

Medical Cannabis and PTSD in Hawaii



Clifton Otto, MD
September 14, 2019

Disclosures

Certifying Physician for Hawaii's
Medical Use of Cannabis Program.

NOT a member or consultant with any
dispensary.

No financial interests to disclose.

Disclaimer

This presentation is for educational purposes only.

I am not a lawyer.

Please consult with a lawyer for professional legal advice regarding the medical use of cannabis in Hawaii.

My Background



Certifying Physician
Board-certified in Cannabis Medicine

Member of the Dispensary Task Force

Medical Retina Specialist
Retina Institute of Hawaii, 2007 - Present

Wyeth-Ayerst Pharmaceuticals
Reference Standard Chemist, 1994-1995

University of Hawaii at Manoa
Natural Products Chemist, 1992-1994

Friend with colorectal cancer ...

Pain relief

Nausea
reduction

Appetite
stimulation



First I looked at the Science ...

Cannabidiol as a novel inhibitor of Id-1 gene expression in aggressive breast cancer cells

Sean D. McAllister, Rigel T. Christian,
Maxx P. Horowitz, Amaia Garcia,
and Pierre-Michel Pithon-Buriel

California Pacific Medical Center, Research Institute,
San Francisco, California
[*Mol. Cancer Ther.* 2007;6(11):2921-7]

Cannabinoids in bipolar affective disorder: a review and discussion of their therapeutic potential

C. H. Ashton *Department of Psychiatry, University of Newcastle upon Tyne, Royal Victoria Infirmary, Newcastle upon Tyne, UK*

Cannabidiol Arrests Onset of Autoimmune Diabetes in NOD Mice

Lola Weiss^{1,*}, Michael Zeira¹, Shoshana Reich¹, Shimon Slavin¹, Itamar Raz², Raphael Mechoulam³, and Ruth Gallily⁴

¹ *Department of Bone Marrow Transplantation & Cancer Immunotherapy Hadassah Hebrew University Hospital*

Then I studied the law ...

Hawaii's Medical Use of Cannabis Act



Governor Ben Cayetano

Senate Bill 862

Act 228

HRS 329, Section IX

Signed into law:

June 14, 2000

Went into effect:

December 28, 2000

A brief history of the medical use of cannabis for PTSD in Hawaii



Late Director Loretta Fuddy



R.I.P.

April 12, 1948 – December 11, 2013

Begins on March 28, 2011 ...

28-Mar-11

Loretta J. Fuddy
Interim Director, Dept of Health
1250 Punchbowl St.
Honolulu, Hawaii 96813

Dear Interim Director Fuddy,

Could you please let me know how to go about requesting that other medical conditions be added to the current list of qualifying conditions for Hawaii's Medical Marijuana Program.

In connection with this request, I have referenced the following statutes and administrative rules governing this program that discuss qualifying conditions:

§329-121-3

Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient.

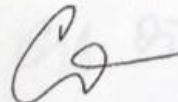
§23-202-2-3

Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient.

I look forward to hearing from you. If you could please let me know one way or the other so that I can decide on the next step.

Thank you for considering this request.

Sincerely,



Clifton S. Otto, MD
C: 808-292-4951

Second inquiry: May 9, 2011

9-May-11

Loretta J. Fuddy, Director
Hawaii State Department of Health
1250 Punchbowl St.
Honolulu, Hawaii 96813

Dear Director Fuddy,

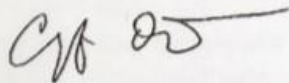
This is my second inquiry about the process that your department has established for adding additional medical conditions to Hawaii's Medical Use of Marijuana Program. My initial letter was sent over 30 days ago and I have not received a response from your office.

I am requesting that Post Traumatic Stress Disorder (PTSD) be added to the list of approved medical conditions for the medical marijuana program.

HRS §329-121 (3): "Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient."

I would appreciate a response to this inquiry within 10 days. Thank you for your help with this important matter.

