

NEIL ABERCROMBIE  
GOVERNOR



BARBARA A. KRIEG  
DIRECTOR

LEILA A. KAGAWA  
DEPUTY DIRECTOR

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

February 8, 2014

**TESTIMONY TO THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

For Hearing on Monday, February 10, 2014  
2:45 p.m., Conference Room 309

BY

BARBARA A. KRIEG  
DIRECTOR

**House Bill No. 1961 House Draft 1  
Relating to Workers' Compensation**

TO CHAIRPERSON ANGUS MCKELVEY AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on H.B. 1961 HD 1.

The purposes of H.B. 1961 HD 1 are 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; and allow for the use of an out-of-state physician under certain conditions.

**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 respectfully opposes 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. We note that the workers' compensation law allows an employee to select any physician of his or her choice as the attending physician—and make a first change of physician—without having to seek mutual agreement from the employer. An IME physician, as selected by the employer which is paying for the examination, provides an alternative medical opinion and serves as a check and balance to the attending physician when objective evidence indicates that a claim may not be compensable or a contemplated treatment regimen may be unnecessary, unreasonable, or even harmful to the employee.

Second, if the parties are unable to agree on a physician to perform an examination, this bill requires that the parties alternately strike names of physicians from a list whereby the last remaining physician would conduct the examination. We believe this would add another layer of delay to an already complex claims process when compensability of a claim or further medical treatment are at issue.

Third, this bill would require that any mutually agreed upon physician examine the employee within forty-five calendar days of selection or appointment, or as soon as practicably possible. In our experience, 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 forty-five days or "as soon as practicable" requirement. These unresolved issues may lengthen the process and make it more burdensome.

Finally, the bill would apparently make the claimant's attending physician the sole arbiter as to when an injured worker attains medical stability. This would have the unintended consequence of potentially lengthening certain claims because employers would lose the ability to challenge ongoing disability and medical treatment when the medical evidence indicates the claimant has reached medical stability and could possibly return to work.

Based on the foregoing, we respectfully request that this measure be held.

Hawaii State Legislature  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

February 9, 2014

*Filed via electronic testimony submission system*

**RE: HB 1961, HD 1, Workers' Compensation; Medical Examinations; Mutual Agreement - NAMIC's Written Testimony for Committee Hearing**

Dear Representative Angus L.K. McKelvey, Chair; Representative Derek S.K. Kawakami, Vice Chair; and members of the House Committee on Consumer Protection & Commerce:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 10, 2014, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's members appreciate the importance of streamlining and economizing the independent medical examination and permanent impairment rating examination process, and commend the bill sponsor for his sincere desire to improve the law in this area. However, NAMIC is still concerned with HB 1961, HD1. In the spirit of cooperation, NAMIC respectfully tenders the following concerns and suggested revisions to HB 1961, HD1:

**1) NAMIC is concerned that the proposed amendments to Section 386-79, Hawaii Revised Statutes will delay the timely treatment of injured workers.**

The proposed amendments create an elaborate and time-consuming process for selecting a mutually agreed upon qualified physician for an independent medical examination and permanent impairment rating examination. Although this type of collaborative process may sound like a good idea in theory, the practical realities of the situation, especially when an injured worker has retained legal counsel, support the conclusion that this type of selection process will be plagued by unnecessary conflict between the parties over the mutual selection and striking of recommended physicians. The very nature of this selection process and the conflict that will result from the inevitable and unavoidable disagreements between the parties will ultimately delay the retention of a qualified physician, the necessary evaluation of the worker's alleged injuries, and the commencement of medical treatment for the benefit of the worker.

**2) As the time-tested adage goes, "if it isn't broken, don't try to fix it", especially when the proposed fix may actually break it.**

Since the current procedure for selecting and appointing a qualified physician is clear, straightforward, and readily implemented with minimal conflict, NAMIC believes that it makes sense to "stay the course" and not create a new physician selection process that could be rife with conflict.

Moreover, the proposed procedure will only create administrative work and expense for the worker and the employer or insurer. If the parties are unable to mutually agree on a qualified physician, the contemplated selection process will lead to nothing more than a dragged-out stalemate where no qualified physician is ever selected.

Specifically, HB 1961, HD 1 proposes an alternating physician selection process that basically allows the injured employee to recommend three of the physicians and the employer recommends the remaining two physicians, then the employer gets to strike three of the physicians (possibly the three selected by the employee) and then the injured employee gets to strike two qualified physicians (likely the two selected by the employer). Hence, there will be no ultimate agreement as to the selection of a qualified physician. The only thing guaranteed is that the parties will be forced to engage in a costly and time-consuming procedure that will lead to no meaningful or beneficial outcome for the parties.

**3) NAMIC believes that the current law provides the parties with effective legal protection and medical counsel.**

The current statutory approach allows each party to select a qualified physician to be involved in the medical examination process. The employer or insurer selects and pays for the qualified physician to conduct the examination and the employee has the right to retain and pay for his/her own physician to be present at the examination. This process affords the worker the opportunity to have his/her *own* medical expert involved in the process. The proposed mutual selection process would require the retention of a mutually agreed upon qualified physician who could end up being placed in a role where he/she could be confronted with a professional conflict of interest.

