

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF S.B. NO. 1190, SD 1

March 30, 2011

To: Chairmen Robert Herkes and Gilbert Keith-Agaran and Members of the House Committee on Consumer Protection and Commerce and House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in support of S.B. No. 1190, SD 1, Relating to Automobile Personal Injury Limitations.

The Hawaii Motor Vehicle Law gives insurance companies the right to ascertain that medical treatment is reasonable by requiring that patients submit to independent medical examinations by doctors of the same specialty as the treating doctor. The independent examiner is selected by mutual agreement or appointed by the court, insurance commissioner or arbitrator. The requirement that the examiner be selected by mutual agreement or appointed by a neutral judge, commissioner or arbitrator was to end the prior practice where insurance companies employed doctors who had a financial incentive to find in favor of the insurance company to maintain steady and profitable employment. The requirement that the reviewing doctor be of the same specialty was to assure the reviewing doctor was knowledgeable of the appropriate treatment protocols and qualified to review the treating doctor.

In order to evade these statutory safeguards, some insurers now utilize "records reviewers" who do not examine patients, but only examine medical records and are therefore not considered independent medical examiners. These insurers are not required to abide by the statutory requirements because record reviewers do not examine the patient. Yet, there is no logical basis not to apply the statutory requirements to records

reviews since the same inherent problems exist with both patient examinations and records reviews. The insurers have offered no justification for treating these differently. It is simply a loophole since records reviewers are not considered independent medical examiners because they do not actually examine the patient. Requirements applicable to independent medical examinations should be made applicable to record reviewers as well.

Subsequent to the hearing in the Senate Committee on Commerce and Consumer Protection, at the urging of the Senate Committee chair, the Insurance Commissioner convened a meeting among several persons representing HAJ, GEICO, the Hawaii Insurers Council, Island Insurance and the Insurance Commissioner's office. State Farm Insurance was not able to attend but was contacted and informed of the substance of the meeting. All those present at this meeting and the representative of State Farm all agreed to the amendment made to the original bill and as set forth in the SD 1 which adds the words "treating or prescribing" on page 2, line 5 of the Senate Draft 1 HAJ has no objection to the additional changes added by the Senate Committee. .

We urge this committee to pass this bill. Thank you for this opportunity to testify.