

REEFER MADNESS? UPDATE ON CANNABIS LAWS AND “MEDICAL MARIJUANA”

D. Faye Caldwell, JD, MBA

Managing Partner
Caldwell Everson PLLC

**Reefer Madness? Update on Cannabis Laws and “Medical
Marijuana”**

October 11, 2018 2:00 pm – 2:30 pm

Disclosure Information

D. Faye Caldwell, JD

No Disclosures

State Marijuana Laws

As of August 14, 2018

31 states + D.C. + 2
U.S. territories
(Guam, Puerto Rico)
have passed
comprehensive
“medical marijuana”
laws

9 states + D.C. have
also passed
recreational
marijuana laws

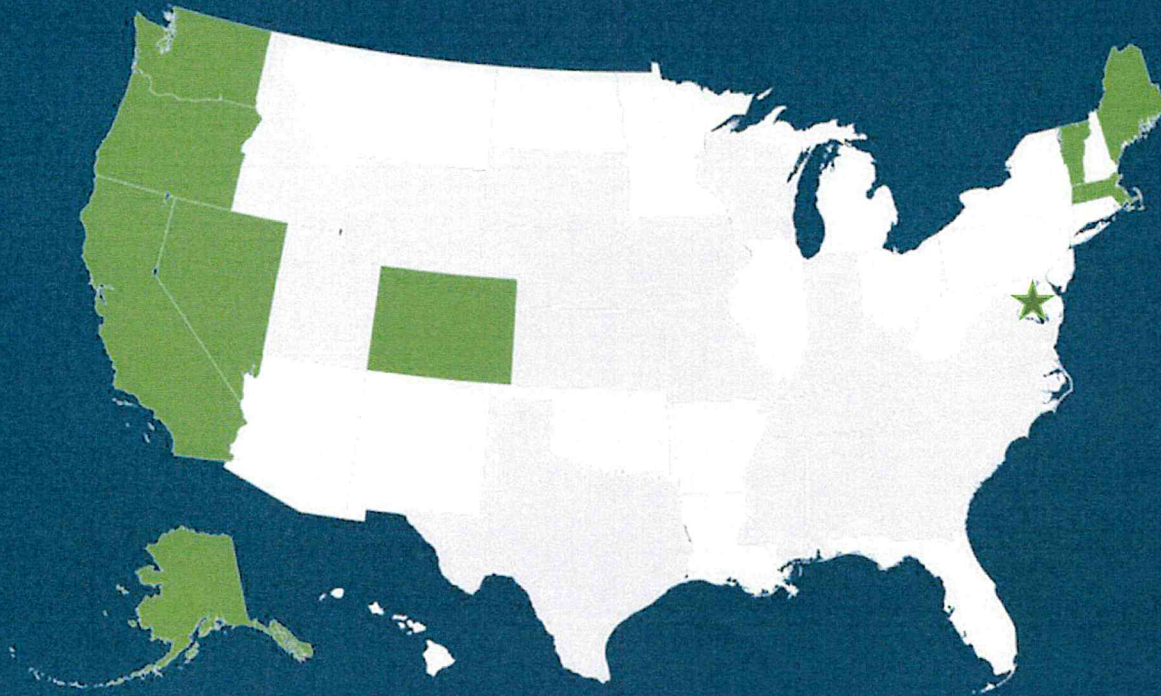
16 states have
passed low
THC/high CBD laws

Only 4 states ban
marijuana for all
purposes in any
form (Idaho,
Kansas, Nebraska,
South Dakota)



State Marijuana Laws

Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota



Montana
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
Vermont
Washington
West Virginia
Washington, D.C.

