

## PART IX. MEDICAL USE OF CANNABIS

## Note

Part heading amended by L 2017, c 170, §2.

Conforming amendments to title 11 of the Hawaii administrative rules; department of health to make conforming revisions to all documents, letterhead, websites, etc. by December 31, 2019. L 2017, c 170, §§3, 4.

Legislative oversight working group; improvement of the medical marijuana dispensary system (ceases to exist June 30, 2018); reports to 2017-2018 legislature. L 2016, c 230, §23.

Medical marijuana alternate tracking system; report to 2018 legislature. L 2017, c 41, §12.

## Cross References

Medical cannabis; economic and other data; collection, see §201-13.9.

Medical cannabis; tenant use; eviction, see §521-39.

Medical cannabis testing and research programs, see §304A-1865.

## Law Journals and Reviews

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

The "Grande Iced Nonfat Chai with a Shot of Espresso" Problem: Dealing with Designer Drugs in the Wake of McFadden v. United States. 39 UH L. Rev. 265 (2016).

## Case Notes

District court erred in re-determining the fact of medical use in contrast to the parties' stipulation that petitioner possessed and transported medical marijuana under a valid Medical Marijuana Registry Patient Identification Certificate, thus preempting consideration of petitioner's affirmative defense; given that the State presented no evidence showing that the marijuana was for any other use other than a medical use, petitioner proved that petitioner was authorized to possess marijuana for medical purposes pursuant to this part for purposes of an affirmative defense under §712-1240.1(2). 129 H. 397, 301 P.3d 607 (2013).

**§329-121 Definitions.** As used in this part:

"Adequate supply" means an amount of medical cannabis jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to ensure the uninterrupted availability of cannabis for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed: ten cannabis plants, whether immature or mature, and four ounces of usable cannabis at any given time. The four ounces of usable cannabis shall include any combination of usable cannabis and manufactured cannabis products, as provided in chapter 329D, with the cannabis in the manufactured cannabis products being calculated using information provided pursuant to section 329D 9(c).

"Adequate supply for a qualifying out-of-state patient" means an amount of cannabis individually possessed by a qualifying out-of-state patient or jointly possessed by a qualifying out-of-state patient who is under eighteen years old and the caregiver of the qualifying out-of-state patient that is not more than is reasonably necessary to ensure the uninterrupted availability of cannabis for the purpose of alleviating the symptoms or effects of the qualifying out-of-state patient's debilitating medical condition; provided that an "adequate supply for a qualifying out-of-state patient" shall not exceed four ounces of usable cannabis at any given time and shall not include live plants. The four ounces of usable cannabis shall include any combination of usable cannabis and manufactured cannabis products, as provided in chapter 329D; provided that the usable cannabis in the manufactured products shall be calculated using

information provided pursuant to section 329D-9(c).

"Advanced practice registered nurse" means an advanced practice registered nurse with prescriptive authority as described in section 457-8.6 and registered under section 329-32.

"Cannabis" shall have the same meaning as "marijuana" and "marijuana concentrate" as provided in sections 329-1 and 712-1240.

"Caregiver of a qualifying out-of-state patient" means a parent, guardian, or person having legal custody of a qualifying out-of-state patient who is under the age of eighteen years.

"Debilitating medical condition" means:

(1) Cancer, glaucoma, lupus, epilepsy, multiple sclerosis, rheumatoid arthritis, 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:

- (A) Cachexia or wasting syndrome;
- (B) Severe pain;
- (C) Severe nausea;
- (D) Seizures, including those characteristic of epilepsy;
- (E) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or
- (F) Post-traumatic stress disorder; or

(3) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or advanced practice registered nurse or potentially qualifying patient.

"Medical use" means the acquisition, possession, cultivation, use, distribution, or transportation of cannabis or paraphernalia relating to the administration of cannabis to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition; provided that "medical use" does not include the cultivation or distribution of cannabis or paraphernalia by a qualifying out-of-state patient or the caregiver of a qualifying out-of-state patient. For the purposes of "medical use", the term "distribution" is limited to the transfer of cannabis and paraphernalia.

"Physician" means a person who is licensed to practice under chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" does not include a physician assistant as described in section 453-5.3.

"Primary caregiver" means a person eighteen years of age or older, other than the qualifying patient and the qualifying patient's physician or advanced practice registered nurse, who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of cannabis. 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.

"Qualifying out-of-state patient" or "registered qualifying out-of-state patient" means a person who is registered for the medical use of cannabis in another state, a United States territory, or the District of Columbia.

