



Akamai Cannabis Clinic
3615 Harding Ave, Suite 304
Honolulu, HI 96816

February 23, 2021

Jade Butay
Director, Hawaii Dept of Transportation
Aliiāimoku Building
869 Punchbowl Street
Honolulu, HI 96813
Fax: 808-587-2167

STATE AUTHORIZED USE

Dear Director Butay,

Thank you for your letter of February 9, 2021, responding to my recent inquiry about interisland sample transport in Hawaii.

My request to speak with a member of your staff about this issue was not mentioned in your letter. Therefore, I am responding to your enclosures: Drug Enforcement Administration (DEA) information on drug scheduling, Federal Aviation Administration (FAA) warning for pilots, and state law regarding interisland sample transport.

First, the federal regulation that has marijuana listed in Schedule I is an administrative rule ([21 CFR 1308.11](#)). Administrative rules do not pre-empt the authority reserved to states by the U.S. Constitution to decide how controlled substances are used within the state, which means that the state authorized use of cannabis in Hawaii is exempt from the federal regulation of marijuana.

Second, it is curious that the FAA guidance on marijuana for pilots that you included says nothing about the federal aviation regulation ([14 CFR 91.19](#)) that specifically exempts the carriage of cannabis aboard aircraft from federal restrictions if authorized under state law, which is exactly the case in Hawaii. Could you please tell me if you have discussed this exemption with the FAA, and, if so, what was their response.

And lastly, the section of Hawaii's Medical Use of Cannabis Act you referred to that authorizes the interisland transport of dispensary samples, [329-122](#), HRS, mistakenly contains the phrase "state law and its protections do not apply outside of the jurisdictional limits of the State". While this statement appears valid when taken at face value, it ignores the impact that the state authorized use of cannabis in Hawaii has upon the federal regulation of marijuana and perpetuates the existing federal conflict rather than establishing a way to resolve it.

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As a result, we are in desperate need of solutions that the State can act upon to end the discrimination against our patients and dispensaries that is being caused by the assumption they are violating federal law. Waiting for the federal government to fix this problem will only subject Hawaii's Medical Cannabis Program to an unrealistic national cannabis tax, weaken the State's authority over the intra-state use of cannabis in the future, and continue to promote criminal activity across the State.

One solution for this conflict is the federal exemption option, which is currently being considered in both [Iowa](#) and [Minnesota](#), and which was introduced in several bills this Session ([SB147](#), [SB669](#), [HB867](#), [HB668](#)) that unfortunately went nowhere, apparently because of a belief that the state executive branch is unwilling to support.

The State has an obligation to resolve this conflict that was created when it authorized the use of cannabis for medical purposes over twenty years ago and never went back to the DEA to figure out how to re-harmonize the state and federal regulation of cannabis. I believe that fixing this conflict is also supported by the [Oath of Office](#), which extends to protecting Hawaii's authority to regulate controlled substances within the State.

In light of these findings, could you please tell me what steps your department will be taking going forward to help resolve the current conflict with the federal regulation of marijuana, such as supporting the federal exemption option.

Thank you for taking the time to consider this important issue. I look forward to hearing from you.

Aloha,



Clifton Otto, MD

cliftonotto@hotmail.com

808-233-8267.