



Medical Marijuana Under Attack At Legislature

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The Hawaii Medical Marijuana program is once again under attack at the Legislature. The bill getting the most attention is HB 1963 which sailed through the House committees on Health and Public Safety. Law enforcement agencies, led by the Narcotics Enforcement Division (NED) of the Department of Public Safety are stubbornly clinging to their decades-old mantra “marijuana is not medicine;” despite the fact that prior to 1937 cannabis had been part of the United States Pharmacopoeia for nearly a century. There is also a growing body of research that shows cannabis’ utility as a medicine.

It is unfortunate for patients that the agency tasked with administering the program is also the agency most opposed to its existence. As enrollment in the program has increased in the 11 years since its inception, NED has accelerated efforts to curtail it. HB 1963 is the most recent example of its efforts. The most significant change is the elimination of severe pain as a qualifying condition. It’s estimated that more than half of the current patients would become ineligible for the program. NED claims that the program is being abused and uses this claim to justify treating all patients as suspects.

Let’s put this into perspective. There is abuse of prescription drugs. However, the focus of law enforcement is on those abusing the program, not on all patients who purchase prescription drugs and certainly not on every person who needs medication for severe pain.

This is what happens when law enforcement is put in charge of a medical program: their focus is misplaced. It is also ironic because there exists more “gold standard” clinical data (double-blind, placebo controlled cross-over trials) regarding the use of inhaled cannabis or organic cannabis extracts for pain than there is evidence for arguably any

other condition. Further, many of the common pain medications that cannabis may replace are far more potentially habit forming; are associated with increased potential of overdose; and have severe side effects. In fact, one recent published review of the subject recommended cannabis as an alternative to opioids for these very reasons.

Other proposed changes in HB 1963 would: limit the number of marijuana plants at any address to 21, regardless of the number of patients and caregivers with permits at the address; would require physicians to register all locations they use to recommend patients for medical marijuana; and make it a Class C felony (currently a petty misdemeanor) to make false statements on a medical marijuana application or to law enforcement officials regarding the medical use of marijuana.

Intimidating Physicians

The change in the requirement for registration by physicians and the increase in penalty for making false statements on an application is a continuation of NED's efforts to intimidate physicians to dissuade them from participating in the program. Without physicians to recommend medical marijuana, the program would wither away. The registration requirement is most likely unconstitutional. The Ninth Circuit Court of Appeals has already ruled that physicians have the first amendment right to discuss medical marijuana with their patients. Physicians should not be required to register in order to exercise their right of free speech.

Many physicians acknowledge to patients that they may benefit from cannabis, but instead of filing the needed forms themselves, they refer patients to physicians who already participate in the program. This concentration of recommending physicians is evidence NED uses to claim that a few physicians are abusing the program.

While NED is claiming abuse of the program by physicians and patients, patients have had to wait as long as six months to receive their cards. NED has also ignored procedures outlined in the administrative rules governing the program. Physicians and patients are expected to follow the program rules, but NED follows only those which are convenient.

Patients Face Arrest due to Ambiguities

Patients and advocates have asked for changes in the program. Especially urgent is to clarify ambiguities that have caused patients to be arrested. In 2010, three patients were arrested for "transporting" their medicine. Judge Barbara Takase in Hilo dismissed two cases, saying that HRS Chapter 321 is void for "vagueness." In Kona, another judge admitted the vagueness, but convicted the patient. While not perfect, SB 58 would help patients and improve the program; it passed the Senate last session. It is not yet known whether the House Health Committee will hold a hearing for the bill.

Decriminalizing Possession of Marijuana

A related measure is SB 1460, which passed the Senate with 24 votes. It now awaits action by the House Health Committee. This bill would decriminalize the personal possession of one ounce or less of marijuana. Instead of the current criminal penalty of a petty misdemeanor, the penalty would be a civil fine of \$100. Criminal records prevent some from obtaining federal student loans; prevent employment in certain jobs, even decades after the conviction; and prevent some from federal or state housing programs.

Decriminalization of marijuana possession would also help to reduce law enforcement costs and to redirect law enforcement efforts to more serious crime. Fourteen states have already replaced criminal sanctions with fine-only policies (Alaska, California, Colorado, Connecticut, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio, and Oregon).

Since Hawaii doesn't have enabling legislation for medical cannabis dispensaries. Decriminalization would assist patients needing small amounts of cannabis, or new patients, who may have an immediate need of cannabis because of chemotherapy treatment and do not have time to grow their own medicine.

There are many myths about marijuana. Decriminalization does not lead to increased marijuana use. Research on the effects of marijuana decriminalization has tended to find either no relationship or a weak positive relation between marijuana decriminalization and drug use. The Cato Institute reported that while Portugal decriminalized all drugs in 2001, "none of the nightmare scenarios touted by pre-enactment decriminalization opponents—from rampant increases in drug usage among the young to transformation of Lisbon into a haven for "drug tourists"—has occurred."¹ In fact, compared to many European Union countries, teens in Portugal have among the lowest levels of cannabis use.

Hawaii's policies on marijuana must be based on science and not on old myths from the past. Law enforcement should not be allowed to interfere with the decisions made between physicians and patients.