TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024

ON THE FOLLOWING MEASURE:
S.B. NO. 2461, RELATING TO MEDICAL CANNABIS.

BEFORE THE:
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Monday, February 12, 2024 **TIME:** 1:02 p.m.

LOCATION: State Capitol, Room 225 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Andrew Goff, Deputy Attorney General

Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments.

The purposes of this bill are to amend the medical cannabis laws in Hawaii to clarify that any medical cannabis dispensary may purchase cannabis and manufactured cannabis products directly from another dispensary as a matter of course, without the need to demonstrate a need for the purchase, and to require the Department of Health (DOH) to adopt rules implementing statutory changes to the types of medical cannabis products that a dispensary may manufacture and distribute within nine months of the statutory change.

Section 3(2) of the bill, on page 5, lines 8-13, proposes to amend section 329D-10(d), Hawaii Revised Statutes (HRS), to require the DOH to adopt rules within nine months of a statutory change permitting new types of medical cannabis products. If DOH does not adopt rules within the specified timeframe, "dispensaries may distribute medical cannabis products in compliance with this chapter." Page 5, lines 11-13. However, the medical cannabis dispensary laws, chapter 329D, HRS, do not allow for a cannabis product to be sold unless adequate testing rules are adopted and complied with.

Section 329D-8, HRS, requires DOH to establish and enforce product standards and testing standards for content, contamination, and consistency of manufactured

cannabis products. Some cannabis products, such as edibles, require very specific standards related to manufacturing, testing, labeling, or dosage. *See* section 11-850-76, Hawaii Administrative Rules. If DOH does not adopt rules that establish testing standards for the content, contamination, and consistency of a new manufactured cannabis product, a dispensary should not be able to sell the new product without compliance with chapter 329D, HRS.

The Department also notes that the amendment to section 329D-10(d) on page 5, lines 8-13, would not have an effect on some of the manufactured cannabis products specified in section 329D-10. For example, 329D-10(a)(9) authorizes "[p]re-rolled cannabis flower products, as specified by the department[.]" Including "as specified by the department" in the product description requires the DOH to specify what types of pre-rolled cannabis flower products are allowed. A dispensary, therefore, would not be able to sell a pre-rolled cannabis flower product in compliance with chapter 329D unless the DOH adopts rules to implement this subsection.

To alleviate these concerns, we recommend deleting the last sentence of the amendment made to section 329D-10(d) by section 3(2), page 5, lines 11-13, that reads: "If no rules are adopted, dispensaries may distribute medical cannabis products in compliance with this chapter."

Thank you for the opportunity to provide comments.

JOSH GREEN, M.D.
GOVERNOR OF HAWAI'I
KE KIA'ÂINA O KA MOKU'ÂINA 'O HAWAI'I

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Testimony in OPPOSITION to SB2461
RELATING TO MEDICAL CANNABIS

SENATOR JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Hearing Date: 2/12/2024 Room Number: 225

Fiscal Implications: N/A.

Department Testimony: The Department of Health (department) Office of Medical Cannabis Control and Regulation (OMCCR) respectfully opposes SB2461 which amends section 329D-10 subsection (d) to require that "All rules adopted pursuant to this section shall be adopted no later than nine months after a product is permitted to be manufactured and distributed pursuant to subsection (a). If no rules are adopted, dispensaries may distribute medical cannabis products in compliance with this chapter." Specifying a time limit for rulemaking is not only unfair to the program, doing so could jeopardize the health and safety of patients and the public.

OMCCR is responsible for registration of qualifying patients for medical use of cannabis; licensing and inspecting dispensary operations and medicinal cannabis products; and, since May 2023, hemp processor registration and regulation of hemp-cannabinoid consumer products. The legislature provided OMCCR with four (4) additional positions to support the newly acquired hemp responsibilities, but funding for these does not begin until FY25. As such, all the duties pertaining to the dispensary licensing and hemp regulation is being managed by the Medical Cannabis Dispensary Licensing Section (MCDLS).

