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

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

MONDAY, FEBRUARY 7, 2011
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 337
RELATING TO ATHLETIC TRAINERS

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE RYAN I. YAMANE, VICE CHAIR,
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department")
appreciates the opportunity to testify on House Bill No. 337, Relating To Athletic
Trainers. My name is Jo Ann Uchida of the Department's Regulated Industries

Complaints Office ("RICO"). RICO does not support this bill in its current form and offers the following comments:

1) Scope of practice. "Practice of athletic training" as provided for in this bill overlaps into a number of other licensed professions, without offering a specific exemption for existing licensees. House Bill No. 337 also does not explicitly address the extent to which scope of practice impacts other licensees. In addition, including the phrase "by a registered and certified athletic trainer" in the definition of "practice of athletic training" would preclude RICO from pursuing cases involving unregistered athletic trainer activities.

2) Practice of medicine; supervisory responsibility of treating physician. "Practice of athletic training" as set forth in this bill appears to fall within the definition of the practice of medicine under Chapter 453, Hawaii Revised Statutes ("HRS"). RICO is concerned that the bill as drafted would trigger possible unlicensed practice of medicine violations.

Also, the bill appears to provide for the participation of a treating physician who would supervise the athletic trainer. However, the bill does not have an affirmative statement that the athletic trainer may render treatment only under the direction of a treating physician. From an enforcement perspective, it would be difficult to take enforcement action if the relative responsibilities of the athletic trainer and the treating physician are not set forth in the respective licensing laws.

3) National Athletic Trainers Association Board of Certification. The bill as drafted provides for registration if the applicant has a current, unencumbered

certification from the National Athletic Trainers Association Board of Certification. In checking the Board of Certification website, it appears that the organization has promulgated Professional Practice and Discipline Guidelines and Procedures that provide for a fairly detailed, confidential hearings process before adverse action is taken on a certification. From an enforcement perspective, information on any investigations and hearing processes involving registrants would be critical. House Bill No. 337 in its current form does not require the registrant to timely disclose and authorize the release of all records relating to those investigations and proceedings as a condition of continued registration.

4) Civil penalties. The civil penalties referred to in section 8 of this bill (§436B-26.5, HRS) apply to situations in which unlicensed activity has occurred. Penalties should not be limited only to situations involving unlicensed activity.

5) Standards of Ethics. It appears that the National Athletic Trainers' Association has adopted a Code of Ethics, and the Board of Certification, Inc., has adopted a separate Standards of Professional Practice that includes practice standards and a Code of Professional Responsibility. House Bill No. 337 does not identify the standards of ethics that would be applied to registrants.

Thank you for this opportunity to testify on House Bill No. 337. I will be happy to answer any questions that the members of the Committees may have.



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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

Monday, February 7, 2011
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 337, RELATING TO ATHLETIC TRAINERS.

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND
TO THE HONORABLE GILBERT S. C. KEITH-AGARAN,
AND MEMBERS OF THE COMMITTEES:

Comments

My name is Celia Suzuki, Acting Licensing Administrator for the Professional and Vocational Licensing Division ("Division"), Department of Commerce and Consumer Affairs ("Department"). The Division appreciates the opportunity to present testimony on House Bill No. 337, Relating to Athletic Trainers.

The bill proposes to regulate the practice of athletic training by requiring athletic trainers to be registered with the Department. On the matter of whether to regulate this new profession, we oppose this proposal as it is contrary to the recommendations of the

Auditor's analysis which was completed in 2010. The sunrise study suggested that regulation and registration of athletic trainers is not warranted.

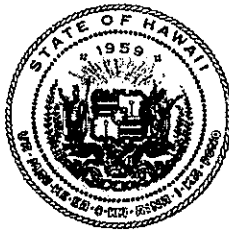
The Regulated Industries Complaints Office also has concerns about the bill as it lacks key provisions for a regulatory law and as is written, would be difficult to implement and enforce.

However, should this proposal advance in the Legislature, we would be willing to work with the proponents of the bill to try and reach a compromise measure.

Also, should the Legislature consider this proposal and it becomes enacted, we would like to mention that the athletic trainers will bear the burden of subsidizing the program through fees, the cost of the Department's resources to start-up, implement, and maintain this new program.

This bill also provides that this act shall take effect on July 1, 2011. We request that should this bill pass, the effective date be that of July 1, 2012 to allow us sufficient time to ensure a smooth and efficient transition for the regulation of athletic trainers. A one year delayed effective date has been consistently supported by the Legislature.

