

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

May 29, 2008

No. 1 Capitol District Building – Conference Room 436

- I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:30 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Lynne Woods
- Sharon Pang
- Michael Yee
- Donald Dymond
- Richard Schnitzler
- Charles Au
- David S. DeLuz, Jr.

**ABSENT MEMBERS:**

- Dorvin Leis
- Peter Yukimura
- Bruce Bucky

**STAFF:**        DBEDT                                Office of the Attorney General  
                  Dori Palcovich                            Margaret Ahn  
                  Pearl Imada-Iboshi

**GUESTS:**

Bill Comerford, President, Hawaii Bar Owners Association  
Edward Boteilho, Jr., President, Boteilho Hawaii Enterprises, Inc. (Cloverleaf Dairy)  
Jeri Kahana, Manager, Commodities Branch, Department of Agriculture  
Kathy Yokouchi, Executive Officer, Nurse Aide Program, Department of Commerce and Consumer Affairs (DCCA)  
Gary Ruby, Regulation Analyst, DCCA  
Susan Droe-Unabia, Interpreter  
Katherine Hallet, Interpreter  
Francine Wai, Executive Director, Disability and Communication Access Board (DCAB), Department of Health (DOH)  
Kristine Pagano, Communication Access Specialist, DCAB, DOH  
Bryan Ardoyan, Advisor, Hawaii Coalition of Caregivers (HCCG)  
Maria Etrata, President, Tri-Central Palliative Care, HCCG  
Lilia Fajotina, Board of Director, Adult Residential Care Home Association (ARCA)  
Myriam Tabaniag, President, ARCA  
Blantina S. Ratuta, Assistant Treasurer, ARCA  
Geronimo Tenorio, ARCA  
Camiot Wasa, Primary Caregiver, Adult Foster Home Association (AFHA)  
Maria Betty Rodriguez, Treasurer, ARCA  
Lani Akee, Primary Caregiver, AFHA  
Ron Gallegos, Vice President & Co-Owner, A Caring Touch/Gallegos Care Homes  
Elizabeth Shim, Manoa Cottage  
Jennifer Shim, Manoa Cottage  
Sandra Shim, Manoa Cottage

**WORKING LUNCH AS THE MEETING PROGRESSED**

- II. **APPROVAL OF MINUTES:** Minutes of the April 16, 2008 board meeting were approved as presented.

III. **OLD BUSINESS**

- A. Recommendation from Liquor Commission Taskforce of post public hearing statement for proposed amendments to Rules of the Liquor Commission of the City and County of Honolulu – Mr. Schnitzler explained that the Liquor Commission taskforce is recommending that the proposed rules of the Liquor Commission be adopted with the exception the following three rule sections, 3-81-17.7, "Monies Collected from Assessment of Fines," 3-81-17.8, "Waiver," and 3-82-38.25, "Restrictions or Conditions on

Licenses.” Upon discussion and review, Mr. Schnitzler recommended that that the proposed rules proceed to the Mayor for adoption with the exception of the noted three rule sections; the Board unanimously agreed.