"Qualifying patient" means a person who has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition.

"Usable cannabis" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for the medical use of cannabis. "Usable cannabis" does not include the seeds, stalks, and roots of the plant.

"Written certification" means the qualifying patient's medical records or a statement signed by a qualifying patient's physician or advanced practice registered nurse, stating that in the physician's or advanced practice registered nurse's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of cannabis would likely outweigh the health risks for the qualifying patient. The department of health may require, through its rulemaking authority, that all

written certifications comply with a designated form. "Written certifications" are valid for one year from the time of signing; provided that the department of health may allow for the validity of any written certification for up to three years if the qualifying patient's physician or advanced practice registered nurse states that the patient's debilitating medical condition is chronic in nature. [L 2000, c 228, pt of §2; am L 2009, c 11, §43 and c 169, §7; am L 2010, c 57, §4; am L 2013, c 178, §2; am L 2015, c 241, §6; am L 2016, c 230, §7; am L 2017, c 41, §2 and c 170, §2; am L 2018, c 116, §4]

#### **Revision Note**

Definitions of "adequate supply", "cannabis", "medical use", and "usable cannabis": "Marijuana" changed to "cannabis" to conform to L 2017, c 170, pursuant to §23G-15.

#### **Case Notes**

Rule of lenity required the construction, under the specific facts of the case, of §§329-122 and 329-125 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under this section, and the prohibition on transport of medical marijuana through "any ... place open to the public" under [§329-122(c) (2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negatived penal liability. 129 H. 397, 301 P.3d 607 (2013).

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**§329-122 Medical use of cannabis; conditions of use.** (a) Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying patient shall be permitted only if:

(1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;

(2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of cannabis would likely outweigh the health risks for the particular qualifying patient; and

(3) The amount of cannabis possessed by the qualifying patient does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

(1) The qualifying patient's physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of cannabis to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(2) A parent, guardian, or person having legal custody consents in writing to:

- (A) Allow the qualifying patient's medical use of cannabis;
- (B) Serve as the qualifying patient's primary caregiver; and
- (C) Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying patient.

(c) Notwithstanding any law to the contrary, the medical use of cannabis within the State by a qualifying out-of-state patient aged eighteen years or older legally authorized to use cannabis for medical purposes in another state, a United States territory, or the District of Columbia shall be permitted only if the qualifying out-of-state patient:

(1) Provides to the department of health a valid medical use of cannabis card with an explicit expiration date that has not yet passed from the issuing jurisdiction and a valid photographic identification card or driver's license issued by the same jurisdiction;

(2) Attests under penalty of law pursuant to section 710 1063 that the condition for which the qualifying out-of-state patient is legally authorized to use cannabis for medical purposes is a debilitating medical condition as defined in section 329-121;

(3) Provides consent for the department of health to obtain information from the qualifying out-of-state patient's certifying medical provider and from the entity that issued the medical cannabis card for the purpose of allowing the department of health to verify the information provided in the registration process;

(4) Pays the required fee for out-of-state registration to use cannabis for medical purposes;

(5) Registers with the department of health pursuant to section 329-123.5 to use cannabis for medical purposes;

(6) Receives a medical cannabis registry card from the department of health; and

(7) Abides by all laws relating to the medical use of cannabis, including not possessing an amount of cannabis that exceeds an adequate supply.

(d) Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying out-of-state patient under eighteen years of age shall only be permitted if:

(1) The caregiver of the qualifying out-of-state patient provides the information required pursuant to subsection (c); and

(2) The caregiver of the qualifying out-of-state patient consents in writing to:

- (A) Allow the qualifying out-of-state patient's medical use of cannabis;
- (B) Undertake the responsibility for managing the well-being of the qualifying out-of-state patient who is under eighteen years of age with respect to the medical use of cannabis; and
- (C) Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying out-of-state patient who is under eighteen years of age.

(e) The authorization for the medical use of cannabis in this section shall not apply to:

(1) The medical use of cannabis that endangers the health or well-being of another person;

(2) The medical use of cannabis:

- (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) At any other place open to the public; provided that a qualifying patient, primary caregiver, qualifying out-of-state patient, caregiver of a qualifying out-of-state patient, or an owner or employee of a medical cannabis dispensary licensed under chapter 329D shall not be prohibited from transporting cannabis or any manufactured cannabis product, as that term is defined in section 329D-1, in any public place; provided further that the cannabis or manufactured cannabis product shall be transported in a sealed container, not be visible to the public, and shall not be removed from its sealed container or consumed or used in any way while it is in the public place; and

(3) The use of cannabis by a qualifying patient, parent, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient, for purposes other than medical use permitted by this part.

