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# Sunset Evaluation Update: Dental Hygienists

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A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawaii



**THE AUDITOR**  
STATE OF HAWAII

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Hawaii

Submitted by

**THE AUDITOR**  
STATE OF HAWAII

Report No. 93-9  
October 1993

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## Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to its date of repeal.

This report evaluates the regulation of dental hygienists under Chapter 447, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate dental hygienists to protect the health, safety, and welfare of the public. It includes our recommendation on whether the regulatory program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in the Appendix the draft legislation intended to implement our recommendations.

We acknowledge the cooperation of the Board of Dental Examiners, the Department of Commerce and Consumer Affairs, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa  
State Auditor



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# Chapter 1

## Introduction

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The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of dental hygienists under Chapter 447, HRS, complies with policies for occupational licensing in the Sunset Law.

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### **Background on Dental Hygienists**

Dental hygienists perform oral prophylaxis (cleaning teeth, polishing them, and massaging the gums). They apply fluoride, give instructions on tooth care, take dental impressions, and perform other procedures to assist the dentist. Under the supervision of dentists, they work in private dental practices, public health programs, and other settings.

They acquire education and training through associate or bachelor's degree programs in dental hygiene. The curriculum includes basic sciences such as anatomy and physiology and specialized courses such as periodontology (the study of gum diseases), dental materials, and clinical dental hygiene.

In March 1993, there were 660 dental hygienists licensed in Hawaii. Of these, 450 lived in Hawaii.<sup>1</sup>

### ***Regulatory program***

Chapter 447, HRS, governs the regulatory program, including licensing and disciplinary provisions for dental hygienists. Those wishing to practice dental hygiene must have a license from the Board of Dental Examiners, which is administratively attached to the Department of Commerce and Consumer Affairs. The board also regulates dentists.

The board consists of eleven members, appointed by the governor, who serve without compensation: eight dentists, one dental hygienist, and two public members. An executive secretary in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations.

The department's Regulated Industries Complaints Office (RICO) mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings.

### ***Previous sunset report***

This is our third sunset evaluation of dental hygienists. In our last evaluation in 1984, we recommended that Chapter 447 be reenacted to continue regulation.<sup>2</sup> We recommended a single standard of supervision to correct the unfair requirement for privately employed dental hygienists to be supervised more closely than those who are publicly employed. We also recommended allowing licensure of dental hygienists from other states by board approved credentials; permitting properly trained, qualified, and supervised dental hygienists to perform such expanded functions as taking dental impressions, administering local anesthetics, and completing restorations; and establishing time limits for temporary licenses.

In addition, we recommended abolishing the State's written clinical examination because it duplicated the national board examination. We called for the board to ensure the integrity of the state practical examination by no longer using dental hygiene students as exam helpers, since they could be taking the state exam themselves.

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### **Objectives of the Evaluation**

This evaluation sought to determine whether the regulation of dental hygienists complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate dental hygienists to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

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## **Scope and Methodology**

To accomplish our objectives, we reviewed the literature on dental hygiene and its regulation. We reviewed statutes and rules on dental hygienists in Hawaii and the changes in these since our last sunset evaluation in 1984.

We also reviewed evidence of harm to consumers including complaints. We interviewed members of the Board of Dental Examiners, personnel from the Department of Commerce and Consumer Affairs, and practitioners in the field. We also obtained information from the Hawaii Dental Hygienists' Association, the American Dental Hygienists' Association, and the American Dental Association. At the Department of Commerce and Consumer Affairs, we reviewed files on licensing, enforcement, correspondence, and board operations. Finally, we observed one of the licensing examinations.

Our work was performed from November 1992 through September 1993 in accordance with generally accepted government auditing standards.



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# Chapter 2

## Findings and Recommendations

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Some of our past recommendations have been implemented. Dental hygienists are now allowed to administer intra-oral infiltration local anesthesia (shallow injections) and to take dental impressions for study casts. The Board of Dental Examiners recently stopped using dental hygiene students to help administer the state practical examination. Some additional improvements, however, could be made in the statutes, rules, and administration of the licensing program.

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### Summary of Findings

1. The State should continue to regulate dental hygienists to protect the public's health, safety, and welfare.
2. The statute still has provisions that are unfair, restrictive, unclear, or unnecessary.
3. Dental hygienists are not adequately represented on the Board of Dental Examiners.
4. Requiring a state written examination in addition to the national board examination is unnecessary.
5. Program operations could be improved by ensuring the authenticity of documents submitted by applicants, deleting the requirement of a personal photograph, updating the license application instructions, and taking better care of minutes of executive sessions.

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### State Should Continue To Regulate Dental Hygienists

The Legislature should reenact Chapter 447 to continue the regulation of dental hygienists. The practice of dental hygiene could harm the public's health, safety, and welfare. Incompetent dental hygienists could injure patients.

