



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony COMMENTING on HCR 132

REQUESTING THE DEPARTMENT OF HEALTH TO SUBMIT A REQUEST TO THE
DRUG ENFORCEMENT ADMINISTRATION FOR AN EXCEPTION TO REGULATIONS
AND A PETITION TO INITIATE PROCEEDINGS FOR FEDERAL RULEMAKING TO
CLARIFY THAT THE STATE-AUTHORIZED USE OF MEDICAL CANNABIS DOES
NOT VIOLATE THE FEDERAL CONTROLLED SUBSTANCES ACT

REPRESENTATIVE RYAN YAMANE, CHAIR
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS
Hearing Date: 3/23/2021 Room Number: 329

1 **Fiscal Implications:** None.

2 **Department Testimony:** The department appreciates the intent of HCR 132, which attempts to
3 clarify that state-authorized medical use of cannabis does not violate the Federal Controlled
4 Substances Act by requesting the Department of Health to submit a request to the Drug
5 Enforcement Administration (DEA) for an exception to regulations and to submit a petition to
6 initiate proceedings for federal rulemaking. The resolution also requires the department to
7 include the following wording in its petition: "persons using marijuana in compliance with state
8 law are exempt from registration" (page 2, lines 27-28).

9 Obtaining an exception from the Federal Controlled Substance Act for the state-authorized use of
10 medical cannabis would potentially benefit the State's residents. However, the department's
11 understanding is that 21 CFR § 1308.35 precludes petitioning the DEA to reschedule or exempt
12 any processed plant material containing any amount of tetrahydrocannabinol (THC) that is used
13 or intended for use for human consumption. Since the purpose of the medical cannabis
14 provisions in Chapter 329, HRS, is expressly to permit registered patients to use cannabis,
15 including by consuming it, Chapter 329, HRS permits human consumption of THC, and it is
16 therefore highly unlikely the DEA would entertain the department's request as the request would
17 violate 21 CFR § 1308.35.

1 Furthermore, the wording of the resolution with respect to registration, "persons using marijuana
2 in compliance with state law are exempt from registration," (page 2, lines 37-38), raises concerns
3 because it could confuse qualifying patients, qualifying out-of-state patients, and their
4 caregivers. This wording could lead patients and their caregivers to believe that they are not
5 required to register with the department to use cannabis for medical purposes. By failing to
6 register with the department, patients and caregivers could expose themselves to criminal
7 liability related to their medical use of cannabis.

8 **Offered Amendments:** None.

9 Thank you for the opportunity to submit testimony.



Akamai Cannabis Clinic
3615 Harding Ave, Suite 304
Honolulu, HI 96816

TESTIMONY ON HOUSE CONCURRENT RESOLUTION 132
REQUESTING DOH TO FILE FOR IMMEDIATE AND PERMANENT RELIEF

By
Clifton Otto, MD

House Committee on Health, Human Services, & Homelessness
Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair

Tuesday, March 23, 2021; 9:00 AM
State Capitol, Videoconference

Thank you for the opportunity to provide testimony in **STRONG SUPPORT** of this measure.

It has been nearly twenty-one years since Hawaii exercised its constitutional authority to decide how controlled substances are used within the state and created a state regulated medical cannabis program.

However, by doing so, a conflict was created between the federal regulation of marijuana and the state authorized use of cannabis for medical purposes in Hawaii. This conflict has created numerous unintended consequences that have negatively impacted our medical cannabis patients and dispensaries for years.

This resolution is a first step towards resolving this conflict and harmonizing the state and federal regulation of cannabis. Such harmonization is necessary to end the current discrimination against our patients and dispensaries and to reign in a disregard for the rule of law that is encouraging criminal activity across the State.

Please consider the following non-substantiative changes to this measure for clarity and consistency:

WHEREAS, Act 228, Session Laws of Hawaii 2000 (Act 228), was enacted, making Hawaii the first state via the legislative process to authorize the medical use of [~~medical marijuana to~~

~~treat~~] cannabis for debilitating medical conditions including cancer, glaucoma, human immunodeficiency virus, acquired immune deficiency syndrome, and other chronic or debilitating diseases; and

WHEREAS, at the time Act 228 was enacted there was ample evidence to show that medical [~~marijuana~~] cannabis helps to alleviate pain and has other benefits for severely ill patients; and

~~[WHEREAS, federal law expressly prohibits the use of marijuana, despite the evidence of the benefits of using medical cannabis, and]~~

WHEREAS, [~~this lack of clarity between state and federal marijuana laws~~] the current conflict between the state authorized use of cannabis for medical purposes in Hawaii and the federal regulation of marijuana has repercussions for medical cannabis patients and the State's medical cannabis dispensaries, including loss of employment and discrimination in child custody hearings, federally subsidized housing, and applications for federal firearms permits, life insurance, and disability insurance for patients who use medical cannabis in compliance with state law; and

