



LATE

LINDA LINGLE  
GOVERNOR  
JAMES R. AIONA, JR.  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH  
DIRECTOR  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Tuesday, February 10, 2009  
8:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 1636 – RELATING TO EMERGENCY MEDICAL PHYSICIANS.**

TO THE HONORABLE RYAN I. YAMANE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department supports this bill.

The purpose of this bill is to establish a uniform standard of care in HRS § 663-1.5 governing exceptions to tort liability. The proposed standard of care applicable to emergency care physicians in subsection (c) and to emergency obstetrical medical care (provided there is no existing physician-patient relationship) in new subsection (d) would be consistent with the standard of care applicable to “good Samaritans”, publishers of public service information on emergency first aid treatment, and trained individuals who administer automatic external defibrillators.

Currently, HRS § 663-1.5(c) creates an exception from tort liability for licensed physicians, unless the physician acts below the standard of care of the “reasonable physician” under similar circumstances. This seemingly conflicts with the existing language in subsection (g) that the exception from tort liability is inapplicable where there is gross negligence or wanton acts or omissions.

Recruiting emergency room doctors is an extremely serious problem in Hawaii, as revealed during deliberations with the Healthcare Task Force in 2005 and the Physician On-Call Crisis Task Force in 2006, and numerous discussions with the public, hospital groups, physician groups, and others. Emergency physicians are paid on a per patient basis by any covering insurers. Therefore, if the patient or patient's insurer does not pay for the emergency physician's care, the emergency physician does not get paid.

There is a shortage of certain physician specialists and an even greater shortage of physician specialists willing to serve on-call. There is an increased exposure to liability when an emergency physician treats a patient in an emergency situation whom the physician has usually never previously seen or treated. In addition, emergency physicians often receive inadequate or no remuneration for their services. Providing reasonable limits on liability for physicians will help ensure that emergency room patients receive appropriate care in their time of need.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.



## THE QUEEN'S MEDICAL CENTER

LATE

1301 Punchbowl Street • Honolulu, Hawaii 96813 • Phone (808) 538-9011 • Fax: (808) 547-4646

Representative Ryan Yamane, Chair  
Representative Scott Y. Nishimoto, Vice Chair

Tuesday, February 10, 2009 – 8:30 a.m.  
State Capitol, Conference Room 329  
**HOUSE COMMITTEE ON HEALTH**

### In Support of HB1636 Relating to Emergency Medical Physicians

Chair Yamane, Vice Chair Nishimoto, and Members of the Committee:

My name is Dr. Gerard Akaka, Vice President of Medical Affairs for The Queen's Medical Center (Queen's), **testifying in strong support of HB 1636** which provides additional protection for physicians who render medical services in genuine emergency situations involving an immediate threat of death or serious bodily injury.

Queen's has a severe shortage of orthopedic surgeons, neurosurgeons, and hand and face (plastic) surgeons willing to take emergency call due to liability concerns. The problem is more acute on the neighbor islands. This measure seeks to provide protection to emergency care physicians and ensure the availability of quality emergency medical care.

Hawaii's laws will continue to protect citizens against true negligence and medical malpractice. This bill provides protection only for physicians who provide genuine emergency care (typically within the confines of an emergency room or trauma center) in cases where there is an immediate threat of death, or serious bodily harm. Other states, including Florida, Georgia, Oklahoma, South Carolina, Texas, and West Virginia, have enacted some form of protection for physicians who provide emergency care.

In 2006, the Hawaii Legislative Reference Bureau published a report, "On-Call Crisis in Trauma Care: Government Responses," which details the causes of the on-call physician specialist shortage. It concludes that, *"Rising malpractice liability insurance premiums, in combination with lower reimbursement rates, render the practice of certain specialties less and less cost effective. There is increasing pressure from malpractice insurers for physicians not to provide emergency room coverage. Several liability insurers have simply stopped providing medical liability coverage for certain physician specialties. During malpractice crises, concerns are expressed that liability costs will drive high-risk specialist physicians from practice, creating access-to-care problems. While the problem is multi-factorial, with reimbursement and managed care arrangements contributing significantly, physician specialists perceive liability to be the strongest driver."*

The study also notes, *"With trauma injuries, seconds count; the chances of survival significantly decrease and the side effects of injury significantly increase if appropriate care is not given in the first hour immediately following the injury. A shortage of physician specialists can jeopardize a trauma team's ability to provide care. It also increases the risk of delay in patient treatment which in turn increases patients' risk of harm."*

Thank you for the opportunity to testify.