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HONOLULU, HAWAII 96813-2437

March 24, 2010

TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE  
For Hearing on Monday, March 29, 2010  
4:00 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

**Senate Bill No. 2566, H.D. 1  
Relating to Medical and Rehabilitation Benefits**

**(WRITTEN TESTIMONY)**

TO CHAIRPERSON MARCUS R. OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 2566, H.D. 1, is to clarify that a physician or surgeon may conduct diagnostic testing or engage in a one-time consult for a subspecialty diagnostic evaluation and treatment recommendations from a board certified or licensed specialist.

The Department of Human Resources Development is **strongly opposed** to this bill as it deprives the self insured employer or insurance carrier of a fundamental right to challenge the referral on the basis of it not being reasonable or necessary or for a condition that is unrelated to the industrial injury.

This bill will likely add to the current adversarial nature of the system and increase costs by removing one of the checks and balances currently afforded employers and insurance carriers.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

950 SOUTH KING STREET, 10<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813

NOEL HANNEMANN  
MAYOR



Noel T. Ono  
DIRECTOR

March 29, 2010

The Honorable Marcus R. Oshiro, Chair  
and Members of the Committee on Finance  
The House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: Senate Bill No. 2566, HD1  
Relating to Medical and Rehabilitation Benefits

The City and County of Honolulu strongly opposes Senate Bill No. 2566, HD1, which amends Section 386-21 (b), Hawaii Revised Statutes ("HRS"), by allowing for diagnostic testing or a one-time consultation for subspecialty diagnostic evaluation in a workers' compensation claim regardless of whether such testing or consultation is medically necessary. In addition, the bill provides that the consultation may be made regardless of whether the specialist works in a medical facility in which the referring physician has a financial interest.

Currently, Hawaii Administrative Rules allow for consultations upon request of the treating physician and approval of the employer or insurance carrier. The proposed change to HRS Section 386-21 (b) requires the employer or insurance carrier to pay for a one-time consultation without allowing the employer or insurance carrier the opportunity to assess whether it is reasonable, necessary and related to a work injury. In addition, because the consulting specialist may work for the same medical facility in which the treating physician has a financial interest, there is potential for serious abuse on every claim. This change to the workers' compensation law will increase the cost of business in Hawaii, remove one of the few checks and balances of the system, and create an environment for potential abuse of the system by the medical community.

We respectfully urge your committee to file Senate Bill No. 2566, HD1.

Yours truly,

A handwritten signature in black ink, appearing to read "Noel T. Ono".

Noel T. Ono  
Director

THE HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

Hearing: Monday, March 29, 2010

Time: 4:00 p.m.

Place: Room 308, State Capitol

TESTIMONY OF ILWU LOCAL 142 RE:  
SB 2566, H.D.1, RELATING TO: MEDICAL AND REHABILITATION BENEFITS

Chair Oshiro, Vice Chair Lee, Members of the Committee:

Thank you for the opportunity to present testimony regarding SB 2566, H.D.1. We support this simple but constructive proposal.

The ability to render prompt medical services is a critical component of any effective workers' compensation system. SB 2566, H.D. 1 amends Section 386-21 HRS by giving treating physicians the prerogative to engage in diagnostic testing or to make a referral to a single subspecialty consultation for evaluation and treatment without following the conventional medical treatment plan procedures.

Affording treating physicians this single tool will measurably enhance their ability to make a prompt diagnosis and accelerate the recovery of injured workers. Where diagnostic testing or referral to a sub-specialist is necessary, there is no sound reason to defer such action because the more rapidly clinicians reach an accurate diagnosis of an injury or illness and the more promptly sub-specialty care is commenced, the more rapidly the injured worker will recover and resume gainful employment. In this fashion, the ultimate expense and duration of disability will be minimized, and the employee and employer will enjoy the benefit of being restored to good health at the earliest feasible date.

It should also be noted that SB 2566, H.D.1 does not in any way sacrifice an Employer's right to contest or deny a claim. However, where a claim is eventually deemed non-compensable after it has been adjudicated, all parties will still benefit by the adoption of SB 2566, H.D.1. As a practical matter, when an employee who works more than half-time is injured, she will have regular medical coverage for at least three months after the month in which the industrial accident occurred because continuation of such coverage by the employer is mandated by the Hawaii Prepaid Health Insurance Act. Thus, if a physician undertakes diagnostic testing or a referral to sub-specialty care when the injury originally occurs and the claim is later denied, regular health care coverage will still be in place to absorb these expenses during this initial three month period. But rather

than being embroiled in a dispute over compensation that delays medical care, essential diagnostic testing and sub-specialty referral will have taken place and such timely intervention is beneficial to all interested parties.

