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Personal stories



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Personal Stories

- Friend with Neuropathy
- Friend's child with ADHD



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Legalized for medical & recreational use (source: <http://norml.org/states>)



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Legalized for medical use only

- Alaska
- Colorado
- District of Columbia
- Oregon
- Washington



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Legalized for medical use (source: <http://norml.org/states>)



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Legalized for medical use only

Alaska	Maryland	New York
Arizona	Massachusetts	Oregon
California	Michigan	Rhode Island
Colorado	Minnesota	Vermont
Connecticut	Montana	Washington
Delaware	Nevada	Washington, DC
Hawaii	New Hampshire	
Illinois	New Jersey	
Maine	New Mexico	




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Decriminalized for small amounts (source: <http://norml.org/states>)




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Decriminalized for small amounts

Typically, decriminalization means no arrest, prison time, or criminal record for the first-time possession of a small amount of marijuana for personal consumption. In most decriminalized states, these offenses are treated like a minor traffic violation.

California, Connecticut, Delaware\*, Maine, Maryland, Massachusetts, Minnesota\*, Mississippi, Missouri\* & \*\*, Nebraska, Nevada\*, New York, North Carolina\*, Ohio\*, Rhode Island, Vermont

\* State still classifies marijuana possession as a criminal misdemeanor, but the offenses do not carry any jail time

\*\*Missouri's decriminalization statute effective January 1, 2017




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# Federal law


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## Federal law

- Marijuana is classified under federal law as a Schedule I drug under the Controlled Substance Act (1970) (21 U.S.C. § 811) which means the government views it as highly addictive and having no medical value.
  - Doctors may not prescribe marijuana for medical use and may go to prison if they do
  - Gonzales v. Raich (2005), the United States Supreme Court held that the federal government has the constitutional authority to prohibit marijuana for all purposes.
- Until marijuana is no longer classified as a Schedule I drug under the Controlled Substance Act (1970) any medical prescription, use, cultivation, transportation, sale or possession of marijuana is subject to federal prosecution and jail time regardless of state law




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## Federal law

- A federal conviction is subject to minimum sentence times
  - Federal sentencing guidelines take into account not only the amount of cannabis involved in the arrest but also the past convictions of the accused. Not all cannabis convictions require jail time under federal sentencing guidelines, but all are eligible for imprisonment.
  - In 2009, President Obama announced his administration would not seek to arrest or prosecute medical marijuana users and suppliers, as long as they conformed to state laws.
  - On August 29, 2013 the Department of Justice (DOJ) issued a guidance memo to prosecutors concerning marijuana enforcement under the CSA making it clear that prosecuting state legal medical marijuana cases is not a priority.
  - New Presidential Administration can issue "new guidance memo" and reverse prior Administration enforcement directions




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# Federal law implications

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## Federal law implications

- Banks
  - Under the Bank Secrecy Act, banks must report to the federal government any suspected illegal activity which would include any transaction associated with a marijuana business.
  - These reports must be filed even though the business is operating legitimately under state law.
- Financial institutions face significant risk for violating federal law if they offer banking services to marijuana-related businesses. The federal statutory barriers include the Controlled Substance Act, USA Patriot Act, Bank Secrecy Act, Racketeer Influenced and Corrupt Organizations Act and other federal statutes



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## Federal law implications

- Merchants
  - Proceeds from a debit or credit card transaction must be deposited into a bank account for the merchant.
  - The same restrictions that prevent banks from offering other types of accounts for marijuana businesses also apply for processing credit and debit card payments.
    - Once a bank identifies the true nature of the merchant's business as a marijuana business, an account is likely to be turned down or quickly terminated.
  - Result is marijuana businesses generally have no bank accounts
  - Cash in off-site and on-site vaults



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Federal law implications

- Insurers
  - Does insuring a business that sells marijuana constitute a "transaction associated with a marijuana business" under the Bank Secrecy Act?
  - Hazards and insurance issues with all-cash business
  - Reputational risk
    - Insuring a high profile lessor risk only fire claim could cause unwanted scrutiny
- Accountants
  - Only 7 State Board of Accountancies have offered specific guidance, all saying they will not take action if business is run in conformance with state law
  - A CPA providing accounting services to a marijuana business is committing a federal criminal offense
  - IRS requires taxpayers to report all income—legal or illegal
    - IRS does not allow deduction of expenses related to income they obtain through an illegal enterprise
    - What constitutes "income" for business interruption insurance




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Federal law implications

- Physicians
  - CSA prohibits physicians from prescribing marijuana or other Schedule 1 drugs
  - DEA has pursued sanctions against doctors who prescribe marijuana
    - BUT - 2002 9th Circuit decision refused to allow DEA to revoke a physician's license who prescribed marijuana;
      - rejected DEA's argument that recommendation of MM would lead to illegal use; doctor not aiding illegal conduct, as was patient's problem not that of doctor
  - Recently DEA ordered seven Massachusetts doctors to sever ties with marijuana dispensary
- Some physicians concerned about non-legal issues
  - Ethical violations, can be disciplined for violating laws related to controlled substances
  - Medical malpractice insurance may not cover them for prescription of non-FDA approved drugs




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Workers Compensation




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### Workers compensation

- Most WC insurers won't voluntarily pay for medical marijuana because it is illegal under federal law
- MI, MT, OR, & VT specifically prohibit WC insurers from paying for medical marijuana
- BUT New Mexico case: Court ordered employer to pay for employee's medical marijuana; rejected argument that paying for medical marijuana would force employer to violate federal law; court said not true because employer could not point to any federal law that it would be forced to violate




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## Policy and Treaty Exclusions




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### Policy and treaty exclusions

- Most insurers have guidelines that state they won't cover medical marijuana businesses
  - Even so, most companies will cover the "indirect" medical marijuana exposure
  - "Indirect" defined as a business who does work for a company that sales, cultivates, transports, stores marijuana, but such business does not sell, cultivate, transport or store marijuana
    - For example, carrier insures a landlord for a commercial building who has a tenant that is a dispensary
    - Insure a contractor who is doing work for a dispensary and the contractor adds the dispensary as an additional insured




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### Policy and treaty exclusions

- Excluding all liability arising out of marijuana
  - Would exclude the indirect exposure to marijuana
    - Could lose very desirable business
    - Question becomes under Bank Secrecy Act is the insuring and re-insuring of this indirect exposure a "transaction associated with a marijuana business"?
    - Even if yes, will federal government enforce it?



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### Q & A



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### Thank you



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