



The Medical Use of Marijuana:

A guide to Hawai'i's law for physicians, patients and caregivers



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To the Reader

The purpose of this brochure is to help patients, their caregivers, and medical professionals understand the 2000 Hawai'i Medical Marijuana Act and all of the legal issues surrounding it.

This brochure provides the best and most accurate information available to us at this time. However, we do not intend to provide legal advice, especially since individual situations may vary. You should consult your own lawyer if you have any uncertainties or questions about the law regarding medical marijuana.

Information in this booklet is current as of July 2008.

Mahalo

Thanks to the Drug Policy Alliance and the Marijuana Policy Project for their generous support in the production and distribution of this booklet and to all those who helped in its creation.

A special thanks to the individuals and organizations whose efforts helped to ensure the passage of this historic legislation. Mahalo nui loa to Governor Benjamin Cayetano for his foresight in introducing this compassionate legislation.

Second Edition

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Resources

The Drug Policy Alliance
www.drugpolicy.org

The Marijuana Policy Project
www.mpp.org

Patients Out of Time
www.medicalcannabis.com

Americans for Safe Access
www.safeaccessnow.org

NORML
www.norml.org

The Drug Policy Forum of Hawai`i
www.dpfhi.org

If you have questions about the current status of Hawai`i's law, contact a lawyer, call the Drug Policy Forum of Hawai`i at 808-988-4386 or email us at info@dpfhi.org.

Medical Marijuana and the Law

The Law in Hawai`i

In April 2000 Hawai`i became the first state to permit medicinal use of marijuana via an act of the state legislature. Governor Benjamin Cayetano signed Hawai`i's Act 228 into law on June 15, 2000. Rules for its administration, developed by the state Department of Public Safety, were approved in December of that year and the medical marijuana program has been in effect since that time. Since the implementation of the program, more than 4,000 patients are being registered every year to use medical marijuana under state law.

The National Situation

Hawai`i has thus joined with eleven other states which have passed laws for the medicinal use of marijuana since 1996: California, Oregon, Washington, Alaska, Colorado, Nevada, Maine, Montana, New Mexico, Rhode Island, and Vermont. (Arizona passed a voter initiative but the program is not active due to a problem with the wording of the initiative.) In the states which have approved the medical use of marijuana, thousands of patients, doctors and caregivers are participating in programs protected from state or local prosecution.

Conflicts between State and Federal Laws

However, despite the progress that has been made toward creating safe and legal systems at the state and local level, federal laws banning any use of marijuana remain in effect (except for a narrow exception for participants in federally approved clinical trials.) In fact, on May 14, 2001 the United States Supreme Court issued a decision reaffirming that federal law prohibits the distribution of marijuana for any reason.

In 2005 the U.S. Supreme Court, in *Gonzales v. Raich* ruled

that the federal government had the power under the commerce clause of the U. S. Constitution to enforce federal marijuana laws against patients who possess or cultivate marijuana. The ruling did not address any issues related to medical marijuana nor did it overturn any of the state laws on medical marijuana. The power of state governments to enact and enforce state medical marijuana laws was not affected by this decision.

From a practical point of view, federal prosecutors tend to act against large drug operations. Federal charges are rarely brought against patients for small-scale, personal possession or cultivation of marijuana, although this remains a possibility. In fact, arrests for marijuana in the U.S. over the last several years made by federal authorities account for only 1% of all marijuana arrests.

If a state like Hawai`i has removed criminal penalties for medical use of marijuana, then patients and physicians are protected from arrest by state or local authorities. It is important to note, however, that the protections of the Hawai`i medical marijuana act do not protect patients and physicians from possible federal prosecution. (See next page for further details.)

What Hawaii's Law Does

Protects Patients and Caregivers from Arrest at the State or Local Level

Patients and their "primary caregiver" who comply with this law (obtain certification from a physician and register with the Narcotics Enforcement Division) are protected against prosecution for marijuana-related crimes under Hawai'i law. In the unlikely event of being arrested, patients and their caregivers who follow the law have a new legal defense available to them. If they are arrested by state or local authorities on marijuana charges, a qualified patient or primary caregiver can claim this new defense under state law if they are following the Act's procedures and using the marijuana only for medical purposes. The law allows growing, transporting and possession of marijuana and "paraphernalia," but only for medical purposes. It does not speak to the question of whether the purchase and/or sale of marijuana for medical purposes permitted by the Act is decriminalized.