Dental hygienists perform procedures that can damage the tissue of the mouth or transmit infectious diseases (a growing concern with the spread of the HIV virus). Providing inadequate care to such high-risk patients as those with diabetes, heart problems, and hemophilia could result in serious health problems.

All 50 states and the District of Columbia regulate dental hygienists through licensing programs. Every state requires applicants to graduate from an accredited dental hygiene school and pass both written and clinical examinations.<sup>1</sup>

We found no evidence that dental hygienists have caused injury, but their hands-on contact with patients makes licensure necessary to ensure that they have the technical knowledge for safe treatment.

Regulation is also needed to establish what dental hygienists may or may not do. Chapter 447 permits dental hygienists to clean teeth down to the gingival sulcus (where the tooth and gum attach), but prohibits them from performing repair work or other operations on the teeth or tissues of the mouth except as delegated by the dentist and authorized by rules of the Board of Dental Examiners. This helps ensure that they do not provide treatment beyond their capabilities.

Because the statute was previously reviewed and reenacted twice within a ten-year period, it falls within Section 26H-8(b), HRS, and the Legislature should consider reenacting it for ten years.

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## **Some Statutory Provisions Are Unfair, Restrictive, Unclear, or Unnecessary**

Regulatory laws should be fair, clear, and contain only those provisions necessary to protect the public. The regulation of dental hygienists would be improved if the statute were amended to correct several deficiencies.

One provision requires a higher standard of supervision for dental hygienists working in private dental practice. A second provision restricts licensees from other states. The third provision is unclear as to whether all dental hygienists should be certified to administer intra-oral infiltration local anesthesia. Finally, the requirement for hygienists to report on their place of employment is unnecessary.

### ***Unfair double standard***

Section 447-3(c) of the statute requires that dental hygienists working in a dentist's private practice be under the *direct* supervision of a licensed dentist. It allows hygienists practicing in other settings—such as legally incorporated eleemosynary dental dispensaries, infirmaries, private schools, welfare centers, or offices under the control of state and county governments—to practice under the *general* supervision of a licensed dentist.

The rules of the Board of Dental Examiners define direct supervision as requiring the supervising dentist to remain in the office or facility while the dental hygienist performs the procedure. The supervising dentist then evaluates the work done. General supervision means that the dentist need not be present but must be available for consultation.

Dental hygienists in private practice point out that direct supervision limits the services they can provide to the public. For example, they

cannot perform routine prophylaxis (teeth cleaning) to home-bound people and to nursing home patients unless a dentist is present.

We believe that all licensed dental hygienists should be governed by the same standard, that of general supervision. We found no evidence that dental hygienists working under this standard have injured patients. Dental hygienists are professionals who have been trained and educated for at least two years. They have demonstrated a required level of competence by passing a national examination and Hawaii's written and practical examinations. They should be allowed to perform routine dental hygiene under general supervision regardless of their place of employment.

The U.S. Federal Trade Commission has suggested that more flexible and less restrictive supervision requirements are appropriate.<sup>2</sup> The commission points out that direct supervision may increase the costs and decrease the availability of preventive care. Twenty-eight states and the District of Columbia permit all dental hygienists to perform routine prophylaxis under the general supervision of a dentist.<sup>3</sup>

### ***Restrictions on out-of-state licensees***

Chapter 447 does not provide for the licensing of dental hygiene licensees from other states whose standards are equivalent to those in Hawaii. Qualified, licensed dental hygienists from another state cannot obtain a license in Hawaii without passing the State's written and practical examinations. These limitations are unfair and restrictive to out-of state dental hygienists.

Both the American Dental Association and the American Dental Hygienists' Association advocate licensure by credentials when the other state's educational requirements and licensure standards are equivalent or greater. Currently 34 states permit licensure by credentials.<sup>4</sup>

Chapter 447 should be amended to allow the licensure of qualified dental hygienists from other states whose licensing requirements are equal to or more stringent than Hawaii's.

### ***Unclear certification requirement***

The statute authorizes any licensed dental hygienist to administer intra-oral infiltration local anesthesia under the direct supervision of a dentist. A 1989 amendment requires license applicants to furnish documentary proof that they have been certified in this procedure by an accredited dental hygiene school or by a certification program previously approved by the board. The amendment took effect on June 8, 1989.<sup>5</sup> The statute, however, does not require those who were licensed before June 8, 1989 to submit documentation showing their qualifications to perform the procedure. Our review of licensing files revealed that many of those licensed prior to June 8, 1989 have not provided such documentation.

To comply with the law, the board has been authorizing those who have submitted documentation showing that they are certified to perform the procedure. The problem is that the statute now allows all dental hygienists to administer the anesthesia whether they are certified or not. We believe that the board's approach is reasonable and recommend that the statute be amended to authorize the earlier licensees to perform the procedure only if they submit documentation to the board that they are certified in the procedure. This would bring the law in line with the board's practice.

### ***Unnecessary employment reporting***

The statute requires licensed dental hygienists to inform the board of their place of employment and the name of their employer. The department does not enforce this requirement, and it appears to serve no useful purpose. The requirement should be deleted.

