



Hawaii Medical Use of Marijuana

[Physician and Patient Information]

The content of this packet does not replace nor rewrite any part of Hawaii Revised Statutes, Chapter 329, or Hawaii Administrative Rules Title 23, Chapter 202, Medical Use of Marijuana. The intent of this packet is to highlight key points and clarify some frequently asked questions. When we can be of assistance, please contact our office at (808) 837-8470.



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DEPARTMENT OF PUBLIC SAFETY
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No. _____

**Physician’s Guideline & Patient Information
for Completing Hawaii’s
Written Certification / Registry Identification Forms
for the Medical Use of Marijuana**

All physicians wishing to recommend marijuana for medical purposes must be licensed under Chapters 453 and 460, Hawaii Revised Statutes, and licensed with authority to prescribe drugs and is registered under section 329-32, Hawaii Revised Statutes. The term “Physician” does not include Physician's Assistant as described in Section 453-5.3, Hawaii Revised Statutes.

Physicians who authorize their patients to utilize marijuana for medical purposes shall submit the completed qualifying patient and primary caregiver written certification / registry identification forms and \$25.00 registration fee to:

Narcotics Enforcement Division
3375 Koapaka Street, Suite D-100
Honolulu, Hawaii 96819

The issued temporary letter signed by the NED Administrator and/or registry certificate (blue card) signed by the qualifying patient’s physician and NED Administrator along with the completed written certification /registry identification application forms shall serve as the physician’s written certification. This certification shall be based upon the physician's professional opinion after having completed a full face to face assessment of the patient to include a review of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship that the qualifying patient has been diagnosed with a debilitating medical condition; and that the physician has certified 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. No person shall engage in the use of marijuana for medical purposes until they have completed the written certification/registry identification application forms with their physician, paid the required registration fees and is issued a signed registry certificate and/or temporary letter from his/her physician. Upon receipt of the completed written certification/registry identification forms from the qualifying patient’s physician the Department will verify the information provided, and mail the registry certificates for the patient and his/her primary caregiver, if any, to the requesting physician. **The physician shall sign and issue the registry certificates to his/her patient and the patient’s primary caregiver, if any.**

Physicians wishing to recommend the medical use of marijuana for their qualifying patients shall fill out section C of the Written Certification/Registry Identification Forms (Registration Forms) and have their patient complete Section A, B, D and E. The patient and his primary caregiver, if any, shall provide a photocopy of their current Hawaii Driver’s License, Hawaii State Identification Card or Passport with the completed registration form.

A qualifying patient shall have only one primary caregiver and only one physician issuing a written certificate at any given time.

1. In the case of a patient who is under the age of eighteen years or an adult lacking legal capacity, the patient's parent, guardian, or person having legal custody shall fill out Section A, B, D and E of the registration form. The patient's parent, guardian, or person having legal custody shall act as the patient's primary caregiver.
2. All patients over the age of eighteen years that elect to have a primary caregiver must fill out Section D of the registration form. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time. The term "primary caregiver" means a person, other than the qualifying patient and the qualifying patient's physician, who is eighteen years of age or older, and 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.
3. A patient or their primary caregiver that elects to grow the authorized amount of marijuana for medical purposes shall fill out Section E of the registration form.

Permissible amounts of medical marijuana. (a) A qualifying patient who possesses a registry identification certificate issued pursuant to section 329-123, Hawaii Revised Statutes, may engage in and a registered primary caregiver of the patient may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the qualifying patient's debilitating medical condition.

(b) The medical marijuana shall be grown only at the following locations:

- (1) The qualifying patient's home address; or
- (2) The primary caregiver's home address or 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.

(c) The qualifying patient and primary caregiver jointly may not possess more than an "adequate supply" which shall not exceed a total of three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

(d) If any individuals described in subsection (a) possess, deliver, or produce marijuana in excess of the amounts allowed in subsection (c), such individuals are not exempted from the criminal laws of the State and shall be in violation of section 329-128(b) Hawaii Revised Statutes.

