

Medical Marijuana: The Blunt Situation

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Speaker



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Agenda

- The landscape
- Current activity
- Risk management issues
- Scenarios
- Q & A

Objectives

- Participants will be able to discuss the conflict between federal and state laws regarding medical marijuana legalization
- Participants will identify three main areas of concern regarding the use of medical marijuana by hospital/clinic patients
- Participants will identify three suggested practices for physicians who recommend marijuana to their patients

Disclaimer

- Nothing in this presentation should be construed to be in favor of or against any efforts to legalize medical marijuana
- The reference to federal and state laws is for informational purposes only and is not legal advice

Marijuana

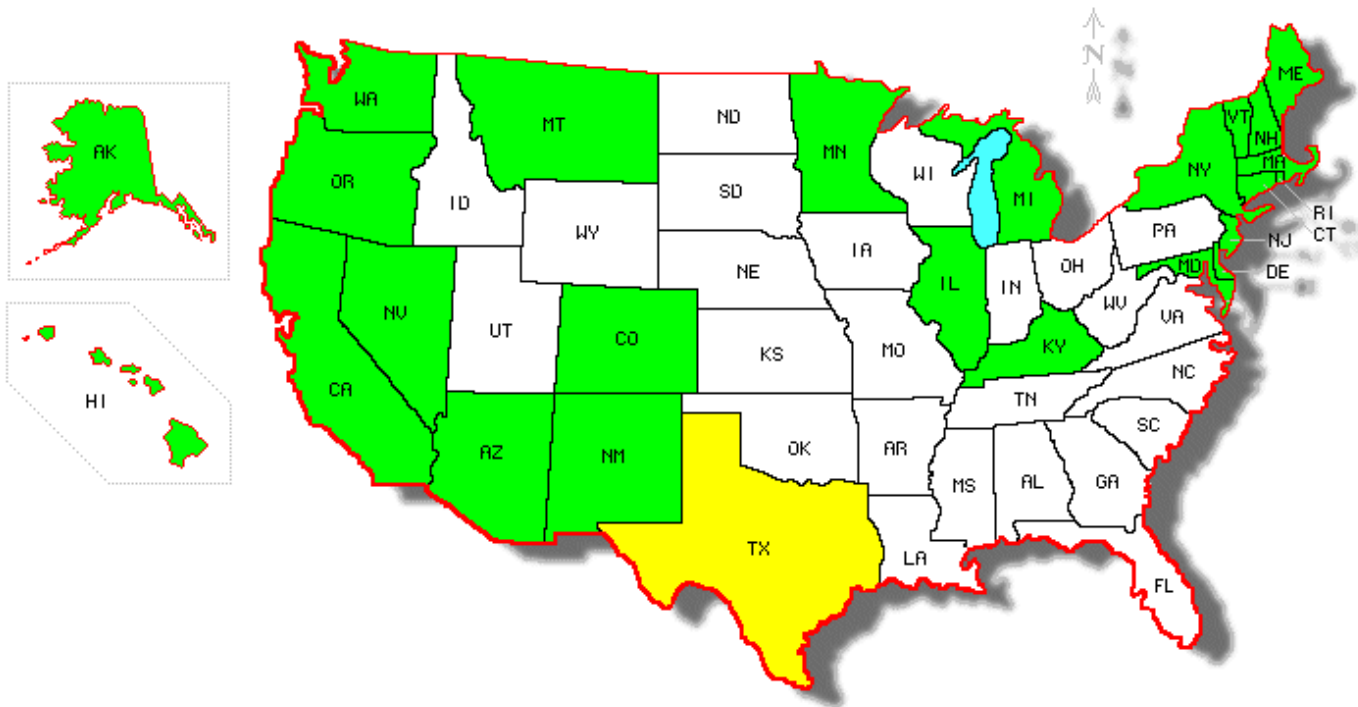
YEAR(s)	POLICY
2737 B.C.	First described for its medicinal purposes in a Chinese text
1545	Spaniards bring marijuana to the New World
1850-1941	Listed in the U.S. Pharmacopoeia
1842-1890s	Listed as the number 1, 2 or 3 most prescribed medications (along with hashish extracts)
1937	Marijuana Tax Act essentially makes it illegal Ruled unconstitutional in 1969 - <i>Leary v. U.S.</i> (395 US 6)
1970	Controlled Substances Act Marijuana classified as a Schedule I
1980s	War on Drugs increases jail time for minor possession

