

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

August 10, 2004

No. 1 CAPITOL DISTRICT BUILDING ROOM 410

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:36 a.m., with a quorum present.

#### MEMBERS PRESENT:

- Lynne Woods
- Brian Zinn
- Joyce Edwards
- Dorvin Leis
- Robert Speers, Ph.D.
- Phyllis Shea
- Jeanette Chang

#### ABSENT MEMBERS:

Edward MacDowell

#### STAFF:

DBEDT

Dori Palcovich

Office of the Attorney General

John Chang

#### GUESTS:

Patrick Cunningham, Owner, Hawaii Boat Charters  
Mark Schoeffler, North American Coordinator, Marine Aquarium Council  
Michael Hull, U.S. Small Business Advocate, U.S. Small Business Administration  
Elienne Yoshida, Research Statistician, Department of Labor and Industrial Relations (DLIR)  
Dick Botti, Representative, Hawaii Medical Association  
Bill Wong, Program Manager, Safe Drinking Water Branch, Department of Health (DOH)  
Teri Leicher, Owner/Partner, Hawaiian Islands Recreational SCUBA Association  
Scott Atkinson, Hawaii Director, Community Conservatory Network  
Katherine Hendricks, Environmental Health Specialist, Clean Air Branch, DOH  
Nolan Hirai, Environmental Engineer, Clean Air Branch, DOH  
Bev Harbin, President, Small Business Advocacy Center  
Marianne Dymond, Executive Director, Kaiser on the Job, Kaiser Permanente, and Hawaii Medical Association  
William J. Walsh, Ph.D., Division of Aquatic Resources, Department of Land and Natural Resources (DLNR)  
Captain Richard Prohoroff  
Paul Warren, Owner, West Hawaii Fish Council – Hualalai Water  
Debbie Shimizu, Executive Director, National Association of Social Workers  
Francis Oishi, Program Manager, Aquatic Resources, DLNR  
Irvette Hanley, Program Specialist, Med-QUEST Division, Department of Human Services (DHS)  
George Handgis, President, Gentry's Kona Marina  
Michael Yee, Member Manger, Enviroservices  
James Hardway, Special Assistant, DLIR  
Kim Hum, Director, Marine Programs, Nature Conservancy

#### WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the July 13, 2004 meeting were approved as presented.

III. **PRESENTATION:** Michael Hull, Regional Advocate, Office of Advocacy, U.S. Small Business Administration, explained the function of the Office of Advocacy and how it assists small business at the federal level. His office is available to all the states should they need any assistance.

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

#### IV. OLD BUSINESS:

- A. Review and discussion of proposed HAR Chapter 17-1737, Subtitle 12, Med-QUEST, “Scope and Contents of the Fee for Service Medical Assistance Program” (DHS) – Ms. Irvette Hanley, Program Specialist, Med-QUEST Division, DHS, discussed the number of licensed clinical social workers and the number of claims that have been submitted. Ms. Debbie Shimizu, Executive Director, NASW, stated that the new law that went into effect July 1, 2004 differentiates between licensed social workers and clinical licensed social workers, explaining that the latter performs psychotherapy and clinical diagnosis while the former does not. Of the 1,000 NASW members, 200 are licensed clinical social workers. Chair Woods assessed the business impact by stating that there appears to be both positive impact for the independent social workers and potential negative impact for some small businesses. Dr. Speers pointed out that there also appears to be some confusion as to the actual ramifications of these rules in terms of the fundamental processing of bills. Dr. Speers recommended that the rules proceed to public hearing in order to hear testimony from impacted businesses.
- B. Review and discussion of proposed HAR Chapter 12-15, “Workers’ Compensation Medical Fee Schedule” (DLIR) – Marianne Dymond, representing Hawaii Medical Association (HMA), presented to the Board an alternative strategy proposal by outlining specific worker’s compensation issues such as quality care, access to care, reimbursement, and the impact of the total cost of claims. Mr. Richard Botti, also representing HMA, indicated that the change in workers’ compensation has to be taken in steps. He further stated that only 30 codes were established in order to start the process. Ms. Marion Speers, representing both small businesses and as a provider of care, supports the rule amendments from both levels, and believes there will be various issues raised at the public hearing. Mr. Hardway, Special Assistant to the Director of DLIR, explained the history of the rules and the time processes for when the fee schedules are amended. Ms. Teri Leicher, who owns Hawaiian Islands Recreational SCUBA Association, expressed to the Board that she employs 36 people, and annually pays Kaiser Insurance \$88,000 and over \$40,000 for workers’ compensation insurance. She suggested that it may be time to “think outside the box” and re-categorize workers’ compensation to decide what works and what doesn’t. Upon a series of questions and answers, Vice Chair Zinn recommended that the rules proceed to public hearing; the Board unanimously agreed.
- C. Review and discussion of proposed HAR Chapter 11-98.1, “Special Treatment Facilities” (DOH) – Dr. Speers indicated that he will prepare a letter to the Governor with an economic impact analysis based on the individual summary reports received from the impacted businesses of these rules. He distributed a 58-page report outlining the focus group input and identified each section of the rule by explaining the modifications that are needed. He specifically outlined eight areas that the proposed rules would cause actual increases in costs to small businesses. While subjective to a degree, the costs include the expense of installing sprinkler systems and educational costs for professional staff. Upon much discussion, Dr. Speers recommended that the issues brought forth be addressed to the Governor, and if DOH does not approve the Board’s recommendations, it was advised that the Board not support the rules. Chair Woods recommended that a memorandum be sent to Governor Lingle with a copy to DOH with the recommended changes; Dr. Speers will draft the letter for Chair Woods’ approval and signature. The Board unanimously agreed.
- D. Follow-up on “Conflicts of Interest” – Dr. Speers expressed the significance of this topic, which Chair Woods concurred and recommended that someone from the Hawaii State Ethics Commission be extended an invitation to discuss this issue.
- E. Report and discussion on legal requirements for public hearings on administrative rules, 91-3, HRS – Vice Chair Zinn reviewed the requirements of both 91-3 and 91-2.6, indicating that while the interpretation of Section 91-2.6 is unclear, it states that the Lieutenant Governor’s office shall post all proposed rule changes on its website. Chair Woods recommended an invitation be extended to the Lieutenant Governor or a representative from his office to discuss these issues.
- F. Voting of new board members(s) – Mr. Michael Yee, owner of Enviroservices and Training Center, LLC, discussed his personal and business background, indicating that his firm performs environmental consulting, investigating, engineering, scientific work, training, and enforcement.

