

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Friday, March 18, 2016
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 3085, S.D. 1, RELATING TO HEALTH.

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

My name is Paul W. Guevara, D.M.D., M.D.S., Chair of the Board of Dental Examiners (“Board”). I appreciate the opportunity to testify in opposition to Senate Bill No. 3085, S.D. 1, Relating to Health. The purpose of this bill is to clarify the requirements for who may become a dental hygienist; and clarifies the allowable and prohibited practices and training requirements for dental assistants.

Regarding Section 2 of the bill which adds new subsection 447-1(a)(4), Hawaii Revised Statutes (“HRS”), the Board currently requires certification in the administration of intra-oral infiltration local anesthesia and certification in the administration of intra-oral block anesthesia under the current statute. Therefore, the proposed amendment may not be necessary with respect to the current statute.

In addition, currently the Board requires certification from a dental hygiene program accredited by the American Dental Association Commission on Dental Accreditation (“CODA”) to issue a license to practice as a dental hygienist to provide dental hygiene services. The Board has a separate process and requirements to allow a dental hygienist to administer intra-oral block anesthesia with the license. These

requirements are the most stringent in the United States and may have negative ramifications of qualified dental hygienists not being allowed to become licensed to provide dental hygiene services. The intent of the statutes is to license qualified dental hygienists to practice dental hygiene in Hawaii and not to establish restrictive requirements to eliminate qualified dental hygienists from practicing in Hawaii.

Regarding Section 3 of the bill, the addition of a new subsection 448-3(c), HRS, appears to also not be necessary with respect to what is already in the Board's administrative rules, under section 16-79-69.1, Hawaii Administrative Rules ("HAR"), Allowable duties and training for a dental assistant; and section 16-79-69.5, HAR, Prohibited Duties of the Dental Assistants, as well as the dental hygienists statutes, Chapter 447, HRS.

The Board strongly opposes this bill as it proposes to remove the dental assistants allowable and prohibited duties from the Board's administrative rules and place them in the dental hygiene statutes. The proposed language would cement the allowable and prohibited duties of the dental assistants, resulting in the Board not being able to adopt rules as current practices, technology, and training changes. In effect, the Board's expertise will be replaced by the expertise of the Legislature in regards to the practice of dentistry.

The proposed amendments to subsection (b) on pages 5 and 6 would prohibit a dental assistant to perform any services that would overlap or conflict with the practice of dental hygiene. It is the Board's understanding that should this measure pass, it

would invalidate the provisions in the Board's administrative rules related to allowable duties for dental assistants to assist the dentist in supportive dental procedures, as all of the allowable duties for dental assistants are specified as duties dental hygienists perform, per the Board's administrative rules.

Furthermore, in regards to the overlap or conflict of services, there are many examples of overlap of services among professions. For example, both dentist and dental hygienist can administer intra-oral infiltration and block anesthesia injections; a physician and advanced nurse practitioner can perform some of the same services; an architect and professional engineer can perform some of the same services. Passage of this bill would require legislation before any changes could be made even if a procedure is allowed in all other states for dental assistants.

The Board is deeply concerned that the passage of this measure will have a negative effect on the dental assistant certification programs at the University of Hawaii, Kapiolani Community College ("KCC") and the Maui Community College ("MCC") campuses. Both the KCC and MCC dental assistant programs are accredited by CODA. Currently, the KCC dental assistant program is ready to establish a training program for dental assistants to apply fluoride varnish, as the Board intends to amend its administrative rules to allow dental assistants to perform that service. It should be noted that Hawaii is the only state that does not allow dental assistants to apply fluoride varnish. In addition, the KCC has offered continuing education courses for dentists to

Testimony on Senate Bill No. 3085, S.D. 1
Friday, March 18, 2016
Page 4

properly train their assistants. The passage of this measure would require the Board to go to the Legislature before any changes can be made.

Thank you for the opportunity to testify on Senate Bill No. 3085, S.D. 1.