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### **Dental Hygienists Need Greater Representation on Board**

The Board of Dental Examiners consists of 11 members: 8 dentists, 1 dental hygienist, and 2 public members. We believe that the regulatory program would be improved by adding dental hygienists to the board. This would create a better balanced board that would ensure that issues affecting dental hygienists receive adequate attention. The board has considered this issue in the past but has taken no action on it.

The board regulates both dentists and dental hygienists. Currently, more than a third of the licensees regulated by the board are dental hygienists. To adequately reflect this population, the board should have at least three dental hygienists. To make Hawaii's board more balanced, the Legislature should consider amending the statute to substitute two dental hygienists for two of the dentist members.

Adequate representation for dental hygienists is particularly important since their interests may conflict with and be outweighed by those of dentists. This was recognized in a recent sunset review of the Maryland Board of Dental Examiners that noted that "it is clearly in the economic self-interest of dentists to define, regulate and control the practice of dental hygiene; and to have the ability to expand or contract the scope of practice; and to define supervision."<sup>6</sup> The report also recommended reducing the number of dentists on the Maryland board from nine to seven and increasing the number of dental hygienists from one to three.

Adding dental hygienists to the board may also ensure that issues relating to hygienists receive attention. Only recently did the program act on our recommendation to discontinue the inappropriate use of dental hygiene students as helpers on the dental hygiene exam. Only now is the board considering ending the unnecessary state written exam.

Other dental hygienist issues deserving more attention from the board are direct versus indirect supervision; licensing of out-of-state licensees; the authority of dental hygienists to complete tooth restorations (which several states permit); and the possibility of independent practice and self-regulation for dental hygienists. Having more dental hygienists on the board could prompt action on these issues.

Furthermore, having additional dental hygienists on the board would provide added resources to those working on the dental hygienist practical examination. With respect to the practical examination, we note that the board's rules contain extensive and detailed requirements for the State's dentistry practical examination but contain only one sentence for the State's dental hygienist practical examination. Like the dentist exam, the dental hygienist exam requires hands-on treatment of actual patients; therefore, similar guidelines may be needed to ensure that the exam is fairly administered and graded.

Sixteen states now have two or more dental hygienists on their dental board. In several others, legislation has been proposed to increase the involvement of dental hygienists, either by increasing the number of hygienists on the dental board or by creating a separate dental hygiene board.<sup>7</sup>

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## **State Written Examination Is Unnecessary**

The board currently requires applicants to pass three examinations: (1) the National Board Dental Hygiene Examination, (2) a state written clinical examination, and (3) a state practical examination (a hands-on test of skill in cleaning teeth). The state written exam duplicates the national exam and is unnecessary.

The state written exam has 50 multiple-choice questions covering infection control, radiography, and administration of local anesthesia. The national examination covers the same areas but more thoroughly. It is a standardized exam with 350 multiple-choice questions covering such subjects as oral inspection, radiographs (x-rays), obtaining diagnostic data, performing prophylaxis, controlling infection, applying topical agents (fluoride), providing oral health instructions, and administering local anesthesia.

The board has recently discussed eliminating the state written exam, leaving only the national board exam and the state practical exam. We support this move and recommend that the board amend its rules to eliminate the state written examination.

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**Program Operations Could Be Improved**

Program operations could be improved by amending the board's rules on documents relating to the applicant's educational background, removing the requirement for a photograph, correcting the license application instructions, and ensuring that executive-session minutes are recorded and kept.

***Questionable reliability of documents***

The board's rules require applicants to provide a photostat or certified copy of a dental hygiene school diploma, or a certificate of graduation or certified transcript of completion. The rules also require applicants to submit a certificate showing satisfactory completion of the National Board Dental Hygiene Examination within the past five years. These rules do not ensure the reliability of the documents submitted by applicants.

The Professional and Vocational Licensing Division accepts non-certified copies or photocopies that are hand-carried or mailed in by applicants. This could raise questions about the reliability of documents. To ensure authenticity, the division should require diplomas, graduation certificates, transcripts, or test results to be sent directly to the board from the school or testing organization, or hand-carried with a seal that would signify that the contents had not been tampered with. The rules should be amended to implement this policy.

***Unnecessary personal photograph***

The board's rules require applicants to submit a photograph of their head and shoulders. The photograph requirement, by revealing the applicant's race, color, national origin, age, and gender, could lead to discrimination or accusations of discrimination.

The purpose of this requirement is unclear. It is not used to identify applicants during the application process or for examinations. The licensing division already requires applications to be notarized. For examination purposes, applicants verify their name through any of the following photo identifications: driver's license, Hawaii state I.D., notarized identification, or passport. These procedures should be sufficient to verify the identity of the applicant and ensure that no substitute takes the exam.

The department has been examining whether photographs are necessary. We recommend that the department work with the board to delete the photograph requirement from the rules.

