
A BILL FOR AN ACT

RELATING TO MEDICAL TORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature understands that one of the
2 most acute issues Hawaii hospitals face is the growing shortage
3 of physicians on call to their emergency departments. In
4 treating traumatic injuries, seconds count. Delay in patient
5 care can mean the difference between full recovery and long-term
6 disability. Yet, currently, delays do occur despite the
7 diligent efforts of emergency department physicians and
8 administrators to locate the specialists required, whether in
9 another hospital or on another island, and hamper the best
10 efforts of emergency physicians and physician specialists to
11 render emergency treatment as quickly as they are able. If
12 current trends continue, this situation will steadily worsen.

13 Several factors contribute to the shortage of physicians on
14 call at emergency departments. Two factors are high and
15 increasing premiums for medical malpractice liability insurance
16 and increasing difficulty in obtaining liability insurance
17 coverage. Placing a cap on noneconomic damages recoverable from
18 physicians and surgeons in medical tort actions arising from the



1 provision of emergency services and care can address these
2 factors by reducing the unpredictability of noneconomic damage
3 recovery amounts for physicians and surgeons. This, in turn,
4 will reduce the chilling effect that these damage recoveries may
5 have on physicians' willingness to take call at emergency
6 departments.

7 The purpose of this Act is to improve the availability of
8 physicians on call to the emergency departments of Hawaii's
9 hospitals by imposing a cap on noneconomic damages recoverable
10 from physicians and surgeons in medical tort actions as a result
11 of the provision of emergency care by on-call physicians in a
12 hospital emergency department. The legislature thereby intends
13 to place a specific ceiling on the amount that may be recovered
14 from an on-call physician, and requiring, as a practical matter
15 that any award in excess of that ceiling be borne by another
16 defendant, if any, such as the hospital.

17 SECTION 2. Chapter 671, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 **"§671- Medical tort action for emergency care;**
21 **noneconomic damages.** (a) Notwithstanding any other law to the
22 contrary, in any medical tort action arising from the



1 professional negligence of a physician or surgeon in the
2 provision of emergency services and care in the emergency
3 department of a hospital, the amount of noneconomic damages
4 recoverable from the physician or surgeon shall not exceed
5 \$250,000, regardless of the theory of liability on which the
6 claim is based or the number of plaintiffs, defendants, or other
7 parties or the number of causes of action.

8 (b) The limitation provided by this section applies only
9 to noneconomic damages awarded as a result of the act or
10 omission of a physician or surgeon in providing medical
11 screening, examination, and evaluation, to determine if an
12 emergency medical condition exists and, if it does, the act or
13 omission of a physician or surgeon in providing care, treatment,
14 or surgery necessary to relieve or eliminate the emergency
15 medical condition, within the service capability of the
16 hospital.

17 (c) For purposes of this section:

18 (1) "Hospital" has the same meaning as in section 327-1,
19 but shall also include any employee of the hospital;

20 (2) "Medical tort action" has the same meaning as in
21 section 671-1;



1 (3) "Noneconomic damages" has the same meaning as in
2 section 663-8.5;

3 (4) "Physician" means a physician licensed under chapter
4 453 or 460 working on-call in the emergency department
5 of a hospital; and

6 (5) "Surgeon" means a surgeon licensed under chapter 453
7 or 460 working on-call in the emergency department of
8 a hospital."

9 SECTION 3. This Act shall not apply to any cause of action
10 for which a complaint has been filed prior to its effective
11 date.

12 SECTION 4. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on January 1, 2008.

14

INTRODUCED BY:



JAN 18 2007



Report Title:

Medical Malpractice; Non-economic Damages; Emergency Care

Description:

Places a \$250,000 cap on non-economic damages recoverable from a physician or surgeon in medical malpractice actions for the provision of emergency care in a hospital emergency department.

