

SB 115



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

TO THE SENATE COMMITTEE ON HEALTH

AND

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

MONDAY, FEBRUARY 2, 2009
2:45 P.M.

TESTIMONY ON SENATE BILL NO. 115 – RELATING TO DENTISTRY

TO THE HONORABLE DAVID Y. IGE, CHAIR,
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE JOSH GREEN, M.D., VICE-CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 115, Relating to Dentistry. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department opposes Senate Bill No. 115 for the following reasons.

Senate Bill No. 115 authorizes the Board of Dental Examiners to issue cease and desist orders for the unlicensed practice of dentistry. The bill also provides that a violation of a cease and desist order constitutes a class C felony.

The Department notes that by virtue of §26-9(m), Hawaii Revised Statutes ("HRS"), board authority to investigate and prosecute complaints is delegated to the Department. Pursuant to that authority, the Department pursues violations for unlicensed activity in one of two ways: it initiates a circuit court action to enjoin unlicensed activity under §§487-13 and 487-15, HRS, or it issues citations that include orders of abatement pursuant to §436B-26.5, HRS. In FY08, RICO obtained 135 unlicensed activity judgments with injunctive relief, and 150 citation orders in a variety of license types.

In addition, §436B-27, HRS, provides that persons who engage in any activity requiring a license and who fail to obtain the required license are guilty of a misdemeanor and are subject to a fine of not more than \$1,000 or imprisonment of not more than one year. Given the existing civil, administrative, and criminal sanction provisions in Chapters 436B and 487, HRS, the Department believes that Senate Bill No. 115 is unnecessary.

Thank you for the opportunity to testify on Senate Bill No. 115. I will be happy to answer any questions that the members of the Committees may have.

From: [Darrell](#)
To: [HTHTestimony](#)
Cc: [Darrell T Teruya](#)
Subject: Testimony in support of SB 115 granting the Dental Board Cease and Desist Powers
Date: Saturday, January 31, 2009 2:17:41 PM

COMMITTEE ON HEALTH
Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

NOTICE OF HEARING

DATE:Monday February 2, 2009
TIME:2:45 PM
PLACE:Conference Room 016

Thank you for the opportunity to testify in support of Senate Bill 115 which would give the Hawaii Board of Dental Examiners cease and desist powers.

All too often issues arise where there is a violation of the statutes or rules under which one is licensed. For the most part, an authoritative sanction with subsequent follow-up on the part of the powers that be are adequate toward the resolution of the infraction. There are always exceptional circumstances where the continuation of "business as usual" presents a threat to public safety and/or a risk to the individual practitioner as well. This bill would enable our Board of Dental Examiners to act in a timely manner on the more egregious cases.

We queried our component analogues across the nation and, of those who replied, we received (and continue to receive) confirmation of statutory cease and desist powers of the State Boards in almost all instances. The Board of Dental Examiners should have the authority to act on the behalf of the best interests of the public as befits their stature.

Again, thank you for allowing the presentation of this testimony.

Darrell Teruya, DDS
Immediate Past-President, Hawaii Dental Association

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE SENATE COMMITTEE ON HEALTH

AND

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Monday, February 2, 2009
2:45 p.m.

TESTIMONY ON SENATE BILL NO. 115, RELATING TO DENTISTRY.

TO THE HONORABLE DAVID Y. IGE, CHAIR, AND
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEES:

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 S.B. No. 115, Relating to Dentistry.

The purpose of S.B. No. 115 is to grant the Board the power to issue cease and desist order for the unlicensed practice of dentistry.

The Board would like to inform the Committee that the regulatory authority to enforce sanctions against unlicensed activity in Hawaii is delegated to the Regulated Industries Complaints Office ("RICO") and not to the individual boards. Pursuant to section 436B-26.5, Hawaii Revised Statutes, RICO has the authority to issue citations to persons engaged in unlicensed activities. With the citation, RICO can assess civil penalties and issue an order of abatement.

Therefore, the Board believes this bill is unnecessary as there is regulatory authority already vested in RICO.

Thank you for the opportunity to testify in opposition to S.B. No. 115.

Hawaii State Legislature
State Senate
Committee on Health
Committee on Commerce and Consumer Protection

Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair
Committee on Health

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair
Committee on Commerce and Consumer Protection

Monday, February 2, 2009, 2:45 p.m. Room 016

Senate Bill 115 Relating to Dentistry

Honorable Chair David Y. Ige, Vice Chair Josh Green and
members of the Senate Committee on Health; and

Honorable Chair Rosalyn H. Baker, Vice Chair David Y. Ige
and the members of the Senate Committee on Commerce and Consumer Protection

My name is Dr. Gary Umeda and I am the President of the Hawaii Dental Association and I appreciate the opportunity to testify in support of SB 115 Relating to Dentistry. This bill addresses a problem that has arisen in which the Hawaii State Board of Dental Examiners is unable to address situations where the clear violation of the Hawaii dental laws cannot result in the immediate action necessary to stop those whose continued violation of the law constitutes a clear and present danger to the health and welfare of the public.

Often times when a situation arises and the Department of Commerce and Consumer Affairs Regulated Industries Complaints Office conducts an investigation of the violation of the law and is prevented in stopping the individuals who are violating the law merely by the individuals changing the legal entity they are using. Either the reluctance of the RICO to pursue the matter or the difficulty in stopping the individual violators has resulted in only rare occasions in where the violators have been actually stopped by the DCCA.

In the case of a dental licensee who apparently has a drug or alcohol problem, the length of time it takes to suspend or revoke the license puts the public in danger while that person continues to provide dental services even after arrest and indictment. With the authority to order the licensee to cease and desist the delivery of licensed services, the Board of Dental Examiners can move swiftly to protect the public from the licensee and put pressure on the licensee to clean up their act if possible.

The State of Nebraska permits their dental licensing board to issue cease and desist orders and has experienced no problems with the exercise of this authority. Additional states which provide for either cease and desist authority or injunctive action include Illinois, Mississippi, Colorado, Montana and Kentucky.