***Incorrect application instructions***

The instructions for applying for a dental hygienist license say that applicants must pass an examination on the laws and rules. However, at

its meeting of May 21, 1990, the board voted to end the laws exam, and it is no longer given. The instructions should be corrected to reflect this change.

### ***Missing executive-session minutes***

Chapter 92, HRS, Hawaii's Sunshine Law, requires that board meetings be open to the public with a few exceptions. These exceptions include evaluating personal information relating to applicants, considering personal matters where privacy is involved, consulting with the board's attorney for particular reasons, considering sensitive matters relating to public safety, and investigating matters relating to criminal conduct. Section 92-9 requires that minutes be kept of executive sessions.

We reviewed minutes of the board's open meetings from January 1990 to February 1993. According to these minutes, the board went into executive session 13 times for reasons such as discussing legal aspects of cases and reviewing personal information about applicants.

However, the executive secretary of the board could not locate executive-session minutes except for the January 1993 meeting. Earlier minutes may have been lost during the transition between the previous and the current executive secretary.

The department should make sure that executive-session minutes are recorded and safeguarded. Without minutes, there is no assurance that the activities during executive sessions fell within the statutory exceptions and matched the purposes stated in the minutes of the open meetings.

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## **Recommendations**

1. The Legislature should reenact Chapter 447, Hawaii Revised Statutes, to continue the regulation of dental hygienists. In doing so, the Legislature should consider reenacting the statute for ten years.
2. In reenacting the statute, the Legislature should consider amending it to:
  - a. Eliminate the distinction in supervision between private-practice dental hygienists and others, and allow all dental hygienists to perform routine dental hygiene under the general supervision of a dentist.
  - b. Allow licensure by credentials of licensed dental hygienists from other states whose licensing requirements are equal to or more stringent than Hawaii's.

- c. Authorize dental hygienists to administer intra-oral infiltration local anesthesia only if they provide documentary proof that they are certified in the procedure.
  - d. Eliminate the requirement that dental hygienists inform the board of their place of employment and the name of their employer.
  - e. Substitute two dental hygienist members for two dentist members so that the composition of the Board of Dental Examiners would be three dental hygienists, six dentists, and two public members.
3. The Board of Dental Examiners should amend its rules as follows:
  - a. Eliminate the requirement for a state written examination for dental hygienists.
  - b. Require educational records and test results to be sent directly to the board from the school or testing organization, or hand-carried with a seal.
  - c. Eliminate the requirement for a personal photograph on the license application.
4. The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs should improve its operations by deleting the reference to a laws examination from the license application instructions and by securing the minutes of the board's executive sessions.

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## Notes

### Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/ Geographic Report* (printout), March 5, 1993, p. 7.
2. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Dental Hygienists*, Report No. 84-1, January 1984.

### Chapter 2

1. U.S., Department of Labor, *Occupational Outlook Handbook*, 1992-93 Edition, May 1992, p. 187.
2. Letter to George L. Schroeder, Director, South Carolina Legislative Audit Council, from Michael O. Wise, Acting Director, U.S. Federal Trade Commission, January 8, 1993, p. 14.
3. Letter to Tony Smalley, Analyst, Office of the Auditor, State of Hawaii, from Kathy Schroder, Manager, Governmental Affairs Division, American Dental Hygienists' Association, February 19, 1993.
4. American Dental Hygienists' Association, "States That Have Licensure by Credentials" (map), provided to the Office of the Auditor on April 8, 1993.
5. Section 447-3(b), HRS (performance of local anesthesia authorized); Act 232, SLH 1989, codified as Section 447-1(a), HRS (certification required).
6. Maryland General Assembly, *Sunset Review: Maryland State Board of Dental Examiners*, Annapolis, Maryland, 1991, pp. 19-20.
7. American Dental Hygienists Association, "State Dental Board Composition" (chart), provided to the Office of the Auditor on April 8, 1993.



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## Responses of the Affected Agencies

### Comments on Agency Responses

We transmitted a draft of this report to the Board of Dental Examiners and the Department of Commerce and Consumer Affairs on July 30, 1993. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2 and that from the department is included as Attachment 3.

The board agrees with our recommendations to reenact Chapter 447, Hawaii Revised Statutes to continue the regulation of dental hygienists; to repeal the statutory requirement that dental hygienists inform the board of their place of employment and the name of their employer; and to eliminate from the rules the requirement of a state written examination.

The board agrees with our recommendation to add two dental hygienist members to the Board of Dental Examiners. However, it disagrees with our recommendation to achieve this by substituting two dental hygienist members for two dentist members because it would lose the assistance of these dentists. Instead, it proposes simply adding two dental hygienists, thus maintaining the number of dentists at eight and increasing the board's size from 11 to 13. We believe that enlarging the board to 13 members is undesirable and would make the board unwieldy. The recommendation is directed to creating a better *balanced* board since the interests of dental hygienists may conflict with and be outweighed by those of dentists. The board's proposal would not achieve the needed balance.

