



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON HEALTH

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, February 16, 2011
3:30 p.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 1438 – RELATING TO DENTAL SERVICES.

TO THE HONORABLE JOSH GREEN, M.D. AND THE MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department takes no position on this bill which amends Hawaii Revised Statutes chapters 432, 432D, and 448D by prohibiting a mutual benefit society, health maintenance organization, or dental service organization from setting or recommending fees for dental services that are not covered services.

The Department does not regulate or oversee the contractual provisions or requirements between dental insurers and dental service providers.

We thank this Committee for the opportunity to present testimony on this matter.

Hawaii State Legislature
State Senate
Committee on Health

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 1438 Relating to the Relating to Dental Services

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 SB 1438 Relating to Dental Services. The bill before you today would prohibit health and dental insurance companies from setting fees for dental services not subject to insurance company contracts. This bill is based on the model legislation from the National Conference of Insurance Legislators (NCOIL) which was approved and adopted last October.

Health and dental insurance companies are now including clauses in their contracts with participating dentists which state that non-covered services are subject to a fee schedule dictated by the insurance companies. Such price fixing and restraint of trade by these insurance companies harm not only the consumer, but in some cases will also cause patients with insurance to be turned away from their dentist due to these onerous clauses.

For instance, if an insurance company stipulates there is no reimbursement or coverage for a particular procedure, such as a crown. The insurance contract provision would prohibit a participating dentist from charging a fee for that service. Such a provision would require the patient to seek a non-participating dentist who is not bound by a contract, to perform the procedure. This absurd result clearly demonstrates how unintended consequences would result when boiler plate provisions are included in contracts of adhesion by insurance companies.

Additionally, should a patient with insurance seek the services of their family dentist for a serious dental problem or disease, they could find that their trusted dentist is restricted or prohibited from providing full and complete professional services to their family due the onerous restrictions in such a contract .

In other states, the Delta Dental Plans Association's response to similar bills as HB 414 has been to attack these laws claiming that these contract provisions enable patients to benefit from a discounts on services **which are not provided or covered in the benefits under their insurance coverage**. The HDA not only disputes this assertion and wishes to point out that in many instances this would put the participating dentist into a losing proposition, especially on the



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Email: har@hawaiirealtors.com

February 15, 2011

The Honorable Josh Green, M.D., Chair
Senate Committee on Health
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1437, Relating to the Uniform Information Practices Act

HEARING: Wednesday, February 16, 2011, at 3:30 p.m.

Aloha Chair Green, Vice Chair Nishihara, and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **supports** H.B. 1141, which clarifies and creates the circumstances under which complaints submitted to the department and agencies shall be made available to the public.

HAR believes in the public's right to have access to information regarding the discipline of state-licensed professionals in various occupations. However, Hawai'i is the only state in the country where all complaints against licensed professionals are disclosed on the Regulated Industries Complaints Office ("RICO") website regardless of the outcome of such complaints.

Reported complaints remain on the website for five years and are not removed, even if the investigation is closed for lack of evidence or merit, or if there is a determination by RICO that a violation did not occur. This has two potentially negative effects—the public may be misled about a licensee's complaint history and a licensee may be unfairly targeted by the disclosure.

HAR believes this measure provides a balanced approach to the disclosure of complaints against real estate licensees and other regulated professionals, inasmuch, as it provides a clear framework and process for the types of complaints to be disclosed to the public.

Mahalo for the opportunity to testify.

Testimony to the Senate Committee on Health
SB 1438
Relating to Dental Services
By
Neil C. Nunokawa, D.D.S.
1885 Main Street, Suite 204
Wailuku, HI 96793

Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

Wednesday, February 16, 2011, 3:30 P.M.
Conference Room 229

Re: SB 1438, Relating to Dental Services

Honorable Chair Josh Green M.D., Vice Chair Nishikawa and
Members of the Senate Committee on Health:

As the present President-Elect of the Hawaii Dental Association and a practicing dentist from the island of Maui for over 30 years, I wish to testify IN SUPPORT of Senate Bill 1438, Relating to Dental Services. This bill would prohibit health and dental insurance companies from setting fees for dental services not subject to insurance company contracts.

