



**HCR 48 Task Force Meeting #7  
Tuesday, December 16, 2014 9:00-2:00pm  
Hawai'i State Capitol, Room 325**

**Task Force Members Present:**

Jill Nagamine and Lance Goto, Attorney General's Office  
Peter Whiticar, Department of Health  
Ted Sakai, Director Department of Public Safety  
Jonathan White, Department of Taxation  
Lee Ann Teshima, Department of Commerce and Consumer Affairs  
Susan Chandler, University of Hawai'i Public Policy Center  
Tricia Nakamatsu (alternate for Jon Riki Karamatsu), Department of the Prosecuting Attorney Harry Kubojiri, Law Enforcement Coalition  
Representative Della Au Belatti, House Committee on Health  
Senator Rosalyn Baker  
Representative Gregg Takayama  
Jensen Uyeda, University of Hawai'i Tropical Agriculture and Human Resources Rafael Kennedy, Drug Policy Forum  
Dr. Clif Otto, Physician participating in Hawai'i's Medical Marijuana Program  
Karl Malivuk, Patient over the age of 18 and a participant in Hawai'i's Medical Marijuana Program  
Jari S. K. Sugano, Guardian of a patient under the age of 10 who is a participant in Hawai'i's Medical Marijuana Program  
Dana Ciccone, Caregiver participating in Hawai'i's Medical Marijuana Program  
Dan Gluck, American Civil Liberties Union of Hawai'i  
Dr. Christopher Flanders, Hawai'i Medical Association  
Alan Shinn, Coalition for a Drug Free Hawai'i

**TF Members Absent:** Senator Josh Green

**Other Legislators in Attendance:** Senator Will Espero

**Introductions:**

Roundtable introductions of participants  
Approval of Agenda  
Opportunity for public input added at halfway point of this Task Force meeting.

### **Review of Ground Rules:**

Timeline: Report Draft due to Legislature (early January)

Additional meeting needed to review Final Draft of Report.

Suggested meeting date: December 30, 2014. Following this meeting, can make final approvals via email.

**Approval of November 18 Minutes:** Deferred to next meeting.

### **Voting Procedures for Task Force Proposals:**

YES = I'm OK with putting this recommendation into the Task Force Report.

NO = I do not want this recommendation in the Task Force Report.

DEFER = This proposal needs more work and should be put into an appendix for further discussion.

### **TF Discussion and Vote on Proposed Recommendations # 1-5:**

#### **1. Number and Location of Dispensaries**

##### Discussion about 4th bullet recommendation:

- The DOH Deputy AG expressed concerns about the transport of medical marijuana between islands. Does this proposed recommendation imply giving DOH's stamp of approval?
  - Comment: Take out "department" to address liability concerns?
  - Comment: Need to include caveats with the approval of petition. Similar to issuance of patient certifications, an approved petition does not protect them person from federal law.
  - Comment: Embed in proposed legislation references to the Cole memorandum and how recommendation that allows dispensing on an island that lacks a dispensary is part of a larger regulated system with appropriate safeguards such as tracking medication, even through the delivery process, with "seed to sale" tracking system.
- Implementation of this type of recommendation will require establishing dialogue with federal partners (ie. discussion with TSA, DOJ and US Attorney). DOH and other stakeholders will need to vet a policy to address interstate transport.
- Re: airport concerns, especially, the various State and federal agencies and their various contractors will be involved and will need to come together to discuss how policies would be implemented.
- Continued open discussion on issues still needed in this area (ie. Is Oakland example replicable in Hawaii).
- Federal partners reserve the right to prosecute; and there is no state protection if someone steps outside of the regulation boundaries.
- Question: Did Task Force receive response from DOJ or TSA regarding meeting request? Representative Belatti reported that due to time constraints a meeting with DOJ representatives could not be arranged with the Task Force, but she and Mr. Whitarcar were able to meet with the US Attorney in early December to begin general discussions about medical marijuana and the prospects of a dispensary system in Hawaii. From that meeting, federal agencies will reserve the right to prosecute.
- Question: Will there be an exemption for populations <500 patients?