Powered by Bing
© GeoNames, MSN, Navteq

2017-2018 State Marijuana Legislation

Medical Marijuana

Passed Legislation

- Oklahoma (2018, effective 7/26/18)
- West Virginia (2017)
- Utah (for terminally ill) (2018)

Introduced Legislation

- Introduced in at least 12 states
- Expected to be on ballot in at least 2 states (MO, UT)

Recreational Marijuana

Passed Legislation

- Vermont (2018)
 - First recreational law passed by legislature; sales not permitted

Introduced Legislation

- Introduced in at least 20 states
- Possible ballot initiatives in at least 6 states

Federal Marijuana Law

Marijuana is still
illegal under Federal
law

Marijuana is still
classified as a
Schedule I drug

- Aug. 2016- DEA denied petition to reschedule
- Medical marijuana is NOT a legitimate medical explanation under U.S. DOT drug testing regulations

June 25, 2018:

- FDA approved 1st drug derived from marijuana plant (Epidiolex) for 2 types of severe childhood epilepsy
- Contains <.1% THC

Federal Marijuana Law & Policy

January 2017: new administration

Feb. 2017: creation of 1st Congressional Cannabis Caucus

Attorney General Sessions anti-marijuana policy

Mar. 2018: Rohrabacher-Blumenauer renewed through Sept. 2018

More than a dozen bills introduced regarding marijuana

Medical Marijuana Laws

Current Trends

Increasing access/removing restrictions on access

- Expanding qualifying conditions
 - Total physician based recommendations
 - Adding PTSD, chronic pain, autism, alternative to opioid use and/or abuse
- Physician/provider requirements

Explicit employment
protections

Other protections E.g.,
custody, housing,
medical care, schools

Limiting methods of
ingestion

Employment Protections

Generally 3 Categories

1

Explicit
statutory
employment
protections

2

No
employment
protections

3

Unclear
employment
protections
and/or
possible
protections
under other
state laws

Employment Protections

Explicit

13 states have explicit protections, language varies

Positive Drug Test Language

- 4 states have positive drug test language E.g., employer may not discriminate based upon a “patient’s positive drug test for marijuana components or metabolites”
- AZ, DE, MN, OK

Treated as Disability

- Some states treat as disability
- NV, NY

Safety-Sensitive Positions

- Some states include specified safety-sensitive positions that may not be performed with specified amount of active THC in blood
- PA, WV

Employment Protections

Current trend is to have/add explicit employment protections

2018 proposed legislation

- ◆ States with proposed medical marijuana legislation (e.g., IN, KY, WI)
- ◆ Amendments to existing marijuana and/or discrimination laws
 - ◆ States with NO employment protections (e.g., CA, WA)
 - ◆ States with unclear protections (e.g., HI, MD, MA, NJ)
 - ◆ States with explicit protections seeking to add positive drug test language (e.g., RI, NY)

Employment Protections

Court Decisions Pre and Post 2017

Courts found no
duty to
accommodate
medical marijuana

2
0
1
7

4 recent court
decisions

Employment Protections

4 Recent Court Decisions Since 2017

Explicit Protections

- 2 decisions in states with EXPLICIT protections- both courts found implied private rights of actions, rejected preemption
- **Connecticut** (Noffsinger (federal court))
- **Rhode Island** (Callaghan (state court))

Unclear Protections

- 2 decisions in states with UNCLEAR protections
- **Massachusetts** (Barbuto):
 - MA supreme court found possible protections under other state law (disability/handicap)
- **New Jersey** (Cotto):
 - Federal district court found no protections

Medical Marijuana Expansion

New Jersey

- March 2018: executive order to expand access
 - Since expansion, ~100 new patients added each day
- Proposed reforms to expand access
 - Eliminate physician registry requirement
 - Removes limits on amounts dispensed, expands access to edible forms

New York

- Aug. 17, 2018: Doubled licensees; approved new products
- Expanded licensed providers
- Expanded qualifying conditions

Pennsylvania

- April 2018
- Expanded to include plant material (Smoking still illegal)
- Expanded qualifying conditions
- State has program to allow medical schools to be involved in research
- Thomas Jefferson University is launching 1st university-based, graduate-level certificate programs in medical marijuana education

Medical Marijuana

Qualifying Conditions

Total Physician Based Recommendations

- States seeking to eliminate specified list of conditions
- 2018 Passed legislation
 - Maine
 - Oklahoma
 - Virginia (CBD law)
- 2018 Proposed legislation
 - New Jersey
 - New York
 - Pennsylvania

