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April 12, 2017

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

Date: Wednesday, April 12, 2017
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.C.R. No. 105 Requesting the Auditor to Conduct an Audit of the Vocational Rehabilitation Unit in the Department of Labor & Industrial Relations, Disability Compensation Unit

I. OVERVIEW OF PROPOSED HOUSE CONCURRENT RESOLUTION

HCR 105 requests the State Auditor to audit the performance, during calendar years 2015 and 2016, of the Vocational Rehabilitation Unit in DLIR's Disability Compensation Division (DCD). The audit would include assessing the types of data used to determine success and efficacy of the program and providers, closing cases due to non-compliance with a forty-five day deadline to submit initial evaluations, determining if counselors were treated in an adverse and discriminatory manner, and determining if the successes or failures of vocational rehabilitation plans were deliberately misclassified. The State Auditor is requested to submit a report on its findings and recommendations no later than twenty days prior to the convening of the Regular Session of 2018.

DLIR opposes the measure, as it will impose resource requirements that will impinge on the ability of the one (1) staff of the Vocational Rehabilitation Unit to process plans and carry out the other work necessary to operate the Unit.

II. CURRENT LAW

Section 386-25, Hawaii Revised Statutes (HRS), states that the, "purposes of vocational rehabilitation are to restore an injured worker's earnings capacity as nearly

as possible to that level that the worker was earning at the time of injury and to return the injured worker to suitable gainful employment in the active labor force as quickly as possible in a cost-effective manner.”

§386-25 also identifies the duties and responsibilities of the Vocational Rehabilitation Unit. §386-71.5 establishes the Unit in the Department of Labor & Industrial Relations.

DLIR's Vocational Rehabilitation Unit consists of just one staff member to administer the program, which manages an average of 760 claims per month. In 1997, the Department lost thirteen (13) professional and clerical staff positions in the Vocational Rehabilitation Unit on Oahu and the Neighbor Islands due to a Reduction-in-Force (RIF). Attempts to restore professional and clerical positions to the Unit have been unsuccessful to date. Most recently, the Department requested on Vocational Rehabilitation Specialist IV in the 2016 Legislature. It was denied.

III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION

The Department opposes this resolution do to the lack of resources and because this Legislature has been requested to appropriate \$3,326,158 during the upcoming biennium to modernize DCD's business processes, including Vocational Rehabilitation. The requested appropriation appears identical in the HD1 and SD1 of the budget bill (HB100). Modernizing the Vocational Rehabilitation Unit's processes will enable the Department to maintain data on the Vocational Rehabilitation program that is envisioned to include information on success rates, efficacy of the program and some of the other data requested by the measure.

In 2016, DLIR assembled the Workers' Compensation Working Group (Working Group) as requested by H.C.R. 168 HD2 SD1 (SLH, 2015) to assess workers' compensation issues. The Working Group was presented with an overview of the findings of DCD's business process optimization analysis and case management system. Act 119 (State Budget) of the 2015 Legislature appropriated general funds for this purpose and the Gartner Group performed the study that included vocational rehabilitation.

The Working Group invited the participation of vocational rehabilitation counselors and met with counselors and other stakeholders regarding the vocational rehabilitation program. Under a multi-year modernization effort, substantial improvements to the Department's ability to oversee and track VR outcomes are anticipated. In addition, there is already research underway to explore alternative approaches used in other states to determine if a more effective program could produce better results for Hawaii's workers. DLIR is concerned that an audit is premature and may delay reforms.

April 11, 2017

COMMITTEE ON JUDICIARY AND LABOR:

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads Vice Chair

Re: HSCR1615

Date: Wednesday, April 12, 2017

Time: 10:00 A.M.

Place: Conference Room 016

Dear Chairman Keith-Agaran and Vice Chair Rhoads,

Thank you for the opportunity to present testimony about HCR 105 (HSCR1615). My name is Adam Yonamine. I have worked as a member of the clerical staff in a vocational rehabilitation office for 12 years and I respectfully **Support HCR 105**. Thank you very much for considering my testimony.

Sincerely,
Adam Yonamine

THE SENATE
TWENTY-NINETH LEGISLATURE,
REGULAR SESSION 2017

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gilbert S.C. Keith-Agaran, Chair

Sen. Karl Rhoads, Vice Chair

Hearing: Wednesday, April 12, 2017

Time: 10:00 a.m.

