

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Representative Karl Rhoads, Chair  
Representative Kyle T. Yamashita, Vice Chair

Tuesday, March 3, 2009  
10:00 a.m.

### **SB 62, SD1**

Chair Rhoads, Vice Chair Yamashita, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** S.B. 62, SD1, which amends Section 386-79, Medical Examination by Employer's Physician.

Our members believe this bill will substantially increase workers' compensation costs, which will translate into a higher cost of doing business, limiting business' ability to compete, adversely affect employees by limiting job availability, pay, and benefits and ultimately find its way into the costs of goods and services in Hawaii.

The current system regarding Independent Medical Examinations (IMEs) has been in place for some time and we believe it is working. It appears that this legislation is prompted by claims that IME physicians are biased toward the employer. We do not believe this is true. Employers seek access to clinical expertise to help return the injured worker to the job. Currently, there are numerous safeguards in place to ensure

the IME is objective and unbiased. Injured workers are able to obtain opinions or comments from their treating physician or other doctors regarding the IME opinion if they disagree. Injured workers are also able to obtain their own rating and if the hearings officer relies on it, the employer has to pay for it. Finally, there is an appeals process that provides further due process to both sides if an agreement cannot be reached.

According to the Department of Labor and Industrial Relations, ordered IMEs number about 1,000 per year. In 2005, there were 52,000 new and pending workers' compensation claims, and therefore, only 2% of all cases require an ordered IME. We believe this legislation is unnecessary because most IMEs occur by mutual agreement, absent any statute. The current system provides an approach for the employer and injured worker to resolve medical treatment disputes in an efficient manner. The proposal to mandate mutual agreement will increase workers' compensation costs and delay the delivery of medical treatment in certain cases. This is detrimental to the injured worker and does not benefit the employer.

The provision to require impairment IMEs to be separate from treatment IMEs merely presents an inconvenience to the injured worker. A comprehensive examination often takes several hours and this requirement will add costs to the system by requiring two separate examinations that could be addressed in one visit. Currently, some IMEs are performed to address appropriate treatment utilization and measurement of the degree of physical impairment. In many cases, it is important to obtain a *baseline* impairment rating to later determine the effectiveness of treatment. This also benefits the injured worker by having one physician look at the case in a comprehensive manner. It is also more cost effective if treatment and impairment are addressed by a single IME instead of requiring two. The suggestion that two separate examinations benefits the injured worker is not substantiated by evidence and will only add costs and delay the delivery of benefits.

The bill also limits IMEs to one per case. There is no measurable benefit to the injured worker by limiting IMEs to one per case. In fact, such a restriction may harm the injured worker. Two IMEs may be necessary in some cases since the first is initially done to establish a baseline and another IME is needed to determine whether there has been improvement, explain a change in the condition, or impairment. A subsequent IME may also be necessary if the injured worker develops new symptoms or conditions secondary to the work injury. The bill also does not allow for any exceptions for an ordered IME for impairment ratings. In the event that an injured worker is ordered to attend an impairment examination and the physician determines that the injured worker is not at maximum medical improvement, or is a no-show for the appointment, the injured worker is precluded from obtaining a subsequent impairment rating. Neither an employer nor an injured worker should be restricted in securing an IME.

Another provision in the bill requires IME physicians to meet certain criteria. Mandating that IME physicians meet certain requirements may not increase the standard of care for the injured worker and will reduce the number of physicians willing to participate in workers' compensation cases. Currently, there are a limited number of physicians who perform IMEs and when categorized by specialty, the list of available physicians is even smaller. It is in both the employer's and the injured worker's best interest to have as many IME physicians available as possible to get the most objective opinion in the most efficient way. Many specialty IME physicians like toxicologists, neuropsychologists and infectious disease specialists who practice on the mainland are used because there are too few or no qualified physicians here that can perform the examinations. Hawaii is a small and isolated state in which specialized physicians are not able to acquire practical experience due to exposure to limited and isolated cases. Insurers rely upon regional clinics and medical centers that specialize in particular medical disorders. The provisions which require that the IME physician be licensed to practice in Hawaii and limits their reimbursement rates are unworkable and will shrink the limited pool of available physicians even further. The average lead time to secure an IME appointment is six weeks and this provision will inevitably create a delay in obtaining timely

