



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P. O. Box 3378  
Honolulu, HI 96801-3378  
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**Testimony in SUPPORT of HB699 HD1  
RELATING TO MEDICAL MALPRACTICE.**

REP. ROY M. TAKUMI, CHAIR  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

REP. CHRIS LEE, CHAIR  
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: February 12, 2019

Room Number: 329

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

2 **Department Testimony:** The Department of Health (DOH) supports HB699 HD1, 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

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Testimony Presented Before the  
House Committees on Consumer Protection and Commerce  
and  
Judiciary

Tuesday, February 12, 2019 at 2:35 p.m.

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

### HB 669 HD1 – RELATING TO MEDICAL MALPRACTICE

Chairs Takumi and Lee, Vice Chairs Ichiyama and San Buenaventura, and members of the committees:

Thank you for the opportunity to provide testimony in support of HB 669 HD1 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.

Mahalo for the opportunity to testify on this matter.



*American College of  
Obstetricians and Gynecologists  
District VIII, Hawai'i (Guam & American  
Samoa) Section*

TO: House of Representatives Committee on Consumer Protection and Commerce  
Representative Roy M Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
House of Representatives Committee on Judiciary  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair

DATE: Tuesday, Feb 12, 2019

PLACE: Hawaii State Capitol, Conference Room 329

FROM: Hawai'i Section, ACOG  
Dr. Chrystie Fujimoto, MD, FACOG, Chair  
Dr. Reni Soon, MD, MPH, FACOG, Vice-Chair  
Lauren Zirbel, Community and Government Relations  
Dr. Jennifer Chin, MD, Junior Fellow Legislative Chair

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

The Hawai'i Section of the American College of Obstetricians and Gynecologists (HI ACOG) represents more than 200 obstetrician/gynecologist physicians in our state. HI ACOG **strongly supports HB 669** as it limits medical malpractice liability for medical residents and fellows working under the supervision of licensed attending physicians.

Our members include attending and resident physicians who work closely in clinical and academic settings. Medical students from around the country come to Hawai'i to gain the necessary skills, experience, and mentorship to become independent physicians. Upon finishing their training in Hawaii, many medical residents often stay here to practice and provide healthcare to the women of Hawai'i.

Resident and fellow physicians are always under the supervision of attending physicians to ensure patient safety. This level of supervision varies based upon level of training, complexity of patient, and difficulty of procedure. Attending physicians thus allow resident physicians to hone their clinical skills while ensuring appropriate care. Unfortunately, the number of lawsuits in which residents and fellows are named has been significantly increasing. This has in turn increased the need for defense funding and has a number of consequences on resident and fellow training.

Being named in a lawsuit is a time consuming and emotionally exhausting process which is amplified in a resident or fellow physician who is early in their career and still trying to refine their clinical skills. Being named can also have negative impacts on applying for future employment, which often makes the trainee less likely to stay in Hawai'i, adding to the already existing shortage of healthcare providers in this state.

By limiting the medical practice liability for resident and fellow physicians in Hawai'i, we can accomplish the following important goals: attracting highly qualified candidates from around the country to train here and retaining those physicians to stay in Hawai'i, and decrease the amount of funding spent on malpractice issues. This funding can instead be used for more educational and clinical opportunities to ensure excellent training for our state's future healthcare providers. Therefore, we **strongly support HB 669**.

Thank you for the opportunity to testify.

**TESTIMONY OF ROBERT TOYOFUKU AND NAHELANI WEBSTER ON  
BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN  
OPPOSITION TO H.B. 669, HD 1**

Hearing: Tuesday, February 12, 2019  
Committee: Consumer Protection and Commerce  
Room: Conference Room 329

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. 669, HD 1, 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>
<b>2014</b>	<b>121</b>
<b>2015</b>	<b>101</b>
<b>2016</b>	<b>91</b>
<b>2017</b>	<b>72</b>

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.





## 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 CONSUMER PROTECTION AND COMMERCE

Rep. Roy Takumi, Chair

Rep. Linda Ichiyama, Vice Chair

HOUSE COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy San Buenaventura

Date: February 12, 2019

Time: 2:35 p.m.