Sincerely,



Clifton S. Otto, MD
C: 808-292-4951

Sincerely,



LORETTA J. FUDDY
Director of Health

Second inquiry: May 9, 2011

I am requesting that Post Traumatic Stress Disorder (PTSD) be added to the list of approved medical conditions for the medical marijuana program.

HRS 329-121 (3): “Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient.”

First reply: April 28, 2011

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to
File #

April 28, 2011

Clifton S. Otto, M.D.
Retina Institute of Hawaii
1620 Ala Moana Boulevard, Suite 500
Honolulu, Hawaii 96815

Dear Dr. Otto:

The agency that administers the Medical Use of Marijuana program [Part IX of Chapter 329, Hawaii Revised Statutes (HRS)] is the Department of Public Safety. As enacted, the provision to add other medical conditions to the definition of "debilitating medical condition" by the Department of Health is contrary to rulemaking authority for Chapter 329 which resides with the Department of Public Safety, not the Department of Health.

Adding other medical conditions to those already listed in Section 329-121, HRS, requires statutory amendment by the Legislature. Enactment of such statutory amendment will provide the necessary authority to amend the definition of "[d]ebilitating medical condition" in Section 23-202-2, Hawaii Administrative Rules.

For information on plans for future amendments to statutory provisions for the Medical Use of Marijuana program, please contact the Department of Public Safety, Narcotics Enforcement Division at 837-8470.

Sincerely,

A handwritten signature in black ink, appearing to read "Loretta J. Fuddy".

LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

First reply: April 28, 2011

As enacted, the provision to add other medical conditions to the definition of “debilitating medical condition” by the Department of Health is contrary to rulemaking authority for Chapter 329 which resides with the Department of Public Safety, not the Department of Health.

Third inquiry: August 15, 2011

The Law Office of
JACK SCHWEIGERT
A Professional Law Corporation

550 Halekauwila Street, Room 309
Honolulu, Hawaii 96813
jackschweigert@hotmail.com

Phone: (808) 533-7491
Fax: (808) 533-7490
www.JackSchweigert.com

August 15, 2011

Loretta J. Fuddy, ACSWMPH, Director
Hawaii State Department of Health
1250 Punchbowl St.
Honolulu, Hawaii 96813

Re: Rescheduling use of medical marijuana

Dear Director Fuddy,

This letter is being written on behalf of my client Robert Marvit M.D., a board-certified psychiatrist licensed in the State of Hawaii who treats post traumatic stress disorder (PTSD) patients on a regular basis. Dr. Marvit (who's CV is attached) hereby petitions your office to add PTSD as a qualifying condition for the treatment of patients under Hawaii's Medical Marijuana Program. This request is made pursuant to H.R.S., Chapter 91 and H.A.R. §23-202-2(3).

Second reply: Sep 14, 2011

NEL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to
File #

September 14, 2011

Loretta J. Fuddy, Director
State of Hawaii Department of Health
1225 Punchbowl St.
Honolulu, Hawaii 96813

Jack Schweigert, Esq.
550 Halekauwila Street, Room 309
Honolulu, Hawaii 96813

Dear Mr. Schweigert:

The request received on August 16, 2011 by the Department of Health (DOH) on behalf of your client, Robert Marvit, M.D., to add Post Traumatic Stress Disorder (PTSD) as a debilitating medical condition under the Medical Use of Marijuana program, cites Section 329-121, Hawaii Revised Statutes (HRS), that authorizes the DOH to approve other conditions for which physicians can recommend the medical use of marijuana.

The DOH is treating your request as a petition for rulemaking under Section 11-1-51, Hawaii Administrative Rules (HAR) and Section 91-6, HRS. Pursuant to Sections 11-1-51, HAR and 91-6, HRS, your petition is denied because there is inadequate evidence to support adding PTSD as a debilitating medical condition for which physicians may recommend the use of marijuana.

C: 808-202-1951

State of Hawaii
1225 Ala Moana Blvd., Suite 309
Honolulu, HI 96813

Sincerely,

A handwritten signature in black ink, appearing to read "Loretta J. Fuddy".

Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

Promoting Lifelong Health & Wellness

Second reply: Sep 14, 2011

The DOH is treating your request as a petition for rulemaking under Section 11-1-51, HAR and Section 91-6, HRS. Pursuant to Sections 11-1-51, HAR and 91-6, HRS, your petition is denied because there is inadequate evidence to support adding PTSD as a debilitating medical condition for which physicians may recommend the use of marijuana.

SB2406: Introduced Jan 20, 2012

Page 2

S.B. NO. 2406

(3) Posttraumatic stress disorder, as defined in the most recent edition of Diagnostic and Statistical Manual of Mental Disorders; or

~~[(3)]~~ (4) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY:

Will Lyons
Clarence K. Dickson
Carol Zukowski
Pohai Yan
John Gosh

SB2406: Introduced Jan 20, 2012

DENIED PUBLIC HEARING



Senator Josh Green
Chair, Senate Committee on Health (HTH)

https://www.capitol.hawaii.gov/archives/measure_indiv_Archives8-12.aspx?billtype=SB&billnumber=2406&year=2012

Request for rules: Jan 24, 2012

January 24, 2012

STATE OF HAWAII
DEPARTMENT OF HEALTH
F.O.I.B. 200
HONOLULU, HAWAII

Loretta J. Fuddy, Director
Hawai'i State Department of Health
1250 Punchbowl St.
Honolulu, Hawai'i 96813

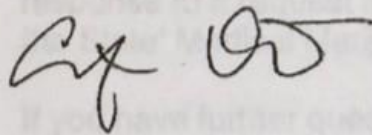
February 21, 2012

Dear Director Fuddy,

Could you please send me a copy of the Department of Health's Administrative Rules relating to Hawai'i's Medical Marijuana Program.

I look forward to hearing from you within ten days of receipt of this inquiry.

Thank you.



Clifton S. Otto, MD
C: 808-292-4951

Director's reply: Feb 21, 2012

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

February 21, 2012

Clifton S. Otto, M.D.
Retina Institute of Hawaii
1620 Ala Moana Blvd., Suite 500
Honolulu, HI 96815

Dear Dr. Otto:

This is in response to your correspondence dated January 24, 2012 requesting a copy of the Hawaii Department of Health's Administrative Rules relating to Hawaii's Medical Marijuana Program.

At present, the Department of Health has not finalized any rules per Chapter 329-121, HRS, which allows the Department to approve "debilitating medical conditions" in response to a request from a physician or qualifying patient that would be eligible under the State' Medical Marijuana Program.

If you have further questions or concerns, please do not hesitate to contact me at 586-4410 or the Office of Planning, Policy, and Program Development which coordinates Hawaii Administrative Rules activities for the Department of Health at 586-4188.

Sincerely,

A handwritten signature in black ink, appearing to read "Loretta J. Fuddy".

Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

Promoting Lifelong Health & Wellness

Director's reply: Feb 21, 2012

At present, the Department of Health has not finalized any rules per Chapter 329-121 HRS, which allows the Department to approve “debilitating medical conditions” in response to a request from a physician or qualifying patient that would be eligible under the State’s Medical Marijuana Program.

FOIA Request: Feb 16, 2012

February 16, 2012

Loretta J. Fuddy, Director
Hawai'i State Department of Health
1250 Punchbowl Street
Honolulu, Hawai'i 96813

Dear Director Fuddy,

Per Hawai'i's Uniform Information Practices Act (UIPA), I hereby request all government records related to your department's decision to deny, based on "inadequate evidence", a petition to add Post-traumatic Stress Disorder (PTSD) to the list of debilitating medical conditions in Hawai'i's Medical Marijuana Program.

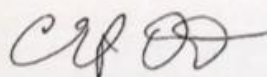
These documents should include, but should not be limited to, all information relating to this decision, such as:


- All emails and written correspondences with other state and federal departments/agencies
- All inter-department emails and memos
- All sources of evidence that was reviewed
- All meeting minutes relating to this decision making process

The Hawai'i Office of Information Practices has informed me that you are required to respond to this request within 10 working days.