- B. Review and discussion of **post public hearing statement** of proposed amendments to HAR Chapter 12-50 through 12-190, “Personal Protection Equipment” (DLIR) – Chair Woods indicated that these rules have been signed by the Governor and adopted; she noted that it appears when an agency submits its post public hearing statement to this Board, the agency simultaneously submits a letter to the Governor requesting her approval to adopt the rules. Consequently, the rule is adopted prior to the Board reviewing it. In any case, Chair Woods reviewed the post public hearing statement and found there to be no changes since the Board first reviewed the proposed rule. Based on this, Vice Chair Pang recommended that a memorandum be sent to the Governor stating that the Board had no opportunity to comment on the post public hearing statement as the rules had already been adopted; the Board unanimously agreed.
- C. Review and discussion of **post public hearing statement** of proposed amendments to Rules of Water System Standards of the Board of Water Supply (County of Kauai) – Chair Woods explained that no one attended the public hearing and no testimony was submitted. Upon reviewing the post public hearing statement, Mr. Au recommended that the proposed rule changes proceed to the Mayor for adoption; the Board unanimously agreed.
- D. Review and discussion of **post public hearing statement** of proposed amendments to HAR Chapter 5-11, “Notaries Public” (AG) – Chair Woods indicated that these rules have been signed by the Governor and adopted. She again explained that it appears that when an agency submits the post public hearing statement to this Board it is simultaneously submitted to the Governor requesting her approval to adopt the rule. Based on these facts, Vice Chair Pang recommended that a memorandum be sent to the Governor stating that the Board had no opportunity to comment on the post public hearing statement as the rules had already been adopted; the Board unanimously agreed.
- E. Review and discussion of **post public hearing statement** of proposed amendments to HAR Chapter 16-51 “Fees” (DCCA) – Chair Woods indicated that these rules have been signed by the Governor and adopted. Mr. Gary Ruby, DCCA’s Regulation Analyst, explained that the letter to the Governor from DCCA stated that the rules were concurrently being submitted to this Board. He stated that the proposed rule amendments were rather innocuous as two sections were proposed for repeal because they had become obsolete. No one attended the public hearing and no testimony was provided. Upon hearing from Mr. Ruby, Vice Chair Pang recommended that a memorandum be sent to the Governor stating that the Board had no opportunity to comment on these post public hearing statements as the rules have already been adopted; the Board unanimously agreed.
- F. Update on the status of the Review Board’s Administrative Assistant Position – Chair Woods explained that the status on the administrative assistant position is that it is delayed again; however the position is funded through fiscal 2009. She further explained that the position is needed and although the Board’s work is getting done through a secretarial pool, Chair Woods will be advancing on getting the position in place. Ms. Imada-Iboshi has been extended an invitation to meet with Chair Woods in Maui to discuss this issue further, among other issues.
- G. Update on the status of the June 25<sup>th</sup> Strategic Planning Session and topics to be discussed – Chair Woods explained that during the June 25<sup>th</sup> strategic planning session, the members will be voting on new officers for the upcoming fiscal year. To assist the members, a job description for both the Board chair and vice chair positions will be distributed prior to the next board meeting for review.

Chair Woods updated the members on the RegAlert project which entails the Board emailing “RegAlerts” to small business organizations; these organizations in turn will forward the Alerts to its members. She explained that in addition to the major support from Mr. Sam Slom, President of Small Business Hawaii, Ms. Melissa Pavlicek, President of National Federation of Independent Business (NFIB), is also amenable to the project, subject to NFIB’s National headquarters’ acceptance and approval. A conference call with Mr. Jim Tollefson, President of Hawaii State Chamber of Commerce has also been scheduled to discuss that organization’s potential participation in the project. Because there is concern that members of these organizations might receive multiple “Alerts” on the same administrative rule, this issue will be discussed with the organizations in order to find a solution. Mr. DeLuz stated that he discussed this project with the immediate incoming President of the Big Island’s Hawaii Island Chamber of Commerce, who is very

interesting in participating in the RegAlert. Chair Woods explained that it was her intent to also approach the neighbor island chambers. Upon review of the draft memorandum regarding the RegAlert project which will be sent to the “partnered” small business organizations, Mr. Schnitzler recommended its approval for submission; the Board unanimously agreed.

Chair Woods announced that the bid proposals regarding the hiring of a facilitator for the June 25<sup>th</sup> strategic planning session have been submitted. She noted that the appropriate bid will be chosen.

- H. Review and discussion of Agency Assignments – This topic was deferred until the June board meeting.

#### IV. NEW BUSINESS

- A. Review and discussion of proposed amendments to HAR Chapter 4-60-10, “Minimum Prices to the Hawaii Milk Shed” (DOA) – Ms. Jeri Kahana, Manager of DOA’s Commodities Branch, explained that the Hawaii milk producers petitioned the Board of Agriculture for preliminary approval of a \$6.00 minimum increase in Class I milk from the current price of \$29.53 per hundredweight to \$35.53 per hundredweight; milk was last increased in 2007. The Big Island is the only island in Hawaii that provides local milk. This is largely due to KTA, one of the major stores on the Island, sponsoring the local milk producer. Ms. Kahana stated that in the long term, locally produced milk will be provided to the consumers at the cheapest possible price and that the consumers will be assured a supply of fresh milk and become less dependent on imported milk; therefore, the State will be assured of a more sustainable dairy industry.

