

UNIVERSITY OF HAWAII AT MĀNOA

The William S. Richardson School of Law

January 23, 2012

Hawai'i State House of Representatives,
The Twenty-Sixth Legislature
Regular Session of 2012
Committee on Health

LATE TESTIMONY

Testimony in support of HB 1967

Dear Chair Rep. Ryan I. Yamane and Vice Chair Rep. Dee Morikawa, Vice Chair,

I strongly support House Bill 1967, Relating to Medical Claim Conciliation. Hawai'i's unique MCCP process has been effective at resolving malpractice claims in many cases. It has demonstrated that a pre-lawsuit process can help parties to resolve disputes. While effective, it can be better. This bill seeks to remedy some perceived weaknesses and promote more voluntary and informal resolution to medical disputes.

MCCP was originally intended to be conciliatory rather than adversarial, and this bill fosters greater conciliation while reducing adversarial posturing that can occur as parties prepare for later litigation.

The amendments remove the word "claim" from the panel process, and focus the parties on fact finding rather than fault finding from the outset. This reflects the true interests of patients at this point, and it is less threatening to physicians. Recasting the process as inquisitorial rather than adversarial may allow opportunities for physicians and patients to share information rather than withhold it from one another as litigation encourages. In the experience of seasoned attorneys, at this stage, the focus for many patients is simply to learn what happened. Likewise, physicians may not be forthcoming because they are in litigation posture.

The changes proposed also allow parties who recognize that their dispute will inevitably not be resolved through MCCP to expend their resources through voluntary ADR rather than force them to go through a futile process. The amendments give panel members more discretion to conduct the proceeding as informally as appropriate. The bill also requires "meaningful" participation by both sides. As the process stands today, some litigants view MCCP as a meaningless hurdle and do not participate with the aim of resolving the dispute at this stage. Finally, the bill proposes that the panel not assess damages or fault. This allows the panel to truly focus on mediation and conciliation. Since MCCP is not binding in anyway, these determinations are regarded as not particularly helpful to resolving any claims.

These changes hold promise to recast the MCCP as less of a dress rehearsal for later litigation and more as a non-adversarial dispute resolution process which it was first conceived. It allows parties to employ intermediaries to help them discover why an adverse medical event occurred and to obtain closure and satisfaction without litigation.

I believe that these bold innovations will benefit both physicians and patients who seek closure following an adverse medical event.

Sincerely,

/s/ Hazel Beh