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**IN THE _____ COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

STATE OF HAWAII,

vs.

Defendant.

) **CR. No.** _____
) **FC-CR.** _____
) **REP. NO(S):** _____
) _____
) _____
) **ORDER FOR EXAMINATION OF**
) **COMMITTED DEFENDANT SEEKING**
) **CONDITIONAL RELEASE OR**
) **DISCHARGE FROM THE CUSTODY OF**
) **THE DIRECTOR OF HEALTH AND FOR**
) **TRANSPORT**
) **[§§704-412(1), (2); 704-414; 704-415 HRS]**
) _____
) **Hearing Date:** _____
) **Judge:** _____

**ORDER FOR EXAMINATION OF COMMITTED DEFENDANT
SEEKING CONDITIONAL RELEASE OR DISCHARGE
FROM THE CUSTODY OF THE DIRECTOR OF HEALTH AND FOR TRANSPORT**

_____ 's (Identify Applicant as either

Defendant or Director of Health) Application for Conditional Release or Discharge from the Custody of the Director of Health under Sections 704-412 and 707-414, Hawaii Revised Statutes, came on for hearing on _____. Defendant's counsel, _____ and the State of Hawaii, represented by the Deputy Prosecuting Attorney, _____, were present.

Defendant [] was physically present
[] appeared via video-conference

The Court, having considered the Application, the arguments of the parties, and the records and files in this case, noting that at least ninety (90) days has passed since the original order of commitment pursuant to HRS Section 704-411(1)(a) or that at least sixty (60) days has passed since the order revoking conditional release pursuant to HRS Section 704-413, and for good cause appearing,

IT IS HEREBY ORDERED as follows:

A. APPOINTMENT OF EXAMINER(S), HRS §704-414(1)

Defendant shall be examined by:

☐ State Designate
Adult Mental Health Division
Court Evaluation Branch
1700 Lanakila Street
Honolulu, Hawaii 96817

☐ _____
Psychiatrist's or Psychologist's name

☐ _____
Psychiatrist's or Psychologist's name

B. DATABASE, HRS §704-404(9); 704-414(1)

The Adult Client Services Branch of the Fifth Judicial Circuit shall obtain and timely make available for inspection by examiner(s), all existing medical, social, police and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes and Rule 16 of the Hawaii Rules of Penal Procedure.

The Court further orders that any substance use disorder patient records within the scope of 42 C.F.R. part 2 that are in the custody of public agencies shall be

provided to the Adult Client Services Branch for review by the examiner(s).

C. PLACE OF EXAMINATION

Defendant shall be examined at:

☐ A hospital or other suitable facility as deemed appropriate by the Director of Health.

☐ Other (please specify): _____

D. CONTENTS OF REPORT, HRS §§704-414(1); 704-404(3), (5)(a), (b), (d), (e), (8); and 704-415

The examiner(s) report(s) shall include the following:

1. A description of the nature of the examination;
2. An opinion as to whether Defendant is still affected by a physical or mental disease, disorder, or defect. If so, a diagnosis of the physical or mental condition of Defendant at the present time;
3. An opinion as to whether Defendant can safely be discharged from the custody of the Director of Health without danger to self, or the person or property of others;
4. An opinion as to whether Defendant can be controlled adequately and provided with proper care, supervision, and treatment if granted conditional release pursuant to HRS Section 704-411(1)(b), without danger to Defendant or to the person or property of others, and if so, what the conditions of release should be.
5. A statement that the diagnosis or opinion rendered were arrived at independently of other examiners, unless there is a showing of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report.
6. Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

E. OTHER _____

F. DUE DATE OF EXAMINER'S REPORT

The examiner(s) shall file a written report with the Court no later than _____. The **original** of the report(s) of the examination(s), including any supporting documents, shall be submitted to the Clerk of the Court by either of the following methods: (1) mailing via U.S. Postal Service to 3970 Ka'ana Street, Lihue, Hawaii 96766; or (2) emailing to LegalDocs.5CC@Courts.Hawaii.Gov. As a courtesy, the examiner is encouraged to fax/email an unfiled copy of the report to the appropriate judge's chamber. FAX numbers for judges' chambers are:

District Court Chambers #2 – (808) 482-2535
Family Court Chambers #1 – (808) 482-2541
Family Court Chambers #3 – (808) 482-2655
Circuit Court Chambers #4 – (808) 482-2662
Circuit Court Chambers #6 – (808) 482-2561

The Clerk of the Court shall distribute the report, and any supporting documents, to the prosecuting attorney, Defendant's counsel, and the Adult Client Services Branch.

Any request for an extension of the due date of an examiner's report shall be made in writing and filed with the Court prior to the due date.

G. EVIDENTIARY HEARING ON APPLICATION; BURDEN OF PROOF

Defendant is ordered to appear for a hearing on the Application to determine whether Defendant should be discharged or released on conditional release on _____ at _____ .m. (within sixty (60) days from the filing of the Application).

Pursuant to HRS Section 704-415, the hearing on the Application shall be deemed civil in nature, and the burden shall be on the Applicant to prove that the Defendant is no longer affected by a physical or mental disease, disorder, or defect, or that Defendant may safely be either released on the conditions applied for or discharged from the custody of the Director of Health.

H. ORDER FOR TRANSPORT

IT IS FURTHER ORDERED that:

1. Representatives of the Department of Law Enforcement, Sheriff's Division shall transport the Defendant from the _____ to the above-entitled Court, for a further hearing on _____ at _____ .m., and shall remain with the Defendant until the conclusion of the hearing, at which time Defendant may or may not be transported back to the facility deemed appropriate by the Director of Health ("DOH Facility").

2. In the event that Defendant's treating physician determines that transport to the next hearing would present a risk of danger to Defendant or to others, or if the Defendant chooses to waive his/her physical presence at the hearing, Defendant's presence at the hearing may be by way of Video-Conferencing.

The representatives of the Department of Law Enforcement, Sheriff's Division shall transport Defendant from the DOH Facility, and back to said facility, for any further hearings, as ordered by this Court.

DATED, Hawaii, _____

Judge

APPROVED AS TO FORM on: _____.

Deputy Prosecuting Attorney

Defense Counsel