

Hawaii State Legislature  
State Senate  
Committee on Health

LATE  
TESTIMONY

State Senator Josh Green, M.D., Chair  
State Senator Clarence K. Nishihara, Vice Chair  
Committee on Health

Wednesday, February 16, 3:30 p.m. Room 229  
Senate Bill 1437 Relating to the Uniform Information Practices Act

Honorable Chair Josh Green, M.D., Vice Chair Clarence K. Nishihara and  
members of the Senate Committee on Health,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association and its 960 member dentists. I appreciate the opportunity to testify in support of Senate Bill 1437 Relating to the Uniform Information Practices Act. The bill before you today would seek to provide basic due process for those who have complaints filed against them with state and county agencies.

For the last two legislative sessions, the HDA, along with other concerned groups, have sought to obtain a semblance of justice from the Legislature in the blatantly unfair and unconscionable act of the public listing of unfounded and unsubstantiated complaints against licensees. During the last legislative session a reasonable compromise was determined by the House and Senate in HB 1212, HD 1, SD 1, CD 1, which was passed to Governor Lingle who vetoed the measure.

In trying to address the issue again during the interim, suggestions were made by legislative members and interested groups to find a way to address this issue from another point of view. It is important to note that Hawaii is the only state that provides for the unresolved and uninvestigated complaints to be listed for the public.

In reviewing other states, California and Florida seemed to provide the proper level of due process to those subject to public complaints. As a result, the California statutory framework was chosen as a basis for this legislation. As noted, the only thing that is affected is the public listing of unsubstantiated and uninvestigated complaints that provide no meaningful information as to whether or not the complaint is substantive or frivolous.

This bill provides specific guidelines as to when a complaint can be made public. Essentially, these guidelines provide that the target of the complaint be treated with a minimum of due process that permits the target to respond to the complaint made against them. Also, the agency must at least make a determination that the complaint is substantive enough to warrant legal action due to a violation of the law and is a risk to the public.

With respect to the HDA's members, an example of an blatant lack of due process is the complaint that listed a dentist member who has a complaint filed over five years ago by a patient who complaint about a billing issue, who was never contacted by DCCA investigators or notified of the complaint filed against him. Yet, the complaint still remains posted on the DCCA website to this day.

Additionally, in reviewing the disclosure provisions for complaints made against lawyers and judges, it is interesting to note that they are not subject to the same disclosure standards that other state agencies are held to. In fact, the complaint handling against lawyers and judges provides for disclosure only after full investigations, prosecutions and hearings are completed, and discipline is applied before the Supreme Court of Hawaii.

Thank you again for the opportunity to testify on this bill.