FAQ – Frequently Asked Questions:

Changes & Clarifications to Hawaii's Medical Marijuana Program

1. ACT 177. Signed into law on June 25, 2013, moves administration of the Hawaii Medical Marijuana program ("Program") to the Hawaii State Department of Health, and away from the Narcotics Enforcement Division of the Public Safety Department. **Act 177 will not go into effect until 1/1/2015.**

2. ACT 178. Signed into law on June 25, 2013: (a) increases the amount of usable marijuana that patients and caregivers can possess from 1 ounce to 4 ounces; (b) removes the (often-confusing) distinction between mature and immature plants; and (c) adds a new requirement that a patient's "primary care physician" be the doctor to make a medical marijuana recommendation. **Act 178 does not go into effect until 1/2/2015.**

3. Court Decision. Hawaii Supreme Court on May 31, 2013 ruled on *State of Hawaii v. Woodhall* ("Woodhall decision"), **overturning the marijuana possession conviction of a Hawaii Island-based medical marijuana program participant**, arrested while attempting to travel by air to Oahu with his medicine.

1. Act 177

Q: What exactly does Act 177 (formerly Hawaii's HB 668 CD1) say?

A: Read the text at:
http://www.capitol.hawaii.gov/session2013/Bills/HB668_CD1_.HTM

Q: When does Act 177 go into effect?

A: 1/1/2015.

Q: How will Act 177 affect the medical marijuana program?

A: Some of the key changes in Act 177:

Program feature	Current	As of 1/1/15 (Act 177 takes effect)
Administrative oversight of Program	Dept. of Public Safety, Narcotics Enforcement Division	Dept. of Health
Special fund from program fees, improved accounting	None	Established

Q: Does Act 177 prevent or limit law enforcement access to my registration information – name, address, contact information, growing sites?

A: No. Law enforcement inquiries about specific patient registrations are already part of the current law. Provisions of Act 177 and Act 178 simply move

responsibility for responding to these inquiries to the Department of Health. The Acts call for a 24-hour contact at the Department of Health for inquiries and verifications of Program participation by law enforcement.

Q: Why were these changes made? Who asked for them?

A: Changes made in Act 177 mostly came from the findings of the Medical Cannabis Working Group, a legislatively convened body tasked to assess and recommend changes to the program. Made up of elected officials, patient advocates and medical marijuana patients/caregivers, the Working Group's 2010 "Report to the Legislature" included top-line recommendations accomplished by Act 177, including transfer of program responsibilities to the Department of Health. Read the Working Group report and recommendations here: http://dpfhi.org/A_PDF/MCWG_final_report.pdf

2. Act 178

Q: What exactly does Act 178 (formerly Hawaii's SB 642 CD1) say?

A: Read the text at: http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=642&year=2013

Q: When does Act 178 go into effect?

A: 1/2/2015.

Q: How will Act 178 affect the medical marijuana program?

A: Some of the key changes in Act 178:

Program feature	Current	As of 1/2/15 (Act 178 takes effect)	Notes
Number and type of plants allowed	3 mature 4 immature	7 plants, regardless of growth stage.	"Immature" was a poorly defined term, confusing to both patients and law enforcement.
Amount of useable marijuana allowed	1 ounce per mature plant	4 ounces total	Increasing the amount of medicine is important to patients who use tinctures, edibles or juice.
Who can certify a patient for medical cannabis	An M.D. or D.O. chosen by the patient.	A patient's "primary care physician"	See section on "primary care physician" requirement below.

Q: Why these changes? Who asked for them?

A: Changes made in Act 178 came partly from the findings of the Medical Cannabis Working Group, a legislatively convened body tasked to assess and recommend changes to the program. Made up of elected officials, patient advocates and medical marijuana patients/caregivers, the Working Group made a 2010 "Report to the Legislature" that is a legislative reference tool for such changes. Read the report at: http://dpfhi.org/A_PDF/MCWG_final_report.pdf.

The original version of the bill in the 2013 session had many good improvements to the program, but was watered down. One important note: The "primary care physician" provision was added in late in the legislative process, and was **not requested** by patients or program advocates.

Q: What is a "Primary care physician ("PCP")?" Will this prevent me from accessing the Program? (This section is still under review, and speculative in nature.)

A: Specifically, Act 178 says: "The certifying physician shall be required to be the qualifying patient's primary care physician." This provision was added in late in the legislative process, and was **not requested** by patients. Many do not have health insurance, or live in rural areas (especially on neighbor islands) that are not reliably served by physicians.

Our goal is to make sure that this term is defined, in legislation or via the administative rules developed by DOH, in the most inclusive and patient-centered way. We are committed to seeking the adoption of rules that will not effectively exclude patients from accessing the program due to geographical or economic status. Below, find a short discussion of the key questions, concepts and goals of resolving this section of Act 178. Patient advocates, including the Medical Cannabis Coalition of Hawaii, will remain involved with the administrative rule making process as this provision is defined and implemented.

To our knowledge, there is no definition of the term "primary care physician" in the Hawaii Revised Statutes nor in any of the county ordinances as of this writing.

