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Will the Legalization of Marijuana Affect Workplace Drug Testing?

By Sarah Ashby, Associate General Counsel for Psychemedics



Colorado and Washington Legalize Marijuana: The Basics

In November, Colorado and Washington passed state initiatives by vote to legalize the recreational use of marijuana. Both new laws are now in effect and regulate and tax marijuana sales, and make it legal for an individual twenty-one or older to use or possess marijuana. Both laws also prohibit public use. The dust has yet to settle around the new legislation, and there will be an adjustment period as Colorado and Washington refine their frameworks for regulation and taxation. However, even at this early stage, the continuing federal prohibition and certain medical marijuana cases provide guidance to the drug testing industry.

Employers Can Look to Medical Marijuana Cases for Policy Guidance

The law has generally favored employer policies in cases involving employees who relied on state medical marijuana laws to challenge their terminations. Courts have pointed out that the Colorado and Washington medical marijuana statutes 1) do not require employers to accommodate use, and 2) only protect authorized users from criminal prosecution. The statutes do **not** restrict employers from taking disciplinary action, including termination, because of positive drug tests resulting from medical marijuana use.

Recreational Use - A Tougher Case for Employers?

Recent cases demonstrate that even if a state law allows medical marijuana use, employers do not necessarily have to. Also, based on the courts' support for employer drug policies in these *medical* use cases, a terminated employee would likely face a more difficult challenge making a case for wrongful termination based on *recreational* use. At this time, even with new state laws permitting recreational marijuana use, drug-free workplace policies appear to be on solid ground.

Statistics

* The treatment admission rate for marijuana increased 21% between 2000 and 2010.

* The total number of drug-related Emergency Department visits increased 94% from 2004 (2.5 million visits) to 2010 (4.9 million visits).

- www.samhsa.gov.com

Notes from Ray Kubacki



Raymond Kubacki, Chairman & CEO, Psychemedics Corporation

Dear Valued Clients and Friends,

2012 was a year of significant achievement for Psychemedics in many areas: we received our 7th patent (a major patent fundamental to all hair analysis drug testing); we received additional FDA clearances on our new custom-designed EIA tests; and we successfully made the switch from RIA to EIA. In addition, we celebrated our 25th Anniversary as a company. These successes were all the result of our teams' hard work and dedication to continued innovation in the hair testing industry.

Now, more than ever, it is important that you screen out/identify drug users and potential liabilities from your workforce. I believe it would be very helpful if you would carefully read the articles in this newsletter about increased use of illegal substances and how "recreational marijuana" could affect your business.

We are looking forward to working with you this year and send our best wishes for a successful 2013.

Best Regards,

Ray

DOT COMPLIANCE NOTICE REGARDING MARIJUANA

Recently, some states passed initiatives to permit use of marijuana for so-called “recreational” purposes. We have had several inquiries about whether these state initiatives will have an impact upon the Department of Transportation’s longstanding regulation about the use of marijuana by safety-sensitive transportation employees – pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency response personnel, among others.



We want to make it perfectly clear that the state initiatives will have no bearing on the Department of Transportation’s regulated drug testing program. The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs, including marijuana, for any reason. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana. We want to assure the traveling public that our transportation system is the safest it can possibly be.

Jim Swart - Office of the Secretary of Transportation (DOT)

Source: <http://images.politico.com/global/2012/12/03/odapcnoticerecreationalmj.html>

DRUGS IN THE NEWS

Substance Abuse Diagnoses Increasing in US

Possibly driven by a surge in painkiller abuse, the number of drug and alcohol problems diagnosed by U.S. doctors increased by 70 percent between 2001 and 2009, according to new research.

The number of doctors visits including a diagnosis of opioid painkiller abuse, in particular, increased from 772,000 to 4.4 million - almost a six-fold increase.

The Centers for Disease Control and Prevention estimate that 14,800 Americans died of an opioid overdose in 2008 - three times the number of overdose deaths 20 years earlier.

<http://www.foxnews.com/health/2012/10/23/substance-abuse-diagnoses-increasing-in-us/>

Many Injured Workers Remain on Opioids

Nearly 1 in 12 injured workers who were prescribed narcotic painkillers still were on the drugs three to six months later, according to a new report on worker’s compensation claims.

