DAVID Y. IGE
GOVERNOR

JAMES K. NISHIMOTO
DIRECTOR

RANDY BALDEMOR
DEPUTY DIRECTOR

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

March 20, 2015

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR

For Hearing on Tuesday, March 24, 2015
9:45 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO
DIRECTOR

**Senate Bill No. 1174, H.D. 1**
**Relating to Workers' Compensation**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide comments on S.B. 1174, H.D. 1.

The purposes of S.B. 1174, H.D. 1, are to provide that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties; and provide a process for appointment in the event that there is no mutual agreement.

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 submits these comments on the 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 alternatively 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—even where the physician is willing to undertake the examination—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 possible" requirement. These unresolved issues may lengthen the process and make it more burdensome.

Fourth, the appropriate check and balance for any perceived "highly partisan" IME opinion is the Director of the Department of Labor and Industrial Relations, who has original jurisdiction to hear and resolve all controversies and disputes arising out of Chapter 386, the Hawaii Workers' Compensation Law. If the Director believes that an IME opinion is not based on any objective medical evidence, he can simply not credit the report and issue a ruling on a disputed medical issue based on other evidence in the record.

Finally, the bill would 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.

DAVID Y. IGE
GOVERNOR

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March 24, 2015

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, March 24, 2015
Time: 9:45 a.m.
Place: Conference Room 309, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. No. 1174 S.D. 2 H.D. 1 Relating to Workers' Compensation**

## I. OVERVIEW OF PROPOSED LEGISLATION

SB1174SD2HD1 proposes to repeal Section 386-79, Hawaii Revised Statutes (HRS), relating to medical examinations by employer's physician, and to replace it with new language 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 parties shall jointly prepare a list of five physicians and by elimination, choose one physician to perform the IME;
- The selected physician shall be currently licensed pursuant to chapter 453 or 442 and shall conduct the examination within 45 calendar days or as soon as possible after the selection;
- The employer shall pay for the IME; and
- The use of an out-of-state physician is allowed under certain circumstances.

The Department supports the intent of this measure that 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. The Department notes that as currently drafted the process might be challenging for pro se clients, as they may not have access to or lists of doctors that perform IMEs. Moreover, the department believes further deliberation on the design and process of the selection process needs to occur, but does not have any suggestion at this time.

The intent of this measure is to reduce the adversarial nature of the increasingly contentious workers' compensation system and reduce the bias of either party's physician through a mutual selection of a physician to perform the IME. Currently, both the employee and the employer often choose doctors who are highly partisan to their side, further exacerbating the adversarial nature of the workers' compensation system.

The workers' compensation system was designed to be more informal and outside the normal legal process, but unfortunately it has developed into a formal, adversarial legal process. The proposal is an attempt to return the workers' compensation system to its original design.

## 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. In contested cases, the parties' primary concern is to have doctors' reports that support their position and they would therefore seek IME doctors who will likely support their positions.

   Employers or Insurance Companies, however, have an economic advantage over claimants, so 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.

2. Fair and Impartial. Where there are disagreements about medical examinations and permanent impairment rating examinations, 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. Out-of-State claimants. The measure also provides for IMEs for claimants living out-of-state. The measure allows for physicians who are licensed in and who reside in the state of the claimants' residence to be selected to perform IMEs and rating examinations for out-of-state claimants if that state's physician licensing requirements are equivalent to a physician's license under chapter 442 or 453. Currently, 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 employer will continue to be responsible for arranging and paying for travel arrangements for claimants who must return to Hawaii for an IME.

4. Medical records to IME physician. The Department recommends the measure stipulate that the employer shall send the claimant's medical records to the IME physician as is the current practice.

5. The Department points out that this proposal only allows physicians currently licensed pursuant to chapters 453 (medicine) and 442 (chiropractics) to perform IMEs. It does not apply to dentists (chapter 448) and psychologists (chapter 465), who are also considered "physicians" under the workers' compensation law.

6. Medical stability. The Department has concerns about the language in Section 1, Subsection (f) which relies on medical stability to be determined solely by the injured employee's attending physician. Employers would lose the ability to challenge ongoing disability and medical treatment when the medical evidence indicates the claimant has reached medical stability. This may result in lengthening of certain claims.

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CAROLEE C. KUBO
DIRECTOR

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ASSISTANT DIRECTOR

March 24, 2015

The Honorable Mark M. Nakashima, Chair
and Members of the Committee
on Labor & Public Employment
The House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members of the Committee:

SUBJECT: Senate Bill No. 1174, SD 2, HD 1
Relating to Workers' Compensation

The City and County of Honolulu **strongly opposes** SB 1174, SD 2, HD 1, which would require independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees. Although the vast majority of workers' compensation claims proceed without controversy or disagreement, there are certain workers' compensation claims where an independent medical examination is necessary.

The Hawaii Workers' Compensation Law permits a claimant to secure medical treatment from any physician practicing in the State of Hawaii. Occasionally, questions arise concerning diagnosis, treatment, or disability status. While employers have no say in an employee's choice of physician, they currently have the right to obtain an independent opinion from a physician or specialist regarding the progress of a claim. SB 1174, SD 2, HD 1, would significantly restrict an employer's ability to obtain such independent examinations by mandating that only physicians agreed upon by claimants be used for employer requested medical examinations, or, if both parties cannot reach a consensus, mutually creating a list of five physicians before alternately striking names to arrive at a final physician. This alternative process will most certainly delay the final disposition of the claim with respect to compensability or future medical treatment.

Most employers and insurance carriers have no problem using mutually agreed upon physicians for permanent impairment ratings, but to require mutual agreement for an employer to conduct an independent medical evaluation takes away from the very independence and purpose of the evaluation. The concept of an independent medical examination is incongruous with the words upon mutual agreement as proposed in this bill.

Hawaii's workers' compensation law already weighs heavily in favor of the claimant. Under the presumption clause, any claim filed is deemed compensable unless the employer presents substantial evidence to the contrary. During the hearing process at the Disability Compensation Division (DCD) and the Labor and Industrial Relations Appeals Board (LAB), issues of doubt are resolved in favor of the claimant. The only way an employer can determine whether a claim is truly compensable or check on a claimant's medical progress is the right to select an independent medical examiner. To change this as proposed is unfair and inequitable to employers.

Finally, the bill allows only the attending physician to make the finding of medical stability. In most instances, this is self-serving and will undoubtedly prolong treatment, delay an employee's return to work and dramatically increase the cost of a claim.

Based on the foregoing, we respectfully urge your committee to file SB 1174, SD 2, HD 1.

Thank you for the opportunity to testify.

Sincerely,

for Carolee C. Kubo
Director

cc: Mayor's Office

HAWAII INSURERS COUNCIL
A trade association of property and casualty insurance companies

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**Alison H. Ueoka**
Executive Director

# TESTIMONY OF JANICE FUKUDA

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Mark M. Nakashima, Chair
Representative Jarret Keohokalole, Vice Chair

Tuesday, March 24, 2015
9:45 a.m.

## SB 1174, SD2, HD1

Chair Nakashima, Vice Chair Keohokalole, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims at First Insurance, testifying on behalf of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council opposes SB 1174, SD2, HD1 which amends Section 386-79, Medical Examination by Employer's Physician.

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

The current system regarding Independent Medical Examinations (IMEs) has been in place for some time and we believe it is working. It appears that this legislation is prompted by claims that IME physicians are biased toward the employer. We do not believe this is true. Employers seek access to clinical expertise to help return the injured worker to the job. Currently, there are numerous safeguards in place to ensure the IME is objective and unbiased. Injured workers are able to obtain opinions or

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

The current system provides an approach for the employer and injured worker to resolve medical treatment disputes in an efficient manner. The proposal to mandate mutual agreement will increase workers' compensation costs and delay the delivery of medical treatment in certain cases. This is detrimental to the injured worker and does not benefit the employer. The mandate also denies employers due process to investigate whether the alleged injury is a compensable consequence of a work related event or exposure.

This bill requires mutual agreement between the employer and employee of an IME physician. If there is no agreement, the IME physician is chosen from a joint list of five physicians with the employer choosing the first and alternating with the employee. Then each may strike a physician until only one remains who shall be the IME physician. The proposed process will delay the ability to secure an examination in a timely manner and may hinder the ability to expeditiously resolve conflicts. The process will always end with the employer not having the opportunity to obtain an IME with a physician of their choice. Furthermore, only one IME is allowed unless another is approved by the Director.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is

permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

There are very few cases where mutual agreement cannot be reached. However, if the law is changed to *require mutual agreement*, we believe many cases *will not have mutual agreement* because there is no incentive to do so. If there is no mutual agreement, the physicians who are licensed under Chapter 453 are a very broad pool, however, we believe the result of having inexperienced physicians perform IMEs will not serve the injured worker or the employer and ultimately increase appeals and costs. Subsequently, if an IME is not performed at a high standard, the employer may not be able to get another one if the Director does not approve it. This leaves the injured worker in limbo and the employer must keep paying for medical treatment that may be unnecessary.