House Committee on Health
March 18, 2016
Senate Hearing on SB 3085 Relating to HEALTH
Testimony in Support of SB 3085 SD1
Ellie Kelley-Miyashiro, RDH
Regulation and Practice Chairperson HDHA 2016

Dear Respected Members of the House Committee on Health:

The Hawaii Dental Hygienists' Association (HDHA) supports the intent of **SB 3085 SD1**. We would like to thank you for your continued support and pursuance of this important discussion during this legislative session. This bill will bring a much-needed resolution to an existing debate with the Hawaii Board of Dental Examiners regarding the mandatory qualifications of a Dental Hygienist as well as the allowable duties of a Dental Assistant under current law.

SB 3085 SD1 appears to address two factors affecting the Hawaii Revised statutes relating to dental hygienists and dental assistants. HDHA will address these two factors separately in this testimony.

Regarding the matter of who may become a dental hygienist, HDHA strongly supports the amendment of HRS 447-1. **SB 3085 SD1** clarifies the original intention of the Statute to have ALL dental hygienists in Hawaii certified in Local Infiltration **and** Block Anesthesia, guaranteeing the highest standard of safety and care for the public.

From the implementation of the anesthesia law in the 1990's, Hawaii's hygienists have been held to the highest standard of training and care requiring certification in Local infiltration anesthesia **and** Block anesthesia. Because of the required certifications, the University of Hawaii at Manoa changed their curriculum shortly after, to become compliant with the law that newly licensed hygienists be duly certified in Local **and** Block anesthesia.

For years, hygiene licensure applicants graduating from the University of Hawaii Manoa and new licensure applicants from out of state were required to submit records showing Hawaii's block anesthesia requirements were met at a CODA accredited university, or a secondary anesthesia course approved by the HBODE was completed with a pre-determined number of Block injections. If neither of these scenarios were fulfilled, licensure was denied until Hawaii's Block **and** Local anesthesia requirements could be met.

In the last few years, HDHA has made several attempts to address the HBODE regarding new dental hygiene licenses issued with no Block Anesthesia requirements and a separate classification of "Local Infiltration Only" licenses being given to new applicants, usually from out of state. They, along with the newest Deputy Attorney General have consistently stated HDHA was misinterpreting the Statute and that Local Infiltration or Block anesthesia was acceptable for licensure. HRS 447-1 clearly states Local Infiltration **and** Block anesthesia is a requirement, not either/or!

HDHA would like to see the original intent be restored to all future dental hygiene applicants. Our association feels **SB 3085 SD1** has clarified this once and for all. Simply said, the better trained we are, the safer the public is!

As regards to the amendment of HRS 448-3 relating to allowable duties of a dental assistant, HDHA is also in support of this amendment. By proposing to add language within the Hawaii Administrative Rules, allowing dental assistants to apply fluoride varnish The HBODE and the current Deputy AG are encroaching on the existing Scope of Practice for dental hygienists, layed out in HRS-447-3 (application of preventive chemical agents to the coronal surfaces of teeth). According to this statute, applying fluoride varnish to the teeth is an allowable duty of a licensed dental hygienist and therefore cannot be an allowable function of a dental assistant simply by placing it in the Rules at this time.

In the future, HDHA would support the licensure or certification of dental assistants with expanded duties, like fluoride varnish application, should the proper HBODE course approved infrastructure (not on the job training) be in place.

HDHA thanks you for your time and consideration of **SB 3085 SD1**. We would like to convey our desire that dentists, assistants and hygienists continue to be integral members of the oral health team, and feel that the public is best served and protected when all oral health providers are highly trained, certified or licensed and work within their practice acts.

Thank you for your time and consideration.