Medical marijuana laws

Use, cultivation and distribution

Medical Marijuana Laws

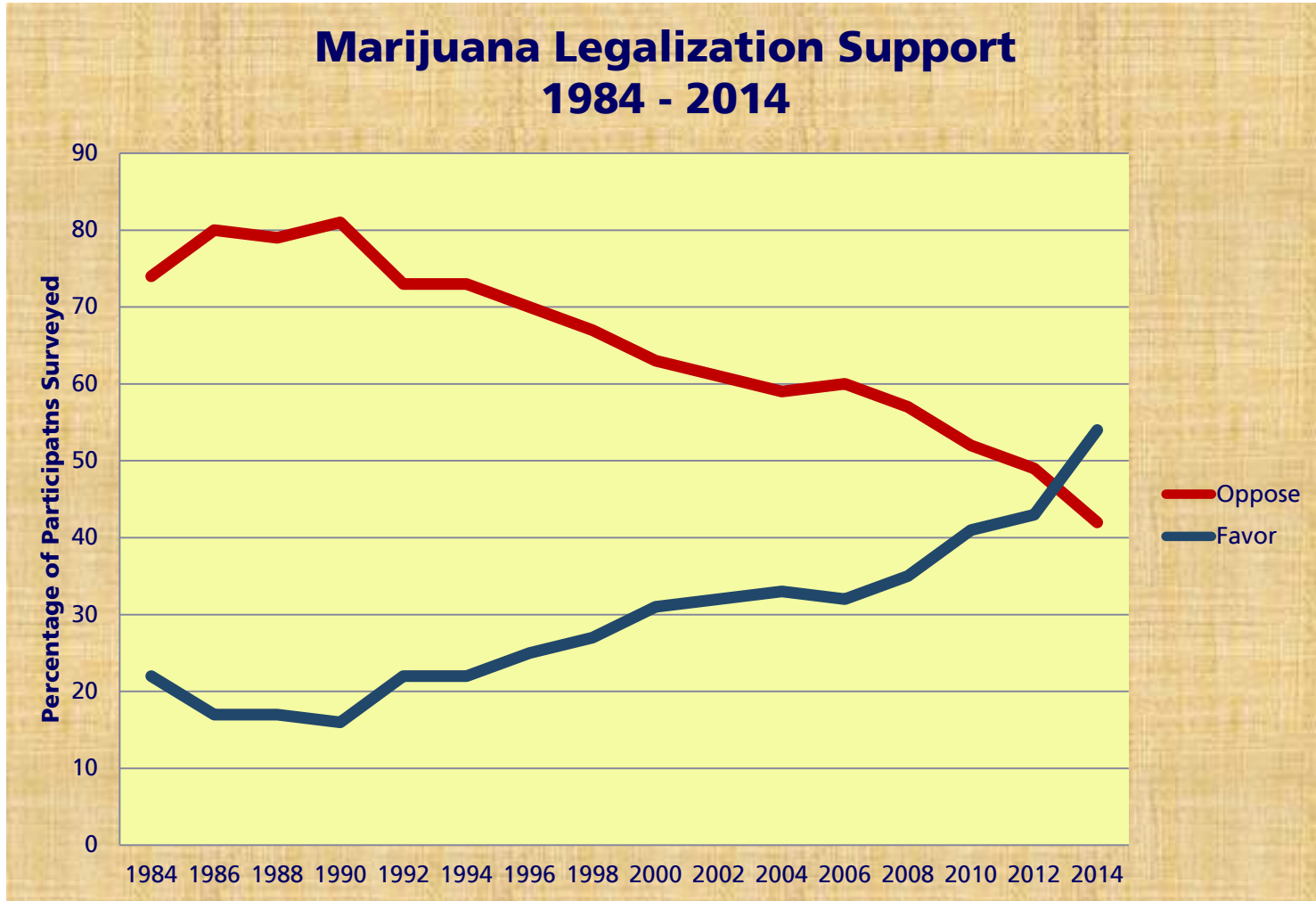
- - Enacted
- - Passed



<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

Marijuana support over time

Support for legalization (not just medical use)



