



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on HCR 132, HD 1
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

SENATOR JARRETT KEOHOKALOLE, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date: 4/9/2021

Room Number: Videoconference

1 **Fiscal Implications:** None.

2 **Department Testimony:** The department appreciates the intent of HCR 132, H.D. 1, which
3 attempts to clarify that state-authorized medical use of cannabis does not violate the Federal
4 Controlled Substances Act by requesting the Department of Health to submit a request to the
5 Drug Enforcement Administration (DEA) for an exception to regulations and to submit a petition
6 to initiate proceedings for federal rulemaking.

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

16 **Offered Amendments:** None.

- 1 Thank you for the opportunity to submit testimony.



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TESTIMONY ON HOUSE CONCURRENT RESOLUTION 132 HOUSE DRAFT 1

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

By
Clifton Otto, MD

Senate Committee on Health
Senator Jarrett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair

Friday, April 9, 2021; 1:10 PM
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 with the federal regulation of marijuana that has negatively impacted our medical cannabis patients and dispensaries for years.

This resolution is a critical step towards resolving this conflict and harmonizing the state and federal regulation of cannabis, while also allowing the Legislature to express its will on this pressing issue.

Please allow me to address concerns that the Department of Health (DOH) raised in its written testimony on this measure for the public hearing held by the House Committee on Health, Human Services, & Homelessness on March 23, 2021.

In its written testimony on HCR132, DOH stated:

“Obtaining an exception from the Federal Controlled Substance Act for the state-authorized use of medical cannabis would potentially benefit the State's residents. However, the department's understanding is that 21 CFR § 1308.35 precludes petitioning the DEA to reschedule or exempt any processed plant material containing any amount of tetrahydrocannabinol (THC) that is used or intended for use for human consumption.”

Let's take a closer look at this federal exemption:

[21 CFR 1308.35:](#)

“§1308.35 Exemption of certain cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols.

(a) Any processed plant material or animal feed mixture containing any amount of tetrahydrocannabinols (THC) that is both:

(1) Made from any portion of a plant of the genus Cannabis excluded from the definition of marijuana under the Act [i.e., the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination] and (2) Not used, or intended for use, for human consumption, has been exempted by the Administrator from the application of the Act and this chapter.”

Basically, this federal rule exempts from the Schedule I list products made for animals from parts of the cannabis plant that fall outside the federal definition of marijuana (ie. stems, sterilized seeds) that may contain trace amounts of THC. An exemption for cannabis material that falls outside the federal definition of marijuana and that is not intended for human use does not preclude an exemption that would simply recognize a state's authority to decide how controlled substances are used within the state.

Similarly, a federal administrative rule ([21 CFR 1308.11](#)) does not pre-empt an authority reserved to the states by the U.S. Constitution to decide how controlled substances are used within the state. It is the unconstitutional application of the federal Schedule I rule for marijuana to Hawaii's Medical Cannabis Program, and the negative consequences being inflicted upon our patients and dispensaries by the misapplication of this rule, that makes a federal exemption so necessary.

DOH also raised concerns about the wording of the proposed rule in this resolution. The language “persons using marijuana in compliance with state law are exempt from registration” is important because it ensures that patients do not need to get federal Schedule I registration from the DEA, which is nearly impossible to obtain, to engage in the state authorized use of cannabis for medical purposes in Hawaii.

Because this wording would appear in a federal regulation, it should be clear that the exemption from registration applies to federal registration with the DEA and not registration with Hawaii's Medical Cannabis Registry Program. However, if DOH is concerned that this wording may be construed by patients to mean that they don't need to register with the program, then DOH could easily provide education for patients under the education requirement of the [Medical Cannabis Registry and Regulation Special Fund](#) to prevent such misunderstanding.

In addition, please consider the following minor changes 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

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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,

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

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the members of Hawaii's Congressional Delegation, Governor, Attorney General, and Director of Health."

Thank you for considering this written testimony.

Aloha.

HCR-132-HD-1

Submitted on: 4/8/2021 8:10:58 AM

Testimony for HTH on 4/9/2021 1:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shana Metsch	Individual	Support	No

Comments:

To: Senate Committee on Health:

Jarrett Keohokalole, Chair

Rosalyn H. Baker, Vice Chair

From: Shana Metsch

Re: Testimony in Support of HCR132

Dear Chair, Vice-Chair, and Members of the Committees,

I am writing today in **strong support of HCR132**. Our daughter, Hannah, has struggled with intractable epilepsy due to a rare gene mutation. She had to endure hundreds of seizures daily, and unfortunately, anti-seizure medications do not control her seizures. She has tried over twenty medications, had a brain stimulator inserted, and was not a brain surgery candidate because her seizures were not focal in origin.

In 2013 we heard about CBD, aka cannabidiol, helping other children with intractable epilepsy. After careful consideration and research that showed success in seizure control, we decided to give it a try, and it was one of the best decisions we have made for our daughter. Hannah is a 329-card holder in Hawaii, which provides her with the ability to access her medical cannabis. However, there is a flaw in the state's system. After all, she cannot attend her classes in a school setting because she uses medical cannabis to control her seizures. The schools in Hawaii cannot give her medication in a school setting due to the conflict of State and Federal law, which has forced her to have a homebound placement.

Supporting HCR 132 is the first step that would allow our daughter and other children in the state who have similar conditions to attend school with their peers. Children need to socialize and be around their peers. No child should have to choose their health over their community and education. We need to ensure that all children in Hawaii can access FAPE (Free Appropriate Public Education).

We humbly ask that you take a hard look at supporting HCR 132. It will not only provide access to children in the state to attend school. But it will also allow people in nursing homes, hospitals, and other settings that are not allowing access to their medical cannabis due to Federal and State conflicts. It is unconscionable that people currently have to choose their health over given freedoms and supporting HC132 would help end this injustice.

Thank you for the opportunity to provide testimony.

Shana Metsch

Princeville, HI