The provision to require impairment IMEs to be separate from treatment IMEs presents an inconvenience to the injured worker and does not correspond to better outcomes. A comprehensive examination often takes several hours and this requirement will add costs to the system by requiring two separate examinations that could be addressed in one visit. IMEs are performed to address various aspects of an injured worker's injury and recovery such as primary and secondary diagnosis, appropriate treatment, utilization and measurement of the degree of physical impairment. *In many cases, it is important to obtain a baseline impairment rating to later determine the effectiveness of treatment.* It is beneficial for the injured worker to have one physician review the medical records and conduct the physical examination in a comprehensive manner. It is also more cost effective if treatment and impairment are addressed by a single IME instead of requiring two. The suggestion that two separate examinations benefits the injured worker is not substantiated by evidence and will only add costs and delay the delivery of benefits. Requiring prior written consent from the injured worker to allow for an Impairment rating during the IME exam will delay the process and add cost.

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

Section (b) requires the employer to promptly provide the employee or employee's representative a copy of the report of the independent medical examination. This may be problematic and not in the best interest of the injured worker for certain types of examination reports that should be reviewed in the presence of the injured worker's treating physician or the concurrent medical provider. Mandating dissemination of all reports may create an inherent risk for the Independent examiner, the file handler and others involved with the injured worker's claim.

For these reasons, we respectfully request that SB 1174, SD2, HD1 be held.

Thank you for the opportunity to provide comments.

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Hawaii State Legislature
House Committee on Labor and Public Employment
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

March 23, 2015

*Filed via electronic testimony submission system*

**RE: SB 1174, SD 2, Workers' Compensation, IME - NAMIC's Written Testimony for Committee Hearing**

Dear Representative Nakashima, Chair; Representative Keohokalole, Vice-Chair; and members of the House Committee on Labor and Public Employment:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the March 24, 2015, 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.

Thee 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than $208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 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 SB 1174, SD2 and respectfully tenders the following concerns and suggested revisions to the proposed legislation:

**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 injured 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, SB 1174, SD2 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, it is extremely unlikely that there will be 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.

In closing, NAMIC is concerned that the proposed legislation 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 to the employer, WC insurer, and injured worker.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at 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

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

Uploaded via Capitol Website

March 24, 2015

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD1 RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD1)

HEARING

DATE: Tuesday, March 24
TIME: 9:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Keohokalole and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred eighty 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 S.B. 1174, SD2, HD1, Relating to Workers' Compensation, which would require that an employee and employer mutually agreed upon physician for an "independent medical examination" commonly known as an IME or permanent impairment rating for worker's compensation claims.

In order to avoid any confusion, the commonly referred to Independent Medical Examination or IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

The GCA is opposed to this measure because it requires the selection of an Employer Medical Examination to be mutually agreed upon. The process has been erroneously referred to as an Independent Medical Examination or IME. The proposed change 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 improper 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.

S.B. 1174, SD2, HD1 remains at odds with the interests of GCA members and other business organizations and for those reasons, the GCA opposes this measure. The GCA believes the current system that is in place works. We believe this legislation is unnecessary.

GCA **strongly opposes** S.B 1174, SD2, HD1 and respectfully requests that this Committee defer the measure. Thank you for the opportunity to express our concerns on this measure.

**BIA-HAWAII**
**BUILDING INDUSTRY ASSOCIATION**

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**Testimony to the House Committee on Labor & Public Employment**
**Tuesday, March 24, 2015**
**9:45 a.m.**
**State Capitol - Conference Room 309**

**RE: SENATE BILL NO. 1174, S.D. 2, H.D. 1, RELATING TO WORKERS' COMPENSATION**

Chair Nakashima, Vice-Chair Keohokalole, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii is **strongly opposed** to S.B. 1174, S.D. 2, H.D. 1, which would require that the independent medical examination (IME) and permanent impairment rating examination for workers' compensation claims be performed by physicians mutually agreed upon by employers and employees, or appointed through the recommended process. It would also amend the workers compensation laws of the State of Hawaii to allow the benefits of an injured employee to be suspended for any refusal to submit to an examination not just unreasonable refusals.

The current statutes have numerous safeguards in place to allow injured employees full disclosure of an employer/insurance carrier's IME report, the right to seek their own medical opinion if they disagree, and an appeal process if the parties cannot agree. A majority of IME's are conducted today under the current statutes without incident or dispute. Permanent impairment rating examinations are currently performed by mutual agreement between parties, without any need for mandate by legislation.

Both changes to the system may be at the expense of finding the best available care for injured claimants in a timely manner. Simply finding qualified physicians to conduct these reviews is time consuming and results in delays due to a shortage of such professionals. Furthermore, the arbitrary process prescribed to appoint an IME physician does nothing to create a mutually agreeable choice as a physician chosen by the employer will be selected 100% of the time using this method.

The ability for an employer to select an IME ensures there is a check and balance system for overall medical care for the injured worker because injured workers select their own treating physician. Without it, the system would be one-sided and costs for any employer, whether private or government, could quickly escalate, resulting in an inequitable, unaffordable, and unsustainable program.

If the intent of this bill is to build trust and reduce confrontation in the workers' compensation system, it will fail at both objectives. Instead, this bill will compel claimants to rely more heavily on plaintiffs' attorneys to navigate increasingly complex procedures.

We appreciate the opportunity to share with you our views

**SMCA** *Sheet Metal Contractors Association*

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NEAL K. ARITA
*Executive Director*

March 24, 2015

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **OPPOSITION TO S.B. 1174, SD2, HD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174, HD1)

HEARING
DATE: Tuesday, March 24
TIME: 9:45 a.m.
PLACE: Conference Room 309

**Dear Chair Nakashima, Vice Chair Keohokalole and Members of Committee,**

I am Neal Arita, Executive Director of the Sheet Metal Contractors Association (SMCA), representing various Sheet Metal Contractors in the State of Hawaii.

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam

**SMCA is Opposed to S.B. 1174 SD2 HD1, Relating to Workers' Compensation,** which would require the commonly referred to "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 this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully

feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

For these reasons, we request that that the proposed bill be held by this Committee.

Thank you for considering this testimony as we Oppose SB 1174 SD2 HD1.

Sincerely,

Neal K. Arita
Executive Director, SMCA

Hawaii Restaurant Association
2909 Waialae Avenue #22
Honolulu, Hawaii 96826
www.HawaiiRestaurant.org
Phone: (808) 944-9105
Email: info@HawaiiRestaurant.org

Date: March 23, 2015

To: Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
Members of the Committee on Labor $ Public Employment

From: Hawaii Restaurant Association

Subject: SB 1174, SD2, HD1 Relating to Workers' Compensation

The Hawaii Restaurant Association opposes SB 1174, SD2, HD1 changing how an independent medical examination and permanent impairment examination process take place.

With Hawaii's presumption factor in our workers compensation law, we feel that the current process allowing the employer to request an independent medical examination if they question the treating physician's course of action provides a balance in the law.

This bill will likely creates delays in treatment and getting our employees back to work on a timely basis will increase the overall costs to everyone. We value our employees and getting those that get injured to be treated promptly and be able to get back working and being productive has always been our goal. Slowing this down is counter- productive.

Thank you for giving us this opportunity to share our points of view.

Property Casualty Insurers
Association of America
Advocacy. Leadership. Results.

To: The Honorable Mark M. Nakashima, Chair
The Honorable Jarrett Keohokalole, Vice Chair
House Committee on Labor & Public Employment

From: Mark Sektnan, Vice President
Property Casualty Insurers Association of America

Re: **SB 1174 SD2 HD1 - Relating to Workers' Compensation**
**PCI Position: OPPOSE**

Date: March 24, 2015
9:45 a.m., Room 309

Aloha Chair Nakashima, Vice Chair Keohokalole and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to SB 1174 SD2 HD1 which would require examinations to be conducted by a physician agreed to by both parties. PCI is a national trade association that represents over 1,000 property and casualty insurance companies. In Hawaii, PCI member companies write approximately 34.6 percent of all property casualty insurance written in Hawaii. PCI member companies write 42.2 percent of all personal automobile insurance, 43.5 percent of all commercial automobile insurance and 58.9 percent of the workers' compensation insurance in Hawaii.

SB 1174 SD2 HD1 would replace the existing employer requested examinations in workers compensation claims with a new, complicated system for obtaining "independent medical examinations". Instead of the existing system that allows an employer to obtain an examination of a claimant to evaluate the merits of a claim, SB 1174 SD2 HD1 would require first that the employer and employee reach a mutual agreement on the physician who conducts the examination.

The term "independent medical examination" is typically used to describe the examinations contemplated by Hawaii Revised Statutes § 386-79, but its use in this bill ignores the important function of the employer requested examination and strips out the employer's right to discovery of facts in workers compensation proceedings. This is neither fair nor prudent.

The employer requested examination is intended to establish a procedure for the employer to access his right to discovery of a claimant's physical condition and course of treatment. The effect of this bill is to do away with the employer's right altogether at the option of the injured employee.

Under the existing law there are many protections for the employee built in. The employer is limited to only one employer requested examination unless good and valid reasons exist with regard to the progress of the employee's treatment. Therefore, the employer has an incentive to obtain a credible examination - on the first try - that will withstand scrutiny on appeal before the DLIR's Disability Compensation Division. Also the report of the employer requested examination must be given to the employee, who has a right to challenge the report and to offer evidence that disputes the report's findings, so there is a check against employer abuse.

Finally, the selection process set forth in SB 1174 SD2 HD1 would be stalled by built-in delays. The employer would have to first try to reach a mutual agreement. If the parties are unable to reach an agreement, the bill requires the employer and employee to develop a list of five physicians and then cross off names much as a jury is selected. This could be a very cumbersome and time consuming process. Once a physician is appointed to take the case, the examination is supposed to take place within 45 days. No doubt, that is an optimistic estimate as currently delays in finding willing and able physicians are already widespread. All this means that examinations would be additionally burdened by these new administrative delays.