Place: Room 016, State Capitol

415 S. Beretania Street

TESTIMONY OF LOWELL K.Y. CHUN-HOON IN SUPPORT OF HCR 105, REQUESTING THE AUDITOR
TO CONDUCT AN AUDIT OF THE VOCATIONAL REHABILITATION UNIT IN DEPARTMENT OF
LABOR AND INDUSTRIAL RELATIONS, DISABILITY COMPENSATION UNIT

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee on Judiciary and Labor:

Thank you for affording me the opportunity to present written testimony in support of House Concurrent Resolution 105. I regret that I am unable to appear in person for this testimony because I must represent a client in a labor arbitration on Maui at the same time as this hearing.

Vocational rehabilitation services have been afforded under Section 386-25 HRS for more than four decades. These services are intended to help individuals with serious injuries either resume work with their original employers in new or modified jobs, find work with new employers if their original employers cannot accommodate them, or to be retrained for new careers. Many claimants with non-serious injuries recover quickly without permanent disability and return to their original employment quickly and uneventfully. In these circumstances, vocational rehabilitation is not necessary at all.

However, where there may or will be permanent impairment that interferes with the resumption of employment on an employee's former job, vocational rehabilitation is of inestimable value in restoring the injured worker as nearly as possible and as quickly as possible to his or her former level of employment. Moreover, where most aspects of the workers compensation system involve disputes over coverage of claims, payment of temporary or permanent disability or disfigurement, vocational rehabilitation is unique in that it is the one component of the system which can be both creative and restorative.

Counselors help persons adjust to their new disabilities and overcome barriers toward becoming productive individuals once again. Stated differently, vocational rehabilitation is an investment in human capital that helps to reclaim lives that would otherwise be unproductive or less productive. While vocational counselors are not mental health experts, they often lend

a friendly and sympathetic ear to those who have sustained industrial accidents, and provide the kind of human encouragement and reassurance that helps the injured worker persevere in the face of adversity, dispel self-doubt, and overcome obstacles to reemployment.

In roughly the past year or year and a half, a drastic change has occurred in the administration of the Vocational Rehabilitation Unit. There has been increased interference with the exercise of independent professional judgment by counselors. The counselors have been directly threatened with suspension or termination of their licensure by reference to Hawaii Administrative Rule 12-14-21 when they have made judgments or failed to act in a fashion the VR Unit deems appropriate. Parts of the essential work counselors perform has also been arbitrarily excluded from billing without any specific regulatory or statutory authorization. Through these actions, the Vocational Rehabilitation Unit appears to manifest an unjustified hostility to the legitimate needs of small business and the creation of a climate that is unnecessarily hostile to business.

Raising this criticism of the VR Unit and requesting an audit, however, does not mean that the VR Unit should not provide neutral and impartial oversight of the work of counselors. Where there is no timely movement of cases, or where proper professional or regulatory standards are not observed, this remains a useful and necessary departmental function.

Nonetheless, the sad truth is that the unit is not carrying out this function but is engaged in arbitrary and capricious decision making that is constantly being reversed by the Disability Compensation Division Hearing's Officers themselves or by stipulation of the parties.

The following examples may help to illustrate the extent of this pervasive problem:

1. A counselor cannot meet the 45 day deadline for an initial evaluation of a claim because she cannot obtain medical limitations from physicians who want a functional capacity test done by a physical therapist. Because the initial evaluation report cannot be filed on time, the vocational rehabilitation case is closed with the option for the injured worker to retain another counselor. The result is so irrational that the parties stipulate to reverse rather than waste time at an administrative hearing that is completely unnecessary.
2. The parties request the VR Unit to approve mainland heavy equipment testing in California because this training is not available in Hawaii for approximately six month's time. The VR Unit refuses to approve the plan for mainland training. At a hearing on the disapproval of the plan the hearings officer states he approves of the plan, but the plan is denied. After the hearing, the parties ask both the hearings officer who said he would approve the plan and the chief hearings officer why the plan was disapproved by decision. Neither of these men knows why and are surprised to learn the decision was unfavorable. The parties appeal and reverse the disapproval of the plan by stipulation.
3. One of the injured workers I represent was hired at an \$18.00/hour job, but one that is beyond the scope of his vocational rehabilitation plan, which trained him to be a

medical coder. The VR Unit classifies this rehabilitation as a failure in its decision and statistics. I appeal the plan and secure an agreement from opposing counsel to reverse that finding.

