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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

WEDNESDAY, APRIL 8, 2009
3:00 P.M.

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 161, PROPOSED
HOUSE DRAFT 1--REQUESTING A SUNRISE REVIEW OF REGULATING
PRACTITIONERS OF TEETH-WHITENING.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND TO THE HONORABLE GLENN WAKAI, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Concurrent Resolution No. 161, proposed House Draft 1, which requests a sunrise review regarding the regulation of persons who engage in the practice of teeth-whitening. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department offers the following comments.

In 2007-2008, RICO received four complaints from dentists involving teeth whitening services. Without discussing the particulars of any particular case, the complaints allege that the tooth whitening businesses are engaged in the practice of dentistry. RICO's investigation has shown that it is important, for purposes of determining whether particular conduct was within the scope of the dentistry law, to clearly differentiate conduct that is dentistry from conduct that is incident to the marketing and sale of tooth whitening products. Measures that clarify this distinction will facilitate effective enforcement.

With regard to the language of this Concurrent Resolution, the Department notes that although some aspects of "kiosk" teeth-whitening operations may be unregulated, the Board of Dental Examiners has opined that teeth-whitening is within the scope of the practice of dentistry. As such, the Department suggests that the references on page 2 lines 17-20 and 29-30 to a sunrise analysis pursuant to §26H-6, Hawaii Revised Statutes ("HRS"), be expanded to include an evaluation under §26H-5, HRS, of whether the existing regulation of dentistry should be modified instead of creating a new regulatory measure.

Thank you for the opportunity to testify on House Concurrent Resolution No. 161, proposed House Draft 1. I will be happy to answer any questions that the members of the Committee may have.

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, April 8, 2009
3:00 p.m.

WRITTEN TESTIMONY ONLY

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION 161, PROPOSED H.D.1,
REQUESTING A SUNRISE REVIEW OF REGULATING PRACTITIONERS OF
TEETH-WHITENING.**

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 comment on H.C.R. No. 161, proposed H.D.1., requesting a sunrise review of regulating practitioners of teeth-whitening.

The purpose of H.C.R. No. 161, proposed H.D.1 is to request the Auditor to conduct a sunrise review of regulating practitioners of teeth-whitening. The Board notes that the resolution raises concerns related to the health and safety of the public where numerous kiosks provide teeth-whitening procedures by individuals who have no formal training and use procedures that do not adequately protect consumers from contamination caused by inadequate sterilization of teeth-whitening appliances. The resolution also cites reports of consumer harm, such as burned gums, choking incidents, damage to the appearance of teeth, and masking of decay to teeth and other problems.

The Board previously testified in support of Senate Bill No. 51, S.D.1 at the House Committee on Health on March 20, 2009. This bill proposed to amend the definition of the practice of dentistry to include teeth-whitening. The bill subsequently passed out as an H.D.1 and was referred to your Committee.

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The Board believes teeth-whitening is within the scope of practice of dentistry and should only be done by a dentist or persons under the supervision of a dentist. The Board agrees there is potential harm to patient's gums and teeth if the procedure is not done correctly and with oversight by a dentist.

Accordingly, the Board of Dental Examiners would prefer that S.B. No. 51, S.D.1, H.D.1 be advanced by your Committee in lieu of H.C.R. No. 161, proposed H.D.1.

Thank you for the opportunity to present comments on H.C.R. No. 161, proposed H.D.1.