

SB875

LATE

TESTIMONY

NEIL ABERCROMBIE
GOVERNOR



DWIGHT Y. TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

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

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February 6, 2013

To: The Honorable Josh Green, Chair,
The Honorable Rosalyn H. Baker, Vice Chair, and
Members of the Senate Committee on Health

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

Date: Wednesday, February 6, 2013
Time: 1:15 p.m.
Place: Conference Room 229, State Capitol

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

Re: S.B. No. 875 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 875 proposes to repeal Section 386-79, Hawaii Revised Statutes (HRS), relating to medical examinations by employer's physician, and to replace it with a new section that proposes:

- Independent Medical Examinations (IMEs) and permanent impairment rating examinations be performed by physicians selected and mutually agreed upon by the employer and employee;
- If no agreement as to physician can be reached, the Department shall appoint a qualified physician licensed in the relevant medical specialty and willing to conduct the examination within 45 calendar days of the request;
- The employer to pay for the IME;
- The use of an out-of-state physician is allowed under certain circumstances; and

- An unspecified appropriation is made in FY 13 - 14 to carry out the purposes of this measure.
- The measure is repealed on June 30, 2018, and section 386-79, HRS, is reenacted in the form in which it read on the day before the effective date of section two of this measure.

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

II. CURRENT LAW

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

III. COMMENTS ON THE SENATE BILL

1. Reduction in number of disputes. Decisions on issues of compensability and permanent disability rely primarily on the doctors' reports that are submitted by the parties. Therefore, in contested cases, the parties' primary concern is to have doctors' reports that support their position. Employers and Insurance Companies, as well as Claimants in many instances, would therefore seek IME doctors who will likely support their positions.

Employers or Insurance Companies, however, have an economic advantage over claimants, and creating a mechanism that would limit this dynamic of "shopping for medical experts" could possibly reduce the number of disputes, especially for cases related to the issues of compensability and permanent disability.

Reducing the number of disputes will assist the Disability Compensation Division that is currently backlogged in scheduling cases for hearings where disputes between the parties occur. For the issue of compensability, it could take 3 to 4 months to schedule a hearing from the time the request is made. For issues such as permanent disability, it could take 8 to 9 months for a hearing to be scheduled.

2. Fair and Impartial. Where there are disagreements about medical stability

(§386-31, §12-10-100 Determination of medical stabilization. Total disability.)—the Department believes the mechanism set forth in the measure will provide a fairer and more impartial method of dispute resolution as well as reduce the number of disputes.

3. Difficulty with establishing the list of physicians. Establishing a list of doctors willing to conduct IMEs for the purposes of compensability or permanent disability under this bill becomes the responsibility of the Director of Labor. Issues such as willingness of doctors to be on the list of different medical specialties and allowable fees for the evaluations will have to be addressed. Doctors may not be willing to be on the Director's list without adequate notice prior to the examination or if the compensation to conduct the exam is not adequate.
4. Out-of-State claimants. The measure also provides for IMEs, where medical treatment is disputed, for claimants living out-of-state. The measure allows for physicians who reside outside the State of Hawaii and who are licensed in another state as a physician equivalent to a license under chapter 453 to perform IMEs and rating examinations for out-of-state claimants. The employer is responsible for locating these out-of-state physicians and for scheduling the examinations in the state where the claimants currently reside.

The department has serious concerns about having to maintain a list of out-of-state IME physicians willing to conduct IMEs and rating examinations. Due to the limited number of out-of-state claimants, it is not reasonable and practical for the Department to compile and maintain a list of out-of-state physicians in different specialties who are willing to perform IMEs and rating exams in compliance with Hawaii's regulations. If the employer and employee are unable to agree on an IME physician in the State where the claimant resides, the Department recommends using the same list of Hawaii physicians and have the employer arrange for the out-of-state claimant to return to Hawaii for the IME. The employer will continue to be responsible for arranging and paying for travel arrangements for claimants who must return to Hawaii for an IME. We in turn recommend that the measure also include a provision that allows for the return of the out-of-state claimant to undergo the IME in Hawaii.

5. Medical records to IME physician. The Department also recommends the measure stipulate that the employer shall send the claimant's medical records to the IME physician, as is the current practice.
6. The Department supports this proposal contingent on adequate funding and

notes that the biennium budget as submitted by the Governor contains additional resources, which should the legislature approve, may reduce or eliminate the funding and additional staff provided for in Section 3. Without adequate funding and staffing, the Director will not be able to implement the proposed procedures.

7. The Department also requests that the effective date of Section 6 of the bill be no earlier than March 1, 2014 because the instructions from the Department of Budget & Finance only permit the funding of new positions in the first year of the upcoming biennium as of January 1, 2014. The Department's ability to conduct operations in the manner prescribed in the measure is dependent on additional resources. The lack of staffing and the time required to establish and fill new positions will prevent the department from implementing this proposal of compiling a list of physicians willing to perform the IMEs and rating exams earlier than March 1, 2014.

