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March 27, 2019

To: The Honorable Karl Rhoads, Chair,
The Honorable Glenn Wakai, Vice Chair, and
Members of the Senate Committee on Judiciary

Date: Thursday, March 28, 2019
Time: 9:45 a.m.
Place: Conference Room 016, State Capitol

From: Scott T. Murakami, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 390 HD1 SD1 RELATING TO WORKERS' COMPENSATION

I. OVERVIEW OF PROPOSED LEGISLATION

This measure proposes to eliminate the sunset date of June 30, 2019 set forth in Act 172 (SLH, 2017), thus making permanent:

- the right of the employee to record a medical examination relating to a workers' compensation injury,
- the allowance for a chaperone to be present during an employee's medical examination relating to a workers' compensation injury, provided that the examining physician or surgeon approves of the recording, and
- the suspension of an employee's right to claim compensation for a work injury if the employee or the employee's chaperone obstructs a medical examination relating to a workers' compensation injury.

DLIR supports this measure.

II. CURRENT LAW

Section 386-79 (a), HRS, provides in part that when an employee is scheduled for a medical examination, "The employee shall also have the right to record such examination by a recording device designated and paid for by the employee; provided that the examining physician or surgeon approves of the recording."

Section 386-79(a) also requires suspension of the employee's right to claim compensation if the employee refuses to submit to examination or the employee's designated chaperone obstructs the examination.

These provisions in the law were enacted by Act 172 (SLH, 2017) and would sunset on June 30, 2019, with section 386-79, HRS, reenacted in the form in which it read on the day before the effective date of Act 172.

III. COMMENTS ON THE HOUSE BILL

DLIR supports making permanent these provisions added to the law by Act 172.

The Thirtieth Legislature
Regular Session of 2019

THE SENATE

Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Glenn Wakai, Vice Chair
State Capitol, Conference Room 016
Thursday, March 28, 2019; 9:45 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 390, H.D.1, S.D.1
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 **supports** H.B. 390, H.D.1, S.D.1, Makes permanent Act 172, Session Laws of Hawaii 2017, which: (1) grants employees the right to have a chaperone present during a medical examination relating to a workers' compensation work injury and, with the approval of the examining physician or surgeon, to record the examination; and (2) provides that if an employee or employee's chaperone obstructs the medical examination, the employee's right to worker's compensation shall be suspended until the refusal or obstruction ceases.

A worker receiving an examination for an injury sustained on the job should have the right to have chaperone present including the ability to record during the examination for transparency purposes. Occasionally, workers may want to seek a second opinion or discuss the injury with their primary physician and a chaperone present including a recording during the examination could help with that process.

The ILWU Local 142 urges the passage of H.B. 390, H.D.1, S.D.1. Thank you for the opportunity to offer testimony on this measure.



**To: Senator Karl Rhoads, Chair
Senator Glenn Wakai, Vice Chair
Members of the Committee on Judiciary**

Date: Thursday, March 28, 2019

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**Place: Conference Room 016
State Capitol
415 South Beretania Street**

Support for House Bill 390 SD1

As Chair of the Legislative Committee and Past President of Work Injury Medical Association of Hawaii representing the providers treating injured workers in our state, we strongly support HB 390 SD1.

The key provision of this bill provides for the following:

Removes the sunset date (June 30, 2019) of the provision allowing an employee to have the right (i) to have a physician, surgeon, or chaperone designated and paid by the employee present at the examination, and (ii) to record such examination by a recording device designated and paid for by the employee.

Justification:

- Employer's physicians do not have any duty of care to the injured worker and often unreasonably delay the impartial examination.
- For many workers with severe injuries, the workers' compensation system is the only thing that stands between them and a downward spiral of unemployment, debt and even homelessness. The use of "employer medical examinations" results in delays that often have devastating consequences to injured workers.
- For injured workers, these medical examinations can be very intimidating with so much at stake.
- Allowing a worker to bring a chaperone and record such an examination provides comfort to the worker and greater transparency and evidence to a process often shrouded in secrecy.
- This bill attempts to bring greater fairness to the IME process by holding the employer physician more accountable for his/her diagnosis.

- I would encourage you to read, if you haven't already, the Civil Beat series "Waiting In Pain" at <http://www.civilbeat.org/projects/waiting-in-pain/> and the related more recent article at <https://www.civilbeat.org/2018/12/delays-denials-wasted-tax-dollars-does-troubled-treatment-of-injured-workers/>.

Sincerely,

Scott J Miscovich MD

Chair of Legislative Committee and Past President

Work Injury Medical Association of Hawaii