**4) NAMIC is also concerned that the proposed amendments would improperly hinder employers or insurers in their efforts to reasonably manage medical costs.**

Current law allows an employer or insurer, who is dissatisfied with the progress of the worker's medical treatment to appoint a physician to examine the injured worker and report to the employer or insurer. If the employer remains dissatisfied, the medical report may be forwarded to the director for consideration. This is a reasonable and appropriate way for an employer or insurer to make sure that the injured worker is receiving beneficial medical care so that the injured worker may return to work and his/her pre-injury life in a timely manner. The proposed amendments to the statute would prevent the employer or insurer from being able to engage in this type of reasonable claims supervision, without having to go through a time-consuming and costly administrative process where the employer or insurer would have to demonstrate the need for a follow-up examination. Pursuant to the proposed amendments, if the Director eventually grants a second examination, the employer or insurer would need to go back to the ineffective mutual selection of a qualified physician process outlined in the proposed amendments. For all practical purposes, it would be near-impossible for an employer or insurer to be able to secure a timely and cost-effective follow-up examination of the worker's medical treatment.

The proposed amendments to the statute also have a number of other provisions that are likely to increase the cost of the workers' compensation system. For example, the proposed amendments would allow for the selection of an out of state physician if the worker does not reside in the state of Hawaii. Pursuant to the proposed regulation, the employer or insurer is solely responsible for the cost of the medical examinations, so the allowance of the retention of an out of state physician could be a workers' compensation insurance rate cost-driver. Additionally, the proposed amendments prevent the independent medical examination and the permanent impairment rating examination from being performed together in a single medical examination, even if such an undertaking would be medically appropriate and cost-effective. The proposed amendments require that the employee consent, in writing, prior to the scheduling of the examination of the final independent selected physician in order for the two examinations to be administered at the same time. This type of administrative requirement will only create needless conflict, delay, and expense for the parties.

**5) NAMIC is concerned that the notice requirement in HB 1961, HD 1, creates unnecessary regulatory and legal liability exposure for employers and workers' compensation insurers.**

HD1 states: (g) Whenever an employee is requested or ordered to undergo an independent medical examination, the employer shall provide notice approved by the director that:

- (1) Informs the employee of the employee's *rights and obligations* with regard to independent medical examinations; and
- (2) Provides the employee with instructions on how to participate in the process for independent medical examinations as established in this section. (Emphasis added).

NAMIC is concerned that this proposed notice requirement creates unnecessary regulatory and legal liability exposure for employers and workers' compensation insurers and requires them to have communications with the injured worker that may interfere with the injured worker's relationship with their own legal counsel. Specifically, the provision requires an employer/

workers' compensation insurer to inform the injured worker of his/her "*rights and obligations* with regard to independent medical examinations."

First of all, what specific information exchange (both in content and scope of detail) is required for an employer/ workers' compensation insurer to comply with the duty to "inform" the injured worker? Second, what is meant by "rights and obligations"? Employers/workers' compensation insurers have to be careful not to be engaged in the unauthorized practice of law when they provide an opinion or statement of one's legal "rights and obligations."

Employers and workers' compensation insurers should not be required to provide information that could arguably be interpreted as legal counsel to the injured worker. Moreover, if the injured worker has retained their own attorney, this required communication could constitute and unauthorized communication triggering ethical problems for the attorney representing the employer and workers' compensation insurer.

If the legislature believes that some standard informational notice should be provided to the injured worker, the notice should come directly from the Director of Labor and Industrial Relations (DLIR), so that the employer and workers' compensation insurer are not exposed to any liability exposure for this communication and any claims by the injured worker that the employer's and workers' compensation insurer's notice failed to properly or thoroughly explain the injured worker's "rights and obligations."

Since the statute does not specifically provide the employer and workers' compensation insurer with any legal liability immunity (a legal liability "safe harbor") for use of the DLIR approved notice, this new administrative requirement will likely create new legal liability exposure and legal defense costs for employers and workers' compensation insurers that will be a needless insurance rate cost driver.

In closing, NAMIC is concerned that the proposed amendments will turn a straightforward medical examination process into a convoluted procedure, where costly conflict and needless administrative delays will burden the system to the detriment of both the employer or insurer and the injured worker.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.  
NAMIC Senior Director – State Affairs, Western Region

**PSIG****PDCA of Hawaii Workers' Compensation Self-insurance Group**

c/o KING &amp; NEEL, INC.

1164 Bishop Street, Suite 1700, Honolulu, Hawaii 96813

Telephone: (808) 521-8311 \* FAX: (808) 526-3893

Via E-mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)

Via Fax (808) 536-8437

February 8, 2014

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SUBJECT: **STRONG OPPOSITION TO H.B. 1961, HD1 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. Allows for the use of an out-of-state physician under certain conditions. Repeals on 06/30/2018.

HEARING

DATE: Monday, February 10, 2014  
TIME: 2:45 p.m.  
PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee,

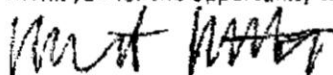
PDCA of Hawaii Workers' Compensation Self-Insurance Group is **opposed** to H.B. 1961, HD1 Relating to Workers' Compensation, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees for a pilot period of four years. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, 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. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Thank you for the opportunity to offer our comments on this matter.



Herbert Hirota, Chairman

**MSIG****Mechanical Contractors Workers' Compensation Self-insurance Group**

c/o KING &amp; NEEL, INC.

1164 Bishop Street, Suite 1710, Honolulu, Hawaii 96813

Telephone: (808) 521-8311 \* FAX: (808) 526-3893

Via E-mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)

Via Fax (808) 586-8437

February 8, 2014

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SUBJECT: **STRONG OPPOSITION TO H.B. 1961, HD1 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. Allows for the use of an out-of-state physician under certain conditions. Repeals on 06/30/2018.

