

TESTIMONY

HB466, HD3

**HTH/JDL, WAM
Committee Hearing
02/13/2012**

NEIL ABERCROMBIE
GOVERNOR



BARBARA A. KRIEG
INTERIM DIRECTOR

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

February 10, 2012

TESTIMONY TO THE
SENATE COMMITTEE ON HEALTH
AND
SENATE COMMITTEE ON JUDICIARY AND LABOR

For Hearing on Monday, February 13, 2012
10:45 a.m., Conference Room 229

BY

BARBARA A. KRIEG
INTERIM DIRECTOR

**House Bill No. 466, HD3
Relating to Workers' Compensation**

TO CHAIRPERSONS JOSH GREEN AND CLAYTON HEE AND MEMBERS OF THE
COMMITTEES:

Thank you for the opportunity to provide testimony on HB 466, HD3.

The purpose of HB 466, HD3 is to require 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; and to appropriate unspecified funds for additional positions in the Disability Compensation Division.

The Department of Human Resources Development (DHRD) has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD has significant concerns on Section 1 of this bill and strongly supports Section 3.

With respect to **Section 1**, DHRD agrees with the underlying policy behind this proposal, which is to improve the fairness of the workers' compensation system and

provide better quality care for those workers hurt on the job. However, as explained below, neither goal may be met by the mandatory provisions of this bill.

First, an independent medical examination conducted by a physician of the employer's choice is the primary tool that is available to the employer to help overcome the statutory presumption that a claim is for a covered work injury, to show that ongoing medical treatment may be unreasonable or unnecessary, and to determine whether a requested medical treatment, e.g., surgery, is reasonable and related to the work injury. Amending the statute in this fashion would deprive the employer of a very fundamental right to conduct its discovery, using physicians of its choice, to evaluate whether the employer is liable for the claim or medical treatment.

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

With respect to **Section 3**, DHRD believes that an appropriation to provide for three additional hearings officers and two additional office assistant positions in the Disability Compensation Division would improve the Department of Labor's administration of workers' compensation claims in this State. Additional hearings officers, with office support, will help to reduce the waiting time for hearings and decisions on contested issues of compensability, medical treatment, and myriad other issues that arise in workers' compensation claims.

Thank you for the opportunity to testify on this measure.



LATE

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
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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.

TIMOTHY P. McNULTY



FILE NUMBER

TIMOTHY P. McNULTY

A LAW CORPORATION
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February 9, 2012

COMMITTEE ON HEALTH

Senator Josh Green, M.D., Chair

Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

DATE: February 13, 2012

TIME: 1:00 pm

PLACE: Conference Room 229

State Capitol

415 South Beretania Street

Honolulu, HI 96813

Dear Senators:

I urge you to pass House Bill 466.

I have been representing injured workers in Hawaii for 25 years and in California for 5 years before then. Despite the insurance industries claims that the medical examiner's they select are "independent" those examiners are nothing of the sort.

That is why California has set up a qualified medical examiner list where doctors are selected randomly for these types of medical examinations. Unfortunately, Hawaii does not have the funding to set up such a system.

The medical examiners selected by the insurance carriers here in Hawaii are what are known in the industry as "the usual suspects," and their medical opinions are predictably against the injured worker. That is because the medical examiners selected by the insurance carriers want repeat business from them. The medical examination business is "big business" not only here in Hawaii, but nationwide. One only need look at the Consumer Reports for February of 2000 to confirm this, and it is only getting worse.

See, "Workers' Comp: Falling Down on the Job," Consumer Reports, February 2000:

Getting medical care depends on the opinion of an independent medical examiner (IME), a physician called in to assess a patient's condition. IMEs are paid by the insurer. On average, they earn \$507 per consultation, according to a 1997 survey of 266 IMEs conducted by SEAK, a medical-seminar company. Specialists like psychiatrists earn as much as \$900 per consult.

The high fees are justified, says Dr. Chris Brigham, editor of The American Medical Association's The Guides Newsletter, which helps doctors and others evaluate workers-comp cases. A proper exam, he says, should include a complete review of the patient's medical records, a thorough interview, an appropriate physical examination (which typically takes about an hour and a half), and a written report--possibly a four- or five-hour job. Determining the severity and cause of an illness is a complicated task, and careful professionals can disagree.

But more than a dozen injured workers who spoke to Consumer Reports, whom we found through lawsuits, injured-worker groups, and the Internet, uniformly complained of doctors who clearly hadn't read their medical records and of examinations that lasted no more than 15 minutes. And even though a negative report from an IME can play a big part in an insurance company's decision to cut off benefits immediately and unilaterally, workers in some states can't have anyone witness an exam except for their treating physician, who may not be available.

IMEs also examine a worker's medical history to find other explanations for the illness or injury.

Letter to Committees on Health, Judiciary & Labor
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February 9, 2012

Insurers sometimes shop patients around to a series of IMEs.

To give you an idea of the size of the business, one medical examiner was paid \$1 million for work in 2006 by one insurance company here in Hawaii.

Forcing the insurance industry to come to an agreement with the injured claimants as to who the medical examiner should be would go a long way towards making these medical examiners become more neutral, because they would then have to establish credibility with not only the insurance carriers, but also with the injured workers and their representatives.

Keep in mind that these medical examiners owe no physician-patient relationship to the injured worker, yet their opinions are used to terminate medical care, disability benefits, etc.

This bill would go a long way towards leveling the playing field in the workers compensation medical examination arena.

Please pass House Bill 466.

Very sincerely,

TIMOTHY P. McNULTY, A LAW CORPORATION



TIMOTHY P. McNULTY

TPM:tpm

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 09, 2012 5:11 PM
To: HTHTestimony
Cc: bharter@aloha.net
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bev Harter
Organization: Jack harter Helicopters, Inc.
E-mail: bharter@aloha.net
Submitted on: 2/9/2012

Comments:

Any added, nonessential, required expenditure burdens this business and others. I avidly oppose this legislation as another unjust impact on small businesses, the heartbeat of the island economy.

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

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February 10, 2012

Testimony before the Senate Committees
on Health, and on Judiciary and Labor

RE: HOUSE BILL 466, H.D. 3
Relating to Workers' Compensation

Dear Chair Green, Chair Hee, Vice-Chair Nishihara, Vice-Chair Shimabukuro & Members of the Committee:

My name is Lorne Direnfeld. I am a neurologist. I am speaking in **opposition** to HB 466, HD3 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

RE: HB 466, HD3

February 10, 2012

administrative issues as a case evolves and progresses through the system.

- 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

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RE: HB 466, HD3

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provided regarding various medical and administrative issues. There is usually an 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 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 30 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

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RE: HB 466, HD3

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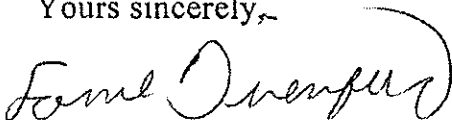
stability meaning "no further improvement in the injured employee's work-related condition can reasonably be expected from curative health care or the passage of time."

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 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,

A handwritten signature in cursive script, appearing to read "Lorne Drenfeld", written in dark ink.

Lorne Drenfeld, M.D.



**Property Casualty Insurers
Association of America**

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

To: The Honorable Josh Green, Chair
Senate Committee on Health

The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor

From: Mark Sektnan, Vice President

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

Date: Monday, February 13, 2012
10:45 a.m., Conference Room 229

Aloha Chair Green and Chair Hee and Members of the Committees:

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

HB 466 HD3 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 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 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 gives the director seven days to appoint a physician who is willing to undertake an examination. However, the bill fails to explain what happens when a willing physician is not found in seven days. Once a physician is appointed to take the case, the examination is supposed to take place within 30 days. No doubt, that is 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 for the remainder of the session.



**Senate Committee on Health and the Senate Committee on Judiciary and
Labor**

DATE: February 13, 2012
TIME: 10:45 a.m.
PLACE: Conference Room 229

**Re: HB 466, HD3
Relating to Workers' Compensation
Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to testify in opposition to HB 466, HD3. NFIB strongly opposes this measure.

HB 466, HD3 requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations. While the description of this measure sounds laudable, we believe that in practice it will unfairly tip the balance of the independent medical examination process and that, as a result, claims will not be appropriately resolved.

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



Hawaii State Chiropractic Association

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THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012

COMMITTEE ON HEALTH

Senator Josh Green, M.D., Chair

Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

NOTICE OF HEARING

DATE: Monday, February 13, 2012

TIME: 10:45 am

PLACE: Conference Room 229

Testimony in Support of SB 466, Relating to Worker's Compensation

Aloha, Chairs Green and Hee and members of the committees:

My name is Gary Saito and I am the President of the Hawaii State Chiropractic Association. The HSCA supports the intent of this bill, but we have a concern and offer some comments.

Although the bill says, "the director shall appoint...a physician licensed in a relevant medical specialty, licensed to practice in Hawaii...", the term "relevant" is not clearly defined. Previous versions of this bill specified that the reviewing physician must be of the same medical specialty as the provider whose records are to be reviewed.

Our concern is that this bill later states that "a physician selected to perform an independent medical examination or permanent impairment rating examinations...shall be currently licensed pursuant to chapter 453". We'd like to remind your committees that chapter 453 refers only to medical doctors and surgeons. However, the Department of Labor also recognizes providers of service under: chapter 442 (Chiropractors), chapter 448 (Dentists), chapter 455 (Naturopaths), chapter 459 (Optometrists), chapter 463E (Podiatrists), and chapter 465 (Psychologists). Medical doctors and surgeons are unlikely to be

licensed and certified in these specialties and, therefore, are not qualified to review the records of these professionals with competence.

We recommend that the reference to chapter 453 be struck from the bill, or that the other professions be similarly recognized by inserting their chapter numbers. We firmly believe that reviewers must be proficient, trained, and schooled in the discipline of the provider whose records they are reviewing.

Thank you for the opportunity to offer these comments.

Sincerely,

Dr. Gary Saito, DC
President

TESTIMONY BEFORE THE SENATE COMMITTEES ON
HEALTH
And
JUDICIARY and LABOR

02-13-12 10:45 am
Conference Room 229

HB 466 HD 3
RELATING TO WORKERS' COMPENSATION

From: SECURITAS SECURITY USA

Aloha Chair Green, Vice Chair Nishihara, Chair Hee, Vice Chair Shimabukuro and Members of the Committees:

Securitas Security USA strongly opposes HB 466 HD 3. Our company represents over 3000 employees throughout Hawaii.

This bill mandates that independent medical examinations (IME) and permanent impairment rating examinations be performed by physicians mutually agreed upon by the employer and the injured employee. An "independent" medical examination is intended to serve as a tool when statutory presumption, excessive treatment, or reasonableness of a surgical procedure or injuries is in question.

While we appreciate the intent, we cannot support a bill that takes away an employer/insurance carrier's fundamental right to select their own independent expert medical opinion, since the cost of the exam is at their expense. The current statutes have safeguards in place to allow injured employees full disclosure of an employer/ insurance carrier's IME report, and the right to seek their own medical opinion if they disagree.

In addition, H.B. 466 HD 3 provides a new definition for "medical stability" that is inconsistent with the definition contained in The Guides to the Evaluation of Permanent Impairment, currently used to evaluate permanent impairments.

We also believe this bill is unnecessary. A majority of IME 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.

For these reasons, we strongly oppose HB 466 and respectfully request this measure be held. Thank you for this opportunity to submit testimony.

International Association of Rehabilitation Professionals

Hawaii Chapter
1834 Nuuanu Ave Suite 205
Honolulu, Hawaii 96817

February 10, 2012

Committee on Health
Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Honorable Committee Members,

Testimony in Support of HB466HD3

My name is Alan S. Ogawa, the current President of International Association of Rehabilitation Professionals-Hawaii. I have practiced as a rehabilitation counselor in Hawaii for the past 30 years.

The International Association of Rehabilitation Professionals-Hawaii Chapter is dedicated to: promoting effective multidisciplinary rehabilitation, disability management, and return-to-work services on behalf of persons with disabilities and the economically disadvantaged; enhancing the competency of service providers; supporting innovation in related business development and management; and becoming the pre-eminent source for shaping public policy that affects rehabilitation.

We support the mutually agreed upon Independent Medical Examination (IME) physician bill to advocate fairness for the injured worker.

Thank you for allowing me to provide testimony to your committee.

Alan S Ogawa, M.Ed., CRC, LMHC
President
808-523-7755

To: Senator Green, Senator Hee, and Members of the Committee

Hearing: February 13, 2012

Re: HB 466 HD3, Relating to Workers' Compensation

From: Milia Leong, Claim Manager, John Mullen & Company, Inc.

Senator Green, Senator Hee and Members of the Committee, I would like to thank you for giving me this opportunity to comment on HB 466, relating to workers' compensation. My name is Milia Leong and I am the Claim Manager for the Workers' Compensation Department at John Mullen & Co., Inc. ("JMCO"), Hawaii's largest Third Party Administrator ("TPA"). We have been handling multi line insurance claims for over 50 years in this State and I have personally adjusted, supervised, and managed workers' compensation claims for over 18 years on behalf of hundreds of Insureds, Self Insureds, State, City and County, and Captive Employers. I am also responsible for reviewing all incoming workers compensation claims daily, and evaluating to determine if the claim is compensable or if further investigation is necessary.

As adjusters, JMCO actively handles the day to day functions required to facilitate medical/indemnity benefits to injured workers pursuant to Section 386 H.R.S. for compensable claims and to expedite the investigation process in cases where liability is questionable. In my experience, I can say without a doubt, that the majority of new claims received on a daily basis, are initially accepted without delay. In the limited cases where initial compensability is denied pending investigation, we must provide a valid justification to the Director based on medical and legal evidence in support of our position. To allege otherwise, is a factual untruth and we believe that as adjusters, whose primary function is to handle claims on a daily basis, we should be credited as we are on the frontline of actual claims adjusting for all issues involved, not just those in dispute.

JMCO opposes HB 466 which requires independent medical examinations ("IME") and permanent partial disability ratings 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.

We offer the following in support of our opposition to HB 466:

1. It is critical to the Employers' discovery process that an IME be scheduled expeditiously, for claims that require investigation with respect to compensability or further liability. The IME provides checks and balances in the form of a second medical opinion to ensure the issues of whether an injury is work related and whether medical treatment/disability certification is reasonable and necessary are properly addressed. The Employer should be permitted the right to select an IME physician of their choosing in the event parties are unable to agree, given the Employer is responsible for 100% of said expense. **The injured worker has such right in the selection of an attending physician pursuant to Section 386-21 which is also at Employer's expense.** The Employer has no input regarding this selection and the Employee may treat with whomever he/she may choose subject to the definitions of a qualified physician pursuant to H.R.S. 386-27. There is no discussion as to an agreed upon attending physician. In fact, the Employer is in no way permitted to direct or influence the injured worker's selection.

2. The independent examiner's role is to provide an unbiased assessment based on the medical records, pertinent file documentation and examination of the injured worker. In fairness to all parties, a copy of said report is furnished to the injured worker, their attending physician and the Department of Labor for review and comment. The injured worker has the right to provide a rebuttal to this report by their physician, an IME/second opinion of their choosing, and/or may file a request for hearing before the Department of Labor should they disagree with the IME findings. The Employer should at the very least be allowed to present its own evidence for the Director's determination. The Employers/Director's determination is not based on the IME alone, but the case facts in its entirety. In cases where an injured worker obstructs an investigation of compensability or further liability, Section 386-79 provides one of the only avenues for an Employer to statutorily expedite such investigation and/or address potential malingering. As a safeguard, the Director requires the Employer to provide sufficient reasoning for any request for Order or the request will be denied.
3. All other standard investigation practices, such as obtaining a statement from the injured worker and securing a signed medical authorization to request necessary medical records, are voluntary and Employer has little to no remedy to enforce cooperation. In cases where we are unable to solicit cooperation, the Employer is left with only the right to an Ordered IME to address questions or concerns, as we are confined to time limitations and discovery deadlines for all cases referred to hearing before the Director. To repeal Employer's right to an Order and by limiting Employer to only one IME, will result in a significant delay in cases where malingering is suspected, intervening accidents/injuries have occurred, lack of compliance by the worker to actively participate in recommended medical treatment has prolonged recovery, underlying unrelated health conditions have surfaced affecting return to pre injury status, financial gain incentives are apparent, and/or fraud is suspected. This will undoubtedly result in inflated claim costs across the board, of which HB 466 provides no remedy for reimbursement of medical/indemnity costs, should the IME agree with Employer's position and the Director issue a Decision affirming same. We are reminded that Workers Compensation costs are borne by all, and in our current depressed economy, we should not be seeking ways to increase costs to employers that will ultimately be passed on to the consumer.
4. HB 466 provides for the Department to maintain a list of qualified physicians licensed to practice in Hawaii and appoint one within 7 days where the employer and employee disagree. This is infeasible given the Department's current staffing challenges, which has already resulted in a backlog of hearings and delay in case assignment. Without a case number, the claim does not exist with the Department, and therefore, we are unable to subpoena records, request a hearing, or even file requests with the DCD until such time a case number is assigned. Currently, it is taking 30 days or more. HB 466 also provides that said exam shall be scheduled within 30 days. This is unrealistic, as currently, IMEs are taking anywhere between 6-12 weeks to schedule, and even longer for specialty or psychiatric evaluations given the limited number of physicians willing to perform these examinations. By mandating these exams be conducted pursuant to the Medical Fee Schedule, we believe fewer physicians will be willing to conduct IME/PPD ratings, resulting in an even longer wait time. In our experience, the majority of IME/PPD ratings that are perceived as being "costly," are due to the physician's requirement to review a myriad of medical records, not just the exam itself. It is not uncommon to have multiple bankers boxes full of medical records submitted to the independent medical examiner for review. The physicians, who are willing to conduct IME/PPD ratings, should be consulted to establish appropriate procedural guidelines for conducting such examinations.

5. HB 466 precludes combining an IME and rating without the employee's written consent. To require the employer to schedule a separate rating would be a tremendous inconvenience to the employer, employee and IME physician, which would at the very least double the costs for such expense. Ironically, the very supporters of this bill are using inflated IME costs as evidence in support of their position, testifying that these physicians are charging thousands of dollars per examination. Furthermore, by mandating two separate exams, this bill will essentially increase the number of scheduled appointments, thus pushing back the availability even further. Undoubtedly, this process only serves to delay resolution of statutory permanent partial disability benefits, keeping due benefits out of the pocket of the injured worker and increasing litigation costs across the board. Finally, it is noted that should the claimant disagree with the accuracy of a rating scheduled by Employer, they have the right to secure a rating of their own, and should the Director credit same, Employer may be ordered to reimburse the claimant for associated costs.

