

# New Drug Testing Challenges for Service Providers and Industry Partners

DATIA Annual Conference  
June 4, 2015

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# Recent Developments

- **Changes in Federally Regulated Drug Testing**
  - DOT: Implemented ECCF and ODAPC revised Guidelines in Employer Handbook
  - Proposed rulemaking for oral fluid and expanded opiates
  - RFI for hair specimens
- **Traditional State Laws on Workplace Drug Testing**
  - Workers' Comp/Post-accident testing
  - Pain management testing and regulation
  - Unemployment benefits testing
- **2015: The Year of Marijuana and its impact on workplace drug testing**
  - State law trends
  - Federal Trends

# Federally Regulated Testing: DOT implemented e-CCF and revised Employer Handbook

## e-CCF

- Final Rule effective April 13, 2015
- Allows employers, collectors, laboratories, and MROs to use electronic version of Federal Drug Testing Custody and Control Form (eCCF) in DOT regulating drug testing program
  - eCCF requires same information and distribution of information as paper CCF
  - Does not require use of eCCF
  - May not use eCCF until lab is approved to use eCCF through NLCP inspection
  - Employer must establish adequate confidentiality and security measures to protect records
  - Employer who uses eCCF must ensure collection site, primary and split labs, and MRO have compatible systems and that employee/other program participants in testing process will receive a legible copy of CCF

## ODAPC Revised Employer Handbook

- Revised June 1, 2015

# Federally Regulated Testing: Proposed Rulemaking for Oral Fluids and Expanded Opiates

- Proposed Oral Fluid Mandatory Guidelines for Federal Workplace Drug Testing Programs
  - Will allow federal agencies to collect and test oral fluid specimens in workplace drug testing program
    - Removes requirement to collect only urine specimen
  - Establishes standards and technical requirements for oral fluid collection, oral fluid drug test analytes and methods for both initial and confirmatory testing, processes for MRO reviews, and requirements for federal agency actions
  - Posted May 15, 2015; Comments submitted on or before July 14, 2015
- Proposed revisions to Urine Mandatory Guidelines
  - Revises standards and technical requirements of the current guidelines
- Proposed revisions to include Expanded Opiates
  - Guidelines for oral fluid and urine include testing procedures for 4 schedule II prescription meds not currently included in mandatory guidelines: hydrocodone, hydromorphone, oxycodone, and oxymorphone

# Federally Regulated Testing: SAMHSA Request for Information on Hair testing

- Notice of RFI posted on May 29, 2015
  - Requests additional information to inform potential use of hair specimens for drug testing
  - Includes requests regarding collection, specimen preparation, analytes/cut-offs, specimen validity, and testing
  - Comments received by June 29, 2015

# Traditional Workplace Drug Testing: State Laws

Traditional Workplace drug testing can be broken into 3 categories:

- Mandatory testing requirements for discretionary workplace testing
- Mandatory testing of certain classes of employees (e.g., state employees, industry-specific)
- Voluntary testing requirements, which, if observed, confer benefits on Employer (i.e., Workers' Compensation)

State laws governing workplace drug testing vary

# Workplace Testing- Recent Changes: Arizona

- 2011: Guidance as to an employer's classification of safety-sensitive positions and determinations regarding on-the-job impairment
  - **Safety-sensitive position**
    - Any position that employer believes in good faith could affect the safety or health of the employee or others
  - **Impairment**
    - Lengthy description of symptoms giving rise to reasonable suspicion of drug or alcohol use

# Workplace Testing- Recent Changes: Rhode Island

- Amended in 2011 & 2103
  - **2011 amendment:** minimal, involved the exemption of certain union workers participating in a national program
  - **2013 amendment:** revised the standard for reasonable suspicion drug testing
    - Employer must now document observations on which a decision to test an employee based upon a suspicion of impairment.

