

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 10TH FLOOR • HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 10, 2017

LATE TESTIMONY

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

The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair
and Members of the Committee
on Commerce, Consumer Protection, and Health

The Senate
State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran, Chair Baker, Vice Chair Rhoads, Vice Chair Nishihara, and
Members of the Committees:

**SUBJECT: Senate Bill No. 253
Relating to Workers' Compensation**

The City and County of Honolulu **strongly opposes** SB 253, which would require independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees.

Hawaii's workers' compensation law permits a claimant to secure medical treatment from any physician practicing in the State of Hawaii. 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 regarding the compensability or progress of a claim. Although the vast majority of workers' compensation cases proceed without controversy or disagreement, there are times when an independent medical examination (IME) is necessary. For example, an IME would be required should issues arise concerning the diagnosis, treatment and/or disability status of the claimant. SB 253 would significantly restrict an employer's ability to obtain such independent

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examinations by mandating that only physicians agreed upon by claimants can be used for employer requested medical examinations, or, if both parties cannot reach a consensus, allowing either the employer or employee to request that a physician be appointed by the Director of Labor.

Requiring mutual agreement for an employer to conduct an independent medical evaluation takes away from the very independence and purpose of the evaluation. Hawaii's workers' compensation law already weighs heavily in favor of the claimant. Under the presumption clause, any claim filed is deemed compensable and any medical treatment is considered reasonable unless the employer presents substantial evidence to the contrary. Eliminating an employer's right to select an independent medical examiner to review compensability of a claim or a claimant's medical progress is inequitable and would provide attending physicians the unfettered ability to prescribe unnecessary and potentially contraindicated treatment to an employee.

The City and County of Honolulu also strongly objects to the portion of the measure which apparently would enable only the attending physician to determine medical stability. Not only is the proposed amendment self-serving, in most instances it will also prolong treatment, delay an employee's return to work and dramatically increase the cost of the workers' compensation claim.

Based on the foregoing, we respectfully urge your committee to file SB 253. Thank you for the opportunity to testify.

Sincerely,



Carolee C. Kubo
Director

cc: Mayor's Office

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

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

I strongly support, and my organization, Work Injury Medical Association of Hawaii supports SB 253. Addressing the IME abuse in our state is our number one legislative change that we feel will improve the process of caring for injured workers in Hawaii. Our organization represents the majority of physicians still treating patients injured on our state. Our best estimates are that less than 50 of the over 3000 licensed physicians regularly accept Workers Compensation and a majority of those are part of WIMAH.

SB253 addresses what has become a blatant abuse of a system that is meant to provide an "independent" physician to represent the Insurer or Employer's interest. Current, approximately 10 physicians have become highly paid "hit men" for certain insurers, and nearly 90 %of the time or higher rule against the injured worker. These individuals average \$4000-\$8000 for usually spending less than 1 hour with a patient who has often had numerous office visits with a practicing attending physician, Specialists Physicians practicing and treating patients daily as well as Physical Therapists, Acupuncture professionals and Doctors of Chiropractic.

In these fifteen minutes to one hour, lives of workers injured in Hawaii usually at no fault of their own are ruined. One letter from this so called "independent" physician becomes the ruling that decides all future care, immediately, regardless of the opinion of a team of dedicated professional who have usually spent 30-50 hours with an injured worker over months or even years. And this is even worsened by the fact that the majority does not even treat patients! They only perform these high paying exams with a regular path worn to certain insurance carriers.

At this point, the worker is now no longer being compensated and has lost health insurance. They are forced to find an attorney and file an appeal with the Department of Labor that in 2016 would take 3-4 months. The injured worker has already been suffering financially making less than 2/3 of their normal wage, and has depleted saving. It is not unusual that they are forced to live with family or in some cases become homeless. And their pain and injury is still present. Many are forced to give up and remain

injured the rest of their lives. They often (in my practice well over 70%) must file for welfare benefits and demand on state assistance to survive.

Unfortunately, most cannot afford to challenge these ruling. If the injured worker can persist and survive this ordeal, the majority of these one sided and baseless IME exams are over turned at the Labor Appeals Board or with the initial hearing. At last count, my practice has won our past 60 consecutive appeals. That means the employers must pay the employee's back wages and continue to provide care. All of this occurs after creating more suffering for our injured workers in our state. Most gains of the initial treatment are lost and must be restarted. This delay further increases the cost of Workers Compensation to all parties including the taxpayers who recently had to increase funding to the DOL to support the appeals process driven by these prolific producers one-sided IME's.

We have more than 100 qualified physicians to perform IME exams, yet some insurance carriers resort to flying an Orthopedic Surgeon from the mainland. I testified as an expert in Federal Court where one such expert under oath admitted to seeing 24-36 IME exam patients in 2 days and receiving approximately \$64,000. He does this 3-4 times per year.

