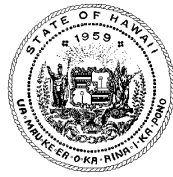


DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RYKER WADA
DEPUTY DIRECTOR

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

April 3, 2017

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE

For Hearing on Tuesday, April 4, 2017
2:00 p.m., Conference Room 308

BY

JAMES K. NISHIMOTO
DIRECTOR

Senate Bill No. 859, S.D. 1, H.D. 1
Relating to Workers' Compensation

(WRITTEN TESTIMONY ONLY)

TO CHAIRPERSON LUKE, VICE CHAIR CULLEN, AND MEMBERS OF THE
COMMITTEE:

Thank you for the opportunity to provide **comments** on S.B. 859, S.D. 1, H.D. 1.

The purposes of S.B. 859, S.D. 1, H.D. 1, are to allow an employee to have a chaperone present during the medical examination relating to a work injury under workers' compensation and, with the approval of the examining physician or surgeon, to record the medical examination; and specify that a chaperone shall not obstruct medical exams.

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.

First, many, many bills and much testimony has been submitted to this committee in sessions past to change the current law pertaining to independent medical examinations ("IMEs") due to its alleged failings. The matter has also been debated at length in the Workers' Compensation Working Group convened by House Concurrent

Resolution 168 (2015) for the purpose of streamlining the WC process including the employer-requested medical examination, under chapter 386. From the employer's perspective, the IME remains one of the few ways it can defend against a claim that did not arise out of the course and scope of employment or against medical treatment that is not related to the work injury. This is particularly true in light of the statutory presumption in Section 386-78, HRS, that a claim is for a covered work injury, and recent Hawaii Supreme Court decisions such as Pulawa v. Oahu Construction Co., Ltd., and Seabright Insurance Company, SCWC-11-0001019 (Hawaii November 4, 2015) which liberalized the standard for medical treatment from "reasonable and necessary" to "reasonably needed" and allows claimants to "receive[] the opportunity for the greatest possible medical rehabilitation."

Second, in lieu of making any substantive changes to the IME provision at this time, we respectfully request consideration be given to deferring this measure pending completion of the working group report and the workers' compensation closed claims study mandated by Act 188 (SLH 2016), wherein the legislature found that "a closed claims study is warranted to objectively review whether specific statutory changes are necessary" to the workers' compensation law. Upon delivery of the respective reports to the legislature, the empirical findings and specific recommendations of the working group and closed claims study can inform any legislative initiatives on workers' compensation, including IMEs.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

April 4, 2017

To: The Honorable Sylvia Luke, Chair,
The Honorable Ty J. K. Cullen, Vice Chair, and
Members of the House Committee on Finance

Date: Tuesday, April 4, 2017
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

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

Re: S.B. No. 859 SD1 HD1 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal amends section 386-79, Hawaii Revised Statutes (HRS), which relates to examinations ordered by the DLIR Director, by proposing that the employee has the right to have a chaperone designated and paid by the employee present at the examination. The employee, with consent of the physician or surgeon, shall have the right to record the examination with a recording device paid for by the employee. If the employee and/or the employee's designated chaperone obstructs the examination, the employee's compensation may be suspended.

DLIR supports the intent of the measure to allow for the attendance of chaperones in an Independent Medical Examination (IME), which has the potential to increase the overall fairness of the IME process. However, we offer comments regarding the recording of the IME.

II. CURRENT LAW

Section 386-79, HRS, allows the employee to have a physician or surgeon designated and paid by the employee present during the examination. It does not identify that a chaperone may be present and does not specify the employee's right to record the examination.

III. COMMENTS ON THE SENATE BILL

DLIR supports the intent of the measure to allow for the attendance of chaperones in an Independent Medical Examination (IME), which has the potential to increase the overall fairness of the IME process. However, we offer comments regarding the recording of the IME.

