

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

LATE

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

### House Committee on Health

### H.B. 1784, RELATING TO MEDICAL TORTS

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

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

1 **Department's Position:** The Department of Health (DOH) supports this bill, but respectfully offers  
2 reference to the Administration-sponsored measure, H.B. 1120, for the collaborative purposes of this  
3 important discussion.

4 **Fiscal Implications:** The inefficiencies of the medical tort system is costly— only about 40 cents of  
5 every dollar spent on malpractice insurance goes to compensate injured patients while the rest goes to  
6 legal fees, court costs, and insurance company administration (RWJF Research Highlights, Oct. 2006).  
7 The associated rise in medical malpractice insurance premiums has economically inhibited the ability of  
8 doctors to provide necessary services in rural areas and on the neighboring islands.

9 **Purpose and Justification:** The Department of Health strongly supports the Legislature in its  
10 efforts to comprehensively consider the many related measures put forth this session to address this  
11 critical issue in health care. The shortcomings of the medical tort system are widely acknowledged.  
12 First, few who sustain medical injuries actually receive compensation. Second, malpractice cases are  
13 lengthy and awarded compensation amounts are inconsistent. Indeed, the current medical tort system  
14 does not seem to effectively promote patient safety and may actually discourage accurate medical error  
15 reporting among health care providers.

1 For discussion purposes, the Administration-sponsored proposal, H.B. 1120, Relating to Medical  
2 Liability, includes:

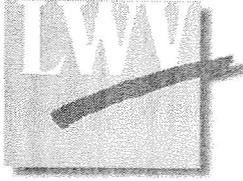
- 3 1) Placing a \$250,000 cap on non-economic damage awards in medical tort actions;
- 4 2) Defining 'economic damages' to include all past and future medical expenses, lost of past and  
5 future earnings, loss of use of property, cost of repair or replacement, cost of obtaining domestic  
6 services, loss of employment, and loss of business or employment opportunities;
- 7 3) Eliminating joint and several liability for economic damages by requiring economic damages  
8 to be allocated to a healthcare provider's proportionate share of negligence or fault;
- 9 4) Allowing the trier of fact to assess the proportionate share of negligence of all parties,  
10 including those who have entered into a settlement;
- 11 5) Establishing a sliding scale of limiting recovery of attorney's fees based on the judgment or  
12 settlement; and
- 13 6) Amending the statutory definitions of 'joint tort feisor,' 'healthcare provider', and 'medical  
14 tort' in HRS §663-11 and 671-1.

15 The measure being considered before this committee expands on these and other issues of  
16 medical tort reform. Specifically:

- 17 1) Defining admissible collateral benefits that the defendant may introduce;
- 18 2) Establishing provisions for periodic payment options;
- 19 3) Providing an expanded definition of non-economic damage limitation, yet also with a similar  
20 cap of \$250,000;
- 21 4) Establishing allocations for both economic and non-economic damages; and
- 22 5) Limiting medical tort actions from six years to three years from date of injury or one year  
23 after plaintiff discovers, which ever comes first, with specific provisions for minors.

1 The Department of Health joins with the Office of the Governor, the Department of Commerce  
2 and Consumer Affairs and the Hawaii State Legislature as we work towards successfully  
3 realizing comprehensive medical tort reform this session.

4 Thank you for the opportunity to testify.



THE LEAGUE  
OF WOMEN VOTERS OF HAWAII

LATE

TESTIMONY HB 1784 RELATING TO MEDICAL TORTS.  
Limits the amount awarded for non-economic damages in medical tort

Tuesday, February 10, 2009  
8:30 am  
Conference Room 329

Testifier: Joy A Marshall, RN, League of Women Voters Hawaii, Health  
Care Reform Chair

COMMITTEE ON HEALTH Chair Yamane, Vice Chair Nishimoto,  
members of the committee

The League of Women Voters of Hawaii Supports tort reform in Hawaii.

The intent of this bill can begin to reduce the overwhelming litigation and  
costs related to providing health care in Hawaii, and hopefully begin to  
reduce the overall cost of health care as we begin to develop plans for  
economic recovery.

Thank you for an opportunity to support of HB 1784

February 9, 2009

LATE

COMMITTEE ON HEALTH

Rep. Ryan I. Yamane, Chair

Rep. Scott Y. Nishimoto, Vice-Chair

NOTICE OF HEARING

DATE: Tuesday, February 10, 2009

TIME: 8:30am

LOCATION: Conference Room 329

State Capitol

RE: HB 1784: Relating to Medical Tort Reform

Representative Yamane, Representative Nishimoto and Committee Members

My name is Susan Slavish. I am both a nurse and a consumer of healthcare and have been for more than 40 years in Hawaii. I strongly support Medical Tort Reform. I am very concerned about quality physicians departing Hawaii for locations on the mainland because of extremely high malpractice insurance premiums associated with Hawaii's draconian laws associated with medical malpractice. Other states have successfully changed passed medical tort reform and have seen quickly seen positive results including reduced malpractice premiums, a reduction of law suits, and an increase in physicians with critical specialities, where the cost for malpractice insurance in the most burdensome. In Hawaii we have seen a steady stream of specialists leave the islands for more favorable practice locations. This puts the population at risk, particularly those who live on the neighbor islands where the loss has been most significant.

