

SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to amend Section 213.6 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from December 10, 2021, through January 24, 2022. A public hearing was held on January 25, 2022. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board’s responses are below.

II.

Summary of Written/Oral Comments from Ellen Komp, Deputy Director, California Chapter of the National Organization for the Reform of Marijuana Laws (NORML).

Comment 1:

The California chapter of the National Organization for the Reform of Marijuana Laws (NORML) questions the Board’s reasoning for changing the text from “obtained legally” to “used legally.” NORML asserts that it is now legal in California for adults 21 and over and/or for persons of any age with a medical recommendation from a doctor to use or obtain cannabis (with parental consent for those under 18). NORML wonders how the Board envisions how an individual would prove that they used cannabis legally and whether “legal” under the proposed rule refers to state or federal law.

As a consumer rights organization, NORML’s biggest concern is the employer’s use of urine or hair tests that fail to measure active THC and instead unfairly measure inactive metabolites, which can be detected for days or weeks after chronic use. NORML asserts that the positive measurement of inactive metabolites does not correlate with on-the-job impairment.

NORML then informs the Board that they are currently advancing legislation to ban job discrimination based on inactive metabolite testing in California and are happy to see that the SPB has ruled that those tests were not a basis for firing someone or denying them employment (except where federal law conflicts). However, NORML asks the Board to clarify which state employees who use cannabis legally in California would possess the right to appeal drug test results.

Response 1:

The Board appreciates and thanks NORML for their questions and concerns related to this regulatory change. The intent of section 213.6's amended language from "obtained legally" to "used legally" is to make clear that it is an applicant's drug *use* rather than drug *possession* that determines whether or not the applicant is eligible to take a civil service examination. Ultimately, drug tests measure drug use and provide no information as to how an applicant obtains a drug.

Additionally, the overall intent behind the proposed regulation is to ensure that individuals who legally use drugs, under California law, may freely participate in the state's selection process, specifically examinations. The Board believes that the proposed regulatory change comports with California marijuana-use laws.

NORML's expressed concern about an employer's use of urine or hair tests is outside the scope of section 213.6. The proposed regulatory change does not address the methods of drug testing used by the state.

Last, the Board respectfully reminds NORML that the proposed amendment is meant to clarify the grounds for an *applicant's appeal* from a failed drug test during the selection process resulting in disqualification from participation in an examination. The regulation is unrelated to failed drug tests during employment that may serve as a basis for dismissal.

III.

Conclusion:

The Board appreciates the comments and feedback it received regarding this proposed amendment. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.