

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS OF HAWAII (CLH) REGARDING H.B. NO. 575, HD 1

March 3, 2009

To: Chairman Jon Riki Karamatsu and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) regarding H.B. No. 575, HD 1.

H. B. No. 575 is similar in its intent to the provisions found in H.B. No. 310 which is scheduled for decision making later today. It appears that the 200% increase in a suggested award is even more severe than some of the penalties set out in HB 310, and therefore HAJ has the same concerns and opposition to this major change in the MCCP. Also, the provisions in subsections (b) and (c) on pages 1 and 2 of the bill do not apply equally to the claimants and the defendants and are unfair in its application.

The Medical Claims Conciliation Panel (MCCP) was created in 1976 as a process to assist in resolving medical malpractice claims when possible or provide guidance to the parties before a lawsuit was filed. Basically, as set forth on the DCCA website, the MCCP program is responsible for conducting informal conciliation hearings on claims against health care providers before such claims can be filed as lawsuits. The decisions of the MCCP panels are advisory in nature and are not binding on the parties. The MCCP program also provides an opportunity for the parties to exchange information in a relatively expedited and inexpensive manner, which in turn provides for opportunities for the parties to explore the conciliation of meritorious claims prior to such claims being

Further, the Legislature enacted an additional merit screening procedure in 2003.

Medical malpractice claims must first be reviewed by a doctor in the same specialty involved in the claim. The claim cannot be filed unless there is a certificate of consultation filed with the claim that the claim has merit. The measure was codified as HRS section 671-12.5 and applied to claims filed after 2003. The effectiveness of the procedure is reflected by the steep decline in the number of claims filed and the fact that only two of the claims heard by an MCCP panel during the past four years was found to be frivolous. The number of claims filed has dropped from a high of 173 in 2001 to 100 as reported in the current MCCP report to the legislature.

The MCCP is successful in reducing claims and preventing lawsuits by giving many pro se claimants a chance to have their “day in court.” Creating severe penalties for either the claimant or the defense will alter the purpose and function of the MCCP and the parties. The current procedure is one of conciliation not adjudication. The process is streamlined, efficient, quick and inexpensive. Its purpose is to assist and advise, not to judge and determine the claim.

There is no formal discovery during the MCCP process and health care providers generally do not provide statements or explanations to claimants before the MCCP hearing. The hearing itself is generally the first time a claimant hears the provider’s story. The claimant is not able to subpoena records or depose witnesses before the MCCP hearing. The hearing itself is abbreviated; typically lasting only about three hours (9am to noon or 1pm to 4pm).

This bill would transform the MCCP from a conciliation panel to an adjudication panel. This would force the parties engage in a mini-trial which will take several days instead of hours and become very costly. It would require the need to have complete

discovery of information through depositions as well as testimony by experts and the parties. In other words, the panels would be sitting as “judges” as if it was a trial rather than conciliation or mediation oriented process.

The Circuit Courts employ the Court Annexed Arbitration Program (CAAP) to assist in the handling of tort cases. The CAAP procedure does provide for the imposition of fees and costs for parties who appeal CAAP awards and fail to improve their positions. However, there are fundamental differences between the MCCP and CAAP, most significantly that a lawsuit has already been filed and the parties have already completed the discovery needed for determination of liability and damages before a CAAP hearing in accordance with the purpose of the CAAP hearing to adjudicate not conciliate. The CAAP arbitrator is not even permitted to engage in conciliation or settlement discussions without the written consent of all parties. The conciliation function in court cases is instead normally reserved for a mediation process. CAAP arbitrators are litigation attorneys who are familiar with tort claims and who are trained to adjudicate tort claims. Thus the penalty provisions of CAAP should not be applied to the MCCP because the two programs serve fundamentally different purposes and function in a completely different manner.

The process proposed by this bill would turn the MCCP into an administrative health court and require extensive revision of applicable statutes, rules and funding.

Because of our concerns stated above HAJ is not supportive of this measure. Thank you for the opportunity to testify on this bill.



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Tuesday, March 03, 2009, 2:00 p.m. Conference Room 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: HB 575 RELATING TO MEDICAL TORTS

Chairs & Committee Members:

HMA has always supported sanctions against the non-prevailing party that rejects the Medical Claim Conciliation Panel (MCCP) decision. Thus we favor this measure.

The MCCP has done much in reducing the number of suits filed, and is working reasonably well. We do not want to see other changes to the panel that would render it less effective.

Thank you for the opportunity to provide this testimony.

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March 3, 2009

The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair

House Committee on Judiciary

Re: HB 575 HD1 – Relating to Medical Torts

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

My name is Rick Jackson and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare	MDX Hawai‘i
Hawaii Medical Assurance Association	University Health Alliance
HMSA	UnitedHealthcare
Hawaii-Western Management Group, Inc.	

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in support of HB 575 HD1 which would lower medical malpractice insurance premiums by adopting legislation that directly affects elements impacting medical malpractice insurance rates. HAHP supports the intent of this bill as a good first step toward helping to contain the spiraling cost of medical malpractice insurance.

We agree with statements made by local physician organizations that the current medical tort system drives significant “defensive medicine” costs and has led to Neighbor Island shortages in key surgical specialties. The members of HAHP see these facts daily in our medical claims costs and in limitations in the numbers and types of our contracted physicians on neighbor islands.

Thank you for the opportunity to offer comments today.

Sincerely,

Rick Jackson
President

• AlohaCare • HMAA • HMSA • HWMG • MDX Hawaii • UHA • UnitedHealthcare •
HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813
www.hahp.org

March 3, 2009

TO: Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
Judiciary Committee Members

FROM: Kathy F. Campbell
1046 Lunaai Street
Kailua, Hi 96734
261-5049

RE: HB 575, HD 1

The Save Our Doctors organization strongly supports this bill. This bill will help in reducing medical malpractice cost to doctors in this state and, in turn, increase patient access to physician care.

The patient group is very concerned about the medical malpractice situation in Hawaii. We are the ones who lose out when physicians leave the state. I am a volunteer advocate and voluntarily represent thousands of patients in this state who have lost their doctors or have not been able to get timely medical care. Many doctors are over loaded and either won't take new patients or won't take Medicare patients. The senior citizens are the hardest hit. They are the population that need to see doctors most often. You'll understand when to you get to our age.

Save Our Doctors strongly supports the idea of changing the medical claim conciliation panel to a medical claim conciliation hearing office with the clout and authority as it is spelled out in this bill. We especially like the idea of making opinions issued by the hearing officer binding upon the parties. This will certainly control frivolous lawsuits.

Again, as you consider this bill please keep the needs of the patients foremost in your mind and do the right thing to help us keep our doctors. Thank you for your attention. Aloha.