

TESTIMONY TO THE HOUSE COMMITTEE ON HIGER EDUCATION/EDUCATION,
ON
SB1129 SD 1, RELATING TO ATHLETIC TRAINERS

The Hawaii Athletic Trainers Association supports Senate Bill 1129 SD 1, Relating to Athletic Trainers with amendments. Certified Athletic Trainers are healthcare professionals who specialize in injury prevention, assessment, immediate care, treatment, referral and rehabilitation particularly in the orthopedic and musculoskeletal disciplines. Athletic Training has been recognized by the American Medical Association as an allied healthcare profession since 1990, an independent national credentialing agency, the Board of Certification Inc. certifies athletic trainers. The Hawaii State Legislature has affirmed the value, importance, and qualifications of certified athletic trainers in the past by appropriating funds to place certified athletic trainers in each of Hawaii's public secondary schools. In addition to the public secondary schools, Certified Athletic Trainers are employed in private secondary schools, Colleges and Universities, physician offices, hospitals, sports medicine clinics, the military, and fitness centers. There are currently 165 certified athletic trainers in the state of Hawaii. The University of Hawaii-Manoa has an accredited athletic training curriculum.

A concurrent resolution was first passed in 2005 asking the State Auditor's Office to perform a "Sunrise Analysis" of regulating the profession of athletic training. That analysis has not yet been done. Our association understands that an analysis must be completed prior to enacting this legislation and we firmly support that requirement.

We feel that our profession should be regulated to safeguard the public.

1. There is risk that Hawaii's athletic population could suffer consequences such as chronic pain, disability, or loss of life if health care is received from unqualified practitioners. Regulation in the form of Registration would ensure that Hawaii's athletic population receives specialized emergency care and appropriate treatment and rehabilitation, and meet appropriate criteria before being returned to play.
2. Regulation in the form of Registration would require and verify, as is now required of other health care professions demonstration of minimum competency in the profession by verifying the educational and certification requirements of the Board of Certification Inc..
3. It would provide a mechanism to report any malpractice or ethical violations. At present that does not exist placing the public at risk.
4. Currently there is no agency that monitors whether the certification of athletic trainers remains in good standing. A person could conceivably become certified and fail to maintain his/her certification. This can happen by failing to meet continuing education requirements or certification can be suspended or revoked by the National Athletic Trainers Association Board of Certification for ethical or legal violations. Again at present there is no one to whom the national organization can report disciplinary actions.
5. As one of the few states nationwide without licensure, Hawaii could become a dumping ground for those who have had disciplinary restrictions from other states.
6. There is title confusion. The public has trouble discerning the differences between certified athletic trainers, personal trainers, boxing trainers, special education skills trainers etc. There is

risk that unqualified, non-credentialed people can represent themselves as “trainers” and the public be misled into thinking they are receiving care from health care professionals.

7. The standard of appropriate care has risen. Because all of Hawaii’s public high schools and many private high schools have certified athletic trainers on staff, parents of secondary school age athletes expect their children will be cared for by qualified and competent healthcare professionals. Nearly all colleges and universities nationwide employ certified athletic trainers. When college and university athletes travel to Hawaii they expect to be treated by Certified Athletic Trainers.
8. Because a nationally accredited Board of Certification already exists, Hawaii would not need to administer a separate examination. Adopting the process which is already in place would decrease the cost of creating a Board of Athletic Trainers. Currently 43 states recognize BOC requirements as the standard for eligibility and regulation of the practice of athletic trainers.

The potential for risk of harm exists. Athletic Trainers have extended and sometimes intimate contact with the athletic population. Athletic trainers routinely work with children as young as 12. It is one of the few medical professions that is unregulated in Hawaii.

There is evidence of risk of harm to the public. In recent years there have been incidents where unqualified individuals have claimed to be athletic trainers or certified athletic trainers when they were not. There is evidence of harm to students. No investigations have ever been done due to the lack of an agency for which to file a complaint.

