

**SB 2805**

LINDA LINGLE  
GOVERNOR OF HAWAII



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In reply, please refer to:  
File:

**AMENDED TESTIMONY**

**SENATE COMMITTEE ON HUMAN SERVICES**

**S.B. 2805, RELATING TO CLEAN AND SOBER AND HALFWAY HOME  
REGULATION**

**Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health**

**February 9, 2010**

1 **Department's Position:** The department respectfully OPPOSES this bill as currently drafted.

2 **Fiscal Implications:** Operating costs will depend on the number of homes to license and cannot be  
3 quantified at this time. However, assuming even a small quantity of homes distributed throughout the  
4 state this bill could require as many as 2 full-time staff to perform announced and unannounced  
5 licensing and monitoring including complaint investigations.

6 **Purpose and Justification:** Clean and sober homes and halfway houses provide a means for  
7 persons to prepare to return to the community through support in a less structured home-like  
8 environment but without the structure or therapeutic care of a Special Treatment Facility (STF) or  
9 Therapeutic Living Program (TLP), which are licensed by the department. To be clear, these residential  
10 locations do not provide therapeutic care as would be required to be licensed by the DOH. Rather, these  
11 homes are established to provide a residence for someone who has been released from a therapeutic  
12 treatment facility or from incarceration. As a result, these homes do not fall under the purview of the  
13 DOH nor should they. These are solely community living residences whereas the DOH licenses health  
14 care facilities that provide active treatment and health care.

1           The Federal Fair Housing Act prohibits discrimination on the basis of disability, which includes  
2 persons with mental or physical impairments, which include mental retardation, alcoholism, drug  
3 addiction, and mental illness. These conditions are specifically stated in this bill. The law also makes it  
4 illegal for local governments to deny a permit for a home because of the disability of individuals who  
5 live or would live there. However, this bill would require the DOH to consider the testimony at a public  
6 informational meeting in determining whether to grant a license. To deny a license because of the kind  
7 of individuals with disabilities who live or would live there is against federal law.

8           Finally, local laws are already in place on other important matters such as public safety, traffic  
9 congestion, construction requirements or occupancy, etc. under the counties and police or other law  
10 enforcement organizations.

11           Therefore, this bill is discriminatory to persons with disabilities, it is unnecessary since the  
12 department already licenses structured therapeutic facilities, and law enforcement matters are already  
13 under the purview of the police while counties have oversight over residential zoning and building  
14 requirements.

15           Thank you for the opportunity to testify.

**For: SB2805 Relating to Clean and Sober and Halfway House Regulation** Establishes a licensing requirement for all clean and sober homes and halfway houses and requires the department of health to establish rules to oversee them.

**To: SENATE COMMITTEE ON HUMAN SERVICES:** Senator Suzanne Chun-Oakland, Chair, Senator Les Ihara Jr., Vice Chair

**Time:** Tuesday, Feb. 9, 2010, 4:30: PM, Conference Room 016

## **HAWAII SUBSTANCE ABUSE COALITION**

Good morning Chair Chun-Oakland, Vice Chair Ihara and Distinguished Committee Members: My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide hui of more than 20 non-profit treatment and prevention agencies.

At its foundation, “clean and sober housing” operates under the philosophy that safe, affordable housing is a basic human right. They are generally considered independent living because the key components include “no conditions of tenancy that exceed the normal conditions under which any leaseholder would be subject.”<sup>1</sup>

### **HSAC strongly opposes SB 2805:**

**Legalities:** The question is whether this is an issue of housing involving people with disabilities or a program that requires licensure. Alcoholism and past illicit drug use are considered disabilities under fair housing laws. In addition to Federal Fair Housing and Other Laws Protecting Housing Opportunities for People with Disabilities, two additional federal laws that may apply to emergency shelters and transitional housing are Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, Titles II and III.<sup>1</sup>

Before implementing any legislation, we recommend that legislators be aware of the legalities on how the laws to protect individuals with disabilities are applied. There is federal precedence that alcoholics as well as individuals who are currently drug free and are involved in continuing professional rehabilitation and mentoring programs are entitled to protection as disabled under the Fair Housing Act. For the last thirty years, federal and state laws have created increasingly protective measures to safeguard equal access to housing for people with disabilities, including changes in rules, policies or procedures to help people with disabilities access housing or housing-related services.

