
A BILL FOR AN ACT

RELATING TO MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the regulation of
2 medical marijuana is of paramount importance to the health and
3 welfare of the State's citizens. The legislature further finds
4 that Act 228, Session Laws of Hawaii 2000, was enacted to
5 provide medical relief for seriously ill individuals in the
6 State by permitting a qualifying patient to use medical
7 marijuana only if the patient's physician certifies that the
8 potential benefits to that patient of using medical marijuana
9 outweigh the potential health risks.

10 Unlike drugs that are prescribed and regulated in
11 accordance with federal and state laws governing controlled
12 substances and the professional conduct of physicians, medical
13 marijuana cannot be prescribed by a physician because to do so
14 would violate federal law.

15 The legislature further finds that the State's current
16 method of sanctioning the use of medical marijuana may be
17 subject to abuse. A recent survey conducted by the department



1 of public safety found that ninety percent of the medical
2 marijuana certifications in the State were recommended by just
3 ten physicians. While it could be argued that these numbers
4 reflect an unwillingness by the medical profession in Hawaii to
5 make medical marijuana certifications, they could also be
6 construed to indicate that certain physicians are over-
7 recommending the use of medical marijuana beyond what is
8 justifiable under the standards of care established by the
9 Hawaii medical board.

10 To address similar concerns, the State of New York
11 established an autonomous regulatory agency with the
12 responsibility of overseeing all physician recommendations for
13 the use of certain drugs, including marijuana. The legislature
14 believes that the establishment of a similar mechanism in Hawaii
15 would benefit not only the users of medical marijuana, but also
16 the general public.

17 Accordingly, the purpose of this Act is to establish a
18 mechanism that will enable the sufficient monitoring of medical
19 marijuana certifications made by physicians by requiring the:

20 (1) Department of health to provide monthly reports to the
21 Hawaii medical board that list all physicians who



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1 certify qualifying patients for the use of medical
2 marijuana, and the total number of qualifying patients
3 for which each physician provided certifications
4 during the preceding month; and

5 (2) Hawaii medical board to:

6 (A) Periodically review the frequency with which
7 licensed physicians have provided written
8 certifications to qualifying patients regarding
9 medical marijuana and investigate whether those
10 physicians have engaged in any misconduct; and

11 (B) Submit an annual report to the director of
12 commerce and consumer affairs regarding any
13 disciplinary action taken by the board against
14 any physician for professional misconduct related
15 to medical marijuana certifications, which shall
16 serve as the primary basis for the director of
17 commerce and consumer affairs' annual report to
18 be submitted to the governor and the legislature.

19 SECTION 2. Chapter 453, part I, Hawaii Revised Statutes,
20 is amended by adding a new section to be appropriately
21 designated and to read as follows:



1 "§453- Medical marijuana certifications; review;
2 disciplinary action. (a) The Hawaii medical board shall
3 periodically review the frequency with which licensed physicians
4 have provided written certifications to patients regarding
5 medical marijuana pursuant to section 329-122 and shall
6 investigate whether any physician has provided any written
7 certification without good cause or has otherwise engaged in
8 misconduct that warrants disciplinary action pursuant to section
9 453-8 and shall take disciplinary action as appropriate.

10 (b) No later than January 7 of each year, the Hawaii
11 medical board shall submit an annual report to the director of
12 commerce and consumer affairs regarding physician misconduct
13 related to medical marijuana during the preceding year. The
14 report shall include the name of each physician against whom
15 disciplinary action pertaining to marijuana was taken pursuant
16 to section 453-8 and the specific nature of the disciplinary
17 action, and shall serve as the primary basis for the annual
18 report provided by the director of commerce and consumer affairs
19 to the governor and the legislature pursuant to section 26-
20 9 (t)."



1 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§26-9 Department of commerce and consumer affairs. (a)
4 The department of commerce and consumer affairs shall be headed
5 by a single executive to be known as the director of commerce
6 and consumer affairs.

7 (b) The department shall protect the interests of
8 consumers, depositors, and investors throughout the State. It
9 shall set standards and enforce all laws and rules governing the
10 licensing and operation of, and register and supervise the
11 conduct of, trades, businesses, and professions, including
12 banks, insurance companies, brokerage firms, and other financial
13 institutions.

