

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

October 15, 2008

Conference Room 410 - No. 1 Capitol Building, Honolulu, HI

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 L. Pang
- Michael Yee
- Richard Schnitzler
- Charles Au
- Peter Yukimura
- Bruce Bucky
- David S. De Luz, Jr.

**ABSENT MEMBERS:**

- Dorvin Leis
- Donald Dymond

<b>STAFF:</b>	<u>DBEDT</u>	<u>Office of the Attorney General</u>
	Dori Palcovich	Margaret Ahn
	Steve Bretschneider	

### WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES**

Mr. Au recommended that the September 17, 2008 minutes be approved as presented; the Board unanimously agreed.

III. **OLD BUSINESS**

A. Review and discussion of post public hearing statement for proposed amendments, "Relating to the Annotations Table 100-19A of the Kauai Water System Standards 2002" (County of Kauai) – Mr. Yukimura indicated that no one testified at the public hearing, and recommended that the amended rules proceed to the Mayor of Kauai for adoption; the Board unanimously agreed.

Re-review and discussion of proposed new rules of HAR Chapter 11-81, "Smoking in Public Places" (DOH) – Mr. Julian Lipsher, Public Health Educator at DOH's Chronic Disease Management and Control Branch, explained that DOH would like to move forward and go to public hearing as quickly as possible. Mr. Lipsher discussed the history of these rules and went through the small business impact statement based on the changes that were made from the previous meeting. Prior to a series of questions and answers posed by the Board members, the following testimony was heard.

Mr. Bill Comerford, spokesperson for the Hawaii Bar Owner's Association indicated that he has been working with Mr. Lipsher in creating the administrative rules. He met with Mr. Lipsher, Vice Chair Pang and Ms. Palcovich last week however he has not yet reviewed the rules that reflect the changes that were discussed at that meeting. He believes that based on the currently written rules compliance falls upon the business owners and not necessarily the violator. Mr. Dave Crowley, co-chair of The Hawaii Smokers Alliance, indicated that he is a proud lover of tobacco and believes that everyone should have such a freedom. He is a lobbyist, representing over 100 bars along with approximately 49,000 Hawaii registered voters, which he began two years. He stated that in the overall picture the onslaught of a smoking ban in the workplaces is killing thousands of businesses throughout the U.S. He pleaded with the board members not to decimate the small businesses throughout the land.

Mr. George Massengale, Director with the American Cancer Society, stated that this Society believes that there is a need for strict enforcement of the rules; the sooner the better. Because of the delay in the creation of these rules, the U.S. Attorney's Office may be asked to enforce the law under Title 42 Section

12-181; this is a public accommodation law that provides for equal access and public accommodations. Bars are specifically included as a public accommodation. In this provision, if an individual is denied access to a public accommodation, the U.S. Attorney's Office can be notified whereby the offender may be prosecuted. Under the Federal Statute, the fine would be \$50,000 to a violator. Mr. Michael Zehner, an associate member of the Hawaii Bar Owner Association and a member of The Hawaii Smoker's Alliance, explained that he has not had a chance to review the revised administrative rules promulgated by DOH and therefore cannot comment on them; in response Mr. Au explained that there would be an opportunity to testify on the proposed rules at the public hearing.

Ms. Trisha Nakamura, Policy and Advocacy Director from the Coalition for the Tobacco Free Hawaii, thanked this Board for the time it has put into reviewing these rules. She expressed the need to move the proposed rules forward because of the lack of the law's enforcement as it is currently voluntary for small businesses to follow the law as well as to voluntarily not follow the law; this results in an uneven playing field. She believes it is unfair for patrons of businesses to be exposed to second-hand smoke due to the risk of various cancers and ramifications to asthma sufferers. She noted that a survey that was conducted this past year showed that seventy percent of the people in Hawaii are in support of a smoke-free Hawaii.