# Workplace Testing- Recent Changes: Maine

- 2011: Amended regulations to incorporate current U.S. DHHS cut-off levels into its testing program
  - Permits testing of hair, oral fluid, and sweat specimens
    - Hair, Oral fluid, and sweat must be collected in accordance with federal guidelines
    - Provides mandatory screening and confirmation cut-off levels
- Amended definition of confirmation testing to include testing using “liquid chromatography”
- According to Maine Dep’t of Health:
  - “If an employer has any employees who are subject to a federally mandated drug-and-alcohol testing program working in Maine, that employer may expand the federal testing pool to cover all employees and forego a policy with the State.”

# Workers' Compensation Post-Accident Drug Testing: Presumptions

- In some states, a positive drug test result can give rise to a “presumption” that impairment—or drug use—caused the accident or injury
  - Presumptions vary drastically between states
- Presumption reduces evidentiary burden on Employers seeking to reduce benefits to an employee testing positive for controlled substances
- 2 Types of Presumptions available to employers
  - Rebuttable Presumption
  - Conclusive Presumption

# Post-Accident Drug Testing: Rebuttable Presumptions

- A conclusion that a judge or jury must draw when certain evidence has been introduced and admitted as true
- Can be overcome by employee if employee presents sufficient evidence to the contrary
- Rebuttable Presumptions
  - Presumption of Impairment
    - Positive drug/alcohol test after accident provides presumption employee was impaired at time of accident
    - No further proof from Employer required to establish impairment
    - Puts burden on employee to prove not impaired
  - Presumption That Impairment Was Cause of Accident
    - Positive drug/alcohol test after accident presumes employee was impaired at time of accident and that impairment was cause of accident
    - Puts burden on employee to prove impairment was not cause of accident

# Conclusive Presumptions

- Employer no longer required to prove a fact– the issue is conclusively established
  - Employee cannot submit evidence to the contrary
  - Not as common as rebuttable
- Current laws only provide for conclusive presumption of impairment
- Presumption of Impairment
  - Employee cannot rebut being impaired at time of accident regardless of evidence
- Presumption That Impairment Was Cause of Accident
  - Employer may be required to prove impairment caused accident

# Workers' Comp Post-Accident Testing: Illinois

- Failure to comply with the requirements results in loss of rebuttable presumption for the employer
- Workers' Compensation post-accident testing regulations:
  - Requires split specimen collections
  - Requires use of a 7-part form, and specific certifications by collector and certifying scientist
    - Requires specific language for certification by certifying scientist: “I certify that the specimen has been examined upon receipt, analyzed, and that the results set forth are for that specimen.”
      - No guidance provided whether this language must appear verbatim
  - Provides different retention periods of specimens than HHS/DOT

# Illinois

- Defines a “positive result” as “the result reported by a laboratory when a specimen contains a drug or intoxicating compound or alcohol concentration of .08 or greater.”
  - No cut-offs provided
  - Analyte concentration in urine admissible in hearings to show impairment and intoxication
- Defines a “negative” result as “the result reported by a laboratory to an MRO when a specimen contains no drugs, other intoxicating compounds, or less than .08 of alcohol concentration and the specimen is a valid specimen.”

# Workers' Comp Post-Accident Testing: Florida

- When employee, at time of the injury, has a positive drug/alcohol test, it is presumed that the injury caused primarily by intoxication
  - **If Employer has implemented drug-free workplace:**
    - Presumption rebutted only by evidence that there is no reasonable hypothesis that the intoxication or drug influence contributed to the injury
  - **If Employer has not implemented drug-free workplace program:**
    - Presumption may be rebutted by clear and convincing evidence that the intoxication or influence of drugs did not contribute to injury

# Workers' Comp Post-Accident Testing: Kansas

- Positive drug/alcohol test using designated cut-offs is conclusive presumption of impairment
  - If impaired, rebuttable presumption that the injury was contributed to by impairment
    - Employee may rebut presumption of contribution by clear and convincing evidence
  - Many restrictions exist to get presumption, including written policy containing specific items, split specimen collection, collection by licensed health care professional, HHS certified or Kansas licensed testing laboratory

