

DAVID Y. IGE
GOVERNOR



RYKER WADA
DIRECTOR

JASON MINAMI
DEPUTY DIRECTOR

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

February 4, 2019

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on February 7, 2019
9:30 a.m., Conference Room 309

BY

RYKER WADA
DIRECTOR

House Bill No. 390
RELATING TO WORKERS' COMPENSATION

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON JOHANSON, VICE CHAIR ELI, AND MEMBERS OF THE
COMMITTEE:

Thank you for the opportunity to provide **comments** on H.B. 390

H.B. 390 proposes to amend HRS, §386-79, by repealing the requirement that the examining physician or surgeon of an employee's medical examination approve of the recording of the medical examination relating to a work injury for workers' compensation purposes.

Pursuant to HRS, §26-5, the Department of Human Resources Development, is responsible for the planning and administration of the State's self-insured and centralized workers' compensation program for all employees of the Executive branch and agencies, the public charter schools, the Hawaii Public Housing Authority, and the Legislature.

H.B. 390 attempts to delete the requirement that [~~;- provided that the examining physician or surgeon approves of the recording~~], which was a new provision that was added just merely two years ago via Act 172, SLH 2017, (S.B. NO. 859). The caveat that the examining physician or surgeon must approve of the recording was introduced under S.B. 859, S.D. 1, H.D. 1, in which the measure was fully supported by entities such as the ILWU Local 142, Hawaii Medical Association, and the Hawaii Injured Workers Association. (Refer to HSCR No. 1719). The concerns raised at that time by the Department of Labor and Industrial Relations was that the bill could reduce the number of physicians or surgeons willing to perform these examinations and the ILWU Local 142 testified that use of a recording device "could result in the employer's physician or surgeon feeling uncomfortable or even intimidated." The resulting

language currently in the statute was the compromise agreed upon by all stakeholders and should remain unamended.

Thank you for the opportunity to testify.

The Thirtieth Legislature
Regular Session of 2019

THE HOUSE

Committee on Labor and Public Employment
Representative Aaron Ling Johanson, Chair
Representative Stacelynn K.M. Eli, Vice Chair
State Capitol, Conference Room 309
Thursday, February 7, 2019; 9:30 a.m.

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

The ILWU Local 142 **supports** H.B. 390, which repeals the requirement that the examining physician or surgeon of an employee's medical examination approve of the recording of the medical examination relating to a work injury for workers' compensation purposes.

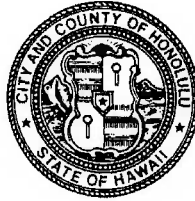
A worker receiving an examination for an injury sustained on the job should have every right to record the examination for transparency purposes. Occasionally, workers may want to seek a second opinion or discuss the injury with their primary physician and a recording of the examination will help with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

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

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

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 5, 2019

The Honorable Aaron Ling Johanson, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
and Members of the Committee
on Labor & Public Employment
The House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Eli, and Members of the Committee:

**SUBJECT: House Bill No. 390
Relating to Workers' Compensation**

H.B. 390 repeals the requirement that the examining physician or surgeon of an employee's medical examination approve of the recording of the medical examination relating to a work injury for workers' compensation purposes.

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

This bill proposes to amend Section 386-79(a), which was last amended just two years ago by Act 172 (2017) to add the sentence, "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." The original version of the bill which became Act 172, S.B. 859, contained only the first clause. However, the Department of Labor and Industrial Relations testified about its concern that the bill could reduce the number of physicians or surgeons willing to perform these examinations. Also, the ILWU Local 142 testified that use of a recording device "could result in the employer's physician or surgeon feeling uncomfortable or even intimidated."

Given the foregoing issues, the Senate Committee on Judiciary and Labor struck the perfect compromise for all stakeholders when it amended the bill in S.B. 859, S.D. 1, by adding the second clause—which allows the recording if the examining doctor

The Honorable Aaron Ling Johanson, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
and Members of the Committee
on Labor & Public Employment
The House of Representatives
February 5, 2019
Page 2

approves—based on the ILWU's recommendation. We believe that the current H.B. 390 resurrect the same concerns from 2017 and that Section 386-79(a) should therefore be left as is.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, reading "Carolee C. Kubo". The signature is written in a cursive, flowing style.

Carolee C. Kubo
Director

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



LATE

SCOTT T. MURAKAMI
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

February 7, 2019

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Stacelynn K.M. Eli, Vice Chair, and
Members of the House Committee on Labor and Public Employment

Date: Thursday, February 7, 2019

Time: 9:30 a.m.