Vice Chair Pang indicated that she, Messrs. Lipsher and Comerford and Ms. Palcovich met last week and reviewed the proposed draft rules. One issue concerned the definition and distinction as to who is a violator and the other was the enforcement of the rules. Specifically, she noted that once a violator has been identified, the rules were very limited to how enforcement is taken; it was requested at that meeting that this section of the rules be expanded on. She also noted and questioned whether research has been conducted as to whether there may be an exception to the rules to designate an establishment as a "smoking bar," such as in other states. It was indicated that the current law does not allow or permit designated smoking bars and restaurants; this would need to be brought to the legislature. Mr. Lipsher stated that while there are approximately twenty-eight states that currently have similar smoke-free workplace laws, some of them do have exemptions. It was noted that health inspectors would not be going from place to place to enforce the law but that fellow citizens would likely report other fellow citizens when a violation is occurring. It was requested that a temporary exemption be initiated by DOH when a business owner has violated the sign requirement and has been turned in by a fellow citizen. In such a case, it was also suggested that DOH notify the owner that a violation has occurred and to rectify the violation before any type of penalty is initiated.

After much discussion, each board member voiced their concerns and suggestions. Vice Pang noted that because Mr. Lipsher addressed most of the issues that were discussed at last week's meeting, the rules should be ready to go public hearing. Mr. De Luz indicated that he would agree to allow the proposed rules to go to public hearing with the caveat that the concerns and reservations of this Board are addressed; Mr. Au concurred with Mr. De Luz. Messrs Bucky and also concurred based on the rules coming back to the Board after public hearing, as did Mr. Schnitzler with reservations expressed. Chair Woods stated that she is concerned that the rules are immovable and inflexible. Mr. Yukimura did not believe that the rules were ready to take to public hearing as the stakeholders were not given an opportunity to review them; he suggested that the rules be reviewed first with an opportunity to present any proposals back to this Board before going to public hearing. After much discussion, Mr. De Luz recommended that this Board's reservations be included in the memorandum to DOH and the Governor as well as in DOH's small business impact statement; seven members agreed and one member opposed.

- B. Discussion and approval of Memorandum to Governor Linda Lingle regarding, "Proposed HAR Chapter 16-89A, "Nurse Aide" (DCCA) –** Chair Woods indicated that the Governor received a memorandum requesting that the proposed Nurse Aide rules do not proceed to public hearing until a resolution to the rules has been made regarding the departments of health and human services developing their own rules for training of nurse aides required by law and based on the rules created and proposed by DCCA. As a result of this memorandum, a meeting was held with DCCA Director Lawrence Reifurth, Deputy Director Ron Boyer, Ms. Kathy Yokouchi, Chair Lynne Woods, Vice Chair Sharon Pang, Deputy Attorney Margaret Ahn and DBEDT staff Ms. Dori Palcovich. Vice Chair Pang stated the nurse aide community never voiced their opinions when the bill was being heard in the legislature, and as a result, there are no state plans or programs designed; therefore, the Hawaii nurse aide community must follow the federal standards and go along with the existing rules. Upon discussion, Mr. Au recommended that another

memorandum be sent to the Governor stating that upon further investigation, the Board supports that the rules proceed to public hearing; the Board unanimously concurred.

#### IV. NEW BUSINESS

- A. Review and discussion of proposed repeal of HAR Chapter 11-39, "Air Conditioning & Ventilation System" (DOH) – Mr. Russell Takata, Chief of DOH's Indoor and Radiological Health Branch, explained the history, background and purpose of the proposed rule amendments. He stated that any business or entity that owns operates or maintains a mechanical ventilation system in a commercial or public building in the state will be directly affected by the proposed rules. Businesses will be responsible for all costs associated with obtaining a license for and operation and maintenance of any mechanical ventilation systems within their facilities. Businesses will benefit from the proposed rules by having a system designed and installed using healthful standards that will minimize the potential for adverse health effects. The owner/operator will be responsible for all aspects of installation and operation of mechanical ventilation systems including design, construction, maintenance and removal of such systems. In addition, it will be the owner's responsibility to ensure that licensed and/or qualified individuals are used for the design, installation and maintenance of these systems. Several questions were asked of Mr. Takata regarding licensing processes and compliance. Upon review, Mr. Yee recommended that the proposed amendments proceed to public hearing; the Board unanimously agreed.
- B. Review and discussion of proposed amendments to Subtitle 12, Med-QUEST for HAR Chapter 17-1721.1, QUEST Expanded Access," and Subtitle 12, Med-QUEST for HAR Chapters 17-1700 through 17-1735 (DHS) – Mr. Paul Higa, Supervisor, and Ms. Patti Bazin, Health Care Service Branch Administrator of DHS's Med-QUEST Division, explained that the Medicaid rules are being amended to implement the last phase of QUEST, which began in 1994. The QUEST Expanded Access program will allow the division to provide more services to the current population, as it will provide healthcare in a managed care setting to aged, blind or disabled individuals currently covered under DHS's fee-for-service medical assistance and home and community-based services programs. Ms. Bazin noted that there are 38,500 people enrolled in QUEST. Vice Chair Pang stated that a lot of money is being infused into the community and that the expanded program benefits many individuals; however, it appears that the community is currently unaware of their rights or what programs are available to them. She also stated that private physicians will be positively impacted by the QUEST Expanded Access program. Ms. Bazin explained that Med-QUEST has recently been educating clients and providing information about this program. From July to October, there five mailings were sent to clients; this represents 39,000 documents. She stated that in regards to time of reimbursement, QUEST does not provide reimbursement to the providers as efficiently as it should as there is a negative reimbursement perception regarding reimbursement to the providers. After much discussion, Vice Chair Pang recommended that the amendments proceed to public hearing; the Board unanimously agreed.
- C. Update on the finalization of 201M-7 Report for 2008, and discussion and recommendation of requested information from Agencies for 201M-7 Report due 2010 – The following comments were made by the members in regards to the listed existing rules:

- HAR Chapter 4-93, "Packaging and Labeling" – Mr. Schnitzler stated that these rules are outdated. There has been a great deal of activity within state and federal laws in regards to labeling and new country of origin labeling. Therefore, these rules are old and archaic and require reviewing and updating. Mr. Schnitzler recommended that the Board request from the Department of Agriculture a draft of updated amended rules by December 2009; the Board unanimously agreed.

Mr. De Luz, Jr. recommended that the Governor receive a copy of all memoranda from the Board to each agency; the Board unanimously agreed.

- HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers" – Chair Woods indicated that she met with Chair Carlito Caliboso of the Public Utilities Commission (PUC) who indicated that he did not believe that the rules needed to be amended despite the Board recommending such amendments. Mr. De Luz, Jr., recommended that the Board request from the PUC a draft of amended rules by December 2009; the Board unanimously agreed.
- HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules" - Chair Woods indicated that she met with Chair Carlito Caliboso of the Public Utilities Commission (PUC) who indicated that he did not believe

that the rules needed to be amended despite the Board recommending such amendments. Mr. De Luz, Jr., recommended that the Board request from the PUC a draft of amended rules by December 2009; the Board unanimously agreed.

- HAR Chapter 6-65, "Water Carriers" - Chair Woods indicated that she met with Chair Carlito Caliboso of the Public Utilities Commission (PUC) who indicated that he did not believe that the rules needed to be amended despite the Board recommending such amendments. Mr. De Luz, Jr., recommended that the Board request from the PUC a draft of amended rules by December 2009; the Board unanimously agreed.

An update was provided to the members in regards to several of the remaining listed rules. In addition to these updates, DLIR will be sent a second request memorandum from the Board for amended rules on the following: HAR Chapter 12-11, "Temporary Disability Insurance," and HAR Chapter 12-41, "Hawaii Labor Relations Board (Employment)."

- D. Review and discussion of Act 137, "Relating to Mortgages" – Chair Woods indicated that her association is working on legislation to amend this Act for next year's legislative session; she will keep the Board apprised of those amendments. She is aware of at least three bills being proposed that will change this legislation that are "industry-specific" and will request that this Board support such bills.
- E. Discussion of budgetary issues and concerns including monthly meetings, video-conferencing, and outreach – Chair Woods referred to a listing of the Board's annual expenses that was distributed to the members. She noted that the Governor has issued instructions to all agencies to substantially cut back their budgets. As a result, DBEDT has requested that each division review its expenses. She explained that one of the ideas to reduce expenses is for this Board to use video-conferencing for the monthly board meetings. Video-conferencing would require the neighbor island members to attend a facility on their respective islands where the meetings would be video-conferenced. It was noted, however, that the chairperson of the Board would need to attend the board meetings in Honolulu in order to manage the meetings. Ms. Palcovich researched whether other boards were using video conferencing and found that not one board or commission in DCCA used video-conferencing because of its inefficiency.

