

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

HAWAI'I GOVERNMENT EMPLOYEES  
ASSOCIATION,

Complainant,

and

HAWAI'I STATE HOSPITAL, State of  
Hawai'i,

Respondent.

CASE NO(S). 19-CE-03-933a  
19-CE-09-933b  
19-CE-13-933c

ORDER NO. 3546

PRETRIAL ORDER AND NOTICES;

- (1) NOTICE TO RESPONDENT(S) OF PROHIBITED PRACTICE COMPLAINT;
- (2) NOTICE OF FILING REQUIREMENTS;
- (3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS;
- (4) NOTICE OF PREHEARING CONFERENCE;
- (5) NOTICE OF PRETRIAL CONFERENCE;
- (6) NOTICE OF HEARING ON THE MERITS; AND
- (7) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

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## **PRETRIAL ORDER AND NOTICES**

THE PARTIES ARE HEREBY NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document shall control the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

### **(1) NOTICE TO RESPONDENT(S) OF A PROHIBITED PRACTICE COMPLAINT**

The attached prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **August 9, 2019**.

PURSUANT TO HAWAI'I REVISED STATUTES (HRS) § 377-9(b) AND HAWAI'I ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

YOU ARE DIRECTED to file a written answer to the Complaint within ten (10) days after service of the Complaint. One copy of the answer shall be served on each party, and the original with certificate of service on all parties shall be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, such failure shall constitute an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

### **(2) NOTICE OF FILING REQUIREMENTS**

#### **1) Electronic Filing:**

**The Board provides to all parties and encourages the use of an electronic filing service through File & ServeXpress.** There is no charge to the parties for use of this electronic filing service.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrp/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

## **2) Filing in Person or by Mail**

A party may mail or file in person an original of any document at the Board's office at 830 Punchbowl Street, Room 434, Honolulu, Hawai'i, 96813. The Board's office is open on the weekdays (excluding state holidays) between 7:45 a.m. to 4:30 p.m.; the office may occasionally be closed from 12:00 p.m. to 1:00 p.m. The date of receipt by the Board shall be deemed the date of filing.

## **3) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information**

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party shall make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" shall include social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board's consideration of this case, the submitting party shall submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party shall by motion request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, pursuant to HAR § 12-42-8(g)(11), "The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document."

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

## **(3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS**

All parties have the right to appear in person and to be represented by counsel or any other authorized person in all Board proceedings. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The parties should be aware that the Board is in a secured State of Hawai'i building and that any party, representative, counsel, or other person attending a proceeding will need to present a government-issued identification for entry.

**(4) NOTICE OF PREHEARING CONFERENCE**

PURSUANT TO HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

NOTICE IS HEREBY GIVEN that the Board will conduct a Prehearing Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: Thursday, August 22, 2019 at 10:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room  
830 Punchbowl Street – Room 434  
Honolulu, Hawai'i 96813

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; to identify witnesses and file applications for the issuance of subpoenas; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing Conference in person or telephonically and to be represented by counsel or any other authorized person. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

**(5) NOTICE OF PRETRIAL CONFERENCE**

PURSUANT TO HRS §§ 89-5(i)(4) and (i)(5), and 377-9:

NOTICE IS HEREBY GIVEN that the Board will conduct a Pretrial Conference on the date listed below and in the Schedule in this document.

DATE AND TIME: Thursday, August 29, 2019 at 1:30 p.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room  
830 Punchbowl Street – Room 434  
Honolulu, Hawai'i 96813

## 1) Pretrial Statement

**Both the Complainant(s) and the Respondent(s) shall file a Pretrial Statement with the Board, as listed in the Schedule set forth below.** The Pretrial Statement shall include the following:

1. Statement of Issues
2. Witness List

The witness lists shall include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability. The summary for each witness shall include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1).

If a party intends to file a request for a subpoena for a witness, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the witness list.

3. Exhibit List

The exhibit lists shall include copies of the proposed exhibits. The parties are encouraged to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day. A party's exhibits or Joint exhibits shall be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes with each exhibit bookmarked and bates-stamped at the top right corner. Alternatively, a party may file exhibits in person or by mail to the Board; the date of receipt by the Board shall be deemed the date of filing.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the exhibit list.

