

LINDA LINGLE  
GOVERNOR



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STATE OF HAWAII  
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813

March 17, 2008

TESTIMONY TO THE  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
For Hearing on Wednesday, March 19, 2008  
10:00 a.m., Conference Room 016

BY

MARIE C. LADERTA, DIRECTOR

**House Bill No. 2929, H.D. 1  
Relating to Workers' Compensation**

TO CHAIR BRIAN T. TANIGUCHI AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2929, H.D. 1, is to amend Section 386-79 (a), Hawaii Revised Statutes, to require that independent medical examinations and permanent impairment rating examinations be performed by mutually agreed upon physicians. **The Department of Human Resources Development is strongly opposed to this bill and requests that it be held.**

An independent medical examination conducted by a physician of the employer's/insurance carrier's choice is the only tool that is available to us to address the statutory presumption, excessive treatment, and reasonableness of a surgical procedure. Amending the statute in this fashion would deprive us of a very fundamental right to discovery.


This bill is unnecessary as safeguards already exist in the statute. The injured employee receives a copy of the report and is afforded the opportunity to rebut it or correct any misinformation. This report is also sent to the injured employee's attending physician who is invited to comment on it.

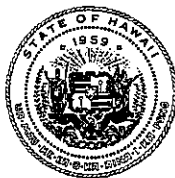
As written, the bill makes no allowances for evaluations to be performed by physicians whose specialties are not available in the State. It isn't clear how we would proceed under those circumstances. It also requires that the mutually agreed upon physician examine the employee within thirty days of selection. This appears to be unrealistic given that we often have to wait 90 days or more for an available appointment. Further, physicians have to have held an active professional and occupational license for five consecutive years prior to the examination. The bill is silent as to what profession and occupational licenses they must have.

Lastly, the definition of medical stability in the bill is inconsistent with the definition in Section 12-10-1 of the Administrative Rules. The rule refers to curative care, passage of time OR when an employee refuses to undergo diagnostic tests or treatment. This would lead to the usage of different standards when determining medical stability for different purposes.

We do not believe that these amendments will serve to reduce the adversarial nature of certain disputes and will likely result in higher costs due to more claims being fully litigated.

Respectfully submitted,

  
for MARIE C. LADERTA



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 18, 2008

To: The Honorable Brian T. Taniguchi, Chair  
and Members of the Senate Committee on Judiciary and Labor

Date: Wednesday, March 19, 2008  
Time: 10:00 a.m.  
Place: Conference Room 016  
State Capitol

From: Darwin L.D. Ching, Director  
Department of Labor and Industrial Relations

**Testimony in Opposition  
to  
H.B. 2929, H.D. 1 – Relating to Workers’ Compensation**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

House Bill 2929, H.D. 1, proposes to require that independent medical examinations (“IME”) and permanent impairment rating examinations be subject to the following:

1. The IME and permanent impairment rating examination physician be selected by mutual agreement between the employer and employee; and
2. If no agreement can be reached, then to have the Department of Labor and Industrial Relations (“Department”) appoint a qualified physician licensed in the relevant medical specialty and willing to conduct the examination within 30 calendar days of the request.

**II. CURRENT LAW**

Currently, section 386-79, HRS, specifies that the employee, when ordered by the director shall submit to the examination by a qualified physician designated and paid by the employer. If an employee refuses to attend the examination or obstructs in any way the examination, their rights to benefits will be suspended for the period during which the refusal or obstruction continues.

### III. HOUSE BILL

The Department understands the intent of this bill is to provide an assurance of impartiality in the IME and rating examination process. However, the Department opposes this bill for the following reasons:

1. The IME process is an important part of the employers' discovery process to ensure proper treatment and that the costs they incur are justified. The employer will request an IME only when they have questions or concerns relating to the claimants injury or the propriety of attending physician's treatments. Requiring that the IME be chosen from a list provided by the director if there is no mutual agreement deprives the employers to choose their own expert witness.

The employer and insurance carrier pays for 100% of the cost of the IME and should be afforded the choice of the IME physician. The role of an IME physician is to evaluate the injury and or treatment.

2. There are already safeguards in place for IMEs. Hawaii's workers' compensation **law requires full disclosure** of the IME report to the injured employee. This allows the treating physician or the injured worker to challenge the evaluation. The Department makes its decisions based upon the evidence provided by the opposing parties.
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 Department is not convinced that this would decrease the adversarial nature of the IME and rating process, as there will always be situations in which claimants and employers will disagree. The IME process is the only vehicle available to the employer to support their position when challenging the injured workers claim or the propriety of the attending physicians treatment.
4. The Department has concerns relating to ensuring that an adequate number of physicians, with the various specialties, will be willing to have their name placed on the IME and rating examination list as this bill specifies that a physician must indicate within seven days of a request if they would be willing to do the examination and shall be required to examine the employee within thirty days of the selection.
5. The Department is concerned that this bill proposes that if an employee "unreasonably" refuses to submit to or obstructs an examination; the employee's

right to compensation shall be suspended. The bill gives no definition of what is considered “unreasonably.”

The Department has concerns with having a permanent impairment rating conducted only when the **attending physician** determines the employee to be medically stable, and proposed a new definition of medical stability for the purposes of only this section. First, in some cases treatment may go on indefinitely before the attending physician believes the employee’s condition has stabilized. This will severely limit the employer’s right to have a permanent impairment rating done to resolve the case expeditiously if they have evidence from that the injured employee’s condition may be stable. Secondly, this proposal defines “medical stability” to mean that the employee’s medical condition is static and well stabilized. It is not clear what time period would equate to “well stabilized”. Medical stability is defined in Chapter 386 Administrative Rules, section 12-10-1 to mean “that no further improvement in the injured employee’s work-related condition can reasonably be expected from curative health care or the passage of time”.

6. The Department is not clear as to what is an “active” professional and occupational license for the last five consecutive years? Is an “active” physician one that is “actively” treating patients or is merely “maintaining” their license in Hawaii for five consecutive years adequate?
7. The Department also has concerns that additional funding for a position will be required to build and maintain a list of IME and rating physicians who would be willing to conduct these examinations and to coordinate with the employer the appropriate physician to conduct the IME. The Department would require at least one clerical position costing \$35,000 to implement this proposal.

GOODSILL ANDERSON QUINN & STIFEL

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CHRISTOPHER G. PABLO, ESQ.  
ANNE T. HORIUCHI, ESQ.  
MIHOKO E. ITO, ESQ.  
JOANNA J. H. MARKLE\*  
LISA K. KAKAZU\*\*

\* Government Relations Specialist  
\*\* Legal Assistant

March 18, 2008

TO: Senator Brian Taniguchi  
Chair, Committee on Judiciary & Labor  
Hawaii State Capitol, Room 219  
[testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

FROM: Anne T. Horiuchi, Esq.  
H.B. 2929, HD1 Relating to Workers' Compensation  
Hearing Date: Wednesday, March 19, 2008 at 10:00 a.m.

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Dear Chair Taniguchi and Members of the Committee on Judiciary & Labor:

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. 2929, HD1 requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians. AIA opposes this measure.

AIA believes that the current system regarding independent medical examinations is well-established, and we believe that it is working. AIA is also concerned that requiring the selection of an IME physician by mutual agreement may delay the delivery of medical treatment in certain cases, and may also increase costs. AIA opposes H.B. 2929, HD1 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

Committee on Judiciary and Labor

March 19, 2008

10:00 a.m.

Conference Room 016

## **Testimony Opposing HB 2929, HD1 "Relating to Workers' Compensation"**

Chair Taniguchi and Members of the Senate Committee on Judiciary and Labor:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

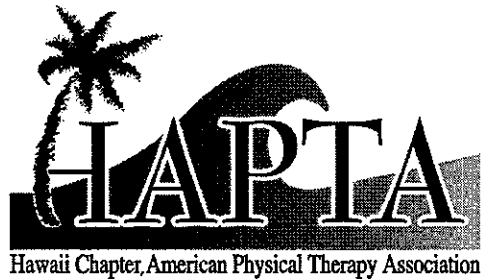
**BIA-Hawaii strongly opposes HB 2929, HD1 "Relating to Workers' Compensation"** because this bill requires the selection of an IME physician by mutual agreement. This will add to compensation costs and delay the delivery of medical treatments in certain cases. BIA-Hawaii believes the current system that is in place works. We believe this legislation is unnecessary because, to our knowledge, most IMEs occur by mutual agreement absent any statute.

Thank you for the opportunity to voice our views.

*Karen I. Nakamura*

Testimony by:  
Derrick Ishihara, PT

HB2929hd1, Workers' Compensation  
Senate JDL Committee  
March 19, 2008 - 10:00 am  
Conference Room 16



**Position: Support with Comment**

Chair Taniguchi and Members of the Senate JDL Committee:

I am Derrick Ishihara, P.T., a small business owner/physical therapist and member of HAPTA's Legislative Committee. and member of the Hawaii Chapter – American Physical Therapy Association. The Hawaii Chapter – American Physical Therapy Association (HAPTA) is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA commends the legislature for addressing potential problems with the current statute regarding IMEs. We support the primary focus of this measure, and believe that we should collaboratively focus on the mutual and fair selection of IMEs. Such a process is needed whereby injured workers and the insurer can re-assess the medical care being given and the future needs of the injured employee in a fairer manner. Currently, the examining physician is selected by the employer/insurer. This process has led to confrontation and extreme distrust between the injured worker and the insurer.

We anticipate that fair and impartial IMEs will lead to quicker resolution of cases as the injured party can get necessary care in a timely manner, potentially avoiding problems associated with chronic pain and disability. The insurer can also get slowly moving cases examined and recommendations made to resolve medical issues in a faster, more efficient manner, thus minimizing indemnity costs. Employers can get experienced employees back on the job and productive in less time. Hopefully, as the antagonistic nature of treating Workers Compensation cases improves, more qualified medical providers will return to the system and access to providers will improve for injured workers.

There are elements in this bill draft that need to be more fully discussed or deleted. As such we support the defective date to keep the measure moving and request that HAPTA be part of the ongoing discussion.

Thank you for the opportunity to provide testimony. I can be reached at (808) 593-2610 if there are any questions.



## COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice Chair

Testimony Related to HB 2929, HD1

Wednesday, March 19, 2008

10:00 A.M.

Conference Room 016

### IN OPPOSITION

Chair Taniguchi, Vice Chair Hee, 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 2929, HD1. The current Independent Medical Examination (IME) process and system is an avenue to ensure an objective review and validation of any injury sustained by an employee, by a physician. This process has evolved over the years to bring an oversight and fairness to both the injured employee and the employer. This system is working.

HB 2929 HD1 will weaken the integrity of the system that has helped and supported parties on both sides of the equation. By adding the Director to facilitate the IME challenge process, it will add another layer of administrative processing, which will require additional resources to the department to ensure a timely turnaround. To further exhaust the system, HB 2929 HD1 establishes time lines for physicians to respond and to perform the examination. While these time lines are important to have, this bill does not establish any penalties for failing to comply or any method to clear doctors' calendars so that they can comply.

We are particularly concerned that your decision may be impacted by the demagoguery and innuendo that is a key component of the testimony of one or more proponents of this bill. They imply that there was something sinister about HEMIC's payment pattern to IME physicians in 2006, and therefore you should change the law. They mislead you even though they are quite aware of their distortions. Here is what they do not want you to know.

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Early in 2006 HEMIC decided to further improve its IME process with the goal of achieving national best practices. We hired one of the foremost experts in the country to assist us in that process. During 2006 IME physicians were recruited to the program, credentialed, evaluated, and selected. A set of standards was adopted to assure high quality and unbiased opinions. From start to finish the process took well over a year. Today HEMIC's IME process is an outstanding example of how the IME process should work.