Hawaii has the reputation of being the Health State. We will be unable to maintain that unless you and other members of the legislature do something this year to improve the current system to make the state a more inviting place to practice medicine.

Thank you for the opportunity to provide this testimony.

Sincerely,

Susan M. Slavish, BSN, MPH, CIC

Infection Preventionist and Private Citizen

LATE

nishimoto2-Bryce

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**From:** Pete Crackel [petelind222@yahoo.com]  
**Sent:** Tuesday, February 10, 2009 12:23 AM  
**To:** HLTtestimony

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please deliver to Representative Ryan Yamane for the House Health Committee hearing, Wednesday, 2/9/09.

February 9, 2009

**To:** Rep., Ryan Yamane, Chair  
Rep., Scott Y. Nishimoto, Vice Chair  
House Health Committee

**From:** Pete Crackel  
1005H Kailua Road, Kailua, HI 96734  
(808) 561-0621

**Re:** HB1784 Relating to Medical Liability  
HB1514 Relating to Medical Liability

I am a Hawaii resident and I strongly support HB1784 and HB1514.

Both bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements.

As a result, physicians are leaving Hawaii and its residents are not always able to obtain timely and appropriate medical care.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Failure to address the critical issue of Doctors leaving Hawaii or reducing their practice to defensive medicine will have a far-reaching effect with consequences that most residents and legislators are not yet aware of.

In point of fact, it already has. Let me explain. The result of 49 doctors leaving, the Big Island specifically within the last two years, and elsewhere throughout the State has effectively resulted in rationed medicine. There are only so many hours in the day, leaving a backlog of patients for the remaining doctors. Since not all patients can be seen on a given day, the consequence is rationing. We have slipped into third world medical status. The commonwealth fund, which rates us as best in the nation for health care, is blind to this situation. Indeed it has slipped up unnoticed on most of us.

I have a Masters in Social Work and a background in mental health. I was born and raised on the Big Island as was my mother and her mother. I was a paratrooper-medic in Vietnam with the 101st Airborne. I have been

exposed to situations outside the normal range of human experience. I say this to verify my view of Hawaii. The remaining doctors in Hawaii, who have young families, pre-teens and teens, are at huge risk of dysfunctional relationships. Parents who work 16 – 18 hours a day cannot possibly make available quality time for their children. There is no time available. Therefore, what keeps young doctors from leaving or coming here in the first place?

The best insurance plan is no substitute for a competent array of doctors on each island. The solution is not complex.

Thank you for the opportunity to provide this testimony.

LATE

House Health Committee  
 Representative Ryan Yamane, Chair  
 Representative Scott Nishimoto, Co-Chair

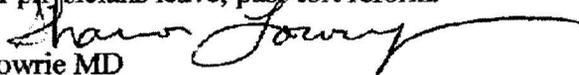
Hearing Tues. Feb. 10<sup>th</sup>, 8:30am, rm 329

## Support for HB1784 Relating to medical tort reform

Dear Representative Yamane, Nishimoto and committee members,

Physicians are not just leaving the state of Hawaii. Across the nation, they are "retiring early". A hot topic of conversation this day among physicians is about their exit strategy. How could our entire health care system become so toxic that the ones who were so passionate about caring for you have had to leave to survive themselves? Tort reform must go through in Hawaii to spare your doctors mental health and to keep them by your side doing what they do best. A malpractice suit takes about 7 years to complete. That is 2500 sleepless nights alternately filled with anger, grief, self doubt, loss of self esteem, and days filled with extra paper work, depositions, and a sequence of events that makes physicians feel like criminals, even if we did nothing wrong and we win the case. Physicians have no time between the office, hospital, running their business and the lawyers to seek physician directed support systems even if there were any. The toll is immense. In an article written by Dr. Tom Gross he stated and I quote " that his colleague had learned that by age 45, 20% or one in five, of his medical school classmates were dead. He compared that to his high school class and his college class, in which fewer than 3 percent had died. He also discovered that the median life span of a physician is 58 years." In other words, half of American physicians make it to 58 years old the other half do not. Doctors commit suicide twice as often as the normal population. Dr. Louise Andrew reported "On average the United States loses the equivalent of at least one entire medical school class to suicide." What you are seeing now is a flight of physicians moving to areas of tort reform, or lower stress communities, or bailing out into hammering nails in order to get their self-respect back. I have retired from medicine. It was the saddest day of my life but I do not regret it. The least stressful part of medicine was the part I loved the best. It is what you see as the most stressful from the sitcoms. Reversing your aunties heart attack, keeping your cousin alive after the deadly car accident, sewing up your son's head laceration, calming your fears when your baby has a high fever, just doing my job. However, I left because of the most stressful part to me, a patient who admitted, after the fact, his intention to sue the hospital before he entered the hospital. There was no wrongdoing by the unsuspecting physician, me, but he tried anyway and I realized the tide had turned. A higher proportion of you saw me as a criminal with a deep pocket rather than as your savior. To those of you I comforted, healed and gave a part of myself to, I am sorry I left you but I had to, to survive. Don't let your other physicians leave, pass tort reform.