The Board does not agree with our recommendation that all dental hygienists should be authorized to perform routine dental hygiene under the general supervision of a dentist because direct supervision is needed to protect consumers. Yet the board supports the current statute which permits dental hygienists working in other settings such as dental dispensaries and welfare centers to practice under general supervision. We view this distinction as unfair and believe that general supervision is sufficient for all dental hygienists except for certain nonroutine procedures.

In addition, the board does not agree with our recommendation that the statute should authorize licensure by credentials of dental hygienists from other states whose licensing requirements are equal to or more stringent than Hawaii's. The board supports its own examination and says it lacks the resources to make a determination regarding

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equivalency. Our report points out that licensure by credentials is permitted in the majority of states and supported by the American Dental Association and the American Dental Hygienists' Association.

Finally, the board does not agree with our recommendation that all dental hygienists must be certified to perform intra-oral infiltration local anesthesia. The board feels this is unfair to those who do not perform this procedure. In response to the board's concerns, we amended our draft report to recommend that the statute be amended to authorize dental hygienists to perform the procedure only if they are certified to do so.

The department agrees with our recommendation to delete the requirement of a personal photograph. The department also agrees that the license application instructions should be corrected by deleting the reference to a laws examination and that executive session minutes should be recorded and maintained.

The department will consider our recommendation to improve the reliability of license application documents by requiring educational records and test results to be sent directly to the board from the school or testing organization, or hand-carried with a seal. The department is concerned that the recommendation will increase the applicant's costs or delay document processing. It says that it seeks further verification only when a question arises as to the reliability or authenticity of a document. We suggest that our recommendation, by helping to ensure reliability from the outset, could actually reduce costs and delays.

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MARION M. HIGA  
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July 30, 1993

**COPY**

Marcy Kawasaki Haines, D.D.S., Chair  
Board of Dental Examiners  
Department of Commerce and Consumer Affairs  
Professional and Vocational Licensing Division  
1010 Richards Street  
Honolulu, Hawaii 96813

Dear Dr. Kawasaki Haines:

Enclosed for your information are twelve copies, numbered 9 to 20 of our draft report, *Sunset Evaluation Update: Dental Hygienists*. We ask that you telephone us by Tuesday, August 3, 1993, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, September 6, 1993.

The Director of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa  
State Auditor

Enclosures

JOHN WAIHEE  
GOVERNOR



CLIFFORD K. HIGA  
DIRECTOR

NOE NOE TOM  
LICENSING ADMINISTRATOR

BOARD OF DENTAL EXAMINERS

STATE OF HAWAII  
PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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September 1, 1993

RECEIVED  
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OFC. OF THE AUDITOR  
STATE OF HAWAII

The Honorable Marion M. Higa, Auditor  
Office of the Auditor  
State of Hawaii  
465 South King Street, Room 500  
Honolulu, Hawaii 96813

Dear Ms. Higa:

The Board of Dental Examiners ("Board") thanks you for the opportunity to provide comment on the Sunset Evaluation Update for Dental Hygienists. We will comment on the recommendations as they appear chronologically on pages 11-12 of the report.

1. "The Legislature should reenact Chapter 447, Hawaii Revised Statutes, to continue the regulation of dental hygienists."

The Board agrees that Chapter 447, HRS, should be reenacted to continue the regulation of dental hygienists.

- 1a. "The Legislature should amend Chapter 447, HRS, to eliminate the distinction in supervision between private-practice dental hygienists and others, and allow all dental hygienists to perform routine dental hygiene under the general supervision of a dentist."

The Board disagrees with this recommendation. It is the Board's opinion that all dental hygienists practice under the direct supervision of a licensed dentist, rather than under the general supervision of a licensed dentist as the report recommends. The Board believes that the higher degree of supervision is warranted due to the nature of

work performed by dental hygienists and the potential for consumer harm. However, the Board believes that only licensed dentists in private practice can maintain this level of supervision, and that it would be impractical for licensed dentists in other settings (dental dispensaries, infirmaries, welfare centers, state and county controlled offices) to fulfill. To do so would create a hardship and limit the effectiveness of their services. Accordingly, the Board believes the distinction in supervision is justified.

- 1b. "The Legislature should amend Chapter 447, HRS, to allow licensure by credentials of licensed dental hygienists from other states whose licensing requirements are equal to or more stringent than Hawaii's."

The Board does not agree that dental hygienists should be licensed by credentials. The Board firmly supports their Board-produced examination and believes that upon passing this examination, a person would be minimally competent to practice dental hygiene.

Additionally, the Board does not have the manpower and resources to review every application to make a determination regarding equivalency.

- 1c. "The Legislature should amend Chapter 447, HRS, to clarify that all dental hygienists must be certified to administer intra-oral infiltration local anesthesia."

