



**TESTIMONY OF MARION M. HIGA, STATE AUDITOR
ON HOUSE BILL NO. 337, HOUSE DRAFT 1, RELATING TO ATHLETIC TRAINERS**

House Committee on Finance

March 2, 2011

Chair Oshiro and Members of the Committee:

Thank you for this opportunity to express our concerns about House Bill No. 337, House Draft 1. This bill proposes to regulate athletic trainers by offering title protection. This means that no one could represent, advertise, or announce oneself, either publicly or privately, as an athletic trainer or registered athletic trainer unless registered with the Department of Commerce and Consumer Affairs (DCCA). Registration would require athletic trainers to have a current certification issued by the Board of Certification, Inc. (BOC)—the independent credentialing body for the athletic training profession accredited by the National Commission of Certifying Agencies.

The bill references the sunrise analysis we performed in Report No. 10-08 in response to Act 108, SLH 2010. We analyzed Senate Bill No. 2601, Senate Draft 1, (S.B. No. 2601, S.D.1) of the 2010 session, which contains identical provisions as House Bill No. 337, House Draft 1 (H.B. No. 337, H.D.1), relating to registration requirements and qualifications. We concluded that, as measured by the Hawai'i Regulatory Licensing Reform Act, the regulation of athletic trainers is not reasonably necessary to protect the public. The DCCA's Office of Consumer Protection has no records of any complaints relating to athletic trainers and the Hawai'i Athletic Trainers Association could provide only anecdotal evidence of harm. Although Hawai'i's athletes need appropriate care, other protections are in place.

Moreover, while some adjustments in H.B. No. 337, H.D. 1, have been made to address flaws noted in S.B. No. 2601, S.D. 1, the regulatory process still appears more akin to *licensure*. For example, language in Section -7 creates *licensure* for an athletic trainer who is *registered* even though the bill is entitled "Athletic Trainer Registration Act." In our report, we noted that identical language is found in Section 457G-1.5(d), Hawai'i Revised Statutes, relating to the practice of occupational therapy and has made enforcement more complicated for DCCA. *Licensure* is the most restrictive form of regulation whereby the state issues a license that confirms that only licensees may practice in a well-defined scope of work. Generally the work is guided by rules and standards of practice and enforced by DCCA. House Bill No. 337, House Draft 1, merely restricts the use of the title of "athletic trainer" to those who have been certified by the BOC. It does not restrict the practice to certified athletic trainers. Consequently, the proposed program offers no assurance that Hawai'i's athletes would receive specialized emergency care and appropriate treatment and rehabilitation.

If a licensure program is intended, state standards for minimum competency are not ensured by this bill. It is unclear whether the standards for minimum competency are covered under the general rulemaking provision in Section -10. In addition, no mechanisms are created to report and remedy malpractice or ethical violations.

Finally, our report noted that fees charged by the DCCA must not be less than the full costs of administering the regulatory program. According to the department, the costs for the proposed *registration* program would be \$45,328 annually. This translates to an initial registration fee of \$267 for the approximately 170 certified athletic trainers working in Hawai'i and \$192 for the renewal fee every three years. Under a *certification* program, the cost per applicant would be \$471. The cost of a *licensing* program, however, would increase the cost per applicant to \$1,012.

We acknowledge the attempts to improve on the bill we analyzed, but regrettably cannot support the new bill. I would be pleased to answer any questions you may have.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

Wednesday, March 2, 2011
12:00 p.m.

WRITTEN COMMENTS

TESTIMONY ON HOUSE BILL NO. 337, H.D. 1, RELATING TO ATHLETIC TRAINERS.

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Celia Suzuki, Acting Licensing Administrator for the Professional and Vocational Licensing Division ("Division"), Department of Commerce and Consumer Affairs ("DCCA"). The Division appreciates the opportunity to present testimony on House Bill No. 337, H.D. 1, Relating to Athletic Trainers.

The bill proposes to regulate the practice of athletic training by requiring athletic trainers to be registered with the DCCA. On the matter of whether to regulate this new profession, we oppose this proposal as it is contrary to the recommendations of the

Auditor's analysis which was completed in 2010. The sunrise study suggested that regulation and registration of athletic trainers is not warranted.

The Regulated Industries Complaints Office also has concerns about the bill as it lacks key provisions for a regulatory law and as is written, would be difficult to implement and enforce.

However, should this proposal advance in the Legislature, we would like to mention that the athletic trainers will bear the burden of subsidizing the program through fees, the cost of the DCCA's resources to start-up, implement, and maintain this new program. We have attached a Proposed H.D. 2 for your Committee's consideration. The Proposed H.D. 2 contains placeholder provisions relating to additional manpower and funding that the department foresees it will need should the bill pass for DCCA to implement.