HEARING

DATE: Monday, February 10, 2014  
TIME: 2:45 p.m.  
PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee,

**Mechanical Contractors Workers' Compensation Self-Insurance Group is opposed to H.B. 1961, HD1 Relating to Workers' Compensation**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees for a pilot period of four years. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, 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. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Thank you for the opportunity to offer our comments on this matter.



Sam Fujikawa, Chairman





February 10, 2014

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE DEREK KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO H.B. 1961, HD1 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. Allows for the use of an out-of-state physician under certain conditions. Repeals on June 30, 2018. (HB1961 HD1)

### HEARING

DATE: Monday, February 10, 2014

TIME: 2:45 p.m.

PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA is **strongly opposed** to H.B. 1961, HD1 Relating to Workers' Compensation. H.B. 1961, HD1 would require that a mutually agreed upon physician be chosen by the employer and employee for the independent medical examination and permanent impairment rating examination for worker's compensation claims.

The GCA is opposed to this measure because it requires the selection of an Independent Medical Examiner (IME) physician by mutual agreement. This will add to compensation costs and delay the delivery of medical treatments in certain cases. The added costs and delays do not benefit either the employer or the injured worker. The IME process is the employer's only safeguard against abusive practices by an employee that may be taking advantage of his or her worker's compensation benefits. The passage of this bill may likely lead to more contested workers' compensation claims because of the added burden placed on the employer to further defend against potentially fraudulent cases.

H.B. 1961, HD1 remains at odds with the interests of GCA members and other business organizations and for those reasons. The GCA believes the current system that is in place works. We believe this legislation is unnecessary.

GCA opposes H.B. 1961, H.D. 1 and respectfully requests that this Committee defer the measure. Thank you for the opportunity to express our concerns on this measure.

# KING & NEEL, INC.

1164 Bishop Street \* Suite 1710 \* Honolulu, Hawaii 96813  
Phone: (808) 521-8311  
Fax: (808) 526-3893



Via E-mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)

Via Fax (808) 586-8437

February 8, 2014

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SUBJECT: **STRONG OPPOSITION TO H.B. 1961, HD1 RELATING TO WORKERS' COMPENSATION.**  
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#### HEARING

DATE: Monday, February 10, 2014  
TIME: 2:45 p.m.  
PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee,

King & Neel, Inc. is opposed to H.B. 1961, HD1 Relating to Workers' Compensation, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees for a pilot period of four years. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, 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. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Thank you for the opportunity to offer our comments on this matter.

  
Sean K. Spencer, Assistant Vice President

Insurance / Surety Bonds / Risk Management

Page 1 of 1



**HEIDE & COOK**  
**MECHANICAL CONTRACTORS**  
 SETTING THE STANDARD  
 IN HAWAII SINCE 1946

Via E-mail: [CPCTestimony@capitol.hawaii.gov](mailto:CPCTestimony@capitol.hawaii.gov)  
 Via Fax (808) 586-8437

February 10, 2014

**TO:** HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE DEREK KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**SUBJECT:** **STRONG OPPOSITION TO H.B. 1961, HD1 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. Allows for the use of an out-of-state physician under certain conditions. Repeals on June 30, 2018. (HB1961 HD1)

HEARING

**DATE:** Monday, February 10, 2014  
**TIME:** 2:45 p.m.  
**PLACE:** Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee,

Heide & Cook LLC **strongly opposed** to H.B. 1961, HD1 Relating to Workers' Compensation, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

**MAIN OFFICE:** 1714 KANAKANUI STREET • HONOLULU, HAWAII 96819 • PHONE (808) 841-6161 • FAX (808) 841-4889  
**HILO OFFICE:** 11 POOKELA STREET • HILO, HAWAII 96720 • PHONE (808) 935-3231 • FAX (808) 934-7955  
**MAUI OFFICE:** P.O. BOX 330301 • KAHULUI, MAUI, HAWAII 96733 • PHONE (808) 870-0975 • FAX (808) 242-6008

**HEIDE & COOK**

**MECHANICAL CONTRACTORS**  
SETTING THE STANDARD  
IN HAWAII SINCE 1946


Continue,

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE DEREK  
KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. The provision in the bill, allowing the creation of a list if unable to reach an agreement, is also unfair as it would allow employee to have three choices, and the employer to have only two.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Best regards,



Earle S. Matsuda, President  
Heide & Cook LLC

**MAIN OFFICE:** 1714 KANAKANUI STREET • HONOLULU, HAWAII 96819 • PHONE (808) 841-6161 • FAX (808) 841-4889

**HILO OFFICE:** 11 POKELA STREET • HILO, HAWAII 96720 • PHONE (808) 935-3231 • FAX (808) 934-7955

**MAUI OFFICE:** P.O. BOX 330301 • KAHULUI, MAUI, HAWAII 96733 • PHONE (808) 870-0975 • FAX (808) 242-6008



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Via Fax (808) 586-8437

February 10, 2014

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE DEREK KAWAKAMI,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON COMMERCE AND  
CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO H.B. 1961, HD1 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. Allows for the use of an out-of-state physician under certain conditions. Repeals on June 30, 2018. (HB1961 HD1)

HEARING

DATE: Monday, February 10, 2014  
TIME: 2:45 p.m.  
PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee,

**Air Central Inc. is a mechanical contractor which has been in operation for going on 13 years.**

**AIR CENTRAL INC. is opposed to H.B. 1961, HD1 Relating to Workers' Compensation**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, 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. The provision in the bill, allowing the creation of a list if unable to reach an agreement, is also unfair as it would allow employee to have three choices, and the employer to have only two.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