Some concerns have been raised regarding possible conflicts of interest in treating physicians referring patients for diagnostic testing or specialty consultation where the referring physician has a financial interest. However, it is difficult to envision licensed physicians engaging in unnecessary procedures for such as the nominal profit on a single referral or diagnostic procedure when such fraudulent behavior would jeopardize their medical licensure. Moreover, if a medical provider did have such ulterior motives, such fraudulent behavior could also occur under the current system by falsifying symptoms that would justify the diagnostic test or referral. Whatever risk of self-dealing there might be already exists in the current system.

Thoughtful participants in the workers' compensation process should therefore unanimously embrace this bill, and ILWU Local 142 enthusiastically supports its passage.

TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
FINANCE

Monday, March 29, 2010  
4:00p.m.

SB 2566, HD 1  
RELATING TO MEDICAL AND REHABILITATION BENEFITS

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

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose S.B. 2566 HD1.** Our companies represent over 2,000 employees statewide.

The purpose of this bill is to clarify that a physician or surgeon may conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and treatment recommendations from a board certified or licensed specialist. It also allows the consultation to be made at a medical facility in which the physician or surgeon has a financial interest.

While well-intended to guarantee that injured workers have access to appropriate health care, this bill removes the established controls in the current administrative rules that ensure that all diagnostic tests and a one-time consultation are reasonable and warranted by the work injury. Although unintended, this bill creates a bias against employers / insurance carriers by removing that opportunity to challenge the referral before these services are performed.

By also allowing consultations to be performed in a medical facility in which the physician or surgeon has a financial interest, it will create the potential for conflicts of interest that may result in the increase of referrals for costly consultations that may not be medically necessary. This will increase workers' compensation costs for employers since not all work injuries are so severe and/or complex in nature that they require this level of assessment and services.

For these reasons, we respectfully oppose S.B. 2566, HD1.

Thank you for the opportunity to testify.



# Hawaii State Chiropractic Association

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REGULAR SESSION OF 2010

## COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

## NOTICE OF HEARING

DATE: Monday, March 29, 2010

TIME: 4:00 P.M.

PLACE: Conference Room 308

Dear Chair Oshiro and members of the Finance Committee:

My name is Dr. Gary Saito, DC, and I am the current President and Executive Director of the Hawaii State Chiropractic Association. **We strongly support SB 2566 HD1.**

While the Department of Labor and other entities testify that current laws already provide for a mechanism to refer an injured worker for consultation with a specialty provider, that mechanism fails the injured worker time and time again.

When insurers/carriers delay compensability by declaring "denial pending investigation", they are not required to explain specifically what is being investigated; nor are there any guidelines for how long the carriers may perform such investigations or when decisions must be made. Therein lies the problem.

While we support the carriers' right to question a work comp claim, they should not have the ability to delay compensability unrestricted by time or reason. This bill is proposed because there are ample cases to illustrate that the Department of Labor lacks a mechanism or the will to require expeditious and conclusive "investigations", some of which extend beyond 6 months without some kind of due process on behalf of the injured worker. Some "investigations" have gone on so long that the injured workers were deprived of their work comp benefits. This is not a system that works in the spirit of the law.

It's important for physicians to get expeditious consultations to assist in their diagnoses and treatment protocols. Delays can mean lack of treatment and unnecessary lost days of work for the worker. Delays can result in a worsening of the injury complex due to an absence of an effective treatment plan. **We urge you to support SB 2566 and put an end to current practices by allowing for expeditious consultations based on physician decision-making for medical necessity.**

President, HSCA

**Testimony by: Derrick Ishihara, PT**

SB 2566,hd1 Relating to Medical and Rehabilitation Benefits

Hse FIN, Monday, March 29, 2010

Room 308, 4:00 pm

Position: Support, With Suggested Amendment

Chair Oshiro and Members of the Hse FIN Committee:

I am Derrick Ishihara, P.T., Legislative Committee member of the Hawaii Chapter – American Physical Therapy Association (HAPTA) and small business owner of a private practice clinic. HAPTA represents 250-300 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. 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 this measure because it will expedite care to the injured employee. The hearings process is very drawn out when the insurance carrier challenges the surgical consult. This lengthy process means that the injured worker does not receive timely treatment and is not able to return to work. The long delay may cause permanent damage of an injury such as nerve damage on a lumbar or cervical radiculopathy. Or, such delay may make a repair more difficult with a poor outcome for the injured worker as in the case of rotator cuff rehabilitation.