# Pain Management Testing

- Considered by many to be clinical testing, is better considered “quasi-forensic” because these test results could lead to specific consequences, and may be challenged
  - Donor could lose pain management treatment if he or she tests negative for an expected drug or positive for other controlled substances
  - Donor could be physically removed from in-patient rehabilitation or addiction treatment center.
- Ongoing discussion regarding what constitutes “forensic defensibility” in these new non-employment applications

# Pain Management Testing

- State laws vary on Pain Management Testing
  - Some states require drug testing pain management patients while it is discretionary in other states
- Tennessee
  - Mandatory drug testing for Pain Management
    - Medical Director of clinic must have a written drug screen policy and compliance plan for employees
      - Urine test required for each new admission and once every 6 months
      - Must keep urine drug screen results on file
- Ohio
  - Discretionary drug testing for Pain Management
    - Practitioner can obtain a drug screen based on evidence or behavioral indications of addiction or drug abuse
      - Discretion to decide nature of screen and drugs to be screened
    - If practitioner believes patient is suffering from addiction or drug abuse, must contact specialist immediately
    - Patient might be placed in substance abuse treatment facility

# Unemployment Benefits Testing

- State initiatives to test benefit recipients
- The Middle Class Tax Relief and Job Creation Act of 2012
  - Federal law amended the Social Security Act allowing states to drug test applicants for unemployment benefits in February 2012
  - States can test claimants who are in an “occupation that regularly conducts drug testing.”
- 2014 Proposed Regulations: DOL proposed regulations listing permitted occupations  
October 9, 2014

# Public Assistance Benefits Testing

- Recent state initiatives to subject welfare benefit recipients to drug testing continue
- Subject to legal challenges
  - Florida recently abandoned challenge of ruling that its law requiring all applicants for welfare benefits submit to drug testing was unconstitutional
  - States now typically test recipients who admit to past drug use
- Where legal, continued developments in testing laws
  - Testing standards not uniformly adopted
  - States taking different approaches to testing requirements, if testing at all