In summary, we believe the current IME process is working for both employer and employee. The vast majority of IMEs are conducted without incident, dispute or the need for an ordered evaluation. The IME process can greatly enhance the likelihood of successful treatment, recovery and resolution of the claim without the need to take the matter to hearing before the Director at significant savings in time and resources. In fact, in many cases, the IME provides direction of which the attending physician will often "defer" further recommendation, especially in cases where the worker is reporting no significant improvement despite ongoing medical treatment and lengthy disability periods. An independent opinion may provide for insight not considered by the attending physician, and in many cases, when situations like this arise, the attending physician agrees with the recommendations and moves forward with the treatment and/or return to work plan. In other cases, IMEs concur with the attending physician's current treatment plan and/or disability duration and often find claims compensable where liability is initially investigated. However, the vast majority of these IMEs are never commented on because there is no "dispute," and the claim moves forward without complaint. It is unfortunate, that the minority, not the majority is driving the support of HB 466. Based on our daily handling of industrial claims, we believe the current IME process is balanced and, therefore, request HB 466 be held.

We welcome the opportunity to discuss this bill with you further. Thank you for this opportunity to provide you our input based on our expertise of actual claims adjusting.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Sixth Legislature, State of Hawaii
Hawaii State Senate
Committee on Health
&
Committee on Judiciary and Labor

Testimony by
Hawaii State AFL-CIO
February 13, 2012

H.B. 466, HD3 - RELATING TO
WORKERS' COMPENSATION

The Hawaii State AFL-CIO supports H.B. 466, HD3 which requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations.

The purpose of this bill is to reduce workers' compensation costs and speed up an employee's ability to return to work by selecting outside non-treating doctors who are mutually agreed upon.

Presently, injured employees are required to go to non-treating doctors who are selected by the employers or insurance carriers. Employees have absolutely no say as to who the doctors will be, resulting in a lack of trust when the medical reports are generated. In fact, some physicians are paid handsomely each year by insurance carriers to perform medical examinations. This should raise a red flag and lead us to question the validity of the medical reports. As a result, unnecessary hearings are conducted, resulting in various delays causing higher costs for both the employers and insurance carriers.

Most notably, H.B. 466, HD3 would reduce workers' compensation costs by eliminating the unnecessary struggles that exist between the employers and employees. It would require mutual cooperation when selecting a doctor to perform a medical examination.

Thank you for the opportunity to testify in support of H.B. 466, HD3.

Respectfully submitted,

Randy Perreira
President



Testimony to the Senate Committees on Health and Judiciary and Labor
Monday February 13, 2012
10:45 a.m.
State Capitol – Conference Room 229

Aloha Chairs Green and Hee, Vice Chairs Nishihara and Shimabukuro, and members of the committees. 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 (HSCR779), 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, 5th 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.

February 10, 2012

The Senate
The Twenty Six Legislature
Regular Session of 2012

Committee on Health
Senator Josh Green M.D. Chair
Senator Clarence K. Nishihara, Vice Chair

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

State Capitol, Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

Relating to: HB 466, HD 3 Relating to Workers' Compensation

Dear Members of the Committee on Health and Judiciary and Labor:

My name is Kirsten Harada and I am a Vocational Rehabilitation Counselor and member of the International Association of Rehabilitation Professionals. I am writing in support of HB 466, HD3, which will require Independent Medical Evaluations and Permanent Impairment rating examinations to be performed by mutually agreed upon physicians.

I feel that the injured worker should not be put on the sidelines and should have a say in who does these examinations to ensure a fair, objective, and truly independent evaluation of their case and disability.

I thank you for the opportunity to address this committee.

I strongly urge you to **SUPPORT HB 466, HD3, HD1 RELATING TO WORKERS' COMPENSATION.**

Sincerely,

Kirsten Harada
715 S. King Street, Suite #410
Honolulu, HI 96813
538-8733

February 10, 2012

The Senate-Twenty Six Legislature
Regular Session of 2012

Committee on Health
Senator Josh Green M.D. Chair
Senator Clarence K. Nishihara, Vice Chair

Committee on Judiciary and Labor
Senator Clyton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

State Capitol, Room 229
415 South Beratania Street
Honolulu, Hawaii 96813

HB 466, HD 3 Relating to Worker's Compensation

Dear Members of the Committee on Health and Judiciary and Labor:

I am Beverly Tokumine, a Vocational Rehabilitation Counselor at Vocational Management Consultants, Inc. I am a member of the IARP, International Association of Rehabilitation Professionals. I am writing to you *in support of the HB 466, HD3*, which will require Independent Medical Evaluations and Permanent Impairment rating examinations to be performed by mutually agreed upon physicians. I feel that the injured worker should have a fair and objective independent evaluation of their case and disability.

Thank you, again, I urge you to support *HB 466, HD3, HD1 Relating to Worker's Compensation*.

Sincerely,

Beverly Tokumine, M. Ed., CRC
715 South King Street, Suite 410
Honolulu, Hawaii 96813
808-538-8733

February 10, 2012

The Senate-Twenty Six Legislature
Regular Session of 2012

Committee on Health
Senator Josh Green M.D. Chair
Senator Clarence K. Nishihara, Vice Chair

Committee on Judiciary and Labor
Senator Clyton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

State Capitol, Room 229
415 South Beratania Street
Honolulu, Hawaii 96813

HB 466, HD 3 Relating to Worker's Compensation

Dear Members of the Committee on Health and Judiciary and Labor:

I am Beverly Tokumine, a Vocational Rehabilitation Counselor at Vocational Management Consultants, Inc. I am a member of the IARP, International Association of Rehabilitation Professionals. I am writing to you *in support of the HB 466, HD3*, which will require Independent Medical Evaluations and Permanent Impairment rating examinations to be performed by mutually agreed upon physicians. I feel that the injured worker should have a fair and objective independent evaluation of their case and disability.

Thank you, again, I urge you to support *HB 466, HD3, HD1 Relating to Worker's Compensation.*

Sincerely,

Beverly Tokumine, M. Ed., CRC
715 South King Street, Suite 410
Honolulu, Hawaii 96813
808-538-8733

February 10, 2012

The Senate-Twenty Six Legislature
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Committee on Health
Senator Josh Green M.D. Chair
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Senator Maile S. L. Shimabukuro, Vice Chair

State Capitol, Room 229
415 South Beratania Street
Honolulu, Hawaii 96813

HB 466, HD 3 Relating to Worker's Compensation

Dear Members of the Committee on Health and Judiciary and Labor:

I am Beverly Tokumine, a Vocational Rehabilitation Counselor at Vocational Management Consultants, Inc. I am a member of the IARP, International Association of Rehabilitation Professionals. I am writing to you *in support of the HB 466, HD3*, which will require Independent Medical Evaluations and Permanent Impairment rating examinations to be performed by mutually agreed upon physicians. I feel that the injured worker should have a fair and objective independent evaluation of their case and disability.

Thank you, again, I urge you to support *HB 466, HD3, HD1 Relating to Worker's Compensation.*

Sincerely,

Beverly Tokumine, M. Ed., CRC
715 South King Street, Suite 410
Honolulu, Hawaii 96813
808-538-8733



Senator Josh Green, Chair
Senator Clarence Nishihara, Vice Chair
Committee on Health

Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Committee on Judiciary and Labor

State Capitol, Honolulu, Hawaii 96813

HEARING Monday, February 13, 2012
 1:00 pm
 Conference Room 229

RE: **HB466, HD3, Relating to Workers' Compensation**

Chairs Green and Hee, Vice Chairs Nishihara and Shimabukuro, Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest employers in the state, employing almost 25% of the labor force.

RMH strongly opposes HB466, HD3, which requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required.

From the employer's position, the IME process is a vital mechanism to ensure proper treatment for the injured employee and costs of the treatment incurred are justified. This measure erodes the ability of the employer to effectively and efficiently manage costs. As a safeguard, the existing statute requires full disclosure to the injured worker of the IME report, which affords the treating physician and the injured employee the opportunity to challenge the evaluation.

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

The members of the Retail Merchants of Hawaii respectfully request that you hold HB466, HD3. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

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Alison Powers
Executive Director

TESTIMONY OF JANICE FUKUDA

SENATE COMMITTEE ON HEALTH
Senator Joshua Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, February 13, 2012
10:45 a.m.

HB 466, HD3

Chair Green, Chair Hee, and members of the Committees, 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, 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.

According to the National Council on Compensation Insurance (NCCI), "The overall impact of HB 466 may be a sizable increase in system costs, depending on the interpretation and enforcement of the 30 day scheduling restriction for IMEs. If enacted, any potential cost impacts would be realized through future loss experience and reflected in subsequent loss cost filings." Attached is NCCI's full analysis.

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.

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. 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.

Another provision in the bill requires IME physicians to meet certain criteria. Mandating that IME physicians meet certain requirements may not increase the standard of care for the injured worker and will reduce the number of physicians willing to participate in workers' compensation cases. Currently, there are a limited number of physicians who perform IMEs and when categorized by specialty, the list of available physicians is even smaller. It is in both the employer's and the injured worker's best interest to have as many IME physicians available as possible to get the most objective opinion in the most efficient way. Many specialty IME physicians like toxicologists, neuropsychologists and

infectious disease specialists who practice on the mainland are used because there are too few or no qualified physicians here that can perform the examinations. Hawaii is a small and isolated state in which specialized physicians are not able to acquire practical experience due to exposure to limited and isolated cases. Insurers rely upon regional clinics and medical centers that specialize in particular medical disorders. The provisions which require that the IME physician be licensed to practice in Hawaii and limits their reimbursement rates are unworkable and will shrink the limited pool of available physicians even further. The average lead time to secure an IME appointment is six weeks and this provision will inevitably create a delay in obtaining timely appointments and reports and limit local physicians' ability to draw upon the clinical expertise of their mainland counterparts. There is also a provision requiring injured workers who reside on the mainland to obtain an IME from a physician licensed to practice in that state for the five consecutive years prior. This requirement does nothing to raise the qualification of the IME physician, but rather limits the number who will be eligible to examine injured workers who reside on the mainland. There is no evidence that duration or license correlates to a higher standard of care or greater expertise. It will add additional cost to the system if the injured worker resides in an area with few practitioners and will need to travel to another city for an examination. This licensing requirement is inconsistent with the requirement for IME physicians who examine injured workers residing in Hawaii.

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

Thank you for the opportunity to testify.



National
Council on
Compensation
Insurance, Inc.

ANALYSIS OF HAWAII HOUSE BILL 466 H.D. 3 Requested January 15, 2012

Hawaii House Bill (HB) 466 H.D. 3 amends the workers compensation law by requiring independent medical examinations (IMEs) and permanent impairment rating examinations (rating exams) to be performed by mutually agreed upon or director appointed physicians, within 30 days of selection or appointment. Due to uncertainty in interpretation and enforcement of the 30 day window by the Hawaii Department of Labor and Industrial Relations (HDLIR), the overall impact of HB 466 may result in a sizable³ increase in system costs if the ability to utilize IMEs is substantially restricted. If enacted, any potential cost impacts would be realized through future loss experience and reflected in subsequent loss cost filings.

Summary

HB 466 proposes IMEs and rating exams be performed by mutually agreed upon or director appointed physicians, within 30 days of selection or appointment. Potential ramifications on the usage of an IME or rating exam when the 30-day window is not met is not addressed in the proposed bill language. The bill further proposes that an IME and a rating exam may not be combined in a single medical examination, unless the employee agrees in writing prior to scheduling.

The bill also appropriates unspecified funds toward establishing three additional hearings officer positions and two office assistant positions in the Hawaii Department of Labor and Industrial Relations.

Actuarial Analysis

Currently in Hawaii, when ordered by the Director of the HDLIR (the Director), an employee must submit to a medical exam at a reasonable time and place by a duly-qualified physician paid for and designated by the employer (Section 386-79). The employee may have an employee-selected and employee-paid physician present. If an employee refuses to submit or in any way obstructs the examination, the employee's right to compensation is suspended until the refusal or obstruction ceases. If the employer is dissatisfied with the progress of the case, the employer may request an examination by an employer-selected physician. One examination per case is allowed, unless good and valid reasons exist with regard to the medical progress of the employee's treatment.

When a worker is close to or has achieved maximum medical improvement, a rating exam may be used to determine the extent of permanent impairment, if any.

³ NCCI defines a sizable impact to be greater than 3.0% on overall system costs.

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ANALYSIS OF HAWAII HOUSE BILL 466 H.D. 3
Requested January 15, 2012

Currently, the rating exam may be completed by the treating physician, occur concurrently with an IME, or be scheduled separately.

Selection of Physician and Scheduling the Examination

Under HB 466, an IME or rating exam physician may be appointed by the employer upon mutual agreement between the employee and employer. If there is no agreement, then the Director would select one physician, licensed in a relevant medical specialty, from the Director's list of qualified physicians, within seven calendar days. The physician, whether mutually agreed upon by the employer and employee or selected by the director, must then conduct the examination within 30 days.

If HB 466 were enacted, the process of obtaining a physician and scheduling the appointment could delay claim processing at the following points:

- Determination of compensability
- Determination of appropriateness of treatment
- Determination of maximum medical improvement
- Quantification of permanent impairment disability

Claims with the choice of physician in dispute at any of the above junctures may be delayed during negotiations over a mutually acceptable physician. If unsuccessful, an additional delay of up to seven days could be expected while the Director supplies a physician's name. The additional covered medical treatments and wage benefits during the delay would increase system costs. There is also the cost of delay to a claimant who might be waiting for a surgical consultation, or for their permanent partial disability benefits to begin. Note that benefits are often not paid while determination of compensability is in question, but a delay would increase costs if the claimant prevails.

The designated IME physician, whether mutually agreed on or assigned by the director, may not be able to accommodate the 30 day timeframe. The proposed maximum 30 day window for an examination to occur after scheduling might not be achievable, for the following reasons:

- Currently, the time between scheduling and examination tends to exceed 30 days, according to stakeholders in Hawaii
- Workers and employers do not have control over physician schedules
- There is a geographical limitation to the pool of physicians trained and willing to perform IMEs and rating exams in Hawaii
- If the Director provides an IME or rating exam physician, and that physician is unable to schedule an appointment within 30 days, the IME will be delayed by up to 7 days for each request for a different physician from the approved list. The list may be exhausted with no physicians available in the local area for scheduling within 30 days

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ANALYSIS OF HAWAII HOUSE BILL 466 H.D. 3
Requested January 15, 2012

- Past medical records may need to be obtained and provided to the examining physician, which may take longer than 30 days

The bill is silent as to the consequences of not meeting the 30 day scheduling restriction. Interpretation and enforcement of the restriction would influence the impact on the workers compensation system in Hawaii. If forfeit of this diagnostic claims tool is the consequence, then some workers who might have reached maximum medical improvement may continue to be paid temporary disability benefits for an extended period of time, increasing system costs. In Hawaii, these benefits are paid "for the duration of disability", so there is no maximum number of weeks as in some other states. Some workers could experience longer delays for approval of treatment plans. The Hawaii workers compensation system may lose the services and expertise of qualified physicians to perform IMEs who are unable to meet the 30 day requirement. Frictional costs may increase as the courts could be asked to determine the consequences of not being able to meet the 30 day requirement.

The right for an employee to have a physician of their choosing present at an examination would be removed if HB 466 were enacted. This change might make some cases easier to schedule, since a second physician's schedule would not need to be accommodated.

IME and Rating Exams Not Combined

One IME per case, unless valid reasons exist with regard to the medical progress of the employee's treatment, would continue to be imposed. However, HB 466 would not permit an IME to be extended to include an examination to determine permanent impairment unless the injured worker consents in writing prior to the examinations. In cases where parties could not agree as to an IME physician, it is unclear if a Director-selected IME physician could complete the rating examination at a later time, or if the Director would need to select a (different) rating exam physician.

The rating exam may be scheduled separately from an IME currently. HB 466 might introduce a delay simply for the time to either agree on a physician or wait for a Director-selected physician. In current instances where an IME physician determines that the worker has reached MMI and concurrently provides an impairment rating, the bill could extend the time the worker has to wait to receive PPD benefits as well as raise system costs by requiring an additional examination. However, it is possible that the scheduling of the IME alone, without a rating exam, may go more quickly than currently, though it is still expected to be over 30 days. An IME does not require as extensive a review of past records which need to be requested and received, taking approximately four to six weeks, according to stakeholders.

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ANALYSIS OF HAWAII HOUSE BILL 466 H.D. 3
Requested January 15, 2012

Additional Funded Positions in the Disability Compensation Division

HB 466 also establishes and funds three additional workers compensation hearings officer positions and two office assistant positions in the Disability Compensation Division of the HDLIR. Hawaii general revenues are the source of the (unspecified) funding. Additional staff may improve the timeliness of the hearings process, reducing the time an injured worker has to wait for a ruling on their claim. Proper staffing and the associated funding could be critical to timely resolution of disputes requiring IMEs.

The overall impact of HB 466 may be a sizable increase in system costs, depending on the interpretation and enforcement of the 30 day scheduling restriction for IMEs. If enacted, any potential cost impacts would be realized through future loss experience and reflected in subsequent loss cost filings.

CONTACT: CAROLYN PEARL
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TESTIMONY OF HAWAII EMPLOYERS MUTUAL INSURANCE COMPANY IN OPPOSITION OF HOUSE BILL NO. 466, HD3

Hearing Date/Time: February 13, 2012 (10:45 AM)

To: Chairman Josh Green and Vice Chair Clarence Nishihara, and Members of the Senate Committee on Health

Chairman Clayton Hee and Vice Chair Maile Shimabukuro and Members of the Senate Committee on Judiciary and Labor

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.

