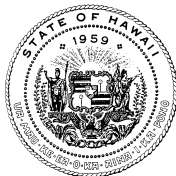


TESTIMONY

SB 62



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 9, 2009

To: The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: February 10, 2009

Time: 2:45 p.m.

Place: Conference Room 224, State Capitol

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

Testimony in OPPOSITION
to
S.B. 62 – Relating to Workers' Compensation

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 62 proposes to require that independent medical examinations (“IMEs”) 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. SENATE 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 claimant's 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 worker's claim or the propriety of the attending physician's treatment.
4. The Department has concerns that this measure would be a detriment to the employee receiving good medical advice. There may not be an adequate number of physicians willing to have their names placed on the list due to the time constraints imposed on the doctors to respond and perform the examinations
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 proposes 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 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 \$28,000 to implement this proposal.
7. The Department would like to note that the current process for selection and payment of an independent medical examiner has worked well for many years and correctly recognizes that employers, who bear the burden of paying workers' compensation benefits, should be responsible for the medical examination that assesses the employee's recovery progress.

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR
CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 9, 2009

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on Tuesday, February 10, 2009
2:45 p.m., Conference Room 224

BY

MARIE C. LADERTA, DIRECTOR

Senate Bill No. 62
Relating to Workers' Compensation

TO CHAIR DWIGHT Y. TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 62, 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.

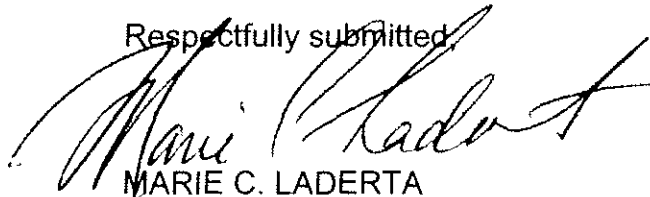
This bill is unnecessary as safeguards already exist in the statute. The injured employee receives a copy of the report and is afforded the opportunity to rebut it or correct any misinformation. This report is also sent to the injured employee's attending physician who is invited to comment on it.

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.

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. This would not be prudent given the State's current fiscal difficulties.

Respectfully submitted,



MARIE C. LADERTA

William P. Kenoi
Mayor



Michael R. Ben, SPHR
Director of Human Resources

Ronald K. Takahashi
Deputy Director of Human Resources

County of Hawai'i Department of Human Resources

Aupuni Center * 101 Pauahi Street, Suite 2 * Hilo, Hawai'i 96720 * (808) 961-8361 * Fax (808) 961-8617
TTY (808) 961-8619 * e-mail: cohdc@co.hawaii.hi.us * Jobs Information: Job Hotline (808) 961-8618 e-mail: jobs@co.hawaii.hi

February 10, 2009

The Honorable Dwight Y. Takamine, Chair
And Members of the Senate Committee on Labor
State Capitol
Honolulu, Hawai'i 96813

Dear Chair Takamine and Members of the Committee:

Re: SB 62 Relating to Workers' Compensation

I am Michael R. Ben, the Director of Human Resources of the County of Hawai'i. I am testifying in opposition to SB 62.

SB 62 amends Section 386, HRS by eliminating Section 386-79, and adding a new section requiring that independent medical examinations and permanent impairment ratings be performed by physicians mutually agreed upon by employers and employees or as appointed by the director of labor and industrial relations.

Independent medical examinations conducted by a physician of the employer's choice are our mean to address statutory presumption, excessive or unwarranted treatment, and reasonableness of surgical procedures. Passage of this bill would take away our right to discovery.

We believe there are presently sufficient safeguards within existing statutes and administrative rules which protect the employees' interest, and yet protect the employer from having to pay for excessive or unwarranted treatment. Current statutes allow for the injured employee to receive medical examination reports, and rebut or correct misinformation. Further, the examination report is also sent to the injured employee's treating physician, who is allowed to comment on it.

SB 62 makes no allowance for evaluations by physicians whose specialties are not available in the State. This situation is always a possibility, and the bill must be cognizant of this and not serve as a bar to pursuing necessary expertise where Hawai'i has none.

Hawai'i County is an Equal Opportunity Provider and Employer.

The Honorable Dwight Y. Takamine, Chair
And Members of the Senate Committee on Labor
February 10, 2009
Page 2 of 2

SB 62 requires that the mutually agreed upon physician examine an injured employee within thirty days of selection. This time limitation is unrealistic as we find oftentimes appointments and subsequent examinations may take three or more months to secure.

The passage of this bill will ultimately result in an increase in workers' compensation costs as the bill creates more administrative and logistical matter to be undertaken in administering workers' compensation.

Therefore, we ask that SB 62 be tabled.