There is unfortunately no due process allowed by our Medical Board to rid our state of these physicians since they state that no doctor patient relationship exists and the IME doctor is not "practicing medicine". They are immune from Malpractice Claims and the MCCP process. Essentially they are accountable to no one. Please consider this since most of us cannot understand how this group can be so insulated from any reasonable action or oversight. The IME provider is able to access someone's confidential life history in his or her medical records and physically perform an exam similar to any other practicing doctor in the State of Hawaii. They make medically treatment recommendations, that the majority of time is refusal of care recommended by the treating physician. These decision lead to refusal of surgeries or complete closure of their case.

Fortunate, SB253 may allow the majority of the outstanding IME physicians that do exist in our state to provide fair exams and reports. The distinction between the truly professional and "independent" physicians is remarkable. Reports are often 50-100 pages, and well thought out and defend the medical opinion with logic with best practice evidence. There are at least 50 IME providers in our state that I never in over 22 years of caring for an injured work had to appeal. This

allows for a realistic and speedy consensus on future treatment, and usually eliminates appeals or costly legal proceedings. Most importantly, the worker receives the necessary care to ultimate return to the work force in our state.

Please support the injured workers of our state, and help stop this devastating process that unfortunate occurs daily.

Sincerely,
Scott J Miscovich MD
President
Work Injury Medical Association of Hawaii (WIMAH)



Testimony to the Senate Committees on
Judiciary and Labor and Commerce, Consumer Protection & Health
February 10, 2017 at 8:30 a.m.
State Capitol - Conference Room 16

RE: SB 253 Relating to Workers' Compensation

Aloha members of the Committees:

We are Cara Heilmann and John Knorek, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii.

We are writing to respectfully oppose SB 253, which requires, among other things, independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations. We believe that this bill unfairly tips the equitable balance of employer and employee perspectives and will likely tend to increase costs.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: human capital. We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it.

Thank you for the opportunity to testify.





98-055 KAMEHAMEHA HWY., C-6, AIEA, HI 96701 · PHONE (808) 831-5050 · FAX (808) 831-5055 · LIC # C-19800

Via E-mail: CPHTestimony@capitol.hawaii.gov

Via Fax (808) 586-6071

February 10, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON JUDICIARY AND LABOR

HONORABLE ROSALYN BAKER, CHAIR, HONORABLE CLARENCE NISHIHARA, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON CONSUMER PROTECTION AND HEALTH

SUBJECT: **OPPOSITION TO S.B. 253, RELATING TO WORKERS' COMPENSATION.** Requires, among other things, independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations. Allows for the use of an out-of-state physician under certain conditions. Appropriates funds for positions to assist with workers' compensation claims. Effective January 1, 2018. Repeals on June 30, 2023.

HEARING

DATE: February 10, 2017

TIME: 8:30 a.m.

PLACE: Conference Room 016

Dear Chair Keith Agaran and Chair Rosalyn Baker, Vice Chair Rhoads and Vice Chair Nishihara and Committee Members,

Elite Mechanical, Inc. is **opposed** to **S.B. 253, Relating to Workers' Compensation**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased

workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that S.B. 253 be held by this Committee.



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

February 9, 2017

Via E-mail: CPHTestimony@capitol.hawaii.gov

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON JUDICIARY AND LABOR

HONORABLE ROSALYN BAKER, CHAIR, HONORABLE CLARENCE NISHIHARA, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON CONSUMER PROTECTION AND HEALTH

SUBJECT: **OPPOSITION TO S.B. 253, RELATING TO WORKERS' COMPENSATION.**
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HEARING

DATE: February 10, 2017
TIME: 8:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran and Chair Rosalyn Baker, Vice Chair Rhoads and Vice Chair Nishihara and Committee Members,

Dorvin D. Leis Co., Inc. is **opposed to S.B. 253, Relating to Workers' Compensation**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that S.B. 253 be held by this Committee.

Sincerely,


Stephen T. Leis
President

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc:
Subject: Submitted testimony for SB253 on Feb 10, 2017 08:30AM
Date: Thursday, February 9, 2017 1:58:07 PM

SB253

Submitted on: 2/9/2017

Testimony for JDL/CPH on Feb 10, 2017 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Fred Moore	HSI Mechanical, Inc.	Oppose	No

Comments: Senate Bill 253, would change the current method and would require that a mutually agreed upon physician be chosen by the employer and employee to perform the IME for worker's compensation claims, thus removing the employer's sole method to independently validate ongoing claims. HSI Mechanical, Inc. opposes S.B. 253 because it would ultimately result in increased workers compensation cost, delayed adjudication of claims, and inadequate or inappropriate treatment for the injured employee.

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

February 10, 2017

TO: Chair Keith-Agaran, Chair Baker, and Members of the Senate Committees on
Judiciary & Labor and Commerce, Consumer Protection & Health:

SUBJECT: **S.B. 253, RELATING TO WORKERS' COMPENSATION**

Grace Pacific respectfully opposes SB 253, which would require "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees.

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 IME. 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 proposed bill 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 workers' compensation claims that misuse the system may increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We 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.

For these reasons, we respectfully request that this bill be held by this Committee. Thank you for the opportunity to testify.



MASTER SHEET METAL, INC.

