

ACT 80

S.B. NO. 1238

A Bill for an Act Relating to Medical Torts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this bill is to effect changes to Chapter 671, Hawaii Revised Statutes, and to improve the hearings procedure of the medical claim conciliation panels.

SECTION 2. Section 671-13, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 671-13 Medical claim conciliation panel hearing; fact-finding; evidence; voluntary settlement. Every claim of a medical tort shall be heard by the

medical claim conciliation panel within thirty days after the last date for filing a response. No persons other than the panel, witnesses and consultants called by the panel, and the persons listed in section 671-14 shall be present except with the permission of the chairperson. The panel may, in its discretion, conduct an inquiry of a party, witness or consultant without the presence of any or all parties.

The hearing shall be informal. Chapters 91 and 92 shall not apply. The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but such record shall not be made available to the parties. The panel may receive any oral or documentary evidence. Questioning of parties, witnesses and consultants may be conducted by the panel and the panel may, in its discretion, permit any party, or any counsel for a party to question other parties, witnesses or consultants. The panel may designate who, among the parties, shall have the burden of going forward with the evidence with respect to such issues as it may consider, and unless otherwise designated by the panel, when medical and hospital records have been provided the claimant for the claimant's proper review, such burden shall initially rest with the claimant at the commencement of the hearing.

The panel shall have the power to require by subpoena the appearance and testimony of witnesses and the production of documentary evidence. When such subpoena power is utilized, notice shall be given to all parties. The testimony of witnesses may be taken either orally before the panel or by deposition. In cases of refusal to obey a subpoena issued by the panel, the panel may invoke the aid of any circuit court in the State, which may issue an order requiring compliance with the subpoena. Failure to obey such order may be punished by the court as a contempt thereof. Any member of the panel may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. Notwithstanding such powers, the panel shall attempt to secure the voluntary appearance, testimony, and cooperation of parties, witnesses and consultants without coercion.

At the hearing of the panel and in arriving at its opinion the panel shall consider, but not be limited to, statements or testimony of witnesses, hospital and medical records, nurses' notes, x-rays and other records kept in the usual course of the practice of the health care provider without the necessity for other identification or authentication, statements of fact or opinion on a subject contained in a published treatise, periodical, book or pamphlet, or statements of experts without the necessity of the experts appearing at the hearing. The panel may upon the application of any party or upon its own decision appoint as a consultant, an impartial and qualified physician or surgeon or other professional person or expert to testify before the panel or to conduct any necessary professional or expert examination of the claimant or relevant evidentiary matter and to report to or testify as a witness thereto. Such a consultant shall not be compensated or reimbursed except for travel and living expenses to be paid as provided in section 671-11. Discovery by the parties shall not be allowed.

During the hearing and at any time prior to the rendition of an advisory decision pursuant to section 671-15, the panel may encourage the parties to settle or otherwise dispose of the case voluntarily."

SECTION 3. Section 671-14, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 671-14 Same; persons attending hearings of panel. Unless excluded

or excused by the panel, the following persons shall attend hearings before the panel:

- (1) The party or parties making the claim;
- (2) The health care provider or providers against whom the claim is made or representatives thereof, other than counsel, authorized to act for such health care provider or providers;
- (3) Counsel for the parties, if any.’’

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 18, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.