The Complainant shall identify its exhibits using alphabetical letters (A, B, C, D, etc.). Union Respondent(s) shall identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.). Employer Respondent(s) shall identify its exhibits using numerical designations preceded by E (e.g., E-1, E-2, E-3, etc.). In the event that there are multiple Union Respondents or Employer Respondents in a particular case, the Board shall specify the designation for each Respondent.

If there are any duplicative exhibits, the parties shall designate them as Joint Exhibits, the parties shall designate one party to file these exhibits, and the Exhibits shall be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

Additionally, the Exclusive Representative, unless no Exclusive Representative is party to the case, in which case the Employer, must submit to the Board the full applicable collective bargaining agreement(s), including any Memoranda of Understanding, Memoranda of Agreement, or any other supplemental agreement that has any bearing on these proceedings. These documents shall be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc.

## **2) Pretrial Conference**

At the pretrial conference, the Parties shall be prepared to discuss, raise, and present their position regarding the presentation of the anticipated evidence (witnesses, exhibits) to be introduced at the Hearing on the Merits (HOM), including but not limited to any stipulations, evidentiary issues, objections, or confidentiality issues that require protection from public disclosure and the narrow tailoring of methods to protect that information (e.g. sealing or redaction).

While all parties have the right to appear at the Pretrial Conference in person or telephonically and to be represented by counsel or any other authorized person, **all parties are required to either appear in person or have a representative appear in person.** Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

## **(6) NOTICE OF THE HEARING ON THE MERITS**

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49 that the Board will conduct an HOM on the instant Complaint at the place, time and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: Monday, September 9, 2019 at 9:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room  
830 Punchbowl Street – Room 434  
Honolulu, Hawai'i 96813

All parties have the right to appear at the Hearing on the Merits in person and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear in person at the hearing on the merits.** Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

**(7) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES**

<b><u>DATES AND DEADLINES</u></b>	<b><u>DATE</u></b>	<b><u>TIME</u></b>
<u>Prehearing Conference</u>	8/22/19	10:00 a.m.
<u>Dispositive Motion Deadline</u> <i>Responses to dispositive motions shall be due five business days after the dispositive motion is filed and served.</i> HAR § 12-42-8(g)(3)(C)(iii)	8/26/19	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	8/26/19	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	8/29/19	1:30 p.m.
<u>Hearing on the Merits</u>	9/9/19	9:00 a.m.

**All submissions shall be filed on or before 4:30 p.m. on the deadline date.**

DATED: Honolulu, Hawai'i, August 13, 2019.

HAWAI'I LABOR RELATIONS BOARD



*Marcus R. Oshiro*  
MARCUS R. OSHIRO, Chair

*Sesnita A.D. Moepono*  
SESNITA A.D. MOEPONO, Memb

EXCUSED

J N. MUSTO, Member

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Enclosure: PROHIBITED PRACTICE COMPLAINT

Copies sent to:

Stacy Moniz

Hawai'i State Hospital

James Halvorson, Deputy Attorney General

HGEA v. HAWAI'I STATE HOSPITAL  
CASE NO. 19-CE-03-933a-c  
PRETRIAL ORDER AND NOTICES  
ORDER NO. 3546





EFiled: Aug 09 2019 12:02PM HAST  
Transaction ID 64082911  
Case No. 19-CE-03-933a-c

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

FORM HLRB-4  
PROHIBITED PRACTICE COMPLAINT

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INSTRUCTIONS. Submit the original<sup>1</sup> of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

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1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.
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2. COMPLAINANT Please select one that describes the Complainant:

Public Employee       Public Employer       Public Union (public employee organization)

- a. Name, address and telephone number.

Hawaii Government Employees Association  
AFSCME Local 152, AFL-CIO  
888 Mililani Street, Suite 401  
Honolulu, HI 96813  
Telephone: (808) 543-0000

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- b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Stacy Moniz  
888 Mililani Street, Suite 401  
Honolulu, HI 96813  
email: smoniz@hgea.org  
Telephone: (808) 543-0055

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<sup>1</sup> Notwithstanding Board rule 12-42-42(b), the Board only requires the original of the complaint.

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3. RESPONDENT Please select one that describes the Respondent:

- Public Employee       Public Employer       Public Union (public employee organization)

a. Name, address and telephone number.