The Twenty-Seventh Legislature, State of Hawaii  
House of Representatives  
Committee on Consumer Protection & Commerce  
Rep. Angus McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair  
State Capitol, Conference Room 325  
Monday, February 10, 2014 2:45pm

RE: HB 1961 HD 1 Related to Workers' Compensation Medical Examinations

In Workers' Compensation, "IME" stands for Independent Medical Evaluation or Independent Medical Examination. In theory, the examination is supposed to be used to help clarify your medical condition and whether your injury was caused by your work activity. It is used to provide a diagnosis, the treatment recommended, whether you require work restrictions, whether you can work at all and how much disability you have as a result of the injury.

In practice, however, the IME is most often a tool used by the Workers' Compensation Insurance Company to limit their liability. In other words, the Insurance Company has a "Master List" of doctors that they hire to perform the IME. They have used these doctors hundreds and hundreds of times. The doctors know what is expected of them and it is not to write reports that are sympathetic to your Workers' Compensation case.

Having been injured in the workplace and being part of two IME examinations, which relied on medical reports, testing results contracted by the employer, and outdated medical information, both IME physicians ruled in the employer's favor. Both IME physicians chose to disregard any tests that I submitted at the examination and disregarded updated peer-reviewed medical information having to do with my injury. I personally needed to hire a specialist in the field of toxicology from the mainland to assist me with my workers' compensation case.

Therefore, I am in **STRONG SUPPORT** of HB 1961 and truly believe that having a mutual agreement between employer/employee on choosing an IME physician would minimize or reduce the question of bias and bring fairness to the workers' compensation process.

Thank you for the opportunity to submit testimony.

Respectfully submitted,

Michael E. Makekau

**LATE**

The Twenty-Seventh Legislature  
Regular Session of 2014

HOUSE OF REPRESENTATIVES  
Committee on Consumer Protection and Commerce  
Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair  
State Capitol, Conference Room 325  
Monday, February 10, 2014; 2:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1961, HD1  
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 supports H.B. 1961, HD1, 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 and allows for the use of an out-of-state physician under certain conditions. The measure sunsets on 6/30/2018.

When the workers' compensation law was enacted in Hawaii decades ago, the premise was simple. If a worker became injured in the course of his or her employment, the injury was presumed compensable and the employer was obligated, with payment by the employer or through an insurer, to provide the worker with medical treatment for the injury and compensation (at least in part) for the worker's lost income. In exchange for this consideration, the injured worker was prohibited from suing his employer for the injuries. Other laws were also enacted to provide for safe and healthful work environments in order to prevent work injuries from occurring in the first place.

In the ensuing years, this "grand bargain" began to unravel. Although intended to be a "no-fault" system, workers' compensation became more adversarial as employers sought to deny workers injured on the job their rightful entitlement to compensation by delaying payment of benefits and challenging presumption.

One of the ways in which the adversarial nature of the system manifested itself is in the so-called "independent" medical examination. This examination is requested by the employer and its insurer to determine compensability, to assess medical treatment and progress, and to otherwise determine what benefits, if any, the injured worker should receive under the law. However, because the physician is requested by the employer and paid by the employer, physicians chosen by the employer/insurer to conduct the independent medical examination are often viewed as suspect.

To counter this perceived bias, H.B. 1961, HD1 proposes that the physician who is to perform an independent medical examination be selected by mutual agreement of the employer/insurer and the injured worker. If both parties agree to a physician, fewer questions of bias are likely and the adversarial nature of the process will be diminished. Independent medical examiners themselves need not rely on employers/insurers alone for continuing referrals but rather on the examiner's reputation for neutrality and objectivity. Furthermore, there should be no adverse cost factor as the fees for a physician chosen by mutual agreement of the parties should be no different than if he was chosen by the employer/insurer alone.

If the parties are unable to agree on a physician, the bill proposes that the insurer/employer and the injured worker alternately appoint a physician until five names are determined. Each party will then alternately strike a name until one name remains. This process is similar to one used in selection of an arbitrator to decide union-management disputes.

However, we are concerned that the injured worker who is not represented will not be able to offer names for the list of five. The advantage will clearly be with the employer/insurer, who is more knowledgeable about IME physicians and also likely to be represented by an attorney. Therefore, we propose a process by which a list of prospective examiners will be provided to both parties, who will then offer names for the five from which each party will strike until one remains. This will allow claimants the right to represent themselves and will protect the integrity of the workers' compensation system.

The process we propose is that all physicians interested in being selected for Independent Medical Examinations (IME) or Permanent Partial Disability (PPD) ratings must complete a survey form providing information that will help the pro se claimant assess the physicians. The survey form will request: medical specialty, duration of medical practice, number of years performing IME's or PPD ratings, number of IME's performed, outcome of those IME's (number in favor of insurer, number in favor of claimant), number of PPD ratings, and any other pertinent information.

The survey forms will be submitted to the Disability Compensation Division (DCD) of the Department of Labor and Industrial Relations (DLIR), which will establish a database of the information and will compile a report of that information for the parties. The report will be used to develop a list of five names from which each party will alternately strike, leaving one physician who will be asked to perform the examination.

DCD will only be asked to establish a database and compile a report from information provided by the potential examiners themselves. All physicians who wish to be considered for appointment as an examiner should be required to provide the information, which should not involve extensive additional work. We believe this proposal will address the issue of how an unrepresented claimant will be able to come up with names for the list of five.