MCDLS has a total of seven (7) staff. A Program Specialist VI (Supervisor), an Office Assistant IV, and five (5) Surveyors. Together these staff are responsible for inspecting each of 37 licensed facilities, reviewing product manufacturing and packaging, overseeing compliance with

laboratory testing, inventory tracking, security requirements, investigating patient complaints, responding to inquiries, and open records requests, and revising Chapter 11-850, HAR. In addition, these staff are now also responsible for reviewing and approving requests for dispensary-to-dispensary sales, registering hemp processors, and revising Chapter 11-37, HAR. Act 108 SLH 2023 was an omnibus medical cannabis bill that included numerous changes to Chapter 329D, HRS. It provided for a "waiting room" area at retail dispensaries to support patient access. It added pre-rolled cannabis flower products as an allowed manufactured product form. It allowed retail locations to have two signs instead of only one. It provided for dispensary-to-dispensary sales. It placed a 2.5% limit on annual increases to license renewal fees. It authorized the department to approve colored lettering on product packaging. It authorized the department to allow construction and maintenance workers to enter dispensary facilities without a background check with proper supervision. It clarified the fining authority for violations. And it required the department to conduct an education and outreach program. Most of these changes require revision of Chapter 11-850, HAR.

In addition, Act 263 SLH 2023 was an omnibus hemp bill that included numerous changes to Chapter 328G, HRS. It clarified that Chapter 328G applies only to processing of hemp biomass into certain forms and their sale and distribution. It added new definitions, including a restrictive definition of "Manufactured hemp product" which is currently preventing the department from approving new product forms. It changed registration of hemp processors to a permit system and added a requirement that the department conduct background checks for applicants who are not USDA hemp cultivator license holders. It added additional standards for hemp crude extract and manufactured products. And, most importantly, it specified that no manufactured products or crude extract could be sold without rules pursuant to Chapter 328G.

Despite these challenges, MCDLS successfully completed an amendment of Chapter 11-850 and submitted it to the Office of the Lt. Governor for consideration and approval on July 14, 2023, just 13 calendar days after the July 1, 2023 effective date of Act 108. The revised rules became effective on August 7, 2023. The amendments included: establishing standards for dispensary-to-dispensary sales of cannabis and manufactured cannabis products; reducing the required number

of employees for transport of cannabis and manufactured cannabis products from two employees to one employee; clarifying transport requirements for inter-dispensary shipments; applying the THC dosage and per package limits in place for manufactured products to edible products; allowing dispensary licensees to post up to two signs; establishing standards for entry of infrastructure workers to dispensary facilities; and clarifying violation fees.

MCDLS prioritized the implementation of the dispensary-to-dispensary sales because the dispensary licensees had emphasized that these were needed and because the program believes that this would greatly benefit patients by giving patients a wider variety of product options, previously limited by what the dispensaries on their island produce, and by streamlining manufacturing, result in lower product costs. MCDLS chose to defer implementing pre-rolls to provide adequate time to research the various considerations to best serve patients as well as protect their health. These include what type of paper to allow, the weight content, requiring a filter, allowed additives, flavorings, etc. This research has been ongoing since the Act 108 became effective and would have significantly delayed implementation of dispensary-to-dispensary sales. Dispensary licensees have been informed of these decisions from the start.

Immediately after the revised Chapter 11-850 amendments were submitted for approval, MCDLS shifted to revisions of Chapter 11-37, HAR. As stated above, without revised rules, hemp processors would not be able to apply for or renew processing permits and existing processors are unable to sell crude extract. The draft revised rules have been completed and are currently being reviewed. We are hopeful the rules will be ready to submit for approval by the end of February, at which time we will return to another revision of Chapter 11-850 to allow for manufacturing of pre-rolls.

OMCCR fully understands the legislature's interest is having legislative changes implemented quickly. However, OMCCR has limited resources. While MCDLS conducts all the research into the rule changes, we must pay a staff person from another program 40 hours of overtime per month to convert everything into Ramseyer format, cross-check for potential interaction or impact with other rules, and prepare and submit the revision request documents. This is the only

way OMCCR was able to complete four (4) revisions of Chapter 11-850 over the past two years while ensuring our function of maintaining patient safety, product safety, and public safety as guiding principles. Placing a strict time limit for rulemaking on the program will require us to prioritize rulemaking over these other program priorities to the detriment of patients and the public. OMCCR asks that SB2461 be deferred.

Thank you for the opportunity to testify.

