



LATE TESTIMONY

DWIGHT Y. TAKAMINE
DIRECTOR

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

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February 16, 2011

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

Date: Wednesday, February 16, 2011

Time: 2:05 p.m.

Place: Conference Room 325, State Capitol

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

Testimony in SUPPORT
of
HB No. 466 HD1 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB 466 HD 1 proposes to repeal Section 386-79, HRS, relating to medical examinations by employer's physician, and to replace it with a new section, by requiring physicians who perform independent medical examinations ("IMEs") and permanent impairment rating examinations to be selected by mutual agreement between the employer and employee. If no agreement can be reached, then the Department of Labor and Industrial Relations ("Department") shall appoint a qualified physician licensed in the relevant medical specialty and willing to conduct the examination within 30 calendar days of the request.

II. CURRENT LAW

Currently, Section 386-79, HRS, specifies that the employee, when ordered by the director, shall submit to the examination by a qualified physician designated and paid by the employer. If an employee refuses to attend the examination, or obstructs in any way the examination, the claimant's rights to benefits will be suspended for the period during which the refusal or obstruction continues.

III. HOUSE BILL

The Department supports the intent of this bill to provide an assurance of impartiality in the IME and rating examination process but has the following comments:

1. There are already safeguards in place for IMEs. Hawaii's workers' compensation law requires full disclosure of the IME report to the injured employee. This allows the treating physician, or the injured worker, to challenge the evaluation. The Department makes its decisions based upon the evidence provided by the opposing parties.
2. As proposed in subsection (b), the Department has concerns with having a permanent impairment rating conducted only when the **attending physician** determines the employee to be medically stable. First, in some cases, treatment may go on indefinitely before the attending physician believes the employee's condition has stabilized. This will severely limit the employers' right to have a permanent impairment rating done to resolve the case expeditiously, if they have evidence that the injured employee's condition may be stable. This may greatly increase the costs of workers' compensation.
3. This proposal takes effect upon approval, however, it may take some time to notify physicians who perform IMEs to ask for their qualifications and interest in being included on the list of qualified physicians who perform IMEs and permanent impairment ratings. Since the examinations have to be conducted within thirty calendar days of selection or appointment, the Department has concerns that there may **not** be many physicians on the Department's list who are willing to review the medical records, examine the injured employee within this short thirty day period of time plus accept the complex consultation charges governed by the medical fee schedule in section 386-21(c). The Department has concerns that the better qualified IME physicians may not want to be on the Department's "list". This may be detrimental to the employee in receiving good medical advice.
4. The funding for the new positions will not take effect until July 1, 2011. Due to the extended length of time it takes to establish and fill new personnel and the shortage of current staff due to previous reductions in force and retirements, it will be difficult to implement this proposal if it is effective upon approval.

Testimony for HB 466, HD1 Workers' Compensation (HSCR228)

JM L [jmlukzen@gmail.com]

Sent: Wednesday, February 16, 2011 12:36 PM

To: CPCtestimony

Consumer Protection & Commerce
Conference room 325
2/16/2011 2:05pm
HB 466, HD1 Workers' Compensation

The Honorable Robert N. Herkes
Chair, CPC
State Capitol
Honolulu, Hawaii

Dear Representative Herkes:

I am writing to express my support of H.B. 466, HD 1 Workers' Compensation. This legislation would require that all Independent Medical Evaluations and Permanent Impairment Rating examinations for Workers' Compensation claims be performed by a physician mutually agreed upon by employers and employees.

IMEs are evaluations performed by an evaluator not involved in the care of the injured worker. IMEs are an important component of workers' compensation protocol used to clarify disability or liability cases/issues. Impairment evaluations are often used to provide a more objective understanding of the impact of an injury or illness.

The purpose of a Workers compensation insurance company is not to obtain an impartial review, but to obtain a viable medical opinion which will be used to justify the discontinuance and/or denial of benefits for the injured party.

House Bill 466, HD1 will promote fair and unbiased medical evaluations and/or ratings that will benefit both the injured party and insurer. Injured workers will be able to receive a fair and just medical assessment by a physician that they approve. Insurers will cut costs by lessening the need for second & third assessments due to the injured worker being dissatisfied with the IME results.

Thank you for the opportunity to provide my support of House Bill 466.

Sincerely,

Jesse Lukzen

PO Box 240993
Honolulu, Hawaii 96824
(808)429-5956

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

LATE TESTIMONY

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

Sent: Wednesday, February 16, 2011 11:18 AM

To: CPCtestimony

Cc: JmLukzen@gmail.com

Categories: Orange Category

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

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Jesse Lukzen

Organization: HIWA

Address:

Phone:

E-mail: JmLukzen@gmail.com

Submitted on: 2/16/2011

Comments:

February 16, 2011

The Honorable Robert Herkes,
Chair, House Committee on Consumer Protection and Commerce

The Honorable Ryan Yamane,
Vice Chair, House Committee on Consumer Protection and Commerce

Re: H.B. 466, HD1 – Relating to Medical Examinations

Dear Chairman Herkes, Vice Chairman Yamane, and Members of the Consumer Protection and Commerce Committee

My name is Paul Naso. I am the General Counsel of the Hawaii Employers' Mutual Insurance Company, Inc. ("HEMIC"). Because of insurmountable real life hurdles that this bill cannot overcome, I am here today to testify in opposition to H.B. 466, HD1

This bill requires Independent Medical Examinations ("IME") 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. Although, on the surface, this sounds good, in real life it is unworkable.

