# HB1085 TESTIMONY

#### DEPARTMENT OF THE PROSECUTING ATTORNEY

# CITY AND COUNTY OF HONOLULU

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KEITH M. KANESHIRO PROSECUTING ATTORNEY



ARMINA A. CHING FIRST DEPUTY PROSECUTING ATTORNEY

# THE HONORABLE CLAYTON HEE, CHAIR SENATE JUDICIARY AND LABOR COMMITTEE

Twenty-sixth State Legislature Regular Session of 2011 State of Hawai'i

March 21, 2011

RE: H.B. 1085, H.D. 2; RELATING TO CONTROLLED SUBSTANCES.

Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 1085, H.D. 2.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) Chapter 329 to bring the Hawaii statutes on controlled substances to be consistent with the federal laws on controlled substances, change language regarding the dispensation and central repository of controlled substances under the Department of Public Safety's Electronic Prescription Accountability System, and increase the fee for the registration certificate for qualifying patients for medical marijuana.

By updating Hawaii's controlled substance schedules, we address or avoid a current or imminent danger to the health and safety of the public.

The amendment to section 329-101(b), HRS, gives flexibility to the designated agency in determining the way information relevant to the dispensation of a controlled substance is reported. The proposed language states, "No identified controlled substance may be dispensed unless information relevant to the dispensation of the substance is reported electronically or by means indicated by the designated agency."

Further, the changes to section 329-102(f), HRS, allows the Department of Public Safety to be more flexible in identifying and tracking the abuse of certain non-controlled substances.

Finally, the amendment to section 329-123(b), HRS, increases the fee for a Medical Use of Marijuana permit from \$25 to \$35 to help with costs to run the program.

For the following reasons, we support the passage of H.B. 1085, H.D. 1. Thank you for this opportunity to testify.

Sent:

mailinglist@capitol.hawaii.gov Thursday, March 17, 2011 6:15 PM

To: Cc: JDLTestimony

Subject:

kjrayford@gmail.com Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: kevin rayford Organization: Individual

Address: Phone:

E-mail: kjrayford@gmail.com Submitted on: 3/17/2011

Comments:

mailinglist@capitol.hawaii.gov

Sent:

Thursday, March 17, 2011 8:14 PM

To:

**JDLTestimony** 

Cc:

WesWong808@gmail.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Wesley Wong Organization: Individual

Address: Phone:

E-mail: WesWong808@gmail.com

Submitted on: 3/17/2011

#### Comments:

As a Sr. citizen living on only a Social Security Disability income, every little increase in costs of food, gas, utilities impacts my life. With no cost of living increases from S.S. over the last 2 years, my standard of living has already decreased without having to increase my Medical Marijuana Permit cost being raised. Please consider this when you vote for or against the increase. Thank you in advance for your consideration.

mailinglist@capitol.hawaii.gov

Sent:

Thursday, March 17, 2011 8:16 PM

To:

**JDLTestimony** 

Cc:

dryvonneconner@yahoo.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Yvonne Conner Organization: Individual

Address: Phone:

E-mail: <a href="mailto:dryvonneconner@yahoo.com">dryvonneconner@yahoo.com</a>

Submitted on: 3/17/2011

#### Comments:

This is a hardship on many with the present economy. The state is already making 200,000 annually on the \$25 fee. I feel this is adequate for now.

mailinglist@capitol.hawaii.gov

Sent:

Thursday, March 17, 2011 9:16 PM

To:

**JDLTestimony** 

Cc:

mattrifkin28@gmail.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Matthew Rifkin Organization: Individual

Address: Phone:

E-mail: mattrifkin28@gmail.com

Submitted on: 3/17/2011

#### Comments:

I am a medical cannabis patient on the Big Island.

The Department of Narcotics has done a terrible job of administering the program. They have been taking 4 months to issue ID cards. They are not helpful when patients call with questions. We are treated like potential criminals instead of patients in need of support.

