

NEIL ABERCROMBIE
GOVERNOR



SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

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

February 27, 2011

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE

For Hearing on Monday, February 28, 2011
5:00 p.m., Conference Room 308

BY

SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

Written Testimony Only

**House Bill No. 466, HD2
Relating to Workers' Compensation**

TO CHAIRPERSON MARCUS R. OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of HB 466, HD2 is to amend Section 386-79 (a), Hawaii Revised Statutes, to require that independent medical examinations and permanent impairment rating examinations be performed by mutually agreed upon physicians. **Although we do appreciate efforts to improve the workers' compensation system in Hawaii, we cannot support this bill due to issues explained below and request that it be held.**

An independent medical examination conducted by a physician of the employer's/insurance carrier's choice is the only tool that is available to the employer to address the statutory presumption, excessive treatment, and reasonableness of a surgical procedure. Amending the statute in this fashion would deprive the employer of a very fundamental right to discovery.

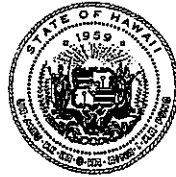
This bill is unnecessary as safeguards already exist in the statute. The injured employee receives a copy of the report and is afforded the opportunity to rebut it or correct any misinformation. This report is also sent to the injured employee's attending

physician who is invited to comment on it.

As written, the bill makes no allowances for evaluations to be performed by physicians whose specialties are not available in the State. It isn't clear how the employer would proceed under those circumstances. It also requires that the mutually agreed upon or appointed physician examine the employee within thirty calendar days of selection or appointment. This appears to be unrealistic given that the employer often has to wait 90 days or more for an available appointment. The bill is silent as to what would happen if there is no qualified physician available to perform the evaluation within the thirty day requirement.

The employer does not believe that these amendments will serve to reduce the adversarial nature of certain disputes and will likely result in higher costs due to more claims being fully litigated. This would not be prudent given the State's current fiscal difficulties.

Thank you for the opportunity to testify on this measure.



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

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HONOLULU, HAWAII 96813
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Phone: (808) 586-8842 / Fax: (808) 586-9099
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February 28, 2011

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: Monday, February 28, 2011

Time: 5:00 p.m.

Place: Conference Room 308, State Capitol

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

Testimony in SUPPORT
of
HB No. 466 HD2 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB 466 HD 2 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

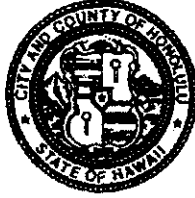
The Department supports the **intent** of this bill to provide an assurance of impartiality in the IME and rating examination process and has the following comments:

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. The Department has concerns that this measure would be a detriment to the employee receiving good medical advice. The Department does not think that making a list of physicians to perform IMEs will result in the best qualified physicians to perform IMEs and rating examinations. Since the examinations have to be conducted within thirty calendar days of selection or appointment, the Department has concerns that there may **not** be an adequate number of physicians willing to be 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". Another concern may be that the appointed physician may have a full schedule and will not be able to examine the injured worker in the required thirty calendar day period. Will the next physician on the list be chosen? The Department opines that the "list" may not be the best solution but in the alternative, if the Legislature feels the "list" is needed, the Department recommends extending the period from thirty calendar days to forty-five calendar days to allow the physician adequate time to schedule and examine the injured worker.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR

February 28, 2011

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 466, HD2 Relating to Workers' Compensation

The City and County of Honolulu **strongly opposes** House Bill No. 466, HD2, 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 Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
The House of Representatives
February 28, 2011
Page 2

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, HD2. 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,



Noel T. Ono
Director



Before the House Committee on Finance

DATE: February 28, 2011
TIME: 5:00 p.m.
PLACE: Conference Room 308

Re: HB 466, HD2
Relating to Workers' Compensation
Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify in opposition to HB 466, HD2. NFIB strongly opposes this measure.

HB 466 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. While the description of this measure sounds laudable, we believe that in practice it will unfairly tip the balance of the independent medical examination process and that, as a result, claims will not be appropriately resolved.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.



