

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [alogawa@yahoo.com](mailto:alogawa@yahoo.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 1:44:56 PM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Alan Ogawa  
Organization: Individual  
E-mail: [alogawa@yahoo.com](mailto:alogawa@yahoo.com)  
Submitted on: 4/3/2012

Comments:



**Alan Shintani Inc.**  
GENERAL CONTRACTOR BC 13068

April 4, 2012

Senator Ige, Chair  
Senator Kidani, Vice-Chair  
Committee on Ways and Means  
State Capitol, Room 211, 9:10 am  
Honolulu, Hawaii 96813

RE: HB 466 HD3 SD1, Relating to Workers' Compensation

Dear Chair Ige, Vice-Chair Kidani and Members of the Committee:

**Alan Shintani, Inc. strongly opposes H.B. 466, HD3 SD1**, which would require 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; allows for the use of an out-of-state physician under certain conditions; and appropriates unspecified funds.

Alan Shintani, Inc. objects to this bill, because it would require that independent medical examinations and permanent impairment rating examinations for workers' compensation claims be performed by physicians mutually agreed upon for employers and employees or appointed by the DLIR director.

The bill is fundamentally unfair and will substantially increase the cost of workers' compensation. If the employer has reason to question the treating physicians proposed course of action, the employer's **only** tool to objectively evaluate treating physician's plan of action is the employer requested examination. This bill would give the claimant employee – likely at the advice of the treating physician – the opportunity to deny the employer that sole opportunity.

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. Currently, permanent impairment rating examinations are performed by mutual agreement between parties.

If the intent of this bill is to build trust and reduce confrontation in the workers' compensation system, it will fail at both objectives. Instead, this bill will compel claimants to rely more heavily on plaintiffs' attorneys to navigate increasingly complex procedures.

Alan Shintani, Inc. is **strongly opposed** to HB 466 HD3 SD1 and respectfully requests that your committee hold this measure.

Thank you for the opportunity to testify.

Sincerely,

President  
Alan Shintani, Inc.

**From:** [alp@hawaiianagroup.com](mailto:alp@hawaiianagroup.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not hurt small businesses: hold HB 466  
**Date:** Tuesday, April 03, 2012 11:31:49 AM

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Albert Pattison  
Hawaiiana Management  
Honolulu, HI 96813-5237

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Thank you for the opportunity to submit comments.

Sincerely,

Albert Pattison  
593-9100

**From:** [areed@hawaiiantel.net](mailto:areed@hawaiiantel.net)  
**To:** [WAM Testimony](#)  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Please do not hurt small businesses: hold HB 466  
**Date:** Tuesday, April 03, 2012 12:22:07 PM

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Angela Reed  
204 So. Kalaheo Avenue  
Kailua, HI 96734-2931

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

Thank you for the opportunity to submit comments.

Sincerely,

Angela Reed

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [regoa@hawaii.rr.com](mailto:regoa@hawaii.rr.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 12:26:55 PM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Anson Rego  
Organization: Individual  
E-mail: [regoa@hawaii.rr.com](mailto:regoa@hawaii.rr.com)  
Submitted on: 4/3/2012

Comments:

The long overdue proposal to mandate "Mutual Cooperation" in processing work injury claims in Hawaii is coming up for consideration on 4/4/12. The bill (HB 466, HD3, SD1) will do the following:

Speed up work injury claims through mutual selection of medical examiners. No more fights over doctor bias. No more doctors getting substantial incomes while working only for insurance companies and then claiming that they are "independent medical examiners". If it's your body that is being examined, you---everyone--deserves a truly independent medical examiner. That is just fair!

The main problem is that that often the employee now has no say even in who gives him a PPD rating for his monetary award as the Labor Board now rubber stamps and orders the employee to see the same IME chosen earlier by the Employer. That is unfair and is a conflict of interest; but that is how unfair it has become.

Please correct this very unfair situation. An employee cannot afford to hire another IME doctor; he's been financially impaired and hasn't been working, sometimes for years.

The workers compensation system should insure justice and protect against financial bias. The system, however, has for many years caused financial injury to the already injured worker. This is why this bill should be passed.

Mahalo for your assistance in passing this bill.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [tony@rmasalesco.com](mailto:tony@rmasalesco.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Wednesday, April 04, 2012 7:41:50 AM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Anthony B. Borge  
Organization: RMA Sales  
E-mail: [tony@rmasalesco.com](mailto:tony@rmasalesco.com)  
Submitted on: 4/4/2012

Comments:



99-134 Waiua Way • Aiea, Hawaii 96701  
Phone: 808-487-9041 • Fax: 808-488-6481  
Island Toll Free: 1-800-644-2882  
E-mail: [sales@rmasalesco.com](mailto:sales@rmasalesco.com)  
Website: [www.rmasalesco.com](http://www.rmasalesco.com)

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April 03, 2012

**Testimony to the Senate Committee on Ways & Means**

Wednesday, April 04, 2012

9:10 a.m.

State Capitol, Room 211

**RE: H.B. 466 HD3 SD1, Relating to Workers Compensation**

Dear Chair Ige, Vice -Chair Kidani, and members of the Committee:

My name is Anthony Borge, General Manager of RMA Sales. We are a small, locally owned and operated company that started business in 1961. We manufacture and distribute vinyl, aluminum window and door products as well as other related building materials throughout the State. We currently employ a full-time staff of sixteen.

We are **opposed** to **H.B. 466 HD3 SD1**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees or appointed by the director of the department of labor and industrial relations; allows for the use of an out-of-state physician under certain conditions.

We believe there is nothing wrong with the current statutes that provides for numerous safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report. Employees have the right to seek their own medical opinion if they disagree, and an appeal process if the parties cannot agree.

This bill will result in increased workers compensation cost to all businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims. This is not the case with the proposed bill.

If the intent of this bill is to build trust and reduce confrontation in the workers' compensation program, it will fail to achieve the desired intent. The current law is effective in building trust and reducing confrontation in the program for both employers and employees.

For these reasons, we ask that the proposed bill be held in abeyance.

Thank you.

Respectfully submitted by:



Anthony B. Borge

**From:** [betty@polyad.com](mailto:betty@polyad.com)  
**To:** [WAM Testimony](#)  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Please do not support HB 466 HD3 SD1 re Work Comp  
**Date:** Tuesday, April 03, 2012 9:36:44 AM

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Betty Prahler  
2880 Kilihau Street  
Honolulu, HI 96819-2071

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

Thank you for the opportunity to submit comments.

Sincerely,

Betty Prahler



200 Akamainui Street  
Mililani, Hawaii 96789-3999  
Tel: 808-625-2100  
Fax: 808-625-5888



Honorable David Ige, Chair  
Honorable Michelle Kidani, Vice Chair  
Senate Committee on Ways and Means

**RE: HB 466 HD3 SD1 – Relating to Workers Compensation – Oppose**  
April 4, 2012 – 9:10 AM, Hawaii State Capitol, Room 211

Aloha Chair Ige, Vice Chair Kidani and members of the committee,

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to over 425,000 Hawaii households, schools and businesses and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to express our strong concerns on 466 HD3 SD1 – Relating to Workers Compensation.

We're committed to fostering a healthy and productive working environment for Oceanic employees. To that end, we work diligently to ensure proper occupational and safety programs are in place that helps protect each individual employee.

Hawaii workers' compensation law places a presumption of compensability in favor of the injured worker. So, the ability select a qualified physician experienced in independent medical examination is the only way for an employer to ensure a that proper treatment is being given to the injured worker.

We have strong concerns that if this bill is passed, employers will lose the ability to conduct reasonable discovery of disputed claims and the ability to present a meaningful defense either to a disputed claim or disputed medical treatment. This will result in an increase to the cost of workers' compensation benefits and workers' compensation premium rates.

The bottom line is that this bill will adversely impact all employers in this already challenging economy when businesses are just trying to stay afloat. It will also be a disincentive to hire new employees and for new business to enter into the state.

For these reasons, we respectfully ask the committee to hold this bill.

Sincerely,

Bob Barlow  
President of Oceanic Time Warner Cable

**Hawaii Island Humane Society**

Kona, Big Island, HI 96740

Number of employees: 41

Comments to the Senate on Ways and Means

Wed. Apr, 4, 2012

Conf Room 211

State Capitol, 415 S. Beretania St.

Re: HB 466 – Relating to Worker’s Compensation

Please consider carefully the ramifications of passing this bill as it is written.

Worker’s Compensation insurance is already a heavy financial burden and this bill will lead to increased costs to the employers.

Under this bill the employers will have much less of an opportunity to oversee the medical treatment to determine if it is fair and reasonable. If employers cannot challenge the doctor’s determination, there lies too much opportunity for the system to be abused, without safeguards or checks and balances.

We want to make Worker’s Comp. more cost efficient, not more expensive and wasteful.

We urge you to not pass HB 466.

Thank you,

C. Kennedy

Accounting

Hawaii Island Humane Society

**From:** [dweiss@bamhawaii.com](mailto:dweiss@bamhawaii.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 3:16:42 PM

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david weiss  
991 limahana pl  
lahaina, HI 96761-1588

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

IMEs are the most effective way for an employer to rebut a claim or to end treatment to determine settlement value or permanent impairment.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Because there are so few IME physicians, mandating the exam within a certain time period of selection or appointment is rarely possible. This may not be in the best interest of the injured worker if the only available IME physician does not specialize in the injury/diagnosis in question.

Thank you for the opportunity to submit comments.

Sincerely,

david weiss, EVP Beach Activities Maui, Kaanapali Kai Charters, Inc. and  
Capricorn Events 808-661-5500

**From:** [dmccarthy@makenaresortmaui.com](mailto:dmccarthy@makenaresortmaui.com)  
**To:** [WAM Testimony](#)  
**Subject:** Comments against HB 466 HD3 SD1 (WAM DM on 4/4)  
**Date:** Tuesday, April 03, 2012 12:57:06 PM

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Declan Mc Carthy  
5400 Makena Alanui  
Kihei, HI 96753-8435

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Thank you for the opportunity to comment on this proposed bill. I feel strongly that this bill as it stands will drive workers compensation costs high for employers, making it more difficult to do business in Hawaii. Businesses are already struggling during these challenging times and if laws such as this are passed, they will have no choice but to reduce costs elsewhere, such as reducing labor costs. As a business we are motivated to ensure that our employees stay healthy and accident free.

IMEs are the most effective way for an employer to rebut a claim or to end treatment to determine settlement value or permanent impairment.

I implore you to put more thought into this bill and avoid passing a bill that will have unintended consequences, that will benefit neither the employers or the employees.

Thank you for the opportunity to submit comments.

Sincerely,

Declan Mc Carthy  
808.875.5803

# DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

April 3, 2012

VIA ELECTRONIC MAIL

To: The Honorable Senator David Y. Ige, Chair, Michelle N. Kidani, Vice Chair  
and Members of the Committee on Ways and Means

Date: Wednesday, April 4, 2012

Time: 9:10 a.m.

Place: Conference Room 211, State Capitol  
415 South Beretania Street

From: Dennis W. S. Chang  
Labor and Workers' Compensation Attorney

## **Re: HB 466, HD3, SD1 Relating to Workers' Compensation**

### **I. Current Law:**

Employers and their representatives (Employers) are allowed to secure an order for an independent medical examination (IME) to be conducted by a physician or surgeon of their unilateral choice. If the injured workers refuse to attend the examination or obstruct the examination in any way, their rights to workers' compensation (WC) benefits are suspended for the period during which the refusal or obstruction continues. The current companion administrative rule shows the onerous impact of this practice on the Director of Labor and Industrial Relations (Director) and Disability Compensation Division (DCD) in the implementation of the current statutory provision. HAR § 12-10-75.

Applications are submitted for the Director's review. After their review, if justification for an order is determined to be appropriate, an order is typed up and issued to all parties giving notice that the Director is compelling the injured workers to attend the examination.<sup>1</sup> The

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<sup>1</sup> § 12-10-75. Medical Examination Orders and Reports.

(a) Orders requiring the injured employee to appear for examination by the physician of the employer's choosing may be issued by the director.

(b) The employer shall submit a request in writing to the director and the injured employee twenty calendar days before the scheduled medical examination date. The request shall also include the purpose of the examination, justification for the order, the name of the physician, and time, date, and place of examination.