They should not be allowed to raise the fee given how poorly they have administered the program.

mailinglist@capitol.hawaii.gov

Sent:

Thursday, March 17, 2011 9:22 PM

To:

JDLTestimony |

Cc:

friendsforjustice@gmail.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Mike Ruggles Organization: Individual

Address: Phone:

E-mail: friendsforjustice@gmail.com

Submitted on: 3/17/2011

#### Comments:

NED published a pamphlet that was very one sided against the medical marijuana program. Why are they spending money on something against the very program they are in charge of?

Don't raise the fee to \$35. Don't wast my fee money on propaganda against medical marijuana.

I don't have a computer and asked FFJ to send this in.

Mike Ruggles Mt View, HI

mailinglist@capitol.hawaii.gov

Sent:

Thursday, March 17, 2011 9:26 PM

To:

JDLTestimony |

Cc:

friendsforjustice@gmail.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Kaipo Fernandez Organization: Individual

Address: Phone:

E-mail: friendsforjustice@gmail.com

Submitted on: 3/17/2011

#### Comments:

I am a medical marijuana patient in Hawaii County.

Many of my friends are patients, and many are on Social Security, disability or retired living on low income. The medical marijuana program is not covered by insurance, so the doctor visit, fee and all medicine must come out of pocket. This is a hardship for many. Please don't raise the cost to \$35.

Kaipo Fernandez Volcano, HI

I don't use a computer. Friends for Justice submitted this for me.

From: Sent: mailinglist@capitol.hawaii.gov Friday, March 18, 2011 6:22 AM

To:

JDLTestimony buzzzed@msn.com

Cc: Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Sandy Webb Organization: The Mum Clinic

Address: Phone:

E-mail: <u>buzzzed@msn.com</u> Submitted on: 3/18/2011

#### Comments:

Please before there is a fee increase :

- 1. Move the program to the Dept of Health.
- 2. Have a concrete way to improve the program.
- 3. Think on-line registration, with protected/secured passwords for physicians that use the program and eliminate the need for the wasteful "paper heavy" system that is used now.

From: Sent: mailinglist@capitol.hawaii.gov Friday, March 18, 2011 6:32 AM

To:

**JDLTestimony** 

Cc:

bfinkenberg@gmail.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: barry finkenberg

Organization: Individual

Address: Phone:

E-mail: <u>bfinkenberg@gmail.com</u>

Submitted on: 3/18/2011

Comments:

mailinglist@capitol.hawaii.gov Friday, March 18, 2011 7:05 AM

Sent: To:

**JDLTestimony** 

Cc:

naturadoc@gmail.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: BIONNIE MARSH, ND

Organization: Individual

Address: Phone:

E-mail: <a href="mailto:naturadoc@gmail.com">naturadoc@gmail.com</a>
Submitted on: 3/18/2011

#### Comments:

Please do not raise the fees for it will create a hardship for the ill citizens. None of this is covered by insurance, it is all out of pocket.

From: Sent: mailinglist@capitol.hawaii.gov Friday, March 18, 2011 7:10 AM

To: Cc: JDLTestimony cheryl@solights.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: cheryl nelson Organization: Individual

Address: Phone:

E-mail: <a href="mailto:cheryl@solights.com">cheryl@solights.com</a>
Submitted on: 3/18/2011

Comments:

mailinglist@capitol.hawaii.gov Friday, March 18, 2011 8:28 AM

Sent: To:

**JDLTestimony** 

Cc:

weasels@hawaii.rr.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Gen Griffin Organization: Individual

Address: Phone:

E-mail: weasels@hawaii.rr.com

Submitted on: 3/18/2011

# Comments:

Please do not increase the fee for medical marijuana licensing. Times are already tough

enough.

mailinglist@capitol.hawaii.gov Friday, March 18, 2011 11:21 AM

Sent: To:

**JDLT**estimony

Cc:

natclark108@gmail.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Nathan Clark Organization: Individual

Address: Phone:

E-mail: natclark108@gmail.com

Submitted on: 3/18/2011

#### Comments:

I am testifying today in opposition to HB 1085 HD 2 Relating to Controlled Substances. I am opposed to raising the medical marijuana registration fee.

I am sure that patients have lots of experiences to report, for instance, how they have waited 4 months or more to receive their cards, have not been able to get answers from the Narcotics Enforcement Division, etc.

