#### POLICE DEPARTMENT

## CITY AND COUNTY OF HONOLULU

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OUR REFERENCE

SD-TA

February 9, 2010

The Honorable Ryan I. Yamane, Chair and Members Committee on Health House Representatives State Capitol Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

Subject: House Bill No. 2592, Relating to Controlled Substances

I am Susan Dowsett, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 2592, Relating to Controlled Substances.

To ensure consistency in the regulation and enforcement of controlled substances, the Federal Controlled Substances Act serves as the basis for classification of all controlled substances on a national level. It is the model upon which the Uniform Controlled Substances Act, chapter 329, Hawaii Revised Statutes, is based. Passage of this bill will update chapter 329 to be consistent with the Federal Controlled Substances Act.

The Honolulu Police Department urges you to support House Bill No. 2592, Relating to Controlled Substances.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

LOUIS M. KEALOHA

SUSAN DOWSETT, Major Narcotics/Vice Division

Chief of Police

Serving and Protecting With Aloha

JAY T. KIMURA PROSECUTING ATTORNEY

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### OFFICE OF THE PROSECUTING ATTORNEY

Testimony In Support of HB 2592, HD1 Relating to Controlled Substances

Hearing before House Judiciary Committee February 23, 2010 2:00 p.m. House Conference Room 325

Submitted by Jason M. Skier, Deputy Prosecuting Attorney

TO: Chair Riki Karamatsu and Committee Members:

We support House Bill No. 2592, HD1

This letter in support of HB 2592 is being submitted by Deputy Prosecuting Attorney Jason M. Skier. I have been a Deputy Prosecuting Attorney for the County of Hawai'i since June 2001, and I am currently responsible for prosecuting most felony drug cases from East Hawai'i County.

I have seen use of this drug rise on the Big Island due to the lack of any legal oversight regarding its use. The prevalence of YouTube videos encouraging its use is especially troubling given the impressionability of young people and the ease with which the drug is grown here on the Big Island. Passage of your bill will go a long way to regulating the use of this potentially dangerous substance.

Thank you for considering our recommendation to adopt this bill.

Jason M. Skier



CHARMAINE TAVARES
MAYOR

OUR REFERENCE

# POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET WAILUKU, HAWAII 96793 (808) 244-6400 FAX (808) 244-6411 February 22, 2010



GARY A. YABUTA CHIEF OF POLICE

CLAYTON N.Y.W. TOM DEPUTY CHIEF OF POLICE

The Honorable Jon Riki Karamatsu, Chair And Members of the Committee on Judiciary House of Representatives State Capitol Honolulu, Hawaii 96813

Re: House Bill No. 2592, HD1, Relating to Controlled Substances

Dear Chair Karamatsu and Members:

The Maui Police Department supports House Bill 2592, HD1.

The amendments being proposed by House Bill 2592, HD1, would add new drugs to schedules II (Tapentadol), IV (Fospropofol), and V (Lacosamide) of Hawaii's Controlled Substance Laws Sections 329-16(c), 329-20(b) and 329-22(d), to be consistent with additions made by Federal law in 2009. The addition of these controlled substances is required by section 329-11(d) Hawaii Revised statues.

Section 329-11(d) states that if a substance is added, deleted, or rescheduled under federal law, then the department shall recommend to the legislature that a corresponding change in Hawaii law is to be made. In 2009, the Federal Government scheduled the following controlled substances: Tapentadol to schedule II on 6-22-09, Fospropofol to schedule IV on 11-5-09, and Lacosamide ([(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]) to schedule V on 6-22-09.

House Bill 2592, HD1, also places the controlled substance Salvia Divinorum and its constituent, Salvinorin A, permanently in Section 329-14(d) as a Schedule I Controlled Substance. On August 15, 2009, in accordance with Chapter 329-11(e), the Administrator of the Department of Public Safety's Narcotics Enforcement Division emergency scheduled Salvia Divinorum and its constituent Salvinorin A and Divinorian A as Schedule I Controlled Substances on a temporary basis, to avoid the possibility of an imminent hazard to the health and safety of the public.

Hawaii has had reported cases of the abuse of Salvia Fivinorum and recently on the island of Maui two minors had to be treated in the hospital for adverse reactions to the use of the drug. The Honorable Jon Riki Karamatsu, Chair And Members of the Committee on Judiciary February 22, 2010 Page 2

The Federal Government has determined that this substance does not have an approved medical use in the United States and is presently listed as a "drug of concern" by the Federal Drug Enforcement Administration due to its ability to evoke hallucinogenic effects that in general are similar to those of other scheduled hallucinogenic controlled substances. This definition allows the Federal Government to treat Salvia Divinorum and/or Salvinorin A as a controlled substance analogue if it is used for human consumption as a psychoactive drug. This leaves a loophole in the law for individuals selling this drug labeled as not for human consumption.