There is a case in which an individual was under a federal and state criminal investigation in another state and was hired by a Hawaii state institution. Although the employer completed a background check the investigation was not complete therefore not reportable. Had there been a state regulatory agency there would have been a report of an ongoing investigation. The individual later had his certification suspended for “risk of public harm”. Recently there was an individual working in a private high school who claimed to be a certified athletic trainer when he in fact had never met the requirements for certification. His co worker and supervisor believed that he was an NATABOC certified athletic trainer but never verified it. Another individual was a full time athletic trainer at a public high school who was arrested for shoplifting at a department store. His employment was terminated and when school staff assumed control of the high school’s athletic training room they found bottles of alcohol inside water coolers. A massage therapist was hired at a private high school to provide athletic training services, when one of our certified athletic trainer members questioned the athletic director he told her “he thought it was alright because she was taking athletic training classes”. She was not enrolled in the University of Hawaii-Manoa Athletic Training Curriculum which is the only accredited athletic training education program in Hawaii.

Our association originally was supporting licensure of athletic trainers for public protection. 43 states currently have licensure and it is the form of regulation with which we are most familiar. After speaking with a representative of DCCA we now feel that registration could meet the needs of the public if it includes title protection, description of the practice of athletic training, and a clear message that violating the act can incur civil penalties. Currently if someone violates ethical or professional standards there are no sanctions unless the act is illegal.

Our association is well aware that there is only one purpose in regulating and licensing professions and vocations, that purpose is public or consumer protection. This bill is not about expanding our scope of

practice. We already have in place through HRS 461J a broad exemption to the Physical Therapy Practice Act which allows NATA Certified Athletic Trainers the latitude to perform within the scope of NATA certification. This bill is not about creating jobs. Athletic Training positions are well established in Hawaii; in fact the State of Hawaii is the largest single employer of Certified Athletic Trainers in this state. The supply and demand in Hawaii is fairly equal and perhaps there is a small shortage of athletic trainers. This bill is not about insurance reimbursement. In our state the majority of certified athletic trainers are employed in educational institutions where that is not an issue. We do have members in a variety of other settings but their employers hired them for their skill sets and not as a means of billing for revenue. This bill is not about which healthcare profession is the best at providing certain services or having exclusivity to provide certain services. Many healthcare professions overlap each other in providing similar services. The profession of Athletic Training overlaps a number of other healthcare professions. We overlap EMT's in the immediate care and transportation of emergency situations, we overlap nurses in triage of illness and injury, we overlap primary care and orthopedic surgeons in assessment of musculoskeletal injury, we overlap physical and occupational therapists and chiropractors in the treatment and rehabilitation of athletic injury, we overlap school counselors and social workers in counseling and guidance of psychosocial factors. We are well aware of our limitations and very quick to make referrals to other healthcare professionals when the condition exceeds our knowledge and training. This bill is about public and consumer protection. This bill is about Hawaii not becoming a dumping ground for those who have had their licenses suspended or revoked in other states. This bill is about having a regulatory agency to which ethical violations can be reported. This bill is about having a regulatory agency to ensure that an athletic trainer who was initially certified by the Board of Certification Inc. remains certified and in good standing by acquiring continuing education and adhering to ethical codes. This bill is about making sure that those who claim to be certified athletic trainers are in fact who they say they are. We are not trying to gain anything to enhance our profession.

We urge you to pass this bill with the suggested amendments. A copy of the measure with our suggested amendments is attached. We are suggesting changing the term "directing physician" to "treating physician" throughout the measure to better reflect that athletic trainers work under the direction and guidance of a number of physicians especially at the secondary school level. We have updated the language under section 2 "practice of athletic training" to reflect the most recent definition used by our national independent credentialing agency the Board of Certification Inc. We have added in exemptions so as to not prohibit students from performing activities that are within their educational program, and to not prohibit certified athletic trainers in good standing in other states from practicing here temporarily while attending to their own teams or athletic events. We added a section to indicate that to be qualified for registration an athletic trainer must have completed the requirements set forth by the Board of Certification. Last we added language that is clear to indicate that there are penalties for violating this measure.

The Hawaii Athletic Trainers' Association thanks you for your time in considering this measure and encourages its passage with amendments.