NOTE: Title 23 Chapter 202-2 Hawaii Administrative Rules states that the qualifying patient and primary caregiver jointly may not possess more than an "adequate supply" which shall not exceed a total of three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

In the case of qualifying patient cohabitating with other qualifying patient, it is recommended that all marijuana plants shall be clearly marked utilizing the qualifying patients medical marijuana registration number to assist in the identification of authorized plants to law enforcement. This is also recommended for marijuana plants grown on property not next to a residence where an address can be verified.

Section 329-1, Definitions

"Physician-patient relationship" means the collaborative relationship between physicians and their patients. To establish this relationship, the treating physician or the physician's designated member of the health care team, at a minimum shall:

- (1) Personally perform a face-to-face history and physical examination of the patient that is appropriate to the specialty training and experience of the physician or the designated member of the physician's health care team, make a diagnosis and formulate a therapeutic plan, or personally treat a specific injury or condition;
- (2) Discuss with the patient the diagnosis or treatment, including the benefits of other treatment options; and
- (3) Ensure the availability of appropriate follow-up care.

PROHIBITED AREAS AND ACTIVITIES

The authorization for the medical use of marijuana 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) Any other place generally accessible to the public;
- (3) Any sale of marijuana; or
- (4) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this chapter.

In addition, although Hawaii law authorizes the medical use of marijuana, it does not authorize the distribution of marijuana other than the transfer from a qualifying patient's primary caregiver to the qualifying patient. Section 329-121, HRS (definition of "medical use"). State law provides no immunity from prosecution for any distribution of marijuana other than from the primary caregiver (defined in Section 329-121, HRS) to a qualifying patient ("a person who has been diagnosed by a physician as having a debilitating medical condition").

1. In order for the application to be complete, a registration fee of \$35 shall be paid at the time the written certification / registry identification forms are submitted to the Department. Payment shall be made in the form of a certified, or cashier's check or money order payable to the Narcotics Enforcement Division. Payment by a bank cashier's check, or money order will allow for faster processing. Payment made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. No refund will be issued once the written certification/registry identification forms have been received at the department.
2. All patients and their primary caregivers shall report any change in information required by the department within five working days. A qualifying patient shall have only one primary caregiver and only one physician issuing a written certificate at any given time.

NOTE: The registry identification certificate authorizes the possession, and use of marijuana for medical purposes under State law only. Federal law prohibits the possession, use or distribution of marijuana within the State and to locations outside the State.

Revocation of registry identification certificate. (a) The department has the authority to revoke a registry identification certificate, with suspension of the registry identification certificate pending administrative hearing on the revocation. The department under one or more of the following conditions may revoke a registry identification certificate:

- (1) The applicant or physician has furnished false or fraudulent material information or omitted information in any of the written certification/registry forms submitted to the department under this chapter;
 - (2) The written certificate issued to the qualifying patient was not based upon provisions set forth in section 329-126, Hawaii Revised Statutes;
 - (3) Suspension or revocation of a physician's medical license or state controlled substance registration as designated under section 329-32, Hawaii Revised Statutes; or
 - (4) For violations of section 23-202-3, 23-202-7, 23-202-13 or 23-202-14 Administrative Rules.
- (b) When the department proposes to revoke a registration certificate of a qualifying patient or a designated primary caregiver, the department shall send a notice of proposed revocation by mail to the patient's address currently listed in the data file and a copy to the qualifying patient's primary caregiver and physician.
- (c) A qualifying patient or designated primary caregiver may contest the proposed revocation of registration by submitting a request in writing within thirty days of the revocation for an administrative hearing in conformity with Chapter 91, Hawaii Revised Statutes. The request for hearing shall be addressed to: Narcotics Enforcement Division, Department of Public Safety, 3375 Koapaka Street, Suite D-100, Honolulu, HI 96819.
- (d) The department may reinstate a registration certificate without reapplication.

