



The Legalization of Medical & Recreational Marijuana

Practical Approaches for Schools

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Agenda for Today

- Overview of marijuana / cannabis products
- Legal landscape
- Employee issues
- Student issues

GOAL: leave with current knowledge and a framework to prepare your school for change and work effectively with your local counsel

Definitions

- **Marijuana / Cannabis sativa**
 - a plant containing 80-100 different chemicals called cannabinoids
 - can be legally grown by licensed growers in some states
- **THC or Tetrahydrocannabinol**
 - a psychoactive chemical in marijuana
 - causes a "high"
- **CBD or Cannabidiol**
 - thought to affect pain, mood and mental function
 - may block some of the psychoactive effects of THC



Grow Ohio Pharmaceuticals,
Seth Perlman, AP Photo



The "New" Facts on Marijuana

*It's not just a hippie,
dropout, stoner
kinda thing.*

Definitions

- Hemp
 - another plant related to marijuana that contains CBD and low levels of THC
 - can be legally grown under the federal 2018 Farm Bill
 - commercial and industrial raw material
 - uses include rope, textiles, clothing, food, paper, bioplastics, insulation, biofuels



Non-Medical CBD Products

- up to 0.3% allowed in “cosmetic” products
- cannot be marketed legally in foods or dietary supplements
- cannot be included in products marketed with therapeutic claims
- consumers should beware of significant issue with inaccurate labels regarding quantities of CBD in any particular product



Consumer Reports

Medical Marijuana - Uses

- Alzheimer's
- Cancer
- Crohn's disease
- Epilepsy
- Schizophrenia
- Anorexia
- Wasting syndrome (cachexia)
- Pain
- Nausea
- Seizures
- Muscle spasms
- Glaucoma
- Post-traumatic stress disorder
- *"another chronic medical condition which is severe and for which other treatments have been ineffective"*

Medical Marijuana – Actions

- Reduce anxiety
- Reduce inflammation and relieve pain
- Kill cancer cells and slow tumor growth
- Relax tight muscles in people with Multiple Sclerosis
- Stimulate appetite and improve weight gain in people with cancer and AIDS

FDA Approved Medical Marijuana

- Synthetic CBDs to control nausea and vomiting caused by cancer chemotherapy
 - dronabinol (Marinol, Syndros)
 - nabilone (Cesamet)
- Control seizures
 - Epidiolex for Lennox-Gastaut syndrome and Dravet syndrome
 - It is not known how this medication works

Contraindications

- In developing brains, MMJ might affect IQ and mental function
- Increases risk of addiction in at-risk individuals
- Interactions with other drugs

Side Effects

- Bloodshot eyes
- Depression
- Dizziness
- Lightheadedness
- Fast heartbeat
- Hallucinations
- Low blood pressure
- Affect judgment and coordination

Methods of Delivery

- Smoking
- Vaping
- Edibles
- Tinctures or oral sprays
- Applied to skin as lotion, spray, oil or cream
- FDA-approved pills/capsules
- Suppositories

Legal Status of Marijuana

Coming soon to a town near you!

Medical Marijuana and Opioids

- **25%** average decrease in opioid overdose deaths in the first year of patient access to a medical marijuana program
- **33%** average decrease in opioid overdose deaths after five years of patient access to a medical marijuana program
- **48%** reduction in patients' opioid use after three months of medical marijuana treatment
- **78%** of patients either reduced or stopped opioid use altogether.



Is Marijuana Legal?