Darryl Funai, A.T.C. President Hawaii Athletic Trainers Association
and

Cindy Clivio, A.T.C. Hawaii Athletic Trainers' Association Governmental Affairs Chair

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Report Title:

Athletic Trainers; Licensing

Description:

Requires athletic trainers to register with the department of commerce and consumer affairs. (SD1)

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 1129
S.D. 1

A BILL FOR AN ACT

RELATING TO ATHLETIC TRAINERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

ATHLETIC TRAINERS

§ **-1 Title.** This chapter is known as the "Athletic Trainer Licensing Act".

§ **-2 Definitions.** As used in this chapter, unless the context indicates otherwise:

"Athletic trainer" means an individual who is registered under this chapter and carries out the practice of athletic training.

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"Department" means the department of commerce and consumer affairs.

"Directing Treating physician" means a physician or surgeon licensed under chapter 453 or an osteopathic physician or surgeon licensed under chapter 460, who, within the licensee's scope of practice and individual competency, is responsible for the athletic training services provided by the athletic trainer and oversees the practice of athletic training by the athletic trainer, as established by rule.

"Director" means the director of commerce and consumer affairs.

"Practice of athletic training" means the application by a registered and certified athletic trainer of principles and methods ~~to~~ of:

- (1) ~~Prevent athletic injuries~~ Prevention;
- 2) ~~Recognize, evaluate, and assess athletic injuries and conditions~~ Clinical evaluation and diagnosis;
- (3) ~~Provide Immediate care of athletic injuries, including common emergency medical situations;~~
- (4) Treatment, Rehabilitate Rehabilitation and reconditioning athletic injuries;
- (5) Organization and Administer Administration athletic training services and organization; and
- (6) Professional Responsibility
- (7) Educate Education athletes.

§ -3 **Registration required.** (a) No person shall represent, advertise, or announce oneself, either publicly or privately, as an athletic trainer, nor use in connection with

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the person's name or place of business the words "registered athletic trainer", "athletic trainer", ATC or any other words, letters, abbreviations, or insignia indicating or implying that the person is an athletic trainer unless the person has registered with the department of commerce and consumer affairs and meets the qualifications of section -6

(b) Nothing in this chapter shall be construed to prohibit students in an educational program for athletic trainers from participating in activities that are conducted as part of the educational program and are under the supervision and guidance of a registered athletic trainer.

(c) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(d) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or

regularly engage in the practice of the regulated
occupation or profession in this state;

(e) an individual licensed, registered, or certified, in
another state or country who is in this state temporarily
to attend to the needs of an athletic team or group, except
that the practitioner may only attend to the needs of the
athletic team or group, including all individuals who
travel with the team or group in any capacity except as a
spectator;

(f) an individual licensed, registered, or certified and in
good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a
sponsoring entity;

(ii) for a reason associated with a special purpose
event, based upon needs that may exceed the ability of
this state to address through its licensees, as
determined by the division; and

(iii) for a limited period of time not to exceed the
duration of that event,

§ -4 Registration requirements. (a) Athletic trainers
shall:

(1) Register with the department by providing the athletic trainer's name, business address, and a current and unencumbered certification from the National Athletic Trainers Association Board of Certification;

(2) Renew the athletic trainer's registration every three years by providing the information required by paragraph (1); and

(3) Notify the department of any changes in registration information within thirty days.

(b) The department shall maintain a current list of the names and business addresses of athletic trainers registered under subsection (a). The registrant's copy of its certification from the National Athletic Trainers Association Board of Certification shall be a public record.

§ **-5 Duties of ~~directing~~ treating physician.** A ~~directing~~ treating physician shall provide ~~supervision~~ direction to an athletic trainer by verbal order when in the presence of the athletic trainer or by written order or written athletic training service plans or protocols when a ~~supervising~~ treating physician is not present with the athletic trainer."

§ **-6 Qualifications of Athletic Trainers. Athletic Trainers shall have completed the educational and certification requirements of the Board of Certification Inc.,**

§ -7 Civil penalty. Any person violating any provisions
of this chapter shall be
fined a sum of not less than \$500 nor more than \$10,000
for each violation, which sum shall be collected in a
civil action brought by the attorney general or the
director of the office of consumer
protection on behalf of the State.

