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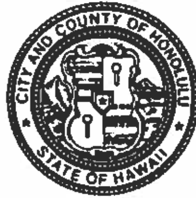
KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 9, 2018

The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
and Members of the Committee
on Consumer Protection & Commerce
The House of Representatives
State Capitol, Room 329
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

SUBJECT: House Bill No. 2202, H.D. 1
Relating to Workers' Compensation

H.B. 2202, H.D. 1, provides that a duly qualified physician or duly qualified surgeon selected and paid for by an employer to perform a medical examination on an employee relating to a work injury under workers' compensation shall be duly qualified to treat the injury being examined, possess medical malpractice insurance, and owe the same duty of care to the injured employee as to a traditional patient.

The City and County of Honolulu, Department of Human Resources, offers the following comments on the bill.

First, the requirements imposed by this measure on an IME physician are at odds with the purpose and nature of ordered examinations. An examination conducted under Section 386-79, HRS, is intended to assess diagnosis, causation, prognosis, maximum medical improvement, work capacity, and/or appropriateness of care. As a result, no physician-patient relationship is created between the employee and examining physician. This independent nature of the examination and the concomitant non-existence of any physician-patient relationship are the cornerstones of medical examinations provided under this section. Consequently, there is no legal or medical basis to support the requirement that examiners possess medical malpractice insurance in order to conduct such an examination.

Second, mandating that medical examiners provide the same duty of care to employees examined as a traditional patient is also legally and medically unfounded. Imposing such a requirement would potentially establish a physician-patient relationship

between the parties or at the very least create the appearance of one, thereby destroying one of the foundational tenets of independent medical examinations.

Third, we note that this H.D. 1 version now defines the phrase "duly qualified" as "a doctor whose specialty is appropriate for the injury to be examined." However, this definition still lends itself to multiple competing interpretations of what is an appropriate specialty, particularly when a claim involves examination of multiple injuries. This bill is certain to have the unintended consequence of potentially lengthening certain claims as both employees and/or their attorneys and employers debate—and litigate at a hearing—the issue of whether the physician or surgeon at issue has the appropriate specialty and is therefore "duly qualified" to perform the examination.

Finally, from the City's perspective as a self-insured employer which pays benefits from public funds, the IME is one of the few tools the City can use to ensure that a questionable claim arose out of the course and scope of employment or that a requested medical treatment is related to the work injury. Without the benefit of an independent medical opinion, the City could be held liable for every claim that is filed and every medical treatment that is sought—even those injuries and treatments that would otherwise be covered by the employee's private medical insurance or a no-fault policy if the injury or treatment is necessitated by a non-work incident or a motor vehicle accident, respectively. 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 (Hawai'i 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."

Thank you for the opportunity to testify.

Sincerely,

Carolee C. Kubo
Director

HB-2202-HD-1
Submitted on: 2/7/2018 1:38:10 PM
Testimony for CPC on 2/9/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Delle Tanioka	AHCS	Support	No

Comments:

Francis G. Brewer, DC
1150 S. King Street, Suite 604
Honolulu, Hawaii 96814
(808) 593-0313

Chair Roy M. Takumi
Vice-Chair Linda Ichiyama
House Committee on Commerce and Consumer Protection

Re: House Bill No. 2202, H.D. 1, Relating to Workers' Compensation
Hearing Date: February 9, 2018
Hearing Time: 2:00 p.m.

Dear Chair Takumi, Vice-Chair Ichiyama, and members of the Committee,

My name is Francis Brewer, DC, and I am the President of Brewer Consulting Services. I have personally performed independent chiropractic evaluations for over twenty years. Thank you for the opportunity to testify on this measure.

House Bill No. 2202 amends Hawaii Revised Statutes, § 386-79 to, among other things, provide that the examining physician "owe the same duty of care to the injured employee while performing such a medical examination as would be owed to a traditional patient."

I respectfully oppose this measure because I believe that the amendments to HRS § 386-79 will taint the independent nature of the independent medical examination (IME) and independent chiropractic examination (ICE), and impose an inappropriate, unnecessary, and unduly burdensome standard upon examining physicians that is inconsistent with the purpose of IMEs/ICEs and the AMA Guides to the Evaluation of Permanent Impairment, 5th edition. All of this will result in a smaller pool of qualified IME/ICE physicians, and less effective direction of care of the employees.

My role as an independent chiropractic examiner is to impartially evaluate the employee's condition and treatment received, to determine if treatment provided was reasonable and appropriate, to determine whether additional diagnostic testing or treatment may be required and, upon request, to rate the employee's injury. Some people may feel that the IME/ICE process is designed only to cut employees off from care. To the contrary, it is meant to ensure that the employee is getting care that is effective for the workplace injury at issue. In many cases, additional treatment recommendations are made over and above that which have already been prescribed by the treating physician. The independent medical examination process more fully and further evaluates injured employees, which can result in additional appropriate diagnostic testing, specialist referrals, and treatment, benefitting both the employee and the employer. It is in this context that I have the following concern with H.B. No. 2202.

The IME/ICE physician is meant to be independent and objective. Holding examining physicians to the "same duty of care to the injured employee while performing such a medical examination as would be owed to a traditional patient" would necessarily transform the IME/ICE physician from an independent voice to an advocate, in circumstances where the examining physician does not have the requisite relationship and information to fully inform and advise the injured worker on all of his or her medical issues.

