DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 10TH FLOOR • HONOLULU, HAWAII 96813
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PETER B. CARLISLE
MAYOR

NOEL T. ONO
DIRECTOR

February 16, 2011

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

Dear Chair Herkes and Members:

Subject: House Bill No. 466, HD1 Relating to Medical and Rehabilitation Benefits

The City and County of Honolulu **strongly opposes** House Bill No. 466, HD1, repealing Section 386-79, Hawaii Revised Statutes (HRS), 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 currently have the right to obtain an independent opinion from a physician or specialist regarding the progress of a claim. HB 466, HD1, greatly limits an employer's ability to obtain such 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.

Most employers and insurance carriers have no problem using mutually agreed upon physicians for permanent impairment ratings, but to require mutual agreement for an employer to conduct an independent medical evaluation takes away from the very independence and purpose of the evaluation. The concept of an independent medical examination is incongruous with the words upon mutual agreement as proposed in this bill.

The Hawaii 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 employer currently has the right to select an independent medical examiner to review a claimant's medical progress. To change this as proposed is unfair and inequitable to employers. The DCD and LAB already provide the necessary checks and balances to ensure that employees are treated fairly, including limiting ordered medical examinations to one per case, while allowing employers to exercise their rights to review the progress of claims using independent medical examiners.

Finally, the bill allows only the attending physician to make the finding of medical stability. In most instances, this is self-serving and will undoubtedly prolong treatment, delay an employee's return to work and dramatically increase the cost of a claim.

We respectfully urge your committee to file House Bill No. 466, HD1. The changes proposed by this bill seriously erode an employer's ability to efficiently and effectively manage claims and will most definitely increase the cost of workers' compensation in Hawaii.

Yours truly,

for Noel T. Ono
Director

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 16, 2011

Representative Robert Herkes, Chair
Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: HB466, HD1 "Relating to Workers Compensation"

Dear Chair Herkes and Members of the Committee on Consumer Protection & Commerce:

I am Karen Nakamura, 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.

This bill would require that the independent medical examinations and permanent impairment rating examinations for workers' compensation claims be performed by physicians mutually agreed upon for employers and employees or appointed by the DLIR director. It would also amend the workers compensation laws of the State of Hawaii to allow the benefits of an injured employee to be suspended for any refusal to submit to an examination not just unreasonable refusals.
BIA opposes H.B. No. 466, HD1.

Both changes to the system may be at the expense of finding the best available care for injured claimants in a timely manner. Simply finding qualified physicians to conduct these reviews is time consuming and results in delays due to a shortage of such professionals. Pushing the selection of IME physician on to the DLIR will create more delays if claimants choose to gamble that they will receive a more favorable review by the government-appointed physician. A similar dynamic was created by the review of motor vehicle insurance PIP denials in the 1990's when a

similar program for motor vehicle insurance independent medical record reviews resulted in years long delays in processing reviews of denials.

By loosening the standards by which employers and insurers are allowed suspend payments in the way this bill does, the State would essentially incentivize bad faith adjusting of these claims. By deleting the word "reasonable", adjusters will have an incentive to set up situations which raise the likelihood that a claimant will refuse an examination. In this context the word "reasonable" is key, since it imposes a duty of good faith upon the participants in resolving these disputes. If the intent of this bill is to build trust and reduce confrontation in the workers' compensation system, it will fail at both objectives. Instead this bill will compel claimants to rely more heavily on plaintiffs' attorneys to navigate increasingly treacherous waters.

BIA respectfully requests that H.B. No. 466 HD1 be held.

Thank you for the opportunity to share our views with you.

Karen T. Nakamura

Chief Executive Officer
BIA-Hawaii

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the House Committee on Consumer Protection & Commerce
Wednesday, February 16, 2011; 2:05 p.m.
Conference Room 325
Hawaii State Capitol

RE: HOUSE BILL 466 HD1 RELATING TO WORKERS' COMPENSATION

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

The Chamber of Commerce of Hawaii ("The Chamber") **opposes HB 466 HD1, 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 as these specialties are either unavailable or unwilling to conduct IME in Hawaii. This unavailability/unwillingness is bound to increase by mandating such examinations or permanent impairment ratings be conducted pursuant to the medical fee schedule resulting in even fewer physicians available for 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 costs. The right for an employer to select the physician of its choice to determine whether or not an injury is work related or whether medical treatment is reasonable and necessary should not be subject to the delay and costs associated with this proposed bill.

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

3) This bill precludes combining examination and rating without the employee's written consent. The IME physician should be permitted to combine examination and permanent impairment rating without requiring the employee's written consent where the IME physician determines the employee is medically stable and ratable. To require the employer to schedule a separate rating would be a tremendous inconvenience to the employer, employee and IME physician as well as result in doubling the costs. Such a proposal is unnecessary, inconvenient, inefficient and expensive.

4) Proponents of this legislation believe this change may decrease the adversarial nature which 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, recovery and resolution of the claim without the need to take the matter to hearing before the Director at significant savings in time and resources.

5) 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. Otherwise, the employee or his or her attending physician will have the opportunity to contest the report. The employee is always free to obtain an alternative permanent impairment rating. In addition, it is not uncommon for an employer to voluntarily authorize another examination and rating by a second IME physician where the employee and his or her counsel disagree with the IME report. This is already done voluntarily by the employer to confirm the accuracy or inaccuracy of some disputed reports.

   On occasion the employer may dispute the attending physician's opinion that the employee has not yet attained medical stability where the medical evidence suggests otherwise. The employer should not be precluded from obtaining examination and rating under these circumstances, but should be allowed to present its own evidence for the Director's determination. Once again, the employee is always free to have his or her attending physician contest the report.

6) This bill provides for the Department to maintain a list of qualified physicians licensed to practice in Hawaii and appoint one within 7 days where the employer and employee disagree. It requires examination be performed within 30 calendar days. This is impractical given the Department's already limited resources. It will be extremely challenging for the Department to maintain an updated list of physicians

agreeable to conduct examinations and ratings for all medical specialties required particularly where some specialties are not available in Hawaii for workers' compensation. It will also be difficult for the Department to process requests within 7 days given their existing priorities and workload. Likewise, requiring an examination be arranged within 30 calendar days may prove difficult due to the schedules of the IME physicians especially if the available physicians are limited to the Department's list.

7) This bill appears to suggest the IME report is the final say regarding the injured employee. However, this is not the case. The Department makes a determination based upon all of the evidence presented to the hearings officers. The IME report is but one piece of evidence.

In summary, we believe the current system regarding independent medical examinations is working and 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 HB 466 HD1 and respectfully requests the committee holds this measure.

Thank you very much for the opportunity to testify.

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON

CONSUMER PROTECTION & COMMERCE

Wednesday, February 16, 2011
2:05 p.m.

HB 466, HD1
RELATING TO WORKERS' COMPENSATION

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. **strongly oppose H.B. 466, H.D. 1.** Our companies represent over 2,000 employees.

This bill mandates that independent medical examinations (IME's) and permanent impairment rating examinations, be performed by physicians mutually agreed upon by the employer and the injured employee.

In any proceeding for the enforcement of a claim for compensation under the current statutes, statutory presumption places the burden of proof on employers to present substantial evidence to the contrary. An "independent" medical examination serves as an objective tool to help employers clarify issues related to statutory presumption, excessive treatment, or reasonableness of a surgical procedure. We cannot support a bill that seeks to take away an employer's fundamental right to select their own physician in defense of their position.

