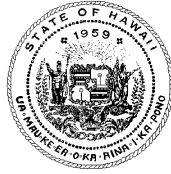


DAVID Y. IGE
GOVERNOR



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. 863
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. 863

H.B. 863 proposes to amend HRS, §386-79, by requiring a physician or surgeon who performs a medical exam on an employee for workers' compensation purposes to be licensed in the State, possess medical malpractice insurance, and owe the same duty and standard of care to the injured employee as owed to a traditional patient. Makes permanent an employee's right to record medical examinations.

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.

As a self-insured employer, 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 HRS, §386-79, is intended to assess diagnosis, causation, prognosis, maximum medical improvement, work capacity, and/or appropriateness of care—*independent* of the injured workers' attending physician. It is the attending physician who has the patient-physician relationship. No such relationship is created or should exist between the employee and examining physician for it to be considered independent. 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 should be required to possess medical malpractice insurance in order to conduct such an examination.

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

Finally, from DHRD's perspective as a self-insured employer which pays benefits from public funds, the IME is one of the few tools the employer 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 examination, the State 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 no-fault policy (if the injury or treatment is necessitated by a non-work related incident or a motor vehicle accident). This is particularly true in light of the statutory presumption clause contained in HRS, §386-78, that a claim is for a covered work injury, and the Hawaii Supreme Court decision in Pulawa v. Oahu Construction Co., Ltd., SCWC-11-0001019 (Hawai'i 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.



Written Testimony Presented Before the
House Committee on Labor & Public Employment
February 7, 2019 9:30 a.m.

by
Laura Reichhardt, MS, AGNP-C, APRN
Director, Hawai'i State Center for Nursing
University of Hawai'i at Mānoa

**COMMENTS RELATED TO
HB 863 RELATING TO WORKERS' COMPENSATION**

Chair Johanson, Vice Chair Eli, and members of the House Committee on Labor & Public Employment, thank you for this opportunity to provide testimony with comments related to this bill, HB 863. This bill aims to require a physician or surgeon who performs a medical exam on an employee for workers' compensation purposes to be licensed in the State, possess medical malpractice insurance, and owe the same duty and standard of care to the injured employee as owed to a traditional patient. Makes permanent an employee's right to record medical examinations.

In 2017, the DLIR proposal put forth as SB 984 was signed in to law as Act 153, Session Laws of Hawai'i 2017. This act amended the definition of "physician" in workers' compensation law to include Advanced Practice Registered Nurses (APRNs). The testimony put forth by DLIR at that time stated the measure would "help alleviate the shortage of physicians willing to treat injured workers" and that "allowing APRNs to treat injured workers as the physician will help alleviate the shortage of physicians willing to treat injured workers and improve access to health care services, especially on the Neighbor Islands."

The Hawai'i State Center for Nursing conducts biennial research on the nursing workforce supply. The most recent Hawai'i Nursing Supply Report, published in 2017, finds that advanced practice registered nurses have grown 104% in 12 years, and are present all over Hawai'i, including the most rural and remote areas, thereby bringing primary care to the communities where people live and work.

Therefore, the Center for Nursing respectfully requests the Committee on Labor & Public Employment to consider revising this measure as follows:

Page 3, Line 8-9:

Is a physician as defined in chapter 861-1 and is licensed pursuant to their appropriate licensing authority;

Thank you for the opportunity to provide comments with recommended considerations for amendments, should this measure pass forward.

**TESTIMONY BEFORE THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**

H.B. 863

Relating to Workers' Compensation

Thursday, February 7, 2019
9:30 a.m., Agenda Item #11
State Capitol, Conference Room 309

Marleen Silva
Manager, Workers' Compensation
Hawaiian Electric Company, Inc.

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

My name is Marleen Silva and I am testifying on behalf of Hawaiian Electric Company Inc. and its subsidiary utilities Maui Electric Company, Limited and Hawai'i Electric Light Company, Inc. (collectively "the Hawaiian Electric Companies") in strong opposition to H.B. 863, Relating to Workers' Compensation.

