

Testimony Presented Before the
House Committee on Labor & Public Employment

January 29, 2008 at 8:30am

By

Suzette Leong, Disability Benefits Manager
Office of Risk Management
University of Hawai'i System

HB 2752 - Relating to Workers' Compensation

Chair Sonson, Vice Chair Nakasone, and Members of the Committee:

The University of Hawaii **strongly opposes** HB 2752, which requires that the physician performing an independent medical examination to be licensed in the State for 5 years, be subject to peer review, and be known in the local medical community to have been in the practice of treating injured employees and conducting independent medical examinations for the employers. HB 2752 also repeals authority of the employer to appoint a physician to examine the employee where the employer is dissatisfied with the progress of the case or where surgery is contemplated. Additionally, HB 2752 prohibits more than one independent medical examination per case.

In changing the language of §386-79, HB 2752 violates public policy by allowing an employee and/or his/her treating physicians unconstitutional and unjust enrichment opportunities. HB 2752 allows an employee to refuse to attend and/or obstruct the independent medical examination process and continue to receive workers' compensation benefits such as wage loss replacement benefits until a hearing is held and an order is issued by the director. Employers can only suspend compensation to the employee from the date of the order to the date the employee ceases to refuse or obstruct the independent medical examination process. The Department of Labor's workload will increase significantly as the employer requests for hearings due to the employee's refusal to cooperate. An optimistic analysis of how quickly a director's order can be issued would be at least 90 days from the start of the employee's refusal to cooperate. HB 2752 creates a financial incentive for employees to not cooperate with the independent medical examination process.

HB 2752 limits the ability of the director, the appellate board, or any court to order more than one independent medical examination per case. If there is a reasonable medical basis to justify the need for more than one independent medical examination per case, such as determination of medical compensability, determination if proposed surgery is medically necessary, permanent partial disability rating, etc., limiting independent medical examinations to one per case unconstitutionally interferes with an employer's right to fully investigate a claim. The current workers' compensation system has

procedures in place with the Department of Labor in which the director determines if an employer's request for additional independent medical examinations are reasonable.

The changes identified in HB 2752 will result in gross violations of public policy by allowing unconstitutional and unjust enrichment to employees and/or their treating physicians. The University of Hawaii **strongly opposes** the proposed changes to §386-79.

Thank you for this opportunity to testify.

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

Date: Tuesday, January 29, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2752, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2752.

HB 2752 is based on the reasonable and constructive premise that so-called independent medical examiners should be selected jointly by the employer and employee. Failing such agreement, examiners would be selected from a list of physicians maintained by the department of the labor and industrial relations. We support this concept because it will prevent financial considerations from unduly influencing the opinions of physicians who render opinions and keep medical opinions neutral and impartial.

However, we offer the following specific comments about ways in which this basic purpose might be improved and implemented:

1. The use of the words "residency" and "resides" in Section 1, subsection (1) must be carefully defined. An individual who is injured in Hawaii may physically relocate to another state but legally maintain Hawaii residency. Such a person should be examined by a physician in the locale where they currently live, even though they maintain legal residence in Hawaii. Likewise a person who maintains legal residency in another state but who is injured in Hawaii and is living in Hawaii should be examined by a physician in Hawaii, and not be required to travel to the state where they technically reside.

2. The requirement in Section 1, subsection (4) of being "known in the local medical community to have been in the practice of treating injured employees and conducting independent medical examinations for the employers" is vague and inappropriate. It is not clear how one can determine whether a physician is "known in the local medical community" and how it will be determined that the requisite knowledge exists. It is also not clear how it will be determined if the physician "has been in the practice of treating injured employees". We further question if the bill truly means that the qualified physician must conduct "independent medical examinations *for employers*." (italics supplied) Does a physician who conducts a greater number of independent medical examinations for injured employees qualify as an IME examiner

under HB 2752? If subsection (4) is to be included in the bill, the phrase “for employers” should be deleted and the other questions raised here must be clarified and addressed.

With correction of the concerns outlined, however, HB 2752 will help to insure medical objectivity and impartiality in workers’ compensation medical examinations and we therefore support the bill.



Hawaii State Chiropractic Association

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January 26, 2008

House of Representatives
Committee on Labor & Public Employment
Chair Rep. Alex Sonson
Vice Chair Rep. Bob Nakasone

Testimony for hearing
Date: Tuesday, January 29, 2008
Time: 8:30 am
Conference Room 309

Chair Sonson, Vice Chair Nakasone, and members of the committee

My name is Gary Saito and I am the President and Executive Director of the Hawaii State Chiropractic Association. We are in **opposition to HB 2752**.

First, the bill stipulates that the examiner must be an allopathic medical doctor by reference to Title 25. Medical doctors are not the only persons qualified to do independent medical examinations. Second, it also stipulates that the examiners must have had experience as examiners for employers, which eliminates qualified physicians who may have done IME's but not for employers. Third, it does not describe how examiners are put on the director's list.

For the stated reasons, we cannot support this bill at this time.

Thank you for allowing us to provide comment on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Saito', written in a cursive style.

Gary Saito, DC
President and ED, HSCA

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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January 28, 2008

TO: Representative Alex Sonson
Chair, Committee on Labor & Public Employment
Hawaii State Capitol, Room 323
Via Email: LABtestimony@Capitol.hawaii.gov

FROM: Anne T. Horiuchi, Esq.
H.B. 2752 Relating to Workers' Compensation
Hearing Date: Tuesday, January 29, 2008 at 8:30 a.m.

Dear Chair Sonson and Members of the Committee on Labor & Public Employment:

I am Anne Horiuchi, testifying on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C., and has representatives in every state.