1648 AUIKI ST, HONOLULU, HI 96819 / TELEPHONE 847-2128 / FAX 847-2131 / msm@hawaii.rr.com

Via E-mail: CPHTestimony@capitol.hawaii.gov
Via Fax (808) 586-6071

February 10, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE
CHAIR AND MEMBERS OF THE COMMITTEE ON JUDICIARY AND LABOR

HONORABLE ROSALYN BAKER, CHAIR, HONORABLE CLARENCE NISHIHARA,
VICE CHAIR AND MEMBERS OF THE COMMITTEE ON CONSUMER PROTECTION
AND HEALTH

SUBJECT: **OPPOSITION TO S.B. 253, RELATING TO WORKERS' COMPENSATION.** Requires, among other things, independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations. Allows for the use of an out-of-state physician under certain conditions. Appropriates funds for positions to assist with workers' compensation claims. Effective January 1, 2018. Repeals on June 30, 2023.

HEARING

DATE: February 10, 2017
TIME: 8:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran and Chair Rosalyn Baker, Vice Chair Rhoads and Vice Chair Nishihara and Committee Members,

Master Sheet Metal, Inc. is opposed to **S.B. 253, Relating to Workers' Compensation**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe there is nothing wrong with the current procedure in place which provides for sound safeguards to allow injured employees full disclosure of an employer's/insurance carrier's IME report.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and an appeal process if the parties cannot agree. This bill would result in increased workers compensation cost to businesses both small and large. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that S.B. 253 be held by this Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Skye Matsumoto", is written over a printed name and title.

Skye Matsumoto
Treasurer



Advocacy. Leadership. Results.

To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection and Health

From: Mark Sektnan, Vice President

Re: **SB 253 – Relating to Workers’ Compensation**
PCI Position: OPPOSE

Date: Friday, February 10, 2017
8:30 a.m., Conference Room 016

Aloha Chairs Keith-Agaran and Baker, Vice Chairs Rhoads and Nishihara and Members of the Committees:

The Property Casualty Insurers Association of America (PCI) is **opposed to SB 253** which requires, among other things, independent medical examinations (IME) and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations. In Hawaii, PCI member companies write approximately 42.3 percent of all property casualty insurance written in Hawaii. PCI member companies write 44.7 percent of all personal automobile insurance, 65.3 percent of all commercial automobile insurance and 76.5 percent of the workers' compensation insurance in Hawaii.

The proposed requirement that the selection of the examining doctor shall be by mutual agreement will needlessly delay the IME process to the detriment of the injured workers, increase the IME costs for insurers and employers, and make the IME process unnecessarily contentious.

If a party wants to contest the selection of a particular IME physician by the Director, a resolution of that dispute would need to be resolved *before* any IME may be conducted. Therefore, the insurer could be hindered in its ability to comply with its regulatory duty to promptly investigate and settle claims, and will be prevented from securing timely information about the injured worker's medical diagnosis. Additionally, this new IME selection process, especially in situations where a party is contesting the Director's IME physician selection, could end up delaying the injured worker's ability to secure timely medical treatment.

SB 253 may create unintended adverse consequences for injured workers, impose additional unnecessary work for the Director and increase claims administrative costs.

For these reasons, PCI respectfully asks the committee to **hold** this bill.

LATE TESTIMONY

JDL/CPL Committee (s)

Measure title: Relating to Workers Compensation

Hearing scheduled on February 10, 2016 at 8:30 am in Conference Room 016

Testimony in support of SB 253

Dear JDH/CPL Committee Chair and members,

I am in strong support of SB 253. The changes requested in this measure will ensure transparency and fairness in Workers' Compensation cases. Mutually agreed upon licensed IME doctor will ensure that the IME reports will not be biased since the Employer currently appoints IME doctors. Setting a deadline to submit IME reports will prevent any delay in the treatment of the employee and in deterioration of employee's health conditions.

Further, I feel that this measure needs to be amended to include "a hearing in case more than one IME is requested by the Employer. Employers always give and justify their reasons for more than one IME. Hearing Officer should decide if an additional IME is required. Employer should be liable to pay for work compensation until the Hearing Officer makes his decision."

Name: *Wade Okuma Wade*

Phone Number:

Email:

Date: *2/8/17*

JDI/CPL Committee (s)

Measure title: Relating to Workers Compensation

Hearing scheduled on February 10, 2016 at 8:30 am in Conference Room 016

Testimony in support of SB 253

Dear JDH/CPL Committee Chair and members,

I am in strong support of SB 253. The changes requested in this measure will ensure transparency and fairness in Workers' Compensation cases. Mutually agreed upon licensed IME doctor will ensure that the IME reports will not be biased since the Employer currently appoints IME doctors. Setting a deadline to submit IME reports will prevent any delay in the treatment of the employee and in deterioration of employee's health conditions.

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Name: VEDA DAS

Phone: 202-231-1111

Email: veda.das@delaware.gov

Date: 2/8/2017

LATE TESTIMONY

JDI/CPL Committee (s)

Measure title: Relating to Workers Compensation

Hearing scheduled on February 10, 2016 at 8:30 am in Conference Room 016

Testimony in support of SB 253

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Name:



Phone:

Email:

Date:

2/8/17