This bill proposes changes to the existing statute to mandate that a "duly qualified physician" or "duly qualified surgeon" selected and paid for by an employer, must also be "duly qualified" to perform an independent medical examination ("IME") to treat the injury being examined. The examiner must possess medical malpractice insurance, and owe the same duty and standard of care to the injured employee as would be owed to a traditional patient.

We respectfully cannot support this measure because it imposes an unnecessary standard on physicians/examiners that is inconsistent with the purpose and intent of an administrative and "independent" medical evaluation, typically requested by an employer or insurer, or ordered by the Director of the Department of Labor and Industrial Relations under Section 386-79, Hawaii Revised Statutes. The role of the

examining physician is to provide an “independent” and objective opinion of the diagnosis, causation, and treatment of the injury. Therefore, the examining physician could not have a traditional doctor-patient relationship because they have not been involved in the direct care and treatment of the patient. Requiring that they “owe” the same duty of care to the injured employee while performing such a medical examination could not be possible, could distort the results, and would be an unreasonable expectation given their role as an “independent examiner” in the statutory process.

Imposing these standards on the examining physician will discourage the already limited pool of qualified physicians from performing these types of examinations and may lead to unintended consequences and further delays as the parties challenge a physician’s qualifications to be able to perform the examination, especially when an injuries involve multiple body parts, or along with psychological injuries.

Accordingly, the Hawaiian Electric Companies opposes H.B. 863. Thank you for this opportunity to submit testimony.

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. 863
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 **supports** H.B. 863, which requires a physician or surgeon who performs a medical exam on an employee for workers' compensation purposes to be licensed in the State, possess medical malpractice insurance, and owe the same duty and standard of care to the injured employee as owed to a traditional patient and makes permanent an employee's right to record medical examinations.

H.B. 863 is a strong bill that will help ensure examinations for worker related injuries are diagnosed appropriately and fairly by a duly qualified physician. It is very important that workers' compensation physicians offer the same duty and standard of care to the injured employee as would be owed to a traditional patient.

The ILWU Local 142 urges the passage of H.B. 863. Thank you for the opportunity to offer testimony on this measure.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



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. 863 RELATING TO WORKERS' COMPENSATION

I. OVERVIEW OF PROPOSED LEGISLATION

HB863 proposes to amend section 386-79, Hawaii Revised Statutes (HRS), to specify that a physician or surgeon selected and paid for by the employer are "duly qualified" to treat the injury being examined. "Duly qualified" is defined and limited to this section to include State licensure, possession of medical malpractice insurance, and requiring the same duty and standard of care owed to a traditional patient.

This measure also eliminates the sunset date of June 30, 2019 set in Act 172 (SLH, 2017) thereby making permanent the allowance for a chaperone during the examination, for the recording of the examination, and for the approval of the physician or surgeon to record the medical examination.

DLIR has concerns this measure with respect to the "duly qualified" provisions as it would lead to further delays in the claims process and potential litigious and unintentional consequences, including reducing the number of IME doctors, which is an already limited pool. DLIR supports the elimination of the sunset of Act 172 (SLH, 2017).

II. CURRENT LAW

Section 386-27, HRS, "Qualification and duties of health care providers." provides qualifications and duties of health care providers. It states that 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 employer to have a duly qualified physician or surgeon designated and paid by the employer to conduct the examination and the employee shall have the right to have a physician, surgeon or chaperone present at the examination. The section also allows the recordation of the examination provided the examining physician or surgeon approves of the recording.

III. COMMENTS ON THE HOUSE BILL

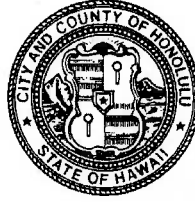
DLIR has concerns this measure with respect to the “duly qualified” provisions as it could lead to further delays in the claims process and potential litigious and unintentional consequences.