**Testimony to the House Committee on Finance
Monday, February 28, 2011
5:00 p.m.
Conference Room 308
Agenda #8**

RE: HB 466 HD2 RELATING TO WORKERS' COMPENSATION

Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to HB 466 HD2 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 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, we do not support HB 466 HD2 and respectfully requests the committee holds this measure.

Thank you very much for the opportunity to provide testimony.

Testimony by:
Derrick Ishihara, PT
HB 466 HD2, Workers' Compensation
Hse FIN Committee
Monday, Feb. 28, 2011
Room 308, 5:00 pm



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

Chair Oshiro and Members of the House FIN 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.



Representative Marcus Oshiro, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Finance

State Capitol, Honolulu, Hawaii 96813

HEARING Monday, February 28, 2011
5:00 pm
Conference Room 308
Agenda #8

RE: HB466, HD2, Relating to Workers' Compensation

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest employers in the state, employing almost 24% of the labor force.

RMH opposes HB466, HD2, which requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. From the employer's position, the IME process is a vital mechanism to ensure proper treatment for the injured employee and costs of the treatment incurred are justified. This measure erodes the ability of the employer to effectively and efficiently manage costs. As a safeguard, the existing statute requires full disclosure to the injured worker of the IME report, which affords the treating physician and the injured employee the opportunity to challenge the evaluation.

Considering that the employer ultimately bears the entire cost of the IME, the choice of the IME justifiably should be the employer's.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB466, HD2. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President



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

Alison Powers
Executive Director

TESTIMONY OF LINDA O'REILLY

HOUSE COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Monday, February 28, 2011
5:00 p.m.

HB 466, HD2

Chair Oshiro, Vice Chair Lee, 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, HD2, 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, HD2 be held.

Thank you for the opportunity to testify.



HIIA

Hawaii Independent Insurance Agents Association

Faxed to 586-6001 on February 27, 2011

February 27, 2011

To: Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice-Chair
Committee on Finance

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

Re: HB 466 HD2 Relating to Workers Compensation
Hearing: Monday, February 28, 2011 5:00 pm Conference Room 308
Agenda #8

The Hawaii Independent Insurance Agents Association (HIIA) opposes HB466, HD2 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 by adding this requirement will cause more negative consequences, like 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.



To: House Committee on Finance

Hearing: February 28, 2011, 5:00 p.m.
Conference Room 308

Re: HB 466, HD 2 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 1,000 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, relating to workers’ compensation.

We are opposed to HB 466 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:

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.

HJB CONVENIENCE CORPORATION

Raymond Huff
President

Vicki Jackson
Marketing Manager

Tom Bachrodt
Regional Manager

Lena Reese
HR Manager



February 28, 2011

Denver, Colorado

One Denver Place
MCI Tower
Republic Plaza
Civic Center
Denver Financial
Independence Plaza
Qwest Building
World Trade Towers
Dominion Plaza
Wells Fargo Atrium
Tabor Center
City County Office Bldg

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Finance Committee
STATE CAPITOL
Conference Room 308
415 South Beretania Street
Honolulu, Hawaii

By facsimile (808) 586-6001 (Oahu)
1-800-535-3859 (for Neighbor Islands)

Honolulu, Hawaii

Kaimana Beach Hotel

Re: TESTIMONY IN OPPOSITION TO HB 466, HD2

Dear Chair Oshiro, Vice Chair Lee, and Members of the Finance Committee:

HB 466, HD2 requires Independent Medical Examinations (IME) and Permanent Impairment Rating Examinations for workers compensation claims to be performed by mutually agreed upon physicians. As a business owner and an employer in Hawaii, I oppose this bill for the following reasons:

1. HB 466, HD 2 will limit my fundamental right as an employer to select a duly qualified IME physician.
2. HB 466, HD2 will substantially increase the cost of claims and increase disputes between employers and employees.
3. HB 466, HD2 will Negatively Affect the Quality of IMEs, an important safeguard for employers.

For these reasons, we respectfully urge you to hold this bill. Thank you for your attention to this very important matter.