These kinds of actions disrupt the formation of positive relationships between counselors and the injured workers because their work together is abruptly terminated. They delay the timely provision of continuous counseling and disrupt the momentum toward creating meaningful strategies to return to work and provoke uncertainty and confusion.

Counselors cannot perform their intended function because they are arbitrarily removed from cases and threatened with suspension or loss of their licenses when their discharge is often the result of factor beyond their control. Instead of being supported in their work and receiving assistance to solve problems that arise so that cases can constructively be expedited their professional judgment is repeatedly challenged, not in a constructive and collaborative fashion but by intimidation.

These actions are not only wasteful, frustrating and discouraging to injured workers, but they are costly to insurance carriers. The carriers pay for the original vocational rehabilitation with one counselor then face an unnecessary assignment of a second counselor. The delay in vocational rehabilitation causes additional payments of temporary total disability. The erratic decision making creates unnecessary litigation and makes claims more expensive to administer because of the extra attorneys' fees that are generated to litigate these claims and the extra administrative time expended to administer files.

This positive and constructive feature of our Workers' Compensation statute has been seriously compromised by the counterproductive of the administration of this program by the current Vocational Rehabilitation Unit, and legislative action is necessary to audit and address these difficulties. Past attempts to work the Disability Compensation Unit have been unsuccessful in redressing this problem. We therefore respectfully urge that HCR 105 be enacted.

From: [Beverly Tokumine](#)
To: [JDLTestimony](#)
Subject: testimony HCR 105 (HSCR 1615)
Date: Monday, April 10, 2017 4:33:18 PM

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Re: HCR 105 (HSCR1615)
Date: Wednesday, April 12, 2017
Time: 10:00 A.M.
Place: Conference Room 016 - State Capitol

Thank you for the opportunity to present testimony on HCR 105. My name is Beverly Tokumine, M. Ed., CRC and employed with Vocational Management Consultants, Inc. I have worked as a vocational rehabilitation counselor for 14 years, but within the Vocational Rehabilitation industry for 32 years. ***I respectfully support this request for an audit, HCR 105.***

I have experienced many of the problems addressed by this resolution. I had initial evaluation reports, which I have not been able to complete within the normal 45 day time period because medical information was unavailable through no fault of my own. Despite explaining this circumstance, I have been ordered to close my file by the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations and ordered to cease working as a counselor. Additionally, I have several decisions made by Ms. Guerrero that have been taken to hearing to be over turned, but costing the employer / employee time and funds wasted. In most cases, delays and denials causes great stress and depression to the injured worker.

I have also had my registration to practice vocational rehabilitation threatened with suspension or termination by the Dept. of Labor's Vocational Rehabilitation Unit for insignificant and unavoidable failures to comply with time deadlines that were never or seldom enforced previously, as many times, medical information from the treating physicians are delayed. Physicians are late in providing information needed, because the medical treatments are denied or approvals for necessary treatments are delayed, due to limited medical resources on the outer islands or Carriers question the needed of treatment by requesting Independent Medical Evaluations be conducted, prior to approving the recommended treatment.

I wrote to Ms. Delphina Guerrero at the VR Unit requesting for explanations, but I received no reply.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, ***I give my full support to an audit of the Unit and ask that you please pass HRC 105.*** My clients and employers are also not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for

considering my testimony.

Respectfully Submitted by,

Beverly Tokumine, M. Ed., CRC

cc: File

April 10, 2017

COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, April 12, 2017
TIME: 10:00 a.m.
PLACE: Conference Room 016

HCR 105 (HSCR1615)

REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE VOCATIONAL REHABILITATION UNIT IN THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, DISABILITY COMPENSATION UNIT.

In Support of HCR 105 (HSCR1615)

Dear Chairman Agaran, Vice Chair Rhoads, and Members of the Committee:

My name is Kirsten Harada Yonamine. I am a vocational rehabilitation counselor who has been in practice for over 20 years. I assist injured workers' in their return to work process and am part of a very small community of service providers. I do support HCR 105 (HSCR1615) and the proposed audit as recently I have seen what I feel is inappropriate decision making by the Vocational Rehabilitation Unit.

