



**Akamai Cannabis Clinic**

3615 Harding Ave, Suite 304  
Honolulu, HI 96816

TESTIMONY ON GOVERNOR'S MESSAGE 541  
RELATING TO GUBERNATORIAL NOMINEE BRUCE S. ANDERSON

By  
Clifton Otto, MD

Senate Committee on Commerce, Consumer Protection, and Health  
Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair

Monday, February 25, 2019; 9:00 AM  
State Capitol, Conference Room 229

Thank you for the opportunity to provide testimony on this matter. The confirmation of a director is a tremendous responsibility. I hope you will consider the respectfully submitted comments below.

The primary responsibility of a director is to faithfully administer the laws of the state that impact the department. While a director may have an interest in encouraging registration with a department program that is dictated by state law, a director does not have the authority to use false information to motivate such registration.

Take for example the policy of the Department of Health (DOH) towards registration cards and the medical use of cannabis:

Since creating its online presence for the administration of Hawaii's Medical Use of Cannabis Program, DOH has posted the following statement on its website, which is also included in routine emails to patients and certifying providers:

**Please be advised that patients and caregivers are not authorized for the medical use of cannabis until such time that they receive their 329 card registration card in hand from the Department of Health, Medical Cannabis Program and they must keep both their valid ID and valid 329 card on them whenever they are in possession of medical cannabis.**

<http://health.hawaii.gov/medicalcannabisregistry/application-information/>

The first half of this statement is false: Written Certification authorizes the medical use of cannabis, not the registration card. The second half of this statement is true: patients and caregivers must possess their registration card once it has been received.

HRS 329-122 outlines the conditions for engaging in the medical use of cannabis:

§329-122 Medical use of cannabis; conditions of

use. (a) Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying patient shall be permitted only if:

(1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;

(2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of cannabis would likely outweigh the health risks for the particular qualifying patient; and

(3) The amount of cannabis possessed by the qualifying patient does not exceed an adequate supply.

Nowhere in the statute does it say that patients must wait for their card to arrive before engaging in the medical use of cannabis.

In fact, DOH's own administrative rules clearly state that patients must possess their registration card once it has been received, not that they must wait for their card to arrive before engaging in medical use (emphasis added):

§11-160-31 Possession of registration card; identification tags on marijuana plants.

(a) A person to whom the department **has issued** a registration card shall carry the registration card on his or her person whenever the person is in possession of medical marijuana.

In addition, the definition of "adequate supply" establishes that patients shall have access to medical use cannabis without interruption (emphasis added):

§329-121 Definitions. As used in this part:

"Adequate supply" means an amount of medical cannabis jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to ensure the **uninterrupted availability** of cannabis for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical

condition; provided that an "adequate supply" shall not exceed: ten cannabis plants, whether immature or mature, and four ounces of usable cannabis at any given time. The four ounces of usable cannabis shall include any combination of usable cannabis and manufactured cannabis products, as provided in chapter 329D, with the cannabis in the manufactured cannabis products being calculated using information provided pursuant to section 329D-9(c).

Nowhere in the statute does it say that patients must wait to receive the potential benefits of medical use cannabis.

Shortly after learning of DOH's registration card policy, I notified several of our state lawmakers, and a stakeholders' meeting was arranged at the state capitol. When we asked why these false statements about registration cards were being posted on the department's website, we were told that the department has an attorney-client privilege with the state Attorney General, and that the department cannot discuss this matter with the public. After we were dismissed, the meeting between DOH and our state lawmakers continued behind closed doors. Unfortunately, we were never able to learn what was discussed during this secret meeting. We were only told that the policy wasn't going to change.

After several failed attempts at initiating a discussion of this topic with the previous DOH director, I decide to try the rulemaking petition approach with the current director, requesting a new rule that would require all certifying providers to give patients a copy of their Written Certification in order to protect patients for the medical use of cannabis until their registration card arrives (please see attached petition).

