

Hawaii State Legislature State
House of Representatives
Committee on Health

Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair
Committee on Health

Friday, January 31, 2014, 8:30 a.m. Room 329
House Bill 2460 Relating to Dentists

Honorable Chair Della Au Belatti, Vice Chair Dee Morikawa and
members of the House 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 opposition to of House Bill 2460 Relating to Dentists. The HDA finds that the current laws and rules relating to the practice of dentistry in Hawaii adequately address the policing needed to protect the public. In fact, provisions of this bill would only serve to weaken the protections for the public at a time when the regulatory environment should call for more diligence by those who regulate the practice of dentistry.

The following reasons cover the objections the HDA has for this bill:

1. It is not clear from this bill why dental specialty licenses are necessary or what benefit they would provide to the State of Hawaii. There are no data indicating the need for additional dental specialists beyond the three available licensing mechanisms which include the ADEX examination, the community service license and the temporary license. In addition, any concerns about misleading or misrepresentation of advanced training by licensed dentists is already covered in HRS Section 448-4, regarding Fraudulent Advertising.
2. The Hawaii State Board of Dental Examiners has worked hard to evaluate dental candidates' competency, and has adopted the ADEX examination as the minimum requirement for dental licensure. The ADEX exam is currently accepted by 42 states and jurisdictions.
3. There are currently nine recognized dental specialties. HB 2460 states that the Board shall issue a specialty license to any licensed dentist "certified in any specialty by an examining board recognized by the American Dental Association", and for public safety, the Board may establish a committee of at least 2 specialists to assist in evaluation of the candidate. This would open the board and committee members to criticism and potential litigation of any unfavorable evaluations. Look at the names involved in 2005 when 5 dentists sued the Hawaii State Board of Dental Examiners. A Pacific Business News

article covered this fiasco when 2 Hawaii State Senators advocated for loosening Hawaii's licensing. Over 30 dentists received licenses during a 4 month period without a Hawaii examination. The credentialing committee of an Oregon hospital lost a lawsuit over the committee's negative recommendation.

4. A licensed dental specialist may practice general dentistry, and a licensed general dentist with advanced training may practice certain specialty procedures. Many of the procedures performed by a specialist could also fall in the category of general dentistry. It would open Hawaii to litigation again by trying to define procedures some specialists may perform under specialty licensure versus dentists who have only passed the ADEX exam.
5. Licensing by paperwork or credentials has failed previously in Hawaii with tragic outcomes. The Kailua dentist involved in the death of Finley Boyle, one of the 5 who sued the Hawaii State Board of Dental Examiners, and the Hilo orthopedic surgeon who placed a screwdriver in a patient's back, were licensed by credentials.
6. Specialist evaluation committees may be impossible to fill. Payments of \$50 a day would pale in comparison to the damages awarded to a dentist claiming restraint of trade. The Sherman Antitrust Act of 1890 has been used in litigation claiming antitrust. The Astoria Clinic case affirmed the ability to hold hospitals and individual physicians liable in cases alleging anti-trust. On the reverse side of credentialing, Missouri found a medical clinic liable for inadequate background checks of a physician sued for malpractice. The Sharp Cabrillo clinic was also sued for inadequate credentialing checks. The language in HB 2460 is extremely vague in any protection provided for public safety.

The HDA urges the legislature to help us maintain our high standards to protect Hawaii's patients and to kill this misguided legislation. Special interest legislation to benefit a few, who have failed the ADEX examination or refuse to take the ADEX exam, does not serve the people of Hawaii.

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**



TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Friday, January 31, 2014
8:30 a.m.

TESTIMONY ON HOUSE BILL NO. 2460, RELATING TO DENTISTS.

TO THE HONORABLE DELLA AU BELATTI, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Mark Chun, D.M.D., Dental member of the Board of Dental Examiners (“Board”). The Board appreciates the opportunity to testify and offer comments on House Bill No. 2460, Relating to Dentists.

The purpose of House Bill No. 2460 is to create a specialty license for dentists qualified to practice a specialty recognized by the American Dental Association (“ADA”), and allows the Board of Dental Examiners to establish committees to assist the Board in licensing ADA recognized specialties.

The Board has not had an opportunity to meet and discuss House Bill No. 2460 and apologizes for not having a position at this time.

However, the Board seeks clarification on the provisions of the bill and offers the following comments.

