SUNSET EVALUATION UPDATE

DENTISTRY

Chapter 448, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the

Legislative Auditor of the State of Hawaii
Honolulu, Hawaii

Report No. 87–19

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Sunset Evaluation Update

DENTISTRY

This report evaluates the regulation of the practice of dentistry under Chapter 448, Hawaii Revised Statutes, to determine whether the health, safety, and welfare of the public is best served by reenactment, modification, or repeal of Chapter 448. An evaluation of the regulation of dentistry was previously conducted by this office, and our findings and recommendations were reported in January 1984 in the *Sunset Evaluation Report, Dentistry, Chapter 448, Hawaii Revised Statutes.* This update summarizes the information presented in the 1984 evaluation, reports on developments since then, and presents our current findings and recommendations.

Background on Dentistry and Its Regulation

Dentistry is an autonomous branch of medicine concerned with the prevention, diagnosis, and treatment of diseases and abnormalities of the teeth, jaws, oral cavity, and adjacent oral structures.

Dentists seek to maintain healthy teeth through such preventive and restorative procedures as filling, extracting, or replacing teeth; performing corrective work such as straightening teeth; treating diseased gum tissue; performing corrective surgery on the jaw or mouth; and fitting and making artificial dentures. In addition, dentists may clean teeth and provide other preventive services.

In 1982, there were approximately 127,000 professionally active dentists in the United States.[1] Most dentists are general practitioners who provide many types of

dental care. About 15 percent practice as specialists. Eight branches of specialists are recognized by the American Dental Association (ADA).[2]

The ADA is the major national organization for dentists. Its local affiliate, the Hawaii Dental Association (HDA), has about 770 members and represents member dentists throughout the State.[3] The HDA is further subdivided into four county dental societies: Honolulu County Dental Society, Maui County Dental Society, Kauai County Dental Society, and Hawaii County Dental Society.

Currently, over 1100 dentists hold Hawaii licenses.[4] About 700 of the licensed dentists practice on Oahu.

Dentists are required to be licensed in all 50 states and the District of Columbia. In addition, 16 states and the District of Columbia require a dentist to obtain a specialty license before practicing as a "specialist."[5]

Dentists have been regulated in Hawaii since 1892. At that time, a three-member Board of Dental Examiners (one physician and two dentists) was created, and standards for licensing were established. Today, an 11-member licensing board made up of eight dentists, one dental hygienist, and two public members regulates dentistry in Hawaii.

To be licensed as a dentist in Hawaii, applicants must: (1) be at least 18 years old, (2) have graduated from an ADA accredited dental school, (3) have passed Parts I and II of the National Board Dental Examination, and (4) have passed the state board's written and practical examinations in dentistry. Graduates of foreign dental schools which are not accredited by the ADA must meet additional requirements to be licensed.

Prior Sunset Evaluation

The regulation of dentistry first came under review in 1984 as a result of provisions of the Hawaii Sunset Law. Our sunset evaluation of the regulation of dentistry in 1984 concluded as follows:

> "1. A clear and significant potential for public harm exists with the practice of dentistry. The absence of regulation would unnecessarily expose the public to possible harm.
>
> "2. Although the practical examination generally appears to be fair and unbiased, the rationale for requiring candidates to complete gold foil restorations, a relatively infrequent and archaic procedure, is questionable.
>
> "3. Current licensing provisions preventing licensure through credentials for qualified and licensed out-of-state dentists are unreasonable and restrictive.
>
> "4. No time limits have been set for temporary licenses and licensees may retain these indefinitely, opening the practice up to potential harm.
>
> "5. Current statutory provisions that restrict ownership of a dental practice to licensed dentists and prohibit many corporations from providing dental services appear to be unreasonable and unnecessarily prohibitive.
>
> "6. Present rules are unclear and confusing regarding those duties which may be legally performed by dental assistants and the level of supervision required for their practice.
>
> "7. Because of the potential risks involved in denturism, the independent and unsupervised practice of dental laboratory technicians, it is premature at this time to seriously consider independent practice status for these technicians."[6]

The need for regulation. We found that the practice of dentistry poses a clear and significant potential for public harm. Several irreversible procedures performed by dentists can potentially result in costly corrective treatment, serious injury, and even death. We stated that "a significant public risk is involved when a dentist is allowed to diagnose or treat any injury of the mouth or teeth. This risk is increased

when a dentist is allowed to perform oral surgery or to administer radiographs (X-rays), anesthesia, and other sedatives or drugs."[7]

Among other dangers, incompetent or negligent dentists can cause public harm by misusing anesthetics, analgesics, sedatives, and antibiotics; failing to diagnose and treat oral cancers and cysts; doing unnecessary and costly dental work; and failing to diagnose and inform patients of gum diseases. We recommended that Chapter 448 be reenacted to continue the regulation of dentistry.