Discussion about 1st bullet recommendation:

- Concerns expressed about 500:1 patient to dispensary ratio.
- Explanation for 500:1 ratio based on Policy Subcommittee finding that most other states with dispensaries allow for one dispensary for every 500-1,000 registered patients. Based on this ratio and also using current number of approximately 13,000 patients statewide, this would result in a range of 15-30 licensed dispensaries for roughly 500-1,000 patients per dispensary.
- Question posed whether there should be a set number of dispensaries rather than a ratio based on patient population?
- Other alternative discussed was to allow the market to determine number of dispensaries based on demand and patient need.
- Further observations made that other states don't necessarily identify a set number of dispensaries or have adopted some pre-existing structure to determine number of dispensaries. For example, Arizona is divided into geographic areas based on census tracts with 126 community health areas and, coincidentally, there's essentially 1 dispensary in each geographic area.
- Question raised about how will licenses be decided/granted? Will process be based on a point system, lottery, or other process? This is still open question and will need to be worked out within DOH.

Discussion about 3rd bullet recommendation:

- Discussion that this recommendation contemplates an 18-month ramp up time from enactment of bill (May/June 2015) to operation of dispensary beginning on January 2017.
- If a 2-year timeline for implementation is desired, then operation of dispensary could begin in July 2017 with licenses having a built in 6-month start up time, meaning dispensary licenses should start being offered in January 2017.
- DOH representative explained that going through rule-making process, application/licensing process, building up program and regulatory capacity to handle responsibilities will take at least 2 years. Also expressed preference for permissive language ("may" vs. "shall"; and "offer" vs. "shall be no less than") rather than mandatory language in event that there are insufficient number of quality applications that meet the licensure requirements.
- Concern expressed that some mandatory language needed to ensure that implementation of dispensaries not unnecessarily delayed. As a compromise, recommendation can be reworded to say "shall offer no fewer than twenty-six licenses by January 1, 2019."

VOTE TALLIES<sup>1</sup>:

Recommendation 1.1: The Department of Health shall determine the number of dispensary licenses based on a guideline of 1 for every 500 patients, adjusted annually, based on the patients' residency. YES=15; NO=1; DEFER=3

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<sup>1</sup> Nineteen authorized members of the Task Force were present with two representatives from the Department of the Attorney General participating in voting. The voting tallies for Recommendations 1.1 and 1.2 are amended to record only one vote for the Attorney General.

Recommendation 1.2: There shall be at least one dispensary on every county with the exception of Kalawao County. YES=15; NO=0; DEFER=4

Recommendation 1.3: The Department of Health may begin offering licenses for dispensaries and producers on January 1, 2017, and dispensaries may begin operations on July 1, 2017. The Department shall offer no fewer than twenty-six licenses by January 1, 2019. YES=10; NO=6; DEFER=2

Recommendation 1.4: In the event that an island or a county lacks a single licensed dispensary by July 1, 2017, a dispensary that is licensed and established on another island or in another county may petition the Department of Health to allow an owner or employee of such dispensary to allow an owner or employee of such dispensary to deliver medical marijuana products to a qualified patient or caregiver of the island or county that lacks a dispensary. The owner or employees shall at all times retain possession of the medical marijuana products until the products are delivered to the patient or caregiver. YES=14; NO=4; DEFER=1

## **2. Producers**

### Discussion about Producer Recommendations:

- Clear definitions are needed for dispensary, producer, and manufacturer.
- Explanation for recommended minimum number of 30 producer licenses is based on current number of approximately 13,000 registered patients and, assuming that these patients would need 39,000 plants and the usable marijuana derived from these plants, then there would be a range of 39 to 78 producer licenses that would need to be issued to meet demand required by dispensaries depending on the plant limits that may be imposed on producers.
- Discussion about plant limits and that Department of Health should be required to determine the number of medical marijuana production center licenses to issue based on a ratio that producers will have *up to* 500 to 1,000 plants at any one time.
- Plant limitation on producers may be worth considering as (i) a means of stronger regulation over producers (ie. having a hard, definite limit will be track-able especially with "seed to sale" software); (ii) a way to align cultivation scheme with federal possession limits so as to not expose cultivators under state regulatory scheme to harsher federal penalties (ie., federal penalties are harsher for those charged with possession of 1,000 plants vs. 500 plants); (iii) a mechanism to ensure supply to dispensaries is diverse and smaller business models are encouraged (ie. the more producers there are, the more likely different strains will be grown); and (iv) a means to ensure that Department of Health not overly burdened with too many production centers to monitor (ie. fewer producers will be needed to be overseen/regulated if these producers are allowed to grow 1,000 plants vs. 500 plants). If producers are limited to 500 plants/producer, then 78 producer licenses would need to be issued vs. if producers are limited to 1,000 plants, then approximately 39 producer licenses would need to be issued.