Not all laws are equal



CALIFORNIA

- Legal for patients and their designated primary caregivers to possess and cultivate marijuana for their personal medical use
- Includes hashish, concentrated cannabis and edibles
- Requires a physician recommendation or approval
- There is no limit on amount, but exceeding SB 420 may allow prosecution
- State ID cards not required but may provide a layer of protection from arrest and prosecution



NEW YORK

- Patient must suffer for a "severe debilitating or life-threatening condition"
- Patient must register with the NY State Dept. of Health
- Patient must have "certification" from a physician
- Only sublingual oil, liquid for vaporization and capsules are allowed
- Whole flower products and smoking is not permitted

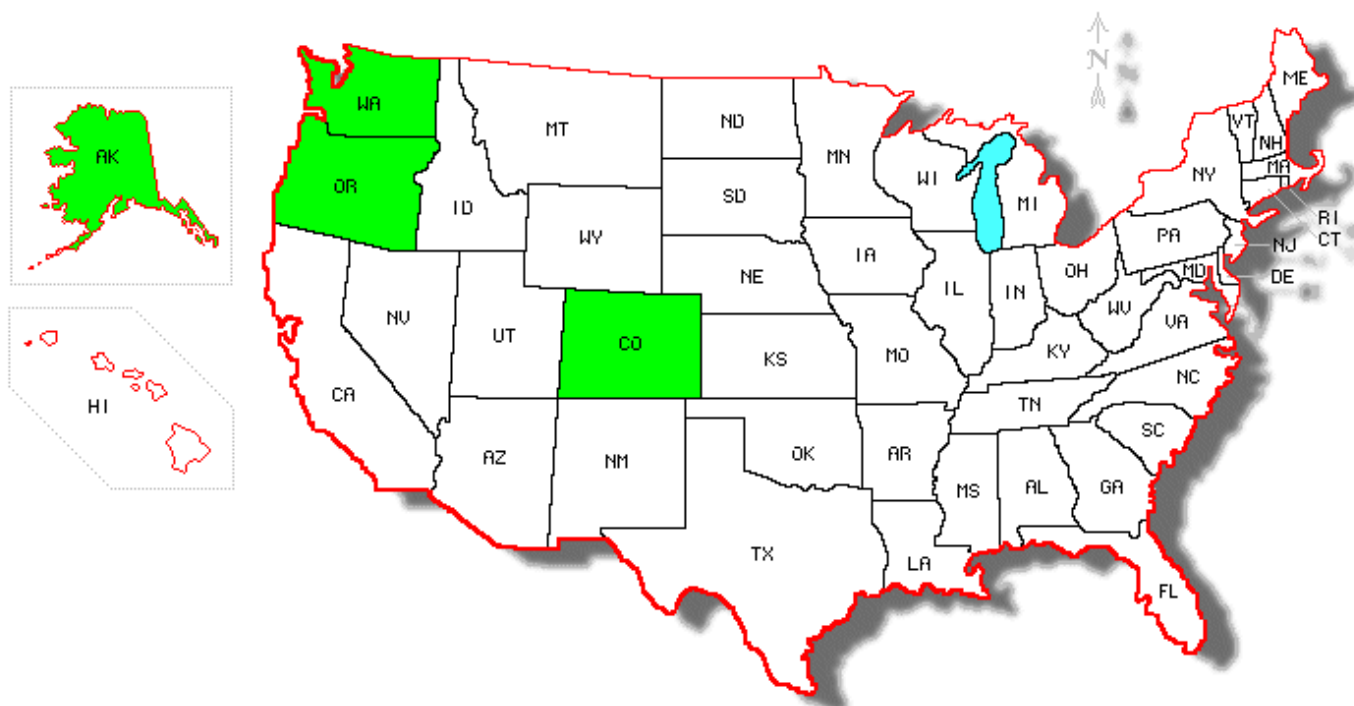


TEXAS

- Considered the most restrictive law in the country by many pro-use organizations
- Allowed only for intractable epilepsy patients whose seizures cannot be controlled by other medications
- Passed in 2015, the state is required to issue three licenses for dispensaries by September 2017
- Physician registry will become operational in July
- The forms to become a dispensary will not be ready until this summer
- Only allows low-THC products (<0.5%)