appointments and reports and limit local physicians' ability to draw upon the clinical expertise of their mainland counterparts. There is also a provision requiring injured workers who reside on the mainland to obtain an IME from a physician licensed to practice in that state for the five consecutive years prior. This requirement does nothing to raise the qualification of the IME physician, but rather limits the number who will be eligible to examine injured workers who reside on the mainland. In addition, it is inconsistent with the requirement for IME physicians who examine injured workers who reside in Hawaii.

Finally, the three year sunset provision may be too short of a time to show adverse loss experience in workers' compensation insurance. Workers' compensation claims are considered a long tail line of insurance which means that total losses of a claim take many years to develop. Unlike other property and casualty coverages which may have coverage limits, workers' compensation benefits can be paid for years and the nature of the claim may change over time. It is also extremely difficult to determine if there is a correlation between one law change and the experience of claims. This provision is not likely to show an accurate reflection of the enactment of the law.

For these reasons, we respectfully request that S.B. 62, SD1 be held.

Thank you for the opportunity to testify.

LATE

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Occupational Medicine  
Orthopaedics  
Sports Medicine

**Services**  
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Orthopaedic Surgery  
Independent Medical Evaluations  
Independent Record Reviews  
Impairment Ratings  
Case Merit Analysis  
Expert Testimony



**HONOLULU SPORTS  
MEDICAL CLINIC, INC.**

932 Ward Ave. Suite 460, Honolulu, Hawaii 96814  
Tel (808) 521-6564 Fax (808) 521-1173

**CHET NIERENBERG, M.D.**  
**ROBERT L. SMITH, M.D.**  
**PETER E. DIAMOND, M.D.**  
**JAMES F. SCOGGIN III, M.D.**  
**CLARISSA T. BURKERT, M.D.**  
**GEORGE H. SEBERG, M.D.**  
**JON H. SCARPINO, M.D.**  
**STEPHEN L. DEMETER, M.D., M.P.H.**

Bill

SBGZ SDI

NOTIFICATION LETTER

February 3, 2009

**Collette Gomoto – Wong & Oshima**

An Independent Medical Evaluation and/or Permanent Impairment Rating have been scheduled for **Calvin Chin** at your request, as follows:

Date: Wednesday March 25, 2009  
Time: 1:00 pm  
Location: 932 Ward Avenue, Suite 460 Honolulu, Hawaii 96814  
Phone No.: (808) 521-6564 (for confirmation, directions, and questions)

Please instruct the claimant to arrive at least 15 minutes early for the appointment. Any and all x-rays and other imaging studies must be hand carried to the appointment and will be returned before leaving. If there are any difficulties accessing these studies, please contact our office for assistance.

**Calvin Chin** will be seen by **Dr. James Scoggin** who is Board Certified in conducting independent evaluations. This evaluation involves a detailed review of the history, medical records, and x-rays, and the performance of a physical examination. One and one-half hours have been set aside for the appointment, although more time may be needed, depending on the complexity of the case.

To ensure an independent evaluation, the following conditions must be observed:

- > No video or audio recording devices.
- > No presence of persons other than the examinee. No children. No attorneys. An exception will be made for an independent interpreter in cases where there is a known language barrier.

Substantial review and preparation is necessary to ensure a comprehensive evaluation. As such, we require ten (10) working days notice for cancellation or rescheduling. Medical records are to be provided by the scheduling party, and are due in our office two (2) weeks prior to the appointment date. **Records delivered to our office will be destroyed; please do not send originals as they cannot be returned.** Failure to show for the appointment will result in a no-show charge of \$1000.00.

Please feel free to contact this office if there are any questions.

