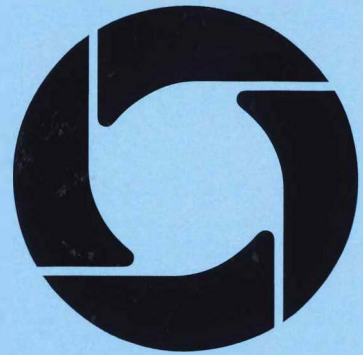
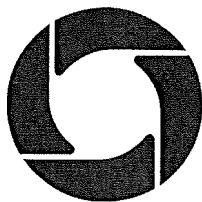


Office of the Ombudsman  
State of Hawaii  
Fiscal Year 2017-2018  
Report Number 49





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.

**Kekuanaoa Building, 4th Floor  
465 South King Street  
Honolulu, HI 96813**

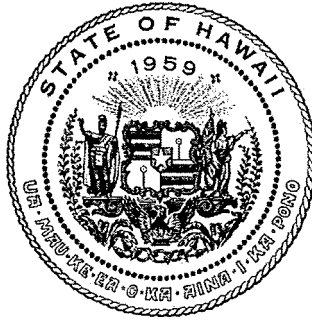
**Phone: 808-587-0770  
Fax: 808-587-0773  
TTY: 808-587-0774**

**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  
Fax extension is 7-0773  
TTY extension is 7-0774**

**email: [complaints@ombudsman.hawaii.gov](mailto:complaints@ombudsman.hawaii.gov)  
website: [ombudsman.hawaii.gov](http://ombudsman.hawaii.gov)**



State of Hawaii

# Report of the Ombudsman

For the Period July 1, 2017 - June 30, 2018  
Report No. 49

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

December 2018



Mr. President, Mr. Speaker, and Members of the  
Hawaii State Legislature of 2019:

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 2017-2018. This is the forty-ninth annual report since the establishment of the office in 1969.

My dedicated staff and I appreciate the unique role we serve as a link between the people and their government. We are all committed to independently and impartially investigating complaints and improving the level of public administration in Hawaii.

On behalf of all the members of this office, I would like to thank the Governor, the Mayors of the counties, and the State and County department heads and employees for their ongoing cooperation and assistance in our efforts to address citizen complaints and to ensure the fair treatment by government of the people of Hawaii.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robin K. Matsunaga', followed by a long, horizontal, wavy line that extends to the right.

ROBIN K. MATSUNAGA  
Ombudsman

December 2018



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## Chapter I

### THE YEAR IN BRIEF

#### Total Inquiries Received

During fiscal year 2017-2018, the office received a total of 3,374 inquiries. Of these inquiries, 2,388, or 70.8 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 431 non-jurisdictional complaints and 555 requests for information.

There was a slight increase in all categories of inquiries.

A comparison of inquiries received in fiscal year 2016-2017 and fiscal year 2017-2018 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
2017-2018	3,374	555	431	2,388	1,295	1,093
2016-2017	3,300	554	389	2,357	1,295	1,062
Numerical Change	74	1	42	31	0	31
Percentage Change	2.2%	0.2%	10.8%	1.3%	0.0%	2.9%



## **Staff Notes**

In July 2017, Melissa Chee was promoted to First Assistant. As First Assistant, Ms. Chee serves as second in command to the Ombudsman and is responsible for supervising the Analyst staff. Ms. Chee previously served as an Analyst from November 2010 through June 2013, before taking on the additional role as Legal Compliance Officer until her promotion to First Assistant.

In September 2017, Cindy Yee joined our office to transition into the Administrative Services Officer position, which would become vacant at the end of October. She was selected because of her strong work ethic and keen understanding of personnel, payroll, and procurement processing. Prior to joining our team, Ms. Yee was employed at the Office of Information Practices.

In October 2017, Administrative Services Officer Carol Nitta retired after 33 years of service with the State of Hawaii. Ms. Nitta was with our office since 2009. Prior to joining our office, she was employed for 24 years at the Legislative Reference Bureau. Ms. Nitta was very knowledgeable in human resource management and payroll administration. She was always pleasant and had a solid work ethic. We were very fortunate to have Ms. Nitta as a team member and would like to extend our gratitude to her for her dedication and commitment to our office.

In October 2017, Analyst Marcie McWayne celebrated 10 years of service with the State of Hawaii. Ms. McWayne has been a member of our team since April 2010. Prior to joining our office, she was employed by the Department of the Attorney General.

In December 2017, Ryan Yeh joined our office as an Analyst. Prior to joining our team, Mr. Yeh was employed at the University of Hawaii. Mr. Yeh is a graduate of Case Western Reserve University School of Law where he received his Doctorate of Jurisprudence degree. He was admitted to the Hawaii State Bar in 2002. In March 2018, Mr. Yeh took on the additional role as Legal Compliance Officer.

In December 2017, Senior Analyst Rene Dela Cruz celebrated 10 years of service with the State of Hawaii. Mr. Dela Cruz has been a member of our team since February 2009. He was previously employed by the County of Hawaii.

In December 2017, Administrative Services Assistant Sue Oshima retired after 27 years of service with the State of Hawaii. Ms. Oshima was with our office since 1990. She was very energetic and kept things

organized to ensure a smoother operating office. Ms. Oshima was a valuable asset with a wealth of institutional knowledge. We were very fortunate to have Ms. Oshima as a team member and extend our gratitude to her for her dedication and commitment to our office.

In February 2018, Carliza Elido joined our office as an Administrative Services Assistant. Prior to joining our team, Ms. Elido was employed at the Honolulu Police Department, City and County of Honolulu. She is a graduate of Chaminade University where she received her Bachelor of Science degree in Criminology and Criminal Justice. Ms. Elido brings to this office a positive attitude and a friendly, professional disposition.

In February 2018, Analyst Clayton Nakamoto left our office to accept a position with the Department of Education. We wish him the best in his new endeavor.

In June 2018, Jason Young joined our office as an Analyst. Prior to joining our team, Mr. Young was employed at the House of Representatives, Hawaii State Legislature. He is a graduate of Northern Arizona University, where he obtained his Bachelor of Science degree in Business Administration.

At the end of fiscal year 2018, our office staff consisted of Ombudsman Robin Matsunaga; First Assistant Melissa Chee; Analysts Herbert Almeida, Rene Dela Cruz, Alfred Itamura, Yvonne Jinbo, Gansin Li, Marcie McWayne, Ryan Yeh, and Jason Young; Administrative Services Officer Cindy Yee; and Administrative Service Assistants Sheila Alderman, Carliza Elido, and Debbie Goya.

## **Staff Activities**

In October 2017, the United States Ombudsman Association (USOA) held its 38th Annual Conference in San Antonio, Texas. This conference continues to provide the most relevant training for public sector ombudsman offices that investigate complaints about administrative acts of government agencies. In addition to providing new ideas and tools for handling complaints, it provides attendees opportunities to network with peers for technical and moral support. Ombudsman Robin Matsunaga was one of several instructors who conducted a two-day training workshop for persons entering the role of a government ombudsman. Other conference attendees from our office included First Assistant Melissa Chee and Analysts Marcie McWayne and Gansin Li. During the USOA Annual Conference, Ombudsman Matsunaga was elected to a fourth consecutive two-year term as President of the USOA Board of Directors.

In November 2017, the International Hospitality Center in Honolulu coordinated a meeting between Ombudsman Matsunaga and three participants of the United States Department of State Professional Fellows Program, Tetiana Kheruvimova of Ukraine, Dmitri Russu of Moldova, and Davit Oboladze of Georgia. Ms. Kheruvimova is an Investigator with the Business Ombudsman Council in Ukraine and deals primarily with complaints from businesses against government. Mr. Russu is the Monitoring and Reporting Program Coordinator for the Moldovan Institute for Human Rights and focuses on ensuring the rights of persons with mental disabilities and human rights for prisoners and persons in police custody. Mr. Oboladze is an attorney with the Innovations and Reforms Center and provides free legal assistance to migrants and stateless persons in Georgia. The Professional Fellows Program is designed to build lasting, sustainable partnerships between mid-level emerging leaders from foreign countries and the United States. Promising young professionals are afforded the opportunity to gain practical experience in, and exposure to, United States government, innovation ecosystems, and other topics, depending on their professional background.

In April 2018, Ombudsman Matsunaga met with Ombudsman Gary Hill and Associate Ombudsman Guy Weber of the National Geospatial-Intelligence Agency (NGA) during their visit to Honolulu. The NGA is both an intelligence agency and a combat support agency that enables the United States Intelligence Community and the United States Department of Defense to fulfill national security priorities to protect the nation. The NGA Ombudsman provides agency employees and external consumers of NGA products an informal resource to resolve concerns.