Presently, dental insurance companies limit the fees that a participating dentist may charge even though the procedure is a non-covered benefit under the insurance contract. This provision results in price fixing and restraint of trade that affects the entire dental profession in the State of Hawaii. This restriction is even more onerous considering the fact that Hawaii is so heavily insurance-oriented. To opt out of participating with any dental insurance company would be a heavy burden and possible economic suicide for many dentists.

Such limitations on fees for non-covered services are also harmful to consumers. If fees are set too low, a participating dentist would not offer certain services, resulting in the patient being forced to seek the services of a non-participating provider, thereby losing any benefit of the patient's earned insurance coverage.

Presently 26 states have implemented similar statutory prohibitions in the last 18 months and similar legislation is now pending in over 13 states. In addition, the National Conference of Insurance Legislators (NCOIL) adopted a model act last October on which HB 1438 is based on.

The special and protected statutory environment that insurance companies enjoy provide for virtual monopolistic power over many providers. Senate Bill 1438 seeks to remedy this injustice.

Please pass Senate Bill 1438.

Sincerely,

Neil C. Nunokawa D.D.S

green1 - Karen

From: Darrell [teruyadt@att.net]
Sent: Saturday, February 12, 2011 11:34 AM
To: HTHTestimony
Subject: Testimony in support of SB 1438

The Senate Committee on Health

Wednesday February 16, 2011; 3:30 p.m.; Conference Room 229

Testimony in support of

SB 1438. RELATING TO DENTAL SERVICES. Prohibits dental service organizations, mutual benefit societies, and health maintenance organizations from requiring a dentist who provides services to its subscribers to accept a fee set by the plan for any services except covered services.

Clarifies circumstances under which complaints submitted to departments and agencies shall be made available to the public.

Senator Josh Green, M.D., Chair; Senator Clarence K. Nishihara, Vice Chair; honored members of the Senate Committee on Health,

Thank you for the opportunity to testify in support of Senate Bill 1438 which would prevent third party payors from imposing payment limits on non-covered dental services.

I am a general dentist practicing in the state of Hawaii for over 25 years. I strive to deliver dentistry to the best of my abilities for the benefit of my patients. To this end, I feel that there is an unfair ability by the insurance companies allowing them to interfere with the provision of these services.

As it stands now, a third party payor has the ability not only to deny payment on a non-covered service but in addition can limit what a dentist can collect on that service. This restricts what I can offer and provide to my patients. My fees have to be able to cover the costs of my services as well as to justify the efforts involved in the provision of those services. There may be additional lab fees and other attendant expenses. All too often the insurance company will recognize the necessity for the extra efforts but deny or restrict the amount that can be assessed. This strikes me as an effort by the third party payor to effectively restrict trade.

It is a specious argument that, by these practices, the insurance company keeps the cost of dental premiums down for the patient. This doesn't make sense to me as the maximum dental benefit is limited by the insurance carrier for each individual. This maximum has typically not been changed for 30 years or more. Conversely, I seriously doubt that the premiums have been kept in check at the previous levels.

Dentistry, through efficiency and advances in technology, has proven itself as health care that works. To deny the people of Hawai'i optimal levels of treatment through such exclusionary means is to deny choice.

Thank you for the opportunity to present this testimony in favor of SB 1438.

Darrell T Teruya, DDS

Former president (2009), Hawai'i Dental Association

green1 - Karen

From: ttkddsinc@hawaii.rr.com
Sent: Sunday, February 13, 2011 1:15 PM
To: HTHTestimony
Subject: Please Help your Hawaii Dental Association Legislative Program

Ted Kanamori
3434 Haleakala Hwy
Makawao, HI 96768-8510

February 13, 2011

HI Senate Health Committee

Dear HI Senate Health Committee:

I feel that Senate Bill 1437 and 1438 are important for how I'm able to practice Dentistry in Hawai'i.

