Office of the Ombudsman
State of Hawaii
Fiscal Year 2011-2012
Report Number 43

As a service to the public provided by the legislature, the Office of the Ombudsman receives and investigates complaints from the public about injustice or maladministration by executive agencies of the State and county governments.

The Ombudsman is a nonpartisan officer of the legislature. The Ombudsman is empowered to obtain necessary information for investigations, to recommend corrective action to agencies, and to criticize agency actions; but the Ombudsman may not compel or reverse administrative decisions.

The Ombudsman is charged with: (1) accepting and investigating complaints made by the public about any action or inaction by any officer or employee of an executive agency of the State and county governments; and (2) improving administrative processes and procedures by recommending appropriate solutions for valid individual complaints and by suggesting appropriate amendments to rules, regulations, or statutes.

By law, the Ombudsman cannot investigate actions of the governor, the lieutenant governor and their personal staffs; the legislature, its committees and its staff; the judiciary and its staff; the mayors and councils of the various counties; an entity of the federal government; a multistate governmental entity; and public employee grievances, if a collective bargaining agreement provides an exclusive method for resolving such grievances.

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Honolulu, HI 96813
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Neighbor island residents may call our toll-free numbers.

Hawaii 974-4000
Maui 984-2400
Kauai 274-3141
Molokai, Lanai 1-800-468-4644

Telephone extension is 7-0770
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email: complaints@ombudsman.hawaii.gov
website: www.ombudsman.hawaii.gov

State of Hawaii

Report of the Ombudsman

For the Period July 1, 2011 - June 30, 2012
Report No. 43

Presented to the Legislature
pursuant to Section 96-16 of
the Hawaii Revised Statutes

December 2012

Mr. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2013:

In accordance with Section 96-16, Hawaii Revised Statutes, I am pleased to submit the report of the Office of the Ombudsman for fiscal year 2011-2012. This is the forty-third annual report since the establishment of the office in 1969.

I would like to thank the State Legislature for its support during this period of limited fiscal resources, allowing the Office of the Ombudsman to continue to connect citizens with their government. We remain committed in our efforts to ensure the fair and impartial delivery of government services.

The Office of the Ombudsman would not be able to resolve complaints or bring about administrative improvements without the full cooperation of the executive branches of the State and County governments. For their continued cooperation and assistance, I extend my sincere appreciation to the Governor, the Mayors of the various counties, and the State and County department heads and employees.

Finally, those who sought the services of our office would not have been as ably served in a timely, objective, efficient, and professional manner without the dedicated services of the professional and support staff members of the office. For their commitment and dedication to the mission and purpose of our office, I convey my personal thanks.

Respectfully submitted,

ROBIN K. MATSUNAGA
Ombudsman

December 2012

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Chapter I

THE YEAR IN BRIEF

Total Inquiries Received

During fiscal year 2011-2012, the office received a total of 4,335 inquiries. Of these inquiries, 3,159, or 72.9 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 493 non-jurisdictional complaints and 683 requests for information.

The 4,335 inquiries received represent a 7.5 percent decrease from the 4,686 inquiries received the previous fiscal year. There was a decrease in all categories of inquiries.

A comparison of inquiries received in fiscal year 2010-2011 and fiscal year 2011-2012 is presented in the following table.

TWO-YEAR COMPARISON

Years	Total Inquiries	Information Requests	Non-Jurisdictional Complaints	Jurisdictional Complaints		
				Total Jurisdictional	Prison Complaints	General Complaints
2011-2012	4,335	683	493	3,159	1,540	1,619
2010-2011	4,686	750	537	3,399	1,744	1,655
Numerical Change	-351	-67	-44	-240	-204	-36
Percentage Change	-7.5%	-8.9%	-8.2%	-7.1%	-11.7%	-2.2%

Staff Notes

After 38½ years of employment with the State of Hawaii, including the last 30 with our office, First Assistant David Tomatani retired on December 31, 2011. Prior to joining the Office of the Ombudsman, Mr. Tomatani was a Conditional Release Branch Administrator with the former Department of Social Services and Housing. Initially hired as an analyst, he was promoted to senior analyst on May 1, 1992 and subsequently appointed First Assistant on July 1, 2005. We thank Mr. Tomatani for his years of exemplary service to our office and the citizens of Hawaii and wish him well in his retirement.

Also retiring on December 31, 2011, after 35 years of State service, was analyst Dawn Matsuoka. She served three years with our office and was previously an Income Maintenance Program Specialist at the Department of Human Services. We wish Ms. Matsuoka the best in her retirement.

Mark Au, a former analyst with the Office of the Ombudsman, was appointed First Assistant on January 5, 2012. Mr. Au was an investigator with the University of Hawaii's Equal Employment Opportunity and Affirmative Action Office prior to returning to our office, and has six years prior experience as Deputy Corporation Counsel, Family Support Division, City and County of Honolulu, in addition to his nine years as an analyst in our office.

Senior analyst Alfred Itamura celebrated 30 years of service with our office in March 2012. Mr. Itamura majored in political science at the University of Hawaii and was hired as an assistant analyst a few months after graduation. He was promoted to associate analyst on September 24, 1982, to analyst on May 1, 1988, and to senior analyst on July 1, 2005. Mr. Itamura is the office's in-house historian and a valuable resource for his fellow analysts. Congratulations and thank you, Mr. Itamura, for your contributions and dedication to our office.

In May 2012, we celebrated analyst Yvonne Jinbo's 10 years of service with our office. Ms. Jinbo was a Legislative Assistant at the Hawaii Insurers Council prior to joining the office. Congratulations and thank you, Ms. Jinbo, for your commitment to our office and service to the public.

We welcomed our newest analyst, Cori Woo, on May 1, 2012. Ms. Woo transferred from the Health and Human Services Division, Department of the Attorney General. She earned a Bachelor of Arts Degree from Pepperdine University and received her Juris Doctor from the William S. Richardson School of Law in 1995.

At the end of the year, our office staff consisted of Ombudsman Robin Matsunaga; First Assistant Mark Au; analysts Herbert Almeida, Melissa Chee, Rene Dela Cruz, Alfred Itamura, Yvonne Jinbo, Gansin Li, Marcie McWayne, and Cori Woo; and support staff Sheila Alderman, Edna de la Cruz, Debbie Goya, Carol Nitta, and Sue Oshima.

Outreach Efforts

On September 17, 2011, we participated in the 2011 Annual Senior Fair held at Pearlridge Center. Sponsored by Senator David Ige, Senator Donna Mercado Kim, Representative Aaron Ling Johanson, Representative Blake Oshiro, Representative K. Mark Takai, and Representative Roy Takumi, this fair allowed us to meet and inform hundreds of seniors and other visitors of the service our office provides. Representing our office at this fair were Sheila Alderman, Melissa Chee, Marcie McWayne, and Carol Nitta.

The 27th Annual Hawaii Seniors' Fair – The Good Life Expo was held from September 23-25, 2011. During this three-day event, thousands of seniors and non-seniors visited the various exhibits at the Neal Blaisdell Center, obtaining information and learning about issues that impact our senior community. We presented our services by talking to attendees who visited our exhibit booth and by distributing brochures that explained what our office does.

This year we were invited to participate in the 2011 Hawaii Small Business Fair held on Saturday, October 29, 2011, at the Kapiolani Community College. There were approximately 27 small businesses promoting their companies via flyers and providing information on starting a small business. Ombudsman staff members Debbie Goya, Alfred Itamura, Carol Nitta, and David Tomatani had the opportunity to introduce our office and explain our function to the attendees who stopped by our table. The crowd was a mixture of college students and young adults who also participated in the workshops offered.

The Hawaii United Okinawa Association held its 5th Annual Senior Health & Awareness Fair on June 22, 2012 in Waipio. We joined 40 exhibitors in greeting approximately 600 attendees and providing them with helpful information. Representing our office were support staff Edna de la Cruz and Sue Oshima.

National and International Ombudsman Organizations

Ombudsman Robin Matsunaga was elected at the Annual Meeting of the United States Ombudsman Association (USOA) in October 2011 to serve as USOA President for the next two years. This is his sixth two-year term as an elected Director of the USOA Board. Mr. Matsunaga also served as USOA President from 2001 to 2005 and most recently served as the USOA Conferences & Training Chair. The USOA is the oldest and largest organization in the United States of ombudsmen working in government to address citizen complaints. The USOA's membership includes practicing ombudsmen at all levels of government, some of whom have general jurisdiction and others who have jurisdiction over a specified subject matter or agency.

In October 2011, Mr. Matsunaga was also elected Director of the North American Region of the International Ombudsman Institute (IOI). Mr. Matsunaga joined Diane Welborn, the Ombudsman for Dayton and Montgomery County, Ohio, and André Marin, the Ombudsman of Ontario, as the Directors of the North American Region. The IOI is the only global organization for the cooperation of more than 150 Ombudsman institutions. In addition to its periodic conferences, the IOI fosters regional and international information exchange. The IOI is comprised of six regional chapters: Africa; Asia; Australia and Pacific; Europe; Caribbean and Latin America; and North America.