Sharon Lowrie MD



LATE

nishimoto2-Bryce HB1784

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**From:** kapoleieyecare@hawaii.rr.com  
**Sent:** Monday, February 09, 2009 9:23 PM  
**To:** HLTtestimony  
**Subject:** Tort Reform

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Legislators,

It is now or never and don't think health system in Hawaii will get any better without the physicians. It has been more than clear in the mainland that Tort Reform is necessary to keep the best physicians in the area.

We have been seeing an exodus of physicians from Hawaii to the mainland. Sooner or later we will have to fly to the mainland to have any special treatment. Think about the people that you serve, think about your own health, I am sure you are not getting any younger and you would like to have the best of care necessary whenever you need it.

Reform will help stabilize medical malpractice insurance premiums and encourage physicians to continue practicing medicine in Hawaii, improving access to care for Hawaii residents. I support a \$250,000 cap on non-economic damages, which has been proven by other states to be effective in stabilizing premiums.

You can make a difference! The people that you serve will very much appreciate your support!

If you have any questions, please do not hesitate to contact me at any time.

Nancy Chen, MD  
[nchen100@hotmail.com](mailto:nchen100@hotmail.com)  
674-2273

From: Peggy Liao [PeggyMLiao@hawaii.rr.com]  
Sent: Monday, February 09, 2009 8:26 PM  
To: HLTtestimony

LATE

Peggy Liao, M.D.  
1319 Punahou Street, Suite 620  
Honolulu, HI 96826  
Telephone (808)949-4558

February 9, 2009

Date and time of hearing: February 10, 2009, 8:30 am  
Number of copies requested: 3

Committee on Health  
Hawaii State House of Representatives  
Re: HB 1784, 1514, 1636, 1785, 310, 575, 807, 718, 439, 532 and 1317

Ladies and Gentlemen:

As a practicing physician committed to serving the people of Hawaii, I respectfully ask for your consideration and support on some dangerously neglected critical issues.

Health care providers in our state, from physicians to pharmacies to hospitals, are quickly sinking into a mire of despair. Costs are too high, reimbursements too low, and all the while the Hawaiian people's medical needs continue to grow.

We realize that increased reimbursements are unlikely due to our unwillingness to behave as labor unions and withhold services. However, there are some measures within your purview that could help our medical community continue to care for you, your family and your constituents.

Insurance companies, in particular those private companies providing coverage for our Medicare and Medicaid patients, continue to deny and

obstruct payment, even as their reimbursements fail to cover the costs of the services provided. As a private practitioner, their frequent refusal to make timely and reasonable payment creates an additional burden on my office, as we must make significant time and money expenditures to collect on claims.

Before your committee now is the issue of tort reform. The cost of excessive litigation goes far beyond liability insurance premiums.

Defensive medicine has become the norm. It is the performance of unnecessary testing and procedures to protect the provider from potential litigation. By definition, this method of practice adds tremendous costs to the provision of healthcare with very little or no benefit.

Protecting doctors from excessive litigation and predatory insurance companies will protect our health care system with no cost to patients or taxpayers. To continue to tolerate these situations takes us further down the slippery slope we find ourselves on.

Respectfully submitted,

Peggy M. Liao, M.D.

**From:** Shsenft@aol.com  
**Sent:** Monday, February 09, 2009 7:22 PM  
**To:** HLTtestimony  
**Subject:** Medical Tort Reform Hearing

LATE

Tuesday February 10, 2009 8:30 AM, Conference Room 329, State Capitol, 415 South Beretania Street

February 9, 2009

Committee on Health

Hawaii State House of Representatives

Re: HB 1784, 1514, 1636, 1785, 310, 575, 807, 718, 439, 532 and 1317

Dear Committee Members:

As a practicing physician committed to serving the people of Hawaii in an underserved area (Big Island), I respectfully ask for your consideration and support on some dangerously neglected critical issues.

Health care providers in our state, from physicians to pharmacies to hospitals, are quickly sinking into a mire of despair. Costs are too high, reimbursements too low, and all the while the Hawaiian people's medical needs continue to grow.

We realize that increased reimbursements are unlikely due to our unwillingness to behave as labor unions and withhold services. However, there are some measures within your purview that could help our medical community continue to care for you, your family and your constituents.

Insurance companies, in particular those private companies providing coverage for our Medicare and Medicaid patients, continue to deny and obstruct payment, even as their reimbursements fail to cover the costs of the services provided. As a private practitioner, their frequent refusal to make timely and reasonable payment creates an additional burden on my office, as we must make significant time and money expenditures to collect on claims.

