

JOSH GREEN, MD
GOVERNOR



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Deputy Director
Administration

Michael Hoffman
Deputy Director
Corrections

William Oku, Jr.
Deputy Director
Law Enforcement

STATE OF HAWAII | KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF PUBLIC SAFETY
KA 'OIHANA HO'OPALEKANA LEHULEHU
1177 Alakea Street
Honolulu, Hawaii 96813

No. _____

TESTIMONY ON SENATE BILL 673. SENATE DRAFT (SD) 1
RELATING TO MEDICAL CANNABIS

By
Tommy Johnson, Director

Committee on Health and Homelessness
Rep. Della Au Belatti, Chair
Rep. Jenna Takenouchi, Vice Chair

Wednesday, March 15, 2023; 10:30 a.m.

Chair Belatti, Vice Chair Takenouchi, and Members of the Committee:

The Department of Public Safety (PSD) **offers comments** for Senate Bill (SB) 673, Senate Draft (SD) 1, that proposes to allow health care facilities to permit terminally ill patients to use medical cannabis under certain conditions.

Section 2, Page 2 Lines 19-21 and Page 3 Lines 1-4 currently states:

(b) Notwithstanding any other law to the contrary and the classification of medicinal cannabis as a schedule I controlled substance, health care facilities permitting patient use of medicinal cannabis shall comply with drug and medication requirements applicable to Schedule II, III, and IV controlled substances and shall be subject to enforcement actions by the department of health.

PSD respectfully recommends that this part be removed from SB 673, SD 1 because it is problematic and would create confusing and chaotic implementation of the bill. Cannabis is currently a schedule I controlled substance on the both the federal and state drug schedules. Imposing the requirements of other scheduled drugs on schedule I controlled substances is nearly impossible to do because schedule I drugs by legal and traditional

definition have no accepted medical use. Therefore, the laws that traditionally recognize “legal” drugs with traditionally accepted medical uses (i.e., drugs in schedules II, III, and IV) cannot readily apply to schedule I drugs. Moreover, in the scenario posed by this proposal, the medical cannabis used in a healthcare facility by a patient is considered “ultimate-user” medication. In other words, the drugs already belong to the user and have become removed from regulation within the highly regulated closed distribution system created by the Hawaii Uniform Controlled Substances Act (chapter 329, HRS)¹. “Ultimate-user” drugs are tantamount to drugs and medications purchased from a pharmacy and kept in the medicine cabinets of our homes. Consequently, it would be impossible to apply the, “...drug and medication requirements applicable to Schedule II, III, and IV controlled substances...” on medical cannabis used by a terminally ill patient because the system of laws that normally control drugs before they come into the possession of the ultimate user would no longer apply. In this scenario, the drugs are already in the ultimate-user’s possession.

Thank you for the opportunity to testify on this measure.

¹ It is important to note that while an ultimate user’s drugs are not regulated by the Controlled Substances Act once those drugs are dispensed to the ultimate user, other laws may apply. Generally, an ultimate user’s controlled substances may not be distributed, given, or conveyed to another person as this may invoke the criminal drug laws pertaining to illegal distribution of detrimental, harmful or dangerous drugs as listed in the Hawaii Penal Code.

JOSH GREEN
GOVERNOR



JORDAN LOWE
DIRECTOR

MICHAEL S. VINCENT
Deputy Director
Administration

STATE OF HAWAII | KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF LAW ENFORCEMENT
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Vacant
Deputy Director
Law Enforcement

No.

TESTIMONY ON SENATE BILL 673, SENATE DRAFT (SD) 1
RELATING TO MEDICAL CANNABIS
Before the House Committee on Health and Homelessness
Wednesday, March 15, 2023; 10:30 a.m.
State Capitol Conference Room 329, Via Videoconference
WRITTEN TESTIMONY ONLY

Chair Belatti, Vice Chair Takenouchi, and Members of the Committee:

The Department of Law Enforcement (DLE) **offers comments** for Senate Bill (SB) 673, Senate Draft (SD) 1, that proposes to allow health care facilities to permit terminally ill patients to use medical cannabis under certain conditions.