Very Truly Yours,

HJB Convenience Corporation

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Hearing Date/Time: February 28, 2011 (5:00 PM)

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Finance Committee
STATE CAPITOL
Conference Room 308
415 South Beretania Street
Honolulu, Hawaii

By Facsimile (808) 586-6001

RE: TESTIMONY IN OPPOSITION TO HB 466, HD2

Dear Chari Oshiro, Vice Chair Lee, and Members of the Finance Committee:

HB 466, HD2 requires Independent Medical Examinations (IME) and Permanent Impairment Rating Examinations for workers compensation claims to be performed by mutually agreed upon physicians.

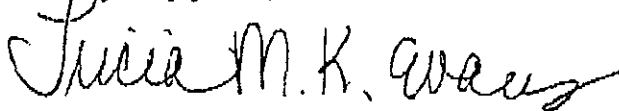
As a business owner and an employer in Hawaii, I oppose this bill for the following reasons:

1. **HB 466, HD2 will limit my fundamental right as an employer to select a duly qualified IME physician.**
2. **HB 466, HD2 will substantially increase the cost of claims and increase disputes between employers and employees.**
3. **HB 466, HD2 will Negatively Affect the Quality of IMEs, an important safeguard for employers.**

For these reason, we respectfully urge you to hold this bill.

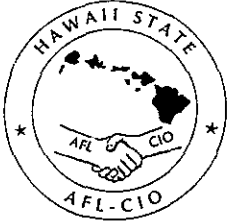
Thank you for your attention to this very important matter.

Very truly yours,



Tricia M.K. Evans
President
Westaff Hawaii

Westaff



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

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

The Twenty-Sixth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

Testimony by
Hawaii State AFL-CIO
February 28, 2011

H.B. 466, HD2 – RELATING TO WORKERS’
COMPENSATION

The Hawaii State AFL-CIO supports H.B. 466, HD2 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, HD2 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, HD2.

Respectfully submitted,

Randy Perreira
President

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

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro Chair
Rep. Marilyn B. Lee, Vice Chair

Hearing: Monday, February 28, 2011

Time: 5:00 p.m.

Place: Conference Room 308, State Capitol

TESTIMONY OF ILWU LOCAL 142

RE: HB 466, HD 2, RELATING TO WORKERS COMPENSATION

Chairman Oshiro, Vice Chair Lee, Members of the Committee:

Thank you for the opportunity to present testimony regarding HB 466, HD 2. 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 2 will preserve the integrity of the independent medical evaluation and permanent impairment rating process. Historically, the Disability Compensation Division has informally required mutual consent between the injured worker and the employer or insurer to insure that the physician examiner was impartial in permanent impairment ratings. Physicians jointly selected recognize 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 serves 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 the expediency and convenience of the employers and insurers.

On still other occasions, insurers have tried to use a finding that an injured worker is likely to have 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 2 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*

An ancillary benefit of passing HB 466, HD 2 is its provision limiting expert medical examination costs to the complex medical evaluation fee provided in Section 386-21(c) HRS. This, too, is a much needed limit on the current exorbitant cost of these evaluations. Some evaluators spend as much as thirty or forty pages unnecessarily and tendentiously recounting an injured workers medical history, when such recitations are wholly unnecessary to the adjudication of claims. Medical experts should render answers to the questions posed to them and should summarize essential facts on relevant issues in plain language, not destroy small forests by pouring a torrent of gratuitous terminology upon the litigants.

In much the same fashion that the all-powerful emperor paraded before his subjects without clothing and still was indulged by his fearful subjects, insurers and employers have tolerated this wasteful practice in order to gain expert opinions they believe will provide a transient advantage in denying specific individual claims. What they fail to realize and ignore is that sound public policy is best served by concerted effort to compel medical experts to simplify their reports, express themselves concisely, and reduce unnecessary reportage. Even the most complicated claims can fairly and fully be adjudicated with ten page physician reports rather than sixty page dissertations that are longer than some M.A. theses.

HB 466, HD 2 will compel medical experts to modify their writing in a constructive fashion and in time will tame runaway expert fee assessments. Less reliance on medical experts or mere simplification of expert witness reporting will also contribute to a less complicated, less litigious, and more practical system of adjudication overall. Lower medical expert expenses by insurers will help reduce premium costs for employers and make insurance more economical and affordable for all without impinging upon legitimate insurer profitability.

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 whole.

