

**SB 51**



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REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON HEALTH

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2009

MONDAY, FEBRUARY 2, 2009  
2:50 P.M.

TESTIMONY ON SENATE BILL NO. 51 – RELATING TO DENTISTRY

TO THE HONORABLE DAVID Y. IGE, CHAIR,  
AND TO THE HONORABLE JOSH GREEN, M.D., VICE-CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 51, Relating to Dentistry. 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.

Senate Bill No. 51 expands the definition of dentistry to include "tooth whitening services." The Department supports the intent of this bill, but urges the Committee to consider certain amendments that will facilitate more effective enforcement.

By way of background, RICO has received a number of complaints over the past year from dentists regarding the tooth whitening businesses that have appeared at a variety of fairly prominent locations, such as shopping malls. The complaints allege that the tooth whitening businesses are engaged in the practice of dentistry.

Without discussing the details of any particular case, our investigation has shown that it is important, for purposes of determining unlicensed activity, to clearly differentiate conduct that is dentistry from conduct that is incident to the marketing and sale of tooth whitening products. Legislation that clearly articulates the types of conduct that would be deemed "tooth whitening" would facilitate effective enforcement. The Department suggests that if the Legislature intends to include tooth whitening in the definition of the practice of dentistry, the term be defined with more specificity.

Based upon our research of the issue, it appears that dental boards across the country are facing similar questions.

For purposes of this bill, the Committee may wish to consider the following language:

Dentistry also includes an offering to perform or performing any phase of any operation incident to teeth whitening, including, but not limited to, the instruction or application of teeth whitening materials or procedures at any location.

"Teeth whitening" means any process performed by one individual upon another individual to whiten or lighten the appearance of human teeth by the application of chemicals, whether or not in conjunction with a light source.

Testimony on Senate Bill No. 51  
February 2, 2009  
Page 3

Thank you for this opportunity to testify on Senate Bill No. 51. I will be happy to answer any questions that the members of the Committees may have.

**From:** [Russel Yamashita](#)  
**To:** [HTHTestimony](#)  
**Subject:** HDA Testimony on SB 51  
**Date:** Sunday, February 01, 2009 3:48:42 PM  
**Attachments:** [Test.ToothWhitening.1.27.09\[1\].doc](#)

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Hawaii State Legislature  
State Senate  
Committee on Health

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

Monday, February 2, 2009, 2:50 p.m. Room 016

Senate Bill 51 Relating to Dentistry

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

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 51 Relating to Dentistry. This bill addresses problems which have arisen in Hawaii and around the country with the advent of teeth whitening kiosks.

There are several problems relating to public safety which have arisen with the advent of the kiosk operators of teeth whitening activities. First, and most importantly, there have been numerous problems here in Hawaii and around the country where the public has been harmed by these operators. The primary ingredient used by the operators is hydrogen peroxide. The concentration used is higher than those used in the over the counter teeth whitening products sold in any drugstore. As a result, the misuse and negligence of these kiosk operations have resulted in the public receiving burned gums and choking on hydrogen peroxide being swallowed.

Local dentists have treated patients who have come in to their office seeking treatment for the damage done by these kiosks operators. Nationally, state dental boards have successfully taken kiosks operators to court determining that these teeth whitening activities are in fact the practice of dentistry. Both the states of Tennessee and West Virginia have recent court cases decided that the kiosk operations are practicing dentistry and banned them from operating.

Other state dental boards have issued opinions that the activities of the teeth whitening kiosk operators constitute the practice of dentistry and require a licensed dental professional to conduct such activity.

The operators of these kiosks hire people who have no medical or dental training and claim that the mere fact that they do not insert the dental trays holding the chemicals do not constitute the practice of dentistry. However, even the fact that the operators determines the size of the dental device to be used is a decision that requires professional judgment and training. The use of an oversized dental tray resulted in a woman swallowing the hydrogen peroxide at a kiosk at the Sam's Club on Keamoku Street. Only when the woman was choking did the employees of the kiosk take any action.

Additionally, in a dental office, extreme care is taken with even the dental trays and other devices and instruments due the issue of liability when it comes to AIDS, Norovirus,

TB, Hepatitis B and C, or any other disease that may be encountered when dealing with patients. Basic hygiene and sterilization of all items used in a dental office goes without saying. No such requirements or standards are applied in these kiosks. Sterilization of the dental trays is not observed and swishing it rubbing alcohol won't necessarily protect the next user.

Finally, since the employees of the kiosk operators have no apparent training in medical or dental procedures, there is a concern that these employees could be exposed to medical waste or disease bearing trays with out proper training or understanding the risks involved in their "simple" tasks. The employees could unwittingly take a serious medical situation home with them to their own families and easily pass it on to the next customer at the kiosk.

Therefore, the HDA and its 950 plus members urge your favorable consideration of this bill in order to protect the public from the real and potential harm that these teeth whitening kiosk operations have and will cause to the public.

**PRESENTATION OF THE  
BOARD OF DENTAL EXAMINERS**

TO THE SENATE COMMITTEE ON HEALTH

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, February 2, 2009  
2:50 p.m.

**TESTIMONY ON SENATE BILL NO. 51, RELATING TO DENTISTRY.**

TO THE HONORABLE DAVID Y. IGE, 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 support of S.B. No. 51, Relating to Dentistry.

The purpose of S.B. No. 51 is to amend the definition of the practice of dentistry to include tooth whitening.

The Board believes tooth whitening is within the scope of practice of dentistry and not merely a cosmetic procedure as there is potential harm to the patient's gums and teeth if the procedure is not done correctly. Currently, there is general language related to treating teeth and this bill will clarify that tooth whitening is included in the practice of dentistry.

Thank you for the opportunity to testify in support of S.B. No. 51.