Ms. Kahana further explained that there are currently only two milk producers in the State of Hawaii, both are located on the Big Island. Mr. Edward Boteilho, Jr., President of Cloverleaf Dairy, one of the milk producers on the Big Island, explained that currently his business is surviving however he doesn’t believe that the current proposed price increase will sustain his business. He explained that feed costs have gone up tremendously and that the shortage of land and water has impacted his industry. Once this rule change has been implemented, DOA will plan to amend the statute to align it with current information and perhaps include an incremental increase. It was noted that prices of different commodities such as corn, which feeds the dairy cattle, increased from \$120 to over \$200, with shipping and transportation costs increasing drastically over the last few years.

After much discussion, Mr. Schnitzler recommended that the proposed rules proceed to public hearing; the Board unanimously agreed. In addition, Mr. Schnitzler recommended that the Board request the following: 1) rules governing the leasing of agricultural land of the Big Island and/or leasing the control of land by the Department of Land and Natural Resources for agricultural purposes, and 2) Memorandum of Agreement between the Department of Agriculture and DLNR in order to have a better understanding of inter-agency administrative agreements between the two agencies; the Board unanimously agreed. Upon receipt of these requested items, the Board will determine what action to take and how to delegate Board review authority.

- B. Review and discussion of proposed new rules Chapter 16-89A, “Nurse Aide” (DCCA) – Ms. Kathy Yokouchi, Executive Officer of DCCA’s Nurse Aide Program, stated that Act 226, which was approved in 2007, requires that administrative rules be implemented to regulate the State’s Nurse Aide program. She explained the history of these rules and that the rules codify the co-mingled work of DCCA, Department of Health (DOH) and Department of Human Services (DHS). She noted that the proposed rules are intended to help the employers of certified nurse aides to distinguish a nurse aide from a certified nurse aide as having met training, examination, and continuing competency requirements based on federal and state standards. In order to have State certification there cannot be two different levels; Group 2 nurse aides who wish to be certified must meet certain requirements that are comparable to nurse aides who are employed by Medicare/Medicaid programs.

Upon hearing from Ms. Yokouchi, the members voiced their comments and questions regarding the proposed rules. Mr. DeLuz suggested that the agencies may want to work with the Workforce Development Program to assist with a specified training program. It was discussed that although Group 1 nurse aides’ education and examination testing is paid for by the Federal government, Group 2 nurse aides are not mandated to receive the training. Because of this, Group 2 may lose their jobs if they make the decision not to certify themselves or if their employers believe there is a need to hire only certified nurse aides. It was also noted that some nurse aides will have to pay for their own certification or they may be out of a job.

Mr. Ron Gallegos, Vice President and Co-Owner of A Caring Touch/Gallegos Care Homes, testified that the proposed Nurse Aide rules result in an inequity to the industry that is very onerous and subject to interpretation. He explained that there are also onerous expectations as the current certified nurse aides should not be required to perform training as they have already completed the certified nurse aide courses. He noted that the current nurse aides, who originally earned their certifications, do not want to lose their certification. He requested that the term “competency evaluation” be clarified and quantified in the rules. He also voiced his concern that the required training and education of the nurse aides would force the care homes to hire substitute caregivers resulting in a costly endeavor. Lastly, he questioned why the certified nurse aides should have the disciplinary oversight of two different government agencies, specifically DOH’s Office of Health Care Assurance and DHS.