International Cooperation

A six-member Chinese delegation headed by Mr. Shi Zengfu visited our office on November 9, 2011. The delegation was comprised of officials from Hangzhou City in Zhejiang Province, located in East China. The purpose of the delegation's visit was to learn about the services provided by our office and the role of the Ombudsman in dealing with citizens' complaints, as well as to explore opportunities for cooperation and collaboration in order to establish and strengthen the ombudsman offices in their own communities.

Chapter II

STATISTICAL TABLES

For all tables, the percentages may not add up to a total of 100% due to rounding.

TABLE 1
NUMBERS AND TYPES OF INQUIRIES
Fiscal Year 2011-2012

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	411	293	40	78
August	411	308	48	55
September	356	278	27	51
October	340	243	41	56
November	384	306	38	40
December	369	282	37	50
January	347	241	44	62
February	360	245	54	61
March	316	220	32	64
April	346	247	40	59
May	368	251	52	65
June	327	245	40	42
TOTAL	4,335	3,159	493	683
% of Total Inquiries	--	72.9%	11.4%	15.8%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2011-2012

Month	Telephone	Mail	Email	Fax	Visit	Own Motion
July	367	25	12	0	6	1
August	363	34	9	2	3	0
September	318	20	14	0	4	0
October	306	17	12	1	4	0
November	261	111	7	0	4	1
December	298	58	11	0	1	1
January	304	25	14	1	3	0
February	312	19	23	0	6	0
March	278	19	11	1	7	0
April	288	31	16	0	11	0
May	320	38	7	0	2	1
June	286	15	13	2	10	1
TOTAL	3,701	412	149	7	61	5
% of Total Inquiries (4,335)	85.4%	9.5%	3.4%	0.2%	1.4%	0.1%

TABLE 3
DISTRIBUTION OF POPULATION AND INQUIRERS BY RESIDENCE
Fiscal Year 2011-2012

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	963,607	70.1%	2,968	68.5%
County of Hawaii	186,738	13.6%	505	11.6%
County of Maui	156,764	11.4%	411	9.5%
County of Kauai	67,701	4.9%	94	2.2%
Out-of-State	--	--	357	8.2%
TOTAL	1,374,810	--	4,335	--

*Source: The State of Hawaii Data Book 2011, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "*Resident Population, by County: 1990 to 2011.*"

TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2011-2012

	TYPES OF INQUIRIES					
	Jurisdictional Complaints		Non-Jurisdictional Complaints		Information Requests	
Residence	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
C&C of Honolulu	2,152	68.1%	297	60.2%	519	76.0%
County of Hawaii	363	11.5%	71	14.4%	71	10.4%
County of Maui	307	9.7%	55	11.2%	49	7.2%
County of Kauai	70	2.2%	10	2.0%	14	2.0%
Out-of-State	267	8.5%	60	12.2%	30	4.4%
TOTAL	3,159	--	493	--	683	--

TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2011-2012

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	Email	Fax	Visit	Own Motion
C&C of Honolulu	2,968	2,686	123	88	5	61	5
% of C&C of Honolulu	--	90.5%	4.1%	3.0%	0.2%	2.1%	0.2%
County of Hawaii	505	469	8	27	1	0	0
% of County of Hawaii	--	92.9%	1.6%	5.3%	0.2%	0.0%	0.0%
County of Maui	411	374	31	6	0	0	0
% of County of Maui	--	91.0%	7.5%	1.5%	0.0%	0.0%	0.0%
County of Kauai	94	82	6	6	0	0	0
% of County of Kauai	--	87.2%	6.4%	6.4%	0.0%	0.0%	0.0%
Out-of-State	357	90	244	22	1	0	0
% of Out-of-State	--	25.2%	68.3%	6.2%	0.3%	0.0%	0.0%
TOTAL	4,335	3,701	412	149	7	61	5
% of Total	--	85.4%	9.5%	3.4%	0.2%	1.4%	0.1%

TABLE 6
DISTRIBUTION AND DISPOSITION OF JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2011-2012

Agency	Juris-dictional Complaints	Percent of Total	Completed Investigations		Discon-tinued	Declined	Assisted	Pending
			Substan-tiated	Not Substan-tiated				
State Departments								
Accounting & General Services	21	0.7%	2	8	1	2	4	4
Agriculture	6	0.2%	0	1	2	1	2	0
Attorney General	224	7.1%	4	155	11	12	40	2
Budget & Finance	75	2.4%	7	30	10	19	8	1
Business, Economic Devel. & Tourism	5	0.2%	0	2	0	0	1	2
Commerce & Consumer Affairs	37	1.2%	0	13	9	10	1	4
Defense	2	0.1%	0	1	1	0	0	0
Education	93	2.9%	7	27	15	33	3	8
Hawaiian Home Lands	8	0.3%	1	1	2	1	1	2
Health	100	3.2%	9	36	10	33	6	6
Human Resources Development	2	0.1%	0	1	0	1	0	0
Human Services	463	14.7%	95	195	57	55	32	29
Labor & Industrial Relations	102	3.2%	4	35	19	23	12	9
Land & Natural Resources	37	1.2%	1	15	5	9	3	4
Office of Hawaiian Affairs	1	0.0%	0	0	0	0	0	1
Public Safety	1,676	53.1%	124	569	79	799	48	57
Taxation	16	0.5%	2	3	4	3	4	0
Transportation	40	1.3%	6	18	2	9	2	3
University of Hawaii	18	0.6%	3	6	1	5	1	2
Other Executive Agencies	3	0.1%	0	0	1	1	0	1
Counties								
City & County of Honolulu	172	5.4%	18	56	19	56	9	14
County of Hawaii	32	1.0%	2	9	0	17	1	3
County of Maui	20	0.6%	1	4	1	13	0	1
County of Kauai	6	0.2%	0	0	1	4	0	1
TOTAL	3,159	--	286	1,185	250	1,106	178	154
% of Total Jurisdictional Complaints	--	--	9.1%	37.5%	7.9%	35.0%	5.6%	4.9%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2011-2012

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
State Departments			
Accounting & General Services	2	2	0
Agriculture	0	0	0
Attorney General	4	2	2
Budget & Finance	7	7	0
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	0	0	0
Defense	0	0	0
Education	7	7	0
Hawaiian Home Lands	1	1	0
Health	9	8	1
Human Resources Development	0	0	0
Human Services	95	95	0
Labor & Industrial Relations	4	4	0
Land & Natural Resources	1	1	0
Office of Hawaiian Affairs	0	0	0
Public Safety	124	118	6
Taxation	2	2	0
Transportation	6	6	0
University of Hawaii	3	3	0
Other Executive Agencies	0	0	0
Counties			
City & County of Honolulu	18	17	1
County of Hawaii	2	2	0
County of Maui	1	1	0
County of Kauai	0	0	0
TOTAL	286	276	10
% of Total Substantiated Jurisdictional Complaints	--	96.5%	3.5%
% of Total Completed Investigations (1,471)	19.4%	18.8%	0.7%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2011-2012

Agency	Information Requests	Percent of Total
State Departments		
Accounting & General Services	13	1.9%
Agriculture	6	0.9%
Attorney General	35	5.1%
Budget & Finance	24	3.5%
Business, Economic Devel. & Tourism	3	0.4%
Commerce & Consumer Affairs	67	9.8%
Defense	2	0.3%
Education	7	1.0%
Hawaiian Home Lands	0	0.0%
Health	61	8.9%
Human Resources Development	2	0.3%
Human Services	38	5.6%
Labor & Industrial Relations	26	3.8%
Land & Natural Resources	9	1.3%
Office of Hawaiian Affairs	2	0.3%
Public Safety	47	6.9%
Taxation	7	1.0%
Transportation	8	1.2%
University of Hawaii	4	0.6%
Other Executive Agencies	22	3.2%
Counties		
City & County of Honolulu	71	10.4%
County of Hawaii	4	0.6%
County of Maui	2	0.3%
County of Kauai	2	0.3%
Miscellaneous	221	32.4%
TOTAL	683	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2011-2012

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	20	4.1%
County Councils	4	0.8%
Federal Government	39	7.9%
Governor	3	0.6%
Judiciary	65	13.2%
Legislature	10	2.0%
Lieutenant Governor	0	0.0%
Mayors	1	0.2%
Multi-State Governmental Entity	0	0.0%
Private Transactions	349	70.8%
Miscellaneous	2	0.4%
TOTAL	493	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2011-2012 AND THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER TO FISCAL YEAR 2012-2013

Types of Inquiries	Inquiries Carried Over to FY 11-12	Inquiries Carried Over to FY 11-12 and Closed During FY 11-12	Balance of Inquiries Carried Over to FY 11-12	Inquiries Received in FY 11-12 and Pending	Total Inquiries Carried Over to FY 12-13
Non-Jurisdictional Complaints	1	1	0	4	4
Information Requests	1	1	0	1	1
Jurisdictional Complaints	146	138	8	154	162
		Disposition of Closed Complaints: Substantiated 38 Not Substan. 83 Discontinued 17 138			
TOTAL	148	140	8	159	167

Chapter III

SELECTED CASE SUMMARIES

The following are summaries of selected cases investigated by the office. Each case summary is listed under the State government department or the county government involved in the complaint or inquiry. Although some cases involved more than one department or involved both the State and the county, each summary is placed under what we believe to be the most appropriate agency.