From: www@hhs.hawaii.gov
To: HTHtest@hhs
Cc: dan.nellis@dole.com
Subject: Submitted testimony for SB875 on Feb 6, 2013 13:15PM
Date: Tuesday, February 05, 2013 11:26:03 AM

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
Daniel Nellis	Dole Food Co. Hawaii	Oppose	No

Comments: SB875 adds more cost to administering Worker's Compensation program and the cost will burden businesses. Dole Food Co. Hawaii stongly opposes this bill.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

Via E-mail: HTHTestimony@capitol.hawaii.gov
Via Fax (808) 586-9391

February 6, 2013

TO: HONORABLE JOSH GREEN, CHAIR, HONORABLE ROSALYN BAKER, VICE
CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON HEALTH

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

SUBJECT: **STRONG OPPOSITION TO S.B. 875, RELATING TO WORKERS'
COMPENSATION.** Requires independent medical examinations and permanent
impairment rating examinations for workers' compensation claims to be
performed by physicians mutually agreed upon by employers and employees or
appointed by the director of the department of labor and industrial relations.
Allows for the use of an out-of-state physician under certain conditions.
Appropriates unspecified funds. Effective 10/1/13. Section 3 effective 7/1/13.
Repeals on 6/30/2018

HEARING

DATE: Wednesday, February 6, 2013
TIME: 1:15 p.m.
PLACE: Conference Room 229

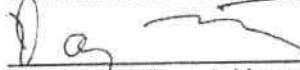
Dear Chairs Green and Hee, Vice Chairs Baker and Shimabukuro and Members of the
Committees

South Pacific Steel is opposed to S.B. 875, 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 or appointed by the director of the department of labor and industrial relations; 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 all 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. The proposed bill would disallow for this
current practice.

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 these Committees.


Doug Ewart/Branch Manager

2/5/2013



THE QUEEN'S HEALTH SYSTEMS

1301 Punchbowl Street • Honolulu, Hawaii 96813 • Phone (808) 691-5900

S.B. 875, RELATING TO WORKERS' COMPENSATION
Senate Committee on Health
Senate Committee on Judiciary and Labor
February 6, 2013, 1:15 p.m.
Room 229

Members of the committees, I would like to thank you for this opportunity to comment on SB 875 regarding the process for Independent Medical Examinations (IME's) for workers' compensation. My name is Gary Warmoth and I am testifying on behalf of The Queen's Health Systems (QHS). As the Manager of Workers' Compensation and Disability Management, I administer workers' compensation claims for QHS through their self-insured workers' compensation program. I am a licensed independent claims adjuster and have been administering workers' compensation claims in the State of Hawaii for over 20 years.

The Queen's Health Systems **opposes** SB 875 as this legislation will increase administrative delays, increase costs to employers and reduce IME quality. The current system is fair and efficient. The present law allows one ordered IME by a physician of the employer's choice. In my experience, the vast majority of IME's are currently done by mutual consent of the parties without the necessity of an administrative order.

SB 875 removes the employer's right to an ordered IME with a physician of the employer's choosing and does not provide any requirement that the employee confer in good faith with the employer on the selection of a physician. As a consequence, it is likely that the employer will have no input on the selection of an IME physician.

There is also concern that the law does not explain how the Director of Labor would appoint an IME physician. There are no assurances that the Director will be able to appoint a physician who has the experience, specialty or skills to conduct a meaningful IME.

The effect of this legislation will increase claim disputes and the necessity for administrative hearings at an already overburdened hearings branch at the Disability Compensation Division. The resultant delays will increase costs for employers and impede the payment of benefits to injured workers.

IME's are an integral aspect of the fair administration of workers' compensation claims. SB 875 will negatively impact the IME process. The Queens' Health Systems respectfully requests that the committee **hold** this measure.



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February 5, 2013

TO: HONORABLE JOSH GREEN, CHAIR, HONORABLE ROSALYN BAKER, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON HEALTH

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

SUBJECT: **STRONG OPPOSITION TO S.B. 875, RELATING TO WORKERS' COMPENSATION.** Requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the department of labor and industrial relations. Allows for the use of an out-of-state physician under certain conditions. Appropriates unspecified funds. Effective 10/1/13. Section 3 effective 7/1/13. Repeals on 6/30/2018.

HEARING

DATE: Wednesday, February 6, 2013
TIME: 1:15 p.m.
PLACE: Conference Room 229

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

Ralph S. Inouye Co., Ltd. (RSI), General Contractor and member of the General Contractors Association of Hawaii (GCA), is **opposed to S.B. 875, 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 or appointed by the director of the department of labor and industrial relations; 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 all 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. The proposed bill would disallow for this current practice.