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

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

THE SENATE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON HEALTH

Sen. Josh Green, Chair
Sen. Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair

Hearing: Monday, February 13, 2012
Time: 1:00 p.m.
Place: Conference Room 229, State Capitol

TESTIMONY OF ILWU LOCAL 142
RE: HB 466, HD 3, RELATING TO WORKERS COMPENSATION

Chairman Green, Chairman Hee, Vice Chair Nishihara, Vice Chair Shimabukuro,
and Members of the Committees:

Thank you for the opportunity to present testimony regarding HB 466, HD3. We enthusiastically support this measure.

This bill amends Section 386-79 HRS to require the mutual selection of examining physicians to conduct independent medical examinations and permanent impairment ratings for injured workers once they have attained medical stability. It also prohibits conducting both an independent medical examination under Section 386-79 HRS and a permanent impairment rating simultaneously without the consent of the injured worker.

HB 466, HD 3 will preserve the integrity of the independent medical examination and permanent impairment rating process. Physicians jointly selected recognize that they are being hired to conduct an independent and objective assessment of medical status or permanent impairment, and that future referrals are dependent on their impartiality, not their ability to please those who retain them. The requirement of mutual selection also serves to offset the enormous economic advantage insurers have in adjudication compared to individual employees, who cannot afford the substantial costs associated with these evaluations and thus literally cannot afford to acquire the medical proof necessary to prove their claims.

In recent years, some insurers have often tried to consolidate independent medical examinations and permanent impairment ratings, though they are designed to serve entirely separate functions, the former to assess medical treatment and progress, the latter

to measure the extent of permanent disability. Combining the two separate functions is inappropriate because often employees have not truly reached maximum medical improvement and deserve further medical care. Physicians also often predict recovery will occur and that there will be no permanent impairment, when they could not possibly know the outcome of future treatment before the treatment has been concluded. In either instance, the right of the injured worker to care or compensation is sacrificed for the expedience of employers and insurers.

On still other occasions, insurers have tried to use a finding that an injured worker has no permanent impairment as a means of subverting the employee's right to vocational rehabilitation, since a finding that an employee has, or may have, a permanent impairment is a necessary condition for receiving vocational rehabilitation under Section 386-25(b) HRS. HB 466, HD 3 would end such abuses, restore neutrality, and promote fairness and objectivity among evaluating physicians.

In past years, certain government employers have argued that this measure will not promote cooperation between the parties and will increase cost. DLIR statistics in the Workers' Compensation Data Book reported that in the three years prior to legislative amendments to Hawaii's workers' compensation law in 1995 averaged \$331 million was paid on benefits annually but in the twelve years from 1996-2008, only \$253 million annually or a savings of \$78 million. However, the amendments made in 1995 primarily concerned reduction in overall medical costs, which are indisputably the largest single cost factor in the system. Those *medical treatment costs* bear no necessary relationship whatsoever to the use of mutually agreed upon *independent medical evaluations*.

In fact, Employers who oppose this bill sometimes wish to use their superior economic resources to tilt the medical evaluation process in their favor. They recognize that if joint selection of examiners becomes the norm of operation, then there will be no economic incentive for evaluators to favor one side or another. However, what these short-sighted Employers fail to recognize is that if true objectivity exists in the evaluation process, both industry and injured workers will benefit. That is, everyone within the system will strive to arrive at authentic determinations of disability. Adversarial posturing will be minimized, and resources can be directed toward either the rehabilitation of honest injuries or restitution of real rather than feigned impairment. This outcome is ultimately cost effective for all parties, and the correct result for our community as a matter of public policy.

An additional constructive feature of HB 466, HD 3 is that it provides an unspecified amount of funding for three full-time equivalent hearing officer positions and two full-time permanent office assistants. This is a direly needed supplement to the Disability Compensation Division's existing staff, who have worked valiantly to maintain the prompt adjudication of claims, but have gradually been overwhelmed because of budgetary cutbacks that have caused delay and resultant unnecessary cost increases.

HB 446, HD 3 thus charts a course away from the narrowed-minded and selfish preoccupations of the past toward a more enlightened and constructive future. This

measure should be enacted effective July 1, 2012, and not July 1, 2030 as is provided for in the existing bill. With this amendment, we wholeheartedly endorse HB 466, HD's passage.

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 6:23 PM
To: HTHTestimony
Cc: mikonczyk@hawaii.rr.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: Yes
Submitted by: David Mikonczyk
Organization: Law Office of David J. Mikonczyk
E-mail: mikonczyk@hawaii.rr.com
Submitted on: 2/10/2012

Comments:

I David J. Mikonczyk am an attorney licensed in Hawaii. I have represented injured worker's compensation persons in the State since 1985. The bill proposed is most appropriate and would actually expedite resolution of claims and most importantly be fair.

As it is now, half of the defense attorneys insurance adjusters are reasonable and usually confer with Claimant's representative to agree on an IME doctor.

However, there are certain insurance carriers who dictate the use of certain doctors. These doctors are highly biased. The major problem is although the statute, H.R.S. 386-79, provides for an examination by a medical examiner of employer's choosing, this has been abused. The exams are never limited to one time and if there are different parts of the body or specialties, sometimes there are several exams. In any event, it means at least one exam a year. However, I've had occasions, where a client in a single year has been subjected to several examinations under said statute. Most egregious however, is the repeated use of this statute H.R.S. 386-79 to perform rating examinations. One should not be fooled by the use of the term independent medical examination in that one can be qualified as an independent medical examiner but he may not really be independent. That is a title that can be obtained but does not really mean anything in truth. The doctors typically selected by certain insurance carriers are highly biased and they are paid exorbitant fees to create biased opinions. Rating impairments, even though not agreed to, nor authorized by in H.R.S. 386-79 are conducted as a matter of course by the Insurer's chosen medical examiner. The HRS 386-79 statute is misused by insurance carriers and some are very blatant about this and misuse it all the time. When a rating exam is requested by a truly neutral Doctor who is respected, the Employer/Insurance Carrier will still deny same alleging a cost factor or they will say, "The Claimant has already had a rating examination and we will not pay for another." (referring to the exam under H.R.S. 386-79) This is very unfortunate because now the injured worker has been rated by a biased medical examiner, and in order to get a fair rating impairment, Claimant must come up with the cost associated with hiring a doctor. This would be conservatively at least \$2,500.00 and could be significantly higher depending on the number of body parts and the complexity of the case. Those involving significant medical records would be substantially more. This is something that an injured worker who receives only two-thirds of his average weekly wage (if TTD benefits haven't been terminated because of the biased report by the insurer's examiner), can not afford to pay for in addition to their own household expenses, mortgage or rent, and supply basic needs for their family. If they've been disabled for several months, some employers will even discontinue prepaid health insurance.

The burdens on an injured worker are considerable. Thus the enactment of a statute whereby the Employer is not deprived of their input in the selection of an examiner, but would allow a Claimant to have some say so as to have a truly neutral doctor be selected is reasonable. There are doctors that are recognized by both the insurance carriers and Claimant's attorneys who provide fair IME exams in addition to impairment ratings. This would facilitate a negotiated settlement and would reduce the caseload at the Department of Labor and expedite the processing of claims. Often times Claimants are forced to fight a battle and struggle with limited means to counter the unfair and biased rating reports performed by the Employer's hired medical expert.

Therefore, it is respectfully requested that the Legislators enact this proposed legislation and the Governor sign same so it can be enacted into law.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

Testimony to Senate Committees on Health and Judiciary and Labor

Monday, February 13, 2012

10:45 a.m.

Capitol Room 229

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

Good morning Chairs Green and Hee, Vice-Chairs Nishihara and Shimabukuro, and members of the Committees:

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.

This bill 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. It would also amend the workers compensation laws of the State of Hawaii to allow the benefits of an injured employee to be suspended for any refusal to submit to an examination not just unreasonable refusals.

BIA-Hawaii is strongly opposed to H.B. 466, HD3.

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.

Both changes to the system may be at the expense of finding the best available care for injured claimants in a timely manner. Simply finding qualified physicians to conduct these reviews is time consuming and results in delays due to a shortage of such professionals. Pushing the selection of IME physician on to the DLIR will create more delays if claimants choose to gamble that they will receive a more favorable review by the government-appointed physician. A similar dynamic was created by the review of motor vehicle insurance PIP denials in the 1990's when a similar program for motor vehicle insurance independent medical record reviews resulted in years long delays in processing reviews of denials.

Senators Green, M.D. and Hee, Chairs
Committees on Health and Judiciary and Labor
February 13, 2012
H.B. 466, HD3
BIA-Hawaii Testimony

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.

BIA-Hawaii is **strongly opposed** to H.B. 466 HD3 and respectfully requests that it be held.

Thank you for the opportunity to share our views with you.

Presentation to the Committees On Health & Judiciary and Labor
Monday, February 13, 2012, at 10:45 a.m.
Testimony on Bill HB 466, HD3

In Opposition

TO: The Honorable Josh Green & Clayton Hee, Chairs
The Honorable Clarence K. Nishihara & Maile S.L. Shimabukuro, Vice
Chairs
Members of the Committees

My name is Gary Y. Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 466, HD3. 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.

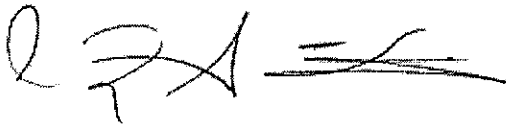
Most businesses realize that their employees are the key to their success, therefore, to attract and retain quality staff, employers needs to treat employees in a fair and respectful manner. It is just good business practices for an employer to maintain a good working relationship with its staff. This 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.

Because there are so few IME physicians, mandating the exam within 30 days 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.

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.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a horizontal line drawn through the bottom of the signature.

Gary Y. Fujitani
Executive Director

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2012 6:59 PM
To: HTHTestimony
Cc: s.matsumoto@shs-hi.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Shinichi Matsumoto
Organization: Independent Living of Hawaii, Inc.
E-mail: s.matsumoto@shs-hi.com
Submitted on: 2/11/2012

Comments:

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.

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2012 7:04 PM
To: HTHTestimony
Cc: bigwavetomatoes@gmail.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Jeanne Vana
Organization: North Shore Farms, LLC
E-mail: bigwavetomatoes@gmail.com
Submitted on: 2/11/2012

Comments:

FRANCIS G. BREWER, D.C.

CHIROPRACTOR

1150 South King Street, Suite 604
Honolulu, Hawaii 96814

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

February 10, 2012

TESTIMONY ON House Bill No. 466, H.D. 3 (Written Testimony Only) Relating to Workers' Compensation Law

Hearing before the Senate Committees on Health, and on Judiciary and Labor
February 13, 2012 @ 10:45 a.m.
Room 229

Chair Green, Vice Chair Nishihara, Chair Hee, Vice Chair Shimabukuro
and Members of the Committees:

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 apologize that I am not able to testify in person as I was prescheduled to be on a neighbor island.

I oppose HB 466, HD 3.

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 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.

To assume that most IME physicians are somehow biased is without merit. This label could easily be given to many treating physicians, attorneys and even patients who hold a financial interest, which often seems to outweigh

Testimony of Francis G. Brewer, D.C.

Re: House Bill No. 466, H.D. 3

Hearing on Feb. 13, 2012, 10:45 am

before the Committees on Health, and on Judiciary & Labor

patient care. Over-utilization by certain physicians and stalling the process of returning injured workers back to work and becoming self-reliant, significantly increases their revenue stream, and ultimately this has ill effects for the outcome of the injured worker. Hiding behind the veil of zealous advocacy is not the same as being a zealous advocate.

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 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, adding to the delay in benefits

Testimony of Francis G. Brewer, D.C.

Re: House Bill No. 466, H.D. 3

Hearing on Feb. 13, 2012, 10:45 am

before the Committees on Health, and on Judiciary & Labor

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.

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, again, ***disenfranchising and limiting the rights of the injured worker***, and undoubtedly contributing to increased costs, litigation and delaying access to care for the injured workers of Hawaii. This also 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.

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 potentially delaying the injured worker's access to benefits under the Workers' Compensation system.

Only Allowing one IME

Often, complex cases need to be addressed by multiple physicians, sometimes in the same specialty. For example, a general orthopedist may evaluate a highly complex spine injury. Further evaluation by another physician specializing in complex spinal injuries may then be needed to re-evaluate the spinal injury since it is beyond a comfortable knowledge base of the first physician. These types of cases are in fact quite common and

Testimony of Francis G. Brewer, D.C.
Re: House Bill No. 466, H.D. 3
Hearing on Feb. 13, 2012, 10:45 am
before the Committees on Health, and on Judiciary & Labor

limiting the employer to one evaluation may prove harmful to the injured worker and ultimately this will result in higher costs.

In many cases there are multiple injuries to different body systems, which require multiple evaluations to properly evaluate all areas of the body. This benefits the injured worker immensely as the knowledge base of the multiple providers can then be pooled to effectively consider ALL of the injuries to the injured worker.

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 only 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. These situations reflect the seedy underbelly of the workers' compensation system where over utilization and abuse of services go unchecked and unregulated, contributing 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.

Prohibition on Combining IME with Permanent Impairment Rating

It is not clear why the bill prohibits combining an IME with a permanent impairment rating, since the same complete medical evaluation required for an IME is also required for a permanent impairment rating. A permanent impairment rating cannot be done without the exam.

Furthermore a Permanent Impairment Evaluation more often than not involves concepts beyond that of just the "pure injury." Issues such as apportionment, pre-existing impairment and conditions and causation are issues that more often than not need to be considered when performing a PPD rating and this can not be done if a full complete

Testimony of Francis G. Brewer, D.C.
Re: House Bill No. 466, H.D. 3
Hearing on Feb. 13, 2012, 10:45 am
before the Committees on Health, and on Judiciary & Labor

examination with review of all medical records is not reviewed in context of the injury.

Requiring that these functions be performed in two separate examinations only increases the time and cost spent on the evaluation process, and inconveniences the injured worker.

30-Day Limit for Performance of Exam

Finally, this bill also requires that a physician selected by the parties or the Director examine the injured employee within 30 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 or that there will be a qualified physician able to examine the patient within the set time frame, again adding to costs and probable delays in an injured workers access to benefits.

Thank you for the opportunity to testify.

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2012 11:04 PM
To: HTHTestimony
Cc: Cindy@cindyogata.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Cindy Ogata
Organization: Therapeutic Touch of Health, LLC
E-mail: Cindy@cindyogata.com
Submitted on: 2/11/2012

Comments:

Testimony to the Senate
Committee on Health and Committee on Judiciary and Labor
February 13, 2012 (10:45 a.m.)
HB 466, HD 3
Relating to Workers' Compensation

Dear Chair Green, Vice Chair Nishihira, Chair Hee, Vice Chair Shimabukuro, and members of the committees:

My name is Melissa L. Z. Lolotai, Esq., and I am a licensed attorney in the state of Hawaii. I practice workers' compensation insurance defense, representing employers and insurance carriers.

I am writing in opposition to HB 466, HD3, which proposes to amend the current HRS §386-79, Medical examination by employer's physician. Passage of this bill will result in the following:

1. **Delay in medical treatment of the injured worker:** As drafted, HB 466, HD3, requires "mutual agreement of the parties" in selection of an independent medical examination ("IME"). Requiring "mutual agreement" will inevitably slow the process of obtaining an independent medical evaluation and increase the costs to both the injured worker and the employer. By practice under the current statutes, mutual agreement is encouraged for permanent impairment ratings. It has been our experience with securing permanent impairment ratings that the process in selecting a mutually agreed-upon physician takes much longer than the present process for obtaining an independent medical evaluation. In HB 466, HD3, while there are time limits for securing an independent medical evaluation once agreement is reached, there is no time limit to negotiate an agreed-upon physician. As such, negotiation could go on indefinitely, and there will be no expediting of the IME process under HB 466, HD3.
2. **Unnecessary strain on the Department of Labor:** HB 466, HD3, provides that the Director of the Department of Labor shall keep and maintain a list of qualified physicians and their respective qualifications. Furthermore, HB 466, HD3 requires that upon receipt of a request that the IME physician be appointed by the Director, the Director then has only seven calendar days to appoint a physician willing to undertake the examination. The Department of Labor is already overwhelmed due to staff shortages while the volume of workers' compensation claims filed has not changed. Presently, hearings are often scheduled more than 60 days after the date of the notice of hearing. With the additional requirements of HB 466, HD3, it is easily foreseeable that the present delays with the Department of Labor will be lengthened and the workers' compensation process will be further delayed. Forcing such further delay is unnecessary and to the detriment of all parties.

3. **Decrease in quality of medical examination and opinions:** Quality physicians and other medical professionals are in high demand, as is to be expected. As such, many specialists and qualified examiners will be unable and unwilling to meet the requirement that examination take place within thirty calendar days. Most of the physicians willing to conduct IMEs are currently scheduling appointments at least 30 days out, as their schedules are not able to accommodate a sooner date. As a result, under the requirements of HB 466, HD3, the injured worker risks not being able to receive quality and specialized review of their medical care as these physicians will most likely not be able to meet the 30 day requirement.

Similarly, the requirement that an injured worker residing out of state obtain an independent medical examination with a physician who has resided in that state for a period of five consecutive years does not seem to provide benefit to any party involved. The practice of medicine is not confined to a geographic territory, and there is no correlation between the skill and expertise of a practitioner and the location in which he or she resides. Such a requirement eliminates well-qualified practitioners from being able to evaluate an injured worker.

4. **Eliminates the ability to reign in and check on inappropriate treatment of an injured worker:** HB 466, HD3 provides that an attending physician shall unilaterally determine when an injured worker has attained medical stability. Only after an attending physician has deemed that an injured worker has attained medical stability will a permanent impairment rating examination be performed. Unfortunately, it is quite common where an attending physician will not acknowledge that an injured worker has attained medical stability, despite the absence of objective medical evidence and the opinions of independent evaluating physicians. Questions arise whether this reluctance to so certify medical stability is directly related to a concern that doing so would, in fact, cut off that source of revenue. Such an approach is unfair and inappropriate to the injured worker, as it prevents him or her from being able to return to a productive life that includes work. Such abuse of power needs to be checked. HB 466, HD3 essentially eliminates a check on such abuse.
5. **Require medical professionals to provide opinion on subject matter in which they are not qualified to render an opinion:** HB 466, HD3 provides that no more than one independent medical examination and one permanent impairment rating examination be ordered per case. In some cases, an injured worker may have an orthopedic injury as well as a psychological injury. Under this provision, for example, an orthopedic surgeon would have to render an opinion about a psychological injury, or a psychologist may be asked to render an opinion as to the orthopedic injury. Such a situation is absurd and laughable, but is also realistic under HB 466, HD3.
6. **Unnecessarily increase burden to the injured worker as well as the employer:** Under HB 466, HD3, an independent medical examination and a permanent impairment rating examination may not be combined in one examination. This

means that an injured worker must attend two separate examinations. Most physicians have offices located in Honolulu, and as such this will require injured workers who do not live in Honolulu to travel more than is necessary.

