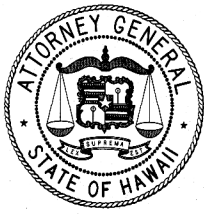


SB3009

Measure Title:	RELATING TO MEDICAL MARIJUANA.
Report Title:	Medical Marijuana
Description:	Amends the definition of "debilitating medical condition" to allow for greater physician discretion to prescribe low potency medical marijuana.
Companion:	HB2222
Package:	None
Current Referral:	CPH
Introducer(s):	GREEN, Gabbard, Kim, Shimabukuro



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 3009, RELATING TO MEDICAL MARIJUANA.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Thursday, February 18, 2016

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Jill T. Nagamine, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General appreciates the intent of the bill, which is to ensure patients receive proper care from physicians, but due to current federal guidelines relating to the use of marijuana, we must oppose this bill.

This bill would amend the definition of "debilitating medical condition" in section 329-121, Hawaii Revised Statutes (HRS), to provide physicians the ability to certify patients to use marijuana with a low level of tetrahydrocannabinol (THC) to treat any medical condition or illness for which the physician has determined marijuana would provide relief.

Law enforcement problems:

There is no provision in the bill for the Department of Health (DOH) to make a distinction between those patients who could use marijuana with any strength THC and those who could use marijuana with a low THC level. A law enforcement official would have no means of determining whether any person in possession of marijuana was allowed to possess that kind of marijuana.

Even if this bill were amended to require physicians to identify those patients being certified under this new provision to the DOH in the application for registration and authorize the DOH to make a distinction on the registration card that would be detectable by law enforcement, there is no means for law enforcement to discern the THC content in marijuana possessed by a patient. This bill would create a situation where law enforcement would have to confiscate and test all marijuana held by patients to make sure that no law is being broken.

Inconsistent with federal law enforcement priorities:

Because marijuana is a Schedule I controlled substance and illegal to produce, possess, sell, or use according to the federal government, federal guidelines mandate that a state regulatory system be consistent with federal law enforcement priorities. The U.S. Department of Justice (DOJ) issued its Memorandum for All United States Attorneys dated August 29, 2013 (the Cole Memo), providing guidance regarding marijuana enforcement. The DOJ has confirmed that it will enforce the Controlled Substances Act consistent with Congress' determination that marijuana is a dangerous drug. Notwithstanding this, the Cole Memo sets forth the DOJ's expectation that states that have enacted laws that authorize marijuana-related conduct must implement strong and effective regulatory and enforcement systems to address threats to public safety, public health, and other law enforcement interests. The DOJ enforcement priorities include prevention of state-authorized marijuana activity from being used as a cover or pretext for illegal activity. The regulatory scheme of the current law is designed to accomplish that, but as stated in the Cole Memo, "[i]f state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on these harms." We believe that making it possible for physicians to certify a patient with any condition to use marijuana, even in a low dosage, would be inconsistent with the priorities set forth in the Cole Memo.

No reliable means to expand qualifying medical conditions:

This bill would bypass the thorough screening process the DOH has established in section 11-160-7, Hawaii Administrative Rules (HAR), for adding a medical condition to the list of debilitating medical conditions for which marijuana can be approved for medical use. As a result, this bill would allow physicians to certify patients to use marijuana for any illness, without requiring a basis to believe that other legal drugs or treatments would be ineffective, and without ensuring that conventional, legal treatments are attempted first. It discounts the flexibility and discretion that physicians already possess to determine whether a patient has a condition which produces severe pain or nausea, cachexia, seizures or muscle spasms, or post-

traumatic stress disorder, and it would not require that patients have any pain or adverse reactions to other treatments or any debilitating symptoms. The effect of this bill would be to diminish the safeguards the Legislature and the DOH have structured to ensure that marijuana is only used by those patients whose medical condition is so debilitating that they have no other feasible option to obtain relief. Allowing a patient with any condition, even a condition for which there is proven, effective treatment and relief with legal medication, to possess and use marijuana is not consistent with the robust enforcement scheme required by the federal government.