House Bill 2592, HD1, proposes to amend section 329-35 to be consistent with federal language listed in Title 21, Chapter II, Part 1301.37 relating to the "Order to Show Cause" and to clarify the department's requirement to provide notice when revoking or suspending a registrant's controlled substance registration certificate. House Bill 2592, HD1, proposes to amend section 329-64 relating to exemptions to the requirements of precursor chemicals by requiring all individuals and entities that conduct retail sales of pseudoephedrine obtain a precursor chemical permit. Section 329-64 is also amended to delete the exemption for the retail sales of dietary supplements that contain Ephedrine due to the fact that the chemical Ephedrine was designated as a drug to be dispensed by prescription only by Act 171 in 2006.

House Bill 2592, HD1, also proposes to amend Hawaii's electronic prescription monitoring program by amending section 329-101(f) to clarify the language relating to the penalty for failure to transmit controlled substance prescription data to the Department due to non-compliance by pharmacies and physicians. House Bill 2592, HD1, amends section 329-104(e) by deleting the requirement for the designated state agency to purge the patient identification number data on all controlled substance prescriptions after three years. Maintaining these identification numbers are necessary due to administrative, civil and regulatory investigations that last longer than three years

The Maui County Police Department strongly supports House Bill 2592, HD1.

Thank you for the opportunity to testify.

Sincerely

GARY YABUTA Chief of Police

# GOODSILL ANDERSON QUINN & STIFEL

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# **MEMORANDUM**

TO:

Representative Jon Riki Karamatsu

Chair, House Committee on Judiciary

VIA Email: JUDtestimony@Capitol.hawaii.gov

FROM:

Mihoko E. Ito

DATE:

February 22, 2010

RE:

H.B. 2592, HD1 - Relating to Controlled Substances

Hearing: Tuesday, February 23, 2010 at 2:00 p.m.

Dear Chair Karamatsu and Members of the Committee:

I am Mihoko Ito, an attorney with Goodsill Anderson Quinn & Stifel, testifying on behalf of **Walgreen Co.** ("Walgreens"). Walgreens operates and offers immunization services in all 50 states, the District of Columbia and Puerto Rico. In Hawai'i, Walgreens now has 9 stores on the islands of Maui and Oahu.

Walgreens **supports** the amendment made in H.B. 2592, HD1, which on page 15, lines 1-7, restores the standard for failure to transmit required information from <u>any</u> failure to transmit such information to an "intentional or knowing" failure. The "intentional or knowing" is fair because it would prevent a misdemeanor violation and immediate suspension of a pharmacy's ability to dispense medications for inadvertent reporting errors (for example, due to interruptions in reporting, or time spent contacting patients to make error corrections).

Thank you very much for the opportunity to testify.



February 23, 2010

To: Representative Jon Riki Karamatsu, Chair Representative Ken Ito, Vice Chair and Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Executive Director

Re: HB 2592 HD1 Relating to Controlled Substances Hearing: Tuesday, February 23, 2010, 2:00 p.m., Conference Room 325

**Position: Strong Opposition** 

The Drug Policy Forum of Hawai'i writes in strong opposition to HB 2592 HD 1 Relating to Controlled Substances. DPFH objects to this measure for several reasons.

### 1. Adding Salvia Divinorum to Schedule I

Although this bill purports to making Hawaii's controlled substances laws consistent with that of federal law; it actually over reaches by adding salvia divinorum, salvinorin A, and divinorum A to Schedule I; the most restrictive of all schedules. These drugs have NOT been added to the federal controlled substance list.

In order to implement emergency scheduling as allowed in HRS§329-11, the Department of Public Safety shall assess the degree of danger or probable danger of the substance by considering the following: A) Its history and current pattern of abuse; B) The scope, duration, and significance of abuse; and C) A judgment of the degree of actual or probable detriment that may result from the abuse of the substance.

It does not make sense to add a drug to Schedule I without scientific information. The Drug Enforcement Administration (DEA) has spent more than a decade studying whether to add salvia to its list of controlled substances and has not done so. Bertha Madras, a deputy director of the Office of National Drug Control Policy (ONDCP) said that "there is an absence of good hard cold information" to schedule salvia.