This bill also provides that this act shall take effect on July 1, 2020. We request that should this bill pass, the effective date be that of July 1, 2012, to allow us sufficient time to ensure a smooth and efficient transition for the regulation of athletic trainers. A one year delayed effective date has been consistently supported by the Legislature.

Thank you for the opportunity to testify on House Bill No. 337, H.D. 1.

A BILL FOR AN ACT

RELATING TO ATHLETIC TRAINERS.

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

SECTION 2.

§ -10 Fees; disposition. Application fees paid pursuant to this chapter shall not be refundable. Pursuant to section 26-9(1), the director shall establish registration, renewal, restoration, penalty and other fees relating to the administration of this chapter. Fees assessed pursuant to this chapter shall be used to defray costs incurred by the department in implementing this chapter.

§ -11 Renewal of registration; fees. Registrations shall be renewed, upon the payment of a renewal fee, triennially not earlier than ninety days before June 30. Failure to renew a registration shall result in a forfeiture of the registration. Registrations that have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees. Failure to restore a registration within one year of the date of its expiration shall result in the automatic termination of the registration and the person may be required

to reapply for registration as a new applicant. All renewal and restoration fees shall be determined by the director."

SECTION 3. [~~This Act shall take effect on July 1, 2020.~~]

"§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs. (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed as specified in this section. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter (athletic trainers) shall be repealed on June 30, 2018."

SECTION 4. The department of commerce and consumer affairs may employ necessary personnel without regard to chapter 76, Hawaii Revised Statutes, to assist with the implementation and continuing functions of this chapter.

SECTION 5. Upon the issuance of a new registration and at each registration renewal period, each athletic trainer shall pay an additional fee (surcharge) of \$_____, which shall be maintained in a separate account within the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes. At the end of each quarter, the moneys

contained in the separate account established pursuant to this section shall be transferred to the compliance resolution fund until such time that the total transferred amounts equal to the amount appropriated in section 6 of this Act. Thereafter, no surcharge shall be assessed, and any funds in excess of the amount appropriated in section 6 of this Act shall be deposited in the compliance resolution fund.

Section 6. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$40,000, or so much thereof as may be necessary for fiscal year 2011-2012, to implement the athletic trainers registration program.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

Section 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

Section 8. This Act shall take effect on July 1, 2012; provided that section 4 of this Act shall take effect on approval; and provided further that section 6 of this Act shall take effect on July 1, 2011.



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

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

WEDNESDAY, MARCH 2, 2011
12:00 P.M.

TESTIMONY ON HOUSE BILL NO. 337 H.D.1
RELATING TO ATHLETIC TRAINERS

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR,
TO THE HONORABLE MARILYN B. LEE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 337 H.D.1, Relating To Athletic Trainers. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). RICO does not support this bill in its current form and offers the following comments:

1) Scope of practice. "Practice of athletic training" as provided for in this bill overlaps into a number of other licensed professions, without offering a specific exemption for existing licensees. House Bill No. 337 H.D.1 also does not explicitly

address the extent to which scope of practice impacts other licensees. In addition, including the phrase "by a registered and certified athletic trainer" in the definition of "practice of athletic training" would preclude RICO from pursuing cases involving unregistered athletic trainer activities.

2) Practice of medicine; supervisory responsibility of treating physician.

"Practice of athletic training" as set forth in this bill appears to fall within the definition of the practice of medicine under Chapter 453, Hawaii Revised Statutes ("HRS"). RICO is concerned that the bill as drafted would trigger possible unlicensed practice of medicine violations.

Also, the bill appears to provide for the participation of a treating physician who would supervise the athletic trainer. However, the bill does not have an affirmative statement that the athletic trainer may render treatment only under the direction of a treating physician. From an enforcement perspective, it would be difficult to take enforcement action if the relative responsibilities of the athletic trainer and the treating physician are not set forth in the respective licensing laws.

3) National Athletic Trainers Association Board of Certification. The bill as drafted provides for registration if the applicant has a current, unencumbered certification from the National Athletic Trainers Association Board of Certification. In checking the Board of Certification website, it appears that the organization has promulgated Professional Practice and Discipline Guidelines and Procedures that provide for a fairly detailed, confidential hearings process before adverse action is taken on a certification. From an enforcement perspective, information on any investigations and hearing processes involving registrants would be critical. House

Bill No. 337 H.D.1 in its current form does not require the registrant to timely disclose and authorize the release of all records relating to those investigations and proceedings as a condition of continued registration.

Moreover, the bill as drafted regulates conduct that has the potential of generating complaints. It is foreseeable that persons with information relating to possible violations will be limited by applicable state or federal educational, employment, or health privacy laws from disclosing information that may be relevant to an investigation. RICO recommends that the bill clarify the Department's authority to access otherwise protected information.

