

Controversy Continues: Medical Marijuana in Workers' Compensation

Speakers:

- Kevin Glennon, RN, BSN, CDMS, CWCP, QRP, VP of Clinical Programs, One Call Care Management
- Markie Davis, ARM, CPCU, State Risk Manager, State of Colorado

Learning Objectives

At the end of this session, you will:

- **Summarize the potential therapeutic value of medical marijuana, particularly in treating chronic pain.**
- **Distinguish the complicating factors surrounding the medical use of marijuana in workers' compensation.**
- **Follow the currently proposed legislation to change marijuana's classification.**

Review Legal Status of Medical Marijuana in United States

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- Kevin Glennon, RN, BSN, CDMS, CWCP, QRP, VP of Clinical Programs, One Call Care Management

Federal Law

Controlled Substances Act (CSA) of 1970

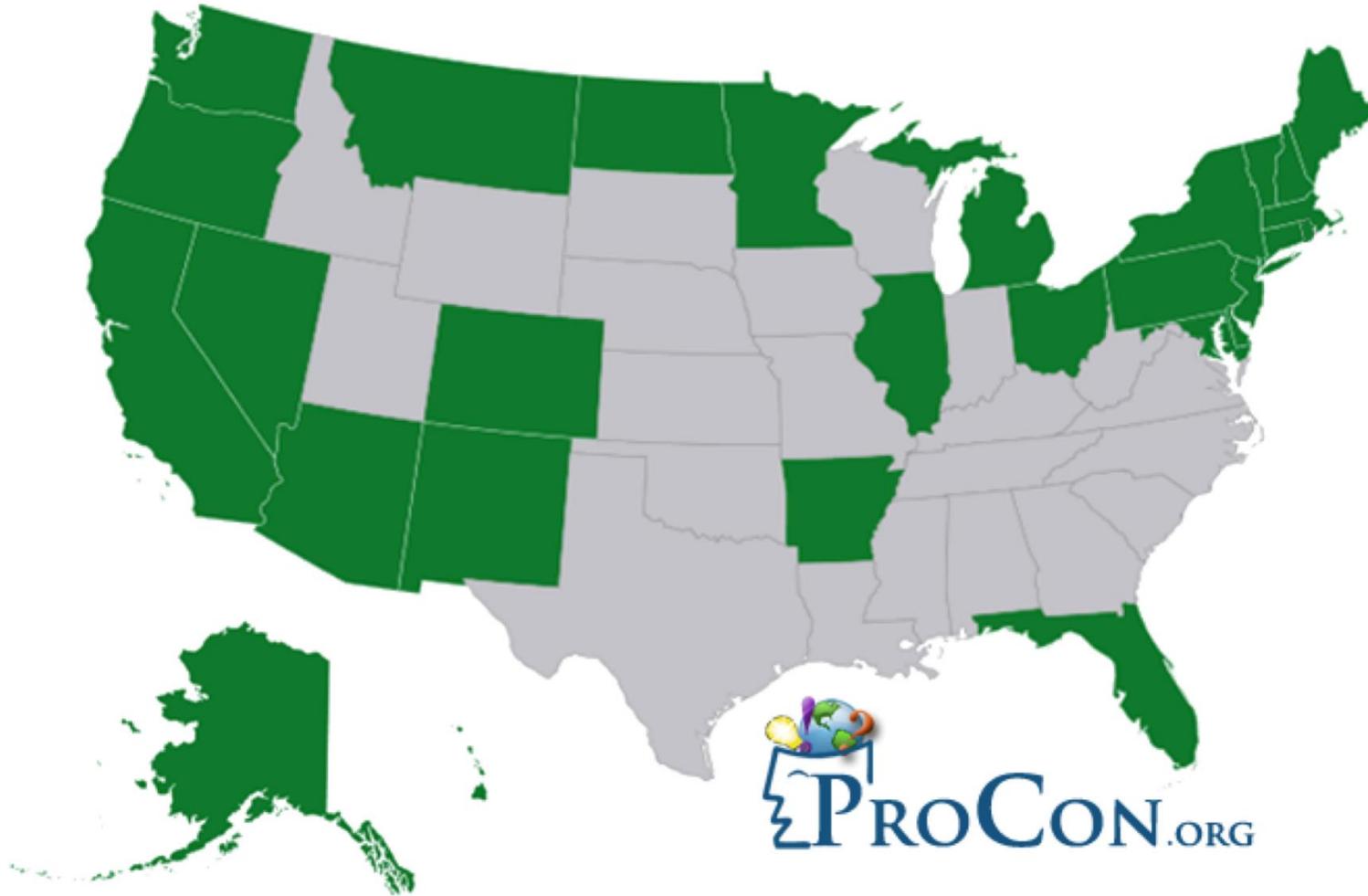
- Categorizes marijuana as Schedule I substance, with a high potential for abuse and no legitimate therapeutic uses
- Cultivation and distribution (which includes gifts as well as sales) are felonies
- Possession for personal use is a misdemeanor
- Use is not itself a crime, but there is no way to use marijuana without possessing it first, and possession of “paraphernalia” is also illegal
- Cultivating marijuana, 100 plants or more, carries a mandatory minimum sentence of 5 years under federal law

Difficult to Conduct Clinical Trials

Since marijuana is classified as a schedule 1 drug, it is exceptionally difficult to do high-quality studies on its medicinal effects in the U.S.