Hawaii State Legislature
State House of Representatives
Committee on Health

State Representative Della Au Belatti, Chair
State Representative Richard P. Creagan, Vice Chair
Committee on Health

Wednesday, March 18, 2016, 9:00 a.m. Room 329
Senate Bill 3085 SD 1 Relating to Health

Honorable Chair Della Au Belatti, Vice Chair Richard P. Creagan, and
members of the House Committee on Health,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association (HDA) and its over 1,000 member dentists. I appreciate the opportunity to testify in opposition of Senate Bill 3085 SD 1 Relating to Health. The Board of Dental Examiners currently regulates the scope of practice for dentists and dental hygienists and intends to update the rules, making this bill both unnecessary and potentially harmful.

Dental health services relating to dental hygienists and dental assistants is constantly modernizing. Highly trained dental assistants now are permitted on the mainland to perform some basic services and procedures which were previously performed by dental hygienists. By passing this legislation and blocking the Board from updating the rules, Hawaii will be locking itself in to archaic practices and procedures.

The HDA also believes that strict adherence to the provisions in this bill will increase the cost of dental health care for both dentists in private practice and for community health centers around the state. Those increased costs will further impede the access to care in communities where there are few dentists to begin with, in either public or private settings. Worse, this bill could reduce available services in marginally served communities when private dentists or community health centers which cannot absorb the costs created by this legislation.

The Hawaii Dental Association opposes this legislation on the poor public policy it sets and the additional financial burden it puts on consumers in Hawaii.

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SB3085

Submitted on: 3/16/2016

Testimony for HLT on Mar 18, 2016 09:00AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------------------|---------------------|---------------------------|---------------------------|
| Gayle C Chang, RDH, BEEd | Individual | Support | No |

Comments: I am in support of this Bill #SB3085 to protect the duties of the licensed dental hygienist and limit the duties of the unlicensed dental assistant. Unfortunately, dental assistants are handed duties by the dentist employers without any discretion, training or knowledge. Public safety is at jeopardy!!

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| Jennifer Takata | Individual | Support | No |

Comments:

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| Joanne Takahashi | Individual | Support | No |

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| Noelani Greene | Individual | Support | No |

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|---------------------|---------------------|---------------------------|---------------------------|
| Michele McTague | Individual | Support | No |

Comments: I support this bill and want to make it mandatory practice for dental assistants to know their limitations upon hire. Regardless of their ability to learn on the job; education and training separates dental hygienist and dental assistants! Very Respectfully, Michele McTague, RDH,BS

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| Rosie | Individual | Support | No |

Comments:

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| Newman Wong | Individual | Support | No |

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Re: SB 3085 SD1 RELATING TO HEALTH

Committee on Health

Representative Della Au Belatti, Chair

Representative Richard P. Creagan, Vice Chair

Hearing Date: Friday, March 18, 2016

Time: 9:00 am

Place: Conference Room 329

Dear Honorable Representative Belatti, Chair, Representative Creagan, Vice Chair, and Committee Members:

This testimony is in **support** of **SB 3085 SD1, as amended with one additional amendment for clarification.**

My name is Diane Brucato, RDH, EF, BS, FAADH. I have been a practicing Dental Hygienist in good standing on the island of Hawaii since 1992, living in Hilo with the privilege to have practiced in Kona and Hilo. I have taken an active role in leadership; volunteered in my community, island, and state; **attended almost every Board of Dental Examiners meeting since 2007**; and twice applied for a position on the Board of Dental Examiners (HBODE). I am now serving my sixth year on the Regulated Industries Complaints Office's (RICO) Dental Advisory Committee. A dental hygienist since 1979, I am a former Anesthesia Examiner for Western Regional Examining Board, and member of the American Association of Dental Boards since the mid 1980's. Active in the legislative process when block anesthesia for dental hygienists became a part of HRS, I was the first dental hygienist to receive certification in block anesthesia in Hawaii.

Thank you for the thought and consideration that went into the creation of HB2707 and SB 3085. It is important in that it has the power to resolve long standing issues of public safety and concern. This testimony will include history as support and will be divided into two sections to address the two parts of SB 3085 SD1.