Offered Amendments: None

SanHi
GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 9, 2024

TO: Senator Joy San Buenaventura
Chair, Committee on Health and Human Services

Senator Henry Aquino
Vice Chair, Committee on Health and Human Services

Submitted Via Capitol Website

FROM: Jena Matila

RE: **S.B. 2461 – Relating to Medical Cannabis**
Hearing Date: Monday, February 12, 2024 at 1:02 p.m.
Conference Room: 225

Dear Chair San Buenaventura, Vice Chair Aquino, and members of the Committee:

We submit this testimony on behalf of Cure Oahu in **support** of S.B. 2461. Cure Oahu is a vertically integrated licensed dispensary that has been operating in the State of Hawaii since 2018, with two retail locations in the Kapahulu and Kapolei areas.

S.B. 2461 amends the dispensary program law to resolve matters that have arisen since the passage of Act 309 (SLH 2022) and Act 108 (SLH 2023). Specifically, the bill seeks to allow dispensary to dispensary sales to move forward and allow for the sale of cannabis products approved by the Legislature by putting a timeline on rulemaking.

Despite the legislative intent of Acts 309 and 108 to allow wholesale between dispensaries more freely, wholesale currently occurs on an emergency basis with an under 30 days request and approval process, or on a prove of need basis requiring over 30 days request and approval process. Current rules also give the Department of Health full discretion to reject requests with no specific timeline to respond. This limited wholesale approach impairs dispensaries' ability to do future planning, share manufacturing capabilities or specialize in equipment or products without facing significant risk of potential wholesale request rejections. Wholesale expands patient access to a variety of formulations, products and strains without sacrificing safety and consistency, and should be more widely supported. On a related matter, the sale of pre-rolled cannabis flower products was authorized under Act 108, but the Department has not engaged in rulemaking for the product since the law's passage. As a result, patients do not have access to this option. S.B. 2461 would address these issues by explicitly stating a dispensary may purchase cannabis and

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manufactured cannabis products from another dispensary, and placing a time limit on rulemaking to allow distribution of products in a timely manner.

Thank you for the opportunity to submit testimony in support of this bill.

To: Senator Joy Buenaventura, Chair
Senator Henry Aquino, Vice-Chair
Members of the Health & Human Services Committee

Fr: TY Cheng, Chairman, Hawaii Cannabis Industry Association

Re: Testimony **In SUPPORT** of **Senate Bill (SB) 2461**

RELATING TO MEDICAL CANNABIS.
Amends the circumstances under which medical cannabis may be transported by and between dispensaries. Requires the Department of Health to adopt rules.

Dear Chair, Vice-Chair, and Members of the Committee:

The Hawaii Cannabis Industry Association (HICIA) is an industry group representing medical cannabis dispensary licensee interests in Hawaii. HICIA **SUPPORTS SB2461** as this bill may affect the medical cannabis dispensary program by expediting wholesale transactions between existing medical cannabis dispensary licensees and allowing the sale of cannabis products (i.e. prerolls) previously approved by legislators.

The Department of Health (the "DOH") has been reluctant to support the medical cannabis program. The DOH did not implement rules in accordance with the legislative wishes of lawmakers and previously passed laws. Instead, the DOH has either implemented rules which are not within the spirit of the law (i.e. requiring conditions on when and why a wholesale transaction between licenses may occur); or have wholly disregarded newly passed laws (i.e. leaving out rules on allowing cannabis preroll sales and allowing members of the public to enter a dispensary lobby when assisting a disabled 329 patient). HB1952 addresses the glaring unilateral additions and omissions by requiring the DOH to issue rules in a timely manner. In previous House testimony, the DOH admits to an institutional culture of anti-smoking which prevented them from issuing rules to allow for the manufacture and sale of cannabis prerolls even though the legislature amended the law to allow for prerolls as a manufactured cannabis product in 2022.

The DOH is an administrator and should not pick and choose what laws to implement when such laws are duly ratified because it does not agree with the policies of the legislative branch.

Thank you for the opportunity to testify. I am available over Zoom for any questions.

Aloha,

TY Cheng

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TESTIMONY ON SENATE BILL 2461
RELATING TO MEDICAL CANNABIS
By
Clifton Otto, MD

Senate Committee on Health and Human Services
Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair

Monday, February 12, 2024; 1:02 PM
State Capitol, Room 225 & Videoconference

Thank you for the opportunity to provide COMMENTS on this measure.

