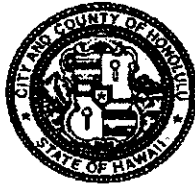


DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5583 • INTERNET: www.honolulu.gov/hr

PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR

February 8, 2011

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor
and Public Employment
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

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

The City and County of Honolulu strongly opposes House Bill No. 466, repealing Section 386-79, Hawaii Revised Statutes (HRS), and adding a new section entitled, **Medical examinations; selection of physicians**. This bill requires independent medical examinations and permanent impairment rating examinations to be performed by mutually agreed upon physicians. Although the vast majority of workers' compensation claims proceed without controversy or disagreement, there are claims where the need for an independent medical examination is necessary to evaluate the compensability and/or progress of the claim. The Hawaii Workers' Compensation Law permits a claimant to secure medical treatment from any physician practicing in the State of Hawaii. Occasionally questions arise concerning diagnosis, treatment, or disability status. While employers have no say in an employee's choice of physician, they currently have the right to obtain an independent opinion from a physician or specialist regarding the progress of a claim. H.B. 466 greatly limits an employer's ability to obtain such independent examinations by mandating that only physicians agreed upon by claimants be used for employer requested medical examinations, or if both parties cannot reach a consensus, physicians assigned by the Department of Labor and Industrial Relations.

The Hawaii Workers' Compensation Law weighs heavily in favor of the claimant. Under the presumption clause, any claim filed is deemed compensable unless the employer presents substantial evidence to the contrary. During the hearing process at the Disability Compensation Division (DCD) and the Labor and Industrial Relations Appeals Board (LAB), issues of doubt are often resolved in favor of the claimant. The employer currently has the right to select an independent medical examiner to review a claimant's

The Honorable Karl Rhodes, Chair
and Members of the Committee on Labor and
Public Employment
The House of Representatives
Page 2
February 8, 2011

medical progress. To change this as proposed is unfair and inequitable to employers. The DCD and LAB already provide the necessary checks and balances to ensure that employees are treated fairly, including limiting ordered medical examinations to one per case, while allowing employers to exercise their rights to review the progress of claims using independent medical examiners.

We respectfully urge your committee to file House Bill No. 466. The changes proposed by this bill erode an employer's ability to efficiently and effectively manage claims and will definitely increase the cost of workers' compensation in the State of Hawaii.

Yours truly,



Noel T. Ono
Director

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON

LABOR & PUBLIC EMPLOYMENT

Tuesday, February 8, 2011

9:00 a.m. – 12:00 p.m.

HB 466
RELATING TO WORKERS' COMPENSATION

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

Chair Rhoads, Vice Chair Yamashita and Members of the Committee:

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

This bill mandates that independent medical examinations (IME's) and permanent impairment rating examinations, be performed by physicians mutually agreed upon by the employer and the injured employee.

An "independent" medical examination is intended to serve as a tool when statutory presumption, excessive treatment, or reasonableness of a surgical procedure 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 the 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 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'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.

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

Thank you for this opportunity to submit testimony.



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

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

The Twenty-Sixth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor & Public Employment

Testimony by
Hawaii State AFL-CIO
February 8, 2010

H.B. 466 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO supports H.B. 466 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 DLIR director.

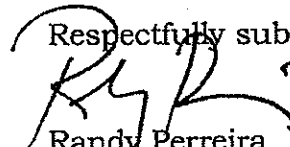
The purpose of this bill is to reduce workers' compensation costs and speed up an employee's ability to return to work by selecting outside non-treating doctors who are mutually agreed upon.

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 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.

Respectfully submitted,



Randy Perreira
President



Property Casualty Insurers
Association of America

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Karl Rhoads, Chair
House Labor & Public Employment Committee

From: Samuel Sorich, Vice President

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

Date: Tuesday, February 8, 2011
9:00 a.m., Conference Room 309

Aloha Chair Rhoads and Members of the Committee:

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

HB 466 would establish a new, complex system for obtaining independent medical examinations. Instead of the simple existing system that allows an employer to obtain an independent medical examination, HB 466 would require the employer and the employee to reach a mutual agreement on the physician who conducts the examination. If mutual agreement is not reached, the director of the department of labor and industry would have to appoint a physician. The purported reason for the bill is to provide safeguards for injured employees, but existing law already provides strong safeguards. Under existing law, the report of the independent medical examination must be given to the employee. The employee has the right to challenge the report and to offer evidence that disputes the report’s findings.

The independent medical review gives the employer valuable information to evaluate the employee’s condition. The employer pays for the examination. HB 466 would unfairly force an employer to pay for examinations that do not allow the employer to discover information that enables the employer to make a reasoned evaluation of the employee’s condition and treatment.

Existing law allows independent examinations to be undertaken quickly. In contrast, examinations under HB 466 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 gives the director seven days to appoint a physician who is willing to undertake an examination, however the bill fails to explain what happens when a willing physician is not found in seven days. Once a physician is appointed to take the case, the examination is supposed to take place within 30 days. No doubt, that is optimistic. All this means that examinations would be burdened by administrative delays.