There have been no documented cases of fatal or near fatal incidences involving the drug. Reports of salvia-related emergency room admissions are virtually non-existent, likely because its effects typically vanish in a few minutes. (See Attachment 1-Domains of Concern for Drugs of Abuse)

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Email: info@dpfhi.org Website: www.dpfhi.org There are no studies suggesting that salvia is addictive or its users prone to overdose or abuse, the criteria for adding drugs to the controlled substances schedule. (See Attachment 2)

Salvia divinorum is an internet fad. Adding it to the controlled substances list will mainly criminalize teens. Criminal records create harms that far outweigh the dangers of the drug. Although teen use of any drug is concerning, by outlawing and prohibiting it, legislators will make the problem worse. Teen access to the drug can be curbed by enacting age controls and placing restrictions similar to those on tobacco and alcohol. Criminalizing drugs makes their access easier for young people because the criminal market does not check ID's for age. As a compromise, we suggest HB 1335 which restricts sales to minors.

Scheduling drugs in Schedule I should not be taken lightly. It prohibits almost all medical research on the drug. Doctors at Johns Hopkins University School of Medicine are conducting research on Salvinorum A.

Public policy must not be made on myths, falsehoods and by sensationalized fear.

Certainly, at a time when financial resources are extremely strained, law enforcement has more serious matters and more dangerous drugs to deal with. Simply because a drug is an intoxicant does not mean it should be illegal. It does not make sense to add a drug to a schedule without the necessary scientific information.

#### 2. Extends disclosure to "regulatory investigations" and adds U.S. Attorney

The language in this measure extends disclosure to "regulatory investigations" whereas it is currently limited to criminal investigations and prosecutions and it adds the U.S. Attorney to those authorized for disclosure. This could be a considerable expansion which is not discussed in the justification sheet.

We are concerned that since the Narcotics Enforcement Division has under its control all of the patient and physician information of the Medical Use of Marijuana Program, that this information will be available to federal authorities. Federal law is in direct conflict with state law with regard to medical marijuana. State agencies must preserve patient and physician confidentiality from federal authorities. It is unclear how this change could affect medical marijuana patient information.

Recall that a past U.S. Attorney for Hawai'i has threatened to arrest physicians and patients and to put an end to the medical marijuana program. Hawai'i state law should not facilitate that potential.

### 3. Repeals the cap on retention of patient prescription data

The identification number of patients is currently purged from the central repository system after 3 years. This measure would eliminate the 3 year cap on retaining identification numbers and allow the department to keep the information indefinitely. Again, there is little justification cited for this change. Current law already allows information to be kept beyond the 3 year limit if the information is part of an active investigation. It is dangerous to allow this information to be kept indefinitely, especially since no compelling reason is given for this change.

DPFH urges this committee to hold this bill since the department has not given sufficient reasons for the proposed changes. Thank you for this opportunity to provide testimony.

# **Domains of Concern for Drugs of Abuse**

3 Major Categories of Potential Harm to Self and Society

1. Potential for addiction (physical or psychological dependence):

Salvia divinorum appears to be Extremely low

For comparison, cocaine, heroin and nicotine are extremely high, marijuana and alcohol are moderate, and LSD is extremely low

- Unlike drugs such as cocaine, heroin, and (to a lesser degree) marijuana, there is no convincing evidence that Salvia divinorum leads to addiction
- In animal experiments that are indicators of addiction potential, Salvia divinorum appears to be the
  opposite of an addictive drug. In other words, animals avoid it when given a choice
- A hallmark feature of addictive drugs is that they increase dopamine in a special area of the brain, call the shell of the nucleus accumbens, which is often referred as the rewards center in the brain. Addictive drugs such as cocaine, heroine, morphine, and even marijuana increase dopamine in this area. Salvia divinorum, in contrast, lowers dopamine in this area, consistent with its aversive effects in animals and many people.
- Survey research and interviews with human users also suggest that most people who try Salvia divinorum
  do not try it again. Such users typically state that the effects are too intense and bizarre, and that the drug
  does not provide an enjoyable or euphoric "high," as with addicted drugs.
- Not a single case report of addiction has appeared in the medical literature or has been reported by
  addictions treatment centers to our knowledge. Note that because programs typically ask patients to report
  all drugs they have used recreationally, some have reported use of Salvia divinorum, However,
  dependence on Salvia divinorum per se has not been reported to our knowledge.
- 2. Physical toxicity (organ damage, nerve damage, brain damage):