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March 15, 2023 at 10:30 am
Conference Room 329

House Committee on Health & Homelessness

To: Chair Della Au Belatti
Vice Chair Jenna Takenouchi

From: Hilton Raethel
President and CEO
Healthcare Association of Hawaii

Re: Comments
SB 673 SD 1, Relating to Medical Cannabis

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the health care continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high-quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 30,000 people statewide.

Thank you for the opportunity to **submit comments** on this measure, which would allow—but not require—healthcare facilities to offer terminally ill patients who are registered medical marijuana users to access and use the drug while admitted to an inpatient setting. Only one state (California) has passed a law allowing this, and it has just recently gone into effect. We appreciate that this measure was amended to be permissive, rather than mandated, because there are remaining and serious concerns about allowing the possession and use of cannabis in federally-certified facilities. Further, healthcare facilities have contracts with private insurers that also contain requirements to limit controlled substance use in facilities.

As originally written, this measure would apply to inpatient care in hospitals, nursing homes, and hospice agencies providing inpatient care. This would have a significant impact on operations for many types of providers that rely on federal reimbursements—in fact, hospice is almost solely funded by Medicaid and Medicare revenues, so almost the entirety of their budgets could be at risk. Further, while we appreciate that there is an attempt to provide a safe harbor, it ultimately will not protect providers since any enforcement action or investigation by a federal agency will not stop if the policy is ended. Once an enforcement action or investigation has been initiated, there is the potential for any provider to lose their license and ability to participate in any federal programs, including grants or education reimbursements. There are also no guarantees that current or future policies at the federal level will ensure that providers can provide this option without risk.

We would ask that your committee maintain the permissive nature of this measure, or defer the measure overall, considering the substantial unanswered questions that remain about how it can be implemented without risk to providers. Thank you for the opportunity to provide testimony on this measure.

SB-673-SD-1

Submitted on: 3/13/2023 6:32:04 PM

Testimony for HLT on 3/15/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
dain retzlaff	Individual	Support	Written Testimony Only

Comments:

Please pass. Thank you!

DATE: March 15, 2023

TIME: 10:30am

LOCATION: State Capitol, Room 415 South Beretania Street

SB 673 Relating to MEDICAL CANNABIS

SUPPORT SB 673

Aloha Chair Au Belatti, Vice Chair Takenouchi and members of the committee,

My name is Mahinalani Pulotu, and I am a graduate student at the University of Hawaii at Manoa. I am pleased to provide personal testimony on Senate Bill 673.

Studies have found that cannabis can help treat neuropathic pain. Some medical cannabis is designed to relieve symptoms without having the same euphoric, depressing effects of recreational cannabis use. Authorizing healthcare facilities to allow terminally ill patients to use medical cannabis under certain conditions can be the option these types of patients wait to hear. Medical cannabis is less likely to cause an overdose with fewer side effects. To me, it's a possibility of a safer option depending on a patient's condition. If I were in a terminal illness, I would prefer medical cannabis to be my drug rather than to be on opioids or morphine.

Therefore, I support SB 673. I support giving terminally ill patients the autonomy to choose between medical cannabis or another medical drug. The goal is to make these patients as comfortable as possible. So, if medical cannabis allows terminally ill patients this comfort, why hold back on passing this bill? Please consider the benefits and comfort medical cannabis can offer patients suffering.

Mahalo,
Mahinalani Pulotu

SB-673-SD-1

Submitted on: 3/13/2023 10:14:36 PM

Testimony for HLT on 3/15/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark Tamosiunas	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support SB673 relating to medical cannabis. Mahalo.

Chair Belatti and Honorable Committee Members,

My name is Jim Bartell.

I am the father of Ryan Bartell and sponsor of HB957 (Ryan's Law); The Compassionate Access to Medical Cannabis in Health Care Facilities Act.

Ryan and his wife Katie both worked in special education with mostly autistic children. To do that job takes not only special skills, but also great patience and compassion. Ryan had those qualities and was very effective with his students.