The Board agrees that dental hygienists who administer intra-oral infiltration local anesthesia should be certified to perform this procedure. However, the Board disagrees that all dental hygienists must be so certified. To subject all dental hygienists to the rigid certification requirement would result in extreme hardship and unfairness to dental hygienists who do not perform this procedure, particularly those who were licensed prior to when the law was amended in 1989.

As a precaution, however, the Board will send notices out to non-certified dental hygienists reminding them that proper certification is a prerequisite for performing intra-oral infiltration local anesthesia.

Additionally, we will remind the Hawaii Dental Association of this distinction so that they may inform their membership.

- 1d. "The Legislature should amend Chapter 447, HRS, to eliminate the requirement that dental hygienists inform the board of their place of employment and the name of their employer."

The Board agrees with this recommendation.

- 1e. "The Legislature should amend Chapter 447, HRS, to substitute two dental hygienist members for two dentist members so that the composition of the Board of Dental Examiners would be three dental hygienists, six dentists, and two public members."

The Board agrees with the report's finding (page 8) that the number of dental hygienists on the Board should be increased from one to three members. Having two additional dental hygienists on the Board would provide necessary transition between appointments, insight, expertise, and guidance. The Board does, however, believe that increased dental hygienist representation should not be at the expense of the dental board members, since their contributions are equally valuable. Thus, the Board proposes that it be expanded from an eleven (11) member Board to a thirteen (13) member Board to accommodate the concerns raised by the report. The result is increased dental hygienist representation, and maintenance of the current dental membership.

- 2a. "The Board of Dental Examiners should amend its rules to eliminate the requirement for a state written examination."

The Board agrees that the requirement for a state written examination should be eliminated and will amend its rules accordingly.

As the remainder of the recommendations are administrative in nature, the Department of Commerce and Consumer Affairs will address 2b, 2c, and 3 in its response to you.

The Honorable Marion M. Higa, Auditor  
September 1, 1993  
Page 4

Again, thank you for the opportunity to provide comment.

Very truly yours,

*Marcy M. Kawasaki-Haines, DDS*

Marcy M. Kawasaki-Haines, D.D.S.  
Chairman  
Board of Dental Examiners

JOHN WAIHEE  
GOVERNOR



CLIFFORD K. HIGA  
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SUSAN DOYLE  
DEPUTY DIRECTOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
1010 RICHARDS STREET  
P. O. BOX 541  
HONOLULU, HAWAII 96809

September 1, 1993

RECEIVED

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OFC. OF THE AUDITOR  
STATE OF HAWAII

The Honorable Marion M. Higa, Auditor  
Office of the Auditor  
State of Hawaii  
465 South King Street, Room 500  
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs ("department") the opportunity to comment on the Sunset Evaluation Update for Dental Hygienists. The department will comment on recommendations 2b, 2c and 3 contained on page 12 of the report.

- 2b. "The Board of Dental Examiners should amend its rules to require education and test results be sent directly to the board from the school or testing organization, or hand-delivered with a seal."

Except for sealed hand-deliveries, the above practice is already in place.

To clarify, an applicant's education results are submitted to the Professional and Vocational Licensing Division ("PVLD") in one of two methods. Under one method, official, certified copies of transcripts are mailed directly from the dental hygiene school to the PVLD. Under another method, applicants are permitted to submit a xeroxed copy of their diploma. If a question arises regarding the reliability or authenticity of the diploma submitted, then PVLD does further research, such as contacting the dental hygiene school to verify graduation.

Additionally, the majority of National Board scores are mailed directly from the testing organization to PVLD. On occasion, PVLD has accepted certificates from the applicants evidencing passage of the National Board score.

If a question arises regarding the reliability or authenticity of the certificate submitted, then PVLD does further research, such as contacting the test organization to verify passage of the national board exam.

There has been no evidence of abuse to warrant discontinuing the practice of occasionally accepting documents from the applicant. However, the department and Board will consider this recommendation and implement appropriate action if they can be satisfied that the recommendation will not add costs to the applicant, or contribute to the delay of processing applications.

- 2c. "The Board of Dental Examiners should amend its rules to eliminate the requirement for a personal photograph on the license application."

The Board and department are in agreement with deleting the personal photograph requirement for reasons that it is no longer necessary for identification and enforcement purposes, and to support the department's efforts to streamline aspects of its document processing to enhance efficiency. The Board and department feel that these are more relevant and accurate reasons to eliminate the photograph rather than unfounded inferences of potential discriminatory use.

3. "The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs should improve its operations by deleting the reference to a laws examination from the license application instructions and by securing the minutes of the board's executive sessions."

We agree that the license application instructions be revised to delete reference to the laws examination.

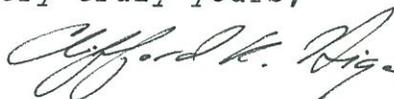
We are also in agreement that executive session minutes be recorded and maintained. All regulatory boards, including the Board of Dental Examiners, currently keep executive session minutes. We also feel it important to point out that the Board's public minutes show that the board's counsel was present each and every time the board entered into executive session. Surely the board's counsel can be relied on to provide guidance on whether the executive session is authorized by section 92-5, HRS. Additionally, the Board's public minutes explicitly stated the reasons for the Board entering into executive session, for example, "discussing legal concerns with its counsel;" and "consider and evaluate informal review reports pursuant to

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92-5(a)(1), HRS." Section 92-5, HRS, specifically  
authorizes executive sessions for these purposes.