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



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF LINDA O'REILLY

HOUSE COMMITTEE LABOR AND PUBLIC EMPLOYMENT
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

Tuesday, February 8, 2011
9:00 a.m.

HB 466

Chair Rhoads, Vice Chair Yamashita, and members of the Committee, my name is Linda O'Reilly, Workers' Compensation Manager at First Insurance. I am here 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, which amends Section 386-79, Medical Examination by Employer's Physician.

Our members believe this bill will substantially increase workers' compensation costs, which will translate into a higher cost of doing business, limiting business' ability to compete, adversely affect employees by limiting job availability, pay, and benefits and ultimately find its way into the costs of goods and services in Hawaii.

The current system regarding Independent Medical Examinations (IMEs) has been in place for some time and we believe it is working. It appears that this legislation is prompted by claims that IME physicians are biased toward the employer. We do not believe this is true. Employers seek access to clinical expertise to help return the

injured worker to the job. Currently, there are numerous safeguards in place to ensure the IME is objective and unbiased. Injured workers are able to obtain opinions or comments from their treating physician or other doctors regarding the IME opinion if they disagree. Injured workers are also able to obtain their own rating and if the hearings officer relies on it, the employer has to pay for it. Finally, there is an appeals process that provides further due process to both sides if an agreement cannot be reached.

According to the Department of Labor and Industrial Relations, ordered IMEs number about 1,000 per year. In 2008, there were approximately 24,500 new workers' compensation claims, and therefore, only about 4% of all cases require an ordered IME. We believe this legislation is unnecessary because most IMEs occur by mutual agreement, absent any statute. The current system provides an approach for the employer and injured worker to resolve medical treatment disputes in an efficient manner. The proposal to mandate mutual agreement will increase workers' compensation costs and delay the delivery of medical treatment in certain cases. This is detrimental to the injured worker and does not benefit the employer.

The provision to require impairment IMEs to be separate from treatment IMEs merely presents an inconvenience to the injured worker. A comprehensive examination often takes several hours and this requirement will add costs to the system by requiring two separate examinations that could be addressed in one visit. Currently, some IMEs are performed to address appropriate treatment utilization and measurement of the degree of physical impairment. In many cases, it is important to obtain a *baseline* impairment rating to later determine the effectiveness of treatment. This also benefits the injured worker by having one physician look at the case in a comprehensive manner. It is also more cost effective if treatment and impairment are addressed by a single IME instead of requiring two. The suggestion that two separate examinations benefits the injured worker is not substantiated by evidence and will only add costs and delay the delivery of benefits.

The bill also limits IMEs to one per case. There is no measurable benefit to the injured worker by limiting IMEs to one per case. In fact, such a restriction may harm the injured worker. Two IMEs may be necessary in some cases since the first is initially done to establish a baseline and another IME is needed to determine whether there has been improvement, explain a change in the condition, or impairment. A subsequent IME may also be necessary if the injured worker develops new symptoms or conditions secondary to the work injury. The bill also does not allow for any exceptions for an ordered IME for impairment ratings. In the event that an injured worker is ordered to attend an impairment examination and the physician determines that the injured worker is not at maximum medical improvement, or is a no-show for the appointment, the injured worker is precluded from obtaining a subsequent impairment rating. Neither an employer nor an injured worker should be restricted in securing an IME.

Another provision in the bill requires IME physicians to meet certain criteria. Mandating that IME physicians meet certain requirements may not increase the standard of care for the injured worker and will reduce the number of physicians willing to participate in workers' compensation cases. Currently, there are a limited number of physicians who perform IMEs and when categorized by specialty, the list of available physicians is even smaller. It is in both the employer's and the injured worker's best interest to have as many IME physicians available as possible to get the most objective opinion in the most efficient way. Many specialty IME physicians like toxicologists, neuropsychologists and infectious disease specialists who practice on the mainland are used because there are too few or no qualified physicians here that can perform the examinations. Hawaii is a small and isolated state in which specialized physicians are not able to acquire practical experience due to exposure to limited and isolated cases. Insurers rely upon regional clinics and medical centers that specialize in particular medical disorders. The provisions which require that the IME physician be licensed to practice in Hawaii and limits their reimbursement rates are unworkable and will shrink the limited pool of available physicians even further. The average lead time to secure an IME appointment

is six weeks and this provision will inevitably create a delay in obtaining timely appointments and reports and limit local physicians' ability to draw upon the clinical expertise of their mainland counterparts. There is also a provision requiring injured workers who reside on the mainland to obtain an IME from a physician licensed to practice in that state for the five consecutive years prior. This requirement does nothing to raise the qualification of the IME physician, but rather limits the number who will be eligible to examine injured workers who reside on the mainland. In addition, it is inconsistent with the requirement for IME physicians who examine injured workers who reside in Hawaii.

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

Thank you for the opportunity to testify.