Protects Physicians at the State, Local and Federal Levels

The Act states that, if a physician complies with the procedures specified in the Act, she or he shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written recommendation for the medical use of marijuana for a qualifying patient. As of September 2001, the physician is protected from state prosecution and as of 2003, from federal prosecution.

On October 29, 2002 the Ninth Circuit Court of Appeals unanimously upheld the right of doctors to recommend marijuana to their patients. The Justices ruled that it is the role of the states, not the federal government to regulate the practice of medicine. In October 2003 the U.S. Supreme Court let this ruling stand (*Conant v. Walters*, 309F.3d 629, 2002). At the heart of the *Conant* decision is the First Amendment's protection of a physician's right to speak openly and candidly about marijuana's potential risks and its therapeutic benefits.

Physicians may therefore recommend medical marijuana to patients free from federal threats or interference as long as they do not do more than is required of them by the Act.

Limits Qualifying Medical Conditions

In order to use marijuana as medicine, a patient must be diagnosed by a physician licensed to practice in Hawai'i as having one or more of the following "debilitating" medical conditions:

1. Cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), or the treatment of these conditions;
2. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
 - a) Cachexia or wasting syndrome (severe weakness, malnutrition or weight loss)
 - b) Severe pain;
 - c) Severe nausea;
 - d) Seizures, including those characteristic of epilepsy; or
 - e) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease;
 - f) Additional conditions which may be added by the state Department of Health.

Sets Limits on a Patient's Protected Supply of Medical Marijuana

Under the Hawai'i medical marijuana act, "adequate supply" means an amount of marijuana possessed by the qualifying patient and the primary caregiver *together* that is "not more than is reasonably necessary" to alleviate the symptoms or effects of a debilitating medical condition.

An "adequate supply" must not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant at any given time. Hawai'i's state Narcotics Enforcement Division (NED) is interpreting this to mean that a patient (and/or caregiver) can have 7 plants and/or 3 ounces of useable marijuana on hand at any given time.

Requires a Doctor's Certificate

The Act protects only patients whose physician has filled out and submitted a written certification to the state Department of Public Safety for use of medical marijuana. A physician, licensed in Hawai`i, must diagnose one of the above conditions and certify in writing that the potential benefits of medical marijuana use would likely outweigh the health risks for the particular patient. *Simply having a qualifying disease or symptoms does not automatically qualify anyone for protection under the Hawai`i medical marijuana act.*

States What Doctors Should Do To Certify a Patient for Medical Marijuana Use

To certify a patient for medical marijuana use, a physician must do the following:

- 1) Complete a full assessment of the patient's medical history and current medical condition;
- 2) Diagnose the patient as having a debilitating medical condition covered by the medical marijuana act;
- 3) Explain the potential risks and benefits of medical marijuana use to the patient or his/her guardian; and
- 4) Certify, in writing, that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks to that particular patient. This should all be documented in the patient's medical record.

States What Patients Should Do to Obtain a Medical Marijuana Certificate

After discussing medical marijuana with their physician as outlined above, patients and their caregivers should:

- 1) Ask their physician to request a written certification form from the Narcotics Enforcement Division of the state Department of Public Safety 808-837-8470;
- 2) With the physician's completed certification form, send a copy of the patient's official identification with a photo;
- 3) Include a check for the annual registration fee (\$25 for the patient plus \$25 for the primary caregiver, if any);
- 4) Mail or deliver the registration form completed by the patient, physician and primary caregiver, if any, to the:

Narcotics Enforcement Division (NED)
3375 Koapaka St., Suite D-100
Honolulu, HI 96819

Permits Patients to Name a "Primary Caregiver"

Patients may appoint a "primary caregiver" who can be any person at least 18 years old other than their physician, who has agreed to undertake responsibility for managing the well-being of only one qualifying patient with respect to the medical use of marijuana. The primary caregiver must also register with NED. When registered, the primary caregiver is also granted a defense from any prosecution for possession and/or cultivation of medical marijuana brought under state law.

In the case of a patient who is a minor (under 18) or an adult lacking legal capacity, a primary caregiver *must* be designated. This person can be one of the parents of a minor, his or her guardian, or a person having legal custody.

What Hawaii's Law Does NOT Do

Does Not Legalize Marijuana

Federal laws banning marijuana remain in effect and the Hawai`i Act does not permit the recreational use of marijuana.

