

Honolulu, Hawaii

FEB 07 2019

RE: S.B. No. 825
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 825 entitled:

"A BILL FOR AN ACT RELATING TO MEDICAL MALPRACTICE,"

begs leave to report as follows:

The purpose and intent of this measure is to limit medical malpractice liability for residents and fellows in accredited residency and fellowship programs acting under the supervision of a licensed physician.

Your Committee received testimony in support of this measure from the Department of Health, Hawaii Health Systems Corporation Board of Directors, University of Hawai'i System, Hawaii Medical Association, Hawaii State Rural Health Association, Hilo Medical Center Foundation, and three individuals. Your Committee received testimony in opposition to this measure from the Hawaii Association for Justice and one individual. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that the State is experiencing a critical physician shortage, which can be attributed to many factors. Your Committee further finds that in recent years, the number of instances in which medical residents and fellows have been named in medical malpractice lawsuits has increased significantly. This has negatively impacted the recruitment and



retention of physicians and discouraged hospital partners from increasing the funding needed to expand the number of resident and fellow positions necessary to address the State's physician shortage.

Your Committee notes that post-medical school training programs are nationally accredited and are necessary for physicians to obtain full licensure and specialty board certification. Medical residents and fellows are closely monitored by faculty and receive continual review and evaluation. Furthermore, data has shown that patient safety is generally enhanced where there is participation in medical education programs.

This measure limits medical malpractice liability for residents and fellows in an accredited residency or fellowship program in certain circumstances, which will help create an environment that is more conducive to recruiting and retaining medical residents and fellows. Your Committee notes that the limited liability established by this measure does not shield medical residents, fellows, or supervising physicians from liability associated with any gross negligence or wanton acts or omissions.

Your Committee has amended this measure by:

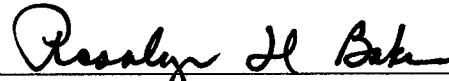
- (1) Clarifying that limited liability applies to any resident or fellow participating in a graduate medical education program and practicing while under supervision of a duly licensed physician;
- (2) Removing language that would have specified that a resident or fellow shall not owe an independent duty of care to a patient;
- (3) Clarifying that the supervising physician shall not be liable for any damages that may result from the resident's or fellow's gross negligence or wanton acts or omissions;
- (4) Inserting a definition for "under supervision";



- (5) Changing its effective date to July 1, 2050, to encourage further discussion; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 825, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 825, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,




ROSALYN H. BAKER, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:	
SB 825	CPH, JDC	1/31/19	
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____			
The Recommendation is:			
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310	<input type="checkbox"/> Recommit 2313
Members	Aye	Aye (WR)	Nay
BAKER, Rosalyn H. (C)	✓		
CHANG, Stanley (VC)	✓		
KEOHOKALOOLE, Jarrett	✓		
NISHIHARA, Clarence K.	✓		
RUDERMAN, Russell E.	✓		
THIELEN, Laura H.	✓		
FEVELLA, Kurt	✓		
TOTAL	7		
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted			
Chair's or Designee's Signature: 			
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy			

*Only one measure per Record of Votes