Regulatory operations. While we found that regulation should be continued, we identified several areas in the board's operations that could be improved.

Board examination. The board's practical examination appeared to be generally fair and unbiased. As a result of a lawsuit, the board had modified its examination procedures, including instituting training and calibration sessions for graders, "blind" or anonymous testing procedures, and an appeals procedure.

However, we found that testing candidates on the gold foil restoration technique was questionable since it was outdated. We recommended that it be replaced with a more relevant procedure.

Licensure by credentials. We found that licensing provisions preventing licensure by credentials for qualified and licensed out-of-state dentists were unreasonable and restrictive. We noted that 21 states permitted licensure by credentials and that such provisions were endorsed by both the ADA and a Council of State Government task force.[8] There was evidence that restrictions on reciprocity tend to unfairly limit the entry rate of new dentists in an area, reduce market competition and, consequently, increase prices. We recommended that the law be amended to allow for licensure through credentials for qualified and licensed dentists from states with standards equivalent to--or more stringent than--Hawaii's.

Temporary licenses. We also found a problem with a loophole in the licensing statute which placed no time limit on temporary licenses. Technically, these licensees could practice for an unlimited period without ever having to take or pass the board examination. To avoid possible abuses, we recommended that a specific time limit be set in the law for temporary licenses.

Ownership and corporations. We found problems with the statutory provision prohibiting all but a few exempted corporations from providing dental services. The statute limits ownership of dental practices to licensed dentists and, in effect, prevents dentists from working for nondentists or forming corporations or partnerships with nondentists. Both the Council of State Governments and the Federal Trade Commission have recommended that states should not limit ownership of dental practices to licensed dentists.[9]

We recommended that this prohibition be removed to allow the development of innovative and possibly more efficient, accessible, and less expensive dental care delivery systems.

Dental assistants. We found that there was confusion about practice restrictions and allowable duties for dental assistants. The board's rules failed to define or explain what is meant by "general supervision" of dental assistants by dentists. While a minimum of supervision was probably appropriate for routine duties such as office management and cleaning the operating area, more stringent supervision was necessary for assistants performing more complex and potentially harmful procedures on patients. We recommended that the board's rules be clarified to provide definitions for "general supervision" and "direct supervision," as well as a clearer and more explicit scope of practice for dental assistants.

Denturism. In 1984, a major controversy in the dentistry profession involved denturism or "the independent practice of dental laboratory technicians in which these technicians are allowed to manufacture and sell dentures directly to the public."[10] We found that denturism was legal in only five states and that because of the limited experience of a few states and the potential risks involved in the unsupervised practice of denturism, it was premature to consider legalizing denturism in Hawaii.

Responses to the report. In response to our report, the board agreed that its operations could be improved by implementing statutory, rule, or operational changes in several areas. It also stated that it would provide a full report to the Legislature on our recommendations. The Department of Commerce and Consumer Affairs (DCCA) agreed that it was premature to consider the independent practice of dental technicians. The department also agreed with our recommendations that time limits be placed on temporary licenses, that the board amend its rules to specify those duties which may be legally performed by dental assistants, and that the terms "general supervision" and "direct supervision" be clearly defined.

Subsequent Developments

Various bills were introduced during the 1984 through 1987 legislative sessions which affected the regulation of dentistry. The more significant of these are discussed below.

During the 1984 legislative session, hearings were held to determine whether Chapter 448 should be reenacted, modified, or repealed. While all who testified agreed that dentists should continue to be regulated, there was disagreement with some of our recommendations.

Both the Board of Dental Examiners and the HDA were particularly opposed to legislation which would eliminate restrictions limiting ownership of a dental practice and which would allow licensure by credentials.