#### TALKING POINTS:

- -The Narcotics Enforcement Division (NED) claims that the current fee does not cover their costs. With 8,000 patients, the office receives \$200,000 per year to operate the patient registry. If NED cannot cover expenses with the current fee, it is their responsibility to streamline the application process. They designed the process, they should make the necessary changes.
- -It is unreasonable to require that patients pay for NED's mismanagement. According to NED's own annual report, " NED was forced to utilize additional PSD clerical staff, after hours, and at overtime rates to assist in processing the increasing number of medical use of marijuana applications. " Patients should not be forced to pay an increased fee because NED could not manage their personnel and because overtime pay was given to employees.
- -Patients should not pay increased fees when their current needs are not being met. They should not be forced to wait months to receive their cards.
- -Many patients are seriously ill, on disability, and cannot work. They cannot afford increased fees.
- -Before approving any increase in fees, the legislature should require an audit of the " Controlled Substance Registration Revolving Fund, " the fund that the medical marijuana registration fees are deposited into. According to NED, there is no funding for positions, then what are the fees being used for? NED should be made to account for how the current fees are being used before they are allowed to increase the fees.

Sincerely, Nathan

# March 1, 2011

To:

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair and Members of the Committee on Judiciary and Labor

From:

Kevin Baiko, M.D.

RE:

HB 1085 HD 2 Relating to Controlled Substances

Hearing:

Monday, March 23, 2011, 8:30 p.m., 3 copies

Position:

Opposed

I am testifying today in opposition to HB 1085 HD 2 Relating to Controlled Substances, specifically in relation to its changing the registration requirements for doctors who participate in the certification/registration process of patients qualified to use medical cannabis.

The proposed changes would codify into law a requirement that physicians could only provide *written certification* (as defined in HRS §329-121) for patients seen at an address specifically associated with the physician's Controlled Substance Certificate on file at the state Narcotics Enforcement Division (N.E.D.). Such a requirement interferes with physicians' ability to serve their patients, particularly patients with debilitating medical conditions, the very patients for whom Hawaii's medical cannabis law has been enacted.

While such a requirement is not presently codified into law, it is practically (or impractically?) enforced as such, because the HRS §329 does state: "The department of public safety may require, through its rulemaking authority, that all written certifications comply with a designated form." At present, the N.E.D. incorporates into its current designated form a requirement for the physician to apply his signature to the following statement: "I certify that this applicant was seen and examined by me at the above listed business address which is registered with the State of Hawaii, Dept. of Public Safety, Narcotics Enforcement Division, as required under HRS §329-32." Of course, HRS §329-32 applies only to a person who "Manufactures, distributes, prescribes, or dispenses any controlled substance within this State", and since this designated form is merely a certification of eligibility (as opposed to a prescription), the designated form used by the N.E.D. is misleading, for it leads a well-meaning physician to believe that, unless he risk perjuring himself, he can only provide written certification for patients he has seen at his registered business address.

In fact, that's exactly what Keith Kamita, then chief of Narcotics Enforcement Division operations, told me when I questioned him on this issue last year in person, specifically that doctors who weren't seeing their patients at the address listed on the *designated form* were perjuring themselves and could face criminal charges for doing so. He further informed me that the business addresses registered with the Narcotics Enforcement Division were limited to locations where "patients are seen and records are kept",

effectively ruling out house calls and doctor-patient interactions otherwise convenient to patients suffering from debilitating conditions.

In the interests of my other patients (and my own career!), I have complied with Mr. Kamita's intimidating advice, but I cannot begin to estimate how many qualified patients have gone without medicine because of this interpretation (misinterpretation?) of the law. How many bed-ridden cancer patients have spent their last days in agony because of this? How many AIDS patients without transport have wasted away because this? I am no less a caring and capable doctor at a patient's home or at a farmer's market than at my office.

So, isn't it curious that this proposed bill would extend registered business address requirements to the *written certification* process? The only reason to do this is to give state law enforcement authorities more legal standing to harass, intimidate and prosecute the physicians who are brave enough to stand up for the well-being and dignity of their patients in the throws of a "drug war" policy that has done far more harm to individuals and society than all so-called narcotics combined (and certainly cannabis by itself).

