

SB 875

TESTIMONY



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

February 5, 2013

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

For Hearing on Wednesday, February 6, 2013
1:15 p.m., Conference Room 229

BY

BARBARA A. KRIEG
DIRECTOR

**Senate Bill No. 875
Relating to Workers' Compensation**

TO CHAIRPERSONS GREEN AND HEE, AND MEMBERS OF THE COMMITTEES:

Thank you for the opportunity to provide testimony on S.B. 875.

The purpose of S.B. 875 is to require independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations (DLIR); allow for the use of out-of-state physicians under certain conditions; and to appropriate funds and positions for the DLIR disability compensation division to assist in workers' compensation claims.

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

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

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

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

Second, this proposal also requires that the mutually agreed upon or appointed physician examine the employee within forty-five calendar days of selection or appointment. This appears to be unrealistic given that the employer often has to wait ninety days or more for an available appointment. The bill is silent as to what would happen if there is no qualified physician available to perform the evaluation within the forty-five day requirement. These unresolved issues may lengthen the process and make it more burdensome.

Third, 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 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.

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

Thank you for the opportunity to testify on this measure.



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

808-535-7401
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Wednesday, February 6, 2013 – 1:15 pm
Conference Room 229

The Senate Committee on Health and
The Senate Committee on Judiciary and Labor

To: Senator Josh Green, MD and Senator Clayton Hee, Chairs
Senator Rosalyn Baker and Senator Maile Shimabukuro, Vice Chairs

From: Virginia Pressler, MD, MBA
Executive Vice President
Chief Strategic Officer

Re: SB 875 RELATING TO WORKERS' COMPENSATION - Testimony in Strong Opposition

My name is Virginia Pressler, MD, MBA, Executive Vice President and Chief Strategic Officer for Hawai'i Pacific Health (HPH). HPH is a nonprofit health care system and the state's largest health care provider anchored by its four nonprofit hospitals: Kapi'olani Medical Center for Women & Children, Pali Momi Medical Center, Straub Clinic & Hospital and Wilcox Memorial Hospital on Kauai. HPH is committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four affiliated hospitals, 49 outpatient clinics and service sites, more than 5,400 employees and 1,300 physicians on staff.

We are writing in **strong opposition** to SB 875 Relating to Workers' Compensation which requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the Department of Labor and Industrial Relations.

We are testifying as both a private non-profit employer and as a health care provider. As a private non-profit employer, we are concerned that SB 875 will substantially increase the cost of providing health care coverage to our employees. The end result is that non profit organizations like Hawai'i Pacific Health will be forced to reevaluate existing cost structures including reduce cutting costs elsewhere within our health care network.

As a healthcare provider we are also concerned that his additional layer of legislated costs has the potential of compromising community access to health care. Healthcare providers rely on fragile operating margins that in order to deliver quality care to our patients. This bill would negatively impact those margins and impact our ability to continue to provide access to care to our patients across all our hospitals.

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



WILCOX HEALTH

Affiliates of Hawai'i Pacific Health

SB 875

RELATING TO WORKERS' COMPENSATION

**SHERI BRAUNTHAL
SENIOR MANAGER – HUMAN RESOURCES
HAWAIIAN TELCOM**

February 6, 2013

Chairs Green and Hee, and members of the Committees:

I am Sheri Braunthal, testifying on behalf of Hawaiian Telcom on SB 875 – Relating to Workers' Compensation which requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the Director of the State Department of Labor and Industrial Relations.

Hawaiian Telcom is opposed to this measure.

The language in SB 875 will greatly restrict the ability for all parties to benefit from the results of an Independent Medical Examination (IME). Restricting the number of the already limited amount of IME physicians currently available as well as reducing the timeframe in which the IME must be performed will result in accessibility issues and add unnecessary delays for both the injured worker as well as the employer. These restrictions would likely result in the inability for an IME to be performed at all.

