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TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Tuesday, February 24, 2009  
2:05 p.m.

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

TO THE HONORABLE JON RIKI KARAMATSU, 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

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Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair

Tuesday, February 24, 2009 – 2:05 p.m.  
State Capitol, Conference Room 325

## HOUSE COMMITTEE ON JUDICIARY

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

Chair Karamatsu, Vice Chair Ito, 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.



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Tuesday, February 24, 2009, 2:05 p.m. CR 325

To: COMMITTEE ON JUDICIARY  
Rep. Jon Riki Karamatsu, Chair  
Rep. Ken Ito, Vice Chair

From: Hawaii Medical Association  
Gary A. Okamoto, MD, President  
Philip Hellreich, MD, Legislative Co-Chair  
Linda Rasmussen, MD, Legislative Co-Chair  
April Donahue, Executive Director  
Richard C. Botti, Government Affairs  
Lauren Zirbel, Government Affairs

Re: HB1636 RELATING TO EMERGENCY MEDICAL PHYSICIANS

Chairs & Committee Members:

Hawaii Medical Association supports HB1636.

The passage of this measure is a common sense approach to encourage medical professionals to provide help in cases of emergency without thinking about how their actions could create unintended circumstances when an ungrateful individual is looking to create monetary gain.

The measure covers cases of gross negligence as it should.

Thank you for the opportunity to provide this testimony.

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**TO** : **Jon Riki Karamatsu, Chairperson**  
**House Committee on Judiciary**

**FROM** : **Michael K. Livingston**

**SUBJECT** : **H.B. 1514 H.D.1; H.B. 1636; H.B. 1784 H.D.1**

**HEARING DATE** : **Tuesday, February 24, 2009, 2:05 p.m.**  
**Room 325**

**TESTIMONY OF MICHAEL LIVINGSTON IN OPPOSITION TO**  
**H.B. 1514 H.D. 1; H.B. 1636; H.B. 1784 H.D. 1**

To the House Committee on Judiciary:

My name is Michael Livingston. I represent patients who are injured through the negligence of health care providers and failures in our health care delivery system.

I would like to bring to your attention a case handled by my law firm involving an orthopedic surgeon, Dr. Ricketson, who was permitted to perform spinal surgery on our client, Arturo Iturralde, in 2001, despite having had his medical license suspended by Oklahoma in 1999 and revoked by Texas in 2000 (with a finding that he engaged in unprofessional conduct that is likely to deceive or defraud the public or injure the public). This doctor implanted a steel screwdriver in our client's spine instead of a titanium surgical rod. The screwdriver broke inside his back only days after the surgery, requiring three more surgeries and leaving our client completely disabled and in constant pain until his death from related complications several years later.

Dr. Ricketson stopped practicing medicine in Hawai'i after we filed suit against him in 2003. Our investigation discovered that, in addition to having had his medical license suspended in Oklahoma and revoked in Texas, he had been denied a medical license in Kansas in 2002, he had been sued for malpractice at least seven times in several states, and he had admitted to addiction to narcotics and use of crack cocaine. Yet it was not until July 17, 2007, more than six years after Dr. Ricketson implanted a screwdriver in our client's back, that the State of Hawai'i finally revoked Dr. Ricketson's Hawai'i Medical license.

This case demonstrates that neither the hospital credentialing process nor the State medical licensing and review process is capable of providing adequate protection to the public against incompetent practitioners. Simply put, the Hawai'i public was only protected from Dr. Ricketson by Arturo Iturralde's malpractice lawsuit. This case also highlights the commonsense notion that our efforts should be addressed at preventing malpractice instead of limiting recoveries of those who are injured. Efforts to limit recoveries unfairly penalize the injured patient, detract from the real solution of preventing malpractice, and have unintended and undesired consequences. Reduce malpractice and you reduce malpractice claims, while preventing unnecessary injury and improving patient safety.

  
Michael K. Livingston