

## HB268 HD2

Measure Title: RELATING TO DENTISTRY.

Report Title: Dentistry; Order to Cease and Desist

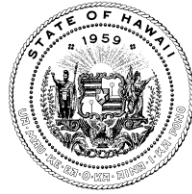
Description: Grants the Director of Commerce and Consumer Affairs the power to issue cease and desist orders for the unlicensed practice of dentistry and for any other act or practice in violation of the dental licensing laws upon a specific determination that the failure to take such action may result in an immediate and unreasonable threat to personal safety or of fraud that jeopardizes or endangers the health or safety of patients or the public. (HB268 HD2)

Companion: [SB725](#)

Package: None

Current Referral: CPN, JDL

Introducer(s): MCKELVEY



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
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**PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-EIGHTH STATE LEGISLATURE  
REGULAR SESSION, 2015**

**TUESDAY, MARCH 17, 2015  
9:00 A.M.**

**TESTIMONY ON HOUSE BILL NO. 268 H.D.2  
RELATING TO DENTISTRY**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 268 H.D.2, Relating to Dentistry. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following testimony in opposition to the bill.

House Bill No. 268 H.D.2 authorizes the Department's Director to issue a cease and desist order: 1) for the unlicensed practice of dentistry; and 2) for any act in violation of Chapter 448, Hawaii Revised Statutes ("HRS"). The bill sets

forth the procedures, including notice and a hearing conducted by the Board of Dental Examiners ("Board"), once the Director has made a determination that failure to act may result in an immediate threat to personal safety or fraud that would endanger the health or safety of the public or a patient and has issued a cease and desist order. The bill also provides that the continued practice of dentistry upon service of a cease and desist order shall constitute a class C felony.

This Committee heard the companion measure, Senate Bill No. 725, and passed that bill out with amendments substantially similar to the House Draft 1 version of House Bill No. 268. This Committee's amendments provided for a summary suspension procedure by the Board for licensee misconduct. RICO prefers Senate Bill No. 725 S.D.2 over this bill and opposes this bill because it inappropriately applies summary suspension proceedings for cases involving allegations of unlicensed activity.

Current law allows RICO to issue citations, with an order of abatement, to persons engaged in unlicensed activity. See §436B-26.5, HRS. The order of abatement is effective upon service. The law provides that an unlicensed individual may request a hearing to contest a citation. If no hearing is requested, the citation is deemed a final order of the Director. The citation process for unlicensed activity is an expedient and efficient means of addressing unlicensed activity.

Current law also allows for the summary suspension of a professional or vocational license when a licensee is determined to have engaged in conduct that is serious and harmful to the safety and welfare of the consuming public. See §436B-

23, HRS. Because summary suspension affects a *licensee's* ability to continue practicing, summary suspension procedures include safeguards, such as notice and hearing within a short period of time.

House Bill No. 268 H.D.2 allows the Director to issue a cease and desist order to persons engaged in unlicensed activity, but requires a hearing before a cease and desist order can be issued. The bill also allows the recipient of the cease and desist order to request a hearing to show cause why the cease and desist order should not be terminated. House Bill No. 268 H.D.2 unnecessarily complicates and significantly impedes the Department's ability to stop an unlicensed individual from practicing dentistry in Hawaii.

If this Committee is concerned with deterring unlicensed dental activity, then the cease and desist procedures as set forth in §436B-26.5, HRS, more appropriately address those concerns. If, however, House Bill No. 268 H.D.2 is intended to address licensee conduct that seriously impacts the safety and welfare of consumers, then the summary suspension provisions in Senate Bill No. 725 S.D.2 would achieve the desired result by enabling the Board to respond swiftly and appropriately against licensees for the protection of consumers.

Thank you for the opportunity to testify on House Bill No. 268 H.D.2. I will be happy to answer any questions the members of the Committee may have.

**PRESENTATION OF THE  
BOARD OF DENTAL EXAMINERS**

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Tuesday, March 17, 2015  
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 268, H.D. 2, RELATING TO DENTISTRY.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Sandra Matsushima, Executive Officer for the Board of Dental Examiners ("Board"). The Board appreciates the opportunity to testify on House Bill No. 268, H.D. 2 Relating to Dentistry.

