

TESTIMONY OF PATRICK K. NIGHTINGALE, ESQ  
BEFORE THE PENNSYLVANIA SENATE  
COMMITTEE ON LAW AND JUSTICE  
ON SB 1182 THE GOVERNOR RAYMOND SHAFER COMPASSIONATE USE OF  
MEDICAL CANNABIS ACT

Good morning Chairman McIlhinney and Ferlo and members of the Committee. My name is Patrick Nightingale and I am from Allegheny County, Pennsylvania.

I am submitting this testimony to urge the Committee to pass the Governor Raymond Shafer Compassionate Use of Medical Cannabis act.

I am the Executive Director of Pittsburgh NORML and I am on the Board of Directors for Pennsylvanians for Medical Marijuana. Professionally, I am a criminal defense attorney practicing in both state and federal court. Prior to practicing criminal defense I spent six years as a prosecutor with the Allegheny County District Attorney's Office.

I am stating the obvious when I say that marijuana is illegal in the Commonwealth of Pennsylvania regardless of the purpose or intent of the person possessing or consuming it. While the penalties for mere possession can be relatively light, a misdemeanor conviction for even Possession of a Small Amount of Marijuana is a criminal conviction that will remain with the individual for the rest of his life. Even where the prosecution ultimately agrees to withdraw or reduce the criminal charge to a non-traffic summary citation the individual has likely already incurred legal fees, attended criminal hearings and paid summary fines. Valuable law enforcement resources are wasted with police officers being required to process criminal complaints, attend court hearings, and ultimately process expungement paperwork.

Though Pennsylvania's Possession of a Small Amount law is one of the less serious offenses in the Pennsylvania Criminal Code, Possession With the Intent to Deliver is a felony with additional serious consequences. I am not talking about the drug dealer facing a mandatory sentence for selling two pounds of marijuana. Rather I am talking about the medicinal marijuana users who turned to home cultivation thinking it better than entering the world of illegal narcotics trafficking.

One such client suffers from temporomandibular joint disorder (TMJ.) He suffers from severe, chronic pain on a daily basis and is prescribed morphine, oxycodone, valium and lidocaine patches for migraines. Yet, despite this medication he continues to suffer severe spasms and tremors in his face, rendering him unable to eat. He cultivated twenty-four (24) plants in his residence and baked the marijuana into cakes. He noticed an immediate decline to the facial spasms. He unfortunately suffered a seizure which brought emergency personnel, including law enforcement, to his residence. The prosecutor thought she was being "generous" and "reasonable" when she offered to waive the three year mandatory in favor of one year in the state correctional system. Having no valid defense

my client was forced to accept the plea offer and spent the majority of his sentence in the infirmary at his designated correctional facility.

Another client, Jacob Snee (who has submitted his own testimony to this committee) suffers from neurovascular dystrophy causing chronic neuropathic pain. The cocktail of prescriptive medications leaves him in a state of constant nausea. When he was 17 years old he decided to try and grow 6 marijuana plants. A cooperating witness, aka a “snitch”, trying to escape a heroin charge provided information to law enforcement and Jake was charged as a juvenile with Possession With Intent – Manufacturing Marijuana. His first juvenile judge found his medicinal use to be credible and adjudicated him delinquent on a possession charge only. Were he an adult the maximum period of probation he would have faced is one year. But, as a juvenile, he can be kept on supervision until he is 21 years of age. Jake is facing placement in a residential treatment facility because his new judge, Judge Michelle Bononi of the Westmoreland County Court of Common Pleas literally screamed at his last hearing that “he’s a drug addict! And he’s getting placed if he’s not clean!” despite a third drug and alcohol evaluation indicating no treatment was necessary. Her Honor graciously said she would transfer supervision to a medicinal state – thus forcing Jake to become a medical refugee.

I am certainly not suggesting that all growers are benevolent medicinal users, as I represent many legitimate “drug dealers” who’s grow operations were discovered by law enforcement. However, I have met numerous law abiding, hard working people who have unwittingly subjected themselves to mandatory minimum sentences and felony convictions because they believed it better to try and grow marijuana at home instead of entering the world of drug dealers and drug trafficking. A felony narcotics conviction in Pennsylvania will deprive one of the right to vote, serve on a jury and possess firearms. Any drug conviction, misdemeanor or felony, also brings with it a loss of one’s operating privileges. For people who must be able to drive in order to work this collateral consequence can be especially devastating.

We now have twenty (20) states (and the District of Columbia) in our great nation that have legalized cannabis for medical purposes. Well over 100 million American citizens have access to medicinal cannabis with a physician’s recommendation. You have heard (or will hear) testimony from patients and parents who risk arrest, prosecution, conviction, loss of employment, loss of driving privileges, dependency proceedings, custody litigation and the stigma that comes with a criminal conviction. I have had the distinct privilege to meet Heather Shuker who’s daughter Hannah suffers from intractable seizure disorder. In my capacity as a NORML chapter director I could have any form of medicinal cannabis delivered to her doorstep by tomorrow morning produced in a well regulated marketplace such as Colorado, Oregon or Washington. But in so doing I would commit a felony, Heather a misdemeanor for Possession and a felony for Endangering the Welfare of Children. Child protective services will file a Dependency Petition and Hannah will be placed in foster care. So Heather and Hannah have a choice – felonies and foster care or medical refugee status. How can that be an answer? It must not be.

An obvious and legitimate concern for this Committee is whether passage of SB 1182 would increase the risks of illegal drug abuse. Any such increase would necessarily impact the medical community and the law enforcement community. As I mentioned earlier, 20 states have medicinal marijuana programs. California and Rhode Island both conducted 10 year studies on the impact of their medicinal programs on teen drug use. Much to the consternation of the “Reefer Madness” crowd there has been no corresponding increase in teen drug use. Additionally, medicinal states have not produced any data suggesting an increase in Driving Under the Influence of marijuana cases. Medicinal cannabis is not a “license” to drive while impaired, and I trust our physicians here in Pennsylvania to tell their patients not to drive or operate heavy machinery when using cannabis.

In conclusion, Members of the Committee, I urge you to consider the real criminal and collateral consequences facing those who treat with medicinal cannabis in the Commonwealth of Pennsylvania. Giving them the opportunity to come out of the shadow of illegality will not result in an increase in illegal drug abuse. Do not force them to become medical refugees. It will save our fellow Pennsylvanians the stigma of a narcotics conviction. And it will save them from entering the black market of narcotics trafficking merely to seek a proven and safe treatment alternative. Accordingly, I urge you to fully support SB 1182.

Thank you for this opportunity to be heard.

Sincerely,

1.24.14

/s/ Patrick K. Nightingale, Esquire  
6517 Stanton Avenue  
Pittsburgh, PA 15219  
412.225.7959  
pknlaw@mac.com