While the development was ongoing HEMIC adjusters and attorneys continued to select IME physicians as they had in the past. There was no directive from executive management to use particular physicians. Management only dictated the principle that IMEs must be unbiased and of high quality. By time the revised IME process was ready for implementation there had been a significant concentration of assignments to one medical practice. That occurred primarily because of the service offered by that practice. If no appropriate physician was available locally they would travel to neighbor islands, and even the mainland, to examine or rate workers. If complex issues were involved they would appear at hearings to provide testimony so that the hearings officer had the best information available to make a decision. They would accommodate the need to see a worker promptly, rather than having a time sensitive issue fester for weeks and months while the worker waited for an appointment. And so by providing good service, not biased opinions, the practice earned the respect and support of HEMIC adjusters.

Our detractors present the payments to the medical practice as "IME expense". In fact it is IME, Impairment rating, travel, and testimony expense. They also fail to tell you that it represents more than one year's activity. This particular provider had a history of delayed reports and billing. In 2006 HEMIC required that the reports and billing be more timely. Accelerating the reporting process resulted in significantly more than 12 month's examinations/ratings/expenses being billed in the 2006 calendar year. They also fail to tell you that HEMIC reported to its Board of Directors and its Government Oversight Body that it was revising its IME process to achieve national best practices, but also to avoid the appearance of too much dependence on a few IME physicians. We pointed out how concentrations of business could be unjustly distorted by detractors. Unfortunately that intentional distortion has now occurred with no disclosure that the concentration occurred while a process improvement initiative was ongoing; that it was not orchestrated by management; and that it occurred because of superior service from the provider, not biased opinions.

We believe this legislation does nothing to improve the IME process. It will slow the process and dilute the quality of IMEs, thus making the system more expensive. If your judgment is that you want to change the process, we urge that your judgment be based upon facts. Demagoguery and innuendo, such as that evidenced in some of the testimony before the committee and previous committees, have no place in the legislative process.

Thank you for your consideration.

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Honolulu, Hawaii 96813  
Telephone (808) 525-5877  
Facsimile (808) 525-5879

**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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SENATE COMMITTEE ON JUDICIARY AND LABOR  
Senator Brian T. Taniguchi, Chair  
Senator Clayton Hee, Vice Chair

Wednesday, March 19, 2008  
10:00 a.m.

### **HB 2929, HD1**

Chair Taniguchi, Vice Chair Hee, and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 2929, HD1 which amends Section 386-79, Medical Examination by Employer's Physician.

The current system regarding Independent Medical Examinations (IMEs) has been in place for some time and we believe it is working. It appears that this legislation is prompted by claims that IME physicians are biased toward the employer. We do not believe this is true. Employers seek access to clinical expertise to help return the injured worker to the job. Currently, there are numerous safeguards in place to ensure the IME is objective and unbiased. Injured workers are able to obtain opinions or comments from their treating physician or other doctors regarding the IME opinion if they disagree. Injured workers are also able to obtain their own rating and if the hearings officer relies on it, the employer has to pay for it. Finally, there is an appeals process that provides further due process to both sides if an agreement cannot be reached.

According to the Department of Labor and Industrial Relations, ordered IMEs number about 1,000 per year. In 2005, there were 52,000 new and pending workers' compensation claims, and therefore, only 2% of all cases require an ordered IME. We believe this legislation is unnecessary because most IMEs occur by mutual agreement, absent any statute. The current system provides an approach for the employer and injured worker to resolve medical treatment disputes in an efficient manner. The proposal to mandate mutual agreement will increase workers' compensation costs and delay the delivery of medical treatment in certain cases. This is detrimental to the injured worker and does not benefit the employer.

The provision to require impairment IMEs to be separate from treatment IMEs merely presents an inconvenience to the injured worker. A comprehensive examination often takes several hours and this requirement will add costs to the system by requiring two separate examinations that could be addressed in one visit. Currently, some IMEs are performed to address appropriate treatment utilization and measurement of the degree of physical impairment. In many cases, it is important to obtain a *baseline* impairment rating to later determine the effectiveness of treatment. This also benefits the injured worker by having one physician look at the case in a comprehensive manner. It is also more cost effective if treatment and impairment are addressed by a single IME instead of requiring two. The suggestion that two separate examinations benefits the injured worker is not substantiated by evidence and will only add costs and delay the delivery of benefits.

The bill also limits IMEs to one per case. There is no measurable benefit to the injured worker by limiting IMEs to one per case. In fact, such a restriction may harm the injured worker. Two IMEs may be necessary in some cases since the first is initially done to establish a baseline and another IME is needed to determine whether there has been improvement, explain a change in the condition, or impairment. A subsequent IME may also be necessary if the injured worker develops new symptoms or conditions secondary to the work injury. The bill also does not allow for any exceptions for an ordered IME for impairment ratings. In the event that an injured worker is ordered to

attend an impairment examination and the physician determines that the injured worker is not at maximum medical improvement, or is a no-show for the appointment, the injured worker is precluded from obtaining a subsequent impairment rating. Neither an employer nor an injured worker should be restricted in securing an IME.

Finally, the bill requires IME physicians to meet certain criteria. Mandating that IME physicians meet certain requirements may not increase the standard of care for the injured worker and will reduce the number of physicians willing to participate in workers' compensation cases. Currently, there are a limited number of physicians who perform IMEs and when categorized by specialty, the list of available physicians is even smaller. It is in both the employer's and injured worker's best interest to have as many IME physicians available as possible to get the most objective opinion in the most efficient way. Many specialty IME physicians like toxicologists, neuropsychologists and infectious disease specialists who practice on the mainland are used because there are few or no qualified physicians here that can perform the examinations. Hawaii is a small and isolated state in which specialized physicians are not able to acquire practical experience due to exposure to limited and isolated cases. Insurers rely upon regional clinics and medical centers that specialize in particular medical disorders. The provision which would require that the IME physician be licensed to practice in Hawaii for five consecutive years unless the employee is living elsewhere and attempts to limit the reimbursement rate for conducting an exam is unworkable and will only shrink the limited pool of available physicians even further. This mandate will limit local physicians' ability to draw upon the clinical expertise of their mainland counterparts and inevitably create a delay in obtaining timely appointments and reports.

For these reasons, we respectfully request that HB 2929, HD1 be held.

Thank you for the opportunity to testify.



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Secretary

Jonathan Cho, MD  
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Paula Arcena  
Executive Director

March 19, 2008

To: Sen. Brian Taniguchi, Chair  
Sen. Clayton Hee, Vice Chair  
Committee on Judiciary and Labor

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: HB2929, HD1 Relating to Workers' Compensation

HMA opposes passage of this bill in its present form, because it removes the balance that is currently in place between the employee's right to choose 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.

PLEASE DELIVER TO:

Senate JDL

Wednesday  
3/19/08  
10:00am

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Randy Perreira  
President

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The Twenty-Fourth Legislature, State of Hawaii  
Hawaii State Senate  
Committee on Judiciary and Labor

Testimony by  
Hawaii State AFL-CIO  
March 19, 2008

## H.B. 2929 HD1 – RELATING TO WORKERS COMPENSATION

H.B. 2929 HD1 requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

**The Hawaii State AFL-CIO strongly supports this measure.**

The purpose of this bill is to reduce workers' compensation costs and speed up their ability to return to work by selecting outside non-treating doctors who are mutually agreed upon.

Presently, injured employees are required to go to non-treating doctors who are selected by the employers or insurance carriers. Employees have absolutely no decision as to who the doctors will be, resulting in lack of trust when the medical reports are generated. In fact, there are doctors who are paid hundreds of thousands of dollars each year by insurance companies to perform medical examinations which raises a red flag and causes many to question the validity of the medical reports. As a result, unnecessary hearings are conducted, resulting in various delays causing higher costs for both the employers and insurance companies.

Most notably, H.B. 2929 HD1 would reduce workers compensation costs by eliminating the unnecessary struggles that exist between the employers and employees. It would require mutual cooperation when selecting a doctor to perform a medical examination. This helps ensure that a non-biased doctor who could potentially be paid hundreds of thousands of dollars is not selected. Thank you for the opportunity to testify in support of H.B. 2929 HD1.



# Hawaii State Chiropractic Association

P.O. Box 22668 Honolulu, HI 96823-2668  
ph: (808) 926-8883 fx: (808) 926-8884

March 15, 2008

THE SENATE  
COMMITTEE ON JUDICIARY AND LABOR

Testimony for hearing  
Date: Wednesday, March 19, 2008  
Time: 10:00 am  
Conference Room 016

Dear Chair Taniguchi, Vice Chair Hee, 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 **support of the intent of HB 2929 HD1.**

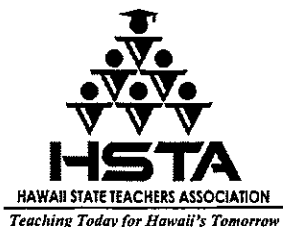
We believe that mutual agreement of an IME physician between the employer and the employee is the fairest way to insure an impartial PPD evaluation is conducted. The current method of selection has led to numerous abuses of injured worker rights by allowing one of the parties to prejudice the IME findings by depriving the other party an input on the selection of the examiner. Disability and impairment ratings must be done in the most impartial manner by a truly independent examiner. Although that is the intent of the current statutes and rules, the intent is circumvented repeatedly in actual practice and the process loses its impartiality.

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

Sincerely,

Gary Saito, DC  
President and ED, HSCA





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**Roger K. Takabayashi**  
President

**Wil Okabe**  
Vice President

**Karolyn Mossman**  
Secretary-Treasurer

**Mike McCartney**  
Executive Director

**TESTIMONY BEFORE THE SENATE COMMITTEE ON  
JUDICIARY & LABOR**

**RE: HB 2929, HD1 - RELATING TO WORKERS' COMPENSATION.**

March 19, 2008

**ROGER TAKABAYASHI, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION**

Chair Taniguchi and Members of the Committee:

The Hawaii State Teachers Association supports HB 2929, HD1, that requires independent medical examinations (IME) and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians, and establishes a process for the appointment of a physician to conduct an IME if the parties cannot mutually agree.

Thank you for the opportunity to testify.

**TESTIMONY on HB 2929 HD 1**  
**International Association of Rehabilitation Professionals**

March 19, 2008

Support of H.B. No. 2929 HD1  
Relating to Workers Compensation

Senate Committee on Judiciary and Labor  
The Honorable Senator Brian T. Taniguchi, Chair  
The Honorable Senator Clayton Hee, Vice Chair  
And Members of the Committee:

As the current President of the International Association of Rehabilitation Professionals-Hawaii Chapter and on behalf of our members, **we support HB2929 HD1.**

“The International Association of Rehabilitation Professionals (IARP) brings together rehabilitation professionals in Hawaii and across North America to promote the availability of effective, interdisciplinary services for persons with disabilities.”

The International Association of Rehabilitation Professionals (IARP) Hawaii Chapter **supports the concept of a mutually agreed upon Independent Medical Examination to perpetuate fairness and impartiality for injured workers.**

We encourage you to pass the proposed bill **HB 2929 HD 1.**

Thank you for the opportunity of addressing this committee.

Alan S. Ogawa, M.ED. CRC, LMHC  
President-International Association of Rehabilitation Professionals  
Hawaii Chapter  
1834 Nu'uauu Ave, Suite 205  
Honolulu, Hawaii 96817  
Phone: 523-7755

Date: 3/19/08      Time: 10:00 am

Place: Conference Room 016, State Capital, 415 South Beretania Street

THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

COMMITTEE ON JUDICIARY AND LABOR

Sen. Brian T. Taniguchi, Chair  
Sen. Clayton Hee, Vice Chair

Date: Wednesday, March 19, 2008  
Time: 10:00 a.m.  
Place: Conference Room 016, State Capitol

**TESTIMONY OF FRED GALDONES/ILWU LOCAL 142**

**RE: HB 2929, HD 1, RELATING TO WORKERS' COMPENSATION**

Thank you for the opportunity to present testimony regarding HB 2929, HD 1.

