

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

August 23, 2006

No. 1 Capitol District Building 250 South Hotel Street – Conference 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
- Sharon L. Pang
- Michael Yee
- Dorvin Leis
- Donald Dymond
- Charles Au
- Richard Schnitzler

ABSENT MEMBERS:

- George Handgis

STAFF: DBEDT Office of the Attorney General
Dori Palcovich Margaret Ahn
Leslie Kawamoto

GUESTS:

Scott Cunningham, Honolulu Harbor Master, Harbors Division, Department of Transportation (DOT)
Lynette Honbo, Medical Director, Med-Quest Division, Department of Health (DOH)
Dianne Okumura, Chief, Office of Health Care Assurance, DOH
Esther Pascual, President, United Group of Home Operations
Charles Morita, President, Taximeter Radios & Services, LLC
Susan Morita, Taximeter Radios & Services, LLC
Coral Andrews, Vice President, Healthcare Association
William Pierpont, Chief, Measurement Standards Branch, Quality Assurance Division, Department of Agriculture (DOA)
Kathy Yokouchi, Executive Officer, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs (DCCA)
Noe Noe Tom, Division Administrator, Professional and Vocational Licensing Division, DCCA
Bob Ogawa, President, Hawaii Long Term Care Association
Ron Boyer, Policy Analyst, Governor's Office
Nenita Andrade-Jose, Second Vice President, Alliance of Residential Care Administrators
Kurt Kawafuchi, Director, Department of Taxation (DoTax)
Johnnel Nakamura, Rules Officer, DoTax
Hayley Callahan, Rules Specialist, DoTax
Dr. Tu Duck Pham, Research & Planning Officer, Tax Research and Planning Office, DoTax
Titan Liem, Special Assistant to Tax Director, DoTax
Trina Pascual, Caregiver, Alliance of Residential Care Administrators
Mediatory Decal, Caregiver, Alliance of Residential Care Administrators
Tim Lyons, President, The Legislative Center
Greg Kurisaki, Attorney, Alliance of Residential Care Administrators
Tessie Ferraro, Caregiver, Alliance of Residential Care Administrators
Maria Betty Rodriguez, Caregiver, Alliance of Residential Care Administrators
Blandina Retetosa, Caregiver, Alliance of Residential Care Administrators
Teofista Gallegos, Caregiver, Alliance of Residential Care Administrators
Ron Gallegos, Vice President, Alliance of Residential Care Administrators
Lilia Fajotino, Caregiver, Alliance of Residential Care Administrators
Myriam Tabaniag, CHO, Alliance of Residential Care Administrators
David Sakamoto, Administrator, State Health Planning and Development Agency, DOH
David Young, Communications Officer, Department of Business, Economic Development & Tourism (DBEDT)

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the July 19, 2006 Board meeting were approved as presented.

III. **PUBLIC TESTIMONY:** Public testimony is included with each agenda topic discussed.

IV. **OLD BUSINESS**

- A. Review and discussion of post public hearing statement, HAR Chapter 19-41 “Commercial Harbors and Tariff” (DOT) – Mr. Scott Cunningham, Honolulu Harbor Master at DOT’s Harbors Division, stated that when the public hearing was held, only one written testimony received which was in support of the proposed amendments. The rule amendments include redefining the definition of “island agricultural products” to include livestock, as well as reducing the wharfage charge for livestock shipped in containers. Mr. Schnitzler recommended that the proposed post public hearing statements proceed to the Governor for adoption; the Board unanimously agreed.
- B. Re-review and discussion of proposed draft rules of Chapter 11-100.1, “Adult Residential Care Homes” (DOH) – Chair Woods explained that this Board has been reviewing these proposed rules for several years. Mr. Gallegos, Vice President of Alliance of Residential Care Homes, concurred with Chair Woods, stating that the rules have been reviewed, analyzed and discussed with the Governor’s office, DOH, the Legislative Center, and several care homes owners numerous times. He noted that the industry is very pleased with the final proposed rules and would like to see the rules move forward for adoption by the Governor. Ms. Dianne Okumura, Chief of the Office of Health Care Assurance, mentioned that the Governor’s office recently added the following change to the rules under Section 11-100.1-15, Medications (a) “other than for administration of medications.” Mr. Tim Lyons, President of The Legislative Center, expressed that this was the only area of concern that needed assistance; and now with this final in agreement by all, he was satisfied with the proposed rules as presented.

