

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



SUNSHINE P. W. TOPPING  
INTERIM DIRECTOR

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

FEBRUARY 11, 2011

TESTIMONY TO THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
For Hearing on Monday, February 14, 2011  
2:00 p.m., Conference Room 325

BY

SUNSHINE P. W. TOPPING  
INTERIM DIRECTOR

**House Bill No. 463, HD1  
Relating to Medical and Rehabilitation Benefits**

**(WRITTEN TESTIMONY ONLY)**

TO CHAIRPERSON ROBERT N HERKES AND MEMBERS OF THE COMMITTEE:

The purpose of H. B. No. 463, HD1 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.

Thank you for the opportunity to testify on this measure.



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

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February 14, 2011

To: The Honorable Robert N. Herkes, Chair  
and Members of the House Committee on Consumer Protection & Commerce

Date: February 14, 2011  
Time: 2:00 p.m.  
Place: Conference Room 325, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations

**Testimony in SUPPORT** —  
Of

**H.B. No. 463, H.D. 1 Relating to Medical and Rehabilitation Benefits**

**I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 463, HD 1 proposes to amend Section 386-21(b), HRS, by clarifying that a injured employee's physician or surgeon may conduct diagnostic testing or make no more than one referral to a board certified or licensed specialist for one subspecialty diagnostic evaluation and treatment recommendations without denial from the insurer or employer; regardless if the one-time consultation is to be made at a medical facility in which the physician or surgeon may be on staff or has a financial interest. It will also require the physician or surgeon who uses this one-time referral allowed under this section to notify the department and the employer.

**II. 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 are 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.

The current law does not address referrals to a medical facility in which the physician or surgeon has a financial interest.

### **III. HOUSE BILL**

The Department supports the intent of this amendment to expedite the process of a workers' compensation claim and want to insure that injured workers are afforded prompt, quality medical care and services.

The Department continues to question the intent of the wording, "provided that the onetime consultation may be made regardless of whether the board certified or licensed specialist is on the staff of or affiliated with a medical facility in which the physician has a financial interest." The Department suggests the legislature consider the potential conflict of interest in determining the most appropriate statutory language.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**  
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PETER B. CARLISLE  
MAYOR



NOEL T. ONO  
DIRECTOR

February 14, 2011

The Honorable Robert N. Herkes, Chair  
and Members of the Committee on Consumer  
Protection and Commerce  
The House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Herkes and Members:

Subject: House Bill No. 463, HD1, Relating to Medical and Rehabilitation Benefits

Although the City and County of Honolulu appreciates the clarifying language added to the original bill, it must still strongly oppose House Bill No. 463, 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. The bill further 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 House Bill No. 463, HD1.

Yours truly,

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

Noel T. Ono  
Director

THE TWENTY-SIXTH LEGISLATURE  
STATE OF HAWAII  
REGULAR SESSION OF 2011

**COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Rep. Robert N. Herkes, Chair  
Rep. Ryan I. Yamane, Vice Chair

Hearing: Monday, February 14, 2011

Time: 2:00 p.m.

Place: Conference Room 325

**TESTIMONY OF ILWU LOCAL 142 RE:**

**HB 463, HD 1, RELATING TO MEDICAL AND REHABILITATION BENEFITS**

Chair Herkes, Vice Chair Yamane, Members of the Committee:

Thank you for the opportunity to present testimony regarding HB 463, HD 1. We support this constructive and useful measure.

The proposed legislation would permit a workers' compensation treating physician to make a single referral without approval by the employer or insurer to a subspecialty physician for diagnostic testing and treatment recommendations. By doing so, it will markedly enhance the deliver of prompt and effective medical care to injured workers and expedite their recovery and rehabilitation.

All too often or members become mired in senseless delay that discourages them when they seek to be healed and to return to work. Their doctors are also often frustrated because they must await approvals before moving their patients forward, where specialty care is necessary and proper. In our debilitated economy, such delay is the enemy is workers, employers, and insurers alike. Delay adds cost in temporary total disability benefits when disability is needlessly prolonged. Delay adds cost in medical care when discouraged employees become depressed and anxious, compounding their physical injuries with psychological complications.