Place: Room 329

From: Hawaii Medical Association

Jerry Van Meter, MD, President

Christopher Flanders, DO, Executive Director

**Re: HB 669 HD 1 – 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



## **HAWAII MEDICAL ASSOCIATION**

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Executive Director – Christopher Flanders, DO



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

*"Quality Healthcare For All"*

**House Committee on Consumer Protection & Commerce**

**Rep. Roy M. Takumi, Chair**  
**Rep. Linda Ichiyama, Vice Chair**

**House Committee on Judiciary**

**Rep. Chris Lee, Chair**  
**Rep. Joy A. San Buenaventura, Vice Chair**

February 12, 2019  
Conference Room 329  
2:35 p.m.  
Hawaii State Capitol

**Testimony Supporting House Bill 669, HD1  
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, HD1. 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 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.

**HB-669-HD-1**

Submitted on: 2/10/2019 10:16:08 AM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Scott Harvey, MD	Individual	Support	No

Comments:

Residents are learners and should be in direct supervision of licensed attending physicians and should not hold liability unless grossly negligent.

**HB-669-HD-1**

Submitted on: 2/9/2019 6:15:45 PM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shandhini Raidoo	Individual	Support	No

Comments:

Written Testimony Submitted to the  
House Committees on Consumer Protection

And  
Judiciary

February 12, 2018

By

Warren Yamashita, Resident Physician  
Hawaii Island Family Medicine Residency

HB 669, HD1 – RELATING TO MEDICAL MALPRACTICE

Chairs Takumi and Lee, Vice Chairs Ichiyama and San Buenaventura, and members of the committees:

Thank you for the opportunity to provide testimony in support of HB 669, HD1 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 second-year family medicine resident at the Hawaii Island Family Medicine Residency Program on the Big Island.

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.

HB 699 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 to remaining 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.

Warren Yamashita

TO: House of Representatives Committee on Consumer Protection and Commerce  
Representative Roy M Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
House of Representatives Committee on Judiciary  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair

DATE: Tuesday, Feb 12, 2019

PLACE: Hawaii State Capitol, Conference Room 329

FROM: Jennifer Chin, MD

**Re: HB 669 – Relating to Medical Malpractice**

**Position: STRONG SUPPORT**

As an obstetrician/gynecologist resident physician currently training in Hawai'i, I am writing in **strong support of HB 669** as it limits medical malpractice liability for medical residents and fellows working under the supervision of licensed attending physicians. As a resident physician, I have already completed medical school and am now refining specific skills in my chosen specialty by working under the supervision of attending physicians. My attendings teach me how to become a better doctor and also ensure I am taking care of patients safely and accurately.

Resident and fellow physicians are always required to have appropriate supervision from their attendings to ensure patient safety. This level of supervision varies based upon level of training, complexity of patient, and difficulty of procedure. Unfortunately, the number of law suits in which residents and fellows were named have been significantly increasing. This has in turn increased the need for defense funding and has a number of consequences on resident and fellow training.

When any physician is named in a lawsuit, it is a time consuming and emotionally exhausting process. There is already a shortage of women's healthcare providers in this state and we must not add to this shortage. By limiting the medical practice liability for resident and fellow physicians in Hawai'i, we can accomplish the following important goals: retain physicians in this state to take care of our citizens, attract highly qualified candidates from around the country to train here, and decrease the amount of funding spent on malpractice issues. This funding can instead be used for more educational and clinical opportunities to ensure excellent training for our state's future healthcare providers. In conclusion, I **strongly support HB 669**.

Thank you for the opportunity to testify.



TO: House of Representatives Committee on Consumer Protection and Commerce  
Representative Roy M Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
House of Representatives Committee on Judiciary  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair

DATE: Tuesday, Feb 12, 2019

PLACE: Hawaii State Capitol, Conference Room 329

FROM: Danielle Ogez, MD, MPP

**Re: HB 669 – Relating to Medical Malpractice**

**Position: STRONG SUPPORT**

As an obstetrician/gynecologist resident physician currently training in Hawai'i, I am writing in **strong support of HB 669** as it limits medical malpractice liability for medical residents and fellows working under the supervision of licensed attending physicians. As a resident physician, I have already completed medical school and am now refining specific skills in my chosen specialty by working under the supervision of attending physicians. My Attending Physicians teach me how to become a better doctor and also ensure I am taking care of patients safely and accurately.