Unfortunately, this rulemaking petition was denied based upon an incomplete interpretation of the department's own administrative rules, which conflated possession of a registration card with authorized medical use. Needless to say, my subsequent attempts at clarification and reconsideration were unsuccessful, except that they did reveal the primary reason for the department's current policy on registration cards, which is the assumption that recognizing the authority of the Written Certification and educating patients on the requirement to register with the department after being certified would be too misleading, and would give patients the impression that they don't need to register at all.

So instead, we have a state agency disseminating false information about registration cards and the authorized medical use of cannabis, which is misleading patients into needlessly suffering until their registration card arrives and undermining their faith in the ability of the state to administer a compassionate medical use of cannabis program.

The department's response to complaints about registration card delays has always been to focus more resources on the registration process and to speed up the issuance of registration cards as much as possible, instead of supporting the role of the Written Certification in authorizing medical use.

Indeed, the time it takes for registration cards to be issued has gone from weeks to days during the past few months in some cases, which is a desperately needed improvement. However, such an improvement does not justify spreading false information about registration cards authorizing the medical use of cannabis and thereby ignoring the important role that the Written Certification plays in the certification and registration process and in the doctor-patient relationship.

My guess is that the director is simply following orders that are coming from the Office of the Attorney General, and that the director believes that these false statements are justified because they might help keep patients out of trouble. However, I can tell you from direct interactions with patients, that being lied to by a state agency is deeply demoralizing, and only serves to further degrade the respect that our patients have for the rule of law.

I would contend that the proper approach would be to recognize that the Written Certification authorizes the medical use of cannabis, while at the same time emphasizing that state law requires patients to register with the department after they have been certified. This could also include a warning to patients that it would be in their best interest to wait for the registration card to arrive before engaging in cultivation.

Having certification and registration occur simultaneously in the certifying physician's office would be an obvious solution to the current concern about patients failing to register, as would allowing certifying providers to issue registration cards at the time of certification and registration. Plans to issue electronic registration cards could also be helpful for those with smart phones, as long as the electronic registration card could be issued the instant that the certification and registration application are submitted.

All of this to say that the committee should use this confirmation hearing as an opportunity to investigate this matter further. If the director is creating this policy on his own, then the director's fitness to lead the department should be questioned. If the director is following the advice of the Office of the Attorney General, then the public deserves to know why the Attorney General is not adhering to state law. Invoking attorney-client privilege with the Attorney General should not be an allowable answer.

At the very least, the committee should make the director's confirmation contingent upon correcting the department's current policy towards registration cards and the authorized medical use of cannabis.

September 10, 2018

Bruce S. Anderson, PhD  
Director, Department of Health  
1250 Punchbowl Street  
Honolulu, Hawaii 96813

**PETITION TO AMEND A RULE**

Dear Director Anderson,

The current misconception that patients must wait for their 329 registration card to arrive before engaging in the accepted medical use of cannabis in Hawaii, which the Department of Health (DOH) is promoting on its website and in electronic correspondences to certifying providers and patients, is not supported by Hawaii's Medical Use of Cannabis Act or the department's own administrative rules regarding registration cards:

**BE ADVISED:** PATIENTS AND CAREGIVERS ARE NOT AUTHORIZED FOR THE MEDICAL USE OF CANNABIS UNTIL SUCH TIME THAT THEY RECEIVE THEIR 329 REGISTRATION CARD FROM DOH AND THEY MUST KEEP BOTH THEIR VALID ID AND VALID 329 CARD ON THEM WHENEVER THEY ARE IN POSSESSION OF MEDICAL CANNABIS.

**Hawaii's Medical Use of Cannabis Act has established that "Written Certification" authorizes patients to engage in the medical use of cannabis, and has authorized DOH to require that certifying providers utilize a designated form:**

**§329-122 Medical use of cannabis; conditions of use.** (a) Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying patient shall be permitted only if:

- (1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;
- (2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of cannabis would likely outweigh the health risks for the particular qualifying patient; and
- (3) The amount of cannabis possessed by the qualifying patient does not exceed an adequate supply.