(f) For the purposes of this section, "transport" means the transportation of cannabis, usable cannabis, or any manufactured cannabis product between:

(1) A qualifying patient and the qualifying patient's primary caregiver;

(2) A qualifying out-of-state patient under eighteen years of age and the caregiver of a qualifying out-of-state patient;

(3) The production centers and the retail dispensing locations under a dispensary licensee's license; or

(4) A production center, retail dispensing location, qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient and a certified laboratory for the purpose of laboratory testing; provided that a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient may only transport up to one gram of cannabis per test to a certified laboratory for laboratory testing and may only transport the product if the qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient:

- (A) Secures an appointment for testing at a certified laboratory;
- (B) Obtains confirmation, which may be electronic, that includes the specific time and date of the appointment and a detailed

- description of the product and amount to be transported to the certified laboratory for the appointment; and
- (C) Has the confirmation, which may be electronic, available during transport.

For purposes of interisland transportation, "transport" of cannabis, usable cannabis, or any manufactured cannabis product, by any means is allowable only between a production center or retail dispensing location and a certified laboratory for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D 6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. Allowable transport pursuant to this section does not include interisland transportation by any means or for any purpose between a qualified patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient and any other entity or individual, including an individual who is a qualified patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient. [L 2000, c 228, pt of §2; am L 2001, c 55, §15; am L 2013, c 178, §3; am L 2015, c 241, §7; am L 2016, c 230, §8; am L 2017, c 41, §3 and c 170, §2; am L 2018, c 116, §5]

#### **Revision Note**

"Marijuana" changed to "cannabis" to conform to L 2017, c 170, pursuant to §23G-15.

#### **Law Journals and Reviews**

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

#### **Case Notes**

Rule of lenity required the construction, under the specific facts of the case, of §§329-121 and 329-125 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under §329-121, and the prohibition on transport of medical marijuana through "any ... place open to the public" under subsection [(c) (2) (E)]; thus, under §701-115(2) (b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negatived penal liability. 129 H. 397, 301 P.3d 607 (2013).

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**§329-123 Registration requirements; qualifying patients; primary caregivers.** (a) Physicians or advanced practice registered nurses who issue written certifications shall provide, in each written certification, the name, address, patient identification number, and other identifying information of the qualifying patient. The department of health shall require, in rules adopted pursuant to chapter 91, that all written certifications comply with a designated form completed by or on behalf of a qualifying patient. The form shall require information from the applicant, primary caregiver, and physician or advanced practice registered nurse as specifically required or permitted by this chapter. The form shall require the address of the location where the cannabis is grown and shall appear on the registry card issued by the department of health. The certifying physician or advanced practice registered nurse shall be required to have a bona fide physician-patient relationship or bona fide advanced practice registered nurse-patient relationship, as applicable, with the qualifying patient. All current active medical cannabis permits shall be honored through their expiration date.

(b) Qualifying patients shall register with the department of health. The registration shall be effective until the expiration of the certificate issued by the department of health and signed by the physician or advanced practice registered nurse. Every qualifying patient shall provide sufficient identifying information to establish the personal identities of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within ten working days. Every qualifying patient shall have only one primary caregiver at any given time. The department of health shall issue to the qualifying patient a registration certificate, and shall charge \$35 per year.

(c) Primary caregivers shall register with the department of health. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time, unless the primary caregiver is the parent, guardian, or person having legal custody of more than one minor qualifying patient, in which case the primary caregiver may be responsible for the care of more than one minor qualifying patient at any given time; provided that the primary caregiver is the parent, guardian, or person having legal custody of all of the primary caregiver's qualifying patients. The department of health may permit registration of up to two primary caregivers for a minor qualifying patient; provided that both primary caregivers are the parent, guardian, or person having legal custody of the minor qualifying patient.

(d) Upon inquiry by a law enforcement agency, which inquiry may be made twenty-four hours a day, seven days a week, the department of health shall immediately verify whether the subject of the inquiry has registered with the department of health and may provide reasonable access to the registry information for official law enforcement purposes.

