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February 4, 2015

**TESTIMONY TO THE
SENATE COMMITTEE ON HEALTH**

For Hearing on Friday, February 6, 2015
2:30 p.m., Conference Room 414

BY

JAMES K. NISHIMOTO
DIRECTOR

Senate Bill No. 766
Relating to Workers' Compensation

WRITTEN TESTIMONY ONLY

CHAIRPERSON JOSH GREEN AND MEMBERS OF THE SENATE COMMITTEE ON HEALTH:

Thank you for the opportunity to provide comments on Senate Bill No. 766 (S.B. 766).

The purpose of S.B. 766 is to require that a physician selected and paid for by an employer to conduct a medical examination for workers' compensation purposes shall be actively treating at least ten patients in a one-month period; be actively treating at least 50 per cent of the physician's total patient load in a one-month period; and possess medical malpractice insurance.

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. An IME physician 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, this bill may have the unanticipated impact of lengthening the already complex claims process by limiting the number of available physicians to perform IME examinations because it would disallow IMEs by retired and non-practicing physicians.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 6, 2015

The Honorable Josh Green, Chair
and Members of the Committee
on Health
The Senate
State Capitol, Room 414
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Green and Members of the Committee:

**SUBJECT: Senate Bill No. 766
Relating to Workers' Compensation**

S.B. 766 seeks to amend Hawaii Revised Statutes ("HRS") Section 386-79 to require that a physician or surgeon selected to perform an independent medical examination under the section be (1) and (2). In addition, the bill would require that the independent medical examiner possess medical malpractice insurance despite the fact that the medical examiner does not provide medical treatment during the course of the independent medical examination. The City and County of Honolulu strongly opposes S.B. 766.

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 is reasonable and related to the work injury. Amending the statute would greatly reduce the number of physicians and surgeons that are statutorily qualified to perform an independent medical examination and serve to limit the employer's fundamental right to evaluate whether the employer is liable for the claim or medical treatment. As a result, we ask that S.B. 766 be held in committee.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo". The signature is written in a cursive style.

Carolee C. Kubo
Director

Hawaii State Legislature
Senate Committee on Health
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

February 4, 2015

Filed via electronic testimony submission system

RE: SB 766, Workers' Compensation; Penalty; Medical Examination by Employer's Physician - NAMIC's Written Testimony for Committee Hearing

Dear Senator Green, Chair; Senator Wakai, Vice-Chair; and members of the House Committee on Health:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 6, 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.

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

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

NAMIC's members appreciate the importance of making sure that injured workers are evaluated and treated by competent medical professionals, but NAMIC is concerned that the proposed legislation is overly and unnecessarily restrictive, and could adversely impact the quality and timeliness of medical care provided to injured workers.

Consequently, NAMIC respectfully tenders the following concerns with SB 766:

1) The proposed legislation is unnecessary –

There is no evidence to support the contention that employers or their workers' compensation carriers are requiring injured workers to be evaluated and treated by medical professionals who lack medical competence, or that physicians whose practice area involves mostly workers' compensation medical review and treatment lack the requisite medical skills necessary to provide effective health care services to injured workers.

If the sponsors of the proposed legislation have concerns about a specific physician's medical competence or professional ethics, this is a matter that should be addressed with and by the state medical board, as opposed to being the basis for a legislative "blanket-prohibition" against a professional segment of the medical community being involved in workers' compensation medical care.

2) SB 766 is likely to harm not help injured workers by creating medical service delays and unnecessary inconvenience for patients, and exposing injured workers to additional physical and emotional harm -

The proposed legislation would meaningfully reduce the number of physicians eligible to assist injured workers in the medical review and treatment; thereby, creating medical services delays for injured workers, who may have to wait longer to be seen by physicians eligible to perform workers' compensation review and treatment.

Medical diagnostic and treatment delays are detrimental to injured workers, because they can exacerbate the medical problem, expose the injured worker to additional physical injuries, and increase the amount of emotional and psychological harm that the injured worker has to deal with as a result of the injury. Additionally, the proposed legislation could create unnecessary inconvenience for injured workers, who may now have to travel longer distances to be seen by the limited number of physicians now eligible to assist injured workers.

3) The proposed legislation could adversely impact the quality of medical care provided to injured workers -

The strict physician eligibility requirements imposed by SB 766 could adversely impact the quality of medical diagnostic and treatment provided to injured workers. Specifically, there are medical experts at universities and research facilities, who could and do provide valuable, cutting-edge medical expertise to injured workers, but they will be disqualified from being able to assist the injured worker as a result of this proposed legislation.

Moreover, SB 766 will prevent physicians, who have extensive expertise and experience with worker place injuries and the workers' compensation system from being able to use their professional acumen and knowledge of the state system to the benefit of injured workers. Why should a physician with a lot of experience in a particular field, like worker's compensation medical services, be prevented from using their training and experience to benefit injured workers?

