



## HAWAII DISABILITY RIGHTS CENTER

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### TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

**To:** Senate Committee on Human Services and Public Housing:  
**From:** Gary L. Smith, President  
 Hawaii Disability Rights Center  
**Re:** SCR 98  
 Requesting An Audit of the Hawaii Disability Rights Center.

**Hearing:** Thursday, March 27, 2008 at 1:15 P.M.  
 Conference Room 016, State Capitol

Members of the Committee on Human Services and Public Housing:

Thank you for the opportunity to provide testimony opposing SCR 98, Requesting An Audit of the Hawaii Disability Rights Center.

I am Gary L. Smith, President of the Hawaii Disability Rights Center (HDRC), formerly known as the Protection and Advocacy Agency of Hawaii (PAA). As you may know, we are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We oppose this Concurrent Resolution for the same reasons we expressed during the 2007 legislature, where a very similar Concurrent Resolution was defeated. We are dismayed to see this issue surface again at the legislature. Nothing has changed in the last year to warrant a reconsideration of this bill. Its reintroduction is simply an attempt to use the Legislature to retaliate against HDRC for conducting its federally mandated advocacy on behalf of Hawaii's people with disabilities.

In August 2006, the Hawaii Disability Rights Center (HDRC) received a report of abuse, alleging serious deficiencies in the quality of training and employment, and day and residential care services at Opportunities for the Retarded, Inc. (ORI).

HDRC, the federally-mandated Protection and Advocacy must investigate these reports of abuse and neglect.

ORI strenuously opposed HDRC's lawful investigation, and engaged in tactics that



delayed or denied HDRC access to the facility, to clients, and to records.

Failing in the courts, ORI has politicized this situation, and has made repeated broad and baseless allegations that our methodologies were somehow deficient or flawed. As a result, S.B. 2758 and H.B. 3352 have been introduced directing the Legislative Auditor to conduct a financial and management audit of HDRC. Now, SCR 98 and HCR 184 have been introduced.

It is important for you to know that the systemic failures are not ours, but ORI's. We urge you to review the report, previously provided to each legislator, "Preliminary Observations, Findings and Recommendations: an Investigation of a Report of Neglect and Abuse at Opportunities for the Retarded, Inc."

We understand that the Legislature is concerned about the litigation between HDRC and Opportunities for the Retarded, Inc. (ORI). The legal proceedings have been seriously protracted. The delay is largely due to the numerous motions filed by the defense in the litigation which took many months to resolve. Since the last legislative session, the following has occurred in the litigation:

- 1) A federal court ruled in favor of HDRC and ordered ORI to comply with HDRC's request for Information to conduct its investigation of neglect and abuse at ORI;
- 2) At the request of several legislators, the Department of Attorney General for the State of Hawaii conducted an analysis on the access authority under federal law of HDRC and concluded that it was in agreement with HDRC's analysis of the access authority presented to the Legislature last year;
- 3) The Commissioner of the Federal Administration on Developmental Disabilities (HDRC's primary federal overseer) who visited Honolulu and met with HDRC, ORI and other community organizations and family members fully supported HDRC's activities in connection with the ORI investigation; and,
- 4) At the request of Governor Linda Lingle's office, HDRC prepared and tendered a report summarizing HDRC's observations, findings and recommendations with respect to the allegations of neglect and abuse at ORI.

HDRC and ORI are in the midst of discussions under the supervision of Federal Magistrate Barry Kurren who is attempting to mediate a settlement. Representatives of the respective boards of directors have met and we are continuing our attempts to achieve a collaborative resolution. Recently, HDRC met with the Judge who expressed the same displeasure that we did concerning the politicization of this case and the inappropriate attempt to interject the legislature into this matter. He has ordered the parties into mediation and those sessions have begun.

If, after hearing all this, the Legislature nonetheless feels that further inquiry is warranted and wants the Auditor to conduct some review of the HDRC, we then submit that at the very least, the Legislative Auditor should be directed, as part of the audit, to

fully examine the findings and conclusions stated in our Report titled "An Investigation of a Report of Neglect and Abuse at Opportunities For The Retarded, Inc." This report raises questions, not only about ORI, but about the actions of several state agencies, such as the Department of Health, Department of Human Services and Department of Labor and Industrial Relations, who have a responsibility to monitor activities at ORI. Overseeing the operation of state agencies is exactly within the purview of the Legislative Auditor. Additionally, ORI receives a sizeable amount of financial support from the state. So, if the Legislature wants to audit the HDRC because it has questions about the way in which it has conducted its statutorily mandated investigation at ORI, then, for purposes of being thorough and complete, it should direct the Auditor to review the report on our investigation and make recommendations to the Legislature next year for any further action which it deems may be appropriate. In that way, the legislature will receive a complete, unbiased review of the entire picture, as opposed to just focusing on the actions of this agency in isolation.