Likewise, this requirement will unnecessarily delay the workers' compensation process. If an injured worker is found to be medically stable at an independent medical evaluation and a rating is not permitted at that time, then he or she must wait until the practitioner's next available date to return to be rated. Such requirement is inefficient and impractical.

Furthermore, requiring a medical expert to schedule separate examinations will place a further strain on their already-strained schedules. As discussed above, many qualified medical practitioners will be unable and unwilling to accommodate such demands. The result would be that fewer quality practitioners will be willing to perform independent medical examinations and permanent impairment ratings.

It appears that the intent of HB 466, HD3 is to expedite the process of obtaining an IME. The reality is, however, that HB 466, HD3 will actually hinder and delay not only the process of obtaining an IME, but the entire workers' compensation process. HB 466, HD3 will drive up costs of litigation for all parties involved, and will prevent the injured worker from obtaining the benefits to which he or she is entitled under HRS Chapter 386.

Thank you for this opportunity to testify in opposition to HB 466, HD3.

Melissa L.Z. Lolotai, Esq.
Attorney
Gallagher Kane Amai

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM
GARY M. SLOVIN
MIHOKO E. ITO
CHRISTINE OGAWA KARAMATSU
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INTERNET:
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meito@goodsill.com
ckaramatsu@goodsill.com
ahoriuchi@goodsill.com

TO: Senator Josh Green
Chair, Committee on Health
Senator Clayton Hee
Chair, Committee on Judiciary and Labor
Via Email: HTHtestimony@capitol.hawaii.gov

FROM: Gary M. Slovin

DATE: February 12, 2012

RE: **H.B. 466, HD3 – Relating to Workers' Compensation**
Hearing Date: Monday, February 13, 2012 at 10:45 a.m.
Conference Room 229

Attached is testimony from our client, the American Insurance Association, regarding H.B. 466, HD3.

Thank you

Attachment.

Testimony of
American Insurance Association
1015 K Street, Suite 200
Sacramento, California 95814 - 3803

TO: Senator Josh Green
Chair, Committee on Health
Senator Clayton Hee
Chair, Committee on Judiciary and Labor
Via Email: HTHtestimony@capitol.hawaii.gov

DATE: February 12, 2012

RE: H.B. 466, HD3 – Relating to Workers’ Compensation
Hearing Date: Monday, February 13, 2012 at 10:45 a.m.
Conference Room 229

The American Insurance Association (AIA) respectfully opposes H.B. 466, HD3, Relating to Workers’ Compensation.

AIA is the leading property-casualty insurance trade organization, representing approximately 300 insurers that write more than \$100 billion in premiums each year. AIA member companies offer all types of property-casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

H.B. 466, HD3 requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the Director of Labor and Industrial Relations.

AIA opposes H.B. 466, HD3. AIA believes that the current system regarding independent medical examinations is well-established, and we believe that it is working. AIA is also concerned that requiring the selection of an IME physician by mutual agreement may delay the delivery of medical treatment in certain cases, and may also increase costs. AIA opposes H.B. 466, HD3, and respectfully requests that it be held.

Thank you very much for the opportunity to submit testimony on this measure.

Steven Suchil
Assistant Vice President/Counsel
State Affairs
Western Region

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 12, 2012 12:29 PM
To: HTHTestimony
Cc: bolger55@gmail.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: Yes
Submitted by: Manu Mook
Organization: Hawai'i Injured Workers Assn.
E-mail: bolger55@gmail.com
Submitted on: 2/12/2012

Comments:

Aloha: I am an injured worker & past President of the Hawai'i Injured Workers. I support the mutually agreed IME's because when I was going through my workers' compensation case, getting the evaluations, opinions & recommendations of mutually agreed IME doctors helped me get the appropriate & needed medical care I needed. This then helped me get medically rehabilitated & back to being a productive worker in Hawai'i's workforce. I have heard many horror stories of other injured workers having bad iME's which caused them not to get the medical treatment & rehabilitation they needed. Instead, their cases dragged out with unnecessary litigation. Mutually agreed IME's help not hurt & I urge you to pass this bill. mahalo

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 09, 2012 11:03 AM
To: HTHTestimony
Cc: toni@a3h.org
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Antoinette M Davis
Organization: Individual
E-mail: toni@a3h.org
Submitted on: 2/9/2012

Comments:

The law currently has a balance and accountability. The employee selects their personal MD; the employer selects IME. The law is working in the large majority of cases perfectly. These IME's are already designated & qualified by the state. It's not as if they are pulled out of the employer's back pocket.

Added regulatory involvement will bring: delays in payment, additional costs to the state, insurance companies & employer and potentially invite abuse from the employees.

With the present economic condition still fragile anything which increases the cost to Hawaii's small business operators should be stopped in its tracks. According to Worker's Comp insurance companies this WILL result with increased premiums even with the changes made with HD3. It's more work = more money. This system is not broke and has no need to be "fixed".

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 09, 2012 7:42 PM
To: HTHTestimony
Cc: tlccostas@msn.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Terry l Costa
Organization: Individual
E-mail: tlccostas@msn.com
Submitted on: 2/9/2012

Comments:

As an injured worker currently on workers compensation i support HB466 H3. After attending a Independent Medical Evaluation (IME) scheduled by the Insurance Carrier that i discovered False information submitted by the IME Doctor and the Department of Labor and Industrial Relations Disability Compensation Division (DCD)has refused to address this issue at numerous hearings. The IME doctors can provide false information and are not liable for any penalties. My case file at DCD contains documented evidence that False Statement made by an IME Doctor resulting in the termination of Temporary Total Disability benefits (TTD)and Treatment. DCD refused to address my complaint. I filed a complaint with DCD and my case was remanded by the Labor Appeals Board to address my Fraud Complaint concerning my IME and DCD refused to hear the issue on 12-01-11. Therefore for a fair IME i support this bill. It is clearly documented according to my work comp case that DCD won't do anything concerning False Statements made by Insurance Carriers IME Doctors even when ordered by the Labor Appeals Board (LAB). Because DCD has jurisdiction concerning workers compensation cases i beleive that even if this bill passes we will still have problems concerning IME's. LAB Ordered DCD to address my complaint concerning my IME and DCD refused to hear it. By passing this bill the Insurance Carriers can no longer send you to Doctors that have been working for Insurtance Carriers for decades. Sports Medicine Hawaii has doctors that only do IME's for Insurance Carriers. When i did mine 3 other people were waiting for there IME.The Committee needs to consider a bill that penalizes IME doctors for knowingly submit false information to deny benefits. No matter what law this committee hears concerning workers compensation, DCD does not enforce any of the fines and penalties that legislation passes. This bill would provide some fairness to the work comp system that clearly needs some kind of fairness. Thank You for allowing my testimony in support of HB466, H3.

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 09, 2012 7:42 PM
To: HTHTestimony
Cc: tlccostas@msn.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Terry l Costa
Organization: Individual
E-mail: tlccostas@msn.com
Submitted on: 2/9/2012

Comments:

As an injured worker currently on workers compensation i support HB466 H3. After attending a Independent Medical Evaluation (IME) scheduled by the Insurance Carrier that i discovered False information submitted by the IME Doctor and the Department of Labor and Industrial Relations Disability Compensation Division (DCD)has refused to address this issue at numerous hearings. The IME doctors can provide false information and are not liable for any penalties. My case file at DCD contains documented evidence that False Statement made by an IME Doctor resulting in the termination of Temporary Total Disability benefits (TTD)and Treatment. DCD refused to address my complaint. I filed a complaint with DCD and my case was remanded by the Labor Appeals Board to address my Fraud Complaint concerning my IME and DCD refused to hear the issue on 12-01-11. Therefore for a fair IME i support this bill. It is clearly documented according to my work comp case that DCD won't do anytrhing concerning False Statements made by Insurance Carriers IME Doctors even when ordered by the Labor Appeals Board (LAB). Because DCD has jurisdiction concerning workers compensation cases i beleive that even if this bill passes we will still have problems concerning IME's. LAB Ordered DCD to address my complaint concerning my IME and DCD refused to hear it. By passing this bill the Insurance Carriers can no longer send you to Doctors that have been working for Insurtance Carriers for decades. Sports Medicine Hawaii has doctors that only do IME's for Insurance Carriers. When i did mine 3 other people were waiting for there IME.The Committee needs to consider a bill that penalizes IME doctors for knowingly submit false information to deny benefits. No matter what law this committee hears concerning workers compensation, DCD does not enforce any of the fines and penalties that legislation passes. This bill would provide some fairness to the work comp system that clearly needs some kind of fairness. Thank You for allowing my testimony in support of HB466, H3.

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 09, 2012 7:43 PM
To: HTHTestimony
Cc: tlccostas@msn.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Terry l Costa
Organization: Individual
E-mail: tlccostas@msn.com
Submitted on: 2/9/2012

Comments:

As an injured worker currently on workers compensation i support HB466 H3. After attending a Independent Medical Evaluation (IME) scheduled by the Insurance Carrier that i discovered False information submitted by the IME Doctor and the Department of Labor and Industrial Relations Disability Compensation Division (DCD)has refused to address this issue at numerous hearings. The IME doctors can provide false information and are not liable for any penalties. My case file at DCD contains documented evidence that False Statement made by an IME Doctor resulting in the termination of Temporary Total Disability benefits (TTD)and Treatment. DCD refused to address my complaint. I filed a complaint with DCD and my case was remanded by the Labor Appeals Board to address my Fraud Complaint concerning my IME and DCD refused to hear the issue on 12-01-11. Therefore for a fair IME i support this bill. It is clearly documented according to my work comp case that DCD won't do anytrhing concerning False Statements made by Insurance Carriers IME Doctors even when ordered by the Labor Appeals Board (LAB). Because DCD has jurisdiction concerning workers compensation cases i beleive that even if this bill passes we will still have problems concerning IME's. LAB Ordered DCD to address my complaint concerning my IME and DCD refused to hear it. By passing this bill the Insurance Carriers can no longer send you to Doctors that have been working for Insurtance Carriers for decades. Sports Medicine Hawaii has doctors that only do IME's for Insurance Carriers. When i did mine 3 other people were waiting for there IME.The Committee needs to consider a bill that penalizes IME doctors for knowingly submit false information to deny benefits. No matter what law this committee hears concerning workers compensation, DCD does not enforce any of the fines and penalties that legislation passes. This bill would provide some fairness to the work comp system that clearly needs some kind of fairness. Thank You for allowing my testimony in support of HB466, H3.

Testimony before the Senate

Committee on Health and Committee on Judiciary and Labor

February 13, 2012 (10:45 a.m.)

HB 466, HD3

Relating to Workers' Compensation

By Christopher R. Brigham M.D.

Chair Green, Vice Chair Nishihara, Chair Hee, Vice Chair Shimabukuro and members of the committees:

My name is Christopher R. Brigham, M.D. and I am speaking in opposition to HB 466, HD3, which amends Section 386-79, Medical Examination by Employer's Physician. I would like to share a perspective of a physician who for nearly three decades has devoted his professional efforts to improving our ability to fairly define the impact of an injury and provide guidance facilitates returned function. I have served as a consultant to many entities, including the United States Department of Labor and the United Nations, published over 200 articles on impairment and disability assessment, and most recently served as the Senior Contributing Editor, AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition. Although I reside in Hawaii, my involvement in performing independent medical evaluations (IMEs) is very minimal, approximately one a month – this is not the focus of work.

Although superficially HB 466, HD3 may appear appealing to some, closer scrutiny will revealed that the bill is ill-conceived and self-serving to certain stakeholders, including treating physicians who provide treatment that is not consistent with practice guidelines and current medical standards. It addresses perceived problems that do not exist (such as the myth that IMEs are biased and not fact based). It will result in decreased ability to assure proper care and decision making, and result in unnecessary costs for the State Of Hawaii. My comments will focus on specific fallacies reflected in this bill and I will provide you with facts to support these opinions.

It is my observation, and that of many others, that some physicians tragically are using injured workers as pawns for their financial gain – this is inexcusable, and could well be, or should be, the subject of investigative reporting – it would be insightful, however a great embarrassment to our State. The problems with care include inappropriate diagnosis, faulty assessments of the cause of conditions,

needless disabling, and bad treatment, including office dispensing of opiates (narcotics) and other addictive medications. Increased use of opiates has contributed to the overall increases in rates of overdose death and nonmedical use. The majority of the opiates are prescribed by a small number of physicians. One study in California that revealed that 3% of physicians accounted for 62% of the opiates prescribed; it is probable that we would have similar findings here. The proliferation of high-volume prescribers can have a large impact on state use of opiates and overdose death rates.

My organization has been involved in the review of independent medical and impairment evaluations throughout the United States. Based on several years of experiences and the review of several thousands of evaluations nationally, it is concluded that the evaluations in Hawaii are consistently of higher quality than in other jurisdiction. The knowledge and skills required to perform independent medical evaluations are not taught in medical school. In Hawaii a relatively small percentage of the physicians have focused on developing a strong skill set in performing these assessments. This requires complexity significantly greater than occurs with traditional medical treatment. Most of the physicians performing IMEs in Hawaii are members of the Academy of Independent Medical Examiners of Hawaii, are Certified Independent Medical Examiners, and perform evaluations consistent with standards published in the *Guides Newsletter*, a publication of the American Medical Association. My observation is that credible, well-qualified treating physicians welcome the involvement of skilled independent medical examiners.

Most IMEs are at the referral of defense, since typically plaintiff counsel seek opinions of treating physicians who they have ongoing relationships with. My experience is that with the reports that I have reviewed are they are fair, and the same report would be issued whether requested by defense or plaintiff. As discussed, there are a small number of treating physicians who appear to cause the greatest problems in the workers' compensation system. In reviewing these cases, the diagnoses are often multiple and questionable; whereas with more skilled treating physicians the diagnoses are supportable. The same occurs for the assessment of whether a problem is work-related or not and for treatment; i.e. controversy occurs more often with these questionable physicians. It is these questionable physicians who are threatened by the IME process.

I would like to review with you some of the concerns that I have with the Bill. First, it is unlikely that the injured employee would agree to being seen by an independent medical examiner, e.g. having mutual agreement by the injured employee and employer is unlikely. Unfortunately most injured workers are not able to discern when care is wrong, and therefore maintain allegiance with their treating physicians, particularly when these physicians have their patients become addicted to their practice patterns and the narcotics prescribed.

HB 466, HD3 also appears to presume that agreed medical examinations (AMEs) are of higher quality and more beneficial; this is not the case. In California there is a process of having Agreed Medical Examiners (AME) and this has led to further litigation and poor quality reports. We have reviewed several thousands of California AME reports and found that 88% of these reports had significant erroneous impairment ratings, compared to 10% or less being erroneous in Hawaii. Why the difference? With an AME process there tends to be more involvement of physicians lacking the necessary skill set and those physicians most qualified may choose not to participate in a system where there are unreasonable time frames and reimbursement schedules. With great certainty passage of HB 466, HD3 will result in poor quality assessments and therefore foster litigation.

It is irrational to separate the independent medical evaluation and a permanent impairment rating and to limit to one IME per case. In performing an IME, and impairment rating may be one of the issues that must be addressed. In performing impairment rating, the physician needs to also assess clinical issues, causation, and maximum medical improvement. During the lifecycle of a claim there maybe needs for different IMEs to deal with different questions and issues. Some injuries also require involvement of different types of specialties, thus a single IME would not be useful. It is also irrational to require a physician to be licensed for five years in Hawaii prior to performing IMEs; how long a physician has been licensed in a specific jurisdiction is not reflective of how skilled that physician is. The knowledge and skills to perform IMEs can be assessed by specialty certification examinations and monitoring the performance of the evaluators; HB 466, HD3 does not address this.

It will be challenging for the State to have an effective process to assign and coordinate designated evaluations. There are several factors that are considered in selecting an appropriate physician to perform an evaluation; this is not merely on the basis of their specialty, rather on skills to address specific issues, such as causation and impairment assessment. At a time of tight budgets, it is absurd to implement a change that will increase costs and complexity, and responding to problems that do not exist. If there was a desire for improvement in workers' compensation in the State of Hawaii, I would suggest that we follow examples of what has worked well in other jurisdictions, implementing evidence-based practice guidelines and taking steps to reduce litigation.

For these reasons, I strongly oppose HB 466 and respectfully request the committee holds this measure. It is unneeded, bad legislation. Its passage would adversely impact injured employees and the State of Hawaii.

February 8, 2012

Dear Sirs and Madams,

I am writing on behalf of all the workers, lawyers and physicians that have struggled for so many years fighting a broken system. This bill in front of us gives the workers of Hawaii a voice in their care and a medical representative that is for the patient and not for the insurance company.

I am a native Hawaiian physician and have been practicing medicine on behalf of Hawaii's workers for some time. I pride myself as a doctor taking care of underrepresented groups such as native Hawaiians and Hawaii's labor force. After the hundreds of independent non randomized physician medical exams by the insurance companies it is apparent that a bias against the worker is apparent. I have seen patients coming to my clinic in wheelchair and legs wasting away from crippling pain with an independent report from a biased medical examiner saying that my patient needs no medicine, no injections and just needs to live with the pain. With exams such as these in one quick act they steal the dignity and integrity our workers of Hawaii deserve. When a patient comes to our office crying saying only, "Doctor, I'm not faking it I promise" it is enough to ask yourself how we got into this kind of system in the first place.

So please, in the face of fairness to our most underrepresented people and workers, please pass this bill.

Rudolph Puana, MD

rbpuana@yahoo.com

COMMITTEE ON HEALTH
Senator Josh Green – Chair
Senator Clarence K. Nishihara – Vice Chair

COMMITTEE ON JUDICIARY & LABOR
Senator – Clayton Hee – Chair
Senator Maile S.L. Shimabukuro – Vice Chair

TESTIMONY IN SUPPORT OF HB 466

My name is Debra Kawamoto and I am submitting my testimony once again in **SUPPORT of HB 466**. I was once a former injured worker, a vocational technician that worked directly with injured workers and Vocational Rehabilitation Specialists at Vocational Management Consultants and the former Secretary for HIWA (Hawaii Injured Workers Association). Due to my above mentioned experiences, I know first hand what it is like to have to deal with the various frustrations, delays and the process of our current worker's compensation system to include having to deal with the IME selection process and system.

