

# Presentation to Senate Committee

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## Prologue

- Chairman Rulli
- Vice-Chairman Lang
- Ranking Member Sykes
- My name is Fadi Boumitri, and I am the CEO of Ascension BioMedical. We are located in Oberlin, Ohio.
- I appear before you today to testify as an interested party to Senate Bill 261

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## General Position

- Allow me to say, I am a big proponent of many components of this bill
  - This advances the benefits of this program to patients
  - This advances the benefits of the program to the State
  - This advances the benefits of the program to the stakeholders
- No matter how I may feel about how far the bill goes or does not go on any topic, I want to be clear that I agree with the general sentiment that this bill is absolutely CRUCIAL to move the medical market in Ohio forward.

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## Introduction

- A little about me...
- I have been a resident of Ohio since my parents brought our family to this country when I was 3 years old
- I went to high school, college, and law school in Ohio
- I am the son of two entrepreneurs: my parents moved to this country and my father took a night shift job at a gas station until he and my mother were able to purchase part of the business, then buy the rest of the business, then buy a small piece of the property it sat on, before eventually saving up enough to buy the rest of the property, which my mother still owns now over 30 years later
- I ran my own solo law practice for 10 years before applying for a cultivation license here in Ohio in 2017
- I currently employ about 20 people, with aspirations of doubling that number by the end of 2022
- I put my entire net worth into this company, and I still have millions in loans and investor money that I owe

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## The Biggest Issues

- While I normally like to start by talking about the good, and there is a lot of good in this bill, out of respect for your time I want to cut to the worst parts of the bill from my perspective
- Small business cultivators, already in jeopardy due to the square footage limitations and how much their competitors are allowed to grow, are only harmed even more in this bill by 2 major provisions:
  1. Lack of level playing field with square footage solidified
  2. Adding cultivation licenses for processors that scored too low to win one

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## Misconception: The Level 1s Spent Significantly More to Win a License

- There is misconception being thrown around that Level 1 cultivators had to spend significantly more money than Level 2 cultivators to get their licenses. THAT SIMPLY IS NOT TRUE.
- Every piece of the applications for Level 1 and Level 2 was exactly the same. In fact, page 1 required you to check the box to decipher whether you were applying for a Level 1 or a Level 2 license.
- The only difference was the applications fees: \$20,000 vs \$2,000.
- Every piece of the application, otherwise, cost a Level 2 the same amount of money as a Level 1. It was literally the difference between checking box 1 for Level 1, or checking box 2 for Level 2, and showing access to enough money to build out whichever you chose.

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## Misconception: Level 1s Need Time to Recoup Their Investment

- Licenses were awarded November, 2017
- Today is November 30, 2021....exactly 4 years later
- If you are thinking “they didn’t get open until 2018 so that is less than 4 years head start” then you need to remember: it will take Level 2 licensees just as long to build out and increase in size as it took Level 1 licensees to get constructed and open (probably longer, thanks to labor shortages and supply shortages since covid) and it will certainly be more expensive
- By the time any increase of Level 2 licenses passes, and the Level 2s put together their plan for expansion, and get that plan for expansion approved, it would be another year minimum....a 5 year head start
- If anyone believes that is not enough of a head start, then tack on another 12 months....or 18 months even...but give Level 2s a path to competing!

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## Level 1s Spent Way More Money

- I don’t know of a single Level 2 that built out and opened with less than the full 3,000 square feet
- I don’t know of a single Level 1 that built out and opened with anywhere near the full 25,000 square feet
- EVERY LEVEL 1 WAS GROWING IN LESS THAN FULL CAPACITY. In fact, my understanding is that every single one built out less than half initially (except 1, allegedly).
- Best estimate: Level 1s spent 2x-3x what Level 2s spent to get open
- How can that be?
  - They only spent \$18,000 TOTAL more on the application than Level 2s (equates to 10-20%)
  - Whether Level 1 or Level 2, you need the same front office (1 head grower, 1 CEO, 1 general manager, 1 packaging manager, etc.)
  - Whether Level 1 or Level 2, you only need 1 delivery van, 1 watering/feed system (if any), 1 trim machine (if any), 1 packaging machine (if any), etc.
  - Most start-up expenses are exactly the same for both levels. The only MAJOR difference is the cost of construction, and Level 1s minimized this by building out half (or less) of their facilities initially