Thank you for the opportunity to testify on House Bill No. 337.



**TESTIMONY OF MARION M. HIGA, STATE AUDITOR
ON HOUSE BILL NO. 337, RELATING TO ATHLETIC TRAINERS**

**House Committee on Consumer Protection & Commerce
House Committee on Judiciary**

February 7, 2011

Chair Herkes, Chair Keith-Agaran, and Members of the Committees:

Thank you for this opportunity to express our concerns about House Bill No. 337. This bill proposes to regulate athletic trainers by offering title protection. This means that no one could represent, advertise, or announce oneself, either publicly or privately, as an athletic trainer or registered athletic trainer unless registered with the Department of Commerce and Consumer Affairs (DCCA). Registration would require athletic trainers to have a current certification issued by the Board of Certification, Inc. (BOC)—the independent credentialing body for the athletic training profession accredited by the National Commission for Certifying Agencies.

The bill references the sunrise analysis we performed in Report No. 10-08 in response to Act 108, SLH 2010. We analyzed Senate Bill No. 2601, Senate Draft 1, (S.B. No. 2601, S.D.1) of the 2010 session, which contains identical provisions as House Bill No. 337 (H.B. No. 337) relating to registration requirements and qualifications. We concluded that, as measured by the Hawai'i Regulatory Licensing Reform Act, the regulation of athletic trainers is not reasonably necessary to protect the public. The DCCA's Office of Consumer Protection has no records of any complaints relating to athletic trainers and the Hawai'i Athletic Trainers Association could provide only anecdotal evidence of harm. Although Hawai'i's athletes need appropriate care, other protections are in place.

Moreover, while some adjustments in H.B. No. 337 have been made to address flaws noted in S.B. No. 2601, S.D. 1, the regulatory process still appears more akin to licensure. For example, language in Section -7 creates licensure for an athletic trainer who is registered even though the bill is entitled "Athletic Trainer Registration Act." Also, the addition of section -8 provides for civil penalties under the Uniform Professional and Vocational Licensing Act, Chapter 436B, Hawai'i Revised Statutes. Licensure is the most restrictive form of regulation whereby the state issues a license that confirms that only licensees may practice in a well-defined scope of work. Generally the work is guided by rules and standards of practice and enforced by DCCA. Senate Bill No. 155 merely restricts the *use* of the title of "athletic trainer" to those who have been certified by the BOC. It does not restrict the *practice* to certified athletic trainers. Consequently, the proposed program offers no assurance that Hawai'i's athletes would receive specialized emergency care and appropriate treatment and rehabilitation.

If a *licensure* program is intended, state standards for minimum competency are not ensured. It is unclear whether the standards for minimum competency are covered under the general rulemaking provision in Section -9. In addition, no mechanisms are created to report and remedy malpractice or ethical violations. As we noted in our report, Section -7 in H.B. No. 337, like Section -6 in S.B. No. 2601, S.D. 1, seems related only to enabling reimbursement from third party insurance payers. Contrary to the policies established by the Legislature in the Hawai'i Regulatory Licensing Reform Act, the bill's primary purpose appears aimed at enhancing the profession and gaining reimbursement from insurers since most third party payers will reimburse only *licensed* health care providers.

We acknowledge the attempts to improve on the bill we analyzed, but regrettably cannot support the new bill. I would be pleased to answer any questions you may have.

Date: 02/07/2011

Committee: House Consumer Protection &
Commerce
House Judiciary

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 0337 RELATING TO ATHLETIC TRAINERS

Purpose of Bill: Creates registration requirements and qualifications for athletic trainers in this State; provides exemptions; prescribes penalties.

Department's Position: The Department of Education (Department) supports HB 337. Currently, the Department has 76 athletic trainers in 43 high schools and the Office of Curriculum, Instruction and Student Support. The Department is the largest employer (48%) of athletic trainers in the State of Hawaii. The Department's Office of Human Resources only verifies that an athletic trainer has met the minimum qualifications upon employment; they do not monitor if any athletic trainer has lost or has had his/her certification revoked. The health and safety of our student athletes are of utmost importance. As such, the Department would benefit by having its employees registered to practice the science and art of athletic training. Therefore, the Department strongly supports the registration of athletic trainers.