They have a son, Conor, who is now thirteen years old.

On March 1st 2018, Ryan called me and my wife, to tell us that he had been diagnosed with stage four pancreatic cancer and had only a few weeks to live. I couldn't believe what I was hearing and my heart sank and the tears swelled.

He was in the hospital on his birthday, March 9th, and he died on April 21st; just 7 weeks after being diagnosed.

What happened between march 1st and april 21st 2018 is why this bill is before you today.

In the first hospital, Ryan was given morphine and other opioids for pain relief, but those weren't strong enough, so they added fentanyl, which is one hundred times more potent than morphine. The result was, he was asleep most of the time. During one of his rare waking moments he said he didn't want to spend his last few weeks sleeping. He told me he wanted to be able to spend time with Katie and Conor, his parents, brother and sister and his many friends.

We suggested medical cannabis as an alternative to the fentanyl, which he agreed to. We had a medical cannabis chemist create cannabis medicines for pain relief. However, we were informed by the hospital that it was their policy was not to allow cannabis in the hospital.

The irony of that policy is that fentanyl and other opioids that kill 125,000 people a year in the u.s. are ok to have in the hospital; but not medical cannabis, which has never killed anyone!

After four weeks on fentanyl we were able to transfer him to another hospital that allowed medical cannabis.

Because he couldn't swallow anything, not even water, the chemist created a medical cannabis spray administered under the tongue for pain relief.

The result was amazing!

Awake and alert during the day, he was able to have conversations with Katie and Conor, me and my wife, his brother and sister and other family and friends.....without pain!

Instead of being asleep from the fentanyl, the medical cannabis provided him with a quality of life for his final two and a half weeks; which allowed him to have much needed conversations with his family; and time to reminisce and laugh with his many friends who came to visit.

Every terminally ill patient should be able to have the same opportunity as Ryan; to spend their final days with as much quality and dignity as possible. They are dying.....why wouldn't we want that for them?

In conclusion, the happiest moments in my life were the first time I held each of my three children when they were born.

The saddest moment in my life was holding Ryan's hand as he took his last breath.

My hope is that my saddest moment will be made less painful by ensuring that Ryan's Law will allow thousands of other terminally ill patients to live their final days with the quality and dignity that he was able to experience.

Please support HB957 (Ryan's law). Thank you.

Respectfully,

Jim Bartell

Dr. Myron Berney, ND, LAc
2352 Komo Mai Drive
Pearl City, HI 96782
808-392-3366

SB 673 SD1

REWRITE

ADD The Compassionate Clause in Healthcare

The Compassionate Clause in Healthcare was deleted from the medical licensing law for the false fear of physician assisted suicide abuse.

Although following that the legislature did pass a physician assisted suicide law. This new law to allow physician assisted suicide is not actually being used by patients or physicians.

However, the need to restore “the compassionate clause in healthcare” continues to be extremely important especially during this unending pandemic.

Even regular medical doctors were prohibited by the FTC, FDA, & CDC from providing any early intervention for health care related to the coronavirus. **All medical professions, all health care delivery was opposed by the federal government for COVID-19 other than vaccination or emergency room & hospitalization.**

Published clinical medical reports within the federal database indicate that **Hemp leaf will block the spike protein and treat COVID-19 disease!** What else are we missing because we lack compassionate care and medicine?

Dr. Myron Berney, ND, LAc

SB-673-SD-1

Submitted on: 3/14/2023 9:55:52 AM

Testimony for HLT on 3/15/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Wendy Gibson-Viviani	Individual	Comments	Written Testimony Only

Comments:

TO: Committee on Health and Homelessness

FROM: Wendy Gibson-Viviani RN

RE: SB673 – Comments Only

Hearing: March 15, 2023 at 10:30 A.M., Videoconference in room 329

Dear Chair Au Belatti, Vice-Chair Takenouchi and Members of the Committee

I would like to submit comments on SB673, on behalf of any terminally ill medical cannabis patients who are being denied access to their medicines--when they need them the most—patients who cannot be here to provide testimony.