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 these Committees.

From: [Dart](#)
To: [HTFestacionary](#)
Subject: Opposition to Sb 875
Date: Tuesday, February 05, 2013 11:36:58 AM

I am small business owner that employs six or more employees and I oppose SB875 for the following reasons:

- It will increase my already high worker's compensation premiums and may lead to a reduction in employee pay, benefits or positions in a already bad economy.
- Restricting the IME process takes away an employer's ability to conduct any meaningful discovery of disputed workers' compensation claims;
- The requirement of "mutual agreement" on the selection of an IME physician may delay the medical treatment of a claimant because it will take longer for the employer and employee to "agree" on the selection of a physician, as opposed to allowing the employer to select a physician on its own;
- The proposed legislation does not specify how long the employer and employee must attempt to reach "mutual agreement" on the selection of an IME physician, before the Director of Labor makes such an appointment;
- The proposed legislation allows for abuse by employees because there is no requirement that employees object in good faith to any IME physicians selected by an employer;
- The proposed legislation doesn't provide any assurances that the DLIR will have the resources or ability to appoint IME physicians who have the knowledge, experience, skills or training necessary to conduct a meaningful IME. This is especially true because the bill states that the Director of Labor must make such an appointment within seven days (although the bill does not state the consequences of a failure to make a timely appointment);
- The proposed legislation does not allow employers to object - or even have any input - on the IME physician selected by the Director of Labor. This is extremely problematic, because it could potentially result in the selection of a physician who would be required to render an opinion on a medical matter for which they are not qualified to do so;
- The prohibition against combining IMEs and ratings examinations, absent consent from the employee, could lead to unreasonable and increased costs for employers (and/or insurance carriers) because they will have to pay for two examinations instead of one;
- If the IME must be conducted within 45 days, it will limit what physicians will be able to conduct the IME based upon availability and scheduling issues; and
- Restricting an employer's ability to conduct meaningful IMEs of disputed workers' compensation claims will eventually lead to a rise in workers' compensation insurance premium rates.

To: Senator Josh Green, Senator Rosalyn Baker, Senator Clayton Hee and Senator Maile S.L. Shimabukuro

Hearing: February 6, 2013

Re: SB 875, Relating to Workers' Compensation

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

I would like to thank you for giving me this opportunity to comment on SB 875, relating to workers' compensation. My name is Milia Leong and I am the Vice President-Claim Manager for the Workers' Compensation Department at John Mullen & Co., Inc. ("JMCO"), Hawaii's largest Third Party Administrator ("TPA"). We have been handling multi line insurance claims for over 50 years in this State and I have personally adjusted, supervised, and managed workers' compensation claims for over 19 years on behalf of hundreds of Insureds, Self Insureds, State, City and County, and Captive Employers.

As adjusters, JMCO actively handles the day to day functions required to facilitate medical/indemnity benefits to injured workers pursuant to Section 386 H.R.S. for compensable claims and to expedite the investigation process in cases where liability is questionable. In my experience, I can say without a doubt, that the majority of new claims received on a daily basis, are initially accepted without delay and the need for an IME. In the limited cases where initial compensability is denied pending investigation, we must provide a valid justification to the Director based on medical and legal evidence in support of our position. To allege otherwise, is a factual untruth.

JMCO opposes SB 875 which requires independent medical examinations ("IME") and permanent partial disability ratings to be performed by physicians mutually agreed upon by employers and employees or appointed by the Director of the Department of Labor and Industrial Relations.

We offer the following in support of our opposition:

1. It is critical to the Employers' discovery process that an IME be scheduled expeditiously, for claims that require investigation with respect to compensability or further liability. The IME provides checks and balances in the form of a second medical opinion to ensure the issues of whether an injury is work related and whether medical treatment/disability certification is reasonable and necessary are properly addressed. The Employer should be permitted the right to select an IME physician of their choosing in the event parties are unable to agree, given the Employer is responsible for 100% of said expense. **The injured worker has such right in the selection of an attending physician pursuant to Section 386-21 which is also at Employer's expense.** The Employer has no input regarding this selection and the Employee may treat with whomever he/she may choose subject to the definitions of a qualified physician pursuant to H.R.S. 386-27.
2. The independent examiner's role is to provide an unbiased assessment based on the medical records, pertinent file documentation and examination of the injured worker. In fairness to all parties, a copy of said report is furnished to the injured worker, their attending physician and the Department of Labor for review and comment. The injured worker has the right to provide a rebuttal to this report by their physician, an IME/second opinion of their

choosing, and/or may file a request for hearing before the Department of Labor should they disagree with the IME findings. The Employer should at the very least be allowed to present its own evidence for the Director's determination. The Employers/Director's determination is not based on the IME alone, but the case facts in its entirety. In cases where an injured worker obstructs an investigation of compensability or further liability, Section 386-79 provides one of the only avenues for an Employer to statutorily expedite such investigation and/or address potential malingering. As a safeguard, the Director requires the Employer to provide sufficient reasoning for any request for Order or the request will be denied.