LIST OF SUMMARIES

(12-00398) Urgent need for a duplicate State ID. A man complained in July 2011 that the State Civil Identification Section (ID Office) in Hilo would not provide him with a duplicate identification certificate (State ID) because he did not have a scheduled appointment.

The complainant explained that he was staying with his friends in Hilo when his wallet, which contained his State ID, was stolen. Earlier on the same day that the complainant called us, he learned that an opening had become available in a Honolulu-based program that he wished to attend. The complainant wanted to make airline reservations to Honolulu as soon as possible in order to secure the open spot in the program. However, without a valid form of identification, he would be unable to clear airport security and board the flight to Honolulu.

The complainant informed us that when he explained his situation to the Hilo ID Office, the staff informed him that the earliest available appointment was a week away. The complainant also contacted the Kona ID Office, and although that office did not require an appointment to obtain a duplicate State ID, the complainant did not have the means to travel to the Kona ID Office.

The Hilo ID Office staff informed us that it processed State IDs on an appointment-only basis to better manage its operations. The staff noted that the Hilo ID Office serviced between 80 and 100 applicants daily. We learned that prior to instituting the new system, there was usually a long line of applicants that extended outside the Hilo ID Office door and into the hallway, resulting in complaints from other tenants of the building.

The Hilo ID Office staff recalled that the complainant called them about his situation, but that he did not explain the urgency of his situation. After further discussion and consideration, the Hilo ID Office staff agreed to try to accommodate the complainant with an earlier appointment time if he could provide documentation to support his situation, such as his flight reservation or a police report number. Although the complainant did not have a flight reservation, he had filed a police report regarding the theft of his wallet and knew the police report number.

Based upon the statements made to us by the Hilo ID Office staff, we suggested to the complainant that he contact the Hilo ID Office again and properly explain the urgency of his need to obtain a duplicate State ID before his appointment date and provide the police report number in support of his situation.

DEPARTMENT OF BUDGET AND FINANCE

(11-04153) Denial of payment for outpatient mental health treatment. The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) provides health care benefit plans to State and County employees and retirees. A psychologist complained that the EUTF denied his claims for payment for outpatient mental health services he provided to a State employee.

The complainant treated a patient for major depression and substance use disorder through regular office visits. The patient's health care benefit plan under the EUTF was with a private insurance carrier. The complainant filed his claims through the carrier, but was denied payment because his patient exceeded the maximum benefit for outpatient mental health visits, which was limited to 24 outpatient visits per calendar year.

The complainant contended that under Chapter 431M, Hawaii Revised Statues, titled "Mental Health and Alcohol and Drug Abuse Treatment Insurance Benefits," a health insurance plan shall not impose rates, terms, or conditions including service limits and financial requirements on serious mental health illness benefits if similar rates, terms, or conditions are not applied to services for other medical or surgical conditions. The private insurance carrier informed the complainant that it only administered his patient's health care benefit plan, but that the EUTF was responsible for determining the benefits and limitations of the plan. The complainant subsequently appealed the payment issue to the EUTF and also argued that the denial of his claims was not in accordance with the Mental Health Parity and Addiction Equity Act (MHPAEA), 26 U.S.C. § 9812 (2008). However, the EUTF denied his appeal.

We followed up with the EUTF assistant administrator and learned that the MHPAEA, which applied to health care benefit plan years beginning on or after July 1, 2010, required group health care benefit plans and health care insurance issuers to ensure that financial requirements, such as co-payments and deductibles, and treatment limitations, such as visit limits applicable to mental health or substance use disorder benefits, were no more restrictive than the predominant requirements or limitations applied to substantially all medical or surgical benefits.

We also learned that although the private insurance carrier's health care benefit plan did not limit the number of outpatient medical or surgical visits, it did limit the number of outpatient mental health or substance use disorder visits. The EUTF assistant administrator believed that pursuant to the MHPAEA, the private insurance carrier should accept the complainant's claims for payment if the services he provided were medically necessary to treat his patient's mental health or substance use disorder issues.

The EUTF assistant administrator later informed us that the private insurance carrier's medical director reviewed the complainant's claims for payment and determined that it was medically necessary for him to treat his patient weekly for mental health or substance use disorder issues. Since there must be parity between mental health or substance use disorder benefits and medical or surgical benefits with respect to treatment limitations under the private insurance carrier's health care benefit plan, the carrier amended its Summary of Benefits to comply with the MHPAEA. The private insurance carrier also accepted the complainant's payment claims for outpatient mental health services he provided from July 1, 2010 that it initially denied.

The EUTF assistant administrator informed us that the private insurance carrier would further review its records and files to locate claims for payment that were denied for outpatient mental health or substance use disorder services that other health care professionals provided from July 1, 2010.

We notified the complainant of our findings and the action taken by the EUTF.

DEPARTMENT OF HUMAN SERVICES

(12-00087) Presumptive eligibility for medical assistance. A woman's application for medical assistance through the Department of Human Services (DHS) was denied because her income was a few dollars over the eligibility limit. She disagreed that her income was over the eligibility limit and requested an administrative fair hearing to review the decision to deny her application.

The fair hearing decision was delayed, and the woman complained to our office that contrary to its rules, the DHS failed to deem her presumptively eligible for medical assistance when the fair hearing decision was not made within 90 days of her request for the hearing.

We reviewed Hawaii Administrative Rules (HAR) Title 17, DHS, Subtitle 12, Med-Quest Division, Chapter 1703, titled "Administrative Appeals." Section 17-1703-16, HAR, titled "Decisions pending over ninety days," stated in part:

> (a) When a final decision has not been made and implemented within ninety days of the request, the department shall . . . grant any service which was . . . denied, . . .

(b) The hearing officer shall notify the eligibility worker orally on the ninety-first day when a final decision is not reached within ninety days. . . .

. . . .

(d) When a final decision on a medical issue is not made and implemented within ninety days:

(1) The specific medical care denied the recipient which is the issue on appeal shall be authorized from the ninety-first day. The hearing shall be decided in the recipient's favor; or

(2) Applicants for medical assistance shall be made presumptively eligible to secure assistance from the ninety-first day until the hearing decision is made.

Under the HAR, when a final decision is not rendered within 90 days from the date a fair hearing request is filed with the Administrative Appeals Office (AAO), the hearings officer initiates the presumptive eligibility process in which the DHS approves any service that is denied from the ninety-first day until the fair hearing decision is issued. As such, it appeared to us that the complainant was correct.

We contacted the AAO administrator who informed us that the presumptive eligibility provision did not apply to issues concerning applications for medical assistance and only applied to denials of medical care to those already receiving medical assistance. She also informed us that the hearings officer denied the complainant's appeal.

We pointed out to the AAO administrator that the complainant was seeking to be "made presumptively eligible to secure assistance," not seeking authorization for medical care already rendered because an appeal decision was not yet made in her case. The AAO administrator acknowledged that the presumptive eligibility rules did apply to this case and other cases where a formal appeals decision was not made and implemented within 90 days of the request for a fair hearing.

We later learned that the decision issued by the hearings officer was in the complainant's favor. The hearings officer found that upon further review of the complainant's household information, the complainant's income fell below the eligibility limit. Thus, the complainant was deemed eligible for medical assistance retroactive to the date of her original application, including the time period during which her appeal was pending a decision.

We reported our findings to the complainant, who confirmed that she had received a favorable ruling on her appeal.

(12-00088) Overpayment and underpayment of food stamps benefits. A woman complained that the Department of Human Services (DHS) decreased her monthly food stamps benefit from $74 to $44 effective March 2011 because of a projected increase in income from her Social Security benefit. The complainant reported to us that her only income was her monthly Social Security benefit and there was no projected increase in that benefit.

We contacted the complainant's DHS caseworker and learned that he had misread the complainant's monthly benefit information in the Social Security Administration Beneficiary and Earnings Data Exchange. The caseworker confirmed that the complainant's only income was her monthly Social Security benefit and that there was no projected increase in that benefit. The caseworker informed us that he corrected the error and recalculated the complainant's monthly food stamps benefit to be $55 effective March 2011, which resulted in a monthly underpayment of $11.

We asked the caseworker to explain why the complainant's recalculated monthly food stamps benefit was lower than the amount the complainant received prior to March 2011 when her income had not changed. The caseworker informed us that when the complainant applied for food stamps benefits in December 2010, he erroneously applied a medical deduction that the complainant was not eligible to receive. This error lowered the net income amount used to calculate the benefit amount, resulting in the complainant receiving more food stamps benefit than she was entitled to receive. The caseworker therefore adjusted the complainant's monthly food stamps benefit effective December 2010, when the error was initially made.

As a result of the caseworker's errors, the complainant was overpaid a total of $45 in food stamps benefits from December 2010 through February 2011 and underpaid a total of $55 from March 2011 through July 2011. The caseworker believed that the complainant would not be responsible for the overpayment she received because it resulted from the DHS's error in calculating her monthly benefit. However, based on what we learned from previous cases involving the overpayment of food stamps benefits, we questioned the caseworker's understanding of the requirements for reimbursement of overpayments.

We reviewed Hawaii Administrative Rules (HAR) Title 17, DHS, Subtitle 6, Benefit, Employment and Support Services Division, Chapter 683, titled "Underpayment, Overpayment, and Recovery." According to the rules, the underpayment/overpayment of benefits shall be restored/repaid if the underpayment/overpayment resulted from the DHS's error.