14 (c) The board of acupuncture, board of public accountancy,
15 board of barbering and cosmetology, boxing commission, board of
16 chiropractic examiners, contractors license board, board of
17 dental examiners, board of electricians and plumbers, elevator
18 mechanics licensing board, board of professional engineers,
19 architects, surveyors, and landscape architects, board of
20 massage therapy, Hawaii medical board, motor vehicle industry
21 licensing board, motor vehicle repair industry board, board of



1 naturopathic medicine, board of nursing, board of examiners in
2 optometry, pest control board, board of pharmacy, board of
3 physical therapy, board of psychology, board of private
4 detectives and guards, real estate commission, board of
5 veterinary examiners, board of speech pathology and audiology,
6 and any board, commission, program, or entity created pursuant
7 to or specified by statute in furtherance of the purpose of this
8 section including but not limited to section 26H-4, or chapters
9 484, 514A, 514B, and 514E shall be placed within the department
10 of commerce and consumer affairs for administrative purposes.

11 The public utilities commission shall be placed, for
12 administrative purposes only, within the department of commerce
13 and consumer affairs. Notwithstanding section 26-9(e), (f),
14 (g), (h), (j), (k), (l), (m), (n), (p), (q), (r), and (s), and
15 except as permitted by sections 269-2 and 269-3, the department
16 of commerce and consumer affairs shall not direct or exert
17 authority over the day-to-day operations or functions of the
18 commission.

19 (d) Except as otherwise provided by this chapter, the
20 functions, duties, and powers, subject to the administrative
21 control of the director of commerce and consumer affairs, and



1 the composition of each board and commission shall be as
2 provided by law.

3 (e) Notwithstanding any provision to the contrary, the
4 employment, appointment, promotion, transfer, demotion,
5 discharge, and job descriptions of all officers and employees
6 under the administrative control of this department shall be
7 determined by the director of commerce and consumer affairs
8 subject only to applicable personnel laws.

9 (f) The director of commerce and consumer affairs may
10 appoint a hearings officer or officers not subject to chapter 76
11 to hear and decide any case or controversy regarding licenses
12 and the application and enforcement of rules involving any of
13 the boards, commissions, or regulatory programs within the
14 department of commerce and consumer affairs. The hearings
15 officer or officers shall have power to issue subpoenas,
16 administer oaths, hear testimony, find facts, and make
17 conclusions of law and a recommended decision; provided that the
18 conclusions and decisions shall be subject to review and
19 redetermination by the officer, board, or commission which would
20 have heard the case in the first instance in the absence of a



1 hearings officer. The review shall be conducted in accordance
2 with chapter 91.

3 (g) The director of commerce and consumer affairs may
4 appoint an information officer not subject to chapter 76 who
5 shall ensure the prompt and efficient handling of consumer
6 inquiries and the development of a strong consumer education
7 program.

8 (h) The director may appoint a complaints and enforcement
9 officer not subject to chapter 76 who shall facilitate the
10 receipt, arbitration, investigation, prosecution, and hearing of
11 complaints regarding any person who furnishes commodities,
12 services, or real estate for which a license, registration, or
13 certificate is required from the department or any board,
14 commission, or regulatory program thereunder. In representing
15 the State in bringing any action to enjoin unlicensed,
16 unregistered, or uncertified activities, the department of
17 commerce and consumer affairs' attorneys shall be empowered to
18 exercise all authority granted to the attorney general and to
19 the director of the office of consumer protection under sections
20 487-12, 487-14, 480-3.1, 480-15, 480-15.1, 480-20(c), and 480-
21 22, as these sections now exist and as they subsequently may be



1 amended. The attorneys also shall be empowered to exercise all
2 authority granted to the attorney general and to the responsible
3 attorneys of the various counties under section 92F-13 in all
4 cases involving documents and records within the custody or
5 control of the regulated industries complaints office.

6 (i) The functions and authority previously exercised by
7 the treasurer (except funds custody, cash management, debt
8 management, and administering of veterans loans transferred to
9 the department of budget and finance) as constituted are
10 transferred to the department of commerce and consumer affairs
11 established by this chapter.

12 (j) In the course of an investigation of matters affecting
13 the interest of consumers, depositors, or investors, or of any
14 other matter within the jurisdiction of the department, the
15 director shall have the power to subpoena witnesses, examine
16 witnesses under oath, and require the production of books,
17 papers, documents, or objects that the director deems relevant
18 or material to the inquiry. Upon application by the director,
19 obedience to the subpoena may be enforced by the circuit court
20 in the county in which the person subpoenaed resides or is found



1 in the same manner as a subpoena issued by the clerk of a
2 circuit court.