In April 2018, Ombudsman Matsunaga submitted to the USOA Conferences and Training Committee a proposal to host the USOA's 2019 Annual Conference, noting that 2019 will mark the 50th anniversary of the opening of the Hawaii Ombudsman's office, the first classical ombudsman office established in the United States. In May 2018, the USOA Board of Directors accepted the recommendation of the Conferences and Training Committee and selected Ombudsman Matsunaga's proposal to host the USOA's 40th Annual Conference in Honolulu in September 2019.

## 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 2017-2018**

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	249	167	34	48
August	321	214	42	65
September	236	162	32	42
October	279	212	29	38
November	222	161	24	37
December	226	147	31	48
January	266	195	37	34
February	256	167	41	48
March	239	166	36	37
April	345	251	43	51
May	395	300	48	47
June	340	246	34	60
TOTAL	3,374	2,388	431	555
% of Total Inquiries	--	70.8%	12.8%	16.4%



**TABLE 2**  
**MEANS BY WHICH INQUIRIES ARE RECEIVED**  
**Fiscal Year 2017-2018**

Month	Telephone	Mail	Email	Fax	Visit	Own Motion
July	201	16	26	1	5	0
August	273	30	15	0	3	0
September	186	11	27	5	7	0
October	236	16	20	0	7	0
November	190	11	16	0	4	1
December	181	30	12	0	3	0
January	227	9	25	0	4	1
February	217	10	26	1	2	0
March	203	10	17	1	7	1
April	296	18	26	0	3	2
May	331	19	19	18	4	4
June	285	23	27	1	4	0
TOTAL	2,826	203	256	27	53	9
% of Total Inquiries (3,374)	83.8%	6.0%	7.6%	0.8%	1.6%	0.3%



**TABLE 3**  
**DISTRIBUTION OF POPULATION AND**  
**INQUIRERS BY RESIDENCE**  
**Fiscal Year 2017-2018**

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	988,650	69.3%	2,148	63.7%
County of Hawaii	200,381	14.0%	379	11.2%
County of Maui	166,348	11.7%	435	12.9%
County of Kauai	72,159	5.1%	96	2.8%
Out-of-State	--	--	316	9.4%
TOTAL	1,427,538	--	3,374	--

\*Source: The State of Hawaii Data Book 2017, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, *"Resident Population, by County: 2000 to 2017."*





**TABLE 4**  
**DISTRIBUTION OF TYPES OF INQUIRIES**  
**BY RESIDENCE OF INQUIRERS**  
**Fiscal Year 2017-2018**

Residence	TYPES OF INQUIRIES					
	Jurisdictional Complaints		Non-Jurisdictional Complaints		Information Requests	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
C&C of Honolulu	1,498	62.7%	234	54.3%	416	75.0%
County of Hawaii	290	12.1%	44	10.2%	45	8.1%
County of Maui	359	15.0%	33	7.7%	43	7.7%
County of Kauai	68	2.8%	17	3.9%	11	2.0%
Out-of-State	173	7.2%	103	23.9%	40	7.2%
TOTAL	2,388	--	431	--	555	--



**TABLE 5**  
**MEANS OF RECEIPT OF INQUIRIES**  
**BY RESIDENCE**  
**Fiscal Year 2017-2018**

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	Email	Fax	Visit	Own Motion
C&C of Honolulu	2,148	1,872	37	170	8	52	9
% of C&C of Honolulu	--	87.2%	1.7%	7.9%	0.4%	2.4%	0.4%
County of Hawaii	379	336	9	34	0	0	0
% of County of Hawaii	--	88.7%	2.4%	9.0%	0.0%	0.0%	0.0%
County of Maui	435	417	5	13	0	0	0
% of County of Maui	--	95.9%	1.1%	3.0%	0.0%	0.0%	0.0%
County of Kauai	96	65	5	8	18	0	0
% of County of Kauai	--	67.7%	5.2%	8.3%	18.8%	0.0%	0.0%
Out-of- State	316	136	147	31	1	1	0
% of Out- of-State	--	43.0%	46.5%	9.8%	0.3%	0.3%	0.0%
TOTAL	3,374	2,826	203	256	27	53	9
% of Total	--	83.8%	6.0%	7.6%	0.8%	1.6%	0.3%



**TABLE 6**  
**DISTRIBUTION AND DISPOSITION OF**  
**JURISDICTIONAL COMPLAINTS BY AGENCY**  
**Fiscal Year 2017-2018**

Agency	Jurisdictional Complaints	Percent of Total	Completed Investigations		Discontinued	Declined	Assisted	Pending
			Substantiated	Not Substantiated				
<u>State Departments</u>								
Accounting & General Services	22	0.9%	1	3	5	8	2	3
Agriculture	2	0.1%	0	0	1	0	1	0
Attorney General	34	1.4%	0	2	9	16	7	0
Budget & Finance	72	3.0%	0	24	4	29	11	4
Business, Economic Devel. & Tourism	5	0.2%	0	1	2	0	1	1
Commerce & Consumer Affairs	52	2.2%	4	13	4	18	3	10
Defense	3	0.1%	0	0	0	3	0	0
Education	62	2.6%	4	12	4	36	2	4
Hawaiian Home Lands	7	0.3%	0	2	2	1	1	1
Health	101	4.2%	4	23	9	41	13	11
Human Resources Development	1	0.0%	0	0	0	0	0	1
Human Services	243	10.2%	6	44	36	113	28	16
Labor & Industrial Relations	71	3.0%	1	13	10	35	4	8
Land & Natural Resources	28	1.2%	0	4	7	11	2	4
Office of Hawaiian Affairs	2	0.1%	0	0	0	2	0	0
Public Safety	1,339	56.1%	60	340	92	703	55	89
Taxation	48	2.0%	0	1	5	20	21	1
Transportation	36	1.5%	1	9	4	15	3	4
University of Hawaii	23	1.0%	2	4	3	11	0	3
Other Executive Agencies	0	0.0%	0	0	0	0	0	0
<u>Counties</u>								
City & County of Honolulu	170	7.1%	7	36	21	83	13	10
County of Hawaii	37	1.5%	0	7	2	22	1	5
County of Maui	18	0.8%	0	6	3	9	0	0
County of Kauai	12	0.5%	0	0	4	7	0	1
<b>TOTAL</b>	<b>2,388</b>	<b>--</b>	<b>90</b>	<b>544</b>	<b>227</b>	<b>1,183</b>	<b>168</b>	<b>176</b>
% of Total Jurisdictional Complaints	--	--	3.8%	22.8%	9.5%	49.5%	7.0%	7.4%



**TABLE 7**  
**DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED**  
**JURISDICTIONAL COMPLAINTS BY AGENCY**  
**Fiscal Year 2017-2018**

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
<u>State Departments</u>			
Accounting & General Services	1	1	0
Agriculture	0	0	0
Attorney General	0	0	0
Budget & Finance	0	0	0
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	4	4	0
Defense	0	0	0
Education	4	4	0
Hawaiian Home Lands	0	0	0
Health	4	4	0
Human Resources Development	0	0	0
Human Services	6	6	0
Labor & Industrial Relations	1	1	0
Land & Natural Resources	0	0	0
Office of Hawaiian Affairs	0	0	0
Public Safety	60	58	2
Taxation	0	0	0
Transportation	1	1	0
University of Hawaii	2	2	0
Other Executive Agencies	0	0	0
<u>Counties</u>			
City & County of Honolulu	7	7	0
County of Hawaii	0	0	0
County of Maui	0	0	0
County of Kauai	0	0	0
<b>TOTAL</b>	<b>90</b>	<b>88</b>	<b>2</b>
% of Total Substantiated Jurisdictional Complaints	--	97.8%	2.2%
% of Total Completed Investigations (634)	14.2%	13.9%	0.3%





