

BOARD OF DENTAL EXAMINERS
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes ("HRS").

- Date: Wednesday, February 17, 2016
- Time: 12:00 p.m.
- Place: King Kalakaua Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813
- Present: Paul Guevara, D.M.D., M.D.S., Chair, Dental Member
Candace Wada, D.D.S., Vice Chair, Dental Member
Staphe Fujimoto, D.D.S., Dental Member
Coy Rebmann, D.D.S., Dental Member
Mark Chun, D.M.D., Dental Member
Earl Hasegawa, D.D.S., Dental Member
Dennis Nagata, D.D.S., Dental Member
Janet Primiano, R.D.H., M.P.H., Dental Hygiene Member
Rodney Ching, Public Member
Daniel Jacob, Esq., Deputy Attorney General
James Kobashigawa, Executive Officer ("EO")
Sandra Matsushima, Executive Officer ("EO")
Lisa Kalani, Secretary
- Excused: Garrett Ota, D.D.S., Dental Member
Marianne Timmerman, R.D.H., Dental Hygiene Member
Joy B. Y. Shimabuku, Public Member
- Guests: Diane Brucato, RDH, EF, BS, FAADH, Hawaii Dental Hygienists'
Association ("HDHA")
Loren Leibling, Hawaii Dental Association ("HDA")
Sheila Kitamura, Kapiolani Community College
Marilyn Nonaka, RDH
Patrick Bratz, ADEX
Gerraine Hignite, Hawaii Dental Hygienists' Association ("HDHA")

Tia Roberts, Hawaii Public Policy Advocates
Russel Yamashita, Hawaii Dental Association ("HDA")

1. Call to Order: There being a quorum present, Chair Guevara called the meeting to order at 12:02 p.m.
2. Additions/ Revisions to Agenda:
 - a. Approval of Anesthesia Checklist
 3. Discussion on 2016 Legislation
 - a. Letter from Marilyn Nonaka regarding Legislation
 - b. Letter from Marilyn Nonaka regarding dental assistants applying topical fluoride

The following agenda item was moved as the next order of business:

- a. Approval of Anesthesia Checklist

It was moved by Dr. Chun, seconded by Ms. Primiano and unanimously carried to approve the Anesthesia Checklist as presented.

Ms. Matsushima stated the approved checklist will be posted on the Board's webpage.
3. Discussion on 2016 Legislation:

Ms. Matsushima stated the main purpose of this meeting is to get the Boards' comments and position on the following bills:

SB 2678 SD1 / HB 1861 Relating to Dental Hygienists

Establishes a separate board of dental hygiene to oversee the licensing and regulation of dental hygienists in the State, independent from the board of dental examiners, who regulate dentists.

Mr. Jacob stated in SB 2678 SD1 it states, "No person shall employ, direct, or otherwise order a dental assistant or other person to perform services or procedures within the scope of

practice of dental hygiene as provided in this chapter, unless the person who performs the services or procedures is a licensed dental hygienist under this section.” This language was not in the original SB 2678 and would be conflicting with the language in Chapter 448 permitting dental assistants, so I will be submitting testimony on SB 2678 SD1.

If they are going to add that language, they would also have to amend Chapter 448. If this were to pass in its current form it would invalidate all the rules pertaining to permissible duties of a dental assistant.

Vice Chair Wada stated that dentists, dental hygienists and dental assistants work as a team. We are all part of the same profession and they should be regulated by one Board. To separate the Board would fragment the process and probably increase the workload as far as regulation and disciplinary actions.

Dr. Chun stated two Boards would be a duplication of the same effort. It would be costly because you would need to have additional staff.

Dr. Hasegawa stated there would be no additional patient protection by a creating a separate dental hygiene board. Currently there are eight dental specialties yet only two specialties are represented on this current Board. A separate dental hygiene board would not add to patient safety.

Ms. Primiano stated she also agrees to having only one board. She would rather see the make-up of the current Board change to possibly include another hygienist than to fragment it and have a separate dental hygiene board.

Dr. Rebmann arrived 12:20 p.m.

Dr. Fujimoto stated he also agrees to having only one board. He does not see how fragmenting the board would add to public protection.

Dr. Rebmann stated he sees no benefit to the public by

having a separate dental hygiene board. Personally, he works with a dental hygienist and a dental assistant and they all work together as a team to provide the best care for the patient. He does not know of any other State that has a separate dental hygiene board.