PCI respectfully requests that the Committee hold SB 1174 SD2 HD1.

Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Labor & Public Employment**
**Tuesday, March 24, 2015 at 9:45 A.M.**
**Conference Room 309, State Capitol**

**RE: SENATE BILL 1174 SD2 HD1 RELATING TO WORKERS' COMPENSATION**

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 1174 SD2 HD1, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties and provides a process for appointment in the event that there is no mutual agreement.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

SB 1174 SD2 HD1 seeks to replace the existing employer requested examinations in workers compensation claims disputes with a new system for obtaining "independent medical examinations".

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

The Chamber **opposes** this bill for the following reasons.

First, 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. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Second, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates. The bill does not set forth a timeline in which the employee or employer must remove a physician from the list. This could add months to the process of getting an IME. Also, under existing law, if the employee does not submit to an employer's IME, the employee's right to claim compensation for the work injury is suspended. While this provision is added at a later part of the bill it appears it will take effect after the selection process.

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

In fact, it would be counter-productive for businesses to want employees not to get better and return to work. Additionally, businesses genuinely care and do everything they can to create a positive, healthy and safe work environment and provide benefits and assistance to employees.

The Chamber and the members they represent, respectfully request that you hold SB 1174 SD2 HD1. Thank you for the opportunity to submit testimony.

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Mark Nakashima, Chair

Rep. Jarrett keohokalole, Vice Chair

Measure Title: Relating to Workers Compensation

**In Support of SB 1174, HD1**

My name is Laurie H. Hamano. I am a vocational rehabilitation counselor and **President of the International Association of Rehabilitation Professionals in the Private Sector** as well as a business owner and member of the Chamber of Commerce o fHawaii. I have been able to see the workers compensation system deal with injured workers from both sides of the spectrum.

**The IARPS membership strongly support SB 1174** and should this measure pass both sides of the perspective of workers compensation would hopefully reap the benefits; 1) reducing the amount of costly IME's 2) focusing on fairness in the system so that the injured workers are heard and medically taken care of, 3) reducing the amount of delays on the injured workers' medical benefits and vocational rehabilitation benefits as this measure will encourage those who are already working in the field to consider doing these medical evaluations.

**Please support this SB 1174 as this is one way to help the workers compensation system move forward and allowing the injured workers have a fair review to help them return to the community as a productive member.**

Laurie H. Hamano, M.Ed. CRC, LMHC
President of International Association of Rehabilitation Professionals

My address and phone number is:
715 S. King Street Suite 410
Honolulu, HI 96813
#5388733

The Twenty-Eighth Legislature
Regular Session of 2015

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
State Capitol, Conference Room 309
Tuesday, March 24, 2015; 9:45 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1174, SD2, HD1**
**RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 supports S.B. 1174, SD2, HD1, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by mutual agreement of the parties and provides a process for appointment in the event that no agreement can be reached.

In the workers' compensation arena, independent medical examinations and examinations for permanent impairment ratings are performed by physicians who are expected to be unbiased and will provide their opinions based on the physical examination of the patient and a review of the medical records. Consideration about who pays their fees should not enter the picture, but the perception of bias will exist if the examiner is both selected and paid for by the insurance company or employer.

Mutual agreement regarding the selection of the IME physician will serve to minimize or even eliminate negative perceptions about the examiner and will offer assurance to the injured worker that the examination will be conducted fairly.

The process for appointment of an examiner, as outlined in the bill, appears fair. However, the only concern is that a claimant who is not represented may not be able to suggest names of prospective IME physicians for consideration, either initially or when there is no agreement. We suggest that the Department consider facilitating the process by:

1. Sending a letter once a year to each physician licensed in the state asking if the physician is interested in performing Independent Medical Examinations or examinations for permanent impairment.

2. Preparing a list of the physicians who have expressed interest, including practice specialty, number of years practicing in Hawaii and elsewhere, number of IME and rating exams performed and when, and any other pertinent information.

3. Providing the list with information on each physician to the claimant and the insurer or employer.

With this information, the claimant will be better able to suggest physicians to be considered. In addition, this suggestion will help to address the concerned raised by the Senate Committee on Judiciary and Labor about the physician's advance consent to perform the exam, but the exam must be coordinated with the physician's calendar.

The section in the bill requiring separation of the IME from the permanent impairment rating is essential. Ratings for permanent impairment should occur only after the injured worker is determined by his attending physician to be "medically stable"—i.e., "no further improvement of the employee's work-related condition can reasonably be anticipated from curative health care or the passage of time." An absurdity occurs when an injured worker is referred to an examiner for both an IME to determine compensability and a permanent impairment rating. How can the examiner determine if there is permanent impairment when the disability has yet to be acknowledged and no treatment has been provided? Nevertheless, this is a common occurrence.

The ILWU urges passage of S.B. 1174, SD2, HD1. Thank you for the opportunity to provide testimony on this matter.

keohokalole2-Relley

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 4:02 PM
To: LABtestimony
Cc: moore4640@hawaiiantel.net
Subject: Submitted testimony for SB1174 on Mar 24, 2015 09:45AM

**SB1174**
Submitted on: 3/23/2015
Testimony for LAB on Mar 24, 2015 09:45AM in Conference Room 309

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Douglas Moore | Hawaii Injured Workers Association | Support | No |

Comments: Aloha Mr. Chair & committee members. The Hawaii Injured Workers Association (HIWA) continues to strongly support the intent of this mutually agreed medical examination bill and its passage. The intent is fairness in workers' compensation. Fairness will reduce litigation as work comp should be. Reduced litigation will reduce costs to all, particularly the business community. It is also important to reduce the Dept. of Labor's involvement if there are disputes over selection of the mutually agreed examiner since the department's resources have been cut back. The alternative dispute resolution process recommended by Mr. Wong seems viable since it apparently has worked for no-fault medical exam disputes. Also, recommendations by Mr. Mukaida regarding defining "physician" and communications with physicians are helpful. Therefore, HIWA respectfully requests the passage of 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

MARCH 23, 2015

**HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**

**SB 1174 MUTUALLY AGREED IME'S**

Chair Nakashima and members of the committee:

This bill and similar versions have been before the Legislature for several years. The employers and insurance representatives who oppose this bill have done so on several grounds one of which is to provide the employers with a "tool" to challenge workers compensation claims. The law has provided the injured workers with the presumption of compensability (work connection unless disproved). However, the present law allows so-called independent examinations only where there is concern over the course of treatment or where major surgery is contemplated. The argument that IME's should be used to challenge compensability is in fact the purpose of the majority of IME's which have been performed, and not due to concern over treatment, nor to evaluate surgery.

One example from my practice involves hard-working middle-aged woman who slipped and fell at work. She was diagnosed by MRI (magnetic reasonance imaging), with torn rotator cuffs to both shoulders. The employer accepted shoulder injuries as compensable.

Two doctors who treated her recommended surgery, including an orthopedic surgeon. The injured worker was referred to an "independent" consultant retained by the insurance carrier. The consultant ascribed the injuries to a pre-existing degenerative shoulder condition, although no medical records supported this theory.

The carrier refused to cover the surgery on the ground of "pre-existing injury", i.e., that it was not related to work. Note that although compensability of the shoulder injury was accepted, the specific injury of a rotator cuff tear was challenged as non-work related by use of a non-treating physician. To add insult to injury, the opinion of the consultant was argued as a physician of the employee's own choice since it was not ordered by the Department of Labor and Industrial Relations (DLIR).

The DLIR ruled in favor of the injured worker. The case was appealed by the employer who succeeded in setting aside the order, for a new hearing. An IME examiner, who is well-known for his insurance bias (and nicknamed, "Dr.

DooLittle") was hired to support the theory of pre-existing injury, and diagnosed "fibromyalgia" as the cause of the shoulder pain and injury. (Fibromyalgia is thought to be systemic rheumatoid condition causing joint pain throughout the body).

The DLIR rejected this new diagnosis and regurgitation of the discredited theory of pre-existing injury. and ruled again in favor of the injured worker. The carrier has not responded to a new request for surgery and a new treatment plan and no explanation has been provided. Presumably, the carrier has continued to adhere to the "advice" of its "independent physicians". It is almost one and one-half years since the injury date and the worker continues to receive temporary disability despite a desire for a surgical procedure and desire to return to work.

Another outstanding case comes to mind involving another of my clients who injured in 2006 and was subjected to no less than *five* IME reports (only three involved actual face-to-face examinations) for the same injuries. A *first hearing* was held on the carrier's denial of a treatment plan.

"Dr. DooLittle" (the same doctor I referenced previously) in his first report evaluated the injured worker with work injuries at 5% *permanent impairment* to the back, and 5% *permanent impairment* to the neck, and psychological injuries (a psych evaluation). However the report said that no further treatment was needed, and was used as a basis to terminate disability and vocational rehabilitation. This was the *second of four hearings* at the DCD (Disability Compensation Division level)

An employer directed video-tape was used to follow the injured worker around for several weeks and obtained only 40 minutes of physical activity, allegedly showing the worker involved in activities beyond his reported capabilities.

Dr. Doolittle and a psychologist were provided the vido-tape and issued reports supporting the theory that the injured worker was engaged in workers compensation fraud, and the worker's benefits were cut off. Dr. DooLittle did a 180º turn-around and said that there was "no impairment," as did the psychologist. The injured worker was found "guilty" of fraud at a *third hearing* of his case. We appealed.

