

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Monday, April 3, 2017
1:35 p.m.

WRITTEN TESTIMONY

TESTIMONY ON HOUSE BILL NO. 374, H.D. 2, S.D. 1, RELATING TO DENTAL ASSISTANTS.

TO THE HONORABLE JILL N. TOKUDA, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Paul Guevara, D.M.D., M.D.S., Chairperson of the Board of Dental Examiners (“Board”). I appreciate the opportunity to present written testimony on House Bill No. 374, H.D. 2, S.D. 1, Relating to Dental Assistants. This measure clarifies the allowable and prohibited practices requirements for dental assistants and prohibits the ordering of a person without a dental hygienist license, to perform services or procedures within the scope of practice of dental hygiene. The bill also requires the Auditor to conduct a study on the effects of regulation of dental assistants in the State via the certification requirements for dental assistants offered by Kapiolani Community College.

The Board strongly opposes this bill, which was amended to include provisions similar to those included in Senate Bill No. 344, S.D. 1, as it would prohibit dental assistants from applying fluoride, a simple procedure that is within the scope of practice of dental hygiene as provided in chapter 447, Hawaii Revised Statutes (“HRS”).

Chapter 447, HRS, specifies that the practice of dental hygiene includes, among other services, “the application of preventive chemical agents to the coronal surfaces of teeth”. The application of fluoride would be included in this definition.

The Board believes that dental assistants can safely apply fluoride to patients, similarly as all other states allow dental assistants to apply fluoride. As proposed in its administrative rules, the dental assistant would be able to apply fluoride in a manner appropriate by the American Dental Association in a unit dose approved by the supervising licensed dentist or in an amount pre-measured by the supervising licensed dentist. Also, the Board requires the supervising licensed dentist to appropriately train or provide training to dental assistants before performing any activity.

It is not the Board’s intent to eliminate or erode the practice of dental hygiene as dental hygienists provide extremely valuable services and skills, and is an essential part of the dental team. However, with changes to the practice of dentistry and rapid improvements to technology and equipment, the Board would like to continue having the ability to implement changes through its administrative rules by using its expertise and in protecting the health, safety and welfare of the public.

In regards to the requirement for the Auditor to conduct a study on the effects of regulation of dental assistants, the Board has not had an opportunity to review this version of the bill. However, the Board believes that Haw. Rev. Stat. §26H-6 requires that a sunrise analysis requires a referral by concurrent resolution that identifies a specific legislative bill to be analyzed. This bill does not provide a regulatory framework upon which analysis would be performed.

Moreover, conducting a sunrise analysis for establishing licensure for dental assistants and certification requirements is not necessary. Presently, the University of Hawaii, Kapiolani Community College, offers a dental assistant certification program.

Therefore, the Board recommends deferral of this measure. Thank you for the opportunity to provide written testimony on House Bill No. 374, H.D. 2, S.D. 1.

April 1st, 2017

RE: HB374, HD2, DS1

Committee on Ways and Means

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Date: Monday, April 3rd, 2017
Time: 1:35 pm
Place: Conference room 211

Dear Honorable Senator Tokuda, Chair and Senator Dela Cruz, Vice Chair, and Committee Members,

On behalf of the Hawaii Dental Hygienist's Association (HDHA) I would like to formally show support for HB 3085 HD1, as amended.

The HDHA believes that increasing access to oral health care is of the utmost importance but at no point should safety be compromised in that process. Untrained and unregulated individuals should not be given duties that could cause harm to their patients. Laws have been established to protect the patient but those laws are being threatened by rules proposed by the Hawaii Board of Dental examiners that are in conflict with HAR §447-3(b).

HB374 HD1 acts to solidify HAR §447-3(b). This bill will protect the public by disallowing uneducated, unlicensed and unregulated personnel from performing duties that historically, required education, testing and licensure. This bill is of utmost importance to protect the public. Please support HB 347 HD1. Thank you for your consideration.