Finally, the requirement in H.B. 1961, HD1 to prohibit combining the independent medical examination and the permanent impairment rating examination into a single examination is an important one that should not be minimized. The two exams have different purposes—one to assess compensability, medical treatment and progress, and the other to measure the extent of permanent disability. In the latter case, permanent disability can only be determined when the injured worker has reached maximum medical improvement.

The sunset proposed in the bill was, we believe, intended as a compromise to encourage the bill's passage. While we do not believe it is necessary, the sunset will satisfy those legislators with some reservations who can see how the law works during the trial period.

The ILWU urges passage of H.B. 1961, HD1. We thank you for the opportunity to share our views on this important matter.





The Senate  
Twenty-Seventh Legislature, 2014  
State of Hawai'i

TO: Honorable Angus McKelvey, Chair  
Honorable Derek Kawakami, Vice Chair  
Members of the Committee on Consumer Protection & Commerce

DATE: Monday, February 10, 2014  
TIME: 2:45 p.m.  
PLACE: Conference Room 325  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

FROM: National Federation of Independent Business (NFIB) Hawai'i

**RE: HB 1961 HD 1 Relating to Workers Compensation**

Chair McKelvey, Vice Chair Kawakami and members of the Committees,

Thank you for the opportunity to testify on HB 1961 HD1. NFIB Hawai'i respectfully **opposes** this measure.

This bill purports to promote collaboration between employers and employees, but it 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 to follow a very specific alternate process when such agreement cannot be reached after 5 days. The bill also allows for use of an out-of-state physician under certain conditions. We believe that this measure and others like it would fundamentally tip the balance between the employer and employee too far in favor of the employee because the right of the employer to request an independent medical exam is essential to ensuring timely return to work and contained costs.

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.

Thank you for the opportunity to testify on this measure.

**LATE**



House Committee on Consumer Protection & Commerce  
Monday, February 11, 2014 / 2:45 p.m.  
Hawai'i State Capitol, Room 325

House Bill 1961, HD 1: Relating to Workers' Compensation

Aloha Chair McKelvey, Vice Chair Kawakami and members of the committee. On behalf of the Society for Human Resource Management – Hawai'i Chapter (SHRM Hawai'i) I am writing in adamant opposition to House Bill 1961, HD1.

HB 1961 ,HD1, although this measure appears to promote collaboration between employers and employees, we have some serious concerns about it. The language of the 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 selected from a list of physicians. The bill also allows for use of an out-of-state physician under certain conditions.

Human resource professionals are responsible for businesses' most valuable asset: people. As such, we are keenly aware of the needs of both employers and employees; we truly have everyone's best interest at heart. We adamantly oppose this measure for it's significant alteration of the manner in which workers' compensation claims are handled and resolved. In addition, we believe this bill will have a host of unintended consequences and costs associated with it.

Our most significant concerns are:

1. If the employer and employee must agree on a physician to perform a medical examination or permanent impairment rating, the employer loses the ability to meaningfully participate in the selection of an appropriate physician based on education, experience and specialty.
2. The initial period for agreement, five days, is extremely short and does not allow flexibility.
3. If the employer cannot combine the medical examination and rating without the employee's consent – even where the physician deems the employee stable and ratable – the employer will be required to unnecessarily schedule additional examinations and report. Additional examinations and reports will increase the cost to the employer in the form of physician fees as well as extended workers' compensation benefits associated with an extended examination period.
4. Currently, employers are already limited to one medical evaluation and rating unless valid justification exists for additional measures. Employers are already required to show justification to the Director for additional medical evaluations and/or ratings, which are reviewed for approval or denial by the Director.



House Committee on Consumer Protection & Commerce  
Monday, February 11, 2014 / 2:45 p.m.  
Hawai'i State Capitol, Room 325

House Bill 1961, HD 1: Relating to Workers' Compensation

5. If the physician is required to be licensed in Hawaii unless the employee is out of state, employers will lose the ability to seek the expert medical opinion of physicians with specialties not available for workers' compensation medical evaluation and rating in Hawaii such as toxicologists for toxic exposure claims, temporomandibular joint disorder and others.
  
6. We are still reviewing this most recent revision but we believe that if this bill is passed, employers will lose the ability to conduct reasonable discovery of disputed claims and the ability to present a meaningful defense either to a disputed claim or disputed medical treatment. This will result in an increase to the cost of workers' compensation benefits and workers' compensation premium rates. Such increases in cost will adversely impact all businesses and discourage new businesses from operating.

We respectfully request this bill not be advanced. However, should the bill continue, we would like to ask for the opportunity to discuss these issues with you further. Thank you for the opportunity to testify.



## HIWA

Hawaii Injured Worker Association  
715 South King Street, Suite #410  
Honolulu, Hawaii 96813  
[info@hiwahawaii.org](mailto:info@hiwahawaii.org)  
Phone: (808) 538-9771

HOUSE OF REPRESENTATIVES  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2014

### COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair

Hearing: Monday, February 10, 2014  
Time: 2:45 PM  
Place: Conference Room 325

RE: H.B. 1961, HD1  
Relating to Worker's Compensation

Position: Support Intent with Recommendations

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Thank-you for the opportunity to present testimony on this important bill.

For many years, HIWA has fought for fairness in the selection of physician to perform an IME. This bill seeks to mandate that the selection of IME physician be by mutual consent of the insurer and the

injured worker. If the parties are unable to agree to a physician, a system of selection and striking ensues, similar to the selection of an arbitrator to decide union-management disputes.