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## Competition

- Picture this: you were told you would be 1 of 100 senators, and your vote would be worth 1%...then, after you campaigned, spent time, spent money, used all of your energy and resources, WON your seat, and bought and furnished an overpriced downtown office, the State of Ohio tells you it will actually be 1 of 150 senators, and your vote would be worth 2/3 of what you thought it would be worth
  - How would you feel? This is what Level 2 licensees deal with every day
- Ohio was supposed to have 12 Level 1 licenses and 12 Level 2 licenses
- Ohio NOW has 20 Level 1 licenses, and I'm told there could still be more coming (I don't actually know, because the program doesn't tell us any of that...that's a discussion for another day)
- The market share that I applied for has been diminished to nearly HALF of what it was supposed to be...but I'm told I "chose" to apply for Level 2

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## Life as a Level 2

- I get emails all the time from patients thanking us for having high quality products at the lowest end of the pricing in Ohio
- Then, I reach out to dispensaries, and I'm told "sorry...we have contracts that require us to buy a certain amount from Level 1 cultivators, otherwise they won't let us buy any from them...not flower, not processed goods...nothing".
- With almost every dispensary in Ohio now being owned by MSOs, almost all of those MSOs have some relationship with other MSOs, and thus an increasing number of contracts like the one I just described.
- You know that a single Level 1 license is almost as big as ALL of the Level 2 licenses? To give you the exact number, 1.68 Level 1 licenses are the same square footage as ALL of the Level 2 licenses combined
- When I get calls from Multistate Operators, they all start off cordial:
  - "Let's joint venture. How do we help you? How can we work together?"
- When they realize I'm not desperate to sell my license to them, you know what they ALL tell me?
  - "You realize that as a Level 2 cultivator with no processor and no dispensaries, and with MSOs buying all the dispensaries, now is probably the best time for you to sell."
  - Translation: you can take money and get out now, or you can wait and lose it all

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## Another Issue: Processor Stand-Alone

- Every single processor that applied for a license did so knowing whether they did or did not win a cultivation license
- LET ME REPEAT THAT! EVERY SINGLE PROCESSOR THAT APPLIED FOR A PROCESSOR DID SO KNOWING THAT THEY DID NOT WIN A CULTIVATION LICENSE, AND APPLIED FOR PROCESSING ANYWAY
- They knew cultivators would need to sell their trim somewhere
- You are taking that away from me and the handful of cultivators (about 5 in total) that don't have a processing license. You are taking away the few outlets that I have for a halfway decent price on my trim. You can imagine, once you do that, the price of my trim goes from \$600 per pound to ZERO with Level 1s at 50k sq ft

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## Processor Stand-Alone Continued

- If you do this, you are awarding cultivation licenses to people who scored to low to win a license
- This awards cultivation licenses to a handful of processors that BLATANTLY DID NOT WIN ONE
- How do you even know they have the ability to cultivate? The license scoring committee obviously didn't think they had that ability.
- The Processors that would be awarded a license through this program scored 83, 85, 112, 128, and 132 on cultivation applications
- All of those applied for Level 1; the lowest winning score was 160 for Level 1; These people were 30 points lower, at least...and HALF the points, for a few of them....yet these people will get to cultivate

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## Processor Stand-Alone Continued

- I heard testimony before the Senate Committee saying that patients are not getting quality medicine because of the good stuff is being sold as flower. This is completely misleading, as the MAJORITY of processed products don't come from flower at all, and quality would not increase AT ALL if it WAS made from flower.
- If the aim is TRULY to help patients get access to higher quality products, and NOT simply to benefit a handful of processors that didn't win cultivation licenses, there are MUCH better way to accomplish this than to give processors a license THEY DID NOT QUALIFY FOR

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## Ohio in Detail

- Level 2 licenses were designed to give small, Ohio entrepreneurs entry to the industry
- The idea was a PHENOMENAL one, but reality has taken the idea in an increasingly DISASTROUS direction
  - Level 1s are growing multi-tiered, which was never expected (meaning every 25k square feet of grow tiered allows them to grow as much as 50k or 75k square feet)
  - Dispensaries are now almost ALL owned by MSOs, which was not anticipated. MSOs, while in competition with each other, have all kinds of contracts and agreements with each other
    - MSOs are generally already familiar with each other from other states
    - Often enter Ohio market with contracts already in place with other MSOs (otherwise, they often enter with relationships already in place to help create such contracts)
    - They push their weight around more (see OMCIA example below)
    - OMCIA is made up of almost all Level 1 cultivators and almost all MSOs. This is a group that allegedly represents all license holders in Ohio, but when it got 8 applications from Level 2 cultivators to join, it put those applications on hold until new elections were held, a new board of all Level 1 cultivators was elected, and every Level 1 cultivator was given twice as many votes as any other licensees. THEN, OMCIA sent an email to Level 2 cultivators to join

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## Ohio in Detail (continued)

- Almost every cultivator has a processor, which makes it nearly impossible for the few of us that don't to sell any trim to the majority of processors
- Of the 5 cultivators that don't have a processor, 4 are Level 2 cultivators
- Giving processors a cultivation would be a DEATH BLOW to the small Ohio business cultivators that don't have enough cultivation to compete as flower, don't have a processor, and have limited outlets to sell trim because the processed products market is flooded with products made from trim (not worth it for processors without cultivation)

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## Are All Complaints Valid?