Section 17-683-10, HAR, stated in part:

> Entitlement. (a) The branch shall restore to the household, benefits which were lost whenever the loss was caused by an error by the department . . . .

Section 17-683-14, HAR, stated in part:

> Determination and calculation of benefits. . . .
>
> . . . .
>
> (c) If a claim against a household is unpaid . . . the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. . . .

Section 17-683-53, HAR, stated in part:

> General. (a) A claim is an amount owed because of:
>
> (1) Benefits that are overpaid . . .
>
> . . . .
>
> (c) The following are responsible for paying a claim:
>
> (1) Each person who was an adult member of the household when the overpayment . . . occurred; . . .

Section 17-683-54, HAR, stated in part:

> Types of claims. There are three types of claims: . . .
>
> . . . .
>
> (c) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the branch.

Section 17-683-58, HAR, stated in part:

> Collection methods. . . .
>
> . . . .

(c) The branch must reduce any restored benefits owed to a household by the amount of any outstanding claim.

Based on the above rules and contrary to what the DHS caseworker believed, the complainant was responsible for paying back the amount of food stamps that were overpaid, even though the overpayment was the result of an error by the caseworker. Consequently, the DHS offset the $55 in underpaid benefits by the $45 of overpaid benefits and issued the balance of $10 in food stamps to the complainant.

We explained the actions taken by the DHS to the complainant.

(12-00270) Unfair denial of food stamps. A woman who lived on Maui applied for food stamps for herself, her boyfriend, and her four children in January 2011. She was interviewed in March by her caseworker. In July, she complained to us that her application had not yet been processed.

Based upon our previous investigations regarding delays in the processing of food stamps applications, we were aware that Hawaii Administrative Rules (HAR) Title 17, Department of Human Services (DHS), Subtitle 6, Family and Adult Services Division, Chapter 647, titled "Application Processing Requirements," required the welfare office to provide an eligible household an opportunity to participate in the program within 30 calendar days after the application for food stamps is filed. The rules accounted for delays in the processing of an application and provided that if a delay was caused by the welfare office, the approval would be retroactive to the date of the application.

We contacted the caseworker who confirmed that the complainant submitted her application in January. She informed us that due to lack of staff and an increase in applications for welfare assistance, there was a delay in the processing of applications. She said that she would work on the complainant's application soon.

In mid-August, the complainant reported that her application was denied because her income exceeded the standard to qualify for food stamps. She informed us that she asked her caseworker in April if she should reapply since there was a decrease in her monthly income in April. Her caseworker told her that her application was already being processed so there was no need for her to reapply. In the following months, the complainant's income decreased even more.

We again contacted the complainant's caseworker who informed us that when she determined the complainant's eligibility for food stamps in August, she projected the complainant's income based on the actual income the complainant received in January, February, and March. The projected

income was above the allowable limit for the complainant to qualify for benefits and thus the caseworker denied the application.

We questioned the caseworker as to why she did not consider the complainant's actual income from April and subsequent months, since that information was available by the time she worked on the complainant's application in August. The caseworker informed us that she believed that in determining an applicant's income, she was allowed to count only the income received by the household in the month the application was filed and to project the household income for the subsequent two months.

We reviewed HAR Title 17, DHS, Subtitle 6, Benefit, Employment and Support Services Division, Chapter 680, titled "Eligibility and Benefit Determination." According to the rules, all food stamps applicants were required to have their eligibility and benefit amount prospectively determined. The rules required the welfare office to use its best estimate of the income and circumstances which will exist in a current or future calendar month. However, the rules did not specify which months' income is to be considered in determining a household's income when there has been a delay of several months in processing the application and the household's actual income has decreased since the month of application.

We spoke with the caseworker's supervisor and the food stamps program administrator, who both stated that the complainant could have reapplied in April when she reported the change in income to her caseworker, and that the complainant should not have been penalized for not doing so under her caseworker's advice. Furthermore, they agreed that a caseworker should be allowed to determine an applicant's projected income by basing their projection on income that would best reflect what the complainant expected to receive had she reapplied in April when her income decreased. The supervisor informed us that she would review the complainant's application.

A few days thereafter, the complainant informed us that she was approved for benefits retroactive to April. It appeared that the welfare office rectified the situation by treating the complainant's case as though she had reapplied in April. The complainant was pleased with the outcome and appreciative of our assistance.

(12-01499) Premature denial of financial assistance application. A grandfather who was the legal guardian of his 2½-year-old grandson complained that the Department of Human Services (DHS) denied the application for financial assistance he filed on behalf of his grandson. Since the grandson was abandoned by his mother, the grandson was eligible under

the law to receive welfare benefits. However, the complainant was still required to provide household income information as part of the application process.

The complainant believed that he submitted the proper documents with the initial application form. However, the initial documents that the complainant submitted were insufficient for his grandson to be eligible for benefits so he dropped off the correct documents at the welfare office.

The complainant's welfare worker subsequently notified the complainant that he did not receive the documents he requested. The complainant offered to deliver the documents again. However, the welfare worker told the complainant that he gave him enough time to do so, and because it was past the 10-day deadline for submission of the documents, he would be terminating the application. The complainant felt that this was unfair because he drove to the welfare office to hand-deliver the documents and gave them to the DHS office staff. However, he was still told by the welfare worker that the documents were not received.

In our investigation, we reviewed Hawaii Administrative Rules Title 17, DHS, Subtitle 6, Family and Adult Services Division, Chapter 647, titled "Application Processing Requirements." We noted the following applicable rules:

> §17-647-14 Time limits on disposition of application.
> (a) The application process shall begin with the submittal of a signed application form to the income maintenance unit and shall end when an assistance benefit or notification of denial or discontinuance is sent to the applicant.
>
> . . . .
>
> (g) An applicant who is requested to submit additional information or verification to establish the claim of eligibility shall be given ten days to provide the information or verifying material from the date the request is made by the eligibility worker.
>
> (h) An applicant who fails to provide the necessary information and verification to establish the claim for eligibility shall not have the application denied until at least thirty days have elapsed from the date of application.
>
> (i) An applicant who fails to provide the necessary information and verification to establish the claim for eligibility within the time limits established in subsections (g) and (h) shall be ineligible for financial assistance.

We spoke with the welfare worker's supervisor and confirmed the date that the complainant submitted the application. The supervisor agreed that based upon the date of the application, the welfare worker should have allowed the complainant 30 days to submit the proper documentation. Instead, the welfare worker only gave the complainant 10 days from the date of his application to provide the documentation.

The supervisor also located the documents that the complainant previously dropped off but which the welfare worker said were not received. The supervisor directed the welfare worker to reopen the complainant's case and process the application. The complainant's grandson subsequently received his welfare benefits.

DEPARTMENT OF PUBLIC SAFETY

(11-02636 and 11-03992) Inmates found guilty of physical interference or obstacle. An inmate complained that an adjustment committee (committee) found him guilty for violating the following sections of Department of Public Safety (PSD) Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations":

> **4.0 <u>MISCONDUCT RULE VIOLATIONS AND SANCTIONS</u>**
>
> . . . .
>
> .3 High Misconduct Violations (7).
>
> a. . . .
>
> . . . .
>
> 7 (12) The use of physical interference or obstacle resulting in the obstruction, hindrance, or impairment of the performance of a correctional function by a public servant.
>
> . . . .

.4 Moderate Misconduct Violations (8).

a. . . .

. . . .

8 (11) Refusing to obey an order of any staff member, which may include violations in the low moderate category.

According to staff reports, the complainant initially refused to comply with an order to move from a cell in one module to a cell in an adjacent module. The complainant claimed to have personal differences with inmates in the adjacent module. He eventually agreed to be moved but only after a lieutenant arrived and spoke with him.

We found the guilty finding for violating Section 4.0.4a.8(11), for refusing to obey an order, to be reasonable because the complainant did disobey an order. However, we questioned the guilty finding for violating Section 4.0.3a.7(12), for the use of physical interference or obstacle. According to the committee's finding and disposition:

> It is because Lt. [name omitted] was forced to interrupt his normal operations, the Sergeants [sic] call for S&E [search and escort] assist and the Sgt's initial order to bag/baggage to move, that the committee finds sufficient evidence to uphold the original charge of obstruction.

We noted that in his investigation report, the investigating officer stated:

> FINDINGS: Based on reports submitted by staff and inmate, this investigator did find evidence that inmate [omitted] did disobey a direct order from Sgt. [omitted] but found no other evidence that would collaborate with the charges of using abusive language or hindrance.

We spoke with the committee chairperson and asked her to explain the basis for the committee finding the complainant guilty of violating Section 4.0.3a.7 (12). The chairperson informed us it was because the lieutenant and the Search and Escort team was forced to "drop what they were doing" and "physically come to the module " to speak with the inmate. The chairperson stated that assisting in the transfer of an inmate to another module was "not in these employees' job descriptions" and thus the complainant created an "obstacle" that resulted in the obstruction, hindrance, or impairment of the performance of a correctional function.