# 2015: The Year of Marijuana

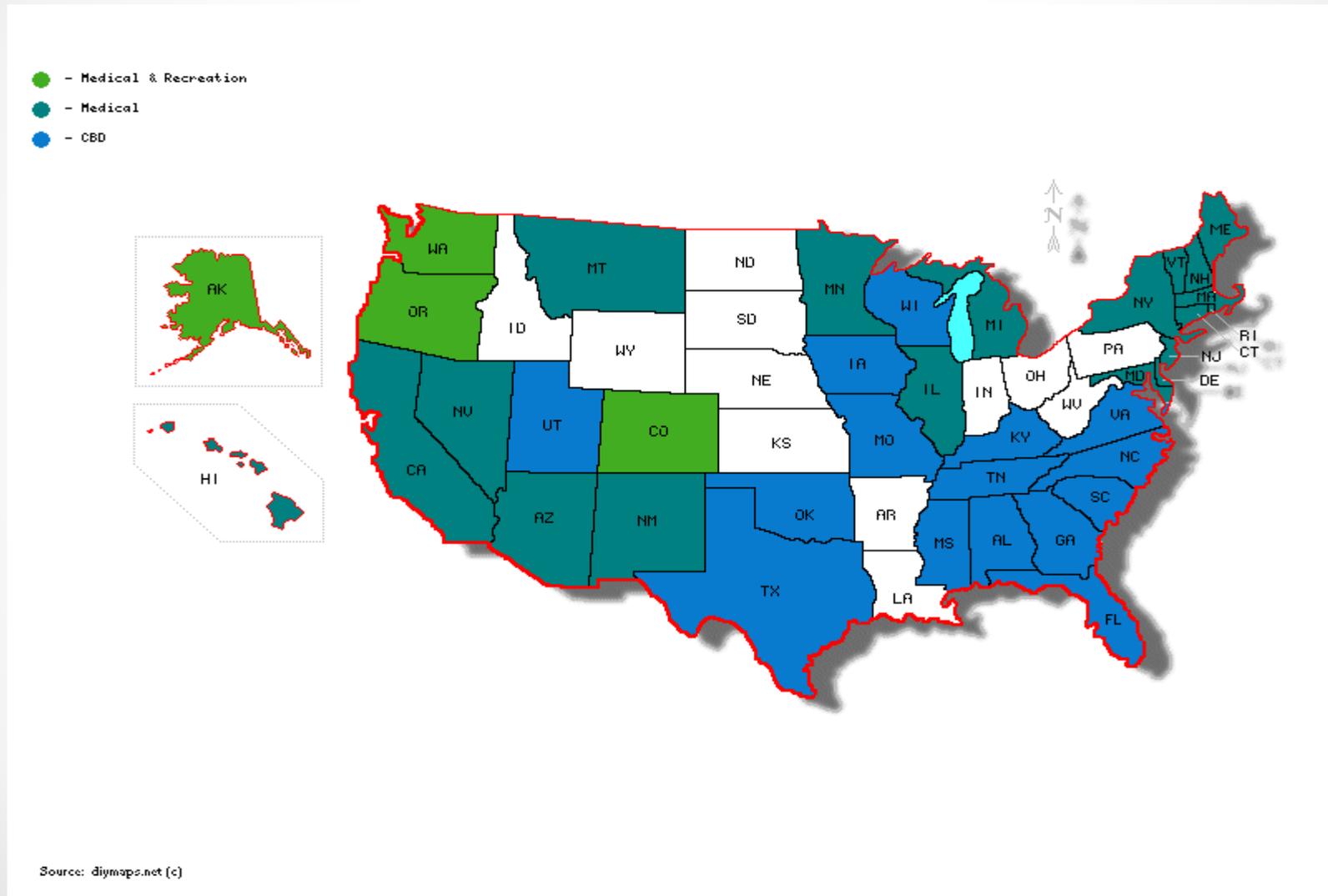
- Why do we care?
  - Drug testing policies
  - Employee Protections/accommodations
  - Workers' Compensation
  - Unemployment Benefits
- Still illegal under Federal Law
  - Is this changing?



# Medical Marijuana Today: State Laws

- 23 states, D.C., and 2 U.S. territories (Guam and Puerto Rico) have comprehensive medical marijuana laws
    - \* 4 States + D.C. legalized recreational use by voter initiative
  - Additional 15 states have low THC/high CBD laws
    - Laws allow use of low THC, high CBD products for medical purposes in limited situations or as a legal defense
- \*Total of 38 states + D.C. allow some form of marijuana or marijuana extracts for medicinal purposes

# Medical Marijuana Today: Medical, Recreational, & CBD States



# Medical Marijuana Today: Federal Law- Still Prohibited

- While states are passing laws allowing medical marijuana:
  - Marijuana is still illegal under federal law
  - Marijuana is classified as Schedule I drug by DEA
- Medical marijuana is not a legitimate medical explanation under Department of Transportation (DOT) drug testing regulations
  - February 2013 DOT Notice re-affirming issue
- States have exceptions for entities that might suffer federal penalties for accommodating medical marijuana use

# Marijuana Legislation: Current Trends in State Laws

- Providing Explicit Employee Protections
- Limiting Methods of Ingestion
- Passage of High CBD/Low THC Laws
- Introduction of marijuana legislation in 2015
  - Medical Legislation: at least 19 states
  - CBD Legislation: at least 9 states
  - Recreational: at least 17 states



# Medical Marijuana Laws: Employee Protections

## Biggest Issue for Most Employers — Four Categories

### 1. States with Law Explicitly Finding No Employee Protection

- Case law has found no employee protection

### 2. States with Explicit Employee Protection

- Newer states' laws provide specific protections for employees for various reasons related to medical marijuana
- States still prohibit use at job site or while working.