While H.B. 466, H.D.1 attempted to amend the definition for "medical stability," it is still inconsistent with the definition contained in *The Guides to the Evaluation of Permanent Impairment*, currently used to evaluate permanent impairments when medical stability is reached.

The current statutes have numerous safeguards in place to allow injured employees full disclosure of an employer / insurance carrier's IME report, the right to seek their own medical opinion if they disagree, and an appeal process if the parties cannot agree. A majority of IME's are conducted under the current statutes without incident or dispute today. Permanent impairment rating examinations are currently performed by mutual agreement between parties, without any need for mandate by legislation.

For these reasons, we strongly oppose H.B. 466, H.D. 1 and respectfully request this measure be held.

Thank you for this opportunity to submit testimony.

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

February 16, 2011

Committee on Labor and Public Employment

House Bill 466 HD1 RELATING TO WORKERS' COMPENSATION

Requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the DLIR director.

The Hawaii Injured Workers Alliance strongly supports House Bill 466 HD1.

The Hawaii Injured Workers Alliance believes that a mutual agreement of an IME physician between the employer and the employee is the fairest way to insure impartial evaluation. Disability and impairment ratings must be done in the most impartial manner to be truly independent examiner.

The passage of this mutually agreed IME bill (HB 466 HD1) will benefit both the injured worker and their employer.

Your passage of this bill would be greatly appreciated.

George M. Waialeale
Executive Director
Hawaii Injured Workers Alliance

PCI
Property Casualty Insurers
Association of America
Shaping the Future of American Insurance
1415 L Street, Suite 670, Sacramento, CA 95814-3972

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

From: Samuel Sorich, Vice President

Re: HB 466 HD1 – Relating to Workers' Compensation
PCI Position: OPPOSE

Date: Wednesday, February 16, 2011
2:05 p.m., Conference Room 325

Aloha Chair Herkes and Members of the Committee:

The Property Casualty Insurers Association of American (PCI) is opposed HB 466 HD1 because the bill is unnecessary and unfair and would result in administrative delays.

HB 466 HD1 would establish a new, complex system for obtaining independent medical examinations. Instead of the simple existing system that allows an employer to obtain an independent medical examination, HB 466 HD1 would require the employer and the employee to reach a mutual agreement on the physician who conducts the examination. If mutual agreement is not reached, the director of the department of labor and industry would have to appoint a physician.

The purported reason for the bill is to provide safeguards for injured employees, but existing law already provides strong safeguards. Under existing law, the report of the independent medical examination must be given to the employee. The employee has the right to challenge the report and to offer evidence that disputes the report's findings. Moreover, the independent medical examination does not determine the outcome of the claim. It is simply one element of evidence. The final decision about the claim is based on consideration of all evidence presented.

The independent medical review gives the employer valuable information to evaluate the employee's condition. The employer pays for the examination. HB 466 HD 1 would unfairly force an employer to pay for examinations that do not

allow the employer to discover information which enables the employer to make a reasoned evaluation of the employee's condition and treatment.

Existing law allows independent examinations to be undertaken quickly. In contrast, examinations under HB 466 HD 1 would be stalled by built-in delays. The employer would have to first try to reach a mutual agreement. If that does not work, the employer would have to petition the director for the appointment of a physician. HB 466 HD1 gives the director seven days to appoint a physician who is willing to undertake an examination, however the bill fails to explain what happens when a willing physician is not found in seven days. Once a physician is appointed to take the case, the examination is supposed to take place within 30 days. No doubt, that is optimistic. All this means that examinations would be burdened by administrative delays.

PCI respectfully requests that the Committee vote to hold HB 466 HD1 for the remainder of the session.

To: House Committee on Economic Revitalization & Business
Representative Karl Rhoads, Representative Kyle Yamashita, Members of the Committee

Hearing: February 16, 2011, 2:05 p.m.

Re: HB 466, Relating to Workers' Compensation

From: Milia Leong, Claim Manager, John Mullen & Company, Inc.

Representative Rhoads, Representative Yamashita, and the Members of the Committee, I would like to thank you for giving me the opportunity to comment on HB 466, relating to workers' compensation. My name is Milia Leong and I am the Claim Manager for the Workers' Compensation Department at John Mullen & Co., Inc. ("JMCO"), Hawaii's largest Third Party Administrator ("TPA"). We have been handling multi line insurance claims for over 50 years in this State and I have personally adjusted, supervised, and managed workers' compensation claims for over 17 years on behalf of hundreds of Insureds, Self Insureds, State, City and County, and Captive Employers. I am also responsible for reviewing all incoming workers compensation claims daily, and evaluating to determine if the claim is compensable or if further investigation is necessary.

As adjusters, JMCO actively handles the day to day functions required to facilitate medical/indemnity benefits to injured workers pursuant to Section 386 H.R.S. for compensable claims and to expedite the investigation process in cases where liability is questionable. In my experience, I can say without a doubt, that the majority of new claims received on a daily basis, are initially accepted without delay. In the limited cases where initial compensability is denied pending investigation, we must provide a valid justification to the Director based on medical and legal evidence in support of our position. To allege otherwise, is a factual untruth and we believe that as adjusters, whose primary function is to handle claims on a daily basis, we should be credited as we are on the frontline of actual claims adjusting for all issues involved, not just those in dispute.

JMCO opposes HB 466 which requires independent medical examinations ("IME") and permanent partial disability ratings to be performed by physicians mutually agreed upon by employers and employees or appointed by the Director of the Department of Labor and Industrial Relations.

We offer the following in support of our opposition to HB 466:

1. It is critical to the Employers' discovery process that an IME be scheduled expeditiously, for claims that require investigation with respect to compensability or further liability. The IME provides checks and balances in the form of a second medical opinion to ensure the issues of whether an injury is work related and whether medical treatment/disability certification is reasonable and necessary are properly addressed. The Employer should be permitted the right to select an IME physician of their choosing in the event parties are unable to agree, given the Employer is responsible for 100% of said expense. **The injured worker has such right in the selection of an attending physician pursuant to Section 386-21 which is also at Employer's expense**. The Employer has no input regarding this selection and the Employee may treat with whomever he/she may choose subject to the definitions of a qualified physician pursuant to H.R.S. 386-27. There is no discussion as to an agreed upon

attending physician. In fact, the Employer is in no way permitted to direct or influence the injured worker's selection.

2. The independent examiner's role is to provide an unbiased assessment based on the medical records, pertinent file documentation and examination of the injured worker. In fairness to all parties, a copy of said report is furnished to the injured worker, their attending physician and the Department of Labor for review and comment. The injured worker has the right to provide a rebuttal to this report by their physician, an IME/second opinion of their choosing, and/or may file a request for hearing before the Department of Labor should they disagree with the IME findings. The Employer should at the very least be allowed to present its own evidence for the Director's determination. The Employers/Director's determination is not based on the IME alone, but the case facts in its entirety. In cases where an injured worker obstructs an investigation of compensability or further liability, Section 386-79 provides one of the only avenues for an Employer to statutorily expedite such investigation and/or address potential malingering. As a safeguard, the Director requires the Employer to provide sufficient reasoning for any request for Order or the request will be denied.