Proponents of this proposed change will argue that doctors are visiting from out-of-state to help Hawaii patients get their "blue cards", and that this is somehow a bad thing. But why would mainland physicians bother to get a Hawaii medical license and periodically fly to Hawaii to provide such a service unless the supply of physicians providing the service couldn't meet the demand for such a service?

The reasons for such a physician shortage are complex and certainly include the fact that many physician employers forbid their physicians from the *written certification* process, not to mention the overall physician shortage itself. But make no mistake, many physicians are too intimidated to participate in Hawaii's medical cannabis program, and who can blame them? This proposed change in law would further discourage physicians from participating.

I ask the committee to remove this change from the bill. Far better the bill forbid the N.E.D. (or whatever state department overseeing the medical cannabis program) from restricting where patients can be seen when a physician issues his *written certification*, since it constitutes neither the manufacture, distribution, prescription, or dispensing of a controlled substance. Without such a change, the N.E.D. will likely continue its practice of intimidating physicians from serving their patients to their full ability. Or better yet omit from HRS §329-121 the statement "The department of public safety may require, through its rulemaking authority, that all written certifications comply with a designated form." Leave the *written certification* process to the ones professionally qualified to determine eligibility and risks/benefits of Hawaii's patients, namely their doctors.

Sincerely,

Kevin Baiko, M.D.

From: Sent:

mailinglist@capitol.hawaii.gov Friday, March 18, 2011 12:54 PM

To: Cc: JDLTestimony saralegal@live.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No

Submitted by: Sara Steiner submitting for Barbara Devaki Lang

Organization: Individual

Address: Phone:

E-mail: <a href="mailto:saralegal@live.com">saralegal@live.com</a>
Submitted on: 3/18/2011

#### Comments:

I am a medical marijuana patient living on the Big Island of Hawaii. I do not support HB 1085 HD2. I do not agree with making more restrictions for doctors, and I am against raising any fees, since so many people are struggling with finances these days.

Thank You, Barbara Devaki Lang

From: Sent:

mailinglist@capitol.hawaii.gov Friday, March 18, 2011 1:44 PM

To:

JDLTestimony

Cc:

forecharlee@msn.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Charles Webb, MD

Organization: Individual Address:

Phone:

E-mail: forecharlee@msn.com Submitted on: 3/18/2011

#### Comments:

DOS has used three different wasteful certification procedures in 2 years. Most of their efforts seem to be to obstruct the program. They could easily streamline and not gouge the poor patients.

From: Sent:

mailinglist@capitol.hawaii.gov Friday, March 18, 2011 12:54 PM

To:

**JDLTestimony** 

Cc:

Subject:

nimo1767@gmail.com Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: Robert Petricci Organization: Friends 4 Justice

Address: Phone:

E-mail: <a href="mino1767@gmail.com">nimo1767@gmail.com</a>
Submitted on: 3/18/2011

Comments:

Aloha from The Big Island

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair and Members of the Committee on Judiciary and Labor.

My name is Robert Petricci I am testifying for Friends 4 Justice.

RE: HB 1085 HD 2 Relating to Controlled Substances

Hearing: Monday, March 23, 2011

Position: Friends for Justice stands in opposition to HB1085.

The Narcotics Enforcement Divisions (NED) position that the current fee does not cover their costs in our opinion is due to poor management not by any fault of the patients. With 8,000 patients, the office receives \$200,000 per year to operate the patient registry. If NED cannot cover expenses with the current fee, it is their responsibility to streamline the application process not just simply ask for more money in these hard times. They designed the process, they should make the necessary changes.