If the Committee were inclined to adopt that amendment, we would propose the following language:

In the course of performing the financial and management audit, the Legislative Auditor is directed to review the report entitled "An Investigation of a Report of Neglect and Abuse at Opportunities For the Retarded, Inc." and examine its findings and conclusions and include in its report to the legislature any recommendations for any further audits or other legislative action concerning ORI, Inc. or any state agencies.

We hope that you will see that these measures were introduced in an attempt to inappropriately inject the legislature into the midst of ongoing litigation as well as utilize the legislature to discourage us from fulfilling our federal mandate. For those reasons, we respectfully request that your Committee not advance this measure any further.

Thank you for the opportunity to provide testimony in opposition to this Resolution.

To: Senate Committee on Human Services and Public Housing

Re: SCR98

For hearing on Thursday, March 27 at 1:15 p.m.

From: Dennis Chun

### Testimony in Support

Since 2004, HDRC has been investigating ORI for alleged abuse and neglect; since the beginning, ORI has requested details on the allegations and that information has been denied. The report filed by HDRC dated February 15, 2008 is the first institutional account detailing their allegations of abuse and neglect. Though it is labeled as a preliminary account, it opens a window into the corporate culture, practices and ideology of HDRC.

Federal law empowering HDRC defines abuse and neglect as acts or omissions that caused or may have caused injury or death to a disabled person. It is clear that it was enacted to prevent serious injury rather than to address every situation that remotely could lead to a remote possibility of injury.

There are several allegations raised in the HDRC report which could have led to such injury and they have been addressed in ORI's response. Without a firm grasp of the facts or of the rules and regulations surrounding the situation, observations were documented expressly for use to discredit ORI. To this day, HDRC has never asked questions relating to allegations; all other agencies routinely do so since it is both expedient and professional. Problems are found, addressed and resolved, not left to fester leading to a federal court case. Failure to inquire can be attributed either to HDRC's willful disregard for the facts or a deliberate ignorance of the facts. The failure to ascertain facts combined with their lack of understanding of rules and regulations covering ORI policy allowed them to retain their mistaken conclusions.

Most of the report deals with matters that have little to do with abuse or neglect.

Among them are

- a. Improper disability ratings
- b. Medicaid irregularities
- c. Violations of wage standards
- d. Operating as a “closed” community
- e. Conflicts of interest
- f. Restrictions on the exercise of freedom of choice and self determination

The report attempts to use the possibility that these matters could lead to abuse and neglect as a substitute for actual findings. Items a.) through c.) should be addressed by the agencies who enforce these laws- failure to refer them to the proper agencies allows the allegations to persist in the hands of those who lack the expertise and enforcement power to either evaluate or remedy the situation.

Items d) and e) deal with HDRC defined conflicts of interest that are neither abuse or neglect; these are criticisms to the program practices of ORI which has had a history of very positive results. The concept that any organization should have to change its successful operations simply because HDRC defines its program methods as having possible conflicts of interest raises serious questions of HDRC’s motives and judgment.

Item f) alleges that restricting choice and self determination as defined by HDRC is a cause of abuse and neglect. There are many families who believe that their choices for their loved ones have been wise- HDRC believes that choices are wise only if they conform to the HDRC agenda. Families are subject to HDRC’s insistence that the right to choose by clients is more important than the best interests of the client and they are willing to go to court to enforce that view.

The experience of ORI and the insight provided by HDRC’s report are symptoms of organizational problems relating to management style, professionalism and competence within this agency designated by the state and given a broad mandate. ORI does not seek support for the audit simply as a means to affect the lawsuit; whatever the outcome of the lawsuit, it will be only on the narrow range of issues before the court. The broader

issues, corporate culture , management, professionalism, competence and judgment will still be unresolved. A management audit by the State Auditor is the only means of reviewing and improving the workings of HDRC; their role in this state is too important to leave the matter unexamined.

