

LATE TESTIMONY

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

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

Wednesday, April 8, 2009, 3.00 p.m. Room 325
House Concurrent Resolution 161, Proposed HD 1

Honorable Chair Herkes, Vice Chair Wakai and
members of the House Committee on Consumer Protection and Commerce,

My name is Russel H. Yamashita and I am the Legislative Representative of the Hawaii Dental Association and I appreciate the opportunity to testify in support of HCR 161 Proposed HD 1 Relating to Teeth Whitening regulation. This resolution seeks to address problems which have arisen in Hawaii and around the country with the advent of teeth whitening kiosks.

There are several problems relating to public safety which have arisen with the advent of the kiosk operators of teeth whitening activities. First, and most importantly, there have been numerous problems here in Hawaii and around the country where the public has been harmed by these operators. The primary ingredient used by the operators is basically hydrogen peroxide. The concentration used is higher than those used in the over the counter teeth whitening products sold in any drugstore. The common chemical used by the kiosk operators is a concentration of 22% carbimide peroxide gel (a form of hydrogen peroxide), which compares with the 5% to 7% in over the counter dental products and the regular bottled hydrogen peroxide used as an antiseptic at 3%. As a result, the misuse and negligence of these kiosk operations have resulted in the public receiving burned gums and choking on hydrogen peroxide being swallowed.

Local dentists have treated patients who have come in to their office seeking treatment for the damage done by these kiosks operators. Nationally, state dental boards have successfully taken kiosks operators to court determining that these teeth whitening activities are in fact the practice of dentistry. Both the states of Tennessee and West Virginia have recent court cases decided that the kiosk operations are practicing dentistry and banned them from operating.

Other state dental boards have issued opinions that the activities of the teeth whitening kiosk operators constitute the practice of dentistry and require a licensed dental professional to conduct such activity. These include Kansas, District of Columbia, Florida, Massachusetts, Nevada, New Jersey, Ohio and Tennessee.

The operators of these kiosks hire people who have no medical or dental training and claim that the mere fact that they do not insert the dental trays holding the chemicals do not constitute the practice of dentistry. However, even the fact that the operators determines the size of the dental device to be used is a decision that requires professional judgment and training. The use of an oversized dental tray resulted in a woman swallowing the hydrogen peroxide at a kiosk at the Sam's Club on Keamoku Street last August 15, 2008, which I personally witnessed. Only when the woman was choking did the employees of the kiosk take any action.

Additionally, in a dental office, extreme care is taken with even the dental trays and other devices and instruments due the issue of liability when it comes to AIDS, Norovirus, TB, Hepatitis B and C, or any other disease that may be encountered when dealing with patients. Basic hygiene and sterilization of all items used in a dental office goes without saying. No such requirements or standards are applied in these kiosks. Sterilization of the dental trays is not observed and swishing it rubbing alcohol won't necessarily protect the next user.

Finally, since the employees of the kiosk operators have no apparent training in medical or dental procedures, there is a concern that these employees could be exposed to medical waste or disease bearing trays with out proper training or understanding the risks involved in their "simple" tasks. The employees could unwittingly take a serious medical situation home with them to their own families and easily pass it on to the next customer at the kiosk.

Currently, the Department of Commerce and Consumer Affairs Regulated Industries Complaints Office has several complaints regarding the safety issues raised by these kiosk operators. One complaint was filed by the Hawaii Dental Association on June 30, 2008, and another by the Board of Dental Examiners prior to that date. As far as it is known, no legal action has been taken by RICO to address the problems raised in those complaints.

Therefore, the HDA and its 950 plus members urge your favorable consideration of this resolution in order to protect the public from the real and potential harm that these teeth whitening kiosk operations have and will cause to the public.