ILWU Local 142 recognizes and supports the need for objective and truly independent medical opinion in the adjudication of industrial accident claims. We therefore support HB 2929, HD 1 as a major advancement of this principle. The concept proposed in the bill of conducting evaluations based on mutual agreement of the parties, or failing such agreement, by appointment by the Director of the Department of Labor is a sound one, which promotes impartiality by the examining physician and the timely adjudication of claims. If adopted, the bill will help facilitate the prompt delivery of effective medical care and accelerate claims processing in a fashion that will be universally beneficial.

However, we also offer the following comments and suggestions about HB 2929, HD 1:

1. We endorse the idea that examination that are mutually agreed upon should be conducted in 30 days. Delay now occurs because insurers favor using only a limited number of physicians who conduct medical examinations, and these physicians often cannot schedule appointments with the injured worker for two, three, or four months. Such delay needlessly burdens all parties with unnecessary cost if a claim is ultimately found compensable, and delays treatment through non-industrial medical care when the claim is determined not to be work-related. However, if flexibility is needed to extend this 30 day period to a longer time period of 45 days during which the examination takes place, this would not be unreasonable.
2. HB2929, HD 1 also presently provides that if the parties cannot agree upon a suitable physician to conduct an independent medical examination or permanent impairment rating, the Director shall appoint a physician from the relevant medical specialty who is licensed to practice in Hawaii after the "employer" requests the appointment of such a physician. There is no reason why the injured worker should also not be allowed to

request that the Director appoint an examining physician, and the bill should be amended to permit this option.

3. The current bill could also be improved by inserting a requirement that before an employee's right to compensation can be suspended, the employee should be afforded the right to a hearing on whether her failure to attend a medical examination was in fact unreasonable, rather than conferring upon the employer the ability to make this determination and to suspend compensation unilaterally
4. The bill's adoption should not be delayed until July 1, 2059 but it should be adopted as rapidly as possible. In this case, July 1, 2008 would be an appropriate date.
5. HB2929, HD 1 makes a superb point by prohibiting both an independent medical examination and a permanent impairment rating simultaneously. All too often an independent medical examination is conducted early in a case, before an injured worker has attained medical stability and the examining physician improperly speculates that there will be no permanent impairment when this cannot be accurately predicted. Only when both parties consent that a single medical examination should it be used to both examine issues regarding causation or medical care, as well as to determine the extent of permanent impairment.

ILWU firmly supports the adoption of HB 2929, HD 1, and suggests that the constructive purposes of the bill could be enhanced even further by the limited suggestions it has made in this testimony.



**KAUAI**

*Chamber  
of  
Commerce*

March 18, 2008

**Testimony to the Senate Committee on Judiciary and Labor  
Wednesday, March 19, 2008; 10:00 a.m.**

**RE: HOUSE BILL NO. 2929 RELATING TO WORKERS' COMPENSATION**

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

My name is Randall Francisco and I am the President of The Kauai Chamber of Commerce.

The Chamber does not support HB 2929 HD1, relating to Workers' Compensation.

The Chamber is Kauai's largest business organization, representing 450 businesses. 87% of our members are small businesses with less than 50 employees. The Chamber works on behalf of members and the entire business community to improve Kauai's economic climate and to foster positive action on issues of common concern.

This measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians. Effective 07/01/2009.

The Chamber has 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. 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.

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 2929 HD1 and respectfully requests that the committee holds this measure. Thank you very much for the opportunity to testify. Aloha.

*Randall Francisco*

Randall Francisco  
President



## Before the Senate Committee on Judiciary & Labor

DATE: March 19, 2008  
TIME: 10:00 a.m.  
PLACE: Conference Room 016

### Re: HB 2929, HD 1 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you defer **HB 2929, HD 1**. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We oppose measures that may tend to increase workers' compensation costs and have unintended negative consequences on employers, employees and the economy. Thank you for the opportunity to testify.



**Property Casualty Insurers  
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Brian T. Taniguchi, Chair  
Senate Committee on Judiciary and Labor

From: Samuel Sorich, Vice President

RE: **HB 2929 HD 1 – Relating to Workers’ Compensation**  
**PCI Position: Oppose**

Date: Wednesday, March 19, 2008  
10:00 a.m.; Conference Room 016

The Property Casualty Insurers Association of America (PCI) is an association of property/casualty insurers. There are more than 100 PCI member companies doing business in Hawaii. PCI members are responsible for approximately 45 percent of the property/casualty insurance premiums written in Hawaii.

PCI is opposed to HB 2929 HD1 because the bill is unnecessary and unfair and would result in administrative delays.

HB 2929 HD1 would establish a new, complex system for obtaining independent medical examinations. Instead of the simple existing system that allows an employer to obtain an independent medical examination, HB 2929 HD 1 would require the employer to reach a mutual agreement on the physician who conducts the examination. If mutual agreement is not reached, the director of the department of labor and industry would have to appoint a physician, who may or may not be willing to undertake the examination.

The purported reason for the bill is to provide safeguards for injured employees, but existing law already provides strong safeguards. The report of the independent medical examination must be given to the employee. The employee has the right to challenge the report and to offer evidence that disputes the report's findings. The independent medical review gives the employer valuable information to evaluate the employee's condition. The employer pays for the examination.

HB 2929 HD1 would unfairly force employers to pay for examinations that may not allow employers to receive information that enables them to make a reasoned evaluation of the employee's condition and treatment.

Existing law allows independent examinations to be undertaken quickly. In contrast, examinations under HB 2929 HD1 would be stalled by built-in delays in the bill. The employer would have to first try to reach a mutual agreement. If that does not work, the employer would have to petition the director for the appointment of a physician. The appointed physician would have seven days to decide whether to take the case. If the physician decides not to take the case, the director restarts the process. Once a physician decides to take the case, the examination is supposed to take place within 30 days. No doubt, that is optimistic. All this means that examinations would be burdened by administrative delays.

PCI requests that the Committee vote No on the bill.





Senator Brian Taniguchi, Chair  
Senator Clayton Hee, Vice Chair  
Committee on Judiciary & Labor

State Capitol, Honolulu, Hawaii 96813

HEARING      Wednesday, March 19, 2008  
                  10:00 am  
                  Conference Room 016

**RE:    HB2929, HD1, Relating to Workers' Compensation**

Chair Taniguchi, Vice Chair Hee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employer in the state, employing 20% of the labor force.

**RMH opposes HB2929, HD1** which requires independent medical examinations and permanent impairment rating examinations to be performed by mutually agreed-upon physicians.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. From the employer's position, the IME process is a vital mechanism to ensure proper treatment for the injured employee and costs of the treatment incurred are justified. As a safeguard, the existing statute requires full disclosure to the injured worker of the IME report, which affords the treating physician and the injured employee that opportunity to challenge the evaluation.

Considering that the employer ultimately bears the entire cost of the IME, the choice of the IME justifiably should be the employer's.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB2929, HD1. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Prejile', is written in black ink.

President

RETAIL MERCHANTS OF HAWAII  
1240 Ala Moana Boulevard, Suite 215  
Honolulu, HI 96814  
ph: 808-592-4200 / fax: 808-592-4202

**testimony**

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**From:** Don Spada [spadabuilders@hawaii.rr.com]  
**Sent:** Monday, March 17, 2008 7:01 PM  
**To:** testimony  
**Subject:** FW: Support passage of HB 2929, HD1

**Spada Builders Inc.**  
350 Auwinala Road  
Kailua, Hawaii 96734

To: The Senate Judiciary-Labor Comm.  
Hon. Senator Taniguchi, Chair  
Hon. Members

Re: Passage of Bill HB 2929

Dear Members,

I have owned and worked for my company Spada Builders Inc. for thirty years, and in that thirty years I have insured myself with workers Compensation Insurance because of the trade I am involved in.

I injured my lower back while working my normal duties for my company and was diagnosed with two bulging disks that impinges on the nerves and causes extreme pain. Not knowing how severe the injury was I went home that day hoping that the pain would subside. The next day was worse so I went to my family physician and filed a workers' compensation claim on December 26, 2002 the day after the injury. The insurance company (HEMIC) initially accepted my claim but after a brief period denied me further medical treatment without any written or verbal notice. Their refusal to honor my benefits has caused hardship, both physically and financially. I have taken my case to the labor board and they have tried to negotiate with the insurance company with no results. My case is still pending to this date with no offers of medical treatment or any compensation. I still cannot do any physical work for ANY length of time due to instability in my lower back and periods of severe pain when just doing normal things. I go to my family doctor for pain pills and have been under the care of a acupuncturist and chiropractor which I have been paying out of my pocket when it gets intolerable. The insurance company states that this is a temporary condition and it is not operable so they deny me any further treatment or any fair settlement.

I have paid HEMIC and they have given the minimal treatment in return with no real effort to care for or compensate me for my injury then cut me off with no notice. This is not right.

I am in support of HB 2929, HD1, the mutually agreed IME bill.

Please change the law. Please pass HB 2929, HD1.

Don Spada  
President  
Spada Builders Inc.

3/17/2008

March 14, 2008

SENATE  
The Twenty-fourth Legislature

Judiciary/Labor Committee  
Senator Chair, Brian Taniguchi  
and Committee members

*Testimony in support of HB 2929 HD 1*

*My name is Laurie Hamano, president of Vocational Management Consultants. We are vocational rehabilitation counselors in the community for the past 25 + years working with injured workers as well as members of Hawaii Injured Workers Alliance members, and International Association of Rehabilitation Specialists. We support HB 2929 as this bill supports the mutually agreed upon Independent Medical Evaluations. This will help the system by asking the parties involved to agree upon a doctor to lessen the animosity that is set forth during these employer requested medical evaluations.*

*We have experienced the trauma with our injured workers who have been subjected to numerous IMES on their cases as they are told over and over by these Employer selected doctors that "there is nothing wrong with you; go back to work" only to find that they cannot return and either reinjure or are terminated from their jobs. These cases never receive the proper treatment that is needed to assist them to recover and return to productive lives. In turn, the case is dragged on for many more months than it would have been should the Injured Worker received the immediate care they needed to recover.*

*Thank you for this opportunity to provide our testimony to the committee.*

*Our address and phone number is:*

*715 S. King Street Suite 410  
Honolulu, HI 96813 #538-8733  
Laurie H. Hamano M. Ed. CRC, MHC  
Kirsten Harada, M. Ed. CRC, MHC  
Patti Inoue, M. Ed. CRC, MHC  
Marcia Berkowitz, CRC, MHC  
Beverly Tokumine, M. Ed. CRC, MHC  
Hawaii Injured Workers Alliance Members  
And  
Vocational Management Consultants, Inc.  
And  
International Association of Rehabilitation Providers*

FRANCIS G. BREWER, D.C.  
CHIROPRACTOR

1150 South King Street, Suite 604  
Honolulu, Hawaii 96814

(808) 593-0313  
Fax: (808) 589-2032

March 18, 2008

**TESTIMONY ON HB 2929, HD 1**  
Relating to Workers' Compensation Law

**Committee on Judiciary and Labor**  
Senator Brian T. Taniguchi, Chair  
Senator Clayton Hee, Vice Chair

Hearing Date & Time: March 19, 2008 @ 10:00 a.m.  
Location: Room 016

Testifier: Francis G. Brewer, D.C., C.I.C.E.

Chair Taniguchi and Members of the Committee:

My name is Francis Brewer. I am a licensed chiropractor in the State of Hawaii and have been in practice for 15 years, providing clinical care for injured workers and performing independent medical examinations (IME's).

I oppose HB 2929, HD 1.

This bill would have a major negative impact on the quality of IME's, as well as have a negative effect on injured workers.

Use of Mutually Agreed Upon Examiner

HB 2929, HD 1 currently proposes that if an employer and employee cannot agree upon a qualified physician to perform an IME for impairment rating, the Director of the Department of Labor And Industrial Relations is to appoint a physician from a list.