**TABLE 8**  
**DISTRIBUTION OF INFORMATION REQUESTS**  
**Fiscal Year 2017-2018**

Agency	Information Requests	Percent of Total
<u>State Departments</u>		
Accounting & General Services	13	2.3%
Agriculture	2	0.4%
Attorney General	3	0.5%
Budget & Finance	8	1.4%
Business, Economic Devel. & Tourism	1	0.2%
Commerce & Consumer Affairs	43	7.7%
Defense	4	0.7%
Education	4	0.7%
Hawaiian Home Lands	0	0.0%
Health	47	8.5%
Human Resources Development	0	0.0%
Human Services	29	5.2%
Labor & Industrial Relations	8	1.4%
Land & Natural Resources	12	2.2%
Office of Hawaiian Affairs	0	0.0%
Public Safety	43	7.7%
Taxation	5	0.9%
Transportation	8	1.4%
University of Hawaii	2	0.4%
Other Executive Agencies	10	1.8%
<u>Counties</u>		
City & County of Honolulu	88	15.9%
County of Hawaii	7	1.3%
County of Maui	4	0.7%
County of Kauai	4	0.7%
Miscellaneous	210	37.8%
<b>TOTAL</b>	<b>555</b>	<b>--</b>



**TABLE 9**  
**DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS**  
**Fiscal Year 2017-2018**

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	19	4.4%
County Councils	2	0.5%
Federal Government	31	7.2%
Governor	4	0.9%
Judiciary	63	14.6%
Legislature	7	1.6%
Lieutenant Governor	0	0.0%
Mayors	3	0.7%
Multi-State Governmental Entity	0	0.0%
Private Transactions	297	68.9%
Miscellaneous	5	1.2%
TOTAL	431	--



**TABLE 10**  
**INQUIRIES CARRIED OVER TO FISCAL YEAR 2017-2018 AND**  
**THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER**  
**TO FISCAL YEAR 2018-2019**

Types of Inquiries	Inquiries Carried Over to FY 17-18	Inquiries Carried Over to FY 17-18 and Closed During FY 17-18	Balance of Inquiries Carried Over to FY 18-19	Inquiries Received in FY 17-18 and Pending	Total Inquiries Carried Over to FY 18-19
Non-Jurisdictional Complaints	1	1	0	1	1
Information Requests	0	0	0	2	2
Jurisdictional Complaints	121	106	15	176	191
		<u>Disposition of Closed Complaints:</u>  Substantiated        29 Not Substan.        56 Discontinued        21 <hr/> 106			
TOTAL	122	107	15	179	194



## **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

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### DEPARTMENT OF PUBLIC SAFETY

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## DEPARTMENT OF PUBLIC SAFETY

**(17-02709) Department listed the wrong unit of measure in the drug detection policy and a correctional facility did not properly interpret the confirmatory test results.** To control and deter the unauthorized use and/or abuse of drugs and alcohol by adult inmates, the Department of Public Safety (PSD) administers an inmate drug detection program. PSD Policy COR.08.10 describes the various procedures for this program, including the use of urinalysis testing to detect the presence of opiates, cocaine, amphetamines, methamphetamines, marijuana, or other drugs in the urine of inmates. Policy COR.08.10 establishes the threshold concentration limits or “cutoff levels” for the detection of drugs in urine samples.

The concentration of a substance in a liquid is determined by measuring the mass of the substance in a given volume of the liquid. For urinalysis tests, the unit of mass that is commonly used is the nanogram (ng), which is equivalent to one-billionth of a gram. The unit of volume that is commonly used is the milliliter (mL), which is equivalent to one-thousandth of a liter. Thus, the common unit of measure for concentrations in urinalysis tests is nanograms per milliliter, or ng/mL.

If the urinalysis test finds that the concentration of a drug in a urine sample is above the cutoff level, the result is considered to be a positive indication that the inmate recently used that substance. If the inmate receives a positive test result and would like to challenge the accuracy of the facility’s testing, the inmate is permitted to order a more detailed analysis of the same urine sample by an independent laboratory (also known as a “confirmatory test”). These test results are used as evidence in PSD Adjustment Committee (AC) hearings (internal adjudicatory proceedings used by the department to determine whether an inmate has violated the PSD misconduct policy). When the AC finds that the inmate violated the misconduct policy, the inmate is subject to disciplinary sanctions.

An inmate complained to us that he should not have been found guilty of a violation of the PSD’s misconduct policy for using a prohibited substance. He argued that his urinalysis test result did not actually exceed the cutoff level that was specified in the PSD’s drug detection policy. The complainant stated that the correctional facility’s test of his urine specimen reported a methamphetamine concentration of “95.1.” The complainant stated that he appealed the guilty finding by arguing that the cutoff level for the test by the facility that was listed in the PSD policy was “500.” The complainant did not know the unit of measure for these test results.

## Unit of Measure for Cutoff Levels in the PSD Policy

As part of our investigation, we reviewed the PSD's policies and the documents pertaining to urinalysis testing. We found that COR.08.10 listed the methamphetamine cutoff level for the correctional facility's test at 500 ng per deciliter (dL), instead of ng/mL, and the cutoff level for the confirmatory test at 250 ng/dL. A dL is equivalent to one-tenth of a liter, or 100 mL. We also noted that the unit of measure in the PSD policy was the "ng/dL" for all other tested drugs.

Excerpt from PSD Policy COR.08.10

Initial Test Analyte	Federal Cutoff Concentrations (ng/dL)
Marijuana Metabolites	50
Cocaine Metabolites	150
Opiate Metabolites (codeine/morphine)	2,000
6-Acetylmorphine (6-AM)	10
Amphetamines (Amphetamine/methamphetamine)	500
Phencyclidine (PCP)	25
Methylenedioxymethamphetamine (MDMA)	500
Confirmatory Test Analyte	Federal Cutoff Concentrations (ng/dL)
Amphetamine	250
Methamphetamine	250
MDMA	250
Methylenedioxyamphetamine (MDA)	250
Methylenedioxyethylamphetamine (MDEA)	250
Cannabinoid metabolite (delta-9-tetrahydrocannabinol-9-carboxylic acid)	15
Cocaine metabolite (benzoylecgonine)	100
Codeine	2,000
Morphine	2,000
6-Acetylmorphine (6-AM)	10
PCP	25

We contacted PSD staff, including the department's Substance Abuse Services Program Manager (SASPM), for information on the basis of the cutoff levels in COR.08.10. The SASPM informed us that the levels listed in COR.08.10 were based on federal guidelines. However, when we reviewed the published federal guidelines, we found that the unit of measure used for the cutoff levels was ng/mL. We also found that the guidelines listed the facility and confirmatory cutoff levels for methamphetamine as 500 ng/mL and 250 ng/mL, respectively. Since the PSD policy listed the cutoff level in the units of ng/dL, the department's cutoff level was effectively one hundred times lower (and thus more strict) than the federal guidelines.

Thus, we asked the SASPM to review this discrepancy and to explain whether the PSD truly intended to set the concentration cutoff level for a positive test for methamphetamine at a level that was 100 times lower than the federal guidelines. The SASPM subsequently informed us that COR.08.10 contained a typographical error and that they intended to list ng/mL as the unit of measure. He further informed us that they would amend COR.08.10 accordingly.

#### Correctional Facility Interpretation of Confirmatory Test Results

According to the documents we obtained from the PSD, the correctional facility's urinalysis officer found the complainant's urine had a methamphetamine concentration of 95.1 ng/mL. The officer deemed this to be a positive test result. However, we noted that this result was clearly less than the 500 ng/mL cutoff level set by the PSD.

We also found that the complainant had requested a confirmatory test of his urine sample by an independent laboratory. The independent laboratory reported that the complainant's urine had a methamphetamine concentration of 95.1 ng/mL and stated that the sample was "positive" for methamphetamine. However, we noted that the independent laboratory's report listed the PSD methamphetamine cutoff level as 25 ng/mL instead of 250 ng/mL. As such, the confirmatory test results stated that the complainant's urine was "positive" for methamphetamine, even though this result was also clearly below the PSD's confirmatory test cutoff level of 250 ng/mL.

## Confirmatory Test Results

FINAL REPORT

Patient Name:

Specimen ID:

76841

Patient ID:

Specimen Outcome:

INCONSISTENT

Patient DOB:

Date Collected:

2/23/2017 @ 01:00 PM

Requesting Physician:

Date Tested:

2/28/2017

Requesting Practice:

Completed Date:

2/28/2017

Specimen Type:

Urine

Collector:

Medications:

No medications listed on requisition form.