It appears that the bill creates three pathways for licensure as a specialist. Pursuant to subsection (b), a dentist can qualify for a specialty license upon being certified in any specialty by an examining board recognized by the ADA. The Board seeks clarification if an “examining board” refers to the appropriate specialty board

recognized by the ADA or a regional examining agency that administers specialty examinations, or both.

Pursuant to subsection (c), a specialty license can be obtained by completing a dental specialty program accredited by the Council on Dental Accreditation ("CODA").

Pursuant to subsection (d), a specialty license can be obtained by a "licensed dentist" who has been licensed and is practicing in another state, province or territory if the "licensed dentist" meets the educational requirements for a specialty license in this State. The reference to a "licensed dentist" in this subsection appears to be a person licensed in another state, province or territory. However, in subsection (i), a "licensed dentist" is defined as a person licensed in Hawaii. Also, the requirements to meet the educational requirements for the specialty license required of original applicants for a specialty license in this State would appear to be addressed in subsection (c) and (b). Therefore, this subsection would appear to be duplicative, or may be combined with the previous subsection by including being currently licensed and in good standing.

Regarding subsection (e), to establish a committee composed of at least two dentists who are diplomats of an ADA recognized specialty board to evaluate an applicant's qualification, there is a question of whether such a committee is feasible and necessary. Our understanding is that a few specialties may not have sufficient diplomats available to sit on the committee. In addition, most states that license or certify specialists qualify the specialists on the completion of their specialty programs. What additional criteria would a committee look at to approve for licensure?

Regarding subsection (f), requiring compensation for a member of the committee, please be aware that the Board itself does not have dedicated funds to compensate the committee members. The Board members volunteer their time and do not get compensated other than those from the neighbor islands who receive a minimal stipend. Also, as stated above, there is a question of whether a committee is feasible and necessary.

Regarding proposed section 448-7(b), the Board's renewal cycle is on a biennium basis and not annual. As proposed, there would be an annual cycle for specialists and a biennial renewal cycle for all other licenses. This would create additional work for the Department of Commerce and Consumer Affairs.

Moreover, if a secondary intent is to address the tragic incident that recently occurred, the bill may not prevent such an incident as it does not address a person's lack of judgment, nor does it prevent a general dentist from providing dental service to different populations or other dental problems as the dentist may not be "practicing as a specialist".

Therefore, the Board seeks clarification of some of the provisions in the bill, as specified in the above comments.

Thank you for the opportunity to testify on House Bill No. 2460, and I will be available for questions.

**TESTIMONY OF L. RICHARD FRIED, JR.
IN SUPPORT OF H.B. NO. 2460**

LATE

Date: Friday, January 31, 2014
Time: 8:30 am

To: Chairman Della Au Belatti, and Members of the House Committee on Health:

My name is L. Richard Fried, Jr. and I am submitting testimony in support of H.B. No. 2460 relating to Dentists. I am an attorney who has represented plaintiffs in personal injury cases for over 40 years.

Since the introduction H.B. No. 2460, the State of Hawai'i Board of Dental Examiners has amended Chapter 16-79 of the Hawai'i Administrative Rules which also regulates the dental profession. Laws like H.B. No. 2460 will prohibit any dentist from representing that they are a specialist or practicing a dental specialty unless they have the necessary training, experience, and specialty license required by this Bill. The current Bill being considered by the Legislature, and the new regulations enacted by the State of Hawai'i Board of Dental Examiners, should complement each other and help to protect members of the public.

Thank you very much for allowing me to testify in Support of this measure. Please feel free to contact me should you have any questions or desire additional information.

C

West's Hawai'i Revised Statutes Annotated Currentness

Division 2. Business

■ Title 25. Professions and Occupations

■ Chapter 448. Dentistry

→→ § 448-17. Refusal, revocation, suspension, and administrative penalties

(a) The board shall refuse to issue a license to any applicant who fails to meet all of the requirements imposed by this chapter and may refuse to issue a license to any applicant who has previously committed any act that would, if committed by a licensee, result in the revocation or suspension of the license.

