



# UNIVERSITY OF HAWAI'I SYSTEM

## TESTIMONY

HB 237 HD2 (HSCR400)  
Relating to Torts

Testimony Presented Before the  
HOUSE COMMITTEE ON JUDICIARY

March 1, 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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Tuesday, March 01, 2005  
State Capitol, Conference Room 325, 2:00 p.m.

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**HB 237 HD2 (HSCR400)  
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Chair Luke, Vice Chair Oshiro and Committee members.

I am T. Samuel Shomaker, MD JD, Acting Dean of the John A. Burns School of Medicine (JABSOM) at the University of Hawai`i, and on behalf of JABSOM I am testifying in favor of HB 237 HD2 as amended by HSCR400 which would place some reasonable limits on the medical malpractice liability exposure of health care providers in our state.

Unfortunately, Hawaii, like many other states has begun to feel the effects of a growing national trend towards more malpractice lawsuits and larger jury awards, especially for non-economic damages. The impact of these trends is having a profoundly negative impact on physicians and the patients they care for. 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 this year.

A number of physicians across our state are retiring early or limiting their practices to reduce their legal liability exposure. In fact the increasing cost of malpractice insurance and the ever escalating risk of being sued are major factors in the current physician shortage crisis being experienced on the neighbor islands today. Many of our medical students are hesitating to go into so called "high risk" specialties, such as obstetrics and neurosurgery, for fear of having to constantly face the threat of being sued, even in cases where they have provided high quality care to the patients they serve. In fact the current structure of our medical liability system provides no disincentive to lawsuits even where there is little or no basis for a claim. It is little wonder that nationally medical tort reform has become a priority for state legislatures and the Congress.

The good news is that 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 adequately distributed to ensure that Hawaii's citizens get access to the health care services they need. The Commission created by this measure will be charged with recommending such legislative solutions. JABSOM feels that this is a good first step in addressing this pressing problem. We look forward to working with the Commission to ensure that its work results in an effective solution that can be adopted by the Legislature quickly so that the growing crisis in insurance coverage can be averted.

Thank you for this opportunity to testify in support of HB 237 HD2 as amended by HSCR400.