Q: Do the laws in the State of Hawaii or its counties have a definition for a "primary care physician?"

A: To our knowledge, there is no definition of the term "primary care physician" in the Hawaii Revised Statutes or any of the county ordinances as of this writing. "Primary care physician" ("PCP") is a vague term, but is often used by insurers. A PCP is generally considered to be the first health care provider to see you for problems. Some people equate it with "family doctor," but emergency physicians, nurse practitioners and physician assistants, and many other health care providers fulfill the function of and may be considered PCPs both under the law and by insurance.

There is concern that the PCP provision is a short-sighted attempt to limit cannabis certification to "family" doctors. However, a very large number of people (including most uninsured people) have no "family" doctor. In addition, many "family" doctors (e.g., Kaiser, VA, etc) are not permitted to issue medical cannabis certifications, and, instead refer patients to outside clinics for certification. We are committed to ensuring rules that permit cannabis certification by pain specialists, neurologists and cancer specialists.

Q: Will the Affordable Care Act (a.k.a. "Obamacare")have any impact on the definition of a PCP?

A: PENDING. The impact of the Affordable Care Act on the definition of a PCP for the purposes of Act 178 is not yet known.

Q: Can a person without medical insurance have a PCP?

A: PENDING. To our knowledge, there is no definition of the term "primary care physician" in the Hawaii Revised Statutes or any of the county ordinances as of this writing.

Q: Can a patient designate multiple PCPs? (e.g., a PCP for oncology, a PCP for pain, a PCP for neurology.

A: PENDING. To our knowledge, there is no definition of the term "primary care physician" in the Hawaii Revised Statutes or any of the county ordinances as of this writing. PCP is a vague term, but some people consider it to be the first health care provider to see you for problems. Some people equate it with "family doctor," but emergency physicians, nurse practitioners and physician assistants and many other health care providers fulfill the function of and could be considered PCPs.

Q. Can this section be changed before the 2015 implementation date?

A: Yes. The Drug Policy Action Group and Medical Cannabis Coalition of Hawaii are both active at the Hawaii State Legislature. We will be monitoring the implementation of Act 178 both at the Department of Health, and advancing patient-centered changes in the 2014 legislature. It is possible that this provision will be legislatively changed before the implementation date of January 2, 2015.

3. Court Decision (Woodhall)

Q: What exactly does the Woodhall decision say?

A: Read the text at: http://law.justia.com/cases/hawaii/supreme-court/2013/scwc-11-0000097-0.html

Q: What was it about?

A: Justia.com Opinion Summary: A medical marijuana patient ('defendant') was arrested for possessing medical marijuana while passing through airport security at Kona International Airport. Patient was later convicted of promoting a detrimental drug in the third degree. The intermediate court of appeals (ICA) affirmed. The Supreme Court vacated the ICA's judgment and remanded the case to the district court to enter a judgment of acquittal, holding (1) Defendant presented sufficient evidence to trigger a medical marijuana affirmative defense in a stipulated fact trial, in which the parties stipulated that Defendant possessed a valid medical marijuana certificate and that the marijuana he possessed was medical marijuana; and (2) the conflict between a statute that allows medical use of marijuana, including transportation of such marijuana, and another statute that prohibits transportation of medical marijuana through any place open to the public, created an irreconcilable conflict that must be resolved in favor of Defendant.

Q. Does this mean I can travel with my medical marijuana now?

A: Talk to your attorney. This ruling by the Hawai'i Supreme Court has generated many questions about what medical cannabis patients may (and may not) do. Our understanding: any medical cannabis patient, who is fully in compliance with the requirements of Hawaii state law, has (i) an affirmative defense to prosecution in state-court marijuana possession cases. (ii) A patient who proves that he/she was transporting her medicine – even if that transportation occurs in a place "open to the public" – may also invoke this affirmative defense.

Hawaii's medical marijuana law does not prevent the police from arresting you, nor does it prevent the prosecutor's office from bringing charges against you. However, the law provides a legal defense (in *state* court only, not federal court) that your lawyer can use to defend against conviction.

Until the very end of this case, prosecutors in Hawaii County argued that patients who did nothing more than transport their medicine from point "A" to point "B" could be convicted (because the law prohibits the "medical use" of marijuana – where the legal phrase "medical use" includes "transportation" – in any place open to the public) – the Hawai'i Supreme Court rejected that argument.

The Court ruled that the law is ambiguous, and the ambiguity must be resolved in favor of patients. However, the Court made very clear that, in any criminal prosecution, the patient must prove that she was transporting the medicine for medical purposes. Importantly, patients do not have free reign to do whatever they please with their medicine – they may only do the limited things that the law allows (including transporting their medicine for medical purposes).

Furthermore, the Legislature can still change the law at any time, so patients should keep current on any changes to the law itself via our website or elsewhere

Finally, the Court's ruling does not make any changes to *federal* law, and patients should know that possession of marijuana is still illegal under federal law (such that there is still a possibility that the federal government might prosecute medical marijuana patients, though President Obama said he would not do so).

In sum, this is a victory for patients, though patients should continue to consult with their attorneys for specific legal advice as to whether a particular action is protected under the law.