Finally, HB 466, HD 2 also seeks funding for three additional hearings officers and two additional clerical staff for the Disability Compensation Division. This request should be granted, as restoring adjudicatory capacity to the department should be a major priority for all. Probably no agency of government throughout the entire state, adjudicates a greater volume of cases with greater efficiency than the Disability Compensation Division.

While the division has done a superb job in maintaining productivity in a time of limited resources, the increased staffing will help there be more decisions rendered in less time, and address the increased demand for review of medical care and vocational rehabilitation issues. Expedited decision making, in turn, will move claims themselves more rapidly through the system. Eliminating delay will have direct consequences in shortening the time claimant's remain on temporary total disability and restore injured workers to productive employment. In short, the funding sought in HB 466, HD 2 will have a highly strategic impact on the entire system of industrial injury adjudication. Adding a small number of additional hearings officers and staff will actually reduce costs and increase employment.

The reforms embodied in HB 466, HD 2 in medical evaluation and claims handling will thus chart a course away from the self-centered preoccupations of individual litigants in the past toward a more enlightened, collaborative, and constructive future. We therefore wholeheartedly endorse its passage.

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

Monday, February 28, 2011
Agenda #8

HB 466, HD2
RELATING TO WORKERS' COMPENSATION

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

Chair Oshiro, Vice Chair Lee, 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. 2. 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 the bill 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. 2 and respectfully request this measure be held.

Thank you for this opportunity to submit testimony.



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance
1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Marcus, Chair
House Finance Committee

From: Samuel Sorich, Vice President

Re: **HB 466 HD2 – Relating to Workers’ Compensation**
PCI Position: OPPOSE

Date: Monday, February 28, 2011
5:00 p.m., Conference Room 308 (Agenda #8)

Aloha Chair Oshiro and Members of the Committee:

The Property Casualty Insurers Association of American (PCI) is opposed HB 466 HD2 because the bill is unnecessary and unfair and would result in administrative delays.

HB 466 HD2 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 HD2 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 2 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 2 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 HD2 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 HD2 for the remainder of the session.

**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. 25, 2011
SENT BY E-MAIL

http://www.capitol.hawaii.gov/emailtestimony
House Finance Committee
State Capitol
415 S. Beretania St.
Honolulu, HI. 96813

HB 466 - Relating to Workers Compensation
(Fair and Mutual Independent Medical Examinations)
Hearing: Feb. 25, 2011 5 p.m.

Dear Chairman Oshiro and members of the Committee:

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.

**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

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

**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

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)**."

WORKSTAR INJURY RECOVERY CENTER

91-2135 Fort Weaver Road Suite #170
Ewa Beach, Hawaii 96797

February 28, 2011

Committee on Consumer Protection and Commerce

House Bill 466 HD2 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

**Testimony to the House Committee on Finance
Monday, February 28, 2011
5:00 p.m.
Conference Room 308
Agenda #8**

RE: HB 466 HD2 RELATING TO WORKERS' COMPENSATION

Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is Molly Jo Campbell. As a defense attorney representing employers, insurance carriers or their third party administrators in workers' compensation cases, I oppose HB 466 HD2, relating to Workers' Compensation.

This measure requires independent medical examinations ("IME's") and permanent impairment rating examinations ("PIRE's") to be performed by "mutually agreed" upon physicians.

I do 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 or PIRE as these specialties are either unavailable or unwilling to conduct an IME or PIRE in Hawaii.
- 2) The IME process is an essential part of an employer's discovery process. The right for an employer to select the physician of its own 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 I believe the employer should be able to select his/her medical physician to address compensability, medical treatment issues or even ratings. 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 already exist for IME's. 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. The employee or his or her attending physician have the opportunity to contest the report. Furthermore, the employee is always free to obtain an alternative permanent impairment rating. It is also not uncommon for the attending physician to comment on the IME or PIRE.

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 that examinations 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.
- 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 just one piece of evidence.

Testimony to the House Committee on Finance
Re: HB 466 HD2 Relating To Workers' Compensation
February 28, 2011
Page 3

In summary, I believe the current system regarding IME's is working and most occur by mutual agreement absent any statute. Only a very small percentage of workers' compensation claims require an ordered IME or PIRE.