Mr. Ching stated he believes it is an unnecessary duplication of efforts. I don't see how the public would benefit from two separate boards. It also creates the risk of one not knowing what the other is doing or even fighting with one another.

Chair Guevara stated he concurs with all the comments.

Mr. Yamashita stated one comment he has that relates to the sunrise and sunset of new boards. Although dental hygiene is currently a regulated profession, normally there would be a sunrise study done by the Legislative Reference Bureau ("LRB") that they always do for new boards that are being created. Because this is a unique situation, and Hawaii would be the only state that would have a separate dental hygiene board.

Mr. Leibling stated that he wants to preface his comments by saying that he loves dental hygienists. He thinks they're great, including the population among us. A lot of his friends are dental hygienists. One comment he does have is regarding the laws and the implementation of rules by boards. It should have nothing to do with the advancement of a profession whether its dentistry or any other profession. He does not see that as a function of the government and thinks that care needs to be taken when creating laws that serve the function, prestige, interest or advancement of any profession. He has also not heard any comments about the issue of supervision. Can one board supervise another board? Because right now dental hygienist work under the supervision of dentist.

Ms. Nonaka stated she has provided the Board a letter and she can tell by some of the discussion that it appears that some have not read it. She would like to request that the Board take "no position" on SB2678 SD1. The reason for this request is because tainted information has been

provided to many dentists in the State as demonstrated by some of the comments here today. Ms. Nonaka stated regarding SB 2678 SD1 and HB1861 that proposes the creation of a separate board to oversee the licensing and regulation of dental hygienists. Information and opinions that have been presented during the Senate CPH Committee legislative hearings, and distributed to the majority of Hawaii practicing dentists, contains erroneous information and unsupported viewpoints. The statement "There is no other state, none, that has a separate licensing board for dental hygienists" is false. The correct information regarding the Dental Hygiene Committee of California ("DHCC"), the authority over dental hygienists, is available via online search. Although the state of California uses "committee" rather than "board" to title the DHCC, its role is undeniably clear.

The DHCC is the sole regulatory agent over all levels of dental hygienist licensees in the state.

Also attached with Ms. Nonaka's letter is documentation regarding the distinct role and composition of the DHCC, and a listing of additional regulatory, advisory options currently in use in seventeen states. Other uninformed and confusing statements made in the legislative hearing testimony are dental hygienists are referred to as "paraprofessionals normally regulated as a subset of the profession responsible for their work and conduct". Such descriptions not only wrongly state that dental hygienists are not licensed professionals, but also deny the existence of their practice act which is separate regulation, apart from the dental practice act, and established by law. Furthermore, an attempt is made to imply that "direct supervision" and "regulation" are synonymous and interchangeable. Dentists and dental hygienists are equally required by laws and rules to function within the parameters of their respective practice acts. The current composition of the Board, with its majority of dentist representation, makes ready the opportunity for misuse that could reflect the desire, direction, and dictation of its secure majority. Because it is not a truly impartial platform where options, ideas and programs can be considered, evaluated, and implemented, therefore Hawaii cannot benefit from proven, successful alternatives and an increase in public safety regarding its oral health care.

Dr. Chun asked, what is the advantage of having a separate second board?

Ms. Nonaka stated she does not say this lightly and her intent is not to offend, but with the secure majority of eight dentist on this board, it is primed for a situation of abuse.

Mr. Leibling asked how would the supervision of dental hygienist work? Are you suggesting independent practice of dental hygiene?

Ms. Nonaka stated there is nothing in the bill that changes supervision.

Ms. Brucato Thomas stated she concurs with Ms. Nonaka's comments.

Chair Guevara asked if Ms. Brucato Thomas knew how many dental hygienist were members of HDHA?

Ms. Brucato Thomas stated about 230.

Mr. Leibling asked if the Board knows how many other boards supervise other boards, and if there are any, how that works? Or is this an attempt to set up independent practice of dental hygiene?

Ms. Nonaka stated she would like to work outside the supervision of a dentist.

It was moved by Dr. Hasegawa, seconded by Dr. Chun to oppose SB 2678 SD1 and HB 1861 for the following reasons:

- Redundancy;
- Dentistry is one profession, regulated by one board;
- Fragmentation of the profession;
- Separation would not make public safer;
- Supervision by DT required of DH;
- Duplication of manpower, actions;

- Does not benefit board and the public; and
 - Is LRB sunrise/sunset study needed for new board?
- This motion was unanimously carried.