State of Hawaii, Hawaii State Hospital  
45-710 Kealahala Road  
Kaneohe, HI 96744  
Telephone: (808) 247-2191

b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Department of the Attorney General  
State of Hawaii  
235 South Beretania Street, 15th Floor  
Honolulu, HI 96813  
Telephone: (808) 587-2900

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4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

Bargaining units 03, 09, and 13.

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5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

See Attachment.

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6. Provide a clear and concise statement of any other relevant facts.

See Attachment.

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

**DECLARATION IN LIEU OF AFFIDAVIT**

(If the Complainant is self-represented, then the Complainant must sign this Declaration).

Please select one:

- the Complainant
- the Complainant's principle representative
- the person described below

I, Stacy Moniz,  
do declare under penalty of law that the foregoing is true and correct.

Date: 08/06/2019

/s/ Stacy Moniz

*The person signing above agrees that by signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.*

smoniz@hgea.org

*Signor's email address*

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

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Your phone number: \_\_\_\_\_

Your relationship to the Complainant:

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If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then complete the Board Agreement to E-File, FORM HLRB-25. (Form HLRB-25 is on the HLRB Website at [labor.hawaii.gov/hlr/forms](http://labor.hawaii.gov/hlr/forms).) Email the completed form to the Board at [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov).

5.

Hawaii State Hospital (“HSH”) has willfully and intentionally violated its license by continuously exceeding its maximum amount of patients which, upon information and belief, is 202. This practice is ongoing. The patient census has been ranging from approximately 212 to 220 patients. This creates a hazardous environment for not only all HGEA members at HSH, but also for the patients who suffer through diminished care because of inadequate staffing. As far as HGEA is aware, HSH does not have a waiver allowing it to exceed its census limit.

Pursuant to Article 22 of the BU 09 Collective Bargaining Agreement, HGEA requested Temporary Hazard Pay for its affected Members. HSH failed to respond. HSH has intentionally and willfully failed to consult with HGEA as required by Article 22.

Pursuant to Article 20 of the BU 13 Collective Bargaining Agreement, HGEA requested Temporary Hazard Pay for its affected Members. HSH failed to respond. HSH has intentionally and willfully failed to consult with HGEA as required by Article 20.

Pursuant to Article 20 of the BU 03 Collective bargaining Agreement, HGEA requested Temporary Hazard pay for its affected Members. HSH failed to respond. HSH has intentionally and willfully failed to consult with HGEA as required by Article 20.

HGEA requested that HSH address the issue of its patients exceeding the census limit and conform to its licensing requirements. HSH has failed to respond. HSH has intentionally and willfully violated Article 4 of the BU 09 CBA, Article 4 of the BU 13 CBA, and Article 4 of the BU 03 CBA.

These acts by HSH are intentional and willful violations of HRS 89-9(c), 89-13(a)(1), (7), (8) and any other provision of HRS Chapter 89 that the evidence presented so proves.

6.

The Hawaii State Hospital's (HSH) practice of exceeding its licensing restriction of having no more than 202 patients is an ongoing violation. It creates a hazardous working environment for all affected HGEA members, in particular the BU 09 nurses who must monitor and provide medications to patients that exceed the census limit of 202 patients. It further creates an unacceptable environment for the patients.

HGEA has reached out to HSH on multiple occasions requesting an explanation and/or consultation regarding these issues. HSH has failed to respond. This is an intentional and willful violation of HRS Chapter 89, as noted above. HSH has a duty and responsibility to adhere to its licensing requirements of having no more than 202 patients in its facility. By continuously exceeding that patient census, HSH is intentionally and willfully creating a hazardous work environment for HGEA members. Even if the census limit violation can be overlooked, HSH refuses to address the hazardous work conditions it is creating and refuses to compensate the affected HGEA members in accordance with the respective Collective Bargaining Agreements cited above.

HSH should be required to comply with the census limitation of 202 patients. If it must exceed that number, then HSH must compensate the HGEA members with a minimum of temporary hazard pay. HGEA requests that all HGEA members be awarded such pay for every day that HSH has exceeded its census limit, with such time period to be determined by the Board based upon the evidence presented.