- Donald Abrams, an integrative medicine specialist for cancer patients at the University of California, San Francisco

28 LEGAL MEDICAL MARIJUANA STATES AND DC



Last updated on: 3/2/2017 3:54:29 PM PST

November 2016 Elections

- 3 states: Florida, Arkansas and North Dakota legalized medical marijuana, bringing total to 28 states
- Montana eased restrictions on an existing medical marijuana law
- 4 states: California, Maine, Massachusetts and Nevada legalized recreational use (bringing total to 8 states, including Alaska, Colorado, Oregon, Washington and DC)

28 LEGAL MEDICAL MARIJUANA STATES AND DC

1.Alaska	15.Minnesota
2.Arizona	16.Montana
3.Arkansas	17.Nevada
4.California	18.New Hampshire
5.Colorado	19.New Jersey
6.Connecticut	20.New Mexico
7.Delaware	21.New York
8.Florida	22.North Dakota
9.Hawaii	23.Ohio
10.Illinois	24.Oregon
11.Maine	25.Pennsylvania
12.Maryland	26.Rhode Island
13.Massachusetts	27.Vermont
14.Michigan	28.Washington

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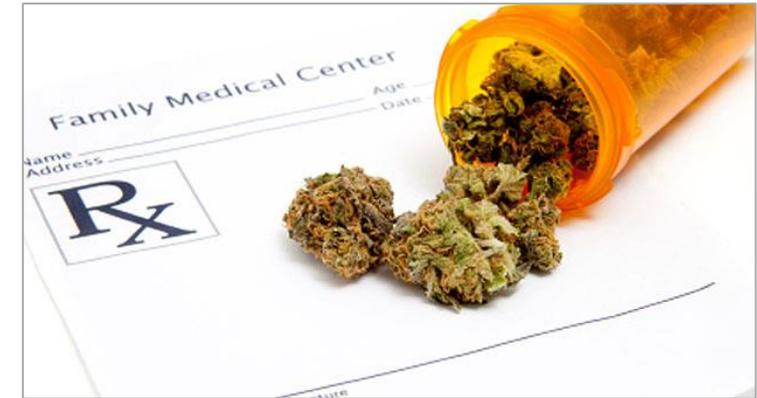
Medicinal Value of Marijuana

Speaker:

- Kevin Glennon, RN, BSN, CDMS, CWCP, QRP, VP of Clinical Programs, One Call Care Management