### 3. States with Potential Employee Protection

- Vague laws could potentially be interpreted to provide employee protection.
- Broad “Off-Duty Use” laws or pending cases

### 4. States with Likely No Employee Protection

- Law appears to only provide criminal protections
- Departments of Health have weighed in on issue of no protection



# States with Laws Explicitly Finding No Employee Protection

- California
- Oregon
- Washington
- Michigan
- Montana



\*Each state has case law that explicitly found no employee protection under each states' respective medical marijuana act.

# States with Laws with Explicit Employee Protection

- Arizona
- Delaware
- Minnesota
- Rhode Island
- Connecticut
- Maine
- Illinois
- Nevada
- New York



\*Each state's medical marijuana statute has explicit language (anti-discrimination or reasonable accommodation provisions) addressed to employers that provides varying levels of protection to employees who are cardholders or who use medical marijuana

# States with Laws with Explicit Employee Protection

- Anti-discrimination provisions prohibit adverse action against employees solely on the basis of participation in state's medical marijuana program
- Some states' provisions explicitly address workplace drug testing: positive drug test cannot automatically be grounds for refusal to hire or other adverse action
  - Arizona
  - Delaware
  - Minnesota
- Some protections limited to discrimination for being part of medical marijuana program (a cardholder), not positive tests or actual use
- Some states have explicit disability accommodation language
  - Nevada
  - New York

# States with Laws with Explicit Employee Protection

- All states with anti-discrimination provisions provide the following exceptions:
  - If failing to penalize cardholder would violate federal law or regulations, or cause employer to lose licensing/monetary benefit under federal law
- All states with anti-discrimination provisions explicitly provide they do not require employers to allow on-duty drug use in the workplace
- All statutes provide they do not permit employees to work while under the influence
- All statutes provide limitations and do not prevent imposition of criminal or civil penalties for:
  - Undertaking task under the influence that would constitute negligence or professional malpractice
  - Operating vehicle, aircraft, boat while under the influence

# States with Laws with Explicit Employee Protection: Arizona

- Prohibits employer from discriminating against person in hiring, termination, or imposing any term or condition of employment or other penalty based upon:
  - Person’s status as a cardholder or
  - Registered qualified patients positive drug test for marijuana
    - **Exception:** if patient used, possessed, or was impaired by marijuana on premises or during work hours
- Although statute does not require employer to allow employee to work while under the influence of marijuana:
  - Qualifying patient cannot be considered “under the influence” solely because of presence of metabolites/components that appear in insufficient concentration to cause impairment



ARIZONA

# States with Laws with Explicit Employee Protection: Delaware

- Prohibits employer from discriminating against person in hiring, termination, any term or condition of employment or other penalty based upon:
  - Person's status as a cardholder or
  - Registered qualified patients positive drug test for marijuana
    - **Exception:** if patient used, possessed, or was impaired by marijuana on premises or during work hours
- Although statute does not require employer to allow employee to work while under the influence of marijuana:
  - Registered qualifying patient not considered under the influence solely because of presence of marijuana
- Nothing prohibits disciplining employee for ingesting marijuana in workplace or working under influence



# States with Laws with Explicit Employee Protection: Minnesota

- Prohibits employer from discriminating against person in hiring, termination, any term or condition of employment or other penalty based upon:
  - Person's status as a patient or
  - Patient's positive drug test for marijuana
    - **Exception:** if patient used, possessed, or was impaired by marijuana on premises or during work hours
- If employee/job applicant tests positive for drugs, employees may present verification of enrollment in patient registry as part explanation for the results prior to any adverse employment action



MINNESOTA

# States with Laws with Explicit Employee Protection: Connecticut

- Prohibits employer from refusing to hire, discharging, penalizing, or threatening employee solely on basis of person's status as qualifying patient or primary caregiver
- **Exceptions:** Does not restrict employer's ability to:
  - Prohibit use of intoxicating substances during work hours; or
  - Discipline employee for being under the influence during work hours