3. All other standard investigation practices, such as obtaining a statement from the injured worker and securing a signed medical authorization to request necessary medical records, are voluntary and Employer has little to no remedy to enforce cooperation. In many cases, the Employer is left with only the right to an Ordered IME by a provider of its choosing to address questions or concerns, as we are confined to time limitations and discovery deadlines for all cases referred to hearing before the Director. If a claimant or his/her representative refuses to comply with our inquiries and/or attend an agreed upon IME voluntarily, and we have no right to an Order, the Employer would basically end up sitting before a Hearings Officer with their hands tied. This would force Employers to accept every single claim, even those that are fraudulent and non compensable per Statute. To repeal Employer's right to request such Order and by limiting Employer to only one IME, this would result in a significant delay in cases where malingering is suspected, intervening accidents/injuries have occurred, lack of compliance by the worker to actively participate in recommended medical treatment has prolonged recovery, underlying unrelated health conditions have surfaced affecting return to pre injury status, financial gain incentives are apparent, and/or fraud is suspected. This will undoubtedly result in inflated claim costs across the board, of which HB 466 provides no remedy for reimbursement of medical/indemnity costs, should the IME agree with Employer's position and the Director issue a Decision affirming same.

4. HB 466 provides for the Department to maintain a list of qualified physicians licensed to practice in Hawaii and appoint one within 7 days where the employer and employee disagree. It requires the IME to be performed within 30 calendar days. This is impractical given the Department's already limited resources, furlough schedule, and the fact that current IMEs are taking anywhere between 6-12 weeks to schedule, and even longer for specialty or psychiatric examinations. This unavailability/unwillingness of parties to agree is bound to increase the numbers of cases requiring an Order, which will undoubtedly delay the process of recovery and return to work for even more injured workers. By mandating such examinations or permanent impairment ratings be conducted pursuant to the Medical Fee Schedule, we believe fewer physicians will be willing to conduct IME/ratings, resulting in an even longer wait time. In our experience, the majority of IME/ratings that are perceived as being "costly," are due to the physician's requirement to review a myriad of medical records, not just the exam itself. It is not uncommon to have multiple bankers boxes full of medical records submitted to the independent medical examiner for review. The physicians

who are certified in this area, and are willing to conduct IMEs, should be consulted to establish appropriate procedural guidelines for conducting these exams.

5. HB 466 precludes combining examination and rating without the employee's written consent. To require the employer to schedule a separate rating would be a tremendous inconvenience to the employer, employee and IME physician, which would at the very least double the costs for such expense. Ironically, the very supporters of this bill are using inflated IME costs as evidence in support of their position.

In summary, we believe the current IME process is working for both employer and employee. The vast majority of IMEs are conducted without incident, dispute or the need for an ordered evaluation. The IME process can greatly enhance the likelihood of successful treatment, recovery and resolution of the claim without the need to take the matter to hearing before the Director at significant savings in time and resources. In fact, in many cases, the IME provides direction of which the attending physician will often "defer" further recommendation, especially in cases where the worker is reporting no significant improvement despite ongoing medical treatment and lengthy disability periods. An independent opinion may provide for insight not considered by the attending physician, and in many cases, when situations like this arise, the attending physician agrees with the recommendations and moves forward with the treatment and/or return to work plan. In other cases, IMEs concur with the attending physician's current treatment plan and/or disability duration and often find claims compensable where liability is initially investigated. However, the vast majority of <u>these</u> IMEs are never commented on because there is no "dispute," and the claim moves forward without complaint. It is unfortunate, that the minority, not the majority is driving the support of HB 466. Based on our daily handling of industrial claims, we believe the current IME process is balanced and, therefore, request HB 466 be held.

We welcome the opportunity to discuss this bill with you further. Thank you for this opportunity to provide you our input based on our expertise of actual claims adjusting.

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Randy Perreira
President

Telephone: (808) 597-1441
Fax: (808) 593-2149

The Twenty-Sixth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Consumer Protection & Commerce

Testimony by
Hawaii State AFL-CIO
February 16, 2011

H.B. 466, HD1 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO supports H.B. 466, HD1 which requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations.

The purpose of this bill is to reduce workers' compensation costs and speed up an employee's 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 say as to who the doctors will be, resulting in a lack of trust when the medical reports are generated. In fact, some physicians are paid handsomely each year by insurance carriers to perform medical examinations. This should raise a red flag and lead us 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 carriers.

Most notably, H.B. 466, HD1 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.

Thank you for the opportunity to testify in support of H.B. 466, HD1.

Respectfully submitted,

Randy Perreira
President

Please support HB466 - Strong Support

Joseph Zuiker [zuikerlw@pixi.com]

Sent: Tuesday, February 15, 2011 8:39 AM

To: CPCtestimony

Categories: Green Category

This bill will save thousands of dollars by getting medical treatment clarified earlier and getting workers back on their jobs. That will save thousands of dollars yearly.

Fair competent second opinions when necessary. Mutual cooperation which is required in this bill willlower work comp. costs.

Please pass this bill.

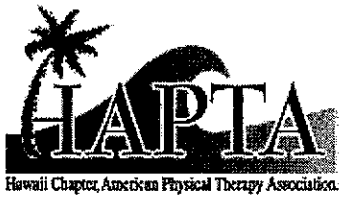
Joseph F. Zuiker

1717 Mott Smith Dr., Apt. 1904

Honolulu, Hawaii 96822

808 523 1142

Testimony by:
Derrick Ishihara, PT
HB 466 HD1, Workers' Compensation
Hse CPC Committee
Wednesday, Feb. 16, 2011
Room 325, 2:05 pm



Position: Support with Comment, Page 2, lines 6-8

Chair Herkes and Members of the House CPC 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 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 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.

Some opposed to this measure rightly state that a claimant dissatisfied with findings of an IME can appeal the findings in a Hearing at the DLIR. As we know, this process can take months to schedule and after the Hearing, weeks to months to receive a decision. For an injured worker in pain, even a few days without needed medical treatment can seem like an eternity. Insurers also contend that a dissatisfied claimant can always obtain their own IME and appeal the insurer's IME. However, this assumes that the claimant has enough money to hire an MD when many injured workers have their income disrupted and are not receiving lost wages **because** of the original IME.

Discussions with treating physicians and claimant attorneys reveal that much of the conflict between injured workers and insurers exist early in the process. Some insurers have denied initial medical care and diagnostic tests "pending investigation". We understand the insurers' need for discovery and do not object to this. However we fail to see how mutually selecting a physician to perform the IME denies them this tool. At the very least, we should use mutually selected physicians for the initial IME to get the needed medical care started and as currently practiced, a mutually selected physician to do the Permanent Partial Disability IME.

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 6-8 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.