(e) This section shall not apply to registration of a qualifying out-of-state patient or a caregiver of a qualifying out-of-state patient. [L 2000, c 228, pt of §2; am L 2011, c 73, §6; am L 2013, c 178, §4; am L 2015, c 241, §8; am L 2016, c 230, §9; am L 2017, c 170, §2; am L 2018, c 116, §6]

#### Revision Note

Pursuant to §23G-15, in:

- (1) Subsection (a), "marijuana" changed to "cannabis" to conform to L 2017, c 170; and
- (2) Subsection (c), "up to two" substituted for "up two".

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**[§329-123.5] Registration requirements; qualifying out-of-state patient; caregiver of a qualifying out-of-state patient.** (a) Notwithstanding section 329-123, a qualifying out-of-state patient and a caregiver of a qualifying out-of-state patient shall register with the department of health as established by rule. The registration shall be effective for no more than sixty days and may be renewed for no more than one additional sixty-day period that begins no later than twelve months after the preceding registration date; provided that the department shall not register any qualifying out-of-state patient for a period that exceeds the term of validity of the qualifying out-of-state patient's authority to use medical cannabis in the qualifying out-of-state patient's home jurisdiction.

(b) A qualifying out-of-state patient aged eighteen or older, at a minimum, shall meet the following criteria for registration:

(1) Provide a valid government-issued medical cannabis card issued to the qualifying out-of-state patient by another state, United States territory, or the District of Columbia; provided that the medical cannabis card has an expiration date and has not expired;

(2) Provide a valid photographic identification card or driver's license issued by the same jurisdiction that issued the medical cannabis card; and

(3) Have a debilitating medical condition, as defined in section 329-121.

(c) A qualifying out-of-state patient under eighteen years of age may be registered pursuant to this section only if the qualifying patient has a debilitating medical condition as defined in section 329-121 and the caregiver of the qualifying out-of-state patient, at a minimum, meets the requirements of paragraphs (1) and (2) of subsection (b) and consents in writing to:

(1) Allow the qualifying out-of-state patient's medical use of cannabis;

(2) Undertake the responsibility for managing the well-being of the qualifying out-of-state patient who is under eighteen years of age, with respect to the medical use of cannabis; and

(3) Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying out-of-state patient who is under eighteen years of age.

(d) In the case of any qualifying out-of-state patient who is under eighteen years of age, the department of health shall register the qualifying out-of-state patient and the caregiver of the qualifying out-of-state patient; provided that the department may register two caregivers for a qualifying out-of-state patient if each caregiver is the parent, guardian, or person having legal custody of the qualifying out-of-state patient who is under eighteen years of age.

(e) Each qualifying out-of-state patient shall pay a fee of \$45 for each registration and renewal.

(f) Upon inquiry by a law enforcement agency, the department of health shall immediately verify whether the subject of the inquiry has registered with the department of health and may provide reasonable access to the registry information for official law enforcement purposes. An inquiry and verification under this subsection may be made twenty-four hours a day, seven days a week.

(g) The department of health may temporarily suspend the registration of a qualifying out-of-state patient or a registered caregiver of a qualifying out-of-state patient for a period of up to thirty days if the department of health determines that the registration process for qualifying patients or primary caregivers is being adversely affected or the supply of cannabis for medical use available in licensed dispensaries is insufficient to serve qualifying patients and qualifying out-of-state patients. A temporary suspension may be extended by thirty-day periods until the department of health determines that:

(1) Adequate capacity exists to register qualifying out-of-state patients and caregivers of qualifying out-of-state

patients in addition to qualifying patients and primary caregivers; and

(2) The licensed dispensaries are able to meet the demands of qualifying patients. [L 2018, c 116, §2]

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**[\$329-124] Insurance not applicable.** This part shall not be construed to require insurance coverage for the medical use of cannabis. [L 2000, c 228, pt of §2; am L 2017, c 170, §2]

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**§329-125 Protections afforded to a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient.** (a) A qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient may assert the medical use of cannabis authorized under this part as an affirmative defense to any prosecution involving marijuana under this part, part IV, or part IV of chapter 712; provided that the qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient strictly complied with the requirements of this part.

(b) Any qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient not complying with the permitted scope of the medical use of cannabis shall not be afforded the protections against searches and seizures pertaining to the misapplication of the medical use of cannabis.

(c) No person shall be subject to arrest or prosecution for simply being in the presence or vicinity of the medical use of cannabis as permitted under this part. [L 2000, c 228, pt of §2; am L 2016, c 230, §10; am L 2017, c 170, §2; am L 2018, c 18, §20 and c 116, §7]

### Case Notes

Rule of lenity required the construction, under the specific facts of the case, of §§329-121 and 329-122 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under §329-121, and the prohibition on transport of medical marijuana through "any ... place open to the public" under [§329-122(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negatived penal liability. 129 H. 397, 301 P.3d 607 (2013).