(c) The director, upon review of the case file and without necessity of hearing, and upon finding that the examination will assist in the expedient disposition of the case or in determining the need for or sufficiency of medical care or rehabilitation, shall issue a medical examination order. The order shall not be appealable and will inform the claimant that compensation may be suspended for failure to submit to the examination without good cause. The injured employee may be responsible for a reasonable no-show fee not to exceed \$250 charged by the physician.

statutory provision does not involve ratings of bodily parts. Ratings require the mutual selection of a physician or surgeon to rate injuries, which are ultimately used to determine the monetary awards, if any, for injured workers. This mutual selection process has worked very well over the long course of my legal career (going on 35 years). There is only one report so there is little dispute unlike in the setting of multiple IMEs where parties are forced to secure their own reports at outrageous costs. This latter process inherently breeds delay in the processing of claims, encourages denial of claims and medical treatment, results in unnecessary litigation, and contradicts the goal of promptly providing medical treatment and returning injured workers to work.

## **II. HB 466 HD3, SD1:**

This measure **proposes** a repeal of the **current** statutory provision and replaces it with a new section requiring the mutual selection of physicians and surgeons to perform what is now inaccurately known as "independent" medical examinations or IMEs. The continued existing practice relating to rating of injured workers by mutual agreement remains intact. If the parties are unable to achieve a mutual selection, the Director appoints a qualified physician licensed in the relevant medical specialty to conduct the examination within 30 days of a request or "as soon as practicably possible." In appropriate cases, there can be more than one IME but an IME and rating cannot be combined, consistent with current law.

## **III. Support for HB 466 HD 3, SD1:**

The Director **supports** the intent of the bill. **However**, he expressed concern about having an understandable shortage of physicians to perform examinations but this has been corrected in part by extending the date to from 30 days to 45 days or "as soon as practicably possible." He also expressed concern that the treating physicians will determine when there is medical stability of injuries and this may result in over treatment and delay a rating of a permanent partial impairment.

## **IV. Position in Support:**

\* We recognize the concerns raised by the Director but the passage of the bill far outweighs his concerns for a myriad of reasons. At the outset, I state, based on extensive years of experience, that generally speaking, injured workers want prompt treatment, recovery and return to work. Living on a reduced income of wage loss benefits is a disincentive to remain on extended treatment and disability.

\* To avoid the inherent bias contained in the current unilateral IME process, which can be and has been highly abusive through manipulation by Employers, there should be mutual agreement in the selection of a physician for IMEs. This will bring back a sense of integrity to the system when the parties jointly share in the selection of a physician.

\* The proposed bill will end the abusive practice of hiring physicians with a particular bias without regard for the welfare of the injured workers.

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(d) Reports for a medical examination by a physician chosen by the employer or employee not requiring a director's order shall be provided to all parties within fifteen calendar days after receipt and no later than fifteen calendar days prior to the scheduled date of hearing, whichever is sooner. Failure to provide the required copies may result in the director denying inclusion of the report in the director's decision.

\* The proposed bill will end the abusive practice of combining an "IME" along with an impairment rating, which often happens whether or not there is medical stability of work injuries since Employers do not send out the cover letter to their selected physician before the examination as a practice. No one really knows what is asked. This abusive practice will be eliminated and ratings of injured body parts, which ultimately determine monetary awards, if any, remain intact. For the estimated 90% of injured workers who have no knowledge of the law and are unrepresented, Employers are no longer able to trick and cheat them into combined IMEs and ratings by defense oriented physicians.

\* The proposed bill will also end the abusive practice of securing multiple IMEs and circumvent the current statute which allows only one "IME" per year for most cases. Currently, there is nothing that prevents the Employers from securing records' reviews without examination of injured workers. This can be conducted time and time again until favorable reports are secured and matched up to deny claims and force litigation. See Exhibit, attached here (7 reports secured by employer in one case in period of less than one year). The current bill will allow more than one IME only "for valid reasons."

\* The bill will end the obscene financial rewards of physicians who are beholden to Employers since they easily make thousands upon thousands of dollars for a report. As some attorneys have indicated in their testimony, a physician could easily earn \$300,000.00 a year performing simple IMEs/ratings (\$2,000.00 per examination and report times three (3) per week times fifty (50) weeks). Of course, we know that charges are not limited to \$2,000.00 per examination and report and could cost as much as \$10,000.00 as shown during prior testimony by a billing. There is also an increasing retainer of particular physicians, one of whom had earned more than one million dollars in a year by performing Employer designated examinations and reports (on record in oral deposition). Such a physician is not only conducting a minimum of 3 IMEs a week (some perform 3 IMEs a day). They obviously cannot be objective knowing that they are serving only select clients who are willing to pay handsome sums for their written reports. They naturally will issue reports with expected defense opinions even if not directly asked to do so. It is like running a repeating business. You service clients the best you can hoping to get more and/or continued requests for services.

\* The proposed bill will level the playing field by having one physician who issues a report which will be binding on all parties. Injured workers can hardly match the resources of Employers and Insurance Carriers who currently have a monopoly over groups of physicians. With a mutual selection of physicians by the parties and only one report, there will be an eventual reduction of these attorneys and physicians who really have no place in the practice of WC claims, and the decrease in engineered litigation would free the Director's staff to handle other pressing matters. The mutual selection of physicians for ratings is proof that this process of mutual selection of physicians for IMEs will work. In most cases, shortly after the receipt of a jointly appointed physician's rating report, the parties are likely to negotiate a settlement and expedite closure. Needless litigation is avoided and there is substantial savings to Employers who oftentimes are unaware of what is the current practice of insurance carriers and their legal defense industry.

\* Arguing that there is an absolute need to unilaterally retain physicians to rebut the presumption that a claim is covered is wholly misplaced. If the goal is to achieve true objectivity, why do you need to purchase a doctor to rebut that a claim is compensable? The WC legislation is humanitarian in nature and you could secure a rebuttal, which all parties will abide by, with a mutually agreed upon examiner who is objective. We should ask why this rebuttal is not accomplished using fair and impartial examiners who are mutually selected? We



are able to resolve disputes in highly questionable claims involving permanent partial impairments arising out of work injuries by mutual agreement of a physician to conduct an examination and issue a report as an established statutory tradition. By extension, we should be able to do the same with IMEs.

\* Employers will see a reduction in their premiums since the cottage industry of defense attorneys working hand in hand with their selected physicians in securing multiple IMEs will be reduced. The parties will no longer be forced to undergo needless litigation with countless IMEs and the Director is asked to review all of them, however unreliable, in the resolution of disputes. A substantial portion of the cost drivers in the current adversarial WC system will be eliminated with the passage of the current bill. This would be a welcomed change from the current ever changing litigious practice in the WC process.

\* Opponents have a shortsighted view. By having delayed "IMEs" conducted at the Employer's leisure, payments of wage loss are prolonged, treatment is delayed and the overarching policy of having injured workers treated for a prompt recovery and return to work is diluted by the current IME process. This is an undeniable with needless long term litigation coupled with appeals with another layer of multiple IMEs. The intention for administrative determinations was to remove the adversarial process in the WC system when the WC statute was reformed by removing disputes from the typical civil practice before the courts and placed before the administrative agencies. Our Legislature never envisioned the abusive dilatory tactics and endless, needless litigation prevalent today, which has been generated to a large extent by the use of unilateral IMEs.

\* Rhetoric of increasing premiums is speculative. Moreover, there has been a drastic reduction in premiums over the years by the slashing of medical costs since 1995. We should be moving forward and enlightened in the 21<sup>st</sup> century. Why not proceed with having objectivity, avoiding needless delay and litigation, ending misleading unknowing injured workers who are unrepresented, preventing backlogs at the DCD and ensuring a just, speedy results as intended as a public policy?

#### **IV. Conclusion:**

We should be asking one simple question, which is why there is such a vested interest in maintaining the status quo of intense litigation by the continued practice of unilateral selection of multiple IMEs? Or, asked differently, why have delay upon delay and waste valuable resources for the sake of litigation and incurring substantial amounts of monies, which can and should rightfully be returned as refundable premiums to Employers? The mutual selection of physicians for IMEs is intended to achieve that laudable goal.

DWSC:ty

Attachment



**From:** [diane@island-realestate.com](mailto:diane@island-realestate.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 10:06:45 AM

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Diane Swenson  
P. O. Box 1979  
Kaunakakai, HI 96748-1979

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

Thank you for the opportunity to submit comments.

Sincerely,

Diane Swenson  
8083360085

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [exec.dir@hihs.org](mailto:exec.dir@hihs.org)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 11:13:29 AM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Donna Whitaker  
Organization: Hawaii Island Humane Society  
E-mail: [exec.dir@hihs.org](mailto:exec.dir@hihs.org)  
Submitted on: 4/3/2012

Comments:  
Comments to the Senate Committee on Ways and Means  
Wednesday, April 4, 2012 at 9:10 am  
Conference Room 211  
State Capitol  
415 South Beretania Street

RE: House Bill 466 HD3, SD1 – Relating to Worker’s Compensation

Dear Chair Ige, Vice Chair Kidani and Members of the Committee,

My name is Donna Whitaker and I am the Executive Director of the Hawaii Island Humane Society. We have 40 full time employess and I oppose SB 466 for the following reason. HB 466 will substantially increase the cost of our workers’ compensation and limit our fundamental right to oversee the medical treatment of an injured worker through the IME process  
State how this bill will affect your business and insert reasons you would like the committee to hold this measure.

Mahalo for the opportunity to offer my comments to the committee.

Sincerely

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [honualandscaping@yahoo.com](mailto:honualandscaping@yahoo.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Wednesday, April 04, 2012 8:09:50 AM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Earl Yempuku  
Organization: Individual  
E-mail: [honualandscaping@yahoo.com](mailto:honualandscaping@yahoo.com)  
Submitted on: 4/4/2012

Comments:

As a small business owner, I strongly oppose this bill as another unfair assault on employer's rights . This bill would increase our costs, which must be passed on to consumers, and allow dishonest employees and doctors to abuse the Work Comp system. I have already been a victim of this type of abuse which cost my insurance company over \$100,000.00 which in turn penalized my company with higher premiums and other penalties. This is another case of you jackass legislators stacking the odds in favor of the employees (see unions) in order to get reelected at the expense of business owners. Fairness has nothing to do with it and it makes me sick, but I can't afford to cover myself under Work Comp because it is too damn expensive.

Sincerely,

Earl Yempuku  
President,  
Honua Landscaping, Inc.

**The Hawaii Academy of Physician Assistants (HAPA)**

RE: HB466 HD3 SD1

Relating to Workers Compensation

(Fair and Mutual Independent Medical Examinations)

Senate Committee on Ways and Means

Senator David Y. Ige – Chair

Michelle N. Kidani – Vice Chair

4/4/2012 9:10 AM Room 211

Honorable Chairperson and Committee Members:

The Hawaii Academy of Physician Assistants supports passage of HB466 HD3 SD1.

The term Independent Medical Exam is supposed to be just that, independent. When the insurance carrier chooses the examiner and pays the examiner at rates far higher than the actual providers of medical care to injured workers, there is the potential for abuse. It is not independent if the patient and attending physician have no input as to who the “IME” is performed by. Some IME physicians make hundreds of thousands of dollars annually providing predictable and often similar reports resulting in the end of care and benefits for injured workers. The current IME system in Hawaii’s Workers Comp system is probably the worst part of the system leading to delays in care, increased morbidity and increased litigation.

Hawaii 's No Fault Auto System has used mutually agreed-upon IME' s for decades with excellent results and little of the abuses seen in Work Comp for this very reason.

Passage of this bill will go a long way towards fixing a currently broken system.

Fielding Mercer, PA-C

President

Hawaii Academy of Physician Assistants

FRANCIS G. BREWER, D.C.

CHIROPRACTOR

1150 South King Street, Suite 604  
Honolulu, Hawaii 96814

(808) 593-0313  
Fax: (808) 589-2032

April 3, 2012

**TESTIMONY ON House Bill No. 466, H.D. 3, SD 1**  
Relating to Workers' Compensation Law

Hearing before the Committee on Ways and Means  
April 4, 2012 @ 09:30 a.m.  
Room 211

Senator David Ige, Chair, Senator Michelle Kadani, Vice Chair:

My name is Francis Brewer, D.C. I am a licensed chiropractor in the State of Hawaii and have been in practice for 19 years, providing clinical care for injured workers and performing independent medical examinations (IME's).

***I oppose HB 466, HD 3, SD1.***

This bill would have a major negative impact on the quality of IME's, as well as have a direct negative effect on injured workers. Although on the surface HB 466, HD3, SD1 may appear to be a logical process to "leveling the playing field" as suggested by some advocates of the bill, this would be far from the case. This bill only goes to serve a small number of stakeholders and does not consider the big picture.

I can certainly attest to the fact that in many cases, **the IME process facilitates treatment that has not been afforded to the injured worker.** Many patients are often treated only with palliative type care and are routinely not referred to specialists outside of the treating physician's field, delaying the healing process and increasing the overall longevity and cost of the claim.