An IME is used to objectively evaluate a claim to ensure proper medical treatment is being provided to the injured worker. As with any worker's compensation claim, the goal to resolve the claim is to ensure the injured worker receives the appropriate care and treatment that is needed in order for the injured worker to be able to return to work. The IME provides assurance for patient safety by validating the care and treatment being delivered.

Without an IME the injured worker may potentially be harmed as there have been instances where the IME has provided correction to the injured workers diagnosis and treatment thereby reducing the period of time to return to full duty. Employer Workers Compensation costs would also increase as the IME facilitates resolution of workers compensation claims by identifying when workers have reached maximum medical improvement.

Based on the aforementioned, Hawaiian Telcom respectfully requests that this measure be held. Thank you for the opportunity to testify.



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Testimony to the Senate Committees on Health and Judiciary and Labor
February 6, 2013

Testimony to SB 875, Relating to Workers' Compensation

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

The Honorable Josh Green, MD, Chair
The Honorable Rosalyn Baker, Vice-Chair
Members of the Committee on Health

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state. We are in opposition to SB 875, Relating to Workers' Compensation.

In today's challenging economic climate, it has become common practice for the injured workers and employers to amicably agree to independent medical examination (IME) physicians, without a legislative mandate. Creating a restrictive statute for the few cases where agreement cannot be reached will harm the entire system. Restricting employers' ability to obtain an IME will take away balance in the system and can lead to runaway costs that will be paid for by employers. Increased workers' compensation costs could result in fewer jobs, lower benefits, and decreased wages.

Thank you for the opportunity to testify in opposition.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

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

Testimony by
Hawaii Government Employees Association
February 6, 2013

S.B. 875 – RELATING TO WORKERS' COMPENSATION

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 875 which will require independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by both employer and employee or appointed by the director of the department of labor.

We believe this act will ensure fairness to both employee and employer in the event of a workers' compensation claim, by allowing both parties the opportunity to mutually agree on a qualified medical physician. This act also provides an alternative in the event that an agreement cannot be reached by the employee and employer.

Thank you for the opportunity to testify in support of S.B 875.

Respectfully submitted,

Randy Perreira
Executive Director



OUTRIGGER
ENTERPRISES GROUP
Hospitality • Retail • Development

THE SENATE
27th LEGISLATURE
REGULAR SESSION of 2013

COMMITTEE ON HEALTH
Senator Josh Green, Chair

COMMITTEE ON JUDICIARY & LABOR
Senator Clayton Hee, Chair

2/6/2013
Rm 229, 1:15 PM

SB 875
Relating to Workers Compensation

Chair Green, Chair Hee and Members of both Committees, my name is Max Sword, here on behalf of Outrigger Hotels Hawaii with concerns about this bill.

This bill deals with Independent Medical Examiners and examinations. It is an improvement over other bills on this issues, however we have a couple of concerns.

The first is that the bill does not allow for an employer who is dissatisfied with the progress of a case, or the basic facts of a case, to unilaterally request an IME to make sure it really is a valid workers' compensation case. In other words, since the employee has the freedom to file a workers' compensation case at any time and for any reason, then it should be fair for an employer to be able to ask for an IME at any time to verify the validity of the case and the treatment.

Secondly, we doubt that the Director will be able to maintain a list of qualified physicians and make referrals within 7 days, and that we can maintain an adequate supply of qualified physicians in our State who will be willing to perform the exams, at the stated reimbursement, within a reasonable amount of time.

We sincerely doubt that the proposed system will work and suspect that the system will immediately become bogged down and come to a grinding halt.

Mahalo for allowing us to testify.

SB 875

RELATING TO WORKERS' COMPENSATION

**SHERI BRAUNTHAL
SENIOR MANAGER – HUMAN RESOURCES
HAWAIIAN TELCOM**

February 6, 2013

Chairs Green and Hee, and members of the Committees:

I am Sheri Braunthal, testifying on behalf of Hawaiian Telcom on SB 875 – Relating to Workers' Compensation which requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the Director of the State Department of Labor and Industrial Relations.

Hawaiian Telcom is opposed to this measure.