The Senate Committee on Health
Wednesday February 16, 2011; 3:30 p.m.; Conference Room 229

Testimony in support of
SB 1437 RELATING TO THE UNIFORM INFORMATION PRACTICES ACT RELATING TO THE UNIFORM INFORMATION PRACTICES ACT. Clarifies circumstances under which complaints submitted to departments and agencies shall be made available to the public.

SB 1438. RELATING TO DENTAL SERVICES. Prohibits dental service organizations, mutual benefit societies, and health maintenance organizations from requiring a dentist who provides services to its subscribers to accept a fee set by the plan for any services except covered services. Clarifies circumstances under which complaints submitted to departments and agencies shall be made available to the public.

Senator Josh Green, M.D.; Chair; Senator Clarence K. Nishihara, Vice Chair; honored members of the Senate Committee on Health,

It would be greatly appreciated if you could facilitate the passage of SB1437. At present there is no substantive review or vetting of a frivolous or malicious complaints before its posting. It appears that the DCCA posts all complaints on their web site without any substantiation of the complaint's validity.

My concerns as a licensed, practicing dentist are as follows:

With regards to SB 1437,

1. Hawaii is the only state in the country that posts completely unsubstantiated claims on a public web site. Only 2 states post unresolved complaints, but they actually have stringent safeguards to protect the integrity of the system against frivolous complaints before posting.

Hawaii is essentially the only state that discloses complaints against its licensed professionals which have not been adjudicated.

2. The public can check on any licensee by contacting the DCCA. They will be given the current information regarding the number of complaints and status of the complaints. All

complaint information for all State and County licensees are available under Hawaii's Freedom of Information act.

This provides more accurate and useful information than is currently available on a web site which is a blanket listing of frivolous and non-legitimate complaints.

3. There is apparently a lack of parity within the DCCA as it appears that complaints against all licensees are not disclosed or investigated on an equal basis. Only the licensees under the Professional and Vocational Licensing Division and the Regulated Industries Complaint Office are posted on the DCCA web site. Licensees under the Insurance Division, the Business Registration Division and the Bank Examination Division are, in contrast, not subject to disclosure on the DCCA web site.

4. The DCCA web site is not updated in a timely manner and there are numerous instances where alleged citations remain on the web site in excess of the five year period. What is particularly onerous is that complaints resolved in favor of the licensee are still posted against the licensee for the 5 year period. This contrasts with what the DCCA has reported to the Legislature and to DCCA licensees.

5. In addition to the unfair and discriminatory actions by the DCCA, the State Judiciary's regulation and handling of complaints against licensed attorneys continues to be in apparent violation of current law. It appears that the Attorney General's staff is not even subject to the same law that the DCCA is applying inequitably to the PVL licensees. With regards to the lawyers employed by RICO, this inequity makes any posting by the DCCA appear as following a double standard. With regards to SB 1438, As a dentist practicing in the state of Hawaii. I strive to deliver dentistry to the best of my abilities for the benefit of my patients. To this end, I feel that there is an unfair ability by the insurance companies allowing them to interfere with the provision of these services.

As it stands now, a third party payor has the ability not only to deny payment on a non-covered service but in addition can limit what a dentist can collect on that service. This restricts what I can offer and provide to my patients. I have a fair amount of fixed and variable costs which I have to consider in my practice. All too often the insurance company will recognize the necessity any extra efforts but deny or restrict the amount that my patient can share in. This strikes me as an unfair way by the third party payor to limit what I can offer my patient.

I try to offer my patients a good value for my services. Please don't let an outside organization dictate how I can practice dentistry. It is also telling that the Hawaii Insurance Commission was, in the past, supportive of this measure. I humbly ask for your consideration in allowing the passage of SB 1437 and SB 1438. I believe that fair enforcement and reporting of license irregularities serves to enhance the business climate in Hawaii. Equitable treatment by third party payors also enables the effective provision of services to my patients. Thank you for your due consideration of these measures.