February 7, 2011

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

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

Date of Hearing: Feb. 8, 2011
Time: 9:00 a.m. – 12:00 noon
Place: Conference Room 309

Testimony in support of HB 466

My name is Laurie Hamano, President of Vocational Management Consultants. I have worked in the community for the past 26 + years working with injured workers as a vocational rehabilitation counselor, as well as a member of Hawaii Injured Workers Alliance, member of International Association of Rehabilitation Specialists, a business owner, and member of the Chamber of Commerce. I support HB 466 as this bill supports the mutually agreed upon Independent Medical Evaluations. This will help the system by asking all the parties involved to agree upon a doctor to lessen the animosity that is set forth during these employer requested medical evaluations. We know that mutually agreed upon IME doctors for PPD ratings are done as the "standard practice" now and it works amongst the carriers and the attorneys/injured workers who are settling their cases. Why can't that same agreement of mutually agreeing who will complete the IME work in the first IME on a new case?

We have experienced the trauma with our injured workers who have been subjected to numerous IMES on their cases as they are told over and over by these Employer selected doctors that "there is nothing wrong with you; go back to work" only to find that they cannot return and either re-injure or are terminated from their jobs. These cases never receive the proper treatment that is needed to assist them to recover and return to productive lives. In turn, the case drags on for many more months than necessary if the Injured Worker received the immediate care he/she needed to recover.

This measure can only help the system decrease the costs and delays from the onset of the cases.

I urge you to pass this bill.

Thank you for allowing me to provide testimony.

Laurie H. Hamano M. Ed. CRC, MHC
President, Vocational Management Consultants, Inc.

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

yamashita2 ----

From: mberkowitz@VocationOptions.com
Sent: Monday, February 07, 2011 10:57 AM
To: LABtestimony
Subject: i support HB 466

Please support HB 466 to insure Hawaii's Injured Workers can mutually agree with employers on chose of physician for Independent Medical Examinations.

Thank you for your time and attention to this matter.

Marcia Berkowitz CRC LMHC
Rehabilitation Specialist

Vocation Options, LLC
Post Office Box 2
Kahului, Hawaii 96733
242-1444 - voice
298-4142 - cell
878-8376 - fax

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February 7, 2011

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

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

Date of Hearing: February 8, 2011
Time: 9:00 a.m. – 12:00 noon
Place: Conference Room 309

Testimony in support of HB 466

My name is Lily Miyahira, Office Manager employed with Vocational Management Consultants, Inc. I've worked in the vocational rehabilitation field for the past 15 years. Working directly with the vocational rehabilitation counselors, I definitely agree with having an Independent Medical Evaluations for the injured workers. Having all parties involved in the agreement of a doctor would definitely lessen the problems set forth during these medical evaluations. Mutually agreed upon IME doctors for PPD ratings are done as a standard practice currently, and it works for all parties involved. Why can't the same agreement be reached when it pertains to who will complete the IME initial evaluation?

Many injured workers are subjected to numerous IMES on their cases and are told over and over by the Employer selected doctors that "there is nothing wrong with you; return to work only to find that they cannot return to work, have re-injured themselves and are terminated from their jobs. These cases never receive the proper treatment needed to assist them to recover and return to productive lives. The cases end up dragging on and may be would probably have been resolved earlier and the injured worker may have been able to return to work by recovering sooner.

I am in support of this bill being passed to help the system decrease the costs and delays from the onset.

Sincerely,

Lily Miyahira

THE LAW OFFICES OF DOUGLAS THOMAS MOORE

Office Address:
Century Square
1188 Bishop Street, Suite 1401
Honolulu, Hawai'i 96813

Telephone: (808) 526-0056
Fax: (808) 526-0057
Moore4640@hawaiiantel.net

February 7, 2011

VIA EMAIL: LABTestimony@Capitol.hawaii.gov

TO: House Labor Committee
Hon. Rep. Karl Rhoads, Chair

Re: TESTIMONY IN SUPPORT OF HB 466
TO BE HEARD 2/8/11 @ 9:00 a.m-12:00 p.m

Dear Rep. Rhoads and Committee Members:

I represent injured workers in their workers' compensation claims. I support HB 466. The intention of the bill is to not only protect the rights of injured workers, but also to save employers money by requiring that physician Independent Medical Examinations (IME's) and Permanent Partial Disability (PPD) ratings be by mutual agreement of the parties. This mutual agreement should avoid litigation, which costs money, because by agreement the parties should agree to the opinions and conclusions of the mutually agreed upon physician.

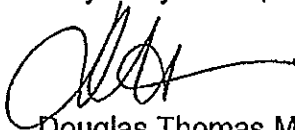
This mutuality of agreement is good for the injured workers who often times have been forced to bad IME doctors who have reputations for almost always rendering opinions against the injured workers. The bad IME doctor opinions do not resolve the issues in the claim and, instead, more litigation ensues which is not good for any of the parties including the Department of Labor which then has to spend time and resources to address and resolve the litigation. Instead, fair and impartial opinions and conclusions should lead to the prompt and effective rehabilitation of injured workers. This gets them back to work sooner which is what employers need.