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 14, 2011 4:26 PM
To: CPCtestimony
Cc: ska@hawaiiantel.net
Subject: Testimony for HB466 on 2/16/2011 2:05:00 PM

Testimony for CPC 2/16/2011 2:05:00 PM HB466

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Sandra K. Aken
Organization: Individual
Address:
Phone:
E-mail: ska@hawaiiantel.net
Submitted on: 2/14/2011

Comments:

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 14, 2011 3:43 PM
To: CPCtestimony
Cc: mkurihara@hgea.org
Subject: Testimony for HB466 on 2/16/2011 2:05:00 PM
Attachments: hb466hd1.PDF

Testimony for CPC 2/16/2011 2:05:00 PM HB466

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Jason Bradshaw
Organization: AFL-CIO
Address:
Phone:
E-mail: mkurihara@hgea.org
Submitted on: 2/14/2011

Comments:

SHRM
HAWAII

To: House Committee on Consumer Protection & Commerce

Hearing: February 16, 2011, 2:05 p.m.
Conference Room 325

Re: HB 466, HD1: Relating to Workers' Compensation

From: Society for Human Resource Management - Hawaii Chapter

The Society for Human Resource Management – Hawaii Chapter ("SHRM Hawaii") represents more than 1,300 human resource professionals in the State of Hawaii. On behalf of our members, we would like to thank the Committee for giving us an opportunity to comment on HB 466, HD1, relating to workers' compensation.

We are opposed to HB 466, HD1 which requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointment by the Department of Labor and Industrial Relations Director.

We have the following concerns with HB 466, HD1:

1. The IME is a critical component to the employers' discovery process. It provides checks and balances in the form of a second medical expert opinion to ensure the issues of whether an injury is work related and whether medical treatment is reasonable and necessary are properly considered and addressed. The employer and insurance carrier pay for 100% of the cost of the IME and should be permitted to select an IME physician whose opinion they trust just as the employee chooses his/her attending physician. It must be noted that the employee's attending physician conducts the medical treatment. The IME physician's only role is to provide independent evaluation. The IME report is already provided to the employee or his/her representative.

2. This bill provides for the Department to maintain a list of qualified physicians licensed to practice in Hawaii and appoint one within 7 days where the employer and employee disagree. It requires examination be performed within 30 calendar days. This is impractical given the Department's already limited resources. It will be extremely challenging for the Department to maintain an updated list of physicians agreeable to conduct examinations and ratings for all medical specialties required particularly where some specialties are not available in Hawaii for workers' compensation. In many cases, there is a necessity to retain physicians in specialties outside of Hawaii to conduct an IME as these specialties are either unavailable or unwilling to conduct IME in Hawaii. This unavailability/unwillingness is bound to increase by mandating such examinations or permanent impairment ratings be conducted pursuant to the medical fee schedule resulting in even fewer physicians available for IME. The physician community should be consulted to establish appropriate procedural guidelines for conducting IMEs.

It will also be difficult for the Department to process requests within 7 days given their existing priorities and workload. Likewise, requiring an examination be arranged within 30 calendar days may prove difficult due to the schedules of the IME physicians especially where the available physicians are limited to the Department's list.

3. This bill precludes combining examination and rating without the employee's written consent. The IME physician should be permitted to combine evaluation and permanent impairment rating without requiring the employee's written consent where the IME physician determines the employee is both medically stable and ratable. To require the employer to schedule a separate rating would be a tremendous inconvenience to the employer, employee and IME physician as well as result in doubling the costs of evaluation and rating. Such a proposal is unnecessary, inconvenient, inefficient and expensive.

In summary, the current IME process works well for both employer and employee. The vast majority of IMEs are conducted without incident, dispute or the need for an ordered evaluation. The opportunity for an employer IME can greatly enhance the likelihood of successful treatment, recovery and resolution of the claim without the need to take the matter to hearing before the Director at significant savings in time and resources. Existing safeguards for employees include the report is provided to the injured employee and the employee is fully able to contest the report, have his/her attending physician review and comment on the report, or obtain an alternate rating. In addition, it is not uncommon for an employer to voluntarily authorize another evaluation and rating by a second IME physician where the employee and his/her counsel disagree with the IME report to confirm the accuracy or inaccuracy of the report. On occasion the employer may dispute the attending physician's opinion that the employee has not yet attained medical stability where the medical evidence suggests otherwise or it may dispute that treatment recommended by the attending physician is reasonable and necessary. The employer should not be precluded from obtaining examination and rating under these circumstances, but should be allowed to present its own evidence for the Director's determination. The Director's ultimate determination is based upon all of the evidence presented to the hearings officers. The IME report is but one piece of evidence.

We would be pleased to further discuss this proposed bill with you. Thank you for this opportunity to provide you with this input.

HAWAII INSURERS COUNCIL
A trade association of property and casualty insurance companies

Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF LINDA O'REILLY

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

Wednesday, February 16, 2011
2:05 p.m.

HB 466, HD1

Chair Herkes, Vice Chair Yamane, and members of the Committee, my name is Linda O'Reilly, Workers' Compensation 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 466, HD1, 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 2008, there were approximately 24,500 new workers' compensation claims, and therefore, only about 4% 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.

For these reasons, we respectfully request that HB 466, HD1 be held.

Thank you for the opportunity to testify.

February 15, 2011

Committee on Consumer Protection and Commerce

NOTICE TO HEARING

DATE: WEDNESDAY, FEBRUARY 16, 2011
TIME: 2:05 P.M.
PLACE: Room #325

TESTIMONY IN SUPPORT OF HB 466

My name is Beverly Tokumine, I am a Rehabilitation Specialist at Vocational Management Consultants, Inc. I have worked within the field of workers compensation for the past 28 years and as a vocational rehabilitation specialist for the past 7 years. I am a member of the Hawaii Injured Worker Alliance, and a member of the International Association of Rehabilitation Specialists, IARP. As a Rehabilitation Specialist, I support the HB 466, which is the mutually agreed upon independent medical evaluations. This will provide the Injured Worker less anxiety and ill feeling to the employer requested medical evaluation.

This measure can only help the system decrease the costs and delays in the rehabilitation
process. Once again, I support this bill and urge you support.

Sincerely,

Beverly Tokumine, M. Ed., CRC
Rehabilitation Specialist

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 15, 2011 1:01 PM
To: CPCtestimony
Cc: sandrakawehi@msn.com
Subject: Testimony for HB466 on 2/16/2011 2:05:00 PM

Testimony for CPC 2/16/2011 2:05:00 PM HB466

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Sandra
Organization:
Address:
Phone:
E-mail: sandrakawehi@msn.com
Submitted on: 2/15/2011

Comments:
Testimony for CPC 02/15/2011 02:05:00 PM HB466 Conference room: 325

Testifier position: Support
Testifier will be present: No
Submitted by: Sandra Kawehi
Organization: Individual
Address: 89-0012 Nanakuli Ave. Waianae, HI 96792
Phone: (808) 668-4299
E-mail: Sandrakawehi@msn.com

Submitted on: 02/14/2011

Aloha Chair Herkes, Vice Chair Yamane, and members on the Committee of Consumer Protection & Commerce,

I apologize that I was not able to make it to the hearing today, but I am in support of HB466. There have been incidences where employees have gotten hurt on the job and their employers have done nothing to help them. I am one of those people. I worked at my job for 26 years and one day I broke my arm on the job site, I was 61 at the time and I am now 64 years old. My employer's insurance company was HEMIC. They did not want to pay for any of my doctor fees because they said, it was "not work related". How can it not be work related, if I got hurt at work!? I had to hire attorneys to get the compensation that I was entitled to. During all of that time I was paying out of pocket for the attorney fees, as well as the surgery and doctor visits. I was so stressed and under so much pressure, I had a massive stroke. I had racked up a bill of about $12,000. I am not only paying for it but so is my family.

