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FOR IMMEDIATE RELEASE

Hawai'i Department of Health requires fingerprinting of every dispensary applicant at the 11th hour

HONOLULU (April 8, 2016) Late in the evening on Thursday, April 7th, the Department of Health effectively scuttled its own medical marijuana dispensary selection process. Around 7 pm the Department of Health sent an email to each of the dispensary applicants requesting that they submit a signed written consent form and the professionally taken fingerprints of every member of the dispensary application by Tuesday, April 12th – just three days before the licensees are supposed to be announced.

According to the email sent by DOH to the dispensary licensees, they are required to submit fingerprints and background check consent forms for “all applicants, members and others required to be fingerprinted pursuant to Section 329D, Hawai'i Revised Statutes and Chapter 11-850 of the Hawai'i Administrative Rules.” That includes: “the individual applicant and all officers, directors, shareholders with at least twenty-five per cent ownership interest or more, members, and managers of an entity applicant; each employee of a medical marijuana dispensary; each subcontracted production center and retail dispensing location employee; all officers, directors, shareholders with at least twenty-five per cent ownership interest or more in a subcontracted production center or retail dispensing location; and any person permitted to enter and remain in dispensary facilities pursuant to section 329D- 15(a)(4) or 329D-16(a)(3).¹” (HRS 329D-12).

To meet this requirement, some dispensary applicants will have to submit background checks and fingerprinting on several dozen individuals from around the world including Hawai'i, Washington, California, Ohio, Oregon, Nevada, Colorado, New York, Illinois, Tennessee, Canada, and Japan. To make matters worse, the organization that dispensary applicants must use to obtain their fingerprints, Fieldprint, Inc., only maintains locations in the United States and will not be open for two of the five days of the submittal period. So international investors, or even Hawai'i residents traveling out of the country right now, are out of luck.

Additionally, the DOH email to the dispensary applicants is not clear about the proper access code to supply to Fieldprint and the Fieldprint website itself does not have an appropriate selection to indicate that a dispensary applicant is fulfilling a requirement from the Hawai'i Department of Health. Yet, if

¹ Note also that right now these last two sections mentioned in HRS 329D-12 currently require dispensaries to conduct these background checks and fingerprinting on all patients and government officials who will enter a dispensary as well. This is currently being addressed by HB2707, but it is still a live issue.



applicants fail to obtain the fingerprints and signed consent forms by April 12th their dispensary application will be denied by DOH without further consideration.

Now all of this is not to say that the Department of Health is wrong to require the dispensary applicants to submit these consent forms and fingerprints. In fact, DOH is required by both the Hawai'i Revised Statutes² and its own administrative rules³ to obtain both the written consent to conduct a background check and the fingerprints to conduct those background checks. However, the Department of Health's online application only required a validation code from an eCrim report from the Hawai'i Criminal Justice Data Center on each person related to a dispensary, and that the individual applicant alone check a box providing consent for a background check. It is possible that the Department of Health's motivation for requiring each member of an application to provide consent and fingerprints so late in the selection process is to maintain the integrity of the application process and avoid having to run the entire process over again in response to lawsuits regarding its failure to require necessary background checks.

According to the Hawai'i Dispensary Alliance, the local trade association for Hawai'i's medical marijuana industry, the Department of Health's attempt to remedy its failure to require this information in the first place will have the same effect of scuttling the application process and robbing its results of legitimacy in the eyes of the public and likely the courts. Even so, the Alliance does suggest that there are other options available to the Department of Health. Namely, because the background checks are not part of the merit-based analysis of each application, the Department could continue the evaluation process as originally intended and announce the results of the merit competition on April 15th – and, at the same time, condition the final award of each license on the successful submission of consent and fingerprinting by each required dispensary member within some reasonable time period, maybe two weeks after the license announcement. This would allow the Department of Health to comply with its statutory obligations, stick to the original time table, and permit dispensaries to meet the requirement.

“The Hawai'i Dispensary Alliance has been in contact with a number of the dispensary applicants and we believe that a statement or some other form of transparency on this issue from the Hawai'i Department of Health could go a long way to addressing the panic enveloping every dispensary applicant right now,” said Christopher Garth, Executive Director of the Hawai'i Dispensary Alliance. “Without some form of explanation or extension, obtaining this information for potentially dozens of people, in a mere five-day window, over a weekend, at limited fingerprinting locations will simply be impossible for many applicants. The Department of Health must either act now to address the issue they created, or act later to defend the lawsuits which will sink Hawai'i's medical marijuana program before it even starts.”

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² HRS 329D-12, HRS 846-2.7

³ §11-850-13(3), §11-850-14(a)(2)(D), §11-850-16(a)(2)(I), §11-850-17.



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Christopher Garth is the Executive Director and chief lobbyist of the Hawai'i Dispensary Alliance, with almost a decade of experience bridging the gap between stakeholder interests and all levels of Hawai'i's state and local governments. A native Hawaiian, educated on the mainland and in Honolulu, Christopher is excited about this opportunity to help a growing industry bring new opportunities to Hawai'i and greater access to medicine for those in need.