I appreciate your timely reply.

Sincerely,




Loretta J. Fuddy, Director
Hawai'i State Department of Health
1250 Punchbowl Street
Honolulu, Hawai'i 96813

FOIA Reply: Jun 27, 2012

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
Communicable Disease Division
P.O. Box 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

June 27, 2012

Clifton S. Otto, M.D.
1620 Ala Moana Boulevard, Suite 500
Honolulu, Hawaii 96815

Dear Dr. Otto:

In your correspondence dated February 16, 2012 to the Director of Health you requested all government records related to the Department's decision to deny addition of Post-Traumatic Stress Disorder (PTSD) to the list of debilitating medical conditions in Hawaii's Medical Marijuana Program. However, there was no petition that came to Department of Health's attention. We indicated this on the Office of Information Practices form entitled Notice to Requester (attached).

We apologize that we did not get this response back to you in a timely matter. The form was completed on March 6, 2012, the day Communicable Disease Division (CDD) was orienting our new CDD Secretary and it is most likely that the letter to you did not go through our usually rigorous accountability process as it made its way back up the Director's Office. Please feel free to contact me at (808) 586-4580 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Wasserman".

Glenn Wasserman, M.D., M.P.H.
Chief, CDD

FOIA Reply: Jun 27, 2012

In your correspondence dated February 16, 2012 to the Director of Health you requested all government records related to the Department's decision to deny addition of Post-Traumatic Stress Disorder (PTSD) to the list of debilitating medical condition in Hawaii's Medical Marijuana Program. However, there was no petition that came to the Department of Health's attention.

Letter to Governor: Dec 1, 2012

December 1, 2012

The Honorable Neil Abercrombie
Governor, State of Hawaii
Executive Chambers, State Capitol
Honolulu, Hawaii 96813

NO REPLY

Dear Governor Abercrombie,

As you may have already heard, Senator Espero and I recently met with representatives from the Department of Health (DOH) and the Attorney General's office to discuss the current obstacles to adding new debilitating conditions to Hawaii's Medical Marijuana Program.

What we realized from the very beginning of this meeting is that DOH's policy towards Medical Marijuana is at the heart of why this State agency is hesitant to have anything to do with Hawaii's program. One can begin to understand why DOH is refusing to follow the statute and create administrative rules for adding new debilitating conditions or consider becoming the administrator for this program when one realizes that the Department itself does not even recognize that Cannabis already has Medical Use in Hawaii and the United States.

As you well know, States hold the authority to decide the medical use of controlled substances. This is why the State of Hawaii was able to create its Medical Marijuana Program in the first place, and this is why you are able to support the Rhode Island-Washington Cannabis Rescheduling Petition that is requesting that the Federal Government recognize the Medical Use of Cannabis and remove it from Schedule I.

Act 177: Jun 25, 2013

NEIL ABERCROMBIE
GOVERNOR

June 25, 2013

GOV. MSG. NO. 1280

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

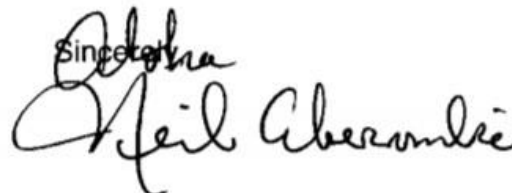
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 25, 2013, the following bill was signed into law:

HB668 HD2 SD2 CD1

RELATING TO HEALTH
ACT 177 (13)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Effective Jan 1, 2015

Plane Crash: Dec 11, 2013



HAWAII
NEWS NOW

NEWS LIVE WEATHER SPORTS HI NOW SUNRISE SPECIAL

Hawaii health director killed after plane crash had infant life vest



<https://www.hawaiinewsnow.com/story/31899587/ntsb-no-safety-briefing-given-prior-to-2013-molokai-plane-crash-that-killed-hawaii-health-director/>