Sincerely,



Justin Stanton, RDH, BS, EPP
Hawai'i Dental Hygienist Association President
541-480-2002
justinstantonrdh@gmail.com

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 2, 2017 1:26 PM
To: WAM Testimony
Cc: fsayre@hawaii.rr.com
Subject: Submitted testimony for HB374 on Apr 3, 2017 13:35PM

HB374

Submitted on: 4/2/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Frank H. Sayre, D.D.S.	Individual	Support	No

Comments: As with any medication the dosage is the key to possible toxic effects. Fluoride varnishes and gels contain approximately 5,000 ppm and at this concentration it is considered a prescription drug. Correspondingly, water fluoridation is at 1 ppm. To apply prescription strength fluoride one should be educationally trained and licensed. The vast majority of dental assistants are on the job taught and take no licensing examinations. This is a procedure that should be done by licensed dental hygienists for public safety reasons. Especially for keiki.

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Laura A. Mallery-Sayre, R.D.H., M.S.D.H.Ed.
Educational Consultant
P. O. Box 1285
Kailua-Kona, Hawaii 96745
808-325-5456

March 12, 2017

WAM Committee
Senator Jill Takuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

I speak in support of HB374 HD2 SD1 relating to the certification or licensure of Dental Assistants. I believe that the original language in HB374

“Prohibit anyone from ordering a person without a dental hygienist license to perform services or procedures within the scope of practice of dental hygiene.” should be restored in this Bill to ensure that the current rules and regulations prohibiting dental assistants from providing dental hygiene procedures be maintained until such time that dental assistants are licensed.

As a dental hygiene educator with a Master’s in Dental Hygiene Education and as a dental practice manager of 45 years experience, I have previously been employed by dental schools, dental hygiene schools and dental assisting schools to train their students. I have also served The Hawaii State RICCO Dental Advisory Board (and continue to do so) for over 25 years. I believe that it is imperative to pass this measure to ensure the safety of the public that is served by the Hawaii State House of Representatives.

In the State of Hawaii, there currently exists no regulatory process for certifying or for licensing dental assistants. Most dental assistants are trained on the job by other dental assistants that were trained on the job and the majority lack any type of formal training. In contrast, the dental hygienists that are educated at the University of Hawaii at Manoa have four years of college education to prepare them with a BS in Dental Hygiene. Strict academic guidelines are in place for these students to meet the accreditations standards established by CODA, The Commission on Dental Accreditation, which serves the public and profession by developing and implementing accreditation standards that promote and monitor the continuous quality and improvement of dental education programs. Accreditation is the ultimate source of consumer protection for prospective students. It is often a prerequisite for governmental funding. Graduation from an accredited program is almost always stipulated by state law and is an eligibility requirement for licensure and/or certification examinations. In short, accreditation of a school or program is a student’s most important source of independent validation that the program has at least enough educational value to be “approved” by a credible (expertise-based), independent (free of outside influence), reliable (consistently applied standards) organization that has the U.S. Department of Education’s approval. Upon graduation from an accredited dental hygiene program, dental hygiene students are required to take a National Board Exam to ensure their knowledge base as well as a Regional Board Examination to test their clinical skills before they can be licensed to practice. None of these requirements are in place for a dental assistant in Hawaii.

It is my educated opinion that no dentist should be directing a dental assistant to perform dental hygiene duties on his or her patients outside of the scope of educational requirements and Hawaii Statute as these duties are clearly outlined to protect the public from uneducated and unqualified personnel. For dentists to testify that they are already allowing dental assistants to perform fluoride procedures on their patients, procedures not allowed in the scope of practice set forth by this legislative authority means that they are already practicing outside of the law. This makes this Bill even more important to pass. This Bill containing the original language while still seeking to conduct a sunrise analysis on dental assisting licensure will ensure the protection of the dental consumer, will prevent the delegation of dental hygiene duties to unlicensed dental auxiliaries, and will further delineate the supervisory role of dentists in the State of Hawaii, thus preventing future misunderstanding of duties and scope of practice of dental hygienists and dental assistants.

I strongly urge the Committee on Commerce, Consumer Protection and Health to pass and not defer HB374 HD2 with inclusive language for the above reasons. If I can be of further service to this committee, I am available at 808-325-5456 or 808-640-9456.