- General discussion that producer regulations should still allow patients to grow their own medicine, especially since patients have over the years learned how to best grow & create their own medical marijuana products.
- Question posed about whether and how access to producer/grow sites will be provided to law enforcement? Licenses will be issued to businesses/entities in order to operate in the State. These licenses will be public available and law enforcement will have access to this public information.

VOTE TALLIES<sup>2</sup>:

Recommendation 2.1: The Department of Health shall determine the number of medical marijuana production center licenses to issue based on a ratio that producers will have up to 1,000 plants at any one time. YES=14; NO=2; DEFER=2

Recommendation 2.2: Producers may acquire, possess, cultivate, manufacture, and transport no more than 1,000 plants at any one time. YES=12; NO=1; DEFER=5

Recommendation 2.3: Beginning on January 1, 2017, the Department of Health may offer a minimum of 30 producer licenses. YES=13; NO=1; DEFER=5

Recommendation 2.4: Medical marijuana production centers shall distribute only to dispensaries or other production centers licensed pursuant to this section. YES=18, NO=1; DEFER=0

### **3. Medical Marijuana Product Manufacturers**

Discussion about Manufacturing Recommendations:

- Basis for these recommendations are Colorado's medical marijuana manufacturing statutes.
- The intent of these set of recommendations is to place a limit on the amount of product a manufacturer is able to possess at one time & to use of seed-to-sale tracking to regulate and monitor amounts by tracking transaction history.
- Comment made that at manufacturing point, material is no longer a "plant" but dried material linked to a certain plant.
- Suggested that recommendation could state: "A licensed medical marijuana product manufacturer may not have *plant material from* more than five hundred medical marijuana plants on its premises, except that the Department of Health may grant a waiver in excess of 500 marijuana plants based on consideration of factors such as nature of the products manufactured, existing business contracts with licensed medical marijuana dispensaries for the production of medical marijuana products, and the ability to contract with licensed medical marijuana dispensaries for the production of medical marijuana products."

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<sup>2</sup> Nineteen authorized members of the Task Force were present with two representatives from the Department of the Attorney General participating in voting. The voting tallies for Recommendations 2.3 and 2.4 are amended to record only one vote for the Attorney General.

- Task Force decided to have Policy Subcommittee discuss these recommendations further as they are newly introduced ideas and return with some recommendations to Task Force at next meeting.

### **Public Input**

- Task Force should review the new federal law that addresses medical marijuana.
- Sites of grow locations are private due to security concerns.
- There are too few doctors willing to certify patients entering or already in program. Primary care physicians often are not willing to certify patients.
- DOH sent out memo regarding primary care physicians that has broad definition for primary care physician.
- Limiting grow sites presents issues for production
- Tracking seed-to-sale software – may only able to track plants not dry weight.
- CO has a closed system between producer, manufacturer, and retailer (one entity throughout supply chain) that Task Force should consider.
- Different strains of marijuana produce different amounts of product. Different parts of the plant are used to manufacture edibles
- Concerns about reciprocity should be considered by Task Force:
  - Patients need access to medication while on vacation
  - Should have reciprocity with other states that permit medical marijuana
- Inter-state transport - TSA will not be supportive of this program
- There are other inter-island transport options that are not subject to TSA inspections
- Dispensary Licensing
  - Lottery may not be best solution.
  - Selection needs to be based on minimum qualifications.
  - Other states use a first come first serve basis.
  - Option for decision to be based on meeting licensing requirements.
- Implementation
  - Concerns about timeline
  - Lack of dispensary system is forcing black market supply
- Concern with limiting producers to 1000 plants. More producers and less plants seems to work better in Oregon.
- Producers should be able to manufacture using excess product rather than creating another entity
- Law enforcement site verification
  - Consider 24 hour hotline to verify grow sites, patient licenses, etc.