The purpose of House Bill No. 268, H.D. 2 is to authorize the Director of the Commerce and Consumer Affairs to issue cease and desist orders for the unlicensed practice of dentistry and for any other act or practice in violation of the dental licensing laws. Also, specifies that violation of a cease and desist order is a Class C felony.

While the Board supports the intent of this bill, it has not had an opportunity to meet and discuss the amendments made in the House Draft 2 version. This matter will be discussed at the next Board meeting which is scheduled for Monday, March 16, 2015 at 9:00 a.m.

Thank you for the opportunity to provide testimony on House Bill No. 268, H.D. 2.

Hawaii State Legislature  
State Senate  
Committee on Commerce and Consumer Protection

State Senator Rosalyn H. Baker, Chair  
State Senator Brian T. Taniguchi, Vice Chair  
Committee on Commerce and Consumer Protection

Tuesday, March 17, 2015, 9:00 a.m. Room 229  
House Bill 268 HD 2 Relating to Dentistry

Honorable Chair Rosalyn H. Baker, Vice Chair Brian T. Taniguchi, and members of the Senate Committee on Commerce and Consumer Protection,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association (HDA) and its 960 member dentists. I appreciate the opportunity to testify in support of to of House Bill 268 HD 2 Relating to Dentistry. This bill is similar to legislation that the HDA sought to have enacted in 2009, which would have empowered the Board of Dental Examiners to issue cease and desist orders to stop those persons who were practicing without proper licensure in Hawaii or whose conduct was in violation of the Hawaii statutes and rules governing the practice of dentistry in Hawaii. This bill addresses the problem where the Hawaii State Board of Dental Examiners and the Department of Commerce and Consumer Affairs (DCCA) are unable to immediately address situations where there are clear violations of the Hawaii dental laws and cannot take action necessary to stop those whose continued violation of the law constitutes a clear and present danger to the health and welfare of the public.

In light of incidents arising last year which brought to the public's attention the problem of policing dental professionals, it is hoped that this legislation would provide the Board of Dental Examiners and the DCCA the needed authority to immediately stop those who were not in compliance with the laws and rules governing the practice of dentistry in our State. Often times when a situation arises and the Department of Commerce and Consumer Affairs Regulated Industries Complaints Office (RICO) conducts an investigation of the violation of the law and is prevented in stopping the individuals who are violating the law merely by the individuals changing the legal entity they are using. Either the reluctance of the RICO to pursue the matter or the difficulty in stopping the individual violators has resulted in only rare occasions in where the violators have been actually stopped by the DCCA.

In the case of a dental licensee who is operating in violation of the law or rules, 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, sometimes even after arrest and indictment. With the authority to order the licensee to cease and desist the delivery of licensed services, the Board of Dental Examiners and the DCCA can move swiftly to protect the public from the licensee and put pressure on the licensee to come in to compliance, if possible.

Additionally, by giving the authority to the Director of the DCCA to issue cease and desist orders against both licensed and unlicensed individuals, this procedure will address the recent US Supreme Court case which held the North Carolina Board of Dental Examiners were in violation of antitrust laws when it took action against unlicensed individuals. Here there is no question that the State of Hawaii is exercising its proper role in protecting the public from unlicensed individuals.

The State of Nebraska permits their dental licensing board to issue cease and desist orders and has experienced no problems with the exercise of this authority. Additional states which provide for either cease and desist authority or injunctive action include Illinois, Mississippi, Colorado, Montana and Kentucky.

The Hawaii Dental Association supports the passage of this legislation as necessary to protect the health and welfare of the people of Hawaii.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [CPN Testimony](#)  
**Cc:** [jamesjtz@aol.com](mailto:jamesjtz@aol.com)  
**Subject:** Submitted testimony for HB268 on Mar 17, 2015 09:00AM  
**Date:** Sunday, March 15, 2015 10:29:56 PM

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**HB268**

Submitted on: 3/15/2015

Testimony for CPN on Mar 17, 2015 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Gauer	Individual	Support	No

Comments: A recent string of media reported dentistry-associated deaths have people on edge over dentist operations. This bill shall address our concerns.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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