Sincerely,

Laura A. Mallery-Sayre, RDH, MSDHEd

April 1st, 2017

RE: HB374, HD2, DS1

Committee on Ways and Means

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Date: Monday, April 3rd, 2017
Time: 1:35 pm
Place: Conference room 211

Dear Honorable Senator Tokuda, Chair and Senator Dela Cruz, Vice Chair, and Committee Members,

This testimony is in support for HB 3085 HD1, as amended.

To protect our patients certain laws have been put in place to assure that only educated and regulated providers place altering and potentially hazardous agents on teeth. As a full time dental hygienist with a bachelor's degree in my field, I understand the importance of an education in order to protect my patients and even myself from causing harm. Dental assistants are a highly valued member of the dental team but until they are regulated and formally educated on functions such as the placement of fluoride, there should be continued restrictions on their duties. With the patients in mind as well as the dental assistant, HAR §447-3(b) is in place to protect everyone. Assistants should not be expected to apply a potentially dangerous agent and not be given proper education. The dental community needs to see that if we value our assistants we will raise up their profession through education and regulation, and then, but only then, added functions.

HB374 HD1 acts to clarify and solidify the law to protect not just the patient but also the dental assistant. Please support HB 347 HD1.

Thank you,

Justin Stanton, RDH, BS, EPP

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 2, 2017 6:28 AM
To: WAM Testimony
Cc: janetancheta9@gmail.com
Subject: *Submitted testimony for HB374 on Apr 3, 2017 13:35PM*

HB374

Submitted on: 4/2/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
janet ancheta	Individual	Support	No

Comments:

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Cc: dgsinhawaii@yahoo.com
Subject: Submitted testimony for HB374 on Apr 3, 2017 13:35PM

HB374

Submitted on: 4/1/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Diana G. Smith	Individual	Support	No

Comments: Dear Senator Baker & Members of the House I've been a dental hygienist to 33 years, 26 of those years here in Hawaii. I am writing in support of HB 374. I've just returned from a Special Olympics/ Special Smiles training program in Minnesota. Here I spoke with dentists, hygienists and doctors from the US, Canada and the Caribbean. We all agreed that formal Training and education is the key to success in any program. To allow an un-educated non trained assistant to perform invasive intra oral procedures on people is dangerous and neglectful. It was a dentist in Oahu who directed an assistant to start a sedation procedure on a minor child , the assistant followed the direction of the dentist, the child died! This should've never happened! I do not perform duties of a dentist neither should a dental assistant perform those duties that are by law in the scope of practice of a dental hygienist or dentist. I believe it is time to increase the education & training of dental assistants and to join the other 38 state who do so. Thank-you for your time concerning this matter.

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To: WAM Testimony
Cc: jananakamura58@gmail.com
Subject: *Submitted testimony for HB374 on Apr 3, 2017 13:35PM*

HB374

Submitted on: 4/1/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
JANA NAKAMURA	Individual	Support	No

Comments:

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To: WAM Testimony
Cc: gchang50@gmail.com
Subject: Submitted testimony for HB374 on Apr 3, 2017 13:35PM

HB374

Submitted on: 4/1/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

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

Comments: This bill ensures public safety and prevents the use of dental assistants from performing services that dental hygienist fully licensed and educated in. Dental Assistant need proper training.

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 31, 2017 10:20 PM
To: WAM Testimony
Cc: gerrainet@excite.com
Subject: *Submitted testimony for HB374 on Apr 3, 2017 13:35PM*

HB374

Submitted on: 3/31/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Gerraine Hignite	Individual	Support	No

Comments:

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To: WAM Testimony
Cc: joyerz@aol.com
Subject: *Submitted testimony for HB374 on Apr 3, 2017 13:35PM*

HB374

Submitted on: 3/31/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

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

Comments:

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Sent: Sunday, April 2, 2017 2:10 PM
To: WAM Testimony
Cc: alanandtracy@hawaiiantel.net
Subject: *Submitted testimony for HB374 on Apr 3, 2017 13:35PM*