**Current language of HD 1:**

“The employer shall appoint the first physician, the employee shall appoint the second, and the process shall continue until there is a list of five physicians. The parties shall alternatively strike a physician from the list. The employee shall strike first, the employer shall strike next, and the process shall continue until only one physician remains who shall conduct the examination and prepare a report.”

In other words, the employer will have 3 choices of physician and the employee will have 2 choices. No matter who starts the striking process, one of the employer choices will be the “only one physician remains who shall conduct the examination and prepare a report.”

**Proposed language:**

“The employer shall submit a list of 6 physicians and the employee shall submit a list of 6 physicians qualified to perform the examination. The names of the 12 selected physicians will be placed “in the hat” and be removed one by one. Each name removed will be assigned a sequential number in the order that they are removed. After all the names are removed and assigned the appropriate number, a neutral party will throw a pair of dice. The physician selected to “conduct the examination and prepare a report” will be the physician whose number corresponds to the thrown dice.”

**Rationale:**

Although this may seem like a frivolous way to select a physician to perform an IME, the current selection method and the current language in HD1 both favor the employer/insurer. This is inherently unfair. Likewise, allowing the employee 3 choices of physician and the

employer 2 choices of physician prior to the striking process is unfair to the employer. The method suggested by HIWA would be the fairest, giving the injured employee and the employer an equal chance in the selection process.

Of course the preferred method would be for the employer and employee to agree on a physician at the outset. Both lists of preferred physicians can be exchanged before a face-to-face meeting is needed. The injured employee can then do research and seek input from other more informed parties before making a decision.

HIWA urges passage of H.B. 1961, HD1 with the proposed amendments. We thank-you for considering our testimony.

# WIMAH

WORK INJURY MEDICAL ASSOCIATION OF HAWAII  
91-2135 FORT WEAVER ROAD SUITE #170  
EWA BEACH, HAWAII 96706

**LATE**

MAULI OLA  
THE POWER OF HEALING

FEBRUARY 10, 2014

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

HOUSE BILL 1961 HD 1 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. ALLOWS FOR THE USE OF AN OUT-OF-STATE PHYSICIAN UNDER CERTAIN CONDITIONS. REPEALS ON JUNE 30, 2018.

WORK INJURY MEDICAL ASSOCIATION OF HAWAII STRONGLY SUPPORTS HOUSE BILL 1961 HD 1.

WORK INJURY MEDICAL ASSOCIATION BELIEVES THIS BILL WILL SPEED UP THE PROCESS OF WORKERS' COMPENSATION AND REDUCE THE COST OF WORKERS' COMPENSATION.

THE PASSAGE OF THIS BILL WILL BENEFIT BOTH INJURED WORKER AND THEIR EMPLOYER.

YOUR PASSAGE OF THIS BILL WILL BE GREATLY APPRECIATED.

GEORGE M. WAIALEALE  
EXECUTIVE DIRECTOR  
WORK INJURY MEDICAL ASSOCIATION OF HAWAII



**LATE**

Via E-mail: [CPCTestimony@capitol.hawaii.gov](mailto:CPCTestimony@capitol.hawaii.gov)

February 10, 2014

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE DEREK KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO H.B. 1961, HD1 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. Allows for the use of an out-of-state physician under certain conditions. Repeals on June 30, 2018. (HB1961 HD1)

HEARING

DATE: Monday, February 10, 2014

TIME: 2:45 p.m.

PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee:

Healy Tibbitts Builders, Inc. is a well established licensed general contractor in the State of Hawaii specializing in marine construction and deep foundation work.

Healy Tibbitts Builders, Inc. is **opposed to H.B. 1961, HD1 Relating to Workers' Compensation**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, 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. The provision in the bill, allowing the creation of a list if unable to reach an agreement, is also unfair as it would allow employee to have three choices, and the employer to have only two.



The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Very truly yours,  
Healy Tibbitts Builders, Inc.

**Richard A.**  
**Heltzel**

A red digital signature scribble is positioned over the name "Richard A. Heltzel".

Digitally signed by Richard A. Heltzel  
DN: cn=Richard A. Heltzel, o=Healy  
Tibbitts Builders, Inc., ou,  
email=raheltzel@healytibbitts.com,  
c=US  
Date: 2014.02.09 16:04:21 -10'00'

Richard A. Heltzel  
President

 **TOMCO CORP.**  
*General Contractors*

TO

**LATE**

February 10, 2014

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE DEREK  
KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE  
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO H.B. 1961, HD1 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. Allows for the use of an out-of-state physician under  
certain conditions. Repeals on June 30, 2018. (HB1961 HD1)

HEARING

DATE: Monday, February 10, 2014

TIME: 2:45 p.m.

PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members of the Committee,

**TOMCO CORP.** is opposed to **H.B. 1961, HD1 Relating to Workers' Compensation**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, 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. The provision in the bill, allowing the creation of a list if unable to reach an agreement, is also unfair as it would allow employee to have three choices, and the employer to have only two.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

**500 Ala Kawa St., Suite #100A Honolulu, Hawaii 96817**  
**Telephone #: (808) 845-0755 Fax #: (808) 845-1021**  
**Lic# ABC 16941**

**LATE**

February 9, 2014

**Amended underlined and bold**

To: COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
The Honorable Angus L.K. McKelvey, Chair  
The Honorable Derek **S.K. Kawakami**, Vice Chair  
Honorable Representatives of Committee

Date: Monday, February 10, 2014  
Time: 2:45 PM  
Place: Conference Room 325, State Capitol

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

**Re: Strong Support for Passage of H.B. 1961, HD 1, Relating to Workers' Compensation**

**I. Discussion.**

Section 386-79, HRS, currently provides that self-insured employers and insurance carriers (collectively referred to as "employer") can petition the director for an order to compel an injured worker ("employee") to appear for an examination before a duly qualified physician or surgeon unilaterally designated and paid by the carrier. The employer can use this for specific grounds, "where the employer is dissatisfied with the progress of the case or where major and elective surgery, or either, is contemplated, . . . [or] good and valid reasons exist with regard to the medical progress of the employee's treatment." This process is more commonly referred to as an "independent medical examination" ("IME").

However, in the actual practice, claim's handling is abused by the employer, in particular, with the unrepresented employee (estimated 90% or more employees are unrepresented). As repeatedly stressed over the years, the designated physician is beholden to the employer designating him or her. Routinely, the employer fails to comply with section 386-79, HRS, by ignoring the need to petition the director, and merely sends a letter to an employee, who is not versed in the law, to comply with a directive for an appointment. The employee almost always appears for the examination. This may be done more than once a year, which clearly violate the subsection. The employer also sneaks in a question for the physician to conduct a rating, unlike an "IME," where by custom and practice, as well as the current legal practice, mandates a rating to be conducted by a physician jointly selected by the parties. The rating process is critical because it is used to determine the percentage of permanent impairment, which translates into the employee's award or settlement for the work injury.

The Legislature has been presented with cogent arguments for many years why section 386-79, HRS, must be amended, including the fact that an employee's attorney unwittingly was able to determine approximately four legislative sessions ago that at least one physician regularly designated by the employer was paid more than one million dollars a year. Should anyone be surprised with the manner in which the reports are written and conclusions reached by an employer unilaterally designating a physician or surgeon? There is no reason to repeat all of the abusive practices of the employer since they have been previously raised and documented during the previous year after year, and during the prior administration. A version of an "IME" was passed, but Governor Lingle used her weapon of the veto to kill the bill.

HB 1961, HD, is a sincere attempt to end abuses. I strongly request that the Honorable Chair, Vice-Chair and members of the committee to end them. The time is long overdue to insert fairness into the statute, and rebuke the litany of misrepresentations used to justify why an "IME" is sacrosanct for the employer. You will have continued diversions to maintain the status quo that section 386-79, HRS, is absolutely required because an employee has the benefit that a claim is presumed to be work related and 386-79, HRS, as currently drafted is essential to offset that advantage given to an employee. This is disingenuous, sheer nonsense, because when the Grand Bargain was struck, an employee was forced to give up the right to sue for damages far beyond, like in a civil or personal injury lawsuit, where damages are allowed such as for pain and suffering, and wage loss and punitives, in exchange for highly limited workers' compensation benefits under the Workers' Compensation Law pursuant to Chapter 386, HRS. If we take the argument at face value, section 386-79, HRS, should be used only when the presumption applies to curb the gross abuses as routinely used by an employer. However, there are yet other vital reasons for amending and passing HB 1961, HD 1, some of which have been highlighted by the director in his January 24, 2014 comments in subsection "III" beginning on page two.

## **II. Suggested Additional Language.**

The director raised a legitimate concern that *pro se* or an unrepresented employee would have difficulty selecting a physician. I previously submitted some criteria in my January 24, 2014 testimony. (Part IV, pp. 3-4).

Subsection (g) as drafted in HD1 should contain additional language that

"Physicians or surgeons interested in conducting mutually selected examinations shall complete a form prepared by the Department of Labor and Industrial Relations ("DLIR") and certify that the information contained is true and correct and subject to the laws relating to perjury. The DLIR shall compile the data provided, shall not be required to verify the declarations, and shall maintain a list of physicians or surgeons who completed the forms with the declaration. The listing of the completed forms shall be provided to the parties for the purpose of the selection/striking process. Each party shall pick five names for a total of ten

names. The DLIR shall develop a simple process of placing all ten names into a bag or container and shall randomly select five names. The striking process shall proceed immediately within five working days.”

I have attached draft forms to be completed by the interested physicians who desire to participate in the process, and another form for the striking/selection process. The additional language with the selection and striking procedure clearly removes most abuses, reduces the need for the parties to gather their own so-called “IMEs,” which is clearly in an employer’s favor, reduces litigation and the backlog of cases by addressing the dynamic of “shopping for experts,” which inevitably results in litigation, leads to fair and impartial physician’s reports by forcing both parties to accept the conclusions **of** the final physician and his report, assist the *pro se* or unrepresented employee, etc. This would be as “independent” as you can get. If seeking the truth is the goal, would one find that the process **here** is bias?

### **III. Conclusion.**

The drafts must be more carefully completed, but they along with the proposed language would give us true “IMEs.” With the additional language, we should all embrace HB 1961, HD 1. Thank you for allowing me to testify on this matter, which has been forced into a “complicated” matter **when it should be highly simplistic.**

Enclosures: Draft Forms

DLIR LOGO

**IME AND PPD EXAMINER APPLICATION**

**HRS** (Insert Statute/new bill language)

**PURPOSE** – To assist employee and employer/insurance carriers in selection of one examiner to perform IME and/or PPD examinations.