HB321 Conference: May 1, 2015



Sen. Josh Green
Chair, HTH



Rep. Della Au Belatti
Chair, HLT

<https://www.washingtontimes.com/news/2015/may/2/agreement-not-yet-reached-on-medical-marijuana-dis/>

HB321 Conference: May 1, 2015



<https://www.washingtontimes.com/news/2015/may/2/agreement-not-yet-reached-on-medical-marijuana-dis/>

HB321 Conference: May 4, 2015



Sen. Will Espero
Vice-Chair, PSM



Rep. Della Au Belatti
Chair, HLT

<https://www.hawaiitribune-herald.com/2015/05/05/hawaii-news/hawaii-committee-passes-medical-marijuana-dispensaries-bill/>

HB321 Conference: May 4, 2015



<https://www.hawaiitribune-herald.com/2015/05/05/hawaii-news/hawaii-committee-passes-medical-marijuana-dispensaries-bill/>

HB321 Conference: May 4, 2015

Page 59

H.B. NO. 321
H.D. 1
S.D. 2
C.D. 1

- 1 (D) Seizures, including those characteristic of
2 epilepsy; [e#]
- 3 (E) Severe and persistent muscle spasms, including
4 those characteristic of multiple sclerosis or
5 Crohn's disease; or
- 6 (F) Post-traumatic stress disorder; or
- 7 (3) Any other medical condition approved by the department
8 of health pursuant to administrative rules in response
9 to a request from a physician or potentially
10 qualifying patient."

Other Major Change



Sen. Josh Green
Chair, HTH



Sen. Rosalyn Baker
Chair, CPN
Vice-Chair, HTH

<https://www.capitol.hawaii.gov/committees/committees.aspx?chamber=S>

Committee Restructuring



HTH



Sen. Rosalyn Baker
Chair, CPH



CPN

Let Providers Decide



State Level Research



<http://www.oahuveteranscenter.com/>

State Level Research



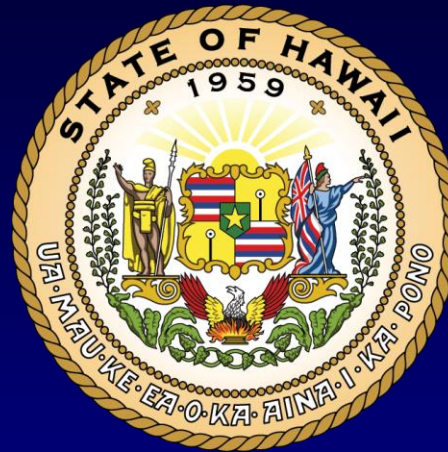
<https://www.uhcancercenter.org/>

Patient Enemy #1



Conflict with Federal Law

Federalism



States hold the authority
to decide the
medical use of
controlled substances

State-Accepted Medical Use

Gonzales v. Oregon (2006)

The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard of care and treatment of patients that is specifically authorized under state law.

<https://www.law.cornell.edu/supct/html/04-623.ZS.html>

Schedule I Exemption

21 CFR 1307.31 - Native American Church.

“The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration.”

<https://www.govinfo.gov/content/pkg/CFR-2010-title21-vol9/pdf/CFR-2010-title21-vol9-sec1307-31.pdf>

