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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION, 2008

THURSDAY, FEBRUARY 7, 2008, 9:00 A.M.

TESTIMONY ON SENATE BILL NO. 2059—RELATING TO INFORMATION
PRACTICES

TO THE HONORABLE BRIAN T. TANIGUCHI, CHAIR,
AND TO THE HONORABLE CLAYTON HEE, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding Senate Bill No. 2059, Relating to Information Practices. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). Recognizing that this bill addresses an area of law which strikes a delicate balance between consumers interested in complaints histories and licensees concerned about the integrity of their good name, the Department takes no position on the merits of Senate Bill No. 2059, but offers the following comments.

Senate Bill No. 2059 amends §92F-14, Hawaii Revised Statutes ("HRS"), to delete "the record of complaints including all dispositions" as an exception to the types of information in which an individual has a significant privacy interest. In effect, Senate

Bill No. 2059 would preclude government from disclosing the existence of customer complaints until and unless those complaints result in legal action by the government agency. Several of the Department's programs, including RICO, would be affected by this bill to the extent they currently provide licensee complaints information to the public and encourage consumers to check licensing and complaints history prior to hiring licensed professionals.

The Department recognizes that under §92F-14(b)(7), HRS, individuals have significant privacy interests in information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, with three exceptions, and the Department has tried over the course of many years to effectuate this law in a manner that appropriately balances the licensee's significant privacy interests against the benefit to the public in obtaining information about the individuals they may hire.

To this end, the Department has long encouraged consumers to obtain licensing and complaints information prior to hiring professionals and, as such, supports the disclosure of information that enhances consumer awareness and decision-making. It should be noted, however, that the Department's public complaints history report provides only specific, limited information about complaints and their outcomes.

The Department is aware that by providing "the record of complaints including all dispositions" as referenced in §92F-14(7)(C), HRS, its complaints history information includes cases that were not substantiated in investigation, cases that may have been filed for ulterior motives, and cases in which the investigation is still pending. The Department has endeavored to act as a neutral repository of information rather than

attempt to differentiate or disclose cases based on the case outcome. In this manner, it provides transparency and accountability to the public as to how cases are investigated.

However, in order to reduce the negative connotation that consumers may associate with a complaints history, the public is always urged to judge a business's complaints history on the outcome of the investigation rather than on the number of complaints or the fact that a complaint was filed. Moreover, there is a concerted effort upon receipt of a complaint to determine whether there is sufficient cause to investigate, and to include in the public complaints history report only those cases in which investigation is warranted. Thus, many complaints are not included in the complaints database because they do not meet the sufficient cause test.

Currently, and in compliance with §92F-14(b)(7), HRS, RICO provides complaints information to consumers through its complaints website and upon telephone or written request.¹ Public RICO complaints information includes the respondent's name, the case numbers associated with each complaint, and the total number of complaints on record. If a complaint is closed without legal action, the complaints history will also show the allegations that were investigated and the outcome of the investigation. If a complaint investigation is pending, the case number of the complaint is included in the complaints history report, and the report states: "This is a pending complaint. No further information is available." If the case results in legal

¹ The Office of Consumer Protection ("OCP") shares the same database as RICO for purposes of complaints history information, but because its complaints are not received or compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, its complaints history information would not be affected by this bill. In addition, complaints history or RICO legal actions involving unlicensed persons would not be affected by this bill.

action, information about the nature of the legal action and any board action is reflected in the licensee's complaints history.

Website usage data shows that the RICO/OCP complaints history database was viewed 438,486 times in calendar year 2007. In addition, approximately 20,000 RICO complaint history calls were received during the same time period, including 11,500 calls relating to contractor complaints information.²

If this Committee is inclined to pass this bill, it should be amended. Under the current draft, the Department believes that it could no longer disclose the existence of pending cases or cases closed without legal action to 1) consumers via its website, by telephone, or in writing; 2) investigative and expert witnesses who may possess information or documentary evidence relating to a pending investigation; 3) other divisions within the Department, including the Professional and Vocational Licensing division and the Office of Administrative Hearings; and 4) the licensing boards. Some of these effects may be unintended. Such restrictions not only would significantly impact consumers, but require the Department to extensively modify its current operations.