For these reasons, I do not support HB 466 HD2 and respectfully request the committee hold this measure.

Very truly yours,

CHAR HAMILTON CAMPBELL & YOSHIDA

By

A handwritten signature in cursive script that reads "Molly Jo Campbell". The signature is written in black ink and is positioned above the printed name.

Molly Jo Campbell

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 28, 2011

Committee on Finance

House Bill 466 HD2 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 HD2.

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 HD2) 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



Activities & Attractions Association of Hawaii
PO Box 598, Makawao, Hawaii 96768
(808)871-7947 Main (808)877-3104 Fax

Testimony to the House Committee on Finance
Monday, February 28, 2011, 5:00 pm
Conference Room 308

RE: House Bill 466 RELATING TO WORKER'S COMPENSATION

Chair Oshiro, Vice Chair Lee & Members of the committee;

Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 13 years it has been my honor to serve the activity & attraction industry of Hawaii through my position as the Executive Director of the Activities & Attractions Association of Hawaii (A3H). A3H represents nearly 200 businesses statewide. These businesses range in size from very large (over 300 employees) to very small (1-2 employees). **A3H strongly opposes HB466.**

With the present economic condition anything which increases the cost to Hawaii's small business operators should be stopped in its tracks. Independent Medical Examiners (IMEs) are an important safeguard for employers. According to Worker's Comp insurance companies this WILL result with increased premiums even with the changes made with HD2.

Please kill this Bill.

Sincerely,

Toni Marie Davis

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 28, 2011

TO: THE HONORABLE REPRESENTATIVE MARCUS R. OSHIRO, CHAIR AND
MEMBERS OF COMMITTEE ON FINANCE

SUBJECT: H.B.466, HD2 - RELATING TO WORKERS' COMPENSATION

NOTICE OF HEARING

DATE: Monday, February 28, 2011
TIME: 5:00 P.M.
PLACE: Conference Room 308

Dear Chair Oshiro 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.

HEMIC

Hawaii Employers' Mutual Insurance Company, Inc.

1003 Bishop Street
Paohi Tower, Suite 1000
Honolulu, HI 96813
Telephone: 808-524-3642, ext. 240
Facsimile: 808-524-0421
pnaso@hemic.com

Hearing Date/Time: February 28, 2011 (5:00 PM)

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Finance Committee
STATE CAPITOL
Conference Room 308
415 South Beretania Street
Honolulu, Hawaii

By facsimile (808) 586-6001

Re: H.B. 466, HD2 - Relating to Medical Examinations

Dear Chair Oshiro, Vice Chair Lee, and Members of the Finance 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, HD2

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.

I. In Real Life, H.B. 466, HD2 will significantly delay the selection of IME providers

From a purely practical standpoint, H.B. 466, HD2 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, HD2 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, HD2 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, HD2 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 IME. 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 IME 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, HD2 will Negatively Affect the Quality of IMEs

If H.B. 466, HD2 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.

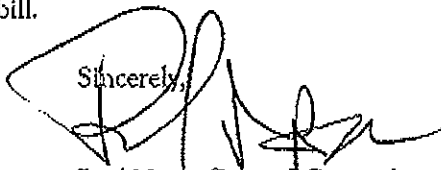
Perhaps most dangerously, it appears that H.B. 466, HD2 would allow IME providers who are not board certified as specialists in a particular area to render opinions in that specialty.

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



KILAKILA
EMPLOYER SERVICES

**Testimony to the House Committee on Finance
Monday, February 28, 2011
5:00 p.m.
Conference Room 308
Agenda #8**

RE: HB 466 HD2 RELATING TO WORKERS' COMPENSATION

Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is Clifford Jamile and I am the Chief Executive Officer at Kilakila Employer Services ("Kilakila"). Our company opposes HB 466 HD2, relating to Workers' Compensation.

Kilakila is a Professional Employer Organization providing outsourced human resource administrative services to over 150 Hawaii employers. Part of our service is to procure workers' compensation insurance for our clients and manage any workers' compensation claims that may occur.

HB 466 HD2 requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

Kilakila does not support this bill for the following reasons:

- 1) 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.