Resident and fellow physicians are always required to have appropriate supervision from their Attending Physician to ensure patient safety. This level of supervision varies based upon level of training, complexity of patient, and difficulty of procedure. Unfortunately, the number of law suits in which residents and fellows were named have been significantly increasing. This has in turn increased the need for defense funding and has a number of consequences on resident and fellow training.

When any physician is named in a lawsuit, it is a time consuming and emotionally exhausting process.

There is already a shortage of women's healthcare providers in this state and we must not add to this shortage. By limiting the medical practice liability for resident and fellow physicians in Hawai'i, we can accomplish the following important goals: retain physicians in this state to take care of our citizens, attract highly qualified candidates from around the country to train here, and decrease the amount of funding spent on malpractice issues. This funding can instead be used for more educational and clinical opportunities to ensure excellent training for our state's future healthcare providers. In conclusion, I **strongly support HB 669**.

Thank you for the opportunity to testify.

**HB-669-HD-1**

Submitted on: 2/10/2019 9:54:25 PM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sally	Individual	Support	No

Comments:

TO: House of Representatives Committee on Consumer Protection and Commerce

Representative Roy M Takumi, Chair

Representative Linda Ichiyama, Vice Chair

House of Representatives Committee on Judiciary

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

DATE: Tuesday, Feb 12, 2019

PLACE: Hawaii State Capitol, Conference Room 329

FROM: Sally Markee, MD

**Re: HB 669 – Relating to Medical Malpractice**

**Position: STRONG SUPPORT**

As an obstetrician/gynecologist resident physician currently training in Hawai'i, I am writing in **strong support of HB 669** as it limits medical malpractice liability for medical residents and fellows working under the supervision of licensed attending physicians. As a resident physician, I have already completed medical school and am now refining specific skills in my chosen specialty by working under the supervision of attending physicians. My attendings teach me how to become a better doctor and also ensure I am taking care of patients safely and accurately.

Resident and fellow physicians are always required to have appropriate supervision from their attendings to ensure patient safety. This level of supervision varies based upon level of training, complexity of patient, and difficulty of procedure. Unfortunately, the number of law suits in which residents and fellows were named have been significantly increasing. This has in turn increased the need for defense funding and has a number of consequences on resident and fellow training.

When any physician is named in a lawsuit, it is a time consuming and emotionally exhausting process. There is already a shortage of women's healthcare providers in this state and we must not add to this shortage. By limiting the medical practice liability for resident and fellow physicians in Hawai'i, we can accomplish the following important goals: retain physicians in this state to take care of our citizens, attract highly qualified candidates from around the country to train here, and decrease the amount of funding spent on malpractice issues. This funding can instead be used for more educational and clinical opportunities to ensure excellent training for our state's future healthcare providers. In conclusion, I **strongly support HB 669**.

Thank you for the opportunity to testify.

**HB-669-HD-1**

Submitted on: 2/11/2019 5:12:57 AM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nikki Kumura	Individual	Support	No

Comments:

As an obstetrician/gynecologist resident physician currently training in Hawai'i, I am writing in strong support of HB 669 as it limits medical malpractice liability for medical residents and fellows working under the supervision of licensed attending physicians. As a resident physician, I completed medical school and am now refining specific skills in my chosen specialty by working under the supervision of attending physicians. My attendings teach me how to become a better doctor and also ensure I am taking care of patients safely and accurately. Resident and fellow physicians are always required to have appropriate supervision from their attendings to ensure patient safety. This level of supervision varies based upon level of training, complexity of patient, and difficulty of procedure. Unfortunately, the number of law suits in which residents and fellows were named have been significantly increasing. This has in turn increased the need for defense funding and has a number of consequences on resident and fellow training. When any physician is named in a lawsuit, it is a time consuming and emotionally exhausting process. There is already a shortage of women's healthcare providers in this state and we must not add to this shortage. By limiting the medical practice liability for resident and fellow physicians in Hawai'i, we can accomplish the following important goals: retain physicians in this state to take care of our citizens, attract highly qualified candidates from around the country to train here, and decrease the amount of funding spent on malpractice issues. This funding can instead be used for more educational and clinical opportunities to ensure excellent training for our state's future healthcare providers. In conclusion, I strongly support HB 669. Thank you for the opportunity to testify.