Sincerely,

Michael R. Ben, SPHR
Director of Human Resources

MRB:ck

Division of Industrial Safety and Workers' Compensation
Department of Human Resources
City and County of Honolulu
650 South King Street, 6th Floor
Honolulu, Hawaii 96813
Phone: 768-8560 Fax: 550-6221

Testimony to the Twenty-fifth Legislature 2009

Testifier's name/position title and organization: Ken Y. Nakamatsu, Director
Department of Human Resources
City & County of Honolulu

The Committee the comments are directed to: Committee on Labor
The Senate

The date and time of hearing: February 10, 2009
2:45 P.M.

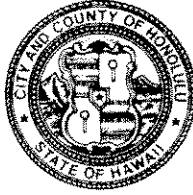
Measure number: SB 62

The number of committee requested copies: 1

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 10TH FLOOR
HONOLULU, HAWAII 96813

MUFI HANNEMANN
MAYOR



KENNETH Y. NAKAMATSU
DIRECTOR

February 10, 2009

The Honorable Dwight Y. Takamine, Chair
and Members of the Committee on Labor
The Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chair Takamine and Members:

RE: SENATE BILL NO. 62 RELATING TO WORKERS' COMPENSATION

The City and County of Honolulu strongly opposes Senate Bill No. 62, repealing Section 386-79 of the Hawaii Workers' Compensation Law and adding a new section entitled, **Medical examinations; selection of physicians**. This bill requires independent medical examinations and permanent impairment rating examinations to be performed by mutually agreed upon physicians. Although the vast majority of workers' compensation claims proceed without controversy or disagreement, there are claims where this cannot be avoided. The Hawaii Workers' Compensation Law permits a claimant to secure medical treatment from any physician practicing in the State of Hawaii. Occasionally questions arise concerning diagnosis, treatment, or disability status. While employers have no say in an employee's choice of physician, they do have the right to obtain an independent opinion from a physician or specialist when questions arise concerning the progress of a claim. This bill greatly limits an employer's ability to obtain independent examinations by mandating that only physicians agreed upon by claimants be used for employer requested medical examinations, or if both parties cannot reach a consensus, physicians assigned by the Department of Labor and Industrial Relations.

Hawaii's Workers' Compensation Law weighs heavily in favor of the claimant. Under the presumption clause, any claim filed is deemed compensable unless the employer presents substantial evidence to the contrary. During the hearing process at the Disability Compensation Division (DCD) and the Labor and Industrial Relations Appeals Board (LAB), issues of doubt are often resolved in favor of the claimant. The only area in the current system where the employer has any leverage is in the selection of independent medical examiners to review the progress of a claim. To change this as proposed is unfair and inequitable to employers. The DCD and LAB provide the necessary checks and balances to ensure that employees are treated fairly, while allowing employers to exercise their rights to review the progress of claims using independent medical examiners.

The Honorable Dwight Y. Takamine
February 10, 2009
Page 2

The 1995 Legislature enacted major reforms to the Hawaii Workers' Compensation Law resulting in hundreds of millions of dollars being saved over the last 12 years. The magnitude of the savings can be assessed using data from the State's Department of Labor and Industrial Relations Workers' Compensation Data Book, published annually (see Attachment I). In short, statewide workers' compensation costs 3 years prior to the reform averaged \$331 million annually. Workers' compensation costs for the 12 years immediately following the reform averaged \$253 million annually; a \$78 million annual savings. Put in the proper perspective, over the last 12 years the State of Hawaii has saved \$936 million in workers' compensation costs as a result of the changes made by the 1995 Legislature.

Now in 2009, the Twenty-fifth Legislature is proposing changes to the Hawaii Workers' Compensation Law that will inevitably increase the cost of workers' compensation in the State. In times of economic turmoil requiring fiscal austerity and innovative solutions, it is most disturbing to see bills introduced by this Legislature that further add to the already critical financial crises in the State.

We respectfully urge your committee to file Senate Bill No. 62. The Hawaii Workers' Compensation Law already weighs heavily in favor of the claimant and the changes proposed by this bill further erode an employer's ability to efficiently and effectively manage claims.