3 The director shall appoint and commission one or more
4 investigators as the exigencies of the public service may
5 require. Persons appointed and commissioned under this section
6 may serve subpoenas and serve process and orders pursuant to
7 section 634-21. Nothing in this subsection shall be construed
8 to entitle persons appointed and commissioned by the director to
9 retirement benefits applicable to police officers under chapter
10 88.

11 (k) The director may adopt, amend, or repeal rules
12 pursuant to chapter 91 to effectuate the purposes of all laws
13 within the jurisdiction of the department of commerce and
14 consumer affairs. The director's authority to adopt rules shall
15 not modify, impair, or otherwise affect the power of boards and
16 commissions placed within the department of commerce and
17 consumer affairs for administrative purposes from adopting,
18 amending, or repealing rules, except as provided for in
19 subsection (l).

20 (l) Any law to the contrary notwithstanding, the director
21 of commerce and consumer affairs may:



- 1 (1) Establish, increase, decrease, or repeal fees relating
2 to any aspect of the registration, certification,
3 licensure, or any other administrative process for all
4 laws within the jurisdiction of the department.
5 Amendments to fee assessments shall be made pursuant
6 to chapter 91;
- 7 (2) Assess fees for copies in any form of media of the
8 computerized records of the business registration
9 division or for electronic access to the computerized
10 information on a one-time or on-going basis. The fees
11 charged for the copies or access may include billing
12 service fees, network usage fees, and computer
13 consultant fees. In adopting these fees, the director
14 shall take into account the intent to make the
15 division self-supporting. To this end, the fees may
16 reflect the commercial value of the service or
17 information provided. In the case of requests for
18 records by a nonprofit organization, the director may
19 reduce or waive the fees. This paragraph shall
20 control in any instance where there is a conflict
21 between this paragraph and any other statute; and



1 (3) Assess fees for copies of consumer and business
2 educational publications prepared or issued by the
3 department. Fees collected under this paragraph shall
4 be deposited into the compliance resolution fund under
5 subsection (o). In the case of requests for copies by
6 a nonprofit organization, the director may reduce or
7 waive the fees. For purposes of this paragraph,
8 "consumer and business educational publications" does
9 not include copies of statutes or administrative
10 rules.

11 The fees collected by the professional and vocational
12 licensing division and the business registration division shall
13 be deposited into the compliance resolution fund under
14 subsection (o).

15 The director may appoint program specialists, not subject
16 to chapter 76, to assist with the activities of the professional
17 and vocational licensing division.

18 (m) Notwithstanding section 92-17 or any other law to the
19 contrary, all boards, commissions, and regulatory programs
20 placed within the department of commerce and consumer affairs
21 for administrative purposes shall delegate their authority to



1 receive, arbitrate, investigate, and prosecute complaints to the
2 department.

3 (n) Each board and commission, as well as the director, by
4 written order, may delegate to the executive secretary or other
5 personnel of the department any of its powers or duties as it
6 deems reasonable and proper for the administration of the
7 licensing laws that are within the jurisdiction of the
8 department of commerce and consumer affairs. The delegated
9 powers and duties may be exercised by the executive secretary or
10 other personnel of the department in the name of the board,
11 commission, or the director. However, neither a board, a
12 commission, nor the director shall delegate the authority to
13 adopt, amend, or repeal rules or take final disciplinary action
14 against a licensee.

15 (o) Every person licensed under any chapter within the
16 jurisdiction of the department of commerce and consumer affairs
17 and every person licensed subject to chapter 485A or registered
18 under chapter 467B shall pay upon issuance of a license, permit,
19 certificate, or registration a fee and a subsequent annual fee
20 to be determined by the director and adjusted from time to time
21 to ensure that the proceeds, together with all other fines,



1 income, and penalties collected under this section, do not
2 surpass the annual operating costs of conducting compliance
3 resolution activities required under this section. The fees may
4 be collected biennially or pursuant to rules adopted under
5 chapter 91, and shall be deposited into the special fund
6 established under this subsection. Every filing pursuant to
7 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
8 initial filing and at each renewal period in which a renewal is
9 required, a fee that shall be prescribed by rules adopted under
10 chapter 91, and that shall be deposited into the special fund
11 established under this subsection. Any unpaid fee shall be paid
12 by the licensed person, upon application for renewal,
13 restoration, reactivation, or reinstatement of a license, and by
14 the person responsible for the renewal, restoration,
15 reactivation, or reinstatement of a license, upon the
16 application for renewal, restoration, reactivation, or
17 reinstatement of the license. If the fees are not paid, the
18 director may deny renewal, restoration, reactivation, or
19 reinstatement of the license. The director may establish,
20 increase, decrease, or repeal the fees when necessary pursuant
21 to rules adopted under chapter 91. The director may also



1 increase or decrease the fees pursuant to section 92-28.