This mutuality of agreement is good for employers and insurance carriers because the opinions and conclusions of the physicians selected should be agreed to by the parties and thereby avoid disagreement and costly litigation. There is typically too much litigation now in the work comp system when the examining physicians are not agreed to by the parties. The goal of work comp is to get the injured workers rehabilitated and back to work which is a great benefit to employers and their insurance carriers. The opinions of fair and impartial physicians will promote this worthy goal.

This mutuality of agreement is also good because it should save money. Too many times there are multiple expensive IME's of injured workers. For instance, enclosed is a bill for \$8,115.18 from an IME doctor! This was the fourth (4th) IME of one injured worker (usually there is only supposed to be one IME per claim). So, was over \$30,000.00 paid out in IME's for this one claim? And this is a State of Hawai'i case. These costs for IME's are ridiculous especially considering the poor financial condition of the State of Hawai'i.

Stop IME abuse and save money by supporting HB 466. Mahalo. Please pass this bill. Thank you. Should you have any questions or need further information from me, please do not hesitate to contact me.

Very Truly Yours,



Douglas Thomas Moore

encl.

[REDACTED], M.D., Ltd.

Diplomate American Board of Psychiatry and Neurology (Adult)
Diplomate American Board of Psychiatry and Neurology (Child)
Diplomate American Board of Psychiatry and Neurology (Forensic)

February 24, 2010


[REDACTED] Esq.
[REDACTED] Davies Pacific Center
841 Bishop Street
Honolulu, HI 96813

RE: Claimant: [REDACTED]
Employer: [REDACTED], State of Hawaii
Carrier: Self-Insured
D/Injury: 12/21/05
Case No.: AB-2006-569 (2-06-40097)
D/Exam: 01/06/10

Hourly charges at \$500.00 per hour as follows:

Review of records	7.25 hours	\$3625.00
Time reserved for examination 11/17/09 "no show"	2.50 hours	\$1250.00
Time reserved for examination 1/6/10	2.50 hours	\$1250.00
Report	3.25 hours	\$1625.00
Excise tax		<u>\$ 365.18</u>
TOTAL DUE		\$8115.18

Please make payment to: [REDACTED], M.D., Ltd.
Fed tax ID number: [REDACTED]

Certified as an original  _____

yamashita2 ----

From: Joseph Zuiker [zuikerlw@pixi.com]
Sent: Monday, February 07, 2011 1:54 PM
To: LABtestimony
Subject: Strong Support for HB 466 "IME Mutual Cooperation " Bill

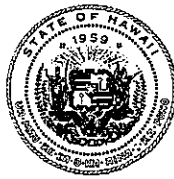
Strong support for HB 466 the IME Mutual Cooperation Bill. Passing this bill and mandating mutual cooperation will directly speed up the treatment of injured workers while cutting weekly benefit costs for employers and insurance carriers.

This bill does save small companies money by getting workers back on the job faster.

Mutual Cooperation fits directly into the platform of Gov. Abernethy and will put Hawaii on the map nationwide as moving forward in a very progressive manner with mandatory cooperation.

Please pass HB 466.

Joseph Zuiker



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
Email: dlir.director@hawaii.gov

February 8, 2011

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 8, 2011
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

Testimony in SUPPORT
of
H.B. No. 466 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

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

II. CURRENT LAW

Currently, Section 386-79, HRS, specifies that the employee, when ordered by the director, shall submit to the examination by a qualified physician designated and paid by the employer. If an employee refuses to attend the examination, or obstructs in any way the examination, the claimant's rights to benefits will be suspended for the period during which the refusal or obstruction continues.

III. HOUSE BILL

The Department supports the intent of this bill is to provide an assurance of impartiality in the IME and rating examination process but have the following concerns:

1. The IME process is an important part of the employers' discovery process to ensure that only proper treatment is provided to the injured worker. Employers request IMEs when they have questions or concerns relating to the claimant's injury or treatment. The employer and insurance carrier pays for 100% of the cost of the IME and they should be afforded the choice of the IME physician.
2. There are already safeguards in place for IMEs. Hawaii's workers' compensation law requires full disclosure of the IME report to the injured employee. This allows the treating physician, or the injured worker, to challenge the evaluation. The Department makes its decisions based upon the evidence provided by the opposing parties.
3. The Department has concerns that this measure would be a detriment to the employee receiving good medical advice. There may not be an adequate number of physicians willing to have their names placed on the list due to the time constraints imposed on the doctors to respond and perform the examinations within 30 days.
5. The Department is concerned that this bill proposes that if an employee "unreasonably" refuses to submit to or obstructs an examination, the employee's right to compensation shall be suspended. The department would appreciate guidance on what is an "unreasonable refusal."

The Department has concerns with having a permanent impairment rating conducted only when the attending physician determines the employee to be medically stable. First, in some cases, treatment may go on indefinitely before the attending physician believes the employee's condition has stabilized. This will severely limit the employers' right to have a permanent impairment rating done to resolve the case expeditiously, if they have evidence that the injured employee's condition may be stable. Medical stability is already defined in Chapter 386 Administrative Rules, section 12-10-1, to mean "that no further improvement in the injured employee's work-related condition can reasonably be expected from curative health care or the passage of time".