The integrity of the IME/ICE process must be preserved in order for the results to be reliable and useful, both for the employer and the employee. Imposing a treatment standard on the independent medical examiner would distort the results of the examination and impose an unreasonable degree of risk to the examining physicians that will discourage qualified physicians from participating as independent medical examiners.

For the foregoing reasons, I respectfully request that this measure be held.

Sincerely,

Francis G. Brewer, D.C.

Francis G. Brewer, D.C.

HB-2202-HD-1
Submitted on: 2/7/2018 3:21:45 PM
Testimony for CPC on 2/9/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Douglas Moore		Support	No

Comments:

Aloha Honorable committee members. Medical examination doctors should be held to the same standard as a treating physician. Medical examiners presently can commit injuries to or malpractice on injured workers without accountability. Inappropriate medical examination evaluations, if not held to an accountable standard can cause great harm to injured workers. If the medical examiner causes injuries to workers or commits malpractice, then the examiner should be held accountable same as a treating doctor. Please pass this bill.

HB-2202-HD-1
Submitted on: 2/8/2018 11:09:42 PM
Testimony for CPC on 2/9/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannie Lum	UH	Support	No

Comments:

Submitting Testimony

Jeannie Lum

Retired UH professor

Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

Rep. Henry J.C. Aquino	Rep. Calvin K.Y. Say
Rep. Ken Ito	Rep. James Kunane Tokioka
Rep. Aaron Ling Johanson	Rep. Ryan I. Yamane
Rep. Matthew S. LoPresti	Rep. Bob McDermott
Rep. John M. Mizuno	

NOTICE OF HEARING

DATE: Friday, February 9, 2018
TIME: 2:00 P.M.
PLACE: Conference Room 329

State Capitol

415 South Beretania Street

RELATING TO WORKERS' COMPENSATION.

HB 2202, HD1 (HSCR73-18) Status	Provides that a duly qualified physician or duly qualified surgeon selected and paid for by an employer to perform a medical examination on an employee relating to a work injury under workers' compensation shall be duly qualified to treat the injury being examined, possess medical malpractice insurance, and owe the same duty of care to the injured employee as to a traditional patient. (HB2202 HD1)

I have been subjected to taking an IME by my employer which was not necessary but only so that the employer would have a medical examiner falsify an interview and test me in order to support the employer's defense in my case against him. The IME report was sprinkled with false statements and used by the employer to attempt to negotiate lower amounts in insurance claims and case settlement. It is clearly a big scam by these psychologists who conduct IMEs because they are not liable for their reports and the reports are fixed and tweaked for the benefit of the Employer. NO REAL JUSTICE and everybody knows it. Even my physician and therapist know about Dr. Likewise and the scam he runs but they cannot do anything about it. It's time that physicians and psychologists be held to the same standard. Why should it be different for work injury cases? What sense has this ever made. Also, psychologists should be added as an amendment to this bill to read that "Provides that a duly qualified physician or qualified surgeon or qualified psychologist…."

DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

LATE

LEONARD HOSHIJO
ACTING DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 9, 2018

To: The Honorable Roy M. Takumi, Chair,
The Honorable Linda Ichiyama, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: Friday, February 9, 2018
Time: 2:00 p.m.
Place: Conference Room 329, State Capitol

From: Leonard Hoshijo, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2202 HD1 RELATING TO WORKERS' COMPENSATION

I. OVERVIEW OF PROPOSED LEGISLATION

HB 2202 HD1 proposes to amend section 386-79, Hawaii Revised Statutes (HRS), to specify that a “duly qualified” physician or “duly qualified” surgeon selected and paid for by the employer are “duly qualified” to treat the injury being examined. “Duly qualified” is defined as used in this section. The bill also proposes “duly qualified” physician or “duly qualified” surgeon be listed in the title of Section 386-79, HRS.

DLIR supports the intent of this measure to further define physician and surgeon and offers comments.

II. CURRENT LAW

Section 386-27, HRS, provides qualifications and duties of health care providers. The director shall qualify any person initially who has a license to practice under Chapters 453 Medicine or Osteopathy, 448 Dentistry, 442 Chiropractic, 455 Naturopathic medicine, 459 Optometry, 463E Podiatry, 465 Psychology and 457 Advanced Practice Registered Nurses.

Section 386-79, HRS, allows the employee to have a duly qualified physician or surgeon designated and paid by the employee conduct the examination and the employee and the employee’s right to have a physician, surgeon or chaperone present at the examination.

Equal Opportunity Employer/Program
Auxiliary aids and services are available upon request to individuals with disabilities.
TDD/TTY Dial 711 then ask for (808) 586-8866

III. COMMENTS ON THE HOUSE BILL

DLIR supports the intent of this measure to further define physician and surgeon and supports the proposed (c) on page three, lines 3-14, and especially the duty of care provision (c)(3). The Department notes that although §386-27 gives the Director the authority to qualify medical providers, the Director relies on the Hawaii Medical Board, which regulates licensure under the Department of Commerce and Consumer Affairs' Professional & Vocational Licensing Division. The Hawaii Medical Board would also regulate matters pertaining to the duty of care provision (c)(3) in the proposal.

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