TO: House of Representatives Committee on Consumer Protection and Commerce  
Representative Roy M Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
House of Representatives Committee on Judiciary  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair

DATE: Tuesday, Feb 12, 2019

PLACE: Hawaii State Capitol, Conference Room 329

FROM: Ronnie Texeira, MD

**Re: HB 669 – Relating to Medical Malpractice**

**Position: STRONG SUPPORT**

As an obstetrician/gynecologist resident physician currently training in Hawai'i, I am writing in **strong support of HB 669** as it limits medical malpractice liability for medical residents and fellows working under the supervision of licensed attending physicians.

Resident and fellow physicians are always required to have appropriate supervision from their attendings to ensure patient safety. This level of supervision varies based upon level of training, complexity of patient, and difficulty of procedure. Unfortunately, the number of law suits in which residents and fellows were named have been significantly increasing. This has in turn increased the need for defense funding and has a number of consequences on resident and fellow training.

When any physician is named in a lawsuit, it is a time consuming and emotionally exhausting process. There is already a shortage of women's healthcare providers in this state and we must not add to this shortage. By limiting the medical practice liability for resident and fellow physicians in Hawai'i, we can accomplish the following important goals: retain physicians in this state to take care of our citizens, attract highly qualified candidates from around the country to train here, and decrease the amount of funding spent on malpractice issues. This funding can instead be used for more educational and clinical opportunities to ensure excellent training for our state's future healthcare providers. In conclusion, I **strongly support HB 669**.

Thank you for the opportunity to testify.

**HB-669-HD-1**

Submitted on: 2/11/2019 8:03:17 AM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Julieta Rajlevsky	Individual	Support	No

Comments:

**HB-669-HD-1**

Submitted on: 2/11/2019 9:43:32 AM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
G. Yokochi	Individual	Support	No

Comments:

I wholeheartedly support this bill and would like it to be implemented sooner than 2050.

G. Yokochi, MD



**HB-669-HD-1**

Submitted on: 2/11/2019 10:54:05 AM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Theresa	Individual	Support	No

Comments:

I am currently an OB/GYN resident training in Hawai'i. I strongly support HB 669 due to the impact it could have on residency training, physician recruitment, and medical culture in Hawai'i. As a resident, I have already completed medical school and am now working on specialty training under the supervision of fully licensed physicians. Residency training should focus on patient care, skill aquisition and practice, and building relationships with patients and care teams. As the number of lawsuits naming residents in training as well as their supervisors increases, the focus shifts from that training to defensive medicine and focusing on patients' charts instead of patients. This harms the quality of our medical training and negatively impacts both current and future patients. Given that residents already practice under supervision, safe guards are in place to protect patients and I feel that malpractice limits are appropriate.

Thank you for your consideration.

Theresa

**HB-669-HD-1**

Submitted on: 2/11/2019 10:58:38 AM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
KH	Individual	Support	No

Comments:

**TESTIMONY OF BERT SAKUDA  
IN OPPOSITION TO H.B. NO. 669, H.D. 1**

Date: Tuesday, February 12, 2019  
Time: 2:35 pm  
Room: 329

To: Chairs Roy Takumi and Chris Lee; and Members of the House Committee on Consumer Protection and Commerce, and the Committee on Judiciary:

My name is Bert Sakuda and am testifying in OPPOSITION to H.B. NO. 669, H.D. 1. I am an attorney who has represented those injured by the negligence of others, including medical negligence, for the past 40 years.

