What is Marijuana?

- *Cannabis sativa*
  - *C. indica; C. ruderalis*

- **Used for > 4,000 years**

- **Chemically complex**
  - > 500 compounds & >100 cannabinoids in *C. sativa*
    - $\Delta^9$-THC (THC): primary psychoactive ingredient
    - Cannabidiol (CBD): antipsychotic, anticonvulsant, antiemetic
    - Cannabinol (CBN): weakly psychoactive
    - Ratios (& potency) vary age, origin, method of cultivation

- **THC Potency (1993 vs. 2008)**
  - “Marijuana”: ~3.5% → ~6%
  - Sinsemilla (female buds, no seeds): ~6% → ~11%
Frequency of Marijuana Use (NSDUH)

- Marijuana was the most commonly used illicit drug. In 2013, there were 19.8 million past month users. Between 2007 and 2013, the rate of current use increased from 5.8 to 7.5%, and the number of users increased from 14.5 million to 19.8 million.

- In 2013, 5.7 million persons aged 12 or older used marijuana on a daily or almost daily basis in the past 12 months (i.e., on 300 or more days in that period), which was an increase from the 3.1 million daily or almost daily marijuana users in 2006. The number of daily or almost daily users of marijuana in 2013 represented 17.4% of past year users.

- Daily or almost daily use of marijuana (used on 20 or more days in the past month) increased from 5.1 million persons in 2007 to 7.6 million persons in 2012 and 8.1 million persons in 2013.

- Daily or almost daily users in 2013 represented 41.1% of past month marijuana users.
Impairment and the Law

- States have passed medical marijuana, recreational marijuana or DUI laws that relate to Impairment for Marijuana.

- **Per Se Laws** - Set at a defined cut-off for marijuana metabolites in blood or other specimen type.

<table>
<thead>
<tr>
<th>State</th>
<th>Marijuana Blood</th>
<th>Marijuana Urine</th>
<th>Marijuana Metabolite Blood</th>
<th>Marijuana Metabolite Urine</th>
<th>Marijuana Metabolites + Other Drug</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado*</td>
<td>5 ng/mL (THC)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Montana</td>
<td>5 ng/mL (THC)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Nevada</td>
<td>2 ng/mL</td>
<td>10 ng/mL</td>
<td>5 ng/mL</td>
<td>15 ng/mL</td>
<td>N/A</td>
</tr>
<tr>
<td>Ohio</td>
<td>2 ng/mL</td>
<td>10 ng/mL</td>
<td>35 ng/mL</td>
<td>50 ng/mL</td>
<td>Urine15 ng/mL Blood 5 ng/mL</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>1 ng/mL</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Washington</td>
<td>5 ng/mL (THC)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Routes of Administration

- Smoking
- Oral
  - Plant material
  - Prescription (Synthetic THC)

Absorption and pharmacokinetics significantly impacted by route of administration
Smoking Marijuana

- **Primary route of administration**
  - Rapid, efficient…contributes to abuse potential
  - Better able to titrate dose

- **Bioavailability** – 2 to 56% (greatly impacted by smoking dynamics)

- **Single (1.75% or 3.55%) THC cigarette (computer-paced)**
  - Detectable in blood after first puff
  - Peak <10 minutes (before last puff)
  - Large inter-subject variability in concentration (50-129 vs. 76-297 ng/mL)
  - THC <5 ng/mL within 2 hours
  - Detection time 3-12 hr. (1.75%) vs. 6-27 hr. (3.55%) (LOQ-0.5 ng/mL)

- **“Feel” Drug: At least 3 hours (Similar profiles for both doses)**
Concentrations after a Single THC Cigarette

Oral Marijuana

• THC is readily absorbed, but slower (peak 1-5 hours)
  – Dose, vehicle, physiological factors influence drug concentrations (even in same vehicle)

• Bioavailability – 4-20% (as compared to IV)
  – Absorption, vehicle, degradation in stomach, first-pass metabolism

• Single 10 mg Marinol® dose
  – Peak THC concentration (3.8 ng/mL, range: 1.1-12.7) in 1-2 hours

• Compared to pharmacodynamic effects of smoking
  – Onset is later, magnitude is lower, & duration is longer

• Bioavailability of dronabinol appears to be superior to hemp oil
  – THC-COOH concentrations after 7.5 mg/d dronabinol > 14.8 mg/d hemp oil
Distribution