The board argued against ownership of dental practices by nondentists stating that "allowing nondentists to own, maintain or operate a dental office and the formation of corporations or partnerships with persons who are not licensed dentists detracts from the professionalism traditionally associated with dental practice."[11] The board warned that abolishing the restrictions on ownership would "result in a loss of quality-patient care and would lead to unscrupulous practices by unlicensed owners more concerned with profits than with safe, quality dental services."[12]

The board also disagreed with our recommendation that the statute be changed to allow for licensure by credentials. The board's position was that:

> "Requiring licensed out-of-state dentists and other unlicensed candidates to pass the State written and practical examinations is still the best way to ensure and maintain the quality of dental care. . . . Eliminating the examination restriction would result in the board losing control of its licensing standards enabling out-of-state dentists of questionable qualifications and skills to practice in the State."[13]

The HDA agreed with the board's position on these two issues. It argued against ownership of dental practices by nondentists, stating that such a change would create "a delivery system in which a corporation without a professional can operate a dental office and hire dentists, with all their advantageous business ramifications."[14] The HDA testified that allowing such corporations to operate would not be in the best interest of the consumer. It pointed to the experience in other states which allowed nondentists to own dental practices stating that "too many corporation for profit in other jurisdictions have left in their wake, the broken

carcasses of professionals and consumer losses when the corporation went out of business."[15]

The HDA was not in favor of allowing licensing by credentials because it would invite part-time dentists to practice here, and HDA questioned whether such dentists would have "the deep community rooted compassion to offer the best possible dentistry to our people."[16]

The Legislature enacted Act 137, SLH 1984, which extended the effective date of Chapter 448 until December 31, 1988.

Subsequently, in 1985 the Legislature enacted Act 9, which deleted the requirement that the gold foil procedure be included on the licensing examination and added a provision that the State consider current trends in dental education in administering the dental examination. Also in 1985, Act 13 amended the statute by limiting the validity of a temporary license to one calendar year. The licenses end when a person takes the licensing examination or when a person leaves the place of employment authorized under the temporary license. The board may also revoke a temporary license at any time.

In 1986, Act 26 clarified the board's authority relating to disciplinary action and penalties, including its power to refuse or revoke a license should an applicant knowingly provide false information on an application and to administer fines.

Also in 1986, Act 217 eliminated the term "general" in reference to supervision of dental assistants by dentists. The act also increased fines to not less than $100 and not more than $1000 for a first offense and not less than $500 and not more than $2000 for a second offense. In addition, the dentist's license is revoked for a second offense.

Current Findings and Recommendations

Our current findings are as follows:

1. The practice of dentistry continues to present the public with a clear and significant potential for harm.

2. The board's practical examination appears to be generally fair and unbiased.

3. Controversy over the grading of the National Board Examination makes it difficult to permit licensure by credentials at this time.

4. Restrictions on ownership of dental practices to only licensed dentists still appear to be unreasonable and unnecessarily restrictive.

5. In recent years, interest in legalized denturism in Hawaii has apparently waned.

6. Although the board has made some needed changes in its rules, there are still some improvements which can be made.

The need for regulation. We find that the practice of dentistry poses a clear and significant potential for harm and that the absence of regulation unnecessarily exposes the public to possible harm. As we noted in our 1984 sunset report:

> "Included within a dentist's scope of practice are several irreversible procedures that can potentially result in costly corrective treatment, serious injury and even loss of life. A significant public risk is involved when a dentist is allowed to diagnose or treat any injury of the mouth or teeth. This risk is increased when a dentist is allowed to perform oral surgery or to administer radiographs (X-rays), anesthesia, and other sedatives or drugs."[17]

An incompetent or negligent dentist can harm consumers by failing to treat oral cancers and cysts; by misusing anesthetics, analgesics, sedatives, and antibiotics; and by doing unnecessary and costly dental work, among other potentially harmful practices.

A review of 63 closed complaint cases filed with the Regulated Industries Complaints Office (RICO) since 1983 provides further support for continued regulation.* The majority of these complaints relate to unsatisfactory dental work and billing disputes. The board was required to take action on four cases during this period. It levied fines in one case of unlicensed dental practice and in two drug-related cases. It also suspended a license for fraud committed in the dentist's practice.

Because of the significant and immediate potential harm posed by incompetent or negligent practitioners, we believe dentists should continue to be licensed. All 50 states regulate dentists through licensure.