Sincerely,



for KEN Y. NAKAMATSU
Director of Human Resources

Attachment

STATEWIDE WORKERS' COMPENSATION COSTS BY TYPE OF PAYMENT

Type of Payment	2000	2001	2002	2003	2004	2005	2006	2007	Type
TTD	55,312,588	62,586,914	65,056,903	67,654,807	63,706,668	59,067,148	54,967,864	56,919,048	TTD
TPD	2,651,756	3,043,394	2,900,452	3,241,339	3,184,548	3,109,906	2,625,563	2,705,692	TPD
PTD	15,507,928	15,118,576	18,395,265	17,626,114	18,093,822	15,955,797	18,599,904	16,765,532	PTD
PPD	57,260,955	57,875,459	65,159,217	68,803,178	69,515,306	66,399,667	64,195,980	63,054,843	PPD
Death	1,962,684	2,735,802	2,360,809	2,325,041	2,148,014	2,010,782	2,182,528	3,052,391	Death
Disfigurement	1,309,482	1,357,202	1,562,803	1,625,475	1,524,271	1,314,094	1,480,269	1,263,750	Disf
Voc Rehab	5,629,397	5,802,764	6,325,020	6,432,282	6,114,837	5,063,253	4,868,366	4,561,823	VR
Medical	91,184,757	103,303,676	105,926,606	106,912,209	106,766,183	97,638,645	93,394,364	98,513,146	Med
Attendant Services	539,633	217,365	140,180	301,787	236,375	219,851	370,655	457,629	AS
Total	231,359,180	252,041,152	267,827,255	274,922,232	271,290,024	250,779,143	242,685,493	247,293,854	Total

Workers' Compensation Reform began July 1, 1995. Major changes were Medical Fee Schedule (Medicare plus 10%), treatment limits, second injury limits on PPD and part-time workers.

Type of Payment	1992	1993	1994	1995	1996	1997	1998	1999	Type
TTD	75,124,541	83,443,021	80,281,234	70,875,583	61,054,623	57,366,809	53,356,078	51,550,709	TTD
TPD	2,335,548	2,769,212	3,072,057	2,774,293	2,829,674	2,825,736	2,878,552	2,743,336	TPD
PTD	13,600,845	11,232,499	19,763,997	15,497,510	17,618,587	16,716,542	15,714,253	15,830,200	PTD
PPD	69,506,346	76,270,234	81,865,987	95,125,484	93,619,941	72,453,667	64,909,092	57,124,045	PPD
Death	2,765,124	2,392,562	2,632,183	2,789,579	2,814,023	2,899,119	2,238,102	2,395,396	Death
Disfigurement	1,763,162	1,869,215	1,681,428	1,759,164	1,942,172	1,808,428	1,384,551	1,341,929	Disf
Voc Rehab	6,639,072	7,866,683	7,892,705	7,871,615	6,574,004	6,179,012	5,534,403	5,359,001	VR
Medical	115,960,185	137,740,829	145,500,111	129,125,665	101,664,903	94,424,669	87,019,208	85,513,448	Med
Attendant Services	307,956	178,355	390,071	303,969	376,739	241,389	190,286	198,250	AS
Total	288,002,779	323,762,610	343,079,773	326,122,862	288,494,666	254,915,371	233,224,525	222,056,314	Total

Source: Workers' Compensation Data Book, State of Hawaii, Department of Industrial Relations, Research and Statistics Office (1992 ~ 2007)



Hawaii Injured Workers Alliance
715 South King Street Suite #410
Honolulu, Hawaii 96813

February 8, 2009

The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

S.B. 62 requires independent medical examination to be performed by mutually agreed physicians.

The Hawaii Injured Workers Alliance 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.

HIWA believes that mutual agreement of an IME physician between the employer and the employee is the fairest way to insure impartial evaluation is conducted. Disability and impairment ratings must be done in the most impartial manner by truly independent examiner.

The passage of the mutually agreed IME bill (SB 62) will benefit both the injured workers and their employers.

Your passage of this bill would be greatly appreciated.

George M. Waialeale
Executive Director
Hawaii Injured Workers Alliance
383-0436

February 7, 2009

SENATE
The Twenty-fifth Legislature

Committee on Labor

Senator Chair, Dwight Takamine,
Vice Chair Senator Brian Taniguchi

DATE: Tuesday, February 10, 2009
TIME: 2:45 p.m.
PLACE: Conference Room 224
State Capitol
415 South Beretania Street

Testimony in support of SB 62

My name is Laurie Hamano, President of Vocational Management Consultants. We, signed below 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 SB 62 as this bill supports the mutually agreed upon Independent Medical Evaluations. This will help the system by asking all 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 re-injure 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 drag on for many more months than it should if the Injured Worker received the immediate care he/she needed to recover.

Thank you for this opportunity to provide our testimony to the committee and we urge you to pass this bill.

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
Beverly Tokumine, M. Ed. CRC, MHC
Percy Wong, M.Ed. CRC, MHC

Vocational Management Consultants, Inc.
And
International Association of Rehabilitation Providers

LAW OFFICES OF
STANFORD H. MASUI
A LIMITED LIABILITY CORPORATION
345 Queen Street, Suite 900, Honolulu, HI 96813
Telephone: (808) 791-6870 • Facsimile: (808) 521-7620

Feb. 9, 2009

SENT BY E-MAIL:

sentakamine@capitol.hawaii.gov

Senate
Labor Committee
State Capitol
415 S. Beretania St.
Honolulu, HI. 96813

SB: 62- Relating to Workers Compensation
(Fair and Mutual Independent Medical Examinations)
Hearing: Tues. Feb. 10th 2: 45 p.m.