6. The Department also has concerns that additional funding for a position will be required to build and maintain a list of IME and rating physicians who would be willing to conduct these examinations and to coordinate with the employer the appropriate physician to conduct the IME. The Department would require three Workers' Compensation Hearings Officers and two Office Assistants for a total annual cost of \$194,000 to implement this proposal because of the loss of staff due to the 2009 Reduction in Force (RIF) experienced by the Disability Compensation Division.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

LATE

RANDY PERREIRA
Executive Director
Tel: 808.543.0011
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NORA A. NOMURA
Deputy Executive Director
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DEREK M. MIZUNO
Deputy Executive Director
Tel: 808.543.0055
Fax: 808.523.6879

The House of Representatives
The Twenty-Sixth Legislature, State of Hawaii
Committee on Labor & Public Employment

Testimony by
Hawaii Government Employees Association

February 8, 2011

H.B. 466 – RELATING TO WORKERS’
COMPENSATION

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 466. We believe that employees injured on the job deserve to be evaluated by an impartial physician selected with their agreement. As drafted, the bill provides a reasonable alternative to selection of an impartial physician in the event no mutual agreement is reached.

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

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director



LATE



**Testimony to the House Labor Committee
Tuesday, February 8, 2011; 9:00 a.m.
Conference Room 309
Hawaii State Capitol**

RE: HOUSE BILL 466 RELATING TO WORKERS' COMPENSATION

Chair Rhoads, Vice Chair Yamashita and the Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes HB 466, relating to Workers' Compensation.**

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

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

The Chamber has carefully reviewed the issues involving the IME process and continues to explore how to improve the process for the injured workers and employers. Although we understand the intent of the bill, the Chamber does not support this bill for the following reasons:

- 1) In many cases, there is a necessity to retain physicians in specialties outside of Hawaii to conduct an IME as these specialties are either unavailable or unwilling to conduct IME in Hawaii. This unavailability/unwillingness is bound to increase by mandating such examinations or permanent impairment ratings be conducted pursuant to the medical fee schedule resulting in even fewer physicians available for IME. The physician community should be consulted to establish appropriate procedural guidelines for conducting IMEs.
- 2) The IME process is an essential part of the employers' discovery process to ensure proper treatment and costs. The right for an employer to select the physician of its choice to determine whether or not an injury is work related or whether medical treatment is reasonable and necessary should not be subject to the delay and costs associated with this proposed bill.

The employer and insurance carrier pay for 100% of the cost of the IME and should be afforded the choice of the IME physician. Just as the employee chooses his or her attending physician, so we believe the employer should be able to obtain a second opinion. Furthermore, it is the employee's attending physician, and not the IME physician, that is conducting the actual medical treatment. The IME physician's role is to evaluate diagnoses, causation, treatment and impairment.

- 3) This bill precludes combining examination and rating without the employee's written consent. The IME physician should be permitted to combine examination and permanent impairment rating without requiring the employee's written consent where the IME physician determines the employee is medically stable and ratable. To require the employer to schedule a separate rating would be a tremendous inconvenience to the employer, employee and IME physician as well as result in doubling the costs. Such a proposal is unnecessary, inconvenient, inefficient and expensive.
- 4) Proponents of this legislation believe this change may decrease the adversarial nature which arises during disputes and eliminate the impression of bias in the IME. However, the vast majority of IMEs are conducted without incident or dispute. The opportunity for an employer IME can greatly enhance the likelihood of successful treatment, recovery and resolution of the claim without the need to take the matter to hearing before the Director at significant savings in time and resources.
- 5) Safeguards exist for IMEs. Hawaii's workers' compensation law requires full disclosure of the IME report to the injured employee. As a result, the employee will be able to determine whether the evaluation was accurate. Otherwise, the employee or his or her attending physician will have the opportunity to contest the report. The employee is always free to obtain an alternative permanent impairment rating. In addition, it is not uncommon for an employer to voluntarily authorize another examination and rating by a second IME physician where the employee and his or her counsel disagree with the IME report. This is already done voluntarily by the employer to confirm the accuracy or inaccuracy of some disputed reports.

On occasion the employer may dispute the attending physician's opinion that the employee has not yet attained medical stability where the medical evidence suggests otherwise. The employer should not be precluded from obtaining examination and rating under these circumstances, but should be allowed to present its own evidence for the Director's determination. Once again, the employee is always free to have his or her attending physician contest the report.

- 6) This bill provides for the Department to maintain a list of qualified physicians licensed to practice in Hawaii and appoint one within 7 days where the employer and employee disagree. It requires examination be performed within 30 calendar days. This is impractical given the Department's already limited resources. It will be extremely challenging for the Department to maintain an updated list of physicians

agreeable to conduct examinations and ratings for all medical specialties required particularly where some specialties are not available in Hawaii for workers' compensation. It will also be difficult for the Department to process requests within 7 days given their existing priorities and workload. Likewise, requiring an examination be arranged within 30 calendar days may prove difficult due to the schedules of the IME physicians especially if the available physicians are limited to the Department's list.