- Processors are complaining there isn't enough biomass on the wholesale market for them to buy to make processed products.
- Dispensaries are complaining there isn't enough flower, and they have to buy product from Level 1s to avoid getting shut out because Level 2s don't grow nearly enough for dispensaries to survive on.
- Patients complain they don't have access to high quality OR low prices.
- Increasing the number of dispensaries from 57 to 131 will make prices SKYROCKET because MORE dispensaries will be fighting over product.
- Meanwhile, Level 1s can only complain that allowing Level 2s disproportionately more grow area will flood the market.
- ONE OF THESE THINGS IS NOT LIKE THE OTHERS; IF ALL OF THE OTHERS ARE TRUE, THEN THE LAST ONE CANNOT BE TRUE. THAT ONE SOUNDS SLIGHTLY MORE LIKE GREED THAN IT DOES A LEGITIMATE COMPLAINT.

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## THE SOLUTIONS (Part 1)

- Increase the square footage of Level 2 licensees to allow them to compete with the Level 1 licensees
  - This corrects the one-sided market that currently favors Level 1 cultivators, and is on the verge of shutting down the Level 2 cultivators entirely, as shown by:
    1. The OMCIA fiasco (Double the votes for Level 1s? Shutting out Level 2s until after elections?)
    2. The dispensaries shutting out Level 2s (predominantly buying Level 1 products due to fear)
  - This allows access to significantly more trim for processors without cultivation
  - This decreases prices, giving access to more patients and giving cheaper access to all patients

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## THE SOLUTIONS (Part 2)

- Create an “add on” license for cultivators that don’t have a processor
- Allows extra square footage to grow in, but all material grown in that extra square footage **CAN ONLY BE SOLD TO PROCESSORS**
- Charge a fee for this “add on” license
- Fix several problems at once
  - This allows patients access to products made from high quality bud
  - This helps both cultivators and processors not vertically integrated to stay relevant against the vertically integrated licensees
  - This gives processors more trim AND bud to make high quality products
  - This ensure processors who **HAVE NOT** proven they can cultivate do not get a free cultivation license they **DID NOT WIN**
  - **THIS WILL DECREASE PRICES FOR PATIENTS WITHOUT HURTING LICENSEES**

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## NOTES

- I should add:
  - I specifically say only cultivators that don’t have a processor should get the add-on license because giving additional cultivation to cultivators that do have a processor would only increase the divide; cultivators with a processor would then get **MORE** plant material to use, which gives them even more of a chance to blow the processors without a cultivation out of the water
  - Giving processors a cultivation license creates a vertical integration for **ONLY** those processors that did **NOT** win a vertical integration, protecting their interests while hurting mine (and the interests of other cultivators without processing)
  - The State of Ohio initially planned for 40,000 patients. We have over 131,000 ACTIVE patients and 216,000 unique patients who have registered at one time or another (many of whom probably let their active status lapse due to price). That is 3.25X to 5.25X of the anticipated patients.
  - The State of Ohio initially planned for 336,000 square feet of grow. We have:
    - 542,000 with the added licenses;
    - 1,084,000 if every licensee goes to double square footage;
    - 1.7M square feet if all licensees go to 50,000 (5X the original number; a perfect match to the patient population that **SHOULD** be buying if prices were normalized through competition)

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## GIVE US A CHANCE TO COMPETE

- Ohio gave small businesses a chance to enter the market
- Ohio gave Level 1s a **FOUR YEAR** (if not **FIVE**) head start at this point
- Every Level 1 has a processing license (except 1? I’m told they actually do have one though), giving them a big advantage over all Level 2s, but especially the handful that don’t have a processing license
- Every dispensary in Ohio except 1 is owned by an MSO or a vertically integrated company; MSOs put in **DOZENS** (or **HUNDREDS**) of applications each to drown the RFA2 process with MSO applications
- **GIVE THE SMALL BUSINESS CULTIVATORS A CHANCE TO SURVIVE; GIVE US A CHANCE TO THRIVE; LET US GROW AS MUCH AS OTHER LICENSEES CAN, AND DO NOT DISPROPORTIONATELY HURT US BY ADDING PROCESSOR-ONLY CULTIVATION LICENSES FOR THOSE THAT DID NOT WIN CULTIVATION!**

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