



Akamai Cannabis Clinic

3615 Harding Ave, Suite 304
Honolulu, HI 96816

TESTIMONY ON HOUSE BILL 290 HOUSE DRAFT 1
RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT

By
Clifton Otto, MD

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

Friday, March 15, 2019; 9:00 AM
State Capitol, Conference Room 229

Thank you for the opportunity to provide testimony on this measure. Please consider the following comments related to this bill:

Comment #1 - A controlled substance that has been accepted for medical use in Hawaii cannot have the highest degree of danger under our state Uniform Controlled Substances Act (UCSA).

The solution to this situation rests with the phrase “does not apply”, for which we have several notable examples:

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.

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. "

[Exempt from federal restriction on carriage aboard aircraft:](#)

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

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(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.

Therefore, the following amendment needs to be made in order to harmonize the accepted medical use of cannabis in Hawaii with our state scheduling regulations:

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.

Failure to recognize this exemption will only continue to hamper effective enforcement of state and federal cannabis regulation. Recognizing this exemption will allow our dispensaries to finally operate as legitimate businesses.

Comment #2 - If the reason for annually updating Hawaii's Uniform Controlled Substances Act is to harmonize the state and federal regulation of controlled substances, then the Drug Enforcement Administration (DEA) Marijuana Extract rule needs to be considered:

<https://www.federalregister.gov/documents/2016/12/14/2016-29941/establishment-of-a-new-drug-code-for-marihuana-extract>

[21 CFR 1308.11\(d\)](#)

(58) Marihuana Extract - 7350

“Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant.”

https://www.deadiversion.usdoj.gov/schedules/marijuana/m_extract_7350.html

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Comment #3 – Along similar lines, if FDA-approved Cannabidiol (CBD) needs to be placed into a state controlled substance schedule that is similar to the federal schedule adopted by the DEA, then what does this tell us about the current state scheduling of non-FDA-approved CBD ?

Hawaii is being inundated with imported and locally formulated CBD products without any regulation to insure consumer safety or compliance with state and federal controlled substance regulation. Before allowing this bill to pass through your committee, please address the scheduling status of non-FDA-approved CBD by answering the following question:

Is CBD a tetrahydrocannabinol or a derivative of a tetrahydrocannabinol ?

[HRS 329-14. Schedule I.](#) (a) The controlled substances listed in this section are included in Schedule I.

(g) Any of the following cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, **derivatives**, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered);

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6154432/pdf/can.2018.0030.pdf>

Delta-8-THC (Delta-6-THC):

<https://pubchem.ncbi.nlm.nih.gov/compound/2977#section=Top>

Delta-9 THC (Delta-1-THC):

<https://pubchem.ncbi.nlm.nih.gov/compound/Dronabinol#section=Top>

This question is of critical importance now that a CBD oil made in England (Epidiolex) is an FDA-approved drug product in the United States.

The [Food and Drug Administration](#) (FDA) is very clear about the status of CBD and THC as food additives or dietary supplements:

“Under the FD&C Act, it’s illegal to introduce drug ingredients like these into the food supply, or to market them as dietary supplements. This is a requirement that we apply across the board to food products that contain substances that are active ingredients in any drug.”

Failure to address the scheduling status of non-FDA-approved CBD products will only allow the unregulated importation of untested and potentially dangerous CBD snake oils to continue, until the FDA or the Department of Justice will have to step in and bring into question the ability of the State to properly regulate its own Hemp and Medical Use of Cannabis Programs.

Comment #4 – 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 at our state airports who have been referred by TSA, which is distracting our officers from more important law enforcement duties and threatening the safety of our airports.

Local law enforcement officers are also telling patients that they cannot travel with their medicine because it is against federal law, which is beyond the enforcement authority of a state law enforcement agency.

All of this despite our Medical Use of Cannabis Act, which only prohibits patients from transporting to other islands for the purpose of transferring to another patient, and a long-time federal aviation regulation, which specifically exempts the carriage of marijuana aboard aircraft if authorized by state law or state agency:

[14 CFR 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.](#)

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(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**.

Therefore, in order to clarify the existing provisions for inter-island transport within Hawaii's Medical Use of Cannabis Act, and to protect the right of patients to transport legal amounts of cannabis for personal medical use to other islands under state law and the Americans with Disabilities Act, the following amendment needs to be made to the Medical Use of Cannabis section of Hawaii's Uniform Controlled Substances Act:

[HRS 329-122\(f\):](#)

"For purposes of interisland transportation, "transport" of cannabis, usable cannabis, or any manufactured cannabis product, by any means is allowable only by a qualifying patient or qualifying out-of-state patient for their personal medical use, or between a production center or retail dispensing location and a certified laboratory for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D-6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. The Department of Transportation and the Department of Public Safety shall adopt rules to provide compliance with this section.