Before your committee now is the issue of tort reform. The cost of excessive litigation goes far beyond liability insurance premiums. In particular, I have personally been affected by issues that are covered in HB 310, HB 807 whereby I was involved in a frivolous lawsuit that went on for 6 years after the MCCP panel ruled that there was no merit. All in all, the proceedings took an astonishing 8 years. In the end, after a tremendous inconvenience to patients (because I had to cancel clinic multiple times for settlement conference meetings, depositions), and stress in general leading up to a 2 week court trial and being out of my office, unable to see patients during that time, the verdict was unanimous 12-0 in my favor that no malpractice had occurred. The plaintiff in this case has no consequences and even had her court fees covered by my insurance company to prevent an appeal to the Hawaii State Supreme Court which would have taken another 4-5 years out of my life. Strengthening the MCCP panel rulings would have helped in this case and prevented this waste of the judicial court system time and unnecessary taxpayer expense.

Defensive medicine has become the norm. It is the performance of unnecessary testing and procedures to protect the provider from potential litigation. By definition, this method of practice adds tremendous costs to the provision of healthcare with very little or no benefit.

Protecting doctors from excessive litigation and predatory insurance companies will protect our health care system with no cost to patients or taxpayers. To continue to tolerate these situations takes us further down the slippery slope we find ourselves on.

Respectfully submitted,

Susan H. Senft, MD

February 10, 2009 HB 1284

TO: Representative Ryan Yamane, Chair  
Representative Scott Nishimoto, Vice Chair  
Health Committee Members

FROM: Kathy F. Campbell   
1946 Lunaai Street  
Kailua, HI 96734  
261-5049

I want to thank you very much for holding this wonderful hearing all about medical tort reform. I thought I had died and gone to heaven when I saw the agenda with all these bills in one hearing and at the beginning of the hearing no less! Thanks for doing this for us.

I am a volunteer advocate for the third group, and probably the most important, concerned with the medical malpractice issue. PATIENTS!!! I am voluntarily representing thousands of patients in this state who have lost their doctors or have not been able to get timely medical care. The Save Our Doctors coalition is composed of consumers, patients and constituents who have all had doctors close their practice while we were their patients. We have all had trouble finding new doctors. Many of us are patients and/or senior citizens who are on medication. When a doctors closes their practice where do we get our medications?

I strongly support medical malpractice reform. These bills will reduce medical malpractice premiums paid by physicians and, in turn, increase patient's access to physician care in Hawaii.

I lost two of my doctors last year. My internist closed her practice with one month notice. Her husband is a cardiologist and has been sued twice. They have young children and my Doctor told me she could not sleep at night due to the stress these suits have caused in their family. She was worried about getting sued herself and she told me this caused her to close her practice. She has been doing paper work for her husband in his practice and in a note she sent me she said, "now he can come home and have dinner with the family two nights a week instead of only one." This is insane! Doctors should be able to have lives too.

My other Doctor was Dr. Michael Hahn, a board certified orthopedic hand specialist. He also left due to high malpractice premiums. He went to Texas where they have passed major malpractice reform legislation. He e-mailed his former partner here and said he can now practice medicine as he was trained to do in medical school. He no longer orders unnecessary tests for patients to protect himself from malpractice suits. He doesn't have to practice defensive medicine. His stress is gone and he enjoys going to work each day. In February 2006 Dr. Hahn diagnosed me with carpal tunnel in both of my hands and was treating me for this problem. In the summer of 2007 I read in the paper that he had gone to Texas. I was upset! In October 2007 my right thumb went to sleep. It didn't wake up. I went to see a new Doctor and decided to have surgery on November 28, 2007. My new Doctor is an orthopedic surgeon but not a board certified hand specialist. I had to take my chances because there wasn't anyone else to help me. I couldn't just wait until my whole hand went to sleep, never woke up and I had permanent nerve damage. My current doctor is originally from Hawaii and recently returned. His wife is a radiologist and the only way they could come home was if she could keep her practice. So she continues her practice to the mainland via the internet as a radiologist.

This is the reason I volunteered to become involved in this issue. This is not a partisan issue. This is not a doctor vs. attorney issue. THIS IS NOT EVEN A MONEY ISSUE. The state doesn't have to pay for anything. That's the best news I've heard all year! THIS IS A PEOPLE ISSUE. THIS IS A PATIENT ISSUE. Since I have been involved I have heard one horror story after another from patients and your

LATE

constituents. Story after story from neighbor island people who have lost an eye, lost a foot, lost a leg because it took 10 or more hours to medevac them to Oahu. Every time I talk to someone they tell me about losing their doctor. My good friend was also Dr. Hahn's patient. Another friend had arthroscopic surgery by another doctor who went back to the mainland. My surgery nurse lost two doctors. A couple I met at a windward legislative meeting both went to my internist. My internist had 3,000 patients. Where are 3,000 patients going to go in Kailua? The couple has been unable to find a new doctor. Every doctor they call said they are not taking new patients and/or will not take Medicare patients. Senior citizens are usually on some kind of medication, and if you stop it on a moments notice it can be life threatening. This happened to me. I had to get my OB/Gyn to refill my prescriptions from my internist.