Does Not Allow Just Anyone to Claim "Medical Use" of Marijuana

To be covered under Hawai`i's medical marijuana law, a patient must register and must have one of the listed medical conditions and have been certified by his/her doctor for medical marijuana use. If a doctor does not provide a written certification, that person does not qualify.

Does Not Allow Unlimited Supplies of Medical Marijuana

Even patients who qualify under the law must still adhere to strict limits on the quantity of medical marijuana they possess. This is limited to an "adequate supply" which shall not exceed three mature marijuana plants, four immature marijuana

plants, and one ounce of usable marijuana per each mature plant (i.e. three ounces in total).

Does Not Permit the Sale of Marijuana

The medical marijuana act defense will not protect someone who sells any amount of marijuana. Any evidence of sale of marijuana can result in prosecution and years of prison time, regardless of the buyer's or seller's medical condition or medical authorization to use marijuana.

Does Not Allow the Use of Medical Marijuana in a Public Place, Workplace or in a Moving Vehicle

Even with a doctor's certification, the Act specifically prohibits use of medical marijuana in any bus or moving vehicle, in the workplace, on school grounds, any use that endangers the health or well being of another person, or in any public place.

Does Not Force a Doctor to Give a Certification for Medical Marijuana

No doctor is required to authorize the medical use of marijuana. Even patients who qualify under the law must still adhere to strict limits on the quantity of medical marijuana they possess.

What Doctors Can NOT Do:

- "Prescribe" medical marijuana; this includes writing a recommendation on a prescription form.
- Assist patients in obtaining marijuana by doing more than that required by the Act.
- Cultivate or possess marijuana for patient use.
- Physically assist patients in using marijuana.
- Recommend marijuana without a justifiable medical cause.

Frequently Asked Questions

Q What Is Medical Marijuana?

Medical marijuana is the same as any other form of marijuana or cannabis except that it is used as medicine.

Q What if I Have a Medical Condition Covered by the Medical Marijuana Act but Don't Have a Statement from My Doctor?

You do not receive the protections of the Act unless you have followed its requirements and procedures and obtained a certification from your physician.

Q What If My Doctor Isn't Willing To Give Me a Certification or Says I Don't Qualify?

The Act does not force physicians to offer certifications for medical marijuana use. It's a new law and it takes a while for physicians to become comfortable with it. You may ask more than one physician.

Q Is There a List of Doctors Who Are Willing to Advise Me on the Medical Use of Marijuana?

No, because the names of doctors who have sent written certifications to the Narcotics Enforcement Division are confidential. The Drug Policy Forum of Hawai'i may be able to assist you in finding a physician.

Q If My Doctor Wants More Information on the Medical Uses of Marijuana Where Can He/She Get It?

In March of 1999 the Institute of Medicine of the National Academy of Sciences released a comprehensive study on medical marijuana: "Marijuana And Medicine-Assessing the Science Base." It can be ordered from the National Academy Press website at www.nap.edu (enter "medical marijuana" in search field) or from 1-888-624-8373. More scientific background can be found at the Marijuana Policy Project's website: www.mpp.org and at NORML's website: www.norml.org.

Q How Long Does My Doctor’s Certification Last?

The certification lasts for one year from the time of the physician’s signing for both patients and primary caregivers. After one year, the doctor must re-certify the patient. Patients must keep track of the expiration date on their own as notices are NOT sent out.

Q Does the Narcotics Enforcement Division Require a Registration Fee?

Yes, there is an annual fee of \$25 for registration. If the patient has a primary caregiver, that person must also pay a \$25 annual fee. There is a charge of \$10 for a duplicate registration certificate.

Q Can My Physician Assistant or Family Nurse Practitioner Authorize Medical Use of Marijuana?

No, Physician Assistants and Nurse Practitioners are not covered by the Hawai`i medical marijuana act. The only people who can meet the certification requirements of the Act are physicians licensed by the state of Hawai`i.

Q Why Can’t I Get Medical Marijuana at a Pharmacy?

Pharmacies are federally regulated and can only dispense medications that are approved by the FDA and prescribed by a physician. Because marijuana continues to be classified by the federal government as a “Schedule I” drug, it cannot be prescribed by any healthcare professional. There are efforts underway to convince federal lawmakers to allow medical marijuana to be rescheduled and treated the same as other controlled medicines.