The training of new doctors to teach them to become competent to safely provide the best medical treatment for our state is a very important process. It is also a very risky and dangerous time for both residents in training and their patients. It is risky for residents because this is a time when they are likely to make mistakes due to their lack of experience and knowledge; and dangerous because they could face monetary liability at a time when they cannot afford to protect themselves with adequate amounts of insurance or pay a significant judgment. It is risky for patients because new medical school graduates in the residency program, who provide most of their hands-on physician care, lack the experience and knowledge that they will eventually have to deliver safe quality medical services; and dangerous because patients in hospitals are already very sick or injured so mistakes can easily result in catastrophic injuries or death.

As a prominent board certified Honolulu surgeon testified after his patient bled to death in the hospital because a resident failed to recognize what was happening to the patient: "I want to speak to somebody [the resident] who also understands . . . whether a patient is gravely ill and is frankly dying in front of them, and having been a surgical intern . . . I know that at that premature level straight out from medical school, you don't have that grasp or that understanding. You just haven't seen enough. You don't have that experience."

It is simple common sense that the risk of mistakes for residents and danger for patients are increased because "straight out of medical school, you don't have that grasp or that understanding" that only comes with experience. While immunity protects residents from the

consequences of their own mistakes, it leaves patients unprotected and at risk for bearing the consequences of mistakes made by residents. Immunity is unnecessary when there is a method for protecting both residents and patients that the medical profession has used for many generations – insurance. Malpractice insurance exists for the very purpose of protecting doctors against the financial consequences of their errors while also protecting their patients.

Currently, neither JABSOM nor hospitals provide the benefit of malpractice insurance to residents. Instead, residents receive limited malpractice coverage from HRP, Inc., which is capped at \$1 million to be shared by all involved residents. In other words, if there are claims against four (4) residents, each resident may have only \$250,000 of coverage, which can be grossly insufficient for catastrophic injuries or death. Residents could, in theory, buy their own additional insurance but it is financially impractical for many, if not most, students in the residency program to do so. The most practical solution to protecting both residents and patients is to increase their insurance coverage or allow them access to insurance from JABSOM and/or hospitals (which benefit from the services provided by residents).

The protection of medical residents and their patients is not a one-or-the-other situation. Both should be protected; and both can be protected using the existing insurance system. There is no need or justification to compromise patient safety or protection under existing laws.

In addition, the HD1 substantially reduces patient safety by eliminating the original bill's requirement that residents train "under the direction of a physician" to qualify for immunity, and now only requires that residents who train "under the supervision of a physician" be given immunity. The HD1 itself does not define the distinction between training under the "direction" versus "supervision" of a physician. Instead it references the ACGME program definitions. ACGME permits a supervising physician to teach a resident directly in the presence of the resident and the patient. This is what is typically shown on television with residents tagging along with the supervising doctor, the doctor speaking with the patient and reviewing the chart, and then teaching the residents what is going on, what they should be looking for, and answering questions.

However, ACGME "supervision" also permits other scenarios: 1) where the supervising doctor has no physical contact or communication with the resident but stops by from time to time (usually once a day in the morning) and reviews the patient chart for the past 24 hours with the

resident; and 2) where the supervising doctor is not at the hospital but is available for consultation by phone or electronic modes (texts, email, fax) and can come to the hospital if needed. These may be adequate in certain situations, especially where experienced residents are involved, but when immunity is involved, there is no doubt that the less direct supervision a resident receives, the greater the risk of error for the patient.

Thank you very much for allowing me to testify in opposition regarding this measure. Please feel free to contact me should you have any questions or desire additional information.

**HB-669-HD-1**

Submitted on: 2/11/2019 12:07:05 PM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mark Hiraoka	Individual	Support	No

Comments:

As a physician who is active in both clinical practice and resident training, I strongly support this bill. This issue is real and I guarantee that if this trend continues training will be negatively impacted. It will both impede us from attracting trainees and will make it more difficult to train them. Financially it may become unsustainable, especially in higher risk fields such as obstetrics. The biggest loser will be our community who will have a difficult time well trained providers.