The licensing program. Currently, licensed dentists from other states must first pass the Hawaii board's written and practical examinations in order to be licensed. Hawaii has no provisions allowing for licensure by credentials, whereby a dentist licensed in another state could obtain a Hawaii license based on the dentist's qualifications.

Licensure by credentials. In our first review, we found that the licensing provisions preventing licensure by credentials for qualified and licensed out-of-state dentists were unreasonable and restrictive. In 1986, 19 states and the District of Columbia allowed licensure by credentials.[18]

We still find licensure by credentials to be desirable. However, questions raised about the appropriateness of the scoring system of the National Board Dental Examination make it more difficult to permit licensure by credentials at this time.

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* Includes 1987 cases that were closed by July 9, 1987.

All states except Delaware accept National Board Dental Examination scores as partial fulfillment of their licensing requirements. In 1985, the Washington State Board of Dental Examiners spearheaded an effort to change the way the National Board Dental Examination is graded. The examination is graded under the norm-referenced system. The Washington dental board wants the examination to be graded under the criterion-referenced system.

Norm-referenced and criterion-referenced tests differ because they serve different purposes. The National Commission for Health Certifying Agencies describes the differences as follows:

> "Norm-referenced tests are used to make comparisons among individuals or to select individuals when the number of vacancies is lower than the number of applicants--such as an admissions test. Criterion-referenced tests are quota-free and designed to determine whether individuals have mastered a specific skill or class of behaviors. Thus, a fixed percentage of examinees regardless of the test difficulty will fail a norm-referenced test, while anywhere from zero to 100 percent of a group can pass a criterion-referenced test."[19]

Currently, a candidate will pass the National Board Dental Examination as long as his or her score is above the score achieved by the bottom 2 percent of the candidates.[20] Washington contends that the National Board Dental Examination is set up so that 98 percent of the candidates pass and 2 percent of the candidates fail. Yet, there is no evidence supporting the assumption that the 98 percent that pass are indeed competent. Washington also pointed to a 1984 American Dental Association study of state and regional board passing scores which suggests that there is a higher proportion of incompetent candidates within the licensing applicant group.

The Joint Commission on National Dental Examinations, the body which develops and conducts the National Board Dental Examination, is currently studying

the issue of whether a criterion-referenced scoring system should be instituted. Washington is advocating this change arguing that:

> "The standard utilized in scoring the National Board examination should be based solely on and reflective of the professional standards and expectations for the competent practice of dentistry, regardless of how many or what proportion of graduates can meet such standards."[21]

The controversy over the adequacy of the National Board Dental Examination scoring system leaves state licensing boards in a tenuous position. State and regional licensing board examinations must now be more heavily relied on as the final determinant of the minimum level of competency for the safe practice of dentistry.*

Licensing by credentials will be more viable when improvements are made to the National Board Dental Examination. It will be further strengthened once a new national clearinghouse of enforcement information is fully operational. The Health Care Quality Act of 1986 mandates state dental boards to report sanctions, malpractice judgments, and peer review cases to a federal registry. Congress established the registry to identify incompetent and unscrupulous practitioners and to prevent them from practicing in other states. The program was to start in the fall of 1987, but it may take some time to become fully operational. When the registry is in place, states should be in a better position to identify incompetent or unscrupulous dentists who apply for licensure in their jurisdictions.

We continue to support licensure by credentials for qualified and licensed practitioners and recommend that this be done as soon as the controversy over the

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* According to the ADA, a total of 32 states belonged to four regional testing boards in 1986.

National Board Dental Examination scoring system is resolved. As noted by the Council of State Government dental task force:

> ". . . the admitting state's sole interest regarding licensure by credentials should be in determining whether the out-of-state applicant has practiced recently and safely and whether the out-of-state license was issued on similar or greater criteria than the in-state license. . . . Once these criteria are met, the board must recognize the out-of-state licensure of any licensed practitioner and issue a license."[22]

Written examinations. To be licensed, applicants must pass Parts I and II of the National Board Dental Examination, as well as written and practical examinations given by the Hawaii dental board. The board's examinations are held twice a year, usually in February and August.

