

To: Rep. Henry Aquino, Chair, and Rep. Ty Cullen, Vice Chair and Members of the Committee on Public Safety and Military Affairs.

From: David J. Barton, MD, Physician, Board Certified in Pain and Palliative Care, Owner of Hawaiian-Pacific Pain and Palliative Care, Ewa Beach, Oahu, Hawaii

RE: HB 1085 Relating to Controlled Substances

Thursday, February 3, 2011, 8:30 a.m., Room 309

Position: Opposed

LATE TESTIMONY

I am writing today to oppose HB 1085 Relating to Controlled Substances.

I am forced to object to the inclusion of the phrase, "recommends the medical use of Marijuana" in Section 4, subsection (e), as I feel that this is an attempt by Law Enforcement to restrict my constitutional right to make the recommendation in the use of medical cannabis as a medicine.

As far as I know, my first amendment free speech right to make the recommendation of the use of medical cannabis cannot be restricted, or "chilled" by the government, and this includes where and when I can exercise that right. This wording is a direct attempt to control where I can practice this right.

I have come to this conclusion after correspondence with Keith Kamita, Chief of the Narcotics Enforcement Division, who expressed in writing, that I did not have the right to visit ill patients in their homes for this purpose.

I asked of Mr. Kamita, "I am concerned about my patients who are not able to get to the office. It is a long tradition for physicians to make house calls. I would like to know in writing what is the appropriate way in which this can be accomplished under HB 1085? These are terminally ill, paraplegic, and very debilitated people. Do I have to inform the NED before I make those house calls? And register that home?"

The answer by Mr. Kamita, who would be responsible for carrying out this law wrote back, "Doctor if you are doing this presently I recommend you stop this is already not authorized(sic) (for controlled substances)."

I find it very wrong that I am not able to compassionately visit the homes of severely ill, disabled, and paraplegic patients in order to provide this care. I find it goes completely against the spirit of the American Disabilities Act and is quite discriminatory against those most at risk in our society. By tradition and compassion, physicians have long made home visits to care for those who cannot make it to the office, and this bill goes against those traditions.

I conclude that this proposed bill, on its surface is well intentioned, but that it goes against core American principles and tradition. Mr. Kamita has long sought to treat the recommendation of medical cannabis the same as the real drug. It is NOT! What is it? It is a physician's first amendment right to do it under the Bill of Rights as determined the Ninth Circuit of the US Court of Appeals. For patients, it is

just an application to receive permission from the State of Hawaii to grow and possess medical cannabis that can be used to relieve their pain and suffering by exercising their right as given to the citizens of Hawaii by the Hawaii State Legislature over ten years ago.

I feel that the concerns previously submitted by me are of a secondary nature to my feelings now. Any inappropriate behaviors by physicians should be addressed by the Medical Board, and NOT by law enforcement.

David J. Barton, MD

LATE
TESTIMONY

the
Action Drug Policy
Group

A sister organization of the Drug Policy Forum of Hawai'i
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Dedicated to safe, responsible, and effective drug policies since 1993

TO: House Committee on Public Safety and Military Affairs

FROM: Pamela Lichty, MPH
President

DATE: February 3, 2011, 8:30 a.m., room 309

RE: H.B. 1085 RELATING TO CONTROLLED SUBSTANCES – IN
OPPOSITION

Aloha Representative Aquino and members of the Committee. My name is Pam Lichty and I'm testifying on behalf of the Drug Policy Action Group.

We are opposed to several of the provisions in this measure. While on the surface it looks like an innocuous effort to conform Hawaii's statutes on controlled substances to the Federal ones, there are several problematic areas which we would like to call to your attention.

In Section 1, which amends the list of controlled substances, (29) amends the description of tetrahydrocannabinols to include both synthetic and naturally occurring THC substances. This is problematic because in an apparent attempt to make marijuana or cannabis even more tightly controlled than it currently is, synthetic THC, commercially known as Marinol is included. Unimed Pharmaceuticals might be displeased to learn it would be more highly restricted than its current listing of schedule 3 in the federal system (a fairly unrestricted classification.)

In Section 4. Subsection (e) lists the places where a specific registration is required when the applicant "manufactures, distributes, prescribes or dispenses controlled substances." Added to this is the language is "recommends the medical use of marijuana." There is no rationale for including this provision since marijuana or cannabis itself is not on the premises nor dispensed there, but only a written recommendation to use it is provided to the patient. The 9th Circuit has found that such a recommendation is covered by the First

Amendment. There is absolutely no reason for this language to be included in this bill except as a means of inhibiting or chilling the free speech rights of physicians.

Again, in Section 7. , which amends Hawaii's medical marijuana statute, there is no reason to require in subsection (b) that the physician sign the patient's "blue card" in addition to the department. This card is carried by the patient and is shown to law enforcement officials on demand. The statute specifies that both the physician's and the patient's names be kept confidential so this signature is unnecessary and unwarranted.

Finally the fee that the patient must pay annually to maintain his registration is capped at \$25. This measure would raise that to \$50. This is a burdensome amount for these seriously ill patients who are often on are impoverished and often on Medicaid.