Mr. De Luz indicated that if video communication is lost while in the middle of a board meeting, a requirement to have at least audio must be adhered to. Further, if handouts are required during the meeting, the members must have access to them. If the handouts are not accessible within fifteen minutes, the meeting shall be terminated. Chair Woods also noted that video-conference meetings can only be held in the Honolulu facility in conference room #436, so that all the board meetings would need to be re-scheduled. In order to access the equipment, meetings must be reserved and scheduled on a month to month basis. Chair Woods would be unable to attend any other meetings in Honolulu except for the third Wednesdays of the month due to her schedule. Plane fares were also discussed. Booking neighbor island members' flights two to three months in advance was suggested, however, with a new airlines coming to Hawaii, it was noted that this may assist in lowering the prices of the flights. Thus, it may not be cost-effective to book the flights too far in advance. Additionally, it was discussed that the time of the board meetings could possibly be rescheduled from 10:30 a.m. to 1:00 p.m., so that lunches for the members would be eliminated.

Based on this discussion, Mr. Schnitzler recommended that if this Board is required to reduce expenses, that a memorandum will be sent to the appropriate parties at DBEDT recommending that this Board will propose the following: 1) Change the time of the board meetings from 10:30 to 1:00 p.m., in order to eliminate buying lunches for the members, which would result in a savings of approximately \$128 per month or \$1,536 a year; and 2) Eliminate hiring a paid facilitator for the Board's annual strategic planning sessions, which would result in a savings of approximately \$3,800 per year. Thus, the total annual savings would be approximately \$5,336. The Board unanimously agreed.

## V. **Discussion and Update on the Board's 2009 Goals:**

- A. RegAlert Project – Chair Woods indicated that Mr. Tim Lyons referred this Board to the Aloha Society of Association Executives as a potential partner for the RegAlert project. This association has numerous members that represent industry specific businesses. Mr. Lyons will approach this association at its next monthly meeting and will let this Board know if it decides to partner with the

Board. The members concluded that it would be very wise for this Board to expand its outreach with RegAlert. As a result, Mr. Au recommended that this Board expand its partnership outreach in the RegAlert project whereby potential associations would be recommendation by the Board members on a case by case basis; the Board unanimously agreed.

- B. Public Outreach Project – Ms. Palcovich contacted Mr. Howard Dicus regarding the Board’s RegAlert project, she has not yet heard back from him.
- C. Working Group for Act 230 – Bill of Rights/Impact Statement – Mr. De Luz updated the members on the working group’s current status, indicating that the last two meetings were very productive and that the group is close to presenting its final recommendations.

**VI. REPORT FROM COMMITTEES** – Nothing was discussed.

**VII. REPORT FROM CHAIR AND BOARD MEMBERS** – Chair Woods referred to an email announcement entitled “Now is the Time to Nominate Rules for Review and Reform,” which was submitted by the Office of Advocacy of the U.S. Small business Administration. She read the first paragraph that stated, “The Office of the Advocacy of the U.S. Small Business Administration is for the second year seeking nominations of federal rules in need of review and reform. The 2009 “top 10” rules nominated by small business owners, trade associations, and others will be transmitted to appropriate federal agencies for their action.” Chair Woods believes the RegAlert could be used as a tool in order to approach the partners and request that they nominate a rule that gives them their biggest business impact. She explained that she and Ms. Palcovich will put a process in place for introducing the program and utilizing the RegAlert partners. As a result, Mr. Schnitzler recommended that the Board put into place a process for introducing such a program by utilizing the RegAlert partners to nominate a rule that gives them the biggest financial impact; the Board unanimously agreed.

Chair Woods indicated that three members’ terms are expiring in June 2009 – Vice Chair Pang, and Messrs. Au and Yukimura; all responded affirmatively as to whether they were interested in pursuing another term as a board member.

**VIII. ANNOUNCEMENTS:** Chair Woods introduced Mr. Eddy Kemp, Advisor to the National Ombudsman, from Region IX Small Business Regulatory Fairness Board, who attended the board meeting to observe. Mr. Kemp was appointed to a three-year term with the federal government and indicated that it was interesting to observe this Board and noted how this Board’s work relates to the federal level. Chair Woods thanked Mr. Kemp for attending the meeting.

**IX. NEXT MEETING** – Wednesday, November 19, 2008, 250 South Hotel Street, Honolulu, HI, Conference Room 410, 10:30 a.m.

**X. ADJOURNMENT** – Chair Woods adjourned the meeting at 1:55 p.m.