SECTION 2. This Act shall take effect on July 1, 2009.

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LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON HIGHER EDUCATION

AND

TO THE HOUSE COMMITTEE ON EDUCATION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION of 2009

Tuesday, March 17, 2009
2:15 p.m.

**TESTIMONY ON SENATE BILL NO. 1129, S.D. 1, RELATING TO ATHLETIC
TRAINERS.**

TO THE HONORABLE JERRY L. CHANG, CHAIR,
TO THE HONORABLE ROY M. TAKUMI, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Celia Suzuki, Program Specialist of the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify in opposition to Senate Bill No. 1129, S.D. 1, Relating to Athletic Trainers. However, the Department does support a sunrise study to be conducted by the Auditor.

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Senate Bill No. 1129, S.D. 1 creates a new chapter providing for the registration of Athletic Trainers within the Department. Section 26H-6, Hawaii Revised Statutes, requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis before any measure is enacted. The statute further requires that the analysis shall set forth the probable effects of regulation, assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation.

On February 25, 2009, the Senate Committee on Commerce and Consumer Protection ("CPN") held a hearing on Senate Bill No. 1129. Prior to decision making, the Senate Committee on CPN asked the Department to draft a bill to reflect a simple registration for the regulation of athletic trainers. The Department complied with the request and the bill before you today contains the Department's suggested language for a registration regulatory scheme. The registration requirements include that the applicant shall submit to the Department the athletic trainer's name, business address, and a current and unencumbered certification from the National Athletic Trainers Association Board of Certification. This scheme would appear to be appropriate for the regulation of Athletic Trainers because the bill in its original form contained essentially only one substantive criterion to determine qualifications, and that was certification from a nationally recognized credentialing agency. That agency would be the National Athletic Trainers Association Board of Certification.

For the Committees' information, when the Auditor assesses a legislative proposal to newly regulate a profession or vocation, the Auditor reviews the application

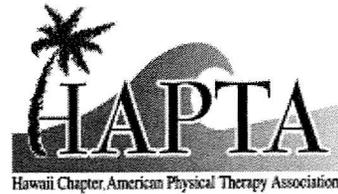
requirements and determines whether the proposal reflects that of a registration, certification, or licensure scheme. There are distinct differences with the three regulatory schemes and the Auditor cites to these differences when critiquing a bill. In this case, Senate Bill No. 1129 in its original form, although purporting to be a licensure scheme, was reflective of a registration scheme and thus the S.D. 1 before you would appear appropriate according to the Auditor's criteria.

The Department could not support a bill containing a licensing regulatory scheme for athletic trainers when the proposal does not in fact represent that. "Licensing" is defined by the Auditor as the most restrictive form of regulation which protects the title and practice of the profession, upon meeting certain specific qualifications. These specific qualifications do not include reliance on private certification standards nor is private certification used for licensure.

We also wish to inform the Committee that a meeting was held on March 12, 2009 with the proponents at their request. The Department stressed that first and foremost, it will continue to oppose the regulation of athletic trainers until the Auditor conducts a sunrise study. The proponents agreed that a sunrise analysis is necessary. The Department also informed the proponents that the language in Senate Bill No. 1129, S.D. 1 is the appropriate means for the regulation of athletic trainers. Finally, pursuant to Standing Committee Report No. 562, since athletic trainers, physical therapists, and occupational therapists work closely together, we encouraged them to work together to achieve consensus on this measure. This matter still seems to be unresolved

Thank you for the opportunity to testify in opposition to Senate Bill No. 1129, S.D.

1. The Department does, however, support a sunrise study on this measure, as mandated by law, before regulating athletic trainers.



**Testimony by:
Ann Frost, PT**

**SB 1129sd1, Relating to Athletic Trainers
Hse HED/EDN, March 17, 2009
Room 309, 2:15 pm**

Position: Support With Reservations

Chairs Chang and Takumi, and Members of the House HED/EDN Committees:

I am Ann Frost, P.T., President of the Hawaii Chapter – American Physical Therapy Association (HAPTA) and member of HAPTA’s Legislative Committee. The HAPTA is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education and Department of Health systems, and private practice. Our members represent Hawaii at the national American Physical Therapy Association and are delegates for Pediatrics, Women’s Health, Parkinson’s Disease and other issue sections. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments.

