
Hawaii State Legislature - ACT 228 Medical Marijuana Law

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Background

In June 2000 Hawaii's Governor signed into law a bill to allow for the medicinal use of marijuana (ACT 228). The law exempts physicians who recommend marijuana to their patients and patients who use marijuana, for a specific medical condition, from *state* criminal penalties.

ACT 228, however, directly contradicts federal law. Under federal law, physicians who recommend marijuana to a patient are **in danger of losing their federal license to prescribe controlled substances (DEA license) and could be subject to criminal prosecution**. More specifically, federal law establishes a clear prohibition against knowingly or intentionally distributing, dispensing or possessing marijuana (21 U.S.C. §§841-44). Therefore, patients using marijuana, even for medical purposes, could also be subject to federal penalties.

What is Hawaii Medical Association's position on the medical use of marijuana?

The HMA opposed the medical marijuana bill based primarily on two principles. First, *federal law still prohibits physicians from recommending marijuana to their patients*. Second, the HMA has consistently stated that we do not oppose any legalization of medical marijuana. Rather, we believe the use of medical marijuana must be approved through the same federal process that all prescriptive drugs in our country undergo — based on evidence from scientific, controlled studies, approved by the U.S. Food and Drug Administration and distributed through pharmacies.

HOW DOES THE STATE LAW WORK?

Can physicians recommend medical marijuana for any medical condition?

Under the law, only patients with a "debilitating medical condition" can use medical marijuana. The law defines "debilitating medical condition" as: 1) cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions; or 2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or 3) any other medical condition approved by a panel within the Department of Health (in response to a request from a physician or "potentially qualifying" patient).

Advising on risks and benefits of medical marijuana

It is important to note that because marijuana has not been fully tested in properly controlled clinical trials, physicians should be extremely cautious when discussing the risks and benefits of its medical use. A physician may be at risk of malpractice liability if a patient suffers an adverse effect, of which the physician was unaware, that would likely have been identified if such testing had taken place.

Can a physician be held liable if a patient's request for marijuana is denied?

The ultimate responsibility to determine the treatment appropriate for the patient rests with the physician. If the physician does not believe that marijuana would be therapeutically beneficial for the patient, the physician's refusal to write a certificate that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient would be a matter of medical judgment for which the physician would not be held liable. Whether the physician should recommend that the patient see another physician would be within the discretion of the treating physician.

If a physician wants to "recommend" medical marijuana under the new state law, what needs to be done?

In order to avoid arrest or prosecution under STATE LAW for recommending medical marijuana to a patient, the physician must do all of the following:

- 1). Diagnose the patient as having a debilitating medical condition as defined in the law;
- 2). Explain the potential risks and benefits of the medical use of marijuana;
- 3). Complete a written certification, issued by the Narcotics Enforcement Division (NED) of the Department of Public Safety, which requires a recommendation that the patient use medical marijuana. The physician must state in the medical record or in a separate statement that, in the physician's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits for the medical use of marijuana would likely outweigh the health risks for the qualifying patient. Written certifications are valid for one year, although the physician may revoke them at any time.
- 4). Contact the NED (phone: 594-0150) to provide the patient's

name, address, patient identification numbers (driver's license number), and other identifying information so that the patient may obtain a registry identification certificate. Any change in the patient's information must be provided by the physician within five working days to the NED.

The NED will provide physicians with the necessary forms to include qualifying patient and primary caregiver registry identification forms, physician written certification forms and an information packet describing the laws and regulations on the program.

Is it okay to write a recommendation for medical marijuana on a personal prescription pad?

NO. This is a violation of federal law.

Patient Registry

If a physician wants to recommend to his or her patient that they use marijuana for a debilitating medical condition, the patient must register with the NED and obtain a registry identification certificate (there will be a registration fee of \$25). The physician who issues a written certification shall register the name, address, patient identification number and other identifying information with the NED.

Primary Caregivers

The law permits each patient to have one primary caregiver who has agreed to undertake responsibility for managing the well being of the patient who is using medical marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or patient having legal custody. Primary caregivers must also register with the NED.

How much marijuana is the patient allowed to have?

The law does not provide for a so-called distribution system of medical marijuana. It does state, however, that the amount of marijuana the patient is allowed to have is not to exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

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POISON CENTER TIPS

- Keep the number of the Hawaii Poison Center on or near your telephone.
- If you suspect a poisoning, do not wait for signs and symptoms to develop. Call the Hawaii Poison Center immediately.
- Always keep Ipecac Syrup in your home. (This is used to make a person vomit in certain types of poisoning.) **Do not use Ipecac Syrup unless advised by the Hawaii Poison Center.**
- Store all medicines, chemicals, and household products out of reach and out of sight, preferably locked up.
- A good rule to teach children is to "always ask first" before eating or drinking anything—don't touch, don't smell, don't taste.

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