Mahalo for your support.

With aloha,

Ted Kanamori
808 572-0822

green1 - Karen

From: drsmiles4you@aol.com
Sent: Sunday, February 13, 2011 10:50 AM
To: HTHTestimony
Subject: Please Help your Hawaii Dental Association Legislative Program

Glenn Okihiro DDS
98-1648 Hapaki Street
Aiea, HI 96701-1734

February 13, 2011

HI Senate Health Committee

Dear HI Senate Health Committee:

I feel that Senate Bill 1437 and 1438 are important for how I'm able to practice Dentistry in Hawai'i.

The Senate Committee on Health
Wednesday February 16, 2011; 3:30 p.m.; Conference Room 229

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green1 - Karen

From: toothdoctorhawaii@yahoo.com
Sent: Sunday, February 13, 2011 2:50 PM
To: HTHTestimony
Subject: Please Help your Hawaii Dental Association Legislative Program

William Hu
377 Keahole St. #211
Honolulu, HI 96825-3405

February 13, 2011

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Mahalo for your support.

With aloha,

William Hu

This message has been verified by CapwizXC as authentic and sent by this individual.
Authentication ID: [651zbzi8]

green1 - Karen

From: weschoy@hawaiiantel.net
Sent: Monday, February 14, 2011 8:51 AM
To: HTHTestimony
Subject: Please Help your Hawaii Dental Association Legislative Program

WESLEY CHOY
1744 Liliha St. Suite 101
Honolulu, HI 96817-3115

February 14, 2011

HI Senate Health Committee

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The Senate Committee on Health
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With aloha,

WESLEY CHOY
808-538-3303

green1 - Karen

From: yeedaman@hawaii.rr.com
Sent: Sunday, February 13, 2011 8:50 PM
To: HTHTestimony
Subject: Please Help your Hawaii Dental Association Legislative Program

Randall Yee
1063 Lower Main St., Suite C-224
Wailuku, HI 96793-2096

February 14, 2011

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Mahalo for your support.

With aloha,

Randall Yee
808-242-6857

green1 - Karen

From: Darrell [teruyadt@att.net]
Sent: Saturday, February 12, 2011 11:31 AM
To: HTHTestimony
Subject: Testimony in support of SB 1437

The Senate Committee on Health

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It would be greatly appreciated if you could consider the passage of SB 1437. There is no substantive review or vetting of a frivolous or malicious complaints before its posting on the Department of Commerce and Consumer Affairs website. Currently it still appears that the DCCA posts all complaints on their web site without any substantiation of the complaint's validity.

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2. Currently, the public can check on any licensee by contacting the DCCA. They will be given the current information regarding the number of complaints and status of the complaints. All complaint information for all State and County licensees are available under Hawaii's Freedom of Information act. This provides more accurate and useful information than is currently available on a web site which is a blanket listing of frivolous and non-legitimate complaints.
3. There is apparently a lack of parity within the DCCA as it appears that complaints against all licensees are not disclosed or investigated on an equal basis. Only the licensees under the Professional and Vocational Licensing Division and the Regulated Industries Complaint Office are posted on the DCCA web site. Licensees under the Insurance Division, the Business Registration Division and the Bank Examination Division are, in contrast, not subject to disclosure on the DCCA web site.
4. The DCCA web site is not updated in a timely manner and there are numerous instances where alleged citations remain on the web site in excess of the five year period. What is particularly onerous is that complaints resolved in favor of the licensee are still posted against the licensee for the 5 year period. This contrasts with what the DCCA has reported to the Legislature and to DCCA licensees.
5. In addition to the unfair and discriminatory actions by the DCCA, the State Judiciary's regulation and handling of complaints against licensed attorneys continues to be in apparent violation of current law. It appears that the Attorney General's staff is not even subject to the same law that the DCCA is applying inequitably to the PVL licensees. With regards to the lawyers employed by RICO, this inequity makes any posting by the DCCA appear as following a double standard.