I am Cannabis Nurse Educator, Wendy Gibson-Viviani, a 30 year resident of Oahu. I serve on the Political Action committee of the Cannabis Nurses Network. Our group was instrumental in getting a similar bill, called “Ryan’s Law” passed in California in both 2020 and 2021. The 2021 bill became active in January of 2022.

The first Ryan’s Law bill that passed - in 2020 - was vetoed by Governor Gavin Newsome. Healthcare facility administrators expressed fears of federal prosecutions and cuts to funding from Centers for Medicare & Medicaid Services (CMS), if they allowed a schedule I drug on their private property.

Before the second Ryan’s law bill was passed, a California Senator questioned CMS about their policies and procedures regarding allowing terminally ill patients to use cannabis at a healthcare facility. The reply from CMS was:

- *Medicare and Medicaid regulations do not address the use of medical cannabis.*
- *CMS is not aware of a provider that has specifically lost funding or been penalized for permitting the use of medical cannabis.*

- *CMS will not cite healthcare facilities for allowing medical cannabis use unless the US Department of Justice (US DOJ), declares its intent or acts to interfere with state medical cannabis laws.*”

So, for **over a year now, terminally ill patients** in California have been allowed to use their cannabis medicines in certain healthcare settings. Other facilities, in Washington state, at Mayo Clinic's hospitals in Rochester, Minnesota and in Baltimore, Maryland allow this—some have for years.

And, so far, not one healthcare facility has been threatened with being charged with any federal crimes. None have received threats of Medicaid/Medicare funds being cut off—for allowing a terminally ill patient to have cannabis oil or have a gummy bear before bed.

There are many reasons why it is unlikely that healthcare facilities will ever have to deal with these problems, including past and recent history:

- We have bipartisan agreement in the U.S. Congress that the States should decide their own medical cannabis and adult-use cannabis laws.
- Allowing states to decide has been promoted by Presidents Obama, Trump and Biden.
- Since 2014, an amendment in the Omnibus spending bill has prohibited the U.S. Justice Department from spending funds to interfere with the implementation of state medical cannabis laws. Originally called the Rohrabacher-Farr amendment, it remains effective through September 30, 2023 and will very likely be renewed or possibly become a permanent fixture in the bill, before it expires.

So, we know that the US DOJ is not allowed to spend any funds to interfere with those in compliance with state medical cannabis laws. And, CMS *hasn't even created policies that would allow someone to withhold funds, because they didn't anticipate that they would need to consider doing something like this.*

I understand that these unfounded fears led to the unfortunate, perceived need to strip this bill of any power, by changing the language from “Shall” to “May” allow.

I cannot continue to support this bill unless that language can be changed back. If it passes AS IS, it will be worthless to these patients. I can't imagine that any healthcare facility would invest any time and money in training staff and setting up the program unless they are required to.

I think that it's cruel for healthcare professionals to take a patient's medicine away from them, especially when they need it the most. It's unfortunate that Hawaii's terminally ill patients will be denied the opportunity to have compassionate continuity of care with the medicines of their choice—for at least another year.

Please either fix or defer the bill. Maybe we can fix it in 2024 after those who oppose the bill can have time to see what is happening elsewhere. Thank you for the opportunity to share my thoughts on this matter.

Wendy Gibson-Viviani RN/BSN

Kailua. (808) 321-4503

Cannabisnursewendygv@gmailcom

Senator Corey Booker's (March 1, 2023) interview of Attorney General Merrick Garland on the Status of DOJ's marijuana scheduling review- can be viewed at:
<https://www.youtube.com/watch?v=FkEViH6fW8U>

SB-673-SD-1

Submitted on: 3/14/2023 4:14:08 PM

Testimony for HLT on 3/15/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark Gordon	Individual	Support	Written Testimony Only

Comments:

Medical cannabis should definitely be allowed to be given to terminally ill patients. This drug is much safer for pain relief and not addictive as other drugs given to these patients, such as hydrocodone and especially fentanyl, which as we know, is very harmful and deadly.