**HB-669-HD-1**

Submitted on: 2/11/2019 12:07:41 PM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kimberly Nagamine	Individual	Support	No

Comments:

**HB-669-HD-1**

Submitted on: 2/11/2019 12:42:37 PM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Samantha Kaiser	Individual	Support	No

Comments:

TO: House of Representatives Committee on Consumer Protection and Commerce  
Representative Roy M Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
House of Representatives Committee on Judiciary  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair  
DATE: Tuesday, Feb 12, 2019  
PLACE: Hawaii State Capitol, Conference Room 329  
FROM: Samantha Kaiser, MD

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

As an obstetrics and gynecology resident physician currently training in Hawai'i, I am writing in strong support of HB 669 as it limits medical malpractice liability for medical residents and fellows working under the supervision of licensed attending physicians. As a resident physician, I have already completed medical school and am now refining specific skills in my chosen specialty by working under the supervision of attending physicians. My attendings teach me how to become a better doctor and also ensure I am taking care of patients safely and accurately. Resident and fellow physicians are always required to have appropriate supervision from their attendings to ensure patient safety. This level of supervision varies based upon level of training, complexity of patient, and difficulty of procedure. Unfortunately, the number of law suits in which residents and fellows are named have been significantly increasing. This has in turn increased the need for legal defense funding and has a number of consequences on resident and fellow training. When any physician is named in a lawsuit, it is a time consuming and emotionally



exhausting

process. There is already a shortage of women's healthcare providers in this state and we must

not add to this shortage. By limiting the medical practice liability for resident and fellow physicians in Hawai'i, we can accomplish the following important goals: retain physicians in this state to take care of our citizens, attract highly qualified candidates from around the country to train here, and decrease the amount of funding spent on malpractice issues. This funding can instead be used for more educational and clinical opportunities to ensure excellent training for our state's future healthcare providers. In conclusion, I strongly support HB 669. Thank you for the opportunity to testify.

Samantha Kaiser, MD

TO: House of Representatives Committee on Consumer Protection and Commerce  
Representative Roy M Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
House of Representatives Committee on Judiciary  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair

DATE: Tuesday, Feb 12, 2019

PLACE: Hawaii State Capitol, Conference Room 329

FROM: Bliss Kaneshiro MD, MPH

**Re: HB 669 – Relating to Medical Malpractice**

**Position: STRONG SUPPORT**

As an obstetrician/gynecologist currently training in Hawai'i, I am writing in **strong support of HB 669** as it limits medical malpractice liability for medical residents and fellows working under the supervision of licensed attending physicians. Of note – my views are my own and do not represent the views of the University of Hawaii of which I am a Professor with Tenure.

Resident and fellow physicians are always under the supervision of attending physicians to ensure patient safety. This level of supervision varies based upon level of training, complexity of patient, and difficulty of procedure. Attending physicians thus allow resident physicians to hone their clinical skills while ensuring appropriate care. Unfortunately, the number of lawsuits in which residents and fellows are named has been significantly increasing. This has in turn increased the need for defense funding and has a number of consequences on resident and fellow training.

Being named in a lawsuit is a time consuming and emotionally exhausting process which is amplified in a resident or fellow physician who is early in their career and still trying to refine their clinical skills. Being named can also have negative impacts on applying for future employment, which often makes the trainee less likely to stay in Hawai'i, adding to the already existing shortage of healthcare providers in this state.

By limiting the medical practice liability for resident and fellow physicians in Hawai'i, we can accomplish the following important goals: attracting highly qualified candidates from around the country to train here and retaining those physicians to stay in Hawai'i, and decrease the amount of funding spent on malpractice issues. This funding can instead be used for more educational and clinical opportunities to ensure excellent training for our state's future healthcare providers. Therefore, we **strongly support HB 669**.

Thank you for the opportunity to testify.



Bliss Kaneshiro MD, MPH

**HB-669-HD-1**

Submitted on: 2/11/2019 2:30:10 PM

Testimony for CPC on 2/12/2019 2:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Rao	Individual	Support	No

Comments:

Hawaii already has a shortage of young physicians, why drive away the ones learning to train here. They practice under the auspices of an attending physician and do not always have control over the decisions made.