3. All other standard investigation practices, such as obtaining a statement from the injured worker and securing a signed medical authorization to request necessary medical records, are voluntary and Employer has little to no remedy to enforce cooperation. In cases where we are unable to solicit cooperation, the Employer is left with only the right to an Ordered IME to address questions or concerns, as we are confined to time limitations and discovery deadlines for all cases referred to hearing before the Director. To repeal Employer's right to an Order and by limiting Employer to only one IME, will result in a significant delay in cases where malingering is suspected, intervening accidents/injuries have occurred, lack of compliance by the worker to actively participate in recommended medical treatment has prolonged recovery, underlying unrelated health conditions have surfaced affecting return to pre injury status, financial gain incentives are apparent, and/or fraud is suspected. This will undoubtedly result in inflated claim costs across the board, of which SB 875 provides no remedy for reimbursement of medical/indemnity costs, should the IME agree with Employer's position and the Director issue a Decision affirming same. We are reminded that Workers Compensation costs are borne by all, and in our current depressed economy, we should not be seeking ways to increase costs to employers that will ultimately be passed on to the consumer.
4. SB 875 provides for the Department to maintain a list of qualified physicians and the Director to appoint one within 7 days where the employer and employee disagree. However, the bill is silent as to the consequence of the Director's failure to timely appoint said examination. This is most concerning given the Department's current staffing challenges, which has already resulted in a backlog of hearings and delay in case assignment. Without a case number, the claim does not exist with the Department, and therefore, we are unable to subpoena records, request a hearing, or even file requests with the DCD until such time a case number is assigned. SB 875 also provides that the exam be scheduled within 45 days. This is unrealistic, as currently, IMEs are taking anywhere between 60-90 days to schedule, and even longer for specialty or psychiatric evaluations given the limited number of physicians willing to perform these examinations. By mandating these exams be conducted pursuant to the Medical Fee Schedule, we believe fewer physicians will be willing to conduct IME/PPD ratings, resulting in an even longer wait time.
5. SB 875 precludes combining an IME and rating without the employee's written consent. To require the employer to schedule a separate rating would be a tremendous inconvenience to the employer, employee and IME physician, which would at the very least double the costs for such expense. By mandating two separate exams, this bill will essentially increase the number of scheduled appointments, thus pushing back the availability even further. Undoubtedly, this process only serves to delay resolution of statutory permanent partial disability benefits, keeping due benefits out of the pocket of the injured worker and increasing litigation costs across the board. It is noted that should the claimant disagree with the accuracy of a rating scheduled by Employer, they have the right to secure a rating

of their own, and should the Director credit same, Employer may be ordered to reimburse the claimant for associated costs.

In summary, we believe the current IME process is working for both employer and employee. The vast majority of IMEs are conducted without incident, dispute or the need for an ordered evaluation. The IME process can greatly enhance the likelihood of successful treatment, recovery and resolution of the claim without the need to take the matter to hearing before the Director at significant savings in time and resources. In fact, in many cases, the IME provides direction of which the attending physician will often "defer" further recommendation, especially in cases where the worker is reporting no significant improvement despite ongoing medical treatment and lengthy disability periods. An independent opinion may provide for insight not considered by the attending physician, and in many cases, when situations like this arise, the attending physician agrees with the recommendations and moves forward with the treatment and/or return to work plan. In other cases, IMEs concur with the attending physician's current treatment plan and/or disability duration and often find claims compensable where liability is initially investigated. However, the vast majority of these IMEs are never commented on because there is no "dispute," and the claim moves forward without complaint. It is unfortunate, that the minority, not the majority is driving the support of SB 875. Based on our daily handling of industrial claims, we believe the current IME process is balanced and, therefore, request SB 875 be held.

From: [Pam Kirk](#)
To: [Hitt@hawaii.gov](#)
Subject: Bill SB 875
Date: Tuesday, February 05, 2013 1:21:36 PM

I oppose Bill SB 875.

Thank you.

Pamela Kirk

Noguchi & Associates, Inc.
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Honolulu, HI 96814
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I am writing to oppose SB 875. Restricting the IME process takes away an employer's ability to conduct any meaningful discovery of disputed workers' compensation claims. It is unfair to the employer to remove our ability to defend against fraudulent worker's compensation claims. As a company who has been victim of such, by removing this process you take away our right to defend our self.

Thank you.