- A. Yes
- B. No
- C. Maybe
- D. It depends
- E. All of the above

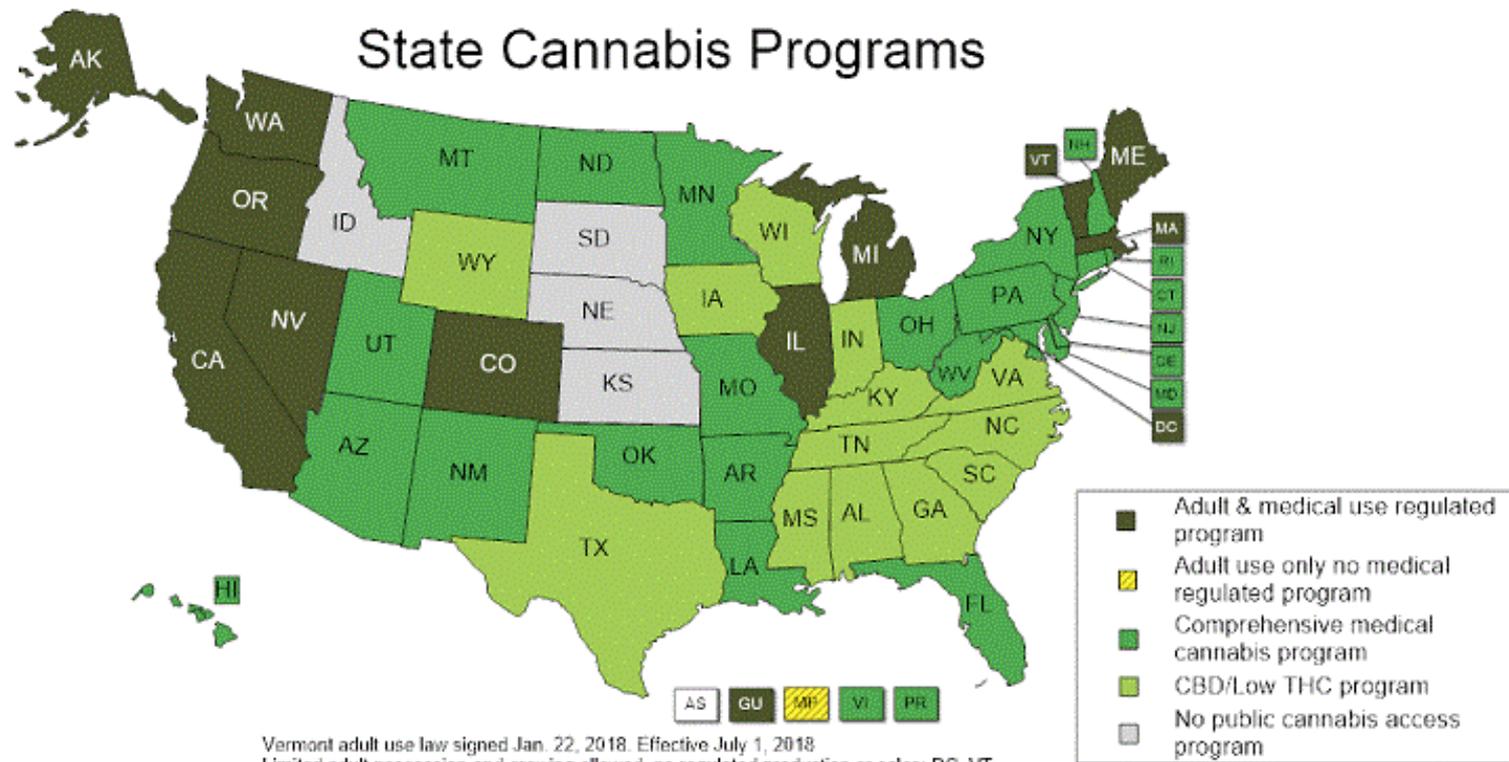
Federal Law vs. State Law

- Controlled Substances Act still lists marijuana as a Schedule I controlled substance
- Deemed to have high potential for abuse, no medicinal value, and can't be prescribed
- Federal crime to possess, buy or sell marijuana
- Special rules for federal contractors, recipients of federal funding and regulated industries
- All but 4 states have some public access cannabis law in place
- 33 states, plus DC, have adult access to medical or recreational cannabis

Marijuana Opportunity Reinvestment and Expungement (MORE) Act

- Addresses racial disparity and business development
- Passed House Judiciary Committee in November 2019
- Likely to pass full House
- Likely to meet more opposition in Senate
- Decriminalizes MJ by removing it from Schedule I
- Allows states to set their own policies
- Reverses convictions
- 5% sales tax on MJ
- SBA funding for MJ businesses
- Non-discrimination in federal benefits and immigration

State Cannabis Programs



Types of State Laws

- Legalization
- Decriminalization
- Medical Use
- Non-Discrimination
- Required Accommodation

... and some combination of these approaches

"Compassionate Care" laws

- State cannabis commission
- Physician certifies that the patient qualifies for medical marijuana
- Patient and caregiver(s) get registration cards*
- Permitted to purchase from licensed dispensary
- Permitted to use and transport
- MAY or MAY NOT permit home grow



Employment Issues

Employment Policies and Practices

- Recruitment
 - Questions
 - Pre-employment drug screens
- Attendance
- Drug-free workplace
- Drug testing
- Post-accident testing
- Safety
- Safety sensitive positions
- Disability accommodations
- Leave
- Sale / Theft
- Discipline

General Rules for Employers

- Never a requirement to allow on-the-job impairment
- No job protections for recreational use, even in states where recreational use is legal
- Unless expressly provided for by state statute, the decriminalization of medical marijuana does not shield employees from adverse employment actions

Example: Non-Discrimination Law

36-2813. Discrimination prohibited.