2 There is created in the state treasury a special fund to be
3 known as the compliance resolution fund to be expended by the
4 director's designated representatives as provided by this
5 subsection. Notwithstanding any law to the contrary, all
6 revenues, fees, and fines collected by the department shall be
7 deposited into the compliance resolution fund. Unencumbered
8 balances existing on June 30, 1999, in the cable television fund
9 under chapter 440G, the division of consumer advocacy fund under
10 chapter 269, the financial institution examiners' revolving
11 fund, section 412:2-109, the special handling fund, section
12 414-13, and unencumbered balances existing on June 30, 2002, in
13 the insurance regulation fund, section 431:2-215, shall be
14 deposited into the compliance resolution fund. This provision
15 shall not apply to the drivers education fund underwriters fee,
16 sections 431:10C-115 and 431:10G-107, insurance premium taxes
17 and revenues, revenues of the workers' compensation special
18 compensation fund, section 386-151, the captive insurance
19 administrative fund, section 431:19-101.8, the insurance
20 commissioner's education and training fund, section 431:2-214,
21 the medical malpractice patients' compensation fund as



1 administered under section 5 of Act 232, Session Laws of Hawaii
2 1984, and fees collected for deposit in the office of consumer
3 protection restitution fund, section 487-14, the real estate
4 appraisers fund, section 466K-1, the real estate recovery fund,
5 section 467-16, the real estate education fund, section 467-19,
6 the contractors recovery fund, section 444-26, the contractors
7 education fund, section 444-29, the condominium education trust
8 fund, section 514B-71, and the mortgage foreclosure dispute
9 resolution special fund, section 667-86. Any law to the
10 contrary notwithstanding, the director may use the moneys in the
11 fund to employ, without regard to chapter 76, hearings officers
12 and attorneys. All other employees may be employed in
13 accordance with chapter 76. Any law to the contrary
14 notwithstanding, the moneys in the fund shall be used to fund
15 the operations of the department. The moneys in the fund may be
16 used to train personnel as the director deems necessary and for
17 any other activity related to compliance resolution.

18 A separate special subaccount of the compliance resolution
19 fund, to be known as the post-secondary education authorization
20 special subaccount, shall be established for fees collected by
21 the department of commerce and consumer affairs pursuant to



1 chapter 305J. The special subaccount shall be governed by
2 section 305J-19.

3 As used in this subsection, unless otherwise required by
4 the context, "compliance resolution" means a determination of
5 whether:

- 6 (1) Any licensee or applicant under any chapter subject to
7 the jurisdiction of the department of commerce and
8 consumer affairs has complied with that chapter;
- 9 (2) Any person subject to chapter 485A has complied with
10 that chapter;
- 11 (3) Any person submitting any filing required by chapter
12 514E or section 485A-202(a)(26) has complied with
13 chapter 514E or section 485A-202(a)(26);
- 14 (4) Any person has complied with the prohibitions against
15 unfair and deceptive acts or practices in trade or
16 commerce; or
- 17 (5) Any person subject to chapter 467B has complied with
18 that chapter;

19 and includes work involved in or supporting the above functions,
20 licensing, or registration of individuals or companies regulated
21 by the department, consumer protection, and other activities of



1 the department.

2 The director shall prepare and submit an annual report to
3 the governor and the legislature on the use of the compliance
4 resolution fund. The report shall describe expenditures made
5 from the fund including non-payroll operating expenses.

6 (p) Any law to the contrary notwithstanding, the
7 department of commerce and consumer affairs, or any board or
8 commission placed within it for administrative purposes, may
9 contract with professional testing services to prepare,
10 administer, and grade examinations and tests for license
11 applicants. For these purposes, the department may require
12 applicants to pay the examination fee directly to the testing
13 agency.

14 (q) Any law to the contrary notwithstanding, when any type
15 of bond or insurance required to be maintained by any licensee
16 under a regulatory program of the department of commerce and
17 consumer affairs, or of any board or commission assigned to the
18 department of commerce and consumer affairs, cannot reasonably
19 be secured, the department, board, or commission may provide by
20 rule for alternative forms of security to the consumer so long



1 as that alternate security is no less than that provided by the
2 type of bond or insurance initially required.

