June 14, 2019

Governor David Ige
State Capitol, Executive Chambers
415 S Beretania Street
Honolulu, HI 96813

Dear Governor Ige,

Happy Medical Cannabis Day!

Attaching a guest editorial column entitled “State’s medical cannabis users are not violating federal law”, that appeared in yesterday’s Star Advertiser.

Now that the State Medical Use Argument is in the public domain, could you please tell us what steps you are taking to notify the U.S. Department of Justice that the Medical Use of Cannabis in Hawaii does not violate the federal Controlled Substances Act.

Look forward to hearing from you.

With warmest Aloha,

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State's medical cannabis users are not violating federal law

By Clifton Otto, M.D.

ISLAND VOICES

Clifton Otto, M.D., is a retina specialist and a certifying physician for Hawaii's Medical Use of Marijuana Program.

Most folks probably don't realize that 19 years ago Friday, on June 14, the state of Hawaii accepted the medical use of cannabis. Unfortunately, our local media cannot use the phrase "accepted the medical use of cannabis" because it's not in the Associated Press' Stylebook. And our state government cannot talk about the state-accepted medical use of cannabis in Hawaii because of a subtle brainwashing that has left just about everyone believing that nothing can be done until there is a change in federal law.

However, it is important that the truth be told about the medical use of cannabis, because of the direct impact that such medical use has upon federal law and the state and federal regulation of cannabis in Hawaii.

On June 14, 2000, Gov. Ben Cayetano signed Senate Bill 862 (Act 228) into law, which amended Hawaii's Uniform Controlled Substances Act (UCSA) by adding Section IX: "Medical Use of Marijuana." As a result, Hawaii became the first state in the country to create a state-regulated medical use of cannabis program via the legislative process that allowed for the personal production of cannabis for medical use under the supervision of a physician.

THE SIGNIFICANCE of this day cannot be overstated. Here is a perfect example of a state exercising its constitutionally protected authority under federalism to accept the medical use of a Schedule I controlled substance.

This is significant because the federal Controlled Substances Act (CSA) says that a substance cannot be in federal Schedule I if it has accepted medical use, which means 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 yet, for the past 19 years, tens of thousands of patients in Hawaii have been forced to suffer under the false assumption that they are violating federal law because our state won't go back to the U.S. Department of Justice and tell it that the medical use of cannabis in Hawaii is "currently accepted medical use in treatment in the United States."

It makes no sense to think that Congress should fix a problem that our own state helped to create.

It is up to the state to stand up for the medical use of cannabis in Hawaii, and it is up to the people of Hawaii to make sure that our state government listens when we say that we have had enough of living under the misconception that our patients and our dispensaries are violating federal law.

THE SOLUTION is simple: Recognize 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, just as it was recognized decades ago that the religious use of peyote by the Native American Church is exempt from federal Schedule I.

But time is running out.

If we wait for Congress to put another Band-Aid on the current conflict with the federal regulation of cannabis, or think that recreational legalization will somehow solve all of our problems, then we will miss the opportunity to protect the intra-state production of cannabis for medical use, and lose the chance to incorporate such medical use into a locally sustainable health care system that could benefit the entire state.

It's time to honor the original intent of our Medical Use of Cannabis Act, which was to promote Hawaii as being an international center for medical cannabis treatment and research.

Please join us in recognizing the medical use of cannabis in Hawaii. Happy Medical Cannabis Day!

HAWAII
STATE MEDICAL USE ARGUMENT

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June 11, 2019

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HAWAII STATE MEDICAL USE ARGUMENT

The State Medical Use Argument proposes that Hawaii's Medical Use of Cannabis Program does not violate federal law. This is based upon the finding that the medical use of cannabis in Hawaii is “currently accepted medical use in treatment in the United States”, which means that the federal regulation of marihuana as a Schedule I controlled substance, and the criminal penalties associated with the illegal use and distribution of a Schedule I controlled substance, do not apply to the medical use of cannabis in Hawaii.

The federal regulation of marihuana as a Schedule I controlled substance does not apply to the medical use of cannabis in Hawaii because:

Point #1

The federal Controlled Substances Act (CSA) says that a substance cannot be in federal Schedule I if it has "currently accepted medical use in treatment in the United States".

(See 21 U.S.C. 812. Schedules of Controlled Substances, (b) Placement on schedules; findings required, (1) Schedule I, (B) The drug or other substance has no currently accepted medical use in treatment in the United States.)

Point #2

The courts have 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.

(See ACT v. DEA, 930 F.2d 936,936 (D.C. Cir. 1991): Neither the statute nor its legislative history precisely defines the term "currently accepted medical use”.)

Point #3

The courts have acknowledged that having medical use in just one state is sufficient for there to be medical use in the United States.

(See Grinspoon v. DEA, 828 F.2d 881,886 (1st Cir. 1987) Congress did not intend "accepted medical use in treatment in the United States" to require a finding of recognized medical use in every state.)

Point #4

The Supreme Court has acknowledged that the decision-making authority to accept the medical use of controlled substances is reserved to the states.

(See Gonzales v. Oregon (2006) The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard of care and treatment of patients that is specifically authorized under state law.)

Point #5

The State of Hawaii exercised its authority to accept the medical use of controlled substances when it determined that cannabis has medical use in Hawaii by enacting Hawaii's Medical Use of Cannabis Act in 2000, thereby creating a state-regulated medical use of cannabis program.

(See Hawaii's Uniform Controlled Substances Act, HRS 329, Part IX. Medical Use of Cannabis.

Point #6

State medical use of cannabis is "currently accepted medical use in treatment in the United States", which means that the federal regulation that places marijuana in federal Schedule I "**does not apply"** to the medical use of cannabis in Hawaii.

(See 21 CFR 1308.11 Schedule I. (d) Hallucinogenic substances. (23) Marihuana and (31) Tetrahydrocannabinols.)

Existing exemptions

We already have several examples of specific activities being exempt from state and federal Schedule I regulation:

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 aircraft carriage restriction:

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.”

The State of Hawaii has determined that cannabis has accepted medical use, which means that cannabis has currently accepted medical use in treatment in the United States, which means that the federal regulation that lists cannabis as a Schedule I controlled substance does not apply to the medical use of cannabis in Hawaii.

What is the advantage of continuing the current myth that our patients and our dispensaries are violating federal law?