



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Consumer Protection and Health
Thursday, January 31, 2019 at 9:30 a.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

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 Hawai'i 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.