This issue is not about eliminating the option to obtain damages for negligence in catastrophic cases. When definite malpractice and permanent damages/disabilities occur people have the right to remuneration. My son was born with cerebral palsy. He is spastic quadriplegic, has never walked one step and has spent his entire life in a wheelchair. There were malpractice issues when he was born. That was 42 years ago before machines and monitors. I did not sue anyone. I have lived with his disability for 42 years so I know how hard it can be. I have walked the walk.

In answer to the attorneys arguments against this reform these bills DO NOT deny anyone the right to sue when there is definite malpractice involved and life changing injuries occur. Of course, those kinds of damages should be compensated. Also, I have heard attorneys say that doctors won't relocate to the neighbor islands and other rural areas. An article in the Honolulu Star Bulletin, October 7, 2007 stated, ".....doctors are responding as supporters predicted, arriving from all parts of the country to swell the ranks of specialists at Texas hospitals and bring professional health care to some long-underserved rural areas." I'm sure that rural areas on the neighbor islands are much more appealing than rural areas in Texas!

The following Doctors from the windward side of Oahu have closed their practice and/or left Hawaii in the past two years: Dr. Kerry Hubbs, orthopedic surgeon; Dr. Terry Smith, the only orthopedic back surgeon; Dr. Neil Katz, orthopedic surgeon; Dr. Richard Rose, orthopedic surgeon; Dr. Michael Hahn, the only board certified orthopedic hand surgeon; Dr. Helen Ing, internist; Dr. Jeffrey Ryan, family practice; Dr. Cynthia Mosbrucker, OB/Gyn; Dr. Theodore Teruya, vascular surgeon; Dr. Sam Smith, anesthesiologist, only here six months. Dr. James F. Pierce, a neurologist at Queens, retired November 30, 2007. In his Star Bulletin notice of retirement he said, "I tried unsuccessfully for 1 1/2 years to find someone to continue my practice. Cost of living in Hawaii, ever-rising costs in the medical practice and inadequate reimbursements..... do not cover these needs" The Doctors who have left have relocated to states that have passed malpractice reform.

OB/Gyn is in chaos in the state right now. There is not a hospital Ewa of Queens and Kapiolani that delivers babies. That is where the majority of young families who are of child bearing age live on Oahu. An OB/Gyn who practices in Wahiawa sends his patients to Kapiolani as soon as they begin contractions. He says if they wait and there are traffic problems they won't make it. There is only one OB/Gyn delivering babies on Maui. Molokai and Lanai have NONE. These patients have to come to Oahu 1-2 weeks before their due date and stay here until they give birth to make sure they are here when they go into labor. Once you are in labor the airlines won't let you on an airplane. You're not suppose to fly in your last month of pregnancy either. The OB/Gyn in the Kahuku area has discontinued delivering babies. She said she can no longer drive back and forth between Kahuku and Castle Medical Center to do the deliveries. Kahuku Hospital closed its obstetrics department. When mothers are forced to deliver babies in unsafe circumstances the chances of developmental disabilities increases drastically and developmental disabilities becomes another cost to the state.

We must embrace change and forget the politics. Malpractice insurance must be changed in such a way to reduce the malpractice premiums so that our Doctors will stop leaving the state and we will have quality of life. The Texas model is an excellent example for us to follow. It has solved Texas' problem with

malpractice. I hope you will create change in the malpractice area and improve our lives.

The health care situation is scary, really scary. In fact it scares me to death. However, it might be a good thing if we all got scared to death, because that would solve our crisis. Seriously, it's not just about us patients, it's about you legislators also. You are being affected the same as us. If you haven't felt the impact of the malpractice problem yet, your turn will come, it's only a matter of time. You are the only ones who can help us and yourselves. I am putting my trust in you to solve the physician shortage in our state this session. I have heard Doctors testify that the system is broke, in crisis and chaos. By passing malpractice reform this year it will be a big step in solving the health crisis in this state. Will you please help because this is a situation in which we can not help ourselves. Again this is not a partisan issue, nor an attorney vs. doctor issue. The Legislature needs to take care of their constituents by solving this problem NOW. Please help us and thank you for listening.

# Mississippi's Tort Reform Triumph

**Jackson, Miss.**  
For most of the past 30 years, Mississippi has ranked as one of the poorest as well as one of the most litigious states. The two statistics are related.

I met with Mississippi Gov. Haley Barbour recently, and this politician, best known for helping his state rebuild after Hurricane Katrina in 2005, had a lot to say about lawsuits.

## CROSS COUNTRY

By Stephen Moore

"We were America's No. 1 judicial hell hole for jackpot jury verdicts," the two-term Republican governor told me. "For trial lawyers, this was the state you wanted to come to if you wanted to sue someone."

But it was not the state to come to if you wanted to start a business. Mississippi's antibusiness reputation was so awful, Mr. Barbour said, that the CEOs of several Fortune 500 companies told him specifically that they wouldn't consider locating in the state unless the tort system was fixed.