I humbly ask for your consideration in allowing the passage of SB 1437. I believe that fair enforcement and reporting of license irregularities serves to enhance the business climate in Hawaii. This is currently not the practice. Thank you for your due consideration of this measure.

Darrell Teruya, DDS

green1 - Karen

From: ltmbobo@aol.com
Sent: Friday, February 11, 2011 8:03 PM
To: HTHTestimony
Subject: Please Help your Hawaii Dental Association Legislative Program

Michael Wong
1010 S. King St., #404
Honolulu, HI 96814-1705

February 12, 2011

HI Senate Health Committee

Dear HI Senate Health Committee:

I feel that Senate Bill 1437 and 1438 are important for how I'm able to practice Dentistry in Hawai'i.

The Senate Committee on Health
Wednesday February 16, 2011; 3:30 p.m.; Conference Room 229

Testimony in support of
SB 1437 RELATING TO THE UNIFORM INFORMATION PRACTICES ACT RELATING TO THE UNIFORM INFORMATION PRACTICES ACT. Clarifies circumstances under which complaints submitted to departments and agencies shall be made available to the public.

SB 1438. RELATING TO DENTAL SERVICES. Prohibits dental service organizations, mutual benefit societies, and health maintenance organizations from requiring a dentist who provides services to its subscribers to accept a fee set by the plan for any services except covered services. Clarifies circumstances under which complaints submitted to departments and agencies shall be made available to the public.

Senator Josh Green, M.D., Chair; Senator Clarence K. Nishihara, Vice Chair; honored members of the Senate Committee on Health,

It would be greatly appreciated if you could facilitate the passage of SB1437. At present there is no substantive review or vetting of a frivolous or malicious complaints before its posting. It appears that the DCCA posts all complaints on their web site without any substantiation of the complaint's validity.

My concerns as a licensed, practicing dentist are as follows:

With regards to SB 1437,

1. Hawaii is the only state in the country that posts completely unsubstantiated claims on a public web site. Only 2 states post unresolved complaints, but they actually have stringent safeguards to protect the integrity of the system against frivolous complaints before posting.

Hawaii is essentially the only state that discloses complaints against its licensed professionals which have not been adjudicated.

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5. In addition to the unfair and discriminatory actions by the DCCA, the State Judiciary's regulation and handling of complaints against licensed attorneys continues to be in apparent violation of current law. It appears that the Attorney General's staff is not even subject to the same law that the DCCA is applying inequitably to the PVL licensees. With regards to the lawyers employed by RICO, this inequity makes any posting by the DCCA appear as following a double standard. With regards to SB 1438, As a dentist practicing in the state of Hawaii. I strive to deliver dentistry to the best of my abilities for the benefit of my patients. To this end, I feel that there is an unfair ability by the insurance companies allowing them to interfere with the provision of these services.

As it stands now, a third party payor has the ability not only to deny payment on a non-covered service but in addition can limit what a dentist can collect on that service. This restricts what I can offer and provide to my patients. I have a fair amount of fixed and variable costs which I have to consider in my practice. All too often the insurance company will recognize the necessity any extra efforts but deny or restrict the amount that my patient can share in. This strikes me as an unfair way by the third party payor to limit what I can offer my patient.

I try to offer my patients a good value for my services. Please don't let an outside organization dictate how I can practice dentistry. It is also telling that the Hawaii Insurance Commission was, in the past, supportive of this measure. I humbly ask for your consideration in allowing the passage of SB 1437 and SB 1438. I believe that fair enforcement and reporting of license irregularities serves to enhance the business climate in Hawaii. Equitable treatment by third party payors also enables the effective provision of services to my patients. Thank you for your due consideration of these measures.

Mahalo for your support.