HB 2706 HD1 / SB 3085 Relating to Health

Clarifies requirements for licensure as a dental hygienist. Prohibits dental assistants from performing certain intra-oral functions and related activities.

Mr. Jacob stated this would amend Chapter 448. Therefore, it would invalidate any rules promulgated by this Board to permit certain duties to be completed by dental assistants under the supervision of a dentist. It would be cementing the prohibited duties of a dental assistant and invalidating the rules of permitted duties.

Vice Chair Wada stated if the Board is charged with making decisions to protect the public, this would be taking that out of the Board's hands and putting it into the hands of people who don't know what they are making decisions on.

Dr. Chun stated this bill is insulting the Board's sense of judgement. As dentists and dental hygienists we have all gone through college, dental school, additional training, continuing education; they are not trusting the Board's judgement to know what is right or wrong; to know what is safe for the public. This bill was not well thought out. To limit what the Board can do is going to be extremely costly to the public.

Mr. Kobashigawa stated there are many dental assisting programs throughout the United States with different training procedures for allowable duties of a dental assistant and if this bill passes, Hawaii would be the only state that many procedures would not be allowed by dental assistants.

Ms. Kitamura stated the Kapiolani Community College ("KCC"), Dental Assisting Program can only teach the allowable duties as listed in the HAR and HRS. These bills would shut down the program. KCC was recently accredited by CODA, and when the site visitors came for the site visit

they stated that Hawaii has the most conservative allowable duties for dental assistants. Right now Hawaii is the only state that does not allow the application of fluoride by a dental assistant. KCC can also work as a resource for dentists by providing them with training materials so they can deliver the training themselves to their dental assistants.

Chair Guevara asked how long is KCC's training program.

Ms. Kitamura stated it is two semesters of assistant training and one semester in general education courses. Upon graduation they are issued a Certificate of Achievement, which makes them eligible to take the CDA exam with DANB.

Dr. Chun stated the dental assistant is part of the framework in the office that provides stability and patient care and comfort; without them we can't work.

Mr. Yamashita stated there was no testimony from KCC submitted regarding the effects of these bills. Being this is a workforce issue, it is important that these facts be brought before the Legislature, because the Higher Education Committees both on the House and Senate are looking deeply into the different programs and if these bills are going to impact those programs, they should be notified. This is going to affect the livelihood of these dental assistants.

Ms. Primiano stated out of fifty-one jurisdictions of the United States, Hawaii is the only state that does not allow a dental assistant to apply topical preventive agents. Out of the fifty jurisdictions that do allow, sixteen have mandatory expanded duty training. Forty-four have on the job training. Ms. Primiano also stated that she agrees with having dental assistants help with the application of preventive agents such as fluoride because she as a dental hygienist, or the dentist can move on to their next patient if the dental assistant is properly trained.

Ms. Brucato Thomas asked Ms. Primiano for the source of her information.

Ms. Primiano stated it is from the Dental Assisting National Board (“DANB”) 2015 State Career Ladder Templates for Dental Assistants.

Dr. Hasegawa stated the Board was moving forward with allowing dental assistants to apply topical fluoride. If medical assistants can do it, why can't dental assistants? We found that Hawaii is the only state that doesn't allow it. We are trying to protect the public and increase care at the same time. This bill is nullifying all of our discussions and decisions. It is basically blocking our decision, it feels like a turf battle.

Ms. Primiano stated Hawaii has the most stringent laws and difficult criteria of anesthesia for dental hygienist. Would this be a restriction of trade for dental hygienists coming from other states?

Mr. Kobashigawa stated the intent of the bill is to require the dental hygienist applicant to complete the fifty (50) injections, etc. to qualify for Hawaii license. It is essentially saying you have to meet those requirements even though other states may not have programs that reach that criteria. So Ms. Primiano has a point to her comment that it may be a restriction of trade.

Ms. Hignite stated until dental assistants are regulated and licensed like dental hygienists and dentists, they should not be allowed to apply fluoride.

It was moved by Vice Chair Wada, seconded by Dr. Fujimoto and unanimously carried to oppose HB 2706 HD1 and SB 3085 for the following reasons:

- Current rules and statutes are satisfactory;
- Hawaii is the only state that does not allow dental assistants to apply topical fluoride;
- Negative impact on dental assisting workforce;
- Negative impact on Kapiolani Community College dental assisting program;

- Limit Board's rule making abilities; and
- Hawaii already has one of the highest/stringent laws of anesthesia for dental hygienists.