The board's written examinations consist of a multiple-choice clinical examination comprised of over 100 questions and a brief true or false examination of the dental laws and rules of the State. The clinical examination was last revised in 1986 by a national testing service. However, the last revision of the examination on laws and rules was conducted in 1975. While the examination on the board's laws and rules are a very small part of the board's examination, we believe that all portions of the examination should be kept as current as possible.

Practical examination. The board's practical examination takes two days to complete and requires candidates to perform two restorative procedures on patients as well as perform laboratory work.

In 1984, we found that the board's practical examination generally appeared to be fair and unbiased. However, we noted that continued testing of candidates on the archaic gold foil restorations was questionable and should be replaced with a more current procedure. The board is proposing to replace the gold foil procedure with the more current gold cast procedure, but it has been advised that before any

substantive change can be made to the examination, it must have approval from the federal court.

The federal court involvement with the board's examination dates back to a lawsuit filed against the board and its members in the mid-1970s. Two dental candidates alleged that the board's administration of the licensing examination discriminated against applicants on the basis of race and residency. In 1980, the State and the plaintiffs settled out of court without any final judgment being made on the case.

Under the terms of the settlement, the State agreed to significantly modify the dental practical examination, including anonymous testing and grading procedures, training and calibration sessions for graders, and the development of an appeals procedure. The board continues to operate under the terms of this agreement to this date. Because of the court order, the board has been advised by its attorney that it apparently cannot make changes to its examination without first getting permission from the court.

In August 1987, the board was in the process of seeking court permission to have the court's jurisdiction over the board's examination withdrawn. If this can be accomplished, the board hopes to put key elements of the court settlement into its rules and to make planned changes to its examinations in time for its February 1988 examinations. Among these changes are implementation of the new gold cast procedure on the practical examination as well as new grading procedures.

Based on our current review of the board's practical examination procedures, materials, and data, and in addition to our observation of the calibration session and the practical examination, we find that the board's examination appears to be generally fair and unbiased. This is further supported by the small number of

examination appeals by candidates. Between February 1983 and February 1987, there were only four appeals out of 330 candidates examined.*

Restrictions on ownership. We found in 1984 that statutory restrictions on the ownership of dental practices appeared to be unreasonable and unnecessarily prohibitive. This is still true.

Except for a few specially exempted corporations, the current statute allows only a licensed dentist to own, maintain, or operate a dental office. This limits the delivery of dental services in Hawaii to basically the traditional private practice delivery model and prevents other systems from operating here.

Dentists today operate in a highly competitive market. In 1961 there were 49 dentists for every 100,000 persons in the United States. By 1984 there were 52 dentists for every 100,000 persons. During this same period, tooth decay in the United States declined 50 percent.[23] Spurred by the imbalance between the oversupply of dentists in the United States and lower demands for dental services, new and innovative delivery systems have developed in many states in recent years.

For example, many states allow the operation of retail dental centers as well as dental clinic franchises. Retail dental centers are located in retail stores which lease space to dentists or dental franchises so customers can obtain services while shopping. Retail dental centers usually offer expanded hours which include evenings and weekends, and they often advertise discounts on services. In 1985, there were a total of 116 retail dental centers operating in 17 states.[24]

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* As of August 1987, the board was being sued by a dental examination candidate regarding the administration of the board's practical examination.

Dental clinic franchises are located in retail stores, shopping malls, and freestanding clinics, and they are sometimes owned by nondentists. Franchisers operate the business side of the practice, advertise the clinics, and generate patient visits. In 1985, there were a total of 90 dental franchises in such states as Arizona, Colorado, Missouri, New York, Washington, Massachusetts, Minnesota, New Jersey, Illinois, and Pennsylvania. Proponents of these types of clinics claim dental franchises allow for discount volume purchasing, management training, extensive marketing programs, and financial control systems.[25]

In 1984, both the Board of Dental Examiners and the HDA opposed abolishing the restrictions regarding ownership of dental practices. The board expressed concern that such a change would lead to a decrease in the quality of care consumers received and would lead to unscrupulous practices by unlicensed owners. The HDA indicated that some profit dental corporations in other states have hurt consumers when these corporations went out of business.