Dear Chairman Takamine and Members of the Committee:

The present law , 386-79 H.R.S. is appropriately entitled: “Medical Examinations by **Employer’s Physician**”, i.e., the employer’s insurance company selects the physician. The present law has developed into an unfair and biased system:

1. A small group of reliable physicians who have been willing to endorse the insurance companies’ positions against the injured worker to cut off temporary disability, deny medical treatment, and deny work connection by alleging poorly documented or non-existent pre-existing injury or medical conditions, see the addendum for one example.

2. Enriched this small group of physicians by lack of scrutiny or limitation on the amount paid for examination reports at rates which are multiples of those fees allowed to treating physicians.

3. Encouraged delay by insurers and the Disability Compensation Division by multiple, repetitive examinations, despite the statutory limitation of sec. 386-79 of “one per case unless good and valid reasons exist.”

4. Enhanced the financial advantage of the insurers against the injured worker by the ability to pay for medical opinions, whereas the worker and attorneys are limited in resources to pay for additional medical support to rebut the hired guns of the insurance carriers.

**LAW OFFICES OF
STANFORD H. MASUI**

A LIMITED LIABILITY CORPORATION

**345 Queen Street, Suite 900, Honolulu, HI 96813
Telephone: (808) 791-6870 • Facsimile: (808) 521-7620**

A similar bill was passed into law in the previous session by both houses of the Legislature, but vetoed by Governor Lingle. This proposed bill would “level the playing field” by requiring examinations by mutual consent of both the employer and employee. Beneficial results of the proposed legislation include:

1. Reduced adversarial litigation over the choice of examiners and the content of the reports.
2. Greater objectivity by medical examiners as the known insurance-biased examiners would be eventually excluded from conducting such examinations.
3. Restoring faith in a system perceived as biased in favor of the employer and dysfunctional for many injured workers.

Thank you for your consideration.

Very truly yours,

STANFORD H. MASUI

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STANFORD H. MASUI**

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ADDENDUM TO TESTIMONY

The following are quoted excerpts of actual “independent” medical reports of Joseph Rogers, Ph.D. who is often an examiner of choice for injured workers who require psychological treatment or counseling following extended disability and career loss. Portions of his reports were submitted (as Exhibits) to a recent post hearing memorandum to show his regular and routine attribution of psychological injury to an alleged, never previously-diagnosed personality disorder, instead of the physical injury and depression that frequently follow injuries.

D. REPORTS OF JOSEPH ROGERS

(LAB Ex. K1) (p.35, para. 1): “The Psychological Factors Associated with her Chronic Pain Disorder are manifestations of her pre-existing Avoidant Personality Traits; all of which are unrelated from a causal standpoint to the 2/10/06 injury.”

(LAB Ex. L1 p.41, para. 2): “In my opinion, the psychological factors associated with Ms. (name redacted) Pain Disorder are causally unrelated to her employment at Sack ‘n Save or the 2/23/03 injury. The medical records indicate a long history of prior somatization tendencies and muscle reactivity; both attributable to her underlying avoidant/histrionic personality traits.

(LAB Ex. M1 p.58, para 1, last sentence): “In my opinion, the symptoms of Fibromyalgia actually represent the psychiatric condition of Pain Disorder Associated with Psychological Factors (Somatoform Pain Disorder), which characterizes the psychogenic aspects of her chronic pain symptoms. In my opinion, Ms. (name redacted) alleged fibromyalgia (Pain Disorder Associated with Psychological Factors) is not causally related to the 11/13/02 injury.

....

(p. 59, para 4) “It is certainly reasonable to infer from this personal psychosocial history that Ms. (name redacted) evidenced impairment in her adaptation and coping due to these personality traits and somatization tendencies; which in turn resulted in her pre-existing Pain Disorder Associated with Psychological Factors (Somatoform Pain Disorder).”

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON LABOR
Sen. Dwight Y. Takamine, Chair
Sen. Brian T. Taniguchi, Vice Chair

Date: Tuesday, February 10, 2009
Time: 2:45 p.m.
Place: Conference Room 224, State Capitol

TESTIMONY OF ILWU LOCAL 142

RE: SB 62, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding SB 62.

The bill amends Section 386-79 HRS to require the mutual selection of examining physicians to conduct permanent impairment ratings for injured workers once they have attained medical stability. It also prohibits conducting both an independent medical examination under Section 386-79 HRS and a permanent impairment rating simultaneously without the consent of the injured worker.

HB SB 62 is necessary to preserve the integrity of the permanent impairment rating process. Historically, the Disability Compensation Division has required mutual consent between the injured worker and the employer or insurer to insure that the physician examiner was impartial. Physicians jointly selected recognized that they were being hired to conduct objective assessment of permanent impairment, although their examinations were paid for by the insurance carrier, and it served to offset the enormous economic advantage insurers had in adjudication compared to individual employees.

