



Akamai Cannabis Clinic

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February 9, 2020

The Honorable Rosalyn H. Baker
Chair, Senate Committee on Commerce, Consumer Protection, and Health
State Capitol, Room 230
415 S. Beretania, Street
Honolulu, HI 96813

Re: State Attorney General Guidance on SB2462

Dear Senator Baker,

Thank you for requesting guidance from the Office of the Attorney General on the effect that obtaining a federal Schedule I exemption for the medical use of cannabis in Hawaii could have upon our Medical Cannabis Program.

Unfortunately, this guidance contains serious errors in its interpretation of the facts in this matter.

In [People v. Woody](#) (1964), the Native American Church (NAC) was granted a state exemption for the ceremonial use of peyote by the California Supreme Court, and they were able to go on to obtain a federal exemption for such use. In [Olsen v. Drug Enforcement Administration](#) (1989), Olsen's church had no such state exemption, and his petition for a federal exemption was denied.

This is a critical difference, which supports my argument that the State is justified in obtaining a federal exemption for the medical use of cannabis in Hawaii because there is already a preceding state exemption for such use.

The Attorney General's guidance also incorrectly states that the NAC's federal exemption for peyote did not result from an exemption petition:

"The exemption granted to the NAC for peyote did not result from a petition to exempt. Rather, the DEA drafted the rule following the California Supreme Court's ruling in [People v. Woody](#). 61 Cal. 2d 716 (1964),"

In fact, just the opposite is true. As noted in the Congressional record, the NAC specifically requested that their ceremonial use of peyote be recognized during hearings for the 1965 amendments to the Food, Drug and Cosmetic Act (see Assistant U.S. Attorney General Theodore Olson's 1981 paper on "[Peyote Exemption for Native American Church](#)", p. 406).

"We have been advised by a representative of the North [s/c Native] American Church that this church is a bona fide religious organization and that peyote has bona fide use in the sacrament of the church. The representative has agreed to document both of these statements."

This request from the NAC resulted in the promulgation of an administrative rule by the Department of Health, Education, and Welfare, recognizing a federal exemption for the ceremonial use of peyote by the NAC (see "Peyote Exemption for Native American Church", p. 407).

Then again in 1970, when Congress was creating the federal Controlled Substances Act (CSA), the NAC requested in writing that the existing exemption be continued, which the Deputy Chief Counsel for the Bureau of Narcotics and Dangerous Drugs (BNDD) supported (see "Peyote Exemption for Native American Church, p. 407):

"Mr. Sonnenreich [Deputy Chief Counsel of BNDD]. In the first instance, Mr. Satterfield, the Native American Church did ask us by letter as to whether or not the regulation, exempting them by regulation, would be continued and we assured them that it would because of the history of the church."

Thereafter, the federal NAC peyote exemption was preserved under the CSA as [21 CFR 1307.31](#), using the same language as the original rule (see "Peyote Exemption for Native American Church, p. 407). BNDD later became the Drug Enforcement Administration (DEA) in 1973. The NAC's federal peyote exemption exists to this day.

In light of these findings, I respectfully request that you reconsider your position on this issue and allow the proposed federal exemption amendment to be included in current measures that have a very high likelihood of making it to the Governor's desk.

Thank you for everything you are doing for our patients.

Aloha,



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Proposed amendment in [SB2462](#):

"329D-25 Coordination among state and federal agencies. The department shall initiate ongoing dialogue among relevant state and federal agencies to identify processes and policies that ensure the privacy of qualifying patients and qualifying out-of-state patients and the compliance of qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients and medical cannabis dispensaries with state laws and regulations related to medical cannabis. The department shall submit a written request, in accordance with title 21 C.F.R. section 1307.03, to the Office of Diversion Control, Drug Enforcement Administration by September 1, 2020, stating that part IX of chapter 329 and this chapter do not create any positive conflict with state or federal drug laws and regulations and are consistent with title 21 U.S.C. section 903, and requesting formal written acknowledgement that the listing of marijuana as a controlled substance in federal schedule I does not apply to the nonprescription use of cannabis under the medical cannabis registry and dispensary programs established pursuant to chapters 329 and 329D."