Q Where Can I Obtain Medical Marijuana?

At this time there’s no recognized legal source for marijuana used for medicinal purposes. The Hawai`i law states, however, that the “acquisition, possession, cultivation, use, distribution [defined as only the transfer of marijuana and paraphernalia from the primary caregiver to the qualifying patient], or transportation of marijuana” for medicinal use is specifically protected.

Q What If My Condition or Illness Is Not Covered by Hawaii’s Law?

Hawai`i’s law provides that the state Department of Health set up a procedure for physicians and potentially qualifying patients to request that other medical conditions and diseases be added to the list of those debilitating medical conditions currently covered in the Act. As of this writing, the Health Department has yet to establish the necessary procedure, but you can contact the Health Department at 808-586-4400 to check the current status.

Q What Is the Definition of “Mature” or “Usable” as It Relates to the Amount of Marijuana a Patient or Caregiver Is Allowed To Possess?

“Usable marijuana” is defined in the Act as any mixture of the dried leaves and flowers of the Cannabis plant that is appropriate for the medical use of marijuana. Useable marijuana does not include the seeds, stalks, and roots of the plant.

Although not defined in the Act, a “mature” marijuana plant is generally understood to mean plants in which the flowers are visible to the naked eye.

Q Do Physicians Risk Losing Their License To Prescribe Controlled Substances If They Participate in the Program?

No. As a practical matter, participating physicians should be protected from loss of their licenses to prescribe controlled substances if they confine their actions to those required by the Act. Of the thousands of certifications that have assisted Hawai`i citizens in acquiring marijuana for medical purposes since the program began, none has resulted in the loss of a physician’s DEA license to prescribe controlled substances.

Q Is My Use of Medical Marijuana Covered by Insurance?

No. The Act explicitly states that insurance companies are not required to pay for medical marijuana.

Q Is a Patient's Confidentiality Protected?

Yes. However, upon an inquiry by a law enforcement agency, the Department of Public Safety will verify whether a particular qualifying patient has registered with the Department and may provide reasonable access to the registry information for official law enforcement purposes.

Q Why Is Getting the Registration Card Important?

The registration card is evidence of compliance with the law and should ordinarily prevent an arrest. Without the card, the patient or caregiver may be arrested and held under arrest until the patient's right to use medical marijuana is confirmed.

Q What Should a Patient Do If Accused of an Marijuana Related Offense?

Politely show the officer your registration card. They may then contact the Narcotics Enforcement Division to verify your registration. If the officer still questions the validity of your registration, you may wish to contact an attorney. If you do not have and cannot afford a lawyer, ask to call the state Public Defender's office. The phone number on Oahu is 586-2200. On the Neighbor Islands the numbers are: Hilo 974-4571; Kona 323-7562; Kaua'i 274-3418; and Maui 984-5018.

Q Can Minors Use Cannabis Under Hawai'i's Act?

Yes, Minors under 18 are protected under Hawai'i's law if their physician has explained the potential risks and benefits to both the qualifying patient and to their parent or legal guardian, and if the parent or legal guardian has consented in writing to allow the use; to serve as the minor's caregiver; and to control the minor's acquisition, dosage and frequency of use of the marijuana. A parent or guardian must serve as the minor's primary caregiver and follow the certification and registration procedures outlined above.

Q What Should I Tell My Employer If I Am Subjected to a Drug Test?

The Act prohibits use of medical marijuana in the workplace but is silent regarding the employer's rights and duties

regarding medical marijuana. It is suggested that employers treat medical marijuana like any other prescription drug that might impair ability.

Q Can Patients Living in Rental Units or Federally Subsidized Housing Participate in The Program?

As noted earlier, despite Hawai'i's medical marijuana act, federal law or federal rules and regulations still prohibit the use, possession, cultivation, or distribution of marijuana. Any federal laws or rules prohibiting the use of marijuana in federally subsidized housing would likely override Hawai'i's law. Patients occupying rental units or federally subsidized housing who wish to use medical marijuana should seek legal guidance on this issue.

Q Are There Any Limits on Where Marijuana To Be Used for Medical Purposes Can Be Cultivated?

The State's medical marijuana act contains no requirements or limitations on where marijuana for medical use can be grown. However, the regulations of the Department of Public Safety limit the places where marijuana can be grown to:

- (1) the qualifying patient's home address;
- (2) the primary caregiver's home address; or
- (3) "(an) other location owned or controlled by the qualifying patient or the primary caregiver that is approved by the administrator and designated on the registry certificate issued by the department."