Testimony by:
Ann Frost, PT
HB 337, Relating to Athletic Trainers
Hse CPC/JUD, Mon. February 7, 2011
Room 325, 2:00 pm

Position: Opposed As Written, Amendments Offered



Chairs Herkes and Keith-Agaran, and Members of the Hse CPC/JUD Committees:

I am Ann Frost, P.T., President of the Hawaii Chapter – American Physical Therapy Association (HAPTA) and member of HAPTA’s Legislative Committee. HAPTA represents 1400 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Physical therapy services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments, improving wellness, and teaching prevention.

HAPTA opposes HB 337 as currently written. As discussed in the 2010 Session’s hearings for this issue, we strongly believe that definitions must be included for the terms “athlete” and “athletic injury” in the definitions section. These definitions recognize the specific population that certified athletic trainers are educated and trained to work with, primarily people who are preparing for or participating in competitive sports activities. Without the definition of those terms, consumer protection is extremely limited because the term “athlete” can be and has been applied very broadly to include everyone from those who are “week-end warriors” to those who exercise in any way, including going for a walk. HAPTA strongly recommends that definitions for both the term “athlete” and “athletic injury” be added to ensure consumer safety.

Recommended Definitions:

1. "Athlete" means a person who prepares for or participates in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, performance arts, including interscholastic, intercollegiate, intramural, semi-professional and/or professional sports activities”
2. “Athletic Injury” means an injury that affects the preparation for or participation in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, performance arts, including interscholastic, intercollegiate, intramural, semiprofessional and/or professional sports activities.”

Other Recommendations:

1. Deletion of Section 7: page 7, lines 19 to page 8, lines 1-9. This language would equate registration with licensure status. As written, it would degrade the more rigorous requirements of licensure, which requires rules and standards with a professional practice Board under DCCA.
2. Insertion of new language: page 8, lines 10. Section X. “The practice of athletic training does not include the practice of physical therapy.”

Ultimately, the physical therapy community is committed to health care provided by health care practitioners within their scope of education and training. We support regulation of allied health professionals’ scope of practice based on a national, standardized training curriculum to ensure that the consumers are receiving appropriate and safe care.

I can be reached at 382-2655 if you have any questions. Thank you for the opportunity to testify.

Testimony of Cindy Clivio on behalf of the Hawaii Association of Athletic Trainers (HATA) in strong support of H. B. No. 337

To: Chairmen Robert Herkes and Gilbert Keith-Agaran and Members of the House Committees on Commerce and Consumer Protection and on Judiciary:

My name is Cindy Clivio and I am testifying for the members of the Hawaii Association of Athletic Trainers (HATA) in strong support of H.B. No. 337.

The Hawaii Athletic Trainers Association (HATA) is the professional membership association for Certified Athletic Trainers in our state. Certified Athletic Trainers are health care providers who specialize in the prevention, assessment, treatment and rehabilitation of injuries and illnesses of athletes participating in various athletic events in Hawaii. The University of Hawaii-Manoa offers a graduate entry level degree in Athletic Training. Athletic Trainers are employed in most of Hawaii's public schools, some private schools, colleges, Universities, hospitals, physician offices, clinics, and by the military. Hawaii is considered a leader in providing healthcare at the Secondary School level as the legislature provided funds to place a certified athletic trainer in all of Hawaii's public schools.

Hawaii is one of only three states who do not currently regulate the profession of athletic training and we believe it is necessary to safeguard the public and our athletes. HATA has tried to be proactive in this endeavor. One of the domains of our profession is "prevention" of injury and our profession understands that the best way to treat an injury is to prevent it from ever occurring. We feel the same way about preventing harm to the public. There have been near misses and close calls. Some schools have hired unqualified personnel to serve as athletic trainers. An individual lied to his employer about being certified when he had not been certified. Another individual began working in Hawaii

when he was under federal investigation in another state. Although most employers do a background check and verify certification status for initial hiring, not one employer in the state verifies that an athletic trainer remains certified and in good standing. Therefore, if someone had been disciplined for an ethical violation or if someone had their certification revoked the employer would never know.

We understand that evidence of harm or of violations is heavily weighted by the State Auditors office when recommendations are made for regulating a profession. Unfortunately there is a catch 22 when you are an unregulated profession. There is no entity that members of the public can report to about any problem that may arise with an athletic trainer or the care and methods he or she is using when treating athletes for an injury. Approximately 10 years ago, one of our members called the DCCA and RICO to report a complaint that a person who was serving as an athletic trainer was unqualified. The person was not certified and had not finished college. DCCA referred her to RICO and was told that there was nothing they could do since Athletic Trainers are not regulated.