This motion was unanimously carried.

SB 2675 SD1 / HB 2430 Relating to Licensing

Authorizes the board of dental examiners, Hawaii medical board, and board of pharmacy to deny a license to an applicant who has been disciplined by another state or federal agency and the board of nursing to deny a license to an applicant who has been disciplined by another state agency. Authorizes the board of dental examiners, Hawaii medical board, board of nursing, and board of pharmacy to impose the same disciplinary action against a licensee as was taken by another state or federal agency. Establishes conditions for the disciplinary action. Prohibits a licensee from practicing until a final order of discipline is issued if the licensee has been prohibited from practicing in another state. Requires any final order of discipline taken to be public record.

Chair Guevara stated we already have something like this in place. Investigation and prosecution is delegated to the Regulated Industries Complaints Office ("RICO") and hearings are delegated to the Office of Administrative Hearings ("OAH"). The Board lacks the resources and expertise.

After a brief discussion, it was moved by Vice Chair Wada, seconded by Dr. Chun and unanimously carried to support the intent of SB 2675 SD1 and HB 2430 however the Board lacks the resources and expertise to investigate and prosecute, and relies on RICO and OAH.

Mr. Yamashita stated HDA submitted testimony in favor of both bills. Primarily because in 2009 and a couple of years ago, HDA submitted legislation to provide for a cease and desist authority to be given to the dental board.

HB 1944 Relating to Telehealth

Requires the State's medicaid managed care and fee for service programs to cover services provided through telehealth. Specifies medical professional liability insurance policy requirements with regard to telehealth coverage. Clarifies requirements for establishing provider-patient relationships for telehealth for purposes of reimbursement. Specifies reimbursement requirements for distant site and originating site providers. Requires written disclosure of coverages and benefits associated with telehealth services. Ensures telehealth encompasses store and forward technologies, remote monitoring, live consultation, and mobile health. Ensures telehealth is covered when originating in a patient's home and other non-medical environments. Clarifies requirements for physicians and out-of-state physicians to establish a physician-patient relationship via telehealth. Ensures reimbursement requirements for telehealth services apply to all health benefits plans under chapter 87A, Hawaii Revised Statutes. Makes other conforming amendments related to telehealth.

Chair Guevara read part of the comprehensive ADA policy statement on tele-dentistry: Tele-dentistry refers to the use of a tele-health system and methodology in dentistry. Tele-health refers to a broad variety of technologies and tactics to deliver virtual medical, health and education services. Tele-health is not a specific service but a collection of means to enhance care and education delivery. Tele-dentistry can include patient care and education delivery using but not to the following modalities:

- Live video;
- Live 2-way interaction between a person, patient, care-giver or provider; and
- Transmission of recorded health information;

Chair Guevara stated it continues on, but commented that he recalls the Board making a determination previously that if a dentist is making decisions for a patient in this state, they would require a license in this state.

Dr. Hasegawa stated he has concerns regarding tele-health,

specifically tele-dentistry because dentistry is very hands on. As a Board, when you're talking about public safety, we have to be very careful as to what is being advocated regarding tele-dentistry. If it is being used for non-clinical issues then that would be ok, but face to face interaction is the five (5) senses, tele-health is only sight and hearing, you are cutting out the rest of the senses.

After a brief discussion, it was moved by Dr. Chun, seconded by Vice Chair Wada and unanimously carried to support the intent of HB 1944 as long as the dentist of record is licensed in Hawaii.

4. Public Comment On Matter Related to the Board of Dental Examiners: Mr. Yamashita asked if the Board would consider writing to the Legislators and Committees of Higher Education regarding the significant impact that would be made to the dental assisting programs should bill HB 2706 HD1 and/or SB 3085 pass.
5. Announcements: None
6. Next Board Meeting: Monday, March 21, 2016
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813
7. Adjournment: Chair Guevara adjourned the meeting at 2:45 p.m.

Reviewed and approved by:

/s/ Sandra Matsushima
Sandra Matsushima
Executive Officer

Taken and recorded by:

/s/ Lisa Kalani
Lisa Kalani, Secretary

SM:lk

3/7/16

[] Minutes approved as is.

[X] Minutes approved with changes; see minutes of 5/16/16.