We believe that the observations made in our 1984 report on this issue remain valid:

> "The purpose of licensing any health professional should be to ensure the practitioner's competence and to protect the health and safety of consumers. Licensing statutes should contain provisions clearly relevant to these two issues and should not unnecessarily limit marketplace competition. There may be grounds for the concern of some dentists that unrestricted ownership of dental practices could lead to unscrupulous practices. However, the board can prevent or minimize potential abuses by adopting rules that would ensure that professional standards are maintained."[26]

Restrictions on ownership of dental practices unnecessarily limit consumers' choices about the kinds of dental services that they can select. These restrictions should, therefore, be removed from the statute.

Denturism. In 1984, we found that it was premature to consider the independent practice of dental technicians (denturism) in Hawaii. That same year, a bill was introduced in the Legislature which would have legalized denturism in this State. Dental technicians would then be allowed to manufacture and sell dentures directly to the public. However, the bill was not reported out of committee. Since then, it appears that interest in legalized denturism has waned locally. No new bills to legalize denturism have been introduced in the Legislature since 1984. We believe that no action need be taken on providing for legalized denturism at this time.

Rulemaking. The board has acted on our 1984 recommendation that definitions for the terms "general supervision" and "direct supervision" be put into board rules. This rule change was completed in 1986. The board has also developed proposed rules delineating specific duties which may be performed by dental auxiliaries, as well as proposed rules setting specifications for lead aprons used for the protection of patients during dental X rays. These proposed rules were finalized by the board during August 1986 and submitted for review to the Attorney General's office in January 1987. By August 1987, the board was still awaiting approval of the proposed rules by the Department of the Attorney General.

In addition to the proposed rule changes already completed by the board, we find that several other amendments to the rules should be made. First, the rules have several outdated references to requirements for good moral character.* While these provisions are not enforced, they should be deleted from the rules.

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* Refers to sections 16–79–11 and 16–79–23 of the board's rules. Also, section 448–18, H.R.S., contains a reference to a good moral character requirement.

The board's rules on sedation and anesthesia should also be reviewed and updated. In recent years, there has been increased concern about the use of anesthesia and sedation in the practice of dentistry. In November 1985, the American Dental Association House of Delegates adopted a policy statement regarding the use of conscious sedation, deep sedation, and general anesthesia in dentistry. Earlier that year, the National Institute of Dental Research, the Food and Drug Administration, and the National Institutes of Health Office of Medical Applications of Research convened a conference to discuss issues and answer questions about the use of anesthesia and sedation in the dental office. Inappropriate use of these drugs can be extremely dangerous, causing complications which may even lead to death. The board has already taken the first step by identifying a need to review its lack of rules relating to deep sedation. In addition, we recommend that all of the board's rules in the area of sedation and anesthesia be reviewed and updated.

Recommendations

We recommend that:

1. Chapter 448, Hawaii Revised Statutes, be reenacted. In reenacting the statute, we recommend that the Legislature eliminate statutory provisions that restrict ownership of a dental practice to licensed dentists and prohibit corporations from providing dental services.

2. The Board of Dental Examiners update the written examination on state laws and rules.

3. The board make the following amendments to its rules:

- *Eliminate requirements relating to good moral character; and*
- *Update definitions and requirements relating to use of sedation and anesthesia in dental offices.*

NOTES

1. American Dental Association, *Facts About States,* Chicago, 1986, p. 2.

2. American Dental Association, *1987 American Dental Directory,* Chicago, 1987, p. 1360.

3. Francis Lock, "HDA Directory Update," *Hawaii Dental Journal,* January 1987, p. 4.

4. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report,* Honolulu, April 1987.

5. American Dental Association, *Directory,* p. 1361.

6. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Dentistry, Chapter 448, Hawaii Revised Statutes,* Report No. 84–2, Honolulu, January 1984, p. 17.

7. *Ibid.,* p. 18.

8. *Ibid.,* p. 24.

9. *Ibid.,* pp. 26–27.

10. *Ibid.,* p. 30.

11. Letter from George Uesato, D.D.S., President, Board of Dental Examiners, to the Honorable Steve Cobb, Chairman, Senate Committee on Consumer Protection and Commerce, January 16, 1984, p. 2.

12. *Ibid.*

13. *Ibid.*

14. Testimony on Senate Bill No. 1743, submitted by Mark S. Tajima, D.D.S., Chairman, Hawaii Dental Association Legislative Committee, to the Honorable Steve Cobb, Chairman, Committee on Consumer Protection and Commerce, February 17, 1984, p. 1.