In summary, Chair Woods stated that she sees an inequity in a number of different areas. She believes there is a need to challenge the required certification examination for nurse aides in Group 2. She explained that this Board needs to understand that if there are people who have been practicing in Group 2 for a long period of time, there should be some form of grandfathering of the rules. There is an apparent inequity because one group is getting paid for their training and licensing by the federal government and another group is not getting paid. She stated there is also an inequity in presenting the proposed rules because representatives of the other two agencies instrumental in these rules, DOH and DHS, are not in attendance. Therefore, this Board cannot make a prudent decision until representatives from all three agencies are in attendance at the same time. She suggested that because the proposed rules threaten the livelihood of Group 2 nurse aides, the rules should not proceed to public hearing as written. After much discussion, Vice Chair Pang recommended that the rules be deferred until the July Board meeting when representatives from all three agencies, DCCA, DOH and DHS, are present; the Board unanimously concurred.

- C. Review and discussion of proposed amendments to HAR Chapter 11-218, Communication Access Services for Persons who are Deaf, Hard of Hearing and Deaf-Blind (DOH) – Ms. Kristine Pagano, Communication Access Specialist of DOH’s Disability and Communication Access Board, explained that the proposed rule amendments amend proposed fee schedules for interpreters that include three new national credentials by the National Council on Interpreting, National Interpreter Certification (NIC), NIC Advanced and NIC Master. The proposed amendments will allow providers to be paid the current federal or state mileage rate for travel plus any documented parking charges; Ms. Pagano explained that an increase in these services has not been imposed since 2000. Locally there are approximately five people who provide real-time caption service for state-wide needs.

Ms. Francine Wai, Executive Director of the DOH’s Disability and Communication Access Board, explained that the proposed rules are for State and County government entities; the rules do not regulate the “profession.” She explained that interpreters are independent contractors and that these rules are in place primarily because State and local government have obligations under Federal and State law to provide non-discriminatory treatment for equal communication access of services. Additionally, part of the rules and part of the function of the office is to test the interpreters to determine their skill level. In order to give guidance to the State as to how much it should pay the captioners and the interpreters, DOH will maintain a database. Ms. Pagano tests the interpreters’ and captioners’ level of skill, and once a certain certification level has been achieved, the recommended guidelines in the rules will instruct the State as to the level of pay the individuals should receive. After a series of questions and answers, Mr. Dymond recommended that the proposed rules proceed to public hearing; the Board unanimously agreed.

## V. UPDATE ON LEGISLATIVE SESSION

1. HB 2781, HD2 SD2 CD1 “Relating to the Small Business Bill of Rights” – Chair Woods stated that this bill incorporated two bills into one, the Small Business Bill of Rights bill and the bill that mandates this Board to convene a working group to modify the small business impact statement. The bill is currently sitting with the Governor for her approval.
3. HB 2253, HD2 SD1, CD1 “Relating to Intoxicating Liquor, etc.” – Mr. Bill Comerford, President of the Hawaii Bar Owners Association, indicated that this bill is currently in the Governor’s office for her signature. He will provide testimony to the Governor expressing his concerns with certain sections,

including “protests,” “fine monies,” and “license fees;” the latter was passed by the City and County of Honolulu.

4. HB 2974, HD21, “Relating to Labor” – Chair Woods explained that the Governor vetoed this bill; this is good news for small business.

**VI. Report from Committees:** Nothing was presented.

**VII. Report from Chair and Board Members:** Chair Woods stated that the Board's 201M-7 Report, which is required every two years, is due at the end of this year; Ms. Palcovich is currently working on it. Chair Woods stressed that because there are a few agencies that do not want to abide by this Board's recommendation and perform a full re-analysis on specific rules, going forward the Board may look to modify the statute through the legislature. Mr. Au suggested that specific commentary might be needed when the Board makes its recommendation to perform a re-analysis.

**VIII. Announcements:** Nothing was presented.

**IX. NEXT MEETING** – Annual Planning Session, Wednesday, June 25, 2008, The Pacific Club, 1451 Queen Emma Street, Honolulu - from 9:30 a.m. to 4:00 p.m.

**X. ADJOURNMENT** – Chair Woods adjourned the meeting at 1:40 p.m.