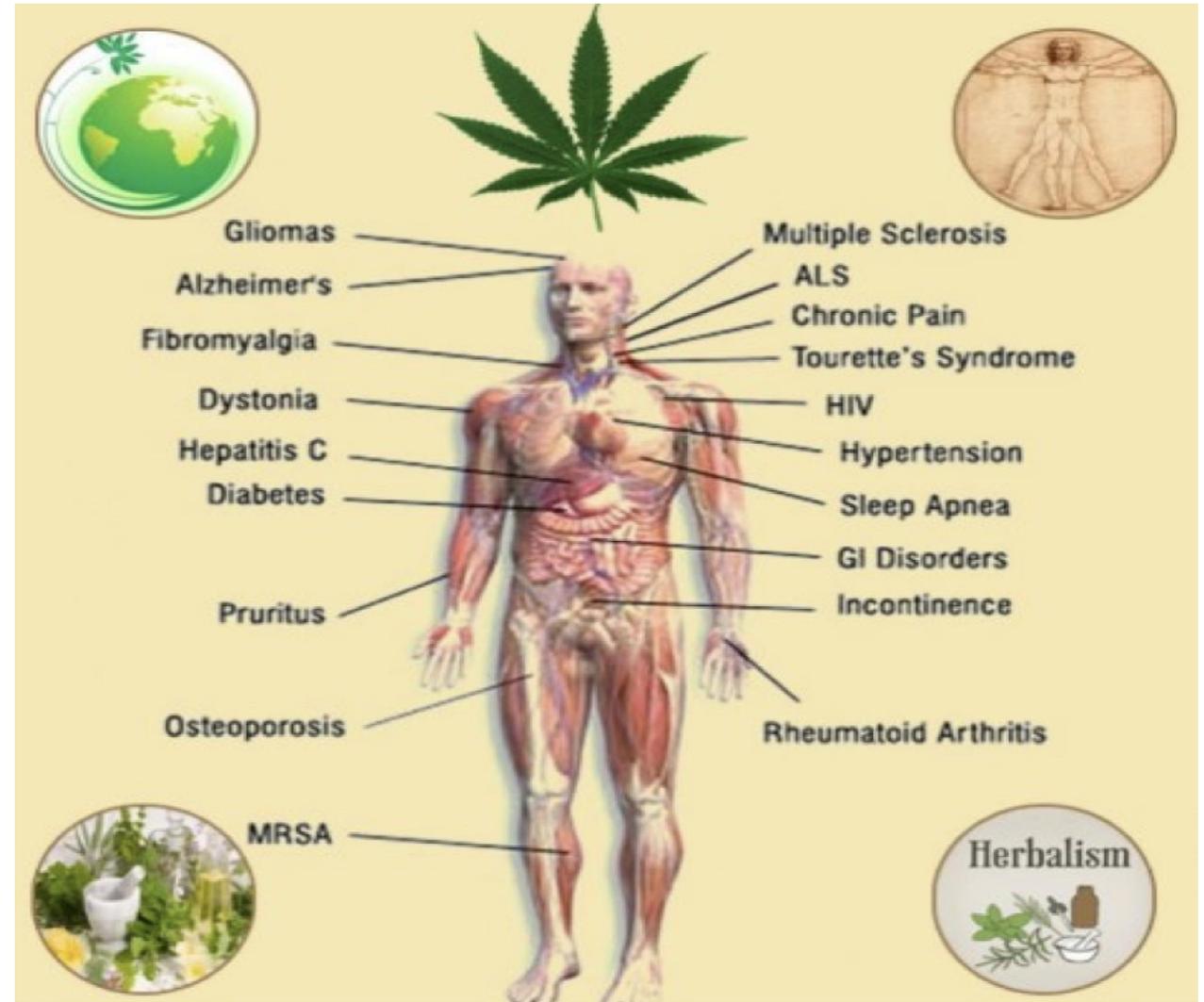
Medicinal Value

- Current literature documents various medical uses (below)
- Delivery: Inhalation (smoked, vaporized) or oral ingestion (pill form or edible version can be added to foods)
- Contains 60 active ingredients known as cannabinoids
- Primary psychoactive cannabinoid in marijuana is THC (tetrahydrocannabinol), gives you “high” feeling



AIDS (HIV) and AIDS Wasting	Multiple sclerosis/muscle spasms
Alzheimer's disease	Nausea/chemotherapy
Arthritis	Pain/analgesia
Asthma/breathing disorders	Psychological/psychiatric conditions
Crohn's/gastrointestinal disorders	Tourette's syndrome
Epilepsy/seizures	Spasticity
Glaucoma	Cancer
Hepatitis C	Cachexia
Migraines	Other terminally ill conditions

Potential Therapeutic Uses



Approved Forms

- **Marijuana not FDA approved as “safe and effective medication”**
- **Marinol®, only version currently approved by FDA**
 - Man-made, synthetic form of THC
 - Available through prescription and comes in pill form
 - Used to treat nausea and vomiting caused by chemotherapy for cancer
 - Used to treat weight loss and loss of appetite in HIV/AIDS patients
 - Controversy whether creates “high” or intoxication – reports say it doesn’t
- **Sativex®, an oral-mucosal spray (not yet approved in U.S.)**
 - Approved in Canada, New Zealand, Spain, and United Kingdom
 - Used to treat spasticity due to multiple sclerosis
 - Contains 2 cannabinoids found in marijuana – THC and Cannabidiol (CBD) – but unlike smoked marijuana, removes contaminants, reduces intoxicating effects
 - Grown in a structured and scientific environment
 - Administers a set dosage and meets criteria for pharmaceutical products





Can Medical Marijuana Help End the Opioid Epidemic?

July 28, 2016

- Since 1999, overdose deaths in the U.S. involving opioids have quadrupled
- Over \$72 billion in medical costs in U.S. each year; kills 80 Americans every day
- Medical experts believe medical marijuana could play critical role in combating opioid epidemic
- In 2015, *JAMA* published an analysis of 79 studies – 30% or greater reduction in pain from cannabinoids compared to placebo

The logo for The Atlantic, featuring the words "The Atlantic" in a white, serif font on a black rectangular background.