Personally, in my case, I waited 4 months for an IME report to be completed, waited 6 months for my case to be brought to a hearing, to determine if it was valid & compensable and **went almost a year in a half with no wages received**. However, as bad as it was, physically and financially, a part of me knows and feels lucky, because there are so many other injured workers in Hawaii who are currently going through or have gone through much worse than I did. I know the current worker's compensation system cannot be changed overnight. However, changes can and must be made to help improve it and make it work better and more efficiently for all those involved.

I believe HB 466 is a step forward in the right direction. To have a truly mutually agreed upon IME would be fair for both sides (the injured worker & employer) and would therefore, be a win-win for all parties involved. The passing of this bill would eliminate a lot of wasted time, energy and money, which no side can afford. It would be a huge step in getting the injured worker healed faster by allowing them to receive the proper and timely treatment & care they need, getting them returned to the workforce sooner and therefore, reducing the rising cost of work comp and also keeping them from depending upon welfare and unemployment.

Thank you for your time and consideration in reading the various testimonies provided in support of this bill by the various injured workers and VR counselors, defense attorneys, doctors and other professionals who deal directly with injured workers on a daily basis. I ask for your support to pass HB466 not for myself, but more importantly for the benefit of those injured constituents in your districts, that are currently in need of your help to improve the workers compensation system and IME selection process.

Thank you.

Debra Kawamoto

February 8, 2012

Dear Sirs and Madams,

I am writing on behalf of all the workers, lawyers and physicians that have struggled for so many years fighting a horrible workers compensation system. This bill in front of you gives the workers of Hawaii a voice in their care and a medical representative that is for the patient and not for the insurance company.

I am one of the few physicians who will even care for those workers who are hurt on the job, and the *most frustrating part* I encounter is reviewing results of an IME (independent medical exam). I have never in all my years of practice seen one IME that is truly fair and unbiased. What kind of corrupt system allows the insurance company to hire and pay the physician performing the 'IME', essentially paying off someone to give the insurance company the answer that *they* want to hear? Then once it has been completed all other viable treatment options are declined due to the report of the IME doctor.

I have seen patients coming to my clinic in wheelchair and wasting away from crippling pain with an independent report from a biased medical examiner saying that my patient needs no medicine, no procedures and just needs to live with the pain. With exams such as these in one quick act they steal the dignity and integrity our workers of Hawaii deserve.

So please, in the face of fairness to our most underrepresented people and workers, please pass this bill.

Lynn Puana, MD

Lpuana@alohapain.com

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 7:00 AM
To: HTHTestimony
Cc: sunlightonwater@gmail.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: M Yee
Organization:
E-mail: sunlightonwater@gmail.com
Submitted on: 2/10/2012

Comments:

February 10, 2012

Senator Josh Green MD,
Chair, Committee on Health
Senator Clarence K. Nishihara
Vice Chair, Committee on Health

Senator Clayton Hee
Chair, Committee on Judiciary and Labor
Senator Maile S.L. Shimabukuro
Vice Chair, Committee on Judiciary and Labor

RE: Testimony in Opposition to HB466 HD3, Relating to Workers'
Compensation
Hearing, 10:45 AM, 2/13/12, Rm. 229

FROM: James A. Pleiss, DC
2045 Main St., Wailuku, HI 96793
808-244-0312

Dear Senators:

Although I support the intension of HB466 HD3, it 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 group such as a chiropractor.

HRS Chapter 386-1 Definitions, Hawai'i Workers' Compensation Law contains the following language defining the various healthcare providers who are allowed to be attending physicians in workers' compensation:

"Health care provider" means a person qualified by the director to render health care and service and who has a license for the practice of:

- (1) Medicine or osteopathy under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- (4) Naturopathic medicine under chapter 455;
- (5) Optometry under chapter 459;
- (6) Podiatry under chapter 463E; and
- (7) Psychology under chapter 465."

Testimony in opposition to HB466 HD3
James A. Pleiss, DC

The IME provider should be of the same **profession** as the attending physician. In fairness to the injured workers, and to provide a more objective examination with less bias, the language on page 3, lines 6-9 should be changed to allow every provider group to perform IME examinations. This will result in examinations that are “apples to apples” when it comes to judging the treatment provided by like providers.

Please consider this amendment to HB466 HD3.

Thank you for the opportunity to testify in opposition to HB466 HD3.

Sincerely,

James A. Pleiss, DC

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 8:02 AM
To: HTHTestimony
Cc: moore4640@hawaiiantel.net
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: Yes
Submitted by: Karen Moore
Organization: Individual
E-mail: moore4640@hawaiiantel.net
Submitted on: 2/10/2012

Comments:
Aloha: I support the passage of HB 466, HD 3

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 8:03 AM
To: HTHTestimony
Cc: moore4640@hawaiiantel.net
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: Yes
Submitted by: Karen Moore
Organization: Individual
E-mail: moore4640@hawaiiantel.net
Submitted on: 2/10/2012

Comments:
Aloha: I support the passage of HB 466, HD 3

To: The Honorable Josh Green, Chair of the Senate Health Committee
The Honorable Clayton Hee, Chair of the Senate Judiciary and Labor Committee
And Members of both Committees

Date: Monday, February 13, 2012

Time: 10:45 am

Place: Conference Room 229, State Capitol

From: Derrick Ishihara

RE: H.B. 466, HD 3 Workers Compensation; Medical Evaluations

Position: Strong Support

Dear Senators Green and Hee, and Committee Members,

I have been a practicing physical therapist in Honolulu for the past 30 years and have treated hundreds of patients who have sustained injuries while at work. For the most part, injuries are treated and the worker goes back to work without incident.

In the more serious injury cases, Independent Medical Evaluations (IMEs) can be ordered by the insurer. I fully support the insurer's right to have these cases reviewed. IMEs are not a problem, in fact at times may be helpful to catch something the treating physician may have overlooked.

The problem arises when an insurer uses the IME as a cost saving tool rather than a tool to ensure appropriate care is being given to the injured worker. More care is not necessarily better care, but in too many cases care is being cut off inappropriately based on the recommendations of unscrupulous IME physicians. These physicians have become well known within the community of health care providers that accept Workers Comp cases. The names may change, but the practice has continued for at least the 30 years I have been in practice. After a few years the unscrupulous physician may be exposed as an "Insurance Doctor", but as the law now exists there is little an injured worker can do but submit to a questionable examination.

Passage of HB 466, HD 3 would not prevent an insurer from ordering an IME when appropriate. It would just give an injured worker a chance at a fair IME by an unbiased physician.

Passage of HB 466, HD 3 would lessen the inherent distrust in the system if the injured worker has a say in selecting the IME physician. Angry, suspicious, distrusting patients are much harder to treat.

Passage of HB 466, HD 3 would reduce the workload of an overburdened and understaffed DCD and LAB due to reduced discord in the system when appropriate care is the focus of IMEs.

Thank you for the opportunity to testify,

Derrick Ishihara, PT

1314 S. King St. #1451

Honolulu, HI 96814

593-2610

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 11:32 AM
To: HTHTestimony
Cc: tinas@ufoparasail.net
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

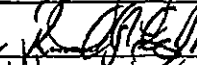
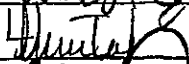

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Tina Skjerseth
Organization: Individual
E-mail: tinas@ufoparasail.net
Submitted on: 2/10/2012

Comments:

PETITION

I am an injured worker. Please support HB 466 HD3, an Independent Medical Evaluation is fair to both parties, the injured and the insurance company.

<u>NAME (print & sign)</u>	<u>CONTACT #</u>	<u>DATE</u>
FREDRICK WARD Fredrick Ward	808-7221771	2/8/12
RONALD P. LEE JR. 	308-7702	2/10/12
Loralia Muntal 	989-0115	2/10/12
CHANKI K. DESILVA  Chanki K. Desilva	259-0341	FEB. 10, 2012

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 1:26 PM
To: HTHTestimony
Cc: markhubbard@hawaiiantel.net
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mark Hubbard
Organization: Individual
E-mail: markhubbard@hawaiiantel.net
Submitted on: 2/10/2012

Comments:

Two thoughts come to mind here - if it is not broken, don't fix it, and that the DLIR should not get into the business of selecting physicians. Please oppose this bill. Thank you.

February 10, 2012
The Senate
The Twenty-Sixth legislature
Regular Session of 2012

Committee on Health
Senator Josh Green M. D. Chair
Senator Clarence K Nishihara, Vice Chair

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile Shimabukuro Vice Chair

HB 466 HD3
Relating to Workers Compensation

Testimony in support of HB 466

My name is Liane Murai and I am an injured worker currently going through the workers compensation process. In addition, I have been interning and recently began employment with Vocational Management Consultants, INC. working with others like me who are going through this process. I support HB 466 as the bill supports mutually agreed upon Independent Medical Evaluations. Being that I am and have been working directly with the injured workers that this bill affects, I have become familiar with the all too common plight of my clients subjected to multiple IMEs by employer-selected doctors. Many of the employer-selected physicians are selected by the employer because their findings on the status of the worker's injuries are in favor of the employer. After these IMEs, many employees are forced to return to work still injured, only to exacerbate their condition and cause further injury.

Many times this leads to secondary injuries that could have been avoided, trauma, and higher medical expenses in the long run. Passing this bill will help the workers compensation system to facilitate recovery and proper treatment from the onset of the injury along with decreasing costs, secondary injuries, and debilitating trauma. I urge House Members to take these important measures into consideration and pass this bill. Thank you all for your time and consideration.

Sincerely,

Liane Murai, MA
Injured worker

My address and phone number is:

Vocational Management Consultants, Inc.

715 S. King St., Suite 410

Honolulu, HI 96813

Phone # (808) 538-8733

February 9, 2012

Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair
Members of the Health Committee

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Judiciary and Labor Committee
415 South Beretania Street, Conference Room 229
Honolulu, Hawaii 96813

Relating to: HB 466, HD 3 - Relating to Workers' Compensation

Dear Senators Green and Hee and members of the Committees:

I strongly urge you to **SUPPORT HB 466 HD 3 - Relating to Workers' Compensation.**

I am a vocational rehabilitation counselor who works with injured workers. I feel that the changes being proposed in HB 466 HD 3 appear to be in the best interest of the injured worker. The bill allows for a **mutually agreed** upon Independent Medical Exam be performed for an injured worker.

This bill will allow for fairness and equity for the injured worker in having input on the medical doctors who are often determining the types of services that a person can receive to the current ability of the injured worker. I have seen too many times in the past where IME doctors do not fairly address the concerns of an injured worker which ends up having the injured worker endure further pain and suffering because of a report that appears to be more favorable towards the insurance companies. I have also seen cases where an injured worker has been informed that they are required to attend an "IME" and because of a possibly biased report from the IME doctor, the person is prevented from receiving treatment that is recommended by their treating physician which can result in the cases remaining open for longer periods of time.

By mutually agreeing upon a qualified, independent examiner, there will be less need for continuous exams to be ordered as both parties are in agreement of the examiner and will expect fair and judicious findings.

Thank you for the opportunity to address this committee in regard to HB 466 HD 3.

Sincerely,

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

2/9/12

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 6:55 PM
To: HTHTestimony
Cc: mark@dewaltanabe.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mark
Organization: Individual
E-mail: mark@dewaltanabe.com
Submitted on: 2/10/2012

Comments:

I am opposed to HB466.

1. Employers(ER) and Injured Workers (IW)don't need additional legislation to settle their claims. Additional legislation adds more unnecessary rules, need for enforcement and additional costs for businesses that are already strapped due to the poor economy. I have seen the system work. It is not perfect but it works very well.
2. The DCD is poorly equipped to be the referral for the IME (in the event that they do no agree). The current system allows for the ER to submit suggestions based on the specific specialty needed and puts the impetus on the ER to justify his case based on the specificity of the case. Please let the IW and ER present the evidence and go through the case. Let them do the leg work. Why add cost by placing more burdens on an already overburdened system of the DCD to also do research as well. This can only increase administrative costs for everyone, especially employers.
3. Limits on the fees for IME will only decrease the already small number of physicians who do IMEs and encourage under-qualified examiners and poor exams and reports. If the bill is to discourage overcharging, the best solution is to allow capitalism to run its course. Good physicians with legitimate qualifications who produce thorough examinations and clear, concise and well documented reports will survive. Poorly documented or unreasonable reports or physicians who are overcharging will not be called again because it is costly for everyone. Although adjusters, attorneys, judges and IW's are not physicians, they are also not totally ignorant of the issues normally discussed. Limiting fees will only discourage those who are practicing physicians from also performing quality IMEs. If fees are restricted, only those who have made a "business" out of doing IMEs or are part of larger IME companies that can crank out reports at low costs, but of questionable quality will be left.
4. This bill increases costs to the ERs already in trouble due to the economy. WC insurance rates have been declining with the current system. Truly injured IW already have a good system in place for a fair assessment and compensation.

Respectfully,

Business Owner

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 7:33 PM
To: HTHTestimony
Cc: tlccostas@msn.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: tyerry costa
Organization: Individual
E-mail: tlccostas@msn.com
Submitted on: 2/10/2012

Comments:

This is a Revised Testimony to the one sent on 2-09-2012.

That I Terry Costa supports HB466 H3. As an injured worker currently on Workers Compensation i can provide this Committee with Documented Evidence that my experience with an Independent Medical Examination (IME) that was scheduled by the Insurance Carrier contains False Information that resulted in the termination of Temporary Total Disability benefits (TTD) that caused financial hardship on my family which resulted in me moving because I could no longer afford the rent. During my examination i was on a Narcotic Drug called Vicodin due to a Torn rotator Cuff surgery which was not mentioned by the IME doctor. I was being examined for my back injury and the IME report does not mention the documented fact that i was taking Vicodin for the pain in my shoulder. I filed a complaint with the Disability Compensation Division (DCD) after asking the Labor Appeals Board (LAB) to Remand my case back to DCD upon which LAB ordered my Fraud Complaint to be heard and DCD refused to address the issue.

This Committee needs to know that Insurance Carriers have caused families to suffer and forced families to go on Unemployment and Welfare just to survive. Unfair IME's is a burden on Families and the State. Only the Insurance Carriers benefit from this bill not being passed. As an injured worker i should be receiving benefits from my workers compensation injury that i am entitled to, instead i am collecting unemployment benefits until my workers compensation case goes to trial.

Therefore i respectfully ask this Committee to take into consideration that Families are being affected by unfair IME's and Permanent Disability Rating (PDR) that have been out dated and only benefiting the Insurance Carrier. My case documents the fact that the Insurance Carrier wrote a letter to a Hearings Officer at DCD saying i requested a PDR knowing i never requested a PDR which resulted in the termination of my TTD benefits.

Therefore as an injured worker that has been on Workers Compensation for 4 years and 4 Hearings at DCD, 3 Temporary Remands with LAB and has over 6 Treatment Plan Denials, TTD benefits denied and a Fraud Complaint denied and as of this day i am divorced had to move to Maui and recently had my car repossessed and collecting Emergency Unemployment because of an Unfair IME. There definitely needs to be change concerning IME's and PDR.

Therefore I thank this Committee for allowing me to submit testimony in support of HB466 H3. Aloha Terry Costa.

February 10, 2012

Honorable Chair and Members of the Committee
The House of Representatives
State Capital
Honolulu, Hawaii 96813

Dear Chair and Members,

Subject: House Bill #466 HD3, Relating to Workers Compensation

I strongly support House Bill #466 HD3, amending Section 1, Chapter 386, Hawaii Revised Statutes (HRS) adding a new section entitled, Medical examinations: selection of physicians. This requires independent medical examinations and permanent impairment rating examinations to be performed by mutually agreed upon physicians.

The reason for my support of this bill is because of my personal experience in dealing with Liberty Mutual Insurance, the Workers Compensation Carrier for my employer, The Home Depot and Dr. Robert Langen, who performed the Independent Medical Examination on me.

On October 14, 2009 I injured my Right Achilles Tendon and reported it to my employer as required. The case was accepted by Liberty Mutual, but I did not take any time off from work. I continued working although still in pain and took medication to get relief.

On February 18, 2010 while at work I injured my left Achilles tendon. It did not appear to be as bad as the right Achilles tendon injury, but I still reported it to my employer, went to see my doctor and continued working using the pain medication to help me deal with the pain in both Achilles tendon's.

In February Of 2010 the pain persisted, so my doctor requested from Liberty Mutual for me to get an MRI and the result was that I had a Partially Torn Right Achilles Tendon and a Badly Strained Left Achilles Tendon. There were several treatment plans requested of Liberty Mutual from my doctor and they were approved to include A Cam Walker Boot, Carbon fiber braces for both my left and right ankles for use at work, Custom fitted AFO Braces for both my left and right ankles at work, A heating pad to stimulate blood flow to the injured area's, a steroid injection to the Right Achilles Tendon itself and physical therapy.

By July 2010 the pain had become unbearable in both Achilles tendon's and it began affecting my right hip from the constant limping due to the pain. I asked my doctor as to what I could do and he recommended that I get off of my feet to allow the injuries to heal. On July 19, 2010 my doctor placed me on "Off Duty" status in an effort to allow my injuries to heal. On July 20, 2010 I was placed on workers compensation.

In January of 2011 Liberty Mutual had scheduled me to see Dr. Robert Langen at The Honolulu Sports Medical Clinic for an Independent Medical Examination. Then on February 11, 2011 I received a letter from Adjuster Brandy Kavin from Liberty Mutual, informing me that my disability benefits were being terminated based on the Independent Medical Examination performed by Dr. Robert Langen. The report stated that the injuries I received while at work were not work related, but due to my being overweight. Dr. Langen dismissed all documentation given to him by The Home Depot, Dr. Robert Aki, and Dr. Scott McCaffrey documenting the sequence of events leading up to my injuries and the medical opinions by those most familiar with my case and came up with the overweight story.