The study, which looked at 300,000 worker’s compensation claims in 21 states, highlights how doctors often don’t follow treatment recommendations for long-term monitoring of injured workers who receive opioid pain medications.

Among the report’s other findings, nationally:

- Only about 24% (up from 14%) of workers who were on narcotic painkillers long-term got at least one drug test. Drug tests are done to monitor use of narcotics in hopes of preventing misuse of the medications.

<http://www.jsonline.com/features/health/many-injured-workers-remain-on-opioids-study-finds-km72vlg-172331511.html>



ASTOUNDING FACTS

There are more medical marijuana dispensaries in the city of Denver, Colorado than Starbucks and McDonald’s combined!!

Source: [http://www.csmonitor.com/USA/Elections/2011/0104/How-much-do-you-know-about-marijuana-Take-the-quiz/More-than-Starbucks/\(result\)/1](http://www.csmonitor.com/USA/Elections/2011/0104/How-much-do-you-know-about-marijuana-Take-the-quiz/More-than-Starbucks/(result)/1)

Positive Drug Test Levels Drop Among Truckers

(This story appeared in the Jan. 28 print edition of Transport Topics)

The percentage of truck drivers testing positive on random drug tests during 2011 dropped to the lowest level since mandatory testing began almost two decades ago, according to the U.S. Department of Transportation. The positive rate was 0.9% for the 492,000 drivers in the 2011 sample, DOT said.

Trucking industry leaders cautioned that the percentages may not accurately reflect drug use among drivers.

“We certainly think [the results are] encouraging, but we are very aware of the limitations of urine testing, so urge some caution in reviewing the results,” said Rob Abbott, vice president of safety policy for American Trucking Associations.

Carriers are required under federal law to do only urine testing on drivers and prospective hires, and many in the industry have concluded urine testing is not as effective as hair testing.

ATA supports changes that would allow carriers to choose between hair tests and urine tests for drivers.

“If our goal is to keep [drug users] from entering the industry, then hair is a superior gatekeeper,” Abbott said.

The overriding issue between the two different methods is hair testing’s effectiveness.

“We get five to 10 times the number when you do side-by-side comparisons,” said Ray Kubacki, CEO of the testing firm Psychemedics Corp., which does hair testing for several carriers.

On the surface, the latest data look like “good news,” said Don Osterberg, senior vice president of safety at Schneider National Inc. which has conducted hair testing on prospective drivers since 2008. But he cautioned the industry not to “embrace” the low positive rate of 0.9% on random tests “as somehow good enough.”

“What we have to do is to really look at it, perhaps more deeply, to say, ‘Is it in fact that; or potentially, is that improvement an indicator that commercial drivers have gotten smarter on how to defeat a urine-



based drug test?” Because certainly that is a possibility,” said Osterberg.

When Schneider compared urine test results with hair test results over a four-year period for prospective hires, the carrier found that 120 prospects tested positive via the urine tests but that 1,400 tested positive via the hair tests.

“If you talk to the fleets that are employing hair testing, they’ll tell you that the positive rates are far higher on hair than on urine,” said ATA’s Abbott.

Osterberg said he will be meeting with lawmakers in hopes of persuading them to allow fleets to use hair testing in place of urine testing.

<http://www.ttnews.com/articles/printopt.aspx?storyid=31102>

Did You Know ??

Psychemedics now using a newly developed and FDA-cleared EIA drug screening process



In 2012, the FDA granted the company 510(K) clearances for five new additional custom designed assays to test for the detection of drugs of abuse using enzyme immunoassay (EIA) analysis of head and body hair. By combining our new FDA-cleared custom designed immunoassays (which are equivalent in effectiveness and sensitivity to radioimmunoassay) with our new patented method of releasing the drugs from the hair, we continue to offer our clients the greatest sensitivity and effectiveness in testing, thereby identifying the greatest number of drug abusers.

*Superior Detection
of Drug Abuse*

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About Psychemedics

Psychemedics was established in 1987 to provide testing for drugs of abuse using hair analysis, and has been successfully operating for over 25 years. Thousands of corporations currently rely on Psychemedics' patented hair analysis technology for their pre-employment and employee drug screening. Psychemedics is headquartered in Boston and has offices in Dallas, Chicago, Los Angeles and Las Vegas. Our Laboratory is located in Culver City, California. Psychemedics is a publicly-held corporation listed on NASDAQ under the ticker symbol PMD.