Patients Ditching Opioids for Weed

Feb. 2, 2017

- Patients turning down opioids like oxycodone in favor of medical marijuana, anecdotally working
- Want to avoid opioid side effects: dizziness, constipation, sexual dysfunction, breathing problems
- Many studies show correlation between states legalizing medical marijuana and a drop in painkiller prescriptions, opioid use, and deaths from opioid overdoses

Comparison of Side Effects

Side effects of Oxycodone

Red color - more serious effect

Central:

- Hallucination
- Confusion
- Fainting
- Dizziness
- Loss of appetite
- Lightheadedness
- Drowsiness
- Headache
- Mood changes

Central:

- Swelling
- Dryness

Mouth, tongue or lips:

- Swelling
- Dryness

Eyes:

- Swelling
- Smaller pupil
- Redness

Face:

- Swelling

Throat:

- Hoarseness
- Swelling
- Difficulty swallowing

Skin:

- Hives
- Rash
- Flushing
- Sweating
- Itching

Heart:

- Fast or slow heartbeat

Respiratory:

- Difficulty breathing
- Slowed breathing

Muscular:

- Seizures
- Weakness

Gastric:

- Nausea
- Vomiting

Intestinal:

- Constipation

Hands, feet, ankles, or lower legs:

- Swelling

Effects of Cannabis

Approved in treatment of migraines and epileptic seizures

Feeling of well-being, distortion of time, increased appetite, increased depression and anxiety, euphoria, increased perception, enhanced recollection, decreased problem solving

Reddening of eyes, decrease in intra-ocular pressure, helpful with glaucoma symptoms

Dryness of mouth

Alleviates asthma symptoms, relaxes muscles in chest and lungs

Increased heart rate

Relaxes muscles, reduces spasticity, approved for treatment of joint pain arthritis pain, and stiffness and spasticity in ALS and in multiple sclerosis

Relief of nausea, increases appetite resulting in weight gain, approved for treatment of severe nausea, and anorexia

www.facebook.com/montereybayholistic

Medical Marijuana in WC

Speaker:

- Kevin Glennon, RN, BSN, CDMS, CWCP, QRP, VP of Clinical Programs, One Call Care Management

Medical Marijuana in Workers' Comp

- **In WC, predominantly requested to manage chronic pain**
 - No large-scale randomized, controlled human trials have been conducted
 - Lack of definitive medical evidence continues to be a barrier to adoption, and as a Schedule 1 substance, obstacles remain with regard to testing and prescribing
- **Fewer side effects and less risky than opioid pain relievers**
 - Some studies have shown synergistic effects when using marijuana with opioids, which could lower opioid dosage and abuse

Claims Best Practices

- **Since marijuana is a schedule I substance per CSA**
 - Illegal to distribute, prescribe or purchase in U.S.
 - Prohibits assigning NDC or procedure code for billing purposes
 - Not FDA-approved to treat any medical conditions or diseases
 - Not FDA-approved to treat any common WC injuries
- **Payers deny medical marijuana claims for WC**
 - Several states, including Colorado, Michigan, Montana, Oregon, and Vermont, contain provisions. WC not required to cover cost of medical marijuana.
 - Not approved in the ODG or ACOEM practice guidelines or any of the state medical treatment guidelines and denied by UR if recommended by a treating physician

Case in Point: Medical Marijuana in WC

- **2014, a judge in New Mexico ruled employer and WC carrier had to reimburse employee**
 - For costs associated with purchase of medical marijuana (Vialpando v. Ben's Auto. Servs. and Redwood Fire & Casualty, 2014-NMCA-32, 920, N.M. Court of Appeals, May 19, 2014)
 - Since marijuana classified as an illegal substance under federal law, insurance carriers are prohibited from paying for it directly; instead reimbursed injured worker
- **Ruled in two additional cases that medical marijuana was “reasonable and necessary” and should be covered under WC**
 - In both cases (Miguel Maez v. Riley Industrial and Chartis; and Sandra Lewis v. American General Media and Gallagher Bassett), injured workers were authorized to use medical marijuana after traditional therapies failed

New Mexico: Additional Developments

- **Nov. 2015 – Became first state to propose a reimbursement rule**
 - 2016 fee schedule set maximum payment injured workers could be reimbursed at \$12.02 per gram, could receive 0.5 pound every 3 months
- **Jan. 2016 – Federal court upheld termination over medical marijuana**
 - Tractor Supply, a New Mexico employer, fired an employee for using medical marijuana, as it went against their drug-free workplace policy
 - If court sided with employee, Tractor Supply, which has stores in 49 states, would have had to modify its drug-free policy for each state that has legalized medical marijuana
- **Feb. 2016 – Proposed bill saying WC insurers and employers would not be liable to reimburse injured workers for medical marijuana**
 - Bill still under consideration

Other Jurisdictions Issues

- **Louisiana also support reimbursement**
 - State's Court of Appeals upheld a WC judge's ruling that an employee's prescription for a drug containing THC was a "necessary medical expense"
 - Ordered employer to reimburse claimant, but did not assess penalties against the employer, did not require employer to pay claimant's attorney fees
- **Dec. 2015 - Minnesota's health commissioner included "intractable" pain as condition that could be treated with medical marijuana**
 - Opens the door for claimants' attorneys to file claims for WC insurers to cover the cost of medical marijuana – one claim has been filed, decision has not yet been reached