1. In Real Life, H.B. 466, HD1 will significantly delay the selection of IME providers

From a purely practical standpoint, H.B. 466, HD1 will significantly delay the selection of IME providers. Insurers, such as HEMIC, will not agree to IME providers that they believe may not be qualified or board certified in the needed specialty. Employees and employees' attorneys will likewise not agree to IME providers that they believe may not be qualified or certified in the needed specialty. In all such cases, it will then be up to the DLIR to select the IME provider.

Therefore, H.B. 466, HD1 will significantly strain the DLIR's Disability Compensation Division ("DCD") because of the increased workloads caused by IME provider selection battles, potential added staff notwithstanding. This will in turn significantly increase the time between when an IME provider is selected by the DCD and when the IME appointment is scheduled, because the selected IME provider will in all likelihood have developed a significant backlog of IMEs to perform.

In addition, the delays in the IME provider selection process will result in substantial increases on claim reserves due to an unreasonable extension of Temporary Total Disability ("TTD")

benefits that insurers are required to pay while the IME provider selection process plays itself out.

H.B. 466, HD1 will also affect the overall cost insurers incur for providing medical care to employees because the IME (which will now be delayed) is a determining factor, and insurers need documented support for continuance of medical care, change of medical care, or discontinuing medical care.

2. H.B. 466, HD1 will Increase Disputes

Proponents of this legislation believe that this bill may decrease the adversarial nature that arises during disputes and eliminate the impression of bias in I.M.E. We do not agree as we believe there will always be situations in which employees and employers will disagree. The important point here is that the I.M.E. process is the only vehicle available to the employer to support their position when challenging the injured worker's claim or the propriety of the attending physician's treatment.

3. H.B. 466, HD1 will Negatively Affect the Quality of IMEs

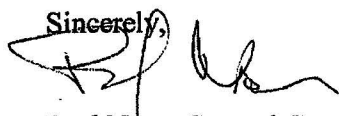
If H.B. 466, HD1 is passed into law, the overall quality of the IME program itself will be diluted and possibly damaged as there will be providers performing IMEs who may not be certified in the needed specialty, as well as IME providers who are not as experienced in the IME process as those currently in the IME provider pool.

Perhaps most dangerously, it appears that H.B. 466, HD1 would allow IME providers who are not board certified as specialists in a particular area to render opinions in that specialty.

Specifically, if an IME provider who is not board certified as a specialist in a particular specialty renders an opinion in that specialty area, they will likely be unable to accurately determine the association with, or causation of, injuries or illnesses. This of course would be a detriment to the employee receiving good medical advice, which will have major ramifications extending well beyond the parameters and scope of this bill.

Finally, given all of the above-mentioned real life problems, the potential for inaccurate IME findings will rise and this will, in turn, exponentially impact the amount of compensability that the insurance industry and business community pays for workers compensation claims.

Again, because of the insurmountable real life hurdles described above that this bill cannot overcome, we respectfully request that you hold this bill.

Sincerely,


Paul Naso, General Counsel
Hawaii Employers' Mutual Insurance Company, Inc.

PN:rm

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

LATE TESTIMONY

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

Sent: Wednesday, February 16, 2011 11:18 AM

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

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Jesse Lukzen

Organization: HIWA

Address:

Phone:

E-mail: JmLukzen@gmail.com

Submitted on: 2/16/2011

Comments:

February 16, 2011

LATE TESTIMONY

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

CONSUMER 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 pm
Place: Conference Room

Testimony in support of HB 466 HD1

My name is Jessica Bohne and I am currently interning at Vocational Management Consultants, Inc. I have been active in the University of Hawaii's Vocational Rehabilitation program as a student for the past 3 years and have worked in the field of mental healthcare for the past 4 years. I support HB 466 as the bill supports mutually agreed upon Independent Medical Evaluations. Being that I have been interning and studying in the vocational rehabilitation field for the past 3 years, I have become familiar with the all too common plight of injured workers subjected to multiple IMEs by employer-selected doctors. Many of the employer-selected physicians are selected by the employer because their findings on the status of the worker's injuries are in favor of the employer. After these IMEs, many employees are forced to return to work still injured, only to exacerbate their condition and cause further injury. Many times this leads to secondary injuries that could have been avoided, trauma, and even higher medical expenses in the long run.

Passing this bill will help the workers compensation system to facilitate recovery and proper treatment from the onset of the injury along with decreasing costs and secondary injuries and trauma. I urge House Members to take these important measures into consideration and pass this bill. Thank you all for your consideration.

Jessica Bohne, BA
Intern, Vocational Management Consultants, Inc.

My address and phone number is:
Vocational Management Consultants, Inc.
715 S. King St., Suite 410
Honolulu, HI 96813
Phone # (808) 538-8733

Testimony to the House Committee on Consumer Protection & Commerce
Wednesday, February 16, 2011
2:05 P.M. Hearing - Conference Room 325

HB 466, HD1: RELATING TO WORKERS' COMPENSATION

Liberty Mutual is opposed to 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.

Liberty Mutual respectfully opposes HB 466, HD1. Thank you for the opportunity to testify.