4) Civil penalties. The civil penalties referred to in section 8 of this bill (§436B-26.5, HRS) apply to situations in which unlicensed activity has occurred. Penalties should not be limited only to situations involving unlicensed activity.

5) Standards of Ethics. It appears that the National Athletic Trainers' Association has adopted a Code of Ethics, and the Board of Certification, Inc., has adopted a separate Standards of Professional Practice that includes practice standards and a Code of Professional Responsibility. House Bill No. 337 H.D.1 does not identify the standards of ethics that would be applied to registrants.

Thank you for this opportunity to testify on House Bill No. 337 H.D.1. I will be happy to answer any questions that the members of the Committee may have.

Testimony to the House Finance Committee
On HB 337 HD1 Relating to Athletic Trainers

Position: Strongly Support

Chair Oshiro and members of the Committee,

My name is Cindy Clivio and I am testifying for the members of the Hawaii Association of Athletic Trainers (HATA) in strong support of H.B. No. 337 HD 1.

The Hawaii Athletic Trainers Association is the professional membership association for Certified Athletic Trainers in our state. Certified Athletic Trainers are health care providers who specialize in the prevention, assessment, treatment and rehabilitation of injuries and illnesses. The University of Hawaii-Manoa offers a graduate entry level degree in Athletic Training. Athletic Trainers are employed in all of Hawaii's public schools, some private schools, colleges, Universities, hospitals, physician offices, clinics, and by the military. Hawaii is considered a leader in providing healthcare at the Secondary School level as the legislature provided funds to place a certified athletic trainer in all of Hawaii's public schools.

The Hawaii Athletic Trainers Association strongly supports HB 337 HD 1. Hawaii is one of only three states who do not currently regulate the profession of athletic training and we believe it is necessary to safeguard the public. The Board of Certification Inc. reports that over

the past 5 years they have issued 960 disciplinary actions to athletic trainers across the county. About half of these were for athletic trainers who did report continuing education within required timeframes and guidelines. The other half were for such things as irregularities in certification exams and exam applications, fraud, conviction of a felony or misdemeanor including DUI's, child pornography, engaging in sexual relationships with minors, insurance fraud, leaving the scene of an accident, and vehicular homicide. It is inevitable that Hawaii will become a dumping ground for those who have been disciplined in other states. We do not want to wait until a Hawaii patient, whether it be a student athlete, recreational, or professional athlete is harmed to enact legislation.

In a previous hearing there was a comment regarding section 7 "Registration indicates permission to engage in the practice of athletic training. It says that "the definition of license under section 436B-2 is inclusive of registration issued under this chapter;" It has been alleged by another profession that this provision is designed to enable reimbursement from third party payers. This is simply not true. A precedent for this language was set in the Occupational Therapy Act and has been inserted to allow the state the legal ability to levy sanctions and penalties for those who violate this act. Otherwise, Registration would be simply signing names on a list and there would be no penalty enforcement for anyone who violates it. Another comment made in recent testimony by the Physical Therapy association is that the term Rehabilitation should not be used in this act and that only physical therapists, occupational therapists, and speech therapists should be allowed to use this term. The word Rehabilitate is not exclusive to those professions. Many medical and healthcare professions overlap in their scopes of practice. Rehabilitation is one of our major practice domains, a large part of our role

delineation, and a focus of our educational curriculum. Our competencies in this area are tested on the Board of Certification's national exam. Athletic trainers are well qualified to perform rehabilitation services.

What we seek in a bill is title protection, a scope of practice, and the ability for the state to levy sanctions on those who attempt to practice without meeting minimum competency. That is what this bill provides, we urge you to pass it.

Thank you for the opportunity to testify on behalf of the members of HATA.

Cindy Clivio

for the Hawaii Athletic Trainers' Association

Testimony by:
Ann Frost, PT
HB 337hd1, Relating to Athletic Trainers
Hse FIN Hearing, Agenda 3 - Weds, March 3, 2011
Room 308, 12:00 pm

Position: Opposed As Written, Amendments Offered



Chair Oshiro and Members of the Hse FIN Committee:

I am Ann Frost, P.T., President of the Hawaii Chapter – American Physical Therapy Association (HAPTA) and member of HAPTA’s Legislative Committee. HAPTA represents 1400 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Physical therapy services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments, improving wellness, and teaching prevention.