With aloha,

Michael Wong

This message has been verified by CapwizXC as authentic and sent by this individual.
Authentication ID: [WAL19Ud4]

green1 - Karen

From: loren001@hawaii.rr.com
Sent: Monday, February 14, 2011 12:20 PM
To: HTHTestimony
Subject: Health

Loren Liebling
579 Keolu Dr. Unit E
Kailua, HI 96734-3980

February 14, 2011

HI Senate Health Committee

Dear HI Senate Health Committee:

I feel that Senate Bill 1437 and 1438 are important for how I'm able to practice Dentistry in Hawai'i.

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Mahalo for your support.

With aloha,

Loren Liebling
8087534767

green1 - Karen

From: kdrkeithk@aol.com
Sent: Monday, February 14, 2011 10:06 AM
To: HTHTestimony
Subject: Please Help your Hawaii Dental Association Legislative Program

Keith K. Kuroiwa DDS
615 Piikoi Street PH-3
Honolulu, HI 96814-3138

February 14, 2011

HI Senate Health Committee

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Wednesday February 16, 2011; 3:30 p.m.; Conference Room 229

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With aloha,

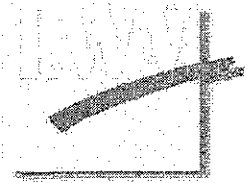
Keith K. Kuroiwa DDS
808-596-2568

This bill as drafted impacts complaints information in all forms; i.e., RICO complaints history reports as well as UIPA records requests. In other words, the public would not be privy to RICO complaints unless RICO chose to take legal action.

RICO acknowledges that it is difficult to balance the competing interests of consumers in making knowledgeable decisions about the professionals they hire against a professional's interest in avoiding negative connotations associated with a history of complaints. RICO is continually evaluating the extent to which it can refine the manner in which these competing interests are served, without undermining its obligation to be as accountable and transparent to the public as possible in its enforcement activities.

There are a number of bills this session that clearly reflect the public's interest in knowing about how government is conducting its investigations and how it responds to complaints. See Senate Bill No. 218 (disclosure of complaints regarding availability of emergency contraception); Senate Bill No. 937 (disclosure of Department of Health and Department of Human Services inspections of state-licensed care facilities); and Senate Bill No. 705 (relating to medical harm disclosure). Senate Bill No. 1437 would preclude public disclosure of complaints or inspections based upon complaints, unless those complaints resulted in legal action.

Given the practical impact of this bill, and in weighing the competing interests involved, RICO believes that this bill weighs too heavily against the



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON SB1437 RELATING TO THE UNIFORM INFORMATION PRACTICES ACT

Committee on Health

Date: Wednesday, February 16, 2011

Time: 3:30 p.m.

Place: Conference Room 229

Testifier: Jean Aoki, LWV Legislative committee

Chair Josh Green, Vice Chair Clarence Nishihara, members of the Committee on Health,

The League of Women Voters of Hawaii opposes SB1437 which would add more restrictions on government's ability to give the public access to information that could protect them from making unwise choices in procuring consumer services. The disclosure of complaints from the consumer public is being severely curtailed for example by certain requirements that have to be met prior to disclosure such as "that the complaint will be referred for legal action if legal action is authorized." Also, "A complaint shall not be made public if the department or agency is conducting an active investigation or review of the complaint". I present but a few of the restrictions to disclosure.

Chapter 92F, Hawaii Revised Statutes lists examples of information in which the individual has a significant privacy interest. No. 7 in that list says *Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except: (emphasis added)*

(A) *The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline; and*

(B) *Information on the current place of employment and required insurance coverages of licensees.*

Interestingly, (C) *(The record of complaints including all dispositions)* has been stricken from this bill.

The League of Women Voters respects the privacy interests of our service providers, most of whom are trustworthy citizens who seek to help members of the public. However, the public needs access to certain information when seeking professional services which involve their health, or services which means the outlay of large sums of money, etc. For the sake of our citizens, please hold SB 1437 in committee. Thank you for this opportunity to testify against SB 1437.