I am in full support of this bill. I believe the employer should assist their employees when getting hurt on job sites and action should be taken as soon as possible. Thank you for your time and consideration.

Mahalo,
Sandy

HIIA

Hawaii Independent Insurance Agents Association

February 15, 2011

To: Representative Robert N. Herkes, Chair
Representative Ryan I. Yamane, Vice-Chair

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

Re: HB 466 HD1 Relating to Workers Compensation
Hearing: Wednesday, February 16, 2011 2:05 pm Conference Room 325

The Hawaii Independent Insurance Agents Association (HIIA) **opposes** HB466, HD1 which would require Independent Medical Examinations (IME) and Permanent Impairment Rating Examinations (PIRE) to be performed by mutually agreed upon physicians by employers & employees or appointed by the Director of Labor and Industrial Relations.

The Workers Compensation law is intended to be impartial and fair and thus the law on one side of the scale, provides the Employee (Injured Claimant) the right to select his or her own primary care physician. On the other side of the scale, the Employer has the right of discovery to measure the progress of the Employee's treatment, medical stability & disability. Additionally, the Employee also has the right to challenge the IME findings.

While we are sympathetic to the claimant's needs, we also feel that the current law is working 98% of the time without statute intervention with approximately only 2% of the new and pending cases requiring an ordered IME. If the existing law is working, we anticipate that adding this requirement will cause more negative consequences, like a 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 should this bill pass. 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.

Thank you for this opportunity to submit testimony.

Phone: (808) 531-3125 • Fax: (808) 531-9995 • Email: hiia@hawaii.rr.com
84 North King Street, Honolulu, Hawaii 96817

Testimony for HB466 on 2/16/2011 2:05:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 15, 2011 2:00 PM

To: CPCtestimony

Cc: tinapliuramohr@gmail.com

Testimony for CPC 2/16/2011 2:05:00 PM HB466

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Tina Pliura-Mohr, LMT
Organization: Individual
Address:
Phone:
E-mail: tinapliuramohr@gmail.com
Submitted on: 2/15/2011

Comments:
Thank you

February 15, 2011

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor
and Public Employment
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Subject: House Bill No. 466, Relating to Workers' Compensation

Dear Chair Rhoads and Members: opposed

I am very much appalled that you would even introduce a bill such as this. The cards are already stacked against the employer, which is costing thousands of dollars. Employers are the life blood of Hawaii; if we don't have employers, we won't have jobs or employees. Mutual agreement upon an IME is virtually impossible. Both sides will want what is best for them. The current system is working fine, so this bill should not pass. I urge you to reject this bill.

Concerned citizen,

Brenda Shiroma

Email: bshiroma@hawaiimedcen.com

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

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

Hearing: Wednesday, February 16, 2011
Time: 2:05 p.m.
Place: Conference Room 325, State Capitol

TESTIMONY OF ILWU LOCAL 142
RE: HB 466, HD 1, RELATING TO WORKERS COMPENSATION

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

Thank you for the opportunity to present testimony regarding HB 466, HD1. We enthusiastically support this measure.

This 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 466, HD 1 will 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 this practice served to offset the enormous economic advantage insurers had in adjudication compared to individual employees.

In recent years, however, insurers have often tried to consolidate independent medical examinations and permanent impairment ratings, though they are designed to serve entirely separate functions, the former to assess medical treatment and progress, the latter to measure the extent of permanent disability. Combining the two separate functions is inappropriate because often employees had not truly reached maximum medical improvement and deserved further medical care. Physicians also often predicted recovery would occur and that there would be no permanent impairment, when they could not possibly know the outcome of future treatment before the treatment was concluded. In either instance, the right of the injured worker to care or compensation was sacrificed for expediency and convenience of the employers and insurers.

On still other occasions, insurers have tried to use a finding that an injured worker has no permanent impairment as a means of subverting the employee's right to vocational rehabilitation, since a finding that an employee has, or may have, a permanent impairment is a necessary condition for receiving vocational rehabilitation under Section 386-25(b) HRS. HB 466, HD 1 would end such abuses, restore neutrality, and promote fairness and objectivity among evaluating physicians.

In past years, certain government employers have argued that this measure will not promote cooperation between the parties and will increase cost. DLIR statistics in the Workers' Compensation Data Book reported that in the three years prior to legislative amendments to Hawaii's workers' compensation law in 1995 averaged $331 million was paid on benefits annually but in the twelve years from 1996-2008, only $253 million annually or a savings of $78 million. However, the amendments made in 1995 primarily concerned reduction in overall medical costs, which are indisputably the largest single cost factor in the system. Those *medical treatment costs* bear no necessary relationship whatsoever to the use of mutually agreed upon in *independent medical evaluations.*

In fact, Employers who oppose this bill sometimes wish to use their superior economic resources to tilt the medical evaluation process in their favor. They recognize that if joint selection of examiners becomes the norm of operation, then there will be no economic incentive for evaluators to favor one side or another. However, what these short-sighted Employers fail to recognize is that if true objectivity exists in the evaluation process, both industry and injured workers will benefit. That is, everyone within the system will strive to arrive at authentic determinations of disability. Adversarial posturing will be minimized, and resources can be directed toward either the rehabilitation of honest injuries or restitution of real rather than feigned impairment. This outcome is ultimately cost effective for all parties, and the correct result for our community as a matter of public policy.

HB 446, HD 1 thus charts a course away from the small-minded and selfish preoccupations of the past toward a more enlightened and constructive future. We therefore wholeheartedly endorse its passage.

International Association of Rehabilitation Professionals
Hawaii Chapter
1834 Nuuanu Ave Suite 205
Honolulu, Hawaii 96817

February 15, 2011

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Ryan I. Yamane, Vice Chair
Honorable Committee Members,

Testimony in Support of HB 466 HD1

My name is Alan S. Ogawa, the current President of International Association of Rehabilitation Professionals-Hawaii. I have practiced as a rehabilitation counselor in Hawaii for the past 30 years.

The International Association of Rehabilitation Professionals-Hawaii Chapter is dedicated to: promoting effective multidisciplinary rehabilitation, disability management, and return-to-work services on behalf of persons with disabilities and the economically disadvantaged; enhancing the competency of service providers; supporting innovation in related business development and management; and becoming the pre-eminent source for shaping public policy that affects rehabilitation.

We support the mutually agreed upon Independent Medical Examination (IME) physician bill to advocate fairness for the injured worker.

Thank you for allowing me to provide testimony to your committee.

Alan S Ogawa, M. Ed. CRC, LMHC
President
808-523-7755

ALAN S. OGAWA, M.Ed., CRC

Pali Medical Building • 1834 Nu'uanu Ave. Suite 205 • Honolulu, Hawaii • 96817
Phone: 808 523-7755
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COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Ryan I. Yamane, Vice Chair
Honorable Committee Members,

Testimony in Support of HB 466 HD1

My name is Alan S. Ogawa and I have practiced as a rehabilitation counselor in Hawaii for the past 30 years.

I support the mutually agreed upon Independent Medical Examination (IME) physician bill to advocate fairness for the injured worker.

This will help our injured workers to obtain treatment as quickly as possible, get rehabilitated and return to suitable employment. The goal is to assist the individual to once again become a contributing member of their community.

Thank you for allowing me to provide testimony to your committee.

