

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

July 13, 2004

No. 1 CAPITOL DISTRICT BUILDING ROOM 410

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

MEMBERS PRESENT:

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

ABSENT MEMBERS:

Jeanette Chang

STAFF:

DBEDT:

Dori Palcovich
Thomas Smyth

Office of the Attorney General

John Chang

GUESTS: Eric Honma, Director, County of Kauai, Liquor Control Commission
Alan Matsunami, Program Specialist, Med-QUEST Division, Department of Human Services (DHS)
Cynthia J. Goto, M.D., American College of Obstetrics and Gynecology, Hawaii Section
Mavis Masaki, Planner, Hawaii Community Development Corporation of Hawaii (HCDCH)
Lili Funakoshi, Hearings Officer, HCDCH
Lee Ann Teshima, Executive Officer, Board of Pharmacy, Department of Commerce and Consumer Affairs (DCCA)
Prabha Natarajan, Reporter, *Pacific Business News*
Linden Joesting, Deputy Director, Department of Transportation (DOT)
John Sweet, Marketing Manager, Sausk Brothers
Lawrence Nakano, Management Analyst, DOT
James P. Hardway, Assistant to the Director, Department of Labor and Industrial Affairs (DLIR)
Randall Kamiya, Milk Specialist, Department of Agriculture (DOA)
Jeri Kahana, Brand Manager, DOA
Patrick Felling, Small Business Ombudsman, Department of Health (DOH)
Priscilla Ligh, Environmental Engineer, Clean Air Branch, DOH
Nolan Hirai, Environmental Engineer, Clean Air Branch, DOH

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the June 8, 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 proposed rules and regulations of the Liquor Control Commission of the County of Kauai – Mr. Eric Honma, Director, County of Kauai Liquor Commission, discussed the proposed rule changes, explaining that the economic impact of the additional fee that licensees will pay would be minimal as the increase is estimated at .0095. Oahu, Hawaii and Maui Liquor Control Commissions have all adopted the same formula, which allows for statewide uniformity, particularly for the chain stores. Mr. MacDowell spoke with a number of the impacted small businesses, indicating that they were pleased with the amendments as well as the manner in which the inspectors have dealt with them. Mr. MacDowell recommended that the rules be supported and proceed to public hearing. The Board unanimously concurred.

- B. 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) – Mr. Alan Matsunami, Program Specialist, Med-QUEST Division, DHS, informed the members that the amended rules represent an enactment in the State law that changed the requirement of “licensed social workers” so that there is now a new designation, “licensed clinical social worker.” Dr. Speers questioned the specific impact the rules have on small business, and Mr. Zinn questioned the accuracy of the small business impact statement. Chair Woods recommended that the rules be deferred until the August Board meeting when a representative in this field will be extended an invitation to discuss the impact of the rules. It was also recommended that the small business impact statement be rewritten. The Board unanimously agreed.
- C. Review and discussion of proposed HAR Chapter 11-98.1, “Special Treatment Facilities” (DOH) – Dr. Speers discussed the individual economic impact analyses received from the impacted small businesses. With DBEDT’s assistance, Dr. Speers will compile a letter to the Governor along with an aggregate synopsis of the economic impact, which he will present at the next meeting. Chair Woods deferred the rules until the August Board meeting.
- D. Review of Administrative Rules by DBEDT in fiscal year 2005, to date – Members reviewed the listing of rules reviewed; no action was taken.