- Blood/plasma concentrations decrease rapidly after smoking
  - Distribution and metabolism

- THC is highly lipophilic
  - Highly perfused tissues absorb rapidly
  - Fat accumulates more slowly
  - Both THC and 11-OH-THC stored in fat
Metabolism

• Extensively metabolized (> 100 metabolites)
  – 11-OH-THC: Primary *active* (equipotent) metabolite
  – 11-Nor-9-Carboxy-THC (THCCOOH): Primary *inactive* metabolite
  – 8-OH-THC: α-OH (inactive) / β-OH (active)
  – 8,11-OH-THC (inactive)
  – Conjugation (glucuronide)

• Lower 11-OH-THC (~10% of THC) observed after smoking vs. oral
  – 11-OH-THC ≈ THC after oral administration

• THCCOOH in plasma > THC 30-45 minutes after cessation of smoking

• Rate limiting step in THC metabolism is redistribution from fat
Elimination

- THC dose, 80 to 90% eliminated within 5 days
  - > 65% in feces, ~20% in urine
  - THCCOOH most abundant in urine
  - 11-OH-THC most abundant in feces

- Greatly impacted by slow release from lipids and enterohepatic recirculation

- THC $t_{1/2} > 4.1$ days in plasma (chronic users)

- THCCOOH $t_{1/2} 4.3$ days in plasma (12.6 days in a single user)

- THCCOOH $t_{1/2} 3-4$ days in urine
  - Last positive THCCOOH in urine (15 ng/mL cutoff)
    - Low dose: 1.75% cigarette: 33.7 hr. (Range, 8-68.5)
    - High dose: 3.55% cigarette: 88.6 hr. (Range 57-122.3)

- Little difference in pharmacokinetic profiles for frequent and infrequent users
Effects – Subjective

• Enhancement of senses
• Errors in time / space judgment
• Impaired impulse control
• Emotional changes
  – Anxiety, panic attacks, paranoia
• Illusions
• Hallucinations
Effects – Objective

- Decreased psychomotor performance (complex motor skills)
- Interference with attention span
- Loss of efficiency of short-term memory
- In infrequent users, impairment
  - NHTSA 2004: up to 5 hours
  - Raemakers et al 2008: up to 8 hours
Effects – Physiological

- Vasodilation
- Tachycardia
- Immunosuppressant
- Dry mouth and throat
- Bloodshot eyes
- Increased appetite
Specimen Types

• Urine
  – Easily obtained in large(r) volume / Not observed
  – Detection window (THCCOOH) days to weeks
    (greatly impacted by usage pattern)
  – Not correlated with effects

• Hair
  – More specialized collection / Observed
  – Detects pattern of repetitive use (THCCOOH)
    • THC at higher concentration (Environmental exposure?)
  – Not correlated with impairment
• **Oral Fluid**
  – Easily obtained / Observed (Most non-invasive of common specimen types)
  – Detection window (THC), 1-2 days
    - THCCOOH detectable (66% of THC + specimens), not as well studied
  – No consensus cut-offs for impairment
    - Few controlled studies of THC disposition
  – Measures residual THC in oral fluid mucosa
    - No THC in oral fluid of patients treated with dronabinol

• **Blood**
  – Specialized/invasive collection / Observed
  – Best correlation with effects
  – Few “per se” levels & vary by State
History of Medical Marijuana

• **Federal Criminalization**
  – 1970: Controlled Substances Act classifies marijuana as a drug with "No Accepted Medical Use."

• **The Beginnings of Legalization**
  – **New Mexico - 1978**
    • Controlled Substances Therapeutic Research Act.
    • Recognized value of medical marijuana.
    • Would not enact full medical marijuana law until 2007.
  – **Virginia - 1979**
    • For cancer/glaucoma patients only.
    • Very limited criminal protection for possession via valid prescription.
  – **South Carolina - 1980**
    • South Carolina Controlled Substances Research Act of 1980.
    • Passed but defunded.
History of Medical Marijuana

• First States to Truly Legalize Medical Marijuana
  – California: 1996
    • First state to legalize medical marijuana.
  – Alaska: 1998
  – Oregon: 1998

• Alaska, Oregon and Washington all passed on the same day.
• All dealt with limiting of criminal penalties.
States Continued to Pass Medical Marijuana Laws

