THE SENATE                              S.B. NO.           862
TWENTIETH LEGISLATURE, 1999
STATE OF HAWAII

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A  BILL  FOR  AN  ACT

RELATING TO MEDICAL USE OF MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that modern medical
2 research has discovered a beneficial use for marijuana in
3 alleviating certain serious illnesses. Medical usage of
4 marijuana has been permitted in California, Arizona, Oregon,
5 Washington, and Alaska.
The legislature further finds that allowing the medical use of marijuana could promote Hawaii as being an international center for medical treatment and research.

The legislature further finds that although federal law prohibits marijuana use, states are not required to enforce federal law and the State is not precluded from passing its own laws.

The purpose of this Act is to ensure that seriously ill people are not penalized for the use of marijuana for strictly medical purposes when the patient's treating physician provides a professional opinion that marijuana is medically beneficial to the patient.

SECTION 2. Chapter 329, Hawaii Revised Statutes is amended by adding a new part to be appropriately designated and to read as follows:

PART .

MEDICAL USE OF MARIJUANA

§329-A Definitions. As used in this part:

"Adequate supply" means an amount of marijuana that is not more than is necessary to assure, throughout the projected course of treatment, the uninterrupted availability for purposes of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

"Debilitating medical condition" means:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(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

(3) Any other medical condition approved by the department of health pursuant to administrative rules in response


"Marijuana" shall have the same meaning as provided in section 329-1.

"Medical use" means the acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition.

"Parent" means the custodial mother or father, the legal guardian, or any other person having legal custody of a qualifying patient under the age of eighteen years.

"Physician" means a person who is licensed under chapter 453.

"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 has significant responsibility for managing the well-being of the qualifying patient.

"Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

"Written documentation" means a statement signed by a qualifying patient's physician or medical records of the qualifying patient stating that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

§329-B Medical use of marijuana; permitted when.

(a) Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient, or the furnishing of marijuana for medical use by the qualifying patient's primary caregiver, as appropriate, shall be permitted, if that qualifying patient has been diagnosed by a physician as having a debilitating medical condition; provided that the physician shall have written
9 documentation pertaining to that qualifying patient; and further
10 provided that the amount of marijuana does not exceed an adequate
11 supply.
12 (b) Subsection (a) shall not apply to a qualifying patient
13 under the age of eighteen years, unless:
14 (1) The qualifying patient's physician has explained the
15 potential risks and benefits or the medical use of
16 marijuana to the qualifying patient and to at least one
17 of the qualifying patient's parents; and
18 (2) At least one of the qualifying patient's parents
19 consents in writing to: the qualified patient's
20 medical use of marijuana; serve as the qualifying
21 patient's primary caregiver; and control the
22 acquisition of the marijuana and the dosage and
23 frequency of the medical use of marijuana by the
24 qualifying patient.
25 (c) This section shall not apply to:
26 (1) Medical use of marijuana that endangers the health or
27 well-being of another person;
28 (2) Medical use of marijuana in a school bus or public bus;
29 on any school grounds; or at any public park, public
30 beach, public recreation center, recreation or youth
31 center, or other place open to the public; and
32 (3) Use of marijuana by a qualifying patient, parent, or
33 primary caregiver for purposes other than medical use.
34 §329-C Insurance not applicable. This part shall not be
35 construed to require insurance coverage for the medical use of
36 marijuana.
37 SECTION 3. Chapter 453, Hawaii Revised Statutes, is amended
38 by adding a new section to be appropriately designated and to
39 read as follows:
40 "§453- Medical use of marijuana. No physician shall be
41 subject to arrest or prosecution, penalized in any manner, or
42 denied any right or privilege, for providing a professional
43 opinion or written documentation to a person, whom that physician
44 has diagnosed as having a debilitating medical condition, as
provided that the professional opinion or written documentation is based upon the physician's assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship."

SECTION 4. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part IV, to be appropriately designated and to read as follows:

"§712- Marijuana. (1) No provision of this part that applies to marijuana shall be construed to be violated due to the medical use of marijuana in accordance with part of chapter 329.

(2) Marijuana subject to part of chapter 329 and any property used in connection with the medical use of marijuana shall not be subject to search or seizure. Marijuana, paraphrenalia, or other property seized from a qualifying patient or primary caregiver in connection with claimed medical use shall be returned immediately upon the determination by a court that the qualifying patient or primary caregiver is entitled to the protections of part of chapter 329, as evidenced by a decision not to prosecute, dismissal of the charges, or an acquittal.

(3) A person shall not be subject to arrest for being in the presence or vicinity of the medical use of marijuana.

(4) It shall be an affirmative defense for prosecution involving marijuana under this part that there was compliance with part of chapter 329; provided that the qualifying patient's physician, in the context of a bona fide physician-patient relationship, has stated that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks defined in section 329-A, about the potential risks and benefits of the medical use of marijuana, as defined in section 329-A;
for the particular qualifying patient.

(5) Misrepresentation of any fact or circumstance relating to subsection (1), (2), or (3) to avoid prosecution under this part shall be subject to imprisonment of up to thirty days and a fine of $500, in addition to any other penalties that may apply for the non-medical use of marijuana.

(6) In any criminal proceeding under this part in which a physician is called to testify, testimony by the physician shall be in private in chambers. Upon request of the physician who testifies, if the testimony is subsequently used in a public proceeding, whether criminal or civil, the name of the physician shall not be disclosed.

(7) For the purposes of this section:

"Marijuana" shall have the same meaning as provided in section 712-1240; and

"Medical use" shall have the same meaning as provided in section 329-A.

SECTION 5. Section 453-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, any license to practice medicine and surgery may be revoked, limited, or suspended by the board at any time in a proceeding before the board, or may be denied, for any cause authorized by law, including but not limited to the following:

(1) Procuring, or aiding or abetting in procuring, a criminal abortion;

(2) Employing any person to solicit patients for one's self;

(3) Engaging in false, fraudulent, or deceptive advertising, including, but not limited to:
    (A) Making excessive claims of expertise in one or more medical specialty fields;
    (B) Assuring a permanent cure for an incurable disease; or
(C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;

(4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;

(5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;

(6) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;

(7) Professional misconduct, hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine or surgery;

(8) Incompetence or multiple instances of negligence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;

(9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association or the American Medical Association;

(10) Violation of the conditions or limitations upon which a limited or temporary license is issued;

(11) Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege for reasons as provided in this section;

(12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician,
notwithstanding any statutory provision to the contrary;

(13) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereunder[;]

except as provided in section 329-B;

(14) Failure to report to the board, in writing, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days after the disciplinary decision is issued; or

(15) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact."

SECTION 6. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. In codifying the new sections added by this Act, the revisor shall substitute the appropriate section numbers for the letters used in designating the new sections of this Act.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

INTRODUCED BY: _______________________

S.B. NO. 862