

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. 807

February 10, 2009

To: Chairman Ryan Yamane and Members of the House Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) regarding H.B. No. 807.

This bill permits the MCCC (Medical Claims Conciliation Panel) to refuse claims where the statute of limitations has expired and dismiss frivolous claims. HAJ agrees that claims where the statute of limitations has expired and frivolous claims should not be pursued through the MCCC process. However, there are constitutional due process issues implicated in this bill because the MCCC is a conciliation not adjudication panel. Therefore its existing statutory and administrative procedures are inadequate to support the provisions of this bill.

Constitutional due process requires that if the MCCC functions in an adjudicatory role (more like a court) with the power to dismiss claims, it would require that the MCCC implement judicial type procedures for proper notice, pleading, discovery, opportunity to be heard, recording and preservation of hearings and appeal. The MCCC currently lacks the resources (funding, personnel and procedures) to accomplish these functions.

HAJ is not aware of any significant problem with claims being filed after the statute of limitations (because these would be dismissed by the court in any event); however, if there is a problem, it may be more efficient to simply allow the MCCC to

permit the parties to submit the issue to the court for determination than create a redundant system within the MCCP.

There is no significant “frivolous” claim issue according to the latest MCCP report which confirms that only two (2) claims have been found frivolous in the past four (4) years. It is questionable whether the existing situation warrants the expense that would be required to create a constitutionally permissible procedure to allow dismissal of these claims at the MCCP level. The court currently has the power and procedure under H.R.S. § 607-14.5 to assess attorneys’ fees and expenses in frivolous cases. It may be more efficient and cost-effective to specifically permit the recovery of fees and expenses incurred at the MCCP level in any future court determination and award should the claimant pursue the matter beyond the MCCP.

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

Health Committee

2/10/2009
8:30 a.m.
Room 329

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 807 RELATING TO MEDICAL CLAIM CONCILIATION PANEL

In support.

Chairs & Committee Members:

The MCCP has done much in reducing the number of suits filed, and is working reasonably well. It is a key element in the avoidance of frivolous suits. This measure will further its purpose in a positive manner.

Thank you for the opportunity to provide this testimony.

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February 10, 2009

The Honorable Ryan Yamane, Chair
The Honorable Scott Nishimoto, Vice Chair
House Committee on Health

Re: HB 807 – Relating to the Medical Claim Conciliation Panel

Dear Chair Yamane, Vice Chair Nishimoto 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 807 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 •
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Memo

To: Chair, House Health Committee
From: Marty Fritz
Date: February 10, 2009, Tuesday at 8:30 a.m.
Re: **HB 807**

Honorable Chair and Committee Members. My name is Marty Fritz. I am a lawyer who represents a small number of medical malpractice victims who suffer horrific injuries or death from doctors errs.

The bills your committee is hearing relating to tort reform have one basic assumption--- there is a need for some change. The arguments I have heard supporting these bills are primarily that there is an explosion in medical malpractice verdicts in the State of Hawaii which is leading large numbers of physicians to leave the state. There are no specifics presented, rather emotional non specific allegations of the negative effects of the current system. The reason why these arguments are non specific is because they are unable to be supported by relating on evidence and analysis.

As a former member of the bipartisan committee appointed by the legislature in the late 1990's to make a two year study of the tort system, I am quite aware of how faulty perceptions combined with emotions and publicity can powerfully impact the legislative process. In the 1990's there was a perception that the costs of the tort system were out of control. The study, which thoroughly reviewed actual cases and filings, found to nearly everyone's surprise that just the opposite was true i.e. *there had been a significant drop in accidents and court filings.*

Of Counsel:
Steven J. Trecker