Sincerely,

Christina Ichiyama

Testimony to the House Committee on Labor  
Tues., March 3, 2009 10:00 a.m.  
Conference Room 309

Re: Senate Bill 62 SD1 Relating to Workers' Compensation

Chair Rhoads, Vice Chair Yamashita and committee members:

I am Carolyn Fujioka on behalf of State Farm Insurance Companies, a mutual company owned by its policyholders. **State Farm opposes SB 62 SD1.**

This measure requires Independent Medical Exams and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

State Farm believes that the current system for selecting IME physicians is not in any need of adjustment and is operating effectively. Requiring a mutually agreed upon physician will cause unnecessary delays and increase the cost of conducting IMEs.

Employers, through their insurance carriers, pay the full cost of the IME, and therefore, should be allowed to choose the physician who conducts the exam. The employee chooses his or her treating physician, so it is reasonable that the employer should be able to choose the physician who conducts the exam to provide another opinion of the case. Furthermore, by law, employees receive full disclosure of the IME findings and are able to contest the findings of the IME. Since the final determination of disputed cases is made by a hearings officer, the IME is the point in the process where the employer should have the opportunity to select the physician to review the case.

Thank you for the opportunity to testify.

**yamashita1- Kathy**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 03, 2009 9:24 AM  
**To:** LABtestimony  
**Cc:** tim.forkner@dhx.com  
**Subject:** Testimony for SB62 on 3/3/2009 10:00:00 AM

**LATE**

Testimony for LAB 3/3/2009 10:00:00 AM SB62

Conference room: 309

Testifier position: oppose

Testifier will be present: No

Submitted by: Tim Forkner

Organization: Dependable Hawaiian Express

Address: 475 Hukilike Street Kahului, Maui, Hi

Phone: 808-877-2822

E-mail: [tim.forkner@dhx.com](mailto:tim.forkner@dhx.com)

Submitted on: 3/3/2009

Comments:

**yamashita1- Kathy**

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**From:** gkagawa@askoxy.com  
**Sent:** Tuesday, March 03, 2009 8:39 AM  
**To:** LABtestimony  
**Subject:** SB 62 and 695

**LATE**

Testimony to the House Labor & Public Employment Committee Tuesday, March 3 10:00 a.m. in Room 309

RE: SB 62 and SB 695 re Workers' Compensation

Chair Rhoads, Vice Chair Yamashita and members of the committee:

I am Gordon Kagawa, President of Occidental Underwriters of Hawaii a locally owned insurance agency. My contact information by email is [gkagawa@askoxy.com](mailto:gkagawa@askoxy.com). I respectfully request that you do not pass SB 62 SD1 and SB 695 SD1, both relating to Workers' Compensation.

SB 62 SD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

SB 695 SD1 requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued. This measure may lead to abuse and cause unreasonable and unnecessary treatment for non-related work injuries, and prolong time off the job, even if the employee is deemed able to return to his or her work. I believe there are adequate safeguards within the statute and current practices to make sure that injured employees receive appropriate medical care. Businesses such as mine make every effort and go above and beyond to ensure a safe working environment for our employees.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

These measures, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

**yamashita1- Kathy**

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**From:** DADSINC001@hawaii.rr.com  
**Sent:** Tuesday, March 03, 2009 9:48 AM  
**To:** LABtestimony  
**Subject:** Take Action Now

**LATE**

David Yamamoto  
98-025 Hekaha Street, #22  
Aiea, HI 96701-4904

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Thank you for the opportunity to submit testimony.

**yamashita1- Kathy**

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**From:** info@gonorthshore.org  
**Sent:** Tuesday, March 03, 2009 9:45 AM  
**To:** LABtestimony  
**Subject:** Take Action Now

**LATE**

Antya Miller, Executive Director  
North Shore Chamber of Commerce  
66-434 Kamehameha Hwy.  
PO Box 878  
Haleiwa, HI 96712  
Phone: 637-4558/342-8557

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Sincerely,  
Antya Miller