- Maine: 1999
- Hawaii: 2000
- Colorado: 2000
- Nevada: 2000
- Montana: 2004
- Vermont: 2004
- Rhode Island: 2006
- New Mexico: 2007
- Michigan: 2008
- New Jersey: 2010
- Washington, D.C.: 2010
- Arizona: 2010
- Delaware: 2011
- Connecticut: 2012
- Massachusetts: 2012
- New Hampshire: 2013
- Illinois: 2013
- Maryland: April 2014
- Minnesota: May 2014
- New York: July 2014
Medical Marijuana Legislation by State

23 states and Washington, D.C. have passed some form of medical marijuana legislation.

Earlier Laws
- Typically provide only criminal protections.

Growing Trend
- To provide protections related to:
  - Housing
  - Schooling
  - Domestic Relations
  - Employment
- Some states even go so far as to discuss actions you can or cannot take when you find marijuana metabolites in urine.
Federal Law Still Prohibits Medical Marijuana

- While states are passing laws allowing medical marijuana remember:
  - Marijuana is still illegal under federal law.
  - Marijuana is classified as a Schedule I drug by the DEA.
  - DOJ released statement would not be pursuing medical marijuana convictions.
    - However, DEA raids continue and courts have upheld the raids as permissible enforcement of federal law.

- Medical marijuana is not a legitimate medical explanation under Department of Transportation (DOT) drug testing regulations.
  - February 2013 DOT Notice re-affirming issue.

- Several states have exceptions for entities that might suffer federal penalties for accommodating medical marijuana use.

- However, House Voted to Defund DEA raids
  - May 29, 2014 vote to defund raids on medical marijuana.
  - Similar bill introduced in June 2014 in Senate.
Qualifying Patient: A person diagnosed as having a debilitating medical condition.

- Diagnosis procedure and application requirements vary by state.
- Debilitating medical condition also different by state.
- Typically minors are permitted with various parental consents.

Primary Caregiver: A person who assists qualifying patient with medical marijuana.

- Protections vary, typically related to possession and obtaining and assisting with the use of medical marijuana.
  - Unclear what “assisting with medical marijuana” protections would entail in states.
- Number of patients caregiver can assist and permitted age of caregiver varies.
- Sometimes referred to as designated caregiver and other terms.
State Medical Marijuana Laws: Common Terms

- **Physician or Practioner:** Typically a doctor licensed in the related state. Can sometimes be a nurse or other health care professional.

- **Written Certification:** Signed statement from physician or practitioner for qualified patient affirming patient has met the health condition requirements and would benefit from medical marijuana.

- **Dispensary:** Many states have set up laws for marijuana to be purchased from a registered dispensary.
  - Names vary, alternative treatment center, compassion center, etc.
  - Employees/volunteers of these centers often offer limited protections for activities related to selling marijuana through a center.
State Medical Marijuana Laws: Common Terms

- **Registry Card**: A card that typically identifies the qualified patient or primary caregiver as having registered with the state.
  - Typically required to obtain protection.
  - Sometimes also provided to dispensary workers.
    - Other times they receive “licenses.”
    - Many times significantly different than cards for patients and caregivers.
  - Most cards expire after a set time.
  - Most states provide specific criteria for what must be on card.
Various Protections Provided

– Criminal
  • All medical marijuana statutes provide some form of criminal protection.
    – Some are as little as an affirmative defense to a crime when arrested and charged.
    – Others are to protect from arrest and prosecution.
    – Protection is not from all crimes, there are many exceptions.

– Civil Protections
  – Some statutes provide protection from civil fines etc.
  – They also protect from action from licensing boards.
    » i.e., a nurse who is a qualified medical marijuana user in theory could not lose her license for medical marijuana use.
  – Other states have said that a qualified individual cannot suffer “any penalty” from a “business.”
    » Unclear what this means.
    » Michigan found such language does not provide employee protection.
Various Protections Provided

- **Landlord/Schooling**
  - Often grouped together, prohibits discrimination in leasing or enrolling people who have medical marijuana cards in those various states.
  - Many protections related “solely” to the applicant having a medical marijuana card and not use or possession of medical marijuana.