KilaKila Employer Services - OAHU
1221 Kapiolani Blvd. • Suite 310 Honolulu, Hawaii 96814
Phone: (808) 597-8535 • Fax: (808) 440-9634
Website: www.kilakila.com • Email: kes@kilakila.com

- 2) 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.
- 3) 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.
- 4) 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.

- 5) 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.

- 6) 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, we do not support HB 466 HD2 and respectfully requests the committee holds this measure.

Thank you very much for the opportunity to testify.

Sincerely,

Clifford A. Jamile
Chief Executive Officer

February 28, 2011

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

COMMITTEE ON FINANCE

HOUSE CHAIR: Rep. Marcus Oshiro, Chair
Vice Chair: Rep. Marilyn Lee, Vice Chair

Date of Hearing: Feb. 28, 2011
Time: 5:00 p.m.
Place: Conference Room 308

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.

My address and phone number is:
Vocational Management Consultants, Inc.
715 S. King Street Suite 410
Honolulu, Hi 96813 #538-8733

TESTIMONY IN SUPPORT OF HB 466

FINANCE COMMITTEE

REPRESENTATIVE MARCUS R. OSHIRO – CHAIR

REPRESENTATIVE MARILYN B. LEE – VICE CHAIR

HONORABLE 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 again to pass this mutually agreed upon IME bill.

Thank you.

Debra A. Kawamoto
Vocational Management Consultants
Vocational Technician
HIWA - Secretary

Testimony to the House Committee on Finance
Monday, February 28, 2011
5:00 p.m.
Conference Room 308
Agenda #8

RE: HB 466 HD2 RELATING TO WORKERS' COMPENSATION

Chair Oshiro, Vice Chair Lee and Members of the Committee:

Aloha, my name is Lisa Wong. As a business and Human Resources executive, I oppose HB 466 HD2, relating to Workers' Compensation.

I work for an organization which provides services for the tourist industry. This bill is important to me and the company because it could result in misdirected or below par healthcare delivery for our employee the patient. This will result in high cost of healthcare delivery, which in return will be burdened by our consumers, the tourist, resulting in a least desired travel destination, due to high cost, and mixed together with higher room tax, high cost of transportation and fuel and other cost factors.

This measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I do 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 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, we do not support HB 466 HD2 and respectfully requests the committee holds this measure.

Thank you very much for the opportunity to testify.

February 28, 2011

COMMITTEE ON FINANCE
The Twenty-sixth Legislature
Regular Session of 2011

HOUSE CHAIR: Rep. Marcus R. Oshiro
VICE CHAIR: Rep. Marilyn B. Lee

Date of Hearing: February 28, 2011
Time: 5:00 p.m.
Place: Conference Room 308

Testimony in support of HB 466

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, 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

February 28, 2011

The Honorable Marcus Oshiro, Chair
The Honorable Marilyn Lee, Vice Chair
Members of the Finance Committee
415 South Beretania Street, Room 306
Honolulu, Hawaii 96813

Relating to: HB 466, HD 2 - Relating to Workers' Compensation

Dear Representative Oshiro and members of the Committee:

I strongly urge you to **SUPPORT HB 466 HD 2 - 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 2 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.

Thank you for the opportunity to address this committee in regard to HB 466 HD 2.

Sincerely,

Patti Inoue, M.Ed., CRC 2/28/11
715 S. King Street, #410
Honolulu, Hawaii 96813
808-538-8733

From the office of:

Pat's Quality Roofing, Inc.

To: House Finance Committee Fax: 1-800-535-3959


From: Patrick O'Brien Date: 2-28-11

Re: HB466 HD2 Pages: 02

IN the past 25 years I have been the victim of worker's compensation fraud 3 times with a total cost to insurance (passed on to me) of OVER \$200,000.00.

IN the recent 5 years, we have finally experienced a hopeful effort to fight this fraud by our carriers. Please Don't take the teeth out of the system that finally has resolved to fight FRAUD.