The language in SB 875 will greatly restrict the ability for all parties to benefit from the results of an Independent Medical Examination (IME). Restricting the number of the already limited amount of IME physicians currently available as well as reducing the timeframe in which the IME must be performed will result in accessibility issues and add unnecessary delays for both the injured worker as well as the employer. These restrictions would likely result in the inability for an IME to be performed at all.

An IME is used to objectively evaluate a claim to ensure proper medical treatment is being provided to the injured worker. As with any worker's compensation claim, the goal to resolve the claim is to ensure the injured worker receives the appropriate care and treatment that is needed in order for the injured worker to be able to return to work. The IME provides assurance for patient safety by validating the care and treatment being delivered.

Without an IME the injured worker may potentially be harmed as there have been instances where the IME has provided correction to the injured workers diagnosis and treatment thereby reducing the period of time to return to full duty. Employer Workers Compensation costs would also increase as the IME facilitates resolution of workers compensation claims by identifying when workers have reached maximum medical improvement.

Based on the aforementioned, Hawaiian Telcom respectfully requests that this measure be held. Thank you for the opportunity to testify.



Testimony to the Senate Health & Judiciary Committees
State Capitol, Conf. Room 229 at 1:15pm
February 6, 2013

RE: OPPOSING SB875 TO CHANGE THE WORKERS' COMPENSATION SYSTEM

The Maui Chamber of Commerce on behalf of our membership opposes this measure relating to Workers' Compensation: independent medical examinations (IMEs).

Close to 90% of our members are small businesses with 25 or fewer employees. We do business in Maui, not Wall Street. Due to the recession and slow recovery, many are operating with far less employees than they did before and are struggling to keep up with rising costs. They simply need an environment where they can grow and thrive; not additional unnecessary mandates that will increase the cost of doing business and reduce their rights as this bill seeks to do by:

- Requiring the employer and employee to "mutually agree" on an independent medical examiner (IME). Although the term "mutually agree" appears fair, it is not. It moves away from a more balanced system to one that will hurt employers puts them in a possible dispute position with injured workers.
- Replacing the existing employer requested examinations in work comp claims disputes with a new system for obtaining "IMEs". Under the bill, the claimant employee will have the right to reject the employer's choice of physician to scrutinize the treating physicians chosen course of treatment. If the claimant employee refuses to accept any of the employer's choices then the selection will be made by the Director of the Department of Labor from a list of "qualified physicians" licensed to practice medicine in the state where the claimant employee resides.

The IME process is an essential part of the employer's discovery process to ensure proper treatment and costs, which they and the insurance carrier bear 100% of the cost of. In any enforcement of a claim for compensation, statutory presumption places the burden on employers to present substantial evidence to the contrary. So the independent medical examination serves as an objective and the only tool an employer has to look into statutory presumption, excessive treatment, etc., that again, employers and insurance carriers bear 100% of the cost of.

Changing the process as proposed will:

- Limit an employer's fundamental rights;
- Substantially increase the cost of claims, which will raise the cost of doing business businesses, causing a negative domino affect;
- Turn a generally amicable agreement system into an adversarial one;
- Negatively affect the quality of IMEs which are an important safeguard for employers; and
- Add to the workload and costs of the Department of Labor.

This bill should die now as the impact on Hawaii's businesses has not been adequately weighed. We ask that you oppose this bill today!

Please contact me if I can answer any questions or provide you with additional information to help you better understand what our small businesses are up against and the environment they need to survive.

Sincerely,

Pamela Tumpap
President

TESTIMONY OF CHRISTOPHER R. BRIGHAM, MD

SENATE COMMITTEE ON HEALTH
Senator Josh Green, Chair
Senator Rosalyn H. Baker, Vice Chair

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

Wednesday, February 6, 2013
1:15 p.m.

SB 875

Chair Green, Chair Hee, Vice Chair Baker, Vice Chair Shimabukuro and members of the Committees, my name is Christopher R. Brigham, MD.

I **oppose** SB 875, which amends Section 386-79, Medical Examination by Employer's Physician.

