

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

April 13, 2004

No. 1 CAPITOL DISTRICT BUILDING ROOM 410

CALL TO ORDER: Chair Woods called the meeting to order at 11:06 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- David Rietow
- Joyce Edwards
- Brian Zinn
- Dorvin Leis
- Robert Speers, Ph.D.
- Jeanette Chang
- Denise Walker

ABSENT MEMBERS:

- Edward MacDowell
- Phyllis Shea
- Al Inoue

STAFF:

DBEDT:

Thomas Smyth
Dori Palcovich
Shawn Pelley

Office of the Attorney General

John Chang

GUESTS:

Valerie Yin, Planner, Department of Health (DOH)
Tom Rack, Hearing Officer, DOH
Patrick Felling, Environmental Ombudsman, Environmental Health Administration, DOH
Jennifer Tosaki, Recycling Coordinator, Solid & Hazardous Waste Branch, DOH
Lane Otsu, Planner, Solid & Hazardous Waste Branch, DOH
Steven Chang, Project Manager, Solid and Hazardous Waste Branch, DOH
Tim Lyons, Executive Vice President, Hawaii Business League
Ron Gallegos, President, RCA Coalition of Care Homes
Teo Gallegos, RCA Coalition of Care Homes
Jeff Strahn, Vice President & General Manager, Maui Dive Shop
Dianne Okumura, R.N., M.P.H., Chief, Office of Health Care Assurance (DOH)
Victor Monis, Project Specialist, Alcohol and Drug Abuse Division, DOH
Virginia Jackson, Project Specialist, Alcohol and Drug Abuse Division, DOH
Violet DeCaires, Registered Nurse, Child and Adult Mental Health Division, DOH
Mary Brogan, Performance Manager, Child & Adolescent Mental Health Division, DOH
Bernie Miranda, Community Housing Services Coordinator, Adult Mental Health Division, DOH
Barbara Yoshioka, State Licensing Section Supervisor, Office of Health Care Assurance, DOH
Shirley N. Souza, R.N., Unit Supervisor, Office of Health Care Assurance, DOH
Mike Tamanaha, Program Manager, Developmental Disabilities Division, DOH
Noelani Wilcox, Crisis Services Director, Adult Mental Health Division, DOH

WORKING LUNCH AS THE MEETING PROGRESSED

II. APPROVAL OF MINUTES: Minutes of the March 9, 2004 meeting were approved as presented.

III. PUBLIC COMMENTARY: Public commentary is included with each agenda topic discussed.

IV. OLD BUSINESS:

- A.** Review and discussion of post public hearing statement from City and County of Honolulu – Liquor Commission – It was indicated that Mayor Harris has refused to sign the proposed rules for adoption. Vice Chair Rietow stated that the Commission should re-review its budget and then weigh and compare the budget with the proposed fee increases. Mr. Zinn indicated that the Commission ignored the recommendations from the industry, from the Review Board, and from

the public hearing. He also indicated that the increase in the administrative fees will have a negative impact on small business and should not be supported in their present form, and recommended that a more realistic fee increase be explored. Thus, based upon the comments received from both Vice Chair Rietow and Mr. Zinn, the Board agreed that due to the enormous impact on small business, that the Honolulu Liquor Commission be asked to perform a complete re-evaluation of the rules and re-assessment of the proposed fees. Mrs. Walker recused herself.

- B. Review and discussion of post public hearing statement on HAR Chapter 12-52.8 "Safety and Health Professional" (DLIR) – Ms. Walker stated that the proposed rules relate to business licensing which would increase the number of safety professionals; however, the business impact would be positive. The Board unanimously agreed to support these post public hearing rules for adoption.
- C. Review and discussion of post public hearing statement on HAR Chapter 12-50, 12-52.1, 12-119.2, etc., "General, Legal, and Administrative Provisions" (DLIR) – As the impact on small business is positive, the Board unanimously agreed to support adoption of these rules.
- D. Follow-up and discussion of HAR Chapter 13-100.1, "Adult Residential Care Homes" (DOH) – Mr. Lyons, Executive Vice President, Hawaii Business League, brought forth several concerns with the rules as they currently exist, and proposed changes to the following items: 1) maximum time period for processing a complete license application; 2) labeling of medications; 3) residents' and primary caregivers' rights and responsibilities; 4) interpreter services; and 5) substitution of caregivers, and devising better definitions for "ill treatment, abuse, gross and repeated negligence and exploitation." Chair Woods stated that these and other recommendations by the Board (regarding emergency procedures) are very important elements to the rules. It was proposed that a memorandum be sent to DOH recommending these changes and requesting they be incorporated into the rules prior to the Board supporting them for adoption. The Board unanimously agreed.
- E. Report from Lynne Woods on transportation issues: limousines and taxicabs – Chair Woods reported on the issues that have been provided to the Board on several occasions by Ms. Dale Evans, President of Charley's Taxi. Chair Woods explained that based on her experience with the "dome versus no dome" dilemma in Maui, as well as Ms. Evan's desire to establish a new taxi service to transport the physically impaired, that she was reluctant to entertain Ms. Evan's concerns on behalf of the Board. Dr. Speers stated that because the primary objective of the Board is to review new and modified administrative rules, the issues presented by Ms. Evans will bring the Board outside its sphere of concentration. It was recommended that because the issues brought to the Board by Ms. Evans are not within the Board's purview, the Board agreed that it is unable to assist Ms. Evans. However, if Ms. Evans provides the Board with specific recommendations within the Board's purview, the Board will place these items on its agenda for consideration. Further it was recommended that the City and County of Honolulu pursue getting vans to drop people off at certain destinations. The Board unanimously supported the recommendations.
- F. Update on "Wai'Opae Tidepools Marine Life Conservation District" – Mr. Zinn expressed concern with DLNR's decision not to reassess the administrative rules that caused Planet Ocean Watersports to close its doors. Vice Chair Rietow stated that the Review Board never received a response from DLNR to the Board's November 10, 2003 request to allow commercial activity at the Wai'Opae Tidepools Marine Life Conservation District. It was recommended that the Board send a second memorandum to DLNR requesting that the agency respond to the Board's initial request, and that DLNR specifically address the reason(s) for allowing commercial activity in other conservation districts but not Wai'Opae Tidepools. The Board unanimously agreed.
- G. Update of Legislative Items – Including "Small Business Bill of Rights," and Correspondence, dated January 5, 2004, from Congressman Ed Case regarding a "Bill to require federal prime contractors to promptly pay their sub-contractors" - Mr. Smyth updated the Board on several small business-related bills. He also distributed and discussed the Hawaii Chamber of Commerce's "2003 Business Retention and Expansion Survey Results" report. He indicated that the Small Business Bill of Rights was not heard by the Ways and Means Committee, so at this point in time, because it has missed the deadlines, the Bill will not be going forward. Chair