Key Summary

Test	Outcome	Result	Prescribed	Inconsistent	Comment
Amphetamine	POSITIVE	83.0 ng/mL	NO	YES	NOT ANTICIPATED
Methamphetamine	POSITIVE	95.1 ng/mL	NO	YES	NOT ANTICIPATED

History

Collect Date	2/23/2017 3:00:00	
Test Date	2/28/2017 1:37:43	
Specimen ID	76841	
Normalized to Creat	No	
Test	Result	Flag
Amphetamine	83.0	POS
Methamphetamine	95.1	POS

Specimen Summary: Confirmatory Tests (Liquid Chromatography/Mass Spectrometry Method) ng/mL

Test	Result	Outcome	Cutoff
AMPHETAMINES (ng/mL)			
Amphetamine	83.0	POSITIVE	Cutoff: 25
Methamphetamine	95.1	POSITIVE	Cutoff: 25
Pseudo/Ephedrine	-	NEGATIVE	Cutoff: 25
Lisdexamphetamine	-	NEGATIVE	Cutoff: 25
Phentermine	-	NEGATIVE	Cutoff: 25

Certification

All Key Summary interpretations performed at Aloha Toxicology were conducted by the Laboratory Director or designated scientist(s).

Laboratory Director:

Based on our assessment of the two test results, we asked the PSD to reconsider the misconduct guilty findings for the complainant. The SASPM subsequently informed us that he believed that the facility urinalysis officers had misinterpreted the confirmatory test results. It appeared that the officer had only read the “positive” notation on the test results instead of comparing the actual test result concentration to the PSD cutoff level.

As a result, the complainant’s misconduct guilty findings were overturned and the charges against him expunged. Moreover, the SASPM informed us that the PSD would provide training to its urinalysis officers on how to properly interpret the confirmatory test results.

We believe that the PSD took reasonable corrective action in the above situation.

**(18-00286) Adjustment committee hearing held beyond time limit.**

Inmates are expected to abide by certain rules of conduct while in prison. In order to address violations of these rules, the Department of Public Safety (PSD) adopted Policy No. COR.13.03, titled "Adjustment Procedures Governing Serious Misconduct Violations and the Adjustment of Minor Misconduct Violations" (PSD Policy).

When a facility staff member suspects that an inmate has violated a rule of conduct, the staff member submits an incident report. Another staff member conducts an investigation of the suspected violation. If the investigator determines that there is sufficient basis to believe the inmate committed at least a moderate level misconduct, the inmate is issued a Notice of Report of Misconduct and Hearing (Notice). The PSD Policy requires that the Notice provide the inmate information about the specific misconduct(s) the inmate is being charged with, as well as the time and place of the adjustment committee (AC) hearing for the adjudication of the alleged misconduct(s).

To ensure the integrity of the adjustment process and the inmate's constitutional right of due process, the PSD Policy also requires the facility to provide the charged inmate an AC hearing and a final disposition signed and dated by the AC hearings officer within 45 days of the facility administration being notified of a misconduct violation committed by the inmate. The PSD Policy provides that the 45-day time limit may be suspended if an inmate leaves the facility due to a release or transfer to a non-PSD facility. This includes, but is not limited to, the inmate being moved to the Hawaii State Hospital, to another correctional facility on another island for a court hearing, or to a contracted facility.

An inmate at a work furlough facility was charged with escaping from the facility. The inmate was notified 73 days later that the AC found him guilty of this misconduct. The inmate complained to us that the warden should have overturned his guilty finding because the AC did not finalize the disposition of this misconduct within the 45-day time limit.

We reviewed the PSD files regarding this misconduct and found that the inmate had pled guilty to the charge during the AC hearing. However, we noted that the PSD Policy did not state that the 45-day time limit did not apply if an inmate pleads guilty to a charge.

We contacted the facility's warden, who explained that he was aware of the policy, but "in the interest of justice," he would not overturn the guilty finding. He informed us that the complainant had escaped with two other inmates and, while on the run from authorities, had committed acts of violence against private citizens.



Even though the AC violated the PSD Policy in addressing this particular misconduct, we did not feel it was unreasonable for the warden to uphold the guilty findings, based on the complainant's admission of guilt and the particular circumstances of this event. However, the complainant still had an active appeal before the Acting PSD Institutions Division Administrator (IDA) to overturn this guilty finding, and based on prior complaints with our office, we were aware of instances in which the IDA had overturned AC findings because the AC had exceeded the 45-day time limit. Therefore, we contacted the IDA to discuss our findings in this case.

The IDA informed us that she was already discussing with the PSD Director this particular case and the issue of the 45-day time limit. She informed us that she would be upholding the AC's and warden's decisions, as well as revising the PSD Policy to specify that the PSD Director had the authority to extend the 45-day time limit. We informed her that we would not object to that revision and suggested that the PSD also consider amending the policy to state that the 45-day time limit may be suspended if an inmate escapes from custody. The PSD agreed with this suggestion.

Thereafter, the PSD revised COR.13.03 to read as follows (new material underlined):

#### **4.0 POLICY**

. . . .

- .5 To ensure the integrity of the adjustment process and the constitutional right of due process, inmates/detainees charged with misconducts shall receive a hearing with the disposition finalized, inclusive of the signature and date of the Adjustment Hearings Officer, and entered within forty-five (45) days of the facility administration being notified of a misconduct violation committed by the inmate/detainee; except when an extended timeframe is authorized by the Director.
- .6 The forty-five (45) day time frame may be "stayed" or "tolled" if any inmate escapes, or leaves the facility due to a release or transfer to another facility. This includes, but shall not be limited to, movement to the Hawaii State Hospital, Court on another island, or contracted facility.

We informed the complainant that we did not find it unreasonable for the AC to have found him guilty, even if it did not hold his hearing within the 45-day time limit. The complainant did not disagree with our response.

**(18-00547) Inmate found guilty of lying when defending himself at his adjustment hearing.** An inmate complained that a facility adjustment committee (AC) 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 MISCONDUCT RULE VIOLATIONS AND SANCTIONS**

. . . .

##### **.3 High Misconduct Violations (7).**

- a. 7(1) Fighting with another person.

. . . .

- 7(9) Possession, introduction, manufacturing or use of any narcotic paraphernalia, drugs, intoxicants, synthetic drug composition or alcoholic beverages not prescribed for the individual by the medical staff, which includes any form of being intoxicated.

. . . .

##### **.4 Moderate Misconduct Violations (8).**

- a. . . .

- 8(13) Lying or providing false statements, information, or documents to a staff member, government official, or member of the public.

During our investigation of this complaint, we reviewed the AC report, the facility’s investigation report on the incident, and the relevant PSD policies. According to the facility’s investigation report, the complainant was observed to be fighting with another inmate, tested positive for amphetamines, and denied fighting. We contacted the AC chairperson, who

stated that based on the investigation report, it was more than likely that the complainant got into a fight and thus, more than likely that the complainant lied about getting into a fight. The AC chairperson informed us that the AC concluded that the complainant had not been truthful and therefore, the complainant was guilty of the 8(13) violation.

We found that the guilty findings for the 7(1) and 7(9) violations were supported by the evidence and were reasonable. However, we did not believe that the evidence supported the guilty finding for the 8(13) violation, because an inmate should be allowed to plead not guilty to a misconduct charge without having that plea used as the basis for an additional 8(13) violation.

We believed that although the constitutional right against self-incrimination may not technically apply in this situation, the intent of this constitutional protection should be honored and an inmate should not be sanctioned for pleading not guilty or making statements in defense of an alleged misconduct. We believed that doing so would effectively, and inappropriately, coerce the inmate to plead guilty to the alleged misconduct in order to avoid being charged with an 8(13) violation. In addition, based on other investigations we have conducted, it was not a common practice for an AC to find an inmate guilty of an 8(13) violation when the inmate claimed to be not guilty of another misconduct, but was subsequently found by the AC to be guilty of that misconduct.

We subsequently asked the PSD Institutions Division Administrator (IDA) to review this case. The IDA stated that the complainant's lying was more extensive than just his saying that he did not fight with someone and that this caused the investigator to do extra work for his investigation. The IDA agreed with the investigator's decision to charge the complainant with the 8(13) violation and said she would uphold the AC finding.

We explained to the IDA our concerns about the use of the 8(13) violation and protection from self-incrimination. We also explained that we believed that it was the investigator's duty to conduct a thorough investigation. Thus, regardless of the statements made by the accused inmate, all work performed by the investigator in this case was part of the investigator's normal function. Therefore, we asked the IDA to reconsider her decision on the matter and overturn the guilty finding.

The IDA consulted with others in her department and subsequently informed us that she agreed with our assessment of the case. She agreed to overturn the guilty finding for the 8(13) violation.

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

**(18-00911) Inmate correspondence to and from court subject to inspection and censorship.** An inmate complained that his correspondence to and from the courts before his pleading or complaint was filed with the courts was being subjected to inspection and censorship by staff at a correctional facility. The complainant did not have an issue with his mail being inspected and censored after he filed his documents in court because then his court case would be docketed and considered a public record whereby anyone could review his court filings. The complainant cited court rulings from the Sixth Circuit Court of Appeals which he said supports his claim that mail to and from the courts should not be inspected and censored by prison staff.