CONNECTICUT

# States with Laws with Explicit Employee Protection: Illinois

- Prohibits employers from penalizing a person solely for their status as registered qualifying patient or caregiver
- **Exceptions:** does not prohibit employer from:
  - Enforcing drug testing policy, zero-tolerance policy, or a drug free workplace if policy applied in nondiscriminatory manner
  - Adopting reasonable regulations for consumption, storage, or time keeping for patients related to use of medical marijuana
  - Disciplining employee for violating workplace drug policy
- **Impairment**
  - Provides description of when employee considered impaired
  - Employers can take actions based on “good faith” beliefs about employee impairment but must give employee reasonable opportunity to contest basis



# States with Laws with Explicit Employee Protection

- **Maine**

- Prohibits employer from refusing to employ or penalizing person solely for person's status as a qualifying patient or primary caregiver
- **Exceptions**
  - Employer not required to accommodate ingestion in any workplace or any employee working under influence

- **Rhode Island**

- Prohibits employer from refusing to employ or from penalizing person solely for their status as a cardholder
- **Exceptions**
  - Not required to accommodate medical use in the workplace

# States with Laws with Explicit Employee Protection: Nevada

- Employer must attempt to make reasonable accommodations for employee with valid registry identification card if reasonable accommodation would not:
  - Pose threat of harm/danger to persons or property or impose undue hardship on employer OR
  - Prohibit employee from fulfilling any/all of their job responsibilities
- **Exceptions**
  - Does not require allowing use in workplace
  - Does not require job modification/working condition based on reasonable business purposes of employer
- Previous law provided only criminal protection
- Unclear how much protection it provides
- **Nevada has broad legal off duty use statute**



NEVADA

# States with Laws that May Provide Employee Protection

- Colorado
- New Mexico

\*These states either have statutory language that implies protections or legal off-duty use statutes that could be read to incorporate medical marijuana use during non-working hours or pending cases to watch



# States with Laws that May Provide Employee Protection: Colorado

- **Colorado Medical Marijuana Statute**

- Act itself provides no employment protections



- **Colorado Legal Off Duty Use Statute**

- Separate from Medical Marijuana Act

- “It shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours.”

**COLORADO**

- Could be read to include lawful use of medical marijuana

- *Coats v. Dish Network, LLC*, 2014 Colo. LEXIS 40 (Colo. Jan. 27, 2014)

- Currently before Colorado Supreme Court-waiting decision
- Appellate Court found that because marijuana illegal at federal level was not “lawful activity.”

# States with Laws that May Provide Employee Protection: New Mexico

- Provides criminal protections but silent on employment protections
- Dep't of Health FAQ: statute does not provide employment related protections
- **2 Pending Cases**
  - 2014: fired physician assistant sues Presbyterian Healthcare Services after failing drug test (state district court scheduled for trial fall 2015)
  - 2014: Stanley v. Metropolitan Detention Center: war vet fired following positive test-claiming violations of State Human Rights Act



NEW MEXICO

# States with Laws Likely Providing No Employee Protection

- Alaska
- DC
- Hawaii
- Vermont
- Massachusetts
- Maryland
- New Hampshire
- New Jersey



\*These States Medical Marijuana Laws are silent as to employee protections and generally only provide criminal protections

The State Departments of Health also provide no guidance on employee protections

# Marijuana Laws and Unemployment Benefits

- Michigan

- Appellate court held employee who holds state medical marijuana card not disqualified from receiving unemployment benefits after employee terminated for receiving positive test result for marijuana (*Braska v. Challenge Mfg.*, 307 Mich. App. 340 (2014))

- Illinois

- Appellate court found employee’s admission of off-duty marijuana use not “misconduct” sufficient to deny unemployment benefits even if it was sufficient for discharge (*Eastham v. Housing Authority of Jefferson County*, No. 09-MR-57 (Ill. App. Ct. 5th Dist. Dec. 2, 2014))



