



UNIVERSITY OF HAWAI'I SYSTEM

TESTIMONY

SB 757

Testimony Presented Before the
SENATE COMMITTEE ON HEALTH

February 11, 2005

by

T. Samuel Shomaker, MD JD
Acting Dean, John A. Burns School of Medicine
University of Hawai'i at Manoa

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Friday, February 11, 2005
State Capitol, Conference Room 016, 2:45 pm

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RELATING TO TORTS

Chair Baker, Vice Chair Chun Oakland and Committee members.

I am Sam Shomaker, Acting Dean of the John A. Burns School of Medicine (JABSOM) at the University of Hawai`i. On behalf of JABSOM, I am testifying *in favor* of SB 757 which would place reasonable limits on the medical malpractice liability exposure of health care providers in Hawaii.

Like many states, Hawaii is feeling the effects of a national trend towards more malpractice lawsuits and larger jury awards, especially for non-economic damages. The cumulative impact of these trends negatively impacts physicians and the patients in their care. The increasing cost of malpractice insurance is stretching the budgets of hospitals and health care providers alike. At JABSOM, despite our excellent claims history, our *malpractice insurer raised our premiums 25%* last year while reducing the scope of coverage by doubling our deductible for each claim and increasing our share of the costs of legal defense. *We expect another double-digit premium increase next year.*

A number of physicians across our state are retiring early--or limiting their practices--to reduce their legal liability exposure, no matter their personal claims history. The increasing cost of malpractice insurance, and the escalating risk of being sued are major factors in the current physician shortage on the neighbor islands in particular. We notice that many of our medical students are hesitant to go into so-called "high risk" specialties, such as obstetrics and neurosurgery, for fear of being sued--even in cases where they have provided high quality care.

More importantly, the current structure of our medical liability system *provides no disincentives* to lawsuits even where there is questionable basis for a claim. It is little wonder that nationally, medical tort reform has become a priority for state legislatures and Congress.

The good news--there are legislative solutions that balance patients' legitimate rights to recover damages for injuries they suffer as a result of health care provider negligence, and society's interest in ensuring that there are adequate numbers of well-trained health care providers to ensure access to health care services. The solutions proposed in these bills, including

- capping non-economic damages (so called "pain and suffering" awards) and attorney contingency fees,
- shortening the statute of limitations for malpractice cases,
- allowing proof of collateral benefits, and
- permitting the periodic payment of future damages,

have been shown to **slow the growth of malpractice awards** and help to **contain the increase in malpractice insurance premiums**. It bears repeating—these proposed legislative solutions do not compromise the ability of patients who are legitimately injured to recover for their injuries. However, they do put a lid on factors leading to the rapid escalation of malpractice costs, and discouraging some of our best and brightest from pursuing careers in important medical specialties like obstetrics, trauma surgery, neurosurgery and anesthesiology.

Given our concern in providing adequate access to care in particularly rural areas in our state I urge you to carefully consider these bills. Passing this legislation would be a proactive, positive step that would have a tangible impact. It would send a powerful message that our legislature is aware of the issues facing the health care community and is willing to act in support of thousands of health care professionals who work hard to care for all of us every day.

Thank you for this opportunity to testify in support of SB 757.