In recent years, however, insurers have often bypassed the need for separate assessments of questions about medical treatment or basic coverage by combining independent medical examinations and permanent impairment ratings. Permanent impairment ratings were conducted with independent medical examinations even though an injured worker was still receiving curative medical treatment and had not reached medical stability. The insurer would compel attendance at independent medical examinations upon the threat of suspending compensation, and then ask questions not only about medical care and coverage, but would encourage the examining physician to predict in advance whether there would be permanent impairment, irrespective of whether the injured worker had attained medical stability.

Sometimes insurers would encourage a finding that an injured worker had no permanent impairment to try to subvert the employee's right to vocational rehabilitation, since a finding that an injured worker has, or may have, a permanent impairment is a necessary condition for receiving vocational rehabilitation under Section 386-25(b) HRS. SB 62 seeks to end these kinds

of abuses and to restore neutrality and objectivity to permanent impairment ratings. The measure will not require any added costs to administer but it will encourage the kind of balance and fairness that should always characterize workers' compensation adjudication.

We urge the adoption of this sensible and constructive bill.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:
GARY M. SLOVIN
CHRISTOPHER G. PABLO
ANNE T. HORIUCHI
MIHOKO E. ITO

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MEMORANDUM

TO: Senator Dwight Takamine
Chair, Senate Committee on Labor
Via e-mail: LBRTestimony@Capitol.hawaii.gov

FROM: Anne Horiuchi

DATE: February 9, 2009

RE: **S.B. 62 Relating to Workers' Compensation**
Hearing: Tuesday, February 10, 2009 at 2:45 p.m., Room 224

Dear Chair Takamine and Members of the Committee on 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. All AIA news releases are available at www.aiadc.org.

S.B. 62 requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the Director of the Department of Labor & Industrial Relations. AIA opposes S.B. 62.

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 S.B. 62, and respectfully requests that it be held.

Thank you very much for the opportunity to submit testimony on this measure.



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Telephone: (808) 597-1441

Fax: (808) 593-2149

The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

Testimony by
Hawaii State AFL-CIO
February 10, 2009

S.B. 62 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO strongly supports S.B. 62 which requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations.

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, S.B. 62 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 S.B. 62.

Respectfully submitted,

Randy Perreira
President



PO Box 22416 Honolulu, HI 96822
(808) 543-6054
prideatworkhawaii@hawaiiantel.net
www.hawafcio.org/PAWHI

February 10, 2009

Hawaii State Senate
Committee on Labor
Chair, Sen. Takamine
Vice Chair, Sen. Taniguchi

Testimony in favor of S.B. 688 – RELATING TO EMPLOYMENT

Pride At Work Hawai'i, whose mission is to mobilize lesbian, gay, bisexual, and transgender (LGBT) workers and their supporters for full equality and to build mutual support between the labor movement and the LGBT community, strongly supports SB 688, which establishes job security requirements upon the divestiture of a covered establishment.

SB 688, at its core, is about job preservation during the initial sale or takeover of a company. It is intended to minimize disruption in such sales, particularly for the employees. The bill calls for all current workers to be retained by the new employer while permitting reasonable latitude for management. It also helps insure that employers comply with the law by obligating violators to compensate the dislocated worker the difference between his salary under the former employer and his or her unemployment insurance benefits.

In these difficult and uncertain economic times, it is more likely than ever that more companies will be sold to new owners or managements, leaving workers vulnerable during the changeover. It is the employees who make a business work, and when new owners buy or take over a company, they should keep the same employees. Passage of this bill is especially important for lesbian, gay, bisexual, and transgender workers, who are even more vulnerable when businesses are taken over by new owners - even in Hawai'i, despite legal protections against discrimination.

It is working people - LGBT and straight - that will help revitalize our economy and get us out of this economic crisis we are currently in. A bill that increases job security for workers will help build confidence among Hawaii's workforce and stimulate spending; without such a measure workers are apt to continue to prepare for the worst. That's why passage of this worker

retention bill is truly a step in the right direction at this critical time.

Thank you for the opportunity to testify in support of S.B. 688. On behalf of all LGBT workers in Hawai'i, we hope you will support this bill.

Respectfully submitted by Steve Dinion, President, on behalf of Pride At Work Hawai'i



**Testimony to the Senate Committee on Labor
Tuesday, February 10, 2009; 2:45 p.m.
Conference Room 224**

RE: SENATE BILL 62 RELATING TO WORKERS' COMPENSATION

Chair Takamine, Vice Chair Taniguchi 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 SB 62, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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 its members, which employ more than 200,000 individuals, 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.

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

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

The employer and insurance carrier pay for 100% of the cost of the IME, therefore should be afforded the choice of the IME physician. The employee chooses his or her treating physician, so we believe the employer should be able to obtain a second opinion for his or her protection. Furthermore, it is the employee's treating physician,

and not the IME physician, that is conducting the actual medical treatment. The IME physician's role is to evaluate the injury and treatment.