Thank you for this opportunity to testify on Senate Bill No. 2059. I will be happy to answer any questions that the members of the Committee may have.

² Affected licensee types investigated by RICO include Accountancy, Activity Desks, Acupuncture, Barbering, Cosmetology, Boxing, Cemetery and Funeral Trust, Chiropractic, Collection Agencies, Employment Agencies, Contractors, Dentists and Dental Hygienists, Detectives and Guards, Electricians and Plumbers, Electrologists, Elevator Mechanics, Engineers, Architects, Land Surveyors and Landscape Architects, Hearing Aid Dealers and Fitters, Marriage and Family Therapists, Massage, Medicine and Surgery (including Osteopathy), Mental Health Counselors, Mortgage Brokers and Solicitors, Motor Vehicle Sales, Motor Vehicle Repair, Naturopathy, Nurses, Nursing Home Administrators, Occupational Therapists, Dispensing Opticians, Optometrists, Pest Control, Pharmacy, Physical Therapy, Port Pilots, Psychology, Real Estate Appraisers, Real Estate Brokers and Salespersons, Social Workers, Speech Pathologists and Audiologists, Time Share, Travel Agencies and Veterinarians.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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February 5, 2008

TO: Senator Brian T. Taniguchi
Chair, Senate Committee on Judiciary and Labor
Hawaii State Capitol, Room 219
Via Email: testimony@Capitol.hawaii.gov

FROM: Joanna Markle

RE: S.B. 2059 - Relating to Information Practices
Hearing Date: Thursday, February 7, 2008 @ 9:00 a.m., Room 016

Dear Chair Taniguchi and Members of the Committee on Judiciary and Labor:

I am Joanna Markle testifying on behalf of the Consumer Data Industry Association. Founded in 1906, the Consumer Data Industry Association (CDIA) is the international trade association that represents more than 400 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services.

CDIA supports S.B. 2059 as it would provide for information included on public records to be relevant and accurate in regards to a licensee's professional background.

Thank you for the opportunity to submit testimony.



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2059

February 5, 2008

The Honorable Brian Taniguchi, Chair
Senate Committee on Judiciary and Labor
State Capitol, Room 219
Honolulu, Hawaii 96813

RE: S.B. 2059 Relating to Information Practices
Hearing Date: Thursday, February 7, 2008 @ 9:00 a.m., Rom 016

Dear Chair Taniguchi and Members of the Senate Committee on Judiciary and Labor

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) strongly supports S.B. 2059.

S.B. 2059 proposes to remove the onerous current practice of reporting all complaints filed against a licensee, whether innocent or guilty. The complaint remains on the website for five years and is not removed, even if the investigation is closed for lack of evidence or merit, or if there is a determination that a violation did not occur by RICO. There needs to be a fair and equitable process so that licensees' reputations are not harmed by an unwarranted or frivolous complaint. As we understand the bill, the public would still have a right to information in regards to a licensee's disciplinary history when there has been a substantive finding of wrongdoing. As such, we urge you to support S.B. 2059.

Mahalo for the opportunity to testify.

COMMITTEE ON JUDICIARY AND LABOR
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Thursday February 7, 2008 9:00 AM Conference Room 16

SB 2059

RELATING TO INFORMATION PRACTICES.

Removes records of complaints from the exceptions to the types of information that are not subject to disclosure as public documents.

Honorable Chairman Brian T Taniguchi, Vice-chairman Clayton Hee and members of the Senate Committee on Judiciary and Labor,

I am writing in support of SB 2059 which seeks to amend Section 92F-14 of the Hawaii Revised Statutes.