- **Domestic Relations**
  - Some statutes provide for protection for domestic relations and custody issues.
  - *i.e.*, a parent who uses medical marijuana cannot lose custody/visitation on that basis.
    - Exceptions are provided - *i.e.*, welfare of child is in danger.
    - Smoking directly around children not addressed in most instances. Unclear if such activity would be protected.
Common Exemptions from Protection

- The majority of states that offer protection have some form of the following exemptions.
- In these areas medical marijuana use or possession is typically not permitted and no accommodation for use has to be made.
  - Schools
  - Public Transportation
  - Substance Abuse Centers
  - Correctional Facilities
  - Public Places
  - While Driving Under the Influence
    - Some states set per se limits for driving under influence, some states have found that the mere presence of metabolites is not sufficient to show impairment.
    - If use would constitute general or professional negligence.
Medical Marijuana Laws and Employers

Biggest Issue for Most Clients — 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 that 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 Likely No Employee Protection
   - Law appears to only provide criminal protections.
   - Departments of Health have weighed in on the issue of no protection.

4. States with Potential Employee Protection
   - Vague laws could potentially be interpreted to provide employee protection.
   - Broad “Off-Duty Use” laws.
States with Law Explicitly Finding No Employee Protection

- California
- Oregon
- Washington
- Michigan

  - Each state has case law that explicitly found no employee protection under each states’ respective medical marijuana act.
States with Law Explicitly Finding No Employee Protection: California

– Only Provides Criminal Protections
  • Patients and Caregivers: Protected from arrest for possession, transportation, delivery or cultivation if patient or caregiver has a valid I.D. (NOTE: I.D. card is voluntary in California).
  • Physicians: Protected from criminal prosecution when recommending marijuana for medical use.

– No Employment Protections
  • Employer not required to accommodate by statute.
  • California Supreme Court found Act provided no protection.
States with Law Explicitly Finding No Employee Protection: Oregon

• **Oregon Medical Marijuana Act**
  – Has registry card system.
  – Only provides protection from criminal prosecution
    • Patients and Caregivers – with a card are protected from Oregon's criminal laws for activity authorized by the act.
    • If patient has no registry card but is otherwise a qualified patient can assert an affirmative defense.

• **No Employee Protection**
  – Oregon statute does not require an employer to accommodate medical marijuana use in the workplace.
  – Oregon Supreme Court explicitly found Act provided no protection to employees.
    • *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Indus.*, 230 P.3d 518, 518 (Or. 2010).
States with Law Explicitly Finding No Employee Protection: Washington

• **Washington State Medical Use of Marijuana Act**
  – No patient registry system.
  – Protections from criminal and civil consequences.

• **No Employment Protection**
  – Washington Supreme Court found Act provided no protection.
    • Act amended in 2011 but nothing that would provide employee protections.

• **I-502**
  – Recreational marijuana statute.
  – Provides no employment protections.
  – Created a per se DUI law for marijuana, motorists with detectable levels of THC in the blood above 5 ng/mL are guilty of DUID.
States with Law Explicitly Finding No Employee Protection: Michigan

- **Michigan Medical Marijuana Act**
  - Has registry card system.
  - Permits out of state card holders.

- **No Employment Protections**
  - Western District of Michigan found Michigan's Act did not regulate private employment despite “no disciplinary action from business” language.
    - Affirmed by 6th Circuit.
    - Not yet ruled on at state level, but no disapproval of *Casias*.

- **Impairment and DUIs**
    - Found that the Act allows a person to drive with indications of marijuana in his or her system but not otherwise “under the influence of marijuana” superseding a general zero tolerance statute in state for marijuana use while driving.
    - Court noted that “under the influence” was not defined.
    - Court asked legislature to define the term.
States with Law Explicit Employee Protection

- Rhode Island
- Maine
- Arizona
- Delaware
- Connecticut
- Illinois

- Each State’s statute has explicit language providing varying levels of protection to employees who are cardholders or who use medical marijuana.

- Some protections limited only to discrimination for being a part of the program (i.e., a cardholder), not positive drug tests or actual use.
States with Law Explicitly Providing Employee Protection: Rhode Island

• **Registry Card System**
  – For patients, caregivers, and dispensary workers.

• **Employment Protections**
  – Employer cannot refuse to employ or otherwise penalize a cardholder “solely for having a card.”
  – **Note:** Employer not required to accommodate use in the workplace.
States with Law Explicitly Providing Employee Protection: Arizona

• Registry Card System
  – For patients, caregivers, and dispensary workers.
    • Has verification system for employers to use.
  – More recent example of employment protections.

