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

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2009

MONDAY, FEBRUARY 23, 2009  
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 1213 H.D.1 – RELATING TO DENTISTRY

TO THE HONORABLE ROBERT N. HERKES, CHAIR,  
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,  
AND TO THE HONORABLE GLENN WAKAI, VICE-CHAIR,  
AND TO THE HONORABLE KEN ITO, VICE-CHAIR,  
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1213 H.D.1, Relating to Dentistry. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department opposes House Bill No. 1213 H.D.1.

House Bill No. 1213 H.D.1 authorizes the Board of Dental Examiners to issue cease and desist orders for the unlicensed practice of dentistry and establishes that a violation of a cease and desist order constitutes a class C felony. The bill also provides for a defective effective date of July 1, 2020.

For the Committees' information, the original version of this bill was identical to Senate Bill No. 115, which was heard by the joint Senate Committees on Health and Commerce and Consumer Protection on February 2, 2009. The Senate Committees voted to hold the measure on February 6, 2009.

The Department notes that by virtue of §26-9(m), Hawaii Revised Statutes ("HRS"), board authority to investigate and prosecute complaints is delegated to the Department. Pursuant to that authority, the Department pursues violations for unlicensed activity in one of two ways: it initiates a circuit court action to enjoin unlicensed activity under §§487-13 and 487-15, HRS, or it issues citations that include orders of abatement pursuant to §436B-26.5, HRS. In FY08, RICO obtained 135 unlicensed activity judgments with injunctive relief, and 150 citation orders in a variety of license types.

In addition, §436B-27, HRS, provides that persons who engage in any activity requiring a license and who fail to obtain the required license are guilty of a misdemeanor and are subject to a fine of not more than \$1,000 or imprisonment of not more than one year. Given the existing civil, administrative, and criminal sanction provisions in Chapters 436B and 487, HRS, the Department believes that House Bill No. 1213 H.D.1 is unnecessary.

Testimony on House Bill No. 1213 H.D.1  
February 23, 2009  
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Thank you for the opportunity to testify on House Bill No. 1213 H.D.1. 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 HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, February 23, 2009  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1213, H.D.1, RELATING TO DENTISTRY.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND  
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

My name is Jeffrey Miyazawa, D.D.S., Chair of the Board of Dental Examiners ("Board"). The Board appreciates the opportunity to testify in opposition to H.B. No. 1213, H.D.1, Relating to Dentistry.

The purpose of H.B. No. 1213, H.D.1 is to grant the Board the power to issue cease and desist orders for the unlicensed practice of dentistry.

The Board would like to inform the Committee that the regulatory authority to enforce sanctions against unlicensed activity in Hawaii is delegated to the Regulated Industries Complaints Office ("RICO") and not to the individual boards. Pursuant to section 436B-26.5, Hawaii Revised Statutes ("HRS"), RICO has the authority to issue citations to persons engaged in unlicensed activities. With the citation, RICO can assess civil penalties and issue an order of abatement. Further, pursuant to section 436B-27, HRS, RICO has the power to pursue misdemeanor charges, fines,

imprisonment and injunctive action for unlicensed activity. Granting the Board such powers to enforce unlicensed activities may result in financial implications which the State can ill afford during these times of economic crisis.

It is our understanding that in other states where a dental board has the power to issue a cease and desist order it is when there is no other agency, such as RICO, to address unlicensed activities. However, in Hawaii, RICO was specifically created to investigate and prosecute violations of laws related to those professions regulated under the jurisdiction of the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs.

Therefore, the Board believes this bill is unnecessary as there is regulatory authority already vested in RICO and there may be financial implications that need to be considered.

Thank you for the opportunity to testify in opposition to H.B. No. 1213, H.D.1.

