



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Health  
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By

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### 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 lawsuits has increased significantly. As a result, defense costs have increased dramatically because of the need to substantively defend the residents who are in training. From 2002 to 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.

**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 acts or omissions, except for such damages as may result from the person's 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 and Definitions.

Mahalo for the opportunity to testify on this matter.