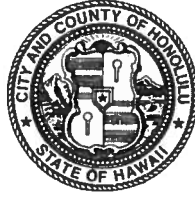
If a patient has a medical condition that is debilitating but is not included on the list of debilitating medical conditions, and that patient's symptoms are likewise not on the list of symptoms that allow a physician to certify that patient to use marijuana, then the DOH ought to be allowed to follow the process established in section 11-160-7, HAR, to determine if that medical condition or the symptom is in fact debilitating. Otherwise, the State may appear to undermine the law enforcement priorities of the United States Department of Justice by unjustifiably expanding the group of people allowed to possess and use this illegal substance.

For the foregoing reasons, we respectfully request that this bill be held.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

KIRK CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

MARIE A. McCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE CT-TA

February 18, 2016

The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce,
Consumer Protection, and Health
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

SUBJECT: Senate Bill No. 3009, Relating to Medical Marijuana

I am Calvin Tong, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Senate Bill No. 3009, Relating to Medical Marijuana.

This bill seeks to allow greater physician discretion to recommend low-potency medical marijuana to a patient. If the bill is passed, a physician would only have to determine that a patient's health would benefit from the use of marijuana. Allowing such discretion would open the door for abuse of the medical marijuana system.

This bill is unnecessary because the Department of Health already has the authority to approve other medical conditions not listed pursuant to administrative rules in response to a request from a physician. This existing process ensures some level of oversight to discourage recommending marijuana for medical conditions that would not benefit from its use.

The Honolulu Police Department urges you to oppose Senate Bill No. 3009, Relating to Medical Marijuana.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Louis M. Kealoha
Chief of Police


Calvin Tong, Major
Narcotics/Vice Division

Serving and Protecting With Aloha



ON THE FOLLOWING MEASURE:

S.B. NO. 3009, RELATING TO MEDICAL MARIJUANA

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Thursday, February 18, 2016

TIME: 9:30 a.m.

LOCATION: State Capitol, Conference Room 229

TESTIFIER(S): Antoinette Lilley, President, or Christopher Garth, Executive Director

Honorable Chair Baker, Vice-Chair Kidani, and Members of the Committee:

The Hawai'i Dispensary Alliance submits the following testimony in **SUPPORT (with amendments) for S.B. 3009 RELATING TO MEDICAL MARIJUANA**, which amends the definition of "debilitating medical condition" to allow for greater physician discretion to prescribe low potency medical marijuana.

The amendments to HRS §329-121 (3) (B) via S.B. 3009 align with our belief that qualified physicians should host the right to provide access to medical marijuana to a larger deserving population. We find that the list of qualifying "debilitating medical conditions" is too limited, placing an impediment on the medical service, clinical assessments, and professional opinions that physicians administer to ensure the health of their patients and the wellbeing of those patients' families. The state of Hawai'i has long since recognized the benefits and legality of marijuana as legitimate medicine, yet there has been only one case in the recent past in which the qualifying "debilitating medical conditions" have been expanded in the 16 year history of the program. The expansion to include post-traumatic stress disorder was an arduous and time-consuming undertaking through the current administrative process that is indicative of the scenario through which other conditions will have to progress if they are to be added to this very short list. This process is far too involved and painstaking to be effective for real time solutions.

It is our opinion that there are already enough checks in the system to deter abuse of physicians' rights to prescribe and certify medicine at their own discretion. The relatively low numbers of certified patients seems to be indicative of the rational approach that Hawai'i's physicians take towards administering these certifications. They seem to be aware of the ramifications of their actions should they provide these medicines, which is perhaps one of the reasons that there are so few medical doctors that provide these services state-wide. The converse of this awareness and the limits provided in the few qualifying conditions is that there are many patients who have not received access to the medicine and care that they need...which is the same rationale which this legislature used to conclude that Hawai'i needed dispensaries. Greater access in this case provides for greater care.