Again, thank you for the opportunity to provide comment.

Very truly yours,



CLIFFORD K. HIGA  
Director

CKH:sg

## Proposed Legislation

SEVENTEENTH LEGISLATURE, 1994  
STATE OF HAWAII

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# A BILL FOR AN ACT

RELATING TO DENTAL HYGIENISTS.

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

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§26H-4 Repeal dates. (a) The following chapters are  
4 hereby repealed effective December 31, 1994:

5 [(1) Chapter 447 (Dental Hygienists)

6 (2)] (1) Chapter 457 (Board of Nursing)

7 [(3)] (2) Chapter 457A (Nurse Aides)

8 [(4)] (3) Chapter 457B (Board of Examiners of Nursing Home  
9 Administrators)

10 [(5)] (4) Chapter 461 (Board of Pharmacy)

11 [(6)] (5) Chapter 468L (Travel Agencies)

12 (b) The following chapters are hereby repealed effective  
13 December 31, 1995:

14 (1) Chapter 437 (Motor Vehicle Industry Licensing Board)

15 (2) Chapter 437B (Motor Vehicle Repair Industry Board)

16 (3) Chapter 440 (Boxing Commission)

17 (4) Chapter 445 Part V (Pawnbrokers)

18 (5) Chapter 448H (Elevator Mechanics Licensing Board)

19 (6) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

1 (7) Chapter 453 (Board of Medical Examiners)

2 (8) Chapter 463E (Podiatry)

3 (c) The following chapters and sections are hereby repealed  
4 effective December 31, 1996:

5 (1) Sections 321-13 to 321-15 (laboratory directors,  
6 laboratory technologists, laboratory supervisors,  
7 laboratory technicians, and sanitarians)

8 (2) Chapter 321, Part XXX, (Tattoo Artists)

9 (3) Chapter 321, Part XXXI, (Midwives)

10 (4) Sections 431:10A-116(4) and 432:1-605 (Mammogram  
11 Screening)

12 (5) Chapter 448F (Electrologists)

13 (6) Chapter 466J (Board of Radiologic Technology)

14 (d) The following chapters are hereby repealed effective  
15 December 31, 1997:

16 (1) Chapter 438 (Board of Barbers)

17 (2) Chapter 448 (Board of Dental Examiners)

18 (3) Chapter 455 (Board of Examiners in Naturopathy)

19 (4) Chapter 459 (Board of Examiners in Optometry)

20 (5) Chapter 460J (Pest Control Board)

21 (6) Chapter 462A (Pilotage)

22 (7) Chapter 471 (Board of Veterinary Examiners)

1 (e) The following chapters are hereby repealed effective  
2 December 31, 1998:

3 (1) Chapter 373 (Commercial Employment Agencies)

4 (2) Chapter 441 (Cemetery and Funeral Trusts)

5 (3) Chapter 443B (Collection Agencies)

6 (4) Chapter 463 (Board of Private Detectives and Guards)

7 (5) Chapter 468 (Solicitors; Business of Taking Orders)

8 (f) The following chapters are hereby repealed effective  
9 December 31, 1999:

10 (1) Chapter 436E (Board of Acupuncture)

11 (2) Chapter 442 (Board of Chiropractic Examiners)

12 (3) Chapter 444 (Contractors License Board)

13 (4) Chapter 448E (Board of Electricians and Plumbers)

14 (5) Chapter 452 (Board of Massage Therapy)

15 (6) Chapter 460 (Board of Osteopathic Examiners)

16 (7) Chapter 461J (Board of Physical Therapy)

17 (8) Chapter 464 (Professional Engineers, Architects,  
18 Surveyors and Landscape Architects)

19 (9) Chapter 465 (Board of Psychology)

20 (10) Chapter 468E (Speech Pathology and Audiology)

21 (11) Chapter 514E (Time Sharing Plans)

22 (g) The following chapters are hereby repealed effective

1 December 31, 2000:

- 2 (1) Chapter 439 (Board of Cosmetology)
- 3 (2) Chapter 448F (Electrologists)
- 4 (3) Chapter 454 (Mortgage Brokers and Solicitors)
- 5 (4) Chapter 454D (Real Estate Collection Servicing Agents)
- 6 (5) Chapter 466 (Board of Public Accountancy)
- 7 (6) Chapter 467 (Real Estate Commission)
- 8 (h) The following chapter is hereby repealed effective

9 December 31, 2001:

- 10 (1) Chapter 458 (Board of Dispensing Opticians)
- 11 (i) The following chapter is hereby repealed effective

12 December 31, 2004:

- 13 (1) Chapter 447 (Dental Hygienists)"