Personally, I have had my placement statistics changed and for one case specifically, from a success to a fail, despite my client returning back to work in a position that offered higher wages. I had a plan that was approved by the carrier, denied by the DCD unit. I had to resubmit this plan, which resulted in more cost and time and which was then allowed to go through and resulted in a successful placement back to work. In another case a plan was denied and while awaiting hearing was told to either submit a direct placement plan or close. This injured worker was a high wage earner and now, because of her injury was not able to secure employment without some training. With a direct placement plan she would have been forced to look for work that was significantly lower in wages than what she had been earning. The law states that, "The purposes of vocational rehabilitation are to restore an injured worker's earnings capacity as nearly as possible to that level that the worker was earning at the time of injury and to return the injured worker to suitable gainful employment in the active labor force as quickly as possible in a cost effective manner." Ultimately, I was forced to close the plan and was not given due process to have the plan denial heard. We have also been told that we cannot personally

respond to determinations that deny our plan or affect our case which under past administrations we were able to.

I am concerned that these decisions are negatively impacting on injured workers' benefits and costing them more time and money to defend their case.

Early on there was a request made to meet with the DCD Representative to discuss the changes that were being enforced and to get some guidance and explanation as to what we, as counselors could do, to address these changes. I was told that, "I am too busy". There is a lack of communication with regard to the changes made, which in turn makes it difficult for us to do our jobs.

Lastly, I have also had my license to practice vocational rehabilitation threatened with suspension or termination by the Department of Labor's Vocational Rehabilitation Unit. This is a first in the 20+ years that I have been in practice.

As a vocational counselor, I am required to complete a Master's Degree program in the field as well as to sit for exams to obtain the Certified Rehabilitation Counselor and Licensed Mental Health Counseling designations. I am also required to maintain continuing education credits yearly. My practice was never called into question and I have always had a good working relationship with the Department of Labor, until recently.

As a result of this I give my full support to an audit of the Unit and ask that you please pass HRC 105 (HSCR1615). My clients have been impacted by the current actions of the Unit and an audit would help to confirm issues raised and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.

Sincerely,

Kirsten Harada Yonamine, M.Ed., CRC LMHC
Vice President of Vocational Management Consultants
Member of International Association of Rehabilitation Professions in Private Sector

My address and phone number is:
715 S. King Street, Suite 410
Honolulu, HI 96813
Phone: 538-8733

April 10, 2017

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, April 12, 2017

TIME: 10:00 a.m.

PLACE: Conference Room 016

HCR 105 (HSCR1615)

REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE VOCATIONAL REHABILITATION UNIT IN THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, DISABILITY COMPENSATION UNIT.

In Support of HCR 105 (HSCR1615)

My name is Kristi Kinsella, M.S.Ed, CRC. I have worked as a vocational rehabilitation counselor for one year in the state of Hawaii and I strongly support HCR 105 (HSCR 1615).

In my short time as a rehabilitation counselor in Hawaii, I have witnessed how vocational rehabilitation can benefit the injured worker both short term and long term. These injured workers are given the opportunity to return to work in a suitable and gainful position with the assistance of an educated and trained rehabilitation professional at the Master's level holding a national certification. It is unfortunate that I have also witnessed many clients having their services terminated due to arbitrary deadlines not being met or *arbitrary decision making by an administration whose qualifications are unclear*.

Instead of denying a plan with recommendations for editing or an option to submit a new plan after more research, cases are being terminated. This is also true for plans that have been mutually agreed upon by the client, carrier, and representatives. Clients then will have to go to hearing and I have observed many, through other counselors, who have had services reinstated. Despite returning to VR, these injured workers suffer from loss of time, costly litigation expenses, and poor mental health as a result of the decision making of the VR Unit. I have seen plan denials and case termination as a result of not enough research to justify a training plan yet the same administration expects counselors to conduct all the research necessary to submit a rehabilitation plan for all clients in approximately four months through the imposition of a deadline not outlined in the statutes.

I have had my license to practice vocational rehabilitation threatened with suspension or termination by the VR Unit upon my submission of an initial evaluation. Once the evaluation is received by the VR Unit, a request for a vocational rehabilitation plan within a certain time frame is received with a citation of the director's ability to suspend or terminate certification if the deadline is not met. This imposed deadline provided by the VR unit, between the initial

evaluation and requested rehabilitation plan, is not only arbitrary and not written in the statutes but will vary between clients. This deadline does not take into account for the injured workers' personal and medical needs, physician approval, and time necessary to conduct adequate vocational research. This deadline appears to encourage quick direct placement options rather than research more in depth suitable and gainful opportunities.