Being subject to public informational meetings and/or neighborhood board approvals as well as licensure may be considered discriminatory acts that limit access for housing to people with disabilities and consequently are in violation of these Federal laws.

For instance, sober houses are exempt from single-family zoning requirements, which mean they can house more than four unrelated people. This immunity comes from a 1995 U.S. Supreme Court decision that found that the Fair Housing Act protects addicts from rental discrimination. Clean and Sober houses may be considered independent living and because they do not receive government assistance, no public agency may oversee their operation.

**Neighborhood Concerns:** While there are well-managed clean and sober housing, there are several who are not. Compounding this issue is that numerous housing rentals are starting because of the rental capacity and profitability. There are literally thousands of individuals in recovery in Hawaii seeking such housing in recent years due to improved treatment access and the reduction in stigma. According to the DOH: ADAD surveys, over 100,000 people in Hawaii need substance use disorder treatment.<sup>2</sup>

Those sober houses that are not well managed have neighbors worried. The biggest issues seem to be parking and noise concerns. Neighbors complain that there are neither rules nor anyone investigating them. There's no apparent accountability for the landlords.

On the other hand, proponents of sober houses question the legality of any regulations. Many cities throughout the country have tried to implement regulations on sober homes, only to see them struck down in court. As the laws currently stand, people in recovery are people with disabilities and they have the same right to live in single-family zones as anyone else. Considering current federal laws, the state may not have the authority enforce this bill.

We clearly need a solution that is fair to both sides as well as legal.

**Recommendation:** *One of the first steps may be to get a legal definition of 'sober house' before deciding how to regulate them.*

**Summary:**

One thing for certain is that more and more people with disabilities are going to seek recovery using clean and sober houses. Over the years, many treatment agencies have considered sober housing a prerequisite for effective psychiatric, substance abuse, and/or other disabilities treatment. And landlords are receptive due to the rental potentials.

We need a balance between those seeking to reenter their communities of choice with the needs of their neighbors to enjoy peaceful neighborhoods. Given the legal concerns, this bill would not accomplish that.

We appreciate the opportunity to testify and are available for testimony.

**References:**

- 1) Mental Health Advocacy Services, Inc., *FAIR HOUSING FOR PEOPLE WITH DISABILITIES: A guidance manual for emergency shelter and transitional housing providers* February 2007  
<http://www.mhas-la.org/FH%20Manual%20rev.4-07.pdf>
- 2) Department of Health: Alcohol and Drug Abuse Division: *Alcohol and Other Drug Use in Hawai'i – Surveys*, <http://hawaii.gov/health/substance-abuse/prevention-treatment/survey/adsurv.htm>

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## Hope, Help and Healing Kauai

Good morning Chair Chun-Oakland, Vice Chair Ihara and Distinguished Committee Members: My name is Malia Tokioka. I am the Executive Director of Hope, Help and Healing Kauai, a Faith-Based Substance Abuse Treatment Program on the island of Kauai.

HHHK has been operating two clean and sober houses since 2005. Through the past 4 years we have serviced the following clientele (homeless, incarcerated and paroled). We provide Substance abuse treatment and case management for the clients in our homes. Our homes have a Facility director and a house leader that oversees the homes. The Client's have a strict regimen of house rules and guidelines for their success. Clients have house hold chores and duties, the program provide food, utilities and a fully finished home for the client. Please see the following stats:

tot peeps 2005-2009	72	men	28	women	44	INCARC	29
num fall	16		9		7		40%
num success	56		19		37	HI	36
success rate 2005-2009	78%		68%		84%		50%
Native Hawaiian HI			20		16	Homeless	3
							20%

## HSAC strongly opposes SB 2805 and has recommendations:

### Community Problems

The problem to the community is that because clean and sober houses are generally independent living and operated by a democratic process by the residents, some homes are not always well regulated with respect to traffic, parking and noise.

