

Written Testimony in Support of Senate Bill 504

Discrimination in Employment - Use of Medical Cannabis - Prohibition
Before the Judicial Proceedings Committee: February 9, 2021

Senate Bill 504 protects medical cannabis patients from employment discrimination based on their status as a medical cannabis patient or a positive test for cannabis components or metabolites.

Senate Bill 504 should be adopted because it reinforces Maryland's decision to recognize medical cannabis as a valid medical treatment. Senate Bill 504 protects Maryland employees who are authorized medical cannabis patients while also considering the needs of employers to follow federal law and provide a safe workplace. Additionally, the passage of Senate Bill 504 would place Maryland among the increasing number of states that have taken affirmative steps to protect medical cannabis patients from discrimination in the workplace.

This Bill Legitimizes the Decision to Recognize Medical Cannabis as Medical Treatment

Maryland and other states across the country recognize medical cannabis as a legitimate treatment for a variety of medical conditions. As with many other medical treatments, Maryland requires a licensed medical provider, who themselves must be certified by the State to prescribe medical cannabis, to determine that medical cannabis is efficacious and medically necessary for the patient's treatment. If a qualified medical provider has determined the patient requires the use of medical cannabis, the patient should be allowed to take their medication without fear of reprisal from their employer. Given this recognition and the protocols in place, medical cannabis patients should not be treated any differently from other patients who similarly use legal and legitimate medication.

Senate Bill 504 Protects Patients and Reasonably Accommodates Employers

The protections afforded by Senate Bill 504 are narrowly tailored to ensure the safety of others, the employer's rights, and the wellbeing of the employee-patient. Specifically, this bill does not require employers to provide protections for medical cannabis patients if doing so will violate federal law, such as the Drug Free Workplace Act, federal regulations, or cause the employer to risk their federal funding sources or licensing. Further, this bill does not prevent employers from adopting policies and protocols that prohibit employees from performing their duties while impaired by medical cannabis. As such, this bill recognizes an employer's need to comply with federal law and accommodates that need by narrowly tailoring the employment protections provided.

The Public Health Impacts of Discrimination of Medical Cannabis Patients

Treating medical cannabis patients in a separate class from other patients is inherently discriminatory and harmfully stigmatizes these patients. As a public health matter, stigmatization is harmful because it can produce negative short- and long-term health effects. A study conducted on California's medical cannabis patients discovered that patients experienced chronic stress because of the stigma they perceived.¹ Chronic stress not only negatively impacts an individual's mental health, but also their physical health. Researchers also discovered that the stigmatization of medical cannabis led patients to delay or not seek beneficial medical cannabis treatment at all. Both concerns, chronic stress and the underutilization of care, can contribute to poor health outcomes and put an employee at an increased risk of job loss.²

If medical cannabis patients fear reprisal from their employers or the stigma associated with their use of cannabis, it may become difficult for these patients to seek and maintain employment. Lack of employment and under employment are linked to poorer health outcomes.³ For example, unemployed individuals tend to suffer more from stress-related illnesses, such as, high blood pressure, stroke, heart attack, heart disease, and arthritis.⁴ Similarly, studies have shown that those who experience underemployment are more likely to report that: their health interferes with their activities; they experience chronic disease and depression; and they have lower positive self-concept than adequately employed workers.⁵ Senate Bill 504 provides needed employment protections which will help cannabis patients avoid the negative health outcomes associated with under employment.

Other States Have Provided Employment Protections for Medical Cannabis Patients

Maryland would not be the first to provide employment protections for medical cannabis patients. Many medical cannabis states protect employees and applicants from discrimination when they are simply taking their legally authorized treatment. Thirteen states and D.C. have enacted statutory provisions providing employment protections for medical cannabis patients.⁶ Many of these laws are very similar to Senate Bill 504. For example, Delaware's statute, enacted in 2011, prohibits employment discrimination based on the person's status as a cardholder or

¹ Travis Satterlund, et al., *Stigma Among California's Medical Marijuana Patients*, 47(1) J. PSYCHOACTIVE DRUGS 10 (2015).

² Larisa Antonisse and Rachel Garfield, *The Relationship Between Work and Health: Findings from a Literature Review*, Kaiser Family Foundation (2018).

³ Linda Rae Murray., *Sick and Tired of Being Sick and Tired*, 93(2) AM. J. PUBLIC HEALTH 221 (2003); Daniel S. Friedland and Richard H. Price, *Underemployment: Consequences for the Health and Well-Being of Workers*, 32(1-2) AM. J. COMMUNITY PSYCHOL. 33 (2003).

⁴ United States Office of Disease Prevention and Health Promotion, *Healthy People 2020: Employment* (October 8, 2020) <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/employment#7>.

⁵ Daniel S. Friedland and Richard H. Price, *Underemployment: Consequences for the Health and Well-being of Workers*, 32(1-2) AM. J. COMMUNITY PSYCHOL. 33 (2003).

⁶ Iris Hentze, *Cannabis and Employment: Medical and Recreational Policies in the States*, National Conference of State Legislatures (2020).

their positive drug test for marijuana components or metabolites. 16 Del. C. § 4905A (2011). Delaware also qualifies this protection by allowing an employer to preclude an individual from employment if failure to do so would violate federal law or regulations or cause the employer to lose federal money or licensing. Further, Delaware's statute does not prevent an employer from prohibiting an employee from performing their workplace duties while impaired by medical cannabis. Some states have passed deeper protections. For example, Nevada law requires employers to make workplace accommodations for medical cannabis employee-patients. Nev. Rev. Stat. Ann. § 678C.850 (2019).

Given this legal landscape, enactment of Senate Bill 504 would solidly stand in the middle ground, striking a balance between providing adequate protections for patients while ensuring employers are not unduly burdened. As such, Maryland should adopt Senate Bill 504 to join the rising tide of states that recognize medical cannabis as a valid and necessary treatment and provide employment protections thereby.

Conclusion

Medical cannabis is an authorized form of medical treatment in Maryland and has been for several years. The Maryland Medical Cannabis Commission has carefully adhered to the directions of the General Assembly to create a system that provides safe access to those qualified for the treatment. Despite this authorization and comprehensive regulations, Maryland does not protect medical cannabis patients against workplace discrimination. Senate Bill 504 prescribes much-needed protections. It should be adopted to ensure medical cannabis patients are not subjected to discrimination and adverse employment actions for their use of a legal, medically necessary treatment.

This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law or the University of Maryland system.