Ms. Pang stated that some of the important issues posed by the care home owners were licensing, medications, residents’ and primary care givers’ rights and responsibilities, and emergency procedures. Upon speaking with Mr. Ron Gallegos and Ms. Esther Pascual, President of the United Group of Home Operations, she was comfortable knowing the care home owners were satisfied with the proposed rules. In response to a question posed by Ms. Pang, Ms. Okumura stated that DOH avoided adding requirements pursuant to the American Disability Association because they would allow additional costs to the operators in the construction of the group homes. She further stated that the requirements are very specific regarding, for example, wheel chairs and specific lift areas for wheel chairs; so rather than adding requirements, the rules of the City and County of Honolulu will be utilized. Mr. Au questioned the definition of “neglect,” indicating that it was a low standard for professionals of this kind, and stated that as a CPA, he is held to the highest of standards. It was explained that the term “neglect” is consistent with the federal definition which governs nursing facilities, whereby, a department can immediately revoke a licensee’s license, if deemed necessary. In contrast, the term “gross negligence,” i.e., a lack of ordinary or reasonable care, is used if a CPA or doctor, for example, is negligent; and in such a case, the professional may be liable for damages under a civil jurisdiction.

In view of the lengthy process of preparing and modifying these rules, as well as the tremendous amount of support from both the Governor’s office and the small business community, Mr. Yee recommended that the proposed rules proceed to the Governor for adoption; Ms. Pang recused herself from voting with the remaining members agreeing and resulting in a quorum. Mr. Lyons thanked the Board for the long time in reviewing these rules, and Ms. Okumura also thanked the Board, indicating that although at times it had been an arduous process, DOH appreciated to finally move ahead with these rules; however, she noted that revisions to the rules will be forthcoming.

- C. Review and discussion of August 14, 2006 facsimile transmittal from Mr. Charles Morita and January 30, 2006 letter to Mr. Charles Morita from Duane K. Okamoto, Deputy to the Chairman at the Department of Agriculture regarding the Measurement Standards (MS) Branch – Mr. Morita, President of Taximeter Radios & Services, LLC, who approached this Board in January 2006, again expressed his desire that DOA establish rules and procedures for inspections and standards of taxi meters, and also questioned the validity of Handbook 44. In response, Mr. William Pierpont, Branch Chief of the Measurement Standards Branch at DOA, explained that the utilization of Handbook 44, which is adopted in statute, outlines the procedures and regulations of uniform weights and measures for taxi meters and measuring devices. It was pointed out that although some of Mr. Morita’s concerns brought about changes to the City and County’s

administrative rules regulating taxi meters, the State did not have input into the implementation of those changes.

Mr. Morita, whose company installs, calibrates and seals taxi meters, stated that it is very easy to tamper with taximeter seals. He believes there is a lot of abuse with taxi owners calibrating their own meters, and explained that in order to get into the meter, the seal must be broken. He suggested that DOA utilize their own seal to prevent the tampering and rigging of taximeters. Mr. Pierpont stated no such complaints have been made regarding tampering with meters, however, should a complaint be made to either the Department of Motor Vehicles or the State, an investigation would be conducted and if found to be true, an arrest would ultimately result. He indicated that surprise inspections of taxi meters are made at the airport and Hanauma Bay to make sure the taxis have state sticker licenses, that they are registered, and that the meters have a seal on them. He noted that because there is a limited amount of resources available to perform daily inspections on the 1,500 meters in operation, it is a difficult task to ensure the accuracy of every meter.

Upon reviewing Mr. Morita's concerns to establish rules and regulations and to insure against tampering with taximeter seals, each member agreed that this Board should proceed forward with these issues. Thus, Chair Woods requested that the members receive copies of both the State's and the City and County of Honolulu's administrative rules governing taximeters, as well as Handbook 44. Mr. Leis recommended that Mr. Morita's issues be deferred until next month and that an invitation be extended to the appropriate governmental individuals who work with these issues; the Board members unanimously agreed.

V. NEW BUSINESS

- A.** Review and discussion of HAR Chapter 18-237, Sections 8.6-01 to 8.6-10 of "General Excise Tax Law" (DoTax) – Mr. Au introduced Mr. Kurt Kawafuchi, Director, and Ms. Hayley Callahan, Administrative Rules Specialist, from DoTax, and explained that the proposed rule amendments relate to a recently passed law that assesses an additional 0.5% county surcharge tax on the Island of Oahu; it is Director Kawafuchi's responsibility to draft the rules based on this new tax. Handouts were distributed outlining how the surcharge tax will be assessed.

Director Kawafuchi explained that based on the new law, it is DoTax's responsibility to determine what entities will be required to pay the new assessed tax. In determining this, it was important for DoTax to provide a "fair and level playing field" for "equal rates" on each of the Hawaiian Islands. Rather than coming up with a whole new set of rules, DoTax attempted to mirror the rules already in place and apply them toward multi-state businesses. He reviewed the sourcing rules which reflect the allocation of gross income from sales of tangible personal property, gross income received by service businesses, from commissions, from rental or lease income of tangible and intangible personal property, from rental or lease income of real property, from contracting income, from interest income, from theater and amusement income, and from other income sources. He broke down each of these categories and examined where the property, service, or sale is delivered, where the event is held, or site is located and discussed reasonable allocation methods.

