

Mason Marks, MD, JD

Re: SB 303

Dear Chair Nosse, Vice-Chairs Goodwin & Nelson, and Members of the House Behavioral Health & Healthcare Committee:

I write to express my personal views regarding SB 303. I speak only for myself. However, I am a medical doctor and the Florida Bar Health Law Section Professor at the Florida State University College of Law, where I teach drug regulation. I also co-founded and lead the Project on Psychedelics Law and Regulation (POPLAR) at the Petrie-Flom Center at Harvard Law School.

After hearing the testimony on SB 303 this Wednesday, I feel compelled to clarify a few points regarding what is permitted under Oregon's Psilocybin Services Program. In her testimony, Senator Steiner frequently referred to psilocybin services as therapeutic. However, by law, Oregon's services are non-therapeutic. They are best described as a form of supervised or supported adult use of psilocybin.

Under existing Oregon Health Authority (OHA) regulations, codified into state law, the licensed individuals (facilitators) administering psilocybin in Oregon are prohibited from making medical claims. They are barred from diagnosing or treating health conditions, and they cannot administer psilocybin within a healthcare facility. Further, if they hold professional licenses in a healthcare field, such as nursing or medicine, they are prohibited from exercising the privileges of their healthcare license while providing psilocybin services. The clients receiving services need not have a medical diagnosis or doctor's prescription, and they may utilize the services for any reason, including spiritual growth or recreation. OHA officials, such as Angela Albee, can confirm these details. You can read more about supported adult use in my [2021 article on the topic](#) and my 2022 article [the Varieties of Psychedelic Law](#).

I raise these points because they show that Senator Steiner's intent to measure the efficacy of psilocybin through SB 303 is misguided. Psilocybin cannot be dispensed in Oregon to treat health conditions. Consequently, collecting data to evaluate its effectiveness at treating health conditions doesn't make much sense.

Collecting some data regarding the program's safety is sensible. However, this can already be done under current OHA regulations. Accordingly, I oppose SB 303 because it is unnecessary. During Wednesday's hearing, a member of the committee asked whether SB 303 is necessary and why OHA should be

involved in data collection (in other words, why should researchers not contact psilocybin services centers directly to coordinate research projects?). I believe that's how research on this program should be conducted, and that is the status quo under existing OHA regulations. Researchers may collect data from psilocybin clients with their informed consent.

Regarding safety, you heard from OHA's Angela Albee that there will be emergency plans in place at each service center. Moreover, we have significant data regarding the safety of psilocybin when administered under supervision as it will be in Oregon. As a whole, current OHA regulations are designed to ensure that if psilocybin clients require medical attention, they will receive it promptly.

OHA developed the regulations on research and client safety over two years, with input from regulated stakeholders and the Oregon Psilocybin Advisory Board, which contained researchers, doctors, lawyers, therapists, and representatives of marginalized communities. These parties discussed how data should be collected, and they produced sensible regulations that respect the will of Oregon voters, who approved Measure 109 with robust confidentiality protections. As a result of their efforts, there are many safeguards to ensure client safety, voluntary data collection is permitted, and SB 303 is unnecessary.

SB 303 will also be more expensive and burdensome for the state than its sponsor admits. The OHA's Angela Albee confirmed this point in her testimony. Steiner's amended bill will also significantly raise costs for psilocybin businesses, and Steiner appears to ignore those costs, which may put service centers out of business. There are already too few service center applicants to generate license revenue to pay for the psilocybin service program, which is over-budget and has sought an addition \$6 million in general funds.

Clearly, SB 303 will have more than a minimal fiscal impact. Angela Albee estimated OHA's portion of the data collection program would cost over \$280,000 for one year, which would pay for one staff member's salary and additional overhead. I respect Ms. Albee's estimate. However, I suspect it would cost far more to implement SB 303 responsibly. Data collection, storage, dissemination are non-trivial matters. Large companies with billions of dollars like Google and Facebook struggle to these things well, and data breaches are common. If SB 303 is enacted, it should require more than this minimal estimate of \$280,000.

In addition to the expense and unnecessary complexity that SB 303 adds, it potentially exploits marginalized and vulnerable groups. Part of the rationale for Measure 109 was to address the harms of the war on drugs, which disregarded people's rights, in part by putting under surveillance. There is also a history of

experimenting on people without adequate consent through atrocities like the Tuskegee Syphilis experiment. To many, Steiner's SB 303 smacks of this kind of government experimentation on vulnerable groups, and it will turn marginalized communities away from participating in psilocybin services. This concern has been expressed by OHA officials such as Andre Ourso in his Senate testimony on SB 303, submitted on February 27.

I have written about other risks of the data collection proposed by SB 303 in a [recent article](#) for Wired Magazine. All of the privacy and bioethics experts I spoke with expressed concern that Senator Steiner's proposal would expose clients to significant legal risks. Because psilocybin remains federally illegal and heavily stigmatized, people could lose their jobs, be arrested, or lose other rights and privileges. Accordingly, the experts I consulted cautioned that psilocybin client data should not be collected or stored by OHA because federal law enforcement will likely be able to access that data without a warrant. In contrast, when data is siloed at individual services centers, which is the case under current Oregon law, it is far less accessible to federal authorities. They would require a warrant each time they wished to access client data. Whereas, when it is stored in a centralized database at OHA, that repository serves as a one-stop-shop for all client data, which most likely does not require a warrant for access.

SB 303 will also raise costs for psilocybin service centers who will pass the cost onto clients, making these services less accessible. During Wednesday's hearing, one member of the committee asked Sam Chapman, a lobbyist with the Healing Advocacy Fund, how much a psilocybin session would cost. He initially responded that the cost "will be prohibitive." When pressed for a more specific answer, he provided a range from \$500 - \$1,500. However, these estimates are unrealistically low. According to a Willamette Week article published yesterday, one service center will charge \$3,500 for a single psilocybin session. This number is a more accurate representation of what psilocybin services will cost, and SB 303 will drive the prices higher.

Because it is unnecessary, expensive, overly burdensome, and potentially discriminatory, I urge you to oppose SB 303. But if you must pass something, please adopt the amendment offered by the Oregon Psilocybin Services Collaborative Community (OPSCC). This simple amendment clarifies SB 303, which is currently very vague and far too broad. Senator Steiner's bill simply does not do what she says it does. The OPSCC Amendment brings the text of the bill in line with her claims. It allows for ethical, transparent research, aligned with international standards and human rights. If you must pass something, please make that the OPSCC Data Privacy Amendment. But even better please oppose SB 303 entirely.

Sincerely,

Mason Marks, MD, JD