This process will be cumbersome, and will not likely result in the most qualified physician or appropriate specialist to be selected for the evaluation. This will be a major disservice to the injured worker, adding additional layers of bureaucracy and potentially delaying the injured worker's access to benefits entitled under the Workman's Compensation system. There has been no proposal of how the "list" would

**RE: HB 2929, HD 1**

March 18, 2008

be maintained, who is “qualified” to be on the list (except for 5 years of licensure), and what restrictions are placed upon those specialists evaluating injured workers who do not necessarily have injuries specifically associated with the examining doctor’s specialty. The potential for increased costs and delay in medical services could be substantial to the injured worker and employer if evaluations are not performed correctly nor consistent with current national standards.

### Quality IME Examiners Have Extensive Training Beyond Licensure

This bill only requires that examining physicians be licensed for five years. This is wholly inadequate. IME’s are not the same as standard physical exams, and the physicians who perform these evaluations have spent countless hours and resources developing their skills.

A fair, thorough, and objective IME is a time-consuming process, and can take hours to days to complete, depending on the complexity of the case. Generally, only those cases with more complex issues are referred for an IME, and often the patient has a history of multiple injuries affecting the same or numerous areas of the body. The IME process involves taking a thorough history, complete examination, and review of all available medical records, which can number in the thousands of pages.

In addition to having excellent diagnostic skills and the ability to apply those skills, quality examiners must also have an in-depth knowledge of the current laws and administrative rules governing the Hawaii Workman’s Compensation system and the national standards for evaluation of physical impairment, in the absence of which the evaluation would only be “just another physical exam.” Superior evaluators have spent years specifically dedicated to improving the quality of the Independent Medical Evaluation by taking extensive training, courses and examinations in learning how to perform high quality evaluations and studying the methodology of permanent impairment rating, which is constantly being updated and requires one to be vigilant in keeping up with the most recent literature.

### Determination of Medical Stability

This bill also proposes that the injured employee's attending physician make the determination regarding the issue of medical stability. Making the employee’s physician the sole authority to determine medical stability can result in a patient NOT

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**RE: HB 2929, HD 1**

March 18, 2008

getting the services that he or she needs.

I have personally evaluated many patients whose conditions have not been adequately diagnosed or treated, and which come to light only at the time of the IME. It is only then that these patients received appropriate referrals for the medical services needed to restore them back to good health. In those cases, allowing the employee's attending physician to have sole authority to determine medical stability would increase costs, while preventing the patient's access to appropriate medical care.

Determinations of medical stability in complex workman's compensation cases are challenging and specialized. Because a comprehensive and independent evaluation of a patient's condition and progress is so valuable, many chiropractors often request IMEs in those cases where their patients are not progressing adequately.

#### Prohibition on Combining IME with Permanent Impairment Rating

It is not clear why the bill prohibits combining an IME with a permanent impairment rating, since the same complete medical evaluation required for an IME is also required for a permanent impairment rating. A permanent impairment rating cannot be done without the exam. Therefore, I recommend that this language be deleted from the bill.

#### 30-Day Limit for Performance of Exam

Finally, this bill also requires that a physician selected by the parties or the Director examine the injured employee within 30 days of the selection. This is often not feasible. Unfortunately, as few skilled specialists are available to perform IME's, there is no assurance that a physician can agree to this schedule or that there will be a qualified physician able to examine the patient within the set time frame, again adding to costs and potential delays in an injured workers access to benefits.

Thank you for the opportunity to testify.

LORNE K. DIRENFELD, M.D., FRCP (C)  
NEUROLOGIST  
DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

89 HO'OKILE STREET, SUITE 204  
KAHULUI, MAUI, HAWAII 96732

(808) 877-5811  
Fax: (808) 877-3146

March 17, 2008

**TESTIMONY RE: HB 2929, HD1**

COMMITTEE ON JUDIARY AND LABOR

Senator Brian T. Taniguchi, Chair

Senator Senator Clayton Hee, Vice-Chair

Date: Wednesday, March 19, 2008

Time: 10:00 a.m.

Conference Room 016

State Capitol

415 South Beretania Street

I am testifying in opposition to HB 2929, HD1. This Bill will have an adverse effect on the care of injured workers.

The reasons this Bill will adversely affect injured workers include:

1. Appointing a physician from a list at the Department of Labor And Industrial Relations will not guarantee the best physician for the patient's problem will be selected. This will also be cumbersome and difficult to administer.
2. Typically the best physicians are often booked more than 30 days in advance and there are few skilled specialists available to perform IME's. There is no assurance a physician can agree to this schedule referenced in the Bill.
3. The Bill contains a definition of medical stability that is inconsistent with the definition contained in the Guides to the Evaluation of Permanent Impairment, Sixth Edition, published by the American Medical Association.

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**RE: HB 2929, HD1**

March 17, 2008

The following section of this Testimony will expand on the reasons supporting my opinion to oppose this Bill.

This Bill appears to come from the position that independent medical examiners are biased in favor of the employer. This Bill proposes when parties cannot agree on who should perform an IME, a physician should be randomly selected from a list.

I am a board-certified neurologist who performs independent medical examinations. I have been in practice in Hawaii for 25 years. I am a contributing editor to the Guides to the Evaluation of Permanent Impairment, Sixth Edition, published by the American Medical Association. I am the founder and was the medical director of Maui Occupational Health Center between 1995-2001. This was a multidisciplinary clinic for the treatment of injured workers.

I have been committed to performing high-quality, objective, thorough independent medical examinations for years.

Longevity in this field requires that reports are found to be credible by fact finders on a consistent basis. Physicians who are not found to be credible do not last long in this area of work. Attorneys, whether for the claimant or the defendant, will stop using them.

Most people are not familiar with independent medical examinations and the requirements of performing them.

IME's are evaluations performed in an administrative context and are reviewed and used by adjusters, attorneys, hearings officers, and judges, among others. This is in marked contrast to a typical medical consultation.

Additional training and experience beyond that obtained in medical school and specialty residency programs is required to perform quality IME's.

A fair, thorough, and objective IME is a time-consuming process. This includes obtaining a detailed history from the patient, performing a careful and thorough physical examination, and reviewing imaging studies and medical records. The



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**RE: HB 2929, HD1**  
March 17, 2008

records are often extensive.

All of this data must be processed, and a report drafted. Issues must be expressed in terms that can be understood by the layman. There is usually an extensive discussion regarding the analysis of the patient's case.

Issues addressed in these reports differ from those of a standard consultation, and may include those of causation, work ability, and potential for permanent residuals. These are in addition to the standard issues of diagnosis, treatment recommendations, need for further evaluation, and prognosis.

HB 2929, HD 1 proposes if an employer and employee cannot agree upon a qualified physician to perform an IME, the Director of the Department of Labor And Industrial Relations is to appoint a physician from a list.

The Department of Labor And Industrial Relations keeping a list, or multiple lists, of qualified physicians in different specialty areas will be cumbersome and difficult to administer. This will also not guarantee the best physician for the patient's problem will be selected. This will be a major disservice to the injured worker.

The time frame referenced in this Bill requiring an examination of employee to occur within 30 days is not realistic. Time is necessary to gather all relevant medical records. The records are often extensive. The records must be sorted and reviewed. Frequently records must be obtained by subpoena.

Typically, the best physicians are often booked more than 30 days in advance. Unfortunately, as few skilled specialists are available to perform IME's, there is no assurance a physician can agree to this schedule.

This Bill defines medical stability to mean "the injured employee's medical condition is static and well stabilized, that no further improvement in the injured employee's work-related condition can be expected from further medical treatment, and that continued medical care will only prevent deterioration of the condition."

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**RE: HB 2929, HD1**

March 17, 2008

The current Sixth Edition of the AMA Guides notes medical stability is a synonym for maximum medical improvement (MMI). This is defined as the point at which a condition has stabilized and is unlikely to change (improve or worsen) substantially in the next year with or without treatment. While symptoms or signs of the condition may wax and wane over time, further overall recovery or deterioration is not anticipated.

The implication in the definition offered in the Bill that continued medical care will only prevent deterioration is not consistent with the definition in the AMA Guides.

For all of these reasons, this Bill will have an adverse effect on the treatment of injured workers and should not be passed.

**testimony**

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**From:** Joan Koff [joankoff@yahoo.com]  
**Sent:** Tuesday, March 18, 2008 8:02 AM  
**To:** testimony  
**Subject:** Re: HB 2929

Honorable representatives:

I have worked as a licensed psychologist for over 30 years and have treated injured workers for more than 20 years. I am currently retired. I have direct experience with independent medical evaluations' effects on injured workers. Although designed as a no-fault type system, the IME mechanisms so far in place have had often disastrous effects on clients. Further, these evaluations appear often tailored to present a point of view that is financially beneficial to the insurer.

In order to substantiate a view that a workers' case is not compensable, independent medical examiners have often gone to great lengths to describe that a workers' unhappy mental health status is related to obscure unrelated, archaic invalidated psychometrics and even undocumented events elsewhere in workers' lives and that the worker is a very flawed individual. Of course, during the years I have urged the worker who has access to these upsetting evaluations to be present with me as they read over this information and I have endeavored to try to explain the IME findings in such a way as to minimize their negative impact on the worker. However, this is not always completely successful: one worker required psychiatric hospitalization; another worker began to threaten the independent medical evaluator and disclosure needed to be made to the independent medical evaluator. Other workers' responses, though not as dramatic, involved substantive increases in depressive and anxiety symptoms. Thus, the IME's themselves became a significant source of stress that required substantial mental health treatment--increasing the frequency of therapeutic contact, readjusting levels of psychotropic medication, extending off duty time, etc.

In my opinion, HB 2929 would be part of an effective solution inasmuch as both the worker and the carrier have agreed to allow a chosen evaluator to listen to all sides of an issue and render an unbiased opinion regarding causality, treatment and possibly permanent partial disability. This will hopefully stop the current practice of carriers' hiring so called "hired guns" who attempt to minimize and/or shift the burden for injury to other non-compensable causes at the expense of the worker, with little consideration for the feelings of the worker. Furthermore, this bill will hopefully send a message to those independent medical evaluators with little tact or conscience, to try to describe the patient impartially and objectively.

Yours truly,

Joan H. Koff, Ph.D.  
Licensed Psychologist  
Diplomate in Clinical Psychology, ABPP  
Senior Disability Analyst and Diplomate, ABDA

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3/18/2008

## testimony

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**From:** Douglas Thomas Moore [Moore4640@hawaiiantel.net]  
**Sent:** Monday, March 17, 2008 7:37 PM  
**To:** testimony  
**Subject:** Support for HB 2929, HD1

To: Senate Judiciary-Labor Committee  
Hon. Senator Taniguchi, Chair  
Hon. Members

HB 2929, HD1: to be heard Wednesday 3/19/2008

Dear Hon. Senators:

I support the passage of HB 2929, HD1, the mutually agreed IME bill. I am a workers' compensation claimants' attorney representing injured workers for 18 years. I support the bill because I have seen too many bad non-agreed IMEs negatively affect the rights & benefits of injured workers.

I have had and now have such negatively affected injured workers. In most cases, these bad non-agreed IMEs happened before the injured workers came to me, and was the reason they came to me for legal representation, and I had to try to fix the problems caused, including medical treatment denials and cut-off wage loss (TTD). In some cases, the Department of Labor, DCD ordered the injured workers to the bad non-agreed IMEs at the request of the employers or the insurance carriers who manipulate the system to deny benefits to injured workers.

The denials of benefits to injured workers after bad non-agreed IMEs have caused great physical, financial, psychological, and spiritual harm to these injured workers. Their medical rehabilitation and return to work as productive workers has been greatly delayed by the denials. This also hurts employers financially by not getting their injured workers back as healed and as quickly, but for the delays caused by the bad non-agreed IMEs.