- 3) Proponents of this legislation believe that this change may decrease the adversarial nature that arises during disputes and eliminate the impression of bias in the IME. However, the vast majority of IMEs are conducted without incident or dispute. The opportunity for an employer IME can greatly enhance the likelihood of successful treatment and recovery.
- 4) Safeguards exist for IMEs. Hawaii's workers' compensation law requires full disclosure of the IME report to the injured employee. As a result, the employee will be able to determine whether the evaluation was accurate. If on the contrary, the employee or his or her personal physician will have the opportunity to contest the report.
- 5) The Department makes a determination based upon the evidence presented to the hearings officers. This bill appears to suggest that the IME report is the final say regarding the injured employee.

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 SB 62 and respectfully requests that the committee holds this measure.

Thank you very much for the opportunity to testify.

**Testimony by:
Derrick Ishihara, PT**



**SB 62, Workers' Compensation
Senate LBR Committee
Tuesday, February 10, 2009
Room 224, 2:45 pm**

Position: Support with Comment, Page 2, lines 7-9

Chair Takamine and Members of the Senate LBR 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 (HAPTA). HAPTA is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education and Department of Health systems, and private practice. Our members represent Hawaii at the national American Physical Therapy Association and are delegates for Pediatrics, Women's Health, Parkinson's Disease and other issue sections. 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 function from neuromusculoskeletal injuries and impairments.

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.

Page 2, lines 7-9 requires the IME doctor selected "...shall examine the employee within thirty calendar days of selection or appointment." We note that this might be a problem for physicians with busy practices who are already scheduled more than 30 days in advance.

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



February 11, 2009

Senator Dwight Takamine, Chair
Senate Committee on Labor
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: SB 62 "Relating to Workers' Compensation" (Mutual Agreement on IMEs)

Chair Takamine and Members of the Senate Committee on Labor:

I am Karen Nakamura, Executive Vice President and 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 is strongly opposed to SB62, "Relating to Workers Compensation" because it would restrict an employer's ability to obtain Independent Medical Examinations (IMEs) in workers' compensation cases. Employers and insurers utilize IMEs to verify injuries reported by an injured worker's care provider and/or whether certain medical treatment is reasonably necessary. IMEs have been used for many years and have served as a stabilizing influence on workers' compensation premiums. We believe the current system works and is fair to both employer and employee.

BIA-Hawaii believes that if enacted, this bill will unnecessarily increase the cost of workers' compensation insurance to businesses and ultimately to all consumers in Hawaii.

Thank you for the opportunity to share our views.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

Testimony by
Hawaii Government Employees Association
February 10, 2009

S.B. 62 – RELATING TO
WORKERS' COMPENSATION

The Hawaii Government Employees Association supports the purpose and intent of S.B. 62. We believe that employees injured on the job deserve to be evaluated by an impartial physician selected with their agreement. As drafted, the bill provides a reasonable alternative to selection of an impartial physician in the event no mutual agreement is reached; and further, identifies fair timelines for scheduling the examinations.

Thank you for the opportunity to testify in support of S.B. 62.

Respectfully submitted,

Nora A. Nomura

Deputy Executive Director

February 8, 2009

Chairman Sen. Dwight Y. Takamine
Vice Chairman Sen. Brian T. Taniguchi
Committee on Labor

RE: Testimony in Support of the intent of SB62, Relating to Workers'
Compensation
Hearing, Tuesday, February 10, 2009 2:45 PM
Conference Room 224

FROM: James A. Pleiss, DC
2045 Main Street, Wailuku, Maui, Hawaii 96793
808-244-0312

Dear Chairman Takamine, Vice Chair Taniguchi, and Members of the Committee:

Thank you for the opportunity to testify in support of the intent SB62 which requires permanent impairment rating examinations be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor.

I have been performing independent medical evaluations (IME) and permanent partial disability (PPD) ratings in Hawaii since 1985. However, the majority of my practice is in the treatment of patients. I have performed in excess of 300 of these types of examinations. In my record reviews involved in those examinations, and of those IME/PPD ratings performed on my patients by others, those physicians who only perform IME/PPD examinations that do not have an active practice tend to be biased towards the entity that refers to them, namely the insurance companies and defense attorneys. In other words, if one only performs these examinations as their source of income, they tend to be inherently biased towards the referring party.

SB62 goes a long way to correct this situation. However, one problem is that injured workers have no way of knowing the qualifications of the doctors who perform these examinations.

In order to correct this, SB62 should be amended to allow only the director of labor to pick the PPD physician from a list of qualified examiners on a rotating basis. The choice of provider should be the same specialty as the treating provider. This will insure a fair and balanced assessment because there will be no incentive to provide a report that satisfies the referring entity. This law should also apply to independent medical examinations (IME) as well.

I also support the testimony of the Hawaii State Chiropractic Association.