(b) In addition to any other actions authorized by law, the board may suspend or revoke any license issued under this chapter and may fine a licensee for any cause authorized by law, including but not limited to the following:

- (1) Fraud in procuring license;
- (2) Habitual intoxication or addiction to the use of drugs;
- (3) Wilful or repeated violations of the rules of the department of health;
- (4) Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court;
- (5) Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient;
- (6) Assisting in the care or treatment of a patient, without the knowledge of the patient or the patient's legal representative;
- (7) Employing, procuring, inducing, aiding, or abetting a person not licensed as a dentist to engage in the practice of dentistry;
- (8) Making any misrepresentations or false promises, directly or indirectly, to influence, persuade, or induce dental patronage;

- (9) Professional connection or association with, or lending one's name to another for, the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding oneself, themselves, or itself out in any manner contrary to this chapter;
- (10) By false or fraudulent representations, obtaining or seeking to obtain practice or money or any other thing of value;
- (11) Practicing, either in the State or elsewhere, under a name other than one's own;
- (12) Any other improper, unprofessional, or dishonorable conduct in the practice of dentistry;
- (13) Violation of section 447-4; and
- (14) False or misleading advertising not otherwise provided for under this subsection, including:
 - (A) Advertising to the public as practicing a dental **specialty** in which the **dentist** has not successfully completed the education specified for the dental specialty as defined by the American Dental Association; and
 - (B) Using the following words or phrases in advertising when the dentist has not successfully completed the education specified for the dental specialty as defined by the American Dental Association:
 - (i) "Dental public health";
 - (ii) "Endodontics";
 - (iii) "Oral and maxillofacial pathology";
 - (iv) "Oral and maxillofacial radiology";
 - (v) "Oral and maxillofacial surgery";
 - (vi) "Orthodontics and dentofacial orthopedics";
 - (vii) "Pediatric dentistry";
 - (viii) "Periodontics"; or
 - (ix) "Prosthodontics";



provided that this paragraph shall not apply to a **dentist** who advertises as being qualified in a recognized **specialty** area of dental practice so long as each advertisement, regardless of form, contains a prominent disclaimer that the **dentist** is a general **dentist** or that the **specialty** services will be provided by a general **dentist**.

(c) Any person who violates, or fails to comply with, any of the provisions of this chapter, the penalty for which is not otherwise provided, shall be fined not less than \$1,000 nor more than \$5,000.


CREDIT(S)

Laws 1937, ch. 220, § 8; R.L. 1945, § 2164; Laws 1949, ch. 177, § 5; R.L. 1955, § 61-17; Laws 1959, 2nd Sp. Sess., ch. 1, § 19; H.R.S. § 448-17; Laws 1974, ch. 205, § 2(13); Laws 1984, ch. 90, § 1; Laws 1986, ch. 26, § 3; Laws 1992, ch. 202, § 77; Laws 2009, ch. 131, § 2, eff. June 18, 2009.

HISTORICAL AND STATUTORY NOTES

Laws 2009, ch. 131, inserted the subsec. (b) designation in the second paragraph of subsec. (a) and redesignated former subsec. (b) as subsec. (c); in newly designated subsec. (b), deleted “or registered” following “not licensed” in par. (7) and added par. (14); and made nonsubstantive changes.

LIBRARY REFERENCES



Health  141, 204 to 212, 222(2).

Westlaw Topic Nos. 198Hk141; 198Hk204 to 198Hk212; 198Hk222(2).

NOTES OF DECISIONS

Mandamus 1

1. Mandamus

Where statute requires applicant to pass examination satisfactory to board, and license is refused because examination is not satisfactory, mandamus is not proper remedy unless it appears that opposite conclusion is only one that could have been honestly reached. In re Lorigan, 1920, 25 Haw. 445, 1920 WL 791, Unreported. Licenses  22; Mandamus  87

H R S § 448-17, HI ST § 448-17

Current with amendments through Act 4 [End] of the 2013 2nd Special Session.

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END OF DOCUMENT

morikawa2-Joanna

From: teruyadt@att.net
Sent: Wednesday, January 29, 2014 11:16 AM
To: HLTtestimony
Cc: Darrell; teruyadt@gmail.com
Subject: House Health Committee Hearing Testimony Friday 01-31-14 6:30 HB2456-60

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The Hawai'i House of Representatives COMMITTEE on HEALTH

Friday, January 31, 2014 Room 329

Testimony in **support** of HB 2456

Testimony in **opposition** to HB 2457; HB 2458; HB 2459; and **HB 2460**

Representative Della Au Bellati, Chair; Representative Dee Morikawa Vice-Chair; honored members of the House Committee on Health,

Thank you for the opportunity to testify on these issues affecting the dental health of the people of Hawai'i . I'm a general dentist with 30 years of practice in the State of Hawai'i and as a previous officer of the Hawai'i Dental Association, I've provided testimony on a variety of issues.