# Marijuana Laws and Workers' Compensation

- New Mexico

- Workers' comp case required employer and insurance company to pay for patient's medical marijuana for back pain (*Vialpando v. Ben's Automotive Servs et al.*, No. 32,920 (N.M. Ct. App., May 19, 2014))

- Arizona

- 2015: Law amended to remove requirement that workers' comp carriers and self-insurers reimburse patients for medical marijuana



# Medical Marijuana Laws: Current Trends

- Older laws typically only provided criminal protections
- Current trend is in providing explicit employee protections and limiting methods of ingestion
  - Most recent States passing Medical Marijuana Legislation provide explicit employee protections and limit methods of ingestion
    - Minnesota
    - New York
  - Proposed Legislation also providing explicit employee protections and limiting methods of ingestion
    - 2015: Hawaii introduced legislation for explicit employee protections (deferred until 2016)

# State Law Trends: 2015

## Introduced Legislation-Medical

- Alabama (SB 326)
  - Contains Explicit Employee protections
    - Provides employee protections from discrimination as a qualified patient or designated caregiver
    - Provides employee protections for positive drug test if qualified patient and medical use not on employer's premises or during hours of employment
  - Approved by senate judiciary committee 4/30/15
    - First time Alabama senate has considered a comprehensive medical marijuana bill
- Iowa (SF 484)
  - Does not permit smoking
  - Passed Senate (4/15/2015)

# State Law Trends: 2015

## Introduced Legislation-Medical

- **Louisiana (SB 143)**

- Allowed in any form except for inhalation and raw or crude form
- LA Board of pharmacy shall adopt rules to establish standards and procedures for testing prescribed samples for levels of THC
- Passed Senate and now waiting on full vote in House (5/28/15)

- **Pennsylvania (SB 3)**

- Does not permit smoking, vaporizing or edibles
- Contains explicit employee protections:
  - Provides employee protections from discrimination as cardholder
  - Provides employee protections for positive drug test unless can be shown employee used, possessed or was impaired at work or during work hours.
- Provides blood content levels for operating certain vehicles “under the influence”
- Passed Senate and now in House Health committee (5/14/2015)

# Low THC/High CBD Laws: What is CBD?

- CBD, or cannabidiol, is one of many cannabinoids found in marijuana
- Non-psychoactive
  - Does not act on CB1 receptors (pathways that THC acts on): does not affect mind or behavior
- Common medical benefits
  - Anticonvulsant, anti-inflammatory, antipsychotic/ anxiolytic/anti-depressant, anti-cancer (combats tumor and cancer cells), anti-oxidant
  - NIDA Facts recognize benefits
- Epidiolex: CBD based liquid medication being tested in U.S. clinical trials
  - FDA recently approved request to trial in children with 2 rare/severe forms of epilepsy (Dravet syndrome and Lennox-Gastaut syndrome)

# THC vs. CBD

## THC

- Psychoactive
- Increases anxiety, paranoia
- Sleep-inducing effects

## CBD

- Non-psychoactive
- Reduces anxiety, paranoia
- Increases alertness
- Most commonly seen to treat epilepsy
- Current FDA approved clinical trial

# Low THC/High CBD Laws: Overview

- All laws passed since 2014, in mostly southern states and most named after children
  - 2013 and 2014: Dr. Sanjay Gupta's CNN documentaries with stories of children with severe epilepsy and claimed "Charlotte's Web Oil" strain that is high in CBD and low in THC reduces intractable seizures
- Varying levels of permitted THC
  - Legislated usage/amount unusual for medical conditions
- Varying qualifying conditions
- CBD still illegal under federal law/ has still not been approved by FDA
- Gateway to more comprehensive medical marijuana laws?



