

LATE TESTIMONY

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary
House Committee on Consumer Protection & Commerce

From: Cheryl Kakazu Park, Director

Date: February 13, 2012, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 2298, H.D. 1
Relating to Privacy Rights

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") has concerns about this bill, and recommends that the bill be amended as described below.

OIP administers Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (UIPA). Since its adoption in 1988, the UIPA has made clear that any individual granted any type of license in the State does **not** have a significant privacy interest in "the record of complaints including all dispositions" so that the UIPA's privacy exception provided in HRS section 92F-13(1) could not apply to exempt such records from public disclosure. Thus, currently under the UIPA, the public has access to complaint records about any and all licensees. While Chapter 436B applies to over 45 different licensed professions, the UIPA in section 92F-14(b)(7) applies to other as well, such as nursing home operators and teachers.

This bill essentially proposes that only licensees under HRS chapter 436B have a significant privacy interest in information about their complaint record

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UNLESS “the applicable licensing authority has determined that the individual against whom the complaint was made was provided the opportunity to respond.” OIP is concerned about this bill for the following reasons.

First, OIP is concerned that the bill is ambiguous and possibly unnecessary because it is not clear in the bill as to when “the applicable licensing authority has determined that the individual against whom the complaint was made was provided the opportunity to respond to the complaint.” For example, since the DCCA provides a licensee with due process in the form of notice and opportunity to respond to a pending complaint, would RICO be able to determine under this bill’s language that the licensee was given the opportunity to respond? If so, then it appears that adequate opportunity to respond is probably given in each case and that this bill would still allow a record of pending complaints to be disclosed. If not, then it is unclear what the bill intends to accomplish.

Second, by specifying this condition only for those persons licensed under HRS chapter 436B, this bill alters the legislative scheme behind the UIPA of providing uniform disclosure provisions for government records. OIP is concerned about proposals, such as this bill, that seek to carve out exceptions, impose conditions, or otherwise limit the public’s access to licensees’ complaint history records. By amending the UIPA as proposed by this bill, the Legislature may adversely impact consumers by limiting licensees’ complaint information under HRS section 436B that would allow consumers to make their own informed choices and to protect themselves against potential risks.

OIP understands the desire of persons falsely accused of improper professional or vocational activity to protect their reputation. However, in originally providing express access to licensees’ complete complaint history information, the Legislature apparently believed that consumers had a right to

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access such information that could potentially protect them and that the public could give appropriate weight to pending complaints or complaints not referred for legal action in deciding whether to use a licensee's service. Accordingly, OIP has long agreed that even where there is no referral for legal action, the disclosure of complaint information may be important to the consumer as well as to the public interest in ensuring accountability of government agencies in carrying out administration of laws and regulations governing businesses and designed to protect consumers.

If the committee nevertheless decides, as a matter of policy, to pass this bill out of committee, then OIP strongly recommends that it make amendments directly to HRS Chapter 436B, where it would impact only those persons licensed under that chapter, and not to the UIPA, HRS Chapter 92F, where it would adversely impact the uniform disclosure requirements.

Thank you for considering OIP's testimony and suggested amendments.



COMMON CAUSE
Holding Power Accountable

Hawaii

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House JUD Committee
Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads

House CPC Committee
Chair Robert Herkes, Vice Chair Ryan Yamane

Monday 2/13/12 at 2:00PM in Room 325
HB2298 HD1 – Privacy Rights

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

Chair Keith-Agaran and Chair Herkes, Vice Chair Rhoads and Vice Chair Yamane, and Committee Members:

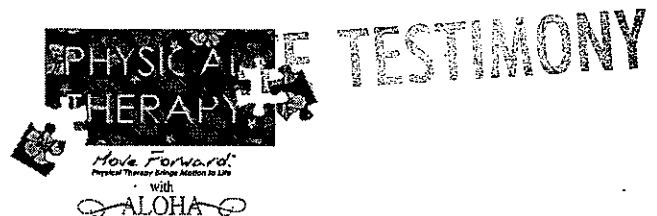
Common Cause Hawaii offers the following comments on HB 2298 HD1.

The earlier version of the bill proposed that in order for a complaint to be made public, the complaint would have to meet two criteria: (1) it has been referred for legal action, and (2) the target of the complaint has been provided an opportunity to respond. There are likely numerous complaints that may be meaningful and informative, but not necessarily severe enough as to require legal action; these complaints would not meet the first criteria, and therefore would be kept hidden from the public. We are glad to see in the HD1 that this provision has been removed from the bill.

Regarding the second criteria – providing the target of the complaint an opportunity to respond – we were under the impression that licensees are already provided an opportunity to respond, so it is unclear whether this change in the law is necessary.

As this bill and similar bills have been proposed at the legislature in recent years, we have been concerned about the departure from principles of open government and public access. These bills move against the trend of growing public expectations of transparency. Thanks to consumer review websites and other online information, consumers have come to expect easy access to information to make decisions about what to purchase and whom to hire. Our government should not move in the opposite direction, and must continue to provide complete information to protect consumers.

Mahalo for the opportunity to submit testimony.



House Judiciary Committee
House Consumer Protection Committee
Monday, February 13, 2012
2:00 p.m.
Room 325

LATE TESTIMONY

RE: HB2298 HD1, RELATING TO PRIVACY RIGHTS

Good morning, Chair Keith-Agaran, Chair Herkes, Vice-Chair Nishihara, Vice-Chair Yamane and members of the Committees. On behalf of the Hawaii Chapter, American Physical Therapy Association ("HAPTA"), we are in **opposition** of HB2298, relating to privacy rights.

This measure would allow complaints against a professional or vocational licensee to become public only if a legal proceeding was filed and the individual had the opportunity to respond to the complaint. We believe the measure would greatly hinder consumer protection and could negatively impact certain professionals who are earnestly delivering much needed care and services to the community.

HAPTA is a non-profit professional organization serving more than 200 member Physical Therapists and Physical Therapist Assistants. Our mission is to be the principal membership organization that represents and promotes the profession of Physical Therapy in the State of Hawaii.

Mahalo,

Ann Frost, P.T.
Legislative Committee Chair

c/o 841 Bishop Street, Suite 2100, Honolulu, Hawaii 96813