In our investigation, we reviewed Department of Public Safety (PSD) Policy COR.15.02 (PSD Policy), titled "Correspondence." The PSD Policy distinguished between "personal correspondence," "privileged correspondence," and "official correspondence" with different procedures in the processing and handling of each type of correspondence. The PSD Policy stated in part:

### **3.0 DEFINITIONS**

. . . .

- .6 Official Correspondence – Mail, incoming and outgoing, between an inmate and the courts (State of Hawaii or the United States), Ombudsman Office, Attorney General, Hawaii Paroling Authority, Elected state or federal officials to include the Governor's Office, Director of the Department of Public Safety and Corrections Division Administrators.
- .7 Personal Correspondence – Mail, incoming and outgoing, between an inmate and individual other than those approved for privileged correspondence.
- .8 Privileged Correspondence – Mail, incoming and outgoing, between an inmate and his/her attorney.

. . . .

### **5.0 PROCEDURES FOR PERSONAL CORRESPONDENCE**

. . . .

- .4 Personal incoming or outgoing correspondence to and from inmates may be inspected, censored and/or read for the following:
- a. Plans to escape;
  - b. Plans for criminal activity;
  - c. Plans to introduce contraband into or out of the facility (i.e. drugs, weapons, other contraband);
  - d. Plans for activities in violation of facility rules;
  - e. Information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;
  - f. Correspondence which attempts to forward unauthorized correspondence to a third party;
  - g. Suspicious correspondence (i.e. oily stains, discoloration, crystallization, excessive wrapping/taping, deformed letters, etc.);
  - h. STG or gang-related activities and plans; or
  - i. Any threat or factor that would undermine safety, security, order, discipline, control, or other legitimate penological interests.

. . . .

## **6.0 PROCEDURES FOR PRIVILEGEDCORRESPONDENCE**

. . . .

- .2 Privileged correspondence is extended to an inmate's attorney(s) and any prospective attorney only. The U.S. Supreme Court has ruled that mail from government agencies (Attorney General, Hawaii Paroling Authority, and Ombudsman Office), officials, and courts is not considered protected legal mail.
- .3 Privileged correspondence shall be subject only to inspection for contraband in the presence of the inmate. The U.S. Supreme Court has ruled that the

inmate must be present when privileged correspondence is opened.

- .4 Privileged correspondence shall not be subject to censorship, unless there is sufficient cause to believe mail is in fact private or threatening under the pretense of legal mail. In such cases, reason for censorship will be documented and authorized by the facility Warden or his designee.

. . . . .

## **7.0 PROCEDURES FOR OFFICIAL CORRESPONDENCE**

. . . . .

- .3 Official incoming or outgoing correspondence to and from inmates may be inspected/censored and/or read for the following:
  - a. Plans to escape;
  - b. Plans for criminal activity;
  - c. Plans to introduce contraband into or out of the facility (i.e. drugs, weapons, other contraband);
  - d. Plans for activities in violation of facility rules;
  - e. Information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;
  - f. Correspondence which attempts to forward unauthorized correspondence to a third party;
  - g. Suspicious correspondence (i.e. oily stains, discoloration, crystallization, excessive wrapping/taping, deformed letters, etc.);
  - h. STG or gang-related activities and plans; or
  - i. Any threat or factor that would undermine safety, security, order, discipline, control, or other legitimate penological interests.

Based on the above definitions and procedures, only mail between an inmate and his/her attorney or prospective attorney is not subject to censorship and is subject only to inspection for contraband in the presence of the inmate.

We reviewed the rulings from the Sixth Circuit Court of Appeals cited by the complainant as well as court rulings from the Ninth Circuit Court of Appeals, under whose jurisdiction the State of Hawaii falls. We found that the PSD Policy was in accordance with the rulings from the Ninth Circuit Court of Appeals.

We reported to the complainant that we believed it was not unreasonable for the correctional facility staff to inspect and censor his mail to and from the courts.

## **CITY AND COUNTY OF HONOLULU**

**(18-00825) Application for a disability parking permit.** A woman complained that staff at a Satellite City Hall (SCH), Department of Customer Services, City and County of Honolulu, refused to process an application for a disability parking permit that she was submitting on behalf of her mother because she did not have an original form of identification (ID) for her mother.

The complainant presented to the SCH staff a "PERSON WITH A DISABILITY PARKING PERMIT APPLICATION" (FORM PA-1), dated July 2017, together with a photocopy of her mother's Hawaii Driver's License. Near the top of page 1 of FORM PA-1, it stated "**If submitting this form on behalf of the applicant (see item #15), a copy of the applicant's identification must be provided to the issuing agency!**" Item #15 was part of the section that a licensed practicing physician or advanced practice registered nurse was required to fill out. Item #15 stated: "**APPLICANT IS UNABLE TO APPLY IN PERSON (Mark only if applicable)** I certify that this applicant is physically unable to apply in person due to a medical condition. \_\_\_\_\_ (PHYSICIAN'S/APRN'S SIGNATURE)"



PERSON WITH A DISABILITY PARKING PERMIT APPLICATION  
FIRST TIME, TEMPORARY & REPLACEMENT PLACARDS  
STATE OF HAWAII  
DISABILITY AND COMMUNICATION ACCESS BOARD

This form must be taken to a County issuing site. Applicant must present proof of identity. All forms of identification shall be current or valid. Acceptable forms of identification include: driver's license, state ID, passport, senior citizen ID, ID of a parent or guardian of a minor, Medicare card; notarized affidavit from: a Hawaii State or county social service agency, the administrator of a Hawaii State or privately owned nursing home, the spouse, an adult relative, a friend, an assistant, the verifying physician or verifying advanced practice registered nurse.

If submitting this form on behalf of the applicant (see item #15), a copy of the applicant's identification must be provided to the issuing agency!

FOR OFFICIAL USE ONLY

1<sup>st</sup> Placard # \_\_\_\_\_

2<sup>nd</sup> Placard # \_\_\_\_\_

Expiration Date \_\_\_\_\_

License Plates # \_\_\_\_\_

FEES COLLECTED, IF APPLICABLE

Amount Collected \$ \_\_\_\_\_

X \_\_\_\_\_

Clerk's Initials \_\_\_\_\_ Date \_\_\_\_\_

1. APPLICANT'S NAME \_\_\_\_\_  
LAST \_\_\_\_\_  
FIRST \_\_\_\_\_ MIDDLE INITIAL \_\_\_\_\_
2. PHONE NUMBER \_\_\_\_\_ (xxx) xxx-xxxx 2a. EMAIL \_\_\_\_\_ (optional)
3. BIRTH DATE \_\_\_\_\_ (mm/dd/year) 4. HEIGHT \_\_\_\_\_ (Feet, Inches) 5. WEIGHT \_\_\_\_\_ (Pounds) 6. GENDER ☐ Male ☐ Female
7. RESERVED.
8. MAILING ADDRESS \_\_\_\_\_  
(City) \_\_\_\_\_ (Street) \_\_\_\_\_ (Apt #) \_\_\_\_\_  
(State) \_\_\_\_\_ (Zip Code) \_\_\_\_\_
9. INDICATE THE COUNTY WHERE YOU LIVE  
☐ City & County of Honolulu ☐ County of Hawaii ☐ County of Kauai ☐ County of Maui
10. PARKING PLACARD REQUEST (Switching from a temporary placard to a long term placard is considered a first time application)  
Mark applicable box and enter serial number of placard(s) already issued. I am requesting a:  
☐ First Time temporary or long term placard  
☐ Second temporary placard  
☐ Renewal of my Hawaii temporary placard(s) placard #(s) \_\_\_\_\_ / \_\_\_\_\_  
☐ Replacement of my Hawaii placard(s) placard #(s) \_\_\_\_\_ / \_\_\_\_\_
11. COMPLETE ONLY IF REQUESTING SPECIAL LICENSE PLATES  
☐ I am interested in receiving information on how to apply for special license plates at the County issuing site.  
☐ I am requesting special license plates. I am the registered owner of the vehicle on which the special license plates will be affixed, AND the vehicle will be used primarily to transport me.
- Year of Vehicle \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_  
Vehicle Lic. # \_\_\_\_\_ Vehicle Registration Expiration Date \_\_\_\_\_ (mm/dd/year)

12. DECLARATION AND AUTHORIZATION TO RELEASE MEDICAL INFORMATION

I declare, under the penalties of the penal law, that the statements contained herein are, to the best of my knowledge and belief, true and accurate, and that I have not knowingly and willingly made a false statement or given information which I know to be false in connection therewith. I also authorize my physician or advanced practice registered nurse to release medical information necessary to process this application.