4) The proposed legislation will be a workers' compensation insurance rate cost-driver that could adversely impact affordability of insurance for employers and their injured workers -

Market completion in the medical services industry helps keep medical diagnostic and treatment costs in check. If one legislatively shrinks the ranks of physicians eligible to assist injured workers, the basic economic principle of “supply and demand” will increase the cost of medical services for injured workers. In the short-run and long-run, this will make the workers’ compensation system in the state less efficient and less cost-effective for employers and injured workers.

NAMIC is also concerned that the proposed immediate effective date is unworkable, impractical and unnecessary. Employers, workers’ compensation carriers, and injured workers should be afforded reasonable time (9 months to a year) to implement this significant change to the workers’ compensation system, so that it doesn’t needlessly harm the quality and timeliness of medical care injured workers need and deserve.

For the aforementioned reasons, NAMIC respectfully asks you to **VOTE NO on SB 766 – injured workers deserve more not less medical care options.**

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

Committee on Health
Senator Josh Green, Chair
Senator Glenn Wakai Vice Chair

Measure Title: Relating to Workers Compensation

In Support of SB 766

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

The IARPS membership support SB 766 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 delay 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 766 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 Vocational Management Consultants, Inc.
President of International Association of Rehabilitation Professionals

My address and phone number is:
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From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: cj77701@hotmail.com
Subject: *Submitted testimony for SB766 on Feb 6, 2015 14:30PM*
Date: Thursday, February 05, 2015 6:31:59 AM

SB766

Submitted on: 2/5/2015

Testimony for HTH on Feb 6, 2015 14:30PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
chris johnson	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.

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Alison H. Ueoka
Executive Director

TESTIMONY OF ALISON UEOKA

COMMITTEE ON HEALTH
Senator Josh Green, Chair
Senator Glenn Wakai, Vice Chair

Friday, February 6, 2015
2:30 p.m.

SB 766

Chair Green, Vice Chair Wakai, and members of the Committee, my name is Alison Ueoka, Executive Director of the 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 this bill. The current system regarding Independent Medical Examinations (IMEs) has been in place for some time and we believe it is working.

This bill mandates treating requirements for Medical Doctors who perform Independent Medical Examinations (IMEs). By requiring that IME physicians treat a certain number of patients in a one-month period and be "actively treating" at least 50% of all patients examined in a month will only shrink the very small pool of physicians willing to perform IMEs. These requirements do not ensure an IME physician is better able to perform their duties. Many IME physicians do only that because over time they have developed an expertise in the area and have chosen to specialize. This bill will make it even more difficult for employers to analyze whether the injured employee is receiving the proper care. We ask that this bill be held.

Thank you for the opportunity to testify.

Aloha Senators,

I am writing in strong support of Bill 766. My support for this bill is motivated not only because it is the right thing to do, but because of how my personal health and life has been affected by an Independent Medical Examination performed by a physician who does not treat patients as a medical doctor.

This same physician only does Independent Medical Examinations for insurance companies. If you were to call his office to request a visit with this physician for his board certified specialty, you will be told that he does not see patients in that manner, he only does legal work.

I was injured in 2009 and was eventually placed on "off duty" status from work in 2010 by my doctor in an effort to allow my injury to heal and I continued with pain medication and physical therapy. My doctor continued to request aggressive treatment as I was off duty from work and my injuries persist. Each request was met with resistance by the insurance company denying treatment based on the above mentioned physician's IME Report.

In December of 2010 I was notified by the Workman's Compensation Insurance Company that they had scheduled for me to see the above mentioned physician for an IME in January of 2011.

In February without prior notice from anyone I was told by the receptionist at my physical therapy appointment that this appointment was my last as they were contacted by the insurance company informing them that they were no longer paying for the physical therapy sessions, although I had several more scheduled.

The very next day I received a letter from the insurance company informing me that they were terminating my disability benefits. They also stated in the letter that the reason for terminating my disability benefits were due to the IME performed by the above mentioned physician concluding that my injuries were not work related, but do to my weight, even though I got hurt at work while in the performance of my duties.

To my understanding, if the insurance company wanted to terminate my disability benefits after I had been receiving the benefits for at least six months, the insurance company was supposed to make an appeal to the Disability Compensation Division of the Department of Labor, get a hearing scheduled and let the DCD decide on whether or not the disability benefits should be terminated. As it was, the insurance company took it upon its self to terminate the disability benefits with no regard to Hawaii State Law and that is a problem when dealing with a mainland insurance company that has no office hear in Hawaii.