HAPTA is committed to ensuring that consumers receive health care services by qualified health care professionals. Nationwide, there is a growing acknowledgement of the health benefits of physical activity, particularly among our school-aged children. Organized sports activities are a wonderful way for our youth to begin healthy, active lifestyles. Most certainly, the certified athletic trainers are an important part of the allied health care spectrum for all age groups participating in sports activity.

We support SB 1129sd1 with reservations because of our concerns with terminology and definitions within this measure, which left unaddressed may allow for athletic trainers to provide services beyond their academic training thus putting the public at risk. HAPTA, along with the Occupational Therapy Association of Hawaii, continues to work with the Hawaii Athletic Trainers Association to resolve these differences.

I can be reached at 382-2655 if you have any questions. Thank you for the opportunity to testify.



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Tuesday, March 17, 2009, 2:15 p.m., CR 309

To: COMMITTEE ON HIGHER EDUCATION

Rep. Jerry L. Chang, Chair
Rep. Mark M. Nakashima, Vice Chair

COMMITTEE ON EDUCATION

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Lauren Zirbel, Government Affairs

RE: SB 1129 RELATING TO ATHLETIC TRAINERS

In support.

Chairs and Committee Members:

The Hawaii Medical Association represents physicians statewide, including primary care and specialty physicians who evaluate and treat patients of all ages that participate in athletic activities. We strongly support SB 1129 and the registration of athletic trainers to better protect the public; i.e., patients who are treated for injuries resulting from exercise and other athletic activities.

We believe that athletic trainers certified by the National Athletic Trainers Association Board of Certification are qualified to treat injuries resulting from athletic activities. We feel that the Treating Physician is best qualified to direct further care to the most appropriate health care provider. For example, patients who need rehabilitation for a disability due to a stroke, ALS, cerebral palsy or Parkinson's disease should not be referred to an athletic trainer.

Thank you for the opportunity to testify and for your time in considering this measure.

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OCCUPATIONAL THERAPY ASSOCIATION OF HAWAII

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Testimony by:

Virginia Tully, OTR, MBA

SB 1129sd1, Athletic Trainers

House HED/EDN Hearing – Tuesday, March 17, 2009

Room 309 – 2:15 pm

Position: Support with Reservations

Chair Chang and Takumi, and Members of the House HED/EDN Committees:

I am Virginia Tully, OTR, and past-president of the Occupational Therapy Association of Hawaii, (OTAH), which represents 507 occupational therapists (OTs) licensed in Hawaii. OT's work in many settings throughout the State, including hospitals, schools, and prisons, to private facilities and community programs. We work with very young children, ages 0-3, as well as school aged children, adults, and the elderly, seeking to restore or develop social-emotional, physical, cognitive, communication and adaptive behavior challenges.

Through understanding of the effect of the consumer's disability, illness and impairment, the occupational therapist develops a program that will promote development and establish needed skills to be independent in daily living activities. Daily living skills include self-care such as bathing, dressing, and skills required for learning, work or social interaction. Often times, OTs must design/fabricate special devices or suggest modification to the home environment.

OTAH strongly believes in the consumer's safety and protection when receiving health care from physicians and allied health professionals. We support licensure as a means to clearly establish a specific allied health profession's scope of service based on appropriate education and field training, as accredited or certified by national boards.

The SD1 removes Athletic Trainer (AT) licensure, which is premature since the Legislative Auditor has not yet completed its study to assess the need for licensure. It also calls for a registration program with DCCA and requires a copy of the AT's certification from the National Athletic Trainers Association Board of Certification. We support this as it will assist qualified ATs to provide services to injured athletes.

However, we continue to have serious concerns about the terminology and definitions within this measure that we believe will allow athletic trainers to provide services beyond their training and certification. I am pleased to say that the ATs, OTs and PTs (Physical Therapists) continue to work collaboratively to resolve these differences.

Thank you for the opportunity to submit testimony. I can be reached at 544-3336 if further information is needed.

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