Two years elapsed before a *hearing on appeal*, and decision was issued by Labor and Industrial Relations Appeals Board essentially rejecting Dr. DooLittle's second report. The injured worker was cleared of the fraud charge. No benefits were paid, and no treatment was performed for the injured worker in the meantime.

A *fourth hearing* was held with the carrier using Dr. DooLittle's second report and same discredited opinion to deny any award of permanent impairment an appeal is still pending.

The injured worker has since his own finally secured lighter duty part-time work and has since resumed treatment. However, his experience with employer-directed IME abuses and delayed treatment is not unique and isolated but recurs with disturbing regularity. Implementing a change to require mutually-agreed IME's is revenue neutral, will not cost more, but should result in cost-saving as it will require less litigation over which physicians should perform IME's, and disputes over the use of IME's for litigation gamesmanship.

This type of legal-medical maneuvering and obstruction can be minimized by fair and objective medical evaluations. Access to quality medical care should not be entrusted to non-medical personnel such as insurance adjusters and defense attorneys. The humanitarian policy of the workers compensation law of expedient and cost saving return to the workforce are undermined by the unilateral ability of employers and carriers to hire the same discredited medical "experts" again and again to delay and obstruct treatment.

Much false arguments are being made by business and insurance interests regarding increased cost of business and higher premiums. The method of selection of a physicians is fiscally-neutral. Only one physician should be allowed to perform an examination as the law presently reads, so there would be no additional expenditure for an examination. The selection process of mutual agreement does not require any additional administrative review nor personnel since the communications and decisions would be between the parties.

The Hawaii Association for Justice (HAJ) proposes to simply the process where there is disagreement by designating the Director of Labor and Industrial Relations or his designee as the decision-maker. This procedure would require only decision-making and minimal paperwork. The Workers' Compensation Section observes that the selection process in the present bill is cumbersome and lengthy, and a party could hold up the process by non-response, which is a common occurrence in workers' compensation cases.

I have taken the liberty of attaching our proposal for your review and consideration

PLEASE APPROVE THIS BILL. Your consideration is appreciated.

Very truly yours,

/s/ Stanford H. Masui

STANFORD H. MASUI, Co-Chair Workers' Compensation Section, Hawaii Association for Justice

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

# S.B. NO. 1174 S.D. 2 H.D. 1

# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAii:**

SECTION 1. Section 386-79, Hawaii Revised Statutes, is amended to read as follows:

(Brackets) are deletions, underlined are new amendment

Higlights are HAJ work comp section changes discussed

"**§386-79 [Medical examination by employer's physician.] Requested mutual examination.** [After an injury and during the period of disability, the employee, whenever ordered by the director of labor and industrial relations, shall submit to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer. The employee shall have the right to have a physician or surgeon designated and paid by *the* employee present at the examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability.

If an employee refuses to submit to, or in any way obstructs such examination, the employee's right to claim compensation for the work injury shall be suspended until the refusal or obstruction ceases and no compensation shall be payable for the period during which the

refusal or obstruction continues.

In cases where the employer is dissatisfied with the progress of

the case or *where* major and elective surgery, or either, is contemplated, the employer may appoint a physician or surgeon of the employer's choice who shall examine the injured employee and make a report to the employer. If the employer remains dissatisfied, this report may be forwarded to the director.

Employer requested examinations under this section shall not *exceed* more than *one* per case unless good and valid reasons exist with regard to the medical progress of the employee's treatment. *The* cost of conducting the ordered medical examination shall be limited to the complex consultation charges governed by the medical *fee* schedule established pursuant to section 386 21(c).)

(a) Following an injury and after a claim is filed by the injured employee, the employer may appoint a qualified physician mutually agreed upon by the parties and paid for by the employer, to conduct an independent medical examination or a permanent impairment rating examination of the injured employee and make a report to the employer.

(b) (The cover letter)All communications to the physician selected to perform an examination under this section shall notify the physician that the physician has been mutually selected by the parties to conduct an independent examination. (The cover letter)All records not previously provided, and all communications to the physician shall be transmitted to the injured employee at least five working days prior to the appointment. Upon the issuance of the report of the independent medical examination or permanent impairment rating examination, the employee or employee's representative shall be promptly provided with a copy thereof.

(c) A physician selected pursuant to this section to perform an independent medical examination or a permanent impairment

rating examination shall be willing to undertake the examination and be paid

by the employer. The selected physician shall be currently licensed to practice in Hawaii pursuant to chapter 442 or 453; except that upon approval by the director, a physician in a specialty area who resides outside of the State and is licensed in another state as a physician with requirements equivalent to a physician's license under chapter 442 or 453, may be selected if no physician licensed by the State in that specialty area is available to conduct the examination.

If the employee does not reside in Hawaii, a physician who is licensed in and who resides in the state of the employee's residence may be selected if that state's physician licensing requirements are equivalent to a physician's license under chapter 442 or 453.

If the parties are unable to reach a mutual agreement on the selection of a physician to conduct the independent medical examination or permanent impairment rating examination, provided that if no agreement is reached, the selection shall be made by the Director of Labor and Industrial Relations ( the parties shall prepare a list of five physicians qualified to do the examination. The employer shall appoint the first physician, the employee shall appoint the second physician, and the process shall continue by alternating appointments until there is a list of five physicians. The parties shall then alternate striking physicians from the list with the employee striking the first physician. The process shall continue until there is a single physician remaining on the list and that physician shall conduct the examination).

Any physician mutually selected or otherwise appointed to do an independent medical examination or permanent impairment rating examination pursuant to this section shall examine the employee within forty-five days of receiving notice of the selection or appointment,
or otherwise, as soon as possible.

(d) In no event shall an independent medical examination and a

permanent impairment rating examination be combined into a single medical examination unless the employee consents in writing to the single examination by the selected physician.

In no event shall the director, appellate board, or a court order more than one requested independent medical examination and one permanent impairment rating examination per case, unless valid reason exists with regard to the medical progress of the employee's medical treatment or when major surgery and elective surgery, or either, is contemplated. In the event of multiple examinations, the process of mutually selecting or otherwise appointing a physician set forth in this section shall apply.

(e) If an employee refuses to submit to, or unreasonably interferes with the examination, the employee's right to claim compensation for the work injury (shall) may be suspended upon order of the director, until the refusal or interference ceases. Upon order of the director, no compensation shall be payable to the employee for the period of suspension.

The cost of conducting the ordered independent medical examination or permanent impairment rating exam shall be limited to the complex consultation charges governed by the medical fee schedule established pursuant to section 386-21(c).

(f) When an employee has attained medical stability as determined by the employee's attending physician, a physician may be appointed to conduct a permanent impairment rating examination.

The physician shall be mutually selected by the parties or otherwise appointed pursuant to this section.

For the purposes of this subsection, "medical stability" means that no further improvement in the injured employee's work-related condition can reasonably be expected from curative health care or

the

passage of time. Medical stability is also deemed to have occurred when the injured employee refuses to undergo further diagnostic tests or treatment that the health care provider believes will greatly aid in the employee's recovery."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2112.

**Report Title:**
Workers' Compensation; Medical Examination

**Description:**
Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HDl)

***The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.***

**HEALY TIBBITTS BUILDERS, INC.**
General Contractors – Hawaii License No. AC-15669
99-994 Iwaena Street • Suite A • Aiea, Hawaii 96701
Telephone (808) 487-3664 • Facsimile (808) 487-3660

SENT VIA E-MAIL: LABTestimony@capitol.hawaii.gov

March 23, 2015

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174, HD1)

HEARING
DATE: Tuesday, March 24
TIME: 9:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Keohokalole and Members of the Committee:

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's.

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

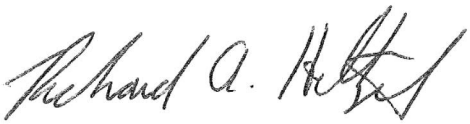
Healy Tibbitts Builders, Inc. is in **strong opposition to S.B. 1174, SD2, HD1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that

worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

For these reasons, we request that that the proposed bill be held by this Committee.

Very truly yours,
Healy Tibbitts Builders, Inc.



Richard A. Heltzel
President

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GENERAL CONTRACTOR

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Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-8544

March 23, 2015

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174, HD1)

HEARING
DATE: Tuesday, March 24
TIME: 9:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Keohokalole and Members of the Committee,

My name is Lance M. Inouye and I am President of Ralph S. Inouye Co., Ltd. (RSI), a State of Hawaii General Contractor and member of the General Contractors Association of Hawaii (GCA).

First, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

**Ralph S. Inouye Co., Ltd.** (RSI), a State of Hawaii General Contractor, is in **strong opposition to S.B. 1174, SD2, HD1 Relating to Workers' Compensation,** which would require the commonly referred to "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 this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Please do not pass this bill. Thank you for the chance to express our views in this matter.

LYZ Inc.
general contractor license #ABC 21576

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-8544

March 23, 2015

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174, HD1)

HEARING
DATE: Tuesday, March 24
TIME: 9:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Keohokalole and Members of the Committee,

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

**LYZ, Inc.** is in **strong opposition to S.B. 1174, SD2, HD1 Relating to Workers' Compensation,** which would require the commonly referred to "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 this is unnecessary as the current procedure in place works.

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For these reasons, we request that that the proposed bill be held by this Committee.

