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TESTIMONY ON SENATE BILL 2745 SD2
BILL FOR AN ACT RELATING TO
CONTROLLED SUBSTANCES
Clayton A. Frank, Director
Department of Public Safety

COMMITTEE ON HEALTH
Representative Ryan I. Yamane, Chair
Representative Scott Y. Nishimoto, Vice Chair

Tuesday, March 16, 2010; 09:30 am
State Capitol, Room 329

Representative Yamane and Members of the Committee:

The Department of Public Safety supports Senate Bill 2745 SD2 that is the department's vehicle to update Hawaii's controlled substance laws to be consistent with amendments made in Federal law and to schedule Salvia divinorum and its constituent Salvinorin A permanently as a schedule I controlled substance as mandated by Section 329-11. The amendments being proposed by Senate Bill 2745 SD2 would add new drugs to schedules II (Tapentadol), IV (Fospropofol) and V (Lacosamide) of Hawaii's controlled substance laws sections, 329-16(c), 329-20(b) and 329-22(d) to be consistent with additions made by Federal law in 2009. The addition of these controlled substances is required by section 329-11(d) Hawaii Revised statues.

Section 329-11(d) states that if a substance is added, deleted or rescheduled under federal law then the department shall recommend to the

legislature that a corresponding change in Hawaii law be made. In 2009 the Federal Government scheduled the following controlled substances: Tapentadol to schedule II on 6-22-09, Fospropofol to schedule IV on 11-5-09 and Lacosamide ([(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]) to schedule V on 6-22-09.

Senate Bill 2745 SD2 also places the controlled substance Salvia divinorum and its constituent Salvinorin A permanently in Section 329-14(d) as a Schedule I controlled Substance. On August 15, 2009, in accordance with Chapter 329-11(e) the Administrator of the Department of Public Safety's Narcotics Enforcement Division emergency scheduled Salvia divinorum and its constituent Salvinorin A and Divinorian A as schedule I controlled substances on a temporary basis, to avoid the possibility of an imminent hazard to the health and safety of the public. Hawaii has had reported cases of the abuse of Salvia divinorum and recently on the island of Maui two minors had to be treated in the hospital for adverse reactions to the use of the drug.

Section 329-11(e) states that the Administrator of the Department of Public Safety's Narcotics Enforcement Division may make an emergency scheduling by placing a substance into schedules I, II, III, IV or V on a temporary basis, if the administrator determines that such action is necessary to avoid an imminent hazard or the possibility of an imminent hazard to the health and safety of the public.

The Drug Enforcement Administration unlike Hawaii has found a way to deal with the substance "Salvia divinorum or its constituent Salvinorin A" as a controlled substance analogue as defined in 21 USC Sec. 802 (32). The Federal Government has determined that this substance does not have an approved medical use in the United States and is presently listed as a "drug of concern" by the Federal Drug Enforcement Administration due its ability to evoke hallucinogenic effects, which in general, are similar to those of other scheduled hallucinogenic controlled substances. This definition allows the Federal government to treat Salvia Divinorum and/or Salvinorin A as a controlled substance analogue if it is used for human consumption as a psychoactive drug. This leaves a loophole in the law for individuals selling this drug labeled as not for human consumption. As of January 2010, fourteen states have enacted legislation placing regulatory controls on Salvia Divinorum and/or Salvinorin A due to its hallucinogenic properties. Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota and Virginia have placed Salvia Divinorum and/or Salvinorin A into schedule I. Louisiana, and Tennessee enacted other forms of legislation restricting the distribution of the plant and making human consumption of Salvia illegal. California and Maine passed legislation making it illegal to sell Salvia to minors. During last legislative session Oregon, Alaska, New Jersey, Pennsylvania, Iowa, Georgia, Texas, Massachusetts, Wisconsin, Alabama, Indiana, Maryland, Michigan, Hawaii, Kentucky, North Carolina proposed legislative bills to place

regulatory controls on Salvia Divinorum and/or Salvinorin A. Salvia Divinorum and/or Salvinorin A have also been placed under regulatory controls in Australia, Belgium, Denmark, Estonia, Finland, Italy, Japan, Spain, and Sweden due to its potential for abuse.

Senate Bill 2745 SD2 proposes to amend section 329-35 to be consistent with federal language listed in Title 21, Chapter II, Part 1301.37 relating to the "Order to Show Cause" and to clarify the department's requirement to provide notice when revoking or suspending a registrant's controlled substance registration certificate. Senate Bill 2745 SD2 proposes to amend section 329-64 relating to exemptions to the requirements of precursor chemicals by requiring all individuals and entities that conduct retail sales of pseudoephedrine obtain a precursor chemical permit. Section 329-64 is also amended to delete the exemption for the retail sales of dietary supplements that contain ephedrine due to the fact that the chemical Ephedrine was designated as a drug to be dispensed by prescription only by Act 171 in 2006.

Senate Bill 2745 SD2 also proposes to amend Hawaii's electronic prescription monitoring program by amending section 329-101(f) to clarify the language relating to the penalty for failure to transmit controlled substance prescription data to the Department due to non-compliance by pharmacies and physicians. Senate Bill 2745 SD2 amends section 329-104(e) by changing the requirement for the designated state agency to purge the patient identification number data on all controlled substance prescriptions after three years to five

years. Maintaining these identification numbers for longer than 3 years is necessary due to administrative, civil and regulatory investigations that last longer than three years

In summary the Department of Public Safety strongly supports passage of Senate Bill 2745 SD2 and would like to thank you for the opportunity to testify on this matter.

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MEMORANDUM

TO: Representative Ryan I. Yamane
Chair, Committee on Health
Via Email: HLTtestimony@Capitol.hawaii.gov

FROM: Mihoko E. Ito

DATE: March 15, 2010

RE: **S.B. 2745, SD2 - Relating to Controlled Substances**
Hearing: Tuesday, March 16, 2010 at 9:30 a.m.

Dear Chair Yamane and Members of the Committee:

Walgreens operates and offers immunization services in all 50 states, the District of Columbia and Puerto Rico. In Hawai'i, Walgreens now has 9 stores on the islands of Maui and Oahu.

Walgreens **submits comments** regarding S.B. 2745, SD2, which amends Hawai'i's controlled substances law.

Walgreens supports the amendment made in H.B. 2592, HD1, which on page 15, lines 1-7, restores the standard for failure to transmit required information from any failure to transmit such information to an "intentional or knowing" failure. The "intentional or knowing" is fair because it would prevent a misdemeanor violation and immediate suspension of a pharmacy's ability to dispense medications for inadvertent reporting errors (for example, due to interruptions in reporting, or time spent contacting patients to make error corrections).

Thank you very much for the opportunity to testify.