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

From: Mark Sektman, Vice President

Re: SB 859 – Relating to Workers' Compensation  
**PCI Position: OPPOSE**

Date: Friday, February 24, 2017  
9:00 a.m., Room 016

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is **opposed** to SB 859 which allows an employee to have a chaperone present and use a recording device during the medical examination relating to a work injury under workers' compensation. The bill also allows the employee to a "duly qualified" physician or surgeon present at the medical examination. 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.

SB 859 defines a "duly qualified physician" and a "duly qualified surgeon" to mean one that is qualified to treat the injury being examined, possess medical malpractice insurance, and owes the same duty of care to the injured employee while performing the medical examination as would be owed to a traditional patient. The definitions, "duly qualified physician" and "duly qualified surgeon" would apply to both the IME physician and if one accompanies the employee in an IME. The bill also allows a chaperone to accompany an employee in an exam and allows recordation of the exam.

We believe this bill will further restrict the small pool of physicians willing to perform IMEs in the state. Having the exam recorded and allowing a physician, surgeon or 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. The provision that requires the IME physician to have medical malpractice insurance may also reduce the number of available physicians because not all of them may carry this coverage. Finally, the duty of care requirement could expose IME physicians to some liability. The IME physician may not have 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. 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 medical and indemnity costs which are ultimately passed on to the business and then to the consumer.

PCI respectfully requests the committee to hold this bill.

From:  
To: IDL Testimony  
Subject: SB 859  
Date: Thursday, February 23, 2017 5:25:31 PM

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Dear Chair and Committee Members:

I have been practicing workers' compensation law for claimants since 1982 and I am in favor of this bill.

Claimant's have a difficult time finding physicians who are willing to attend an IME with them since all the physicians want to be paid for their time and in advance before attending. The result is claimant's have to go alone.

This is unfair especially where English is a second language. I have been successful in having an interpreter attend but many times the insurance carrier adjuster will not pay for the interpreter and the claimant must pay out of pocket.

Each time I tell my client to ask if they can video tape or digital voice tape the IME they are refused.

Having a companion to attend with the claimant and to allow video or voice taping would be the only way to level the playing field.

I humbly submit this testimony and I am willing to testify in person if called upon.

Very truly yours,

*Randall N. Harakal*

Randall N. Harakal  
Attorney at Law

LAW OFFICES OF GARY Y. SHIGEMURA

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and limits of the desired consultation services.

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LATE TESTIMONY

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDL Testimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB859 on Feb 24, 2017 09:00AM\*  
**Date:** Thursday, February 23, 2017 3:57:34 PM

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**SB859**

Submitted on: 2/23/2017

Testimony for JDL on Feb 24, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Una Greenaway	Individual	Support	No

Comments:

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**LATE TESTIMONY**

**From:**  
**To:** [JDLTestimony](#)  
**Subject:** Support of SB 859  
**Date:** Friday, February 24, 2017 2:39:38 AM  
**Attachments:** [Tony Hunstiger M.Ed CRC.vcf](#)  
[SB 859 IME Chaperone - recording device.docx](#)

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

**DATE:** Friday, February 24, 2017  
**TIME:** 9:00 a.m.  
**PLACE:** Conference Room 016

**RE: Strong Support of SB 859**

Dear Chair Gil Keith-Agaran, Vice-Chair Karl Rhoads and Judiciary and Labor Committee,

As a vocational rehabilitation counselor working with injured workers in Hawaii for over twenty years I see the need for transparency in the independent medical evaluation process. Often injured workers tell me that the IME doctors tell them things that are then contradicted in the report the IME doctor submits. Having an independent observer present would make IME doctor's more accountable and help to protect vulnerable injured workers.

Please support and pass SB 859.

Submitted by,

*Tony Hunstiger*

Tony Hunstiger, M.Ed., CRC, LMHC

<p><b>Tony Hunstiger, M.Ed., CRC</b> Vocational Rehabilitation Counselor Case Management Works - Hawaii</p>
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To: COMMITTEE ON JUDICIARY AND LABOR  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair

**LATE TESTIMONY**

DATE: Friday, February 24, 2017

TIME: 9:00 a.m.

PLACE: Conference Room 016

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**RE: Strong Support of SB 859**

Dear Chair Gil Keith-Agaran, Vice-Chair Karl Rhoads and Judiciary and Labor Committee,

I am in support of SB 859. I believe that all injured employees should be allowed to have: a chaperone, or a recording device with them during their independent medical examination/IME. Please note the following.

- 1) That IMEs are daunting, and the patient does not always hear all that the physician is telling them about their prognosis.
- 2) That having a chaperone and or hearing device during the IME prevents any misconstrued information from the physician to the patient, and vice versa. It will also prevent any future: "He said she said" scenarios, as the IME will be memorialized via the chaperone and or hearing device.
- 3) That having a chaperone and or hearing device during the IME will also be cost effective, as it will prevent future misdiagnosis due to a misunderstanding during the IME.

Respectfully submitted by:

Helen Ann Lee



# LATE TESTIMONY

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDL Testimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB859 on Feb 24, 2017 09:00AM\*  
**Date:** Thursday, February 23, 2017 11:36:55 PM

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## **SB859**

Submitted on: 2/23/2017

Testimony for JDL on Feb 24, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gary Okamura M.D,	Individual	Support	No

### Comments:

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**RE: Strong Support of SB 859**

Dear Chair Gil Keith-Agaran, Vice-Chair Karl Rhoads and Judiciary and Labor Committee,

As a patient advocate I strongly support SB 859. This measure allows an Independent Medical Examiner performing an IME to be accountable for what he puts in his report. Patients are allowed to have chaperones with them on regular exams, why not an IME exam? What reason could an Independent Medical Examiner have to not want to have a chaperone attend or to have patient record the exam? Passage of this measure adds protection to the injured worker as well as the examiner.

Thank you for this opportunity to testify in support of SB 859.

Cathy Wilson

# IBEW1260

'A'OHE HANA NUI KE ALU 'IA

February 24, 2017

The Twenty-Ninth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Judiciary and Labor

## SB859 - RELATING TO WORKERS COMPENSATION

Chair Agaran, Vice Chair Rhoads and Members of the Committee,

The International Brotherhood of Electrical Workers Local Union 1260, AFL-CIO (IBEW1260), represents more than 3500 members, has advocated for all workers in the State of Hawaii for over 75 years and respectfully offers the following testimony in **SUPPORT** of Senate Bill 859 (SB859).

IBEW1260 members are provided professional representation in all areas of their work lives including any investigatory interviews. However, during a required medical examination by the employer's physician, the same employee is asked to stand alone, unprepared, against a medical professional who could cause loss of benefits and ultimately employment.

Support of SB859 would allow our members, and the rest of Hawaii's workers, when faced with the already stressful situation of a workplace injury, to be well represented by an advocate prepared to represent the employee during a medical investigation by the employer's physician. For this reason, IBEW1260 ask the Committee to support SB859 effectively standing for Hawaii's workers.

Mahalo for the opportunity to testify on this issue,

Respectfully,



Michael M. Brittain  
Asst. Business Manager  
IBEW1260 / AFL-CIO