HB374

Submitted on: 4/2/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Tracy Furukawa	Individual	Support	No

Comments:

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Re: HB 374 HD2 RELATING TO DENTAL ASSISTANTS

COMMITTEE ON WAYS AND MEANS

Senator Jill N. Tokuda, Chair

Senator Donovan M. Dela Cruz, Vice Chair

Hearing Date: Monday, April 3, 2017

Time: 1:35 pm

Place: Conference Room 211

Dear Honorable Senator Tokuda, Chair, Senator Dela Cruz, Vice Chair, and Committee Members:

This testimony is in strong support of HB 374 HD2 SD1, as amended. I especially appreciate the thoughtful restoration of language to “Prohibit anyone from ordering a person without a dental hygienist license to perform services or procedures within the scope of practice of dental hygiene.” This language serves to protect the public, while the Auditor conducts such sunrise analysis of establishing licensure and certification requirements for dental assistants, required by the amendment HB374 HD2.

My name is Diane Brucato, RDH, EF, BS, FAADH. A dental hygienist since 1979, 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; was an Anesthesia Examiner for Western Regional Examining Board; have maintained membership in the American Association of Dental Boards since the mid 1980's; **attended almost every Hawaii Board of Dental Examiners (HBODE); meeting since 2007;** and twice applied for a position on the HBODE; and am now serving my seventh year on the Regulated Industries Complaints Office's (RICO) Dental Advisory Committee.

Thank you for hearing HB374 HD2 SD1. It is important in that it has the potential to ensure standardized education and regulation of dental assistants, thereby increasing public safety. In addition, it restores pertinent protective language for public safety, especially while the Sunrise review is being performed This language prevents the drafting of rules by the HBODE that conflict with §447-3(b) and would allow unlicensed personnel to perform duties that have required standardized education, testing, and a license to practice Dental Hygiene, as defined in said statute. This testimony will include history as support.

History:

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 THREE years ago, in January 2014, the result of that extensive Rules Change process was implemented.**

Late 2015, through a letter from Dan Fujii, DDS, it came to the attention of HBODE that medical assistants were applying fluoride varnish on children, which HBODE ASSUMED was allowable. According to Donald Balasa, JD, MBA, the American Association of Medical Assistants' Chief Executive Officer and Legal Counsel (Questions may be directed to AAMA Executive Director, Donald A. Balasa, JD, MBA, at dbalasa@aama-ntl.org or 800/228-2262):

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 licensed health care 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 the interpretation of 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 currently 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. The reason (cited by Dr. Chun of the HBODE) is to lower cost of applying fluoride and increase access, because dental assistants' hourly salary is much lower than dental hygienists' hourly salary. Fluoride costs about a dollar a dose and takes, at most, three minutes to apply. Yet, the fees for applying topical fluoride vary from \$15-30.00. Whether or not dental assistants are allowed this duty will not change the fees that dentists charge, and therefore, will not save the public money or increase access. It will only increase risk.

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. Serious known risks include toxic overdose and even anaphylactic shock. Children especially, deserve the safe application of various fluoride treatments by licensed professionals, who possess the knowledge, skill, training, and licensure, and, who understand the chemical ingredients, risks, and contraindications.**

In conclusion, HB374 HD2 SD1 would require the Auditor to conduct a sunrise analysis of establishing licensure and certification requirements for dental assistants AND it restores the language that disallows the proposal or drafting any rules that would allow unlicensed personnel to perform duties that have, to date, required standardized education, testing, stringent licensure, and continuing education. This measure has the potential to ensure standardized education and regulation of dental assistants, thereby increasing public safety, and eliminate redundant, time-consuming re-visitation by the HBODE. The public deserves to be protected from allowing unlicensed personnel to perform duties that have, to date, required standardized education, testing, stringent licensure, and continuing education.

Please pass HB374 HD1 SD1 as amended, with the requirement of a sunrise analysis and 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 Past President, Hawaii Dental Hygienists' Association

ADHA/Hu-Friedy Master Clinician Award 2008 Sunstar/RDH Award of Distinction 2002