WHEREAS, Title 21 Code of Federal Regulations section 1307.03 allows the Administrator of the Drug Enforcement Administration to grant exceptions to certain federal regulations; and

WHEREAS, obtaining an exception from the [~~federal Controlled Substances Act~~] Drug Enforcement Administration for the state-authorized use of [~~medical~~] cannabis would benefit the State's residents who use [~~medical~~] cannabis for medical purposes and the State's medical cannabis dispensaries; now, therefore,

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BE IT RESOLVED by the House of Representatives of the Thirty-first Legislature of the State of Hawaii, Regular Session of 2021, the Senate concurring, that the Department of Health is requested to submit [~~a request~~] an application to the Drug Enforcement Administration for an immediate exception to regulations and a petition to initiate proceedings for federal rulemaking to clarify that the state-authorized use of [~~medical~~] cannabis does not violate the federal Controlled Substances Act; and

BE IT FURTHER RESOLVED that when [~~making the request~~] submitting an application for an exception to regulations in accordance with Title 21 Code of Federal Regulations section 1307.03, the Department of Health is urged to argue that Hawaii's medical cannabis laws do not create any positive conflict with state or federal drug laws and to request a written acknowledgement from the Drug Enforcement Administration that the listing of marijuana as a controlled substance in Schedule I of the federal Controlled Substances Act does not apply to the [~~non-prescription~~] state authorized use of cannabis under Hawaii's medical cannabis registry and medical cannabis dispensary programs; and

BE IT FURTHER RESOLVED that when making a petition for federal rule making in accordance with Title 21 Code of Federal Regulations section 1308.43, the Department of Health is urged to offer the following proposed [~~language~~] rule: "\$1307. State Authorization. The listing of marijuana as a controlled substance in Schedule I does not apply to the state-authorized use of marijuana, and persons using marijuana in compliance with state law are exempt from registration."; and

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BE IT FURTHER RESOLVED that a certified copy of this Concurrent Resolution be transmitted to the Director of Health, the Governor, The Lieutenant Governor, the Director of Public Safety, the Director of Transportation, and the Office of the Attorney General.

Thank you for considering these suggestions for changes.

Aloha.



To: Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair
House Committee on Health, Human Services, & Homelessness

Fr: Jaclyn L. Moore, Pharm.D., CEO Big Island Grown Dispensaries

Re: Testimony in Support of HCR132

REQUESTING THE DEPARTMENT OF HEALTH TO SUBMIT A REQUEST TO THE DRUG ENFORCEMENT ADMINISTRATION FOR AN EXCEPTION TO REGULATIONS AND A PETITION TO INITIATE PROCEEDINGS FOR FEDERAL RULEMAKING TO CLARIFY THAT THE STATE-AUTHORIZED USE OF MEDICAL CANNABIS DOES NOT VIOLATE THE FEDERAL CONTROLLED SUBSTANCES ACT.

Dear Chairs, Vice-Chairs, and Members of the Committees:

Big Island Grown Dispensaries is one of eight dispensary licensees in the State. We operate a production facility and 3 retail locations on the Big Island of Hawaii. Our medical cannabis operation currently employs 60+ Big Island residents. We submit testimony today in **support of HCR132, and view this as a huge step forward for the medical cannabis program, and the patients the program serves.**

We appreciate the efforts, and the steps this committee is taking to clarify that the State authorized use of medical cannabis does not violate the federal controlled substance act. These efforts, and subsequent progress made will ultimately benefit 329 qualifying patients that continue to face discrimination despite functioning within a State legal medical cannabis program.

Thank you for the opportunity to testify.

Jaclyn L. Moore, Pharm.D., CEO Big Island Grown Dispensaries

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION 132
RELATING TO CONTROLLED SUBSTANCES**

House Committee Health, Human Services, & Homelessness

Representative Ryan I. Yamane, Chair and Representative Adrian K. Tam, Vice
Chair

Tuesday, March 23rd, 2021 9:00am

On Behalf of Patients Who Rely on Medical Cannabis and Members of the Hawaii Patients Union We Are Calling For Strong Support of HCR132 and it's companion, HR112.

Aloha Chair, Yamane and Vice Chair Tam and members of the House Health, Human Services, & Homelessness committee. Thank you for the opportunity to testify in SUPPORT of this resolution.

A cornerstone of healing is understanding. Whether you are trying to understand how to treat symptoms of a disease or the reasons your child is denied the basic human right to medicine. We do not understand why children are being denied medicine in school but we are given a reason. We are told a conflict exists between state and federal law. Attorney General Connors has testified that Cannabis is federally illegal. We believe her and would recommend kids with Cannabis treatable diseases stay out of school if it weren't for her confusing message that federal laws should somehow be ignored.