- 7) This bill appears to suggest the IME report is the final say regarding the injured employee. However, this is not the case. The Department makes a determination based upon all of the evidence presented to the hearings officers. The IME report is but one piece of evidence.

In summary, we believe the current system regarding independent medical examinations is working and most IMEs occur by mutual agreement absent any statute. Only a very small percentage of workers' compensation claims require an ordered IME.

For these reasons, the Chamber does not support HB 466 and respectfully requests the committee holds this measure.

Thank you very much for the opportunity to testify.

LATE

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

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Hearing: Tuesday, February 8, 2011
Time: 9:00 a.m. – 12:00 p.m.
Place: Conference Room 309, State Capitol

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

Chairman Rhoads, Vice Chair Yamashita, Members of the Committee:

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

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

HB 466 will preserve the integrity of the permanent impairment rating process. Historically, the Disability Compensation Division has required mutual consent between the injured worker and the employer or insurer to insure that the physician examiner was impartial. Physicians jointly selected recognized that they were being hired to conduct objective assessment of permanent impairment, although their examinations were paid for by the insurance carrier, and this practice served to offset the enormous economic advantage insurers had in adjudication compared to individual employees.

In recent years, however, insurers have often tried to consolidate independent medical examinations and permanent impairment ratings, though they are designed to serve entirely separate functions, the former to assess medical treatment and progress, the latter to measure the extent of permanent disability. Combining the two separate functions is inappropriate because often employees had not truly reached maximum medical improvement and deserved further medical care. Physicians also often predicted recovery would occur and that there would be no permanent impairment, when they could not possibly know the outcome of future treatment before the treatment was concluded. In either instance, the right of the injured worker to care or compensation was sacrificed for expediency and convenience of the 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 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.

HB 446 thus charts a course away from the small-minded and selfish preoccupations of the past toward a more enlightened and constructive future. We therefore wholeheartedly endorse its passage.



LATE

Hawaii Injured Worker's Alliance

715 South King Street Suite #410
Honolulu, Hawaii 96813
Phone: 538-8733 (Oahu)
Phone: (888) 598-8115 Neighbor Islands
Web Site: www.hawaiiinjuredworkersalliance.com

February 8, 2011

Committee on Labor and Public Employment

House Bill 466 RELATING TO WORKERS' COMPENSATION

Requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the DLIR director.

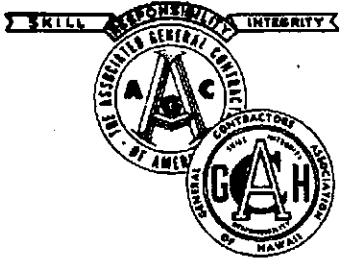
The Hawaii Injured Workers Alliance strongly supports House Bill 466.

The Hawaii Injured Workers Alliance believes that a mutual agreement of an IME physician between the employer and the employee is the fairest way to insure impartial evaluation. Disability and impairment ratings must be done in the most impartial manner to be truly independent examiner.

The passage of this mutually agreed IME bill (HB 466) will benefit both the injured worker and their employer.

Your passage of this bill would be greatly appreciated.

George M. Waialeale
Executive Director
Hawaii Injured Workers Alliance



LATE

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1065 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1681 • FAX 808-839-4167

E-MAIL ADDRESS: gca@gcahawaii.org • WEBSITE: www.gcahawaii.org

February 7, 2011

TO: THE HONORABLE REPRESENTATIVE KARL RHOADS, CHAIR AND
MEMBERS OF COMMITTEE ON FINANCE

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

NOTICE OF HEARING

DATE: Tuesday, February 08, 2011
TIME: 9:00 a.m. – 12:00 p.m.
PLACE: Conference Room 309

Dear Chair and members of this Committee:

The General Contractors Association of Hawaii (GCA), an organization comprised of over five hundred and eighty (580) general contractors, subcontractors, and construction related firms, **strongly opposed** HB2929, HD1 "Relating to Workers' Compensation" because this bill requires the selection of an IME physician by mutual agreement. This will add to compensation costs and delay the delivery of medical treatments in certain cases. The added costs and delays do not benefit either the employer or the injured worker.

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

Thank you for the opportunity to voice our views.

**International Association of Rehabilitation Professionals
Hawaii Chapter
1834 Nuuanu Ave Suite 205
Honolulu, Hawaii 96817**

February 7, 2011

Representative Karl Rhoads, Chair
House Committee on Labor and Public Employment

Rep. Kyle T. Yamashita, Vice Chair
House Committee on Labor and Public Employment

Honorable Committee Members,

NOTICE OF HEARING

DATE: Tuesday, February 08, 2011
TIME: 9:00 a.m. – 12:00 p.m.
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

Testimony in Support of HB 466

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

LATE

ALAN S. OGAWA, M.Ed., CRC

Pali Medical Building • 1834 Nu'uauu Ave. Suite 205 • Honolulu, Hawaii • 96817

Phone: 808 523-7755

Castle Professional Plaza • Windward Office

Phone: 808 235-3458

February 7, 2011

Representative Karl Rhoads, Chair
House Committee on Labor and Public Employment

Rep. Kyle T. Yamashita, Vice Chair
House Committee on Labor and Public Employment

Honorable Committee Members,

NOTICE OF HEARING

DATE: Tuesday, February 08, 2011

TIME: 9:00 a.m. – 12:00 p.m.