Recreational use

Recreational Use Laws

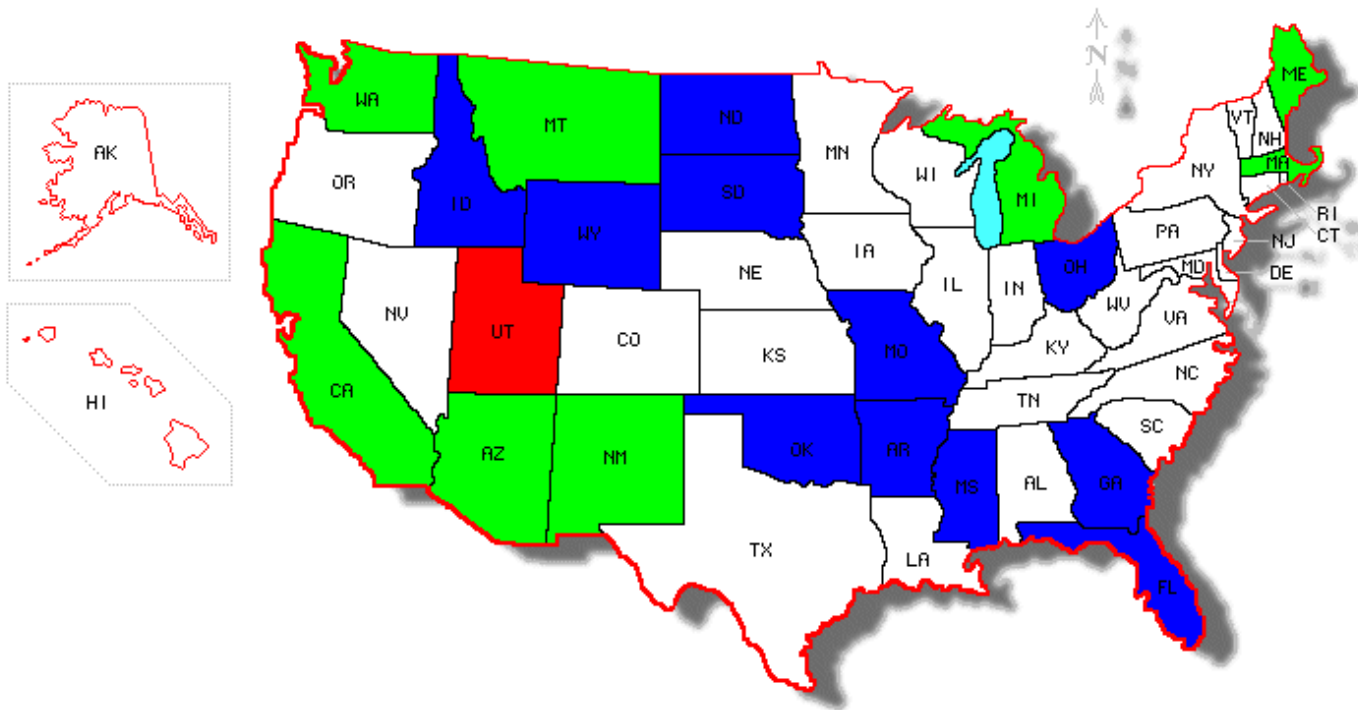


<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

2016 ballot initiatives

2016 Ballot Initiatives

- - Not Currently Legal
- - Currently Legal
- - Removed from Ballot



State laws

They don't impact the feds

- **Americans with Disabilities Act**
 - Does not recognize the use of medical marijuana
- **Federal Labor Laws (OSHA)**
 - Employers have a right to maintain a drug-free workplace
- **Drug Enforcement Administration**
 - Schedule I Classification:
 - Highly Potential for Abuse; &
 - No Recognized Medical Use
- **Exception: Veterans Administration**
 - 22 JUL 2010
 - Medical marijuana allowed in states where its use is legal

The Memos

Signal to the states that medical marijuana views are changing

- **19 OCT 2009**

- David W. Ogden, Deputy Attorney General
- Authorizing the Medical Use of Marijuana
- “As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.

