



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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February 19, 2015

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,  
The Honorable Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary & Labor

The Honorable Josh Green, Chair,  
The Honorable Glenn Wakai, Vice Chair, and  
Members of the Senate Committee on Health

Date: Thursday, February 19, 2015  
Time: 10:00 a.m.  
Place: Conference Room 016, State Capitol

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

**Re: S.B. No. 803 Relating to Workers' Compensation**

**I. OVERVIEW OF PROPOSED LEGISLATION**

S.B. 803 proposes to amend Section 386-80, Hawaii Revised Statutes (HRS), which relates to qualified impartial physicians appointed by the director, by proposing that the specialty of the physician is appropriate to the injury being examined.

The Department supports the measure.

**II. CURRENT LAW**

Currently, Section 386-80, HRS, does not specify that a physician appointed by the director to be a physician whose specialty is appropriate for the injury being examined.

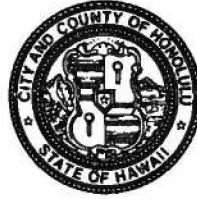
**III. COMMENTS ON THE SENATE BILL**

Qualifying the specialty of the physician will ensure that the claimant will be examined by a physician knowledgeable in the injury of the claimant.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

February 19, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee  
on Judiciary and Labor  
The Honorable Josh Green, Chair  
and Members of the Committee  
on Health  
The Senate  
State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Keith-Agaran and Green and Members of the Committees:

**SUBJECT: Senate Bill No. 803  
Relating to Workers' Compensation**

Senate Bill No. 803, seeks to amend Hawaii Revised Statutes ("HRS") Section 386-80 so an impartial examination conducted under the section is performed by a physician whose specialty is appropriate for the injury being examined. The City and County of Honolulu, Department of Human Resources, respectfully opposes the measure and asks that it be held in committee.

While the measure seems reasonable at first glance, it is in fact superfluous given the lack of examinations that are conducted under HRS Section 386-80. In fact, the City is not aware of any such examinations being performed in the recent past.

At the same time, the proposed amendment fails to take into account the fact that the Director would automatically select an appropriate physician to perform the examination. Insofar as HRS Section 386-80 already requires the Director to appoint a "duly qualified" physician, the proposed amendment is redundant and it is simply unnecessary for the legislature to amend the statute.

The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Josh Green, Chair  
and Members of the Committees  
The Senate  
February 19, 2015  
Page 2

SB 803 accordingly appears to be nothing more than a veiled attempt to try and amend HRS Section 386-79 in the same fashion in either the current or an upcoming session. This would discriminate against qualified physicians and further reduce the efficacy of the independent medical examination process in the State. The City therefore respectfully requests that the measure be filed.

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, flowing style.

Carolee C. Kubo  
Director

cc: Mayor's Office

The Twenty-Eighth Legislature  
Regular Session of 2015

THE SENATE

Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Committee on Health

Senator Josh Green, Chair

Senator Glenn Wakai, Vice Chair

State Capitol, Conference Room 016  
Thursday, February 19, 2015; 10:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 803  
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 supports S.B. 803, which requires a workers' compensation impartial exam to be conducted by a doctor whose specialty is appropriate for the injury to be examined in cases where the director of labor and industrial relations appoints a doctor to conduct an exam.

This measure appears to refer only to those exams directed by the Department of Labor and Industrial Relations and, as such, paid by the Department. In this instance, the physician performing the exam should be specialized in the body part to be examined. It makes no sense, for example, for a podiatrist to evaluate a back injury.

This requirement for a the physician's qualifications to be consistent with the specialty appropriate for the injury to be examined should also be considered for the Independent Medical Examinations requested and paid for by the Employer. The same principle would seem to apply.

The ILWU urges passage of S.B. 803. Thank you for the opportunity to testify on this measure.

TESTIMONY BEFORE THE SENATE

COMMITTEE ON JUDICIARY AND LABOR and COMMITTEE ON HEALTH

Thursday, February 19, 2015  
10:00 a.m.

SB 803  
RELATING TO WORKERS' COMPENSATION

By Marleen Silva  
Director, Workers' Compensation  
Hawaiian Electric Company, Inc.

Chairs Keith-Agaran and Green, Vice Chairs Shimabukuro and Wakai, and Members of the Committees:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **strongly oppose S.B. 803.** Our companies represent over 2,000 employees throughout the State.

This bill proposes to amend Section 386-80, HRS, mandating that the Director of Labor and Industrial Relations appoint a physician to conduct impartial examinations by a duly qualified physician, "whose specialty is appropriate for the injury being examined."