The passage of the mutually agreed IME bill will benefit both the injured workers and their employers, whose partnership for success can be encouraged and protected by this legislation. Please pass this bill.

I am happy to answer any questions. Mahalo for your support.

Douglas Thomas Moore  
Attorney-at-law  
526-0056

**testimony**

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**From:** Mukaida88@aol.com  
**Sent:** Monday, March 17, 2008 7:57 PM  
**To:** testimony  
**Subject:** HB2929 HD1 Workers' Compensation and IMEs

TESTIMONY IN SUPPORT OF H.B. No. 2929, HD1  
RELATING TO WORKERS' COMPENSATION

SENATE COMMITTEE ON JUDICIARY AND LABOR

Wednesday, March 19, 2008, 10:00 a.m.  
(The Committee is requesting an original and 5 copies.)

Mr. Chairman, members of the Committee, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers. I support H.B. No.2929 HD1 relating to Workers' Compensation and so-called "Independent Medical Examinations."

**I. AGREED UPON IMEs ARE NEEDED TO HELP PREVENT UNNECESSARY DELAYS IN INITIATING PAYMENTS TO AND CARE FOR INJURED WORKERS.**

The problem which this bill would correct is an unnecessary delay in initiating payments and care for injured workers. The unnecessary delay is caused by the practices of some insurers in selecting their "favored" physicians to examine injured workers.

The workers' compensation system is supposed to be a "no-fault" system which provides immediate medical care and compensation. The workers' compensation statute provides that there is a presumption that an injury is work related and pursuant HRS 386-31 (b), an injured worker is supposed to start receiving his benefit payment by the 10th day after the employer is notified of the employee's disability. An injured worker is also supposed to receive prompt medical care.

Unfortunately, although there is the statutory presumption and although an injury may have been witnessed, and although an employer does not contest the injury, the start of payments and care is very often delayed by several months. The longer it takes to receive medical care, the longer it takes for an injured workers to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments.

Often, the cause of the delay is the employer/carrier's choice of their favored physician who, very predictably, will argue that there was no injury, that any medical condition was pre-existing, or that if there was an injury, it was a very temporary condition which has since resolved. The use of agreed upon physicians will serve to reduce the abuse of the system by employers/carriers.

The use of agreed upon physicians has proven to be feasible. After the condition of an injured worker has stabilized, the worker is sent to a physician for a "rating" examination to measure the extent of the permanent impairment. For years, the practice has been to require that the employer/carrier and the injured worker agree on a physician to conduct the "rating" examination, and the practice has proven to be workable. Most of the time, the agreed upon physician prepares a report which is satisfactory to all parties, simply because, more often than not, the examination is fair and correct.

The proposed bill merely incorporates the practice of using an agreed upon "rating" physician, to also be used when an employer/carrier desires the opinion of a non-treating physician. The use of an agreed upon physician will greatly expedite cases and result in fairer treatment of injured workers.

## II. CARRIERS ARE ABUSING THE SYSTEM AND DENYING PROMPT COMPENSATION TO INJURED WORKERS.

The use of agreed upon physicians is necessary because employer/carriers are abusing the system by choosing their "favored" physicians who produce reports which predictably favor the employer/carrier.

The workers compensation statute provides in HRS 386-31 (b) that an injured worker is supposed to start receiving his benefit payment by the 10th day after the employer is notified of the employee's disability. An injured worker is also supposed to receive prompt medical care. Unfortunately, the start of payments is very often delayed by several months. The longer it takes to receive medical care, the longer it takes for an injured workers to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments.

One major cause of delay in treatment is the use of "employer medical examinations." The enactment of this bill would reduce delays in treatment, and reduce total indemnity payments and benefit both employers and employees. (In this testimony, the term "employer" refers to workers' compensation carriers and adjusters.)

## III. "EMPLOYER MEDICAL EXAMINATIONS" RESULT IN LONGER PERIODS OF DISABILITY AND HIGHER INDEMNITY PAYMENTS.

One factor which prevents timely receipt of medical care is the use of "employer medical examinations." The phrase "Independent Medical Examination" (IME) should not be used in this context because it is a misnomer. Examinations by physicians chosen by an employer are too frequently not "independent", nor "medical". If employer medical examinations were truly "independent" examinations, and had the goal of restoring an employee's health and getting an employee back to work, then there would be no problem.

Unfortunately, too often the goal of an employer directed medical examination is not altruistic. The goal is often to enable an employer to escape liability or to delay benefits, although an employee has been injured on the job and is entitled to treatment. An employer can attempt to escape liability if the employer can obtain a physician's opinion in its favor.

If an employer delays long enough, the injured employee may give up and seek care outside of workers' compensation. If a case does reach a hearing, the fallacies in the report of the employer's physician can be pointed out, and the result is that the Department of Labor subsequently confirms that there was a work injury or that a certain medical procedure is appropriate. Unfortunately, that result too frequently can take over 1/2 year to obtain during which time the injured employee may be without income and without medical treatment..

### A. "EMPLOYER MEDICAL EXAMINATIONS" AT THE BEGINNING OF A CASE ARE OFTEN DEVASTATING TO INJURED WORKERS.

The use of "employer medical examinations" results in delays which often have devastating consequences to injured workers.

After an injury is reported by a worker, the workers' compensation statute allows an employer to contest the claim. The employer can contest the claim even though the injury was witnessed and is obvious.

§12-10-73 of the Administrative Rules requires the employer to support a denial with a "report" within 30 days of the denial, however, the Rule also provides that the employer can request extensions of time. Since the calendar of the employer's physician is often full, the physician frequently cannot see the worker until months after the injury, and therefore the employer requests extensions for months after the injury.

There are also administrative delays. The Department of Labor can take months to schedule a hearing. A notice of hearing is not issued until one month prior to a hearing. A decision on a hearing is frequently not issued until 60 days after the hearing (60 days is the maximum period allowed under §386-86). Even if a hearing was scheduled today, there would be no Department of Labor decision until 90 days from today.

Therefore, it would not be uncommon for an injured worker to have to wait for more than a half year before a determination is made that a work injury was suffered. All this time, the worker might be without medical care

and without income. He might be without a personal health plan because he is a new employee or is a part-time employee. His personal health plan might deny coverage because the employee is claiming a work injury. His personal health plan coverage will end after 3 months because the employer can stop paying for the worker's health insurance and the employee will not be able to afford to pay COBRA premiums for his coverage. He might be not be eligible for TDI coverage, nor have any available sick leave.

All too often, the devastating results are that the injured worker and his family lose their health coverage and are evicted from their residence because of delays caused by the employer seeking the report by one of its physicians.

#### B. "EMPLOYER MEDICAL EXAMINATIONS" IN THE MIDDLE OF CASES ARE ALSO DEVASTATING

"Employer medical examinations" can also have a devastating impact in the middle of a case. Such examinations are often scheduled to contest the need for surgery. The resulting delays are the same as stated above. The injured worker has to endure the pain and suffering during the extensive period of delay. The delay also results in higher indemnity payments.

#### IV. THERE ARE POWERFUL FINANCIAL INCENTIVES FOR AN EMPLOYER'S PHYSICIAN TO PROVIDE OPINIONS IN EMPLOYER'S FAVOR.

The financial rewards to an employer's physician who consistently provides opinions in favor of an employer can be substantial. The fees which a worker's doctor can charge are limited by the Workers' Compensation Medical Fee Schedule. However, the Department of Labor has applied that Fee Schedule only to cases in which the Department of Labor has ordered a worker to attend an examination. Therefore, there is no limit to the fees which can be charged by employer's physicians for examinations which have not been ordered.

Information regarding the amount of money earned by a particular employer's physician from a particular insurance company is not readily available. It would seem to be an easy matter to have a subpoena issued for a federal income tax Form 1099 issued by an insurance carrier, however, the Department of Labor has refused to issue such subpoenas requested by injured workers.

In any event, employer's physicians are apparently paid more than \$2,000.00 per examination. Three examinations per week yields \$6,000.00. 50 weeks a year yields an income of \$300,000.00. Employer's physicians can do more than 3 examinations per week. There is at least one employer physician who has earned more than \$1 million dollars from one workers' compensation insurer.

The financial incentives for an employer's physician to provide reports favoring employers are very powerful and are reflected in reports from certain employers' physicians who consistently issue opinions in employers' favor. Current law unjustly allows employer's physicians generate reports with impunity and without liability.

#### V. AN EMPLOYER'S PHYSICIAN SHOULD NOT BE ALLOWED TO RENDER AN OPINION WITH IMPUNITY.

A basic general rule in society is that a person should be responsible for his actions. There is no sound reason to allow employer's physicians to deviate from this general rule.

Presently, an employer can readily obtain a physician's opinion to fit its needs because the employer's physician can presently state any opinion with impunity. The employer's physician is free to opine, regardless of the facts, that the injury:

- (1) did not occur,
- (2) should have already healed,
- (3) was a temporary aggravation of a pre-existing condition, and has healed,
- (4) was entirely pre-existing, or
- (5) was due to non-work related conditions.

The employer then uses that opinion to deny coverage or to deny treatment. The employer's physician is also free to opine on what care is appropriate or whether a worker's condition is stable. There is no requirement for the employer's physician to explain why a worker could do his job for years, but is not able to do his job after the injury.

It is the freedom from liability that allows the employer's physician to give employer's the opinions they want without responsibility for the devastating consequences to the injured worker. The employer's physician also is empowered because of a Hawaii U.S. District Court decision which held that the employer's physician had not duty to the injured worker.

Although the employer's physician knows that his opinion will directly affect the worker, the employer's physician does not feel any obligation to the worker. The reason that an employer's physician is free to opine is that he claims that he has no doctor-patient relationship with the worker. The employer's physician knows that the impact of his opinion can be devastating to the worker, however, he claims that he is under no duty to the worker, and therefore is not liable for any consequences.

Although there is no liability for IME reports, there are physicians who are known to generate fair reports. The requirement that a physician be agreed upon would reduce the number of time that employers are able to abuse the system by relying on their favored physicians who generate reports to fit employers' needs, as opposed to providing fair evaluations.

A requirement that examinations by employer's physicians be within a doctor-patient relationship would go very far in reducing IME abuses and would go hand in hand with agreed upon IMEs in reducing the abuses by employers.

#### IV. CONCLUSION.

There are physicians who conduct employer's examinations who properly consider the facts and who provide opinions which are medically sound. Attorneys representing injured workers will readily agree to have their clients examined by such physicians. Responsible insurance carriers will utilize the services of such physicians because those carriers know that proper medical treatment with a correct diagnosis will result in getting the injured worker back to work sooner, which is the correct and fair result.

The problem with employers' examinations lies with certain physicians and insurance carriers who are willing to use improper opinions to unfairly deny benefits to injured workers. The inherent disparity of the financial resources of insurance carriers versus an injured worker, who is frequently without income, makes the playing field inherently uneven in favor of the carrier. The workers' compensation system certainly does not need the unrestrained opinions of employers' physicians to allow carriers to deny benefits to injured workers.

Thank you for considering my testimony.

WAYNE H. MUKAIDA  
Attorney at Law  
Bank Tower, Ste. 1028  
1001 Bishop Street  
Honolulu, HI 96813  
Telephone: 531-8899

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**testimony**

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**From:** Nena Fahigal [cutiney2152@yahoo.com]  
**Sent:** Tuesday, March 18, 2008 8:58 AM  
**To:** testimony  
**Subject:** Support passage of HB 2929,HD1

To: Senate Judiciary-Labor Commission  
Honorable Senator Taniguchi,Chair  
Honorable members

I am an injured worker. I support the passage of HB 2929, HD1.

At work, while joining a Christmas party in 2005, I was sexually harassed by a co-worker in front of a big group. I filed a worker's compensation and discrimination claim. Up until now, the worker's compensation carrier continues to deny my medical bills and refuse to pay my wage loss. Financially undergoing hardship for my son's college and house mortgage, I was forced to request return to work doctor's slip but my employer barred me from entering my workplace for no logical reason. This caused me and my family tremendous hardship, mentally, physically and financially.

