



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

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February 13, 2012

To: The Honorable Josh Green, M.D., Chair, Clarence K. Nishihara, Vice Chair,
and Members of the Senate Committee on Health

The Honorable Clayton Hee, Chair, Maile S.L. Shimabukuro, Vice Chair,
and Members of the Senate Committee on Judiciary and Labor

Date: Monday, February 13, 2012
Time: 10:45 a.m.
Place: Conference Room 229, State Capitol

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

Re: H.B. No. 466 H.D. 3 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 466 H.D. 3 proposes to repeal Section 386-79, Hawaii Revised Statutes, HRS, relating to medical examinations by employer's physician, and to replace it with a new section, by requiring physicians who perform independent medical examinations ("IMEs") and permanent impairment rating examinations to be selected by mutual agreement between the employer and employee. If no agreement can be reached, then the Department shall appoint a qualified physician licensed in the relevant medical specialty and willing to conduct the examination within 30 calendar days of the request.

The Department supports this bill, as it will bring a greater assurance of impartiality in the IME and permanent impairment rating processes and more importantly has the potential to reduce the number of Workers' Compensation medical disputes.

II. CURRENT LAW

Currently, Section 386-79, HRS, specifies that the employee, when ordered by the director, shall submit to the examination by a qualified physician designated and paid by the employer. If an employee refuses to attend the examination, or

obstructs in any way the examination, the claimant's rights to benefits are suspended for the period during which the refusal or obstruction continues.

III. COMMENTS ON THE HOUSE BILL

The Department supports the measure and offers the following comments:

1. The Department currently has a backlog of cases where disputes between the parties occur. For the issue of compensability, it could take 3 to 4 months to schedule a hearing from the time the request is made. For issues such as permanent disability, it could take 8 to 9 months for a hearing to be scheduled.

Decisions on issues of compensability and permanent disability rely primarily on the doctors' reports that are submitted by the parties. Therefore, in contested cases, the parties' primary concern is to have doctors' reports that support their position. Therefore, the parties in many instances look for doctors that will likely support their positions to perform IME's.

This occurs with the Employers and Insurance Companies as well as with Claimants. However, usually the Employers or Insurance Companies tend to have more financial resources at their disposal. Creating a mechanism that would limit this dynamic of "shopping for medical experts" could possibly reduce the number of disputes, especially related to the issues of compensability and permanent disability.

2. The establishment of a listing of doctors who would be willing to conduct IME's for the purposes of compensability or permanent disability under the bill becomes the responsibility of the Director. Issues such as willingness of doctors in different medical specialty areas and allowed fees for such evaluations will have to be addressed. A thirty-day limit to have such evaluations done following selection of the doctor may not be practicable. Therefore, some flexibility in the timetable may be advisable.
3. The allowable fees governed by the Workers' Compensation Medical Fee Schedule may be an obstacle to implementation. The legislature should consider setting an initial fee in the measure until such time the Director amends the fee by rulemaking in accordance with Chapter 91.
4. The Department is concerned that the measure does not allow employers to appoint a physician and forward a medical report to the director in cases where major or elective surgery is contemplated, which is the current law.

Where there are disagreements about medical stability (§386-31, §12-10-100 Determination of medical stabilization. Total disability.)—the Department believes the mechanism set forth in the measure will provide a fairer and

more impartial method of dispute resolution as well as reduce the number of disputes.

5. The Department requests an effective date of October 1, 2012 for Sections 1 and 2. Due to the length of time it takes to establish and fill new positions, it will be difficult to implement this proposal if these sections are effective upon approval or July 1, 2012.