For doctors, the situation was a little different—many who were inside the state were getting out as fast as they could. With 25% annual increases in malpractice premiums, many physi-

cians simply couldn't survive if they stayed. The outflux left some counties without a single obstetrician. In some cases, residents had to drive 100 miles to find a doctor.

One of the worst places, in term of frivolous lawsuits, was Jefferson County. It became renowned as the lawsuit capital of the country, with more plaintiffs than residents. This is the infamous county where one pharmacist was named in more than 1,000 lawsuits. In one legendary case

## The state has become a growth leader since telling the trial lawyers to get lost.

against a pharmaceutical company that sold the diet pill Pondimin (part of the weight-loss combination known as fen-phen, which was later banned), a Jefferson County jury awarded \$1 billion to the family of a woman who had taken the drug.

But four years ago, Mississippi transformed itself from judicial hell hole to job magnet, a story that is instructive for other states trying to at-

tract jobs in turbulent economic times. The lessons here are especially timely, because the pro-growth tort reform trend that was once spreading across the country may soon reverse course.

James Copland of the Manhattan Institute's Center for Legal Policy reports that, thanks to big Democratic gains in state legislatures in 2006, trial lawyers from coast to coast have replenished their army of allies in state capitals. "The legislatures are busy at work repealing many of the reforms while creating new rights to sue, through such scams as patient bill of rights laws," he says.

Shortly after winning election in 2003 by running on a tort-reform platform, Mr. Barbour stitched together a coalition of doctors, business groups, taxpayers and even unions to roll back the trial lawyer lobby.

"It was not just a battle," recalls Charlie Ross, the Senate sponsor of the reform bill, "it was a five-year



Haley Barbour, left, with Toyota officials in Feb. 2007 moments after announcing Toyota Motor Corp. will build a \$1.3 billion assembly plant in northeast Mississippi.

war." The law that eventually passed was every trial lawyers' worst nightmare. It capped awards for noneconomic damages, and prevented the popular practice whereby a plaintiff attorney seeking to bring a class-action shops around for a court where he'll be likely to get a favorable ruling or judgment.

Almost overnight, the flow of lawsuits began to dry up and businesses started to trickle in. Federal Express invested \$1 billion in a new facility in the state. Toyota chose Mississippi over about a dozen other states for a new \$1.2 billion, 2,000-worker auto plant. The auto maker has stipulated that the company would pull up stakes if the tort reforms were overturned by the legislature or activist judges.

That hasn't happened. About 60,000 new jobs have arrived in four years—not a small number in a workforce of about 1.3 million—and a sharp improvement from the 30,000 jobs lost in the four years before Mr. Barbour took office. Since the law took effect, the number of medical malpractice lawsuits has fallen by nearly 90%, which in turn has cut malpractice insurance costs by 30% to 45%, depending on the county.

Another encouraging sign: Fewer Mississippians are heading to law school and more are looking at business school as the best way to get rich. Many in the younger generation are pursuing a career path that will make them wealth creators, not wealth redistributors.

Meanwhile, in other states, the

trial bar is spending record amounts on 2008 campaigns to make sure that the political massacre plaintiffs lawyers suffered in Mississippi isn't repeated. Next to the unions, trial lawyers are the biggest givers to Democrats. It is no secret they will want a payback if the Democrats have a big year on the state level. A big Democratic theme this year, starting with Barack Obama at the top of the ticket, is to roll back the well-

heeled special interests. Trial lawyers—some of the richest people in the country—apparently don't count.

The Pacific Research Institute estimates that the tort system nationwide costs the economy about \$7,000 for every family in America. The pols in Washington are sending out tax-rebate checks of up to \$1,200 for married couples in hopes of stimulating the economy. But outside of Mississippi and a few other places, there seems to be little understanding of how frivolous lawsuits and greedy tort lawyers weigh down the economy.

For too long class action lawsuits seemed to be Mississippi's biggest industry, and tort lawyers seemed to be the only state residents making it big. That seems to be turning around. One of the richest tort lawyers of all is Dickie Scruggs. More than a decade ago he was one of the architects of the state tobacco settlement. He recently pleaded guilty to attempting to bribe Mississippi state Judge Henry Lackey.

Thanks to Mr. Barbour, the state's unemployment rate is down to about 6% from nearly 9%. Last year, Mississippi's per capita income growth was 6.7%, third highest of the 50 states and well above the national average of 5.2%. Mississippi tort reform is making the poor richer, and the rich lawyers less fabulously rich. Now that's a good way to close the income gap.

Mr. Moore is senior economics writer for The Wall Street Journal editorial page.

# Liability cap has doctors flocking to Texas

*Physicians see less risk due to protection provided by limits on malpractice awards*

**By Ralph Blumenthal**

New York Times

HOUSTON >> In Texas, it can be a long wait for a doctor: up to six months.

That is not for an appointment. That is the time it can take the Texas Medical Board to process applications to practice.

Four years after Texas voters approved a constitutional amendment limiting awards in medical malpractice lawsuits, doctors are responding as supporters predicted, arriving from all parts of the country to swell the ranks of specialists at Texas hospitals and bring professional health care to some long-underserved rural areas.