Between February and August 2011 I received no benefits, I filed for TDI and was denied because I had received worker's compensation for a time, could not file for unemployment, because I was still technically employed and filed for temporary social security and was denied.

By August 2011, my wife and I had drained our savings to keep up with the bills to include our utilities and our mortgage. Up to this point we had never been late on our mortgage payment even after Liberty Mutual had cut me off in February 2011. In an effort to stop the depletion of our savings we were force to file for a loan modification with our bank and in doing this our credit has been significantly ruined.

In August my attorney was able to restart my benefits through Liberty Mutual, but I continue to have difficulty getting treatment approved as Liberty Mutual continues to use Dr. Langen as their source for medical advice. Liberty Mutual has been willing to approve pain medication to include Vicodin, Oxycontin and Morphine which is addictive, but not approve treatment plans requested by my doctors to try and fix the problem.

I continue to struggle physically everyday while I wait for Liberty mutual to approve treatment for my injuries. From getting up in the morning and trying to stand up avoiding as much pain as possible, to sitting back down. My wife and I have not slept in the same bed for over a year because I'm unable to lay flat on the bed; I sleep on a chair in the living room so not to be in pain as I sleep. The three activities I loved the most and grew up with, ranching, hunting and fishing are things I can't do now because of my injuries. My life has been on hold for almost two years with no end in sight.

I humbly ask that you pass House Bill #466 HD3 for the simple reason that someone like Dr. Robert Langen does not have a regular practice as a doctor, he only performs Independent Medical Evaluations, and therefore he is considered a hired gun for the insurance company. In this capacity, there is a conflict of interest meaning, if he does not save the insurance company money by ruling against the injured worker, he would be out of a job and they would find another doctor that would be willing to rule in the insurance companies favor.

Doctor's performing IME's are compensated as much as \$8,000.00 plus per evaluation and a few doctors earn up to a million dollars in one year. This is more than enough incentive for someone to get into to this kind of medical specialty if you have no morals and you're only in it for the money. This statement alone should be more than enough explanation as to why this bill is needed.

Submitted By,

Ronald Lee
Injured Worker

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2012 11:13 AM
To: HTHTestimony
Cc: dennisblind@gmail.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Dennis B. Lind, M.D.
Organization: Individual
E-mail: dennisblind@gmail.com
Submitted on: 2/11/2012

Comments:

I support this bill. I am a practicing psychiatrist who treats injured workers with work-related stress, or the emotional consequences of work-related injuries, such as chronic debilitating pain, despair, depression, etc. Oftentimes the claim is quickly denied, "pending IME", and the examiner often has a reputation as being overly conservative, read that as a "hired gun", who practically never allows a correlation between the symptomatology and impaired to the actual injury. Instead, it is acknowledged, but interpreted as being pre-existing, the result of something else, or symptom magnification, etc. The worker, their attorney, and often the practitioner can see what is coming, and this bill would allow a better "mix" of examiners and the increased likelihood of a more impartial exam.

I do not mean to impugn all or even most examiners. However, after a while, the insurance companies know which examiners have a bias towards conservatism and big business, and they will tend to favor sending patients to them for their evaluation. This bill would tend to even the playing field by allowing a better balance towards a more impartial evaluation.

Thank you for your attention.

Dennis B. Lind, M.D.

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2012 11:40 AM
To: HTHTestimony
Cc: tom.donovan@ritzcarlton.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Tom Donovan
Organization: Ritz-Carlton, Kapalua
E-mail: tom.donovan@ritzcarlton.com
Submitted on: 2/11/2012

Comments:

I am all for protecting our employees and making sure they are safe but this state already has one of the highest rates for workers comp in the country and this just makes it easier for those who manipulate the system to continue to do so. Lets come up with another way to help our workers this plan does not make sense.

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2012 12:40 PM
To: HTHTestimony
Cc: jjennet@hawaii oceansports.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Judith Jennet
Organization: Individual
E-mail: jjennet@hawaii oceansports.com
Submitted on: 2/11/2012

Comments:

Charles R. Kelley MD
Chairman of the Board
Outrigger Enterprises, Inc.
2375 Kuhio Avenue
Honolulu, HI 96815

Testimony to the Senate Committee on Health
Monday, February 13, 2012, 10:45 AM
Conference Room 229, Hawaii State Capitol

RE: HB 466, HD3 (HSCR 779) Relating to Workers' Compensation

I am opposed to HB 466.

As both a physician, who spent years treating Workers Compensation injuries, and as an employer, I believe that this bill will not improve our system. On the contrary, it is likely to make it worse.

Many others will testify that it is unnecessary to require mutual consent in choosing an IME physician, as there are adequate already safeguards in place to make sure that the injured worker gets a fair evaluation. I agree. As an employer, when we hire a physician to perform an IME, we know that we are hiring a neutral third party. Quite frankly we often we don't like, or even agree with, the results of the IME, but we understand that it is a neutral and unbiased evaluation.

Independent Medical Examiners are just that- Independent. The physicians who perform them are fully aware of the need to balance the interests of both the patient and the employer. Logically, since the physicians are independent, there is no need to require mutual consent.

On the other hand if one were to take the position that IME physicians are not independent, then it follows that the employer and the injured worker will never agree on an examiner, and virtually every case will require the intervention of the Department of Labor. Every injured worker will need two exams, one favorable to the employer and one favorable to the injured worker, and then later at a hearing, the hearing officer will will split the difference. This will be quite costly, time consuming and inefficient.

Furthermore, physicians who perform IME's are in short supply. This is an area of specialty that few doctors have the interest to delve into, and any legislation that results in the increase in the number of IME's will slow the system down and increase costs for all parties, including the Disability Compensation Division.

Efficiency and speed are the key to getting injured workers back to work with minimal disability and minimal cost. This proposal requiring mutual consent when choosing IME physicians, will make our system less efficient and slower.

Respectfully Submitted,

Charles R. Kelley M.D.

**Testimony to the Senate Committee on Health and the Senate Judiciary and
Labor Committee**

Monday, February 13, 2012

10:45 a.m.

RE: House Bill 466 HD3, Relating to Workers' Compensation

Testimony in OPPOSITION to HB 466 HD3

Chair Green, Vice Chair Nishihara, Chair Hee, Vice-Chair Shimabukuro, and Members of the Committees

My name is Peter Diamond, and I am a Medical Doctor, licensed in Hawaii, Board certified in Orthopedic Surgery, and currently running an active clinical practice in Hawaii. I have practiced surgery in Hawaii for over 20 years, including 6 years on the island of Maui before relocating to Honolulu and a Queen's Medical Center-based practice. In addition, I am asked to conduct Independent Medical Evaluations and Permanent Partial Impairment Ratings. I oppose the passage of HB 466 HD3, as the stipulations in this bill would impose needless restrictions upon the truly independent nature of these examinations.

As mentioned, I run an active clinical practice, meaning that I treat injured workers on a regular basis, and as a treating provider, my role in the care of an injured worker is that of an advocate.

It must be recognized, however, that in many cases, an independent examiner has access to medical records and/or information about the injured worker that the treating provider does not have. Similarly, in many cases, and for many reasons, the independent examiner can elicit details or useful information that may have otherwise been overlooked by a treating provider.

On occasion, my own patients are sent to other physicians for Independent Medical Evaluations. I have never objected to this, and personally welcome an Independent Medical Evaluation on patients who are not responding to treatment.

Restricting in any way the ability of a patient to obtain an unbiased, independent opinion on these and other issues, is potentially detrimental to the patient, and cannot possibly be in the best interests of:

- ensuring that the appropriate diagnosis has been established,
- ensuring that the appropriate treatment is being rendered, or
- ensuring that the injured worker is given the best opportunity to return to work.

Independent Medical Evaluations represent an integral and necessary aspect of the fair adjudication of many Workers' Compensation claims.

The issues involved with conducting Independent Medical Evaluations and Permanent Partial Impairment Ratings can be complex, and may require a degree of skill, experience in a different medical discipline, additional education, and in the case of Permanent Partial Impairment Ratings, intimate knowledge of the procedures set forth in the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment.

In addition to the requisite medical skill and experience, an effective independent medical examiner must also be comfortable with the legal definitions contained within the State Workers' Compensation statutes, and understand the ramifications of using these terms and definitions properly.

There is inherent and intrinsic value added through a properly conducted, unrestricted Independent Medical Evaluation, often with the results of increasing the quality of patient care and decreasing the overall cost to the system

I have personally performed Independent Medical Evaluations and Permanent Partial Impairment Ratings for claims adjusters, defense attorneys, and plaintiff's attorneys, and do so based on the material presented, with opinions expressed to a reasonable degree of medical probability, the standard for medical legal testimony in this State. I can also tell you that the majority of Independent Medical Evaluations that I perform are already "agreed upon."

Often, the issue of bias is raised, with the argument posited that many of the doctors who perform Independent Medical Evaluations skew their opinions in favor of the entity that pays for their services. The simple fact is that I am reimbursed for the time I spend evaluating each case. The source of that reimbursement has absolutely no effect or influence on my opinions. If such were the case, the examinations would not and should not be considered independent, and would have no place at all in the proper adjudication of ANY case.

Bias, however, cannot be established without determining whether the conclusions in any Independent Medical Evaluation report are based on objective medical evidence. In other words, claiming that bias exists based on "who pays the bill" and before the examiner's conclusions are analyzed is a totally unfounded assertion. Ultimately, the opinions expressed in my Independent Medical Evaluations have to be accurate from a medical science point of view.

Certainly, there is room for honest disagreement in opinion among professionals, but when the opinions presented are supported by the objective medical facts, there is no bias.

Next, the notion of establishing and maintaining a "list of qualified physicians" is fraught with potential pitfalls. For example, it is unlikely that the personnel charged with establishing and maintaining this list will understand the medical issues involved. This could result in inappropriate "selection," and unnecessary delay in the overall process.

In addition, mandating that the selected physician perform the evaluation within a certain period of time is simply not practical.

In conclusion, for the reasons outlined above, I am in opposition to the passage of this bill. The issues targeted in this bill do not appear to represent a problem that would warrant a wholesale overhaul of a system that works well for the vast majority of cases.

Thank you for the opportunity to present this testimony.

**Testimony to the Senate Committee on Health and the Senate Judiciary and
Labor Committee**

Monday, February 13, 2012

10:45 a.m.

RE: House Bill 466 HD3, Relating to Workers' Compensation

Testimony in OPPOSITION to HB 466 HD3

Chair Green, Vice Chair Nishihara, Chair Hee, Vice-Chair Shimabukuro, and Members of the Committees:

My name is James Scoggin, M.D. I am a Board certified Orthopedic Surgeon, licensed in Hawaii. I have been practicing in Hawaii for approximately 20 years. I currently have an active clinical practice and surgical practice. In addition to this, I perform Independent Medical Evaluations and Permanent Partial Impairment Ratings.

I oppose the passage of HB 466 HD3 in its present form. The mandates in this bill are damaging to the independent medical examination process, and will have a detrimental effect on the proper care of injured workers in this state, as well as the proper adjudication of their cases.

In my practice, I treat injured workers on a regular basis AND conduct independent medical evaluations. I can certainly appreciate the difference between the processes involved, and understand the necessity for both.

As a treating physician, my primary focus is the accurate diagnosis and appropriate treatment of the injured worker. This may include surgery, when necessary.

As an independent medical examiner, however, I am asked to independently review the cases of injured workers where I am not the treating physician. These cases often require complex and specialized decision making with regard to causation and appropriate treatment.

Sometimes, this is necessary because the case involves complex orthopedic issues, but the treating physician is not an orthopedic surgeon. Sometimes, this is necessary because causation or apportionment is at issue. Objectively determining issues of causation and apportionment may require careful review of voluminous current and prior medical records. The treating physician may not have had access to these materials or may not have had time to review them during the course of normal office visits.

The amount of time required to provide an unbiased, thorough evaluation addressing all the stated concerns is significant. The choice of the physician who conducts the independent medical evaluation is of paramount importance:

1. The physician must be independent. The independent medical evaluator should not be the same physician who treats the individual.
2. The physician must be qualified, whether through a formal Board qualification, training provided by recognized authorities in the field, or by virtue of practical experience, i.e., conducting examinations that have been recognized in the community as being fair, thorough, and unbiased.

Constraints beyond these basic tenets (for example, establishing a "list" or being "agreed upon") represent impediments to the independent examination process. The independent examiner is most often in the best position to provide an understanding of multiple, interrelated case details. If the independent examiner is compromised in any way, the injured worker will be the party that is ultimately hurt the most.

The value of these independent examinations is manifest in many ways. A fair, unbiased, thorough Independent Medical Evaluation serves to decrease the overall cost to the Workers' Compensation system, by increasing the likelihood that efficient and effective care is provided to the injured worker, and by providing guidance to Hearings Officers and finders of fact in disputed cases. To undermine the manner in which the independent medical examination is conducted would compromise this process.

While allowing that there is room for improvement in the current system, it is my opinion, based on years of experience as a treating physician and an independent examiner, that passing this bill in its present form would not result in improvement.

Thank you for the opportunity to submit this testimony.

**Testimony to the Senate Committee on Health and the Senate Judiciary and
Labor Committee**

February 13, 2012

10:45 a.m.

Conference Room 229

RE: House Bill 466 HD3, Relating to Workers' Compensation

Testimony in OPPOSITION to HB 466 HD3

Chair Green, Vice Chair Nishihara, Chair Hee, Vice-Chair Shimabukuro, and Members of the Committee on Health and the Committee on Judiciary and Labor:

My name is Charles Donovan, and I am in the position of being able to present a unique perspective on these issues, based on more than 17 years of experience in this very specialized field. I am the Medical/Legal Coordinator for a group of physicians who actively treats injured workers and performs Independent Medical Evaluations and Permanent Partial Impairment Ratings.

I am neither a lawyer nor a doctor, but I have received extensive training over many years in the field of Independent Medical Evaluations, including training and certification as a Certified Impairment Rater. While I do not perform examinations myself, I use my skill set to ensure that the physician's reports that I review are technically correct.

Over the last 17 years, I have reviewed literally thousands of Independent Medical Examination and Permanent Partial Impairment Rating reports. These examinations have been performed at the request of insurance adjusters, defense attorneys, plaintiff's attorneys, and injured workers themselves, all of whom expect a thorough, timely, fair, and balanced evaluation.

My job necessarily entails talking to adjusters and attorneys representing both sides. This has allowed me to gain a respect and appreciation for all the issues involved. I have attended Labor Board Hearings and Appeals Board proceedings, and have seen first hand the role that Independent Medical Evaluations play in the overall claims adjudication process.

I have also personally been through "the process." I was injured, and my treatment was initially challenged by the insurance carrier. I felt it necessary to hire an attorney, and I was eventually sent to an Independent Medical Evaluation.

I am familiar with the testimony provided to this point, both in favor of and in opposition to HB 466, and would like to briefly address a few points:

I: “The director shall keep and maintain a list of qualified physicians...”

Establishing a list of “qualified physicians” to conduct an independent medical examination is problematic. I often receive calls from attorneys, asking for advice on who would be best qualified to perform a particular IME. For me to properly advise them, I have to understand the issues, which are often complex. For example, if an injured worker has undergone surgery, it may seem that an orthopedic surgeon is “best qualified” to assess the case. However, if the patient has not been able to return to work for over a year, then the real issue may be one of disability or inadequate rehabilitation. Similarly, if the patient has a history of injuries and surgeries, causation/apportionment issues may be the focus, and these issues may best be addressed by yet another physician.

The Department of Labor has already expressed concerns about its ability to fund a position to build and maintain a list of IME and rating physicians. I would also be concerned about the training and qualification that would be necessary for the people who are tasked with maintaining this list, such that they are able to decide who is “best qualified.”

The point here is that determining who is best suited to address the issues raised for an Independent Medical Evaluation is already being done by responsible parties in this state.

In addition, the proposed bill places a Department of Labor employee in an intermediary position, by making them responsible for contacting the physician’s office and asking generic questions about what basically amounts to scheduling. This adds an unnecessary layer of administrative complexity and (taxpayer) expense, with no yield. Again, this is already being done by responsible parties in this state. It is not necessary to legislate this by adding additional players, layers, or potentially unenforceable regulations.

II: “In no event shall an independent medical examination and a permanent impairment rating examination be combined...”

The concept of completely separating a Permanent Partial Impairment Rating examination from an Independent Medical Evaluation is unnecessary, impractical at best, and will directly increase costs. And again, this is something that has already addressed by responsible parties in this state.

In almost every case involving impairment, it is necessary to address issues other than the actual rating. The most common example: “*Please apportion any aspect of the PPD that either pre-existed or is not related to this industrial accident.*” Once this issue is raised, it requires much more than correctly applying the concepts in the Guides and rendering a strict numerical rating. Unless the intent of this bill is to completely ignore the legitimate issue of apportionment, this is an unwise proposal.

Finally, the correct term is Independent Medical Examination, which means that the examiner must arrive at his or her own opinion, independent of the referring source, remuneration, others' opinions, or personal bias. The independent examiner is a medical professional who MUST NOT have been involved in the claimant's care.

Detractors of this process refer to them as "Insurance Medical Examinations" or "Defense Medical Examinations," and claim that the reports are designed to "cut off benefits." This is not only patently false, but offensive and unprofessional. No independent examiner has the power or authority to dictate the future course of treatment of any injured worker.

Honest differences in opinion can and will occur, but there is already a system in place to resolve these disputes. It starts with the Hearings Officers, and under ideal circumstances involves reasonable discussion, NOT heated rhetoric, unfounded accusations, or a "sound bite" strategy.

What do I mean by "sound bite" strategy? I would briefly cite some of the testimony submitted thus far on this bill:

- In testimony presented to House Labor and Public Employment Committee on 2/15/11, an attorney characterized the IME doctors as a "...**group 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...**" and went on to refer to them as "...**hired guns of the insurance carriers.**"
- Another example is reflected in testimony presented to House Labor and Public Employment Committee, on 2/8/11, by a practicing physician supporting this bill, who apparently felt it necessary to use inflammatory phrases including "**anti-patient doctors**" who conduct **nefarious practices** that are **neither "independent" nor, for that matter, very "medical."**

These "sound bites" are total mischaracterizations of the unbiased, independent medical examiner, and certainly do not represent my experience with multiple examiners across multiple disciplines and multiple cases over 17 years. The representation that all of these exams are biased is simply disingenuous.