ACOEM Practice Guidelines

- **Employers are in a difficult position, trying to accommodate state laws, while enforcing policies based on federal law**
- **April 2015, ACOEM developed guidelines regarding workplace safety and marijuana impairment. Consider these points when developing policies:**
 1. For employees covered by federal drug testing regulations, marijuana on and off job is prohibited
 2. Employees in safety-sensitive positions must not be impaired at work by any substance
 3. Employees residing in or near states allowing use of recreational marijuana must establish a policy regarding off-work use of marijuana
 4. Although most states allow the use of medical marijuana, employers may be able to continue policies banning or restricting the use of marijuana, as it's consistent with federal law
 5. Most WC statutes allow reduced benefits when worker is under the influence of alcohol or illegal drugs
 6. Clear policies and procedures to identify impairment and refer employee for evaluation
 7. Employee education is vital to ensure compliance
 8. Where marijuana use permitted, provide educational resources regarding the detrimental effects of marijuana use

Reclassification: Is it Possible?

Speaker:

- Kevin Glennon, RN, BSN, CDMS, CWCP, QRP, VP of Clinical Programs, One Call Care Management

Future Outlook: Is Reclassification Possible?

- Cultural outlook and public opinion polls support marijuana use
- Significant momentum at state legislative level
 - Some experts feel it's only a matter of time before the federal government reclassifies marijuana, allowing use of medical marijuana
- Reclassification would create significant upheaval in “drug free” workplace policies
 - Transition from “zero tolerance” to “impairment” policies, similar to alcohol
- Would need standards for measuring THC impairment and determining if someone is “under the influence” of marijuana
 - No research on marijuana impairment levels – affects people differently
 - Blood tests are unreliable
 - No breathalyzer

CARERS (Compassionate Access, Research Expansion and Respect States) Act

- Bipartisan medical marijuana bill to allow patients – including veterans – to access necessary care without fear of federal prosecution
 - Recognize states' responsibility to set medical marijuana policy, eliminate potential federal prosecution
 - Reschedule marijuana from Schedule I to Schedule II, recognizing “accepted medical use”
 - Allow states to import Cannabidiol (CBD), recognized treatment for epilepsy and seizure disorders
 - Provide veterans access
 - Permit financial services and banking for marijuana dispensaries
 - Expand opportunities for research

Congress Rethinks Policies

- Bipartisan medical marijuana bill to allow patients – including veterans – to access necessary care without fear of federal prosecution
 - Regulate Marijuana Like Alcohol Act, Rep. Jared Polis (D-Colo.)
 - Remove marijuana from the Controlled Substances Act's schedules
 - Transfer oversight from Drug Enforcement Administration to Bureau of Alcohol, Tobacco, Firearms and Explosives
 - Regulate marijuana in way similar to alcohol in U.S.
- Marijuana Tax Revenue Act, Rep. Earl Blumenauer (D-Ore.)
 - Set up a federal excise tax for regulated marijuana

Under Trump Administration

- For legalization advocates, Trump's election served a substantial blow to reform
- Feb. 23 – Sean Spicer stated that while President Trump is sympathetic toward those using medical marijuana for serious ailments, recreational use is a different issue deserving federal attention
- If the administration is serious about making medical marijuana available to patients, it could reschedule marijuana
- Currently, users of medical marijuana are still technically in violation of federal law
 - Puts their employment, access to government benefits and parental rights at risk even in absence of federal crackdown



Policy Group to Advise...



- National District Attorney's Association (NDAA) created a policy group, featuring 14 district attorneys who will issue advisements on possible law or policy changes regarding marijuana as more states legalize it
- NDAA group is pretty conservative, but prosecutors from Colorado, California and Oregon are participating — states where recreational marijuana has been legalized
- U.S Attorney General Jeff Sessions will ultimately go over this group's recommendations
 - Sessions has been a vocal opponent of legalization
 - Trump said he plans to keep marijuana illegal at the federal level

Medical and Recreational Marijuana in Colorado

Speaker:

- Markie Davis, ARM, CPCU, State Risk Manager, State of Colorado

Medical Marijuana

2000

- Voter Initiative – Amendment 20
- Legalized the use Medical Marijuana
- Program was small, almost underground group of “caregivers” that were regulated by the Co. Dept. of Health and Environment

2007

- Law was interpreted to allow caregivers to dispense more than to five patients.
- Dispensaries opened across the Denver area



Medical Marijuana Colorado Law

A chronic or debilitating disease or medical condition, or treatment for such conditions, which produces, for a specific patient, one or more of the following, and for which, in the professional opinion of the patient's physician, such condition or conditions reasonably may be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis



Medical Marijuana

October 2009 – Ogden Memo

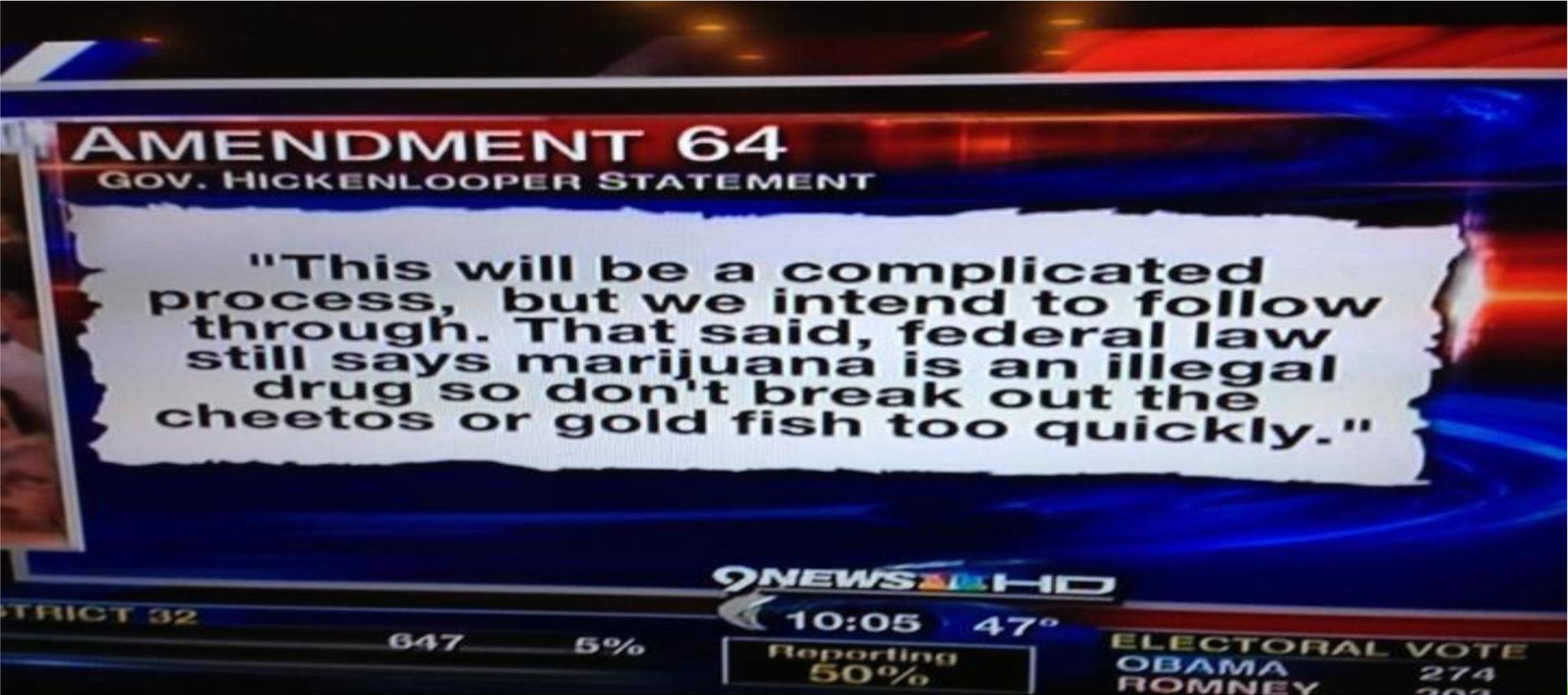
- Huge increase in registered marijuana users

House Bill 10-1284 was passed:

- Operating hours
- Security requirements
- Requirements that dispensaries grow 70% of sales
- Allowed cities and towns to ban dispensaries
- Created the Med Marijuana Enforcement Division in the Colorado Dept. of Revenue



Legalization of Recreational Marijuana



New Year's Day – 2014

grassroots
grown to perfection



**ALL
1/8THS
\$25**
ALL TOP SHELF
25+ STRAINS!
Out the door, tax included!

First time patient.
\$20
1/8TH
Limit 1 per patient.