- -It is unreasonable to require that patients pay for NED's mismanagement. According to NED's own annual report, " NED was forced to utilize additional PSD clerical staff, after hours, and at overtime rates to assist in processing the increasing number of medical use of marijuana applications. " Patients should not be forced to pay an increased fee because NED could not manage their personnel and because overtime pay was given to employees. Rewarding poor management will foster further poor management.
- -Patients should not pay increased fees when their current needs are not being met. They should not be forced to wait months to receive their cards. Or continue to be arrested even when in compliance, as we see in Hawaii county.
- -Many patients are seriously ill, on disability, and cannot work. They cannot afford increased fees.
- -Before approving any increase in fees, the legislature should require an audit of the " Controlled Substance Registration Revolving Fund, " the fund that the medical

marijuana registration fees are deposited into. According to NED, there is no funding for positions, then what are the fees being used for? NED should be made to account for how the current fees are being used before they are allowed to increase the fees.

-We are also opposed to changing the registration requirements for doctors who recommend medical marijuana as these changes may make it difficult for doctors to make house calls or see seriously ill patients in locations other than doctors' offices. This provision is an example of the adversarial position that NED has taken with physicians and is part of NED's on-going efforts to harass law-abiding physicians. Recent communication from NED has made it clear that their intention is to restrict and interfere with how doctors are able to treat their medical marijuana patients. We ask the committee to remove this change from the bill.

Thank you for your time and efforts on behalf of the 8,000 sick citizens struggling to treat there afflictions and stay in compliance with the law. Things are hard enough already for many of these patients please consider them and vote no on HB1085. You do not have to like marijuana to understand many people are benefiting from its medical use, the stigma, perceptions, dangers, risk they are subjected to is wrong there are laws in place to address any abuse. Patients have enough problems with out the state adding to them.

mailinglist@capitol.hawaii.gov

Sent:

Saturday, March 19, 2011 3:22 PM

To:

JDLTestimony

Cc:

mcajudoy@hotmail.com

Subject:

Testimony for HB1085 on 3/21/2011 8:30:00 AM

Testimony for JDL 3/21/2011 8:30:00 AM HB1085

Conference room: 016

Testifier position: oppose Testifier will be present: No Submitted by: mackenzie cajudoy

Organization: Individual

Address: Phone:

E-mail: <a href="mcajudoy@hotmail.com">mcajudoy@hotmail.com</a>
Submitted on: 3/19/2011

#### Comments:

very hard as it is to get it pretty much illeagal average people will have a hard time paying more...



# Medicine Buddhas and Bodhisattvas Natural Cancer Wellness Foundation Dr. Myron Berney, ND LAc



# Oppose HB1085 HD2

Marijuana can not be legally crammed into a Schedule I where it legally does not fit. Because we have medical marijuana that is approved for use by President Obama in Hawaii VA system with no penalty for using a dangerous drug or controlled substance, Marijuana can not be crammed into a Schedule I drug category because it has documented, safe and effective clinical use.

If it has a medical use it can not be Schedule I by LAW. Meaning that this bill is a fraud; this bill is a lie!

There is not any State or Federal requirement that State Law must mirror Federal Law. There is no logical reason to mirror bad law that is in violation of the law itself and completely wrong from the get go.

Senate Health, under Dr. Green MD, moved forward a bill to reschedule Marijuana to Schedule III

Currently under the HRS 329 Medical Marijuana is a recommended (non-prescription) home grown herbal medicine. This has been no problem; let's keep it that way.

Why, under what scientific or medical basis is Cannabis, Marijuana, herbal medicine considered to have no medical use and to be completely unsafe under the strictest supervision when before 1939 Marijuana was completely unregulated with no social harm and since 1939 marijuana use has been completely unsupervised with no social harm.

What is it that the State finds wrong with a non toxic anti stress, relaxing, calming medicine that has life long benefit for the worst kinds of pain and illness, Where even the recreational use is therapeutic.

Granted the worst part of Marijuana is the smoking, although smoking marijuana protects cigarette smokers, tobacco smokers, from lung cancer! Proven and Published!

The absolute worst thing about Marijuana is the Federal Law, State Law and the resultant black market and crime. Although even with Marijuana these problems do not rise to the extremes of meth and coke.

Respect the Local Culture--Over 50% of Voters love Pakalolo

Either Kill this Bill or

Better Yet

Delete the whole thing and move it forward with the language to reschedule Marijuana to a Schedule III (or less) HRS 329-18 (or higher). See SB 174.