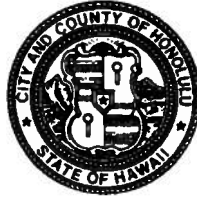
There may be some hesitation on the part of a physician or surgeon conducting the examination to have a “chaperone” present and/or to have the entire examination recorded. With the exception of an interpreter or for other specific reasons, some physicians may already have a policy of restricting the examination to solely the injured employee. This measure may reduce the number of physicians or surgeons willing to do these types of examination.

The proposal should identify what specific recording devices shall be allowed and who will be responsible for the costs of the recording, along with a specified timeframe to produce the copies, if copies of the recorded examination are requested by the employer, director, or physician or surgeon who performed the IME.

The Department is also concerned with the potential altering of the recording and with ensuring that the recordings are subject to privacy laws.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

April 4, 2017

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
and Members of the Committee on Finance
The House of Representatives
State Capitol, Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

SUBJECT: Senate Bill No. 859, SD1, HD1
Relating to Workers' Compensation

S.B. 859, SD1, HD1 seeks to amend Hawaii Revised Statutes ("HRS") Section 386-79 to allow a chaperone to be present during an ordered medical examination and authorizes the employee with the right to record the examination provided the examining physician approves of the recording. The City and County of Honolulu offers the following comments regarding the measure.

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 HRS Section 386-79 in the manner suggested by S.B. 859, SD1, HD1 will likely serve to reduce the number of physicians and surgeons willing to perform an independent medical examination, thereby limiting the employer's fundamental right to evaluate whether the employer is liable for the claim and/or proffered medical treatment.

In light of the above, the City and County of Honolulu asks that the committee consider deferring S.B. 859, SD1, HD1 pending completion of the workers' compensation closed claims study mandated by Act 188 (SLH 2016). The legislature would then be able to review the study's empirical findings and specific recommendations to objectively determine whether specific statutory changes, such as those set forth in the measure, are necessary to the workers' compensation law.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo".

Carolee C. Kubo
Director

The Twenty-Ninth Legislature
Regular Session of 2017

THE HOUSE OF REPRESENTATIVES
Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair
State Capitol, Conference Room 309
Tuesday, April 4, 2017; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 859 SD 1 HD 1
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 supports S.B. 859 SD 1 HD 1, which allows an employee to have a chaperone present and to use a recording device during the medical examination, with the approval of the examining doctor, under the workers' compensation system.

This measure provides greater fairness and more integrity to the independent medical examination process. Providing the opportunity for the injured worker to be accompanied by a "chaperone" while being examined by a physician or surgeon designated and paid for by the employer, allows the worker to feel better supported, in what would otherwise be an unfamiliar and intimidating experience.

Although current law allows the injured worker the right to a physician or surgeon of his or her designation to be present at the independent medical examination, that physician or surgeon would have to be paid by the injured worker. In most instances an injured worker would not have the financial means to be able to pay for that kind of medical representation.

S.B. 859 SD 1 HD 1 also provides the injured worker the opportunity to record the independent medical examination, with a recording device provided by the worker, if the examining doctor does not object. This would result in a better balance, as the doctor would not be forced to allow the recordation of the discussion during the examination, but the possibility of providing consent is still available.

The ILWU urges passage of S.B. 859 SD 1 HD 1. Thank you for the opportunity to share our views on this measure.



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814

Phone (808) 536-7702 Fax (808) 528-2376

www.hawaiimedicalassociation.org

FROM:

HAWAII MEDICAL ASSOCIATION

Dr. Christopher Flanders, Executive Director

Lauren Zirbel, Community and Government Relations

TO:

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty J.K. Cullen, Vice Chair

DATE: Tuesday, April 4, 2017

TIME: 2:00 P.M.

PLACE: Conference Room 308

Re: SB 859– IME Chaperone and /or Recording device allowed – STRONG SUPPORT

The HMA is in strong support of SB 859, which allows injured workers the right to have a chaperone and a recording device at an IME examination. Having a recording or witness to the exam protects both the examiner and the injured worker.

Thank you for the opportunity to testify.