Bring in this ad to
receive **1 ounce**
for \$150!
(Plus tax, select strains,
limit 1 per patient.)
Expires 9/17/12

Rocky Mountain High Taxes

Tax on Recreational Marijuana (27.9 percent)

- 12.9 percent state sales tax
- 15 percent excise tax

Tax on Medical Marijuana (12.9 percent)

- 12.9 percent state sales tax



Rocky Mountain High Taxes

Revenue and Tax Revenue Growing

Tax and Fee Revenue for 2014 - \$76 Million

- \$700 Million spend on Marijuana
- \$313 Million – Recreational
- \$386 Million – Medical

Tax and Fee Revenue for 2015 - \$135 Million

- \$996 Million spend on Marijuana
- \$586 Million – Recreational
- \$410 Million – Medical

Tax and Fee Revenue for 2016 - \$200 Million

- \$1.3 Billion spend on Marijuana
- \$875 million – Recreational
- \$438 million - Medical



Driving

Legal limit for DUI of marijuana

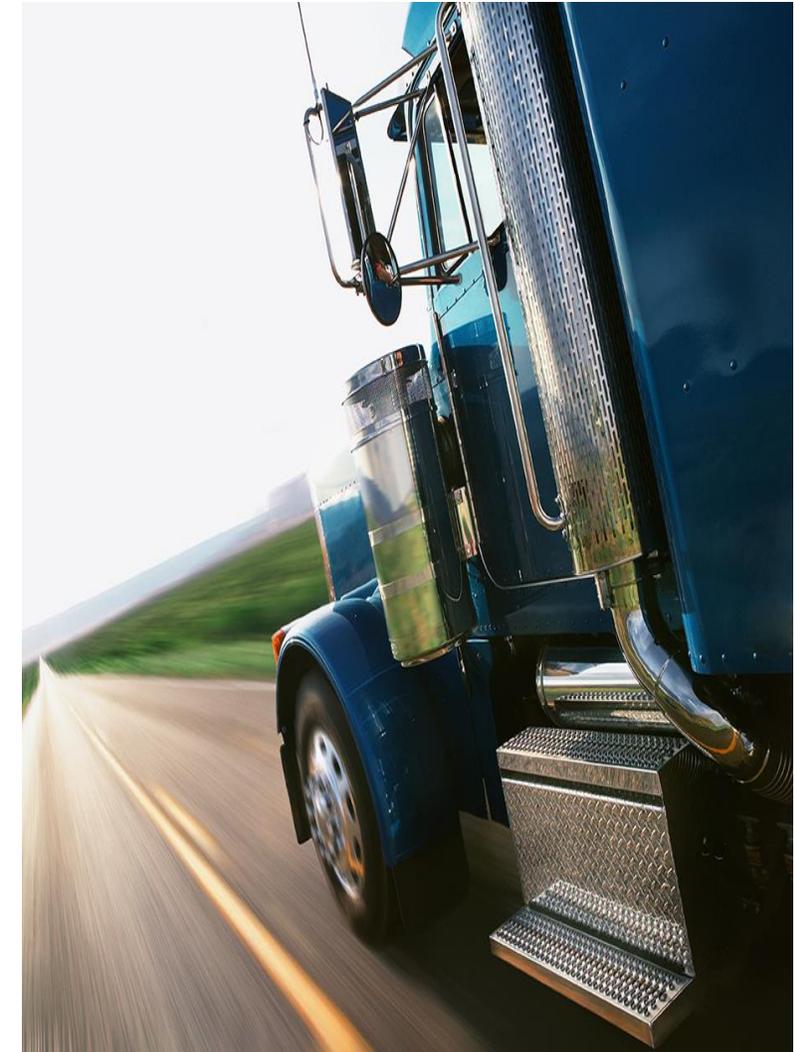
- 5 nanograms of active THC in blood - enforced in the same manner as alcohol

What does that mean?

- It is hard to tell. Some users will be well below the limit three hours after using and others will be well above the limit.
- No recognition in the legislation that the effects of marijuana and alcohol together may be more than the sum of their parts.

Occurrence of impaired-driving prosecutions

- Impairment related prosecutions are not tracked by the type of impairment. Therefore, there is no data to determine if there is a change in marijuana related impairment prosecution.
- However, there has been no increase in overall impaired driving prosecutions.



Reasonable & Necessary Treatment

II. WORKERS' COMPENSATION BENEFITS

Medical Benefits: Necessary and reasonable medical treatment, prescriptions, and hospital services related to the work injury are paid by the employer's insurance carrier or directly by the employer if self-insured. The employer and / or its insurance carrier have the right to designate medical providers for all work-related injuries.

- Colorado – Marijuana can be recommended but not prescribed by a doctor. There have been no challenges to this interpretation that have made it to the court system in Colorado.
- Safety rule violations have been successfully enforced against employees who are discovered to have THC in their systems.

Federal Regulation

- **Drug-Free Workplace Act – Companies receiving a federal contract of more than \$100,000 or a federal grant of any size must maintain a drug-free workplace**

DFWA doesn't require drug testing, but it does require employees to:

- Publish and distribute a policy
- Specify actions that will be taken against employees who violate the policy
- Provide education in the workplace about the dangers of drug use

Drugs in the Workplace

Coats v. Dish Network

- Telephone operator for DISH Network L.L.C, was fired in 2010 after failing a company drug test.
- Mr. Coats was a medical marijuana patient who had been paralyzed and used marijuana to control seizures
- Issue of law: Lawful activity off the premises of the employer during non-working hours
- Mr. Coats lost his case at the lower court and ultimately appealed to the Colorado Supreme Court
- After over a year the Colorado Supreme Court affirmed the lower court's ruling.