Board members reviewed the resumes of other Board candidates. The Board voted and agreed to re-state its position on the nomination of Leslie Hill, and also recommended Mr. Terry O'Halleran and Mr. Michael Yee be submitted to Governor Lingle for nomination to the Board.

#### **V. NEW BUSINESS:**

- A. Review and discussion of proposed HAR Chapter 13-37, "Old Kona Airport Marine Life Conservation, Hawaii," Chapter 13-58, "Kona Coast, Hawaii, and Chapter 13-60.3, "West Hawaii Regional Fisheries Management Area, Hawaii" (DLNR) – Dr. William Walsh, Division of Aquatic Resources, DLNR, presented an overview and background on the rule amendments and the justification and reasons behind each rule change. His discussion included harvesting of fish and responsibilities of the users of the specific areas. Several small business owners from the industry testified in support of the amended rules, with a series of questions and answers ensuing. Upon questioning by Vice Chair Zinn, Mr. Oishi, Program Manager, Division of Aquatic Resources, DLNR, indicated that aquarium fish collectors are currently required to be licensed and that there are no controls or regulations for gill netters. Dr. Walsh indicated that there have been approximately 20 community meetings addressing the proposed rules with some minor opposition, which was taken into consideration when drafting the rules. Vice Chair Zinn was concerned that there were no aquarium fish collectors in attendance to voice their opinions. Thus, he recommended that the proposed rules be approved provided that DLNR advise all those affected businesses of the upcoming public hearing by mail, particularly businesses unable to attend the board meeting, such as collectors of aquarium fish. The Board unanimously agreed.
- B. Review and discussion of proposed HAR Chapter 11-65, "Environmental State Revolving Funds" (DOH) – Mr. Bill Wong, Program Manager, Safe Drinking Water Branch, DOH, discussed that in 1974, the federal government established rules requiring drinking water regulations. In 1996, congress instituted a new program, State Revolving Fund, whereby money is lent to water purveyors to improve infrastructure and meet the water standards; the program offers a lower interest rate than, for example, a bank offers. Overall, the proposed rule provision lowers the current rate from 3.25% to 1.0%. Chair Woods recommended that the rules proceed to public hearing; the Board unanimously agreed.

**VI. REPORTS FROM COMMITTEES** – Nothing was reported.

#### **VII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES:**

1. HAR Chapter 19-42, "Vessel and Harbor Controls" (DOT) – Vice Chair Zinn reported that he spoke with Ms. Linden Joesting, Deputy Director, and Mr. Glenn Okimoto, Administrator, Harbors Division, DOT, who indicated that the rules are contingent upon DOT establishing a security plan for the harbors. It was determined that while the rules need to be re-reviewed, the agency is not very far in the process. Because of this, Vice Chair Zinn recommended that the rules be left alone until such time that they have been modified.
2. HAR Chapter 4-60, "Milk Control Rules" (DOA) – Vice Chair Zinn discussed that he and Ms. Palcovich met with representatives from DOA who expressed that the dairy industry is in agreement that the rules are obsolete and no longer apply to current standards. Letters were sent to all the Hawaii milk producers requesting input on the rules, and Vice Chair Zinn spoke to agricultural students and agricultural professors. In anticipation of receiving input from the milk processors, Vice Chair Zinn recommended the review of these rules be deferred until the September board meeting.
3. HAR Chapter 11-59, "Ambient Air Quality Standards" (DOH) – Vice Chair Zinn indicated that the concerns of past Board member David Rietow relate to the enforcement of violations on the Big Island. The violation process was discussed by Ms. Katherine Hendricks, Environmental Health Specialist, Clean Air Branch, DOH, who indicated that warnings of violation are issued before penalties are assessed. No recommendations were made by the Board.

**VIII. REPORT FROM THE CHAIR** – Chair Woods indicated that the process from the Governor's office for clerical help is moving along.

**IX. REPORT AND UPDATE FROM BOARD MEMBERS:** Nothing was reported.

**X. POLICIES AND PROCEDURES:** Nothing was reported.

**XI. ANNOUNCEMENTS:** Nothing was reported.

**XII. NEXT MEETING:** Tuesday, September 7, 2004 at 10:30 a.m.; No. 1 Capitol District Building, Room 410.

**XIII. ADJOURNMENT:** Chair Woods adjourned the meeting at 2:32 p.m.