As rehabilitation counselors, we follow the code of ethics provided by the American Counseling Association. We practice within the scope of our education to provide optimal services to the clients we serve. This includes not pushing agendas on the injured workers such as pursuing direct placement or simple training plans as a means to meet the arbitrary deadlines imposed upon us. I have myself written to DCD and have witnessed other counselors who have written to DCD to explain individual circumstances of our clients, only to receive an unprofessional response or to receive no response at all.

We as certified rehabilitation counselors aim to provide individualized services to Hawaii's injured workers and assist them in navigating through the difficult return to work process. The factors affecting each client differ substantially and therefore clients should not be held to a set timeline. I am in strong support of HCR 105 (HSCR 1615) to audit the DCD VR Unit in order to restore a working relationship between VR counselors and the Department of Labor and Industrial Relations VR Unit. Thank you for considering my testimony in your decision making.

Respectfully,

Kristi Kinsella, M.S.Ed, CRC
Vocational Rehabilitation Counselor
Vocational Management Consultants Inc.
715 S King Street Suite 410
Honolulu, HI 96813
808-538-8733

From: [Laurie Hamano](#)
To: [JDLTestimony](#)
Cc: lauriehamano@gmail.com; [Kirsten Harada](#)
Subject: HSCR 1615
Date: Monday, April 10, 2017 3:33:41 PM

Re: HSCR 1615
Date: Tuesday April 12, 2017
Time: 10:00 A.M.
Place: Conference Room 016

Highly Recommend Support of this Audit

Dear Chairman Senator Gilbert S. C. Keith-Agaran and Vice Chair Karl Rhoads,

I have been a Vocational Rehabilitation Counselor for the past 32 years in the state. I have been primarily working with the injured workers in the private sector. These are the "victims" of the current system we have in place under the DCD VR Unit. I have worked with several injured workers who have been informed that they had their vocational rehabilitation services "terminated" and through a hearing process have had their decisions reversed. I have gone to at least 3 hearings where this has occurred and through the hearing process the injured worker was reinstated in their vocational rehabilitation services with their original counselor. This has delayed the cases several months and has placed another financial burden on the injured worker to pay for a hearing that was not necessary. I have had at least 5 cases this past year informed that they were terminated by DCD due to a deadline that was arbitrary and did not consider the injured worker's status.

I have had two instances where the VR Unit personnel informed me that she "sent the letter" to the undersigned terminating the injured workers VR services, however in fact in hearing I was informed that none of the parties received a copy of the "said sent letter". Again, another hearing; another delay due to the VR Unit's "statements" whether true or not, was told to this counselor and unnecessary and costly terminations of VR services ensued. The second letter that was NOT sent and since none of the parties received it allowed for the Injured Workers plan to be approved. Please remember the VR Unit indicated that the Injured Workers plan was "denied". There was no evidence of the letter.

These terminations of injured workers as well as threats to have my certification "pulled" by the DCD has only caused additional stress to an already hostile situation.

The most recent letters from DCD within the past two weeks now indicate that the services that are provided before the Initial Evaluation is completed and the enrollment form sent with the Initial Evaluation *might not be approved per the DCD unit*. The letter indicated that the services provided to create the Initial Evaluation may be "unapproved vocational rehabilitation services" and the Rehabilitation Specialist "may be required to terminate the services immediately and the director may void the certification of the provider". In order for ANY reports to be done, research must be completed in order for any decision to be formed regarding whether the Injured Worker is feasible for the services, and the selection form must be APPROVED by the parties involved before any work begins on their cases. This appears to be ANOTHER form of over-reaching in regard to the DCD's "enforcement duties" with an odd way of looking at the services that are needed and required to make a coherent and well thought out Initial Evaluation of each injured worker done by the counselor.

Given the above, one wonders whether DCD realizes how difficult it is to own and run a small business in the State of Hawaii. By creating this hostile environment, it is no wonder that it has been difficult to find University of Hawaii Master's level students to mentor who would like to work for the private sector in

Vocational Rehabilitation Services.

I wholly support the resolution to have the DCD VR Unit be audited.