X \_\_\_\_\_  
APPLICANT'S SIGNATURE (or Authorized Representative)

\_\_\_\_\_  
(DATE)



## CERTIFICATION BY LICENSED PRACTICING PHYSICIAN/APRN

This page must be completed by a licensed practicing physician (as defined under HRS §§453, 455, 460, or 463E) or an advanced practice registered nurse (as defined under HRS §457).

**CERTIFICATION OF CONDITION:** The physician or advanced practice registered nurse (APRN) must certify that the applicant has one or more of the specific disabilities listed below (as defined under HRS §291-51). The list of conditions that do not qualify includes blindness; deafness; upper limb amputation; mental illness; old age; pregnancy; infancy; and learning, intellectual, or developmental disabilities.

**13. CRITERIA.** I certify that \_\_\_\_\_ meets one or more of the criteria below:  
(APPLICANT'S NAME)

- (a) The applicant is **UNABLE TO WALK** 200 feet without stopping to rest due to the following condition:  
☐ Arthritic ☐ Neurological ☐ Orthopedic ☐ Oncologic ☐ Renal ☐ Vascular
- (b) The applicant is diagnosed with the following **RESPIRATORY DISABILITY**:  
☐ **FEV < 1L** – Forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter.  
☐ **P<sub>50</sub> < 60 mm. Hg** – Arterial oxygen tension is less than sixty mm/hg on room air at rest.
- (c) The applicant is diagnosed with the following **HEART CONDITION** according to the American Heart Association Standards:  
☐ **Class III** – Patients with cardiac disease resulting in marked limitation of physical activity. They are comfortable at rest. Less than ordinary physical activity causes fatigue, palpitation, dyspnea, or anginal pain.  
☐ **Class IV** – Patients with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of cardiac insufficiency or of the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.
- (d) The applicant is **UNABLE TO WALK** without the use of, or assistance from, the following:  
☐ Artificial Lower Limb(s) ☐ Brace(s) ☐ Crutches ☐ Walker ☐ Cane(s) (excluding white canes)  
☐ Another Person ☐ Wheelchair ☐ Other Assistive Device (specify): \_\_\_\_\_
- (e) ☐ The applicant **USES PORTABLE OXYGEN**.

**14. DURATION OF DISABILITY:**

Mark one box only. If the disability lasts longer than anticipated, subsequent certification can be made.

- ☐ 1 month ☐ 2 months ☐ 3 months ☐ 4 months ☐ 5 months ☐ 6 months  
☐ 6 years

**15. APPLICANT IS UNABLE TO APPLY IN PERSON (Mark only if applicable)**

☐ I certify that this applicant is physically unable to apply in person due to a medical condition.

(PHYSICIAN'S/APRN'S SIGNATURE)

**16. PHYSICIAN/APRN CERTIFICATION.** I understand that per HRS §291-51.4, a physician/APRN, who fraudulently verifies that the applicant is qualified for purposes of this form shall be guilty of a petty misdemeanor and each fraudulent verification shall constitute a separate offense. DCAB conducts random checks to verify the authenticity of certifications.

<b>a. PHYSICIAN'S/APRN'S NAME</b> _____			
(PRINT OR TYPE)			
LAST	FIRST	MI	
<b>b. MAILING ADDRESS</b> _____			
(PRINT OR TYPE)			
STREET/PO BOX		CITY	HI 96 ZIP CODE
<b>c. PHONE NUMBER (808)</b> _____			
<b>d. PHYSICIAN'S/APRN'S SIGNATURE</b> x _____			
MEDICAL LIC. NO. M.D. / N.D. / D.O. / D.P.M. / APRN		# _____	
(circle one)		(HAWAII OR U.S. ARMED SERVICES STATIONED IN HAWAII)	
<b>e. DATE</b> _____			
MONTH	DAY	YEAR	

FOR PROCESSING SUBMIT COMPLETED FORM TO APPROPRIATE COUNTY ISSUING AGENCY.

For more information or the locations of county issuing sites visit <http://health.hawaii.gov/dcab/> or call (808) 586-8121.

FORM PA-1

SIDE 2

July 2017

The SCH staff questioned where the complainant obtained FORM PA-1. The complainant informed staff that she downloaded and printed the form from the website of the Disability and Communication Access Board (DCAB), Department of Health, which administers the statewide program for the issuance of parking placards to disabled persons, in accordance with Part III, Chapter 291, Hawaii Revised Statutes. The SCH staff made a telephone call to check on how to proceed, and thereafter informed the complainant that she still needed to provide the SCH an original form of ID for her mother.

The complainant informed her mother that the SCH did not accept her application form, so the following day, the mother applied in person at a different SCH. At that SCH, the mother informed staff about what had transpired the previous day when the complainant attempted to submit FORM PA-1 together with a copy of the mother's ID. Staff at the second SCH informed the mother that form PA 2 dated May 2014 required that an original ID be presented at the time of application, and that staff at the first SCH should have accepted the July 2017 FORM PA-1 that was presented since it was the most current application form.

<b>PERSON WITH A DISABILITY PARKING PERMIT APPLICATION</b> <small>STATE OF HAWAII DISABILITY AND COMMUNICATION ACCESS BOARD</small>		<b>FOR OFFICIAL USE ONLY</b> 1st Placard # _____ 2nd Placard # _____ Expiration Date _____ License Plates # _____ FEES COLLECTED, IF APPLICABLE: Amount Collected \$ _____ x Clerk's Initials _____ Date _____
<p>Applicant must present proof of identity. All forms of identification shall be current or valid. Acceptable forms of identification include: driver's license, state ID, passport, senior citizen ID, military ID, student ID, ID of a parent or guardian of a minor, Medicare card, notarized affidavit from: a Hawaii State or county social service agency, the administrator of a Hawaii State or privately owned nursing home, the spouse, an adult relative, a friend, an assistant, the verifying physician or verifying advanced practice registered nurse.</p>		
<p><b>1. APPLICANT'S NAME</b></p> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 2px;"></div> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <span>LAST</span> <span>FIRST</span> <span>M.I.</span> </div> </div> <div style="width: 35%; border-bottom: 1px solid black; height: 1.2em;"></div> </div>		
<p><b>2. PHONE NO.</b> <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span></p>		
<p><b>3. BIRTH DATE</b> <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> / <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> / <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> <span style="font-size: 0.8em;">(MM / DD / YYYY) MONTH DAY YEAR</span></p>		
<p><b>4. HEIGHT</b> <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> <span style="font-size: 0.8em;">FEET</span> / <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> <span style="font-size: 0.8em;">INCHES</span></p>		
<p><b>5. WEIGHT</b> <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> <span style="font-size: 0.8em;">POUNDS</span></p>		
<p><b>6. GENDER</b> <input type="checkbox"/> Male <input type="checkbox"/> Female</p>		
<p><b>7. STREET ADDRESS</b></p> <div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 2px;"></div> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <span>STREET</span> <span>APT.#</span> <span>CITY</span> <span>STATE</span> <span>ZIP CODE</span> </div>		
<p><b>8. MAILING ADDRESS</b></p> <div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 2px;"></div> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <span>STREET</span> <span>APT.#</span> <span>CITY</span> <span>STATE</span> <span>ZIP CODE</span> </div>		
<p><b>9. INDICATE THE COUNTY WHERE YOU LIVE</b></p> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <input type="checkbox"/> City &amp; County of Honolulu           <input type="checkbox"/> County of Hawaii           <input type="checkbox"/> County of Kauai           <input type="checkbox"/> County of Maui         </div>		
<p><b>10. PARKING PLACARD REQUEST</b> (Switching from a temporary placard to a permanent placard is considered a first time application)          Mark applicable box and enter serial number of placard(s) last issued. I am requesting a:</p> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <div> <input type="checkbox"/> First Time Hawaii placard  <input type="checkbox"/> Renewal of my Hawaii placard(s)         </div> <div>           placard #(s) <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span> </div> </div> <div style="display: flex; justify-content: space-between; font-size: 0.8em; margin-top: 5px;"> <div> <input type="checkbox"/> Replacement         </div> <div>           placard #(s) <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span> </div> </div>		
<p><b>11. COMPLETE ONLY IF REQUESTING SPECIAL LICENSE PLATES (Applying for a special plate cannot be done by mail)</b></p> <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <div> <input type="checkbox"/> I am interested in receiving information on how to apply for special license plates at the Satellite City Hall or County issuing site.  <input type="checkbox"/> I am requesting special license plates. I am the registered owner of the vehicle on which the special license plates will be affixed, AND the vehicle will be used primarily to transport me.         </div> <div>           Year of Vehicle <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> <span style="font-size: 0.8em;">Make</span> <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span> <span style="font-size: 0.8em;">Model</span> <span style="border-bottom: 1px solid black; display: inline-block; width: 100px;"></span>            Vehicle Lic. # <span style="border-bottom: 1px solid black; display: inline-block; width: 40px;"></span> <span style="font-size: 0.8em;">Registration Expiration Date (Month)</span> <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> / (Year) <span style="border-bottom: 1px solid black; display: inline-block; width: 20px;"></span> </div> </div>		
<p><b>12. TERMS TO RELEASE OF MEDICAL INFORMATION</b></p> <p style="font-size: 0.8em;">I declare, under the penalties of the penal law, that the statements contained herein are, to the best of my knowledge and belief, true and accurate and that I have not knowingly and willingly made a false statement or given information which I know to be false in connection therewith. I also authorize my physician to release medical information necessary to process this application.</p> <div style="display: flex; justify-content: space-between; font-size: 0.8em; margin-top: 10px;"> <div>           x _____            APPLICANT'S SIGNATURE (or Authorized Representative)         </div> <div>           _____            DATE         </div> </div>		

