



Akamai Cannabis Clinic

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TESTIMONY ON HOUSE BILL 673 HD1
RELATING TO MEDICAL CANNABIS

By
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House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 14, 2019; 2:05 PM
State Capitol, Conference Room 325

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

Comment #1 – It is not necessary to specifically authorize Physician’s Assistants to perform Written Certifications and provide an ongoing doctor-patient relationship for the supervision of the medical use of cannabis. This function is already possible under the provision that allows a Physician to supervise the activities of an associated Physician’s Assistant in Hawaii. In addition, a Physician’s Assistant is a Physician’s Assistant, not a Physician. You cannot define the two as being the same when there is a separate definition for Physician’s Assistant under HRS 453-5.3. If a Physician’s Assistant will be performing a Written Certification under the supervision of a Physician, then the supervising Physician should be required to sign off on the Written Certification and Registration Application.

Comment #2 – If you want dispensaries to transport material to other islands for the purpose of selling to other dispensaries in the event of crop failure, then the issue of the inter-island transportation of cannabis needs to be fully addressed. We can no longer allow this kind of transport to occur, as it is now being done with laboratory samples, under the false assumption that such activity violates federal law.

Federal Aviation Regulation 14 CFR 91.91 clearly states that the carriage of cannabis aboard aircraft is exempt from federal regulation if authorized by state law or state agency.

“An Accepted Medical Use Supporter”

[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**.

If the problem is that certain state agencies are refusing to recognize the authority of state law as it applies to the inter-island transport of cannabis, then the following amendment should be made to this section:

(4) The selling dispensary is permitted by the department to transport cannabis or manufactured cannabis products to another county or another island, for the limited purpose of completing its sale to the purchasing dispensary pursuant to this subsection, in an amount and manner prescribed by the department by rules adopted pursuant to this chapter and chapter 91 and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State; and

(5) Nothing in this subsection shall relieve any dispensary of its responsibilities and obligations under this chapter and chapter 329."

(6) The Department of Public Safety and the Department of Transportation shall adopt rules that provide for the provisions of this section.

Comment #3 - However, it would be a discrimination against registered patients, and a violation of the Americans with Disabilities Act, to only focus on the inter-island transport of cannabis by dispensaries, and not to recognize the medical necessity of patients to transport their Medical Use Cannabis to other islands as well.

The current situation for patients is being made worse by the fact that local law enforcement officers are telling patients that they cannot transport their cannabis for personal medical use to another island because such transport is against federal law, which is an unauthorized enforcement of federal law, and is not entirely true because of the federal aviation regulation noted above.

Therefore, the following amendment needs to be made to the Medical Use of Cannabis section of Hawaii's Uniform Controlled Substances Act (UCSA), in order to protect the right of patients to carry their cannabis for personal medical use to other islands:

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 Public Safety and the Department of Transportation shall adopt rules that provide for the provisions of this section.

Comment #4 - And the last piece of the inter-island transportation issue that needs to be addressed has to do with re-harmonizing the Medical Use of Cannabis in Hawaii with the scheduling provisions of Hawaii's UCSA.

A controlled substance with accepted medical use cannot have the highest degree of danger. Therefore, in order to clarify that Medical Use Cannabis is not subject to the same regulations as a state Schedule I controlled substance, the following amendment needs to be made to the scheduling section of Hawaii's 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.

Comment #5 – Cannabidiol (CBD) products that have been produced under the Agriculture Improvement Act of 2018 cannot be sold for medical use. Producing CBD that is intended for medical use would require Food and Drug Administration (FDA) approval as an approved drug product for inter-state marketing.

In fact, the [FDA](#) is very clear that any compound that has FDA-approved medical use (ie. THC in Dronabinol and CBD in Epidiolex) may not be sold as a food additive or a dietary supplement.

“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.”

However, the situation is very different for CBD this is produced by locally licensed hemp manufacturers in compliance with the Agriculture Improvement Act of 2018, since such products do not require FDA approval if they will not enter inter-state commerce. If you want dispensaries to be able to sell CBD products derived from hemp, then one solution would be to allow dispensaries to contract with local hemp manufacturers for the production of CBD that will be sold exclusively by dispensaries for medical use.

Comment #6 - Hawaii’s Dispensary System is fundamentally flawed because the Legislature ignored the recommendation of the Dispensary Task Force to create a horizontally integrated production and distribution system, rather than the current vertical monopoly. This error needs to be corrected if Hawaii’s Medical Use of Cannabis Program is to be successful.