## Use of Mutually Agreed Upon Examiner

H.B. 466, H.D. 3, SD1 currently proposes that if an employer and employee cannot agree upon a qualified physician to perform an IME for impairment rating, the Director of the Department of Labor And Industrial Relations is to appoint a physician from a list of qualified physicians who is licensed in a relevant medical specialty.

There has been no proposal of how the “list” would be maintained, who is “qualified” to be on the list and what restrictions are placed upon those specialists evaluating injured workers who do not necessarily have injuries specifically associated with the specialist’s specialty. The potential for increased costs and delay in medical services could be substantial to both the injured worker and employer if evaluations are neither performed correctly nor consistent with current national standards.

Furthermore, as you are aware, access to medical care on the neighbor islands, under the workers’ compensation system, is difficult at best and unattainable at worst. Not all islands have physicians that are trained or willing to do IME’s. In these situations, injured workers may have to be routinely flown to an island where a “mutually agreed upon examiner” can then evaluate the injured worker, again adding to the delay in benefits and cost to the insurer and ultimately small business, not to mention the liability and stress involved in having an injured worker travel to a neighbor island for evaluation. This is already a concern under the current system and I have no doubt will be amplified under H.B. 466, H.D. 3, SD1.

In addition, this measure contains language on page 3, lines 6-9 that states: “A physician selected to perform an independent medical examination or permanent impairment rating examinations, as provided in this subsection, shall be currently licensed pursuant to chapter 453”. This language will effectively force all injured workers to be seen by medical doctors for IMEs even if their attending physician is of another healthcare specialty, such as a chiropractor. The effect of *Disenfranchising and limiting the rights of the injured worker*, not to mention completely carving out an entire segment of the health care community, will undoubtedly contribute to increased costs,



litigation and delay access to care for the injured workers of Hawaii. The exact **OPPOSITE** effect that the bill is intended to have.

To muddy the waters further this bill contains language that directly **contradicts** earlier language in the bill that **requires** the director, in the event the employer and employee cannot agree on an examining physician, to appoint a physician who is licensed in a “**relevant**” *medical specialty*. See page 2, line 4 of the bill.

The short sighted nature of this bill is to fix something that is not broken, however, in the process will open Pandora's' box to a host of other the issues and roadblocks complicating the Workers' Compensation System even further, which will be directly translated into delay of care and resolution to ones injuries, not too mention the undoubted cost not only in monetary terms but also the cost in peoples lives.

Therefore, requiring a mutually agreed upon examiner will be a cumbersome process at best, and will not result in the most qualified physician or appropriate specialist to be selected for the evaluation. This will be a major disservice to the injured worker, adding additional layers of bureaucracy and with out doubt delaying the injured worker's access to benefits under the Workers' Compensation system. This will also overburden and already stretched Department of Labor to create, monitor and regulate a “list” of physicians, requiring additional resources which in today's economy may be difficult to locate.

#### Determination of Medical Stability

This bill also proposes that the injured employee's attending physician make the determination regarding the issue of medical stability. Making the employee's physician the **sole** authority to determine medical stability will increase costs, particularly in those cases where treatment does not enable a patient to get back to work but instead encourages the patient to be off work. Clearly this is not a perfect system and it would be naive to assume that unchecked and unregulated over utilization of services, by providers does not occur. These instances of abuse of services, damage peoples lives and contribute to the rise in insurance costs for ALL concerned. At this time the

only measure to address this problem is through the IME process, which assists injured workers in their recovery and return to the active work force.

Thank you for the opportunity to testify.

Presentation to the Committee On Ways and Means  
Wednesday, April 4, 2012, at 9:15 a.m.  
Testimony on Bill HB 466, HD3, SD1

**In Opposition**

TO: The Honorable David Y. Ige, Chair  
The Honorable Michelle N. Kidani, Vice Chair  
Members of the Committee

My name is Gary Y. Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 466, HD3, SD1. HBA is the trade association representing FDIC insured depository institutions operating branches in Hawaii.

This bill 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.

Most businesses realize that their employees are the key to their success, therefore, to attract and retain quality staff, employers need to treat employees in a fair and respectful manner. It is just good business practices for an employer to maintain a good working relationship with its staff. This bill could turn a generally amicable agreement system to an adversarial one.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

We also believe this bill is unnecessary. A majority of IME's are conducted under the current statutes without incident or dispute today. Permanent impairment rating examinations are also currently performed by mutual agreement between parties, without any need for mandate by legislation. Therefore, we respectfully request that this measure be held in Committee.



Gary Y. Fujitani  
Executive Director



Senator David Y. Ige, Chair  
Senator Michelle N. Kidani, Vice-Chair  
**SENATE COMMITTEE ON WAYS AND MEANS**

April 4, 2012 – 9:10 a.m.  
State Capitol, Conference Room 211

### **In Opposition to H.B. 466, HD3, SD1 Relating to Workers' Compensation**

Chair Ige, Vice-Chair Kidani, and Members of the Committee,

Thank you for this opportunity to comment in opposition to HB 466 HD3 SD1 regarding the process for Independent Medical Examinations (IME's) for workers' compensation. My name is Gary Warmoth and I am testifying on behalf of The Queen's Health Systems (QHS). As the Senior Workers' Compensation Claims Analyst, I administer workers' compensation claims for QHS through their self-insurance program. I am a licensed independent claims adjuster and have been administering workers' compensation claims in the State of Hawaii for over 20 years.

The Queen's Health Systems opposes HB 466 HD3 SD1 as this legislation will increase administrative delays, increase costs to employers and reduce IME quality. The current system is fair and efficient. The present law allows one ordered IME by a physician of the employer's choice. In my experience, the vast majority of IME's are currently done by mutual consent of the parties without the necessity of an administrative order.

HB 466 HD3 SD1 removes the employer's right to an ordered IME with a physician of the employer's choosing and does not provide any requirement that the employee confer in good faith with the employer on the selection of a physician. As a consequence, it is likely that the employer will have no input on the selection of an IME physician.

There is also concern that the law does not explain how the Director of Labor would appoint an IME physician. There are no assurances that the Director will be able to appoint a physician who has the experience, specialty or skills to conduct a meaningful IME.

HB 466 HD3 SD1 also limits the charges that an IME physician will be able to charge for an IME. The current pool of experienced IME physicians is limited. It is likely that there will be fewer qualified physicians willing to conduct IME's for less compensation and an increased administrative burden. This will increase the delays in the IME process and negatively impact the quality of IME's.

The effect of this legislation will increase claim disputes and the necessity for administrative hearings at an already overburdened hearings branch at the Disability Compensation Division. The resultant delays will increase costs for employers and impede the payment of benefits to injured workers.

IME's are an integral aspect of the fair administration of workers' compensation claims. HB 466 HD3 SD1 will negatively impact the IME process. The Queens' Health Systems respectfully requests that the committee hold this measure.

Thank you for the opportunity to provide testimony in opposition to this measure.



## **Testimony to Senate Committees on Ways and Means**

Wednesday, April 4, 2012

9:10 a.m.

Capitol Room 211

### **RE: H.B. 466 HD3 SD1, Relating to Workers' Compensation**

Good morning Chair Ige, Vice-Chair Kidani, and members of the Committee:

My name is Gladys Quinto Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

**BIA-Hawaii is strongly opposed to H.B. 466, HD3 SD1** which would require 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; allows for the use of an out-of-state physician under certain conditions; and appropriates unspecified funds.

BIA-Hawaii objects to this bill, specifically Section 1, because it would require that the independent medical examinations and permanent impairment rating examinations for workers' compensation claims be performed by physicians mutually agreed upon for employers and employees or appointed by the DLIR director.

The bill is fundamentally unfair and will substantially increase the cost of workers' compensation. If an employer has reason to question the treating physicians proposed course of action, the employer's **only** tool to objectively evaluate the treating physician's plan of action is the employer requested examination. This bill would give the claimant employee – likely at the advice of the treating physician – the opportunity to deny the employer that sole opportunity.

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.

If the intent of this bill is to build trust and reduce confrontation in the workers' compensation system, it will fail at both objectives. Instead, this bill will compel claimants to rely more heavily on plaintiffs' attorneys to navigate increasingly complex procedures.

Senator Ige, Chair  
April 4, 2012  
H.B. 466, HD3 SD1  
BIA-Hawaii Testimony

The BIA-Hawaii is **strongly opposed** to HB 466 HD3 SD1 and respectfully requests that your committee hold this measure.

Thank you for the opportunity to share our views..

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [greg@ccs-hawaii.com](mailto:greg@ccs-hawaii.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 2:29:38 PM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Greg Thielen  
Organization: Complete Construction Services  
E-mail: [greg@ccs-hawaii.com](mailto:greg@ccs-hawaii.com)  
Submitted on: 4/3/2012

Comments:

In addition to being bad for business HB466 is just fundamentally unfair. It is designed to benefit a few at the expense of many.



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [harai@bigislandabalone.com](mailto:harai@bigislandabalone.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 3:37:28 PM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Hirohsi Arai  
Organization: Big Island Abalone Corp.  
E-mail: [harai@bigislandabalone.com](mailto:harai@bigislandabalone.com)  
Submitted on: 4/3/2012

Comments:  
Comments to the Senate Committee on Ways and Means  
Wednesday, April 4, 2012 at 9:10 a,  
Conference Room 211  
State Capital  
415 South Beretania Street

Re: House Bill 466 HD3, SD1 – Relating to Worker’s Compensation

Dear Chair Ige, Vice Chari Kidani and Members of the Committee,

Hirohsi Arai, Big Island Abalone Corporation (BIAC), Abalone Aquaculture, current number of employees – 30.

HR 466, if passed, will dramatically impact BIAC ‘s insurance cost and other operating costs to maintain records to remain in compliance. In today’s current business economic conditions, is it proper for the government to intervene and increase a company’s operating costs? An injured worker on the job is one situation and we already have in place, adequate reporting practices and procedures to record the incident report to the State. It appears that regardless if the injury occurred outside of the workplace, the company will probably be held responsible for all workmen’s compensation claims that an individual may file and in a way disallows any due process to a company such as BIAC.

BIAC will no longer have the ability to assign a non-bias “Independent Medical Examiner” (IME) to examine the injured worker and to determine if the injury is work related. The responsibility under this legislation is controlled by the DOL who assigned the IME. This same IME is also in control of when a worker can be returned to active status. How will a company protect its investments (workers, inventory, assets, etc.) from inappropriate workmen’s compensation claims?

Sincerely,  
Hiroshi Arai, CEO



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

**Alison Powers**  
Executive Director

## TESTIMONY OF JANICE FUKUDA

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### SENATE COMMITTEE ON WAYS AND MEANS

Senator David Y. Ige, Chair

Senator Michelle N. Kidani, Vice Chair

Wednesday, April 4, 2012  
9:10 a.m.

### **HB 466, HD3, SD1**

Chair Ige, Vice Chair Kidani, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims 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, HD3, SD1, 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.

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.

This bill requires mutual agreement between the employer and employee of an IME physician. If there is no agreement, the IME physician is chosen off a list of physicians licensed under Chapter 453, Hawaii Revised Statutes. Furthermore, only one IME is allowed unless another is approved by the Director.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period in which the injured worker continues to get treatment, but the treatment is not medically curative.

There are today, very few cases where mutual agreement cannot be reached. However, if the law is changed to *require mutual agreement*, we believe many cases *will not have mutual agreement* because there is no incentive to do so. If there is no mutual

agreement, the physicians who are licensed under Chapter 453 are a very broad pool, however, we believe the result of having inexperienced physicians perform IMEs will not serve the injured worker or the employer and ultimately increase appeals and costs. Subsequently, if an IME is not performed at a high standard, the employer may not be able to get another one if the Director does not approve it. This leaves the injured worker in limbo and the employer must keep paying for medical bills that may be unnecessary.

The bill also allows *only* the treating physician to say the injured worker has reached medical stability. This definition differs than that of “medical stabilization” in the administrative rules. The difference is the rules definition has an additional part that says if an injured worker refuses to get recommended treatment by the treating physician, he or she has reached medical stabilization. There is no need for a new truncated definition. By allowing only the treating physician to say when the injured worker has reached medical stability or stabilization, the injured worker will continue to be in limbo as long as the treating physician says so. This disallows the IME physician from saying the injured worker has reached medical stability or stabilization. Again, this will leave the injured worker in limbo with continued treatment which may be unnecessary and the employer will have to pay for it.