It's a problem to accredited healthcare providers too because they are required to obtain a license to operate "managed" therapeutic living homes and neighborhoods are reluctant to approve them given their negative experience with unpopular clean and sober houses.

Compounding the issue is that independent living for those with disabilities are protected by Federal law. Many communities throughout the nation have been frustrated with lack of accountability and have enacted regulations only to see them struck down in court. In 2002, for example, Florida passed an ordinance that enacted regulations on sober houses prompting the ACLU to sue for discrimination, which resulted in payments for more than \$600,000 to sober-house operators.<sup>1</sup>

While clean and sober houses have been around in Hawaii for several decades, there is a surge of many new rentals because 1) treatment agencies are encouraging self-help, supportive living; 2) there are a growing number – in the thousands - of recovering individuals now reentering communities each year; and 3) landlords are assured of long term tenancy and profitability.

Recent surveys from several states indicate that the clear majority of people are in favor of clean and sober houses. Further, the well-run clean and sober housing organizations, such as Oxford House, are considered good neighbors after they are established for at least a year.<sup>2</sup> As more and more recovering individuals seek independent living in a supportive environment as a means to transition to drug-free living, we can expect many more sober living housing in the very near future.

While many sober houses are well-run, the poorly-run have a greater impact to the community. The problem-free ones are not in the news or in neighborhood meeting discussions. Further, agencies who do request licensing for “managed” housing are confronted by the minority who oppose any housing project, rejecting all recovering individuals. In practice, the majority who favor “managed” houses are silent, while the few who object to all considerations of reentry are very surly and loud, overpowering everyone else.

### **Recommendation:**

We suggest starting where some other states are starting. We propose a Task Force to consider the following:

- First, let’s define independent living within the context of clean and sober housing in order to determine which models fall under protection.
- Second, let’s get legal reviews about the liability issues of subjecting clean and sober houses to public informational meetings, neighborhood board approvals, public agency oversight, and licensure that may be considered discriminatory acts to people with disabilities.
- Finally, let’s evaluate what is legal to regulate and ensure that such regulation is applicable to all groups of community living including the general public.

### **Summary:**

It is hard enough for people to get clean and sober living. Passing this Bill will make it nearly impossible. People so desperately need clean and sober living and there are so little to begin with. Passing this Bill will make it harder for those running clean and sober living to continue services and for those wanting to open up houses in the future.

We need to look at what is working already and continue to build on that, instead of hindering the process. Please consider killing this bill.

We appreciate the opportunity to testify and are available for testimony.

**References:**

- 1) Matt Snyders, *Sobriety Check: Neighbors turn to St. Paul City Council to provide more oversight on sober homes*, Minneapolis News, October 08, 2007
- 2) Journal of Prevention & Intervention in the Community (The Hayworth Press), *This Is My Neighborhood: Comparing United States and Australian Oxford House Neighborhoods* Vol. 31, No. 1/2, 2006, pp 41-49



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## **HINA MAUKA**

Good morning Chair Chun-Oakland, Vice Chair Ihara and Distinguished Committee Members: My name is Alan Johnson. I am the CEO of Hina Mauka, an alcoholic and substance use disorder treatment center.

The majority of sober living environments involves community, is self-supporting and often operated by a democratic process by the residents. They are established as a means of self-help for themselves. Since they are generally considered independent living, it is unlawful to place restrictions on them that are discriminatory or different than any other protected group of people who would choose to live together. Alcoholism and past illicit drug use are considered disabilities and are subject to protection laws under the Federal Fair Housing, the Rehabilitation Act and the Americans with Disabilities Act.

### **HSAC strongly opposes SB 2805 and has recommendations:**

#### **Community Problems**

The problem to the community is that because clean and sober houses are generally independent living and operated by a democratic process by the residents, some homes are not always well regulated with respect to traffic, parking and noise.

It's a problem to accredited healthcare providers too because they are required to obtain a license to operate "managed" therapeutic living homes and neighborhoods are reluctant to approve them given their negative experience with unpopular clean and sober houses.