In contrast:

- Testimony presented to the House Labor and Public Employment Committee on behalf of the Hawaii Insurers Council on 2/8/11, represents a **thoughtful, cogent, reasoned argument of the issues, backed by statistical analysis.**
- On behalf of the largest third-party administrator in the State compelling testimony was presented to the House Consumer Protection and Commerce Committee on 2/16/11, again representing **cogent, reasoned, and articulate arguments of the issues from the standpoint of people who administer industrial claims on a daily basis.**

- Testimony from the Chamber of Commerce, testimony from the Society for Human Resource Management, and testimony from the Hawaii Independent Insurance Agents Association **address the individual issues contained in HB 466 in a rational and reasoned manner.**

SUMMARY:

There appear to be numerous problems with this bill, from a financial standpoint and an administrative standpoint. The arguments, however, can be summed up as follows:

1. There is already a system in place that works, far more often than not, and the vast majority of IMEs do exactly what they are designed to do - provide all parties with guidance to properly adjudicate the injured worker's claim.
2. The arguments in support of this bill are characterized by heated rhetoric, name calling, and vicious personal attacks. They can be summed by an adaptation of an old aphorism: *If you have the facts on your side, pound the facts. If you have the law on your side, pound the law. If you have neither the facts nor the law on your side, pound the table.*"
3. The arguments in opposition to this bill are predicated on statistical analysis, and on years of working within the system, with providers, adjusters, and attorneys who value working together toward the common good and the welfare of the injured worker.

Reasonable people recognize that increasing the volume of the argument does not increase the legitimacy of the argument. Please consider the FACTS in their totality. Please do NOT allow the person or entity that screams the loudest or brings up the most egregious examples and portrays them as the "norm" to destroy a system that is not only working, but statistically working well.

The answer to ANY of the problems within the system is to work more closely and cooperatively with each other. Passage of HB 466 in its present form does absolutely nothing to foster that cooperation.

Thank you for the opportunity to present this testimony.



55 Merchant Street
Honolulu, Hawai'i 96813-4333

HAWAI'I PACIFIC HEALTH
Kapi'olani • Pali Momi • Straub • Wilcox

808-535-2401
www.hawaiipacifichealth.org
LATE

Monday – February 13, 2012 – 10:45am
Conference Room 229

The Senate Committee on Health

To: Senator Josh Green, Chair
Senator Clarence K. Nishihara, Vice Chair

The Senate Committee on Judiciary and Labor

To: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

From: Virginia Pressler, MD, MBA
Executive Vice President
Strategic Development

Re: HB 466 HD3 RELATING TO WORKERS' COMPENSATION- Testimony in Strong Opposition

My name is Virginia Pressler, MD, MBA, Executive Vice President, Strategic Development for Hawai'i Pacific Health (HPH). HPH is a nonprofit health care system and the state's largest health care provider, committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four affiliated hospitals, 49 outpatient clinics and more than 2,200 physicians and clinicians. The network is anchored by its four nonprofit hospitals: Kapi'olani Medical Center for Women & Children, Pali Momi Medical Center, Straub Clinic & Hospital and Wilcox Memorial Hospital.

We are writing in **strong opposition** to HB 466 HD3 Relating to Workers' Compensation which requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations.

We are testifying as both a private non-profit employer and as a health care provider. As a private non-profit employer, we are concerned that HB 466 HD3 will substantially increase the cost of providing health care coverage to our employees. The end result is that non profit organizations like Hawai'i Pacific Health will be forced to reevaluate existing cost structures including reduce cutting costs elsewhere within our health care network.

As a healthcare provider we are also concerned that his additional layer of legislated costs has the potential of compromising community access to health care. The recent closure of Hawai'i Medical Center is a visible reminder of the fragile operating margins that healthcare providers rely upon across the health care continuum in order to deliver quality care to our patients. This bill would negatively impact those margins and impact our ability to continue to provide access to care to our patients across all our hospitals.

We ask that you hold this measure. Thank you for the opportunity to testify.



Affiliates of Hawai'i Pacific Health

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



LATE
GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

February 13, 2012

TO: HONORABLE SENATORS JOSH GREEN, CHAIR, CLARENCE NISHIHARA, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON HEALTH

HONORABLE SENATORS CLAYTON HEE, CHAIR, MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 466, HD3, 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. Appropriates unspecified funds. Effective January 1, 2030. Repealed on June 30, 2013. (HB466 HD3)

HEARING

DATE: Monday, February 13, 2012
TIME: 10:45 a.m.
PLACE: Conference Room 229

Dear Chairs Green and Hee, Vice Chairs Nishihara and Shimabukuro and Members:

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 80th anniversary this year; GCA remains the largest construction association in the State of Hawaii. GCA is **strongly opposed** HB 466,HD3, Relating to Workers' Compensation.

This bill proposes to replace the existing employer requested examinations in workers compensation claims with another system that will, among other things, complicate the process further, require more staffing by the Department of Labor and Industrial Relations (DLIR) and allow the DLIR Director the ability to authorize one examiner over the other if the parties cannot agree.

GCA is opposed to this bill because it requires the selection of an IME physician by mutual agreement. This will add to compensation costs and delay the delivery of medical treatments in certain cases. The added costs and delays do not benefit either the employer or the injured worker. The Independent Medical Examination (IME) process is the employer's only safeguard

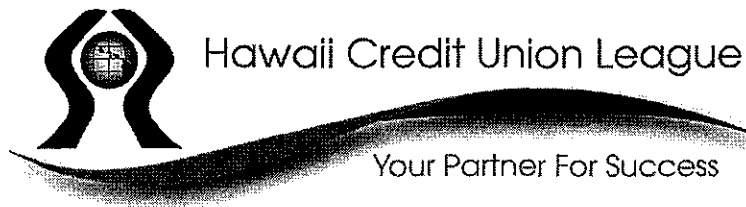
against abusive practices by an employee that may be taking advantage of his or her workers compensation benefits.

The GCA believes the current system works. We believe this legislation is unnecessary because most IMEs occur by mutual agreement absent any statute.

We respectfully urge these Committees to hold this measure.

Thank you for the opportunity to voice our views.

LATE



1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org



Testimony to the Senate Committees on Health and Judiciary and Labor
Monday, February 13, 2012

Testimony to HB 466 HD3, Relating to Workers' Compensation

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committee on Judiciary and Labor

The Honorable Josh Green, MD, Chair
The Honorable Clarence Nishihara, Vice-Chair
Members of the Committee on Health

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state. We are in opposition to HB 466 HD3, Relating to Workers' Compensation.

In today's challenging economic climate, it has become common practice for the injured workers and employers to amicably agree to independent medical examination (IME) physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will harm 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 could result in fewer jobs, lower benefits, and decreased wages.

Thank you for the opportunity to testify in opposition.

LATE

The Alliance

*"Protecting Hawaii's
Economy and Preserving
Jobs"*

Native Hawaiian Chamber of
Commerce
Hawaii Restaurant Association
Hawaii Island Chamber of
Commerce
Kona-Kohala Chamber of
Commerce
Molokai Chamber of
Commerce
Associated Builders and
Contractors-Hawaii
Building Industry Association
of Hawaii
Honolulu Japanese Chamber
of Commerce
Kauai Chamber of Commerce
Hawaii Crop Improvement
Association
Japanese Chamber of
Commerce and Industry of
Hawaii
The Chamber of Commerce of
Hawaii
Hawaii Business Roundtable
National Federation of
Independent Business-Hawaii
Hawaii Automobile Dealers
Association

**Testimony to the Senate Committees on Health and
Judiciary & Labor
Tuesday, February 13, 2012; 10:45 a.m.
Conference Room 229
Hawaii State Capitol**

**RE: HOUSE BILL 466 HD3 RELATING TO WORKERS'
COMPENSATION**

Chairs Green and Hee, Vice Chairs Nishihara and Shimabukuro,
and Members of the Committees:

The Alliance, a group of business organizations whose mission it is to protect Hawaii's economy and preserve jobs, opposes HB 466 HD3 and respectfully asks that the committees recognize the impact this measure will have on business.

HB 466 HD3 seeks to replace the existing employer requested examinations in workers compensation claims disputes with a new system for obtaining "independent medical examinations".

Under the bill, the claimant employee will have the right to reject the employer's choice of physician to scrutinize the treating physicians chosen course of treatment. If the claimant employee refuses to accept any of the employer's choices then the selection will be made by the Director of the Department of Labor and Industrial Relations from a list of "qualified physicians" licensed to practice medicine in the state where the claimant employee resides.

The Alliance opposes this bill.

First there is no consensus on the problem which the bill seeks to solve. The bill is based upon the erroneous presumption that employers routinely abuse their limited right to discovery through employer requested examinations. The employer requested examination results are subject to review and appeal by the employee and must be credible enough to withstand the scrutiny of the DLIR's review. For this reason and also since employers are only allowed one examination under most circumstances under the existing law, there is already strong incentive for the

employer to obtain a credible report on the first try.

Proponents of the bill have only offered scattered anecdotal evidence of such abuse. For the record, the Alliance objects to the inference that unethical and possibly illegal behavior is commonplace among Hawaii's employers. There is no evidence that abuse of employer requested examinations is common place in Hawaii.

In fact, it would be counter-productive for businesses to want employees not to return to work. Additionally, businesses genuinely care and do everything they can to create a positive work environment and provide benefits and assistance to employees, which are additional costs for business. This is an addition to the costs to comply with the various mandates and regulations. Employees are their asset

Nevertheless, the bill seeks to punish all employers on the theory that there are some employers who abuse this right. As a result, it creates added burdens to employers who seek to create jobs. Second the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates. Therefore it is likely to increase the cost of running a business and creating jobs, which add to the apprehension of investing in additional workforce due to today's economic climate.

Finally the bill is fundamentally unfair. If the 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 ability.

By all accounts, there are already significant delays in finding qualified physicians to conduct employer requested examinations. This bill is likely to aggravate those delays by creating an additional point in the proceedings to create additional conflict between employer and employee.

The Alliance respectfully request that you hold HB 466 HD3. Thank you for the opportunity to submit testimony.

LATE

The Testimony of Glenn Ida
Representing the Plumbers and Fitters, Local 675
1109 Bethel St., Lower Level
Honolulu, Hi. 96813

Sen. Josh Green, Chair
Sen. Clarence Nishihara, Vice-Chair
Committee on Health

Sen. Clayton Hee, Chair
Sen. Maile Shimabukuro, Vice-Chair
Committee on Judiciary

Monday, Feb. 13, 2012, at 10:45 AM.
State Capitol Conference Room 229

Re: Support of HB 466, HD3

Aloha, Chairs Green and Hee, Vice-Chairs Nishihara and Shimabukuro and Committee Members,

My name is Glenn Ida; I represent the 1300 plus active members and about 600 retirees of the Plumbers and Fitters Union, Local 675.

Local 675, supports HB 466, HD3, which requires independent medical examinations and permanent impairment rating examinations for workers compensation, claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations.

Local 675 believes that by requiring an independent Physician mutually agrees to by the employer and employee, to do the Medical and permanent impairment rating examinations will bring fairness and a sense of trust to this critical stage of the injured workers' return to work or having a permanent disability.

Therefore Local 675, Supports HB 466, HD3.

Thank you for this opportunity to testify.

Glenn Ida
808-295- 1280

TESTIMONY BEFORE THE SENATE

COMMITTEES ON HEALTH
Senator Josh Green, M.D. Chair
Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, February 13, 2012
1:00 p.m.

HB 466, HD3
RELATING TO WORKERS' COMPENSATION

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

Chairs Green and Hee, Vice Chairs Nishihara and Shimabukuro, and Members of both Committees:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **strongly oppose H.B. 466, H.D. 3.** Our companies represent over 2,000 employees.

In any proceeding for the enforcement of a claim for compensation under the current statutes, employers already bear the burden of proof to present substantial evidence to the contrary. This bill only serves to add to this burden and handicaps the employer by mandating that independent medical examinations (IME's) and permanent impairment ratings be performed by physicians mutually agreed upon by the employer and the injured employee or appointed by the Director of the Department of Labor and Industrial Relations. This bill also serves to increase costs of doing business for employers.

The current statutes already 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 further legislation. In cases of dispute, this bill strips employers of their right to select who conducts the independent medical examination.

This bill further compromises the employers ability to use the IME to evaluate and manage claims because it also has the effect of shrinking the pool of physicians qualified

to perform the IME by limiting the amount of fees such physicians may charge, without regard to experience, specialty and qualifications.

For all these reasons, we strongly oppose H.B. 466, H.D. 3 and respectfully request this measure be held.

Thank you for this opportunity to submit testimony.

LATE

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 8:34 AM
To: HTHTestimony
Cc: josh@upwhawaii.org
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM
Attachments: HB466 HD3 HTH-JDL 021312.doc

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Florence Kong Kee
Organization: United Public Workers
E-mail: josh@upwhawaii.org
Submitted on: 2/13/2012

Comments:

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2012 10:56 AM
To: HTHTestimony
Cc: drporterturnbull@gmail.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM

LATE

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Porter Turnbull D.C.>
Organization: Individual
E-mail: drporterturnbull@gmail.com
Submitted on: 2/10/2012

Comments:

green1 - George

From: mrubenstein@royalstarhawaii.com
Sent: Sunday, February 12, 2012 3:16 PM
To: HTHTestimony
Subject: Hold HB 466

Marc Rubenstein
5 Sand Island Access Rd #121
HONOLULU, HI 96819-4907

February 12, 2012

Chairs Green and Hee and Members of the Committee

Dear Chairs Green and Hee and Members of the Committee:

Testimony to the Senate Health and Judiciary and Labor Committees Monday, February 13, 2012
10:45 a.m.
Room 225

Please take into consideration the unfairness of this measure to business and hold HB 466 HD 3.

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.

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.

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

Other requirements such as mandating IME physicians be licensed in Hawaii and have been licensed for 5 consecutive years prior to the exam only shrinks the pool of IME physicians.

I respectfully request that you hold this measure.

Sincerely,

Marc Rubenstein
8088326261

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 12, 2012 4:12 PM
To: HTHTestimony
Cc: tlccostas@msn.com
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM
Attachments: 002.jpg

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: tyerry costa
Organization: Individual
E-mail: tlccostas@msn.com
Submitted on: 2/12/2012

Comments:

The documents attached are in support of my Testimony that was revised and submitted on February 10 2012 This is Documented Evidence for the Committee that an Independent Medical Examination is not fair. Thjank You Terry Costa

Examinee: COSTA, RY L.
Date of Report: June 25, 2007

LATE

Medications: Toprol, Celebrex, Naprosyn.

Allergies: Denied.

Review of Systems

Review of Systems indicates a history of hypertension, but is otherwise unremarkable. Mr. Costa is a nonsmoker. He has no history of problems with alcohol or illicit drugs.

Mr. Costa denies any other significant medical problems.

Physical Examination Section

Mr. Costa is a well-developed, well-nourished gentleman who is 5'11 $\frac{1}{4}$ " in height and 256 pounds of body weight, which equates to a Body Mass Index of approximately 36, placing Mr. Costa in the obese classification.

Mr. Costa is neatly attired and well groomed. He is oriented to time, place and person. He is pleasant and cooperative during his interview and evaluation. There is no evidence of symptom magnification or excessive illness behavior. Care is taken during the examination to avoid any activity or movements, which might aggravate his right shoulder or left knee.

Mr. Costa is examined in 4 positions; standing, seated, supine and prone.

Standing Evaluation: Mr. Costa demonstrates flattening of the lumbar lordosis and a normal thoracic kyphosis. There is no list or lean to the right or left side. The pelvis is level on palpation. There is right-sided lumbar paraspinal tightness. Spinal motions are mildly restricted.

Range of motion is as follows: Forward flexion 60°, extension 10°, right side bending 20°, left side bending 20°. On extension, Mr. Costa tends to bend his knees to further extend his spine to make up for the stiffness in the spine. Although his motion is restricted, he indicates that it is not painful and he actually feels good in the extended position, indicating a directional preference towards extension.

On observation, his gait is normal. Mr. Costa can walk on his heels and toes without evidence of weakness. His tandem gait reveals normal balance.

Mr. Costa is limited in squatting to $\frac{1}{2}$ of the range of motion to the parallel position. The limitation in squatting, however, is due to left knee pain and not due to back pain.

Trendelenburg testing is negative.

Torso rotation is negative. Head compression testing is negative.

RECEIVED

JUL 16 2007

JMCO

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EXHIBIT "C"

LATE

February 12, 2012

HOUSE OF REPRESENTATIVES
The Twenty-Sixth Legislature
Regular Session of 2012

COMMITTEE ON FINANCE HEARING

HOUSE CHAIR: Rep. Karl Rhoads, Chair
Vice Chair: Rep. Kyle Yamashita, Vice Chair

Date of Hearing: Feb 13, 2012
Time: 10:45 AM
Place: Conference Room 229

Testimony in support of HB 466

My name is Marylyn Sye, and I currently work as a Registered Nurse- Clinical Admissions Specialist at Bristol Hospice. I have been on Workman's Compensation due to an Auto accident while on the job. I was subjected to an IME by an employer selected doctor, who said nothing was wrong with me and told me that my pain and problems with my neck and back were pre-existing and degenerative. He told me that I should go back to my job with no limitations. My doctor does not agree with the IME findings and would have chosen a different doctor for my IME.

Soon after the IME my employer's insurance company terminated my weekly TTD benefits, leaving me in severe financial difficulty. My doctor told me that he was notified that he would not be paid by the insurance company for any further visits. He told me that my visits will be on hold and I can contact him by phone with updates or problems. The insurance company also denied the Vocational Rehabilitation Plan for further education and computer training.

I spoke to my employer asking why they will not take my back with a modification to the job description; she told me that they cannot make exceptions or modifications for one person because they would have to do it for everyone. She said the only way they would let me come back to work was to have my doctor change the documentation to say that I had no limitations or restrictions; otherwise they will not accept me back because they see me as a liability.