# States with Low THC/High CBD Laws

- Alabama (2014)
- Florida (2014)
- Iowa (2014)
- Kentucky (2014)
- Mississippi (2014)
- Missouri (2014)
- North Carolina (2014)
- South Carolina (2014)
- Tennessee (2014)
- Utah (2014)
- Wisconsin (2014)
- Georgia (2015)
- Oklahoma (2015)
- Texas (2015)
- Virginia (2015)

# CBD Laws: THC/CBD Levels

STATE (YEAR)	THC/CBD LEVELS ALLOWED
Alabama (2014)	≤ 3% THC
Florida (2014)	.8% or less THC and more than 10% CBD by weight
Georgia (2015)	Not more than 5% THC and equal or greater amount of CBD
Iowa (2014)	≤ 3% THC
Kentucky (2014)	No definition
Mississippi (2014)	No more than .5% THC and more than 15% CBD
Missouri (2014)	No more than .3% THC by weight, at least 5% CBD by weight, and contains no other psychoactive substance
North Carolina (2014)	< .3% THC by weight, at least 10% CBD by weight, and contains no other psychoactive substance
Oklahoma (2015)	≤ .3% THC in liquid form
South Carolina (2014)	At least 98% CBD and not more than .90% THC by volume
Tennessee (2014)	<.9% THC
Texas (2015)	≤ .5% by weight THC and not less than 10% by weight CBD
Utah (2014)	< .3% THC by weight, at least 15% CBD by weight, and contains no other psychoactive substance
Virginia (2015)	At least 15% CBD but no more than 5% THC
Wisconsin (2014)	CBD must be in form without psychoactive effect

# Marijuana Legislation: State Law Trends 2014-2015

- **Passed Legislation**

- Medical: Puerto Rico (by Executive Order)
- CBD: 15 states passed Low THC/High CBD Laws
- Recreational: 2 States + D.C. legalized recreational marijuana by voter initiative

- **Introduced Legislation**

- Medical: 19 States (at least) introduced Bills for medical use of marijuana
- CBD: 9 States introduced CBD laws
- Recreational: 17 states introduced



# Medical Marijuana Trends: Federal Law- Is there a shift in Stance?

- 2013 DOJ Memo: Guidance regarding marijuana enforcement
  - DOJ will not intervene with state medical and recreational marijuana laws if states have legalized and implemented effective regulatory measures
- 2014: Medical Marijuana Protection Provision in Spending Bill
  - Prohibits DOJ/DEA from using funds or resources to prevent states from implementing their State laws that authorize medical marijuana
  - Defunding raids in states where medical marijuana legal
    - Previous amendments on issue had been blocked on House floor for more than 10 years
  - Renewed by House vote again on 6/3/15
- Feb 2015: Surgeon General: Marijuana offers Health Benefits
- Publications by government citing studies with positive effects

# Current Trends in Federal Law: Is there a shift in Stance? 2015

- Increased research
  - NIDA 2014 records: 28 active grants for research into possible medical benefits of marijuana
  - NIDA approved study to explore marijuana as treatment for PTSD- study will be 1<sup>st</sup> in US to use whole plant marijuana instead of extracted THC
    - First federally approved study where ingestion by smoking permitted
- Increased growth of plants for federal research at Ole Miss

# Current Trends in Federal Law: 2015 Introduced Legislation

- **CARERS ACT**

- Re-classifies marijuana as schedule II drug
- Excludes cannabidiol from definition of marijuana
- Seeks to increase research facilities that grow marijuana for research approved by FDA
- Opens banking system to marijuana dispensaries
- Referred to Committees in House and Senate

- **Veterans Equal Access Amendment**

- Would authorize Dep't of Veteran Affairs' health care providers to recommend medical marijuana to veteran patients in states where medical marijuana is legal
  - Currently, VA bans medical providers working with agency from providing recommendations or opinions to patients regarding participation in medical marijuana program in states with medical marijuana
- Added to Military Construction and Veterans Affairs Appropriations bill
- Passed Senate Appropriations Committee 18-12

- **Therapeutic Hemp Medical Access Act**

- Exempts from Controlled Substances Act strains of hemp to fight seizures in children and adults suffering from intractable epilepsy; Contains less than .3% THC

# Questions?



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