825**

Hearing: Thursday, January 31, 2019
Committee: Commerce, Consumer Protection, and Health
Room: Conference Room 229

We are presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in strong opposition to S.B. 825, 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.

Medical malpractice remains an important mechanism for protecting patients when medical errors are made, and patients are injured, and HAJ strongly supports keeping that protection in place. The issue of a statewide shortage of physicians cannot be resolved by granting immunity. 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.

Further, 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 data indicates that there does not seem to be an “increasing frequency at which residents or 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? We respectfully request that the committee 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.

SB-825

Submitted on: 1/30/2019 7:54:23 AM

Testimony for CPH on 1/31/2019 9:30:00 AM

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

Comments:

This bill is essential to our rural workforce pipeline; without the protections for resident doctors in training we will not be able to have them rotate at our neighbor island hospitals; which will impact/increase our physician shortages.

SB-825

Submitted on: 1/27/2019 8:07:04 PM

Testimony for CPH on 1/31/2019 9:30:00 AM

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

Comments:

SB-825

Submitted on: 1/29/2019 3:12:10 PM

Testimony for CPH on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Douglass Adams	Individual	Support	No

Comments:

Honorable Chair Baker and Members of the Commerce, Consumer Protection, and Health Committee,

I write in support of SB825. This bill provides for additional opportunities for residents under the supervision of a licensed physician to care for patients in rural areas without the need to worry about medical malpractice liability. This will begin to help with the ultimate goal of having enough caregivers for Hawaii's citizens and visitors.

respectfully,

Doug Adams

Hilo, Hawaii

TESTIMONY OF WOODY SOLDNER IN OPPOSITION TO SB 825

Hearing date: January 31, 2019

Committee: Senate Commerce Consumer Protection and Health

Room: 229

To: Chairperson Rosalyn Baker and Members of the Senate Committee on Commerce Consumer Protection and Health:

My name is Woody Soldner, a practicing attorney for over 30 years and founding partner of Leavitt, Yamane and Soldner, specializing in the area of personal injury since 1985.

I am testifying in opposition to SB 825 relating to medical malpractice. The intent of this measure is to address physician shortages by granting immunity to residents and fellows in training. This is not the solution to address physician shortage and will have significant impact on the patients and the standard of care received in the healthcare profession.

“Resident” doctors are doctors who have just graduated from basic medical school and are now allowed to see patients in hospitals in order to learn a particular skill such as OBGYN, general surgery, orthopedic surgery, etc. These doctors in training are almost immediately involved in patient care and decisions while working incredibly long hours (80 hours per work and often working for 24 hours straight.) Indeed, Residents are generally providing “doctor coverage” for hospitals at nights and on weekends when experienced physicians prefer to be elsewhere. I have the upmost respect for the work they do and for the dedication they have to their career, but it does not warrant a waiver to the reasonable standard of care that must be upheld by the medical profession in order to protect patients.

The primary question is, who should bear the risk during their residency training if an error is made and a patient is either injured or dies? Is it the patient or their families, or is it the resident, attending physician, or the hospital where the patient is being cared for?

In analyzing these questions, it is helpful to understand the current situation. The John A. Burns School of Medicine (JABSOM) advertises on its website for JABSOM Residency programs with the apparent intention of attracting medical students to complete their residency in Hawaii. The JABSOM website, <http://www.catalog.hawaii.edu/schoolscolleges/medicine/Jabsom>, provides the following:

Graduate Medical Education Programs

Graduate medical education programs in Hawai'i hospitals are in family medicine, sports medicine, internal medicine, geriatric medicine, obstetrics and gynecology, orthopedic surgery, pathology, pediatrics, neonatal-perinatal medicine, developmental-behavioral pediatrics, psychiatry (adult, child and adolescent, geriatric, addiction), general surgery, surgical critical care, cardiology, and transitional year. Also offered are a fellowship in maternal-fetal medicine accredited by the American Board of Obstetrics and Gynecology, and a fellowship in addiction medicine leading to certification by the American Board of Addiction Medicine. The UH John A. Burns School of Medicine acts as the institutional sponsor for these residency training programs. Approximately 250 physicians are involved in training, which lasts one to seven years. These physicians serve as members of the house staff in the affiliated hospitals while studying their chosen specialty.

The participating hospitals require the Residents to have an "attending physician" to supervise the medical work done by these Residents. These "attending physicians" who oversee the Residents are then given the title of "Assistant Professor JABSOM". Further, most of these patients have no idea that the Resident assigned to them by the hospital is a doctor in training.

If the goal is to protect the Residents in training the law should make it clear that the hospitals that allow these Residents to treat patients and the attending physician should be clearly responsible for

any medical negligence of these Residents. This would allow Residents to receive their essential medical training while holding the hospitals responsible for any medical errors.

Thank you for the opportunity to testify on this matter. I am available should you have any questions.

LATE

Written Testimony Submitted to the
Senate Committee on Consumer Protection and Health
January 31, 2018

By
Warren Yamashita MD MPH
Medical Resident, Hawaii Island Family Medicine Residency Program

SB 825 – RELATING TO MEDICAL MALPRACTICE

Chair Baker, Vice Chair Chang, and members of the committee:

Thank you for the opportunity to provide testimony in support of SB 825 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.

My name is Warren Yamashita and I am a second year Family Medicine Resident at the Hawaii Island Family Medicine Residency Program. Thank you for not only the opportunity to train in rural Hawaii, where I hope to serve, but also for considering this bill.

Medical residents are medical school graduates participating in a post-medical school training program necessary to gain full licensure and specialty board certification. These programs are nationally accredited and have stringent compliance requirements. All 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. Residents and fellows are closely supervised and monitored and receive ongoing review and evaluation.

SB 825 would create an environment in Hawaii which would be more conducive to medical residents remaining in the state to live and practice. In light of the high cost of living and lower reimbursement rates, the prevalence of being named in a medical malpractice law suit while still in the residency program is a major disincentive for new resident applicants to train here. This in turn adversely affects Hawaii's ability to train more physicians to reduce the growing physician shortage.

Mahalo for the opportunity to testify on this matter.