The influx, raising the state's abysmally low ranking in physicians per capita, has flooded the medical board's offices in Austin with applications for Texas licenses, close to 2,500 at last count.

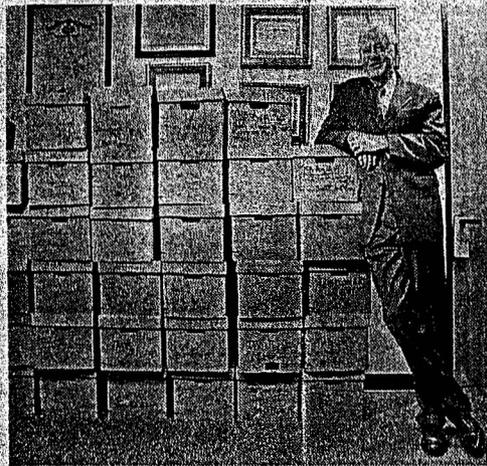
"It was hard to believe at first; we thought it was a spike," said Donald Patrick, executive

director of the medical board and a neurosurgeon and lawyer. But Patrick said the trend — licenses up 18 percent since 2003, when the damage caps were enacted — has held, with an even sharper jump of 30 percent in the last fiscal year, compared with the year before. "Doctors are coming to Texas because they sense a friendlier malpractice climate," he said.

Some experts say the picture may be more complicated and less positive. They question how big a role the cap on malpractice awards has played, arguing that awards in malpractice lawsuits had shown little increase in the 12 years before the law changed.

And some critics, including liability lawyers, question whether the changes have left patients more vulnerable. With doctors facing reduced malpractice exposure, they say, many have cut back on their insurance, making it harder for plaintiffs to collect damages. Moreover, they say that some rural areas have fewer doctors than before.

The measure changing Texas' malpractice landscape, Proposition 12, was narrowly approved in a constitutional referendum on Sept. 12, 2003. It



**Dr. Donald Patrick, executive director of the Texas Medical Board, says the board has been flooded with applications for medical licenses.**

NEW YORK TIMES

barred the courts from interfering in limits set by the Legislature on medical malpractice recoveries.

For pain and suffering, so-called noneconomic damage, patients could sue a doctor and, in unusual cases, up to two health-care institutions for no more than \$250,000 each, under limits adopted by the Legislature. Plaintiffs could still recover economic losses, like continuing medical care or lost income, but the amount they could win was capped at \$1.6 million in death cases.

All but 15 states have adopted some limits on medical damage awards, according to

the National Conference of State Legislatures. But the restrictions in Texas go further than in many states, where the limits are often twice as high as they are here.

"Other states have passed tort reform, but Texas implemented big changes all at once," said Lisa Robin, a vice president for government relations at the Federation of State Medical Boards, a national umbrella group based in Dallas.

Some experts say the lack of a state income tax, combined with what William Sage, a law professor at the University of Texas in Austin, called a "relatively rapid transition in its tort

reputation as a plaintiff-friendly state," has contributed to the state's appeal to doctors.

Timothy George, 47, a pediatric neurosurgeon, who credits the measure in part with attracting him and his sought-after specialty last year to Austin from North Carolina, said, "Texas made it easier to practice and easier to take care of complex patients."

The increase in doctors — double the rate of the population increase — has raised the state's ranking in physicians per capita to 42nd in 2005 from 48th in 2001, according to the American Medical Association. It is most likely considerably higher now, according to the medical association, which takes two years to compile the standings. Still, the latest figures show Texas with 194 patient-care physicians per 100,000 population, far below the District of Columbia, which led the nation with 659.

The Texas Medical Board reports licensing 10,878 new physicians since 2003, up from 8,391 in the previous four years. It issued a record 980 medical licenses at its last bimonthly meeting in August, raising the number of doctors in Texas to 44,752, with a backlog of nearly

2,500 applications.

Of those awaiting processing, the largest number, after Texas, come from New York (145), followed by California (118) and Florida (100).

In some medical specialties, the gains have been especially striking, said Jon Opelt, executive director of the Texas Alliance for Patient Access, a medical advocacy group: 186 obstetricians, 156 orthopedic surgeons and 26 neurosurgeons.

Adding to the state's allure for doctors, Opelt said, was an average 21.3 percent drop in malpractice insurance premiums, not counting rebates for renewal.

To help state officials monitor the influx of doctors, the Texas Medical Board recently got money to hire six more employees, said Patrick, the director since 2001. It now has 17 lawyers, compared with no more than four when he arrived, he said.

Since 2003, investigations of doctors have gone up 40 percent, patient complaints have gone up 25 percent, and disciplinary actions about 8 percent, said Jill Wiggins, a board spokeswoman. But the figures may reflect greater regulatory diligence rather than more misconduct, Wiggins said.

