



**Testimony to the Senate Committees on Health and Judiciary & Labor  
Tuesday, February 13, 2012; 10:45 a.m.  
Conference Room 229  
Hawaii State Capitol**

**RE: HOUSE BILL 466 HD3 RELATING TO WORKERS' COMPENSATION**

Chairs Green and Hee, Vice Chairs Nishihara and Shimabukuro, and Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes HB 466 HD3, relating to Workers' Compensation.**

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

The Chamber has carefully reviewed the issues involving the IME process and continues to explore how to improve the process for the injured workers and employers. Although we understand the intent of the bill, the Chamber does not support this bill for the following reasons:

- 1) In many cases, there is a necessity to retain physicians in specialties outside of Hawaii to conduct an IME as these specialties are either unavailable or unwilling to conduct IME in Hawaii. This unavailability/unwillingness is bound to increase by mandating such examinations or permanent impairment ratings be conducted pursuant to the medical fee schedule resulting in even fewer physicians available for IME. The physician community should be consulted to establish appropriate procedural guidelines for conducting IMEs.
- 2) The IME process is an essential part of the employers' discovery process to ensure proper treatment and costs. The right for an employer to select the physician of its choice to determine whether or not an injury is work related or whether medical treatment is reasonable and necessary should not be subject to the delay and costs associated with this proposed bill.

The employer and insurance carrier pay for 100% of the cost of the IME and should be afforded the choice of the IME physician. Just as the employee chooses his or her attending physician, so we believe the employer should be able to obtain a second opinion. Furthermore, it is the employee's attending physician, and not the IME physician, that is conducting the actual medical treatment. The IME physician's role is to evaluate diagnoses, causation, treatment and impairment.

- 3) This bill precludes combining examination and rating without the employee's written consent. The IME physician should be permitted to combine examination and permanent impairment rating without requiring the employee's written consent where the IME physician determines the employee is medically stable and ratable. To require the employer to schedule a separate rating would be a tremendous inconvenience to the employer, employee and IME physician as well as result in doubling the costs. Such a proposal is unnecessary, inconvenient, inefficient and expensive.
- 4) Proponents of this legislation believe this change may decrease the adversarial nature which arises during disputes and eliminate the impression of bias in the IME. However, the vast majority of IMEs are conducted without incident or dispute. The opportunity for an employer IME can greatly enhance the likelihood of successful treatment, recovery and resolution of the claim without the need to take the matter to hearing before the Director at significant savings in time and resources.
- 5) Safeguards exist for IMEs. Hawaii's workers' compensation law requires full disclosure of the IME report to the injured employee. As a result, the employee will be able to determine whether the evaluation was accurate. Otherwise, the employee or his or her attending physician will have the opportunity to contest the report. The employee is always free to obtain an alternative permanent impairment rating. In addition, it is not uncommon for an employer to voluntarily authorize another examination and rating by a second IME physician where the employee and his or her counsel disagree with the IME report. This is already done voluntarily by the employer to confirm the accuracy or inaccuracy of some disputed reports.

On occasion the employer may dispute the attending physician's opinion that the employee has not yet attained medical stability where the medical evidence suggests otherwise. The employer should not be precluded from obtaining examination and rating under these circumstances, but should be allowed to present its own evidence for the Director's determination. Once again, the employee is always free to have his or her attending physician contest the report.

- 6) This bill provides for the Department to maintain a list of qualified physicians licensed to practice in Hawaii and appoint one within 7 days where the employer and employee disagree. It requires examination be performed within 30 calendar days. This is impractical given the Department's already limited resources. It will be extremely challenging for the Department to maintain an updated list of physicians

agreeable to conduct examinations and ratings for all medical specialties required particularly where some specialties are not available in Hawaii for workers' compensation. It will also be difficult for the Department to process requests within 7 days given their existing priorities and workload. Likewise, requiring an examination be arranged within 30 calendar days may prove difficult due to the schedules of the IME physicians especially if the available physicians are limited to the Department's list.

- 7) This bill appears to suggest the IME report is the final say regarding the injured employee. However, this is not the case. The Department makes a determination based upon all of the evidence presented to the hearings officers. The IME report is but one piece of evidence.

In summary, we believe the current system regarding independent medical examinations is working and most IMEs occur by mutual agreement absent any statute. Only a very small percentage of workers' compensation claims require an ordered IME.

For these reasons, the Chamber does not support HB 466 HD3 and respectfully requests the committee holds this measure.

Thank you very much for the opportunity to testify.