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- Second, let’s get legal reviews about the liability issues of subjecting clean and sober houses to public informational meetings, neighborhood board approvals, public agency oversight, and licensure that may be considered discriminatory acts to people with disabilities.
- Finally, let’s evaluate what is legal to regulate and ensure that such regulation is applicable to all groups of community living including the general public.

### **Summary:**

A clean and sober house that is self-run, self-supported, disciplined practice of rules and regulations helps to bring hope to those in recovery who have suffered from addiction. Well run self-help housing is a positive contribution to community. Poorly-run self-help housing creates negative community relations.

Let’s not enact regulations that would be challenged and possibly lost in court, causing payments to sober living operators. Instead, let’s evaluate the problem in a task force from a community, legal, healthcare and disability perspective.

We appreciate the opportunity to testify and are available for testimony.

### **References:**

- 1) Matt Snyders, *Sobriety Check: Neighbors turn to St. Paul City Council to provide more oversight on sober homes*, Minneapolis News, October 08, 2007
- 2) Journal of Prevention & Intervention in the Community (The Hayworth Press), *This Is My Neighborhood: Comparing United States and Australian Oxford House Neighborhoods* Vol. 31, No. 1/2, 2006, pp 41-49

**Claire Woods, M.ed  
731 Wanaao Road  
Kailua, Hawaii 96734**

**TO: Senator Suzanne Chun Oakland  
Chair, Senate Committee on Human Services**

**RE: Testimony in opposition to SB 2805**

**Aloha. While I support the intent of this bill, I oppose it as written. Based on my experience overseeing alcohol and drug treatment programs, I certainly appreciate the need for clean and sober housing for people as they transition back into society. Clean and sober housing plays a vital role in supporting them as they adjust back into a clean and sober world. But these homes are just that – homes. Not treatment. They are supportive housing that is operated and supervised by individuals often in recovery themselves. Often a 501-c-3.**

**These homes are based on a nationally recognized model of care that instills structural accountability, community and positive self care... Clean and sober housing is a model of care that is widely accepted. It has stood the test of time as being one of the best ways to support an individual's re-entry into society. It is widely accepted as a cost effective model of care that is easily implementable -- much easier than what is being proposed in this bill**

**While I certainly am supportive of the intent of licensing – that being the consistent stand of care that ensures the health and safety of those in residence, I do not feel that the application of standards that are treatment based are appropriate**

**I do not have an estimate of the number of clean and sober homes in our community. This makes implementation of this bill even more of a challenge. Due to the confidentiality and anonymity of this model of care; it is hard to know how many homes we are dealing with**

**If I read this legislation correctly, it appears that state licensing standards would apply to this level of care; - most likely special treatment facilities standards. The key word here is treatment. The Department of Health has, over the years, attempted to establish standards of treatment and care in its licensed therapeutic living programs, - clean and sober supportive housing programs for people in transition. This has been a challenge, with the STF standards being more of a medical model. These standards are extremely expensive to implement and would place an unrealistic burden on the homes**

**I do feel very strongly that these homes should be registered somehow with the state, while protecting the anonymity of the house. I feel they should be subject to some**

**form of SIMPLE oversight of program operations Perhaps a simple checklist of things they need to be doing ( house rules, codes of behavior etc )something easily understood and implement able.**

**I feel that what is needed right now is a meeting with the housing staff and the state to develop a realistic set of things they need to do It need not be complicated just realistic so they know what is expected of them to ensure the health and safety of those in their care.**

**The state DOH is already overburdened with likening and accreditation loads. I do not see how they can actually over see these homes.**

**Just two doors down from where I live, a new clean and sober house has just moved in. In meeting with the staff there, I was struck by just how much structure the program had ;the day to day operations seemed pretty "tight" they had clear guideline for resident behavior A simple checklist would be a way for them to be sure they were doing things to ensure the residents are safe and healthy.**

**Nothing fancy. Simple, sweet and to the point.**

**I think there is room for negotiation in the development of standards for the accountability of these clean and sober houses. If the STF or STF -like standards are to be applied, it leaves me no option but to vehemently oppose passage of this bill**