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**§329-125.5 Medical cannabis patient and caregiver protections.** (a) No school shall refuse to enroll or otherwise penalize, and no landlord shall refuse to lease property to or otherwise penalize, a person solely for the person's status as a qualifying patient or primary caregiver in the medical cannabis program under this part, unless failing to do so would cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulation; provided that the qualifying patient or primary caregiver strictly complied with the requirements of this part; provided further that the qualifying patient or primary caregiver shall present a medical cannabis registry card or certificate and photo identification, to ensure that the qualifying patient or primary caregiver is validly registered with the department of health pursuant to section 329-123.

(b) For the purposes of medical care, including organ transplants, a registered qualifying patient's use of cannabis in compliance with this part shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

(c) No qualifying patient or primary caregiver under this part shall be denied custody of, visitation with, or parenting time with a minor, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this part; provided that this subsection shall not apply if the qualifying patient's or primary caregiver's conduct created a danger to the safety of the minor, as established by a preponderance of the evidence.

(d) This section shall apply to qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients who are validly registered with the department of health pursuant to this part and the administrative rules of the department of health. [L 2015, c 242, §2; am L 2017, c 170, §2; am L 2018, c 116, §8]

#### **Revision Note**

In subsection (b), "marijuana" changed to "cannabis" to conform to L 2017, c 170, pursuant to §23G-15.

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**§329-125.6 Protections afforded to an owner or qualified employee of a licensed medical cannabis dispensary.** (a) An owner or employee of a medical cannabis dispensary that is licensed under chapter 329D may assert the production or distribution of medical cannabis as an affirmative defense to any prosecution involving marijuana under this part, part IV, chapter 329D, or part IV of chapter 712; provided that the owner or employee strictly complied with the requirements of chapter 329D and any administrative rules adopted thereunder.

(b) An owner or employee of a licensed medical cannabis dispensary not strictly complying with the requirements of chapter 329D, and any administrative rules adopted thereunder, shall not be afforded the protections provided by subsection (a). [L 2015, c 241, pt of §5; am L 2016, c 230, §11; am L 2017, c 170, §2; am L 2018, c 18, §21]

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**§329-126 Protections afforded to a treating physician or advanced practice registered nurse.** (a) No physician or advanced practice registered nurse shall be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written certification for the medical use of cannabis for a qualifying patient; provided that:

- (1) The physician or advanced practice registered nurse has diagnosed the patient as having a debilitating medical condition, as defined in section 329-121;
- (2) The physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of cannabis, as required under section 329-122;
- (3) The written certification is based upon the physician's or advanced practice registered nurse's professional opinion after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship or bona fide advanced practice registered nurse-patient relationship, as applicable; and
- (4) The physician or advanced practice registered nurse has complied with the registration requirements of section 329-123.

(b) For purposes of this section, a bona fide physician-patient relationship may be established via telehealth, as defined in section 453-1.3(j), and a bona fide advanced practice registered nurse-patient relationship may be established via telehealth, as defined in section 457-2; provided that treatment recommendations that include certifying a patient for the medical use of cannabis via telehealth shall be allowed only after an initial in-person consultation between the certifying physician or advanced practice registered nurse and the patient. [L 2000, c 228, pt of §2; am L 2016, c 230, §12; am L 2017, c 170, §2; am L 2018, c 116, §24]

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**§329-127 Protection of cannabis and other seized property.** (a) Cannabis, paraphernalia, or other property seized from a qualifying patient or primary caregiver in connection with a claimed medical use of cannabis under this part shall be returned immediately upon the determination by a court that the qualifying patient or primary caregiver is entitled to the protections of this part, as evidenced by a decision not to prosecute, dismissal of charges, or an acquittal; provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of such plants.

(b) This section shall also apply to qualifying out-of-state patients and caregivers of qualifying out-of-state patients who are validly registered with the department of health pursuant to this part and the administrative rules of the department of health; provided that notwithstanding subsection (a) to the contrary, under no circumstances shall cannabis, paraphernalia, or other property be returned to any location outside of the island from which it was seized. [L 2000, c 228, pt of §2; am L 2017, c 170, §2; am L 2018, c 116, §9]

#### **Revision Note**

"Marijuana" changed to "cannabis" to conform to L 2017, c 170, pursuant to §23G-15.

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