The Workers Comp. carrier sent me to two employer choice IME doctors that I did not agree to. Now, my employer is sending me for his third choice IME doctor. How many more employer-sponsored IME doctors will I see? These cause me more problems.

I was forced to hire legal counsel. This is not right and it is very unfair.

Please change the law so that injured workers are not forced to go to bad IMEs. Please pass HB 2929, HD1.

Nena Pattugalan  
677-3418  
03/18/08

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**testimony**

---

**From:** Heather Sikas [oahuheather@yahoo.com]  
**Sent:** Monday, March 17, 2008 4:45 PM  
**To:** testimony  
**Subject:** H.B. 2929, HD1 Testimony

To All Whom Are Voting on the Bill:

I was injured on the job in Dec. 2005, and have been in the process of rehabilitating from injuries that I sustained as a result of that injury for the past 2 years. During that time, I have attended two IME's set up by the workers compensation insurance company. The first, with an orthopedic surgeon of their choosing, went well and as I would have hoped to help me. The second, with a psychiatrist (to determine level of depression) of their choosing, could have gone much better. His tests and very brief interview indicated a minor depression. In truth, I was moderately depressed which he may have found out had he talked with me a bit more. He felt I only needed to be seen by a psychologist monthly for four months. In truth, I needed to see one weekly, for a much longer period to prepare me to access the workforce better. I ended up with post traumatic stress symptoms that made it impossible for me to work then. It took me a number of months more to get the w/c insurance compay to accept that need and approve those visits.

I feel that if I'd been able to have some say in who I had that IME with, it might have reduced the significant stress I was under during those months. That might also have improved my ability to return to the workforce sooner.

Sincerely,  
Heather Sikas

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Good Day, my name is Frances Soares,

I

am here to give testimony on this Bill 2929, voice for those affected by work comp procedures and what it means not only to me but to those after me. We need this bill so we can not only reduce worker's compensation cost and finding an effective means of getting the injured worker back on his feet and back working immediately after treatment during the recovery period.

But more

important, I would want to have a doctor I can trust and have confidence in that he will make a fair assessment of my injuries honestly and without doubt. I can rest comfortably knowing that the doctor I am seeing will contribute to my recovery period by giving me and my company I work for, an accurate rating, an estimate of down time or recuperation, an effective treatment and rehabilitation period without the biased and untrue account of my injury and pain by a doctor who is paid for services rendered by some Employers/Insurance Carrier entity.

I not only

suffered the pain of my injuries but the pain and stress that left me emotionally disturbed which further hampered my healing and recovery period especially when red-lined or red-tagged that would prevent me from obtaining even further treatment by other doctors put out by my employer's lawyer. It's another dilemma that I have to go through. I as an injured worker felt I had no right at that point. I was unfairly judged, condemned and executed all at the same time. It was a unjust feeling to have to go through. I am disturbed by the inaccurate medical report that paints me as a liar, a fake, and a cheat. It's hard to keep the faith in some of these doctors who misrepresent my condition, pain, injury and my recovery. What am I suppose to do at this point? Who do I see for a fair and just representation of my work comp injury case?

I

believe that because of these types of doctors, insurance carriers, it has delayed my case with the Department of Labor for a very long time-it has not been resolved or closed yet. I just turned 51 when I fell from an office roof built within this ware house in Campbell Industrial Park, fell off the

ladder, hit my head, hurt my back, shoulders, twisted my right leg while trying to install phone service for this vintage car business back in June of 2003. I have retired now at age 55 back in Sept of 2006. I am 56 going on 57 and now the next step is 6' in the ground and nothing has been resolved yet. I only hope that my work comp case is resolved soon and hopefully, this pending HB2929 bill gets passed and will help all those concerned and involved not only for today but hereafter. I

am sure that it will reduce worker's compensation costs and definitely speed up the work injury claim process. I hope that by reducing this costs, it will eliminate present fights as well as embarrassing moments over the validity of medical reports issued by these doctors closely connected to these insurance carriers that elected them. We

need cooperation from all parties involved, we need to trust and rely on one another's medical reports and claims and know that it's in the best interest of the patient, injured worker, employer, insurance carriers as well as the legal departments involved. No

more delays, we need to cut work comp costs for Hawaii, its business community, and all those who play a big part in the work force day in and day out, everyday of their work lives. I know and feel we can do this and do it now. Thank You for letting me testify on behalf of this bill HB2929.

**testimony**

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**From:** Douglas Thomas Moore [Moore4640@hawaiiantel.net]  
**Sent:** Monday, March 17, 2008 10:12 AM  
**To:** testimony  
**Subject:** Support passage of HB 2929, HD1

To: The Senate Judiciary-Labor Comm.  
Hon. Senator Taniguchi, Chair  
Hon. Members

I am an injured worker. I support the passage of HB 2929, HD1, the mutually agreed IME bill.

I injured my low back while working as a flight attendant in 2006. I filed a workers' comp claim. The insurance denied my benefits including needed medical treatment and wage loss (TTD). This caused me great hardship, both physically and financially.

The insurance company forced me to go to an IME that I did not agree to. The Dept. of Labor ordered me to go to the IME after the insurance company requested an order.

The opinions of the IME doctor I did not agree to have been used against me and have caused me further problems like trying to get needed and requested medical care and like trying to get my voc rehab benefits. This has forced me to hire legal counsel and have to go to DCD hearing to get my benefits. This is very unfair and it is not right.

Please change the law so that injured workers are not forced to go to bad non-agreed IMEs. Please require IMEs to be by mutual consent. Please pass HB 2929, HD1.

Harmony Valoroso  
526-0056  
3/17/08

## testimony

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**From:** tahitianbreeze@hawaii.rr.com  
**Sent:** Tuesday, March 18, 2008 10:12 AM  
**To:** testimony  
**Cc:** Moore4640@hawaiiantel.net  
**Subject:** Support passage of HB 2929, HD1

**Importance:** High

To: The Senate Judiciary-Labor Comm.  
Hon. Senator Taniguchi, Chair  
Hon. Members

I am an injured worker. I support the passage of HB 2929, HD1, the mutually agreed IME bill.

I injured my low back while working as a flight attendant in 2006. I filed a workers' comp claim. The insurance denied my benefits including needed medical treatment and wage loss (TTD). This caused me great hardship, both physically and financially.

The insurance company forced me to go to an IME that I did not agree to. The Dept. of Labor ordered me to go to the IME after the insurance company requested an order.

The opinions of the IME doctor I did not agree to have been used against me and have caused me further problems like trying to get needed and requested medical care and like trying to get my voc rehab benefits. This has forced me to hire legal counsel and have to go to DCD hearing to get my benefits. This is very unfair and it is not right.

Please change the law so that injured workers are not forced to go to bad non-agreed IMEs. Please require IMEs to be by mutual consent. Please pass HB 2929, HD1.

Cynthia Ward  
384-1505  
3 /18 /08

## Testimony in support of House Bill 2929

Everyone says that it takes injured workers too long to get back to work following an injury. Extended **stop loss time increases work comp. costs** in Hawaii. HB is the solution to this problem.

1. **HB 2929** will **reduce workers' compensation costs** and speed up injured workers' return to the job site.
2. HB 2929 will **require "mutual cooperation"** in selecting outside (non-treating) doctors when Employers/Insurance Carriers want medical opinions from these non-treating doctors.
3. HB 2929 will **speed up the delivery of needed medical services** and that will **allow injured workers to return to work faster.**

### Why should HB 2929 be passed into law?

1. It will **reduce workers compensation costs** by speeding up the work injury claim process.
2. It will reduce workers compensation costs by **eliminating present day fights over the validity of medical reports** generated by doctors closely connected to the very insurance carrier that selected them.
3. The **"mandated cooperation"** requirement in HB 2929 has previously been successfully used with auto-insurance claims and is successfully being used with final impairment reports. **Mandated cooperation has a proven track record of being successful in Hawaii.**
4. In addition to cutting work comp. costs for Hawaii's business community the passage of **HB 2929 will establish Hawaii as a national leader in promoting "mandated cooperation" in workers' compensation claim.**

Joseph F. Zuiker  
Work Comp. Attorney  
1188 Bishop St., Ste. 1102  
Honolulu, Hawaii 96813

808 523 1142    Zuikerlw@pixi.com

**LATE**

**Joeseph Zuiker**

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**From:** <tj@hawaii-attorney.com>  
**To:** "Joeseph Zuiker" <zuikerlw@pixi.com>  
**Sent:** Friday, March 14, 2008 2:46 PM  
**Subject:** FW:

=====

**HB 2929 - MANDATED COOPERATION CERTIFICATE**

I support HB 2929 "Mandated Cooperation" in selecting non-treating medical examiners. I am personally familiar with the fact that Mandated Cooperation has worked in Hawaii in promptly selecting medical impairment doctors. The following information pertains to my use of "mandatory cooperation" examinations for final impairment ratings:

1. Name of law firm: LAW OFFICES OF T.J. LANE,

-

2. Number of years of practice as a Workers Compensation attorney in Hawaii: 22

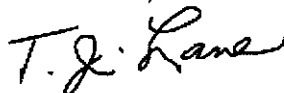
-

3. Estimated number of workers compensation claims handled by attorney: 2500,

-

4. Number of times that it was necessary to seek an order from the Department of Labor assigning a final impairment examiner for the above referenced claims due to inability to reach agreement with employer/carrier as to a mutually acceptable final rating examiner: 25

March 14, 2008

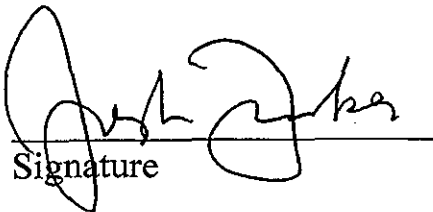




**HB 2929 - MANDATED COOPERATION CERTIFICATE**

I support HB 2929 "Mandated Cooperation" in selecting non-treating medical examiners. I am personally familiar with the fact that Mandated Cooperation has worked in Hawaii in promptly selecting medical impairment doctors. The following information pertains to my use of "mandatory cooperation" examinations for final impairment ratings:

1. Name of law firm: Zulker Law Office  
1188 Bishop Street  
Suite 1102  
Honolulu, HI 96813
  
2. Number of years of practice as a Workers Compensation attorney in Hawaii: 15 Years
  
3. Estimated number of workers compensation claims handled by attorney: 3000
  
4. Number of times that it was necessary to seek an order from the Department of Labor assigning a final impairment examiner for the above referenced claims due to inability to reach agreement with employer/carrier as to a mutually acceptable final rating examiner:  
NEVER


  
Signature

3-14-08  
Date

**HB 2929 - MANDATED COOPERATION CERTIFICATE**

I support HB 2929 "Mandated Cooperation" in selecting non-treating medical examiners. I am personally familiar with the fact that Mandated Cooperation has worked in Hawaii in promptly selecting medical impairment doctors. The following information pertains to my use of "mandatory cooperation" examinations for final impairment ratings:

- 1. Name of law firm: DAVID ROBINSON  
ROBINSON & CHUR
- 2. Number of years of practice as a Workers Compensation attorney in Hawaii: 32
- 3. Estimated number of workers compensation claims handled by attorney: thousands
- 4. Number of times that it was necessary to seek an order from the Department of Labor assigning a final impairment examiner for the above referenced claims due to inability to reach agreement with employer/carrier as to a mutually acceptable final rating examiner: Less than 12.

  
Signature

3/17/08  
Date



**The Chamber of  
Commerce of Hawaii**  
Since 1850

**LATE**

**Testimony to the Senate Committee on Judiciary and Labor  
Wednesday, March 19, 2008; 10:00 a.m.  
Conference Room 016**

**RE: HOUSE BILL NO. 2929, HD1 RELATING TO WORKERS' COMPENSATION**

Chair Taniguchi, Vice Chair Hee 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 2929 HD1, 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. As the "Voice of Business" in Hawaii, 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 independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians. Effective 07/01/2009.