PLACE: Conference Room 309

State Capitol

415 South Beretania Street

Testimony in Support of HB 466

My name is Alan S. Ogawa and I have practiced as a rehabilitation counselor in Hawaii for the past 30 years.

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

This will help our injured workers to obtain treatment as quickly as possible, get rehabilitated and return to suitable employment. The goal is to assist the individual to once again become a contributing member of their community.

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

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

LATE

WORKSTAR INJURY RECOVERY CENTER

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

February 8, 2011

Committee on Labor and Public Employment

House Bill 466 RELATING TO WORKERS' COMPENSATION

As a doctor who has treated literally thousands of industrial injuries I strongly support House Bill 466. It will restore a sense of fairness and balance in a system that has grown callous to the legitimated needs of those injured in the line of their duty.

House Bill 466 offers a unique opportunity to protect injured workers from abusing evaluators bent on cutting off care to those in need in exchange for additional lucrative carrier referrals.

By mandating cooperation for the first IME, anti-patient doctors will moderate their "less care is best care" approach allowing the patient to continue with his/her recovery vs. getting swept up in litigation—their only other option when derailed and disenfranchised through these nefarious practices that are neither "independent" nor, for that matter, very "medical".

In addition to the above, orchestrated efforts to cut off care for legitimated injured workers shifts the burden to help to others stressed social welfare safety nets and forces local physicians to no long accept workers compensation.

I ask that you listen to those on the front lines of care—clinical doctors, physical therapist, vocational councilors and the patients they serve who are testifying here before you today and whom have the direct experience necessary to improve our beleaguered Workers Comp. System.

Mahalo,

Scott McCaffrey, MD
Occupational and Emergency Medicine

yamashita1-----Kristen

From: dkawamoto@vmchawaii.com
Sent: Tuesday, February 08, 2011 1:28 AM
To: LABtestimony
Subject: *****SPAM*****

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

CHAIRMAN: KARL RHOADS
VICE CHAIR: KYLE T. YAMASHITA

TESTIMONY IN SUPPORT OF HB 466

Dear Gentlemen:

My name is Debra Kawamoto and I am submitting my testimony in support of HB 466. As a former injured worker, I know first hand what it is like to deal with the frustrations, delays and the process of our current worker's compensation system. I waited 4 months for an IME report to be completed, waited 6 months for my case to be brought to a hearing, to determine if it was valid & compensable and went almost a year in a half with no wages received. However, as bad as it all was, a part of me knows and feels lucky, because there are so many other injured workers in Hawaii who have gone through much worse. I know this because I work alongside a group of hard-working dedicated Vocational Rehabilitation Counselors who struggle and fight everyday for the rights of their clients and the injustices they face. I also know this because I serve as Secretary to the Hawaii Injured Workers Alliance (HIWA). An organization of doctors, lawyers, therapists, VR counselors and most importantly fellow injured workers both past & present determined and dedicated to help the injured workers of Hawaii.

We know we cannot change the worker's compensation system overnight. However, we can make changes to help improve it and make it work better and more efficiently for all those involved. I believe HB 466 is a step forward in the right direction. To have a truly mutually agreed upon IME would be fair for both sides (the injured worker & employer) and it would appear to be a win-win for all parties involved. The passing of this bill would eliminate a lot of wasted time, energy and money, which no side can afford. It would be a huge step in getting the injured worker healed faster by allowing them to receive the proper and timely treatment & care they need, getting them returned to the workforce sooner and therefore reducing the rising cost of work comp and also keeping them from depending upon welfare and unemployment.

In our day to day world, we all talk about the importance of working together, cooperating with each other, and helping each other because we know our combined efforts will always produce a positive outcome. In my observation, however, the current work comp system does not promote any of this and it obviously has not been working. Therefore, maybe it's finally time to take a collaborative step towards change and improvement. I humbly ask for your support again to pass this mutually agreed upon IME bill.

Thank you.

Debra Kawamoto
Vocational Management Consultants
Vocational Technician
HIWA - Secretary

LATE

February 7, 2011

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

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

Date of Hearing: Feb. 8, 2011
Time: 9:00 a.m. – 12:00 noon
Place: Conference Room 309

Testimony in support of HB 466

My name is Carrie Noborikawa, I am an injured worker. Please let me tell you a little bit about myself. For the last 17 years, I have worked as a Restaurant Manager. In a position I absolutely put my heart and soul into, for no other reason than I simply loved it. A normal work week would consist of 50+ hours and on one occasion, 6 weeks straight at 19 hours a day, prior to my injury. My vacation time was fully vested, meaning I could not acquire any more. Why...because I truly enjoyed my work. However, the last 4 of the 17 years, I have fought to find balance and normality with my work related injury. As a manager, I strive for excellence and customer satisfaction and believed in a system that would protect both my company as well the associates under my direction. I never thought I would see a day when my hard work and leadership skills would be put to an ultimate test. I was injured because someone else, under another manager's direction failed to complete their job. The injuries sustained resulted in my knee cap popping out, which required surgery and many physical therapy sessions. After being off of work completely for 4 months, and a series of Cortisone injections in my spine(in 3 vertebrae, 3 different times), I returned only to have persistent and unrelenting pain in my knee and low back.