The provision to require impairment IMEs to be separate from treatment IMEs presents an inconvenience to the injured worker and does not correspond to better outcomes. 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. IMEs are performed to address various aspects of an injured worker’s injury and recovery such as primary and secondary diagnosis, 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. It is beneficial for the injured worker to have one physician review the medical records and conduct the physical examination 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, unless approved by the Director. 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. Several IMEs may be necessary in some cases to clarify the diagnosis, establish a baseline, determine whether there has been improvement or deterioration, explain a change in the condition, or impairment. A subsequent IME may be necessary if the injured worker develops new symptoms or conditions secondary to the work injury. The bill 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.

For these reasons, we respectfully request that HB 466, HD3, SD1 be held.

Thank you for the opportunity to provide comments.

**From:** [jhalpin@classicresorts.com](mailto:jhalpin@classicresorts.com)  
**To:** [WAM Testimony](#)  
**Subject:** Comments against HB 466 HD3 SD1 (WAM DM on 4/4)  
**Date:** Tuesday, April 03, 2012 3:21:44 PM

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Jeff Halpin  
180 DickensonSt. Ste. 201  
Lahaina, HI 96761

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

I am writing in oppsoition to the above bill. My resort management company employs 230 people on Maui and the Big Island.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

This bill and others before the Legislature continue to create obstacles to the economic health of small businesses--the real job creators in the State.

Thank you for considering my position.

Jeff Halpin  
President  
Classic Resorts

Thank you for the opportunity to submit comments.

Sincerely,

Jeff Halpin

**From:** [jerry@rxkl.com](mailto:jerry@rxkl.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not support HB 466 HD3 SD1 re Work Comp  
**Date:** Tuesday, April 03, 2012 10:41:43 AM

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Jerry Bangerter  
1061 Keolu Drive #107  
Kailua, HI 96734-3847

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

Thank you for the opportunity to submit comments.

Sincerely,

Jerry Bangerter  
808-738-9333



**From:** [laulaujill@gmail.com](mailto:laulaujill@gmail.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not support HB 466 HD3 SD1 re Work Comp  
**Date:** Tuesday, April 03, 2012 10:06:53 AM

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Jill Lau  
2911 pahoehoe place  
honolulu, HI 96817-1414

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

IMEs are the most effective way for an employer to rebut a claim or to end treatment to determine settlement value or permanent impairment.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Because there are so few IME physicians, mandating the exam within a certain time period of selection or appointment is rarely possible. This may not be in the best interest of the injured worker if the only available IME physician does not specialize in the injury/diagnosis in question.

Thank you for the opportunity to submit comments.

Sincerely,

Jill Lau

**From:** [joelnavasca111@hotmail.com](mailto:joelnavasca111@hotmail.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 12:06:49 PM

---

Joel Navasca  
4479 Rice Street  
Lihue, HI 96766-1807

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

Thank you for the opportunity to submit comments.

Sincerely,

Joel Navasca

**From:** [jmorgan@kualoa.com](mailto:jmorgan@kualoa.com)  
**To:** [WAM Testimony](#)  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Please do not support HB 466 HD3 SD1 re Work Comp  
**Date:** Wednesday, April 04, 2012 8:12:04 AM

---

John Morgan  
P.O. Box 650  
Ka'a'awa, HI 96730-0650

April 4, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Aloha House members,  
Please do NOT vote for HB 466 HD3 SD1. Plain and simple, it is unfair and will encourage some people to stay out of work, even if they are able. We need to promote the work ethic in our community, not destroy it. Fairness, honor and integrity is what we should support, not bills that discourage those values.

Thank you for the opportunity to submit comments.

Sincerely,

John Morgan

**From:** [karenskaife@comcast.net](mailto:karenskaife@comcast.net)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not hurt small businesses: hold HB 466  
**Date:** Tuesday, April 03, 2012 2:32:15 PM

---

Karen Voss-Skaife  
68-1792 Melia Street  
Waikoloa, HI 96738-5530

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

IMEs are the most effective way for an employer to rebut a claim or to end treatment to determine settlement value or permanent impairment.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Because there are so few IME physicians, mandating the exam within a certain time period of selection or appointment is rarely possible. This may not be in the best interest of the injured worker if the only available IME physician does not specialize in the injury/diagnosis in question.

Thank you for the opportunity to submit comments.

Sincerely,

Karen A. Voss-Skaife  
808-883-3853

**From:** [ken@kaihawaii.com](mailto:ken@kaihawaii.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 9:12:00 AM

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Ken Hayashida  
31 N Pauahi Street, 2nd Floor  
Honolulu, HI 96817-5136

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

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This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Because there are so few IME physicians, mandating the exam within a certain time period of selection or appointment is rarely possible. This may not be in the best interest of the injured worker if the only available IME physician does not specialize in the injury/diagnosis in question.

Thank you for the opportunity to submit comments.

Sincerely,

Ken Hayashida



**From:** [kken116@aol.com](mailto:kken116@aol.com)  
**To:** [WAM Testimony](#)  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Hold HB 466 HD1 SD1 re Work Comp (WAM DM on 4/4)  
**Date:** Tuesday, April 03, 2012 10:26:56 AM

---

Kraig Kennedy  
1130 N. Nimitz  
Honolulu, HI 96817-4579

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

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Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Thank you for the opportunity to submit comments.

Sincerely,

Kraig M. Kennedy  
808-524-3255

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [kyle@gaikona.com](mailto:kyle@gaikona.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 11:35:12 AM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Kyle H Onaka  
Organization:  
E-mail: [kyle@gaikona.com](mailto:kyle@gaikona.com)  
Submitted on: 4/3/2012

Comments:  
Comments to the Senate Committee on Ways and Means  
Wednesday, April 4, 2012 at 9:10 am  
Conference Room 211  
State Capitol  
415 South Beretania Street

RE: House Bill 466 HD3, SD1 – Relating to Worker’s Compensation

Dear Chair Ige, Vice Chair Kidani and Members of the Committee,

Kyle H. Onaka with General Appliance, Inc., we are in the retail sales and service business of major household appliances.

This bill will: increase the complexity of the process, delay proper medical examination and treatment, further the reduction of available medical professionals due to the increased doldrum of process.

Mahalo for the opportunity to offer my comments to the committee.

Sincerely,  
Kyle H. Onaka

**From:** [grovesu@cs.com](mailto:grovesu@cs.com)  
**To:** [WAM Testimony](#)  
**Subject:** Hold HB 466  
**Date:** Tuesday, April 03, 2012 9:51:49 AM

---

Laila Groves  
46-081 Konohiki Street  
Kaneohe, HI 96744-6137

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

Thank you for the opportunity to submit comments.

Sincerely,

Laila Groves

**From:** [lawrence@molokaicommunityfcu.com](mailto:lawrence@molokaicommunityfcu.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 9:21:42 AM

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Lawrence Lasua  
135 Puali PLace, P.O. Box 1888  
Kaunakakai, HI 96748-1888

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

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Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Thank you for the opportunity to submit comments.

Sincerely,

Lawrence Lasua  
808-553-5328

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [Imiyahira@vmchawaii.com](mailto:Imiyahira@vmchawaii.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 4:25:49 PM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Lily Miyahira  
Organization: Individual  
E-mail: [Imiyahira@vmchawaii.com](mailto:Imiyahira@vmchawaii.com)  
Submitted on: 4/3/2012

Comments:

I am in support of H.B. No.466, H.D. 2, S.D.1 Relating to Workers' Compensation  
I am in support of moving the bill forward because under the current system, the most serious problems in the workers' compensation system is allowing insurance carriers to force the injured worker to be examined and evaluated by physicians favored by the insurance carriers. There is no basis for anyone to logically argue against a process which selects a fair physician. Please support this bill in all fairness to the injured worker.

LORNE K. DIRENFELD, M.D., FRCP (C)  
NEUROLOGIST  
DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

89 HO'OKELE STREET, SUITE 204  
KAHULUI, MAUI, HAWAII 96732

(808) 877-5811  
Fax: (808) 877-3146

April 3, 2012

Testimony before the Senate Ways and Means Committee

**RE: HOUSE BILL 466, HD, 3 SD 1**  
Relating to Workers' Compensation

Dear Chair Ige and Vice-Chair Kidani & Members of the Committee:

My name is Lorne Direnfeld. I am a neurologist. I am speaking in **opposition** to HB 466, HD3 SD1 which amends Section 386-79 of the Hawaii Revised Statutes (HRS) titled "Medical Examination by Employer's Physician."

I am a Board Certified Neurologist who performs Independent Medical Examinations. I have been in practice in Hawaii for 27 years. I am a contributing editor to the Guides to the Evaluation of Permanent Impairment, Sixth Edition, published by the American Medical Association. I am the Founder and was the Medical Director of Maui Occupational Health Center between 1995 and 2001. This was a multidisciplinary clinic for the treatment of injured workers.

I have been committed to performing high-quality, objective, thorough Independent Medical Examinations for years. I am asked to evaluate some of the most complex cases in the state.

This Bill should be held because:

- This Bill will lead to the selection of an IME physician by chance, instead of choosing the best qualified specialist.
- This Bill creates unrealistic time frames, comprising the quality of the process.
- This Bill limits the opportunity of addressing complex medical and administrative issues as a case evolves and progresses through the system.



**RE: HB 466, HD3**

February 10, 2012

- This Bill will contribute to more litigation.
- This Bill increases costs to taxpayers and employers.

I will explain the reasons why this Bill will produce these undesired and unintended results.

The skills required to perform Independent Medications Examinations differ from general clinical medical skills.

Most people are not familiar with Independent Medical Examinations and what is required when performing such an exam.

IME's are evaluations performed in an administrative context, and are reviewed and used by Adjusters, Attorneys, Hearings Officers, and Judges, among others. This is in marked contrast to typical medical consultations.

Performing a quality IME requires skills and knowledge beyond that needed for the fundamental practice of medicine. Additional training, education, and experience is required beyond that obtained in medical school and specialty residency programs to perform quality IME's.

A fair, thorough, and objective IME is a time-consuming process. This includes obtaining a detailed history from the patient, including a history of the injury, their clinical course, and their current condition, as well as a history of their past medical health and work history.

A careful and thorough examination relevant to the injury is then performed. Imaging studies (plain x-rays, MRI scans, CT scans, etc.) are reviewed, and medical records (often extremely extensive) are reviewed and summarized.

All of this data must then be processed, and a report is drafted in which opinions are provided regarding various medical and administrative issues. There is usually an

Page #3

**RE: HB 466, HD3**

February 10, 2012

extensive discussion regarding the analysis of the patient's case.

Patients referred for IME's often have lengthy histories and multiple injuries, complicating their assessment.

HB 466, HD3 SD1 currently proposes that if an employer and employee cannot agree on a qualified physician to perform an IME, the Director of the Department of Labor and Industrial Relations is to appoint a physician from a list.

Therefore, this cumbersome process will not likely result in the most qualified physician or appropriate specialist to be selected for the evaluation. This will be a major disservice to the injured worker.

This Bill requires that a physician selected by the Director examine the injured employee within 45 days of the selection. This is often not feasible. Unfortunately, as few skilled specialists are available to perform IME's, there is no assurance that a physician can agree to this schedule. This will diminish the quality and value of the IME.

The number and complexity of the issues that need to be addressed in any particular case vary depending on the stage of the case. Early issues concerning compensability and causation may need to be addressed, whereas later issues concerning maximum medical improvement, treatment, and impairment rating arise.

The limitation of a single impairment rating in any particular case does not make sense in this context. Limiting the ability to address issues as a case evolves will lead to more litigation.

The Bill provides for a definition of "medical stability" that is inconsistent with the definition contained in the Impairment Rating Guides currently used in the State of Hawaii (Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association). The definition in the Bill refers to medical stability meaning "no further improvement in the injured employee's work-related

Page #4

**RE: HB 466, HD3**

February 10, 2012

condition can reasonably be expected from curative health care or the passage of time."

The Fifth Edition of the AMA Guides describes maximum medical improvement or medical stability, stating, "A condition or state that is well established and unlikely to change substantially in the next year with or without medical treatment. Over time there may be some change; however, further recovery or deterioration is not anticipated." The definition contained in the Bill implies ongoing medical care will prevent deterioration of a condition. This is not consistent with the definition noted in the AMA Guides.

In summary, the provisions in HB 466, HD3 SD1 will result in: increased administrative delays; increased costs within the Department of Labor and Industrial Relations and therefore to taxpayers, as well as greater costs to employers; reduced IME quality; and increased litigation.

Thank you for consideration of this Testimony.

