

September 21, 2021

Perfectly Normal

Testimony on SB 749

Senate Health & Human Service Committee

Todd Eachus, Member Liaison

To all Members of the Senate Health & Human Services Committee, my name is Todd Eachus, and I am providing testimony on behalf of Perfectly Normal and our volunteer members who are grateful for the opportunity to offer our comments and concerns on SB 749, sponsored by Senator Robert Mensch. We would like to thank Senator Mensch and his staff publicly for allowing us to communicate our concerns about his legislation on a zoom call prior to today's hearings.

Perfectly Normal is a non-partisan coalition of cannabis professionals, advocates and concerned citizens who are dedicated to the education of elected Members of the Pennsylvania General Assembly, other policy makers and influencers on issues affecting the responsible use of cannabis in the Commonwealth. Our volunteer members at Perfectly Normal are committed to advocating for the responsible personal use of cannabis and the development of policy alternatives protecting the rights, workplace protections and an open market for Adult Use Marijuana as a regulated free activity within Pennsylvania.

Perfectly Normal opposes SB 749 as currently written as it reverses Marijuana workplace impairment testing standards and employee rights implemented under Act 16 of 2016, Section 510 and Section 2103(b):

Act 16

Section 510. Prohibitions.

The following prohibitions shall apply:

(1) A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than 10 nanograms of active tetrahydrocannabinol per milliliter of blood in serum:

(i) Chemicals which require a permit issued by the Federal Government or a state government or an agency of the Federal Government or a state government.

(ii) High-voltage electricity or any other public utility.

(2) A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical marijuana.

(3) A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

(4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

And:

Section 2103, Protections for Patients and Caregivers.

(b) Employment.

(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.

(2) Nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.

(3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.

Act 16, Section 510 implements blood testing and sets a standard of 10 nanograms of active tetrahydrocannabinis per milliliter of blood in serum covering Pennsylvania Medical Marijuana Cardholders and is enumerated under the act.

Today, hardworking medical marijuana patient-employees across the Commonwealth are being terminated after failing workplace drug tests for INACTIVE THC Metabolites, while state law Act 16, Section 510 requires the measure of ACTIVE THC in blood serum. Typically these urine, hair and saliva tests are modeled after standard US Department of Transportation screening methods. Many Pennsylvania employers are claiming that a positive test for INACTIVE THC metabolites indicates that the employee is "impaired" or "under the influence" in the workplace at the time of the specimen collection.

SB 749 is attempting to replace an existing blood test which measures for impairment/intoxication of the patient-employee with a urine test which does not indicate impairment but is only meant to identify that INACTIVE THC is present within the screen.

Blood serum testing with a 10 ng/ml of ACTIVE THC impairment standard is the ONLY form of drug testing specifically outlined in the Act 16. The Act is VERY clear under what specific circumstances an employer may take adverse action:

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- This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.
- Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.
- A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical marijuana
- A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

- A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

The Urine screening modeled in SB 749, may have been the acceptable standard of testing prior to the passage of the Medical Marijuana Act, but today taxpaying MM Cardholders are finding no safe harbor on the job, which should be guaranteed under existing PA law. Perfectly Normal and our members hold the current Administration and the Attorney General responsible for not creating regulatory enforcement protections set forth in Act 16 in the workplace and not clearly communicating to all PA employers that ACTIVE THC in Blood is the only acceptable testing standard for MM patient-employees. Employees should not be getting fired solely for failed metabolite screens. SB749 will also make Pennsylvania workers ineligible for Unemployment Compensation and Workers Compensation as well. This simply should not be occurring; honest Pennsylvanians are not being protected.

SB 749 should NOT use INACTIVE THC metabolites as the accepted testing standard and Perfectly Normal advocates to the Member of the Senate that a 10 ng/ml threshold of ACTIVE THC in blood serum shall be the recommended standard of impairment for **ALL** workers in the Commonwealth, including those protected MM cardholders. This common definition will extend a well-conceived testing standard which many Senate and House Members have already voted on and supported under Act 16 of 2016, this include sitting Members of the Senate HHS Committee including the prime sponsor of SB 749.

The result of implementing this common fair standard advocated by Perfectly Normal to **ALL** workers in PA will be equally fair to workers, employers, insurers and Medical Marijuana licensees as well. The PA Medical Marijuana System has over 650,000 legal physician approved cardholders receiving cannabis medicines which in many cases are eliminating opioid prescriptions, assisting cancer patients and providing a consistent revenue stream to the PA general fund.

Perfectly Normal concludes that by making Section 510 testing standards the workplace law of the land, that this common testing threshold will increase the signup rate for the PA Medical Marijuana system. Removing the risk of a job, UC and WC benefits termination, will be a catalyst for thousands of Pennsylvanians wishing to join the PA Medical Marijuana Program. Obviously, this will also bring more customers for at our Medical Marijuana neighborhood dispensaries, require addition plant material to be grown and add more tax revenue for collection.

SB 749 intends to impose a urine testing standard while not addressing impairment, leaving the employee with an unfair test, doubt and all the risk on the backs of employees within a legal MM state approved system. SB 749 is also bad for business and will inhibits potential gains and growth in a newly regulated business sector, legal marijuana.

Finally, Aug. 5th, the Pennsylvania Superior Court ruled that an aggrieved MM patient-employee who was terminated after a failed drug test for INACTIVE THC metabolites *has the right to sue their former employer for discrimination under Act 16* (Scranton Quincy Clinic Co. LLC v. Palmiter). It is important to note that the courts have also found that *the legislature created a public policy that protects medical marijuana patients from discrimination in the workplace, Act*

16. This decision comes on the heels of back-to-back, pro-patient Commonwealth Court decisions (*Pittsburgh Water and Sewer Authority v. Unemployment Comp. Bd. Of Review*, *Jack Lehr Elec. V. Unemployment Comp. Bd. Of Review*) awarding unemployment benefits to MM patients who were terminated after failed workplace screens for INACTIVE THC metabolites. The court noted *that a valid recommendation for medical marijuana must be treated the same as any other legally prescribed medication*. At the Federal level, an Eastern District Court in the Third Circuit has ruled *that an aggrieved MM patient-employee terminated for a failed drug test has the right to sue for discrimination* (*Hudnell v. Thomas Jefferson Univ. Hosps.*) These Pennsylvania and Federal Court ruling on behalf of MM patient-employees have shown that the time has come for Pennsylvania to act. Marijuana in neither red nor blue; and the solution should be a 'green light' for a bipartisan workplace testing standard. See links to court rulings.

Thank you again for allowing Perfectly Normal and our Pennsylvania members this opportunity to present our concerns on SB 749. We are Perfectly Normal.