Woods indicated that the Board would review the Bill of Rights again next year, prior to the 2005 legislative session, and determine what specifically has prevented it from going forward. Mr. Smyth mentioned that DBEDT has currently been working on the liability insurance and procurement sections of the Bill.

The Board reviewed and discussed the correspondence from congressman Ed Case. No decisions or comments were made.

- H. Voting of New Board Member(s) / Discussion of Board Member Agency Assignments – Vice Chair Rietow stated that Ms. Leslie Hill owns a retail nursery and a number of farms in Hilo, and that she would be a good candidate and participant on the Review Board. The Board voted to submit Ms. Hill's name and background to Governor Lingle for consideration as a nominee to the Board.
- I. Discussion of proceeding with existing administrative rule review – Deferred until May.
- J. Review of Administrative Rules by DBEDT in fiscal year 2004, to date – Deferred until May.

V. NEW BUSINESS:

- A. Review and discussion of proposed HAR Chapter 11-98.1 "Special Treatment Facilities" (DOH) – Ms. Dianne Okumura, Chief, Office of Health Care Assurance (DOH) explained that the Office of Health Care Assurance administers licensing for various health care facilities throughout the State. Accompanying Ms. Okumura were representatives from other divisions that are also involved in the statewide licensing process. Several introduced themselves and discussed the types of clients and services offered by each division. Ms. Okumura indicated that the proposed rules are intended to provide consistency and clear requirements throughout the State, and are intended to establish sufficient community resources to meet the needs of the clients, and to move clients out of institutional settings into community-based settings. Ms. Okumura indicated that the rules also related to Chapter 92, which is a therapeutic living program that would be a step down from the special treatment facilities. Questions and answers ensued. It was recommended that a letter be mailed to small business providers, requesting a response on the impact of the proposed rules on their businesses. The responses will then be reviewed by the Board at the next meeting. The Board unanimously agreed.
- B. Review and discussion of proposed HAR Chapter 11-282, "Deposit Beverage Container Recycling" (DOH) – Mr. Steven Chang, Project Manager, Solid and Hazardous Waste Branch, DOH, discussed the requirements and procedures that consumers and businesses would be required to perform; the various exemptions by which businesses would pass on their cost to the consumers; the process of becoming a certified recycling vendor; and the reimbursement process. A series of questions and answers ensued, including Ms. Walker inquiring about the status of the requests made at the December 2003 board meeting. Mr. Tim Lyons, who represents Anheuser-Busch regarding these rules, and also works closely with a coalition of business groups including the Hawaii Food Manufacturers Association, the Food Industry Association, and the Retail Merchants Association, discussed industry concerns relating to specific sections of the proposed rules, including dealers who sell products, redemption sites, tax clearance requirements, and submission of new applications. Upon review and discussion of the proposed rules, the Board unanimously agreed that the rules should proceed to public hearing.

Mr. Chang requested the Board review the proposed amended rules, HAR Chapter 11-58.1, "Solid Waste Management." The Board voted to add the rules to the agenda; a two-thirds vote was not attained, thus, the rules will be reviewed at the next board meeting.