Yours sincerely,

Lorne Direnfeld, M.D.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [Lynne.kahoaka@yahoo.com](mailto:Lynne.kahoaka@yahoo.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 4:27:08 PM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Lynne Kahoaka  
Organization: Individual  
E-mail: [Lynne.kahoaka@yahoo.com](mailto:Lynne.kahoaka@yahoo.com)  
Submitted on: 4/3/2012

Comments:

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [megreenwell@kealakekuaranch.com](mailto:megreenwell@kealakekuaranch.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 10:30:41 AM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: M. E. Greenwell  
Organization: Kealakekua Ranch, Ltd. dba Choice Mart  
E-mail: [megreenwell@kealakekuaranch.com](mailto:megreenwell@kealakekuaranch.com)  
Submitted on: 4/3/2012

Comments:  
I oppose HB 466. It is BAD for the employer.  
Thank you.



**Property Casualty Insurers  
Association of America**

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

To: The Honorable Senator David Y. Ige, Chair  
Senate Committee on Ways and Means

From: Mark Sektnan, Vice President

Re: **HB 466 HD3 SD1– Relating to Workers’ Compensation**  
**PCI Position: OPPOSE**

Date: Wednesday, April 4, 2012  
9:10 a.m., Conference Room 211

Aloha Chair Ige and Members of the Committee:

The Property Casualty Insurers Association of American (PCI) is opposed HB 466 HD3 SD1, which is unnecessary and unfair, and would result in significant administrative delays.

HB 466 HD3 SD1 would replace the existing employer requested examinations in workers compensation claims with a new, complicated system for obtaining “independent medical examinations”. Instead of the existing system that allows an employer to obtain an examination of a claimant to evaluate the merits of a claim, HB 466 HD3 SD1 would require first that the employer and employee 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 Industrial Relations would have to appoint a qualified physician from a list of volunteer physicians licensed to practice medicine in the state in which the injured employee resides.

The term “independent medical examination” is typically used to describe the examinations contemplated by Hawaii Revised Statutes § 386-79, but its use in this bill ignores the important function of the employer requested examination and strips out the employer’s right to discovery of facts in workers compensation proceedings. This is neither fair nor prudent.

The employer requested examination is intended to establish a procedure for the employer to access his right to discovery of a claimant’s physical condition and course of treatment. The effect of this bill is to do away with the employer’s right altogether at the option of the injured employee.

If the employee refuses to consent to the employer's selection of physician, the selection would be made by the Director. The employer is effectively replaced in the process by the Director of the DLIR, which begs the question of whether the proponents of this bill would be more satisfied with the fairness of this process if in the future there is a change in the office of the Director of the DLIR. This bill is intended to be pro-employee, but it has the potential to backfire by centralizing authority in the Director's office.

Under the existing law there are many protections for the employee built in. The employer is limited to only one employer requested examination unless good and valid reasons exist with regard to the progress of the employee's treatment. Therefore the employer has an incentive to obtain a credible examination - on the first try - that will withstand scrutiny on appeal before the DLIR's Disability Compensation Division. Also the report of the employer requested examination must be given to the employee, who has a right to challenge the report and to offer evidence that disputes the report's findings, so there is a check against employer abuse.

Finally, the selection process set forth in HB 466 HD3 SD1 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 HD3 SD1 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 45 days. No doubt, that is an optimistic estimate as currently delays in finding willing and able physicians are already widespread. All this means that examinations would be additionally burdened by these new administrative delays.

PCI respectfully requests that the Committee vote to hold HB 466 HD3 SD1 for the remainder of the session.

**From:** [matt.stevenson@fourseasons.com](mailto:matt.stevenson@fourseasons.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not support HB 466 HD3 SD1 re Work Comp  
**Date:** Wednesday, April 04, 2012 6:16:53 AM

---

Matt Stevenson  
3900 Wailea Alanui  
Wailea, HI 96753-5453

April 4, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

Thank you for the opportunity to submit comments.

Sincerely,

Matt Stevenson  
808 874-2243



**From:** [mdelaney@thehawaiigroup.com](mailto:mdelaney@thehawaiigroup.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not hurt small businesses: hold HB 466  
**Date:** Tuesday, April 03, 2012 11:36:50 AM

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Matthew Delaney  
500 Ala Moana Boulevard, Suite 2-302  
Honolulu, HI 96813-4993

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Chair Ige and members of the committee:

My name is Matthew Delaney and I am a co-owner and the President of The Hawaii Group, Inc. ("HiGroup"). I am here to state HiGroup's opposition to House Bill No. 466 HD3 SD1 re Workers' Compensation.

As a business services outsourcing resource (Employment Services, HR, Accounting, and Marketing) for over 300 businesses in Hawaii, our company works on behalf of our clients, to foster positive action on issues of common concern.

Our company and the companies we work for do our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time may force me to restructure our benefits system. Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

At a time when the State is placing an emphasis on jobs and the economy, this measure and any other mandate that creates perceived or real additional costs, will undermine those efforts, hinder economic progress and entrepreneurial activity, and deter business investment in our State. During this uncertain state of the economy, the passage of this measure and other cost burdens would be unfortunate and devastating for Hawaii's economic climate.

In light of this, HiGroup respectfully requests that this measure be held.

Thank you for the opportunity to submit comments.

Very Respectfully Submitted,

Matthew S. Delaney  
808-695-2222

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [matt@alohabailhawaii.com](mailto:matt@alohabailhawaii.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 10:52:19 AM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Matthew McGill  
Organization: Aloha BailBonds  
E-mail: [matt@alohabailhawaii.com](mailto:matt@alohabailhawaii.com)  
Submitted on: 4/3/2012

Comments:  
Comments to the Senate Committee on Ways and Means  
Wednesday, April 4, 2012 at 9:10 am  
Conference Room 211  
State Capitol  
415 South Beretania Street

RE: House Bill 466 HD3, SD1 – Relating to Worker's Compensation

Dear Chair Ige, Vice Chair Kidani and Members of the Committee,

As President of Aloha BailBonds, I wish to Stongly Oppose this measure, in its current form. If passe, I believe it would have many profoundly detrimental impacts on all businesses, here in Hawaii. I support the testimony from Jim Tollefson, President & CEO of the Chamber of Commerce of Hawaii.

Mahalo for the opportunity to offer my comments to the committee.

Sincerely,

Matthew McGill

**From:** [info@myhighwayinn.com](mailto:info@myhighwayinn.com)  
**To:** [WAM Testimony](#)  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 11:26:41 PM

---

Monica Toguchi  
94-226 Leoku Street  
Waipahu, HI 96797-1919

April 4, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

This bill is simply put, UNFAIR. It creates an undemocratic process that favors one party over the other. The current system allows a fair and objective standard for determining workers compensation and this bill will only increase the cost for everyone in the system.

There is one truism in this: Insurance companies WILL ALWAYS PASS ALONG THEIR INCREASED COSTS. Those of us who are small businesses do not have the luxury of large profit margins to absorb the effects of this type of legislation and the economic impact it presents.

This bill seeks to punish all businesses on the theory that there are some who abuse this right. Our company does our best to take care of our staff. We understand that they are an asset to Highway Inn and we make sure to have a healthy and safe work environment.

Every year, I have my insurance person conduct a work safety presentation and we have been accident free for several years. Our employees understand how their safety is directly related to the monies paid out to insurance companies versus money kept home to pay for raises and benefits that could be afforded to them.

Besides the fact that this bill may be unconstitutional (and if it goes to court, it will cost our state more money), and disallows due process, IME are few and will cause a backlog in the system causing unnecessary delays in care. Alternatively, the system is working because injured workers and employers are currently able to agree to IME physicians WITHOUT a legislative mandate.

Attempting to create legislation for a few cases when it hurts the entire system and is perhaps unconstitutional is incomprehensible and lacks common sense.

Please vote no on this bill.

Thank you for the opportunity to submit comments.

Sincerely,

Monica Toguchi

**From:** [nokumura@vipfoodservice.com](mailto:nokumura@vipfoodservice.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not hurt small businesses: hold HB 466  
**Date:** Tuesday, April 03, 2012 4:31:46 PM

---

Nelson Okumura  
74 Hobron Avenue  
Kahului, HI 96732-2106

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

Thank you for the opportunity to submit comments.

Sincerely,

Nelson Okumura  
8088701129



## Before the Senate Committee on Ways and Means

DATE:	Wednesday, April 4, 2012
TIME:	9:10 A.M.
PLACE:	Conference Room 211

### Re: HB 466 HD3 SD1 Relating to Workers' Compensation

Thank you for the opportunity to testify. On behalf of the business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we oppose HB 466 HD3 SD1 Relating to Workers' Compensation in its current form.

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.

We are concerned about the possible unintended consequences of allowing the Director of the Department of Labor and Industrial Relations to select the physician and setting a 45-day time limit for the physician's evaluation. We believe that such legislation will add costs to business which ultimately hurts employees and the economy as a whole.

April 4, 2012

Senator David Ige, Chair  
Senator Michelle Kidani, Vice Chair  
Senate Committee on Ways and Means

**RE: HB 466 HD3 SD1 – Relating to Workers’ Compensation - Oppose**  
Conference Room 211, 9:10 A.M.

Aloha Chair Ige, Vice Chair Kidani and members of the committee:

My name is Nona Tamanaha, Regional Director of Human Resources Starwood Hotel & Resorts, Hawaii & French Polynesia (“Starwood”). I am testifying on behalf of Starwood in opposition to HB 466 HD3 SD1 – Relating to Workers’ Compensation.

Starwood diligently works to foster a nurturing environment for our employees and are keenly attuned to their occupational and safety needs. We have safety programs in place which are a collaboration of leaders and associates. While the focus is always on awareness and prevention, injuries do at times occur and as an employer our interest is to insure the associate receives the care they need to return them to pre-injury status.

An independent medical examination (“IME”) occurs when a physician who has not previously been involved in person’s care examines an employee to determine the cause, extent and medical treatment of a work-related injury where liability is at issue. This entails a thorough and independent review of the employee’s medical records and a medical examination. It provides us with the ability to verify whether the injury is work related, whether the treatment is reasonable and whether the employee is able to return to work. As an employer, which covers 100% of the costs for the treatment for our employee, we are entitled to verify the extent of the injury.

If this bill is enacted, it will disrupt the manner in which workers’ compensation claims are managed and resolved for the employee and the employer because it makes it more difficult to obtain an IME. Our greatest concerns about the proposal are as follows:

- It limits our ability as an employer to utilize the IME process that is an essential part of the employers’ discovery process to ensure proper treatment and costs;
- It substantially increases the cost of claims and the cost of doing business in Hawaii;
- It mandates unrealistic time frames for a medical examination to occur;
- It becomes a disincentive for the limited pool of qualified physicians who are experienced in the rating guidelines; and



- If the Director must select a physician within seven days, it may result in examinations by physicians who are not familiar with particular issues or are lacking certain education, experience or specialty in the treatment of certain injuries.

None of these consequences are beneficial to the employee and to the employer.

In closing, this bill proposes to add more costs and another layer of administration to our industry which are overly burdensome.

For these reasons, we respectfully urge members of the committees to hold this bill.

Thank you for the opportunity to share our views on this matter.

Sincerely,

Nona Tamanaha  
Regional Director of Human Resources  
Starwood Hotel & Resorts – Hawaii & French Polynesia

Paul Naso  
General Counsel  
1003 Bishop Street  
Pauahi Tower, Suite 1000  
Honolulu, HI 96813  
Telephone: 808•524•3642, ext. 240  
Facsimile: 808•524•0421  
pnaso@hemic.com

TESTIMONY OF HAWAII EMPLOYERS MUTUAL INSURANCE COMPANY  
IN OPPOSITION OF HOUSE BILL NO. 466, HD3, SD1

Hearing Date/Time: April 4, 2012 (9:10 AM)

To: Chairman David Ige and Vice Chair Michelle Kidani, and Members of the Senate Committee on Ways and Means

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 writing in opposition to H.B. 466, HD3

This bill requires Independent Medical Examinations ("IME") and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations. Although, on the surface, this sounds good, in real life it is unworkable.

1. In Real Life, H.B. 466, HD3 will significantly delay the selection of IME providers

From a purely practical standpoint, H.B. 466, HD3 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, HD3 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, HD3 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, HD3 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, HD3 will Negatively Affect the Quality of IMEs

If H.B. 466, HD3 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, HD3 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.

4. H.B. 466, HD3, SD1 appears to Eliminate the Right of Employers to Challenge Unnecessary Treatment by the Attending Physician

In addition, to the stated points above, by allowing only the attending physician to determine medical stability (as the language of the Bill implies), the right of the employer to challenge continued and unnecessary medical treatment by the attending physician will be eradicated. Eliminating the employer's right to challenge unnecessary medical treatment provides an unwelcomed revenue stream to those attending physicians who already do not timely release injured workers back to work. Not allowing the employer to challenge unnecessary medical treatment will simply increase costs for medical, extend unnecessary weekly benefits, prolong vocational rehabilitation, and severely delay the opportunity for the injured worker to return to gainful employment.