Place: Conference Room 309, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

HB390 amends section 386-79 (a), Hawaii Revised Statutes (HRS), pertaining to Independent Medical Examinations (IMEs) by repealing the requirement that the examining physician or surgeon must approve of the recording before an employee may record the employee's medical examination.

This measure also eliminates the sunset date of June 30, 2019 set in Act 172 (SLH, 2017) thus making permanent:

- the right of the employee to record the medical examination,
- the allowance for a chaperone to be present during an employee's medical examination and
- the suspension of an employee's right to claim compensation for a work injury if the employee of the employee's chaperone obstructs the medical examination

DLIR supports the intent of the measure and provides comments with concerns.

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, Session Laws of Hawaii 2017. This Act sunsets 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.

III. COMMENTS ON THE HOUSE BILL

DLIR supports the right of the employee to record the medical examination and to have a chaperone present at the examination. However, DLIR is concerned that the proposal to remove the requirement that the examining physician or surgeon approve of the recording of the examination could lead to further delays in the claims process.

There exists a limited pool of doctors willing to perform IMEs and repealing the right of the physician or surgeon to approve of the recording of the examination may deter them from examining the employee. This would lead to a further reduction of the limited pool of IME doctors, which would lead to further delays in the workers’ compensation benefits process.

HB-390

Submitted on: 2/6/2019 4:43:28 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Adam Yonamine	Individual	Support	No

Comments:

LATE

HB-390

Submitted on: 2/6/2019 8:07:40 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy wilson	Individual	Support	No

Comments:

To: Rep. Aaron Ling Johanson, Chair

Rep. Stacelynn K.M. Eli, Vice Chair

Members of the Committee on Labor & Public Employment

Date: Thursday, February 7, 2019

Time: 9:30 a.m.

Place: Conference Room 309

Support for House Bill 390

As a patient advocate, I strongly support HB 390.

Patients deserve the right to have someone with them during an IME examination, just as they do any other examination. This is a good law. Please bill 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.

Thank you for hearing this bill today.

HB-390

Submitted on: 2/6/2019 8:29:25 PM
Testimony for LAB on 2/7/2019 9:30:00 AM

LATE

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

Comments:

HB-390

Submitted on: 2/6/2019 9:01:23 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Janel Denny	Individual	Support	No

Comments:

LATE

HB-390

Submitted on: 2/7/2019 8:43:47 AM

Testimony for LAB on 2/7/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lily Miyahira	Individual	Support	No

Comments:

HB-390

Submitted on: 2/7/2019 8:44:46 AM

Testimony for LAB on 2/7/2019 9:30:00 AM

LATE

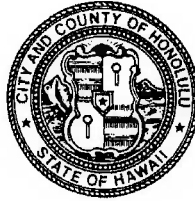
Submitted By	Organization	Testifier Position	Present at Hearing
Carmen Mitsuyasu-Gapero	Individual	Support	No

Comments:

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February 5, 2019

The Honorable Aaron Ling Johanson, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
and Members of the Committee
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The House of Representatives
State Capitol, Room 309
415 South Beretania Street
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Dear Chair Johanson, Vice Chair Eli, and Members of the Committee:

SUBJECT: House Bill No. 390
Relating to Workers' Compensation

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

This bill proposes to amend Section 386-79(a), which was last amended just two years ago by Act 172 (2017) to add the sentence, "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." The original version of the bill which became Act 172, S.B. 859, contained only the first clause. However, the Department of Labor and Industrial Relations testified about its concern that the bill could reduce the number of physicians or surgeons willing to perform these examinations. Also, the ILWU Local 142 testified that use of a recording device "could result in the employer's physician or surgeon feeling uncomfortable or even intimidated."

Given the foregoing issues, the Senate Committee on Judiciary and Labor struck the perfect compromise for all stakeholders when it amended the bill in S.B. 859, S.D. 1, by adding the second clause—which allows the recording if the examining doctor

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Page 2

approves—based on the ILWU's recommendation. We believe that the current H.B. 390 resurrect the same concerns from 2017 and that Section 386-79(a) should therefore be left as is.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Carolee C. Kubo
Director

LATE



**To: Rep. Aaron Ling Johanson, Chair
Rep. Stacelynn K.M. Eli, Vice Chair
Members of the Committee on Labor & Public Employment**

Date: Thursday, February 7, 2019

Time: 9:30 a.m.

Place: Conference Room 309

State Capitol

415 South Beretania Street

Support for House Bill 390

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.

The key provisions of this bill provide for the following:

- (a) Repeals the requirement that the examining physician or surgeon of an employee's medical examination approve of the recording of the medical examination relating to a work injury for workers' compensation purposes; and
- (b) 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 (despite an employer physician's objection) 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