Resolution: 2020 Session

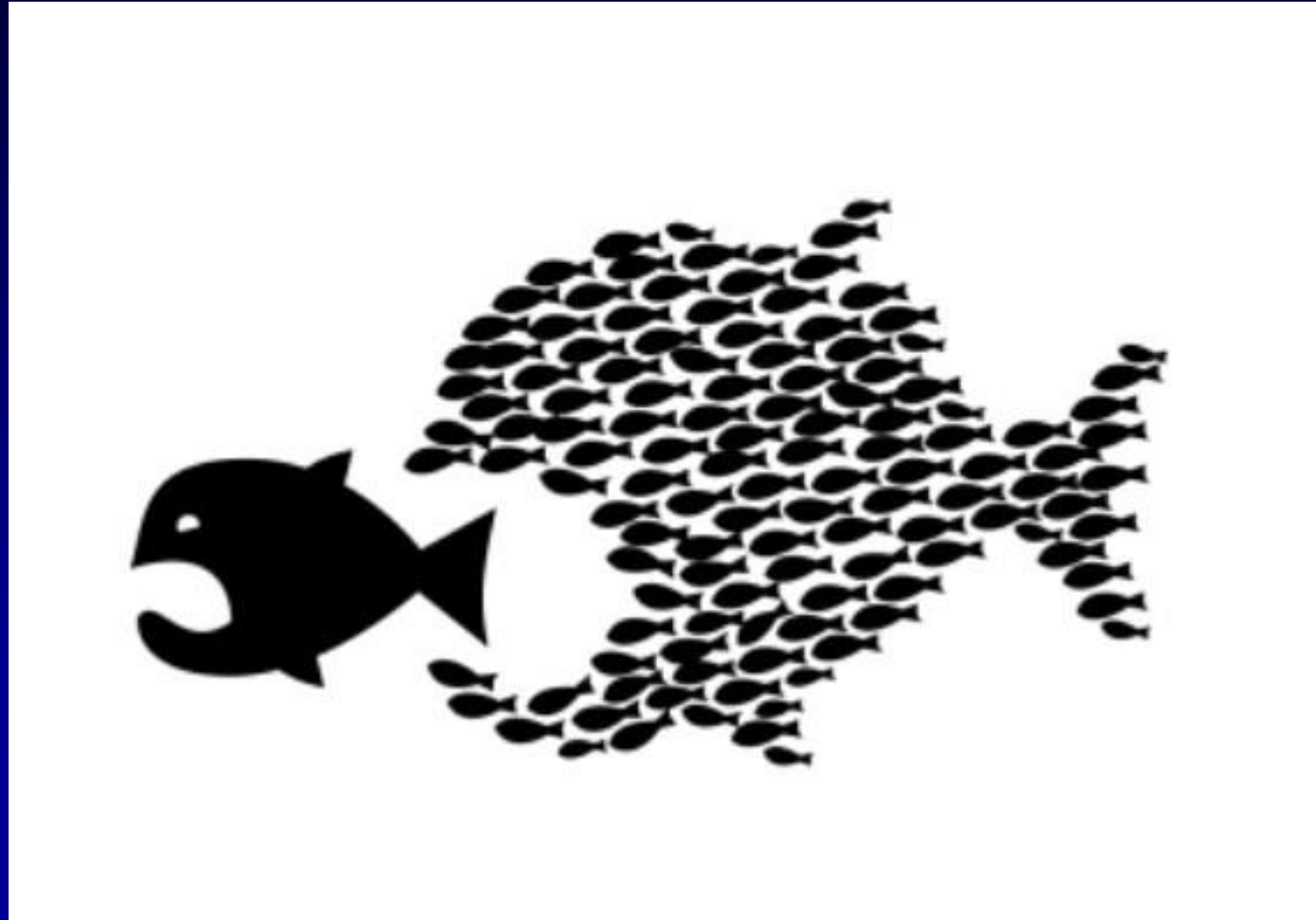
THE HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2020
STATE OF HAWAII

H.C.R. NO.