Since there are over 8,000 patients currently registered with the program, the current registration income exceeds \$200,000. Even with this amount, the Narcotics Enforcement Office is currently taking more than 4 months to issue cards from the time all of the required materials are submitted. The administrator of NED, Mr. Keith Kamita, in budget hearing for his Division stated that one of his secretaries submitted a request for 2,500 hours of overtime. I would suggest that this indicates a badly managed agency which requires a streamlining of its (self-imposed) procedures not additional monies.

We urge you to remove the egregious provisions we have mentioned from this bill if you see fit to pass it out to Judiciary. Mahalo for the opportunity to testify.

 **the Drug Policy Forum** **LATE TESTIMONY**
of hawaii

February 3, 2011

To: Rep. Henry Aquino, Chair
Rep. Ty Cullen, Vice Chair and
Members of the Committee on Public Safety and Military Affairs

From: Jeanne Y. Ohta, Executive Director

Re: HB 1085 Relating to Controlled Substances

Position: Strong Opposition

Good morning Chair Aquino, Vice Chair Cullen and Members of the Committee, I am Jeanne Ohta, Executive Director of the Drug Policy Forum of Hawaii testifying in opposition to HB 1217 Relating to Controlled Substances.

This measure goes beyond conforming Hawaii's controlled substances list to the federal list. Any and all language pertaining to substances that have not been added to the federal list should be stricken. We should be able to have a full and open discuss on the addition of substances such as mephedrone and spice and we should be able to discuss other options rather than this extreme measure. Schedule I is the most restrictive of all schedules.

According to §329-11 HRS, in order to schedule these two substances, the department must assess the following:

- (1) The actual or probable abuse of the substance including:
 - (A) Its history and current pattern of abuse;
 - (B) The scope, duration, and significance of abuse; and
 - (C) A judgment of the degree of actual or probable detriment that may result from the abuse of the substance;
- (2) The biomedical hazard of the substance including:
 - (A) Its pharmacology: the effects and modifiers of effects of the substance;
 - (B) Its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychic or physiological dependence;
 - (C) Risk to public health and particular susceptibility of segments of the population; and
 - (D) Existence of therapeutic alternatives for substances that are or may be used for medical purposes;
- (3) A judgment of the probable physical and social impact of widespread abuse of the substance;
- (4) Whether the substance is an immediate precursor of a substance already controlled under this part; and
- (5) The current state of scientific knowledge regarding the substance.

Before these substances are scheduled, the above information should be provided for public review.

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MEPHEDRONE AND SPICE

Continually adding new designer drugs to our controlled substance list makes little sense. New drugs with slight molecule changes can easily be made, and we would always be playing catch-up. It makes better sense to regulate these drugs and prohibit their sales to minors. This is an example of how our drug policy has gone out of control, with escalating costs and no progress in reducing the availability of drugs.

May I point out that because the real marijuana is illegal, there is incentive to produce synthetic versions which are more dangerous and have more harmful effects. Another incentive in using synthetic marijuana is that it doesn't show up in drug tests. If we really want to decrease the use of synthetic marijuana, wouldn't it be smarter to change our policy on natural marijuana?

CHANGES TO THE MEDICAL MARIJUANA PROGRAM

Page 13, line 17:

We oppose the changes to the program. The first is the change in the registration requirements for physicians. There is no need to add "recommends the medical use of marijuana" on page 13, line 17. Only physicians with prescriptive authority are allowed to recommend marijuana. This requirement is another example of the Narcotics Enforcement Division's administrator's overzealous adversarial position with physicians who participate in the program. The objective here is to prevent physicians from seeing patients at places other than their offices. He has taken action bordering on harassment with physicians and finds that the law as currently written doesn't suit his needs, so he is adding this requirement. Until we know the full extent of this change and what its ramifications are for physicians, we ask that this be stricken from the bill.

Page 15, line 4:

We ask that the subsection read as follows:

"Qualifying patients shall register with the department of public safety. Such registration shall be effective until the expiration of the certificate issued by the department ~~physician~~." There is no need for the physician to sign the certificate. They have already signed the application forms submitted to the department. This will enable the department to mail the certificate directly to the patient, saving the both the physician and patient time and saving the patient a special trip back to the physician's office.

NED should welcome these simplifications, as they claim they cannot process the paperwork with the revenue currently generated by the program.

Page 15, line 12:

We oppose the increase of the fee for the medical marijuana program from \$25 per year to \$50 per year. The department receives approximately \$200,000 per year to maintain a registry of patients. If they cannot do so within the current revenue, the department should streamline the process. They have not made any effort to simplify the process and to cut their costs. Simply, patients should not be made to pay for their inefficiency.

For instance, the department could make forms available on their website, as is done in other states, but the department refuses to do so; when a physician needs a form, one must be faxed or mailed.

We have also been made aware of outrageous claims of over-time in the office. We hope the legislature will consider asking for an audit of the agency before increasing fees.

Many patients have serious and chronic illnesses, many are on disability and cannot afford an increase in fees. This request is unreasonable and unfair.

We respectfully request that you only pass the parts of this measure that make changes that have been made to the federal controlled substance list and we also request that the physician registration and the increase in fees be taken out of the bill language.

Thank you for this opportunity to testify.