**testimony**

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**From:** kuulei [kuuleikiliona@hawaii.rr.com]  
**Sent:** Thursday, March 27, 2008 1:34 AM  
**To:** testimony  
**Subject:** SCR 98

**AMENDED**

**TESTIMONY IN SUPPORT OF SCR 98**  
Requesting Audit of Hawaii Disability Rights Center

**TO:** Committee on Human Services and Public Housing  
Suzanne Chun Oakland, Chair and Les Ihara, Jr., Vice Chair

**FROM:** Ku'ulei Kiliona, advocate/private citizen  
[kuuleikiliona@hawaii.rr.com](mailto:kuuleikiliona@hawaii.rr.com)

**DATE:** Thursday, March 27, 2008  
**TIME:** 1:15 p.m.  
**PLACE:** Conf. Room 016

Dear Chairs and Committee Members,

I am in strong support of resolution SCR 98, requesting a financial and management audit of the Hawaii Disability Rights Center. Let me first point out that HDRC has said this measure is only an issue between two parties, but that is not so.

I have been an advocate for people with disabilities for over twenty years here in Hawaii. I have assisted people on all of the islands and areas of the state. A good part of my training came from the Developmental Disabilities Council. I also have a strong background from various sources that have also contributed to my training and abilities. I have continuously heard complaints about HDRC over the years from people mainly ones with disabilities that HDRC was not fulfilling their mission. I also heard this complaint from one of their former staff secretary/paralegals.

Last month, at a hearing, I gave testimony about a man in Hilo named Larry who had contacted HDRC years ago, but never received the assistance he sought even though he was told they would help. Instead, they dropped the ball. As a result of not receiving their help, **Larry has been forced to live in an institutionalized setting at the long term care unit of Hilo hospital against his will for 30 years.** Larry did not contact HDRC only once or twice, but on several occasions over the 30 years. He has never received any help from HDRC.

After my testimony last month, HDRC was again contacted to help Larry. Gary Smith, the director of HDRC said that papers needed to be filled out in order to get services, but that they would help. Donald Thomas of HDRC's East Hawaii office took two weeks to find the paperwork. Next, he decided that Larry should continue to be institutionalized because he could not swallow on his own. This is a decision for a medical doctor, not for Mr. Thomas or HDRC to decide. HDRC quickly dropped the ball again on Larry.

Over the last 30 years, Larry has suffered enormous abuse while being institutionalized: mental, physical, emotional and spiritual. Hearing of Larry's plight, a couple of unpaid advocates set out to help Larry. With a doctor's consent, they have been able to arrange an independent living setting for Larry with all the services he needs. He now rents his own apartment. He also has an attorney who will be filing a lawsuit against those who abused him.

It's a shame that HDRC, an agency given the mission to help people with disabilities, drops the ball on vulnerable people such as Larry. If they had done their job years ago or even in the last month, Larry's situation would never have come to overt abuse and a lawsuit.

Truly, it is time to audit HDRC to make sure that tax dollars are being correctly spent. Additionally, bonuses for director, Gary Smith (\$20,000) also need to be looked into as well.

Mahalo for the opportunity to submit written testimony.

Sincerely,

Ku'uilei A. Kilion



**testimony**

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**From:** Ethel Yamane [ehy@hawaii.rr.com]  
**Sent:** Wednesday, March 26, 2008 3:49 PM  
**To:** testimony  
**Cc:** HPPR@hawaii.rr.com  
**Subject:** Testimony on SCR 98, Auditor to Conduct a Financial and Management of HDRC,3/27/08, 1:15 pm, conf. rm016, Senator Suzanne Chun Oakland

**Testimony on SCR 98****Requesting the Auditor to Conduct Financial and Management Audit  
Of the HDRC**

As a concerned citizen, I have observed the struggles of private providers of services to persons with developmental disabilities in providing guidance, protection, education in an environment comparable to any other services for other citizens within the state. As a former administrator with the Department of Health which provided funding and oversight to these private providers of services, I have always marveled at the dedication, patience and sincere interest of the staff working with the clients. When I look back on the Waimano Institution for the mentally retarded and the care of the mentally challenged in the community today, there is no comparison. The clients in the community are really enjoying a normal life in the community.

The Hawaii Disability Rights Center has a right to advocate for persons with disabilities but the persons with developmental disabilities also have the right to privacy. Only when there are specific complaints on someone, the record should be open to HDRC. Otherwise, it will be like a witch hunt looking to find something to charge the providers with. The providers are regularly monitored for compliance by the licensing agency, the funding agencies, both Federal and State. Abuse cases are also reported to the Adult Protective Services of the Department of Human Services.

