

**TESTIMONY OF PATRICK K. NIGHTINGALE, ESQ.
BEFORE THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
COMMITTEE ON HEALTH AND HUMAN SERVICES
ON HB 1393 COMPASSIONATE USE ACT OF 2009**

Good morning Members of the Committee. My name is Patrick Nightingale. I reside in Pittsburgh, Allegheny County, Pennsylvania.

I am submitting this testimony to urge passage of the Compassionate Use Act of 2009 (HB 1393) by this Committee and the General Assembly.

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. 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. He now faces a three year mandatory minimum sentence for manufacturing over twenty (20) marijuana plants.

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.

Reflecting the risks of arrest and prosecution facing medicinal marijuana patients registered nurse Ken Wolski and Executive Director of the Coalition for Medical Marijuana—New Jersey, Inc. points out in his written testimony to this Committee that:

In 2004 the American Nurses Association (ANA) adopted a Position Statement on "Providing Patients Safe Access to Marijuana/Cannabis." The ANA recognized:

- that marijuana has been used medicinally for centuries; and,
- that marijuana has been shown to be effective for a wide range of symptoms and conditions; and,
- that patients should have safe access to therapeutic marijuana/cannabis.

The ANA supports legislation to remove criminal penalties including arrest and imprisonment for bona fide patients of therapeutic marijuana/cannabis. The ANA supports federal and state legislation to exclude marijuana/cannabis from classification as a Schedule I drug. The ANA represents 2.7 million RN's in the U.S. Registered nurses are the largest group of healthcare professionals in the nation and we are, according to Gallup polls, the most trusted profession in the nation.

(See Testimony of Ken Wolski, RN, MPA).

An obvious and legitimate concern for this Committee is whether passage of HB 1393 would increase the risks of illegal drug abuse. Any such increase would necessarily impact the medical community and the law enforcement community. A number of medical professionals have submitted written testimony for this Committee's consideration. I would like to take a couple of moments of your time to share some of their testimony that may address some of this Committee's concerns about the risk of abuse.

Edward Pane is the CEO and President of Sorrento Gardens Alcoholism and Drug Services, Inc., an addictions treatment facility in Hazelton, PA. Mr. Pane is a Certified Addictions Counselor and faculty member at the University of Scranton. He is also on the staff of Hazelton General Hospital. In his December 2, 2009, testimony before this Committee Mr. Pane addressed the "gateway drug" myth. He said:

The "Gateway" theory was found without merit in a report commissioned by the Federal Government. In 1999, the Institute of Medicine published an extensive research study on medical marijuana, Marijuana and Medicine: Assessing the Science Base. (Joy, 1999) Their study was commissioned by the U.S. Office of National Drug Control Policy in 1997 in the wake of medical marijuana initiatives that had begun during the prior year. Weighing in on the "gateway" theory, they concluded, "(t)here is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs." (Joy, 1999).

(See Testimony of Edward Pane).

Mr. Pane also testified about a 2000 study of Certified Addictions Counselors he conducted in conjunction with the Pennsylvania Certification Board. Of the sixty-nine professional substance abuse counselors who responded 78% said that marijuana had legitimate medical use and 62% said they did not believe medicinal marijuana would hinder drug prevention efforts. (Pane, 2000).

Dr. Leonard Krivitsky has worked as a physician in the field of addictions in Philadelphia since 2000. He is certified by the American Society of Addiction Medicine. In his written testimony he also addressed the "gateway drug" myth. He said:

I worked for years with seriously drug addicted patients in Philadelphia, and have experience ranging from methadone maintenance therapy for opiate addicts, to an inpatient detox/rehab, primarily for opiate, alcohol and prescription drug dependencies. The only patients (and there were very few of those) with "marijuana addiction" were those referred by the justice system, after someone on parole or probation was found positive for marijuana on urine drug screen. . . . Alcoholism does NOT start with using Cannabis; heroin addiction does NOT start with using Cannabis; gambling addiction, internet addiction, and a host of other behavioral addictions do not start with Cannabis. There is a genetic predisposition to a particular addiction, and, as one can hear often at AA meetings, people describe how, at the exposure to alcohol, it was as if "the switch was thrown", and that immediate "affection" for alcohol revealed itself. But I am yet to meet the first alcoholic who blames Cannabis as a "gateway" to his alcohol addiction . . . If the "gateway drug theory" . . . were true, we would all run a great risk of becoming serious drug addicts, as we are continuously exposed to mind-altering substances, of which alcohol, caffeine, and nicotine are examples.

(See Testimony of Leonard Krivitsky, MD).

Malorie McFarland is a medical assistant and office manager at a substance abuse treatment program in northwestern Pennsylvania. Her program has five physicians with a patient load of 500. Ms. McFarland notes in her written testimony that she has never once encountered a cannabis addict. "I have never taken a patient history where anyone has ever said they were in withdrawal from cannabis. I have never had someone call to report they have overdosed from cannabis, or threaten to overdose. I have never had a patient shoot up cannabis." Ms. McFarland states that "the over prescribing of opioid pain medication . . . is overwhelming . . . Currently 20% of our patients come in as heroin addicts, the remaining 80% are opioid drug addicts being prescribed medication. Several of the patients that we treat that are addicted to heroin became addicted because a doctor stopped prescribing pain medication." (See Testimony of Malorie McFarland).

In conclusion, Members of the Committee, I urge you to consider the real criminal 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. 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 HB 1393.

Thank you for this opportunity to be heard.

Sincerely,

8.18.10

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