Thank you for the opportunity to testify before your committee in support of the intent of SB62.

Sincerely

James A. Pleiss, DC

February 9, 2009

SENATE
The Twenty-fifth Legislature

Committee on Labor

Senator Chair, Dwight Takamine,
Vice Chair Senator Brian Taniguchi

DATE: Tuesday, February 10, 2009
TIME: 2:45 p.m.
PLACE: Conference Room 224
State Capitol
415 South Beretania Street

Testimony in support of SB 62

My name is Michael Manu Mook. I am President of Hawaii Injured Workers Alliance for the past year 2008 and 2009.

I worked for many years for the State of Hawaii and was injured in 2004. The injury has greatly changed my life and my ability to return to work. I participated in vocational rehabilitation services, returned to school and now I am a licensed massage therapist.

I wholly support this bill and I encourage you to support this bill to assure that all injured workers are treated fairly especially when they are asked to attend independent medical evaluations. A skewed IME could mean more delays and benefits NOT getting to the injured worker timely.

Hawaii Injured Workers Alliance support this bill. So do I.

Thank you for this opportunity to provide my testimony to the committee.

Manu Mook

My phone number is: #741-5590
Or contact HIWA
At 714 S. King Street Suite 410
Honolulu, Hawaii 96813



Testimony to the Senate Committee on Labor
Tuesday, February 10, 2009 at 2:45p.m.
Conference Room 224

RE: SENATE BILL 62 RELATING TO WORKERS' COMPENSATION

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

The Maui Chamber of Commerce, a business organization with who mission it is to advance and promote a healthy economic environment for business, advocating for responsive government and quality education, while preserving Maui's unique community characteristics, strongly opposes this bill and asks that you do the same.

We are a membership driven organization comprised of over 900 members, 88% of which are small businesses with fewer than 25 employees, representing nearly 21,000 employees. We oppose this bill which relating to Workers' Compensation as it requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

Chambers across the state have carefully reviewed the issues involving the IME process and continue to explore how to improve the process for the injured workers and employers. Although we understand the intent of the bill, the Maui Chamber of Commerce does not support this bill for the following reasons:

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

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

- 3) Proponents of this legislation believe that this change may decrease the adversarial nature that arises during disputes and eliminate the impression of bias in the IME. However, the vast majority of IMEs are conducted without incident or dispute. The opportunity for an employer IME can greatly enhance the likelihood of successful treatment and recovery.
- 4) Safeguards exist for IMEs. Hawaii's workers' compensation law requires full disclosure of the IME report to the injured employee. As a result, the employee will be able to determine whether the evaluation was accurate. If on the contrary, the employee or his or her personal physician will have the opportunity to contest the report.
- 5) The Department makes a determination based upon the evidence presented to the hearings officers. This bill appears to suggest that the IME report is the final say regarding the injured employee.

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 Maui Chamber of Commerce does not support SB 62 and respectfully requests that the committee hold this measure.

Sincerely,

Pamela Tumpap
President

TESTIMONY IN SUPPORT OF S.B. NO. 62
RELATING TO WORKERS' COMPENSATION
SENATE COMMITTEE ON LABOR

Tuesday, February 10, 2009, 2:45 p.m.

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 SB 62 relating to Workers' Compensation and so-called "Independent medical Examinations."

Under the current system, insurance carriers can force injured workers to be examined by physicians favored by the carriers. There are several problems in this arrangement.

1. IME physicians bias toward insurers. There is nothing in the system to prevent the following abuses:

a. Insurer interference with report outcome: Carriers can have ex parte communications with the physicians, and put inappropriate comments in their letter to the IME doctor.

b. Financial pressure: IME doctors whose sole practice and income is from IMEs paid by insurers are very susceptible to making sure that their livelihoods are kept intact. At least one physician reported receiving over a million dollars from one carrier.

c. The Department of Labor and Industrial Relations, upon request of insurers, routinely order injured workers to be examined by the carriers' physicians. If an injured worker does not attend an ordered examination, the workers' benefits can be suspended.

2. IME physicians are not accountable. IME physicians argue that there is no physician-patient relationship in IMEs, and that therefore the physicians have no duty to the injured workers and are not liable for what they report even though the reports might involve denials of treatment. There is no process in place for handling injured workers complaints regarding IMEs. There is no place or effective process to handle workers' complaints for mistreatment.

3. Lack of professional/ethical standards for IME physicians and no oversight. Currently any doctor with an active license can serve as an IME physician. The physicians do not fall under the same scrutiny as treating physicians.

The most efficient and immediate means to handle these concerns has already proven to work with respect to "rating" examinations. In order to assess the extent of any permanent injury, a "rating" examination is conducted. The current system requires the carrier and the injured worker to agree upon the selection of physician to conduct the rating examination. Over the years, in just about every case, an agreement is reached between the carrier and the injured worker.

