

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION
AND COMMERCE

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Wednesday, February 27, 2008
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 2301, H.D.1, RELATING TO DENTISTRY.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Jeffrey Miyazawa, D.D.S., Chair of the Board of Dental Examiners ("Board"). The Board appreciates the opportunity to testify in opposition to H.B. No. 2301, H.D.1, Relating to Dentistry.

The purpose of H.B. No. 2301, H.D.1, is to prohibit interference by an unlicensed person or entity in the practice of dentistry and prohibit the practice of dentistry in a commercial or mercantile establishment.

As the bill was introduced prior to any discussion with the Board, the Board is unaware of any problems that may have motivated the introduction of this bill. If there are concerns that a licensed dentist's judgment may be adversely affected by the influence of others (i.e. someone without a license), the Board feels the current law already addresses this issue. Specifically HRS 448-17(a)(9) provides for sanctioning "professional connection or association with, or lending one's name to another for, the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding oneself, themselves, or itself out in any manner contrary to this chapter". Also, HRS 448-17(a)(12) provides for sanctioning "any other improper, unprofessional, or dishonorable conduct in the practice of dentistry".

Moreover, the American Dental Association addresses this issue in its Principles of Ethics which the Board uses as a guide for the ethical practice of dentistry and may be used for enforcement purposes to sanction dentists. For example, the Principle of Ethics states that "the dentist has a duty to promote the patient's welfare". Also, "...Under this principle, the dentist's primary obligation is service to the patient and the public-at-large. The most important aspect of this obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provision of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient's welfare first." Based on these Principles, a breach by a licensed dentist would be used as a basis for a violation of HRS §448-17(a)(9) and (12).

With regard to this bill's intent to control or regulate the conduct of others who would allegedly interfere with a dentist's judgment and practice, chapter 448, HRS, is not the means to do this. The Board has no powers or jurisdiction over such persons and adding such a provision to the law would not change that.

Regarding the proposed prohibition of the practice of dentistry in a commercial or mercantile establishment, the Board is concerned that this may be restrictive. The Board notes that optometrists and pharmacists have practiced their professions in such establishments for many years and is unaware of any problems or cases that have come before the respective boards for sanctioning of the respective licensees.

Moreover, should there be a question of a dentist being employed by a commercial or mercantile establishment, the statute specifies that a dentist must own, maintain or operate an office for the practice of dentistry.

In conclusion, the Board believes the provisions in H.B. No. 2301, H.D.1, while perhaps attempting to address some foreseen concerns, are restrictive and attempt to control and regulate parties outside of the realm of chapter 448, HRS. The Board opposes this bill and asks that the Committee hold this measure.

Thank you for the opportunity to provide testimony on H.B. No. 2301, H.D.1.

mckelvey3

From: Darrell [teruyadt@worldnet.att.net]
Sent: Monday, February 25, 2008 2:33 PM
To: CPCtestimony
Cc: Russel Yamashita; Darrell T Teruya
Subject: Testimony Hearing CPC, Weds Feb 27, 2008; 2:00 PM Rm 325

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Angus L.K. McKelvey, Vice Chair

DATE:Wednesday, February 27, 2008
TIME:2:00 pm
PLACE:Conference Room 325

Thank you for the opportunity to submit this testimony in support of House Bill 2301. This measure seeks to prohibit the interference by an unlicensed person or entity in the practice of dentistry. This would also prohibit the practice of dentistry in a commercial or mercantile setting. This measure would not apply to the employment of dentists in Federally Qualified Health Centers or in any non-profit hospital or eleemosynary setting.

Dentistry has been a profession which relies on trust. If that trust were compromised it would bode poorly for both dentist and patient.

What HB 2301 seeks to address is that the dentist act in the best interest of the patient. To this end an actively practicing dentist should be the owner of a dental practice and not subject to any outside pressure. The dentist is there for the mutual benefit of the practice and the patient. The dentist must be able to rely on the best of his (or her) training and intuition. The dentist can't be beholden to an arrangement where financial interest dictates the promotion of a treatment which would profit the practice owner but would be to the detriment of the patient.

A dentist is liable for his (or her) actions as reflected in the ethics of the profession. If another person renders the decision on which dental laboratory is used or when, whether and where to refer to a specialist then this is asking the dentist to be accountable for not only the dentist's own professional decisions but also the business decisions of the, possibly, non-dentist employer.

There is also the matter of the practice location setting. A dental office is a self contained unit. The dentist is responsible for the welfare of his patients and should be able to treat outside of regular practice hours. Should an emergency arise that has to be seen there is an imperative for the office to be available for that patient to be seen. This might not be possible for an office within the confines of an existing, non-dental business.

As dentists we are compelled to act in an ethic which allows us to be able to practice to the best of our abilities. To additionally impose external strictures needlessly compromises an atmosphere of trust and dedication to our patients and profession.

Thank you for your consideration of this measure.

2/25/2008

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Darrell Teruya, DDS

President, Hawaii Dental Association

The following is a recent news release concerning a mainland dental franchise. It points out the pressure that a corporation can place on a dentist to increase profitability at the expense of the patients' welfare.

Former Dentist Confesses Criminal Behavior at Kids Clinic

Reported by: Jane Flasch

(February 15, 2008, Rochester, N.Y.) - Last December, 13WHAM showed a disturbing video tape of children strapped in restraints undergoing multiple root canals while their parents were kept out of the room.