H.B. 2752 requires that the physician performing an independent medical examination be licensed in the State for 5 years, be subject to peer review, and be known in the local medical community to have been in the practice of treating injured employees and conducting independent medical examinations for the employers. The measure also repeals the authority of the employer to appoint a physician to examine the employee where the employer is dissatisfied with the progress of the case or where surgery is contemplated, and prohibits more than one independent medical examination per case.

AIA is in the process of reviewing the various workers' compensation measures before the Legislature. At this time, AIA does not take a position on H.B. 2752.

Thank you very much for this opportunity to submit testimony.

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

Testimony Related to HB 2752
Tuesday, January 29, 2008
8:30 A.M.
Conference Room 309

Chair Sonson, Vice Chair Nakasone, and Committee Members:

I am Ernest H. Fukeda, Jr., Chief Operating Officer of Hawaii Employers' Mutual Insurance Company, Inc. (HEMIC). Thank you for the opportunity of offering testimony regarding HB 2752. Hawaii currently has a very workable Workers' Compensation system that provides avenues of fairness to both the employees and the employers. This bill introduces another step and layer into the system that can and will create another time consuming feature which, in turn, generates an expense element.

Alternatively, and keeping in the spirit of this bill, workers' compensation carriers can provide a list of three (3) Independent Medical Examiners (IME) for the other party to select.

**Testimony to the House Labor & Public Employment
Tuesday, January 29, 2008; 8:30 a.m.
Conference Room 309**

RE: HOUSE BILL NO. 2752 RELATING TO WORKERS' COMPENSATION

Chair Sonson, Vice Chair Nakasone and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber does not support HB 2752, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing over 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires that the physician performing an independent medical examination be licensed in the State for five years, be subject to peer review, and be known in the local medical community to have been in the practice of treating injured employees and conducting independent medical examinations for the employers. The measure also repeals the authority of an employer to appoint a physician to examine the employee where the employer is dissatisfied with the progress of the case or where surgery is contemplated. Finally, the bill prohibits more than one independent medical examination per case.

The Chamber has carefully reviewed the issues involving the IME process and continues to explore how to improve the process for the injured workers and employers. Although we understand the intent of the bill, the Chamber does not support this bill for the following reasons:

- 1) In many cases, there is a necessity to retain physicians in specialties outside of Hawaii to conduct an IME. The physician community should be consulted to establish appropriate procedural guidelines for conducting IMEs.
- 2) The IME process is an essential part of the employers' discovery process to ensure proper treatment and to justify incurred costs. The right for an employer to select the physician of its choice to determine whether or not an injury is work related should not be subjected to the delay and costs associated with this procedure.

The employer and insurance carrier pay for 100% of the cost of the IME, therefore should be afforded the choice of the IME physician. The employee chooses his or her treating physician, so we believe the employer should be able to obtain a second opinion for his or her protection. Furthermore, it is the employee's treating physician, and not the IME physician, that is conducting the actual medical treatment. The IME physician's role is to evaluate the injury and treatment.

- 3) Proponents of this legislation believe that this change may decrease the adversarial nature that arises during disputes and eliminate the impression of bias in the IME. However, the vast

majority of IMEs are conducted without incident or dispute. The opportunity for an employer IME can greatly enhance the likelihood of successful treatment and recovery.

- 4) Safeguards exist for IMEs. Hawaii's workers' compensation law requires full disclosure of the IME report to the injured employee. As a result, the employee will be able to determine whether the evaluation was accurate. If on the contrary, the employee or his or her personal physician will have the opportunity to contest the report.
- 5) The Department makes a determination based upon the evidence presented to the hearings officers. This bill appears to suggest that the IME report is the final say regarding the injured employee.

For these reasons, the Chamber does not support HB 2752 in its present form.

Thank you very much for the opportunity to testify.

LATE TESTIMONY



PLEASE DELIVER

To rm 329 for:
Committee on Labor &
Public Employment

Tuesday
1/29/08
8:30 am

January 29, 2008

To: Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair
Committee on Labor & Public Employment

From: Cynthia J. Goto, M.D., President
Linda Rasmussen, M.D., Legislative Co-Chair
Philip Hellreich, M.D., Legislative Co-Chair
Paula Arcena, Executive Director
Dick Botti, Government Affairs Liaison

Re: HB2545, HB2752, HB2929 Relating to Workers' Compensation

HMA opposes passage of this bill in its present form, because if removes the balance that is currently in place between the employee's right to chose a treating physician(s) and the employer's ability to seek expert second opinion. HMA agrees that the hearings process should be streamlined.

Thank you for the opportunity to testify on this matter.

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January 29, 2008

LATE TESTIMONY

Tuesday, January 29, 2008
8:30 a.m. - House LAB, Room 309
Fax: 586-6501

To: The Honorable Alex Sonson, Chair Fax: 586-6521
And Members of the Committee on Labor and Public Employment

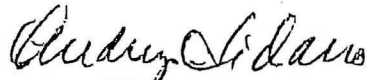
Re: HB 2544, HB 2929, HB 2545, HB 2752

Dear Chair Sonson and Committee Members:

I am Audrey Hidano of Hidano Construction, Inc. testifying in OPPOSITION of HB 2544, HB 2929, HB 2545 and HB 2752 which is attempting to amend Section 386-79, Medical Examination by Employer's Physician.

I believe the current system is working and this legislation is unnecessary because most IME's occur by mutual agreement absent any statute. New proposals requiring selection of an IME physician will increase costs and delay the delivery of medical treatments in some cases.

Thank you for this opportunity to testify in OPPOSITION of these bills.



Audrey Hidano