James N. Kurita
Vice President/COO

378 N. School Street, Suite 201 • HONOLULU, HAWAII 96817 • PHONE (808) 845-3779 • FAX (808) 845-3748

DORVIN D.
Leis co., inc.
MECHANICAL CONTRACTORS

**Maui** 202 Lalo Street • Kahului, HI. 96732-2924
Phone: (808) 877-3902 • Fax: (808) 871-6828
Service Dept: (808) 877-4040 • Fax:(808) 873-6199
**Oahu** 2265 Hoonee Place • Honolulu, HI. 96819
Phone: (808) 841-2112 • Fax: (808) 847-1991

March 23, 2015

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-8544

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174, HD1)

HEARING
DATE: Tuesday, March 24
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PLACE: Conference Room 309

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**Dorvin D. Leis Co., Inc.** is in **strong opposition to S.B. 1174, SD2, HD1 Relating to Workers' Compensation,** which would require the commonly referred to "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 this is unnecessary as the current procedure in place works.

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DORVIN D.
Leis co., inc.
MECHANICAL CONTRACTORS

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Phone: (808) 877-3902 • Fax: (808) 871-6828
Service Dept: (808) 877-4040 • Fax:(808) 873-6199
**Oahu** 2265 Hoonee Place • Honolulu, HI. 96819
Phone: (808) 841-2112 • Fax: (808) 847-1991

employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

For these reasons, we request that that the proposed bill be held by this Committee.

Sincerely,

Stephen T. Leis,
President

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-8544

March 24, 2015

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174, HD1)

HEARING
DATE: Tuesday, March 24
TIME: 9:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Keohokalole and Members of the Committee,

**Standard Sheetmetal & Mechanical, Inc. is an upstanding corporation that conducts general construction and specialty construction including city, state, and federal projects, throughout the islands**

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

**Standard Sheetmetal & Mechanical, Inc.** is in **strong opposition to S.B. 1174, SD2, HD1 Relating to Workers' Compensation,** which would require the commonly referred to "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 this is unnecessary as the current procedure in place works.

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For these reasons, we request that that the proposed bill be held by this Committee.

keohokalole2-Relley

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 6:43 AM
To: LABtestimony
Cc: kiloanui@gmail.com
Subject: *Submitted testimony for SB1174 on Mar 24, 2015 09:45AM*

**SB1174**
Submitted on: 3/23/2015
Testimony for LAB on Mar 24, 2015 09:45AM in Conference Room 309

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Leonard Hall | AwaPiilani Farms, LLC | Oppose | No |

Comments:

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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keohokalole2-Relley

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 8:56 AM
To: LABtestimony
Cc: ltadaki-kam@vmchawaii.com
Subject: *Submitted testimony for SB1174 on Mar 24, 2015 09:45AM*

**SB1174**
Submitted on: 3/23/2015
Testimony for LAB on Mar 24, 2015 09:45AM in Conference Room 309

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Leona Tadaki-Kam | Vocational Management Consultants, Inc. | Support | No |

Comments:

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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IME

**WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES A PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (ATLEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION**

| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| Amie Lou Annuion | | 518-2402 | 2033 Puckett St Apt #10 Honolulu HI 96819 | amie.lou@gmail.com |
| Guy K O'Sullivan | Guy O'K | (808)371-1008 | 86-454 Lualualei Homestead Rd Waianae HI 96792 | keone095@gmail.com |
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| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| Cody Owens | C. Owens | 286 6479 | Honolulu Hi | |
| Gail P. Pacheco | Gail P. Pacheco | 381-2826 | 369 Hobron Lane #6 Honolulu, Hawaii 96815 | N/A |
| Ann Bergan | Ann Bergan | 926-6046 | 234 Queen ave. Honolulu, Hawaii 96815 | N/A |
| Chevante Kaaina | | 271-6884 | Kaneohe, Hi 96744 | N/A |
| Tyson Garcia | | 485-9976 | waipahu HI. 96797 | |
| Franklin Figueroa | | | 98-1040 Moanalua Aiea, Hi | N/A |
| Carl Kaikaina | | 699-8695 | [redacted] Honolulu, Hi. 96814 | N/A |
| ~~DENISE JACOB~~ | ~~[illegible]~~ | 637-4853 | WAIALUA | N/A |
| BERNICE SALES | Bernice Sales | 233-9108 | Honolulu, Hi | NA |
| Aileen Loyd | Aileen Loyd | 277-2244 | [redacted] P.O. Box 37582 Honolulu, HI 96815 Mailing address 37 | NA |

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|---|---|---|---|---|
| **Name (Print)** | **Signature** | **Telephone** | **Address** | **E-mail** |
| Margie Preciado | Margie Preciado | 293-2747 | Honolulu, HI 96815 | |
| HUGH T. DICKSON | Hugh T. Dickson | 808-388-758 | 369 HOBRON Ln. #33 Honolulu, HI, 96815 | |
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| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| BENJAMIN A. WATTS | Benjamin A Watts | 756-5814 | 1555 KINO'OLE ST HILO, HI 96720 | |
| Frankie Pang | Frankie Pang | 896 8846 | P O Box 2408 Kamuela HI 96743 | |
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| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| Jorden Hanawahine | Jorden Hanawahine | (808) 938-0564 | 144 Mikihala St | |
| Adam Pacheco Jr. | Adam Pacheco Jr | 809-769-9976 | HCR-1 Box 4208 Keaau, HI 96749 | mauneke.ahuntal@yahoo |
| Lucinda Chavez | | 808-313-2408 | P.O. Box 553, Pahoa, HI 96778 | plumeria1c@yahoo.com |
| Olivia Ostrye IKAIKA STAKE | Olivia Ostrye | (808) 679-1711 | 1065 KAWAIAHAO ST 96814 | |
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| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| Amie Lou Asmanon | | 518-2402 | 2033 Kuckle St Apt #10 Honolulu HI 96819 | amie.lou@gmail.com |
| Karen Tsu | Karen Tsu | (808) 368-3629 | 766 Anuwale Street Honolulu, HI 96821 | KCTsu@gmail.com |
| ERIC BRUCE | | (808)391-9211 | 1415 ERNEST ST. #2 HON, HI 96822 | EBSJOINT@HOTMAIL.COM |
| Ikeda Nishimura | | 2845147 | 1275 Ala Alii St | |
| CARRIE NOBORIKAWA | Carrie Noborikawa | 354.4225 | 1275 Ala Alii St | |
| Sheena Soares | Sheena N. Soares | 354-5891 | P.O. Box 622226 Hon., HI 96839 | snohealani.soares@gmail.com |
| Elijah Dixon | | 808-312-2471 | 98-259 Ualo St Aiea, HI 96701 | Elidixon22@gmail.com |
| Kirsten Yonamine | | 538-8733 | 715 S. King St. #410 | kharada@vmchawaii.com |
| Leona Tadaki-Kam | Leona Tadaki-Kam | 595.6248 | 822 Eleoka St | Ltadaki-kam@vmchawaii.com |
| Lily Miyahira | Lily Miyahira | 595-8239 | 3191 Aloha Aina Pl. Hon 96817 | Lmiyahira@vmchawaii.com |
| Adam Yonamine | | 538-8733 | 715 S. King St. #410 | ayonamine@vmchawaii.com |

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| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| DELBERT DEREGO | | (808) 870-3507 | 13-3866 LUANA St. PAHOA, HI 96778 | dwderego@hotmail.com |
| Elmer Gonsoe | | (808) 936 6210 | 2111 Kamaaia Dr Hilo, Hi 96720 | egonsoe@hawaii.rr.com |
| Roland Shimaoka Jr | | 9604168 | PO Box 322 Honoma Hi 96728 | |
| CLYDE F KIHAKA | | 936-6878 | RR3 BOX 1223 PAHOA HI 96778 | CFKIHAKA@YAHOO.COM |
| ROY P. JARDINE | Roy P. Jardine | 808-326-2906 | P.O. BOX 5105 KOLOA-KONA, HI 96745 | rp-jardine@hawaii.rr.com |
| Carol Tilg | C. Tilg | 808-345-3200 | 74-995 Kealakehe St Kona Hi. | CJ.Tilg@Live.com |
| Mary Rillanos | Mary Rillanos | 808-7750863 | PO Box 1157 Honokaa Hi 9677 | |
| Gilbert De Motta | Gilbert De Motta | 808 959-4683 | 2617 Kilauea Ave Hilo HI; 96720 | |
| Theresa Cabuliza | | (808) 987-1819 | PO Box 1161 Kamuela, Hi 96743 | Kdika57@gmail.com |
| Fred Galdones | | 808-964-1345 | POB 273 Pepeekeo HI 96783 | |
| GARY LABRADOR | Gary Labrador | (808) 756-6534 | P.O.Box 5515 KAILUA, KONA | glabrador1228@yahoo.com |

**WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES AN IME PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (AT LEAST 10 PER MONTH), SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION, AND SB803 THAT SUPPORTS THE IME DOCTOR HAVING THE APPROPRIATE SPECIALTY TO CONDUCT AN IME.**

| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| Paulo V. Sope | Paulo V Sope | 224.6514 | 2163 Wilson St | psope25@gmail.com |
| Michael Pascua | Michael Pascua | 808 250-0964 | Suite 201-3674 1750 Kalakaua | MauiMike66@yahoo.com |
| Abigail Brillantes | Abigail Brillantes | 754 2795 | 520 Luna #10 Honolulu, HI 96825 | belamaric2011@gmail.com |
| RHONDA SHIN | | 777-7787 | 6800 #109 KALANIANAOLE Hwy | RhonShin@GMAIL HON, HI 96825 |
| Chris Mizushima | C Mizushima | 349-8002 | 1244 Nehoa St Hon HI 96822 | Skippy64 kbp@Yahoo |
| ROBERT G. WALLING | Robert G Walling | 226-0149 | 737 TWIN VIEW DR Honolulu HI 96817 | N/A |
| Richard Diaz | Richard Diaz | 22-3858 | 1329 Wilder Ave. Apt #7 Honolulu Hawaii 96822 | Con3fdbs@gmail. |
| Lauren Hahano | | 397-4800 | PO BOX 8259 Hon-HI 96830 | |
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WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES AN IME PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (AT LEAST 10 PER MONTH), SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION, AND SB803 THAT SUPPORTS THE IME DOCTOR HAVING THE APPROPRIATE SPECIALTY TO CONDUCT AN IME.

| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| DACIO VIELMA | | (808)286-5764 | 2027 10th Ave. Honolulu, Hi 96816 | DVi1865@MSN.Com |
| Richard ALLGIRE | | 808-957-0443 | 1634 MAKIKI ST 1106 | dallgire12@yahoo.com |
| Cheryl N. Haia | | 808-861-3353 | 2717 S. King St. #202 | CherylHaia@outlook.com |
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keohokalole2-Relley

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 9:14 AM
To: LABtestimony
Cc: lmiyahira@vmchawaii.com
Subject: *Submitted testimony for SB1174 on Mar 24, 2015 09:45AM*

**SB1174**
Submitted on: 3/23/2015
Testimony for LAB on Mar 24, 2015 09:45AM in Conference Room 309

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Lily Miyahira | Individual | Support | No |

Comments:

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

March 23, 2015

Committee on Labor & Public Employment
Representative Mark Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Relating to: Relating to Worker's Compensation

**In Support of SB 1174, HD1**

My name is Kirsten Harada. I am a avocational counselor who has been in practice for 20 years. I assist injured workers' in their return to work process. I would support a bill that would require that independent medical examinations and permanent impairment rating examinations be conducted by a qualified physicians selected by the mutual agreement of the parties. This not only allows for the fair treatment of injured workers but also gives them an opportunity to have an objective and impartial evaluation..

I would therefore urge you to support SB 1174 HD1, Relating to Worker's Compensation.

Sincerely,

Kirsten Harada, M.Ed., CRC, LMHC
Rehabilitation Specialist

TESTIMONY IN SUPPORT OF S.B. NO. 1174, S.D. 2; H.D. 1
RELATING TO WORKERS' COMPENSATION
COMMITTEE ON JUDICIARY AND LABOR

Tuesday, March 24, 2015, 9:45 a.m.

Mr. Chairman, members of the Committee, I am attorney Jacob Merrill. I have been in practice since 1989. Since 1992, I have devoted a portion of my legal practice to representing injured workers. I strongly support S.B. No. 1174 SD2, HD 1, with the suggested modifications by the Hawaii Association for Justice Workers Compensation Division relating to Workers' Compensation and Medical Examinations.

## I. MUTUAL CHOICE OF A PHYSICIAN HAS PROVEN TO BE EFFECTIVE. THERE IS NO LEGITIMATE ARGUMENT AGAINST GETTING A FAIR AND CORRECT OPINION.

The use of agreed upon physicians has proven to be feasible. Under present practice, after the condition of an injured worker has stabilized, the worker is sent to a physician for a "rating" examination to measure the extent of the permanent impairment. For many years, the practice has been to require that the employer/carrier and the injured worker agree on a physician to conduct the "rating" examination, and the practice has proven to be workable. Most of the time, the agreed upon physician prepares a report which is satisfactory to all parties, simply because, more often than not, the examination is fair and correct.

The proposed bill merely incorporates the practice of using an agreed upon "rating" physician, to also be used when an employer/carrier desires the opinion of a non-treating physician. The use of an agreed upon physician will greatly expedite cases and result in fairer treatment of injured workers.

## II. AGREED UPON IMEs ARE NEEDED TO HELP PREVENT UNNECESSARY DELAYS IN INITIATING PAYMENTS TO AND CARE FOR INJURED WORKERS.

The problem which this bill would correct is unnecessary delays in initiating payments and care for injured workers. The unnecessary delay is caused by the practices of some insurers in selecting their "favored" physicians to examine injured workers.

The workers' compensation system is supposed to be a "no-fault" system which provides immediate medical care and compensation. The workers' compensation statute provides that there is a presumption that an injury is work related and

pursuant HRS 386-31 (b), an injured worker is supposed to start receiving his benefit payment by the 10th day after the employer is notified of the employee's disability. An injured worker is also supposed to receive prompt medical care.

Unfortunately, although there is the statutory presumption and although an injury may have been witnessed, and although an employer does not contest the injury, the start of payments and care is very often delayed by several months. The longer it takes to receive medical care, the longer it takes for an injured workers to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments.

Often, the cause of the delay is the employer/carrier's choice of their favored physician who, very predictably, will argue that:

a. there was no injury,
b. that any medical condition was pre-existing, or
c. that if there was an injury, it was a very temporary condition which has since resolved.

The use of agreed upon physicians will serve to reduce the abuse of the system by employers/carriers.

## III. CARRIERS ARE ABUSING THE SYSTEM AND DENYING PROMPT COMPENSATION TO INJURED WORKERS.

The use of agreed upon physicians is necessary because employer/carriers are abusing the system by choosing their "favored" physicians who produce reports which predictably favor the employer/carrier.

The workers compensation statute provides in HRS 386-31 (b) that an injured worker is supposed to start receiving his benefit payment by the 10th day after the employer is notified of the employee's disability. An injured worker is also supposed to receive prompt medical care. Unfortunately, the start of payments is very often delayed by several months. The longer it takes to receive medical care, the longer it takes for an injured workers to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments.

One major cause of delay in treatment is the use of "employer medical examinations." The enactment of this bill would reduce delays in treatment, and reduce total indemnity payments and benefit both employers and employees. (In this testimony, the term "employer" refers to workers' compensation carriers and adjusters.)

## IV. "EMPLOYER MEDICAL EXAMINATIONS" RESULT IN LONGER PERIODS OF DISABILITY AND HIGHER INDEMNITY PAYMENTS.

One factor which prevents timely receipt of medical care is the use of "employer medical examinations." The phrase "Independent Medical Examination" (IME) should not be used in this context because it is a misnomer. Examinations by physicians chosen by an employer are too frequently not "independent", nor "medical". If employer medical examinations were truly "independent" examinations, and had the goal of restoring an employee's health and getting an employee back to work, then there would be no problem.

Unfortunately, too often the goal of an employer directed medical examination is not altruistic. The goal is often to enable an employer to escape liability or to delay benefits, although an employee has been injured on the job and is entitled to treatment. An employer can attempt to escape liability if the employer can obtain a physician's opinion in its favor.

If an employer delays long enough, the injured employee may give up and seek care outside of workers' compensation. If a case does reach a hearing, the fallacies in the report of the employer's physician can be pointed out, and the result is that the Department of Labor subsequently confirms that there was a work injury or that a certain medical procedure is appropriate. Unfortunately, that result too frequently can take over 1/2 year to obtain during which time the injured employee may be without income and without medical treatment..

### A. "EMPLOYER MEDICAL EXAMINATIONS" AT THE BEGINNING OF A CASE ARE OFTEN DEVASTATING TO INJURED WORKERS.

The use of "employer medical examinations" results in delays which often have devastating consequences to injured workers.

After an injury is reported by a worker, the workers' compensation statute allows an employer to contest the claim. The employer can contest the claim even though the injury was witnessed and is obvious.

§12-10-73 of the Administrative Rules requires the employer to support a denial with a "report" within 30 days of the denial, however, the Rule also provides that the employer can request extensions of time. Since the calendar of the employer's physician is often full, the physician frequently cannot see the worker until months after the injury, and therefore the employer requests extensions for months after the injury.

There are also administrative delays. The Department of Labor can take months to schedule a hearing. A notice of hearing is not issued until one month prior to a hearing. A decision on a hearing is frequently not issued until 60 days after the hearing (60 days is the maximum period allowed under §386-86). Even if a hearing was scheduled today, there would be no Department of Labor decision until 90 days from today.

Therefore, it would not be uncommon for an injured worker to have to wait for more than a half year before a determination is made that a work injury was suffered. All this time, the worker might be without medical care and without income. He might be without a personal health plan because he is a new employee or is a part-time employee. His personal health plan might deny coverage because the employee is claiming a work injury. His personal health plan coverage will end after 3 months because the employer can stop paying for the worker's health insurance and the employee will not be able to afford to pay COBRA premiums for his coverage . He might be not be eligible for TDI coverage, nor have any available sick leave.

All too often, the devastating results are that the injured worker and his family lose their health coverage and are evicted from their residence because of delays caused by the employer seeking the report by one of its physicians.

### B. "EMPLOYER MEDICAL EXAMINATIONS" IN THE MIDDLE OF CASES ARE ALSO DEVASTATING.

"Employer medical examinations" can also have a devastating impact in the middle of a case. Such examinations are often scheduled to contest the need for surgery. The resulting delays are the same as stated above. The injured worker has to endure the pain and suffering during the extensive period of delay. The delay also results in higher indemnity payments.