I support HB 466 as the bill supports mutually agreed upon Independent Medical Evaluations. Being that I have been directly effected in a negative way by the IME by an employer selected doctor. I ask you to please be fair and allow honest doctors who are not being paid by the employer's insurance company, to perform an IME that has been mutually selected by the injured workers and their doctors. Passing this bill will help the workers compensation system

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

Sincerely,

Maryllyn Sye, RN

My address and phone number is:

P.O. Box 61981

Honolulu, HI 96839

Phone # (808) 951-0229

February 11, 2012

TO: COMMITTEE ON HEALTH

Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

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

Date: February 13, 2012

Room: 229

Time: 10:45 a.m.

Re: STRONG SUPPORT OF HB 466, HD3

Dear Honorable Chairs Green and Hee and Members of the Joint Committees:

Introduction

The purpose of this bill is to improve fairness in the workers' compensation system, provide better quality services to injured workers and avoid the increasing adversarial procedures leading to needless hearing. Aside from targeting costs drivers, HB 466, HD 3 promotes these ideals by requiring actual "independent medical examinations" and permanent partial disability ratings. Employers and employees will be required to mutually agree to the selection of qualified physicians even though the costs are borne by employers, consistent with the repeated articulation by our Hawai'i Supreme Court that providing workers' compensation insurance is the cost of doing business. Alternatively, if the parties are unable to mutually select qualified physicians, they will be designated by the Director of Labor and Industrial Relations (Director).

Existing Law and Previously Intended Practice

HRS Chapter 386 was enacted with the intention of a cost effective and orderly procedure for the implementation of the workers' compensation statute. As a fundamental social policy, most claims are presumed compensable when workers sustain injuries arising out of and in the course of their employment in the absence of substantial evidence to the contrary. . HRS §386-85. If there are suspicious disputed claims, employers and insurance carriers (jointly referred to as "employers") can exercise their discretion to appoint qualified physicians at their cost to conduct what are known as an "independent medical examination" ("IME") to decide whether such claims are compensable. Id. §386-79. The operative word is "independent," which under the rules of statutory construction are to be given a plain simple meaning. As defined in the

Webster's Dictionary, the most common definition of "independent" is "not subject to control by others."¹

When the employers mutually select qualified physicians with employees for IMEs (which is increasing rare in today's practice especially for *pro se* injured workers), they usually resolve real or perceived disputes and reduce the involvement of hearings. The jointly selected qualified physicians address identified issues by providing impartial opinions, whether the issue is a claim to be deemed compensable, whether more treatment and diagnostic testing are required, whether surgeries should be performed, whether medical conditions are stable and, if opined in the affirmative, what is the extent of permanent partial disability. Or, assuming injured body parts have reached stability, are continuing medical services including medications required and what is the prognosis for various medical conditions so that informed determinations can be on whether injured workers should be enrolled in the vocational rehabilitation (VR) process. When parties agree to joint selections of truly impartial physicians, the parties implicitly agree that they will abide to the opinions contained in the IME reports. Such agreements for mutual opinions result in cost savings, avoid delays and rapidly facilitate the claims' handling process even though one of the parties may disagree with opinions contained in the mutually IMEs. There is certainty even though the current statute does not mandate abiding by the opinions since, when done, they are done akin to the parties engaging a "hand shake" so to speak. The claim for such employees is then fast tracked. Veterans in the system who work with this custom and practice prefer mutually selected qualified physicians since the process makes common sense.

I speak from experience in long legal career spanning nearly 35 years as a labor lawyer with a heavy emphasis handling workers' compensation claims for injured workers. Using this mutual selection, we avoid costly elongated litigation. Benefits are promptly paid or a bad claims are immediately resolved. In turn, injured workers avoid needless delay and the extensive backlog before the Director is reduced saving the scheduling of hearings for *bona fide* disputed claims. Real or perceived lack of integrity by injured workers is reduced by mutually agreed upon IMEs and the outrageous economic advantage of the employers in fighting claims and their abusive practices in claims handling are removed. HB 466, HD 3 is a necessary and is consistent with the true intent and public policy of the workers' compensation statute in bringing the parties closer to what has been seemingly lost over the years as discussed beginning in the next section.

Current Adversarial Practice Compels Passage of HB 466, HD 3

Currently, the laudable practice using "independent" medical examinations are essentially non-existent. Adjusters and attorneys for the employer alike have lost sight of the meaning of "independent" and the benefits of mutually selected qualified physicians conducting examinations. Instead, they have now increasingly engaged in the wholesale purchase of physicians for such examinations for employers, turning them into adversarial weapons to deny lawful claims and to delay or deny the payment of legitimate workers' compensation benefits. There are more and more physicians, adjusters and attorneys engaged in the abusive handling of claims by the use of IMEs for the exclusive purpose of lining their pockets. Contrary to some of rhetoric contained in the testimonials opposing HB 466, there are no safeguards in place since injured workers have no means to offset the enormous wealth of employers - they do not have

¹ www.merriam-webster.com/dictionary/independent

and cannot have the monetary resources to rebut purchased bias IMEs. The testimonials opposing HB 466 are disingenuous as they gloat and cheat under the guise of the “critical” need to maintain their unfettered right to IMEs. And, this vile defense practice will continue to run amok unless HB 466, HD 3 is passed.

Predictable IMEs Compels Passage of HB 466, HD 3

To illustrate the need for the passage of the bill, I will discuss the case of a constituent of Chair Green in which I attended a hearing in Kona last week Thursday, February 9, 2012. Defense adjusters and attorneys are lining their pockets along with the physicians conducting their IMEs as illustrated in this case (I have many more clients in identical situations).² The result is sadly observing avoidable needless painful suffering, senseless economic ruin, and in the absence of mutually selected IMEs injured workers undergo costly and protracted litigation. The latter is inevitable when huge sums of monies are made so long as countless IMEs are in line with what is requested by the defense industry. Defense attorneys love the *status quo* since they have created a cottage industry and art form along with their purchased physicians, earning annual incomes, which I am sure, if disclosed, would be shocking to decision-makers.

Steven’s Plight

Steven, was age 58 at the time of his work accident on September 7, 2009 while working as a station manager in Kona for an airline. He decided to assist his subordinates by loading and tossing luggage weighing up to 70 pounds onto a conveyor belt. Specifically, he was engaged in repetitive work and as he lifted a box by its rope, it slipped and dropped. To prevent it from dropping, he grabbed onto the box in an awkward position and felt instant pain to the small of his low back. He was off of work the next two days resting in bed, took some old medications, and hoped that he merely strained his low back. The pain did diminish some and he returned to work. He thought that he had merely pulled a muscle and it would go away. This was the first real work accident that he had sustained in his entire working career.

Eventually, he began developing a numbing sensation in his legs. Rather than relating it to his low back, he thought that he was suffering from circulatory problems in his lower extremities. He informed his supervisor of the unusual developments. He sought medical treatment with Dr. Lambert Lee Loy who informed him that he may have a circulatory condition since Steven had a family history. Dr. Lee Loy also expressed concerned that he could be suffering from the result of a low back injury. Work-up was conducted for both circulatory and low back conditions. For the low back, the work-up included taking x-rays and a MRI and

² I am more than willing to show you IME after IME by a select few physicians who are constantly on the payroll and joined at the hips with the defense. They make incredibly handsome annual income as Douglas Thomas Moore testified during the 2011 session by letter dated February 7, 2011 where one IME was charged at the tune of \$8,115.18 for a fourth IME one of a claim which he was handling! I say this is obscene. Ironically, he is an injured worker and employee of the State of Hawai’i and this is our monies. The legislators may also well recall a single physician who earned more than \$1,000,000.00 annually conducting so-called IMEs for one insurance company. There are many more physicians who conduct IMEs for the defense only.

consultation with Dr. Jon Graham, a prominent neurosurgeon. The MRI disclosed multiple diagnosis of the low back, including stenosis and protrusions/herniations at two levels and anterolisthesis by x-rays. After learning of his serious low back condition and having extreme difficulty with sitting, standing and walking, Steven decided to file a formal claim for workers' compensation benefits.

The claim was denied. Adding insult to the whole situation, Steven was also terminated even though he had seniority to bump into a position by transferring to Honolulu to finish up nine (9) more months to vest for a ten (10) year-pension. The adjuster first gathered his entire historical medical records by way of subpoena, hoping that there would be something in the records, which could be used to deny his claim. Fortunately, Steven never had a back problem, nor went to a physician for treatment. This did not stop the insurance carrier from mishandling the claim. Then, he sent Steven to Dr. Lorne Direnfeld on July 20, 2010 for an IME at the insurance carrier's costs to determine if the claim was work related. During this whole period, the adjuster offered Steven no help, did not send him a copy of the required workers' compensation highlights which would inform him of some of his basic lawful entitlements. If this were done, he probably would have also contacted the Department of Labor and Industrial Relations.

On July 20, 2010, after confirming that Steven had no pre-existing work injury to the low back, Dr. Direnfeld who works closely with the insurance industry, authored a 30-page report and cited studies to justify that his medical condition was not work related. In relevant parts, he opined that he merely had an underlying low back stenosis, which was dormant throughout Steven's life. He cited statistics from studies and perfectly fitted him into a category of individuals by picking and choosing symptoms. In short, he opined that Steven's manifestation of symptoms was merely coincidental when it happened after the work accident and could not be related in anyway to the work accident. In other words, his disabling condition related to age and genetics and coincidentally manifested itself after the work accident.

A hearing was finally conducted nearly a year after the work accident. The adjuster represented that he relied on Dr. Direnfeld's comprehensive report. Steven did not have any guidance and proceeded with the hearing *pro se*. He failed to secure disability slips and had placed all of his treatment under his private medical plan, thanks to the adjuster who never informed him of his rights. The hearing officer on behalf of the Director must have found it difficult to buy into the argument that Steven's condition merely manifested itself as coincidence since Steven never had low back problems before the work accident. For this reason, he found that Steven sustained a compensable injury and awarded reasonable medical care, services and supplies since Steven unquestionably needed surgery even though he could not award any wage loss benefits.³ The insurance carrier appealed the case. Even though Steven urgently needed and was scheduled for surgery, it was denied. It was at that late point that I was retained. Eventually, he continued to deteriorate and was only able to function for two (2) to three (3) hours at best during a day. He also could not sleep. For this reason we tried to secure payment through his private medical plan, but this was also denied because he already had won his workers' compensation case. Needless suffering should and could have been avoided.

During the interim, the defense secured another IME with Dr. Raymond Taniguchi who had already prejudged the case. We had tried to have the use of another designated physician by

³ All relevant records will be made available upon request by Chairs Green and Hee.

offering three more impartial physicians to no avail. Steven was forced by order of the Labor and Industrial Relations Appeals Board ("Board") to attend an examination with Dr. Taniguchi. The examination was a farce. Steven attended the compelled examination with the understanding that he was seeing Dr. Taniguchi for the purpose of determining if the recommended surgery by Dr. Graham was appropriate and necessary. To his chagrin, the first words made by Dr. Taniguchi was that he fully agreed with Dr. Direnfeld's opinion that his symptoms the week following the work accident were merely a coincidence after the work accident.

In light of his continued deteriorating condition and since he won his case, Dr. Graham submitted another treatment plan for surgery. The defense attorney relied on both Drs. Direnfeld and Taniguchi's report on coincidence to deny the request for surgery. I requested a hearing before the Director to address the surgery. I also filed a motion to remand the case from the Board to the Director for a ruling to determine whether the insurance carrier is liable for Steven's critical low back surgery. The defense continued to rely on Dr. Direnfeld's IME and Dr. Taniguchi's IME, which regurgitated Dr. Direnfeld's "coincidence" opinion. The defense attorney vigorously opposed my motion for remand. During argument on the motion, a Board member commented to the insurance carrier's attorney that it should be liable for Steven's medical care. In this regard, fortunately, the Board issued an order to remand and to allow the Director to address whether the employer should be liable for the surgery as recommended by his primary care physician and Dr. Graham.

We tried to secure a rebuttal to Drs. Direnfeld's and Taniguchi's bias purchased opinions but we could not do so. Dr. Graham informed Steven that he would need to pay \$4000.00 to \$5000.00 if he wanted a rebuttal, monies Steven could not pay. The employers opposing this bill know this despite their mantra that there are built-in mechanisms where injured workers can get opinions from his physicians to address a rebuttal. This is true, but like Steven, there is a built in barrier as a practical matter preventing injured workers from doing so – he just cannot match the outrageous financial resources to rebut the purchased highly expensive IMEs gathered by the defense.

During last week's hearing, the defense engaged in an abusive and unconscionable low. Unbeknownst to us, the defense secretly secured a third IME opinion with its endless vast economic advantage. The defense had secured a medical records review from Dr. Clifford Lau, who never examine Steven or the diagnostic testing and merely regurgitated the identical opinions of Drs. Direnfeld and Taniguchi. The report is dated September 16, 2011 and not disclosed and transmitted to us within 15 days of receipt of the report as required by the rules. There is another applicable rule which requires that the report be disclosed within the record's submission deadline of 15 days before the hearing. Instead, with the mindset of winning at all costs, it was dropped on us and the Hearings Officer for the first time during the hearing. I made an oral motion to strike Dr. Lau's report as untimely, followed by a letter dictated over the telephone while I was still at the Kona airport.

In his long quest to secure lawful benefits, in particular, his critical surgery since he first won his case in 2010, we now must wait another 60 days for a decision from the Director. This is absurd that we must overcome barrier after barrier, and it is crystal clear that it is literally impossible for injured workers to match resources in securing IMEs or are safe in allowing IMEs chosen by the defense. Developments in Steven's claim to pursue his rightful lawful benefits belie testimonials opposing HB 466 from the outset. Steven's case is a First Insurance Company

of Hawaii, LTD. claim and Linda O'Reilly, who is the case manager for First Insurance, submitted testimony for the Hawaii Insurers Council in her testimony dated February 8, 2011. Its attorneys include the law firm of Leong Kunihiro Lezy & Benton, who routinely refuse to use any other suggested physicians for IMEs, like in Steven's case, even when we suggested other defense physicians as an alternative to Dr. Taniguichi. This was rejected since Dr. Taniguichi will parrot whatever the employers needs. In fact, they routinely use and compensate Dr. Direnfeld, Taniguichi and Lau since their IMEs are bias and predictable for employers, adjusters and insurance carriers. Ms. O'Reilly's testimony that injured workers benefit by the defense's unfettered right to select "qualified" physicians for IMEs at their cost is a sinister plot to hurt injured workers.

Conclusion]

I enthusiastically support the passage of HB 466, HD 3 for a myriad of reasons. A bill like this one was enacted by the will of the people and legislators only to have it vetoed by former Governor Linda Lingle during her tenure. We urgently need this bill to prevent the continued abusive claims handling and passage of the bill will insert a sense of justice by correcting the wrongful use of IMEs. As shown, unless we have mutually agreed IMEs, injured workers will be subjected to one of the most oppressive tools in arsenal of powerful legalized adversarial loopholes, contained in the statute, to be used to illegally deny rightful claims and lawful benefits. Injured workers can never compete with the unequal outrageous advantage of monetary resources of employers and insurance carriers.

As notably, the continued use of IMEs selected by employers and their representatives creates needless litigation, unduly delays returning injured workers to work, assuming they ultimately win, and aggravates the already unfortunate backlog for the Disability Compensation Division. Just as important, the continued current use of IMEs, if left unchanged, is an unequivocal overlooked cost driver in the system, unnecessarily imposes undue physical and emotional suffering and leads to economic ruin for your constituents among other untoward adverse consequences. These, alone or together, are inconsistent with the underlying humanitarian purpose of the workers' compensation law and unquestionably violate sound public policy.

Please feel free to contact me for additional data and thank you for the opportunity in allowing me to submit testimony on such a critical matter.

To whom it may concern,

My name is Michelle Higgins-Mahe. I am an injured worker. I am in support of Bill HB466. Injured workers need to have a say in how, who and when their treatment occurs. I know from experience that the IME's is a one-sided and arbitrary exam that is controlled and conducted by the employer.

On the day of my exam the building that the doctor was located in had a fire and had to be evacuated. This meant that I had to walk down several flights of stairs. At the time my left knee was injured from my accident and my primary care physician (PCP) was refusing to address my complaints. I was forced to seek medical attention for my knee outside of workers compensation (WC) at the suggestion of my PCP for my WC injury. Please note that my left knee was eventually treated under WC due to the request of the surgeon that cared for me.

After walking down the stairs and waiting across the street in a park, the fire department allowed us back into the building. By this time my left knee had swelled to the point where there was no definition around my knee joint. Due to overwhelming pain and discomfort during the IME all of the assessments were not done. On the full report completed by the IME doctor there were values for all assessments even for the ones that were not assessed.

The IME doctor was concerned about the condition of my knee and sent me for x-rays that very day. In his report he did not mention the condition of my knee or the fact that he sent me for x-rays.

I was sent for an IME before my knee surgery and the IME physician based his opinion on the Functional Capacity Examination (FCE) that was done previously. Please note that I have two copies of this FCE both with different dates and different values regarding my abilities to perform various tasks. It is with the FCE that has the greater values that the IME physician assessed and rated me.

My IME and FCE were done before my left knee surgery, where they found two meniscal tears and subsequently had to do a lateral release (cut the ligament). Both documents exhibited fictitious values. I have no recourse as it is their word against mine because they do not allow anyone to be in the room with you, nor do they allow videotaping of the assessments.

I am a victim of the IME nightmare and it has affected every aspect of my life. Due to their prejudiced and fictitious assessments I have been denied treatment, therapies, medications and been terminated from my job. I am now being forced to look for work at a medium duty level due to the IME and FCE rating. My PCP doctor rates me as sedentary.

Bill HS466 will stop the practice of IME physicians producing IME documents that are biased and fraudulent. The IME companies base their income on revenue from a limited number of insurers and companies. If they do not complete IME reports the way their employers request,

they will have no income. It is unreasonable for them to expect them to bite the hand that feeds them. Bill 466 will ensure this will no longer be the case.

Sincerely,

Michelle Higgins-Mahe, RN, BSN

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 2:49 AM
To: HTHTestimony
Cc: GEEDUBBYOU@AOL.COM
Subject: Testimony for HB466 on 2/13/2012 10:45:00 AM
Attachments: TESTIMONY FROM GEORGE WAIALEALE FOR HB466 HD3.pdf

Testimony for HTH/JDL 2/13/2012 10:45:00 AM HB466

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: GEORGE WAIALEALE
Organization: Individual
E-mail: GEEDUBBYOU@AOL.COM
Submitted on: 2/13/2012

Comments: