

# Impact of Legalization of Marijuana

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## Marijuana Legalization: Implications for Property/Casualty Insurance

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**MARIJUANA TODAY**

**Legal Status and Public Opinions**

**C**urrently, marijuana is classified as a "Schedule 1" substance by the Food and Drug Administration (FDA).<sup>2</sup> As a result of its Schedule 1 status, it is illegal to possess or use marijuana under Federal law. Schedule

Abstract: In 2012, two states legalized marijuana for recreational use. An additional 18 states, plus the District of Columbia, had already legalized medical marijuana. Even though marijuana is still illegal at the federal level, President Barack Obama and very clearly that his administration will not seek to enforce the law in states that have decriminalized the green plant legal. Further, a majority of Americans indicate that they do not want federal resources used to arrest and convict marijuana smokers in states that have legalized the substance (Frost, 2012).  
 The legalization of marijuana is now a reality. With its comes interesting implications for the property and casualty industry. This paper presents the current status of marijuana's legality, addresses coverage issues that have been litigated, and analyzes the various standard insurance forms on today's market for coverage implications. Finally, areas for future research are presented. (Key words: insurance, marijuana, legalization)

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 This article is dedicated to the late Dr. Alan Hurligren. Without Alan, I would have never ended up in academia in the first place. I also would like to thank the kind participants at the 2013 Western Risk and Insurance Association annual meeting for their suggestions and

## History of Marijuana Use and Social Acceptability

## Known Benefits of Hemp

- ▶ 1 acre of hemp
  - ▶ As much fiber as 2-3 acres of cotton
  - ▶ Produces as much paper as 3-4 acres of trees
- ▶ Fibers are stronger and softer than cotton
- ▶ Easily and quickly grown
  - ▶ Frost-tolerant
  - ▶ Requires very little water
  - ▶ Grows in all 50 states
  - ▶ Ready to harvest in 120 days

## Known Benefits of Hemp


- ▶ Seeds produce a protein similar to soy protein
  - ▶ Not intoxicating
  - ▶ More nutritious
- ▶ Hemp seed oil can be used to produce non-toxic diesel fuel, paint, varnish, detergent, ink and lubricating oil.
- ▶ Cheap easy source for ethanol production
- ▶ Woody inner core can be used in housing production

## How Long Have We Used It?


- ▶ "...a known medicine in 2000 BC..."
- ▶ "...found a large stash of cultivated cannabis belonging to a shaman of the Gushi people in the Gobi desert, dating from 2700 BC. (CNN, 2008)."

Source: <http://www.slaters-center.com/about-cannabis/about-history/>

## B(H)ANG!



- ▶ Shiva is said to have brought cannabis to India.
- ▶ Shiva is also known as the 'Lord of Bhang'.
- ▶ Bhang is a socially important liquid refreshment made with cannabis, spices, and milk.



## 1700's

- ▶ Farmers in Virginia are **REQUIRED** to grow hemp!
- ▶ Guess who...?
  - ▶ Diaries show he grew hemp for 30 years.
  - ▶ Especially interested in medicinal use of marijuana.
  - ▶ Diary entries also show he grew a marijuana with a high THC content.




## 1799?

- ▶ Brought marijuana from Egypt to France.



## 1840's

- ▶ Victorian times: muscle spasms, rheumatism, convulsions.
  - ▶ Queen Victoria used it for menstrual cramp relief.
- ▶ French doctor found that it
  - ▶ Relieved headaches
  - ▶ Increased appetite
  - ▶ Aided sleep
- ▶ Became accepted in Western medicine




**United States Pharmacopeial**

Official public standards setting authority for all prescription and over-the-counter medicines

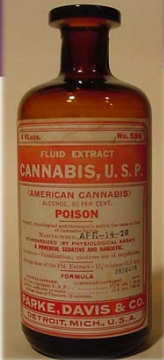
1820-1890

- 1820 The U.S. Pharmacopoeial Convention founded in Washington, DC. All state societies of medicine invited to send delegates—11 attended. USP creates a system of standards, and a national formulary. Only 217 drugs meeting the criteria of "most fully established and best understood" selected. Dr. Lyman Spalding, Dr. Samuel Mitchell and Dr. Jacob Bigelow credited with establishing the United States Pharmacopoeia (USP) compendium.
- 1830 Committee of Revision created (seven members). First revision of the USP published; revisions continue at 10-year intervals. Surgeons General of U.S. Army and Navy become first federal agencies to participate in USP revision.
- 1848 Drug Import Act passed: Federal legislation recognizes the USP as an official compendium.
- 1880 Colleges of pharmacy invited to participate in revision of the USP.



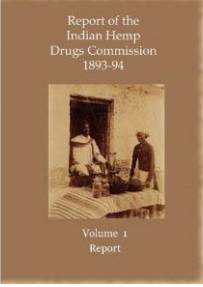
1850

- ▶ Marijuana put in *United States Pharmacopeial*.
- ▶ Treatment for: neuralgia, tetanus, typhus, cholera, rabies, dysentery, alcoholism, opiate addiction, anthrax, leprosy, incontinence, gout, convulsive disorders, tonsillitis, insanity, excessive menstrual bleeding, and uterine bleeding, among others.




1890's

- ▶ Indian Hemp Drugs Commission
  - ▶ "cures dysentery and sunstroke, clears phlegm, quickens digestion, sharpens appetite...freshens the intellect, and gives alertness to the body and gaiety to the mind."



Marijuana  
Illegalization




1925

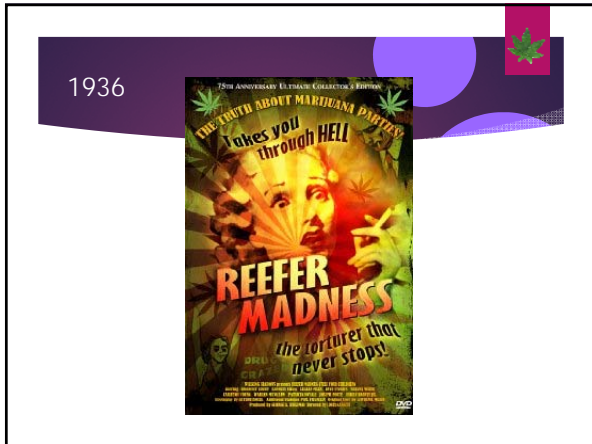
- ▶ Prohibition:
  - ▶ No alcohol
  - ▶ No gambling
- ▶ League of Nations ("Second Opium Conference")
  - ▶ International drug control treaty created because of opium trade
  - ▶ Signs ban on cannabis against anything other than scientific or medical research.



1936

- ▶ Aspirin and other analgesics are supplanting cannabis





1936

- ▶ All states outlawed it for anything other than prescribed medical purposes

1937

- ▶ Cannabis is made illegal in the U.S. via the Marijuana Tax Act
  - ▶ Introduced by Rep. [Robert L. Doughton](#) of [North Carolina](#)
  - ▶ Opposed by the American Medical Association
  - ▶ Who was so anti-Hemp? Speculation suggests....

William Randolph Hearst


PAPER/TIMBER

Dupont Family

NYLON


Andrew Mellon

INVESTED IN DUPONT



1970

- Federal Controlled Substances Act passed.
- Declares cannabis a "Schedule 1" drug:
  - High potential for abuse
  - No recognized medical use
  - Lack of accepted safety
  - Insufficient clinical trials to show benefits outweigh risks
  - Inconsistency in levels of active ingredients from one batch to another




ATTEMPTS TO "RE-LEGALIZE"




Let's Reschedule...

- 1972: Petition submitted to what is now the DEA to reschedule marijuana to Schedule II, enabling legal physician prescription.
  - Court battles ensue for 22 years.
- 1994, US Court of appeals upholds the DEA's decision not to reschedule.
- 1995: Second petition filed to reschedule it.
- 1997: *NEJM* publishes editorial calling for rescheduling.



Our Friends in the High-er Latitudes

- 2003: Canadian HIV-patient Jari Dvorak becomes the first patient to receive government-grown marijuana.
  - In response to an Ontario court order for the Canadian government to make a legal supply of marijuana available to authorized patients.
- How it Works
  - Qualified patients are approved through government health care system (Health Canada)
  - Marijuana is distributed through the patients' physicians.



Today...These States/Jurisdictions Allow Medical Marijuana

- Alaska (1998)
- Arizona (2010)
- California (1996)
- Colorado (2000)
- Connecticut (2012)
- D.C. (2011)
- Delaware (2011)
- Guam (2014)
- Hawaii (2000)
- Illinois (2013)
- Maine (1999)
- Maryland (2014)
- Massachusetts (2012)
- Michigan (2008)
- Minnesota (2014)
- Montana (2004)
- Nevada (2000)
- New Hampshire (2013)
- New Jersey (2010)
- New Mexico (2007)
- New York (2014)
- Oregon (1996)
- Rhode Island (2006)
- Vermont (2007)
- Washington (1998)



Source: <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>

**Summary Chart: 23 states and DC have enacted laws to legalize medical marijuana**

State	Year Passed	How Passed (Yes/No)	Fee	Possession Limit	Accepts other states' registry numbers?
1. Alaska	1998	Ballot Measure 9 (59%)	\$25-\$20	1 oz usable; 6 plants (3 mature, 3 immature)	No
2. Arizona	2010	Proposition 203 (58.13%)	\$150/\$75	2.5 oz usable; 6-12 plants	Yes
3. California	1996	Proposition 215 (54%)	\$60/\$33	8 oz usable; 6 mature or 12 immature plants	No
4. Colorado	2000	Ballot Amendment 20 (54%)	\$15	2 oz usable; 6 plants (3 mature, 3 immature)	No
5. Connecticut	2012	House Bill 5389 (96.91%) House: 21-13 Senate:	\$100	One-month supply (exact amount to be determined)	No
6. DC	2010	Amendment A01818-022 (75.8 vote)	\$100/\$25	2 oz dried; limits on other forms to be determined	No
7. Delaware	2011	Senate Bill 17 (27.14%) House: 17-4 Senate:	\$125	5 oz usable	No
8. Hawaii	2000	Senate Bill 862 (35.18%) House: 13-12 Senate:	\$25	3 oz usable; 7 plants (3 mature, 4 immature)	No
9. Illinois	2013	House Bill 1413-07 House: 36-23 Senate:	TBD	2.0 ounces of usable cannabis during a period of 14 days	No
10. Maine	1999	Ballot Question 2 (81%)	No fee	2.5 oz usable; 6 plants	Yes
11. Maryland	2014	House Bill 881 (125.11%) House: 48-2 Senate:	TBD	30-day supply; amount to be determined	No
12. Massachusetts	2012	Ballot Question 3 (83%)	\$50	60-day supply for personal medical use	Unknown
13. Michigan	2008	Proposal 1 (67%)	\$100/\$25	2.5 oz usable; 12 plants	Yes
14. Minnesota	2014	Senate Bill 2479 (66.18%) Senate: 19-40 House:	\$200/\$50	30-day supply of non-smokable marijuana	No
15. Montana	2004	Initiative 148 (62%)	\$75	1 oz usable; 4 plants (mature); 12 seedlings	No

Source: <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>

**I. States with Legislation or Ballot Measures to Legalize Medical Marijuana**

**9 Pending Legislation in 2015**

- Florida
- Georgia
- Missouri
- Nebraska
- North Carolina
- Pennsylvania
- South Carolina
- Tennessee
- Texas

**7 Failed Legislation in 2015**

- Indiana
- Kansas
- Kentucky
- Mississippi
- North Dakota
- Utah
- West Virginia

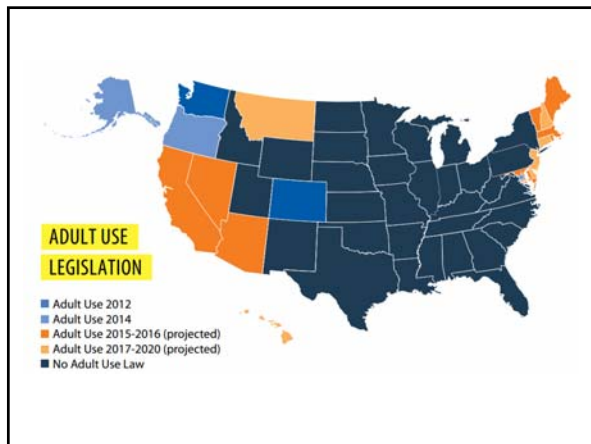
<http://medicalmarijuana.procon.org/view.resource.php?resourceID=002481>



**States Predicted to Legalize Adult Use Within 5 Years**

- Rhode Island
- New Hampshire
- Vermont
- Maryland
- Hawaii
- Maine
- Missouri
- Massachusetts
- Nevada
- Arizona
- California
- Delaware

Source: "The State of Legal Marijuana Markets, 2nd Edition," published by ArcView.