#### 4. Transportation

##### VOTE TALLIES WITH DISCUSSION<sup>3</sup>:

Recommendation 4.1: Producers and dispensaries shall be permitted to transport medical marijuana within Hawai'i and between the Hawaiian islands in accordance with security requirements to be established by the Department that *may* include but are not limited to: use of seed-to-sale tracking software and labeling of medical marijuana; limitations of amounts to be transported based upon whether it is a producer and dispensary; utilization of additional security measures for transport of medical marijuana plants and/or manufactured products between producers and dispensaries. YES=13; NO=2; DEFER=3

Recommendation 4.2: The Legislature shall enact provisions that comply with the State v. Woodhall, 301 P.3d 607 (2013) decision. YES=18; NO=0; DEFER=1

#### 5. Range of Products

- Policy Subcommittee to be reconvened by Dan Gluck to examine this set of recommendations along with recommendations related to "Medical Marijuana Product Manufacturers" in order to develop some further recommendations for the Task Force at its December 30, 2014 meeting.

##### Task Force Discussion and Vote on Proposed Recommendations #6-14:

#### 7. Zoning

##### VOTE TALLIES WITH DISCUSSION:

Recommendation 7.1: Dispensaries, producers and manufacturers shall comply with County zoning ordinances, provided that counties cannot enact zoning laws that target/discriminate against dispensaries or producers. YES=14; NO=4; DEFER=1

- This recommendation address concerns that county zoning not be used to zone dispensaries out of existence.

Recommendation 7.2: No dispensary or producer shall be located within 500 feet of a public school. YES=13; NO=6; DEFER=0

- Distance from schools should mirror restrictions placed on establishments that sell alcohol.
- Should consider adding "private schools" to limitation. However, concern expressed that "private school" could open in place where dispensary may already be located and force dispensary to close.

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<sup>3</sup> Nineteen authorized representatives of the Task Force were present with two representatives from the Department of the Attorney General participating in voting. The voting tally for Recommendation 4.2 is amended to record only one vote for the Attorney General.

- Compromise reached that recommendation be limited to "public school" at this time but Legislature could consider further defining and adding private schools to limitation.

**Recommendations not voted on due to time constraints:**

- 6. Inspections**
- 8. Fees**
- 10. Security**
- 11. Quality**
- 12. Education and Training**
- 13. Resources & DOH Staffing**
- 14. Federal Interface and Protections**

**These recommendations to be considered and voted on at December 30, 2014 meeting of Task Force.**

**Public Input:**

- Technical advisor is missing from the Task Force. Subject matter expert that has experience in the field (ie. certified master grower) would be helpful.
- Management consultant working with MMJ in other states. Focus is on what is best for wellness of patients. Has testing capabilities, wants to support science that informs policy, look at vertical integration, interested in tapping UH capabilities.
- Representative from the government for the Hawaiian people stated they won't regulate medical marijuana on sovereign land. State government needs to establish clear policies.
- Edible aspirin is available in the pharmaceutical section. Packaging of product indicates that product is medicinal.

**Quick Reference Table - Completed Votes**

<b>Recommendation</b>	<b>Yes</b>	<b>No</b>	<b>Defer</b>	<b>Total Votes</b>
<b>1.1</b>	15	1	3	19
<b>1.2</b>	15	0	4	19
<b>1.3</b>	10	6	2	18
<b>1.4</b>	14	4	1	19
<b>2.1</b>	14	2	2	18
<b>2.2</b>	12	1	5	18
<b>2.3</b>	13	1	5	19
<b>2.4</b>	18	1	0	19
<b>4.1</b>	13	2	3	18
<b>4.2</b>	18	0	1	19
<b>7.1</b>	14	4	1	19
<b>7.2</b>	13	6	0	19

*\*Note: Nineteen authorized members of the Task Force were present with two representatives from the Department of the Attorney General participating in voting. The voting tallies for Recommendations 1.1, 1.2, 2.3, 2.4, and 4.2 are amended to record only one vote for the Attorney General.*



### Next Steps

- Open items
  - Defer recommendations 3 & 5 to subcommittee for discussion and vote
  - Review and vote on recommendations – 6, 8, 10, 11, 12, 13, & 14
    - \* Not addressed during this meeting due to time constraints
- Sub-committee meetings
  - Discuss recommendations 3 & 5 – Dan Gluck will coordinate
  - The subcommittee will produce a report prior to December 30, 2014, meeting.
- Additional Task Force meeting to consider and vote on remaining recommendations and review final report: December 30, 2014, from 9am – 12pm

**The next Task Force Meeting is Tuesday, December 30, 2014 at the State Capitol,  
Room 329 from 9:00am – 12:00pm.**