B. **Unless** a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations, **an employer may not discriminate** against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person **based upon** either:

1. The person's **status as a cardholder**.

2. A registered qualifying patient's **positive drug test** for marijuana components or metabolites, **unless** the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

Questions to Consider:

- I am hiring a school bus driver and a teacher. Can I ask whether the applicant is a registered user?
- I have a drug free workplace policy and terminate a bookkeeper for keeping pot in his desk drawer. He complains to HR that he was discriminated against for being a medical cannabis cardholder. Result?

Accommodations for Disability

- ADA does not protect MMJ user on the basis of status
 - However, ADA may protect same individual on the basis of a different impairment
- State law may parallel ADA or may have special protection for MMJ status
- Recommendation: When an employee asks for accommodation, always engage in the “interactive process”

Accommodations for Disability

Interactive process:

1. Analyze the employee's essential job functions
2. Meet with the employee
3. Request information about the employee's limitations; and
4. Make a determination as to whether the employee's off-duty use of medical marijuana can be reasonably accommodated without an undue hardship to the company

Example: Workplace Accommodation Law

NRS 453A.800 The provisions of this chapter do not:

... require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer but the **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.

Questions to Consider:

- High school teacher has been doing chemotherapy without a leave of absence. She requests a modified schedule because she will be using MMJ every morning for the next few months. She will miss home room and 1st period.
- You receive concerned reports that an experienced groundskeeper has looked unsteady on a ladder and yesterday he narrowly missed a tree when plowing snow. He discloses he uses MMJ at home in the mornings for diabetes.

Plan Your Approach

- Review policies against current law
- Shape your culture through training
- Communicate effectively

Steps To Take Now: Policy

- Use an attorney familiar with your state, educational environments, and employment law.
- Get your policies and procedures up to snuff: handbook, forms, EAP if you have one
- Policies should be clear, specific, legally compliant, and meet the needs of the organization.
 - Zero tolerance drug-free workplace policies are acceptable.
 - Address off-duty and off-premises use proactively.

Steps to Take Now: Policy

- Set drug testing rules, select a vendor, and set testing protocol before you need them.
 - Do you want/need random, post-accident and/or reasonable suspicion tests?
 - Is there a written second-chance policy?
 - Zero-tolerance drug testing policies are disfavored.
 - Remember that testing for MJ is not as straightforward as testing for alcohol:
 - Testing positive does not mean the individual was intoxicated at the time of the test.
 - Values are subject to interpretation.

Steps to Take Now: Policy

- Employee disclosure policy
 - Require if permissible under state law
 - Permit just as you would other substances
 - Confidentiality
- Job descriptions
 - precise and up-to-date every year
 - essential duties/functions

Steps to Take Now: Culture

- Train HR and all supervisors to articulate signs of impairment/addiction, to recognize and avoid bias, to hold difficult conversations appropriately, and to document all concerns and resolutions.
- Educate employees on marijuana policies and consequences.
- "Open door policy"
- Consistently discipline every instance of on-the-job use or intoxication.

Steps to Take Now: Communication

- Get clear facts.
 - Is marijuana use medical or recreational?
 - Is it on or off duty?
- Engage in the interactive process if there are disability issues.
- Issue FMLA notices if there are leave issues.
- Respect confidentiality appropriate to the situation.



Student Issues

Schools and the Law

- Very few states explicitly address schools.
- Laws vary among those states.
- Topics:
 - Enrollment
 - State benefits to school
 - Use/possession on school grounds/vehicles
 - Administration by parents/staff

Enrollment

- No public or private school or institution of higher education may **refuse to enroll a person** based solely on the person's status as a registrant with the commission, unless failing to do so would result in the school or institution losing a monetary or licensing-related benefit granted pursuant to federal law.
- No public or private school or institution of higher education **shall be penalized or denied any benefit under State law** solely on the basis of enrolling a person who is registered with the commission.
- Schools can verify registration status with the commission.