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.

Page 2

The Chamber of Commerce of Hawaii Testimony on HB 2929 HD1

- 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.

In summary, we believe the current system regarding independent medical examinations is working and that most IMEs occur by mutual agreement absent any statute. Only a very small percentage of workers' compensation claims require an ordered IME.

For these reasons, the Chamber does not support HB 2929 HD1 and respectfully requests that the committee holds this measure.

Thank you very much for the opportunity to testify.



Pauahi Tower, Suite 2010  
1003 Bishop Street  
Honolulu, Hawaii 96813  
Telephone (808) 525-5877  
Facsimile (808) 525-5879

**Alison Powers**  
Executive Director

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## TESTIMONY OF ALISON POWERS

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SENATE COMMITTEE ON JUDICIARY AND LABOR  
Senator Brian T. Taniguchi, Chair  
Senator Clayton Hee, Vice Chair

Wednesday, March 19, 2008  
10:00 a.m.

### **HB 2929, HD1**

Chair Taniguchi, Vice Chair Hee, and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 2929, HD1 which amends Section 386-79, Medical Examination by Employer's Physician.

The current system regarding Independent Medical Examinations (IMEs) has been in place for some time and we believe it is working. It appears that this legislation is prompted by claims that IME physicians are biased toward the employer. We do not believe this is true. Employers seek access to clinical expertise to help return the injured worker to the job. Currently, there are numerous safeguards in place to ensure the IME is objective and unbiased. Injured workers are able to obtain opinions or comments from their treating physician or other doctors regarding the IME opinion if they disagree. Injured workers are also able to obtain their own rating and if the hearings officer relies on it, the employer has to pay for it. Finally, there is an appeals process that provides further due process to both sides if an agreement cannot be reached.

According to the Department of Labor and Industrial Relations, ordered IMEs number about 1,000 per year. In 2005, there were 52,000 new and pending workers' compensation claims, and therefore, only 2% of all cases require an ordered IME. We believe this legislation is unnecessary because most IMEs occur by mutual agreement, absent any statute. The current system provides an approach for the employer and injured worker to resolve medical treatment disputes in an efficient manner. The proposal to mandate mutual agreement will increase workers' compensation costs and delay the delivery of medical treatment in certain cases. This is detrimental to the injured worker and does not benefit the employer.

The provision to require impairment IMEs to be separate from treatment IMEs merely presents an inconvenience to the injured worker. A comprehensive examination often takes several hours and this requirement will add costs to the system by requiring two separate examinations that could be addressed in one visit. Currently, some IMEs are performed to address appropriate treatment utilization and measurement of the degree of physical impairment. In many cases, it is important to obtain a *baseline* impairment rating to later determine the effectiveness of treatment. This also benefits the injured worker by having one physician look at the case in a comprehensive manner. It is also more cost effective if treatment and impairment are addressed by a single IME instead of requiring two. The suggestion that two separate examinations benefits the injured worker is not substantiated by evidence and will only add costs and delay the delivery of benefits.

The bill also limits IMEs to one per case. There is no measurable benefit to the injured worker by limiting IMEs to one per case. In fact, such a restriction may harm the injured worker. Two IMEs may be necessary in some cases since the first is initially done to establish a baseline and another IME is needed to determine whether there has been improvement, explain a change in the condition, or impairment. A subsequent IME may also be necessary if the injured worker develops new symptoms or conditions secondary to the work injury. The bill also does not allow for any exceptions for an ordered IME for impairment ratings. In the event that an injured worker is ordered to

attend an impairment examination and the physician determines that the injured worker is not at maximum medical improvement, or is a no-show for the appointment, the injured worker is precluded from obtaining a subsequent impairment rating. Neither an employer nor an injured worker should be restricted in securing an IME.

Finally, the bill requires IME physicians to meet certain criteria. Mandating that IME physicians meet certain requirements may not increase the standard of care for the injured worker and will reduce the number of physicians willing to participate in workers' compensation cases. Currently, there are a limited number of physicians who perform IMEs and when categorized by specialty, the list of available physicians is even smaller. It is in both the employer's and injured worker's best interest to have as many IME physicians available as possible to get the most objective opinion in the most efficient way. Many specialty IME physicians like toxicologists, neuropsychologists and infectious disease specialists who practice on the mainland are used because there are few or no qualified physicians here that can perform the examinations. Hawaii is a small and isolated state in which specialized physicians are not able to acquire practical experience due to exposure to limited and isolated cases. Insurers rely upon regional clinics and medical centers that specialize in particular medical disorders. The provision which would require that the IME physician be licensed to practice in Hawaii for five consecutive years unless the employee is living elsewhere and attempts to limit the reimbursement rate for conducting an exam is unworkable and will only shrink the limited pool of available physicians even further. This mandate will limit local physicians' ability to draw upon the clinical expertise of their mainland counterparts and inevitably create a delay in obtaining timely appointments and reports.

For these reasons, we respectfully request that HB 2929, HD1 be held.

Thank you for the opportunity to testify.

**LATE**

TESTIMONY BEFORE THE SENATE COMMITTEE ON  
JUDICIARY AND LABOR

Wednesday, March 19, 2008  
10:00 a.m.

HB 2929, HD1  
RELATING TO WORKERS' COMPENSATION

By Marleen Silva  
Director, Workers' Compensation  
Hawaiian Electric Company, Inc.

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 2929, HD1.** Our companies represent over 2,000 employees.

This bill requires that independent medical examinations (IME's) and permanent impairment rating examinations, be performed by physicians mutually agreed upon by the employer and the injured employee.

We cannot support a bill that takes away an employer's fundamental right to the discovery process. The current IME process is the only tool available to employers or insurance carriers, to assist them in the evaluation of an "alleged" work-related injury, or to insure the treatment proposed by the employee's attending physician is appropriate for the covered work injury. Also, the current statutes have safeguards in place to allow employees full disclosure of an employer's IME report, and the option to obtain their own IME if they disagree.

This bill also requires physicians participating on the IME list to perform the exam within thirty days of selection by the parties. In practice, it often takes at least 90 days to get an appointment from the limited pool of physicians here, and the bill makes no allowances for physician specialists who may need to be retained outside the State of Hawaii.

Regarding permanent impairment rating examinations, a majority of these are already performed by mutual agreement between the parties, without any mandate by legislation.

A majority of IME's are conducted under the current statutes without incident or dispute today. We believe this bill will increase workers' compensation costs due to more litigation and subsequent delays in the delivery of benefits to injured employees.

For these reasons, we respectfully oppose H.B. 2929, HD1.

Thank you for the opportunity to testify.



THE SENATE  
24<sup>th</sup> LEGISLATURE  
REGULAR SESSION of 2008

COMMITTEE ON JUDICIARY & LABOR  
Senator Brian Taniguchi, Chair

3/19/08  
10:00 AM – Room 016

HB 2929, HD 1  
Relating to Workers Compensation

Chair Taniguchi and members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels, to offer our opposition to this bill.

This bill will require the employer and employee to mutually agree on an Independent Medical Examination or IME.

While we understand the need to get the best treatment for an employee, we don't understand why this process needs to be required by statues, since the results will be the same as the current procedure, but will only make the process cumbersome and only will increase the cost of premiums.

Under the current set up, only a very small percentage of worker's comp claims are processed with IMEs, but when they due occur, both parties usually come to an agreement.

We urge you to hold this bill!

**LATE**

Vinh Alkire-Clemen, B.S.N., R.N., C  
95-492 Kaulia Place  
Mililani, Hawaii 96789  
(808) 623-0899 or (808) 352-7467  
[Alkireclv001@hawaii.rr.com](mailto:Alkireclv001@hawaii.rr.com)

March 19, 2008

1000 in room #016

**Attn:** Senate Committee on Judiciary and Labor

**RE:** (“HB 2929 HD1”), I strongly support HB 2929 HD1, mutually agreed upon IMEs to help the Hawaii Injured Workers.

I thank you for this opportunity to speak to the committee.

I, Vinh Alkire-Clemen, an injured worker, had worked for over 15 years as a Registered Nurse when I was severely injured twice at work. 1998, back injured and neck strain from catching a patient who was falling out of bed and a 1999, severe neck injury and aggravated my back injury resulted from an attack by male Nurse's Aide.

Under the old and destructions policy, the Injured Workers have no say regarding IME, the Employers/Insurance Carriers selectively choose IMEs that generated copious amount of medical reports about work-related injured workers. These IMEs will say that either nothing wrong with the workers the injury was from a preexisted condition that is unrelated to their employment. Further, this old policy only benefits the Employer/Adjuster. They force Injured Workers to see a stranger who is a non-treating and bias doctor.

Some IMEs believe they have exaggerated power over the injury worker. In my case, one IME expected me to be totally nude and in order to assess curvature of my back. The implication was cooperate or your injury could be minimized. I kept on my gown but it had an open back. Because he did not respect my right of privacy, I resisted following his command. He went so far as to inappropriately pushing my head forward to expose my whole back side for

The goal of these high paid IMEs is to ignore the diagnosis from doctors and specialists M.Ds. who have treated these injured workers for months and years. They substituted their single 15minutes examination to generate a 50-70 pages document that support their position that little or no injury exist. Positive results on

MRIs, BS, and EMGs are often ignored or minimized. This document is use by Employer/Adjuster to denied benefits.

In my case, in-spite of these malfeasances' IMEs reports, since 2002, until August 28, 2007 and October 19, 2007, I finally, received wise and favorable Decisions on my hearing. However, the long wait for these decisions proved that these IMEs have no ground in their examinations. However, to wait for this decision to be made, result in injured workers suffering from lack of medical Care and benefits being put on hold. Their medical condition often deteriorates from subsequently injuries, such as in my case. Now I am still waiting for Employer/Adjuster to honor DILR's and LIRAB's Decisions to resume my medical care, TTD, & Vocational Rehabilitation, they are still using these IMEs reports in the Intermediate Court of Appeals (ICA).

**My goals today are:**

**First**, to share with you that under current IME's policy Hawaii Injured Workers are not getting the care and treatment that they deserve.

**Second**, to plead with the house of Senate to support the **HB 2929**:

HB 2929 will require Employers/Insurance Carriers and Injured Workers to cooperate in selecting outside (non-treating) doctors when Employers/Insurance Carriers want medical opinions from these non-treating doctors. Under HB 2929 injured workers will be sent to non-treating doctors that are selected mutually (jointly) by the Employers/Insurance Carriers and Injured Workers.

**I strongly support HB 2929HD1 and I am asking all of your representatives ensure us to help us by passing this bill.**

Thank you for this opportunity to speak to the committee via testimony.

Sincerely,

Vinh Alkire-Clemen

Vinh Alkire-Clemen, B.S.N., R.N., C  
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(808) 623-0899, (808) 352-7467  
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**testimony**

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**From:** hawaii dot [hi.dot@usa.net]  
**Sent:** Tuesday, March 18, 2008 8:48 PM  
**To:** testimony  
**Subject:** Support for HB 2929, HD1

To: Senate Judiciary-Labor Committee  
Hon. Senator Taniguchi, Chair  
Hon. Members

HB 2929, HD1: to be heard Wednesday 3/19/2008

Dear Hon. Senators:

I support the passage of HB 2929, HD1, the mutually agreed IME bill. I am a workers' compensation claimant who was injured at Costco 5 years ago. I support the bill because I was sent to an independent chiropractic examination for a closed head injury. I should have been sent to a neurologist.

I have been denied treatment as a result of this poor assessment of my injury. This required me to get an attorney. All of this has caused me emotional hardship and financial distress. Why am I paying for medical treatment out of my pocket for an injury I got at work?

