



**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

March 9, 2010

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor and Public Employment

Date: March 9, 2010

Time: 9:30 a.m.

Place: Conference Room 309, State Capitol

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

Testimony in OPPOSITION

to

S.B. 2566 – Relating to Medical and Rehabilitation Benefits

I. DEPARTMENT POSITION

The Department opposes the amendment because its administrative rules that allow for consultations are fair and adequate. Currently, the attending physician usually refers the injured worker for diagnostic testing and consultations when they feel it is reasonable and necessary as the injury requires. And because not all workers' compensation injuries are so severe and complex to require diagnostic testing and consultations, the Department does not feel that "a blanket approval" for diagnostic testing and a one-time consult should be allowed. Each case should be determined on a case by case basis which the current administrative rules provide. The Department, therefore, opposes the proposed amendment for the reasons cited above.

II. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 2566 proposes to amend Section 386-21(b), HRS, by clarifying 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, without prior approval from the insurer or employer.

III. CURRENT LAW

The current law allows an injured employee to select any physician or surgeon who is practicing on the island where the injury was incurred to render medical care. The current Workers' Compensation Medical Fee Schedule Administrative Rules (WCMFS) allows for Consultations under Section 12-15-42 when additional medical opinions and treatment is warranted.

Under Section 12-15-42, WCMFS, Consultations may be requested by the attending physician, the injured employee, the employer, or the director whenever another physician with expertise and experience on the subject may be required. Consultation referrals must be authorized by the employer/insurance carrier (hereafter "employer") or granted upon order of the director. The employer, upon receipt of a consultation request, shall respond within seven calendar days after postmark of such request, giving authorization or stating in writing the reason for refusal to the attending physician, the injured employee, and the director. If the employer denies the consult, the attending physician or the injured employee may request the director to review the employer's denial and a hearing will be held to approve or deny the request for consultation based on the evidence presented.

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

March 8, 2010

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
For Hearing on Tuesday, March 9, 2010
9:30 a.m., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

**Senate Bill No. 2566
Relating to Medical and Rehabilitation Benefits**

(WRITTEN TESTIMONY)

TO CHAIRPERSON KARL RHOADS AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 2566 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.



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

Tuesday, March 9, 2010, 9:30 A.M., Conference Room 309

To: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

From: Hawaii Medical Association
Gary A. Okamoto, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Lauren Zirbel, Government Affairs
Dick Botti, Government Affairs

Re: SB2566 RELATING TO MEDICAL AND REHABILITATION BENEFITS

In Support

Chairs & Committee Members:

Hawaii Medical Association supports SB2566 Relating Medical and Rehabilitation Benefits as a measure to help expedite care for injured workers and avoid long delays with denials that may have no basis in medical need.

Thank you for the opportunity to testify.

OFFICERS

President - Robert Mavit, MD President-Elect - Morris Mitsunaga, MD Secretary - Thomas Kosasa, MD
Immediate Past President - Gary Okamoto, MD Treasurer - Stephen Kemble, MD Executive Director - April Donahue



Testimony by: Derrick Ishihara, PT

SB 2566, Relating to Medical and Rehabilitation Benefits

Hse LAB, Tuesday, March 9, 2010

Room 309, 9:30 am

Position: Support, With Suggested Amendment

Chair Rhoads and Members of the Hse LAB 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.

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

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Hearing: Tuesday, March 9, 2010
Time: 9:30 a.m.
Place: Room 309, State Capitol

TESTIMONY OF ILWU LOCAL 142 RE:
SB 2566 RELATING TO: MEDICAL AND REHABILITATION BENEFITS

Chair Rhoads, Vice Chair Yamashita, Members of the Committee:

Thank you for the opportunity to present testimony regarding SB 2566. 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 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 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. 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.

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



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

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

Tuesday, March 9, 2010
9:30 a.m.

S.B. 2566

Chair Rhoads, Vice Chair Yamashita, 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. 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.

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

We respectfully request that S.B. 2566 be held.

Thank you for the opportunity to testify.



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

March 7, 2010

The Twenty-Fifth Legislature, State of Hawaii
Regular Session 2010
The House of Representatives
Committee on Labor and Public Employment

S.B. 2566 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.

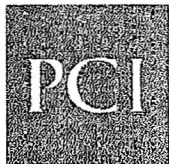
We believe this bill will bring about a faster resolution to claimant injury.

We are concerned about referring physician financial interest guidelines. Our concern is in hospital such as Kaiser, Straub, Hawaii Medical Center and others they may not be able to refer patients to an in house doctor because as a group of doctors they have a financial interest in there hospital.

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



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

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

To: The Honorable Karl Rhoads, Chair
House Labor and Public Employment Committee

From: Samuel Sorich, Vice President

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

Date: Tuesday, March 9, 2010
9:30 a.m.; Conference Room 309

Aloha Chairman Rhoads and Committee Members:

The Property Casualty Insurers Association of American (PCI) is opposed to SB 2566 which 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 could not contested by an insurer or employer.