Example: School Grounds

Medical Cannabis law does not permit:

2) possessing or engaging in the use of medical cannabis:

- (i) on a school bus or van;
- (ii) on the grounds of any preschool or primary or secondary school;
- (iv) on the grounds of any child care facility or home day care;

(3) vaporizing medical cannabis:

- (i) on any form of public transportation;
- (ii) where the vapor would be inhaled by a nonpatient minor child;
- (iii) in any public place, including any indoor or outdoor area used by or open to the general public or a place of employment

Example: School Grounds

The School Code requires school districts to authorize a parent or guardian of a student who is a qualifying patient to administer a medical cannabis infused product to the student **on school premises or a school bus** if both the student and the parent or guardian have been issued registry identification cards.

Example: Administration & Storage

(b) *School exceptions.*--Notwithstanding subsection (a) of this section, a designated caregiver registered pursuant to § 4908A of this title may possess for the purpose of administering, and may administer to a minor qualifying patient medical marijuana oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The designated caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of doses prescribed per day of medical marijuana oil which is kept at all times on their person. Provided further, this exception shall only apply within the physical boundaries of the State of Delaware.

District of Columbia

- Allows registered students to self-carry MMJ at school
- Allows school staff and nurses to administer MMJ
- Eliminates “choice” of receiving medical treatment vs. attending school
- Temporary legislation up for vote Jan. 7, 2020

Plan Your Approach Now

- How do you approach OTC medication?
- How do you approach prescription medication?
- What is your state's law on MMJ?
 - Registration and verification
 - Student and/or parent
 - Does your school have the option or need to be registered?
 - School grounds, vehicles, field trips
 - Possession
 - Storage
 - Administration by parent as "caregiver"
 - Staff administration, participation or supervision
 - Authorized dispensary? "original label"
 - Are any forms of MMJ specifically disallowed or disallowed in certain places?

Plan Your Approach Now

- What is your state's law?
 - Are there different rules for public schools, charter schools, non-public schools, independent schools, etc.?
 - Is your school required to have a MMJ policy?
 - Does your school receive federal funding?
 - DoE and DoAg have not yet addressed the issue
 - What is your state's anti-discrimination law?
 - What is your state's accommodation law?

Plan Your Approach Now

- Has your state's department of education or public health issued guidance?
- What is your state's nursing statute?
- What is your local standard of care for negligence?

Your School's Policy

- If you will allow MMJ, publish a policy for staff, parents and students
- Address as much as possible in the policy
- Set limits which protect other students
- Set limits which protect your staff
- Administration only by written plan
- Never allow "self-carry" (unless required by law)
- Balance "need to know" with privacy
- Train staff, including overcoming bias

Sample Policy

SCHOOL permits/supports the administration of medical marijuana to students with serious medical conditions consistent with the maintenance of a safe environment for other students while on school property. A parent, legal guardian or caregiver may administer medical marijuana to their child/student on school premises provided that the parent, legal guardian or caregiver: (1) provides the school principal with a copy the registration letters for themselves and for their student; and (2) enters a written plan with SCHOOL covering each instance in which the parent or caregiver will administer the medical marijuana to the child/student. Prior to the first administration on campus and every 6 months thereafter, the school principal shall verify the registration letters with the appropriate state authority and will provide notification to the school nurse in each instance a parent or caregiver will be administering medical marijuana to the child/student as well.

Sample Policy (con't)

The parent/caregiver shall follow all school protocols applicable to visitors to the school during the school day. A parent, legal guardian or caregiver shall bring to the school and administer the medical marijuana to their child/student without creating a distraction, and shall promptly remove any excess medical marijuana and related materials from the school premises after the administration of medical marijuana is complete. The school shall provide a secure and private location for the parent/caregiver to administer the medical marijuana to the student. School staff shall not administer, store, or transport medical marijuana at any time. Students themselves shall not be permitted to possess any form of medical marijuana at any time on school property, on busses, on field trips, or during any school-sponsored activities.

Q&A



This presentation is written for general informational purposes only and not for the purpose of providing legal advice.

You should contact your attorney to obtain advice with respect to any particular issue or problem.