I support HB 2456 which requires an introductory dental examination prior to entry in a primary or secondary school in Hawai'i. The keiki of Hawai'i would be well served by placement in a "Dental Home" setting. As a longtime dentist I can recall the State DOH Certificate of Dental Health that we used to hand out on completion of treatment.

I oppose HB 2457 which requires the DOH to enter into agreements to administer sealants to high school students. There are protocols in place where such programs can be administered on an ad hoc or proscribed basis. Since the Dental Department of the DOH has only recently been reestablished, it would be prudent to see what priorities and program implementation will be forthcoming before proceeding on any mandated path.

I oppose HB 2458 which would change the membership and structure of the Hawai'i Board of Dental Examiners. Governor Abercrombie has only recently signed the revised Rules for the Practice of Dentistry in Hawai'i. This comes only after an 8 year comprehensive review and revision by this Dental Board. Change of the makeup of the Board would unduly compromise the ability of the Board to carry out its duties.

I oppose HB 2459 which requires a dentist to obtain written permission from the Board of Dental Examiners in prescribing or administering general anesthesia or conscious/ unconscious sedation. While well intentioned, there have been recent changes to the Hawai'i Dental Rules which essentially obviates this measure. I earnestly hope that we give these Rules changes a chance.

I oppose HB 2460 which would set up a secondary licensing structure for Dental Specialists. There have been a number of times in recent years where the integrity of dental licensure in Hawai'i has been challenged. This measure could have the unintended consequence of having differing means and standards of licensure between categories of dentists. That being said, I would be amenable to recognition of Board Certified Specialties as recognized by the ADA. This approach is also congruent with the advertising strictures in the Hawai'i Revised Statutes regarding dental advertising. This, however, should be addressed separately.

Again, mahalo for this opportunity to submit testimony on these measures.

Darrell Teruya, DDS

Past President (2008) Hawai'i Dental Association

Committee on Health

Rep. Della Au Belatti, Chair

Rep. Dee Morikawa, Vice Chair

Rep. Mele Carroll

Rep. Bertrand Kobayshi

Rep. Richard Creagan

Rep. Marcus Oshiro

Rep. Mark Hashem

Rep. Justin Woodson

Rep. Jo Jordan

Rep. Lauren K. Matsumoto

LATE

Friday, January 31, 2014

8:30 AM

Conference Room 329

State Capitol

415 South Beretania Street

Dear Chair Belatti and Members of the House Committee on Health,

My name is Glenn Okihiro and I am writing in opposition to HB 2460 creating a specialty license for dentists. The bill creates licensure by credentials as stated on page 2 of the bill the Board shall grant a license in one of the specialty areas “to a licensed dentist who is certified or licensed and is practicing in another state, province or territory”. The dentist in Kailua was licensed by credentials in 2005 as advocated for by Brian Schatz. Please don’t repeat the situation in Hilo where Dr. Robert Ricketson placed a screwdriver in Arturo Iturraide’s back.

Having graduated from a dental school or medical school does not guarantee competency. Dr. Ricketson was granted a license in Hawaii via credentials even though Oklahoma suspended his license and Texas revoked his license. I was told to my face by Senator Rosalyn Baker “this was just an anecdotal case and I was just a selfish dentist.” Two deaths by health professionals granted licenses by credentials are not anecdotal cases.

Creating Specialty Committees opens a slew of lawsuits on both sides of the granting of licenses. Oregon had a hospital and credentialing committee sued for restraint of trade using the Sherman Antitrust Act. In Johnson v. Misericordia the lawsuit contended that the credentialing process was inadequate in granting licensure by credentials.

Instead of weakening our licensure process, let us work to improve safety for Hawaii's patients. I am appalled that health legislation is introduced without any communication with the Hawaii Dental Association that represents over 90% of the practicing dentists in Hawaii. We have access to experts in any dental specialty you need information on. The Kailua dentist was not a member of our association.

Please help us protect Hawaii's citizens not individuals unable to pass an examination process accepted by 42 different states and jurisdictions. Hawaii's accepted exam has a 90% pass rate and we should not be legislating ways to avoid a standard competency level.

Sincerely,

Glenn Okihiro, DDS