House Committee on Health and Human Services
Rep. John Mizuno (Chair), Rep. Bertrand Kobayashi (Co-chair)

Re: Testimony for HB2572 - Relating to the Medical Use of Cannabis

From: Clifton Otto, MD (Strong Support)

Public Hearing: February 7, 2018, 10:30 am, Room 329

Thank you for hearing this very important bill, which simply recognizes a situation that already exists, namely that the state-accepted medical use of cannabis in Hawaii is currently accepted medical use in treatment in the United States.

A formal recognition of this finding under state law would confirm that the federal regulation that has marijuana listed as a Schedule I controlled substance does not apply to the medical use of cannabis in Hawaii, and that Hawaii's Medical Use of Cannabis Program does not violate federal law.

Such recognition is essential for our patients to engage in the medical use of cannabis in Hawaii without being considered federal criminals, to allow our local banks and University system to become involved without the fear of federal reprisal, and to eliminate the restriction on firearms possession by lawfully registered patients.

Federal preemption does not apply in this case because there is no conflict between state and federal law regarding the medical use of cannabis in Hawaii: state law has established that cannabis has accepted medical use in Hawaii, and federal law has established that marijuana cannot be in federal Schedule I if it has accepted medical use.

Because the State of Hawaii accepted the medical use of cannabis in the first place, it is up to the State to remove the misconception that our medical program

is violating federal law, especially in light of the recent Sessions Memo and the current review of FinCEN's previous guidance on banking involvement.

While the current version of HB2572 produces the necessary statutory changes as it stands, it might be helpful to include more of the reasoning behind the need for these amendments in Part I of this bill. Please consider the following language:

"The Legislature finds that our system of government known as federalism provides that powers not transferred to the federal government remain with the state, and that a power retained by the state is the authority to accept the medical use of controlled substances under state law.

The Legislature also finds that the State of Hawaii lawfully exercised its authority to accept the medical use of controlled substances when it accepted the medical use of cannabis under state law in 2000 and created a state-regulated medical use of cannabis program.

The Legislature also finds that in Gonzales v. Oregon, 546 U.S. 243 (2006), the Supreme Court acknowledged that the decision making authority to accept the medical use of controlled substances is reserved to the states.

The Legislature also finds that the federal Controlled Substances Act requires that a substance with "currently accepted medical use in treatment in the United States" cannot be classified as a federal Schedule I controlled substance.

The Legislature also finds that in Alliance for Cannabis Therapeutics v. Drug Enforcement Administration, 930 F.2d 936, 939 (D.C. Cir. 1991), the Court acknowledged that Congress never defined the term "currently accepted medical use", which leaves it to the states to determine what constitutes accepted medical use in their state.

The Legislature also finds that in Grinspoon v. Drug Enforcement Administration, 828 F.3d 881, 886 (1st Cir. 1987), the Court acknowledged that Congress did not intend the term “accepted medical use in treatment in the United States” to require a finding of recognized medical use in every state.

The Legislature also finds that there is no conflict between state and federal law regarding the medical use of cannabis in Hawaii, and therefore no need to invoke federal preemption, because state law says that cannabis has accepted medical use in Hawaii and federal law says that cannabis cannot be in federal Schedule I if it has accepted medical use.

The Legislature also finds that, because the criminal penalties associated with the acquisition, possession, cultivation, use, distribution, or transportation of cannabis as a state Schedule I controlled substance do not apply to those who comply with Hawaii's Medical Use of Cannabis Act, the state scheduling of cannabis does not apply to the medical use of cannabis in Hawaii.

The Legislature also finds that, because the medical use of cannabis in Hawaii is currently accepted medical use in treatment in the United States, the federal scheduling of marijuana does not apply to the medical use of cannabis in Hawaii.

The purpose of this act is protect the medical use of cannabis in Hawaii from unlawful federal interference by recognizing certain legalities that already exist, namely that the medical use of cannabis in Hawaii is currently accepted medical use in treatment in the United States, that the federal scheduling of marijuana does not apply to the medical use of cannabis in Hawaii, and that Hawaii's Medical Use of Cannabis Program does not violate federal law."