We informed the chairperson that based on the plain language of Section 4.0.3a.7(12), it appeared the policy was intended to prohibit an inmate from physically interfering with or using an obstacle to interfere with a staff member's performance of his or her duties. For example, an inmate who physically blocked the path of an adult corrections officer (ACO) or closed a door to prevent an ACO from entering a cell would be guilty of violating the rule. In this instance, however, no such physical interference was committed by the complainant and even though ACOs had to be removed from their posts, responding to the incident and escorting the complainant to another block in the module were part of the ACO's regular duties.

The committee chairperson disagreed and stated that she believed the "obstacle" by the complainant did not need to be physical in nature because the adjective "physical" modified only the word "interference" and not the word "obstacle." Thus, the chairperson stated that the committee felt that by refusing to move, the complainant created an obstacle to normal facility operations and he was therefore guilty of the violation.

We were not convinced that the committee chairperson had properly explained Section 4.0.3a.7(12). Therefore, we conducted further research on the issue.

The Meaning of Physical Interference or Obstacle

We reviewed the definition of the terms "interference" and "obstacle" in *Merriam-Webster's Collegiate Dictionary*, Eleventh Edition. "Interference" is defined as the act of interfering, and "interfere" is defined in part as follows:

> **1** : to interpose in a way that hinders or impedes : come into collision or be in opposition

The term "interpose" is defined in part as follows:

> **1 a** : to place in an intervening position **b** : to put (oneself) between : INTRUDE

Thus, we interpreted the term "physical interference" as used in Section 4.0.3a.7(12) to mean an inmate's positioning of himself or herself in such a way that it hinders or impedes a staff member from carrying out a correctional function.

The same dictionary noted above defines the term "obstacle" as follows:

> [T]o stand in front of . . . in the way . . . something that impedes progress or achievement

The staff reports did not indicate that the complainant positioned himself or stood in the way of any staff member so that the staff member was hindered or impeded from carrying out a correctional function. The actions of the complainant did not fit the definitions of "physical interference" or "obstacle."

Application of Section 4.0.3a.7(12)

We noted that in every instance in which an inmate commits an alleged misconduct, staff members will need to respond to the incident, write reports, complete investigations, and conduct disciplinary hearings. Although these staff members may be interrupted in carrying out the other work that they were performing at the times in question, we believed these duties to be part of the responsibilities of these staff members. As a result, we believed that an inmate should be found guilty of violating Section 4.0.3a.7(12) only if the inmate's conduct directly resulted in such obstruction, hindrance, or impairment and the inmate intended that result. Otherwise, every time an inmate is guilty of any misconduct, the inmate would also be guilty of violating Section 4.0.3a.7(12), as staff members would be diverted from other work in order to respond to the incident, write reports, complete investigations, and conduct disciplinary hearings.

We believed that the Hawaii Penal Code (HPC) provided insight in determining intent, which is a critical element of criminal offense. We reviewed Chapter 710, HPC, titled "Offenses Against Public Administration." Section 710-1010, HPC, prohibits the obstruction, impairment, or hindrance of the performance of a government function by a public servant, language similar to Section 4.0.3a.7(12). Section 710-1010, HPC, stated in pertinent part:

> **Obstructing government operations.** (1) A person commits the offense of obstructing government operations if, by using or threatening to use violence, force, or physical interference or obstacle, the person intentionally obstructs, impairs, or hinders:
>
> (a) The performance of a governmental function by a public servant acting under color of the public servant's official authority; . . . (Emphasis added.)

Chapter 702, HPC, titled “Principles of Penal Liability,” stated in Section 702-206, HPC:

> **Definitions of states of mind.** (1) “Intentionally.”
>
> (a) A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.
>
> . . . .
>
> (c) A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

We believed that in its adjustment of charges of misconduct, the PSD should consider two elements of a violation--the nature of the act committed by the inmate and the intent of the inmate in committing that act. In that regard, the HPC principles provided useful guidance in determining whether an inmate is guilty of violating Section 4.0.3a.7(12). Did the act committed by the inmate result in the obstruction, hindrance, or impairment of a staff member’s performance of a correctional function? In committing the act, was it the inmate’s intention and objective to obstruct, hinder, or impair a staff member’s performance of a correctional function? If the answers to these questions are affirmative, it would be reasonable to find the inmate guilty of violating Section 4.0.3a.7(12).

In the subject case, the act committed by the complainant was his refusal to obey an order to pack his belongings and move from one cell to another within Module 1. The action did not directly obstruct, hinder, or impair a staff member’s performance of a correctional function.

The complainant intentionally committed the act. However, it appeared to us that the complainant’s intent and objective was to avoid his movement to a module where he believed he would be unsafe. We did not believe it was reasonable to conclude that in refusing to obey an order to pack his belongings and move from one cell to another, the complainant’s intent and objective was to obstruct, hinder, or impair a correctional function being performed by the lieutenants and sergeants.

In summary, when determining whether an inmate is guilty of committing a prohibited act, we believed that the PSD must consider whether the act resulted in the obstruction, hindrance, or impairment of a staff member’s performance of a correctional function and, if so, whether that result was intended by the inmate who committed the act.

As the actions of the complainant did not directly obstruct, hinder, or impair a staff member's performance of a correctional function, and we did not believe it was his intent to commit such obstruction, hindrance, or impairment by their actions, we determined that it was inappropriate to find him guilty of violating Section 4.0.3a.7(12).

We presented our analysis and findings to the PSD and requested its review and reconsideration of the guilty finding in the complainant's case.

The PSD responded to our inquiry by stating that the inmate's guilty finding would be dismissed as it did not appear that the justification for this specific charge was warranted. The PSD stated that the charge would be expunged from the complainant's institutional files.

At about the same time that we received the above-described complaint, another inmate at a different PSD facility made a similar complaint to our office. According to staff reports, the complainant jumped on the back of another inmate, and placed the other inmate in a headlock, which caused both inmates to fall to the ground. Both inmates continued to fight after getting up off the ground. The committee found the complainant guilty of assaulting the other inmate, which we found to be reasonable. However, the committee also found the complainant guilty of the use of physical interference or obstacle.

The committee chairperson and warden in this second case informed us that the complainant's conduct interfered with the normal operations of the facility because the module was locked down, staff was called away from their posts to respond to the incident and escorts were needed to take the inmates to the medical unit and to the holding unit thereafter. For the same reasons provided in our analysis above, we found the guilty finding to be unwarranted, and we presented our findings and recommendations to the PSD. The PSD agreed with the applicability of our analysis to the second case and expunged the guilty finding from the second complainant's institutional file as well.

Both complainants were happy with the results of our investigations.

(11-02897) Incorrect reclassification. The placement of an inmate within a correctional facility is based on his or her custody level. The custody level determines the degree of physical control and staff supervision that an inmate requires. The custody levels for inmates, in order of highest to lowest security level, are maximum, close, medium, minimum, and community.

The Department of Public Safety (PSD) utilizes a classification instrument that objectively determines an inmate's custody level using a point system. Thereafter, the PSD utilizes a reclassification instrument at least

every six months to review and update the custody level of the inmate. The reclassification instrument takes into consideration the inmate's behavioral adjustment and institutional performance, as well as other changes that have occurred since the previous assessment. The inmate's custody level can increase, decrease, or remain unchanged as a result of the reclassification.

An inmate complained that his custody level had not been reduced from medium custody to minimum custody at his last reclassification. Had he received a lower custody level, he would have been eligible for transfer to another facility that offered work furlough and substance abuse programs. The Hawaii Paroling Authority recommended that he complete these programs in order to be eligible for parole.

We reviewed the complainant's most recent reclassification instrument. In one of the sections, the inmate was scored based on the following factors:

- Severity of institutional violence;
- Occurrence of violence within the last 18 months;
- Severity of current offense;
- Prior conviction for violent crimes within the last 10 years;
- Time left to serve on minimum sentence;
- Escape history;
- Frequency of misconduct reports;
- Severity of institutional misconduct;
- Current age;
- Release eligibility; and
- Program/work participation in the last 6 months.

The complainant received a total score of 11 points, which resulted in his being reclassified as medium custody. We were able to validate the scores for all of the factors listed above except for the score the complainant received for his escape history. The complainant received a score of 5 points for an escape or attempted escape from a medium custody or higher level facility, or an escape or attempted escape from a minimum or community custody facility using violence within the past ten years.

We accessed the State of Hawaii Judiciary website and found that the complainant was convicted of escape in the second degree more than ten years earlier. We reviewed Chapter 710, Hawaii Revised Statutes (HRS), titled "Offenses Against Public Administration." Section 710-1020, HRS, stated in part:

> **Escape in the first degree.** (1) A person commits the offense of escape in the first degree if the person intentionally

employs physical force, the threat of physical force, or a dangerous instrument against the person of another in escaping from a correctional or detention facility or from custody.

Section 710-1021, HRS, stated in part:

> **Escape in the second degree.** (1) A person commits the offense of escape in the second degree if the person intentionally escapes from a correctional or detention facility or from custody.

We contacted the complainant to learn more about his escape conviction. The complainant stated that he escaped from a work furlough program while he was in a community custody facility by jumping over a fence and that no one made any attempt to stop him. He did not employ any dangerous instrument in his escape. The complainant could not tell us the exact date of this escape but stated that it occurred more than ten years earlier.

If the complainant's statements were correct, he should have received a score of 1 point for his escape history on his reclassification instrument since he escaped from a community custody facility over seven years earlier and he did not use violence. Thus the complainant's reclassification would have resulted in a minimum custody score.