These limitations may be challenged in court since the law does not specify that the Department has authority to limit the place of cultivation.

Q If I'm Covered under the Hawai'i Medical Marijuana Act Can I Use Medical Marijuana in Other States?

At this time Montana is the only state to honor the Hawai'i law. Hawai'i does not recognize medical marijuana certification from any of the other eleven states with medical marijuana programs.

The Hawai`i Medical Marijuana Act

CHAPTER 329. [NEW] UNIFORM CONTROLLED SUBSTANCES ACT

PART IX. MEDICAL USE OF MARIJUANA

[§329-121]. Definitions

As used in this part:

“Adequate supply” means an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to assure the uninterrupted availability of marijuana 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 three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

“Debilitating medical condition” means:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

- (A) Cachexia or wasting syndrome;
- (B) Severe pain;
- (C) Severe nausea;
- (D) Seizures, including those characteristic of epilepsy; or

(E) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn’s disease; or

(3) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient.

“Marijuana” shall have the same meaning as “marijuana” and “marijuana concentrate” as provided in sections 329-1 and 712-1240.

“Medical use” means the acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana 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 marijuana and paraphernalia from the primary caregiver to the qualifying patient.

“Physician” means a person who is licensed under chapters 453 and 460, and is licensed with authority to prescribe drugs and is registered under section 329-32. “Physician” does not include physician’s assistant as described in section 453-5.3.

“Primary caregiver” means a person, other than the qualifying patient and the qualifying patient’s physician, who is eighteen-years-of-age or older who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody.

“Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition.

“Usable marijuana” means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture of preparation thereof, that are appropriate for the medical use of marijuana. “Usable marijuana” does not include the seeds, stalks, and roots of the plant.

“Written certification” means the qualifying patient’s medical records or a statement signed by a qualifying patient’s physician, stating that in the physician’s professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. The department of public safety may require, through its rulemaking authority, that all written certifications comply with a designated form. “Written certifications” are valid for only one year from the time of signing.

[§329-122]. Medical use of marijuana; conditions of use

(a) Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:

(1) The qualifying patient has been diagnosed by a physician as having a debilitating medical condition;

(2) The qualifying patient's physician has certified in writing that, in the physician's professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and

(3) The amount of marijuana does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

(1) The qualifying patient's physician has explained 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; and

(2) A parent, guardian, or person having legal custody consents in writing to:

(A) Allow the qualifying patient's the medical use of marijuana;

(B) Serve as the qualifying patient's primary caregiver; and

(C) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(c) The authorization for the medical use of marijuana in this section shall not apply to:

(1) The medical use of marijuana that endangers the health or well-being of another person;

(2) The medical use of marijuana:

(A) In a school bus, public bus, or any moving vehicle;

(B) In the workplace of one's employment;

(C) On any school grounds;

(D) At any public park, public beach, public recreation center, recreation or youth center; or

(E) Other place open to the public; and

(3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this chapter.

[§329-123]. Registration requirements

(a) Physicians who issue written certification shall register the names, addresses, patient identification numbers, and other identifying information of the patients issued written certifications with the department of public safety.

(b) Qualifying patients shall register with the department of public safety. Such registration shall be effective until the expiration of the certificate issued by the physician. Every qualifying patient shall provide sufficient identifying information to establish personal identity of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within five working days. Every qualifying patient shall have only one primary caregiver at any given time. The department shall then issue to the qualifying patient a registration certificate, and may charge a reasonable fee not to exceed \$25.

(c) Primary caregivers shall register with the department of public safety. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time.

(d) Upon an inquiry by a law enforcement agency, the department of public safety shall verify whether the particular qualifying patient has registered with the department and may provide reasonable access to the registry information for official law enforcement purposes.

[§329-124]. Insurance not applicable

This part shall not be construed to require insurance coverage for the medical use of marijuana.

[§329-125]. Protections afforded to a qualifying patient or primary caregiver

(a) A qualifying patient or the primary caregiver may assert the medical use of marijuana as an affirmative defense to any prosecution involving marijuana under this chapter or chapter 712; provided that the qualifying patient or the primary caregiver strictly complied with the requirements of this part.

