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No. _____

TESTIMONY ON HOUSE BILL 2360
RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT
by
Nolan P. Espinda, Director

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, February 5, 2020; 2:05 p.m.
State Capitol, Conference Room 325

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Department of Public Safety (PSD) **supports** House Bill (HB) 2360, which updates chapter 329 of the Hawaii Revised Statutes (HRS), to incorporate an amendment made to the federal Controlled Substances Act that was temporarily permitted in Hawaii by the temporary designation of a new controlled substance by PSD in 2019. Under section 329-11(d), HRS, PSD's temporary designation of a new controlled substance shall be nullified if the next regular session of the state legislature has not made the corresponding changes to law.

Section 329-11, HRS, provides that if a substance is added, deleted or rescheduled under federal law, then PSD shall recommend to the Legislature a corresponding change in Hawaii law.

The following substances were scheduled by the federal government in 2019:

1. 4-fluoroisobutyryl fentanyl or para-fluoroisobutyryl fentanyl [N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide];
2. Acryl fentanyl or acryloylfentanyl [N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide];and

3. Oxycodone [N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide]."

PSD supports HB 2360 because it amends chapter 329, HRS, to mirror recent changes to the federal Controlled Substances Act, thereby eliminating differences between federal and state law. PSD further supports the passage of HB 2360 to avoid nullification of the controlled substance that was temporarily designated in 2019.

Thank you for the opportunity to testify on this measure.



Akamai Cannabis Clinic

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TESTIMONY ON HOUSE BILL 2360
RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT

By
Clifton Otto, MD

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, February 5, 2020; 2:05 PM
State Capitol, Conference Room 325

Thank you for the opportunity to provide testimony on this measure. Please consider the following comments related to this bill:

Hawaii's annual Uniform Controlled Substances Act update bill is the perfect opportunity to address inconsistencies between the state and federal regulation of controlled substances.

When the State of Hawaii exercised its constitutional authority to decide that cannabis has medical use in Hawaii, and created a state-regulated medical cannabis program, it also created a conflict with the federal regulation of marijuana, which has resulted in the misconception that our medical cannabis program violates federal law.

States don't create laws that are unconstitutional without challenge from the U.S. Department of Justice (DOJ), and Hawaii's program has never been challenged by DOJ, which means that our Medical Use of Cannabis Act is lawful and constitutional.

The problem lies with the misapplication of the federal regulation that has the non-medical use of marijuana on the Schedule I list, which is creating severe unintended consequences for our patients and dispensaries every day.

These injuries include **patients** not being able to obtain employment because of a positive cannabis screening drug test, being terminated from employment because of failing a cannabis urine drug test that does not test for impairment in the workplace,

"An Accepted Medical Use Supporter"

being evicted from federally subsidized housing, not being able to obtain life insurance, not being able to enjoy the protections of the Americans with Disabilities Act, being discriminated against in child custody hearings, not being able to travel to other islands with their medicine, not being able to obtain firearms for home protection and hunting.

In addition, our **dispensaries** are suffering from not being able to carry on normal banking activity, having to conduct a majority of their transactions in cash, not being able to enjoy standard business expense deductions which is creating a 70%+ tax burden that only raises product costs for patients, not being able to conduct medical research with the University of Hawaii System, and even dispensary employees not being able to open local bank accounts.

Our patients and dispensaries should not be required to operate under the false assumption that they are violating federal law in order to engage in the medical use of cannabis in Hawaii.

Perpetuating this misconception only attracts individuals and organizations that are willing to violate federal law and impedes the effective regulation of our medical cannabis program.

The State of Hawaii created this situation when it lawfully decided that cannabis has medical use in Hawaii, which means that our state cannot simply wait for Congress to fix a situation that it created. We can no longer stand for the federal regulation that has the non-medical use of cannabis on the Schedule I list being unconstitutionally applied to our medical cannabis program.

There is a simple but powerful solution to this problem, presented in Senator Ruderman's federal exemption bill, [SB2462](#), that is currently waiting on deferred decision making by CPH on February 7, 2020.

However, this issue is too important to be depending upon the approval of just one committee. This issue needs to be discussed openly between the Department of Health, the Department of Public Safety, and the Office of the Attorney General. These state agencies have already had ample time to come up with actions that the state can take to eliminate this conflict between our medical cannabis program and the federal regulation of the non-medical use of marijuana.

I have been addressing this issue persistently with all the state agencies above for at least the past year without any forward movement that I can discern. It is time for our Legislature to face this problem and embrace a solution such as the one in SB2462, which does not require any change to federal law.

Therefore, I ask that your committee use this hearing of HB2360 to discuss the benefits of adopting the solution presented in SB2462, and that you consider adding the following language to HB2360:

"329D-25 Coordination among state and federal agencies. The department shall initiate ongoing dialogue among relevant state and federal agencies to identify processes and policies that ensure the privacy of qualifying patients and qualifying out-of-state patients and the compliance of qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients and medical cannabis dispensaries with state laws and regulations related to medical cannabis. The department shall submit a written request, in accordance with title 21 C.F.R. section 1307.03, to the Office of Diversion Control, Drug Enforcement Administration by September 1, 2020, stating that part IX of chapter 329 and this chapter do not create any positive conflict with state or federal drug laws and regulations and are consistent with title 21 U.S.C. section 903, and requesting formal written acknowledgement that the listing of marijuana as a controlled substance in federal schedule I does not apply to the nonprescription use of cannabis under the medical cannabis registry and dispensary programs established pursuant to chapters 329 and 329D."

Thank you for considering this very necessary amendment.

Aloha.