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Hawaii State Legislature
Committee on Commerce, Consumer Protection and Health
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

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RE: SB 3052, Liability Insurance Policies - NAMIC's Written Testimony in Opposition to Legislation

Dear Senator Baker, Chair; Senator Kidani, Vice Chair; and honorable members of the Committee on Commerce, Consumer Protection, and Health:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 5, 2016, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than $208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

The proposed legislation states:

(d) Every liability *policy shall specify* that when an examination of an injured party is requested by the insurance company, the selection of the examining doctor *shall be by mutual agreement*; provided that if no agreement is reached, the selection shall be submitted to the insurance commissioner or a circuit court. The examining doctor shall be of the *same specialty* as the

provider whose treatment is being reviewed unless otherwise agreed by the parties. All records and charges relating to an independent medical examination shall be made available to the plaintiff upon request. [Emphasis added]

NAMIC respectfully submits the following statement of concerns with the proposed amendments to the statute:

1) SB 3052 will create an unnecessary administrative cost and burden for insurance companies and require the DOI to have to re-review and approve insurance policy forms.

The proposed legislation states, that "[e]very liability *policy shall specify …."* NAMIC is concerned that this provision could be strictly read to require insurers to rewrite their policies to include this consumer disclosure and then resubmit them to the DOI for prior approval of the policy forms. This requirement will create unnecessary administrative costs and IT expenses for insurers, when the insurer could provide this disclosure information during the claims process in a more cost-effective, timely, and meaningful manner. If the goal is to make sure that the insurance consumer knows about this proposed statutory right, it makes more sense to educate the consumer about it at a time when it is salient, i.e. when an independent medical exam (IME) has been requested by the insurer, not when the policyholder purchases the insurance policy.

Additionally, NAMIC is concerned that this new requirement will create a needless delay in the issuance of new and renewal insurance policies. Hawaii is a prior approval of insurance rates and forms regulatory regime, so any required change in an insurance policy must be filed and approved by the DOI, which takes time.

2) NAMIC is concerned that the proposed requirement that, "the selection of the examining doctor shall be by mutual agreement" will needlessly delay the IME process to the detriment of the injured insurance consumer, increase IME costs for insurers and policyholders, and make the IME process unnecessarily contentious.

Policyholders already possess the legal right to have the IME reviewed by a doctor of their selection, if they want to contest the insurer's IME doctor's medical assessment. Therefore, the proposed requirement that the IME doctor be selected by "mutual agreement" (whatever that means procedurally) doesn't really provide the policyholder with any new consumer protection. The only thing it does is make the insurance claims process more complicated and protracted.

Moreover, the proposed "mutual agreement" selection requirement could create unintended professional liability and ethical duty problems for medical professionals. When the insurer retains the IME doctor and the insurance consumer retains his own doctor, the ethical and professional duties of the respective medical professionals are quite clear. The proposed "mutual agreement" selection requirement makes the physician's duties unclear to the detriment of both parties and the physician.

3) NAMIC is concerned that the proposed legislation will adversely impact an insurer's ability to secure a timely and accurate medical evaluation and the insurance consumer's ability to secure prompt medical treatment.

The proposed legislation states, that "if no agreement is reached, the selection shall be submitted to the insurance commissioner or a circuit court." First of all, this provision is ambiguous in that it is not clear as to who shall ultimately resolve the IME medical professional selection dispute. Is it the commissioner *or* a circuit court judge? What if the insurer wants a circuit court judge to decide and the insurance consumer wants the commissioner to decide? Moreover, how and when would an appeal of the commissioner's or circuit court judge's decision on the medical professional selection dispute be handled?

Since a resolution of a dispute over the selection of the IME medical professional would need to be resolved *before* any IME may be conducted, the insurer will be hindered in its ability to comply with its regulatory duty to promptly investigate and settle claims and will be prevented from securing timely information about the insurance consumer's medical diagnosis. Additionally, the insurance consumer will be delayed in securing medical treatment or a change in medical treatment, because the IME and any subsequent challenge of the IME doctor's medical finding will be delayed until the commissioner or circuit court judge resolve the IME selection dispute.

4) NAMIC is also concerned that the proposed legislation is impractical and may create unnecessary inconvenience and cost for insurance consumers.

The proposed legislation states, that the "examining doctor shall be of the *same specialty* as the provider whose treatment is being reviewed . . . ." Conceptually, this seems reasonable, but in reality it may be unrealistic. If the injured insurance consumer lives on the island of Maui, but the only examining doctor of the *same specialty* practices on the island of Oa'hu, the proposed legislation creates a dynamic where the consumer may have to travel to another island for the IME. This will create an unnecessary burden and cost for the injured insurance consumer.

Although, NAMIC appreciates the fact that the proposed legislation does specifically state that the parties may agree to deviate from the "same specialty" requirement, an insurer may be legally apprehensive to do so, since the proposed provision arguably creates a quasi-preference for the retention of a physician of the "same specialty".

The fact of the matter is that unless the insurance consumer suffers from a specialized injury, most doctors with general medical training or doctors with similar or related medical experience to the treating doctor is skilled and qualified to perform the IME. If there ends up being a dispute after the IME has been performed as to whether the insurer selected IME doctor had the requisite subject matter knowledge and experience necessary to have conducted the IME, that issue can then be resolved by the parties. The proposed requirement presumes that there is going to be dispute between the insurer and insurance consumer over the medical abilities of the selected IME doctor. Such disputes are rare.

One also has to remember that licensed medical providers have ethical and professional duties, and no doctor is going to risk jeopardizing her license (ability to make a living) and reputation or expose herself to malpractice by conducting an IME the doctor is not qualified to perform. The

only thing this proposed requirement will accomplish is to drive up the cost of retaining a doctor to perform the IME, which will ultimate be a cost borne by all insurance consumers.

In closing, NAMIC believes that SB 3052 is unnecessary, and likely to create unintended adverse consequences for insurance consumers, impose needless requirements that will be insurance rate cost-driver for policyholders, and turn a standard medical evaluation claims process into a costly, complicated, and contentious procedure. For the aforementioned reasons, NAMIC respectfully asks the committee to VOTE NO on SB 3052.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.
Respectfully,

Christian John Rataj, Esq.
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