(b) Any qualifying patient or primary caregiver not

complying with the permitted scope of the medical use of marijuana shall not be afforded the protections against searches and seizures pertaining to the misapplication of the medical use of marijuana.

(c) No person shall be subject to arrest or prosecution for simply being in the presence or vicinity of the medical use of marijuana as permitted under this part.

[§329-126]. Protections afforded to a treating physician

No physician shall be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for providing written certification for the medical use of marijuana for a qualifying patient; provided that:

(1) The physician has diagnosed the patient as having a debilitating medical condition, as defined in section 329-121;

(2) The physician has explained the potential risks and benefits of the medical use of marijuana, as required under section 329-122;

(3) The written certification is based upon the physician's professional opinion after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship; and

(4) The physician has complied with the registration requirements of section 329-123.

[§329-127]. Protection of marijuana and other seized property

Marijuana, paraphernalia, or other property seized from a qualifying patient or primary caregiver in connection with a claimed medical use of marijuana under this part shall be returned immediately upon the determination by a court that the qualifying patient or primary caregiver is entitled to the protections of this part, as evidenced by a decision not to prosecute, dismissal of charges, or an acquittal; provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of such plants.

[§329-128]. Fraudulent misrepresentation; penalty

(a) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution under this part or chapter 712 shall be a petty misdemeanor and subject to a fine of \$500.

(b) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the issuance of a written certificate by a physician not covered under section 329-126 for the medical use of marijuana shall be a misdemeanor. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana. Nothing in this section is intended to preclude the conviction of any person under section 710-1060 or for any other offense under part V of chapter 710.

CHAPTER 453. MEDICINE AND SURGERY

PART I. GENERALLY

§ 453-8. Revocation, limitation, suspension, or denial of licenses

(a) In addition to any other actions authorized by law, any license to practice medicine and surgery may be revoked, limited, or suspended by the board at any time in a proceeding before the board, or may be denied, for any cause authorized by law, including but not limited to the following:

(13) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereunder except as provided in section 329-122;

§ 712-1240.1. Defense to promoting

* * * * (2) It is an affirmative defense to prosecution for any marijuana-related offense defined in this part that the person who possessed or distributed the marijuana was authorized to possess or distribute the marijuana for medical purposes pursuant to part IX of chapter 329.

At a glance: Information for Physicians

HOW TO CERTIFY PATIENTS FOR MEDICAL MARIJUANA USE

To certify a patient for medical marijuana use, a physician must do the following:

1. Request a written certification form from the Narcotics Enforcement Division of the state Department of Public Safety 808-837-8470;
2. Complete a full assessment of the patient's medical history and current medical condition;
3. Diagnose the patient as having a debilitating medical condition covered by the medical marijuana act (see page 7);
4. Explain the potential risks and benefits of medical marijuana use to the patient or his/her guardian; and
5. Certify, in writing, that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks to that particular patient. This should all be documented in the patient's medical record.
6. It then is the patient's responsibility to:
 - provide a copy of his or her official identification with photo;
 - include a check made out to the "Narcotics Enforcement Division" for the annual registration fee (\$25 for the patient plus \$25 for the primary caregiver, if any), then;
 - either the patient or the physician can mail or deliver 1) the copy of the i.d., 2) the check, and 3) the registration form completed by the patient, physician and primary caregiver (if any) to: the Narcotics Enforcement Division (NED) at 3375 Koapaka St., Suite D -100, Honolulu, HI 96819. The phone number there is 808-837-8470.



of hawai`i

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About Us

The Drug Policy Forum of Hawai`i (DPFH) is a non-profit membership organization founded in 1993 to encourage the development of effective drug policies that minimize economic, social, and human costs, and to promote the consideration of pragmatic approaches to drug policy based on:

- * Scientific principles
- * Effective outcomes
- * Public health considerations
- * Concern for human dignity
- * Enhancing the well-being of individuals and communities

DPFH sponsors local, national, and international drug-policy professionals at community forums and conferences on topics such as medical marijuana, the impact of crystal methamphetamine, effective drug education and sentencing reform. DPFH also presents films and videos, maintains a reference library on drug policy, acts as a resource for the media on drug policy issues, sustains an active speakers' bureau, and publishes newsletters.

For more information about the Drug Policy Forum of Hawai`i or to obtain additional copies of this brochure, please contact our office at 808-988-4386 or e-mail us at info@dpfhi.org. This complete brochure is also available on our website: www.dpfhi.org.