Now, the man who once ran the Irondequoit Small Smiles Branch is speaking out for the first time.

He was jailed for fraud. In a follow-up to our 13 WHAM News investigation, he told Jane Flasch that some of the procedures that so traumatized children weren't even necessary.

Rochester's Small Smiles dental office opened with a promise to serve children who don't get regular dental care. Clinic director, Dr. David Gardner, was hauled into a Monroe County court 14 months later.

Gardner pleaded guilty to grand larceny and left Rochester for prison. Now, he wants to come clean about what he says was going on behind closed doors on Ridge Road in Irondequoit.

"Taxpayer dollars are being wasted because they're paying for treatment that's not getting done, treatment that doesn't need to be done, and children aren't being treated like children," Gardner said.

Ashley Sones was a patient during that time. Nine of her teeth were extracted. Another dentist reviewed Ashley's x-rays.

He confirmed that at least two of her teeth could have been saved. But, her file did not contain enough information about the rest.

She never did get partial she was promised; it was denied.

Some very young Small Smiles patients had metal caps, crowns, and root canals. Dentists dispute whether root canals and crowns are the best treatment option for young patients.

However, Gardner said he was under pressure from the corporation to make \$1 million every year.

"The biggest thing you can do is those baby root canals and crowns because it's \$220 that Medicaid does not question. It's just \$220, \$220, \$220," Gardner said.

The Rochester office would not allow cameras inside.

Gardner said they routinely used another controversial technique to restrain children. On an attached video taken at a Small Smiles in Maryland, you can see a small child strapped to a papoose board which holds his body and arms immobile.

Gardner said papoose boards were encouraged in order to complete four or more root canals at a time. Even though it made kids frightened and stressed.

"Stressed out enough to wet their pants, sweat completely through their clothes, be all wet," Gardner said. He said he was told, "Clean them up as best you can before you give them to mom and dad."

Ashley Sones said both she and her younger brother Wesley were physically held down.

"My heart was racing," she said. "It felt like blood was rushing through my body."

Their mother never even knew. It was Small Smiles policy not to allow parents to be with their children.

"I trusted them," said Ashley's mother Wendy. "That's their job."

Since our reports first aired in December, Small Smiles changed its policies. It now allows parents to be present with their children for procedures.

While it still uses papoose boards, the policy is clearly posted and parents can refuse. As for Gardner, the company characterized him as someone with an ax to grind.

Gardner confessed to billing Medicaid for work he did not do.

Investigators say Small Smiles cooperated in the investigation against Gardner and repaid nearly half a million dollars.

Gardner has surrendered his medical license and now sells RVs in Indianapolis.

He says he was pressured into the Small Smiles way of doing business with the understanding that if he were caught, he would be taken care of.

"I've lost my career, I've lost my livelihood," he said.

A member of the Pediatric Dentistry Program at SUNY Buffalo conducted an independent review of the Small Smiles Rochester office last month.

He concluded that restraints, crowns, and other procedures are being used in the proper manner.

Nevertheless, we were not allowed to see a copy of the review documents.

The reviewer spent only half a day at the clinic and did not interview parents. Criminal investigations are underway in several states including New York.

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February 26, 2008

Rep. Robert N. Herkes, Chair
Rep. Angus L.K. McKelvey, Vice Chair
Committee on Consumer Protection & Commerce
02-27-08, Conference Room 325, 2:00 pm

RE: HB 2301, HD1

Dear Representative Herkes and members of the CPC Committee:

As a dentist who is entrusted with the dental health of the people of Hawaii, **I urge you to support HB 2031, HD1.** This legislation will ensure that an unlicensed person or entity will not practice dentistry. It will also prohibit the practice of dentistry in a commercial or mercantile establishment.

The main goal of this legislation is to prohibit interference by non-dentists with the professional judgment of a dentist. In a corporate or mercantile establishment or with dental management service organizations (DMSO), the dentist might be subject to working hours which might interfere with the timely delivery of emergency dental treatment or result in situations where "profit" is the determining factor in dental treatment plans.

Our patients in Hawaii are used to the private practice model where they can have a "one to one" relationship with their dentist which could grow to a trusting professional relationship. What would happen to the patients in a corporate setting when the dentist is asked to leave because of lack of profitability?

Many clinics run by management companies as well as corporate (mercantile) establishments have their management fees determined directly or indirectly based on the production of these clinics or on the amount of patients seen in a day. Because of this business model, Quest or Medicaid patients will probably not be served.

In a recent article dated 02/15/08, an employed dentist in New York working for a **corporation** Small Smiles, was recently jailed for fraud and grand larceny. Small Smiles was initially granted a license to practice dentistry under the pretense to serve children who don't get regular dental care (ie) Medicaid. The dentist was "forced" to do unnecessary dental treatment and subject the children to unnecessary trauma because the corporation put pressure on the dentist to make \$1 million a year.

It appears that the **quality of dental care** in situations where an unlicensed DMSO or a corporation, interferes with the delivery of dental health care is the wrong model to follow. I feel that the quality of dentistry under our existing Doctor and patient model is excellent. Your support of HB 2301, HD1 will ensure that our patients in Hawaii will continue to receive quality care.

Respectively submitted by,

Gary S. Yonemoto, DDS, MS