One of the ways that the Regulated Industries Complaint Office (RICO) under the aegis of the Department of Commerce and Consumer Affairs (DCCA) reports public complaints for 45 professions (and 20 licensing programs) via an entry to this page on their website:

<http://pahoehoe.ehawaii.gov/cms/app>

From there any member of the public is able to use a search engine to determine if any complaints have been filed against an individual. There are, however some shortcomings with this process.

1. There are more than a few names with a single citation and some of these were dismissed due to findings of no improprieties, uncooperative witnesses or otherwise dismissed. Even these stay on the site for 5 years. Unfortunately there is an implication of the individual in the search of being "guilty until proven innocent". Also, since the details are not available it would be hard for anyone to determine the seriousness of the complaint.

2. One can type in a last name such as Teruya and while looking for, say, me, get a list of other people in regulated industries other than the dentist they were searching for in the first place. It is unfortunate that someone may punch in the last name of a realtor and retrieve a physician as the unintended result of the search.

3. I'm very sure that everyone thinks long and hard before anything is posted on the website and that it would be a serious matter that warrants the inclusion of that matter on that site. It's just that I'm unaware of the vetting process. I'm concerned that a frivolous accusation could make it to the list and once there remain for the 5 year period regardless of any subsequent finding.

4. We queried other states on this matter and none of them had a similar statute or similar law.

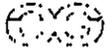
While everyone feels that an individual who is performing business in a manner detrimental to the public be brought to the attention of the public. The reputation of an innocent should, however, not be impugned through that process.

These are among the issues which were brought to the attention of Ms. Uchida at RICO and Ms. Takase at OIP.

Thanks for your interest in this matter. .

Darrell Teruya, DDS
President, Hawaii Dental Association

Handwritten notes in the left margin, including the number "4" and some illegible scribbles.



**ENDODONTIC
SPECIALISTS, INC.**

Wade K. Nobuhara, DDS, MS

To: Senator Brian Taniguchi, Chair
Senator Clayton Ilee, Vice-Chair
Judiciary and Labor Committee

From: Wade K. Nobuhara, DDS, MS

Date: Thursday, February 7, 2008 - 9:00 am

Subject: **Support of SB2059, Relating to Information Practices**

Historically, many of Hawaii's dentists have elected to treat their patients as solo practitioners in private practice. As a whole, Hawaii's dentists strive to: skillfully provide the highest quality of patient care; diligently conform to demands of regulatory agencies; and conduct business according to the highest ethical standards. Dentists understand that the best reflection of their practice is their reputation in the community.

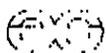
The State of Hawaii Department of Commerce and Consumer Affairs operates a "*Business and Licensee Complaints History Search*" on its website. Information posted on the webpage states that "This search is designed to help the public obtain basic information about complaints that have been filed against companies that conduct business in the State of Hawaii". Complaints filed through the Office of Consumer Protection and the Regulated Industries Complaints Office may be posted on this website *before a formal investigation has been conducted*. Many of Hawaii's dentists have found the discovery of this practice to be extremely disconcerting. It seems inherently unfair to disclose information concerning a complaint before its validity and merit have been determined.

In other cases, formal investigations by the regulatory agency have determined there was insufficient evidence to pursue warnings or sanctions against the licensee. While the licensee may feel he or she has been vindicated, the information regarding the complaint and its outcome is still subject to disclosure and remains posted on the website. The record of complaints that are pending investigation and complaints that do not result in disciplinary action remains posted on the website for a minimum of five years. Ironically, the duration of time the information remains posted on the website is based on the State Comptroller's assessment of storage space available for written documents.

1



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**ENDODONTIC
SPECIALISTS, INC.**

Wade K. Nobuhara, DDS, MS

To: Judiciary and Labor Committee
From: Wade K. Nobuhara, DDS, MS
Date: Thursday, February 7, 2008 9:00 am
Subject: **Support of SB2059, Relating to Information Practices**

(continued)

The statutory language under review was introduced in the late 1980's. At question was the balance between the State's interest in open and accessible government and an individual's right to privacy. In 1988, the Senate's Committee on Government Operations wrote, *"It is an open question whether Hawaii's constitutional right to privacy is broader than the provisions of Section 92-53, in some respects, and may compel the State to close additional records"* (Standing Committee Report No. 2580. Senator Russell Blair, Chair).