My perspective is that of a physician who has consulted on workers' compensation issues internationally to a variety of jurisdictions. I am licensed to practice medicine in Hawaii and have been a resident of the Island of Oahu for approximately eight years. Although I have been active in the past in the independent medical evaluation arena, including being the founding director of the American Board of Independent Medical Examiners, consulted to a variety of governmental jurisdictions, and published extensively in this area, I choose not to perform independent medical examinations; therefore this bill does not impact what I do. I can provide independent insights that may be useful. As a citizen of the State of Hawaii I am very concerned by this bill and what it represents.

This bill, in my opinion, has been promoted by certain interests who perceive independent medical evaluations as a threat to their financial interests. My experience is that most physicians practicing quality medicine consistent with evidence-based

medicine are not concerned with the issue of independent medical evaluations. The care they provide is appropriate and rarely subject to question. However, there are certain physicians who do not provide care consistent with accepted guidelines and obtain significant revenues by practices are not consistent with best practice standards. Certain physicians are also involved in "physician dispensing". Based on my experience injured workers may be given medications (including narcotics) that are not appropriate and place injured workers at significant risk; however, the prescription of these medications is highly profitable to the dispensing physicians and other parties (located outside of our state). It appears, to me, that these physicians are threatened by the independent medical evaluation process and therefore they, and allied interests, are attempting to thwart processes that currently work well.

Based on my national experience, the quality of independent medical evaluations in Hawaii is excellent. The vast majority of evaluations are comprehensive, objective, and unbiased. There is a process that works in challenging any questionable issues.

This bill requires mutual agreement between the employer and employee of an IME physician. Since the "employee" will largely be influenced by the treating physician; effectively this means agreement between the employer and the treating physician. If the treating physician is performing inappropriate care it is unlikely they will agree. It is probable that with the cases involving care by questionable physicians that it will be rare to achieve mutual agreement. Therefore for patients receiving questionable care it is probable that the IME physician will be chosen off a list of physicians licensed under Chapter 453, Hawaii Revised Statutes. This will be problematic. The choice of the best physician to perform an examination is based on many considerations, relating to the case, the questions, and the evaluator. A roster will not work well. The process of mutually agreed examiners has been universally unsuccessful, based on my experience as a national consultant.

It is inappropriate to restrict to a single IME. At different times in the course of an injury, there are different issues that need to be addressed, such as causation, diagnosis, diagnostic studies, treatment and work ability. Therefore, more than one IME may be required. A single IME does not make sense.

The bill also allows *only* the treating physician to say the injured worker has reached medical stability. This is also irrational since the treating physician is not in an independent role to judge such issues.

It is appropriate for any decisions in regards to this bill be made without bias. Therefore, it is my recommendation that any member of the legislature who has received political contributions from entities affiliated with interests associated with this bill, including any relationship to companies involved in physician dispensing and/or billing, disclose these relationships.

For these many reasons, I respectfully request that SB 875 be held.

green1 - George

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 10:02 PM
To: HTHTestimony
Cc: tlccostas@msn.com
Subject: Submitted testimony for SB875 on Feb 6, 2013 13:15PM

SB875

Submitted on: 2/5/2013

Testimony for HTH/JDL on Feb 6, 2013 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
tyerry costa	Individual	Support	Yes

Comments: I support this bill and will be providing documented evidence at the hearing in support of my testimony. my testimony will state that during my IME i was on prescibed NARCOTICS during my examination. The examiniong Doctor failed to mention in his IME report. Also i will provide documentation show that after requesting another IME the insurance carriers attorney's submitted false information to the Disability Compensation Division (DCD) hearings officer saying that I requested a Permanrent Disability Rating which i never requested. After submitting my fraud complaint to the DCD concerning my IME the insurance carriers attorney again submitted false information relating to my IME which the DCD rendered a Decision and Order in support of the false information submitted by insurance carrieres attorney's. My case involves violation of the Hawaii Rivise Statutes and the DCD does not enforce any fines or penalties that legislation has enacted into law. Therefore even if you have a bad IME the DCD cannot enforce any fines or penalties against the IME doctor. see you at the hearing aloha Terry Costa

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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