SECTION 1: Block Anesthesia

When block anesthesia was introduced for dental hygienists, consideration was given to the practicing licensed dental hygienists in Hawaii, who had no desire to perform this function. They were grandfathered with a choice whether or not to pursue certification. Those who wished to were provided stringent guidelines and criteria to fulfill. In order to raise the standard of care in Hawaii, and provide that eventually **all** dental hygienists would be qualified to provide this service, all new licensure applicants were required to fulfill those criteria and be certified in order to obtain licensure.

This was enforced until two years ago, when there appeared a sprinkling of dental hygiene applicants licensed without block anesthesia certification, which increased over time to the majority. **Somewhere along the line, "and" statements in the Statute were suddenly interpreted as "or" statements, different from the original intent.** According to Stanley Malamed, DMD, expert on Dental Anesthesia,

block anesthesia is the safest and the highest standard for pain control. Infiltration anesthesia has a high risk of toxicity, overdose, and medical emergency due to the stress of multiple injections.

SB 3085 clarifies the original intention of the Statute to have ALL dental hygienists in Hawaii certified in Block Anesthesia, and guarantees the highest standard of safety and care for the public.

However, at the HBODE meeting held on February 17, 2016, the current Deputy Attorney General to the Hawaii Board of Dental Examiners stated that passing this bill will not change the way PVL is currently licensing new applicants. Therefore, I would propose an additional amendment to read:

(4) Who has been officially certified in the administration of intra-oral block anesthesia by an accredited dental hygiene school THAT MEETS THE EDUCATIONAL REQUIREMENTS ESTABLISHED IN [§447-3.5] Educational requirements for intra-oral block anesthesia or by a certification program previously approved by the board; and

SECTION 2: Prohibited Duties for Dental Assistants

In November of 2007, the Hawaii Board of Dental Examiners (HBODE) began a **complete update of the entire Hawaii Administrative Rules Chapter 79**, in order to bring them **CURRENT** with HR Statutes and remove redundancies. In January, 2008, a draft containing proposed language to allow expanded duties for dental assistants with no standardized education, testing, or certification, appeared for consideration with no history of public meeting, forcing Hawaii Dental Hygienists' Association (HDHA) to put the HBODE on notice for violation of Sunshine Law. HDHA demonstrated these duties were unsafe and in clear violation of HRS 447-3(b). The HBODE became careful to comply with the Sunshine Law and the inclusion of those expanded duties was abandoned, although Hawaii Dental Association persisted with testimony to include them. That process required constant vigilance for public safety. **Only TWO years ago, in January 2014, the result of that extensive Rules Change process was implemented.**

In recent months, it came to the attention of HBODE that medical assistants were applying fluoride varnish on children, which HBODE ASSUMES is allowable. According to Donald Balasa, JD, MBA, the American Association of Medical Assistants' Chief Executive Officer and Legal Counsel:

Medical assistants cannot be delegated any duties that:

- (1) constitute the practice of medicine or require the skill and knowledge of a licensed physician;
- (2) are restricted in state law to other health professionals;**
- (3) require the medical assistant to exercise independent professional judgment or to make clinical assessments, evaluations, or interpretations.**

In addition, the HBODE acknowledged that there are dental assistants placing fluoride varnish on children's teeth in many dental offices. **Rather than advise the HBODE to initiate or take disciplinary action against the pediatricians and dentists in violation, who are putting public safety at risk, and contrary to previous Deputy Attorneys General (DAG), the current DAG cited the last line of HRS 448-**

3(b) "Duties of the dental assistant and regulatory directives shall be delineated under rules which the board of dental examiners may from time to time adopt" as a loophole in the Statutes to enable the HBODE to create rules in violation of HRS 447-3(b) to achieve their goals with no regard to public safety. In fact, at the January 25th, 2016, Rules meeting, the DAG encouraged the HBODE to delete the section of HAR 16-79-69.5 after the semicolon, ultimately deleting the public safety net from the rules.

