

September 10, 2018

Bruce S. Anderson, PhD  
Director, Department of Health  
1250 Punchbowl Street  
Honolulu, Hawaii 96813

**PETITION TO AMEND A RULE**

Dear Director Anderson,

The current misconception that patients must wait for their 329 registration card to arrive before engaging in the accepted medical use of cannabis in Hawaii, which the Department of Health (DOH) is promoting on its website and in electronic correspondences to certifying providers and patients, is not supported by Hawaii's Medical Use of Cannabis Act or the department's own administrative rules regarding registration cards:

BE ADVISED: PATIENTS AND CAREGIVERS ARE NOT AUTHORIZED FOR THE MEDICAL USE OF CANNABIS UNTIL SUCH TIME THAT THEY RECEIVE THEIR 329 REGISTRATION CARD FROM DOH AND THEY MUST KEEP BOTH THEIR VALID ID AND VALID 329 CARD ON THEM WHENEVER THEY ARE IN POSSESSION OF MEDICAL CANNABIS.

**Hawaii's Medical Use of Cannabis Act has established that "Written Certification" authorizes patients to engage in the medical use of cannabis, and has authorized DOH to require that certifying providers utilize a designated form:**

§329-122 Medical use of cannabis; conditions of use. (a) Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying patient shall be permitted only if:

- (1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;
- (2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of cannabis would likely outweigh the health risks for the particular qualifying patient; and
- (3) The amount of cannabis possessed by the qualifying patient does not exceed an adequate supply.

§329-121 Definitions. As used in this part:

"Written certification" means the qualifying patient's medical records or a statement signed by a qualifying patient's physician or advanced practice registered nurse, stating that in the physician's or advanced practice registered nurse's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of cannabis would

likely outweigh the health risks for the qualifying patient. The department of health may require, through its rulemaking authority, that all written certifications comply with a designated form.

**Hawaii's Medical Use of Cannabis Act has established that patients will be afforded "uninterrupted availability" of cannabis for medical use:**

[§329-121 Definitions.](#) As used in this part:

"Adequate supply" means an amount of medical cannabis jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to ensure the uninterrupted availability of cannabis for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed: ten cannabis plants, whether immature or mature, and four ounces of usable cannabis at any given time. The four ounces of usable cannabis shall include any combination of usable cannabis and manufactured cannabis products, as provided in chapter 329D, with the cannabis in the manufactured cannabis products being calculated using information provided pursuant to section 329D-9(c).

**Hawaii's Medical Use of Cannabis Act has established that patients may distribute material to each other as long as such distribution does not occur in public, as long as an "adequate supply" is not exceeded, and as long as the transfer is not considered a commercial sale:**

[§329-121 Definitions.](#) As used in this part:

"Medical use" means the acquisition, possession, cultivation, use, distribution, or transportation of cannabis or paraphernalia relating to the administration of cannabis to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of cannabis and paraphernalia.

**DOH's administrative rules require that patients carry their registration card once it has been issued by the department:**

[§11-160-31 Possession of registration card](#); identification tags on marijuana plants.

(a) A person to whom the department has issued a registration card shall carry the registration card on his or her person whenever the person is in possession of medical marijuana.

**Nowhere in the statute or the administrative rules is it written that patients must wait for their registration card to arrive before engaging in the medical use of cannabis.**

Clearly, the policy of making patients believe that they must wait for their registration card to arrive goes against the intent of Hawaii's Medical Use of Cannabis Act, and puts our patients at unnecessary risk of additional suffering.

One simple solution to this problem is to require that certifying providers use an official document that already exists; namely the 329 Physician/APRN Certification form that DOH has created and released for use by certifying physicians and APRNs (see Form CBD-C-001, revised 12/29/17). Mandatory use of this form by all certifying providers, as well as education of law enforcement on the validity of the Written Certification, could provide the protection that patients require until their registration card arrives.

Patients could still be notified that it is in their best interest to wait until their registration has been approved before engaging in personal cultivation, since a registration number and expiration date are required for tagging plants.

Therefore, in accordance with HRS 91-6 and HAR 11-1-51, I hereby petition your department to adopt the following amendment:

§11-160-11 Physician requirements for issuing written certifications. Any physician issuing a written certification shall:

- (1) Hold a current and valid Hawaii license to practice pursuant to chapter 453, HRS, and have authority to prescribe drugs;
- (2) Be registered with the department of public safety pursuant to section 329-32, HRS;
- (3) Have a bona fide physician-patient relationship with the qualifying patient;
- (4) Diagnose the qualifying patient as having a debilitating medical condition;
- (5) Be of the professional opinion that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient;
- (6) Explain the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient if the qualifying patient is a minor or an adult lacking legal capacity; and
- (7) Provide all patients with a copy of their Written Certification at the time of certification using a form provided by the department.

I have an interest in this matter as a certifying physician who is involved with the health and welfare of our patients.

Thank you for considering this request. I look forward to your timely response.

Please send all correspondences regarding this petition to the office or email address below.

Aloha,



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