

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS OF HAWAII (CLH) IN SUPPORT OF H.B. NO. 718

February 10, 2009

My name is Robert Toyofuku. I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH*) in Support of H.B. No. 718.

This bill establishes a medical malpractice captive insurance company similar to HEMIC (Hawaii Employers Mutual Insurance Co.) that was established by the legislature to address the availability and affordability of workers' compensation insurance. The HEMIC experience illustrates that a properly administered captive insurer can succeed in Hawaii.

There is currently a disconnect between the premiums charged to Hawaii doctors by MIEC (Medical Insurance Exchange of California), the largest malpractice insurer for private practitioners, and claims paid by MIEC. This session's Report of the Insurance Commissioner shows that MIEC charged Hawaii doctors \$15.1 million in premiums, yet paid only \$2.8 million in claims. Last session's Insurance Commissioner's report showed the MIEC charged Hawaii doctors \$15.3 million in premiums, yet paid only \$3.7 million in claim.

Indeed, MIEC claims payments have dramatically and steadily dropped since the legislature required that malpractice claims be reviewed by a doctor for merit before they can be filed. Claims dropped from \$8.2 million in 2004 to \$4.8 million in 2005, \$3.7 million in 2006 and \$2.8 million in 2007 (the most recent year for which data is available). Yet, despite the sharp decreases in claims, MIEC has continued to charge

annual premiums of around \$15 million per year (\$15.9 in 2004, \$14.9 in 2005, \$15.3 in 2006 and \$15.1 in 2007). MIEC has collected almost \$70 million more from Hawaii doctors than it has paid in claims since 2000 according to data published by the Insurance Commissioner.

In addition, the current Commissioner's report shows a 19% reduction generally in malpractice claims paid since last session's report. This is on top of the 53% overall reduction in malpractice claims reported by the Commission in last session's report.

Reports of the National Association of Insurance Commissioners (NAIC) similarly confirm that the medical malpractice insurance business in Hawaii is profitable and steadily improving. The current NAIC report shows a 17.8% return on net worth. Last year's NAIC report showed a 14.1% return and the year before that showed a 4.3% return.

Finally, doctors insured by HAPI (the only local doctors' self-insurance group) reportedly pay premiums anywhere from 30% to 40% less than the MIEC premiums. Membership in HAPI is limited and its underwriting requirements are strict. The low HAPI rates and its continued success for many years, however demonstrate that there is considerable potential for a well run captive insurer.

Thank you for this opportunity to testify in SUPPORT of H.B. No. 718.

* CLH has changed its name to conform to the name of its national organization the American Association for Justice.



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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: HB718 RELATING TO MEDICAL MALPRACTICE CAPTIVE INSURANCE

Chairs & Committee Members:

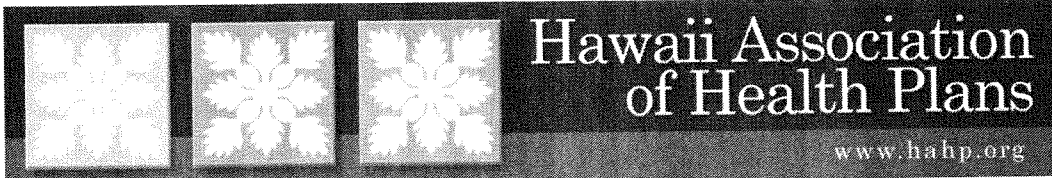
Hawaii already has two not-for-profit, physician-owned insurers. If the state wishes to create a new Captive Insurance Company, then the existing firms will simply leave Hawaii. The real issues are: can the creation of a new captive really provide medical doctors the highest level of service with the lowest possible cost consistent with reasonable and applicable actuarial standards and the sound financial integrity stated in the purpose of the bill.

Attorneys have been blaming the insurer for the high cost of malpractice insurance. Yet, for-profit insurers have pulled out of the market, suggesting that Hawaii would not be profitable for them in the absence of tort reform.

Before throwing out the baby with the bath water, the legislature should determine if the insurer is the problem or the victim.

Thank you for the opportunity to provide this testimony.

Hawaii Medical Association
1360 S. Beretania St.
Suite 200
Honolulu, HI 96814
(808) 536-7702
(808) 528-2376 fax
www.hmaonline.net



February 10, 2009

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

Re: HB 718 – Relating to Medical Malpractice Captive Insurance

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 718 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 •
HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813
www.hahp.org

**Trecker
&
Fritz**

Attorneys At Law

Collin M. (Marty) Fritz
Allen K. Williams
Suite 701
820 Mililani Street
Honolulu, Hawaii 96813-2937

(808) 528-3900
Fax: (808) 533-3684
Toll Free: (800) 237-9300

Memo

To: Chair, House Health Committee
From: Marty Fritz
Date: February 10, 2009, Tuesday at 8:30 a.m.
Re: **HB 718**

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