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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON HEALTH

AND

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015

FRIDAY, FEBRUARY 6, 2015
1:15 P.M.

TESTIMONY ON SENATE BILL NO. 725
RELATING TO DENTISTRY

TO THE HONORABLE JOSH GREEN, CHAIR,
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE GLENN WAKAI, VICE CHAIR,
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department")
appreciates the opportunity to testify on Senate Bill No. 725, Relating to Dentistry.
My name is Daria Loy-Goto, Complaints and Enforcement Officer for the

Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following testimony on the bill.

Senate Bill No. 725 authorizes the Board of Dental Examiners ("Board") to issue cease and desist orders for unlicensed dental activity and for any act that violates Chapter 448, Hawaii Revised Statutes ("HRS"). The bill also provides that continuing unlicensed activity or conduct in violation of Chapter 448, HRS, is a class C felony.

As the enforcing agency, RICO typically handles complaints of unlicensed activity by filing a court action pursuant to §436B-27, HRS. In addition, §436B-26.5, HRS, authorizes the issuance of citations, with an order of abatement, and the assessment of civil penalties for unlicensed activity. As such, there are statutory remedies currently available to address unlicensed dental activity.

Senate Bill No. 725 also grants the Board the authority to issue a cease and desist order for any act in violation of Chapter 448, HRS. Currently, the Board may summarily suspend a license pursuant to §436B-23, HRS, for the protection of the public. This authority extends to all boards and commissions. As a result, the authority to issue a cease and desist order against a licensee may be unnecessary.

As an alternative to §436B-23, HRS, the Committee may wish to consider the summary suspension language in §453-8.4, HRS. This provision, enacted in 2013, specifically grants the Hawaii Medical Board the power to summarily suspend a license under certain conditions and sets forth specific procedures for a summary suspension to satisfy due process concerns.

Testimony on Senate Bill No. 725

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Thank you for the opportunity to testify on Senate Bill No. 725. I will be happy to answer any questions that the members of the Committees may have.

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE SENATE COMMITTEE ON HEALTH
AND
TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Friday, February 6, 2015
1:15 p.m.

TESTIMONY ON SENATE BILL NO. 725, RELATING TO DENTISTRY.

TO THE HONORABLE JOSH GREEN, CHAIR,
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Marianne Timmerman, R.D.H., Dental Hygiene member of the Board of Dental Examiners ("Board"). The Board appreciates the opportunity to testify and offer comments on Senate Bill No. 725, Relating to Dentistry.

The purpose of Senate Bill No. 725 is to grant the Board the power to issue cease and desist orders for the unlicensed practice of dentistry and for any other act or practice in violation of the dental licensing laws.

The Board supports the intent of this bill but believes provisions already in place in Chapter 436B, Hawaii Revised Statutes ("HRS"), Professional and Vocational Licensing Act, adequately fulfill the purpose of this measure. Specifically, pursuant to HRS §§436B-27 and 436B-26.5, the Regulated Industries Complaints Office ("RICO") can pursue civil and criminal sanctions and citations for unlicensed activity. The civil and criminal sanctions RICO may pursue include fines, injunction relief, recovery of

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damages, and forfeiture of all tools, implements, armamentarium, documents, materials, or any other property.

In addition, pursuant to HRS §436B-23, there are summary suspension provisions and procedures to address serious violations by licensees.

Finally, the existing provisions noted above better address due process concerns that the Board has that are not provided for in this bill.

Thank you for the opportunity to testify on Senate Bill No. 725, and I will be available for questions.

Hawaii State Legislature
State Senate
Committee on Health
Committee on Commerce and Consumer Protection

State Senator Dr. Josh Green, Chair
State Senator Glenn Wakai, Vice Chair
Committee on Health

State Senator Rosalyn H. Baker, Chair
State Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection

Friday, Feb. 5, 2015, 1:15 p.m. Room 414
Senate Bill 725 and Senate Bill 804 Relating to Dentistry

Honorable Chairs Dr. Josh Green and Rosalyn H. Baker, Vice Chairs Glenn Wakai and Brian T. Taniguchi, and members of the Senate Committee on Health and the Senate Committee on Commerce and Consumer Protection,

My name is Dr. Lynn Fujimoto and I am President of the Hawaii Dental Association. Thank you for allowing me to testify in support of SB 725. The Hawaii Dental Association supports the Board of Dental Examiners in their ability to issue cease and desist orders to stop persons who practice without proper licensure in Hawaii or whose conduct is in violation of the Hawaii statutes and rules governing the practice of dentistry in Hawaii. For public safety, the Board of Dental Examiners need to be able to protect the public from licensees that operate in violation of the law or rules. Please help us protect our community and support SB 725.

Hawaii State Legislature
State Senate
Committee on Health
Committee on Commerce and Consumer Protection

State Senator Dr. Josh Green, Chair
State Senator Glenn Wakai, Vice Chair
Committee on Health

State Senator Rosalyn H. Baker, Chair
State Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection

Friday, February 6, 2015, 1:15 p.m. Room 414
Senate Bill 725 Relating to Dentistry

Honorable Chairs Dr. Josh Green and Rosalyn H. Baker, Vice Chairs Glenn Wakai and Brian T. Taniguchi, and members of the Senate Committee on Health and the Senate Committee on Commerce and Consumer Protection,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association (HDA) and its 960 member dentists. I appreciate the opportunity to testify in support of Senate Bill 725 Relating to Dentistry. This bill is similar to legislation that the HDA sought to have enacted in 2009, which would have empowered the Board of Dental Examiners to issue cease and desist orders to stop those persons who were practicing without proper licensure in Hawaii or whose conduct was in violation of the Hawaii statutes and rules governing the practice of dentistry in Hawaii. This bill addresses a problem that has arisen in which the Hawaii State Board of Dental Examiners is unable to address situations where the clear violation of the Hawaii dental laws cannot result in the immediate action necessary to stop those whose continued violation of the law constitutes a clear and present danger to the health and welfare of the public.

In light of incidents arising last year which brought to the public's attention the problem of enforcement of the licensing laws, it is hoped that this legislation would provide the Board of Dental Examiners and the Department of Commerce and Consumer Affairs (DCCA) the needed authority to immediately stop those who were not in compliance with the laws and rules governing the practice of dentistry in our State. Often times when a situation arises and the Department of Commerce and Consumer Affairs Regulated Industries Complaints Office (RICO) conducts an investigation of the violation of the law and is prevented in stopping the individuals who are violating the law merely by the individuals changing the legal entity they are using. Due to the difficulty in stopping the individual violators, only in rare occasions have violators been actually stopped by the DCCA.

In the case of a dental licensee who is operating in violation of the law or rules, the length of time it takes to suspend or revoke the license puts the public in danger while that person continues to provide dental services, sometimes even after arrest and indictment. With the authority to order the licensee to cease and desist the delivery of licensed services, the Board of Dental Examiners can move swiftly to protect the public from the licensee and put pressure on the licensee to come in to compliance, if possible.

The State of Nebraska permits their dental licensing board to issue cease and desist orders and has experienced no problems with the exercise of this authority. Additional states which provide for either cease and desist authority or injunctive action include Illinois, Mississippi, Colorado, Montana and Kentucky.

In the House Consumer Protection Committee hearing this week, a similar bill was amended to meet the DCCA's concerns regarding due process. The HDA agreed that the proposed House Draft to House Bill 268 would be acceptable and meet the objectives of SB 725.