## V. THERE ARE POWERFUL FINANCIAL INCENTIVES FOR AN EMPLOYER'S PHYSICIAN TO PROVIDE OPINIONS IN EMPLOYER'S FAVOR.

The financial rewards to an employer's physician who consistently provides opinions in favor of an employer can be substantial. The fees which a worker's doctor can charge are limited by the Workers' Compensation Medical Fee Schedule. However, the Department of Labor has applied that Fee Schedule only to cases in which the Department of Labor has ordered a worker to attend an examination. Therefore, there is no limit to the fees which can be charged by employer's physicians for examinations which have not been ordered.

Information regarding the amount of money earned by a particular employer's physician from a particular insurance company is not readily available. It would seem to be an easy matter to have a subpoena issued for a federal income tax Form 1099 issued by an insurance carrier, however, the Department of Labor has refused to issue such subpoenas requested by injured workers.

In any event, employer's physicians are apparently paid more than $2,000.00 per examination. Three examinations per week yields $6,000.00. 50 weeks a year yields an income of $300.000.00. Employer's physicians can do more than 3 examinations per week. There is at least one employer physician who has earned more than $1 million from one workers' compensation insurer.

The financial incentives for an employer's physician to provide reports favoring employers are very powerful and are reflected in reports from certain employers' physicians who consistently issue opinions in employers' favor. Current law unjustly allows employer's physicians generate reports with impunity and without liability.

## VI. AN EMPLOYER'S PHYSICIAN SHOULD NOT BE ALLOWED TO RENDER AN OPINION WITH IMPUNITY.

A basic general rule in society is that a person should be responsible for his actions. There is no sound reason to allow employer's physicians to deviate from this general rule.

Presently, an employer can readily obtain a physician's opinion to fit its needs because the employer's physician can presently state any opinion with impunity. The employer then uses that opinion to deny coverage or to deny treatment. The employer's physician is also free to opine on what care is appropriate or whether a worker's condition is stable. There is no requirement for the employer's physician to explain why a worker could do his job for years, but is not able to do his job after the injury.

It is the freedom from liability that allows the employer's physician to give employer's the opinions they want without responsibility for the devastating consequences to the injured worker. The employer's physician also is empowered because of a Hawai'i U.S. District Court decision which held that the employer's physician had no duty to the injured worker.

Although the employer's physician knows that his opinion will directly affect the worker, the employer's physician does not feel any obligation to the worker. The reason that an employer's physician is free to opine is that he claims that he has no doctor-patient relationship with the worker. The employer's physician knows that the impact of his opinion can be devastating to the worker, however, he claims that

he is under no duty to the worker, and therefore is not liable for any consequences.

Although there is no liability for IME reports, there are a few physicians who are known to generate fair reports. The requirement that a physician be agreed upon would reduce the number of time that employers are able to abuse the system by relying on their favored physicians who generate reports to fit employers' needs, as opposed to providing fair evaluations..

## VI. CONCLUSION.

There are physicians who conduct employer's examinations who properly consider the facts and who provide opinions which are medically sound. Attorneys representing injured workers will readily agree to have their clients examined by such physicians. Responsible insurance carriers will utilize the services of such physicians because those carriers know that proper medical treatment with a correct diagnosis will result in getting the injured worker back to work sooner, which is the correct and fair result.

The problem with employers' examinations lies with certain physicians and insurance carriers who are willing to use improper opinions to unfairly deny benefits to injured workers. The inherent disparity of the financial resources of insurance carriers versus an injured worker, who is frequently without income, makes the playing field inherently uneven in favor of the carrier. The workers' compensation system certainly does not need the unrestrained opinions of employers' physicians to allow carriers to deny benefits to injured workers.

Thank you for considering my testimony.

JACOB MERRILL

March 23, 2015

Committee on Labor & Public Employment
Representative Mark Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Relating to: Worker's Compensation

**In Support of SB 1174, HD1**

I am a Vocational Rehabilitation Counselor working in the private sector assisting injured workers. I support SB 1174, HD1 because requiring independent medical examinations and permanent impairment ratings to be conducted by qualified physicians selected by mutual agreement of all parties will permit the injured worker an objective and impartial evaluation. I urge you to support SB 1174 HD1, Relating to Worker's Compensation.

Sincerely,

Yvonne Ferguson

Yvonne Ferguson, M.Ed., CRC
Rehabilitation Specialist
Vocational Management Consultants, Inc.

# WAYNE H. MUKAIDA

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March 23, 2015

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Mark M. Nakashima, Chair

Re: S.B. No. 1174, SD2, HD1 Relating to Workers' Compensation
Hearing: March 24, 2015, 9:45 a.m.

Chair Nakashima and members of the Committee, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers.

I strongly support S.B. No. 174, SD2, HD1 relating to Workers' Compensation because it will allow decisions of the Department of Labor and Industrial Relations to be based on fair and impartial medical facts and opinions. However, the bill must be amended in several respects.

I. Records and communications to the physician. A current problem in workers' compensation claims is that the insurer often has ex parte communications with the physician. To ensure a fair and unbiased process, the injured employee should receive copies of all records sent to and communications with the physician. Therefore the second sentence in §386-79 (c) of the bill should amended as follows:

> ~~The cover letter~~ All records and communications shall be transmitted to the injured employee, unless previously provided, at least five working days prior to the appointment.

II. Selection of an out of state physician. The second sentence in §386-79 (c) of the bill provides for the selection of the physician from outside of Hawai'i, and refers to HRS Chapter 442 or 453. That provision must be amended as Hawaii's workers' compensation statute provides that an injured worker may receive care by a "physician". §386-71 defines "physician" as being doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, an optometrist, and a podiatrist. The reference in the bill to HRS Chapter 442 or 453 incorrectly restricts the term physician to doctors of medicine and chiropractors. Therefore, the second sentence of the bill should be amended as follows:

~~The selected physician shall be currently licensed to practice in Hawai'i pursuant to chapter 442 or 453, except that~~ Upon approval by the director, a physician in a specialty area who resides out side of the State and is licensed in another state as a physician with requirements equivalent to a physician's license ~~under chapter 442 or 453~~ in the State, may be selected if no physician licensed by the State in that specialty area is available to conduct the examination.

III. Suspension of Benefits. §386-79 (e) of the bill provides for suspension of benefits where an employee refuses an examination or unreasonably interferes with the examination. An employee may have a good reason for not being able to attend an examination to which he agreed, for example, an employee might have had to miss an examination if a family emergency arose. There are many disputes that can arise during an examination, for example, if an employee has an arm injury, a physician doing a range of motion examination may physically push the arm beyond the employee's pain tolerance, and the employee might, understandably and reasonably, object. It would be unreasonable and unjust to allow an insurer to unilaterally suspend all compensation.

The term "compensation" is defined in §386-1 as "all benefits accorded by this chapter", which includes medical, rehabilitation and wage replacement benefits, among other benefits. If an insurer unilaterally suspended compensation, the results could be devastating to an injured employee.

As a matter of very fundamental due process, no compensation should be suspended until a hearing and a decision by the Director. Therefore, the first sentence in §386-79 (e) of the bill should be amended as follows:

(e) If an employee refuses to submit to, or unreasonably interferes with the examination, the employee's right to ~~claim compensation for the work injury shall be suspended~~ weekly benefit payments, if any, to which the employee is entitled for the work injury, ~~shall~~ may, after a hearing pursuant to §386-86, be suspended for so long as the refusal or obstruction continues.

The added language is similar to the language in §386-21(e) in cases where an employee wilfully refuses or obstructs medical care.

Conclusion.

After amending the bill as stated above, please move S.B. No. 1174, SD2, HD1 towards passage so that all parties in the workers' compensation system can benefit

from fair and impartial medical evaluations.

Thank you for considering my testimony.

WAYNE H. MUKAIDA

**WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES A PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (ATLEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION**

| Name (Print) | Signature | Telephone | Address | E-mail |
|---|---|---|---|---|
| Clayton Ishida | Clayton Ishida | 959-5643 | 113 Anela St. | |
| Blaine Takaki | Blaine Takaki | 217-5880 | 18-4013 N. Peck Rd. | |
| Ed Coykendall | Ed Coykendall | (808) 959-4259 | 124 E Palai st | |
| Missy Cornwell | Missy Cornwell | (808) 959-4259 | 124 E. Palai St. | |
| TODD C. PATARAY | Todd C. Pataray | (808) 938-7635 | 1615 KAUWELA PL H:16 HI 96720-5571 | tc pataray@Gmail |
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March 23, 2015

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Mark M. Nakashima, Chair

RE: S.B. NO. 1174, SD2, HD1
RELATING TO WORKERS' COMPENSATION

Hearing: March 24, 2015, 9:45 a.m.

Support for Passage of SB 1174 Relating to Workers' Compensation

Dear Committee Members,

I have been practicing in the area of workers compensation law for over 15 years. My experience began as a defense attorney representing insurance companies, and then gradually my practice changed to my representation of injured workers (claimants).

I strongly support the passing SB 1174 which allows for the parties to a workers compensation claim to mutually agree upon an medical examiner to conduct an independent medical exam.

This bill is a small step towards promoting amicable resolution of workers' compensation claims. In many areas of legal disputes, the parties are often ordered to attend mediation in an attempt to have both sides participate in resolving the conflict. This is done because it is well-accepted that allowing the parties to a dispute to mutually agree on solutions is not only cost-effective, it promotes harmony and allows for quicker resolution.

