

Testimony Presented Before the
HOUSE COMMITTEE ON HEALTH

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by

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HB 237
RELATING TO TORTS

Chair Arakaki, Vice Chair Green and members of the House Committee on Health.

I am Ed Cadman, 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 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 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 down the growth of malpractice awards and help to contain the increase in malpractice insurance premiums. It bears repeating that the legislative solutions being proposed do not compromise the ability of patients who are legitimately injured to recover for their injuries. However, they do put a lid on the factors that are 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 the growing problems we are experiencing in providing adequate access to care in some parts of 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 the hundreds of health care professionals who work so hard to care for all of us every day.

Thank you for this opportunity to testify in support of HB 237.