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

**From:** [psammer@lava.net](mailto:psammer@lava.net)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not support HB 466 HD3 SD1 re Work Comp  
**Date:** Tuesday, April 03, 2012 1:47:03 PM

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Phil Sammer  
445 Nohonani St  
Honolulu, HI 96815-2622

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

IMEs are the most effective way for an employer to rebut a claim or to end treatment to determine settlement value or permanent impairment.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Because there are so few IME physicians, mandating the exam within a certain time period of selection or appointment is rarely possible. This may not be in the best interest of the injured worker if the only available IME physician does not specialize in the injury/diagnosis in question.

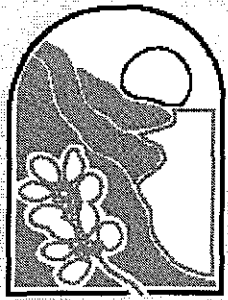
This bill is simply an unwarranted and arbitrary infringement of employer's rights and appears to be an attempt to force union style negotiations by government fiat. I urge you to support the rights of all in the work place by voting against this bill.

Mahalo

Thank you for the opportunity to submit comments.

Sincerely,

Phil Sammer, GM  
808-923-1877



**KAUAI**  
Chamber  
of  
Commerce

**TESTIMONY**  
**Hawaii State Senate**  
**Committee on Ways & Means**  
**Wednesday April 4, 2012**  
**9:10 a.m.**

**Hawaii State Capitol - Conference Room 211**

**RE: House Bil 466,HD3,SD1 Relating to Workers Compensation**  
Chair David Ige, Vice Chair Kidani and, members of the committee:

Aloha! My name is Randall Francisco and I represent the Kauai Chamber of Commerce which comprises of 450+ members, nearly 700 representatives and about 6000 employees.

**The Chamber is in opposition to HB 466, HD3,SD1**  
**Relating to Workers Compensation**

Approximately 87% of the Chamber's members are small businesses.

The Chamber's many members and their employees enjoy the benefit and privilege of having medical insurance. The added benefit of workers compensation, unemployment insurance and other personnel costs of doing business creates additional challenges, especially, for our small businesses who are simply trying to recover from the losses of the past few years. The unintended consequences of this legislation creates an additional burden and function for our members, in particular, those who do not have the benefit of an human resources staff member to follow-up in order to insure that proper procedures, documentation, and, medical follow-up and attention are maintained at the highest level of quality and service, for both the employer, the employee, physicians and Department of Labor.

The Kauai Chamber of Commerce concurs with The Chamber of Commerce of Hawaii in their testimony submitted. We therefore do not support this legislation for the above reasons as well as those from The Chamber of Commerce of Hawaii. For these reasons, the Chamber opposes this measure. Thank you very much for the opportunity to testify. Please do not hesitate contact me at, 245-7363.

Mahalo Nui Loa and Aloha.

Randall Francisco  
Kauai Chamber of Commerce

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [rickoliver@hawaii.rr.com](mailto:rickoliver@hawaii.rr.com)  
**Subject:** Testimony for HB466 on 4/4/2012 9:10:00 AM  
**Date:** Tuesday, April 03, 2012 10:33:01 AM

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Testimony for WAM 4/4/2012 9:10:00 AM HB466

Conference room: 211  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Rick Oliver  
Organization: Individual  
E-mail: [rickoliver@hawaii.rr.com](mailto:rickoliver@hawaii.rr.com)  
Submitted on: 4/3/2012

Comments:

Comments to the Senate Committee on Ways and Means  
Wednesday, April 4, 2012 at 9:10 am  
Conference Room 211  
State Capitol  
415 South Beretania Street

RE: House Bill 466 HD3, SD1 – Relating to Worker's Compensation

Dear Chair Ige, Vice Chair Kidani and Members of the Committee,

I am against this bill as it creates an unfair balance in favor of someone who claims they have an injury without a proper system to adjudicate their claim.

Mahalo for the opportunity to offer my comments to the committee.

Sincerely,

Rick Oliver

**From:** [rodfelt@netscape.net](mailto:rodfelt@netscape.net)  
**To:** [WAM Testimony](#)  
**Subject:** HB466 is not good for Hawaii  
**Date:** Tuesday, April 03, 2012 10:01:39 AM

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Rodney Felt  
HC 1 BOX 620  
KAUNAKAKAI, HI 96748-8612

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

It has been my experience as a business owner in Hawaii that the employees of the government agencies that distribute assistance to the unemployed and to low income individuals often decide to give the assistance regardless of evidence provided that the individuals seeking assistance do not have valid claims. It appears that the employees of these agencies see that their jobs and livelihoods depend on giving assistance, not policing the validity of claims.

HB466 will give employees of yet another government agency unfettered ability to give assistance to those who do not have valid claims.

That unfettered giving to invalid claimants will cost business owners and tax paying citizens more money.

Please vote against HB466

Thank you for the opportunity to submit comments.

Sincerely,

Rodney Felt  
8085588508



**From:** [riwamoto@bisihi.com](mailto:riwamoto@bisihi.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Wednesday, April 04, 2012 6:21:45 AM

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Rodney Iwamoto  
615 Piikoi Street, #1901  
HONOLULU, HI 96814-3147

April 4, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

IMEs are the most effective way for an employer to rebut a claim or to end treatment to determine settlement value or permanent impairment.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Because there are so few IME physicians, mandating the exam within a certain time period of selection or appointment is rarely possible. This may not be in the best interest of the injured worker if the only available IME physician does not specialize in the injury/diagnosis in question.

Thank you for the opportunity to submit comments.

Sincerely,

Rodney Iwamoto  
808-592-4062

**From:** [Ronald Kienitz](#)  
**To:** [WAM Testimony](#)  
**Subject:** RE: HB 466, HD3, SD1 Relating to workers compensation reimbursement  
**Date:** Wednesday, April 04, 2012 8:23:53 AM

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Honorable Senator Ige and Ways and Means committee members,

RE: HB 466, HD3, SD1 Relating to workers compensation reimbursement

I am an expert in Occupational Medicine and the treatment of injured workers. I work for a mainland company that markets our services well and knows how to make it work, in spite of the lowest fee schedule in the nation (adjusted for cost of living). Since you dropped the fee schedule by 54% in 1995, 60 to 70% of doctors that used to take WC no longer will. It was a gradual but steady decline. How do I know this? First, I also to Independent medical Exams here and on all islands, several hundred a year. In just about every other case, the patient told me that they were either refused care from their family doctor or had a hard time finding a competent doctor to take care of them, once they told them it was a WC injury case. Second, as the peripatetic secretary of the WC committee of Hawaii Medical Association, I did a survey of ~500 Hawaii doctors, and that was the consistent answer I got.

As a result of all this, business is good for Concentra. We get a lot of patients, because they are refused care by their doctors. Fortunately, we are the best WC provider in the state and at least these patients get excellent, cost-effective care from us (averaging 40-50% of the state average cost per case). Unfortunately, we are only one clinic in only one locale. The other refused cases tend to end up at some mill that maximizes care, extends passive and expensive therapeutics, dispenses non-generic and expensive items, maximizes disability, and increases overall costs. .... And overall costs have increased, in spite of Hawaii's ridiculously low fee schedule. This is something else that I can prove, but I will leave it to you to consult with DCD to verify it yourselves.

From a purely business standpoint of my employer, these issues and others such as of long term and sometimes permanent disability brought on by your 1995 action are really immaterial. So, from a business standpoint, please leave the fee schedule as it is. After all, if you raise it to a reasonable level, our competition for patients will certainly be much stiffer.

If my frustration is apparent from this testimony, just realize that I have been saying all of this since even before your 1995 action.

Ronald Kienitz, D.O. - Center Medical Director, Concentra Medical Center, Honolulu

Certified Independent Medical Examiner

Board Certified Occupational Medicine (Preventive Medicine)

Fellow American Association of Disability Evaluating Physicians



Testimony to the Senate Committee on Ways and Means  
Wednesday, April 4, 2012  
9:10 a.m.  
State Capitol – Conference Room 211

Aloha Chair Ige, Vice Chair Kidani, and members of the committee. We are Ryan Kusumoto and Lisa Kracher, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter (SHRM Hawaii). SHRM Hawaii represents more than 1,000 human resource professionals in the State of Hawaii.

We are writing to adamantly oppose to HB 466, HD3 SD1, 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 appointment by the director of the Department of Labor and Industrial Relations (Director).

Human resource professionals are keenly attuned to the needs of both employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: people. We truly have our employers' and employees' best interests at heart. We adamantly oppose this measure for significantly altering the manner in which workers' compensation claims are handled and resolved to the satisfaction of all parties and the likely unintended consequences and costs associated therewith.

Our most significant concerns are:

1. The medical examination 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, whether medical treatment is reasonable and necessary and whether an employee is stable and ratable are properly considered and addressed.
2. If the employer and employee must agree on the physician to perform medical examination and rating, employer loses the ability to meaningfully participate in the selection of an appropriate physician based on education, experience, and specialty as needed for the particular issues involved in the claim.
3. If the Director maintains a list of approved physicians who may only charge according to the workers' compensation/medicare fee schedule, the pool of **qualified** physicians who are experienced in the rating guidelines provided by the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition, and willing to perform medical examinations will shrink dramatically.
4. If the Director must select a physician within 7 days, the Director may not be familiar with the particular issues involved and the need for a physician with certain education, experienced, or specialty.

5. If the medical examination must be conducted within 30 days of selection or appointment by the Director, the physician will have insufficient time to schedule and conduct the examination, review medical records which are oftentimes substantial, and prepare a detailed and professional report. This problem will be magnified if the qualified physicians decline to perform examinations for the reasons indicated in paragraph 2 above.
6. If the employer cannot combine the medical examination and rating without the employees consent even where the physician deems the employee is stable and ratable, employer will be required to unnecessarily schedule another examination thereby requiring another report. This will increase the cost to employer in the form of physician fees as well as extended workers' compensation benefits while rating is pending.
7. Please be aware that currently employer is already limited to one medical evaluation and rating unless valid justification exists. That is, employers are already required to show justification to the Director for additional medical evaluation/rating which is reviewed and approved or denied by the Director as appropriate.
8. If the physician is required to be licensed in Hawaii unless the employee is out of state, employers will lose the ability to seek expert medical opinion of physicians with specialties not available for workers' compensation medical evaluation/rating in Hawaii such as toxicologists for toxic exposure claims, temporomandibular joint disorder and others.
9. If this bill is passed, employers will lose the ability to conduct reasonable discovery of disputed claims and the ability to present a meaningful defense either to a disputed claim or disputed medical treatment. This will result in an increase to the cost of workers' compensation benefits and workers' compensation premium rates. This will substantially adversely impact all businesses and particularly small businesses in this already challenging economy when businesses are just trying to stay afloat. It will also discourage new business in the state.

We continue to review this bill and its serious consequences. We request the bill not be advanced and, if it is advanced, the opportunity to discuss these issues further. Thank you for the opportunity to testify.

**From:** [alohasamb@rxkl.com](mailto:alohasamb@rxkl.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not hurt small businesses: hold HB 466  
**Date:** Tuesday, April 03, 2012 10:16:42 AM

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Sandra Bangerter  
44-145 Hako Street #6  
Kaneohe, HI 96744-2529

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

If Hawaii is to remain and encourage small business. This cannot go into effect!

Thank you for the opportunity to submit comments.

Sincerely,

Sandra Bangerter  
808 254 2556

Please support of HB 466. I am a Family Physician in Kaneohe ( 20 years) and have continued to treat my patient under the Work Comp system, unlike all of my colleagues on the Windward side of Oahu who have given up the "fight". I don't really blame them and it's issues like HB 466 that might start to bring them back. I now get all of the referrals from my private practice colleagues including Straub, since they refuse to treat injured workers, even if they are patient they have seen for years.

The real problem in Hawaii is focused on 5-6 individuals physicians in the IME "business" that continuously produce anything but "independent" or fair exams and get a disproportionate share of the work. I can tell you these doctors, whom I will not name, have ruined peoples lives who can ill afford it. I do not perform IME's so I have no conflict. I only treat the injured worker. As I read the testimonies on line, it's amazing the stark differences and lack of concern for the people this effects most...the hard working people of Hawaii who are injured.