• Employment Protections
  • Qualified Patients- Protected for positive drug test for marijuana.
    – Related to pre-employment and current employment testing.
    – Cannot impose any term or condition.
    – Exception: Cannot possess, use or be impaired during work hours.
  • Cardholders-
    – Cannot penalize “cardholders” in hiring/termination, etc.
    – Applies to patients, caregivers, and dispensary workers.
• **Employment Protections**
  
  – **Qualified Patient**
    * Protected from discrimination in hiring, termination or otherwise for Positive drug test for marijuana.
      – Unless patient used, possessed or was impaired by marijuana on place of employment OR
      – If employer would lose monetary or licensing related benefit under federal law.

  – **Cardholders** (patients and caregivers).
    * Can not penalize “cardholders” in hiring/termination etc.
      – Applies to patients and caregivers.

  – **Impairment Guidelines**
    * DUI- shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana.
Additional States with Law Explicitly Providing Employee Protection

• **Connecticut**
  - No employer may refuse to hire a person or may discharge, penalize or threaten an employee **solely for being a qualifying patient or primary caregiver**.
  - No protection for intoxication at work.

• **Maine**
  - Cannot refuse to employ a person for being a qualifying patient or caregiver.
    - Not required to accommodate use at work.
    - A worker allegedly fired for applying for a dispensary license filed suit.
    - Court found that applying for a license was not a protected activity.

• **Illinois**
  - No employer may penalize a person “solely for his or her status” as a registered patient or caregiver
    - State Provides Exceptions, any private business can prohibit marijuana use
    - Can discipline for violating workplace drug policy
States with Law That May Provide Employee Protection

- **Colorado**
- **Nevada**
- **New Jersey**
  - 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.
States with Law 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.”
    - Could be read to include lawful use of medical marijuana.
      - Issue currently before Colorado Supreme Court.
      - Appellate Court found that because marijuana illegal at federal level was not “lawful activity.”
      - Oral Argument before Colorado Supreme Court are scheduled for September.
Additional States with Law That May Provide Employee Protection

- **New Jersey**
  - **Potential employment protections.**
    - The law provides “[a] qualifying patient, primary caregiver, alternative treatment center, physician, or any other person acting in accordance with the provisions of act shall not be subject to any civil or administrative penalty, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, related to the medical use of marijuana as authorized under this act”.
    - In a FAQ, New Jersey Department of Health took no position on employee drug testing merely referencing to the provision above.
    - A court could potentially find the above would provide employee protection.
Additional States with Law That May Provide Employee Protection

- **Nevada**
  - **Employment protections.**
    - Previous law provided only criminal protections.
    - Amendments effective April 1, 2014.
  - **Reasonable Accommodation**
    - An employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not:
      - (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or
      - (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities.
  - Brand new. Unclear how much protection it provides.
  - Nevada also has a broad legal off duty use statute.
States with Law Likely Providing No Employee Protection

- Alaska
- Massachusetts
- Hawaii
- Vermont
- Montana
- DC
- New Mexico
- Montana

- 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.
States with Law Likely Providing No Employee Protection

• Montana
  – Provides criminal protections, used to be more employee friendly.
  – Statute was heavily revised in 2011.
    • Provided among other things that an employee could not bring a cause of action for wrongful discharge or discrimination related to the Act.
  – Legal Off Duty Use Statute: As currently written would be in conflict with medical marijuana Act.
  – Currently groups have sought to declare the law as unconstitutional.
    • Parts of the Act have been enjoined.
    • The litigation is still ongoing.
  – While it appears the lack of employee protections are explicit, the current legal uncertainty should make Montana one to watch.
  – DUI
    • Act provides a user with 5 ng/mL of delta-9-THC in blood may be charged with driving under the influence in Montana.
Additional States with Law Likely Providing No Employee Protection

• Alaska
  – Provides criminal protections and department of health is silent on employee protections.

• Massachusetts
  – Newer law that breaks the trend and provides only criminal protection and protection from civil penalty to patients, caregivers, dispensaries, and physicians.

• Hawaii
  – Provides criminal protections with no mention of employment protections.
  – In a FAQ regarding employee drug testing, the Hawaii Department of Health stated the Act prohibits use of medical marijuana in the workplace but is silent regarding the employer’s rights and duties regarding medical marijuana.