Whether it's gun laws (2nd amendment), privacy laws (HIPAA) or our own medical Cannabis laws, confusion exists. Voices are not being heard and trust in government falters in conflicts. Ethics and moral judgement is questioned and unrest develops when voices are not heard. By passing this resolution your committee can demonstrate that you care about federal law.

By passing HCR 132 we can all understand a little better how the stigmatization of Cannabis patients affects all of us. Should the legislature decide that clarification of the supposed federal conflict with state law exists, this resolution would fill in the gaps of awareness by simply asking the DEA for an exemption for our medical Cannabis patients.

If silence is the preferred treatment we will seek other ways for others to hear our voices. We realize the state legislature may feel powerless but the simple asking of an exemption from the DEA would clarify the state's intention and ability to ask for help. As patients we ask for help when we need it. We're asking for your help to resolve this conflict. CARES funding may not be used to support our 31,000 licensed patients if the program is actually illegal. But not knowing also prevents anyone from trying. It's time to end the hypocrisy. It's been more than twenty years of running the program without an exemption. We're asking for your help.

For your consideration:

Legal Authority and Background

The Controlled Substances Act (CSA) requires all persons who seek to manufacture a controlled substance to obtain a DEA registration.[1] 21 U.S.C. 822(a)(1). The CSA defines "manufacture" to include the "production" of a controlled substance, which in turn includes, among other things, the planting, cultivation, growing, or harvesting of a controlled substance. 21 U.S.C. 802(15), (22).

Thus, any person who seeks to plant, cultivate, grow, or harvest marijuana to supply researchers or for other uses permissible under the CSA (such as product development) must obtain a DEA manufacturing registration. Because marijuana is a schedule I controlled substance, applications by persons seeking to become registered to manufacture marijuana are governed by 21 U.S.C. 823(a). See generally 76 FR 51403 (2011); 74 FR 2101 (2009), pet. for rev. denied, *Craker v. DEA*, 714 F.3d 17 (1st Cir. 2013). DEA's Administrator has the authority to grant a registration under section 823(a).

To do so, the Administrator must determine that two conditions are satisfied:

(1) The registration is consistent with the public interest (based on the enumerated factors in section 823(a)), and (2) the registration is consistent with U.S. obligations under the Single Convention on Narcotic Drugs, 1961 ("Single Convention" or "Treaty"), 18 U.S.T. 1407.[4]

The application for states is here:

<https://apps.deadiversion.usdoj.gov/webforms2/spring/main?execution=e1s1>

Thank you again for the opportunity to share this information and support this important resolution.

TO: COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS
From: Wendy Gibson-Viviani RN/BSN
RE: HCR132—In Support
HEARING Tuesday, March 23, 2021 at 9:00 AM

Dear Rep. Ryan I. Yamane, Chair, Rep. Adrian K. Tam, Vice Chair and Members of the Committee,

In 1971 Richard Nixon declared drug abuse to be “Enemy number ONE” and launched a vicious, racist War on Drugs—now known as a War on People who use marijuana. It specifically targeted Nixon’s enemies: Vietnam War protesters and black people. He promoted making marijuana and heroin illegal to disrupt Hippy and Black communities. Nixon counsel and former Assistant to the President John Ehrlichman later revealed that:

“We knew we couldn’t make it illegal to be either against the war or black. But by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news”.

And so, Marijuana/Marihuana was placed into the **Schedule I drug** assignment (in the Controlled Substance Act). This CSA category is reserved for Drugs distinguished as being the most dangerous drugs on the planet and have **no “accepted” medicinal use**. This assignment was never based upon public health or safety issues. It was not based upon any science about the habit-forming, non-toxic, medicinal plant, “Marijuana/Marihuana”.

In 2000, Hawaii legislators **accepted the medical use for cannabis** (AKA Marijuana) and created a conflict between Federal and State Law. To date, 35 U.S. States, four U.S. territories, and the District of Columbia, allow cannabis for medical purposes. This conflict has led to the mistreatment and discrimination of medical cannabis users at work, at home, at school and in the medical healthcare system. Patients face loss of employment, housing, disability insurance, life insurance and risk having their medicine taken away from them if they try to use it when they are in a hospital.

The US Congress has prohibited the Federal DOJ from spending money to criminalize and prosecute medical cannabis programs that are following State laws.

HCR 132 is a good first step towards resolving the State/Federal Govt conflict and harmonizing the regulation of cannabis. Such harmonization is necessary to end the current discrimination against our patients and dispensaries.

Please support passage of this resolution. Thank you for the opportunity to provide testimony.
Wendy Gibson-Viviani RN/BSN Cannabis Nurse Educator
Kailua Resident