The department needs to have discretion over wholesaling between dispensaries, because wholesaling cannabis between certain islands violates interstate commerce. The department should be able to determine the extent to which it will participate in these activities, to include not participating at all.

The same should hold true for issuing rules for the sale of unhealthy dispensary products. The Legislature erred when it added Pre-rolled Marijuana Cigarettes (Prerolls) to the list of allowed dispensary products because encouraging patients to engage in smoking violates the department's mission to protect the public health.

In addition, if a patient does not have the manual dexterity to roll a joint, then they probably also don't have the manual dexterity to safely hold a joint, which means that Prerolls are a fire hazard as well as a health risk.

The Legislature should correct this error by removing Prerolls from the allowed product list for patients and reserve this product for an adult use program that is administered by a different department. The use of a dry herb vaporizer is the preferred inhalation method for the medical use of cannabis and is much easier to hold than a joint.

To correct these deficiencies, please make the following amendments to this bill:

SECTION 2. Section 329D-6, Hawaii Revised Statutes, is amended by amending subsection (r) to read as follows:

"(r) A dispensary may purchase cannabis and manufactured cannabis products from another dispensary. The department [~~may~~] [~~shall~~] may authorize a dispensary to purchase cannabis and manufactured cannabis products from another dispensary in a manner prescribed by the department by rules adopted pursuant to section 329D-27; provided that:

[~~(1) The purchasing dispensary establishes to the department's satisfaction that:~~

~~(A) The purchase is necessary to ensure that qualifying patients have continuous access to cannabis for medical use; or~~

~~(B) The cannabis and manufactured cannabis products are for medical, scientific, or other legitimate purposes approved by the State;~~

~~(2)~~] (1) The selling dispensary may transport no more than eight hundred ounces, or other amounts with prior approval by the department, of cannabis or manufactured cannabis products to the purchasing dispensary within a thirty-day period;

[~~(3)~~] (2) The cannabis and manufactured cannabis products are transported between the dispensaries for

medical[~~,~~] sales, scientific[~~,~~] use, or other legitimate purposes approved by the State; and

[~~(4)~~] (3) Nothing in this subsection shall relieve any dispensary of its responsibilities and obligations under this chapter and chapter 329 with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State."

SECTION 3. Section 329D-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The types of medical cannabis products that a dispensary may [~~be manufactured and distributed~~] manufacture and distribute pursuant to this chapter shall be limited to:

(1) Capsules;

(2) Lozenges;

(3) Pills;

(4) Oils and oil extracts;

(5) Tinctures;

(6) Ointments and skin lotions;

(7) Transdermal patches;

(8) Pre-filled and sealed containers used to aerosolize and deliver cannabis orally or by inhalation, such as an inhaler, nebulizer, or device that provides safe pulmonary administration; provided that:

(A) Containers need not be manufactured by the licensed dispensary but shall be filled with cannabis, cannabis oils, or cannabis extracts manufactured by the licensed dispensary or purchased from another dispensary pursuant to section 329D-6(r); but shall not contain nicotine, tobacco-related products, or any other non-cannabis derived products; and

(B) For devices that provide safe pulmonary administration:

(i) The heating element of the device, if any, shall be made of inert materials such as glass, ceramic, or stainless steel, and not of plastic or rubber;

(ii) The device shall be distributed solely for use with single-use, pre-filled, tamper-resistant, sealed containers that do not contain nicotine or other tobacco products;

(iii) There shall be a temperature control on the device that is regulated to prevent the combustion of cannabis oil; and

(iv) The device need not be manufactured by the licensed dispensary;

[~~(9) Pre-rolled cannabis flower products, as specified by the department~~];

(~~10~~) (9) Edible cannabis products, as specified by the department; and

(~~11~~) (10) Other products as specified by the department."

2. By amending subsection (d) to read:

"(d) Any medical cannabis product manufactured and distributed pursuant to this chapter shall be regulated and approved by the department and meet all requirements of rules adopted pursuant to this chapter; provided that the department shall establish requirements for child-resistant packaging and accurate and proper labeling. [~~All rules adopted pursuant to this section shall be adopted no later than nine months after a product is permitted to be manufactured and distributed pursuant to subsection (a)~~]."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 3000.