Submitted By,

Laurie H. Hamano M. Ed. CRC LMHC
VR Counselor
President of
Vocational Management Consultants Inc.
715 S. King Street Suite 410
Honolulu, HI 96813
#5388733

From: [Marcia Berkowitz, CRC, LMHC](#)
To: [JDLTestimony](#)
Subject: Testimony for HCR 105 (HSCR1615)
Date: Monday, April 10, 2017 7:33:32 PM

Subject: Testimony for HCR 105 (HSCR1615)

COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, April 12, 2017
TIME: 10:00 a.m.
PLACE: Conference Room 016

HCR 105 (HSCR1615)

I am in Support of HCR 105.

I am a certified rehabilitation counselor/licensed mental health counselor providing services to Hawaii's injured workers since 1982. From 1982 until now, there have been changes to DCD-VR Unit by different administrations and their respective directors. Sometimes the pendulum swings one way and then another. Of all of these administrations, I never believed the injured worker or the vocational rehabilitation program itself was in jeopardy, until the present administration under the current director.

The rehabilitation program is the face of HOPE & CHANGE for the injured worker. I have seen suicidal individuals be restored, life changing medical situations result in new employment for clients and/or difficult cases be resolved with the injured worker still having a career trajectory in large part due to the Disability Compensation Division Vocational Rehabilitation Program.

What is going on now in the department is significantly different from years past. There is the spirit of the law and the letter of the law. The department is now working to the exact letter of the law and beyond, negating input as well as serious concerns from certified counselors, injured workers, physicians, attorneys in one fell swoop. The department will tout their "Working Groups" but to date, no significant changes have been made by these Working Groups that benefit the injured worker or the vocational rehabilitation program. The VR counselors who attend these meetings report they are stymied in how to provide excellent service to our injured workers with under this current director. The department will disavow rehabilitation plans that no one objects too, just the bureaucratic department causing the injured worker to lose hope in their vocational future post injury. Letters have been written to certified rehabilitation counselors that show case an arrogance and ignorance for professional relationships between the department and those who are trying to comply and provide services to Hawaii's

injured workers.

A program that has flourished for years and given hope to Hawaii's injured workers who are suffering physically, emotionally and financially should within reason, be supported by the very unit that purports to have their best interest at heart.

Thank you for your time and attention.

Sincerely,

Marcia A. Berkowitz, CRC, LMHC
1975 East Vineyard
Wailuku, Hi 96793

808-298-4142

April 9, 2017

Chairman Johanson, Vice Chair Holt, Members of the Committee:

Thank you for the opportunity to present testimony about HCR 105. My name is Nicole Cron. I am a student at the University of Hawaii and I support this request for an audit. I have people close to me that work in construction and if anything were to happen to them I would want the to be properly compensated and taken care of by the Vocational Rehabilitation Unit. Thank you very much for considering my testimony.

Nicole Cron

Phone: (606)484-3489

Email: ncron@hawaii.edu

Case Management Works – Hawaii, Inc.

April 10, 2017

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

Re: HCR 105
Date: Wednesday, April 11, 2017
Time: 10:00 A.M.
Place: Conference Room 016;
State Capitol;
415 South Beretania Street;
Honolulu, HI

Aloha,

My name is Tony Hunstiger. I have been working as a vocational rehabilitation (VR) counselor in the State of Hawaii since 1997. I have clients throughout the State.

I am in strong support of HCR 105.

During the past few years, since the introduction of new staff at Department of Labor and Industrial Relation's VR Unit, policies and determinations generated by the VR Unit defy law and logic.

Arbitrary deadlines for the submission of VR plans tied to a threat of revocation of counselor registration appeared. I wrote to Ms. Delphina Guerrero at the VR Unit and to her supervisor, Ms. Jo Ann Vidinhar asking for an explanation. I received no reply.

When the VR Unit acts beyond the scope of its authority, my job is more difficult. Worse, workers who have been injured on the job are now left without the protection the law was designed to give them. The VR process, meant to be a safety net, fails.

In order to gain valuable information and to motivate constructive change, I urge you to please approve and support HCR 105. Please, audit the State VR Unit.

Respectfully Submitted By:

Tony Hunstiger

Tony Hunstiger, M.Ed., CRC, LMHC
(808) 722-0838
tonyh@cmw-hawaii.com

WAYNE H. MUKAIDA

Attorney at Law

888 MILILANI STREET, PH 2
HONOLULU, HAWAII 96813

TEL & FAX: (808) 531-8899

April 7, 2017

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

Re: H.C.R.105, Requesting Audit of Vocational Rehabilitation Unit
Hearing: April 12, 2017, 10:00 a.m.