## CERTIFICATION BY LICENSED PRACTICING PHYSICIAN/APRN

This page must be completed by a licensed practicing physician (as defined under HRS §§453, 455, 460, and 463E), or an advanced practice registered nurse (as defined under HRS §457.8.6).

**CERTIFICATION OF CONDITION** The physician or an advanced practice registered nurse must certify that the applicant has one or more of the specific disabilities listed below (as defined under HRS §291-51). A list of conditions that do not qualify an applicant can be found on the web: <http://health.hawaii.gov/dcab>.

I certify that \_\_\_\_\_ meets at least one of the criteria below.

APPLICANT'S NAME

### 13. MARK APPROPRIATE BOX(ES). ONLY ONE CATEGORY IS REQUIRED.

- (a) The applicant is **UNABLE TO WALK** 200 feet without stopping to rest due to the following condition:
- ☐ Arthritic    ☐ Neurologic    ☐ Orthopedic    ☐ Oncologic    ☐ Renal    ☐ Vascular
- (b) The applicant is diagnosed with the following **RESPIRATORY DISABILITY**:
- ☐ FEV < 1L - Forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter.
- ☐ P<sub>O</sub><sub>2</sub> < 60 mm. Hg - Arterial oxygen tension is less than sixty mm/hg on room air at rest.
- (c) The applicant is diagnosed with the following **HEART CONDITION** according to the American Heart Association Standards:
- ☐ **Class III** - Patients with cardiac disease resulting in marked limitation of physical activity. They are comfortable at rest. Less than ordinary physical activity causes fatigue, palpitation, dyspnea, or anginal pain.
- ☐ **Class IV** - Patients with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of cardiac insufficiency or of the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.
- (d) The applicant is **UNABLE TO WALK** without the use of, or assistance from, the following:
- ☐ Artificial Lower Limb(s)    ☐ Brace(s)    ☐ Crutches    ☐ Walker    ☐ Cane(s) (excluding white canes)
- ☐ Another Person    ☐ Wheelchair    ☐ Other Assistive Device (specify): \_\_\_\_\_
- (e) ☐ The applicant **USES PORTABLE OXYGEN**.

### 14. DURATION OF DISABILITY

- ☐ Temporary Disability for a duration of:
- (Mark one box only. If the disability lasts longer than anticipated, subsequent certification can be made.)
- ☐ 1 month    ☐ 2 months    ☐ 3 months    ☐ 4 months    ☐ 5 months    ☐ 6 months
- OR
- ☐ Long-term Disability

### 15. NOT ABLE TO APPLY IN PERSON (Mark only if applicable)

- ☐ The applicant is physically unable to apply in person due to a medical condition. × \_\_\_\_\_

PHYSICIAN/APRN'S SIGNATURE

**16. PHYSICIAN or ADVANCED PRACTICE REGISTERED NURSE READ CAREFULLY** I understand that per HRS §291 Part III, as a physician/advanced practice registered nurse (APRN), fraudulently verify that to obtain a parking permit, I shall be guilty of a petty misdemeanor, and each fraudulent verification shall constitute a separate offense. For program integrity, DCAB conducts random checks to verify the authenticity of certifications.

- a. **PHYSICIAN'S/APRN'S NAME** \_\_\_\_\_
- (PRINT OR TYPE) LAST FIRST M.I.
- b. **MAILING ADDRESS** \_\_\_\_\_ HAWAII 96 \_\_\_\_\_
- (PRINT OR TYPE) STREET / P.O. BOX CITY ZIP CODE
- c. **PHONE NO. (808)** \_\_\_\_\_
- d. **PHYSICIAN'S/APRN'S SIGNATURE** × \_\_\_\_\_ M.D. / N.D. / D.O. / D.P.M. / APRN
- (HAWAII / U.S. ARMED SERVICES STATIONED IN HAWAII) (CIRCLE ONE)
- e. **DATE** \_\_\_\_\_
- MONTH DAY YEAR

**FOR PROCESSING, APPLICANT MUST SUBMIT THIS FORM TO THE APPROPRIATE ISSUING AGENCY.**

**First-time placards** (blue in color) and **temporary placards** (red in color) are processed in person at a Satellite City Hall or County issuing site.

**Replacement placards** (lost, stolen, or mutilated) are processed in person at a Satellite City Hall or County issuing site for a fee.

**Long-term placard renewals** (blue in color) are processed by mail: DCAB, 919 Ala Moana Blvd., Rm. 101, Honolulu HI 96814

Application form can be found on the DCAB website: <http://health.hawaii.gov/dcab>.

PA 2

SIDE 2

May 2014

In our investigation, we reviewed the July 2017 FORM PA-1 and discussed the complaint with the SCH administrative staff, who checked further into the matter. The administrative staff informed us that it was the DCAB staff who provided conflicting information to the SCH staff as to whether an applicant's original ID was required. Further discussion between the SCH and the DCAB resulted in an understanding between the agencies that the SCH staff should accept a copy of the applicant's ID if the applicant

could not appear in person to present FORM PA-1, provided that a physician certified on item #15 of FORM PA-1 that the applicant was unable to appear in person. The SCH administrative staff sent a memorandum to all SCH offices informing them of this new procedure.

Given the confusion caused by having two application forms available for use by the public, each with different ID requirements, we contacted the DCAB staff to discuss the matter further. The DCAB staff informed us that in addition to the May 2014 and July 2017 application forms, there were application forms dated January 2010, June 2010, and July 2011 that were still being used and were probably distributed to patients by their doctor's offices, which were unaware of the updated application forms. The DCAB staff acknowledged that having application forms with different dates and requirements put an undue burden on the SCH and other county staff who may not be sure what to accept from and require of the applicant. The DCAB staff offered to issue instructions to the SCH and other county offices to clarify the situation.

Shortly thereafter, the DCAB staff issued a memorandum to all County Issuing Agencies to clarify the policy on accepting the various versions of the application form. The memorandum informed the agencies that there were at least five versions of the Person With a Disability Parking Permit Application form in circulation – July 2017, May 2014, July 2011, June 2010, and January 2010. However, the July 2017 version provides an exception to the original ID requirement by allowing the applicant's authorized representative to provide a copy of the applicant's ID when submitting the application form on behalf of the applicant. The memorandum directed the agencies to accept a copy of the applicant's ID as provided by the applicant's authorized representative, provided that item #15 of the form was checkmarked and signed by a licensed practicing physician or advance practice registered nurse.

We notified the complainant that the first SCH should have accepted the copy of her mother's ID since the July 2017 FORM PA-1 allowed the copy to be submitted.

**(18-01002) Police department erroneously cited woman twice for a vehicle she did not own.** A woman received a notice of default judgment from the district court, filed on February 22, 2017, for not responding to a January 8, 2017, citation for the following motor vehicle violations: no license plates, no windshield, no rear-view mirror, and no windshield wipers. This was the first time she had learned about the citation, which she knew was issued in error since her vehicle had license plates and was operable and in her possession on the date the citation was issued.