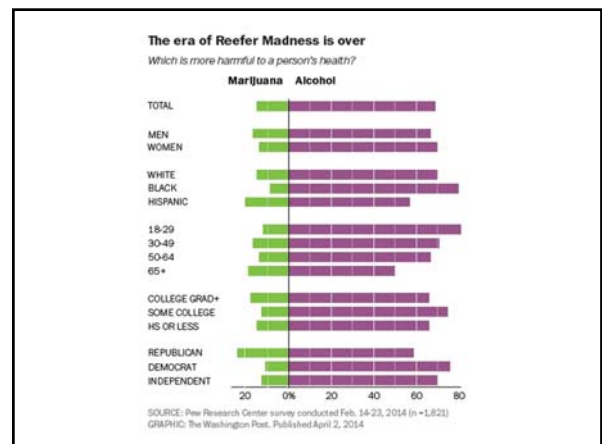
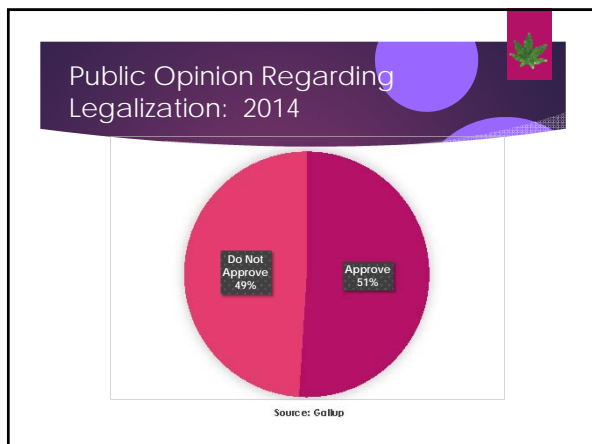
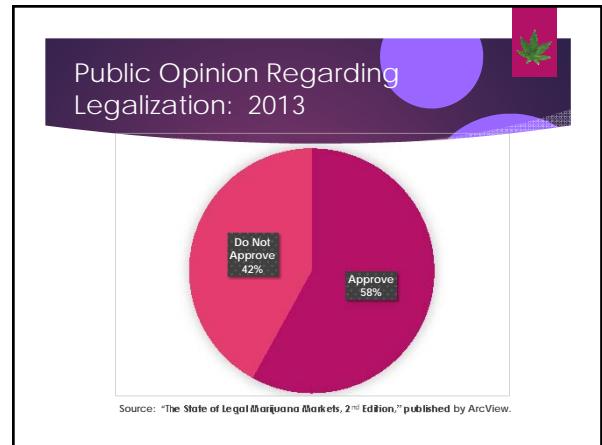
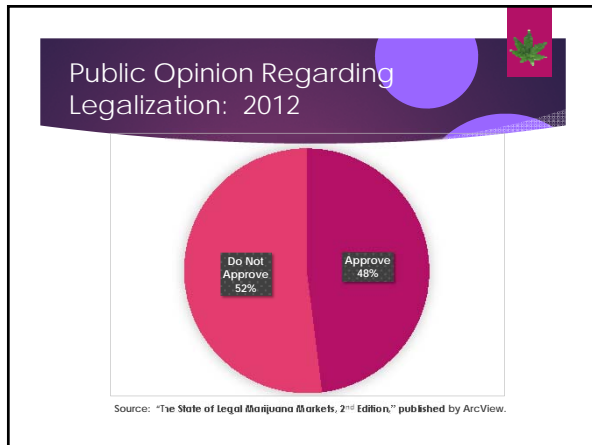
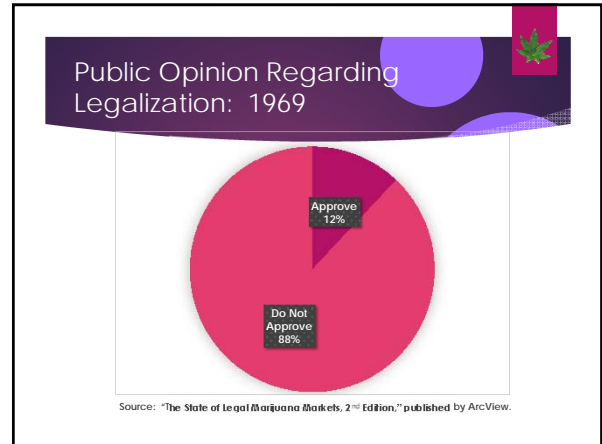
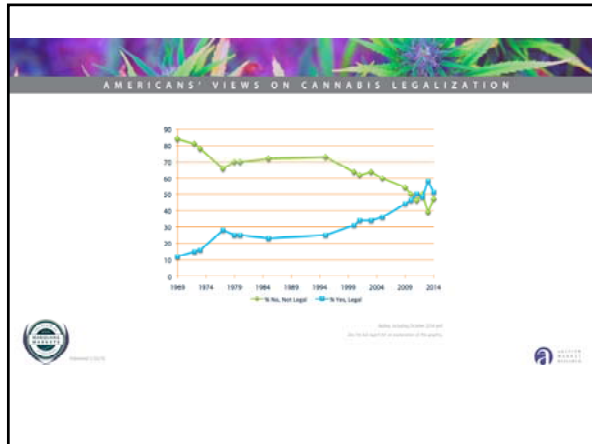