A perfect solution would have been for the medical community to police itself and find a way to hold these individuals accountable to their peers. But unfortunately, our medical community, like most across the country is unable to do much if anything. **The other option is HB 466 which will allow a type of medical Darwinism to occur.** By this I mean, the only IME providers that will remain in business are those who BOTH SIDES feel repeatedly produce a fair evaluation of the worker's injury.

That is all any practicing physician in the Work Comp field or patient can expect. I have to feel anger when I read the insurance or employer group siding against this bill, with reference to "cost" and no concern for the plight of the worker. The patients don't have the resources to go through the appeals process and usually are not getting paid during this process! We need to put a process in place that gets it right the first time, and expeditiously. Costs should decrease due to less appeals being generated due to consistently accurate evaluations.

These unfortunate people are usually like 80 % of America, living paycheck to paycheck since 2008. Remember, it isn't the office workers or white-collar staff that are injured, it is usually hard working, laborers and people who are certainly not looking to sue their employer, game the system or fake an injury. They need to work and are usually just happy to have a job.

Mahalo for taking the time to read this, Scott J Miscovich MD  
45-1144 Kam Hwy  
Kaneohe, HI 96744  
808-247-7596



**From:** [Scott](#)  
**To:** [WAM Testimony](#)  
**Cc:** [Alan Tice MD](#); [Amendeep Somai](#); [Anthony Hernandez](#); [Arleen Meyers](#); [Art Brownstein MD](#); [Bernard Portner MD](#); [Charles Soma](#); [Charlie Sonido, MD](#); [Chelsea Loo Ph. D.](#); [Christopher Flanders](#); [David R. Griffith](#); [Dennis Lind MD](#); [Derrick Ishihara](#); [Douglas Birch](#); [Fielding and Faye Mercer](#); [Frank Vannatta MD](#); [Gabino L. Baloy MD \(rfbaloy@gmail.com\)](#); [Gary Okamura MD](#); [Gary Whitney, Voc. R.C.](#); [Heidi Kiyota Ph. D.](#); [Inam Rahman](#); [Ira Zunin, MD](#); [Irwin and Joan Koff](#); [Irwin Koff MD](#); [Jack Hsieh](#); [James Barahal](#); [Janessa Ruckle](#); [Jeff Lee MD](#); [Jeff Wang MD](#); [Jeffrey Young](#); [Jerald Garcia](#); [John Juliano](#); [Jordan Popper](#); [Jose De Leon](#); [Joshi Madhup](#); [Joshua Tan](#); [Kathryn Shaefer MD](#); [Kay and Ken Ray](#); [Keith Stepheon](#); [Kent Yamamoto](#); [Kerrey Barton-Taylor](#); [Kevin Higashigawa](#); [Lauren Suzanne Zirbel](#); [Laurie Hamano](#); [Liza Maniquis-Smigel](#); [LMT Bill Seeman](#); [Lyla Prather](#); [Lynn Puana](#); [Maria Ilar](#); [Michael and Kalen Cooper \(chinanet@verizon.net\)](#); [Michael and Kalen Cooper](#); [Nada Mangialetti](#); [Paula.T.Lenny, MD](#); [Peter Galpin](#); [Robert Bergman](#); [Robert Hyman](#); [Robert Medoff](#); [Robert Sloan MD](#); [Ron Gackle MD](#); [Ronald Barrozz](#); [Rudy Puana](#); [Russell Tacata](#); [Ryan Nomura](#); [Salvador Cecilio](#); [Scott McCaffrey](#); [Scott Miscovich](#); [Sorbella Guillermo](#); [Stephen Scheper](#); [Steve Kemble MD](#); [Steven Kaneshiro](#); [Stuart Wakatsuki](#); [Ton Chiang](#); [Vicente Ramo](#); [Warren Loos](#)  
**Subject:** HB 466 and HB 2152  
**Date:** Tuesday, April 03, 2012 12:55:00 PM

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To: Ways and Means Committee Distinguished Members/Chair—Senator David Ige  
From: Scott McCaffrey, MD  
Re: HB 466 and HB 2152

Dear Committee Members and Honorable Chair:

I am writing in strong support of HB 466 which will help protect injured workers from extreme, anti-patient IME's which undermine their reasonable and desired care. HB 2152 is a partial correction to the draconian cuts providers were subjected to (i.e. 53%) in 1995 which forced many doctors out of business and others to flee the WC system.

By passing both bills you will deliver a long overdue message to those injured in the line of their duty—Hawaii's WC System will be there for you and your family when and if you need it!

-

This social safety net has suffered almost two decades of benefit deterioration. Thank you for helping restore it to its intended status.

Sincerely,

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

**From:** [smeichtry@hihrhawaii.com](mailto:smeichtry@hihrhawaii.com)  
**To:** [WAM Testimony](#)  
**Subject:** Hold HB 466 HD1 SD1 re Work Comp (WAM DM on 4/4)  
**Date:** Tuesday, April 03, 2012 11:16:56 AM

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Scott Meichtry  
500 Ala Moana Boulevard, Suite 2-302  
Honolulu, HI 96813-4993

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Chair Ige and members of the committee:

My name is Scott Meichtry and I am a co-owner and the Vice-President of Hawaii Human Resources, Inc. ("HiHR"). I am here to state HiHR's opposition to House Bill No. 466 SD1 re Work Comp.

As an HR outsourcing resource for over 280 businesses in Hawaii, our company works on behalf of our clients, to foster positive action on issues of common concern.

Our company and the companies we work for do our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time may force me to restructure our benefits system. Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

At a time when the State is placing an emphasis on jobs and the economy, this measure and any other mandate that creates perceived or real additional costs, will undermine those efforts, hinder economic progress and entrepreneurial activity, and deter business investment in our State. During this uncertain state of the economy, the passage of this measure and other cost burdens would be unfortunate and devastating for Hawaii's economic climate.

In light of this, HiHR respectfully requests that this measure be held.

Thank you for the opportunity to submit comments.

Very Respectfully Submitted,

Scott Meichtry

**From:** [sknox@hi-employment.com](mailto:sknox@hi-employment.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 11:21:33 AM

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Sean Knox  
500 Ala Moana Boulevard, Suite 2-302  
Honolulu, HI 96813-4993

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Chair Ige and members of the committee:

My name is Sean Knox and I am a co-owner and the President of Hawaii Employment Services, Inc. ("HiEmployment"). I am here to state HiEmployment's opposition to House Bill No. 466 HD3 SD1 re Workers' Compensation.

As a Staffing and Employment resource for over 25 businesses in Hawaii, our company works on behalf of our clients, to foster positive action on issues of common concern.

Our company and the companies we work for do our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time may force me to restructure our benefits system. Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

At a time when the State is placing an emphasis on jobs and the economy, this measure and any other mandate that creates perceived or real additional costs, will undermine those efforts, hinder economic progress and entrepreneurial activity, and deter business investment in our State. During this uncertain state of the economy, the passage of this measure and other cost burdens would be unfortunate and devastating for Hawaii's economic climate.

In light of this, HiEmployment respectfully requests that this measure be

held.

Thank you for the opportunity to submit comments.

Very Respectfully Submitted,

Sean Knox

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

April 3, 2012  
SENT BY E-MAIL

WAMTestimony@Capitol.Hawaii  
House Ways and Means  
State Capitol

(HB 466, HD3, SD1- Relating to Workers Compensation  
(Fair and Mutual Independent Medical Examinations)

:  
DECISION DATE: April 4, 2012

Dear Chairman Ige and members of the Committee:

Bills similar to this bill have been passed into law in the previous sessions by both houses of the Legislature, but vetoed by former Governor Lingle. There should be a renewed commitment by all stake-holders in the workers' compensation system to cooperation instead of litigation:

. 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.

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

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example of one well-known psychologist who repeatedly states the same type of opinion regardless of the case. Several others can be cited as routinely favoring the employer (insurance carrier).

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 under the Medical Fee Schedule for Workers Compensation

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.

It is time to "level the playing field" and encourage a spirit of mutual cooperation.

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

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**ADDENDUM TO TESTIMONY**

The following are quoted excerpts of actual “independent” medical reports of Joseph Rogers, Ph.D. who is often an examiner of choice of employers for injured workers who require psychological treatment or counseling following extended disability and career loss. Portions of his reports were submitted (as Exhibits) to a 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)**.”



1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcawhawaii.org](mailto:info@gcawhawaii.org)  
Website: [www.gcawhawaii.org](http://www.gcawhawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 4, 2012

TO: HONORABLE SENATORS DAVID IGE, CHAIR, MICHELLE KIDANI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **OPPOSITION TO H.B. 466, HD3, SD1 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 director of the department of labor and industrial relations. Allows for the use of an out-of-state physician under certain conditions. Appropriates unspecified funds. Effective 10/1/12. Section 3 effective 7/1/12. Repeals on 6/30/2017. (SD1)

### HEARING

DATE: Wednesday, April 4, 2012  
TIME: 9:10 a.m.  
PLACE: Conference Room 211

Dear Chair Ige, Vice Chair Kidani and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80<sup>th</sup> anniversary this year; GCA remains the largest construction association in the State of Hawaii whose mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest. GCA is **opposed** to HB 466, HD3, SD1, Relating to Workers' Compensation.

Although GCA attempted to address some of the concerns of this measure at the previous Committees, unfortunately the bill remains at odds with the interests of GCA members and other business organizations. Therefore, GCA opposes the current version of the bill and respectfully requests that this Committee hold the measure.

GCA is opposed to this bill because it requires the selection of an Independent Medical Examiner (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 IME process is the employer's only safeguard against abusive practices by an employee that may be taking advantage of his or her worker's compensation benefits.

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.

We respectfully urge the Committee to hold this measure.

Thank you for the opportunity to express our concerns on this measure.

**From:** [thomas.steinbauer@fourseasons.com](mailto:thomas.steinbauer@fourseasons.com)  
**To:** [WAM Testimony](#)  
**Subject:** Comments against HB 466 HD3 SD1 (WAM DM on 4/4)  
**Date:** Tuesday, April 03, 2012 5:56:45 PM

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Thomas Steinhauer  
3900 Wailea Alanui  
Wailea, HI 96753-5453

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Because there are so few IME physicians, mandating the exam within a certain time period of selection or appointment is rarely possible. This may not be in the best interest of the injured worker if the only available IME physician does not specialize in the injury/diagnosis in question.

Thank you for the opportunity to submit comments.

Sincerely,

Thomas Steinhauer

**From:** [tstewart@alsco.com](mailto:tstewart@alsco.com)  
**To:** [WAM Testimony](#)  
**Subject:** Comments against HB 466 HD3 SD1 (WAM DM on 4/4)  
**Date:** Tuesday, April 03, 2012 12:16:45 PM

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Thomas Stewart  
2771 Wai Wai Loop  
Honolulu, HI 96819-1941

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill would replace "employer requested examinations" with so-called "independent medical examinations". This is the only tool my business has to objectively evaluate the treating physician's plan of action.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our company does our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time will force me to restructure our benefits system.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

There are very few IME physicians today and restricting access further will add unnecessary delays for both injured workers and employer.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Because there are so few IME physicians, mandating the exam within a certain time period of selection or appointment is rarely possible. This may not be in the best interest of the injured worker if the only available IME physician does not specialize in the injury/diagnosis in question.

Thank you for the opportunity to submit comments.

Sincerely,

Thomas G. Stewart  
808-834-7500

**From:** [tallen@insurancefactors.com](mailto:tallen@insurancefactors.com)  
**To:** [WAM Testimony](#)  
**Subject:** HB 466 - This Bill Is NOT Necessary  
**Date:** Tuesday, April 03, 2012 4:41:48 PM

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Tom Allen  
745 Fort Street, #1000  
Honolulu, HI 96813-3809

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Why is this bill even being introduced? What problem is it solving? Right now, the employee has a distinct advantage in receiving medical care paid for by Workers Comp insurance. As a commercial insurance agent, I've seen employees take advantage of work comp claims by "milking" the system, taking extended leaves because their injury still supposedly hurts. I've seen sprained ankle claims continue on for almost 2 years, at a cost of 6-figures. I've seen cut fingers (legitimate) turn into carpal tunnel syndrome, and evolving into psychological stress claims. Really? And who gets punished? The employer by paying increased premiums due to higher experience modification numbers. I'm not saying all employees do this, I'm just saying it's very easy to and this bill would only make it easier for employees to take advantage, thereby increasing costs to employers. Don't employers do enough already? I've never seen or heard of a business owner trying to deny workers comp coverage to their employees. If anything, you should introduce a bill requiring extensive confirmation that an employee is still injured or sick and unable to return to work. We should be trying to limit the amount of dollars workers comp pays out, not increase it.