A series of questions and answers ensued; it was clarified when the tax increase would become effective, that Oahu businesses would need to keep two sets of bookkeeping records, and that internet sales do not apply. DoTax has a very ambitious plan to notify the businesses of the new surcharge tax; they will continue to approach business organizations such as Small Business Hawaii and the Chambers throughout the next few months, as well as neighbor island organizations. The proposed rules will also be posted on DoTax's website. Upon review and discussion, Mr. Au recommended that the proposed rule changes proceed to public hearing; the Board members unanimously agreed.

- B.** Review and discussion of "Application to Renew Nurse Aid Certification" – Several individuals discussed this issue with the Board, Ms. Dianne Okumura, Chief of the Office of Health Care Assurance, Ms. Coral Andrews, Vice President of Healthcare Association, Ms. Lynette Honbo, Medical Director of the Med-Quest Division, Ms. Kathy Yokouchi, Executive Officer and Ms. Noe Noe Tom, Division Administrator, both of the Professional and Vocational Licensing Division, Mr. Bob Ogawa, President of Hawaii Long Term Care Association, and Mr. Ron

Gallegos, Vice President of Alliance of Residential Care Administrators. Ms. Pang explained that a memorandum was recently received by several certified nurse aides, indicating that the State of Hawaii was unable to approve their recertification, and that in order to be eligible for recertification, the nurse aides must be employed for "at least one day" in a long-term care skilled nursing or intermediate care facility (certified nursing facilities defined in 42 U.S.C) and approved by the State of Hawaii. She questioned the purpose of the program and why nurse aides working in patient care homes were excluded from an automatic re-certification and re-education when nurse aides working in hospitals, assisted living care homes, and assisted living homes were automatically re-certified and re-educated.

It was explained that the certification of nurse aides comes under the jurisdiction of DCCA. Ms. Yokouchi then distributed a handout outlining the legal authority of three different groups (identified as Group 1, Group 2 and Group 3), and discussed each groups' authoritative body, type of employment, training requirements, examination requirements, oversight and in-service training requirements, recertification examination requirements, and enforcement. Group 1 represents over 2,700 members who participate in Medicare/Medicaid employment. Group 2 represents over 3,400 members and consist of certified/licensed health care setting (i.e., assisted living care homes and assisted living homes), and Group 3 represents more than 2,800 members; the latter group may be as high as 8,000 participants as it is difficult to pin down an exact number for this group. The members in Group 1 have automatically been "re-certified." Group 2 members have had their certifications extended to December 31, 2007, or until a bill is passed to automatically re-certify this group, and Group 3 members are not certified.

Ms. Yokouchi explained that Federal law requires the State to place Group 1 members on the certification registry. The State has been attempting to place Group 2 on the registry through a bill, Senate Bill 3277, "Relating to Nurse Aides." This bill was introduced at the last legislative session in order to establish certification procedures for nurse aides employed in State licenses or State certified health care settings and Medicare/Medicaid facilities. Though this bill ended up being deferred, the proponents of the bill will attempt to re-introduce it in the upcoming legislative session. Group 3, it was explained, is a "moving target," as the members are not governed by any regulatory body, and do not require in-service training or insurance. Overall, Mr. Ogawa stated that home health agencies are regulated by the State and home care agencies are not. Even so, Ms. Pang explained that the members in Group 3 want to keep their certifications and they want oversight through rules and regulations that would hold them accountable. Chair Woods stated that there appears to be a substantial amount of miscommunication; therefore, she would like to see the associations work "hand and hand" with government for educational purposes, as it appears to be very difficult for any "lay person" to work effectively with miscommunication and the lack of education.

Mr. Schnitzler recommended that this Board send a letter to the individuals from the various departments and associations that have come in front of this Board today to collectively discuss the issues at hand. This letter will contain a request by this Board to conduct better educational and informational sharing with all impacted parties so that everyone is on the same page; so that the insurance issues are understood by the impacted parties; so that all three groups will be brought up-to-date on what does or doesn't affect them, including existing laws, and proposed legislature (i.e., Senate Bill 3277 SD2), and that this Board will receive a copy of all communication sent to the impacted parties; the Board unanimously agreed. Mr. Schnitzler added that Group 3 needs to have some type of recourse, whether it be educational, or at the very least, that the recourse is to stay in business and to further educate themselves, or to find another association to assist them. Chair Woods thanked everyone for coming and indicated that the Board was looking forward to their anticipated educational program.