- Proposed subsection (d)(1) requires that a physician or surgeon be licensed under Chapter 453 (medicine or osteopathy) to perform the medical examination. This provision does not address the other health care providers (dentists, chiropractors, naturopaths, optometrists, podiatrists, psychologists, and APRNs) referenced in Section 386-27, HRS which could lead to further delays in the process as the parties challenge a physician's qualifications, especially in cases with multiple body parts or added issues (stress or psychological).
- Proposed subsection (d)(3) requires that a duly qualified 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." The Department is concerned as the Examiner does not have a traditional doctor-patient relationship as the Examiner is not involved in the claimant's care. The IME is a single event for the Examiner to opine on the diagnosis, treatment, and causation of the injury.
- Hawaii Independent Medical Examiners that perform exams (IMEs) are doctors, surgeons and medical expert witnesses who, according to the Board of Medicine and pursuant to Section 453-2, HRS, are not required to be licensed if they do not practice medicine or surgery and consequently will not meet the requirements to be “duly qualified.”

For the above reasons the DLIR feels that the “duly qualified” provisions of this measure will deter IME doctors from examining injured workers. 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.

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. 863
Relating to Workers' Compensation**

H.B. 863 requires a physician or surgeon who performs a medical exam on an employee for workers' compensation purposes to be licensed in the State, possess medical malpractice insurance, and owe the same duty and standard of care to the injured employee as owed to a traditional patient; and makes permanent an employee's right to record medical examinations.

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—independent of the injured workers' attending physician. It is the attending physician who has the patient-physician relationship. No such 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.

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

Second, mandating that medical examiners provide the same duty and standard of care to employees examined as would be owed to 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.

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 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

LATE

Written Testimony Presented Before the
House Committee on Labor and Public Employment
Hearing: Thursday February 7, 2019 @ 9:30am

By Members of



American Nurses Association
in Hawaii

**COMMENTS RELATED TO
HB 863 RELATING TO WORKERS' COMPENSATION**

Chair Johanson, Vice Chair Eli, and members of the House Committee on Labor & Public Employment, thank you for this opportunity to provide testimony with comments related to this bill, HB 863. This bill aims to require a “physician or surgeon” who performs a medical exam on an employee for workers' compensation purposes to be licensed in the State, possess medical malpractice insurance, and owe the same duty and standard of care to the injured employee as owed to a traditional patient.

We are members of the American Nurses Association in Hawaii, who are registered professional nurses practicing in this state. We are in support of the intent of this bill that protects the rights of patients. However, in 2017, the DLIR proposal put forth as SB 984 was signed in to law as Act 153, Session Laws of Hawai‘i 2017. This act amended the definition of “physician” in workers’ compensation law to include Advanced Practice Registered Nurses (APRNs). We respectfully request the Committee on Labor & Public Employment consider revising this measure throughout, to be inclusive of "physician" as a “doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopathic physician, a psychologist, an optometrist, an advanced practice registered nurse, and a podiatrist.”

Thank you for the opportunity to provide comments with recommended considerations for amendments, should this measure pass forward.

Contact information:

Dr. Linda Beechinor, APRN-Rx, FNP-BC
500 Lunalilo Home Road, #27-E
Honolulu Hawaii USA 96825

phone (808) 779-3001
e-mail: L.Beechinor@hawaiiantel.net

HB-863

Submitted on: 2/6/2019 4:44:40 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:

HB-863

Submitted on: 2/6/2019 8:18:50 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 863

As a patient advocate, I strongly support HB 863.

This bill attempts to bring greater fairness to the IME process by holding the employer physician accountable for his/her diagnosis. Opponents of this measure argue that an IME exam is intended to assess diagnosis, causation, prognosis, maximum medical improvement, work capacity, and/or appropriateness of care for the insurance company, and therefore an IME physician should not owe a duty of care to the injured worker.