14 SECTION 2. Chapter 447, Hawaii Revised Statutes, is amended  
15 by adding a new section to be appropriately designated and to  
16 read as follows:

17 "§447- Licensure by credentials. (a) Notwithstanding  
18 the provisions of section 447-1, any dental hygienist who is  
19 registered or licensed under the laws of any state or territory  
20 of the United States with qualifications of licensure which equal  
21 or exceed those of this State, shall be eligible for licensure by  
22 the board without examination provided that: (1) the dental

1 hygienist possesses a current valid license and (2) there is no  
2 disciplinary action pending or other unresolved complaints  
3 against the dental hygienist in any state or territory. The  
4 board shall adopt rules pursuant to chapter 91 to implement this  
5 section."

6 SECTION 3. Section 447-1, Hawaii Revised Statutes, is  
7 amended by amending subsection (c) to read as follows:

8 "(c) If the applicant, in the opinion of the board,  
9 successfully passes the examination, the applicant shall be  
10 registered and receive a certificate of ability to practice as a  
11 dental hygienist in the State. Every registered dental  
12 hygienist, before entering practice, shall pay the board a  
13 registration fee. On or before December 31 of each odd-numbered  
14 year, every registered dental hygienist desiring to begin or  
15 continue to practice in the State shall pay to the board a fee  
16 for the biennial registration thereof. The failure, neglect, or  
17 refusal of any duly licensed dental hygienist to pay the biennial  
18 registration fee shall constitute a forfeiture of the license,  
19 but the license may be restored upon written application therefor  
20 and payment to the board of a restoration fee.

21 [Every dental hygienist practicing dental hygiene in the  
22 State shall furnish the board with the place of employment and

1 the name of the dentist or institution by whom the dental  
2 hygienist is employed.]"

3 SECTION 4. Section 447-3, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By amending subsection (b) to read:

6 "(b) Clinical dental hygiene may be practiced by a licensed  
7 dental hygienist. The practice of clinical dental hygiene is  
8 defined as the removal of hard and soft deposits and stains from  
9 the portion of the crown and root surfaces to the depth of the  
10 gingival sulcus, polishing natural and restored surfaces of  
11 teeth, the application of preventive chemical agents to the  
12 coronal surfaces of teeth, which chemical agents have been  
13 approved by the board of dental examiners, and the use of mouth  
14 washes as are approved by the board, but shall not include the  
15 performing of any repair work or the preparation thereof, or any  
16 other operation on the teeth or tissues of the mouth; provided  
17 that nothing herein shall prohibit a dental hygienist from using  
18 or applying topically any chemical agent which has been approved  
19 in writing by the department of health for any of the purposes  
20 set forth in part V of chapter 321, and other procedures  
21 delegated by the dentist in accordance with the rules of the  
22 board of dental examiners.

1 In addition, a licensed dental hygienist may administer  
2 intra-oral infiltration local anesthesia under the direct  
3 supervision of a dentist[.] upon providing documentary proof  
4 satisfactory to the board of certification in the administration  
5 of this procedure."

6 2. By amending subsection (c) to read:

7 "(c) The licensed dental hygienist may operate in the  
8 office of any licensed dentist, or legally incorporated  
9 eleemosynary dental dispensary or infirmary, private school, or  
10 welfare center, or in any building owned or occupied by the State  
11 or any county, but only under the aforesaid employment and under  
12 the [direct or] general supervision of a licensed dentist[;  
13 provided that in the private practice of dentistry, the hygienist  
14 shall be under the direct supervision of a licensed dentist]. No  
15 dental hygienist may establish or operate any separate care  
16 facility which exclusively renders dental hygiene services."

17 SECTION 5. Section 448-5, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§448-5 Board of examiners; appointment. The board of  
20 dental examiners shall consist of eleven members, [eight] six of  
21 whom shall be practicing dentists who have been engaged in the  
22 practice of dentistry for a period of five years preceding their

1 several appointments, [one] three of whom shall be [a] practicing  
2 dental [hygienist,] hygienists, duly licensed under section 447-1  
3 or 447- , who [has] have been engaged in the practice of dental  
4 hygiene in the State for a period of five years preceding  
5 appointment, and two of whom shall be public members. No member  
6 shall be in any way connected with, or interested financially in,  
7 any dental supply company. One member in the practice of  
8 dentistry shall be appointed from each of the counties of Hawaii,  
9 Maui, and Kauai and [five] three members in the practice of  
10 dentistry shall be appointed from the city and county of  
11 Honolulu. As used in this chapter, "board" means the board of  
12 dental examiners."

13 SECTION 6. The two practicing dentist members from the city  
14 and county of Honolulu whose terms expire soonest shall continue  
15 to serve until the expiration of the terms of their appointment  
16 and shall be replaced by practicing dental hygienists.

17 SECTION 7. Statutory material to be repealed is bracketed.  
18 New statutory material is underscored.

19 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_