Insurer representatives were not initially opposed to this measure but asked for some fairly simple amendments to prevent abuse of this new right and to protect injured workers. The amendments would have provided that the referral has to be within the occupational medical guidelines and the physician or surgeon has no financial interest in the diagnostic testing, the subspecialty diagnostic evaluator's practice or in the licensed specialist's practice. These amendments have not been adopted so we are forced to oppose this bill.

We also support 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 "blanket rule" allowing for diagnostic testing and a one-time consultation.

Granting this blanket waiver, 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, we respectfully request members of this committee to oppose SB 2566.

March 8, 2010

House of Representatives
The Twenty-fifth Legislature

Committee on Labor and Public Employment
Representative Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair and Committee members
Hearing March 9, 2010 at 9:30 a.m. Conference Room 309

Testimony in support of SB 2339 SD1

We are in support of SB 2339 SD1

My name is Laurie H. Hamano, Vocational Rehabilitation Counselor as well as President of Vocational Management Consultants, Inc. The following signatures below indicate the support of VMC of this bill. We have seen too many cases that are consistently prolonged due to the carrier's indication that they are "investigating the case, or denying the case" and once the hearing has been held, the injured worker then has their case opened after a long period of waiting without compensation or medical treatment. We have seen that more than likely these workers' injuries are worsened by the lack of treatment and time lapse. Many of them must fall to other resources such as the Welfare system and the Social Security Disability system when they have not received the treatment or benefits from the start of the injury. This then causes the cost shifting to our other resources when the injured worker's recovery should have been paid by the insurance company of injury.

Please pass this bill.

Testimony for SB 2566 (SSCR2383) Relating to Medical and Rehabilitation Benefits

We are in support of SB 2566 AS ORIGINALLY WRITTEN WITHOUT THE AMENDMENT

Those signing below also support the next bill that clarifies that the physician's ability to conduct diagnostic testing or engage in a one-time consultation. Please allow these physicians to do their job and not tie their hands as to where they refer. We need these doctors in the system and by adding or tying their hands in any way decreases their ability to do their jobs. Please allow this bill to pass without their amendment.

Thank you for the opportunity to address this committee.

Vocational Management Consultants, Inc.
President Laurie H. Hamano, M. Ed. CRC, LMHC
Kirsten Harada, M. Ed. CRC, LMHC
Patti Inoue, M. Ed. CRC, LMHC
Beverly Tokumine, M. Ed. CRC, LMHC

Percy Wong, M. Ed. CRC, LMHC
Lily Miyahira
Leona Tadaki-Kam
Raynee Callihan
Adam Yonamine

715 S. King Street Suite 410
Honolulu, Hawaii 96813

#538-8733
fax 538-8744

LATE

**LAW OFFICES OF
STANFORD H. MASUI**

A LIMITED LIABILITY CORPORATION

Seven Waterfront Suite 400 • 500 Ala Moana Blvd. • Honolulu, HI 96813

Phone: (808) 543-8346 • FAX: (808) 521-7620

TESTIMONY IN SUPPORT OF S.B. 2566

In the field of workers' compensation, judicial rules have been supplemented by the legislative mandate to liberally interpret the statutes to further the humanitarian purpose of the laws and various presumptions, which require that doubts be resolved in favor of the claimant. Akamine v. Hawaiian Packing and Crating, Co., 53 Hawai'i 406, 414, 495 P.2d 1164 (1972); DeFries v. Ass'n of Owners, 57 Hawai'i 296, 304, 555 P.2d 885 (1976). After all, injured workers were stripped of their right to sue their employers with the enactment of the workers' compensation statute in 1915 in exchange for the prompt payment of benefits as a cost of doing business for the employers. HRS § 386-5 (exclusiveness of right to compensation under the statute). However the present system as it presently functions is a subversion of the original intent of workers' compensation.

The present practice for allowance of medical treatment under our Workers' Compensation law, Chap. 386 as it has been administratively structured has become dysfunctional. As members of your committee probably are aware, most of the medical profession has dropped out of the Worker's Compensation system out of frustration and lack of adequate financial compensation.

This bill seeks to correct an aspect of delay in treatment. The few medical professionals willing to treat injured workers are constantly hamstrung by the inability to readily conduct diagnostic testing or obtain a consultation under the workers compensation system with a specialist in the field to further determine treatment and diagnostic recommendations.

There are now frequent insurance carrier objections even at the outset of an injury to requests for treatment, diagnostic testing or consultation. It was estimated by one member of the Labor and Relations Appeals Board that about 50% of appeals before the Board are now related to the denials of treatment plans under current law and practice.

These objections to treatment are frequently being made by insurance personnel without medical training, or minimal medical knowledge. Moreover, many medical providers will hesitate to provide the diagnostic testing or consultation under private medical insurance when confronted with a denial by a worker's compensation insurance company. The result is delay in medical services for the injured worker and rapid return to the work force. This needed change in the law will expedite treatment and allow flexibility to the treating physician at the outset of an injury.

ACCIDENT CASES • WORKERS' COMPENSATION • EMPLOYMENT & LABOR LAW

Email: standmanmasui@yahoo.com • visit us: www.stanfordmasui.com