



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

September 18, 2018

Clifton Otto, M.D.
Aloha Medical Consultants, LLC
3615 Harding Avenue, Suite 304
Honolulu, Hawaii 96816

Dear Dr. Otto:

This letter is in response to your letter of September 10, 2018, petitioning the Hawaii State Department of Health (DOH) to amend §11-160-11, Hawaii Administrative Rules, to read as follows:

§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; ~~and~~
- (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.

The amendment that you are proposing would not provide any added benefit, value, or protections to the qualifying patients and/or caregivers in the state of Hawaii regarding the medical use of cannabis. There is nothing prohibiting a physician or Advance Practice Registered Nurse (APRN) from providing a patient with a copy of a written certification for their own personal records. Revising the administrative rules to include this as a requirement is unnecessary and would be potentially confusing.

Chapter 329, Part IX, Hawaii Revised Statutes (HRS), affords qualifying patients and caregivers protection from prosecution involving cannabis under chapter 329 Part IV, HRS, and chapter 712, Part IV, HRS, provided that the individual strictly complies with chapter 329 Part IX, HRS.

Clifton Otto, M.D.

Re: Petition to amend §11-160-11, Hawaii Administrative Rules

September 18, 2018

Page 2

This includes the requirement to register with the department of health (§329-123, HRS.) It is our position that adding a requirement that a physician or APRN provide a written certification to the patient might mislead the patient into thinking that a certificate is a substitution for a registration card, and it is not. Such a misconception could lead to unfortunate arrests and prosecutions if a patient possesses or uses cannabis before being registered and legally entitled to use or possess cannabis.

In your letter, you state that “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.” While you are correct that your statement is not used in the Hawaii Revised Statutes or the Hawaii Administrative Rules, you are mistaken about the legal concept. In addition to the requirement of §329-123, HRS, that qualifying patients and primary caregivers shall register with the department of health, §11-160-31(a), HAR, requires persons to whom the department has issued a registration card to “...carry the registration card on his or her person whenever the person is in possession of medical marijuana [cannabis].” Pursuant to the definition of medical use in §329-121, HRS, medical use includes possession, and it is clear that for legal possession of cannabis to occur pursuant to Hawaii law, a person must strictly comply with chapter 329, Part IX, HRS.

The Department of Health is committed to providing a safe process for the medical use of cannabis and establishing clear rules that set forth the requirements to register with the department is a part of achieving this. Based on the above, your petition is denied.

Respectfully,



Bruce S. Anderson, Ph.D.
Director of Health