HB 463, HD 1 takes a positive and proactive approach to medical care by empowering the treating physician, where in her judgment, subspecialty referral is necessary to make such referrals unilaterally. The reality of modern medicine is that it is highly specialized and this bill recognizes that fact by allowing referrals promptly. Where surgical intervention is necessary, timely surgical referral often actually improves the actual outcome of surgery, where delay can make surgery more complicated or less effective. Yet at the same time, HB 463, HD 1, does not eliminate the employer and insurer's legitimate prerogatives to approve or deny surgery and to have second-opinion independent medical evaluations where that is deemed appropriate.

HB 463, HD 1, thus strikes a proper balance between respecting Employer and insurer discretion, while expediting treatment and care in the cost-saving interest of all parties to the industrial adjudication process. We therefore urge that this simple, yet constructive measure be adopted.



Testimony by: Derrick Ishihara, PT  
HB 463hd1, Relating to Medical and Rehabilitation Benefits  
Hse CPC, Monday, February 14, 2011  
Room 325, 2:00 pm                      Position: Support

Chair Herkes and Members of the House CPC 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 request for surgical or other sub-specialist consult.

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.



**HAWAII MEDICAL ASSOCIATION**

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

**Monday, February 14, 2011, 2:00 P.M., Conference Room 329**

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Robert N. Herkes, Chair  
Rep. Ryan I. Yamane, Vice Chair

From: Hawaii Medical Association  
Dr. Morris Mitsunaga, MD, President  
Linda Rasmussen, MD, Legislative Co-Chair  
Dr. Joseph Zobian, MD, Legislative Co-Chair  
Dr. Christopher Flanders, DO, Executive Director  
Lauren Zirbel, Community and Government Relations

Re: HB 463 RELATING TO MEDICAL AND REHABILITATION BENEFITS

In Support

Chairs & Committee Members:

Hawaii Medical Association supports HB 463 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 - MORRIS MITSUNAGA, MD PRESIDENT-ELECT - ROGER KIMURA, MD  
SECRETARY - THOMAS KOSASA, MD IMMEDIATE PAST PRESIDENT - DR. ROBERT C. MARVIT, MD TREASURER  
- STEPHEN KEMBLE, MD EXECUTIVE DIRECTOR - CHRISTOPHER FLANDERS, DO**



# Work\*Star™

## Injury Recovery Center

91-2135 Fort Weaver Road, Suite 170, Ewa Beach, HI 96706

Phone: (808) 676-5331 • Fax: (808) 671-2931

February 13, 2011

The Twenty-Sixth Legislature, State of Hawaii

Regular Session 2011

House of Representatives

Committee on Consumer Protection and Commerce

### HB 463 HD1 RELATING TO WORKERS COMPENSATION

Dear Honorable Committee Members,

I am writing in support of this legislation, which gives the treating physician a guarantee of a minimum of diagnostic testing and investigation and working up a work-related injury. This bill would not be necessary whether or not so many “denied pending investigation” by insurance, which is now estimated to involve well over 15% of the approximately 25,000 workers’ compensation injuries claimed yearly.

Such “denial pending investigation” unfortunately is being used without specifications regarding the type of “investigation” underway and is, in actuality, a medical-legal maneuver to give insurers enough time for one of its chosen doctors to deny and withhold care. Unfortunately, since this technique is applied to legitimately injured workers, the patient lacks the ability to have their problem diagnosed and treated appropriately in accordance with the community and national medical standards. Without such care, the patient is thrust into a “limbo” status, unable to recover and, unfortunately, unable to utilize his/her private insurance without misrepresenting how they were injured or became ill.

It is indeed unfortunate that legislation of this type is necessary since Hawaii’s Workers’ Compensation HRS 386 statute should provide full and complete care for those injured at work in lieu of injured workers tort action against the employer. However, through various “remedies” such as “denied pending investigation” insurers have found ways to deny and delay care pushing liability off on other state and federal social welfare systems to the detriment of the community.

Thank you for supporting this measure which provides a minimum of care for those injured in the line of their duties. This is at least a small patch in the broken safety net we call workers’ compensation.

