

# American Academy of Pediatrics

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## Hawaii Chapter

### Hawaii Chapter

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Organization: Hawaii Chapter, American Academy of Pediatrics (HAAP)  
Measure: HB2321 / SB 2284  
Committee: Consumer Protection and Commerce  
Judiciary

February 22, 2006

Testimony in support of HB 2321 / SB 2284

Dear Representatives Robert Herkes and Brian Schatz and Senators Colleen Hanabusa and Clayton Hee :

As President of the Hawaii Chapter of the American Academy of Pediatrics, (HAAP), and as representative of that organization's many Hawaii pediatricians, I urge you to support HB 2321 and SB 2284. This legislation is needed to address the malpractice problem facing our state that is limiting access to medical care and making it increasingly difficult to deliver quality medical care. We are in full agreement with Insurance Commissioner Schmidt's commentary "Medical malpractice bill must be approved" which appeared in the Honolulu Advertiser on February 21, 2006, a copy of which is enclosed.

HAAP urges you to allow these bills to move forward.

Respectfully submitted:

Keith Matsumoto MD  
President, HAAP

We have a serious problem in Hawai'i. Our residents are not getting the medical services they need, particularly in rural areas and on the Neighbor Islands.

In the past year, there have been instances on Maui and on the Big Island where patients have entered emergency rooms with a broken leg and no orthopedic doctors were available. The patients had to be stabilized, put on an airplane and transported to O'ahu for treatment.

To further highlight the need for medical attention, there is just one OB/GYN from Kahuku to Kane'ohe, and none on Moloka'i or in South Hawai'i.

The No. 1 problem for our doctors in these areas is medical malpractice insurance. For necessary specialties like OB/GYNs, orthopedists and neurosurgeons, their insurance premiums can be \$60,000 per year and in some cases as high as \$100,000 per year.

We only have a couple of nonprofit doctors' reciprocal insurance companies and a doctor's nonprofit insurance trust. These are doctors who essentially organized their own company to try to provide coverage for other doctors in the same field. The for-profit insurers have all left the market, saying that they were unable to keep up with the volatile and erratic nature of our current tort system.

Medical malpractice lawsuits in our tort system have no standard for non-economic damages (damages for pain and suffering and emotional distress). A plaintiff may receive an award for non-economic damages of a few thousand dollars or several million dollars for similar injuries. Since there is no standard, the award is based on emotion, which is unpredictable because there is no rational basis.

It is never a good thing when a part of the legal system has no rational basis and decisions are based on emotion. Moreover, in this instance, it has created an insurmountable obstacle to providing necessary medical services for the people of Hawai'i.

We have proposed a bill (House Bill 2321/Senate Bill 2284) for legal reforms to help our doctors. It places a cap on non-economic damages like emotional distress. Non-economic damages used to be a small part of the awards in these cases. Now, they can often be 50 percent or more of the award. A plaintiff should have some recompense for emotional distress, but not a blank check with no limits. The bill also reforms joint and several liability and caps attorneys' fees.

Our proposal does not limit the recovery of economic damages, which include all medical expenses, all future medical expenses, all wage losses, all present and future additional living expenses due to the injury and other quantifiable damages. Only the damages that you cannot quantify or even estimate would be limited.

These reforms have worked for more than 30 years in California, where they have stabilized the market and brought down premiums. Other states have enacted similar reforms with similar positive results. Texas recently enacted such reforms and reported that premiums decreased, new insurers entered the market, the number of licensed neurosurgeons increased, and there was better 24/7 coverage in emergency rooms.

Some argue we should reduce the medical errors that underlie these suits. Reducing medical errors is always a good thing, but it does not solve the problems in medical malpractice insurance.

For example, in the 1970s, Pennsylvania had a medical malpractice insurance crisis. It focused on and passed a number of laws to reduce medical errors. But again in the 1980s and the 1990s, Pennsylvania experienced crises, so it refined and passed more laws to try to reduce medical errors. All of those laws were probably good laws, because we always want to reduce medical errors. But, now, once again, the American Medical Association has currently designated Pennsylvania as one of the states that has a medical malpractice insurance crisis.

The current system is failing. We need to reform our legal system so it has some limits, is more rational, more stable and more predictable.

History in other states has shown that legal reform will help our doctors and give us at least some chance of providing necessary physician services for all of our residents not just the people who live in urban areas.

A recent poll found that 80 percent of Hawai'i residents are in favor of legal reforms to help our doctors.

Unfortunately, it appears that the bill (HB 2321/SB 2284) has become stalled in committees at the Legislature. Please, call, write or e-mail your legislators and encourage them to join the 80 percent of us, the people of Hawai'i, who understand that we are in desperate need of medical malpractice tort reform.

J.P. Schmidt is the Hawai'i insurance commissioner.

<http://the.honoluluadvertiser.com/article/2006/Feb/21/op/FP602210312.html>

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