It took over six months for my attorney get the disability benefits restored after receiving a decision in our favor by the Disability Compensation Division of the Department of Labor. In those six months, my wife and I had exhausted all of our savings and borrowed money from family to help pay our mortgage, utilities and other bills.

Half way through the six months, we were left with no other option but to file for a loan modification with our bank or face foreclosure for not being able to pay our mortgage. We were told that the process would include a three month trial period to see if we qualified for the loan modification.

We had never been late on our mortgage payments until we entered into the loan modification trial period. The bank allows you to pay a smaller amount to your mortgage and holds it in an escrow until the following month's payment is paid and then they apply your original mortgage payment amount to your loan. In this process you're making a payment to the bank, but you're incurring a late payment status because they won't apply it to the loan until you've paid enough to cover the original loan payment. The three month process took sixteen months and our credit was totally ruined.

I finally began receiving medical treatment for my injuries in late 2011, but by this time with the constant limping and the lack of medical treatment being approved, I began experiencing pain in other areas and I was forced to see another doctor to address the new injury as well as continuing treatment with my original doctor for my initial injury.

Both my doctors requested approval for treatment plans throughout 2012 and 2013 and was met with denials by the insurance company each time, citing the physician's IME or a new letter from this same physician contradicting my doctors' diagnosis and request for treatment. The doctor for my initial injury had concluded that what little treatment I had received to this point in 2012 was not going to help and he began requesting that I have surgery.

Four years and twelve days after my initial injury in 2009, I finally received surgery for that injury, but by this time in 2013 I had incurred an injury that was diagnosed as an exacerbation of the initial injury and I continue to experience severe pain in the new injury.

In 2014 I was scheduled to see the same physician for a second IME, he continues to conclude that my initial injury is not work related although the DCD has ruled it work related, but he concurred that I do need to take the strong medications that have been prescribed by my current treating physicians on a daily basis.

Today my initial injury is considered everything has been done, even with the surgery in 2013 and that is due to the long delay in treatment, allowing the injury to improperly heal. I experience pain on a daily basis and I take pain medication for that.

The injury that was an exasperation of the initial injury is now a major problem. The constant limping for the last four years and the overcompensating on my other leg has caused my hip to be permanently damaged. I have no cartilage in my hip and it is bone on bone causing excruciating pain with no relief. I take very strong medication and have switched medications numerous times as my body builds tolerance from one to another.

I currently walk with a cane and I'm not able to walk for a long distance. I have difficulty standing from the seated position and difficulty sitting from standing for a short amount of time. The medication I'm taking does not take the pain away, it just makes the pain tolerable and at times, not even tolerable. I've been prescribed morphine, but I only take it when the others don't work, it makes me sleepy when I do take it.

I'm currently waiting for approval on a hip replacement, as I wait for the powers to be giving the approval. I suffer with the excruciating pain every day and I'm told by my doctor that without the hip replacement I will go from the cane to a walker and eventually a wheel chair. I'm also experiencing pain in my opposite hip and knee and I have Tibial Tendonitis in my left foot as well, all due to overcompensating for the ruined hip.

My frustration with the workman's compensation process has taken a toll on me, my wife and my family. I've lost five years of my life dealing with this process, I was 48 years old when I was initially injured and I'm now 53. I have voiced my frustration with the process to my attorney and his hands have been tied by the current workman's compensation laws. He told me in one meeting that the laws may appear to be unfair and if I did not agree with the laws we would have to change them to help the injured worker.

I cannot understand how a doctor, who does not clinically treat patients, can contradict two doctors who treat hundreds of patients a week. Physicians that performed IME's, who do not treat patients in their respective board certified skill, are in my opinion a hired gun for the insurance companies. They should not be considered to perform an Independent Medical Examinations (IME) for workman's compensation cases.

Physicians performing these examinations are paid anywhere from \$150.00 to \$400.00 per page of each IME Report. The physician that did my IME Reports submitted 25 pages for the first IME report and 17 pages for the second. He made as little as \$3750.00 and as much as \$10,000 on the first report and as little as \$2550.00 and as much as \$6800.00 on the second report.

A physician that chooses to only do IME's, not only puts him/her self in a position to be questioned regarding his/her findings, but now they would be considered employee's for the insurance company and not an independent doctor doing an independent medical examination. If you think about it, why would an insurance company continue to hire a physician to perform IME's if he finds in favor of the injured worker. In this situation, it benefits the physician to find in favor of the insurance company as it's his only form of compensation, because he does not treat patients for a living.

If these doctor's choose to do only legal work, then they should have become attorneys and not doctors that are sworn to help people.

For this reason, I was compelled to contact Senator Maile Shimabukuro and ask for her assistance in drafting a bill to address physicians who are solely are in it for the money and not treat patients as stated in the original and modern versions of the Hippocratic Oath.

Respectfully Submitted by,

Ronald Lee