Thank you for the opportunity to submit comments.

Sincerely,

Tom Allen  
546-7414

**From:** [toni@a3h.org](mailto:toni@a3h.org)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 4:21:49 PM

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Antoinette Davis  
1361 Makawao Ave  
Makawao, HI 96768-9505

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

Thank you for the opportunity to submit comments.

Sincerely,

Toni Marie Davis  
808871-7947

**From:** [vgc@torkildson.com](mailto:vgc@torkildson.com)  
**To:** [WAM Testimony](#)  
**Subject:** Comments against HB 466 HD3 SD1 (WAM DM on 4/4)  
**Date:** Tuesday, April 03, 2012 5:46:46 PM

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Vaughn Cook  
120 Pauahi Street, Suite 312  
Hilo, HI 96720-3048

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

My name is Vaughn Cook and I am the President Elect of the Hawaii Island Chamber of Commerce. With more than 230 member businesses and over 500 member representatives, the Chamber serves as an important voice of business in Hawaii.

The Chamber STRONGLY OPPOSES HB 466 which will increase the costs of worker's compensation and limit our members and our local employers' rights to oversee the medical treatment of its injured workers.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to all our member business that are already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Our recovery is still VERY FRAGILE. Please do not impose additional regulation and costs on businesses that are struggling to stay afloat and keep their employees gainfully employed. Please do not pass this bill.

Thank you.

Thank you for the opportunity to submit comments.

Very Truly Yours

Vaughn Cook  
8089610406



**From:** [vaughn@akimeka.com](mailto:vaughn@akimeka.com)  
**To:** [WAM Testimony](#)  
**Subject:** Comments against HB 466 HD3 SD1 (WAM DM on 4/4)  
**Date:** Tuesday, April 03, 2012 1:56:37 PM

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Vaughn Vasconcellos  
1600 Kapiolani Blvd., Ste. 527  
Honolulu, HI 96814-3802

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

My name is Vaughn G.A. Vasconcellos, CEO, Akimeka, LLC.

Aloha kakou,

I am submitting this written testimony against the passage of HB 466 HD3 SD1 re: Workers' Compensation.

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The bill seeks to punish all businesses on the theory that there are some who abuse this right. As a result it creates added burdens to my business. I'm already struggling with many of the expenses and costs to comply with many government imposed mandates and regulations.

Akimeka, LLC management takes care of our employees. They are an asset to our company and we make sure to have a healthy and safe work environment. We provide generous benefits, including health coverage for not only my employees but their families as well. Any increase in costs during this time will force me to restructure our benefits system.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

Injured workers and employers often amicably agree to IME physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system.

Mahalo nui for your consideration.

Thank you for the opportunity to submit comments.

Me ke aloha

Vaughn G. A. Vasconcellos



75-5737 Kuakini Hwy. Suite 208  
Kailua-Kona, HI 96740  
Phone: 329-1758 Fax: 329-8564  
www.Kona-Kohala.com info@kona-kohala.com

Comments to the Senate Committee on Ways and Means  
Wednesday, April 4 13, 2012 at 9:10 am  
Conference Room 211  
State Capitol  
415 South Beretania Street

RE: HOUSE BILL 466 HD3 SD1 - Relating to Worker's Compensation

Dear Chair Ige, Vice Chair Kidani and Members of the Committee:

My name is Vivian Landrum, and I am the President/CEO of the Kona-Kohala Chamber of Commerce (KKCC). KKCC represents over 525 business members and is the leading business advocacy organization on the west side of Hawai'i Island. KKCC also actively works to enhance the environment, unique lifestyle and quality of life in West Hawai'i for both residents and visitors alike.

The Kona-Kohala Chamber of Commerce respectfully requests you reject HB 466 HD3 SD1.

The cost of doing business in Hawaii remains a challenge for all businesses. Many of my Chamber members are still struggling to regain their footing after the economic setbacks of the last few years. This bill adds yet another burden for the employer to bear; one that we question is really needed.

The new system for IME with the employee right to reject the employer's choice of physician thus resulting in a selection made by the DLIR from a "qualified list of physicians" presents a particular challenge to Hawaii Island employers as our total list of practicing physicians is nominal at best. To wade through this process involves company time and expense, both of which our employers are struggling to control. This bill adds to the cost of claims, thus resulting in another rise in the cost of doing business, thus creating a negative impact on our economic recovery.

I encourage you to explore the consequences that may arise from the implementation of this bill. What is now considered an "amicable" system will turn into an adversarial one that will delay the possibility of resolving the claim for both parties. The current system for IMEs is the most effective way for an employer to rebut a claim or to end treatment to determine settlement value or permanent impairment. The new system brings more challenges and opportunities for delays and increased costs. Is this really necessary?

Mahalo for the opportunity to submit my comments.

Sincerely,

A handwritten signature in cursive script that reads "Vivian Landrum".

Vivian Landrum  
President/CEO

**From:** [wayne@armstrongbuilders.com](mailto:wayne@armstrongbuilders.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 9:16:40 AM

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Wayne Muraoka  
80 Sand Island Access Road #209  
Honolulu, HI 96819-4904

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

We strongly oppose HB 466 HD3 SD1 and respectfully request that it be held by this Committee.

IMEs are an important tool for employers to help ensure that a claimant's providers are providing necessary and appropriate care (not inappropriate or excessive), and that the limitations / disabilities are being accurately represented.

There is an inherent unfairness in allowing one party to effectively choose both the treating physician and the physician who will review the treating physician's plan.

The law already has limitations / safeguards against abusing the IME process, and this proposal would, for the most part, remove all the benefits of the process, not just for the employer, but more importantly for the injured worker.

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

Thank you for the opportunity to submit comments.

Sincerely,

Wayne Muraoka  
808-628-6420

April 3, 2012

Comments to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 A.M.  
Room 211

Re: HB 466 HD3 SD1 re Worker's Compensation


The Honolulu Japanese Chamber of Commerce (HJCC) is made up of 650 members all representing employers and businesses in Honolulu. On behalf of our members, the HJCC presents its comments in opposition to House Bill 466 House Draft 3 Senate Draft 1 (hereafter "HB 466").

HJCC's primary concern is that all testimony and research establishes that the current process of conducting the initial IME and examinations to determine medical stabilization of an injured employee are working, and there is no reason for the drastic measures proposed by this bill. Indeed, injured workers and employers in nearly all cases amicably agree to IME physicians and this is without a legislative mandate. From all testimony presented, it appears that there may be a few cases where the selection of an IME physician has been contentious. Therefore, creating such a restrictive statute for the few cases where agreement cannot be reached will hurt the entire system and punish the employers who do not have disagreements over their selection of an IME physician. The additional layer of administrative requirements proposed in HB 466 will clearly add cost to providing workers' compensation benefits in all cases. In the current economic climate where employers are struggling to stay in business, adding additional operating costs will be extremely harmful and may cause companies to close and employees to lose jobs.

In addition, both employers and employees will be hurt by HB 466 because:

- The bill would eliminate employer's current ability to manage the care and treatment of its injured employees. Selecting the IME physician is the only tool employers have to understand an injured employee's condition, and to objectively evaluate the treating physician's plan of action.
- IMEs are the most effective way for an employer to understand the extent of an injury and the treatment that may be required.
- Restricting employers' ability to obtain an IME will tip the balance in the system in favor of employees and their attorneys and will result in additional administrative costs that will be paid for by employers. Increased cost to business may result in fewer jobs, lower benefits, and decreased wages.
- Giving the Director the responsibility to select an IME physician will require the Director to retain staff with expertise to recommend an appropriate physician for very diverse and in some cases complicated injuries. This process will, as history has shown, cause delays in decisions,

2454 South Beretania Street, Suite 201  
Honolulu, Hawaii 96826


 Tel: [808] 949-5531  
Fax: [808] 949-3020  
Web: [www.honolulujapanesechamber.org](http://www.honolulujapanesechamber.org)

require continued medical treatment and payment of TTD benefits, all of which will add to the workers' compensation premiums employers will be required to pay.

Again, we respectfully request that you defer this measure.

Thank you for the opportunity to submit our concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wayne T. Ishihara".

Wayne T. Ishihara  
President

**From:** [wtomita@thehawaiigroup.com](mailto:wtomita@thehawaiigroup.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 11:06:58 AM

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Wayne Tomita  
500 Ala Moana Boulevard, Suite 2-302  
Honolulu, HI 96813-4993

April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Chair Ige and members of the committee:

My name is Wayne Tomita and I am the Chief Financial Officer of Hawaii Accounting, Inc. ("HiAccounting"). I am here to state HiAccounting's opposition to House Bill No. 466 SD1.

As an Accounting outsourcing resource for numerous businesses in Hawaii, our company works on behalf of our clients, to foster positive action on issues of common concern.

Our company and the companies we work for do our best to take care of the employees. They are an asset to the company and we make sure to have a healthy and safe work environment. We provide generous benefits and any increase in costs during this time may force me to restructure our benefits system. Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs may result in fewer jobs, lower benefits, and decreased wages.

This is a fundamental change in the workers' compensation system and could prove unconstitutional by virtually eliminating the employers' right to due process.

At a time when the State is placing an emphasis on jobs and the economy, this measure and any other mandate that creates perceived or real additional costs, will undermine those efforts, hinder economic progress and entrepreneurial activity, and deter business investment in our State. During this uncertain state of the economy, the passage of this measure and other cost burdens would be unfortunate and devastating for Hawaii's economic climate.

In light of this, HiAccounting respectfully requests that this measure be held.

Thank you for the opportunity to submit comments.

Very Respectfully Submitted,

Wayne Tomita



**From:** [wtoyomura@askoxy.com](mailto:wtoyomura@askoxy.com)  
**To:** [WAM Testimony](#)  
**Subject:** Please do not impose additional costs on business: hold HB 466 SD1  
**Date:** Tuesday, April 03, 2012 5:16:46 PM

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Wayne Toyomura  
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April 3, 2012

Chair Ige and Ways and Means Committee

Dear Chair Ige and Ways and Means Committee:

Testimony to the Senate Ways and Means Committee  
Wednesday, April 4, 2012  
9:10 a.m.  
Room 211

Re: HB 466 HD3 SD1 re Workers' Compensation

Restricting employers' ability to obtain an IME will take away balance in the system and can lead to run away costs that will be paid for by employers. Increased workers' compensation costs may result in more businesses closing down which translates into fewer jobs. The ones that do remain will be forced to look at lowering benefits, and decreasing wages.

Less businesses and workers receiving lower wages means less income (tax revenue) to the State. The State is still not firmly on the way to financial recovery and cannot afford any further hindrances such as the one this bill would cause.

Thank you for the opportunity to submit comments.

Sincerely,

Wayne Toyomura



To: COMMITTEE ON WAYS AND MEANS  
Senator David Y. Ige, Chair  
Senator Michelle N. Kidani, Vice Chair

[www.itoen.com](http://www.itoen.com)

Date: Wednesday, April 4, 2012  
Time: 9:10 a.m.  
Place: Conference Room 211  
State Capitol  
415 S. Beretania St.

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#### Comments Regarding HB466 HD3 SD1 - Opposed

This proposed legislation is bad for employers because it severely restricts an employer's ability to conduct any meaningful discovery of a workers' compensation claim that may be in dispute.

Claimants enjoy a strong presumption that a claim for workers' compensation benefits is valid. In order to rebut this presumption, employers must provide "substantial evidence" to the contrary. Without the use of a meaningful IME, however, employers will be severely restricted in their ability to challenge a claim for workers' compensation benefits.

Why the Proposed Legislation will result in meaningless IME's and a waste of money:

- The proposed legislation allows for abuse by employees because there is no requirement that employees object in good faith to any IME physicians selected by an employer;
- The proposed legislation doesn't provide any assurances that the DLIR will have the resources or ability to appoint IME physicians who have the knowledge, experience, skills or training necessary to conduct a meaningful IME. This is especially true because the bill states that the Director of Labor must make such an appointment within seven days (although the bill does not state the consequences of a failure to make a timely appointment);
- The proposed legislation does not allow employers to object - or even have any input - on the IME physician selected by the Director of Labor. This is extremely problematic, because it could potentially result in the selection of a physician who would be required to render an opinion on a medical matter for which they are not qualified to do so;
- If the IME must be conducted within 45 days, it will limit what physicians will be able to conduct the IME based upon availability and scheduling issues; and

Restricting an employer's ability to conduct meaningful IMEs of disputed workers' compensation claims will eventually lead to a rise in workers' compensation insurance premium rates.

Thank you for the opportunity to submit our comments

Wendy Chuck  
Human Resources Manager