**chunOakland5 - Michael**

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**From:** Jud Cunningham [jcunningham@aloha-house.org]  
**Sent:** Monday, February 08, 2010 11:05 AM  
**To:** HMS Testimony  
**Subject:** Clean & Sober Housing

**For: SB2805 Relating to Clean and Sober and Halfway House Regulation**

**To:** SENATE COMMITTEE ON HUMAN SERVICES: Senator Suzanne Chun-Oakland, Chair, Senator Les Ihara Jr., Vice Chair

**Time:** Tuesday, Feb. 9, 2010, 4:30: PM, Conference Room 016

Chair Chun-Oakland, Vice Chair Ihara and Committee Members: My name is: Jud Cunningham. I am the CEO of Aloha House, Inc., Maui Youth and Family Services, Inc., and Malama Family Recovery Center, three agencies that provide substance abuse treatment services in Maui County. I have participated in the development of and reviewed the testimony provided by Alan Johnson on behalf of the Hawaii Substance Abuse Coalition and Hina Mauka regarding the proposed regulation of clean and sober housing. I wholeheartedly concur with Mr. Johnson's testimony (and for the sake of brevity will not repeat it ) and urge you to vote against SB 2805 for all the stated reasons. Thank you.

Jud R. Cunningham, CEO

Aloha House, Inc.

**chunOakland5 - Michael**

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**From:** shari@kahalepomaikai.org  
**Sent:** Monday, February 08, 2010 1:13 AM  
**To:** HMS Testimony  
**Subject:** SB2805 Relating to Clean and Sober and Halfway House Regulation

**For: SB2805 Relating to Clean and Sober and Halfway House Regulation**

**To:** SENATE COMMITTEE ON HUMAN SERVICES: Senator Suzanne Chun-Oakland, Chair, Senator Les Ihara Jr., Vice Chair

**Time:** Tuesday, Feb. 9, 2010, 4:30: PM, Conference Room 016

**From: KA HALE POMAIKA'I**  
**PO Box 1895**  
**Kaunakakai, HI 96748**

Aloha Chair Chun-Oakland, Vice Chair Ihara and Distinguished Committee Members,

As the Executive Director of Ka Hale Pomaika'i, an outpatient substance misuse and addiction treatment center and Moloka'i's single Clean and Sober Home, I would like to express our agency's opinion on the SB2805 by voicing our **Strong Opposition**. Our sober living home is a safe haven and often the only resource for adults in early recovery from substance misuse disorders to help them sustain their sobriety once they have finished a course of treatment.

The residents we have on site are part of a program in which independent living is monitored by a case worker. We believe it is unlawful to place restrictions on them that are discriminatory or different than any other protected group of people who would choose to live together. Persons who have the disease of addiction or alcoholism are protected by the Federal Fair Housing laws which consider them to have specifically diagnosed disabilities. Our residents are also recipients of the protective and qualitative services under the Carl Perkins Vocational Rehabilitation Act , section 504 and the Americans with Disabilities Act.

Before we ever opened the doors of our Safe and Sober living shelter, we held numerous public community based meetings to "feel" the local climate. We worked with all of our neighbors and Kupuna. We sought the assistance from successful similar homes on other islands and in the mainland to assure that the highest ethical standards would be in place with our home. Time and time again we were told that NIMBY was illegal for our population but we went ahead and did our due diligence to create peace and acceptance in our community.

Today we stand proud as the only home of this kind on Moloka'i. We have been a bright spot for our community and although we are located on a Hawaiian Homestead, we are able to offer a home to any adult community member who meets our criteria for housing. 100% of our residents have successfully remained sober beyond their tenancy with us and have all found jobs.

Our neighbors have come to support us wholeheartedly because we have proven over and over again that those individuals in recovery are not the same bad neighbors that they once were in active addiction.

We at KHP hold to the belief that adding undue regulatory restrictions which re-define our residents as non-disabled would not be a benefit to our program. Our efforts are positive and productive and legal as they stand.

Thank you for your time and for reading our views on this bill - which we reiterate that we strongly oppose.

Mahalo,  
*Shari R. Lynn*

S. Lynn, M Ed, CCS, CSAC, ICDAC  
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