
A BILL FOR AN ACT

RELATING TO MEDICAL TORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The purpose of this part is to address medical
3 malpractice insurance and defensive medical costs for certain
4 specialty physicians by placing a ceiling on non-economic
5 damages in medical torts involving neurologists and
6 neurosurgeons and requiring a reduction in insurance premiums
7 for their malpractice liability coverage.

8 SECTION 2. Chapter 671, Hawaii Revised Statutes, is
9 amended by adding a new section to part I to be appropriately
10 designated and to read as follows:

11 "§671- Noneconomic damages; ceiling. Damages
12 recoverable for noneconomic damages, as defined in section 663-
13 8.5, against a licensee under chapter 453 who is board-certified
14 in neurology or neurosurgery shall be limited to a maximum award
15 of \$1,000,000."

16 SECTION 3. Beginning January 1, 2010, all insurers
17 providing professional liability insurance for health care
18 providers in the state shall implement a premium rate for board



1 certified neurologists and neurosurgeons licensed in the state,
2 that is twenty-five per cent of the lowest rate for board
3 certified neurologists and neurosurgeons licensed in the state,
4 in effect between January 1, 2003, and December 31, 2009, unless
5 to do so would cause imminent insolvency or fail to provide a
6 fair rate of return.

7 SECTION 4. The department of commerce and consumer affairs
8 shall submit a report to the legislature no later than twenty
9 days prior to the convening of the 2013 regular session that
10 identifies any benefits and detriments related to passage of
11 part I of this Act as well as any suggested legislation for
12 recommended changes.

13 PART II

14 SECTION 5. Chapter 321, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 **"§321- Duty to notify patients of adverse events;**
18 **definitions; penalty; rules.** (a) An appropriately trained
19 designee of a health care provider shall notify in person each
20 patient, or the patient's relative or representative, regarding
21 any adverse event that results in serious harm to or a life



1 threatening situation for the patient within seventy-two hours
2 of the adverse event or discovery of the adverse event.

3 (b) The notification under subsection (a) shall not be
4 admissible as evidence of an admission of liability pursuant to
5 rule 409.5, Hawaii rules of evidence, under section 626-1.

6 (c) For purposes of this section, unless the context
7 otherwise requires:

8 "Adverse event" means an event that is a negative
9 consequence of care resulting in unintended injury or illness
10 that may or may not have been preventable.

11 "Health care provider" means a physician or surgeon or
12 osteopathic physician or surgeon licensed under chapter 453, a
13 podiatrist licensed under chapter 463E, and a health care
14 facility as defined in section 323D-2.

15 "Notify" means a forthright and empathetic discussion of
16 clinically significant facts about the occurrence of an adverse
17 event that resulted in patient harm, or could result in patient
18 harm in the foreseeable future.

19 "Relative" means the patient's spouse, parent, grandparent,
20 adult children, adult siblings or any other adult person who has
21 a family type relationship with the patient.



1 "Representative" means a legal guardian, attorney, person
2 designated to have medical power of attorney, executor of the
3 patient's estate, or any other person recognized in law as a
4 patient's agent.

5 (d) Failure to comply with this section may subject a
6 health care provider to license revocation and any other civil
7 or criminal penalties permitted by law.

8 (e) The Hawaii medical board shall adopt rules in
9 accordance with chapter 91 to carry out the effect of this
10 section."

11 PART III

12 SECTION 6. The purpose of this part is to ensure that
13 consumers have basic information about medical treatment
14 providers by providing consumers with physician profiles.

15 SECTION 7. Chapter 453, Hawaii Revised Statutes, is
16 amended by adding a new section to part I to be appropriately
17 designated and to read as follows:

18 "§453- Physician profiles. (a) The board shall make
19 available to the public a profile of each physician licensed to
20 practice medicine in the state through an Internet website and,
21 if requested, in writing. The physician profile shall contain
22 the following information:



- 1 (1) The full name of the physician, address and telephone
2 number of primary practice office, and electronic mail
3 address;
- 4 (2) A description of any criminal convictions for felonies
5 and serious misdemeanors, as determined by the board,
6 including convictions reported to the board pursuant
7 to section 329-44;
- 8 (3) A description of any final disciplinary action by the
9 board against the physician, including fines,
10 penalties, probation, suspension, or revocation of
11 license;
- 12 (4) A description of any final disciplinary action taken
13 by any other licensing jurisdiction in other states
14 against the physician within the last five years;
- 15 (5) A description of revocation or involuntary restriction
16 of hospital privileges for reasons related to
17 competence, character, or substance abuse that have
18 been taken by the hospital's governing board or
19 administrative officer, or resignation from or
20 nonrenewal of medical staff membership or restriction
21 of privileges at a hospital taken in lieu of or in
22 settlement of a pending disciplinary action. Adverse