Alan S Ogawa, M. Ed. CRC, LMHC
808-523-7755

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 Alt.Fax: (808) 543-2010

Feb. 15, 2011
SENT BY E-MAIL:
CPCtestimony@Capitol.hawaii.gov

House Committee on Consumer Protection
And Commerce
State Capitol
415 S. Beretania St.
Honolulu, HI. 96813

HB 466 - Relating to Workers Compensation
(Fair and Mutual Independent Medical Examinations)
Hearing: Feb. 16, 2011 2:05 p.m.

Dear Chairman Herkes and Members of the Committee: Support

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 of

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.

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A similar bill was passed into law in the previous sessions 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,

/s/

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 of employers 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 (emphasis added)

(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).**"

February 15, 2011

The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair
Members of the Consumer Protection and Commerce Committee
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Relating to: HB 466, HD 1 - Relating to Workers' Compensation

Dear Representative Herkes and members of the Committee:

I strongly urge you to **SUPPORT HB 466 HD 1 - Relating to Workers' Compensation.**

I am a vocational rehabilitation counselor who works with injured workers. I feel that the changes being proposed in HB 466 HD 1 appear to be in the best interest of the injured worker. The bill allows for a **mutually agreed** upon Independent Medical Exam be performed for an injured worker.

This bill will allow for fairness and equity for the injured worker in having input on the medical doctors who are often determining the types of services that a person can receive to the current ability of the injured worker. I have seen too many times in the past where IME doctors do not fairly address the concerns of an injured worker which ends up having the injured worker endure further pain and suffering because of a report that appears to be more favorable towards the insurance companies. I have also seen cases where an injured worker has been informed that they are required to attend an "IME" and because of a possibly biased report from the IME doctor, the person is prevented from receiving treatment that is recommended by their treating physician which can result in the cases remaining open for longer periods of time.

By mutually agreeing upon a qualified, independent examiner, there will be less need for continuous exams to be ordered as both parties are in agreement of the examiner and will expect fair and judicious findings.

I am also in support of additional staff to help the Department of Labor to become more efficient with regards to the hearings process and the daily operations of the Department.

Thank you for the opportunity to address this committee in regard to HB 466 HD 1.

Sincerely,

Patti Inoue, M.Ed., CRC 2/15/11
715 S. King Street, #410
Honolulu, Hawaii 96813
808-538-8733

HOUSE OF REPRESENTATIVES
The Twenty-sixth Legislature
Regular Session of 2011
Committee on Consumer Protection and Commerce
HEARING: HB 466 HD1

Date of Hearing: February 16, 2011
Time: 2:05 p.m.
Place: Room 325

Testimony in support of HB 466 HD1

My name is Leona Tadaki-Kam I am employed with Vocational Management Consultants, Inc. I have worked in the vocational rehabilitation field as a vocational technician for the past 4 years. I support HB 466 HD1. Having all parties "mutually cooperate" will provide the injured worker a FAIR review where the injured worker will get PROPER treatment needed to RECOVER faster there by RETURNING THE INJURED WORKER BACK INTO THE WORK FORCE and LOWERING workers comp COSTS. "A WIN, WIN FOR ALL!!"

Sincerely,

Leona Tadaki-Kam
Vocational Technician

KESSNER UMEBAYASHI
BAIN & MATSUNAGA
ATTORNEYS AT LAW
LAW CORPORATION

220 SOUTH KING STREET
SUITE 1900
HONOLULU, HAWAII 96813

TELEPHONE: (808) 536-1900
TELECOPIER: (808) 529-7177
E-MAIL: lawyers@kdubm.com

February 15, 2011

TO: Representative Karl Rhoads

FROM: Kessner Umebayashi Bain & Matsunaga

RE: HB 466

We join in the testimony submitted by Milia Leong, Claims Manager for John Mullen & Co., Inc. who apposed HB 466. In addition, we believe that HB 466 should not be passed for the following reasons:

1. It would unduly delay the adjudication of the workers' compensation claims. It is extremely difficult to get an agreement from claimant or their attorney on any matter. If an agreed upon independent medical evaluation is adopted it will literally take weeks to months to come to an agreement. In the interim, claimant may be collecting benefits and there may be large overpayments made or if claimant is not collecting benefits it may delay any benefits. This would cause undue delays and eventually raise the premiums for employers.

2. The right to choose an independent medical evaluation by a party is something that is embodied in the Hawaii Rules of Civil Procedure. In workers' compensation it is not being abused. The overwhelming number of cases require no independent medical evaluation. The independent medical evaluation is used to address situations as to whether claimant has a pre-existing condition causing problems, whether a claim is compensable, whether treament and recovery is unduly being prolonged, whether an apportionment can be made between employer, the Special Compensation Fund, or other insurance carriers and whether a fraud is being perputauted on the employer.

3. Claimant has the benefit of the presumption clause. Employers desire to know whether the claimant is engaged in symptom magnification or whether an outright fraud is being perpetuated. Without employer's right to an independent medical evaluation, employer is put at a serious disadvantage in discovering the truth.

February 15, 2011

HOUSE OF REPRESENTATIVES
The Twenty-sixth Legislature
Regular Session of 2011
Committee on Consumer Protection and Commerce
HEARING: HB 466 HD1

Date of Hearing: February 16, 2011
Time: 2:05 p.m.
Place: Conference Room #325

Testimony in support of HB 466 HD1

My name is Lily Miyahira, Office Manager employed with Vocational Management Consultants, Inc. I've worked in the vocational rehabilitation field for the past 15 years. Working directly with the vocational rehabilitation counselors and injured workers, I definitely agree with having an Independent Medical Evaluations for the injured workers. Having all parties involved in the agreement of a doctor would definitely lessen the problems set forth during these medical evaluations. Mutually agreed upon IME doctors for PPD ratings are done as a standard practice currently, and it works for all parties involved. Why can't the same agreement be reached when it pertains to who will complete the IME initial evaluation?

Many injured workers are subjected to numerous IMES on their cases and are told over and over by the Employer selected doctors that "there is nothing wrong with you; return to work only to find that they cannot return to work, have re-injured themselves and are terminated from their jobs. These cases never receive the proper treatment needed to assist them to recover and return to productive lives. The cases end up dragging on and may be would probably have been resolved earlier and the injured worker may have been able to return to work by recovering sooner.

I am in support of this bill being passed to help the system decrease the costs and delays from the onset.

Sincerely,

Lily Miyahira

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

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February 15, 2011

TO: THE HONORABLE REPRESENTATIVE ROBERT N. HERKES, CHAIR AND MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SUBJECT: H.B.466, HD1 - RELATING TO WORKERS' COMPENSATION

NOTICE OF HEARING

DATE: Wednesday, February 16, 2011
TIME: 2:05 pm
PLACE: Conference Room 325

Dear Chair Herkes and members of this Committee:

The General Contractors Association of Hawaii (GCA), an organization comprised of over five hundred and eighty (580) general contractors, subcontractors, and construction related firms, **strongly opposed** HB 466,HD1 "Relating to Workers' Compensation" because this bill requires the selection of an IME physician by mutual agreement. This will add to compensation costs and delay the delivery of medical treatments in certain cases. The added costs and delays do not benefit either the employer or the injured worker.

The GCA believes the current system that is in place works. We believe this legislation is unnecessary because most IMEs occur by mutual agreement absent any statute.