We feel the addition of this new language is not needed. The current statute allows the Director discretion to "appoint a duly qualified impartial physician" as he sees appropriate to perform the medical examination. Requiring that a specialist be used may not always be practical in the time frame needed. One specialist may not always be appropriate, especially if there are multiple injuries or medical conditions involved, or in question. In these unique situations, it may be beneficial to the parties to have a physician with a broader field of expertise so that a comprehensive evaluation and opinion can be offered.

Allowing the Director to have some flexibility and discretion in the selection of physician to perform these types of impartial examinations is of great benefit and value to all parties involved.

**For these reasons, we strongly oppose S.B. 803 and respectfully request this measure be held.**  
Thank you for this opportunity to submit testimony.



Property Casualty Insurers  
Association of America

Advocacy. Leadership. Results.

To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
Senate Committee on Judiciary and Labor

The Honorable Josh Green, Chair  
Senate Committee on Health

From: Mark Sektnan, Vice President

Re: **SB 803 – Relating to Workers’ Compensation**  
**PCI Position: Oppose**

Date: Thursday, February 19, 2015  
10:00 A.M., Conference Room 016

Aloha Chairs Keith-Agaran and Green, Vice Chairs Shimabukuro and Wakai and Members of the Committees:

The Property Casualty Insurers Association of America (PCI) respectfully opposes SB 803 which would require that a workers' compensation impartial examination be conducted by a doctor whose specialty is appropriate for the injury to be examined. 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.

While this bill appears to be harmless, the bill's passage could significantly limit the availability of impartial physicians. Many physicians who currently perform such exams have significant background and experience in examining and rating other body regions and body parts outside of their Board Certified Specialty. SB 803 could be read to limit the examination to only those physicians who have working within their board certified specialty. Such action could restrict the number of physicians who can perform these examinations and result in long delays for the injured worker seeking to resolve their medical issues. The requirement could also be a huge cost driver as a result of longer time to close claims, disputes over the accuracy of IME exams and final reports. It may also open up the field for medical providers to perform reviews who are unfamiliar with the Guides to the Evaluation of Permanent Impairment, Fifth Edition and therefore would likely result higher impairment ratings leading to higher PPD Awards and other negative factors.

For these reasons, we urge the committee to hold the bill in committee.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB803 on Feb 19, 2015 10:00AM  
**Date:** Thursday, February 19, 2015 6:50:45 AM

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**SB803**

Submitted on: 2/19/2015

Testimony for JDL/HTH on Feb 19, 2015 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Scott J Miscovich MD	WIMAH Work Injury Medical Association of Hawaii	Support	No

Comments:

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**Cc:**  
**Subject:** Submitted testimony for SB803 on Feb 19, 2015 10:00AM  
**Date:** Wednesday, February 18, 2015 11:39:16 AM

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**SB803**

Submitted on: 2/18/2015

Testimony for JDL/HTH on Feb 19, 2015 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
ANSON REGO	Individual	Support	No

Comments: I have submitted previous testimony in favor of insuring a truly independent partial disability examination and fair rating for injured workers. This bill also requires a workers' compensation impartial exam to be conducted by a doctor whose specialty is related to the injury in cases where the director of labor and industrial relations appoints a doctor to conduct an exam. I believe this bill also insures fairness and protects the injured worker from physicians with financial bias and blocks their present ongoing relationships with their insurance carriers and their carrier's attorneys, thus insuring a fair report. We are all in favor of fairness. Anson Rego Waianae Attorney representing Claimants over 40 years

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# DENNIS W. S. CHANG

Attorney at Law, A Limited Liability Law Corporation

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

February 18, 2015

## THE TWENTY-EIGHT LEGISLATURE REGULAR SESSION OF 2015

To: COMMITTEE ON JUDICIARY AND LABOR  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S. L. Shimabukuro, Vice Chair  
Members of the Committee

To: COMMITTEE ON HEALTH  
Senator Josh Green, Chair  
Senator Glenn Wakai, Vice Chair  
Members of the Committee

Date: Friday, February 19, 2015  
Time: 10:00 am  
Place: Conference Room 016  
State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

### **Re: Strong Support for Passage of SB 803 Relating to Workers' Compensation**

#### **I. Gross Abuse Of Use Of IME And Need For Change.**

We strongly support the passage of SB 803 because at the minimum, it is a step in the right direction. There is a whole cottage industry of IME physicians, who have no place in the workers' compensation process and should be held to the same standards of physicians treating injured workers. Instead, their entire income is singularly paid by the defense for conducting employers biased reports. More importantly, the independent medical examiners can write reports and say whatever they please even if it is medically erroneous. This is simply because the independent medical examiner is not subject to medical malpractice lawsuits, unlike a practicing treating physicians. They are "immune" from lawsuit even if they are medically erroneous and cause harm to injured workers.