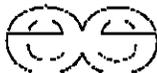
While the interest in open and accessible government has not changed, the instantaneous accessibility to information the internet currently provides could not have been foreseen. This brings us back to the dilemma of the dentist whose name remains posted on this website because of a complaint which may – or may not – be based on factual merit. Or the dentist whose name remains posted on this website even though a formal investigation has determined there was insufficient evidence to support the filed complaint. In my opinion, the practice of posting this information is inherently unfair and potentially damaging to the dentist's reputation.

Since there appears to be no other recourse than the proposed change in statutory language, I express my support for SB2059 and respectfully request this committee to consider the intent to protect the record of complaints that do not result in disciplinary action against a licensee.

Thank you for the opportunity to testify in support of SB2059.

Sincerely,

Wade K. Nobuhara, DDS, MS



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NIWAO
&
ROBERTS

Certified Public Accountants, A Professional Corporation

Before the Committee on Judiciary and Labor

**Thursday, February 7, 2008 at 9:00 a.m.
Conference Room 016**

**Re: Support to SB 2059
Relating to Information Practices**

Testimony of John W. Roberts

Chair Taniguchi, Vice Chair Hee, and committee members:

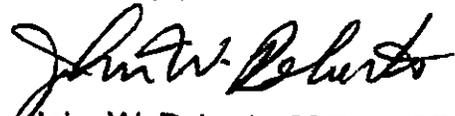
I support SB 2059 because it will eliminate the existing improper inference of wrongdoing without basis or justification and restore the "guilty until proven innocent" principle.

Currently, the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs posts on its website all complaints received against any licensee. The complaint remains on the website for five years and is not removed, even if the related investigation is closed for lack of evidence or merit, or there is a determination that a violation did not occur by the legal staff of RICO. As a result, the licensee is branded with a complaint when in fact there may be no substantive violation of the terms and conditions of his or her licensure.

Accordingly, I urge you to support SB 2059.

Thank you for your consideration of this matter.

Very truly yours,


John W. Roberts, M.B.A., CPA

LATE

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary and Labor

From: Paul T. Tsukiyama, Director

Date: Thursday, February 7, 2008, 9:00 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 2059
Relating to Information Practices.

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") opposes this bill.

OIP administers Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"). Since its adoption in 1988, the UIPA has made clear that any individual granted any type of license in the State does not have a significant privacy interest in "the record of complaints including all dispositions" so that the UIPA's privacy exception provided in section 92F-13(1), HRS, could not apply to exempt such records from public disclosure. Thus, currently, under the UIPA, the public has access to complaint records about any and all licensees. It cannot be disputed that the availability of such complaint information has been valuable to the public. For example, many consumers have relied on these records to make informed decisions about whether to engage licensees' services.

This bill jeopardizes the public's current access to licensee complaint records by removing the express acknowledgment that licensees' have no significant privacy interest in complaint records. In effect, under this bill, all licensees would now be deemed to have a significant privacy interest in their records of complaints and, if this significant privacy interest is found to outweigh the public interest in disclosure, the complaint records about any and all licensees can be held exempt from public disclosure under the UIPA's privacy exception.

When adopting the UIPA in 1988, the Legislature had reported that it was crafting the new law in response to extensive testimony that was received by a Governor's Committee on Public Records and Privacy in 1987 and that largely criticized the shortcomings of previous public records laws. Thus, the Legislature appeared to have been responsive to the public's need for licensee complaint information when it specifically inserted the express recognition of no significant privacy interest in such records.

This bill signifies a major policy shift in the accessibility of licensee complaint information that the public has come to rely on. While it is, of course, the Legislature's call as to whether to make the policy shift called for in this bill, it is highly questionable as to how this bill would serve anyone other than the few licensees who want to hide their complaint records from the public's view.

Thank you for the opportunity to testify.

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