Testimony of

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Medical Marijuana Testimony

Good morning Chairmen Marsico, Petrarca, Baker, and Fabrizio and members of the House Judiciary and House Health Committees. My name is Risa Vetri Ferman, and I am the Vice President of the Pennsylvania District Attorneys Association and District Attorney of Montgomery County. With me is my colleague David Heckler, District Attorney of Bucks County. We sincerely appreciate the opportunity to speak with you about medical marijuana and the PDAA's position on this issue.

Whether to permit the use of medical marijuana and, if so and under what circumstances, is a challenging topic. We have incredible sympathy for those who are in pain and are legitimately seeking relief. On the other hand, we have to be concerned about unintended consequences—what happens if a bill is enacted that unintentionally, but effectively, legalizes marijuana for those who are not suffering and truly in need of additional help?

The broad question is, quite frankly, how do we meet both goals here? How do we design a safe and effective system of distribution for patients who are suffering from debilitating diseases, but do so in a manner that keeps marijuana out of the hands of kids, recreational users, and black market dealers? This is easier said than done, but nonetheless critical if legislation is to move forward.

As an initial matter, we all know there are debates about the science and research. Do the studies show there is some benefit for some people who use medical marijuana? Or, do the studies show that no such benefit exists? Or does the answer lie somewhere in the middle? We are not here to debate those issues; there are others far more knowledgeable. Instead, the goal of this testimony is to provide our suggestions of how to structure legislation that will not result in the de facto legalization of marijuana for recreational users.

Dangers of Marijuana

Why we are so concerned about this? Because marijuana is harmful. Indeed, legalization of recreational marijuana would be dangerous and ill-advised.

Research indicates that there are documented, negative health and social consequences of marijuana use. Studies compiled by the National Institute for Drug Abuse have shown an association between chronic marijuana use and increased rates of anxiety, depression, schizophrenia, and suicidal thoughts. These studies have also shown that marijuana use is associated with dependence, respiratory and mental illness, poor motor performance, and impaired cognitive and immune system functioning.

A recent study from the Australian journal "Addiction" analyzed data over the last 20 years and concluded that, among other things, driving while cannabis-intoxicated doubles the risk of a car-crash and that regular cannabis use in adolescence approximately doubles the risks of dropping out of school and of cognitive impairment and psychosis in adulthood.

Beyond the physical consequences associated with marijuana use, there are many documented negative social effects of marijuana use. Studies by the Journal of the American Medical Association and the Journal of Health Economics have found that heavy smokers, for instance, generally report lower life satisfaction, poor mental and physical health, relationship problems, and less academic and career success as compared to their peers who came from similar backgrounds.

Moreover, the potential that legalizing medical marijuana may lead to abuse is real and demonstrated. In other states that have legalized medical marijuana, there are documented cases of medical marijuana falling into the hands of those to whom it was not prescribed. This marijuana easily finds its way into the hands of kids and teens. In a 2012 study in Colorado, 74% of the teens in a substance-abuse program admitted to using medical marijuana that was not prescribed to them, with each teen reporting that he or she had used medical marijuana illegally an average of 50 times. The study found that those teens were more likely to have started using marijuana earlier and more frequently, and they were more likely to develop marijuana dependency than others who had used marijuana that was not medically linked.

In the first years after Oregon legalized medical marijuana, a government official charged with regulating medical marijuana estimated that as much as 75% of the state's medical marijuana ended up on the black market.

We know we can prosecute people who illegally possess medical marijuana, but that is not the point. An important goal of this legislation must be preventing diversion of marijuana in the first place, which simply means keeping it out of the hands of those who are not supposed to have it. Without a tightly regulated statute, designed to eliminate diversion, we could be looking at the legalization of marijuana.

Creating a Robust Framework Without Loopholes

In order to prevent the unintentional legalization of marijuana, any proposed legislation must create a robust framework without loopholes. We need to make sure that the appropriate people are prescribing, distributing, and receiving medical marijuana by providing oversight of the cultivation, prescription, and distribution of medical marijuana.

At its core, this framework must restrict the forms of consumption for patients and the amount of marijuana that both patients and distributors are legally allowed to possess. Under no circumstances should smoking of medical marijuana be permitted.

There is no precedent for a medication that is smoked, and for good reason. Smoking makes the dosage difficult to measure and regulate, not to mention its damaging effects on patients' respiratory systems. Additionally, studies have shown that orally ingesting marijuana produces less of a so-called "head high" than smoking marijuana, meaning that an oral form of marijuana would be less attractive to those who would attempt to appropriate a patient's medicine for recreational use. Thus, limiting medical marijuana to other forms, such as those that are oil-based or in pill form, is entirely appropriate.

Perhaps the most crucial portion of any statute is the list of illnesses for which medical marijuana may be prescribed. For instance, in California—where there are absolutely no limits on the types of illnesses for which medical marijuana may be prescribed—experts estimate that less than five percent of the medical marijuana prescriptions issued are actually issued for patients with serious illnesses like cancer and HIV.