**DEFINITIONS–**

1. IME – Determine whether claim compensable, if surgery needed, medical examination for continuing medical treatment...
2. PPD - Permanent partial disability (PPD) – medical examine to determine percentage of permanent impairment to determine monetary award based on current AMA Guideline to Impairment...

**NAME:** FIRST \_\_\_\_\_ MI \_\_\_\_\_ LAST \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_ City/State

**ZIP**

Other locations:

**TELEPHONE:**

**FACSIMILE:**

**EMAIL:**

**State of Hawaii license ID #:** \_\_\_\_\_  Active  Inactive

**Licensed in following states:** \_\_\_\_\_  Active  Inactive

**Medical Specialty Certification(s):** \_\_\_\_\_

**Concentration of Medical Practice:**  None

- Spine  Joint  Psychology  Neurology  Surgery  Opthomology  ENT  
 Dentistry  Cardiology  surgery  Infectious Disease  
 Physiatry  OTHER(s)

**PLEASE COMPLETE THE FOLLOWING :**

	YES	NO
1. Active medical malpractice insurance? Effective period _____ Current/ongoing malpractice actions? _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Presently practice medicine? <input type="checkbox"/> Solo <input type="checkbox"/> Group <input type="checkbox"/> Clinic <input type="checkbox"/> Evaluations only	<input type="checkbox"/>	<input type="checkbox"/>
3. Presently practice in field of workers' compensation?	<input type="checkbox"/>	<input type="checkbox"/>
4. Number of Years of Performing IME?	<input type="checkbox"/>	<input type="checkbox"/>

# years \_\_\_\_\_  # per year \_\_\_\_\_  
 # for employer \_\_\_\_\_  # for employee \_\_\_\_\_  
 Range of cost of evaluation \$ \_\_\_\_\_

5. Perform PPD?    
 # years \_\_\_\_\_  # per year \_\_\_\_\_  
 # for employer \_\_\_\_\_  # for employee \_\_\_\_\_  
 Average cost \$ \_\_\_\_\_  
 Is ODG applicable in State of Hawaii?    
 Is AMA 5<sup>th</sup> edition applicable in State of Hawaii?    
 Is AMA 6<sup>th</sup> Edition applicable in State of Hawaii?

6. Perform examination at following islands.

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Oahu  Maui/Molokai  Kauai  Hawaii:  Hilo  Kailua-Kona

---

**SELECT BODY PARTS TO EVALUATE :**

Spine (neck and back)  Joint (shoulder, knee, arms, legs, etc.)  
 Psychiatry  neurology  surgery  Opthomology  
 ENT  dental  cardiac  surgery  Infectious Disease  
 Environmental  Toxicology  Brain injury  
 OTHER \_\_\_\_\_

**ANY OTHER PERTINENT AND USEFUL INFORMATION (optional)**

---

I certify that the information provided is true and accurate and submitted subject to the laws of perjury. I will voluntarily update the information to my application, including removing my name from list of examiners and change of information by submitting an amended application. The Director of the Department of Labor and Industrial Relations shall not be responsible for certifying or monitoring list, and plays a limited role in assembling a list for the use of the parties. I am responsible for removal or change of information.

Signature \_\_\_\_\_ Dated: \_\_\_\_\_

---

**DISCLAIMER – Physicians or surgeons complete application for placement on list for employee and employer to identify final selection for review of records, examination, and report. This list is not certified by the Director OF Labor And Industrial Relations, but merely prepared to assist the parties. A list of the participating examiners will be maintained on a list at \_\_\_\_\_. (DISCLAIMER TO BE BETTER DEFINED).**

**SELECTION OF IME AND PPD EXAMINER**

**PURPOSE:** (To be defined)

**EMPLOYEE NAME:** First \_\_\_\_\_ MI \_\_\_ Last  
\_\_\_\_\_

**EMPLOYER/INSURANCE CARRIER :**

\_\_\_\_\_  
By Adjuster / Attorney.  
\_\_\_\_\_

**DATE OF ACCIDENT:**

**INJURED BODY PART(S) TO EVALUATE :**

**REASON FOR EXAMINATION .**

IME – Compensable claim, need for surgery, and independent medical examination by an examiner for continuing medical care, services, and supplies.

PPD – Percentage of permanent partial impairment, which is calculated to determine monetary award. Performed when injured employee’s primary care physician determines medical condition has reached maximum medical improvement.

Striking or selection – Remove unacceptable examiner by filling in box in appropriate column.

**ELECTION PROCESS**

Instructions: **The Employee performs the 1<sup>st</sup> and 3<sup>rd</sup> strike, and, alternatively, the Employer Insurance carrier performs the 2<sup>nd</sup> and 4<sup>th</sup> strike. (See chart below).** The remaining named examiner will perform the examination. Suggestion: *Employee review list with the workers’ compensation treating doctor.*

Selection and Striking Process: *(Circle final selection for clarity)*

Employee/Employer	Examiner Name	EE (1,3) <i>(Fill in box)</i>	ER (2, 4)
Employee selection #1 <input type="checkbox"/>	_____		<input type="checkbox"/>
Employee selection #2 <input type="checkbox"/>	_____		<input type="checkbox"/>
Employer selection #1 <input type="checkbox"/>	_____		<input type="checkbox"/>
Employer selection #2	_____	<input type="checkbox"/>	<input type="checkbox"/>
Employer selection #3	_____	<input type="checkbox"/>	<input type="checkbox"/>

Employee/rep signature: \_\_\_\_\_ Dated: \_\_\_\_\_



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Employer/IC signature: \_\_\_\_\_ Dated: \_\_\_\_\_

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