MODIFICATION, TRANSFER, AND TERMINATION OF CERTIFICATE

(a) In the event of a change of name or address of the qualifying patient, primary caregiver, or location where the qualifying patient elects to grow the qualifying patient's medical marijuana, the qualifying patient shall submit a letter with the updated information to the Department of Public Safety, Narcotics Enforcement Division, at 3375 Koapaka Street, Suite D-100, Honolulu, Hawaii 96819. The notification shall be submitted to the department within five working days of the change. No fee shall be assessed for the modification of the certificate.

(b) Failure to report a change of any of the information mentioned in subsection (a) shall invalidate the certificate as of the date of the change plus five working days and shall require re-registration and the imposition of a \$10 late fee.

(c) No certificate issued to a qualifying patient shall be assigned or otherwise transferred to any other patient.

(d) A qualifying patient who possesses a registry identification certificate who no longer suffers from a debilitating medical condition shall return the registry identification certificate to the department within seven calendar days of notification of the diagnosis. The qualifying patient's primary caregiver shall also return the issued registry identification certificate within the same period of time and the qualifying patient's medical marijuana supply disposed of in accordance with procedures set forth by the department.

(e) The qualifying patient's attending physician shall notify the department that the qualifying patient's condition no longer warrants the use of marijuana for medical purposes. The physician shall notify the qualifying patient of the contact.

(f) A certificate issued to a qualifying patient or primary caregiver is void upon the qualifying patient's death or if the patient's primary physician revokes the qualifying patient's written certificate. The qualifying patient's family, legal guardian, or primary caregiver shall notify the department within seven calendar days of the qualifying patient's death or revocation

of the written certificate by the primary physician. The certificate shall be returned to the department and the qualifying patient's medical marijuana supply shall be disposed of in accordance with the procedures set forth by the department.

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.

What Hawaii's Medical Use of Marijuana Law Does NOT Do:

Does Not Legalize Marijuana State and Federal laws banning marijuana remain in effect and Hawaii's Medical Use of Marijuana Program does not permit the recreational use of marijuana.

Does Not Allow Just Anyone To Claim 'Medical Use' of Marijuana To be covered under Hawaii's medical marijuana law, a patient must have one of the listed debilitating medical conditions certified by his/her doctor, and registered with the Department and issued a Medical Marijuana Registry Patient Identification Certificate. If a patient is not registered with the Department then he is not qualified under this program.

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.

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 buyers or seller's medical condition or medical authorization to use marijuana.

Does not allow for marijuana dispensaries Hawaii law does not authorize any person or entity to sell or dispense marijuana to medical use of marijuana patients. Hawaii law authorizes the medical use of marijuana, it does not authorize the distribution of marijuana (Dispensaries) other than the transfer from a qualifying patient's primary caregiver to the qualifying patient. Section 329-121, HRS (definition of "medical use"). State law provides no immunity from prosecution for any distribution of marijuana other than from the primary caregiver (defined in Section 329-121, HRS) to a qualifying patient ("a person who has been diagnosed by a physician as having a debilitating medical condition").

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.

Frequently Asked Questions

Q) Will having a patient registry certificate for the medical use of marijuana exempt the patient from U.S. Department of Transportation drug testing rules? No. Employees who test positive for marijuana on a drug test, which is required under U.S. Department of Transportation (DOT) rules, will be reported positive whether or not an employee has a certificate issued by the State to utilize marijuana for medical purposes.

Q) Will the drug test be declared negative because the employee has a medical reason for the positive test result? If you are drug tested under a program required by the U.S. Department of Transportation (DOT), you will be deemed to have a positive test result even if you have followed all the medical marijuana requirements found in State rules. In addition, your employer will be required under DOT rules to remove you from safety-sensitive functions. The DOT rules do not recognize medical marijuana as a medical explanation for a positive test result. Therefore, the test will be declared positive by the MRO. Other federal agencies and other employers, at their own discretion, may elect to take a similar position. Your employer may also elect to other actions, including termination. It is, therefore, imperative that you talk to your employer relating to the possible consequences of utilizing marijuana for medical purposes in regards to drug testing.