Mahalo


President Pat's Quality Roofing
808-870-1533

FINTestimony

From: mailinglist@capitol.hawaii.gov
sent: Monday, February 28, 2011 10:10 AM
To: FINTestimony
Cc: sawonglaw@hawaii.rr.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Tawhiri Power
Organization: Tawhiri Power
Address:
Phone:
E-mail: sawonglaw@hawaii.rr.com
Submitted on: 2/28/2011

Comments:

Tawhiri Power opposes this measure because the current process works well - "If it ain't broke, don't fix it." The proposed measure fundamentally changes the balance between the employer and the employee, and jeopardizes the integrity of our workers compensation system. Pls. hold this bill.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 10:30 AM
To: FINTestimony
Cc: cutiney1987@yahoo.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Nena Pattugalan
Organization: Individual
Address:
Phone:
E-mail: cutiney1987@yahoo.com
Submitted on: 2/28/2011

Comments:

I am an injured worker who underwent to 4 bad IME doctors. Please pass this bill.

FINTestimony

From: mailinglist@capitol.hawaii.gov
ent: Monday, February 28, 2011 11:36 AM
To: FINTestimony
Cc: rpage96825@hawaii.rr.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Richard C. Page
Organization: Eagle Const. Co.
Address:
Phone:
E-mail: rpage96825@hawaii.rr.com
Submitted on: 2/28/2011

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 1:17 PM
To: FINTestimony
Cc: bobbrennan14@gmail.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: bob brennan
Organization: Individual
Address:
Phone:
E-mail: bobbrennan14@gmail.com
Submitted on: 2/28/2011

Comments:

Our injured workers are a very important resource. Currently, the laws are ok but some of the insurance don't play fair. In our system, the insurance companies/employers make injured workers go to bad IME doctors. These doctors see injured workers as billable when they do the IME's and make a lot of money. I have read many reports. a lot of them are similiar - no benefits for you because....I (the doctor) get paid well to make sure you don't pass. It's sad when injured workers are forced to go see these "bad doctors" whose reports go unchecked and are not accountable.

Our system is founded on checks and balances. By allowing the claimant to have a say in the choice of the IME doctor, it will reduce the "bad doctor" influence in the industry. That is very healthy for our system. Let's say "aloha" to bad doctors who cost the system too much money and time.

Thank you very much for considering passing this bill to the next step.

Aloha, Robert Paul Brennan

February 28, 2011

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

COMMITTEE ON FINANCE HEARING

Committee on Finance, Rep. Marcus R. Oshiro-Chair
Rep. Marilyn B. Lee-Vice Chair
Respective Committee Members

Date of Hearing: Feb. 28, 2011
Time: 5:00 pm
Place: Room 308

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

Hearing Date/ Time: February 28, 2011 (5:00) / HB466, HD2

Honorable Marcus R. Oshiro, Chair
Honorable Marilyn B. Lee, Vice Chair
State Capitol
Conference Room 308
415 South Beretania Street
Honolulu, Hawaii

Via FACSIMILE TO 586-6001

Re: Testimony IN OPPOSITION to HB 466, HD2

Dear Chair Oshiro, Vice Chair Lee, and other Members of the Finance Committee:

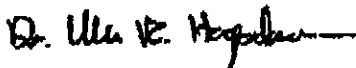
HB 466, HD2 is proposing requiring Independent Medical Examinations (IME) and Permanent Impairment Rating Examinations for workers compensation claims to be performed by mutually agreed upon physicians (employee and employer agreement).

As a small business owner and an employer for 34 years in Hawaii, I oppose this bill for the following reasons:

- 1. HB 466, HD 2 will limit my fundamental right as an employer to select a duly qualified IME physician. If agreement cannot be reached (at potentially significant additional expense to the employer) he/she will be forced to accept an "agency" selection. This will NOT speed up the process and will lead to increased delays for both the employee and the employer.**
- 2. HB 466, HD2 will substantially increase the cost of claims and increase disputes between employers and employees. If you review the historical record, workers compensation laws are already significantly stacked against the small business employer in Hawaii. These are the same employers you are now looking at for increased revenues to cover the State's budget shortfall. Quit burdening us with these unproven "experiments" in social policy!**
- 3. HB 466, HD2 will Negatively Affect the Quality of IMEs, an important safeguard for employers, since the requirement of employee agreement can easily bias the entire process and dramatically extend the time and effort necessary by the small business to search and review all possibilities. The process is already cumbersome, expensive and clearly favors the employee at the expense of the small business employer. We don't need another artificial tier of legislation to further confuse and confound the process.**

For these reasons, we respectfully urge you to hold this bill. Thank you for your attention to this very important matter. Please help us to HELP YOU to raise money for the State Budget Shortfall by eliminating these legislative "experiments" into a system that already works!