Salvia divinorum appears to be Extremely low

For comparison, abused solvents, heroin, and tobacco are extremely high, alcohol is moderate, and LSD is extremely low

- Animal studies show no evidence of organ toxicity or brain damage even at dose many times higher than those that are abused
- Overdose fatally therefore is extremely improbable, and has never been reported
- 3. Acute impairment (intoxication; relevant to accidents, errors in judgment, ability to drive):

Salvia divinorum appears to be Moderately High

For comparison, LSD and alcohol (at high doses) are extremely high, cocaine and marijuana are moderate, and nicotine is extremely low

- · High doses can cause extreme short-term motor impairment and confusion
- However, no Emergency Department mentions have been made about accidents while impaired, perhaps because the effects are so short lasting (major effects lasting about 10 minutes or less). Therefore, impairment potential for Salvia divinorum may be lower than high doses of alcohol or long-acting hallucinogens such as LSD, for which impairment can last many hours

Matthew W. Johnson, Ph.D. testimony on regulation of Salvia divinorum

A wide variety of options are currently used for regulating dangerous drugs of abuse in the United States. Note that some extremely dangerous substances are in the most restrictive class (heroin), while other extremely dangerous drugs are in the least restrictive class (abused solvents), with many other extremely dangerous drugs in between. Therefore, classification is based not only on potential dangers, but also on potential medical, industrial, and practical considerations.

Type of regulation	Federal Schedule guidelines (paraphrased)	Examples	Relevant Comments
Schedule i	High potential for abuse and no medical use	Heroin Marijuana (note that the active ingredient THC is scheduled lower, in Schedule III) PCP, LSD	Some of these drugs are associated with clear and dramatic effects on public health, and lead to addiction, such that they are placed in the very most restricted category by society. For example, the clear damage heroin abuse has caused in Baltimore (societal and personal degradation, overdose fatalities, HIV/AIDS)
Schedule II	High potential for abuse, accepted medical use; use may lead to high levels of dependence High level of regulation and control of prescription use by DEA	Cocaine Opioids such as morphine and Oxycontin® Methamphetamine and amphetamine	Cocaine is used medically in nose/fitroat surgery as a local anesthetic Opioids are invaluable pain relievers in medicine Methamphotamine, amphetamine are used in treatment of childhood and adult ADHD Many of these drugs can be extremely addictive, even more so than some drugs in schedule I, but are nonetheless valuable and widely used in medicine and medical research
Schedules III – V	Some potential for abuse and dependence, but less than higher schedules (abuse potential of Schedule 3 is less than Schedule 2; abuse potential of Schedule 4 less than Schedule 3, etc.)  Different Schedules (III – V) have different regulations about medical use, such as frequency of allowable prescription refills	Anabolic steroids (III)     Some opioids, eg., Vicodin® (III)     Marinol® (III) (FDA-approved THC, active constituent of marijuana     Sedatives (IV) such as Xanax® and Valium®	Steroids used medically in many circumstances     Opicids are invaluable pain relievers in medicine     FDA-approved THC used medically to treat nausea in chemotherapy     Sedative used medically to treat insomnia     Some of these drugs, such as sedatives, are involved in many deaths per year when abused, but are nonetholess valuable in medicine and medical research
Regulation of sales with age restriction (must be 21); restrictions on public use; strict prohibition of public impairment and impaired driving	N/A	Alcohol	Alcohol is responsible for 100,000 deaths/year in U.S., second only to tobacco in fatalities.  Enforcement of drunk driving laws has saved thousands of lives
Regulation of sales with enforcement of age restriction (must be 18); public health/education focus	N/A	Tobacco     Over-the-counter medications such Robotusin® and Sudafed® (very powerful drugs of abuse at high doses)	Tobacco is responsible for 400,000 deaths/year in U.S.; 2-3 million deaths/year world-wide. More than any other drug.  Tobacco is a good example in which this form of regulation has been effective. Smoking rates in the US have been cut roughly in half since peak rates in the 1950s and 1960s, primarily through education, public health warnings, and age restriction
Limited or no regulation; public health/education focus	N/A .	Solvents like gasoline, and chemicals in paint thinner and model airplane glue	Among the most toxic and dangerous of all drugs of abuse - many teens and children die from "huffing" and "sniffing glue" every year; permanent brain damage  Value to society in other respects is substantial, such that the best approach has been judged to be primarily education and public health warnings