We contacted the facility case manager who conducted the complainant's most recent reclassification and inquired about the score for his escape history. The case manager informed us that she simply carried over the score of 5 points for his escape history from his previous reclassification instruments. She also confirmed that the complainant escaped more than ten years earlier and was later convicted of escape in the second degree. However, she did not have any further information on the escape since the files were stored in the facility's archives. We asked the case manager to locate the file on the complainant's escape.

The case manager subsequently reported that she was unable to locate the records of the complainant's escape. We spoke with other staff members at the facility but no one had information of the complainant's escape. We also contacted the records office of another PSD facility where the complainant was housed but they did not have any record of the complainant's escape either.

We thereafter wrote to the deputy warden and presented the facts of our investigation. We asked that a review of the complainant's case be done to determine if the classification score for his escape history should be changed from 5 points to 1 point.

The deputy warden thereafter informed us that the complainant's recent reclassification was done in error and that the complainant had escaped from the work furlough center without violence. The deputy warden stated that he instructed his staff to reclassify the complainant using the updated information.

During the subsequent reclassification, the complainant received a minimum custody score. The complainant was very appreciative of our assistance.

(11-03115 and 11-04067) Failure to transmit reports of sexual harassment to law enforcement for investigation. A person sentenced to prison for committing a crime may sometimes also become a victim of a criminal act while serving time in prison. When this happens, the inmate is allowed to file a report that is then transmitted by the prison to a law enforcement agency for investigation.

An inmate at a correctional facility alleged that an adult corrections officer (ACO) sexually assaulted him by inappropriately touching his genitals during a pat down search. A month after he filed a report against the ACO, the inmate complained that no one from law enforcement contacted him about his complaint.

We spoke with a lieutenant at the correctional facility who informed us that he personally handed over the complainant's report to the law enforcement agency. However, the lieutenant was unable to recall either the name of the law enforcement officer to whom he gave the report or when this was done. The lieutenant also informed us that he believed the complainant's allegation was "a piece of malarkey" and that the accused ACO was "just doing his job." We recommended that the lieutenant provide the complainant with another report form to fill out and that the lieutenant transmit the completed report to the law enforcement authority. The lieutenant agreed to do so. The complainant subsequently informed us that law enforcement investigators "finally" interviewed him about the alleged crime committed against him by staff.

During the time we received the above-described complaint, another inmate at the same facility contacted our office with a similar complaint. He alleged that an ACO made inappropriate sexual gestures and comments toward him. The complainant stated that after reporting the incident to the lieutenant at the facility, he was waiting almost three months for law enforcement investigators to interview him. We reported this second complaint to the facility's chief of security (COS). After his investigation, the COS could not confirm whether the complainant's report was sent to a law enforcement agency because there was no record of its transmission.

To ensure the timely transmission of these reports in the future, we contacted the facility's warden and recommended that the facility create a system to track the transmittal of the incident reports to law enforcement agencies. The warden assigned this task to the COS. Subsequently, the COS informed us that in previous similar circumstances, security staff was recording their report transmissions to the law enforcement agencies, but that the practice was discontinued for no apparent reason. Thus, the COS reinstated the tracking policy by creating a report logbook and issuing a memorandum to all security staff with instructions on how to process and record the report transmissions. This logbook contained the names of both the victim and the accused, the date the incident occurred, the date the incident was reported to the facility, the name of the facility staff who transmitted the report, the date the report was transmitted to the law enforcement agency, the name of the law enforcement agency that the report was transmitted to, the method of transmission, and the response by the receiving law enforcement agency (for example, the date the law enforcement officer arrived at the facility to interview the victim and the name of the interviewing officer).

The COS also informed us that the inmate in the second complaint was provided with another report form to fill out and that the completed form was promptly transmitted to the law enforcement agency and recorded in the logbook. The complainant subsequently informed us that he was interviewed by a law enforcement officer shortly thereafter.

(11-03238 and 11-04300) Inmate property. In addition to State-issued property, inmates are allowed to possess certain personal items while in prison. When the inmates are transferred to other correctional facilities, they are allowed to have their property transferred with them. We investigated two complaints pertaining to the transfer and handling of inmate property by the Department of Public Safety (PSD).

In the first complaint, an inmate was not allowed to take his Bible with him when he transferred to another correctional facility. We learned that the warden of the sending facility issued a memorandum to his staff specifying a limited number of personal items that inmates were allowed to take with them, and a Bible was not on the list of allowed items. The warden cited a confidential department policy pertaining to transport of inmates that supported his memorandum. In our investigation, however, we noted the existence of a separate policy governing the transfer and handling of inmate personal property that included a longer list of items that inmates were allowed to take with them when they transferred to another facility.

We contacted the institutions division administrator (IDA), PSD, and requested a review of the two policies. After reviewing the policies, he

agreed that the policies should be amended so that there is uniformity in the number and types of items inmates are allowed to take with them when they are transferred to other correctional facilities.

The IDA subsequently informed us that the policies were amended to include consistent language about the increased number of personal items allowed to be transferred with the inmate when moving between State facilities, including a "Holy book of professed faith, e.g. Bible, Koran, etc."

During the course of our investigation of the above-described complaint, a former inmate with a mental health impairment complained that his personal property had disappeared from storage while he was housed at a correctional facility. The complainant's personal property, including a watch he considered to be valuable, was placed in the correctional facility's property room for storage. However, when the complainant was transferred to the Hawaii State Hospital several months later, none of his property was transferred with him.

We contacted the facility property room staff who informed us that the complainant entered the facility with excess property, including the watch. The property officer reported that the complainant signed an acknowledgement form indicating that he understood that he had to make arrangements to have his excess articles sent out within 30 days. The property officer informed us that the complainant took no steps to send out his excess property, so when the 30-day deadline passed, the property was marked as abandoned. As such, the complainant's property was disposed of several weeks later and there was no property left to transfer.

We reviewed the PSD policy pertaining to the disposition of inmates' personal property and confirmed that inmates were to be notified in writing that they have 30 days to dispose of all excess property (i.e., items the inmate is not allowed to retain while in custody), and if no one claims the excess property within the 30 days or the inmate does not make an effort to dispose of the property within that period, the excess property shall be considered abandoned. Thereafter, the property would be disposed of by the property room staff.

We informed the complainant that because he did not make the proper arrangements, his property was disposed of pursuant to department policy. We informed him that he could utilize the State tort claim process if he wished to attempt to recover the value of the watch.

Although we found that the property room staff had correctly followed department policy, we had reservations about the application of the policy to inmates with a mental health impairment as they should not be expected to comprehend and consent to the disposal of their property. When we questioned the facility's property officer about the complainant's case, he

stated that the property room had no way of knowing whether an inmate had a mental health impairment. However, he said they could have made an informal exception to the 30-day disposal rule if the facility's mental health staff had provided the property room with notice that the complainant was being treated for a mental health impairment.

We spoke with the facility's mental health section administrator, who acknowledged that disposal of property of mental health inmates was an ongoing problem. We informed him that the property officer stated that if the facility health care providers notified the property room that an inmate was being treated for mental health issues, they could have made an exception to the 30-day disposal rule. The section administrator said that he spoke to the IDA several months earlier about changing the policy to prevent certain property of mental health inmates from being discarded. However, the policy change was still pending.

We contacted the IDA and suggested that the excess property policy be modified to include an exemption from the 30-day disposal rule when a facility property room is properly notified that the inmate is being treated for a mental health impairment. The IDA agreed and subsequently modified the policy to contain such an exemption. The new policy stated that the exemption should end when the inmate has either regained the ability to comprehend the policy or when he or she is transferred, along with his or her property, to the Hawaii State Hospital.

(12-00214) Suspension of parole. Parole is an opportunity for a convicted felon to serve a portion of his or her sentence under supervision in the community. Parole is available to those inmates not serving a mandatory minimum sentence of imprisonment established by the court. While on parole, the parolee must agree to follow certain conditions. If the parolee violates the conditions of parole, he or she may be returned to prison. Paroles are administered by the Hawaii Paroling Authority (HPA).

A parolee had not reported his whereabouts to his parole officer between November 3, 2006 and August 5, 2007. Consequently, the HPA suspended his parole for nine months, a period equivalent to the time the parolee's location was not known. The parolee complained that his parole had not been revoked, and therefore his suspension from parole should be rescinded.

We reviewed Hawaii Administrative Rules (HAR), Title 23, Department of Public Safety, Subtitle 5, Hawaii Paroling Authority, Chapter 700. Section 23-700-37(c), HAR, stated:

> When a parolee's whereabouts is unknown or the parolee leaves the State without permission, the

> Authority may suspend that person's parole term until the parolee is in the custody of a law enforcement agency to be returned to the custody of the Department of Public Safety. That period of suspension shall be added to the parolee's aggregate parole term."

Therefore, the HPA's actions were in accordance with its rules.

However, we found that the HPA was not in compliance with another section of its rules. Section 23-700-1, HAR, defined "Formal decisions of the Authority" as "the fixing or reduction of a minimum term of imprisonment, a decision on a request for reduction of minimum term of imprisonment, a pardon or commutation recommendation and granting, denying, revoking, suspending or reinstating parole." Section 23-700-2(b), HAR, stated, in part, that "[t]he Authority consists of three persons; one full-time and two part-time members, . . . Formal decisions of the Authority shall not be conclusive and final unless at least two members are in agreement."