V. NEW BUSINESS:

- A. Review and discussion of proposed HAR Chapter 17-2021, “Grievance Procedure” (DHS) – Ms. Mavis Masaki, Administrative Rules Planner, HCDCH, indicated that the proposed rules are conditioned upon the state receiving federal funds. She explained that, pursuant to federal regulations, federal and state public housing residents are able to bring a grievance against the HCDCH. Substantive changes include language in the applicable services so that it applies to residents of public housing projects, which conform to the rules to federal anti-drug and alcohol abuse requirements. Other changes will amend the procedures for hearing officers and panels, include an expedited grievance procedure for certain emergency situations, and renumber the rules from Title 15 to Title 17, in accordance with the transfer from DBEDT to DHS in July 2003. Dr. Speers indicated that he has no objections to the rules, as there appears to be no business impact, and recommended that the Board support the rules in order to proceed to public hearing; the Board unanimously agreed.
- B. Review and discussion of proposed HAR Chapter 4-60, “Milk Control Rules” (DOA) – Mr. Randall Kamiya, Milk Specialist, DOA, explained that dairy farmers asked for a milk price increase; thereby prompting the rule change. Mr. Zinn concurred that the local milk producers did, in fact, need the price increase. He recommended that the Board have no objections to the rule amendments, as the increase is long past due; the Board unanimously agreed.
- C. Review and discussion of proposed HAR Chapter 19-44, “Wharfage Rates” (DOT) – Ms. Linden Joesting, Deputy Director, DOT, explained the purpose of the amended rules was to move shipping businesses to Kalaeloa Barbers Point Harbor due to the congested and limited space at Honolulu Harbor. The rules, which provide economic incentives to businesses, reflect two new categories, “overseas general merchandise” and “lumber” that were not in “unit loads” before. Mr. John Sweet, Marketing Manager, Sausk Brothers, joined Ms. Joesting in describing the importance of the rules. When asked by Mr. Zinn how the small businesses would be notified of the public hearing, Ms. Joesting indicated that the businesses would be mailed a notification. Mr. Zinn complimented the agency on the comprehensive and organized manner in which the small business impact statement was prepared. Mr. Zinn recommended that the rules be supported, subject to the impacted parties being notified by mail of the public hearing; and after public hearing, that the Board be provided with public testimony. The Board unanimously agreed.
- D. Review and discussion of proposed HAR Chapter 16-95, “Pharmacists and Pharmacies” (DCCA) – Ms. Lee Ann Teshima, Executive Officer, Board of Pharmacy, DCCA, discussed the proposed rules, which relate to emergency contraception. Questions and answers ensued. Dr. Speers indicated that he did not see a significant small business impact and therefore was not opposed to the amendments. He recommended that the rules be supported, and requested that the Board be provided with testimony after the public hearing process. The Board unanimously concurred.

- E. Review and discussion of proposed HAR Chapter 17-1601, "Confidentiality" (DHS) – Dr. Speers indicated that it would be helpful to hear from affected businesses, as these rules could potentially have impact on providers of health and human services. He suggested that the Board invite a representative from DHS as well as those parties impacted to discuss the proposed rules. Deferred until the August Board meeting.
- F. Review and discussion of proposed HAR Chapter 12-15, "Workers' Compensation Medical Fee Schedule" (DLIR) – Mr. James Hardway, Assistant to the Director, DLIR, explained that there are 16 proposed changes to the medical fee schedule. Although mostly housekeeping measures, he provided a summary of the changes, explaining the current rules versus the proposed rules. Dr. Speers stated that the rules would have significant small business impact, and that it would be helpful to solicit input from affected parties in the industry. The Board unanimously agreed. The Board voted that an investigative subcommittee be formed to consist of Chair Woods and Dr. Speers to work with DLIR on these particular rules as well as upcoming rules. It was recommended that the rules be deferred until the August Board meeting.
- G. Report and discussion on legal requirements for public hearings on Administrative Rules – Deputy Attorney General Chang indicated that the procedure for adopting rules through public hearings is covered in Chapter 91-3, HRS, which essentially only requires a 30-day notice. He further stated that there are no rules, per se, that cover an actual public hearing. Mr. Smyth also discussed the minimum requirements and processes for public hearings, and suggested that the best way to implement changes to this process is to modify the existing Administrative Directive 99-02 (AD 99-02). Chair Woods stated that she would research the AD 99-02, and recommended that this discussion item be deferred until the next Board meeting, at which time HRS 91-3 will have been provided to the members for review to determine what changes, if any, they would like to recommend.
- H. Voting of Chairperson, Vice Chairperson, and new Board Member(s) – Chair Woods indicated that her term is up as Chair and solicited nominations for the Chairperson and Vice Chairperson positions. Mr. Zinn nominated Chair Woods, which she accepted; no other nominations for Chair were offered. Ms. Shea recommended that Chair Woods be re-nominated as Chairperson by acclamation; the Board unanimously agreed. Chair Woods thanked the members for their hard work and stated that she enjoyed being the Chair over the past year. She liked the changes that have been made, and looked forward to a great year with more changes. She particularly appreciated Dr. Speers' involvement who has had a huge workload with DOH and was very strong legislatively. Mr. MacDowell nominated Mr. Zinn as Vice Chair, which he accepted; no other nominations for Vice Chair were offered. Ms. Shea recommended that Mr. Zinn be nominated as Vice Chair by acclamation; the Board unanimously agreed. Ms. Edwards was approved as Second Vice Chair.