3 (r) Notwithstanding any other law to the contrary, the
4 department of commerce and consumer affairs, or any board or
5 commission placed within it for administrative purposes, may
6 change any license renewal date by rules adopted in accordance
7 with chapter 91.

8 (s) The director of commerce and consumer affairs may
9 establish advisory committees, the members of which shall serve
10 as consultants to the boards and to the director in their review
11 of licensees referred for possible disciplinary action and as
12 experts to the department for investigations and professional
13 vocational licensing matters. Each advisory committee shall be
14 appointed by the director from a list of licensees submitted
15 annually by the board or by referral from the regulated industry
16 for which an advisory committee is appointed. Each member of
17 the committee shall serve until a new committee is established
18 or until the particular case for which the member was designated
19 a consultant or expert has been concluded.

20 All members of the advisory committee shall serve
21 voluntarily and without compensation, but shall be paid



1 reasonable allowances for travel and expenses that may be
2 incurred as a result of performance of their duties on the
3 committee. The costs shall be paid by the department.

4 Any member of the advisory committee shall be immune from
5 civil liability for any act done in connection with this
6 subsection.

7 (t) The director of commerce and consumer affairs shall
8 submit an annual report to the governor and the legislature no
9 later than twenty days prior to the convening of each regular
10 session on disciplinary actions taken by the Hawaii medical
11 board against physicians for misconduct related to medical
12 marijuana pursuant to sections 453-8 and 453- (b)."

13 SECTION 4. Section 329-123, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§329-123 **Registration requirements.** (a) Physicians who
16 issue written certifications shall provide, in each written
17 certification, the name, address, patient identification number,
18 and other identifying information of the qualifying patient.
19 The department of health shall require, in rules adopted
20 pursuant to chapter 91, that all written certifications comply
21 with a designated form completed by or on behalf of a qualifying



1 patient. The form shall require information from the applicant,
2 primary caregiver, and physician as specifically required or
3 permitted by this chapter. The form shall require the address
4 of the location where the marijuana is grown and shall appear on
5 the registry card issued by the department of health. The
6 certifying physician shall be required to have a bona fide
7 physician-patient relationship with the qualifying patient. All
8 current active medical marijuana permits shall be honored
9 through their expiration date.

10 (b) Qualifying patients shall register with the department
11 of health. The registration shall be effective until the
12 expiration of the certificate issued by the department of health
13 and signed by the physician. Every qualifying patient shall
14 provide sufficient identifying information to establish the
15 personal identities of the qualifying patient and the primary
16 caregiver. Qualifying patients shall report changes in
17 information within ten working days. Every qualifying patient
18 shall have only one primary caregiver at any given time. The
19 department of health shall issue to the qualifying patient a
20 registration certificate, and shall charge \$35 per year.



1 (c) Primary caregivers shall register with the department
2 of health. Every primary caregiver shall be responsible for the
3 care of only one qualifying patient at any given time.

4 (d) Upon inquiry by a law enforcement agency, which
5 inquiry may be made twenty-four hours a day, seven days a week,
6 the department of health shall immediately verify whether the
7 subject of the inquiry has registered with the department of
8 health and may provide reasonable access to the registry
9 information for official law enforcement purposes.

10 (e) Each month, the department of health shall provide to
11 the Hawaii medical board a report that includes:

12 (1) The name of each physician who provided a written
13 certification to a qualifying patient during the
14 preceding month; and

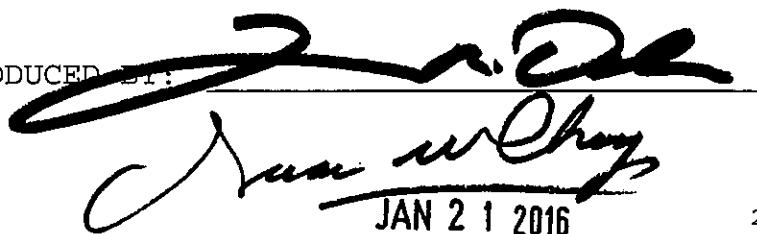
15 (2) The total number of qualifying patients for which each
16 physician provided a written certification during the
17 preceding month."

18 SECTION 5. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.

20

INTRODUCED BY:



JAN 21 2016



H.B. NO. 1677

Report Title:

Medical Marijuana; Physicians; Misconduct; Discipline

Description:

Requires DCCA to submit annual report regarding physician discipline related to medical marijuana certifications. Requires DOH to submit monthly report on medical marijuana certifications. Requires Hawaii medical board to investigate potential misconduct regarding medical marijuana, take appropriate disciplinary action, and submit annual report.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