Drugs in the Workplace

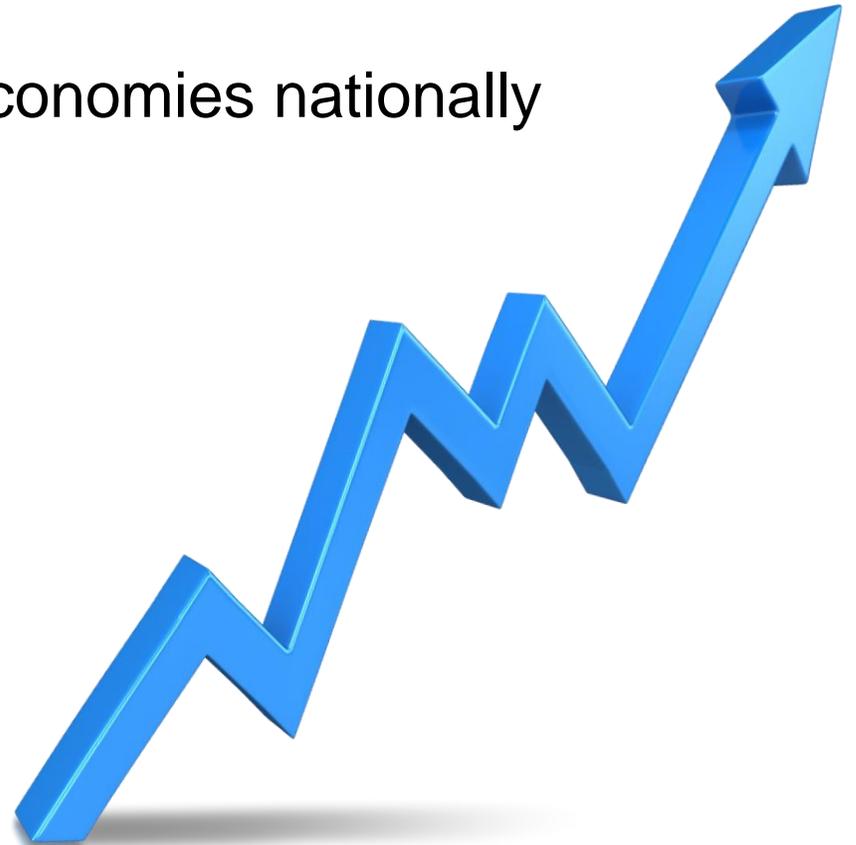
Coats v. Dish Network

The Decision

The supreme court holds that under the plain language of section 24-34-402.5, C.R.S. (2014), Colorado's 'lawful activities statute,' the term 'lawful' refers only to those activities that are lawful under both state and federal law. Therefore, employees who Engage in an activity such as medical marijuana use that is permitted by state law but unlawful under federal law are not protected by the statute. We therefore affirm the court of appeals' opinion," the court wrote in its ruling.

Benefits

- Tax revenue!!! Contributing to one of the best economies nationally
- Food and Pot pairings
- The Girl Scout cookie sales were up
- Violent crime appears to be down
- 10,000 jobs in the marijuana industry
- Criminal marijuana prosecution down 75%



Edibles

- A marijuana product that caused many issues after legalization
- The marijuana industry came together to voluntarily standardize THC content.



Downsides

- Overall seems to be less problems than anticipated
- Much of the impact on Colorado is still evolving
- Marijuana transported across state lines
- Conflict between State and Federal law will need to be resolved in banking

Summary & Wrap-up of Key Points

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Kevin's Takeaways (Clinical Perspective)

- Risk managers and WC professionals must continue to review policy guidelines around medical marijuana, issued by organizations ODG, ACOEM and OSHA
- Continue to monitor state and federal legalization efforts, as well as case verdicts—these will all have ongoing ramifications for the industry and could possibly forecast a tipping point toward reclassification
- Keep an eye on clinical trials and FDA approval; if FDA approves a marijuana-based drug, the DEA would likely reclassify marijuana within a short period of time

Markie's Takeaways (Employer Perspective)

- Tax revenue is very enticing so be prepared for a change of law in your state.
- Unintended consequences with legalization of marijuana still evolving
- Conflict between State and Federal law will need to be resolved in banking.
- The impact of medical marijuana on workers' comp depends greatly on the workers' comp law in a state.
- The conflict between state and federal law in regard to employment issues has been resolved in Colorado.

Questions?

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