#### **II. History Justifying Change.**

The purpose of SB 803 is to improve the fairness of the workers' compensation process by having truly qualified impartial physicians, whose specialty is "appropriate for the injury being examined." This bill does that and we ask that it be passed with the **condition** that there be sufficient funds appropriated for use by the Department of Labor and Industrial Relations.

#### **III. Existing Law.**

DILLINGHAM TRANSPORTATION BUILDING

735 BISHOP STREET ● SUITE 320 ● HONOLULU, HAWAII 96813 ● TELEPHONE: (808) 521-4005

Chapter 386, HRS contains what should be an orderly process under the workers' compensation statute by using "independent medical examinations." Claims are deemed compensable when injured workers sustain injuries arising out of and in the course of their employment. If the claims are disputed or deemed specious, they may be subjected to an exacting scrutiny by "independent physicians," who are appointed by the employers and insurance carriers to investigate the claims. If they are able to prove by credible substantial evidence that the claims are not work related, they prevail on the issue of whether the claims should not be covered under Chapter 386. The Employers exercise their discretion to designate "independent physicians" at their costs to conduct the examinations to challenge the alleged compensable claims. The independent medical examiners are beholden to the Employer and Insurance Carriers.

The opposition routinely argues that the independent medical examinations are critical because when the Grand Bargain was struck, injured workers were given an edge, the presumption that their claims would be covered under Chapter 386 in the absence of substantial proof to the contrary. This is totally disingenuous. First, the presumption was exchanged for the insulation of employers from getting sued by injured workers, who are negligently or deliberately exposed to abject hazardous working conditions. Second, the examinations are **often times never** used for the rebuttal of claims, which should be presumed to be covered under Chapter 386. Instead, they are used to mislead injured workers into the hands of physicians, who are beholden to employers and insurance carriers. Then, the physicians issue reports containing opinions for highly reduced monetary ratings or opinions to justify the termination of the injured workers' ongoing statutory entitlements.

Under the rules of statutory construction, the operative word "independent" is required to be given its plain, simple meaning. As defined in the Webster's Dictionary, the most common definition of "independent" is "not subject to control by others." Another common meaning is "not looking to others for one's opinion or for guidance in conduct." At least in nearly the last decade of legislative sessions, a substantial number of bills have been proposed with the hopes of securing truly "independent" medical examinations pursuant to section 386-79, HRS. Under the rules of statutory construction, unambiguous words contained in statutes like "independent" must be given its plain, simple meaning, consistent with the underlying purpose of the enabling statutes. *Bailey's Bakery, Ltd. v. William Borthwick*, 38 Haw. 16; 1948 Haw. LEXIS 34 (1948). Yet, employers and insurance carriers continue to divert the Legislature's attention from the real issue by maintaining that "independent medical examinations" are necessary in their arsenal to rebut the presumption as intended by the Grand Bargain. They intentionally disregard the fact that injured workers received the presumption so that their claims are covered for reduced monies and benefits under the workers' compensation statute, and forever forfeited their right to sue their employers in tort for much more monies.

I respectfully submit that SB 803 be summarily passed out of your committee with the condition that sufficient funds be appropriated. We are all speaking of the ordinary working persons, who suffer needlessly emotionally, go into economic ruin, and often homeless. SB 803 is essential to carry out the true intent of the underlying humanitarian purpose of Chapter 386, HRS.

  
\_\_\_\_\_  
Dennis W. S. Chang  
Labor and Workers' Compensation Lawyer

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [derrick@islandpt.com](mailto:derrick@islandpt.com)  
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**SB803**

Submitted on: 2/18/2015

Testimony for JDL/HTH on Feb 19, 2015 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Derrick Ishihara	Individual	Support	No

Comments: I fully support this common sense measure.

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**SB803**

Submitted on: 2/18/2015

Testimony for JDL/HTH on Feb 19, 2015 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karin Nomura	Individual	Support	No

Comments: Most workers compensation is on a physical disability or injury, but when it's psychological the claim is harder to obtain - in my case, I spoke to 4 psychologists - 3 independent who refused to see me, and just said it's my former employer, the 4th one obtained by my former employer but refused service because it had to do with my former employer. (with people from my former employer still coming by up till about a week ago with "she was acting".) In any event I support the bill because it should be a given that proof of a disability/injury has occurred, and would think that the victim would immediately try to seek medical attention.

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