In our review of the complainant's file, we found that the approval of the complainant's suspension did not indicate that at least two of the three HPA members were in agreement with the decision, as required by its rules. We also noted that there was no record of any action by the HPA indicating that it revoked the complainant's parole.

We brought this to the parole administrator's attention. He subsequently informed us that the complainant's nine-month suspension was being rescinded.

We reported our findings to the complainant, who was pleased with the outcome.

(12-00293) Union dues erroneously deducted from paychecks. A former part-time employee of the Department of Public Safety (PSD) complained that union dues were erroneously deducted from her paychecks from October 2005 to May 2011. A total of $1,129.75 was withheld from the complainant's paychecks by the PSD and paid to the union during this time period.

The complainant reported that when she was hired in 2005, she went to an orientation meeting with a union representative present. The representative told her that as a part-time employee, she was not a union member so she was not entitled to its benefits. When she received her first paycheck, she questioned the PSD as to why union dues were being deducted from her pay since she was only a part-time employee. The PSD informed her that the dues were being deducted in accordance with the law.

In May 2011, the complainant, who worked 10 hours per week, discovered that the deductions were contrary to Chapter 89, Hawaii Revised Statutes (HRS), titled "Collective Bargaining." Section 89-6, HRS, "Appropriate bargaining units," specifically excluded part-time employees working less than 20 hours per week from inclusion in any appropriate bargaining unit or entitlement to coverage under the chapter.

The complainant then sought the assistance of the PSD's human resources personnel in having the union return the money to her. The PSD sent the union a letter dated June 30, 2011, explaining that the employee was mistakenly charged union dues from October 2005 to May 2011 and asking the union to contact the employee directly. The union responded to the PSD in a letter dated July 22, 2011 that it would refund $95.15, which was the amount of dues collected three months from the date the union was notified of the oversight, but would not be refunding the full amount of the withheld dues. The union stated that in spite of the fact that the complainant's employee status may have been erroneously documented by the employer, the continued payment of the dues and the union's acceptance of the dues required the union provide her with full representation services.

The complainant thereafter contacted our office to complain about the deductions by the PSD. She noted that she did not receive any services from the union during the time period that the dues were deducted from her paychecks. We spoke with a PSD staff member about the situation, who noted that if the complainant really disagreed with the deductions, she would have been persistent in following up from the beginning. The staff also noted that the PSD did not have the funds to reimburse the complainant nor was there anything the department could do since the funds were already provided to the union.

Because the law did not allow the deductions from the complainant's paychecks, and since we believed that it was unfair not to reimburse the complainant, we contacted a PSD deputy director about this situation. Subsequently, the deputy director informed us that the union would be refunding the employee the entire $1,129.75 she paid in dues. Thereafter, the complainant confirmed that she received the payment.

(12-00362) Inmate found guilty for having a new tattoo. An inmate complained that a correctional facility's adjustment committee (committee) found him guilty of two misconduct violations for having a tattoo. The complainant informed us that while he was being processed for transfer to a work furlough facility, an adult corrections officer (ACO) noticed the tattoo on his left thigh. The ACO determined that the complainant did not

have the tattoo when he first entered the facility approximately two years earlier. However, the complainant asserted that he had the tattoo for 20 years and that it should have been documented upon his entry to the facility along with several other tattoos.

The committee found the complainant guilty of violating the following sections of Department of Public Safety (PSD) Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations":

4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS

. . . .

.4 Moderate Misconduct Violations (8).

a. . . .

. . . .

8 (22) Tattooing or self-mutilation or possession of tattooing tool/implements.

. . . .

.5 Low Moderate Misconduct Violations (9).

a. . . .

. . . .

9 (10) Failure to follow safety or sanitary rules.

We reviewed the facility's staff reports and documents, which included a photograph of the tattoo in question which was located on the left thigh of the complainant. The ACO who conducted the routine screening in preparation of the complainant's transfer to the work furlough facility indicated that this particular tattoo was not documented in the complainant's institutional file. The complainant's other tattoos were noted in his institutional file upon his entry two years earlier.

We spoke to the ACO who discovered the tattoo in question on the complainant. However, he was not the ACO who processed the complainant when he first entered the facility. We subsequently spoke to the ACO who did the intake processing of the complainant when he entered the facility two years earlier. The processing ACO stated that the particular tattoo on the complainant's thigh was not present when the complainant entered the

facility. The ACO explained that the intake procedures required an inmate to provide the location and description of his/her tattoos on the bottom of the emergency contact form. The ACO stated that the inmate is required to remove his/her clothing to allow the ACO to check for other tattoos that may not have been documented by the inmate on the form.

We notified the complainant that we were unable to substantiate his claim that the tattoo was present on his left thigh when he entered the facility and that he did not indicate this particular tattoo on the emergency contact form which he completed two years earlier. The complainant asserted that he completed the top portion of the form, which asked for emergency contact information, but did not complete the bottom portion of the form, which asked for the location and description of his tattoos. The complainant stated that the handwriting on the bottom portion of the form was not his, and he recalled that it was the ACO who had filled in the location and description of his tattoos. The complainant stated that he did not know what the ACO wrote on the bottom portion of the form, and that he should not be held responsible for what was written. He asked if we could inquire with two other correctional facilities where he was incarcerated for a brief period of time prior to his transfer to his current facility for information those facilities may have regarding his tattoos.

We agreed to inquire further and learned that the first facility did not document the complainant's tattoos in its records. However, we found documentation of the tattoo in question in the second facility's records that preceded the complainant's entry to the current facility.

We informed the warden of the complainant's current facility of the records at the second facility, which documented the existence of the tattoo prior to the complainant's transfer to his current facility. The warden informed us that the complainant's two guilty misconduct findings would be changed to not guilty and that a memo would be forwarded to the complainant to inform him of the correction. The warden also informed us that the prison computer system would be updated to document the complainant's tattoo in question.

We subsequently notified the grateful complainant of our findings and the action taken by the warden.

(12-00916) Improper classification score. A jail inmate is a person who is sentenced to a term of no more than one year. An inmate whose term is longer than one year is considered a prison inmate. The custody levels for jail inmates, in order of highest to lowest security level, are maximum, close, medium, minimum, and community.

A jail inmate complained in July 2011 that his case manager used an old escape charge when calculating the score for his classification. This resulted in the complainant receiving medium custody, but he believed he should have been classified as minimum custody. The escape in question occurred in April 2002 from a community level facility and did not involve violence. The complainant was convicted of the escape charge in July 2003.

When we reviewed a copy of the complainant's jail custody instrument, we found conflicting information. The section of the instrument covering the escape history of an inmate within the last ten years provided that 3 points shall be added for an escape or attempted escape from a minimum or community facility within the last three years, and that 5 points shall be added for an escape or attempted escape from a medium, close, or maximum facility or for any escape with violence. In the complainant's case, although the escape occurred over three years earlier, staff added 3 points to his score.

We also reviewed the instructions in the Department of Public Safety (PSD) Classification Handbook (Handbook), and found that the corresponding section of the Handbook stated that 3 points shall be added for an escape or attempted escape in the last ten years from minimum or community custody with no violence involved. The instructions did not state that the inmate shall be assessed 3 points only if the escape or attempted escape from a minimum or community facility occurred within the preceding three years.

We discussed the discrepancy with the PSD classification staff. The staff member informed us that she would check with the developer of the computer-generated classification system for clarification. She subsequently informed us that the correctional facility staff was supposed to check on all of an inmate's escapes within the last ten years. Staff conducting the review was to add 3 points to the classification score for escapes from a minimum security or community facility that did not involve violence in the last three years, and 5 points for escapes within the last ten years from any facility that involved violence. We learned that the date of conviction for the escape should be utilized, not the date of the escape. The department thereafter took steps to correct the error in the Handbook and to provide staff with updated instructions regarding classification reviews.

Staff amended the complainant's classification score and no points were added to his score for escape since his old escape charge did not involve violence and occurred over three years earlier. This amendment decreased the complainant's total score, resulting in his custody level being reduced to minimum.

We explained our follow up to the grateful complainant.

(12-01634) Remedying slippery shower floor. An inmate stated that she injured her foot when she slipped and fell in the shower at a correctional facility. She complained about the lack of non-slip strips on the shower floor and believed such strips would prevent inmates from slipping and falling in the shower.

In our discussions with the operations staff at the facility, we learned that the floor inside the shower was resistant to the adhesive used to secure the strips. Non-slip strips had been installed outside the shower but became loose soon after installation due to the wet conditions. As an alternative, the staff planned to place signs on the walls inside the shower advising inmates to use caution as the area was slippery when wet.

Subsequently, we contacted the operations staff at a different correctional facility and were informed that they too were unsuccessful in ensuring that the non-slip strips adhered to the floors inside and outside the shower. As an alternative, that facility placed rubber bath mats inside and outside the shower which helped to prevent inmates from slipping and falling.

Thereafter, we contacted an operations staff member at the facility where the complainant slipped and fell and informed her of the use of rubber mats by the other facility. The staff member informed us that she had considered placing rubber mats in the shower area, but her proposal was denied due to lack of available funds. She informed us that the mats would have cost $1,000 while the non-slip strips cost just $120.