HDRC has hired attorneys to charge different programs with non-compliances and have made monetary settlements with the programs involved. The private agencies do not have the funds to be paying thousands of dollars to HDRC. Their funds really need to be used to care for the persons with disabilities.

In view of the ongoing disputes with HDRC, an audit of the agency's management and funding activities are warranted. I would also recommend that the audit be completed on a timely basis to meet the immediate needs of persons with developmental disabilities as well as ensure the continuity of services of the private agencies rendering the services.

Respectfully submitted,  
Ethel Yamane

## testimony

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**From:** hprr@hawaii.rr.com  
**Sent:** Wednesday, March 26, 2008 4:21 PM  
**To:** testimony  
**Subject:** Testimony in Support of SCR 98 with comments

TESTIMONY IN SUPPORT OF SCR 98  
With Comments

**TO:** Senate Committee on Human Services and Public Housing  
**FROM:** Yvonne de Luna  
**RE:** Senate Concurrent Resolution # 98  
REQUESTING THE AUDITOR TO CONDUCT A FINANCIAL AND  
MANAGEMENT AUDIT OF THE HAWAII DISABILITY RIGHTS CENTER  
**HEARING:** Thursday, March 27, 2008, 1:15 pm  
Conference Room 016, State Capitol

Dear Members of the Senate Committee on Human Services:

I am submitting this testimony in support of Senate Concurrent Resolution # 98, which requests the auditor to perform a financial and management audit of the Hawaii Disability Rights Center (HDRC), currently the state's designated protection and advocacy (P&A) agency. Although, if given a choice, I would also support, more so, a "bill" form which would require an audit and conduct periodic audits.

I support this resolution for several reasons:

First of all, HDRC's overall financial accountability, operations, effectiveness of governance, and appropriate administration of programs and services has not been reviewed by the state since its inception 30 years ago. I believe our state needs to ensure the agency it designated is attaining the objectives and results expected of them while also examining how well they are organized and managed and how efficiently they acquire and utilize resources. Protection and Advocacy systems are required in order for a state to receive federal allotment for state councils on developmental disabilities or for the protection and advocacy of individual rights. Thus, appropriate and efficient utilization of these funds/resources in our state and an assessment of its direct impact on our community should be reviewed by our state on a regular basis.

The Developmental Disabilities Act, a federal law, which led to the creation of P&A agencies such as HDRC, requires a review by Congress every 7 years. It seems even Congress felt it was necessary to do a periodic review on its laws. Furthermore, the need for accountability of P&A agencies is identified in the Developmental Disabilities Act, the Government Performance and results Act of 1993, and the Program Assessment Rating Tool (PART), administered by the Office of Management and Budget.

Secondly, I support the idea that, through this audit, the Legislature and the Governor, will have the opportunity to receive a thorough assessment and hopefully, recommendations, which could reinforce or help to change and/or improve our P&A system, its policies, financial, program, operation and/or administration management. In fact, other states have done audits on their designated P&As. Although HDRC has some federal oversight, our state should conduct its own evaluation.

Families/guardians, persons with disabilities, service providers and concerned individuals have raised their concerns as to how HDRC resolves conflicts between a patient and their rights to privacy, conflicts on the service providers' obligations to disclose patient information and records to HDRC, and conflicts on the justification and manner in which HDRC demands from service providers and their families/guardians unrestricted and unaccompanied access to the patient and the patient's records. Moreover, how HDRC handles abuse and neglect complaints, how it determines the merit of litigation as opposed

to other means of dispute resolution and how it handles complaints/ grievances against it, needs to receive its overdue evaluation.

"There is authority for the Legislature to direct the auditor to conduct an investigation," according to our state's Attorney General (AG) report in Sept. and Oct. 2007. Since our public agencies are subject to state audits, there should be no reason to exempt HDRC from such oversight.

It had been suggested in the AG's report that perhaps our P&A's efforts should focus on augmenting current services and not duplicating them. Regulations do not directly address this potential redundance in service with other statewide advocacy programs. This certainly is something that auditor can look into.

I feel it is the right time for government and the community to re-visit and discuss the values we hold with regards to the care and protection of people with disabilities, the intent of the laws, and to determine if the law or the manner in which it is implemented need to change. I believe it is also the right time for a fresh pair of eyes to look at what HDRC is doing and how well it is performing its job. Without an audit, there would be no gauge for our Governor and the legislature to determine if the system it created really works.

Thank you and I hope to gain your support for this resolution.

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