The Alliance stands in strong support of this component of S.B. 3009, yet we find significant flaw in the design and incorporation of the 5% THC limit. Low THC MMJ has been discussed as less harmful due to its lack of psychotropic effects, yet the introduction of this caveat provides a difficult and

unrealistic approach to our untested program. It is unclear whether a patient in this category would receive a different kind of certification, which leads to a variety of operational questions:

- Would patients grow this type of low-THC marijuana at home? Will DoH be required to test the potency of home grown low-THC marijuana? Will there be penalties for patients who accidentally grow 6% THC marijuana?
- Will dispensaries be required to provide a low-THC strain of marijuana exclusively for these patients? Will the DoH and dispensary computer systems be required to screen these patients from purchasing marijuana with a higher THC content?
- THC levels and effects vary significantly based on the application method, to require a 5-percent THC level in all products could significantly reduce the medical effectiveness of non-ingestible medicinal products.

Additionally, in order to conform to the highly regulated model called for in the Cole Memo, a low-THC program would have to be seamlessly integrated into our current dispensary system. To add this new program without a regulated structure risks toppling the medical marijuana program entirely.

For these reasons we ask that your committee **pass S.B. 3009 (with amendments)** by striking “; provided that the medical use of marijuana be limited to medical marijuana with a tetrahydrocannabinol potency that does not exceed five per cent.” from the language of the measure and it be passed on for further discussion.

Thank you very much for the opportunity to provide testimony on this measure.

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: kalawaiag@hotmail.com
Subject: *Submitted testimony for SB3009 on Feb 18, 2016 09:30AM*
Date: Friday, February 12, 2016 4:31:50 PM

SB3009

Submitted on: 2/12/2016

Testimony for CPH on Feb 18, 2016 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kalawai'a Goo	Individual	Support	No

Comments:

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To: [CPH Testimony](#)
Cc: kate31999@gmail.com
Subject: *Submitted testimony for SB3009 on Feb 18, 2016 09:30AM*
Date: Wednesday, February 17, 2016 6:40:48 AM

SB3009

Submitted on: 2/17/2016

Testimony for CPH on Feb 18, 2016 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Katarina Culina	Individual	Support	No

Comments:

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To: [CPH Testimony](#)
Cc: OccupyHiloMedia@yahoo.com
Subject: *Submitted testimony for SB3009 on Feb 18, 2016 09:30AM*
Date: Tuesday, February 16, 2016 7:11:28 PM

SB3009

Submitted on: 2/16/2016

Testimony for CPH on Feb 18, 2016 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Support	No

Comments:

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Cc: alohalalasun@yahoo.com
Subject: *Submitted testimony for SB3009 on Feb 18, 2016 09:30AM*
Date: Wednesday, February 17, 2016 12:44:31 AM

SB3009

Submitted on: 2/17/2016

Testimony for CPH on Feb 18, 2016 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
leilea satori	Individual	Support	No

Comments:

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To: [CPH Testimony](#)
Cc: Keith.t.kamita@gmail.com
Subject: Submitted testimony for SB3009 on Feb 18, 2016 09:30AM
Date: Saturday, February 13, 2016 11:42:49 AM

SB3009

Submitted on: 2/13/2016

Testimony for CPH on Feb 18, 2016 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Keith Kamita	Individual	Oppose	No

Comments: I do not support passage of SB3009 that would allow practitioner's to issue medical marijuana permits for conditions not authorized by DOH using marijuana with 5% THC or less. This will cause added cost to DOH that would have to develop special permits that limit the patient to marijuana certified at 5% THC or less. Law enforcement would also have a difficult time in verifying the THC level in marijuana possessed by a patient claiming this special circumstance. For this reason I do not support SB3009

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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