We thereafter spoke with the facility warden. We informed the warden that we believed the use of rubber mats at the facility would prevent inmates from getting injured and would thus save the State money in the long run. The warden agreed to reconsider the matter and later informed us that he would ask his staff to obtain new price quotes for the rubber mats.

The operations staff member subsequently informed us that she was authorized to purchase 48 mats for outside the shower area and 8 mats for inside the shower at a total cost of $312.

CITY AND COUNTY OF HONOLULU

(12-03268) Name not allowed on driver's license. In March 2012, a woman complained that when she went to renew her driver's license at the Motor Vehicle Licensing and Permits Division (MVLPD), City and County of Honolulu, she was told that she could only have her first and last name on her driver's license. The MVLPD staff informed her that Act 38, Session Laws of Hawaii 2010, Hawaii's Legal Presence Law, required individuals

applying for or renewing their driver's license to show proof that they were legally in the United States of America. As a result, the complainant was required to provide a copy of her marriage certificate to show that her name was legally changed upon her marriage. However, when the MVLPD staff reviewed her marriage certificate, there was only a declared first and last name. Thus, the MVLPD staff believed that the complainant did not have a legal middle name.

The complainant informed us that she spoke with staff at the Department of Health, and was informed that her legal name is her first name, her birth middle name, and her married last name. However, the complainant wanted her driver's license to reflect her first name, her maiden name as her middle name, and her married last name, as she believed that was her legal name following her marriage and because she had been signing her name as such on important documents.

In our investigation, we learned that the complainant's name at birth was "Jane Mary Doe." She believed that when she married "John Smith" in 1990, she legally changed her name to "Jane Doe Smith," and replaced her birth middle name with her maiden name. We reviewed the complainant's marriage certificate and found that the sections on the certificate that indicated a declared middle name of the bride and groom were not filled in.

We reviewed Chapter 574, Hawaii Revised Statutes (HRS), titled "Names," and found that Section 574-1, HRS, titled "Married persons," was amended numerous times, most recently in 1991 and 1993. At the time the complainant got married, Section 574-1, HRS, read as follows:

> Upon marriage each of the parties to a marriage shall declare the surname each will use as a married person. The surname chosen may be the person's own, that of the person's spouse alone or that of the person's spouse placed before or after the person's own surname and separated by a hyphen.

On May 16, 1991, Section 574-1, HRS, was amended by Act 121, Session Laws of Hawaii (SLH) 1991, to read as follows (for purposes of identifying the changes made by Act 21, repealed text is bracketed and new text is underscored):

> Upon marriage each of the parties to a marriage shall declare the [surname] <u>middle and last names</u> each will use as a married person. The [surname] <u>last name</u> chosen may be the person's own, that of the person's spouse alone or that of the person's spouse placed before or after the person's own [surname] <u>last name</u> and separated by a hyphen. <u>The middle name or names chosen may be the person's last name or the last name of a person's spouse converted to a middle name or</u>

> the middle name or names given on the person's birth certificate or a combination of a middle name or names on a person's birth certificate and the person's last name converted to a middle name.

On July 1, 1993, Act 346, SLH 1993, further amended Section 574-1, HRS, to remove the requirement that parties use a hyphen to separate a last name that has two names, and to expand the choices of names that can be declared as a middle name. As a result, Section 574-1, HRS, currently reads as follows (for purposes of identifying the changes made by Act 346, the repealed text is bracketed and new text is underscored):

> Upon marriage each of the parties to a marriage shall declare the middle and last names each will use as a married person. The last name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse, or any combination of such names, which may, but need not, be separated by a hyphen. [the person's own, that of the person's spouse alone or that of the person's spouse placed before or after the person's own last name and separated by a hyphen.] The middle name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse, or any combination of such names, which may, but need not, be separated by a hyphen. [the person's last name or the last name of a person's spouse converted to a middle name or the middle name or names given on the person's birth certificate or a combination of a middle name or names on a person's birth certificate and the person's last name converted to a middle name.]

Because the complainant was married in 1990, we determined that the applicable law was what Section 574-1, HRS, stated prior to May 16, 1991. The fact that the law at that time did not allow a change of a person's middle name explained why the complainant's marriage certificate did not show any declared middle name. Therefore, what the MVLPD staff informed the complainant was erroneous because a person married prior to May 16, 1991 was only allowed to declare a last name, and the person's middle name remained the same as was given to the person at birth.

When we spoke with the MVLPD office that serviced the complainant, we learned that its staff was unaware that the law did not allow individuals who were married prior to May 16, 1991 to change and, therefore, declare a middle name. We asked the MVLPD administrator if his office had a procedure to address those individuals who were married prior to May 16, 1991 and whose marriage certificates did not have their middle name. The administrator informed us that the MVLPD did not have a procedure in place

but that he would consider establishing such a procedure. Subsequently, the MVLPD administrator issued a memorandum informing his staff of the proper procedure in handling applications from these individuals.

The MVLPD offered to reprint the complainant's driver's license to reflect her full legal name, "Jane Mary Smith." We informed the complainant of the offer and informed her that because she was married during a time when the law did not allow couples to change and declare a middle name upon marriage, her legal name was "Jane Mary Smith" and not "Jane Doe Smith." We also explained that if she wanted her legal name to be "Jane Doe Smith," she would need to legally change her name. The complainant informed us that she had already initiated the name change process through the Office of the Lieutenant Governor.

HAWAII COUNTY

(12-01344) Naturopathic physicians not allowed to do medical examination. A County of Hawaii resident wanted to renew his driver's license but was required, pursuant to the Hawaii Administrative Rules (HAR), to obtain a medical examination to prove that a medical condition he had would not prevent him from safely operating a motor vehicle and that his condition would not make such operation hazardous to public safety. The resident complained that the county's office of Motor Vehicle Registration (MVR) refused to allow a licensed naturopathic physician (N.D.), who had provided medical services to him, to complete the required medical examination form. The MVR informed the complainant that the written instructions on the medical form issued by the Department of Transportation (DOT) indicated that only a licensed doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) could complete the medical examination form.

By law, the director of the DOT is authorized to enforce HAR Title 19, DOT, Subtitle 5, Motor Vehicle Safety Office, Chapter 122, titled "Rules Relating to the Examination of Applicants for Issuance and Renewal of Motor Vehicle Driver's Licenses and Instruction Permits" and may delegate the task of implementing and administering the driver's license program to the counties.

We reviewed the DOT medical examination form and found that it contained the following instruction: "Please take this form to your doctor (licensed M.D. or D.O.)." We also reviewed Section 19-122-353(c), HAR, titled "Examination of applicant or licensee," which stated:

> If the examiner of drivers has reasonable cause beyond self-disclosure on the application form to believe that an applicant has a medical condition which may prevent the applicant from safely operating a motor vehicle or which makes such operation hazardous to public safety, the examiner of drivers may require a completed medical report and other examinations and reports by a licensed medical doctor or any other competent authority acceptable to the examiner of drivers. (Emphasis added.)

We contacted the DOT and explained that we found that the instructions on the medical examination form were more restrictive than Section 19-122-353(c), HAR, allowed because the rule allowed the medical examination to be performed by "any other competent authority acceptable to the examiner of drivers." Therefore, we recommended that the DOT consult with its legal counsel at the Department of the Attorney General (AG) to make any necessary changes to the form to conform with Section 19-122-353(c), HAR.

As a result of our discussion, the DOT amended the medical examination form with the following instruction: "Please take this form to your doctor (licensed to do physical examinations)." However, we informed the DOT that we still did not believe the revised language complied with Section 19-122-353(c), HAR. We noted that the phrase "licensed to do physical examinations" might give the applicant/licensee the impression that only a doctor licensed to do physical examinations could complete the examination form, whereas Section 19-122-353(c), HAR, authorized the MVR to also accept medical examination forms that were completed by "other competent authorities." Thus, we suggested that the DOT amend the examination form instructions to reflect the language used in Section 19-122-353(c), HAR. We again recommended that the DOT seek the advice of the AG to review any such changes.

The DOT accepted our recommendation after consulting with the AG and subsequently amended the form to include the following instructions: "Please take this form to a licensed medical doctor or any other competent authority acceptable to the Examiner of Drivers."

We notified the complainant that Section 19-122-353(c), HAR, allowed the MVR to decide whether or not to accept a medical examination form by a licensed medical doctor or any other competent authority. We explained that it was reasonable for the MVR to deny his request to have his N.D. complete the examination form based on the language on the DOT examination form as it existed at the time. However, we also notified the complainant that we recommended that the DOT amend its medical examination form to clarify that the MVR can accept the examination form from "other competent authorities."

The complainant notified us that he already completed the renewal of his driver's license by submitting a medical examination form completed by a licensed medical doctor. However, he was satisfied with the results of our investigation.

We found the administrator's actions to be reasonable and so informed the complainant.

Appendix

CUMULATIVE INDEX OF SELECTED CASE SUMMARIES

To view a cumulative index of all selected case summaries that appeared in our Annual Report Nos. 1 through 42, please visit our website at www.ombudsman.hawaii.gov and select the “Annual Reports” link from the homepage.

If you do not have access to our cumulative index via the Internet, you may contact our office to request a copy.