Mahalo nui loa,

D. Scott McCaffrey, M.D.  
Work\*Star Injury Recovery Center  
Board Member, Board of Advisors  
Hawaii Injured Workers Alliance

## CPCtestimony

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**From:** Douglas Moore [bolger55@gmail.com]  
**Sent:** Monday, February 14, 2011 6:50 AM  
**To:** CPCtestimony  
**Subject:** Support for HB 463

Aloha Committee Chair & Members:

I support the passage of HB 463 to allow medical testing & specialist referral for injured workers. This legislation will enable injured workers to receive the diagnostic testing & evaluation needed for medical treatment & rehabilitation without interference from insurance carriers/employers. Thank you. Douglas Thomas Moore, Esq.  
808-526-0056



## Hawaii Injured Worker's Alliance

715 South King Street Suite #410  
Honolulu, Hawaii 96813  
Phone: 538-8733 (Oahu)  
Phone: (888) 598-8115 Neighbor Islands  
Web Site: [www.hawaiiinjuredworkersalliance.com](http://www.hawaiiinjuredworkersalliance.com)

February 14, 2011

The Twenty-Sixth Legislature, State of Hawaii  
Regular Session 2011  
House of Representatives  
Committee on Consumer Protection and Commerce

### **HB 463 HD1 RELATING TO MEDICAL AND REHABILITATION BENEFITS.**

Allows an injured employee's physician or surgeon to conduct diagnostic testing or make a total of one referral to a board-certified or licensed specialist for one subspecialty consultation for diagnostic evaluation and treatment recommendations.

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 it 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 Waialeale  
Executive Director  
Hawaii Injured Workers Alliance



Property Casualty Insurers  
Association of America

Shaping the Future of American Insurance  
1415 L Street, Suite 670, Sacramento, CA 95814

To: The Honorable Robert N. Herkes, Chair  
House Consumer Protection & Commerce Committee

From: Samuel Sorich, Vice President

Re: **HB 463 HD1– Relating to Medical and Rehabilitation Benefits**  
**PCI Position: Oppose**

Date: Monday, February 14, 2011  
2:00 p.m.; Conference Room 325

Aloha Chair Herkes and Committee Members,

The Property Casualty Insurers Association of America (PCI) is opposed to HB 463 HD1.

HB 463 HD1 would allow a physician or surgeon to conduct a diagnostic test or engage in a one-time consultation for a subspecialty diagnostic evaluation without being subject to review or objection by the injured employee's insurer or employer. The bill would allow the consultation to be made to a specialist who works in a medical facility in which the physician or surgeon has a financial interest.

HB 463 HD1 should be rejected because the bill would increase workers compensation costs and encourage dishonest practices. The right of an insurer or employer to determine whether a medical procedure is reasonable, necessary and related to a workplace injury provides a critical control on workers compensation costs and an important safeguard to assure that a medical procedure will help the injured employee return to work. The abolishment of this right for those procedures covered by HB 463 HD1 would remove an important control on costs without accomplishing anything that assures better treatment for injured employees.

Moreover, the bill's authorization for physician referrals to facilities in which the physician has a financial interest would create an environment that encourages financial kickbacks and unnecessary treatments. There is no good reason to create such a scenario. Any problems caused by a possible delay in going to another facility in which the physician does not have a financial interest are clearly outweighed by the prospect of kickbacks and questionable treatments.

PCI believes that HB 463 HD1 would be harmful to Hawaii's workers compensation system. PCI respectfully requests that the Committee vote to hold HB 466 HD1 for the remainder of the session.



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**Alison Powers**  
Executive Director

## TESTIMONY OF LINDA O'REILLY

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HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice Chair

Monday, February 14, 2011  
2:00 p.m.

### **HB 463, HD 1**

Chair Herkes, Chair Yamane, and members of the Committee, my name is Linda O'Reilly, Workers' Compensation Claims Manager at First Insurance, testifying on behalf 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 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 463, HD1. 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.

This proposal for uncontested referrals and diagnostic testing does not allow the employer due process to adjudicate medical treatment that is neither reasonable nor necessary. The bill should be clarified to ensure only one diagnostic test is allowed.

HB 463, HD1 will likely add costs to the workers' compensation system if there is increased abuse in this area. Without the adoption of nationally recognized utilization guidelines, such as Official Disability Guidelines (ODG), which has been adopted by 23

states, practitioners may seek to increase revenues by referring the patient to a specialist within their group practice or conducting unnecessary diagnostic tests.

We respectfully request that HB 463, HD1 be held.

Thank you for the opportunity to testify.

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES  
COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Monday, February 14, 2011  
2:00 p.m.

HB 463, HD1  
RELATING TO MEDICAL AND REHABILITATION BENEFITS

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

Chair Herkes, Vice Chair Yamane, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 463, 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 ensure 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 is reasonable and warranted by the work injury. Although unintended, this bill creates a bias against employers / insurance carriers by removing their 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 H.B. 463, HD1.

Thank you for the opportunity to testify.