**§329-121 Definitions.** As used in this part:

"Written certification" means the qualifying patient's medical records or a statement signed by a qualifying patient's physician or advanced practice registered nurse, stating that in the physician's or advanced practice registered nurse's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of cannabis would likely outweigh the health risks for the qualifying patient. The department of health may require, through its rulemaking authority, that all written certifications comply with a designated form.

**Hawaii's Medical Use of Cannabis Act has established that patients will be afforded "uninterrupted availability" of cannabis for medical use:**

"An Accepted Medical Use Supporter"

[§329-121 Definitions](#). As used in this part:

"Adequate supply" means an amount of medical cannabis jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to ensure the uninterrupted availability of cannabis for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed: ten cannabis plants, whether immature or mature, and four ounces of usable cannabis at any given time. The four ounces of usable cannabis shall include any combination of usable cannabis and manufactured cannabis products, as provided in chapter 329D, with the cannabis in the manufactured cannabis products being calculated using information provided pursuant to section 329D-9(c).

**Hawaii's Medical Use of Cannabis Act has established that patients may distribute material to each other as long as such distribution does not occur in public, as long as an "adequate supply" is not exceeded, and as long as the transfer is not considered a commercial sale:**

[§329-121 Definitions](#). As used in this part:

"Medical use" means the acquisition, possession, cultivation, use, distribution, or transportation of cannabis or paraphernalia relating to the administration of cannabis to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of cannabis and paraphernalia.

**DOH's administrative rules require that patients carry their registration card once it has been issued by the department:**

[§11-160-31 Possession of registration card](#); identification tags on marijuana plants.

(a) A person to whom the department has issued a registration card shall carry the registration card on his or her person whenever the person is in possession of medical marijuana.

**Nowhere in the statute or the administrative rules is it written that patients must wait for their registration card to arrive before engaging in the medical use of cannabis.**

Clearly, the policy of making patients believe that they must wait for their registration card to arrive goes against the intent of Hawaii's Medical Use of Cannabis Act, and puts our patients at unnecessary risk of additional suffering.

One simple solution to this problem is to require that certifying providers use an official document that already exists; namely the 329 Physician/APRN Certification form that DOH has created and released for use by certifying physicians and APRNs (see Form CBD-C-001, revised 12/29/17). Mandatory use of this form by all certifying providers, as well as education of law enforcement on the validity of the Written Certification, could provide the protection that patients require until their registration card arrives.

Patients could still be notified that it is in their best interest to wait until their registration has been approved before engaging in personal cultivation, since a registration number and expiration date are required for tagging plants.

Therefore, in accordance with HRS 91-6 and HAR 11-1-51, I hereby petition your department to adopt the following amendment:

"An Accepted Medical Use Supporter"

§11-160-11 Physician requirements for issuing written certifications. Any physician issuing a written certification shall:

- (1) Hold a current and valid Hawaii license to practice pursuant to chapter 453, HRS, and have authority to prescribe drugs;
- (2) Be registered with the department of public safety pursuant to section 329-32, HRS;
- (3) Have a bona fide physician-patient relationship with the qualifying patient;
- (4) Diagnose the qualifying patient as having a debilitating medical condition;
- (5) Be of the professional opinion that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient;
- (6) Explain the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient if the qualifying patient is a minor or an adult lacking legal capacity; and
- (7) Provide all patients with a copy of their Written Certification at the time of certification using a form provided by the department.

I have an interest in this matter as a certifying physician who is involved with the health and welfare of our patients.

Thank you for considering this request. I look forward to your timely response.

Please send all correspondences regarding this petition to the office or email address below.

Aloha,



Clifton Otto, MD  
Aloha Medical Consultants, LLC  
3615 Harding Ave, Suite 304  
Honolulu, HI 96816  
808-233-8267  
cliftonotto@hotmail.com