When the woman examined a copy of the citation, she noted that the police officer's vehicle description matched the make, type, color, year, and even the Vehicle Identification Number (VIN) of her vehicle. However, she had never parked or left her car in the rural area where the vehicle was cited. She surmised that the police officer must have erred in recording the VIN for the cited vehicle. Thus, she drove to the rural area to take pictures of the vehicle and inspect its VIN. However, by then, the vehicle had been stripped of most of its parts and none of the remaining parts appeared to have the VIN on them (photo below).



The woman posted a \$286 court appearance bond to request that the district court set aside the default judgment order. In April 2017, the woman submitted written arguments and supporting documents that the citation was unjustified because at the time it was issued, the vehicle with the VIN identified on the citation was actually in her possession and had a current safety inspection certificate. The court granted the woman's motion, vacated the default judgment, and dismissed with prejudice all counts on the January 8, 2017, citation.

## Photos of complainant's car



Five months later, the woman received a second notice of default judgment for not responding to another citation related to the same vehicle. This citation, issued on January 13, 2017, was issued by the same police officer and was for abandoning the vehicle in the same location.

After receiving the second default judgment notice, the woman drove to the district police station for the area where the vehicle was cited. She attempted to show the police officers her vehicle to prove that her car could not be the one that was abandoned and subsequently vandalized. However, the officers refused to examine her vehicle and informed her that the proper forum to address the citation was the district court.

The woman filed a motion for the court to set aside the default judgment for the abandoned vehicle citation and posted a \$160 appearance bond, and at that point, she also contacted our office regarding her situation. We explained to the complainant that our office did not have authority to investigate complaints about the district court for issuing the default judgment against her. However, we agreed to investigate a complaint against the police department for a possible error in recording the VIN for the cited vehicle.

Before contacting the police, we contacted the county motor vehicle licensing division to determine if it was possible for another vehicle in the county to have the same VIN as the complainant's vehicle. The administrator of the division informed us that there is only one vehicle registered with the

VIN of the complainant's vehicle. The administrator offered to write our complainant a letter explaining that her vehicle registration and safety inspection were still current to support her argument that she did not own the cited vehicle.

We thereafter discussed the complaint with a captain at the police station in the district where the vehicle was cited. We asked him to review whether the police officer could have erred in recording the VIN on the vehicle when he issued the two citations. The captain spoke to the officer who issued the citations and also contacted the complainant. The captain also arranged to have one of his specialist officers inspect the complainant's vehicle. The specialist determined that all of the VINs on the complainant's vehicle were intact and thus he hypothesized that the cited vehicle must have had a forged VIN plate that matched the complainant's car. Although the hypothesis could not be tested since the abandoned vehicle was no longer available for inspection, the captain believed that the citing officer had not acted improperly in listing that VIN on both citations. However, the captain apologized to the complainant for the inconvenience she went through.

Because we were unable to examine the VIN plate on the cited vehicle, we were unable to substantiate the complaint that the police officer erred in recording the VIN of the cited vehicle in the two citations. However, the complainant was satisfied with the opportunity to have the police specialist inspect her vehicle and appreciated our follow up. She also informed us that the district court vacated the judgment in the second citation and dismissed all counts with prejudice.

**(18-02153) Driver's license office required driver to turn in her old driver's license in order to receive new driver's license.** In response to the September 11, 2001, terrorist attack on the United States (U.S.), Congress passed the REAL ID Act of 2005. The REAL ID Act establishes minimum standards for the production and issuance of State-issued driver's licenses and identification (ID) cards. It also prohibits Federal agencies from accepting for official uses driver's licenses and ID cards issued by States that have not been determined by the U.S. Department of Homeland Security to have met the REAL ID Act standards. Official uses include, but are not limited to, accessing Federal facilities, entering nuclear power plants, and boarding Federally-regulated commercial aircraft.

According to the REAL ID Act, States shall require, at a minimum, the presentation and verification of the following information before issuing a driver's license or ID card to a person: (1) a photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth; (2) documentation showing the person's date of birth; (3) proof of the person's social security account

number or verification that the person is not eligible for a social security account number; and (4) documentation showing the person's name and address of principal residence.

A woman renewed her driver's license at the Motor Vehicle Licensing and Permits Division (MVLPD), Department of Customer Services, City and County of Honolulu. The woman complained that she was required to turn in her old driver's license and was issued a temporary paper license, pending the issuance of her permanent new license. She recalled that when she previously renewed her driver's license years earlier, MVLPD staff, before giving her back her old driver's license, punched a hole in the license to make the license invalid. The complainant said that not receiving back her old driver's license caused problems for her as banks and other businesses did not accept the temporary paper driver's license. She said that the driver's license office informed her it would be about four weeks before she received her permanent driver's license.

In our investigation, we spoke with MVLPD staff and researched the relevant laws. The MVLPD staff informed us they are required to collect the old driver's license upon issuance of the temporary paper license and to shred the old license. Section 286-102, Hawaii Revised Statutes (HRS), was amended in 2013 and stated in part that "[n]o person shall receive a driver's license without surrendering to the examiner of drivers all valid driver's licenses and all valid identification cards in the person's possession. All licenses and identification cards so surrendered shall be shredded; . . ." (Emphasis added.)

The MVLPD informed us that in order to comply with REAL ID Act requirements that States ensure the physical security of the location where drivers' licenses are produced and subject all persons authorized to manufacture the drivers' licenses to appropriate security clearance requirements, it contracted a private vendor to produce the drivers' licenses. The MVLPD further informed us that it took a few weeks for the contracted vendor to produce the driver's license, which was then mailed by the contracted vendor to the licensee.

We informed the complainant that since the law required a driver to surrender his/her old driver's license in order to receive a new license, and also required all surrendered licenses to be shredded, we could not substantiate the complaint.

**(18-02251/18-02254) Management of feral cats in City and County park.** We received complaints from frequent users of a City and County of Honolulu (C&C) park that the park staff were not cleaning up and sanitizing areas within the park where feral cats had defecated and urinated, in particular on and around the park's tennis courts. The complainants also



said that the park staff did not appear to be taking action to prohibit people from feeding feral cats at the park. The complainants believed that the feeding of the feral cats contributed to the growth of the feral cat population at the park, which exacerbated the problem of the unsanitary conditions.

We contacted the C&C parks district manager regarding these complaints. With regard to the cleaning and sanitizing of the tennis courts and surrounding areas, the district manager informed us that his staff were aware of the growing feral cat population and are inspecting and cleaning those areas once a day, usually in the mornings. Based on the complainants' observations, we questioned the sufficiency of checking the areas only once a day. The district manager spoke to his staff and then informed us that he would increase the frequency of his staff's inspections and cleaning of the tennis courts from once a day to at least three times a day. While we believed this action should have been taken sooner, we found the district manager's response to be reasonable.

With regard to the feeding of the feral cats in the park, the district manager informed us that this action was already prohibited under Section 10-1.2(a)(10), Article 1, Revised Ordinances of Honolulu (ROH), which stated:

- (a) Within the limits of any public park, it is unlawful for any person to:

. . . .

- (10) Feed any animal or bird when signs are posted prohibiting such feeding;

He informed us that signs notifying park patrons that feeding animals was prohibited were posted at the entrance to the park and throughout the park. We confirmed through an onsite visit to the park that the signs were posted and clearly visible.





However, the district manager noted that he was aware that some patrons ignored the posted signs and continued to feed the feral cats in the park. He informed us that if his staff witnessed patrons feeding animals or birds, they were already instructed to approach and educate the individual on the above section of the ROH. If the patrons refused to comply, his staff were instructed to contact the Honolulu Police Department (HPD) to assist with enforcement. We noted that Section 10-1.6(a), Article 1, ROH, stated:



- (a) Powers of Arrest or Citation. Police officers and any other officer so authorized shall issue a citation for any violation of the provisions of this article . . . .

The district manager also mentioned to us that for the past two years, a private company had been coming to the park on a bimonthly basis to spay/neuter and release cats that were living there.

We found the district manager's explanation of the measures in place to prevent the feeding of the feral cats to be reasonable. We also recognized that park staff could not be expected to monitor the actions of every person who visited the park throughout the day and therefore, we did not substantiate this complaint.

During our follow up with the complainants to report the findings of our investigations of these complaints, we were informed that there had been noticeable improvement in the cleanliness of the tennis courts. The complainants acknowledged that in order to solve the problem, they would need to take responsibility for contacting either park staff or the HPD when they saw persons feeding the feral cats in violation of the ROH. The complainants were satisfied with the outcome of our investigations.



## ***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 49, please visit our website at [ombudsman.hawaii.gov](http://ombudsman.hawaii.gov) and select the “Cumulative Index” 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.