The Board of Certification Inc. (BOC), the national certification entity, reports that over the past 5 years they have issued 960 disciplinary actions to athletic trainers across the country. About half of these were for athletic trainers who did report continuing education within required timeframes and guidelines. The other half were for such things as irregularities in certification exams and exam applications, fraud, conviction of a felony or misdemeanor including DUI's, child pornography, engaging in sexual relationships with minors, and insurance fraud. It is inevitable that Hawaii will become a dumping ground for those who have been disciplined in other states. We do not want to wait until a Hawaii patient, whether it is a student athlete, recreational, or professional athlete is harmed to enact legislation.

Although all public schools have Certified Athletic Trainers, that is not the case with all schools. The Hawaii High School Athletic Association has 98 member schools, 36% (36/98) do not currently

employ certified athletic trainers. There are schools in every league that do not employ certified athletic trainers. In the ILH, 13 of 26 schools, 50 % do not have athletic trainers and only 5 ILH schools employ full time athletic trainers. Although the State of Hawaii requires BOC Certification for employment eligibility, nothing requires that private schools use the same standards. We want to ensure that all athletes are treated by competent, well qualified, and ethical certified athletic trainers wherever they participate. We want to know that whoever is providing athletic training services is current on standards of care in such areas as concussion management. Without regulation a private entity could hire someone to provide athletic training services that is not certified and thereby would not have the proper training or education.

We understand that the Physical Therapist Association and the Occupational Therapists Associations have strong feelings that definitions of "Athlete" and "Athletic Injury" are included in this bill. We do not feel it is necessary as most regulated health care professions are defined by what conditions they treat and not who they treat. However, in the interest of passing a bill that is mutually agreeable to all of our professions we are willing to amend the bill with the definitions suggested in the testimony submitted in the Senate hearing and which was discussed with them last year

What we seek in this bill is title protection, a central agency where trainers must register and hold themselves out to the public as being certified, and the ability for the state to levy sanctions on those who attempt to practice without meeting minimum training and education by becoming certified. That is what this bill provides, we urge you to pass it.

Thank you for the opportunity to testify on behalf of the members of HATA.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Written Testimony Presented Before the
Committee on Consumer Protection and Commerce
and
Committee on Judiciary
February 7, 2011, 2:00 p.m.
Conference Room 325

By
Carl R. Clapp
Associate Director of Athletics
University of Hawai'i at Mānoa

HB 337 RELATING TO ATHLETIC TRAINERS

Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads, and members of the Committees:

I am Carl Clapp, Associate Director of Athletics for the University of Hawai'i at Mānoa, and I am presenting testimony for the University of Hawai'i in support of HB 337 relating to Athletic Trainers. We are aware that the National Athletic Trainers Association (NATA) and the Hawai'i Athletic Trainers Association support the registration of athletic trainers and that Hawaii is one of only a few states that does not require athletic trainers to be registered.

Athletic trainers at the University of Hawai'i are in compliance with the requirements of this bill including the following:

1. Having an unencumbered certification from the National Athletic Training Association (NATA) Board of Certification; and
2. Receiving direction for their work from a physician.

The Board of Certification, Inc. (BOC) was incorporated in 1989 to provide a certification program for entry-level Athletic Trainers (ATs). The BOC establishes and regularly reviews both the standards for the practice of athletic training and the continuing education requirements for BOC Certified ATs. The BOC has the only accredited certification program for ATs in the US.

The University of Hawai'i at Mānoa offers an Entry-Level Graduate Athletic Training Education Program to prepare graduate students to become BOC Certified Athletic Trainers (ATC) and scholarly practitioners in the athletic training profession.

Athletic training is recognized by the American Medical Association (AMA) as an allied healthcare profession, and the AMA recommends athletic trainers in every high school

to keep America's youth safe and healthy. Specifically, the Certified Athletic Trainer has demonstrated knowledge and skill in six practice areas or domains:

- Prevention
- Clinical Evaluation and Diagnosis
- Immediate Care
- Treatment, Rehabilitation and Reconditioning
- Organization and Administration
- Professional Responsibility

As part of a complete healthcare team, the athletic trainer works under the direction of a physician and in cooperation with other healthcare professionals, athletic administrators, coaches and parents. The athletic trainer gets to know each patient individually and provides injury prevention, treatment, and rehabilitation.