VI. UPDATE AND OUTCOME OF STRATEGIC PLAN

- A.** Discussion and review of proposed Small Business "Bill of Rights" brochure – Mr. Dymond presented a first draft of the Small Business "Bill of Rights" brochure. He stated that this Board has been working on these "Bill of Rights" for a long time but that over the past few years the Board has lost some support as the bill was changed within the legislature. At the Board's last strategic planning session in October 2005, it was voted to establish a brochure that would be presented to the small business community as the "law," instead of sending it through the

legislative process. He felt there is a lot of good information in these rights and suggested that whenever a business applies for a new business name or registers for a general excise tax, that they receive this brochure in the mail. He asked the members for ideas regarding the brochure's graphics so that it looks professional as it will be a "marketing piece" for the Governor and for DBEDT. Ms. Ahn recommended that each member individually review the brochure and share any recommendations they may have for changes to Ms. Palcovich, who in turn, will provide those recommendations to Mr. Dymond. Chair Woods thanked Mr. Dymond for his hard work on the brochure. The second draft will be presented at the next Board meeting.

- B.** Review DBEDT's "peer presentation" for the SBRRB – Ms. Palcovich distributed and discussed the Logic Model "peer presentation" that will be presented to DBEDT. Members made several suggestions; one of which is to propose an increase the Board's total budget to \$60,000 to be utilized for marketing purposes. It was conveyed that DBEDT does not appreciate or value the energy that the members put into this Board's work. Mr. Leis mentioned that the fact that he is donating funds towards the Board's marketing strategies could use as leverage. He suggested that each member contribute their own share to help the Board's cause by showing that the members are participating in moving this body ahead while needing DBEDT's support in this strategy.

Mr. David Young, Communications Officer at DBEDT, explained that Ms. Leis is allowed to extend funds without going through the State's procurement process, as Ms. Palcovich received commentary to this effect, provided by both the State's Attorney General's office and DBEDT's Contracts Division. Therefore, Mr. Leis can move ahead expeditiously in hiring a public relations firm to educate the small business community about the Board's functions. However, because it is necessary for the Board to determine exactly what they would like accomplished, Mr. Young asked the members what they would like small businesses to think and know about this Board six months from when the marketing outreach had begun. The members' ideas included, "Get rid of 50% of the regulatory requirements so we can move ahead;" "to view the Board as a gatekeeper;" "that this Board has the apparent authority and ear from the Governor;" "what the Board decides and recommends matters;" "that the small business owners will say that's the group that we go to when we feel there is additional cost to being in business because of regulations," and that this Board "can do and can take and create action or change."

Chair Woods explained that, in her opinion, when this Board was first established, the agency directors clearly did not want to come into contact with it, which made it extremely frustrating, and people were adverse to wanting to serve as a member of the Board. Understanding that the Board can be "worked with" and can "get results" is what she would like the small businesses to be able to acknowledge. Members throughout the years have longed to bring these sentiments to fruition and many of the past members deserve credit. Mr. Young explained that these comments convey a major leap forward in getting that understanding across. So, when the Board conducts its next strategic planning session and reviews its long term goals, the Board can be more targeted in specific objectives while continuing to move forward. The next step is for Ms. Palcovich and Mr. Young to interview public relations firms to discuss the Board's proposal and to approach the Board's Marketing Investigative Subcommittee with prospective bids.

VII. 201M-7 RULE REVIEW

- A.** Review and recommendation of HAR Chapter 11-186, "Hawaii State Health Planning and Development Agency Certificate of Need" (DOH) – Mr. David Sakamoto, Administrator at the State Health Planning and Development Agency, updated the members on information he reported at the last meeting. He explained that the agency had approached the legislature during the last session for \$500,000 for a very important project on a health care work force analysis but that the bill was not passed despite the unanimous support. The agency will re-approach the legislature in 2007 to request an increase in the budget ceiling. He also explained that the monies from the "filing fees," which are deposited into a "special fund" account, can actually be utilized over a two-year period even though it was initially thought that these funds were inaccessible; he noted that there is a valid need for this money. Mr. Sakamoto will be invited to

the October Board meeting when Chair Woods will provide specific recommendations to these rules.

- VIII. REPORT FROM THE CHAIR** – Nothing was reported.
- IX. REPORT FROM COMMITTEES** – Nothing was presented.
- X. REPORT AND UPDATE FROM BOARD MEMBERS** – Nothing was reported.
- XI. ANNOUNCEMENTS** – Nothing was presented.
- XII. NEXT MEETING** - Wednesday, September 20, 2006, No. 1 Capitol Building, Conference Room 410.
- XIII. ADJOURNMENT** – Chair Woods adjourned the meeting at 2:10 p.m.