Very truly yours,



Mark R. Hagadone, Ph.D., FACFE
President and Technical Director,
INALAB, INC.
TECHNICAL EXPERTS, INC.

February 28, 2011

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

COMMITTEE ON FINANCE HEARING

Committee on Finance, Rep. Marcus R. Oshiro-Chair
Rep. Marilyn B. Lee-Vice Chair
Respective Committee Members

Date of Hearing: Feb. 28, 2011

Time: 5:00 pm

Place: Room 308

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

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 2:40 PM
To: FINTestimony
Cc: mukaida88@aol.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Wayne Mukaida
Organization: Individual
Address:
Phone:
E-mail: mukaida88@aol.com
Submitted on: 2/28/2011

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 2:53 PM
To: FINTestimony
Cc: mjc@charhamilton.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Molly Jo Campbell
Organization: Individual
Address:
Phone:
E-mail: mjc@charhamilton.com
Submitted on: 2/28/2011

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
ent: Monday, February 28, 2011 3:24 PM
fo: FINTestimony
Cc: ltadaki-kam@vmchawaii.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Leona Tadaki-Kam
Organization: Vocational Management Consultants, Inc.
Address:
Phone:
E-mail: ltadaki-kam@vmchawaii.com
Submitted on: 2/28/2011

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
ent: Sunday, February 27, 2011 9:58 PM
To: FINTestimony
Cc: emsski@aol.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Emily Skedeleski
Organization: Individual
Address:
Phone:
E-mail: emsski@aol.com
Submitted on: 2/27/2011

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 9:00 AM
To: FINTestimony
Cc: Moore4640@hawaiiantel.net
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: support
Testifier will be present: Yes
Submitted by: Douglas Moore
Organization: Individual
Address:
Phone:
E-mail: Moore4640@hawaiiantel.net
Submitted on: 2/28/2011

Comments:
Strongly support the passage of this bill. Please pass this bill. Mahalo

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 9:30 AM
To: FINTestimony
Cc: zuikerlw@pixi.com
Subject: Testimony for HB466 on 2/28/2011 5:00:00 PM

Testimony for FIN 2/28/2011 5:00:00 PM HB466

Conference room: 308
Testifier position: support
Testifier will be present: Yes
Submitted by: Joseph Zuiker
Organization: Individual
Address:
Phone:
E-mail: zuikerlw@pixi.com
Submitted on: 2/28/2011

Comments:

Please support this bill which requires cooperation between the Claimant and the Insurance carriers. This bill will speed up the recovery of injured workers, reduce conflicts in the claims process and cut work comp. costs further.

Please pass HB 466

HB466

We received about 50
form letters in
opposition.

Hearing Date/Time: February 28, 2011 (5:00 PM)

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Finance Committee
STATE CAPITOL
Conference Room 308
415 South Beretania Street
Honolulu, Hawaii

By facsimile (808) 586-6001 (Oahu)
1-800-535-3859 (for Neighbor Islands)

Re: TESTIMONY IN OPPOSITION TO HB 466, HD2

Dear Chair Oshiro, Vice Chair Lee, and Members of the Finance Committee:

HB 466, HD2 requires Independent Medical Examinations (IME) and Permanent Impairment Rating Examinations for workers compensation claims to be performed by mutually agreed upon physicians.

As a business owner and an employer in Hawaii, I oppose this bill for the following reasons:

- 1. HB 466, HD 2 will limit my fundamental right as an employer to select a duly qualified IME physician.
- 2. HB 466, HD2 will substantially increase the cost of claims and increase disputes between employers and employees.
- 3. HB 466, HD2 will Negatively Affect the Quality of IMEs, an important safeguard for employers.

For these reasons, we respectfully urge you to hold this bill.

Thank you for your attention to this very important matter.

Very Truly Yours



Signature

POHAKU PLUMBING INC.

Company