- **29 June 2011**

- James M. Cole, Deputy Attorney General
- Seeking to Authorize Marijuana for Medical Use
- Sent in response to multiple requests for guidance

- **29 AUG 2013**

- James M. Cole, Deputy Attorney General
- Guidance Regarding Marijuana Enforcement
- Discussed the traditional role of leaving possession of small amounts to local and state authorities

- **NOTE:** These instructions are to employees of the Department of Justice. They are not binding on the Drug Enforcement Administration

Congress

Adding support to the memos

- US House of Representatives
 - 242 – 186
 - Rohrabacher-Farr statute
 - Amendment to an appropriations bill
 - Blocks the Justice Department, including the Drug Enforcement Administration, from using funds to undermine state-legal medical marijuana programs
 - First passed the House on May 29, 2014
 - Included by both houses of Congress in December 2014
 - Signed by President Obama on 18 DEC 2014
 - It had been defeated every year since 2007
 - Renewed Dec 16, 2015
 - It still does not legalize medical marijuana at the federal level

Rohrabacher-Farr Amendment

Legal challenge

- U.S. v. Marin Alliance for Medical Marijuana
 - 19 OCT 2015
 - The DOJ interpreted the amendment to bar only those actions by state governments, not federal
 - Court denied the motion to remove an injunction
 - At issue was the language barring the spending of federal funds to “prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”
 - This case could have broad implications on the ability of the DEA to prosecute medical marijuana cases going forward

Examples of scheduled drugs

Schedule I	Schedule II	Schedule III	Schedule IV	Schedule V
Heroin	<i>Dilaudid</i>	Vicodin	<i>Xanax</i>	Cough medicine w/ Codeine
LSD	<i>Demerol</i>	<i>Tylenol w/ Codeine</i>	Soma	
Marijuana	<i>Oxycodone</i>	Didrex	Klonopin	
Peyote	<i>Morphine</i>	Depo- Testosterone	<i>Valium</i>	
Meth	<i>Ritalin</i>		Ativan	
Ecstasy	Opium		Versed	
	Cocaine			

- U.S. v. Oakland Cannabis Buyers Cooperative
532 US 483 (2001)
 - 8-0
 - Rejected the common law defense of medical necessity to crimes enacted under the Controlled Substances Act
- Gonzales v. Raich
545 US 1 (2005)
 - 6-3
 - Under the Commerce Clause the US Congress can criminalize the production and use of home-grown cannabis even where states approve its use for medicinal purposes. (Challenge to CA law)
- Nebraska v. Colorado
Declined to hear argument: 21 MAR 2016
 - 6-2
 - Question: Can a state that legalized cannabis be forced to pay the increased costs borne by neighboring states where it is illegal?

One other important decision

Federal District Court

- **Conant v. Walters**

- U.S. 9th Circuit (2002)**

- Affirmed the right of physicians to recommend medical marijuana
 - District Court's permanent injunction: "The government should be permanently enjoined from revoking any physician class member's DEA registration merely because the doctor makes a recommendation for the use of medical marijuana based on a sincere medical judgment and from initiating any investigation solely on the ground...whether or not the doctor anticipates that the patient, will in turn, use his or her recommendation to obtain marijuana in violation of federal law."
 - "The history of the litigation demonstrates that the injunction is not intended to limit the government's ability to investigate doctors who aid and abet the actual distribution and possession of marijuana."
 - Injunction upheld 3-0
 - Supreme Court Refused Certiorari. Upheld as the law in the 9th Circuit and persuasive in other circuits