Over the next three years, my work place allowed me to stay on a part time basis with the hope I would receive the treatment I so desperately needed. In January of 2010, I finally hit a wall physically and mentally. Working 3-4 days a week with a cocktail of muscle relaxants (Skelaxin), Fibromialgia medications (Lyrica) and pain meds(Vicodin), all three taken throughout the day, just to get through a days work. I drank coffee all day long to offset the drowsiness of the medications. By the time I would return home from work all I could do was stay in bed, without regard to my household and family. During

this time, while overcompensating for my back and knee pain, I tore my rotator cuff that is currently under investigation with the insurance carrier and my work place.

These last 4 years have been detrimental to myself and my family. It has demoralized my work ethic and personal mantra of "Leadership By Example". I've been through many debates and argument with at least 5 adjustors over the years, as well as 2 IME studies by different doctors within a 7 month period. It was recommended that I loose weight. And I did, through diet and very moderate/limited exercise. So far, I'm at a 42lb loss since my date of injury. And the pain levels have not changed for the better. I walk a fine line of easily overdoing it every day of my life.

I am asking for your help in letting us, the injured workers, keep some semblance of respect and dignity in this process and be given the opportunity to work with a selection of mutually agreed upon choice of IME physicians. This process is arduous, intimidating and hard to put into words pain felt every day and in every moment of our lives. Simply knowing the IME physician is someone of your own choosing and agreed upon by both parties, will make the exam process more dignified and with merit.

Recently, I was accused of "Sitting on my butt just waiting for checks in the mail" by my adjustor. That is not where I wish to be at all. My dream is to be a productive contributor at the work place without being a liability that would cause further injury to myself and/or others.

I urge you to pass this bill.

Thank you for allowing me to provide testimony.

Carrie Noborikawa

My address and phone number is:

1275 Ala Alii Street
Honolulu, HI 96818
808.354.4225

From: emsski@aol.com
Sent: Monday, February 07, 2011 8:19 PM
To: LABtestimony
Subject: HB466 IME Hearing

I've read Joe Zuiker editorial and what he said is so true. I personally have encountered so many obstacles trying to get medical attention for my back problem and other problems related to my back with very little results. I feel like a ball being toss back and forth between getting help and the insurance company. I'm in constant pain and some days it's unbearable when my back is inflamed and yet, I'm denied treatment of any kind. I've gone to two hearings trying to fight my case to no avail. I understand that there are a few people who try to take advantage of the system which causes the insurance company to question their injury. However, there are some of us who are in dire need of help whether it's drugs, physical therapy, massages, etc. Having an unbiased IME doctor to evaluate a patient is of utmost importance because his/her report affects the necessary treatment that the insurance company will follow for any kind of approval. The doctor's evaluation is like their Bible that they follow to disapprove ALL treatment which may deemed necessary to the patient. Through my experience, the insurance company refused to approve physical therapy because the IME doctor wrote that at the time I saw him, I was doing home exercises and using the tens unit to help alleviate my pain. However, in my settlement, it said that the insurance company agreed to any REASONABLE medical attention. I can NOT take any medication of any kind so physical therapy would help me with my pain but because of the IME report, the insurance company did not feel it was a valid, necessary treatment. Today as I write this testimonial, I am in intense pain and having a hard time moving from on position to another--sitting in a chair and trying to stand to walk.

Sincerely,

Mrs. Emily Skedeleski

yamashita1-----Kristen

From: mark hambright [mark49hawk@yahoo.com]
Sent: Tuesday, February 08, 2011 4:25 AM
To: LABtestimony
Subject: testimony

Although I have never seen an independent medical examiner. I am frustrated in how long it has taken for me to get the care I need.

I am an RN and was injured at work (Castle Medical Center). My back was injured on September 19, 2008. I have had one back surgery already (an XLIF on October 15, 2009) and now will have a second surgery (an ILIF) in two weeks.

I know if I were a doctor, lawyer, POLITICIAN, it would NOT have taken over a year to have the first surgery done. I have had constant back pain for over two years now. Because it took so long (over a year) for the first surgery. I now have peripheral neuropathy (permanent nerve damage) in my toes!!!!!!

With a few exceptions my workers comp carrier (Broadspire) has been fairly good. I have never been denied tests or treatments and I see my PCP once a month for a check-up.

As far as I'm concerned the Labor Department has nothing to say about my treatment!!!!!! Just another way for the government to control peoples lives!!! I DID NOT go to the Department of Labor to apply for a job, so for them to try to control what happens to a person after they get injured is a bunch of crap.

The more our government is involved, in any matter, the more this great Country is screwed-up!!!

And you can thank the Unions for most of this!!!!!!

Mark Hambright