We also propose amending the language to ensure that if more than one sub-specialty provider is needed for evaluation of a severe, multi-system injury, each sub-specialist is allowed to evaluate and obtain necessary testing without prior authorization of the insurance carrier.

Paying for the consult fee in the short run may be less expensive than challenging the case and the long drawn out process to settle the case. Ultimately, it will benefit the injured worker's rehabilitation and return to work.

I can be reached at 593-2610 if you have any questions. Thank you for the opportunity to testify.

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON FINANCE  
Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair

Monday, March 29, 2010  
4:00 p.m.

### **S.B. 2566, H.D. 1**

Chair Oshiro, Vice Chair Lee, 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 45% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** S.B. 2566, H.D. 1. This bill would allow a physician or surgeon to conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and treatment recommendations that shall not be subject to contest by an insurer or employer. It further allows the one-time consultation to be made regardless of whether or not the physician or surgeon has a financial interest.

S.B. 2566, H.D. 1 will likely add costs to the workers' compensation system if there is increased abuse in this area. Collusion could occur especially if there is a financial interest between the physician and a diagnostic testing facility. There could also be referrals made for injuries unrelated to the work injury which would also add costs if the employer has to pay for this referral.

We respectfully request that S.B. 2566, H.D. 1 be held.

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 Marcus Oshiro, Chair  
House Finance Committee

From: Samuel Sorich, Vice President

Re: **SB 2566 HD1 – RELATING TO MEDICAL AND REHABILITATION BENEFITS**  
**PCI Position: Opposed**

Date: Monday, March 29, 2010  
4:00 p.m.; Conference Room 308; **Agenda #3**

Aloha Chairman Oshiro and Committee Members:

The Property Casualty Insurers Association of American (PCI) is opposed to SB 2566 HD1 which would allow a physician or surgeon to conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and make treatment recommendations that could not be contested by an insurer or employer.

Insurer representatives were initially supportive of SB 2566 HD1 provided this measure included some fairly straightforward amendments to prevent potential abuse of this new right and to protect injured workers. The proposed amendments provided that the referral had to be within the occupational medical guidelines. The occupational medical guidelines are designed to ensure optimal treatment for the patient along with ensuring their safety. In addition, insurers requested amendments to ensure that the physician or surgeon had no financial interest in the diagnostic testing, the subspecialty diagnostic evaluator's practice or in the licensed specialist's practice. Any issues caused by a possible delay in going to another physician or surgeon without a financial interest in the diagnostic testing is clearly out weighted by the threat of financial kickbacks and unnecessary testing. Unnecessary testing which has the potential to merely increase revenue is both costly to the system and potentially dangerous to the patient. These amendments have not been adopted so PCI forced to oppose SB 2566 HD1.

PCI also supports the Department of Labor and Industrial Relations Department's belief that the existing administrative rules that allow for consultations are fair and adequate and that there is no need for a non-contestable "blanket rule" allowing for diagnostic testing and a one-time consultation.

Making the decision non-contestable, without including important safeguards, would eliminate the right of the insurer to challenge the referral on any basis including the belief that the test and consultation were not reasonable or were for a condition not related to an industrial injury. Such actions would merely serve to increase the cost of workers' compensation insurance without any benefit to the injured worker. For these reasons, PCI must respectfully oppose SB 2566 HD1.



HAWAII INJURED WORKERS ALLIANCE  
715 SOUTH KING STREET SUITE #410  
HONOLULU, HAWAII 96813

March 29, 2010

The Twenty-Fifth Legislature, State of Hawaii  
Regular Session 2010  
House of Representatives  
Committee on Finance

S.B. 2566 HD1 clarifies that a physicians or surgeon may conduct diagnostic testing or engages in a one-time consultation for subspecialty diagnostic evaluation and treatment recommendations from a board certified or licensed specialist.

The Hawaii Injured Workers Alliance strongly supports this measure.

The ability to move quickly and accurately to resolve an injury is foremost in the mind of doctors. By giving doctors this one-time consultation would help bring about a faster resolution of the injury.

We believe this bill will bring about a faster resolution to claimant injury.

We agree this is a positive step for injured workers in the State of Hawaii.

Your passage of this bill would be greatly appreciated.

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