§16-79-69.5 Prohibited duties of dental assistants.

A dental assistant shall not perform the following intra-oral functions or any other activity deemed to be irreversible as to cause change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures; and any other activity which represents the practice of dentistry and dental hygiene or requires the knowledge, skill, and training of a licensed dentist or licensed dental hygienist:

As a result, HBODE has proposed a rule to allow dental assistants to apply any type of fluoride, "the application of a chemical preventive agent to the coronal surfaces of teeth", which is in violation of 447-

3 (b):

§447-3 Employment of and practice by dental hygienists.

(b) Clinical dental hygiene may be practiced by a licensed dental hygienist. The practice of clinical dental hygiene is defined as the removal of hard and soft deposits and stains from the portion of the crown and root surfaces to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, the application of preventive chemical agents to the coronal surfaces of teeth, which chemical agents have been approved by the board of dental examiners, and the use of mouth washes approved by the board,...

The HBODE has proposed this allowable duty requiring **only on the job training** by a dentist, without standardized education, testing, or means of regulation. Fluoride is a well-accepted preventive agent in the hands of licensed professionals. **It is also a known poison with specific contraindications with specific products on specific patients. The safe application of various fluoride treatments, requires the knowledge, skill, training, and licensure of a dentist or dental hygienist.**

SB 3085 SD1 drops the current (1/2014) list of allowable (HAR 16-79-69.10) and prohibited (HAR 16-79-69.5) duties for dental assistants neatly into the statute, with added educational measure; preventing constant threat to public safety by unregulated persons, and eliminating redundant, time-consuming re-visitation.

Please do not be misled by opposition. SB 3085 SD1 ensures standardized education, examination, regulation, the highest standard of care, and, most importantly, **public safety. Please support SB 3085 SD1.** Thank you for your consideration.

Respectfully yours,

Diane Brucato, RDH, EF, BS, FAADH

d.bt@live.com (808) 937-7282

Member, Regulated Industries Complaints Office's (RICO) Dental Advisory Committee (2010-present)

Member, American Association of Dental Boards

Past President, American Academy of Dental Hygiene

ADHA/Hu-Friedly Master Clinician Award 2008

Past President, Hawaii Dental Hygienists' Association

Sunstar/RDH Award of Distinction 2002

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| Gerraine Hignite,RDH,BS | Individual | Support | No |

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| janet ancheta | Individual | Support | No |

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| Christine Schroeder | Individual | Support | No |

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| Stacy Matsuyama-Sekioka | Individual | Support | No |

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| Ha Au | Individual | Support | No |

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| Nikkie Au | Individual | Support | No |

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| Melody Hayase, RDH | Individual | Support | No |

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| Lori Tamayori | Individual | Support | No |

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March 17, 2016

Aloha,

I am writing to express my support for SB 3085. As a registered Dental Hygienist in Hawaii, I know this bill will preserve the current level of quality that our patients deserve. Allowing advanced procedures to be performed by unqualified personnel can have deleterious effects on patient care. As one who has gone through the rigorous education and training required to become a Dental Hygienist, I know the level professionalism and skill that is required to not only perform specific duties, but to perform them well.

Mahalo,

Ari L. Agpaoa RDH

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To: HLTtestimony
Cc: jakimoto47@gmail.com
Subject: *Submitted testimony for SB3085 on Mar 18, 2016 09:00AM*

SB3085

Submitted on: 3/17/2016

Testimony for HLT on Mar 18, 2016 09:00AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Jill Akimoto | Individual | Support | No |

Comments:

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To: HLTtestimony
Cc: sasakirobin@gmail.com
Subject: *Submitted testimony for SB3085 on Mar 18, 2016 09:00AM*

SB3085

Submitted on: 3/17/2016

Testimony for HLT on Mar 18, 2016 09:00AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Robin Sasaki | Individual | Support | No |

Comments:

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SB3085

Submitted on: 3/17/2016

Testimony for HLT on Mar 18, 2016 09:00AM in Conference Room 329

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|---------------------|---------------------|---------------------------|---------------------------|
| Kyoko Tomita | Individual | Support | No |

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Cc: dollcydonesa@yahoo.com
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SB3085

Submitted on: 3/17/2016

Testimony for HLT on Mar 18, 2016 09:00AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dollcy | Individual | Support | No |

Comments:

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HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 18, 2016 1:19 AM
To: HLTtestimony
Cc: emma.macanas808@gmail.com
Subject: *Submitted testimony for SB3085 on Mar 18, 2016 09:00AM*

SB3085

Submitted on: 3/18/2016

Testimony for HLT on Mar 18, 2016 09:00AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Emmeline Macanas | Individual | Support | No |

Comments:

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SB3085

Submitted on: 3/17/2016

Testimony for HLT on Mar 18, 2016 09:00AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| karen guevarra | Individual | Support | No |

Comments:

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HLTtestimony

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Sent: Friday, March 18, 2016 12:45 AM
To: HLTtestimony
Cc: leimarks@yahoo.com
Subject: *Submitted testimony for SB3085 on Mar 18, 2016 09:00AM*

SB3085

Submitted on: 3/18/2016

Testimony for HLT on Mar 18, 2016 09:00AM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lenora Marks | Individual | Support | No |

Comments:

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Honored members of The Senate Committee on Commerce, Consumer Protection, and Health

Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair

Rep. Mark J. Hashem Rep. Marcus R. Oshiro
Rep. Jo Jordan Rep. Beth Fukumoto
 Chang
Rep. Bertrand Rep. Andria P.L. Tupola
Kobayashi
Rep. Dee Morikawa

Hearing scheduled for Friday, March 18, 2016 9:00am Conference Room 329

Testimony in **opposition** to SB3085, SD1
RELATING TO HEALTH.

Clarifies the requirements for an individual to become a dental hygienist. Clarifies the allowable and prohibited practices and training requirements for dental assistants. Effective 7/1/2050.

My name is Darrell Teruya. I am a licensed General Dentist actively practicing in the State of Hawai'i since 1984.

This measure unnecessarily obfuscates defining rules regarding Dental Assistants and redundantly restates the block anesthesia requirement for Dental Hygiene licensure. It is a little confusing as to why the former items regarding Dental Assistants should be addressed as a Statutory change and seeks to obviate the due diligence that the Hawai'i Board of Dental Examiners have applied in the formulation of the Rules section of the Dental Practice Act.

Although this bill has appended a defective date, I would still strongly urge the members of this committee to remove this bill from any serious consideration.

Thank you for this opportunity to submit testimony in opposition to SB3085, SD1.

Darrell Teruya, DDS
previous past-President, Hawai'i Dental Association (2008)

I am Dr. Steve Wilhite, President of the Hawaii Dental Association and a dentist in private practice.

I wish to testify in opposition to SB3085 SD 1 Relating to Health.

First, this measure would needlessly restrict the Hawaii Board of Dental Examiners from input into defining rules regarding Dental Assistants. The Board of Dental Examiners currently regulates the scope of practice for dentists and dental hygienists and intends to update the rules, making this bill both unnecessary and potentially harmful.

Second, the most egregious point of this bill is that it will prohibit dental assistants from applying topical fluoride on coronal surfaces of the teeth. Currently, Hawaii is the only state in the country that prohibits dental assistants this activity. Medical assistants in Hawaii are allowed to place topical fluoride in pediatrician/physician's offices; therefore, Dental Assistants should not be prohibited from doing so in a dental office. This provision alone will increase cost 3 to 4 times on EVERY patient receiving a topical application. Those increased costs will further impede the access to care in communities where there are few dentists to begin with, in either public or private settings.

I oppose this legislation on the poor public policy it sets and the additional financial burden it puts on consumers in Hawaii.

Thank You,

Dr. Steve Wilhite