- C. Review and discussion of HAR Chapter 11-1, "Rules of Practice and Procedure" (DOH) – Mr. Tom Rack, Hearing Officer, DOH, explained that the current rules are 42 years old. While there had not been many contested case hearings, in the past decade, the number of hearings has increased substantially. This has prompted the need to modify the rules to address any existing "gaps." The rules are intended to bring procedures up-to-date and set forth guidelines for uniform, timely and efficient handling of administrative hearings. The amendments address contested case proceedings, public hearings, and permit, license and processing; these changes

will affect individuals as well as small and large businesses. There is also a new section in the proposed rule, Subchapter 5, entitled "Field Citations." The rules do not impose fees on individuals or companies, as all fines, penalties and fees would be generated by the existing rules that the department enforces. Mr. Rack estimated that there are approximately 12 to 25 contested case hearings per year. Ms. Walker requested that the rules include a penalty waiver if a situation is remedied within 30 days. Recommendations on the proposed amendments will be deferred until after the small business impact statement has been revised and updated to include additional comments from the impacted businesses.

- D. Review and discussion of proposed HAR Chapter 17-653 and 17-676, "Relating to the Income Maintenance Programs" (DHS) – Dr. Speers reported that the rules did not have an impact on small business and recommended that the rules be supported, which the Board agreed to do.
- E. Discussion of scheduling the board meetings (includes timing of meetings as well as bi-monthly meetings) – Members agreed to begin monthly board meetings at 10:30 a.m., rather than 11:00 a.m., due to the higher volume of information needed to be reviewed by the Board. It was also agreed that the time permitted for each presentation will be limited.

VI. REPORTS FROM COMMITTEES – Nothing was reported.

VII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES

1. HAR Chapter 13-31, "Molokini Shoal Marine Life Conservation District – Maui" (DLNR) – Mr. Jeff Strahn, Vice Present & General Manager of Maui Dive Shop distributed a paper entitled "DLNR's Impacts on Maui's Small Business," which outlines testimony presented to the Maui Governor's Advisory Committee, by Chairperson Peter Young of the Board of Land and Natural Resources. It addresses specific issues relating to HAR Chapter 13-31, "Molokini Shoal Marine Life Conservation District - Maui," and HAR Chapter 13-221, "Unencumbered Public Lands." Mr. Strahn explained that Chapter 13-31 allows for statewide commercial boating day-use mooring permits, which are two-year permits that will renew on December 15, 2005. He is concerned that DLNR will not automatically renew these permits, but instead, will institute a public process to include an "amenity permit." He stated that people go to Molokini because it is a "unique experience" with exceptional water clarity that is protected by marine and bird sanctuaries. He further explained that DLNR's proposal would significantly impact businesses because of the risk of losing their Molokini use permit.

Regarding Chapter 13-221, Mr. Strahn stated that the proposed rules mandate commercial activity permits to be "site and use" specific, thus, not allowing commercial operators exclusive rights to use specific areas. The Board will follow-up with Mr. Strahn regarding his concerns.

Mr. Zinn deferred HAR Chapter 13-31, "Molokini Shoal Marine Life Conservation District – Maui" until next month.

2. HAR Chapter 4-16, "Cattle, Sheep and Goats" (DOA) – Vice Chair Rietow supported the rules, indicating that although they reflect "old" regulations, they are general enough so they should remain as they are.
3. HAR Chapter 3-70-10, "Staffing and Other charges, Cost of Moving Stands" (DAGS) – Mr. Leis supported the rules, indicating there was no negative small business impact.
4. HAR Chapter 3-70-11, "Rental Charges: Payment" (DAGS) – Mr. Leis supported the rules, indicating there was no negative small business impact.
5. HAR Chapter 3-70-15, "Insurance, Indemnification" (DAGS) – Mr. Leis supported the rules, indicating there was no negative small business impact.
6. HAR Chapter 3-70-18.01, "Sale or Distribution of Articles" (DAGS) - Mr. Leis supported the rules, indicating there was no negative small business impact.

VIII. REPORTS FROM THE CHAIR

1. Discussion of Potential Workshops for State Agencies regarding Chapter 201M, Administrative Rule Review, Small Business Impact Statement, etc. – Chair Woods and Ms. Palcovich will begin working on training workshops that will focus on Chapter 201M, the rule review process, and preparing small business impact statements.
2. Discussion of updating Administrative Directive 99-02 – Chair Woods indicated that she and Ms. Palcovich would also work with the Governor’s Policy Office on updating the current Administrative Directive 99-02.

IX. REPORTS AND UPDATES FROM BOARD MEMBERS - Nothing was reported.

X. POLICIES AND PROCEDURES: Chair Woods and Ms. Palcovich met with Ms. Donna Woo, First Assistant to the Ombudsman of the Office of the Ombudsman, who suggested that standard operating guidelines and procedures be established for the Board. Ms. Palcovich has drafted an outline; Chair Woods will finalize it, and provide it to the members.

Dr. Speers announced that he would not be staying on with the Board after June 30, 2004. He suggested that upon leaving the Board, each member perform an “exit interview” whereby they would discuss their observations and make recommendations to the Board.

XI. ANNOUNCEMENTS: Nothing was reported.

XII. NEXT MEETING: Tuesday, May 11, 2004 at 10:30 a.m.; No. 1 Capitol District Building, Room 410.

XIII. ADJOURNMENT: Chair Woods adjourned the meeting at 2:38 p.m.