VI. REPORTS FROM COMMITTEES – Nothing was reported.

VII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES:

- 1. HAR Chapter 19-41, "Rules Relating to General Provision" (DOT) – Mr. Zinn explained the rules and how they relate to Homeland Security and harbor issues; he did not see a current impact on business. He recommended that the Board not suggest any changes to the rules at this time but wait until such time that the agency modifies them. The Board unanimously agreed.
- I. HAR Chapter 6-60, "Milk Control Rules" (DOA) – Mr. Zinn suggested that input be solicited from the Hawaii milk producers as well as students enrolled at the University of Hawaii, and teachers and professors of agriculture. Mr. Kamiya concurred with Mr. Zinn that the rules need to be re-evaluated to determine if they allow the dairy industry to function in this day and age, as the Milk Act was enacted in 1967. Mr. Kamiya further noted that the rules do not address the issue of imported milk, which it should. The Board voted that an investigative subcommittee be formed to consist of Chair Woods, Mr. Zinn and Mr. Kamiya to review the rules. It was recommended that the rules be deferred until the August Board meeting.

2. HAR Chapter 11-59, "Ambient Air Quality Standards" (DOH) – The review of these rules is largely precipitated by Vice Chair Rietow reporting at the last Board meeting that DOH's Clean Air Branch levied hefty fines against a number of small businesses on the Big Island. Mr. Patrick Felling, Small Business Ombudsman, Ms. Priscilla Ligh, Environmental Engineer, and Mr. Nolan Hirai, Supervisor, Environmental Engineer Department, Clean Air Branch, DOH, discussed the inspection process and levying of fines to businesses that are not in compliance. Mr. Felling explained that the inspectors for each particular office have the discretion to provide the company with an "informal" notice of violation, and if businesses do not respond appropriately, the owners will receive a notice of violation and a fine, which is accompanied by a 30-day appeal process, the latter of which is currently in the rules and specifically geared toward small business. Mr. Felling stated that in most cases businesses would get a "second chance." Mr. Zinn recommended that the Board speak with Vice Chair Rietow to find out exactly what his concerns were. In addition, Chair Woods also suggested that the Board research the initial "informal" notice of violation to decide whether it should be incorporated into the rules rather than made discretionary. It was recommended that these rules be deferred until the August Board meeting.
3. HAR Chapter 11-60.1, "Air Pollution Control" (DOH) / Memorandum to Chiyome L. Fukino, M.D., dated June 13, 2003 – Ms. Palcovich indicated that these rules were recommended by Vice Chair Rietow at the last Board meeting to be reviewed as they are also handled by the Clean Air Branch. The rules have not been modified since the Board reviewed them last year, and therefore Chair Woods recommended that the Board support the rules as presented; the Board concurred.

VIII. REPORT FROM THE CHAIR – A motion was made by Chair Woods, and the Board unanimously approved to go into Executive Session under the provisions of Section 92-5, Exceptions, Subsection (a), Paragraph (3). The Board went into Executive Session at 12:30 p.m. The Executive Session ended at 12:40 p.m.

Chair Woods reported that the Board's recent memorandum to Governor Lingle regarding DOH's proposed administrative rules Chapter 11-100.1, "Adult Residential Care Homes" was discussed with Ms. Linda Smith, Senior Policy Advisor to Governor Lingle. Ms. Smith understands the concerns, and she will call a meeting with DOH to try to resolve those concerns; Ms. Palcovich will also attend the meeting. Chair Woods discussed with Ms. Smith the lack of appointments to the Board, and although there was not a clear reason as to why the Governor's office hadn't approved any of the nominations, Ms. Smith is aware that the Board may be unable to meet quorum each month. It was expressed to Ms. Smith that if the Governor's office does not agree to a Board nomination, that the Board would like to be notified as to the reasons why.

Chair Woods discussed the outcome of a meeting that was held with the Mr. Peter Young, Chair, Board of Land and Natural Resources, Mr. Zinn, Ms. Palcovich and herself. Mr. Young is performing a thorough review of the use of public lands and how businesses operate in those areas. He indicated that it is important for the business community to be treated fairly regarding the renewal of permits. Chair Woods told Mr. Young that she and Ms. Palcovich will be attending one of DLNR's staff meetings in the near future to discuss the rule making process and Chapter 201M.

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

X. POLICIES AND PROCEDURES: Chair Woods will review the policy and procedures outline as quickly as possible as they are particularly important now.

XI. ANNOUNCEMENTS: Chair Woods explained that some of the Board expenses are not reimbursed by the State.

Mr. Smyth announced and discussed topics relating to the Office of Management and Budget, Office of Information and Regulatory Affairs, Regulatory Flexibility Acts that have been enacted in at least 8 different states, and Worker's Compensation legislation.

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

XIII. ADJOURNMENT: Chair Woods adjourned the meeting at 1:07 p.m.