HMA OFFICERS

President – Bernard Robinson, MD President-Elect – William Wong, Jr., MD Secretary – Thomas Kosasa, MD

Immediate Past President – Scott McCaffrey, MD Treasurer – Michael Champion, MD

Executive Director – Christopher Flanders, DO

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 3, 2017 12:11 PM
To: FINTestimony
Cc: moore4640@hawaiiantel.net
Subject: *Submitted testimony for SB859 on Apr 4, 2017 14:00PM*

SB859

Submitted on: 4/3/2017

Testimony for FIN on Apr 4, 2017 14:00PM in Conference Room 308

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

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

TESTIMONY OF ALISON UEOKA

HOUSE COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Tuesday, April 4, 2017
2:00 p.m., Room 308

SB 859, SD1, HD1

Chair Luke, Vice Chair Cullen, and members of the Committee on Finance, my name is Alison Ueoka, President of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. The bill allows a chaperone to accompany an employee in an exam and allows recordation of the exam with the examiner's approval.

We believe this bill will further restrict the small pool of physicians willing to perform IMEs in the state. Having a chaperone in the exam room will change the tone of the interaction between IME physician and patient to one that may be of an unnatural flow, self-conscious, and stilted. If the pool of IME physicians is reduced, it will not serve the injured worker. The delays to obtain an IME will be longer, mutual agreement of IME physicians may be hampered, and cases will remain open longer with no resolution pending an IME. This could prevent medical treatment, prolong a settlement, or delay an impairment rating, all of which are harmful to the injured worker. For the employer, the longer delays add to the medical and indemnity costs which are ultimately passed on to the business and then to the consumer. We ask that this bill be held.

Thank you for the opportunity to testify.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Tuesday, April 4, 2017 at 2:00 P.M.
Conference Room 308, State Capitol**

RE: SENATE BILL 859 SD1 HD1 RELATING TO WORKERS' COMPENSATION

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 859 SD1 HD1, which allows an employee to have a chaperone present during the medical examination relating to a work injury under workers' compensation and, with the approval of the examining physician or surgeon, to record the medical examination; specifies that a chaperone shall not obstruct medical exams.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We oppose the bill for many reasons which we think will hurt the overall process which will adversely affect employees and employers.

First, we believe this bill will restrict the already small pool of physicians willing to perform IMEs in the state by requiring malpractice insurance, as not all of them carry this insurance. While they give the patient the same level of care as if they were their own patient, the IME physician is not the treating physician and has not had a history of treating the patient over time. If the pool of IME physicians is reduced, it will not serve the injured worker. The delays to obtain an IME will be longer, mutual agreement of IME physicians may be hampered, and cases will remain open longer with no resolution pending an IME.

Second, most providers offer each claimant the option of a chaperone for the interview and/or the physical exam. That chaperone is a member of their staff. No other parties are allowed. To maintain the independence of the proceedings, it is inappropriate to allow family members, attorneys, or any other "interested" parties in the exam. Third-party professional interpreters are the obvious exception, and only when the language barrier has been established in earlier aspects of the case.



Chamber *of* Commerce HAWAII

The Voice of Business

We also do not think recording devices of any kind should be allowed. There is no basis for their use, and there are a multitude of issues surrounding this including HIPPA privacy rights and potential exposure/liability, custody of the recording, alterations, deletions, etc.

We ask that this bill be deferred. Thank you for the opportunity to testify.

From: Idirenfeld@aol.com
Sent: Saturday, April 1, 2017 3:19 PM
To: FINTestimony
Subject: Testimony Against SB 859

Testimony Against SB 859

Aloha, I am writing in opposition to SB 859.

I am a physician who performs IME's.

I have extensive experience in this area.

Much earlier in my IME career, I allowed patient-selected chaperones to be present during the evaluation. After all, I reasoned, I had nothing to hide. I subsequently discontinued that based on my experience.

What I learned is that the presence of a chaperone is distracting and adversely affects the clinical evaluation of the patient.

Chaperones are not reliable witnesses to the evaluation.

