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TESTIMONY ON GOVERNOR'S MESSAGE 543
RELATING TO GUBERNATORIAL NOMINEE NOLAN P. ESPINDA

By
Clifton Otto, MD

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Thursday, April 4, 2019; 1:15 PM
State Capitol, Conference Room 229

Thank you for the opportunity to provide testimony on this Gubernatorial nomination. Please address the comments below before concluding this confirmation hearing.

Fulfilling the duties of director for our Department of Public Safety (PSD) is undoubtedly a daunting task given the degree of criminal activity and illegal drug trafficking that occurs in Hawaii.

Unfortunately, there is one issue that PSD is failing to address; and that is the impact of the medical use of cannabis in Hawaii upon the controlled substance regulation of cannabis in general.

Comment #1 – A controlled substance that has medical use cannot have the “highest degree of danger”. We do not give our patients substances that have the highest degree of danger. And yet this is exactly what PSD is saying when it tells us that cannabis for medical use should fall under the same controlled substance regulation as non-medical use cannabis.

Recognizing that medical use cannabis does not meet the criteria of a state Schedule I controlled substance is necessary to re-harmonize the medical use of cannabis in Hawaii with our Uniform Controlled Substances Act (UCSA). Doing so will not only legitimize our Medical Use of Cannabis Program in the eyes of law enforcement and the community, but it will also allow limited law enforcement resources to be more effectively applied to illicit cannabis activity.

“An Accepted Medical Use Supporter”

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We are not talking about rescheduling cannabis here. We are talking about formally recognizing, by way of simple exception, that cannabis for medical use cannot be regulated as a state Schedule I controlled substance. And one way to recognize this finding is by adopting the following amendment to our UCSA:

Section 329-14, Hawaii Revised Statutes, is amended by adding the following subsection:

(f) The enumeration of cannabis, tetrahydrocannabinols or chemical derivatives of these as Schedule I controlled substances does not apply to the medical use of cannabis pursuant to Section 329, Part IX, and Section 329D, Hawaii Revised Statutes.

There is nothing unusual about this kind of amendment. Guam has already done the same for very similar reasons:

[Exempt from Guam Schedule I:](#)

Section 2. The following *new* subsection (g) is added to Appendix A of Chapter 67 of Title 9 Guam Code Annotated, to read as follows:

“(g) The enumeration of marihuana, tetrahydrocannabinols or chemical derivatives of these as Schedule I controlled substances **does not apply** to the medical use of cannabis pursuant to the Joaquin Concepcion Compassionate Cannabis Use Act of 2013.”

In fact, there already exists a similar exception for a different Schedule I controlled substance at the federal level:

[Exempt from federal Schedule I:](#)

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.”

Saying that our UCSA must follow changes in federal controlled substance regulation makes sense when we’re talking about making an FDA-approved drug product, such as Epidiolex, available for sale by prescription in our local pharmacies.

However, it makes no sense to say that we cannot address the controlled substance regulation of medical use cannabis until cannabis is rescheduled at the federal level. The situation here is completely reversed.

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[State medical use](#) is “currently accepted medical use in treatment in the United States”, which means that the medical use of cannabis in Hawaii directly impacts the federal Controlled Substances Act (CSA), as well as the federal regulation that is still being applied inappropriately to our Medical Use of Cannabis Program.

It is time for PSD to address this issue and make a recommendation to the Legislature to adopt an amendment like the one described above. Please ask the nominee why such a recommendation is not forthcoming.

Comment #2 – The inter-island transportation of cannabis for personal medical use continues to be an issue that is requiring significant amounts of local law enforcement time due to the processing of patients being referred by TSA, which is distracting our officers from other more important duties and threatening the safety of our airports.

Sheriff Division officers, who fall under PSD, are also telling our patients at the Daniel K. Inouye International Airport that they cannot travel with their medicine to other islands because it is against federal law.

Firstly, the idea that the inter-island transportation of cannabis for personal medical use violates federal law is not entirely true because of the federal aviation regulation that specifically exempts the carriage of cannabis aboard aircraft if authorized by state law or state agency:

[Exempt from aircraft carriage restrictions:](#)

14 CFR 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(b) Paragraph (a) of this section **does not apply** to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.”

And second, our local law enforcement officers do not have the authority to enforce federal law, even if the federal exception above did not exist. This fact has already been expressed by the police spokesman at Los Angeles International Airport (LAX):

[These Airports Say You Can Fly With Legal Marijuana](#)

“We don’t have the power to enforce the federal law,” LAX police spokesman Rob Pedregon told the *Boston Globe*.

Therefore, before conclusion of this confirmation hearing, please have the nominee explain why his officers are placing federal law before state law when it comes to the inter-island transport of cannabis for personal medical use.