

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

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

Date: Tuesday, January 29, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2929, RELATING TO WORKERS' COMPENSATION

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

ILWU Local 142 recognizes and supports the need for objective and truly independent medical opinion in the adjudication of industrial accident claims and supports HB 2929. The concept proposed in the bill of conducting evaluations based on mutual agreement of the parties is a sound one, which promotes impartiality by the examining physician.

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

1. Line 21 of page 2 and line 22 of page 3 note that the report of a mutually selected physician "may constitute substantial evidence." We question whether inclusion of the phrase is necessary, since whether or not the report constitutes substantial evidence is ultimately a question to be determined by adjudication at the Disability Compensation Division, the Labor and Industrial Relations Appeals Board, or our appellate courts.
2. We endorse the idea that examination in question 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 when the claim is ultimately found compensable, and delays treatment from non-industrial medical care when the claim is determined not to be work-related. Shortening the time period to allow for examinations will also expand the pool of physicians who will be available to perform the examinations and that will ultimately serve the public interest.
3. HB 2929 retains the antiquated language of Section 386-79 HRS allowing the "employer's physician the right to visit the injured

employee at all reasonable times and under all reasonable conditions during disability.” This provision appears to have been included because plantation doctors from a bygone era would actually visit the company housing of employees to determine whether they were truly ill. This provision is no longer necessary or appropriate and should be deleted.

4. 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.

ILWU urges the adoption of HB 2929 and suggests that the amendments we propose also be adopted.



Hawaii State Chiropractic Association

P.O. Box 22668 Honolulu, HI 96823-2668

ph: (808) 926-8883 fx: (808) 926-8884

January 26, 2008

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

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

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

My name is Gary Saito and I am the President and Executive Director of the Hawaii State Chiropractic Association. We are in **support of the intent of HB 2929.**

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. Opposition to this bill would demonstrate that one of the parties means to prejudice the IME findings by depriving the other party an input on the selection of the examiner. Disability ratings must be done in the most impartial manner by a truly independent examiner.

However, this bill as written does not describe how physicians will be selected for the director's list or how the director will choose the physicians and whether they will be in the same medical specialty as the treating physician. The bill will require some clarification on these matters.

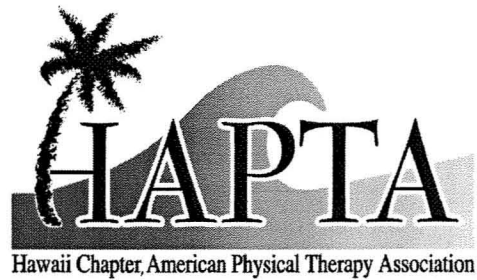
Thank you for allowing us to provide comment on this bill.

Sincerely,

Gary Saito, DC
President and ED, HSCA

**Testimony by:
Derrick Ishihara, PT**

**HB2929, Workers' Compensation
House LAB Committee
January 29, 2008 - 8:30 am
Conference Room 309**



Position: Strong Support

Chair Sonson and Members of the House LAB 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. HB 2929 allows for a process 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.

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

THE LAW OFFICES OF DOUGLAS THOMAS MOORE

Office Address:

Century Square Telephone: (808) 526-0056

1188 Bishop Street, Suite 1009 Fax: (808) 526-0057

I am a workers' compensation claimants' attorney. I am one of the drafters of HB 2929, the workers' compensation mutually agreed IME bill. Others giving input into this bill include members of the Hawai'i Injured Workers' Alliance, Consumer Lawyers of Hawai'i, and the Hawai'i Chamber of Commerce. This broad based coalition brings consensus to this bill. At a recent vote in the Chamber of Commerce workers' compensation subcommittee and the HR committee, of which I am a member, pretty much the only opponents to a mutually agreed IME bill were the insurance industry people.

This bill should be supported because:

- 1. There is a need to require mutually agreed work comp IMEs to try to ensure fairness and impartiality. Too many injured workers are being sent to or ordered by the DCD to attend medical exams by doctors who are not giving fair and impartial evaluations. This creates problems and disputes over liability, medical care, and payment of wage loss. There is too much litigation in the work comp arena, a system not intended for litigation, caused by these unfair and not impartial IMEs. This litigation not only negatively impacts injured workers, but also increases the costs to employers.**
- 2. Clearly there is a recognized problem when several bills are being introduced to address this problem (see HB 2545 & HB 2752). There is also a bill, HB 2544, to address the growing problem of employers/insurance carriers who are having permanent partial disability (PPD) evaluations conducted in the guise of IMEs. By practice, PPD evaluations are supposed to be conducted by mutual agreement of the parties. Unfortunately, due to growing abuse of the process, it has become necessary to codify this issue to return PPD evaluations to being conducted by mutual agreement.**

3. There is a cottage industry of doctors who are being paid to render biased opinions. This abuse must stop. A 1099 obtained from HEMIC shows a particular doctor being paid over one million dollars in 2006. Work comp claimants' practitioners agree that this particular doctor always opines against the injured worker which then typically results in unnecessary litigation commonly to the detriment of the injured workers (delays in getting needed treatment, etc.).

I am happy to answer questions regarding this need for mutually agreed IMEs.

Douglas Thomas Moore

January 28, 2008

House of Representatives
The Twenty-fourth Legislature

Committee on Labor and Public Employment
Representative Alex Sonson and
Representative Bob Nakasone Vice Chair and Committee members

Testimony in support of HB 2929

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 Hawaii Injured Workers Alliance members and International Association of Rehabilitation Specialists or Rehabilitation Counselor members. We support HB 2929 as this bill supports the mutually agreed upon Independent 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 care or diagnosis that assists them to recover and return to their productive lives.