Thank you for the opportunity to voice our views.

TESTIMONY IN SUPPORT OF H.B. NO. 466, H.D. 1
RELATING TO WORKERS' COMPENSATION
COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Wednesday, February 16, 2011, 2:05 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 H.B. 466 relating to Workers' Compensation and mutually agreed upon "Independent Medical Examinations."

Under the current system, insurance carriers can force injured workers to be examined by physicians favored by the carriers. The problems of such a system were highlighted in two features in the New York Times:

http://www.nytimes.com/2009/03/31/nyregion/31comp.html?_r=1&emc=eta1
http://www.nytimes.com/2009/04/01/nyregion/01comp.html?_r=1&hp

Just as in New York, there are several problems in this arrangement in Hawaii.

1.
THERE ARE POWERFUL FINANCIAL INCENTIVES FOR AN EMPLOYER'S PHYSICIAN TO PROVIDE OPINIONS IN THE CARRIER'S FAVOR.

There are physicians who regularly prepare reports favorable to carriers. The financial rewards to carriers' physicians who provide opinions in favor of carriers can be very substantial. The fees which a worker's doctor can charge are limited by the Workers' Compensation Medical Fee Schedule. However, the Department of Labor has applied that Fee Schedule only to cases in which the Department of Labor has ordered a worker to attend an examination. Therefore, there is no limit to the fees which can be charged by carriers' physicians for examinations which have not been ordered.

Carriers' physicians are paid an approximate average of over $2,000.00 per examination; 3 examinations per week yields $6,000.00; 50 weeks a year yields an income of $300,000.00. Carriers' physicians can, of course, do more than 3 examinations per week. At least one physician reported receiving over a million dollars from one carrier.

Carriers' physicians whose income is from examinations paid for by carriers are very susceptible to making sure that their livelihoods are kept intact. The financial incentives for carriers'

physicians to provide reports favoring carriers are therefore very powerful and are reflected in theirs reports.

A carrier can readily obtain a physician's opinion to fit its needs because the carrier's physician can presently state any opinion with impunity. The carrier's physician is free to opine, regardless of the facts, that the injury:

(1) did not occur,
(2) should have already healed,
(3) was a temporary aggravation of a pre-existing condition, and has healed,
(4) was entirely pre-existing, or
(5) was due to non-work related conditions.

The carrier then uses that opinion to deny coverage or to deny treatment. The carrier's physician is also free to opine on what care is appropriate or whether a worker's condition is stable. There is no requirement that the carrier's physician explain why a worker could do his job for years, but is not able to do his job after the injury.

Although the carrier's physician knows that his opinion will directly affect the injured worker, the carrier's physician does not feel any obligation to the worker. The reason that an employer's physician is free to opine is that he claims that he has no doctor-patient relationship with the worker. The carrier's physician is free from liability and can give the carrier the opinions the carrier wants without responsibility for the devastating consequences to the injured worker. The carrier's physician is so empowered because a Hawaii U.S. District Court decision held that the carrier's physician had no duty to the injured worker. Although the employer's physician knows that the impact of his opinion can be devastating to the worker, the physician claims that he is under no duty to the worker, and therefore is not liable for any adverse consequences.

2.
"INSURER MEDICAL EXAMINATIONS" RESULT IN LONGER PERIODS OF DISABILITY AND HIGHER INDEMNITY PAYMENTS.

One of the criticisms of Hawaii's workers' compensation system is that the rate of indemnity payments higher than that of other states. One of the reasons for the higher rate of payments is the delay in allowing injured workers to get the appropriate care. The longer it takes to receive medical care, the longer it takes for an injured worker to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments. If injured workers are allowed to receive appropriate medical care on a timely basis they would, no doubt, be able to return to the work force sooner and the total indemnity payments would drop.

One factor which prevents timely receipt of medical care is the current use of "insurer medical examinations." If insurer medical examinations were truly "independent" examinations, and had the goal of restoring an employee's health and getting an employee back to work, then there would be no problem.

If one steps back to take an overview, an obvious question is why would anyone not want a mutually agreed upon evaluator? Unfortunately, too often the goal of an insurer medical examination is not altruistic. The goal is often to enable an insurer to escape liability, although the employee was injured on the job and is entitled to treatment. An insurer can attempt to escape liability if the insurer can obtain a physician's opinion in its favor.

a. "INSURER MEDICAL EXAMINATIONS" AT THE BEGINNING OF A CASE ARE OFTEN DEVASTATING TO INJURED WORKERS.

The use of "insurer medical examinations" results in delays which have devastating consequences to injured workers.

After an injury is reported by a worker, the workers' compensation statute allows an insurer to contest the claim. The insurer can contest the claim even though the injury was witnessed and is obvious. §12-10-73 of the Administrative Rules requires the insurer to support a denial with a "report" within 30 days of the denial, however, the Rule also provides that the insurer can request extensions of time. The insurers often request extensions for months after the injury.

There are also administrative delays. The Department of Labor can take months to schedule a hearing. A notice of hearing is not issued until one month prior to a hearing. A decision on a hearing is frequently not issued until 60 days after the hearing (60 days is the maximum period allowed under §386-86).

Therefore, it would not be uncommon for an injured worker to have to wait for more than a half year before a determination is made that a work injury was suffered. All this time, the worker might be without medical care and without income. He might be without a personal health plan because he is a new employee or is a part-time employee. His personal health plan might deny coverage because the employee is claiming a work injury. His personal health plan coverage will end after 3 months because the employer can stop paying for the worker's health insurance and the employee will not be able to afford to pay COBRA premiums for his coverage . He might be not be eligible for TDI coverage, nor have any available sick leave.

All too often, the devastating results are that the injured worker and his family lose their health coverage and are evicted from their residence.

b. "INSURER MEDICAL EXAMINATIONS" IN THE MIDDLE OF CASES ARE ALSO DEVASTATING.

"Insurer medical examinations" can also have a devastating impact in the middle of a case. Such examinations are often scheduled to contest the need for surgery. The resulting delays are the same as stated above. The injured worker has to endure the pain and suffering during the extensive period of delay. The delay also results in higher indemnity payments.

One major cause of delay in treatment is the use of "insurer medical examinations." The enactment of this bill would reduce delays in treatment, and reduce total indemnity payments and benefit both employers and employees.

2. REQUIRING THE USE OF MUTUALLY AGREED PHYSICIANS HAS WORKED IN PRACTICE.

Current practice at the Disability Compensation Division requires the use of a mutually agreed upon physician to conduct rating examinations. This has been the practice for years and has been effective. There is no reason wAmehy the same system cannot work for non-rating examinations.

H.B. 466 should be amended by deleting the second, third and fourth paragraphs and Section 3 which require the Director to select a physician in the event that an agreement cannot be reached, require an exam within 30 days, and prohibits combining an IME with a rating exam. The present system regarding the selection of a rating physician works without these provisions in place, and it may not be feasible to obtain an exam within 30 days.

3. AN EMPLOYEE SHOULD BE ENTITLED TO TAKE REASONABLE ACTIONS DURING AN EXAMINATION.

The sixth paragraph in H.B. 466 which begins with the phrase "If an employee refuses to submit to, or in any way obstructs such examination" should be amended. The phrase virtually strips the employee from any ability to protect him/her self during an examination. If an employee reasonably believes that a physician is acting inappropriately, that employee should be free to take steps to protect him/her self without fear that benefits would be terminated. The phrase should be amended as follows: "If an employee unreasonably refuses to submit to, or ~~in any way~~ unreasonably obstructs such examination... ."