15. *Ibid.,* p. 2.

16. *Ibid.,* p. 1.

17. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Dentistry,* p. 18.

18. American Dental Association, *Facts,* p. 26.

19. National Commission for Health Certifying Agencies, *Perspectives on Health Occupational Credentialing,* Washington, D.C., 1979, pp. 17–18.

20. "The National Board of Dental Examiners: Is the 2% Cutoff Score too Low?" position paper by Board of Dental Examiners, State of Washington, August 1985, p. 1.

21. *Ibid.,* p. 3.

22. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Dentistry,* pp. 24–25.

23. Richard Greene, "What's Good for America Isn't Necessarily Good For the Dentists," *Forbes,* August 13, 1984, p. 80.

24. Kari E. Super, "Retailers Say They'll Try to Take Bigger Bite of Dental Clinic Market," *Modern Healthcare,* June 6, 1986, p. 158.

25. Elizabeth Gondela, "Franchised, Retail Dental Operations Record Major Gains," *Modern Healthcare,* May 15, 1984, p. 163.

26. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Dentistry,* p. 27.

APPENDICES

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813

CLINTON T. TANIMURA
AUDITOR

October 1, 1987

COPY

Mr. George Uesato, D.D.S., Chairperson
Board of Dental Examiners
Department of Commerce and Consumer Affairs
1010 Richards Street
State of Hawaii
Honolulu, Hawaii 96813

Dear Mr. Uesato:

Enclosed are 12 preliminary copies, numbered 4 through 15, of our *Sunset Evaluation Update, Dentistry, Chapter 448, Hawaii Revised Statutes.* These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Robert Alm, Director of the Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of dentistry. If you have any comments on our recommendations, we would appreciate receiving them by November 2, 1987. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura

Clinton T. Tanimura
Legislative Auditor

Enclosures

JOHN WAIHEE
GOVERNOR

ROBERT A. ALM
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF DENTAL EXAMINERS

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

October 9, 1987

RECEIVED
Oct 15 10 41 AM '87
OFC. OF THE AUDITOR
STATE OF HAWAII

Honorable Clinton T. Tanimura
Legislative Auditor
The Office of the Auditor
465 S. King Street, Room 500
Honolulu, HI 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your sunset evaluation report on dentists.

We found the report to be comprehensive and agree with most of the recommendations.

The board concurs with and will initiate action to comply with the following recommendations:

1. Update the written examination on state laws and rules;

2. Eliminate requirements in our rules relating to good moral character; and

3. Update definitions and requirements in our rules relating to the use of sedation and anesthesia in dental offices.

We do have reservations concerning the recommendation to eliminate statutory provisions that currently restrict ownership of a dental practice to licensed dentists and prohibit corporations from providing dental services.

Allowing non-dentists to own, maintain or operate a dental office and the formation of corporations or partnerships with persons who are not licensed dentists detracts from the

professionalism traditionally associated with dental practice. Lifting these practice restrictions would result in a loss of quality patient care and would lead to unscrupulous practices by unlicensed owners more concerned with profits than with safe, quality dental services.

Proposed legislation by the Department of Commerce and Consumer Affairs dealing with the regulation of dental service plans is presently being reviewed by the board. It is anticipated that the board will discuss this proposal in detail at its next meeting scheduled for November 16, 1987. The board's position on the Department's bill will then be presented to the 1988 legislature.

Very truly yours,

George Uesato, D.D.S.

George Uesato, D.D.S.
Chairman

GU/MDM:jan

DIGEST

A BILL FOR AN ACT
RELATING TO DENTISTRY

Reenacts law providing for the Board of Dental Examiners by changing the date of repeal to December 31, 1994 and amends law by eliminating statutory provisions that restrict ownership of a dental practice to licensed dentists and prohibit corporations from providing dental services, and by eliminating requirement relating to good moral character.