Presently, the corporate entity, i.e. the insurance carrier, is allowed to pick and choose the physician who will perform the examination of the injured worker. Although the examination is entitled "independent," in reality, the selected physicians are being regularly paid by the insurance company to formulate opinions which favor the insurance company's denial of claims. The physicians who perform these examinations for the insurer are paid handsomely, and they are rewarded for their opinions which favor the insurance by being given more examinations to conduct. The employee often has no recourse, and must spend a lot of money hiring lawyers to undo the damage caused by the unfair opinions.

Under the present bill, the fair process will reduce litigation. If there was no value in mandated mutual agreements, mediation would not be consistently ordered by the district and

family courts for civil disputes and divorces. In workers compensation, as in other legal disputes, the relationships between the parties are ongoing even after the filing of a claim. Allowing both parties to mutually select the physician to conduct an examination will foster the truth-seeking function of litigation and avoid the present imbalance which disfavors the injured worker.

S.B. 1174 echoes the specific process in effect for choosing the examining physician in a no-fault dispute. Specifically, H.R.S. Section 431:10(c) 308-5 (b) provides, in pertinent part, as follows:

> (b) … Charges for independent medical examinations, including record reviews, physical examinations, history taking, and reports, to be conducted by a licensed Hawaii provider unless the insured consents to an out-of-state provider, shall not exceed the charges permissible under the appropriate codes in the workers' compensation supplemental medical fee schedule. The workers' compensation supplemental medical fee schedule shall not apply to independent medical examinations conducted by out-of-state providers if the charges for the examination are reasonable. **The independent medical examiner shall be selected by mutual agreement between the insurer and claimant; provided that if no agreement is reached, the selection may be submitted to the commissioner, arbitration or circuit court.** The independent medical examiner shall be of the same specialty as the provider whose treatment is being reviewed, unless otherwise agreed by the insurer and claimant. All records and charges relating to an independent medical examination shall be made available to the claimant upon request. The commissioner may adopt administrative rules relating to fees or frequency of treatment for injuries covered by personal injury protection benefits. If adopted, these administrative rules shall prevail to the extent that they are inconsistent with the workers' compensation supplemental medical fee schedule; provided that the fees set forth in the administrative rules adopted by the commissioner shall not exceed the charges permissible under sections 386-21 and 386-21.7.

[Emphasis added].

I know of no detrimental effects arising out of the passage of Section 431:10(c) 308-5(b) which provides for the mutual agreement of an examining physician in a no-fault dispute. I sincerely believe that applying the established and reasonable method provided by H.R.S. Section 431:10(c) 308-5 should apply to workers' compensation matters. S.B. 1174 achieves this goal and should be passed.

Thank you very much for allowing me to submit this testimony. Please feel free to contact me should you have any questions.

Sincerely,

Edie A. Feldman, Esq.

keohokalole2-Relley

From: Matthew Matsunaga <mmatsunaga@schlackito.com>
Sent: Monday, March 23, 2015 4:23 PM
To: LABtestimony
Subject: FW: LAB Hearing on Tuesday March 24, 2015 at 9:45 a.m. Conference room 309

Please see the below testimony from Dr. Scott McCaffrey in support of SB1174 scheduled as follows:

DATE: Tuesday, March 24, 2015
TIME: 9:45 AM
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

3/23/15

Re: Mutually Agreed IME Bill

Dear Distinguished Chairs and Committee Members

I am writing in strong support of this and any other measure which helps protect the injured worker from our anti-patient and biased "independent" medical evaluation (IME) process that has come to plague our WC System. A recent study reported by National Public Radio shows that IME's performed this way are harmful to patients in some way 90% of the time. By paying evaluators 10-20 times more for this type of work, insurers have created a rather Draconian "skinners box" wherein a onetime assessment by a single provider can be used to override and deny treatment recommendations of seasoned clinicians—against the patient's desires, wishes and best interest.

Insurance-sponsored doctors are also immune from the Tort patient safeguards of 1) failure to diagnose 2) failure to treat and 3) withholding of needed care--because there is no "established doctor-patient relationship". This cost saving maneuver if good for insurance but bad for the patient and other publicly funded safety nets which must step in to halt the injured workers slide toward homelessness.

Thank you for your continued efforts to improve Hawaii's WC System .

Scott McCaffrey, MD
The Workstar Injury Recovery Center
The Queen's West Oahu Campus

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March 23, 2015

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Mark M. Nakashima, Chair

RE: S.B. NO. 1174, SD2, HD1, RELATING TO WORKERS' COMPENSATION
Hearing: March 24, 2015, 9:45 a.m.

Re: Strong Support for Passage of SB 1174 Relating to Workers' Compensation

I write in strong support for passage of a mutual independent medical examination (IME) bill for workers' compensation cases. This will be a fairer process and I believe will reduce workers' compensation litigation. I believe a mutually-selected or tribunal-selected IME examiner will be seen more as an arm of the tribunal rather than as an advocate for the party hiring the examiner.

The mutually-selected or tribunal-selected examiner's opinion should be given greater credence by the parties and the tribunal hearing the matter. This should lead to more resolutions without costly litigation.

In personal injury protection (formerly known as "no fault") cases, Article 10C, Motor Vehicle Insurance, of Title 24, Insurance, Hawaii Revised Statutes, provides for an independent medical examiner to be selected by mutual agreement, or if no agreement is reached, the selection may be submitted to the insurance commissioner, arbitration, or the circuit court. Hawaii Revised Statutes Section 431:10C 308-5 (b) provides in part:

> (b) … Charges for independent medical examinations, including record reviews, physical examinations, history taking, and reports, to be conducted by a licensed Hawaii provider unless the insured consents to an out-of-state provider, shall not exceed the charges permissible under the appropriate codes in the workers' compensation supplemental medical fee schedule. The workers'

compensation supplemental medical fee schedule shall not apply to independent medical examinations conducted by out-of-state providers if the charges for the examination are reasonable. **The independent medical examiner shall be selected by mutual agreement between the insurer and claimant; provided that if no agreement is reached, the selection may be submitted to the commissioner, arbitration or circuit court.** The independent medical examiner shall be of the same specialty as the provider whose treatment is being reviewed, unless otherwise agreed by the insurer and claimant. All records and charges relating to an independent medical examination shall be made available to the claimant upon request. The commissioner may adopt administrative rules relating to fees or frequency of treatment for injuries covered by personal injury protection benefits. If adopted, these administrative rules shall prevail to the extent that they are inconsistent with the workers' compensation supplemental medical fee schedule; provided that the fees set forth in the administrative rules adopted by the commissioner shall not exceed the charges permissible under sections 386-21 and 386-21.7.

(Emphasis added.)

I believe this has worked reasonably well in personal injury protection cases.

Thank you for the opportunity to submit this testimony.

keohokalole2-Relley

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 23, 2015 10:44 PM
To: LABtestimony
Cc: derrick@islandpt.com
Subject: Submitted testimony for SB1174 on Mar 24, 2015 09:45AM

**SB1174**
Submitted on: 3/23/2015
Testimony for LAB on Mar 24, 2015 09:45AM in Conference Room 309

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Derrick Ishihara | Individual | Support | No |

Comments: I fully support this measure to help injured workers get a more objective medical evaluation from a non- biased physician. Although not perfect, the selection process allows the injured worker a better chance of obtaining a fair medical evaluation.

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

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**March 23, 2015**

**VIA EMAIL: LABTestimony@Capitol.hawaii.gov**

TO: House Committee on Labor & Public Employment
Honorable Mark M. Nakashima, Chair
Honorable Jarrett Keohokalole, Vice Chair

**Re: TESTIMONY IN SUPPORT OF SB1174 HD1**
**Hearing Date: March 24, 2015**
**Hearing Time: 9:45 a.m.**

Dear Honorable Nakashima and Committee Members:

Please accept my **testimony in support of SB1174 HD1**, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by mutual agreement of the parties, and which further provides a process for appointment in the event that there is no mutual agreement.

As a Claimant's attorney for over 25 years, I have personally encountered and reviewed an inordinate number of reports done by the same purported "independent" medical examiners, whose opinions are clearly skewed in favor of the Employer/Carrier. Based on such IME reports, which often demonstrate clear and pre-determined bias against the Claimant, workers' compensation benefits have been unfairly denied and/or terminated. The present system is certainly flawed when it continues to allow an Employer to unilaterally select and pay for its own medical examiner to deny medical care and disability benefits to its legitimately injured and hard-working Employees, especially those unrepresented by a workers' compensation attorney. I truly believe there is a consensus among all parties involved, claimants' counsel, insurance carriers/adjusters, and defense counsel alike, that the current IME system under HRS 386-79 lends itself to more abuse than good and has created an increasingly adversarial workers' compensation system.

Clearly, an amendment to HRS 386-79 and a change in the current IME system under Chapter 386 are long overdue. The passage of SB1174 HB1 would allow fairness and impartiality in allowing both parties to mutually select a qualified examiner to evaluate an injured worker's injuries for the purpose of determining compensability, further medical care and treatment, and permanent impairment. The passage of SB1174 HB1 would be a positive step in creating a less adversarial system, reduce the frequency and number of medical disputes under the Hawaii Administrative Rules, and as a result, litigation costs would greatly diminish since claims would resolve more quickly as the injured worker recovers and returns to work sooner.

For the foregoing reasons, along with those offered by others in support of SB1174 HB1, I strongly urge the passage of SB1174 HB1.

Thank you for allowing me the opportunity to submit testimony and for your kind attention and consideration. Should you have any questions concerning any of the foregoing, please feel free to call me at (808) 521-0900.

Very truly yours,

GILBERT C. DOLES
Attorney at Law