They do not understand the process and have expectations that may or may not be valid.

The presentation of the patient becomes a self-conscious "performance" rather than an authentic interaction.

The presence of a chaperone adds nothing and detracts from the quality of the clinical interaction. Similarly, recording devices adversely affect the evaluation/examination process.

This can result in the evaluation becoming an awkward performance rather than a straight forward medical assessment.

It is intrusive and inhibiting.

It changes the tone of the interaction to one that can be stilted, self-conscious and unnatural for both the doctor and the patient.

There is currently a shortage of well-qualified physicians in Hawaii in many areas of specialization, including those performing IME's.

This bill will exacerbate that shortage as many IME physicians would likely decline to see patients under the provisions of this Bill.

Respectfully,

Lorne Direnfeld MD.

To: Chair, Representative Sylvia Luke, Vice Chair, Representative Ty J.K. Cullen and the Committee members of the House Finance Committee

Date: Tuesday, April 4, 2017

Time: 2PM

Place: Conference Room 308

RE: Strong Support for SB 859 with comments

Dear Chair Luke, Vice Chair Cullen and the House Finance Committee members,

I am a patient advocate representing patients and injured workers from all over Hawaii. I am in strong support of SB 859, which allows injured workers the right to have a chaperone and a recording device at an IME examination. Having a recording or witness to the exam protects both the examiner and the injured worker.

The original draft of this bill allowed an employee to bring a recording device to the examination. The current draft has been amended to say the employee may record the exam only with the examiners permission.

May I suggest that an amendment be made so that is recognizable in the IME report that a recording of the exam was requested and denied? For example, at the beginning of the report it should read, "**RECORDING OF THE EXAM WAS REQUESTED AND DENIED BY EXAMINER**". If the examiner doesn't want the exam recorded, the employee has the right for that to be included in the report.

Thank you for your consideration of this amendment.

Cathy Wilson

LATE

From: Byron Izuka <Byron@drizuka.com>
Sent: Monday, April 3, 2017 5:09 PM
To: FINTestimony
Subject: SB859, IME Chaperone Bill

To: Chair, Representative Sylvia Luke
Vice Chair, Representative Ty J.K. Cullen and
The Committee members of the House Finance Committee

Date: Tuesday, April 4, 2017
Time: 2PM
Place: Conference Room 308

RE: Support for SB 859

Dear Chair Luke, Vice Chair Cullen and the House Finance Committee members,

I am a pediatric orthopedic surgeon in private practice who has extensive experience with the use of live recordings in an outpatient setting. I would even go so far as to suggest that I am the most experienced local physician in this regard -- to date I have performed an estimated 600-700 such recordings with my patients and their caregivers and on Friday, April 7, 2017 I will be giving a formal scientific presentation on my experience with this process at the Hawaii Orthopaedic Association annual symposium at the Hawaii Prince Hotel.

Although I have found great utility with the use of moderate technology to facilitate the transformation and retention of information provided during office visits, there are also a number of significant pitfalls that can occur if such technology is not approached appropriately. If not done correctly, this type of interaction can actually lead to patient/caregiver discomfort and a decreased sense of satisfaction on their part, both of which are undesirable and potentially avoidable. My concern is that in the absence of appropriate instruction, many providers who may feel forced into providing this service may end up with a negative interaction rather than a positive one.

A potential solution is to include appropriate education as part of the implementation of this process, especially given the novelty of this new proposal. To this end, healthcare providers with appropriate experience should be an integral part of the rollout process. Such experience should be vetted through the usual standards of the so-called "scientific method". To accept self-proclaimed expertise in the absence of objective measures would be unacceptable and ill-advised.

I sincerely regret that I will not be able to present this testimony and person and thank you for allowing me to provide my input in this fashion.

Byron Izuka, M.D.
Children's Orthopaedics of Hawaii
Associate Professor - University of Hawaii Division of Orthopaedic Surgery

MPSEmailSecurity Message Security: [Check Authenticity](#)