HB 337 requires that Athletic Trainers register with the Department of Commerce and Consumer Affairs by providing the athletic trainer's name, business address, and a current and unencumbered certification from the Board of Certification, Inc. This will ensure that those practicing athletic training in Hawai'i have been certified by the BOC; the BOC certifies that entry level athletic trainers have received the necessary education and training and that certified athletic trainers complete appropriate continuing education requirements. The University of Hawai'i's practice in the past, and going forward, is to employ individuals that are Certified by the BOC and eligible for registration in the State of Hawai'i.

We support this bill because it requires individuals that practice athletic training in Hawaii to receive the appropriate education and training that prepares them to sit for the BOC certification exam, to pass the exam, and to present an unencumbered certification from the BOC.

Thank you for the opportunity to testify.



OCCUPATIONAL THERAPY ASSOCIATION OF HAWAII

1360 S. Beretania St., Suite 301, Honolulu, Hawaii 96814

Testimony by:

Avis Sakata, OTR

HB 337, Athletic Trainers

House CPC/JUD Hearing – Monday, Feb. 7, 2011

Room 325 – 2:00 pm

Position: Oppose, Amendments Offered

Chairs Herkes and Keith-Agaran, and Members of the House CPC/JUD Committees:

I am Avis Sakata, OTR and president of the Occupational Therapy Association of Hawaii, (OTAH), which represents 603 occupational therapists (OTs) registered in Hawaii. OT's work in many settings throughout the State, including hospitals, schools, prisons, skilled nursing to private facilities and community-based programs.

Occupational Therapy is a science driven, evidenced-based profession that enables people of all ages, from infants to the elderly, to live life to its fullest by helping them promote health and prevent or live better with illness, injury or disability. Occupational Therapists are recognized members of the Healthcare Rehabilitation team which is comprised also of physicians, nurses, physical therapists, speech therapists, social workers and others. As a healthcare provider, OTs provide, but are not limited to: 1) assessment and evaluation of our patients/clients needs and development of an appropriate treatment plan, 2) interventions focused on daily living skills (including self-care), work readiness, play or educational performance skills, 3) and interventions that include sensorimotor, neuromuscular functioning, cognitive or psychosocial components.

OTAH supports the intent of this bill that would provide consumer protection from unqualified practitioners and protects qualified practitioners' rights to provide services. We agree that there is the potential for athletic trainers who have been censored in other states to practice in Hawaii and in the worst case scenario, an individual could set up his/her own practice and state that they provide athletic trainer services when in fact he/she may not have the professional qualifications which would definitely lead to consumer harm.

We recognize and appreciate the language in this bill that more clearly defines that the registered and certified athletic trainer may provide certain services to athletes. However, the bill does not address the definition of "athlete" or "athletic injury", which is critical to assuring consumers that they are seeking treatment from practitioners who are appropriately educated and trained for specific populations and care. As discussed in the 2010 Session, we recommend the following definitions:

Definition of athlete: A person who prepares for or participates in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, or performance arts including interscholastic, intercollegiate, intramural, semiprofessional, or professional sports activities.

Definition of athletic injuries: Injuries that affect the preparation for or participation in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, or performance arts including interscholastic, intercollegiate, intramural, semiprofessional or professional sports activities.

The insertion of these definitions will clearly state that the specific population that benefits from the existing education and training requirements of certified and registered athletic trainers will be assured of appropriate treatment.

I can be reached at 522-4602 if further information is needed. Thank you for the opportunity to submit testimony.

meeting on December 29, 2010, the Board stated that the Department had made positive revisions to their proposed amendments to Chapter 16-89 of the Hawaii Administrative Rules Relating to Nurses. As a result, the Board approved a motion recommending that the Governor approve the proposed amendments.

The Department continues to comply with chapters 91 and 201M, HRS, and remains sensitive to the potential impact that its rules may have on the public. When rules are necessary, we attempt, to the best of our abilities, to craft rules that do not overly burden the public. In addition, our various divisions routinely propose clean-up bills each legislative session, which results almost as promptly in the review and revision of rules related to newly amended laws.

Given all of the above, the Department believes that it is already complying with the spirit of the proposed bill using its existing internal review process in conjunction with the periodic review of its rules by the Small Business Regulatory Review Board. Therefore, the Department believes that a formal review as described in the Administrative Rules Review Pilot Program proposed in the bill is not needed and would only result in an unnecessary and adverse diversion of personnel, assets, and other resources that the Department would utilize to provide services to the small businesses and the public.

I would like to thank the Committee for the opportunity to present testimony on this matter.