Chair Keith-Agaran, Vice Chair Rhoads, 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 H.C.R.105, Requesting Audit of Vocational Rehabilitation Unit in the Department of Labor and Industrial Relations, Disability Compensation Unit.

Next to medical care, Vocational Rehabilitation benefits are often the most valuable workers' compensation benefit. If a person is unable to return to his or her job because of physical limitations, the assistance of a professional vocational rehabilitation counselor is essential in most cases.

I. HRS §386-25(b) is being ignored.

HRS §386-25(b) requires that the VR Unit "shall include appropriate professional staff."

A. The VR Unit is not adequately staffed. A number of years ago, the VR Unit was staffed by about 14 individuals who monitored VR for the entire State. The VR Unit was decimated and is now staffed by only 1 individual. The extensive duties of the VR Unit enumerated in HRS §386-25 are too great for a single individual to fulfill.

B. Questions exist whether the VR Unit has the statutorily required "appropriate professional staff." VR counselors are required to have extensive training, are required to undergo testing and certification, and are considered professionals. The VR Unit should be investigated to see whether is complying with

COMMITTEE ON JUDICIARY AND LABOR

April 7, 2017

Page Two

the requirement of "appropriate professional staff" if it is comprised of an uncertified person.

Disagreements about services in any field will arise. However, the VR Unit has a single administrative individual performing ad hoc rule making, monitoring, judging, and certification. The VR Unit is acting as a legislature, police officer, judge and jury, and therefore is in an inherently conflicted position, and a denial of due process is the result.

II. The VR Unit is not complying with administrative law.

The Administrative Procedure Act, HRS Chapter 91, requires that before a rule of broad application can be applied, an agency must go through rule making procedure. The VR Unit is requiring that all VR plans must be completed within 120 days, with a 60 day follow up period after job placement. Those 2 time period requirements have never been through the rule making process required by HRS Chapter 91 and yet are being applied to terminate benefits to injured workers.

III. The VR Unit inconsistently asserts its "jurisdiction."

The DCD is comprised of several units. When a case is before another unit, the VR Unit might decide not to exercise its "jurisdiction." For example, if a case is before the Hearings Unit, the VR Unit might decide it will not act because it does not have "jurisdiction." This results in extended delays.

DCD decisions can be appealed to the Labor and Industrial Relations Appeals Board. At times, during the pendency of an appeal, the VR Unit may act on a case, or it may inconsistently decide on another VR matter that it does not have jurisdiction and refuse to act. It may take the LIRAB over 2 years to issue a decision, and therefore, a VR issue may be delayed for that period.

IV. Alternative dispute resolution.

When the VR Unit was staffed by more than 1 individual, the development of an individual's VR plan could include informal conferences with the VR Unit. These

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conferences served as an informal dispute resolution mechanism. The VR Unit is not structured or staffed for any ADR process. Instead, HRS § 386-25 requires a very awkward and wasteful procedure:

- (a) a party must file an objection;
- (b) the VR Unit issues a determination;
- (c) a party must request a reconsideration within 10 days;
- (d) if the 10 day period is not met, the determination is final;
- (e) if the 10 day period is met, the VR Unit must file a reconsideration determination (which is almost denied almost as a matter of course);
- (f) a party must request a hearing within 10 days;
- (g) if the 10 day period is not met, the reconsideration determination is final;
- (h) if the 10 day period is met, a hearing is set before the Hearings Section;
- (i) the Hearings Section may take months to schedule a hearing;
- (j) after a hearing, the Hearings Section has up to 60 days to issue a decision (it typically takes the full 60 days; it is not clear what happens if the 60 day period is not met);
- (k) If either party disagrees with the decision, the case can be heard by the LIRAB;
- (l) The LIRAB's calendar is full and it may take 2 years for a decision to be heard; and
- (m) If either party disagrees with the LIRAB decision, the matter can be appealed to the appellate court.

The unfortunate result is that if an initial determination by the VR Unit is against the injured worker, that worker will never receive his or her desperately needed

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workers' compensation VR benefit because virtually no one can afford to be without income and to put their life on hold to go through the process.

V. CONCLUSION.

Please move H.C.R.105 towards passage.

Thank you for considering my testimony.

WAYNE H. MUKAIDA