The sixth paragraph must also be amended to provide that benefits not be suspended until after a hearing on the issue. Due process requires a hearing on the reason for any refusal of obstruction.

4. THE SEVENTH PARAGRAPH REGARDING LICENSING MUST BE AMENDED.

The seventh paragraph in H.B. 466 requires the IME and rating physician to be licenses under Chapter 453, H.R.S., which refers to medical doctors. However, the workers compensation statute defines "physician" in §386-1 as follows:

> "Physician" includes a doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, an optometrist, and a podiatrist.

Workers compensation care can be by any of the named professionals. It would not be appropriate for only an MD to review care provided by a dentist, nor any other professional. Therefore, the seventh paragraph would have to be amended to allow for examinations by other professionals listed in the statute.

5. THE DEFINITION OF "MEDICAL STABILITY" SHOULD BE DELETED.

The second paragraph of section b, which defines "medical stability" should be deleted. The term has been modified by the American Medical Association in its *Guides to the Evaluation of Permanent Impairment* in its various editions, and adding another definition in the statute would only serve to add confusion.

CONCLUSION.

There are physicians who conduct employer's examinations who properly consider the facts and who provide opinions which are medically sound. Attorneys representing injured workers will readily agree to have their clients examined by such physicians. Responsible insurers utilize the services of such physicians because those carriers know that proper medical treatment with a correct diagnosis will result in getting the injured worker back to work sooner, which is the correct and fair result.

The problem with insurers' examinations lies with certain physicians and insurers who are willing to use improper opinions to unfairly cut off benefits to injured workers. The inherent disparity of the financial resources of an insurer versus an injured worker, who is frequently without income, makes the playing field inherently uneven in the insurer's favor. The workers' compensation system certainly does not need the unrestrained opinions of insurers' physicians to allow insurers to deny benefits to injured workers.

The most efficient and immediate means to handle these concerns is the use of agreed upon physicians. This 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 insurer 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 use of mutually agreed upon physicians can also work for IMEs.

The major focus of H.B.466 is to require that insurers 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
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CPCtestimony

From: dkawamoto@vmchawaii.com
Sent: Tuesday, February 15, 2011 3:59 PM
To: CPCtestimony
Subject: *****SPAM***** RE: TESTIMONY IN SUPPORT OF HB 466

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

CHAIRMAN: REP. ROBERN N. HERKES, CHAIR
VICE CHAIR: REP. RYAN I. YAMANE

TESTIMONY IN SUPPORT OF HB 466

Dear Chairman & Vice Chair and Respective Committee Members:

My name is Debra Kawamoto and I am submitting my testimony in support of HB 466. As a former injured worker, I know first hand what it is like to deal with the frustrations, delays and the process of our current worker's compensation system. I waited 4 months for an IME report to be completed, waited 6 months for my case to be brought to a hearing, to determine if it was valid & compensable and went almost a year in a half with no wages received. However, as bad as it all was, a part of me knows and feels lucky, because there are so many other injured workers in Hawaii who have gone through much worse. I know this because I work alongside a group of hard-working dedicated Vocational Rehabilitation Counselors who struggle and fight everyday for the rights of their clients and the injustices they face. I also know this because I serve as Secretary to the Hawaii Injured Workers Alliance (HIWA). An organization of doctors, lawyers, therapists, VR counselors and most importantly fellow injured workers both past & present determined and dedicated to help the injured workers of Hawaii.

We know we cannot change the worker's compensation system overnight. However, we can make changes to help improve it and make it work better and more efficiently for all those involved. I believe HB 466 is a step forward in the right direction. To have a truly mutually agreed upon IME would be fair for both sides (the injured worker & employer) and it would appear to be a win-win for all parties involved. The passing of this bill would eliminate a lot of wasted time, energy and money, which no side can afford. It would be a huge step in getting the injured worker healed faster by allowing them to receive the proper and timely treatment & care they need, getting them returned to the workforce sooner and therefore reducing the rising cost of work comp and also keeping them from depending upon welfare and unemployment.

In our day to day world, we all talk about the importance of working together, cooperating with each other, and helping each other because we know our combined efforts will always produce a positive outcome. In my observation, however, the current work comp system does not promote any of this and it obviously has not been working. Therefore, maybe it's finally time to take a collaborative step towards change and improvement. I humbly ask for your support to pass this mutually agreed upon IME bill.

Thank you.

Debra Kawamoto
Vocational Management Consultants
Vocational Technician
HIWA - Secretary

February 14, 2011

HOUSE OF REPRESENTATIVES
The Twenty-sixth Legislature
Regular Session of 2011

ONSUMER PROTECTION AND COMMERCE COMMITTEE HEARING

HOUSE CHAIR: Rep. Robert Herkes, Chair
Vice Chair: Rep. Ryan Yamane, Vice Chair

Date of Hearing: Feb. 16, 2011
Time: 2:05 p.m.
Place: Conference Room

Testimony in support of HB 466 HD1

My name is Laurie Hamano, President of Vocational Management Consultants. I have worked in the community for the past 26 + years working with injured workers as a vocational rehabilitation counselor, as well as a member of Hawaii Injured Workers Alliance, member of International Association of Rehabilitation Specialists, a business owner, and member of the Chamber of Commerce. I support HB 466 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 know that mutually agreed upon IME doctors for PPD ratings are done as the "standard practice" now and it works amongst the carriers and the attorneys/injured workers who are settling their cases. Why can't that same agreement of mutually agreeing who will complete the IME work in the first IME on a new case?

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 drags on for many more months than necessary if the Injured Worker received the immediate care he/she needed to recover.

This measure can only help the system decrease the costs and delays from the onset of the cases.

I urge you to pass this bill.

Thank you for allowing me to provide testimony.

Laurie H. Hamano M. Ed. CRC, MHC
President, Vocational Management Consultants, Inc.

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February 16, 2011

Committee on Consumer Protection and Commerce

House Bill 466 HD1 RELATING TO WORKERS' COMPENSATION

Dear Honorable Chair and Committee Members:

I am writing in support of this measure, which, once enacted, will improve our Workers Compensation System by reducing conflict and litigation. Today's practice of unilaterally choosing an IME evaluator by the insurer lends itself to extremist physicians who pander to carriers for such lucrative referrals by providing opinions that allow care and benefit cessation to the detriment of legitimate patients in need. Such carrier behavior not only causes needless suffering and prolongs cases but also places additional burden on our state health and welfare programs which are already dangerously stressed.

Hawaii's No Fault Auto System, the closest type of care delivery, has used agreed-upon IME's for decades with excellent results and little of the patient abuses we see perpetrated in Work Comp for this very reason.

Further study is needed on the negative impact carrier-chosen IME's have on our citizenry as well as our other social safety nets. But speaking from the front lines I can testify that the damage being caused is multiple, extensive, unnecessary and costly.

Please, therefore, add some long overdue reason, fairness and conflict prevention to our Workers Compensation System by voting "yes" on this bill.

Respectfully submitted,

Scott McCaffrey, MD
Emergency and Occupational Medicine
Hawaii Medical Center-West