20 January 2017

The day things might change at the federal level

Candidate	Rating	Comments
Clinton	B	"I really believe it's important that states like Colorado lead the way, so that we can learn what works and what doesn't work. And I would certainly not want the federal government to interfere with the legal decision made by the people of Colorado, and enforced by your elected officials, as to how you should be conducting this business that you have approved. So, no, I want to give you the space and I want other states to learn from you, what works and what doesn't work." MSNBC, October 14, 2015
Cruz	C	"I don't support drug legalization, but I do support the Constitution. I think individual states can choose to adopt it. So if Texas had it on the ballot, I'd vote against it, but I respect the authority of states to follow different policies." Texas Tribune, March 24, 2015
Kasich	C-	"On medical marijuana, doctors that I know tell me we don't need that, there are other ways to [treat pain]." OhioCapitalBlog, March 30, 2012 (More recently he has stated that it is something at which he would have to look.)
Sanders	A	"States which want to regulate marijuana would remain free to do so the same way local laws now govern sales of alcohol and tobacco. Bernie would continue to allow federal law enforcement officials to arrest and prosecute drug dealers for trafficking in marijuana sales." Bernie Sanders Campaign Website, October 28, 2015
Trump	C+	"In terms of marijuana and legalization, I think that should be a state issue, state-by-state. ... Marijuana is such a big thing. I think medical should happen — right? Don't we agree? I think so. And then I really believe we should leave it up to the states." Washington Post, October 29, 2015

DISCLAIMER: The information and the ratings in this chart were taken directly from the Marijuana Policy Project. Neither Zurich nor its presenters are in any way recommending one candidate over another on this issue.

Risk management issues

- Liability for physician recommendation
- Hospital storage of patient's own medications
- Hospital dispensing of marijuana
- Executive signature on medicare form
- Reimbursement
- 2014, The National Council on compensation insurance listed medical marijuana one of the top issues for Workers Compensation
- Crime-fraud exception to attorney-client privilege
- Influx of "Pot docs"

Patient safety issues

- Efficacy compared to other forms of treatment
- Control of pain
- Interaction with other medications
- Standards of care
- Staff unfamiliar with product
- Patients hiding use for fear of prosecution (despite the current landscape) or judgment

Guidelines for physicians

Recommendation of medical marijuana

- Recommending marijuana to patients
 - Conant v. Walters
 - HIPAA
- Help patients obtain marijuana
 - To date I cannot find a federal court case directly on point, so...
 - It is illegal to help your patients obtain
- Lack of medical standards
 - No US guidelines for use
 - Canada has published guidelines for use in controlling pain
- Use by minors¹
 - Control of seizures (>300/wk)
 - Use of oil reduced seizures to 1 per week

¹ Young, Sandra. "Marijuana Stops Child's Severe Seizures." *CNN*. Cable News Network, 7 Aug. 2013.

Scenario for discussion

Out of state patient

- You have a patient in your facility who comes from another state where medical marijuana is legal. It is also legal in your state but requires the patient be listed on the registry.
- The patient suffers from chronic pain for which they use a topical ointment which they have with them. The ointment is not well marked as to its contents (label is worn).

1. What are your concerns?

2. Are there additional concerns if it is illegal in your state?

3. What do you do if you discover its use after the fact?

Scenario for discussion

Practitioner activities

- Medical marijuana is legal in your state.
- You have a patient that suffers from chronic pain for which opioids and other pain medication has not been effective.
- Your patient uses a form of liquid, edible marijuana that she mixes into her beverages which controls her pain. She asks the nurse for something to drink for this purpose.

1. What are your concerns?

Scenario for discussion

Employee use

- Medical marijuana is legal in your state
- Your hospital has a “no tolerance” policy for the use of illegal drugs
- One of your maintenance workers who is treated for PTSD through the VA has tested positive for marijuana.
- He has a valid, state issued medical marijuana card that allows him to use the product legally in your state

1. What are your concerns?

State court decisions

Employee use

- **Colorado** — Coats v. Dish Network (2015)
 - Suit for wrongful termination after testing positive for marijuana
 - Question was whether federally prohibited but state-licensed medical marijuana use is “lawful activity” under section 24-34-402.5, C.R.S. 2012, Colorado’s Lawful Activities Statute.
- **California** — Ross v RagingWire (2008)
 - Dismissal of a wrongful termination suit under the Fair Employment and Housing Act after testing positive for marijuana
 - Narrow view that Prop 215 only protected people from criminal prosecution and did not create a right to use

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