Q) Can the Department give me a list of physicians who are participating in the medical use of marijuana program? No. State agencies are prohibited from recommending or referring a patient to particular physicians.

Q) Can I get copies of the application form to take to my physician? No. All medical use of marijuana application forms are issued directly to physicians participating in the program. All potential patients that have a debilitating medical condition that is authorized under the program should visit their treating physician who will do a medical examination and determine if that patient qualifies under the program. The authorization to use marijuana for medical purposes is the physician's decision and therefore application forms are limited to physicians participating in the program and not issued to the public for diversion reasons.

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 participate in the program it is up to the physician to use his / her best medical judgment in deciding to recommend marijuana for medical use. If a physician informs a patient that he does not qualify under the program then he possibly does not have a debilitating medical condition as defined under the program or the physician feels that the risk associated with marijuana is not warranted.

Q) If My Doctor Wants More Information on the Medical Uses of Marijuana Where Can He/She Get It? All physicians can obtain information from the Narcotics Enforcement Division by calling (808) 837-8470 or download information from the Division's webpage located at http://www.hawaii.gov/psd/ned_home.php.

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.

Q) Does The Narcotics Enforcement Division Require a Registration Fee? Yes, there is an annual registration fee of \$35 which covers the cost of the patient and if he has a primary caregiver. There is a charge of \$10 for a duplicate registration certificate and a \$15 bounced check penalty (All bounced checks will immediately invalidate the patient's medical use of marijuana certificate). It is recommended that the use of cashiers check or money order be utilized to avoid any processing problems.

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 Hawaii's medical marijuana act. The only people who can authorize medical marijuana for a patient in Hawaii are physicians licensed by the state of Hawaii's (MD) and how have a active State Controlled Substance Registration.

Q) Why Can't I Get Medical Marijuana at a Pharmacy? Marijuana is a Schedule I controlled Substance under both State and Federal law and not approved by the FDA and cannot be administered, prescribed or dispensed by a physician or pharmacy.

Q) Where Can I Obtain Medical Marijuana? State law is silent on how a patient obtains his / her marijuana. The State does not authorize marijuana buyers clubs or recognize any legal source for marijuana to be utilized for medicinal purposes. The Hawaii's 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? Then you are ineligible for this program, however Hawaii's medical use of marijuana 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.

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? Under Title 23 Chapter 202 "mature plant" is defined as a marijuana plant whether male or female, that has flowered and which have buds that are readily observed to the naked eye.

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 Stopped by the Police and Accused of Possession of Marijuana? Politely show the officer your medical use of marijuana patient registry card. They may then contact the Narcotics Enforcement Division to verify your registration and let you go on your way.

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.

Q) Can Patients Living in Rental Units or Federally Subsidized Housing Participate in The Program? As noted earlier, despite Hawaii'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 come before Hawai'i's law. Patients occupying rental units or federally subsidized housing that 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? Title 23, Chapter 202-13 Hawaii Administrative Rules states that a patient's medical marijuana shall only be grown at the following locations:

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

Q) Am I Covered under the Hawaii Medical Marijuana Law if I have a Medical Marijuana Certificate from another State? No. Hawaii Law does not recognize medical use of marijuana certificates from other States. All Medical Use of Marijuana Certificates must be processed through a Physician licensed in the State of Hawaii with an active Controlled Substance Registration.

Q) Act Can I Use Medical Marijuana in Other States? At this time there are no arrangements with other states to honor the Hawaii law. Likewise, Hawaii's law does not recognize medical marijuana certification from any other state. The Hawaii Medical Marijuana Act is *only* recognized within Hawaii.

Q) How Can I Amend Information on My Registry Identification Certificate? Qualifying patients and primary caregivers are required to report any change in information submitted to the department on their written certification/registry identification application forms within five working days. A qualifying patient shall have only one primary caregiver and only one physician issuing a written certificate at any given time.