States with Expansion of Qualifying Conditions

- **Louisiana:** Added at least 5 new conditions
- **Michigan:** Added 11 new conditions (considered 22)
- **New Jersey:** Added 6 new conditions
- **Pennsylvania:** Added 4 new conditions

Medical Marijuana Qualifying Conditions

2017-2018 Common Conditions

Chronic, intractable pain

· GA (CBD law), IL, LA, MI,
NH, NY, CT*, NJ*

PTSD

· CO, IL, LA, NH, NJ, NY

Migraines

· CT, NJ

Arthritis

· HI, MI

Autism/Autism spectrum disorder

· LA, MI, MN, Vetoed in CO

Anxiety

· NJ

Obstructive sleep apnea

· MN

Tourette's

· MI, NJ

Lupus

· HI

Medical Marijuana

Qualifying Conditions

Included as alternative/substitute for prescription opioids and/or for opioid abuse and addiction treatment

- ◆ 2018 Passed legislation
 - ◆ Illinois
 - ◆ Pennsylvania
 - ◆ New Jersey
 - ◆ New York
- ◆ 2018 Proposed (Colorado)
- ◆ Failed/vetoed in Connecticut, Hawaii (opioid addiction), Maine, Maryland

Medical Marijuana

Increasing Access

Many states are revising provider requirements to expand patient access to medical marijuana

Expanding

- who may recommend/certify
 - *E.g., HI:* APRN
 - *E.g., NY:* Nurse practitioners and physician assistants
- who may administer
 - *E.g., MA:* Nurse practitioners, treating elderly in nursing homes, hospices

Easing

- physician requirements (i.e., physician opt-out from registry)
- *E.g., NJ, PA*

Medical Marijuana

Increasing Access

Other ways states are increasing access

- Where, who, and how to obtain
- E.g., NH: “support person” may now obtain from dispensary
- E.g., NY: Increases in # of licenses
- Reducing fees
- Increasing length of certifications
- Telehealth

Example: Hawaii 2018 amendments to medical marijuana law:

- To allow 3-year certifications (instead of annual)
- Permits Telehealth after initial in-person visit
- Recognizes out-of-state reciprocity
- Increases THC limit in certain manufactured marijuana products

Recreational Cannabis Laws

All states with recreational cannabis laws also have medical marijuana

Requirements often different (e.g., possession limits, potency, etc.)

Most states prohibit driving under the influence

but no guidance

Current trend is explicitly providing no employment protections

Only 1 state appears to have unclear employment protections (ME)

Impairment and the Law

Some state laws (marijuana/DUI laws) relate to impairment for marijuana

Some states have “per se” limits; no consensus on limit

- 5 ng/mL THC in blood (CO, MT, WA)
- 2 ng/mL THC in blood (OH, NV)
- 1 ng/mL THC in blood (PA)

Recent legislation contains per se limits for certain safety sensitive positions

- 10 ng/mL THC in blood (PA)
- 3 ng/mL THC in blood (WV)

Routes of Administration

Smoking

- Marijuana leaves/buds
- Vaping (oil)

Oral

- Plant material
- Prescription (synthetic THC)
- Pills
- Edibles
- Oils

Current trend and recent legislation prohibits smoking (E.g., LA, NY, PA, WV)

Routes of Administration

Absorption, pharmacokinetics significantly impacted by route of administration

Smoking

- Primary route of administration (rapid, efficient)
- For single THC cigarette:
 - Peak < 10 minutes (before last puff)
 - THC <5 ng/mL within 2 hours

Oral Marijuana

- Later onset, longer duration
- THC readily absorbed, but slower (peak 1-5 hours)
 - Dose, vehicle, physiological factors influence drug concentrations (even in same vehicle)
- For single 10 mg Marinol® dose:
 - Peak THC concentration in 1-2 hours



QUESTIONS?

D. Faye Caldwell, JD, MBA



ASAM American Society of
Addiction Medicine