HB 1784

COMMITTEE ON HEALTH  
Rep. Ryan I. Yamane, Chair  
Rep. Scott Y. Nishimoto, Vice Chair

LATE

## NOTICE OF HEARING

DATE: Tuesday, February 10, 2009  
TIME: 8:30 a.m.  
Conference Room 329  
State Capitol

RE: Support of medical tort reform

Dear Representative Ryan Yamane, Scott Nishimoto and committee members,

I, like most residents, am concerned about the high cost of medical insurance in Hawaii and the number of doctors leaving the State of Hawaii as a direct result of the high cost of their insurance.

The current laws have attracted a very large number of lawyers to our State. Typically many of these lawyers are able to thrive under the current laws. Their competition to attract business is clearly illustrated in the 'Hawaiian Telcom Yellow Pages'

**137 Pages of Lawyer Adds, including many expensive full page adds encouraging litigation**

**as compared with**

**51 Pages of Physicians, including all types of medical services, including optional surgery.**

The high cost of medical insurance impacts every one,

- Employers
- Families, Individuals
- Medical Insurance companies
- Doctors
- Hospitals
- State of Hawaii

The Lawyers are being very short sighted and driving away doctors that would be their future potential source of income.

Hopefully our Legislators are able to follow the example of other progressive States and curb the high cost of medical insurance and prevent the loss of more of our physicians.

Sincerely

John Miller, 47-169B Hui Akepa Place, Kaneohe Hi. 96744 Ph 239 4984

LATE

**nishimoto2-Bryce**

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**From:** Pete Crackel [petelind222@yahoo.com]  
**Sent:** Tuesday, February 10, 2009 12:23 AM  
**To:** HLTtestimony

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please deliver to Representative Ryan Yamane for the House Health Committee hearing, Wednesday, 2/9/09.

February 9, 2009

**To:** Rep., Ryan Yamane, Chair  
Rep., Scott Y. Nishimoto, Vice Chair  
House Health Committee

**From:** Pete Crackel  
1005H Kailua Road, Kailua, HI 96734  
(808) 561-0621

**Re:** HB1784 Relating to Medical Liability  
HB1514 Relating to Medical Liability

I am a Hawaii resident and I strongly support HB1784 and HB1514.

Both bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements.

As a result, physicians are leaving Hawaii and its residents are not always able to obtain timely and appropriate medical care.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Failure to address the critical issue of Doctors leaving Hawaii or reducing their practice to defensive medicine will have a far-reaching effect with consequences that most residents and legislators are not yet aware of.

In point of fact, it already has. Let me explain. The result of 49 doctors leaving, the Big Island specifically within the last two years, and elsewhere throughout the State has effectively resulted in rationed medicine. There are only so many hours in the day, leaving a backlog of patients for the remaining doctors. Since not all patients can be seen on a given day, the consequence is rationing. We have slipped into third world medical status. The commonwealth fund, which rates us as best in the nation for health care, is blind to this situation. Indeed it has slipped up unnoticed on most of us.

I have a Masters in Social Work and a background in mental health. I was born and raised on the Big Island as was my mother and her mother. I was a paratrooper-medic in Vietnam with the 101st Airborne. I have been

exposed to situations outside the normal range of human experience. I say this to verify my view of Hawaii. The remaining doctors in Hawaii, who have young families, pre-teens and teens, are at huge risk of dysfunctional relationships. Parents who work 16 – 18 hours a day cannot possibly make available quality time for their children. There is no time available. Therefore, what keeps young doctors from leaving or coming here in the first place?

The best insurance plan is no substitute for a competent array of doctors on each island. The solution is not complex.

Thank you for the opportunity to provide this testimony.

nishimoto2-Bryce

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**From:** frances1215@gmail.com on behalf of Frances Nuar [frances.nuar@gmail.com]  
**Sent:** Tuesday, February 10, 2009 9:06 AM  
**To:** HLTtestimony  
**Subject:** Testimony on HB 1784

LATE

**HB 1784**

The Grassroot Institute of Hawaii supports caps on non-economic damages. These are a necessary means of retaining competent physicians who would otherwise be put out of practice due to the ever-increasing costs associated with medical care, and will reduce the amount of frivolous lawsuits, resulting in lower overall medical costs for the consumer. According to the Hawaii Medical Association, between 2002 and 2006, Hawaii's average medical malpractice insurance premium increased 90% from an average of \$33,000 to \$63,000 for doctors who provide high risk, life-saving treatment. This increase has seen many doctors leave Hawaii and move to the mainland.

Research from the Agency for Healthcare Research and Quality reports that States with caps have about 12 percent more physicians per capita than States without a cap, and the American Medical Association cites that a \$250,000 award limit in states without effective reforms could result in premium savings of \$1.4 billion. We need this reform so that we have the medical care that we need when we need it. Unless we protect our physicians, they cannot protect us.

Frances Nuar  
*Policy Intern*

**Grassroot Institute of Hawaii**

[www.grassrootinstitute.org](http://www.grassrootinstitute.org)

(808) 591-9193

*The mission of the Grassroot Institute of Hawaii is to promote individual liberty, free market economic principles and limited, more accountable government. Please visit our [website](http://www.grassrootinstitute.org) to make a tax-deductible donation or to learn more.*

HB 1784

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