This mutual agreement system of choosing rating physicians can also work for IMEs. Carriers and representatives of injured workers are familiar with the work of the various physicians, and the fact that the ratings physicians selection process has worked over the years is proof that it can also work for IMEs.

The major focus of SB 62 is to require that carriers and injured workers agree upon the examiners. While the bill will not remedy all IME problems, the bill will go a long ways towards forging a more just system.

Thank you for considering my testimony.

WAYNE H. MUKAIDA
Attorney at Law
1001 Bishop St., Ste. 1028
Honolulu, HI 96813

Tel: 531-8899



Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice Chair
Committee on Labor
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 10, 2009
 2:45 pm
 Conference Room 224

RE: SB62, Relating to Workers' Compensation

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

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 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 SB62, which requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations.

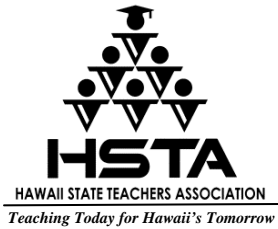
We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. From the employer's position, the IME process is a vital mechanism to ensure proper treatment for the injured employee and costs of the treatment incurred are justified. As a safeguard, the existing statute requires full disclosure to the injured worker of the IME report, which affords the treating physician and the injured employee the 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 SB62. Thank you for your consideration and for the opportunity to comment on this measure.

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

President



1200 Ala Kapuna Street λ Honolulu, Hawaii 96819
Tel: (808) 833-2711 λ Fax: (808) 839-7106 λ Web: www.hsta.org

Roger K. Takabayashi
President

Wil Okabe
Vice President

Karolyn Mossman
Secretary-Treasurer

Mike McCartney
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON
LABOR

RE: SB 62 – RELATING TO WORKERS' COMPENSATION

February 10, 2009

ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Takamine and Members of the Committee:

The Hawaii State Teachers Association support SB 62 that requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations.

Thank you 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

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON LABOR
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Tuesday, February 10, 2009
2:45 p.m.

SB 62

Chair Takamine, Vice Chair Taniguchi, 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** S.B. 62, which amends Section 386-79, Medical Examination by Employer's Physician.

Our members believe this bill will substantially increase workers' compensation costs, which will translate into a higher cost of doing business, limiting business' ability to compete, adversely affect employees by limiting job availability, pay, and benefits and ultimately find its way into the costs of goods and services in Hawaii.

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.

Another provision in 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 the 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 too 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 provisions which require that the IME physician be licensed to practice in Hawaii and limits their reimbursement rates are unworkable and will shrink the limited pool of available physicians even further. The average lead time to secure an IME appointment is six weeks and this provision will inevitably create a delay in obtaining timely appointments and reports and limit local physicians' ability to draw upon the clinical expertise of their mainland counterparts. There is also a provision requiring injured workers who reside on the mainland to obtain an IME from a physician licensed to

practice in that state for the five consecutive years prior. This requirement does nothing to raise the qualification of the IME physician, but rather limits the number who will be eligible to examine injured workers who reside on the mainland. In addition, it is inconsistent with the requirement for IME physicians who examine injured workers who reside in Hawaii.

Finally, the three year sunset provision may be too short of a time to show adverse loss experience in workers' compensation insurance. Workers' compensation claims are considered a long tail line of insurance which means that total losses of a claim take many years to develop. Unlike other property and casualty coverages which may have coverage limits, workers' compensation benefits can be paid for years and the nature of the claim may change over time. It is also extremely difficult to determine if there is a correlation between one law change and the experience of claims. This provision is not likely to show an accurate reflection of the enactment of the law.

For these reasons, we respectfully request that S.B. 62 be held.

Thank you for the opportunity to testify.



HIIA

Hawaii Independent Insurance Agents Association

February 9, 2009

To: Senator Dwight Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Labor

From: Sonia M. Leong, Executive Director
Hawaii Independent Insurance Agents Association

Re: SB62 – Relating to Workers Compensation
Hearing: Tuesday, February 10, 2009 2:45 PM Conference Room 224

The Hawaii Independent Insurance Agents Association (HIIA) **opposes** SB62 which would require Independent Medical Examinations (IME) and Permanent Impairment Rating Examinations (PIRE) to be performed by mutually agreed upon physicians.

The law provides that injured claimants select their own primary care physician and the only recourse an employer has to assess the current medical status on a case is through the IME. The current law appears to be working 98% of the time without the intervention of statute with approximately 2% of new and pending cases requiring an ordered IME.

If the law is currently working, we feel that adding this requirement will cause more negative consequences, like delay in services and increased cost of the claim.

HIIA is a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs. Many of our clients are business owners who will be directly affected if this bill is passed. As you are all aware, workers compensation is a very complex issue with so many interrelated factors that one change could tip the delicate balance. The current business climate is extremely fragile and this will put a real burden on many of the businesses.

Thank you for this opportunity to submit testimony.