- 1 decisions reported to the board pursuant to section
2 663-1.7 shall be included in the profile;
- 3 (6) All medical malpractice court judgments or awards in
4 which a payment was awarded to a complainant,
5 including those reported to the board pursuant to
6 sections 453-8.7, 671-5, and 671-15;
- 7 (7) Name of medical school attended, dates of attendance,
8 and date of graduation;
- 9 (8) Name of graduate medical education program, dates of
10 attendance, and date of completion;
- 11 (9) Specialty board certification. The toll free number
12 of the American Board of Medical Specialties shall be
13 included to verify current board certification status;
- 14 (10) State or jurisdiction in which the physician is
15 licensed, date of licensure, and current status of
16 licensure;
- 17 (11) Names of hospitals where the physician has privileges;
- 18 (12) Status of compliance with continuing education
19 requirements;
- 20 (13) Name of the professional liability insurance carrier
21 or whether the physician is self-insured and the



1 status of compliance with financial responsibility
2 provisions; and

3 (14) Whether the physician participates in the medicaid
4 program, health plans, or accepts workers'
5 compensation cases.

6 (b) The board shall provide a copy of the profile to the
7 physician prior to initial publication and the physician shall
8 have sixty days after receipt to correct inaccurate factual
9 information. The physician may elect to include the following
10 information: professional and community memberships, community
11 activities, publications in peer reviewed medical literature,
12 appointments to medical school faculty, language access, and any
13 specialized areas of treatment.

14 (c) The physician shall update information in the profile
15 within thirty days of any change in the information by reporting
16 the change to the board.

17 (d) The board may take disciplinary action, including
18 assessing a fine or penalty, against the physician for failure
19 to comply with this section.

20 (e) The board may adopt rules pursuant to chapter 91
21 necessary to carry out the purposes of this section."



1 SECTION 8. Section 453-7.5, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Reports of adverse decisions of peer review
4 committees transmitted to the department under section 663-1.7
5 shall not be available to public inspection or subject to
6 discovery and shall be held confidential by the department;
7 provided that:

8 (1) A written affirmative or negative reply may be given
9 to a written inquiry by a hospital or health care
10 facility as to whether a report of an adverse decision
11 is on file with the department; [~~and~~]

12 (2) A subpoenaed report shall be subject to the
13 requirements under section 453-17[-]; and

14 (3) The board shall include in the physician profile under
15 section 453- a statement that an adverse decision
16 has been reported to the board."

17 PART IV

18 SECTION 9. (a) There is established in the department of
19 commerce and consumer affairs for administrative purposes a
20 medical malpractice task force. The task force shall provide
21 support in implementing this Act and study the effects passage



1 of this Act has had on the medical profession, specifically in
2 the area of medical tort liability.

3 (b) The task force shall be composed of the following
4 members:

5 (1) The state insurance commissioner, who shall be the
6 chair of the task force;

7 (2) Two members, who shall be appointed by the governor;

8 (3) Two members, who shall be appointed by the speaker of
9 the house of representatives;

10 (4) Two members, who shall be appointed by the president
11 of the senate;

12 (5) The President of the Hawaii Association for Justice,
13 or the President's designee;

14 (6) The Executive Director of the Hawaii Medical
15 Association, or the director's designee; and

16 (7) A representative of the medical malpractice insurance
17 industry, who shall be appointed by the governor from
18 a list of three nominees submitted jointly by the
19 speaker of the house of representatives and the
20 president of the senate.

21 (c) The members of the task force shall:

22 (1) Serve without compensation;



1 (2) Be reimbursed for reasonable expenses, including
2 travel expenses necessary for the performance of their
3 duties under this Act; and

4 (3) Hold public hearings on issues relating to medical
5 malpractice insurance rates, including damage awards
6 ranges and guidelines for different types of medical
7 malpractice claims, based upon recent cases.

8 (d) The department of commerce and consumer affairs shall
9 provide all administrative, technical, professional, and
10 clerical support required by the task force.

11 (e) The task force shall submit a report of its findings
12 and recommendations, including any proposed legislation, to the
13 legislature no later than twenty days prior to the convening of
14 the regular session of 2010.

15 (f) The task force shall cease to exist on June 30, 2010.

16 PART V

17 SECTION 10. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun, before its effective date.

20 SECTION 11. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 12. This Act shall take effect upon its approval;
2 provided that part I of this Act shall be repealed on July 1,
3 2014.



Report Title:

Medical Torts; Damages; Notification of Patients; Physician Profiles; Task Force

Description:

Places a ceiling on non-economic damages in medical torts involving neurologists and neurosurgeons and reduces insurance premiums for malpractice liability coverage. Requires a health care provider to disclose to patients adverse events relating to their medical treatment. Requires the Hawaii medical board to collect and publish information about physicians licensed in the state to allow consumers to make informed decisions in selecting physicians. Establishes a medical malpractice damages task force to provide support in implementing the provisions of this Act. (HB1514 HD1)