• Vermont
  – Provides limited criminal protections.
Additional States with Law Likely Providing No Employee Protection

• **Washington, D.C.**
  – Provides limited criminal protections for patients.
    • Provides an affirmative defense to prosecution for possession and use.

• **New Mexico**
  – Provides criminal protections.
  – Statute is silent on employment protections.
  – Department of Health provides in FAQ that the statute does not provide employment related protections.
  – However, recent worker’s compensation case required employer and insurance company to pay for patient’s medical marijuana for back pain.
Newest States

• **New Hampshire**
  - Regulations adopted on July 23, 2014
    - Effective Date is August 1, 2015.
  - Appears to provide only criminal protections.

• **Maryland**
  - Passed in April 2014, Effective June 2014
    - However, dispensaries, the only place marijuana can be legally acquired, will not be running until 2016.
  - Appears to provide only criminal protections
Newest States

• **Minnesota**
  - Passed May 2014
  - Smoking prohibited.
    - Can only administer marijuana via liquids, oils and pills.
    - Patients may vaporize, but only using oils or liquids.
  - Provides protection from employer discrimination for being a patient and for a positive drug test.
  - An employee who undergoes an employment drug test pursuant to Minnesota’s employment drug testing law can present verification of enrollment in medical marijuana program as part of explanation for a positive test result per the drug testing statute requirements.

• **New York**
  - Passed July 2014
  - Smoking prohibited.
  - Currently provides limited employee protections for status as a patient or cardholder.
  - Being a medical marijuana patient would be a disability for purposes of the state’s anti-discrimination laws.
Pending Medical Marijuana Laws

• Pennsylvania
  – Senate passed SB 1182 on September 24, 2014.
  – Still has to pass House where bill faces opposition.
  – No smoking/vapors, only allowed in oils, edibles, ointments, etc.
  – 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.

• Florida
  – Vote on Constitutional Amendment set for November 2014 elections.
  – Polls show close race. Must get 60% approval to pass.

• Iowa
  – Two identical bills. Last action in February 2014.
  – Silent on employment protections.
Pending Medical Marijuana Laws

• **Georgia**
  – One bill, would provide employment protections for status as patient and from drug tests.
  – Last action in March 2014.

• **Puerto Rico**
  – One bill, silent as to employment protections.
  – Last action in June 2014.

• **Ohio**
  – Would provide employment protections for failed drug tests.
  – Last action in May 2013.
Recreational Marijuana Laws

States with Recreational Marijuana Laws

- Colorado
- Washington
- Both states provide limited criminal protection for recreational marijuana use and no explicit employment protections.

States with Pending Recreational Marijuana Laws

- Massachusetts
- New Jersey
- New York
- Ohio
- Pennsylvania
- Washington, D.C.
Other Issues

- **Decriminalization**
  - Applies to minor crimes related to recreational marijuana crimes.
  - Lowers penalties for lower possession amounts and varies from none to high fines and prison time.
  - All “decriminalized” states still prohibit higher levels of possession and most have severe penalties for selling or distributing.
  - Decriminalized states provide no protection in a private employment context.
Marijuana Drug Use in Previous 30 Days

(NSDUH)

Overall Positivity for Marijuana

Quest Diagnostics Drug Testing Index™ marijuana positivity consistent with societal trends.

Source: Quest Diagnostics Drug Testing Index™

2013
First full year of data since Colorado and Washington legalized “recreational” marijuana.
Marijuana Positivity Rates
(General Workforce)

Source: Quest Diagnostics Drug Testing Index™
Marijuana Positivity for Hair Testing
(General Workforce)

Source: Quest Diagnostics Drug Testing Index™
Summary

• Marijuana use in general society is increasing
  – Self-reported use in employment sector increasing

• Workplace drug test positivity trends up across all specimen types and consistent with societal data

• Data correlating concentration and impairment very limited, especially for specimen types commonly used in workplace drug tests

• Employee for protections for marijuana
  – Only applicable for “cardholders” – users and, often, caregivers

• Employer drug testing programs need to have mechanism to verify the card
  – MRO, Employer, Third Party

• Too early to declare trend in court decisions

• Current employee protection laws have no exemption for “safety-sensitive” employees
Thank You

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