We support this bill wholeheartedly and believe that this is the step necessary to assist the Worker’s Compensation system to have all of the stakeholders work together to make it work for the injured. Ultimately, the community will have a healthy, productive worker once again.

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

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
ANNE T. HORIUCHI, ESQ.
MIHOKO E. ITO, ESQ.
JOANNA J. H. MARKLE*
LISA K. KAKAZU**
* Government Relations Specialist
** Legal Assistant

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:

gslovin@goodsill.com
cpablo@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com
jmarkle@goodsill.com
lkakazu@goodsill.com

January 28, 2008

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

FROM: Anne T. Horiuchi, Esq.
H.B. 2929 Relating to Workers' Compensation
Hearing Date: Tuesday, January 29, 2008 at 8:30 a.m.

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

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

H.B. 2929 requires independent medical examinations to be performed by mutually agreed upon physicians, and by the employer's physician.

AIA is in the process of reviewing the various workers' compensation measures before the Legislature. AIA generally supports the provisions of H.B. 2929.

Thank you very much for this opportunity to submit testimony.

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

Testimony Related to HB 2929
Tuesday, January 29, 2008
8:30 A.M.
Conference Room 309

Chair Sonson, Vice Chair Nakasone, and Committee Members:

I am Ernest H. Fukeda, Jr., Chief Operating Officer of Hawaii Employers' Mutual Insurance Company, Inc. (HEMIC). Thank you for the opportunity of offering testimony regarding HB 2929. Hawaii currently has a very workable Workers' Compensation system that provides avenues of fairness to both the employees and the employers. This bill introduces another step and layer into the system that can and will create another time consuming feature which, in turn, generates an expense element.

This bill can create a cumbersome process for the Director to develop, implement, manage, audit, and evaluate. Alternatively, and keeping in the spirit of this bill, workers' compensation carriers can provide a list of three (3) Independent Medical Examiners (IME) for the other party to select.

LATE TESTIMONY



OFFICERS

Cynthia Jean Goto, MD
President

Gary Okamoto, MD
President Elect

Linda Rasmussen, MD
Immediate Past President

Thomas Kosasa, MD
Secretary

Jonathan Cho, MD
Treasurer

Paula Arcena
Executive Director

January 29, 2008

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

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

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

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

Thank you for the opportunity to testify on this matter.

PLEASE DELIVER

To rm 329 for:
Committee on Labor &
Public Employment

Tuesday
1/29/08
8:30 am

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

HIDANO CONSTRUCTION, INC.
1620 Hau Street
Honolulu, Hawaii 96817
Telephone: 847-5555, Fax: 847-5550
January 29, 2008

LATE TESTIMONY

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

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

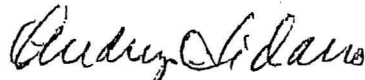
Re: HB 2544, HB 2929, HB 2545, HB 2752

Dear Chair Sonson and Committee Members:

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

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

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



Audrey Hidano

To: House Committee on Labor and Public Employment

Fr: Brian Costa

Re: HB 2929

LATE TESTIMONY

Dear Committee Chair and Members:

As an injured worker of the State of Hawaii, I am in favor and urge you to pass HB-2929.

On October 24, 2006, I was injured while working for a top ten television show shot locally in Hawaii. My injury/accident was recorded and documented by multiple motion picture cameras and witnessed by approximately 200+ people including my employer, company medic, doctor, co-workers and by-standers.

In my experience, it has been impossible for me to get the reasonable, necessary and prescribed medical care that my physician believes would promote the fullest recovery in a timely manner and that the State of Hawaii mandates by law.

To date, I have been subjected to three Independent Medical Examinations, all recommending further treatment and further diagnostic investigation. It has been over a year of battling with the insurance carrier at great personal monetary expense and serious physical and psychological stress and aggravation. This has added unnecessary frustration and is a distraction from the other serious issues involved with an injury- such as pain management, rehabilitation, new physical limitations, career and financial concerns, social-psychological-personal matters, etc... This additional stress has negatively affected my recovery.

By passing HB-2929, you will make our system more efficient by reducing time and expense to the benefit of all parties involved.

I ask you to please consider the workers/residents of the State of Hawaii and the constituents who elected you to represent their interests. Remember the Hawaiian practice of Kina'ole- Do the 'right thing' at the 'right time' for the 'right reason', the first time. This is the time to protect our workforce!



Brian Costa

TESTIMONY on HB 2929
International Association of Rehabilitation Professionals

January 28, 2008

Support of H.B. No. 2929
Relating to Vocational Rehabilitation

LATE TESTIMONY

The Honorable Representative Alex M. Sonson, Chair
The Honorable Representative Bob Nakasone, Vice Chair
And Members of the Committee:

My name is Alan S. Ogawa and I have been providing Vocational Rehabilitation Services for 31 years assisting injured and disabled individuals/workers of Hawaii. As the current President of the International Association of Rehabilitation Professionals-Hawaii Chapter and on behalf of our members, **we support HB2929**.

“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 workers’ compensation mutually agreed IME Bill HB 2929**. We advocate the mutually agreed upon workers compensation Independent Medical Examination to perpetuate fairness and impartiality for injured workers.

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

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’uanu Ave, Suite 205
Honolulu, Hawaii 96817
Phone: 523-7755

Date: 1/29/08 Time: 8:30 am

Place: Conference Room 309, State Capital, 415 South Beretania Street

LABtestimony@Capitol.hawaii.gov.