To prevent de facto legalization, this list must be specific and limited to only the most serious and appropriate illnesses.

Looking at the twenty-three states that have enacted medical marijuana statutes, we believe there are at least three groups of people that need to be regulated—the doctors prescribing medical marijuana, the patients obtaining medical marijuana, and the distributors cultivating and dispensing medical marijuana. A responsible framework should create a system of checks and balances between these three groups and the Department of Health.

Doctors

Doctors are the gate keepers of this process, as any prescription starts with their assessment of the patient. Many states protect the health and safety of patients by first checking the qualifications of the doctor and creating a registry of all pre-approved health care professionals. These doctors should be experts in their field and receive training specific to the health benefits and risks associated with medical marijuana. We know that any statute that would permit, say a podiatrist, to prescribe medical marijuana for a condition unrelated to foot issues, would not be in the public interest and likely lead to unintended consequences. We can look to California's statute as an example of how not regulating the types of medical professionals that can write a prescription leads to disastrous results. Moreover, the last thing we want to have are doctors who are primarily interested in profiting from these prescriptions—like we've seen in the pill-mill context—as opposed to focusing on the health and well-being of their patient.

Equally important, any doctor who prescribes medical marijuana must be intimately familiar with the patient and their illness, and—prior to prescribing medical marijuana—thoroughly explain the risks and benefits, as well as any restrictions related to the appropriate form and dosage for the patient. In an effort to prevent doctor shopping and multiple prescriptions, legislation should also require doctors to consult the prescription drug monitoring database prior to issuing a prescription.

Patients

Once a patient has a medical marijuana prescription, this prescription should be sent to the Department of Health for verification and inclusion in a patient registry. Many states employ an identification card system for patients. ID cards benefit patients, distributors, and law enforcement. When each patient has a state-issued identification card containing their prescription details—like the appropriate dosage, form, and expiration date, as well as identifying information for the patient—all of the parties involved can quickly differentiate between the legitimate patients and the drug-seeking recreational users who are attempting to skirt the law. Moreover, important information concerning form and dosage is front and center.

Dispensaries

The greatest risk for illegal diversion of medical marijuana falls squarely on the dispensaries' shoulders. It's not hard to imagine a situation where a dispensary employee looks the other way when someone's patient ID card has expired, or, even worse, dispenses medical marijuana directly to a drug dealer for sale on the black market. Studies show that relatively unregulated dispensaries attract crime. The same studies, however, showed that properly regulated dispensaries neutralize the threat of crime in the surrounding area. The key is proper, robust regulation.

Responsible dispensary policy starts with the number of dispensaries a state allows. As failures in both California and Oregon have demonstrated, limiting the number of dispensaries—while balancing geographic diversity—is crucial to long term success. Quality control is an impossible task without limitations. New York, for example, provides for five dispensaries with up to four geographically-diverse locations. This model is preferable, because it's much easier to expand the number of dispensaries at a later date than try to create post-hoc limitations. I cannot tell you how many dispensaries are appropriate, but instead that dispensaries should be limited.

In addition to limits on the number of dispensaries, the Department of Health should require extensive training and criminal background checks for anyone working in or owning a medical marijuana dispensary. As part of the licensing process, a dispensary owner should be required to provide a security and safety plan detailing the measures it will take to ensure that medical marijuana isn't diverted. This plan should include twenty-four hour video surveillance and record-keeping procedures. When Colorado passed its medical marijuana bill, it went as far as to require that the live feed from video cameras transmitted directly to their newly-created Medical Marijuana Enforcement Division.

Moreover, there should be strict requirements related to the cultivation, packaging, and tracking of medical marijuana. Cultivation requirements should be designed to protect the consumer and provide for independent laboratory testing of the product. Packaging that clearly labels the product and displays consumer warnings must also be required. Finally, any proposed statute should mandate "seed-to-sale tracking," which is essentially GPS tracking for all marijuana plants. This tracking method allows for oversight of all aspects of medical marijuana cultivation—from "seed-to-sale" as the name implies—and provides an additional layer of safety and security for the patient.

Criminal & Civil Consequences

The final check for all three groups lies in new criminal penalties. For doctors, there should be consequences for knowingly prescribing medical marijuana to a patient who does not suffer from one of the defined illnesses. For patients, there must be criminal penalties for intentionally diverting prescribed medical marijuana, possessing more than the statutorily-allowed amount, or driving under the influence of medical marijuana. Distributors similarly must be held accountable for diverting medical marijuana and cultivating or possessing more than the amount delineated by statute.

Just as important, there needs to be appropriately severe civil sanctions, such as suspension or revocation of the dispensary's license, if the new law or its accompanying regulations are violated.

In closing, on behalf of my colleagues, I want to offer our compassion to patients who are suffering. We are here today because we recognize that we can find a way to design a system that offers patient's potential relief from their suffering yet does not create significant negative consequences to public safety as a whole. As we often say, the devil is in the details, and it is incumbent on all of us to work very carefully and with a critical eye toward achieving these important mutual goals.

Thank you for the opportunity to testify on this important topic.