HAPTA opposes HB 337hd1 as currently written. While the definition of “athlete” is added to the measure, we strongly and consistently believe that definitions must include “athlete” and “athletic injury”. These definitions recognize the specific population that certified athletic trainers are educated and trained to work with, primarily people who are preparing for or participating in competitive sports activities. While this may seem superfluous, it is necessary since without the definition of what they treat, there may be lack of understanding of their scope of practice. Since they have clearly indicated on a national level that they intend to expand their scope of practice, and because their current educational requirements prepare them to treat only athletes with athletic injuries, this language will help protect the public.

Recommended Definition:

“Athletic Injury” means an injury that affects the preparation for or participation in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, performance arts, including interscholastic, intercollegiate, intramural, semiprofessional and/or professional sports activities.”

In addition, we offer the following amendment that will provide consumers further assurances that certified athletic trainers are practicing within their education and training parameters:

1. Page 1, lines 13 -17: “...Regulation of athletic trainers will ensure that participants in athletic activities receive prompt, specialized emergency care as well as appropriate follow-up treatment and rehabilitation and meet appropriate criteria before being returned to play.”

Page 3, line 21: “(4) Treat, rehabilitate, and recondition athletic injuries;

Recommendation: Remove “rehabilitation” from page 1, lines 13-17 and “rehabilitate” from page 3, lines 21. Athletic trainers treat and recondition athletic injuries. Rehabilitation is the province of physical therapists, occupational therapists, and speech therapists and encompasses a much broader scope of practice, a broader patient population, and a broader knowledge and skill set than is involved in treating athletic injuries. Although UH Hawaii does have an athletic training program which culminates in a master's degree, many athletic trainers have gained their certification by acquiring a bachelor's degree in any number of programs including kinesiology and exercise science--but not necessarily athletic training--, doing their requisite field time, and passing the national certification exam. Thus the use of the word "rehabilitate" does not accurately describe what they do.

Ultimately, the physical therapy community is committed to health care provided by health care practitioners within their scope of education and training. We support regulation of allied health professionals’ scope of practice based on a national, standardized training curriculum to ensure that the consumers are receiving appropriate and safe care. I can be reached at 382-2655 if you have any questions. Thank you for the opportunity to testify.



OCCUPATIONAL THERAPY ASSOCIATION OF HAWAII

1360 S. Beretania St., Suite 301, Honolulu, Hawaii 96814

Testimony by:

Avis Sakata, OTR

HB 337hd1, Athletic Trainers

House FIN Hearing, Agenda 3 – Weds. March 2, 2011

Room 308 – 12:00 pm

Position: Support Intent, Amendments Offered

Chair Oshiro and Members of the House FIN Committee:

I am Avis Sakata, OTR and president of the Occupational Therapy Association of Hawaii, (OTAH), which represents 603 occupational therapists (OTs) registered in Hawaii. OT's work in many settings throughout the State, including hospitals, schools, prisons, skilled nursing to private facilities and community-based programs.

Occupational Therapy is a science driven, evidenced-based profession that enables people of all ages, from infants to the elderly, to live life to its fullest by helping them promote health and prevent or live better with illness, injury or disability. Occupational Therapists are recognized members of the Healthcare Rehabilitation team which is comprised also of physicians, nurses, physical therapists, speech therapists, social workers and others. As a healthcare provider, OTs provide, but are not limited to: 1) assessment and evaluation of our patients/clients needs and development of an appropriate treatment plan, 2) interventions focused on daily living skills (including self-care), work readiness, play or educational performance skills, 3) and interventions that include sensorimotor, neuromuscular functioning, cognitive or psychosocial components.

OTAH supports the intent of this bill that would provide consumer protection from unqualified practitioners and protects qualified practitioners' rights to provide services.

We recognize and appreciate the language in this bill that more clearly defines that the registered and certified athletic trainer may provide certain services to athletes, particularly with the definition of "athlete". However, the bill does not address the definition of "athletic injury", which is critical to assuring consumers that they are seeking treatment from practitioners who are appropriately educated and trained for specific populations and care. As discussed in the 2010 Session, **we recommend the following definition:**

Definition of athletic injuries: Injuries that affect the preparation for or participation in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, or performance arts including interscholastic, intercollegiate, intramural, semiprofessional or professional sports activities.

In addition the following amendments are offered:

Page 3, line 17: "(2) Recognize, diagnose, evaluate and assess athletic injuries and conditions;

Remove the word "diagnose" because it is the Medical Doctor who is responsible and accountable for the confirmed diagnosis, and not the athletic trainer.

We also recommend that SB 155sd1 language be added to HB 337hd1:

Page 4, lines 3 – X:

"(6) Educate athletes [,];

Insert: provided that the practice of athletic training does not include provision of occupational therapy services as defined in section 457G-1 or physical therapy or physical therapy services as defined in section 461J-1.

I can be reached at 522-4602 if further information is needed. Thank you for the opportunity to submit testimony.