FOURTEENTH LEGISLATURE, 1988
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO DENTISTRY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates. (a) The following chapters are hereby repealed effective December 31, 1988:

(1) Chapter 465 (Board of Psychology)

(2) Chapter 468E (Board of Speech Pathology and Audiology)

(3) Chapter 468K (Travel Agencies)

(4) Chapter 373 (Commercial Employment Agencies)

(5) Chapter 442 (Board of Chiropractic Examiners)

[(6) Chapter 448 (Board of Dental Examiners)

(7)] (6) Chapter 436E (Board of Acupuncture)

(b) The following chapters are hereby repealed effective December 31, 1989:

(1) Chapter 444 (Contractors License Board)

(2) Chapter 448E (Board of Electricians and Plumbers)

(3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)

(4) Chapter 466 (Board of Public Accountancy)

(5) Chapter 467 (Real Estate Commission)

(6) Chapter 439 (Board of Cosmetology)

(7) Chapter 454 (Mortgage Brokers and Solicitors)

(8) Chapter 454D (Mortgage and Collection Servicing Agents)

(c) The following chapters are hereby repealed effective December 31, 1990:

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 457 (Board of Nursing)

(4) Chapter 458 (Board of Dispensing Opticians)

(5) Chapter 460J (Pest Control Board)

(6) Chapter 462A (Pilotage)

(7) Chapter 438 (Board of Barbers)

(d) The following chapters are hereby repealed effective December 31, 1991:

(1) Chapter 448H (Elevator Mechanics Licensing Board)

(2) Chapter 451A (Board of Hearing Aid Dealers and

Fitters)

(3) Chapter 457B (Board of Examiners of Nursing Home Administrators)

(4) Chapter 460 (Board of Osteopathic Examiners)

(5) Chapter 461 (Board of Pharmacy)

(6) Chapter 461J (Board of Physical Therapy)

(7) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective December 31, 1992:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(f) The following chapters are hereby repealed effective December 31, 1993:

(1) Chapter 441 (Cemetery and Funeral Trusts)

(2) Chapter 443B (Collection Agencies)

(3) Chapter 452 (Board of Massage)

(4) Chapter 455 (Board of Examiners in Naturopathy)

(5) Chapter 459 (Board of Examiners in Optometry)

(g) The following chapter is hereby repealed effective December 31, 1994:

(1) Chapter 448 (Board of Dental Examiners)

[(g)] (h) The following chapters are hereby repealed effective December 31, 1997:

(1) Chapter 463 (Board of Private Detectives and Guards)

(2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Section 448-18, Hawaii Revised Statutes, is amended to read as follows:

"§448-18 Hearings. In every case in which it is proposed [to refuse to issue a license because of lack of good moral character or] to revoke, suspend, or refuse to issue a license under section 448-17, the person concerned shall be given notice and opportunity to be heard by the board of dental examiners in conformity with chapter 91. Written notice shall be given to the person concerned at least five days before the hearing.

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the board, or of a member thereof, or of any subpoena issued by it, or a member, or the refusal of any witness to testify to any matter regarding which the

witness may be questioned lawfully, any circuit judge [shall], on application by the board, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein."

SECTION 3. Section 448-15, Hawaii Revised Statutes, is repealed.

["§448-15 No corporation to practice dentistry; penalty. No corporation shall practice dentistry or engage therein, or hold itself out as being entitlted to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title, or furnish dental advice for any compensation, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service, dentists, or dental surgeons, or solicit through itself, or its agents, officers, employees, directors, or trustees, dental patronage for any dentist or dental surgeon employed by any corporation; provided that nothing in this section shall prohibit a corporation from employing a dentist or dentists to render free dental services to its employees, nor shall it apply to corporations or associations in which the

dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when the dentist assumes full responsibility for the information and services, nor shall it apply to dental service corporations formed for the primary purpose of contracting with individuals, groups of individuals, and corporations for defraying or assuming the cost of services of dentists and dental surgeons and of contracting on behalf of dentists and dental surgeons to furnish such services as provided in chapter 423, nor shall it apply to professional corporations as defined in chapter 416. Any corporation violating this section shall be fined not less than $200 or more than $500 for each offense, and each day's violation shall be considered a separate offense.

Every association of persons engaged in the practice of dentistry under the name of an association or other title, shall cause to be displayed and kept in a conspicuous place at the entrance to its place of business the names of each and every person employed by the association in the practice of

dentistry; and every person so employed by any association shall cause the person's name to be so displayed. Any person employed by the association whose name is not displayed as above provided shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided; and the association, and the persons comprising the same, for failure to display the aforesaid names, shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided."]

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY:_____