

ACT 325

H.B. NO. 3068

A Bill for an Act Relating to Medical Peer Review.

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

SECTION 1. Section 663-1.7, Hawaii Revised Statutes, is amended as follows:

“§663-1.7 Professional society; peer review committee; hospital or clinic quality assurance committee; no liability; exceptions. (a) As used in this section, “professional society” or “society” means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice; “peer review committee” means a committee created by a professional society, or by the medical or administrative staff of a licensed hospital or clinic, whose function

is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; and "hospital or clinic quality assurance committee" means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital or clinic, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

(b) There shall be no civil liability for any member of a peer review committee or hospital or clinic quality assurance committee, or for any person who files a complaint with or appears as a witness before such committees, for any acts done in the furtherance of the purpose for which the peer review committee or hospital or clinic quality assurance committee was established; provided that:

- (1) [The member was authorized to perform in the manner in which the member did; and] The member, witness, or complainant acted without malice; and
- (2) [The member acted without malice.] In the case of a member, the member was authorized to perform in the manner in which the member did."

(c) This section shall not be construed to confer immunity from liability upon any professional society, hospital, or clinic, nor shall it affect the immunity of any shareholder or officer of a professional corporation; provided there shall be no civil liability for any professional society or hospital or clinic in communicating any conclusions reached by one of its peer review committees or hospital or clinic quality assurance committees relating to the conformance with professional standards of any person engaged in the profession or occupation of which the membership of the communicating professional society consists, to a peer review committee or hospital or clinic quality assurance committee of another professional society or hospital or clinic whose membership is comprised of persons engaged in the same profession or occupation, or to a duly constituted governmental board or commission or authority having as one of its duties the licensing of persons engaged in that same profession or to a government agency charged with the responsibility for administering a program of medical assistance in which services are provided by private practitioners.

(d) The final peer review committee of a medical society, hospital, or clinic, or other health care facility shall report in writing every adverse decision made by it to the department of commerce and consumer affairs; provided that final peer review committee means that body whose actions are final with respect to a particular case; and provided further that in any case where there are levels of review nationally or internationally, the final peer review committee for the purposes of this subsection shall be the final committee in this State. The hospital or clinic quality assurance committee shall report in writing to the department of commerce and consumer affairs any information which identifies patient care by any person engaged in a profession or occupation which does not meet hospital or clinic standards and which results in disciplinary action unless such information is immediately transmitted to an established peer review committee. The report shall be filed within thirty business days following an adverse decision. The report shall contain information on the nature of the action, its date, the reasons for, and the circumstances surrounding the action; provided that specific patient identifiers shall be expunged. If a potential adverse decision was superseded by resignation or other voluntary action that was requested or bargained for in lieu of medical disciplinary action, the report shall so state. The department shall prescribe forms for the submission of reports required by this section. Failure to comply with this subsection shall be a violation punishable by a fine of not less than \$100 for each member of the committee.

(e) In any civil action arising under this section where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees, in an amount to be determined by the court upon a specific finding that the party's claim or defense was frivolous; provided the amount shall not exceed twenty-five per cent of any amount originally prayed for by the party assessed.

(f) In determining the award of attorneys' fees and the amounts to be awarded under subsection (e), the court must find in writing that all claims or defenses made by the party are frivolous and are not reasonably supported by the facts and the law in the civil action."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 13, 1988.)