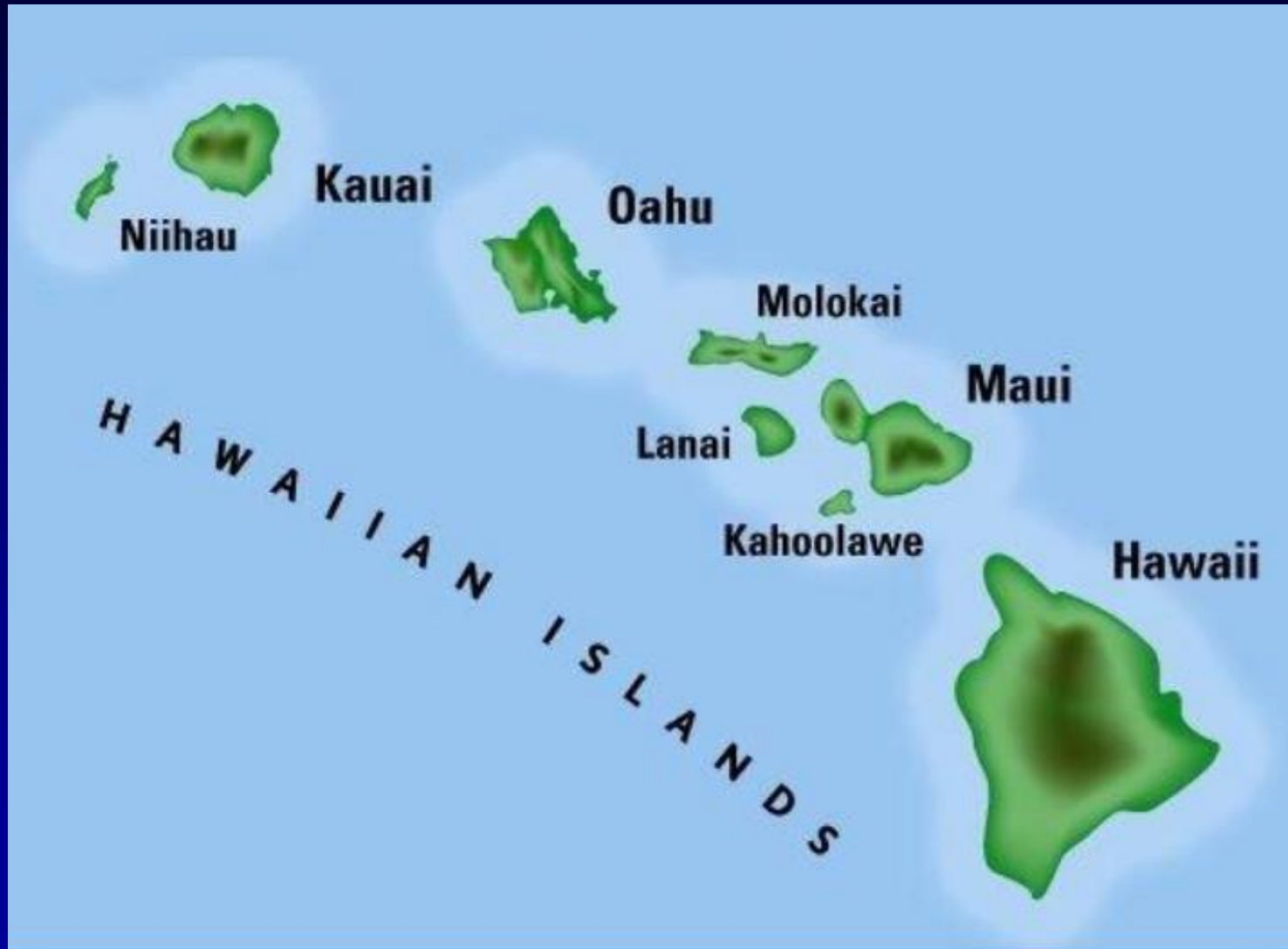
HOUSE CONCURRENT RESOLUTION

URGING THE DEPARTMENT OF HEALTH TO NOTIFY THE
DRUG ENFORCEMENT ADMINISTRATION THAT A
FEDERAL SCHEDULE I EXEMPTION IS REQUIRED FOR
THE MEDICAL USE OF CANNABIS IN HAWAII.

Organize !



Hawaiian Islands



Sustainable HealthCare



Focus on Medical Use

**JUST
MEDICALIZE
IT.**



Hawaii Medical Cannabis Day
June 14, 2020

MAHALO



Clifton Otto, MD

808-233-8267

cliftonotto@hotmail.com

akamaicannabisclinic.com