Hawaii State Legislature  
State House of Representatives  
Committee on Consumer Protection and Commerce  
Committee on Judiciary

Representative Robert N. Herkes, Chair  
Representative Glenn Wakai, Vice Chair  
Committee on Consumer Protection and Commerce

Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair  
Committee on Judiciary

Monday, February 23, 2009, 2:00 PM Room 325  
House Bill 1213,HD1 Relating to Dentistry

Honorable Chair Robert N Herkes, Honorable Chair Jon Riki Karamatsu and members of the House Committee on Consumer Protection and Commerce, and House Committee on Judiciary

My name is Dr. Craig Mason. I am the President-Elect of the Hawaii Dental Association and I appreciate the opportunity to testify in support of HB 1213 HD1 Relating to Dentistry. This bill addresses the problem of the Hawaii State Board of Dental Examiners being unable to stop unlicensed individuals from practicing dentistry. This constitutes a clear danger to the health and welfare of the public.

When a complaint has been filed, the Department of Commerce and Consumer Affairs Regulated Industries Complaints Office conducts an investigation which may require many months. During this time they may request a determination from the Hawaii State Board of Dental Examiners as to whether the activities of the unlicensed individual constitute the practice of Dentistry. If it does, then the complaint is turned over to the legal section of the Regulated Industries Complaints Office where again it may take many months for action to be taken. If before the Regulated Industries Complaints Office takes action, the unlicensed individual changes the name under which they are practicing, or changes the location of their business, the complaint is rendered void and the whole process must start over with the filing of a new complaint. All the while the unlicensed individual can be practicing dentistry and putting the public at risk. If the Hawaii State Board of Dental Examiners could issue a cease and desist order at the time they determine the unlicensed individual is practicing dentistry, the public could be protected much more rapidly.

In the case of a dental licensee who apparently has a drug or alcohol problem, 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 even after arrest and indictment. With the authority to order the licensee to cease and desist the delivery of dental services, the Board of Dental Examiners can move swiftly to protect the public.

At least ten states permit their dental licensing board to issue cease and desist orders. Many others have similar authorities in place.

## Sharon Sagayadoro

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**From:** Darrell [teruyadt@worldnet.att.net]  
**Sent:** Friday, February 20, 2009 12:03 PM  
**To:** CPCtestimony  
**Cc:** Darrell T Teruya  
**Subject:** Testimony CPC, JUD Monday 02-23-09 rm 325 HB1213 empowering the Hawaii Board of Dental Examiners

COMMITTEE ON CONSUMER PROTECTION & COMMERCE Rep. Robert N. Herkes, Chair, Rep. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY  
Rep. Jon Riki Karamatsu, Chair, Rep. Ken Ito, Vice Chair

Monday, February 23, 2009, 2:00 p.m., Conference Room 325

HB 1213, HDI RELATING TO DENTISTRY.

Grants the Board of Dental Examiners the power to issue cease and desist orders for the unlicensed practice of dentistry. (HB1213 HDI)

Honorable Chairmen Representatives Herkes and Karamatsu; Honorable Vice Chairmen Wakai and Ito; venerable members of the Committees on Consumer Protection and Commerce and Judiciary Thank you for the opportunity to testify in support of House Bill 1213, HDI which would give the Hawaii Board of Dental Examiners cease and desist powers.

All too often issues arise where there is a violation of the statutes or rules under which one is licensed. For the most part, an authoritative sanction with subsequent follow-up on the part of the powers that be are adequate toward the resolution of the infraction. There are always exceptional circumstances where the continuation of "business as usual" presents a threat to public safety and/or a risk to the individual practitioner as well. This bill would enable our Board of Dental Examiners to act in a timely manner on the more egregious cases.

We queried our component analogue associations across the nation and, of those who replied, we received (and continue to receive) confirmation of statutory cease and desist powers of the State Boards in almost all instances. The Board of Dental Examiners should have the authority to act on the behalf of the best interests of the public as befits their stature.

Again, thank you for allowing the presentation of this testimony.

Darrell Teruya, DDS  
Immediate Past-President, Hawaii Dental Association