Please help injured workers in the State of Hawaii get a proper medical examination with a mutually agreed upon physician. We want to get well and need to get back to work to support our families and be happy, productive people. Please pass this bill!

Mahalo for your support.

Dorothy Browne  
76-6243 Kupuna Street  
Kailua-Kona, HI 96740  
(808) 989-3903

March 18, 2008

SENATE 24<sup>TH</sup> LEGISLATURE  
JUDICIARY/LABOR COMMITTEE  
SENATOR CHAIR, BRIAN TANIGUCHI & COMMITTEE MEMBERS

TESTIMONY IN SUPPORT OF HB 2929 HD1

My name is Debra Kawamoto and I am offering my personal testimony, to hopefully influence the positive support and passing of House Bill 2929.

At the time of my injury, I was a full time licensed massage therapist working at a local day spa. While at work, I developed a deep sharp pain in both of my hands & wrists that I had never experienced before. Consequently, I went to see my primary doctor, who then referred me to a specialist – a Physiatrist – to better assess my condition. I was given a diagnostic nerve test that showed decreased nerve activity and I was diagnosed with carpal tunnel syndrome in both hands and cubital tunnel syndrome in my left arm. Since I felt that the injury and pain occurred while at work, I filed a worker's compensation claim accordingly. I felt that this was not only the proper and correct thing to do, but the only thing to do to protect myself. This claim was submitted in August 2006. However, in September, much to my surprise, I received a notice from the insurance company that my claim had been denied pending further investigation. In October, I was notified by the insurance company that as part of the investigation, I needed to see their appointed IME. However, my appointment would not be until 11/14<sup>th</sup> – still a month in a half away.

On 11/14<sup>th</sup> the IME conducted his physical examination and oral interview with me. I found it interesting that he mentioned that I was the 5<sup>th</sup> massage therapist he had seen that month for similar problems or complaints. Upon completion of the examination, he said he would submit his report and findings to the insurance company and that things seemed pretty clear cut.

Since I knew the acceptance of my claim, was contingent upon the investigation and findings of the IME, I was anxiously waiting for a copy of his report. I contacted the IME's office in December, January and early February, but was told each time that it was still not ready.

My hearing with the Department of Labor was scheduled for March 6, 2007. It was at this hearing that I received my first copy of the IME's report. The report was dated February 19, 2007. Due to the fact that I had not had a chance to thoroughly review the report and discuss the evaluation with my own physician, we had to take even longer, at least another month, to clarify and discuss the

differences between the opinions of the two doctors. Despite the added delay, in my case, I feel I was fortunate that on the main issues, the doctors were in agreement. I'm not so sure that other claimants are as lucky.

During this entire worker's compensation ordeal and in relation to this testimony for HB 2929, some of the things I had to question were:

1. After being evaluated by the Psychiatrist and given diagnostic tests, why did it take 2 ½ months before I could be evaluated by the IME whose report is vital to the investigation.
2. Why was I not given a choice of IME's to go to or at least have an appointment with one who might have been able to see me sooner?
3. Why did it take the IME another 3 months to complete my report? In addition, I wondered how he could have accurately remembered all the details of my evaluation, after such a long lapse in time and not to mention the added fact that he was evaluating 4 other massage therapists with similar complaints during the same month.
4. How much longer would my case have been delayed, if the doctors disagreed in all the main areas?

The entire wait time from the point my claim was submitted until the IME report was completed and a decision by the Dept of Labor, where my injury was found compensable, took over 6 months. It also took an additional year, before I received any disability payments from the insurance company. Thankfully, if it were not for the support of my mother and family, I believe I would have ended up possibly bankrupt and/or homeless.

Ultimately, because of my own experience, I support House Bill 2929, because there is no adequate way to describe the varying emotions, frustrations and stress the claimant goes through during the process of delays, not to mention the added fact that they are already in pain and injured. Therefore, I believe, if this bill is passed and it helps even one person go through this system with a fairer evaluation, without unnecessary delays and they can return to work sooner, than it is definitely worth passing. We need to remember that the claimant is a living person, with responsibilities and needs to return to work and support himself as soon as possible – he/she is not just a file folder left to be neglected or lost on someone's desk.

I urge you to consider passing this bill. Thank you.

Debra A. Kawamoto 2011-B Lanihuli Drive Honolulu, HI 96822 808-941-2854



**LATE**

## TESTIMONY

To: Senate Judiciary and Labor Committee  
Senator Brian Tanaguchi-Chair

From: Scott McCaffrey, MD

Regarding: HB 2929

Dear Chair and Committee Members:

I personally speak for some of Oahu's leading clinicians and programs and have personally overseen the care of over 10,000 injured workers over the last two decades.

I and the providers I represent strongly urge you to pass the measure before you in the name of case efficiency and patient sufferage. For the first time in recent history an opportunity exists to add balance to one of Hawaii's most important "safety nets"—the Workers Compensation System. Seemingly reasonable in concept, the IME process has unfortunately devolved to a level of patient abuse that is simply intolerable by civilized standards especially for a land and people known for the Aloha Spirit.

It is estimated that over half the legitimate claimants subject to insurer chosen evaluators produce medical recommendations disagreeable and/or threatening to the patient. This adds not only additional psychological stress to the aggrieved, but also prolongs the patient's recovery period thru denial of patient desired efforts made on his/her behalf by the patient's own trusted physician. After enduring a carrier chosen, carrier biased exam patients have no choice but to seek attorney representation which adds to system litigation.

By mandating agreement in the choosing of the physician performing the first IME evaluation a "middle of the road" compromise is accomplished to the benefit of all system stakeholders. This will also save the employer/carrier by reducing loss time and litigation expense.

Mahalo for making our troubled system more patient friendly and efficient.

Scott McCaffrey, MD  
Occupational Medicine and Rehabilitation



**TESTIMONY**

TO: Senate Judiciary and Labor Committee  
Senate Brian Tanaguchi - Chair

FROM: Mark Tollisen, Injured Worker

RE: HB 2929 Senate Version

Dear Chair and Committee Members,

I am providing you my testimony in regard to Independent Medical Examiners in the Workers' Compensation system, on behalf of myself as an injured worker, as well as the many thousands of other injured workers in Hawaii.

I am writing to you regarding my medical concerns resulting from an industrial injury and the blatant disregard of my true medical condition by the "Independent" Medical Examiner, Dr. Henricksen. It is my contention that an "Independent" examination should be just that, "Independent," not slanted toward one side or the other. My specific complaint is in regard to John W. Henricksen, Jr., M.D. of 1329 Lusitana Street, Suite 301, Honolulu, HI 96813. In Dr. Henricksen's "findings/opinions" he made his judgements without seeing my actual CT and MRI scans and relied strictly on other reports.

On October 23, 2006, I was injured by a flying piece of wood that hit my head behind my left eye and in front of my left ear, across my temple down to my cheekbone. This wood came from a pallet that was being demolished by a hammer. This has caused me 500 days of consecutive daily headaches, as well as problems affecting my vision, balance, and walking.

When Dr. Henricksen saw me in May 2007, he indicated that I had just started to complain about how I was walking, when in fact, my problems in walking occurred immediately after the injury, when I had loss of power in my legs, which I reported to my treating physician.

When I was at the Emergency Room, ER did not tell me that I had a concussion or anything about my head injury. I was not told that I shouldn't drive myself nor advised to have someone else come pick me up. When I went to ER the second day, the Nurse questioned whether I had been sent to have a CT scan on the day of injury and I said that I had not been advised to do so. She said that this should have been done on the day of injury. Later, I told someone at ER that I had weakness in my legs.

Dr. Henricksen said "*the patient returned to work and worked 2 full days.*" I was not told anything about my medical condition and specifically I was not told that I had had a concussion. The doctor said I could go back to work so I did.



March 18, 2008

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Dr. Henricksen said *"the patient was able to walk. There was no indication that he had any gait abnormality. He was observed to hobble about holding his right leg in a flexed position that I do not believe had been reported by previous examiners. On having him ambulate for 60 feet in the hallway, he demonstrated a hobbling non-antalgic gait, still holding his right leg in a flexed position. He veers into the left wall and pushes himself back to the middle of the hall. He does not have a wide based gait today."*

This seems contradictory, saying on the one hand there was no indication I walked abnormally but on the other hand stating I demonstrated a hobbling non antalgic gait.

Dr. Henricksen said on Feb 5, 2007 that I reported to my Doctor #2 that I was having trouble walking due to balance problems.

I had reported balance problems and slow walking speed since Oct-Nov 2006 to my Doctor #1.

Dr. Henrickson said, *"associated with this was a mild post-concussion syndrome, which is now historical. He has no evidence of post concussion syndrome or any traumatic brain injury at this time."* Later in the same paragraph, *"the patient had normal gait and was ambulating without difficulty the day following injury. This would not have been so, if he had sustained some type of intracranial injury affecting ambulation in the event of 10/23/06. Late manifestation or progressive neurological defects are seen in cases of intracranial hematoma or edema. This was not found in the case of this patient per this patient's normal CT and MRI scans."*

Since he didn't see my MRI, how does he really know whether I had edema or any other defect.

Dr. Henricksen said: *"His bizarre markedly non-antalgic gait noted on examination today was not noted by previous examiners. It is not consistent with any intracranial or extracranial pathology and his balance and coordination are quite good with Romberg testing heel to toe and squatting and returning to upright position."*

I believe this proves that my other examiners did not pay much attention to my medical condition. Therefore, Dr. Henricksen reliance on their reports is misplaced and his conclusions are flawed.

Dr. Henricksen said, *"I note he is eager to get back to riding his Harley Davidson motorcycle and that he is advised that this would not be a good idea."* Dr. Henricksen told me personally, that if I had another head injury it would pose major effects on my lifestyle. He said that if I get hit by anything else, I would have a higher than normal chance for developing brain injury or serious problems, such as Alzheimers. He just spent 7 pages of this report that I had no injury and now this statement contradicts what he just said, indicating that a second injury would seriously disable me and I should not

RE: HB 2929 Senate Version  
Testimony from Mark Tollisen, Injured Worker

March 18, 2008

Page 3

risk anything by riding my motorcycle. I have a number of witnesses who will attest that my walking gait is different than it was before the injury.

Thank you for your consideration of my testimony.

Sincerely,

*Mark Tollisen*

Mark Tollisen  
638 N. Kuakini St.  
Honolulu, HI 96813



A I R L I N E S

**LATE**

March 18, 2008

Albert J. Pattison  
Senior Vice President  
Human Resources  
P.O. Box 30028  
Honolulu, Hawaii 96820  
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apattison@alohaairlines.com

Senator Brian Taniguchi, Chair, Senate Judiciary and Labor Committee  
Senator Clayton Hee, Vice-chair, Senate Judiciary and Labor Committee

**RE: HB2929 SB1 Relating to Workers Compensation**

Chair Taniguchi, Vice-Chair Hee and Members of the Committee:

My name is Albert J. Pattison and I am Senior Vice President, Human Resources, for Aloha Airlines. Thank you for this opportunity to testify in opposition to House Bill 2929 SD1.

Aloha Airlines employs more than 3,400 Hawaii residents, and is the 10<sup>th</sup> largest private employer in the State of Hawaii, the 7<sup>th</sup> largest on the Big Island, 11<sup>th</sup> largest on Maui and 12<sup>th</sup> largest on Kauai.

We stand in strong opposition to House Bill 2929 SD1, which would remove our right to select a physician to conduct independent medical examinations (IME). Under this legislation, the employer and employee would have to mutually agree on an IME physician but the employer would be the one paying for the exam.

As the Chamber of Commerce of Hawaii points out, only a very small percentage of workers' compensation claims are IME-related. Most IMEs occur by mutual agreement, absent any statute. Rather than help move the process along, this legislation could potentially delay the process and increase the cost of workers' compensation premiums.

Thank you for allowing us to comment on this bill. We urge you to reject it.

Albert J. Pattison  
Sr. Vice President Human Resources