Thank you for hearing this bill today.

LATE

HB-863

Submitted on: 2/6/2019 9:01:42 PM
Testimony for LAB on 2/7/2019 9:30:00 AM

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

Comments:

LATE

HB-863

Submitted on: 2/6/2019 8:30:18 PM

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

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

Comments:

LATE

HB-863

Submitted on: 2/7/2019 8:44:07 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-863

Submitted on: 2/7/2019 8:53:29 AM

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

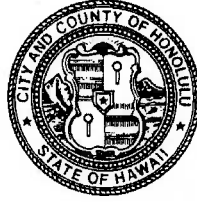
LATE

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

Comments:

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. 863
Relating to Workers' Compensation**

H.B. 863 requires a physician or surgeon who performs a medical exam on an employee for workers' compensation purposes to be licensed in the State, possess medical malpractice insurance, and owe the same duty and standard of care to the injured employee as owed to a traditional patient; and makes permanent an employee's right to record medical examinations.

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—independent of the injured workers' attending physician. It is the attending physician who has the patient-physician relationship. No such 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.

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

Second, mandating that medical examiners provide the same duty and standard of care to employees examined as would be owed to 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.

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 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



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 863

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 863.

The key provisions of this bill provide for the following:

- (a) Requires a workers' compensation impartial exam to be conducted by a "duly qualified physician" or "duly qualified surgeon"
- (b) Defines "duly qualified physician" and "duly qualified surgeon" as follows: (1) Is duly qualified to treat the injury being examined; (2) Possesses medical malpractice insurance; and (3) Owes the same duty of care to the injured employee while performing the medical examination as would be owed to a traditional patient."

Justification:

- Unfortunately, some employer/carriers are abusing the system by choosing their "favored" physicians who produce reports that predictably favor the employer/carrier. Too often, the goal of an employer directed medical examination is not altruistic. The goal is often to enable an employer to escape liability or to delay benefits. An employer can attempt to escape liability if the employer can obtain a physician's opinion in its favor.
- The financial rewards to an employer's physician who consistently provides opinions in favor of an employer can be substantial. Employer's physicians apparently are paid more than \$2,000.00 per examination. Three examinations per week yields \$6,000.00. 50 weeks a year yields an income of \$300,000.00. Employer's physicians can do more than three examinations per week.

There is at least one employer physician who has earned more than \$1 million from one workers' compensation insurer.

- Employer's physicians do not have any duty of care to the injured worker and often escape responsibility for a misdiagnosis. It is the freedom from liability that allows the employer's physicians to give the employer the opinions they want without responsibility to the injured worker.
- For many workers with severe injuries, however, 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.
- There are physicians who conduct employer's examinations who properly consider the facts and provide opinions that are medically sound. Attorneys representing injured workers will readily agree to have their clients examined by such physicians. Responsible insurance carriers will utilize the services of such physicians because those carriers know that proper medical treatment with a correct diagnosis will result in getting the injured worker back to work sooner, which is the correct and fair result.
- The problem with employers' examinations lies with certain physicians and insurance carriers who are willing to use improper opinions to unfairly deny benefits to injured workers. The inherent disparity of the financial resources of insurance carriers versus an injured worker, who is frequently without income, makes the playing field inherently uneven in favor of the carrier.
- This bill attempts to bring greater fairness to the IME process by holding the employer physician accountable for his/her diagnosis. Opponents of this measure argue that an IME exam is intended to assess diagnosis, causation, prognosis, maximum medical improvement, work capacity, and/or appropriateness of care for the insurance company, and therefore an IME physician should not owe a duty of care to the injured worker. As Sen. Karl Rhoads eloquently stated last year, "How can you be a doctor, and you're looking at a patient, but you're saying your duty is to someone else?" Rhoads asks. "I don't see how that makes any legal, moral or ethical sense at all."
- 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