**LANDMARK REPORT ON MARIJUANA REGULATION ISSUED TO VERMONT LEGISLATORS; STATE WILL CONSIDER ENDING PROHIBITION IN 2015**

On January 16, 2015, researchers from the Rand Corporation presented legislators with an in-depth report on marijuana legalization and regulation options in Vermont. The report, which was authorized by the legislature in 2014, revealed that approximately 80,000 Vermonters are regular marijuana users, and that they spend between \$125 million and \$225 million each year buying cannabis from the illicit market. The researchers estimated that Vermont could reap between \$20 million and \$75 million per year in taxes if it decides to regulate.

Following the release of the report, Gov. Peter Shumlin said he favors legalization and wants Vermont to move forward in a responsible fashion. Additionally, Commissioner of Public Safety Keith Flynn has said he supports taking "a hard look" at the idea, and Health Commissioner Harry Chen has said he is "open" to the issue. Attorney General William Sorrell and many legislators have gone further by saying they support regulating marijuana similarly to alcohol. Clearly, there are many reasons to be optimistic about the prospects for ending marijuana prohibition in Vermont.

The case for regulating and taxing marijuana in Vermont was bolstered in May 2014, when a poll commissioned by MPP and conducted by the Castleton Polling Institute found 57% support for the idea. Only 34% of Vermonters said they were opposed.



### A Favorable International Climate

- ▶ 2011: Canadian judge required auto insurer to pay for greenhouse, soil and plants for man injured in car accident



(Source: Jones, 2011)


### Federal Climate: 2009

- ▶ Obama Administration instructs Federal prosecutors not to target medical marijuana dispensaries/users in compliance with their respective state laws

(Source: Barrett, 2009)

### 2014: Illegal at Federal Level, but...

### 2014: Illegal at Federal Level, but...

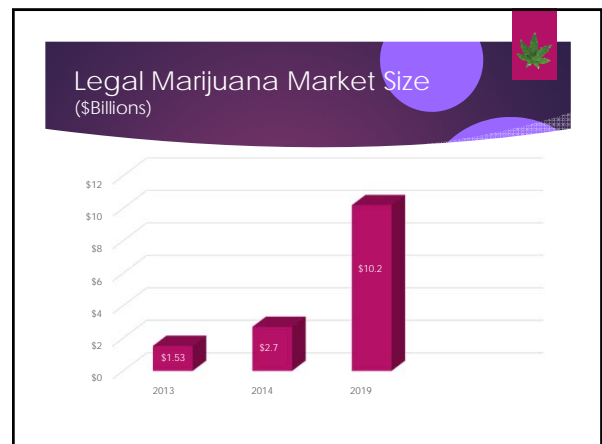


"It would not make sense for us to see a top priority as going after recreational users in states that have determined that it's legal..."  
-President Barack Obama

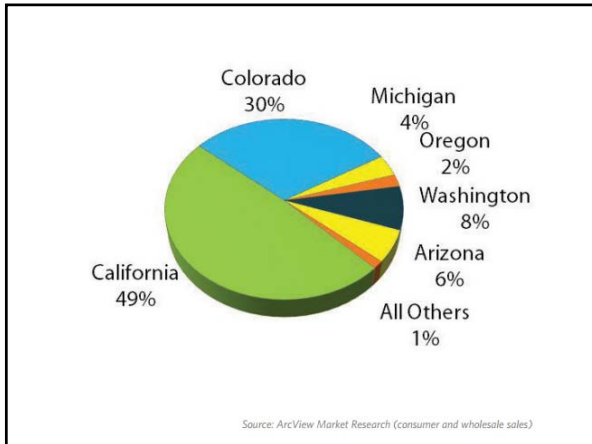
### What Happens Now?



Colorado saw retail prices drop 30% over two years.







- ### Problems for P&C Insurers
- ▶ We know how many people smoke cigarettes and drink alcohol...but....
    - ▶ No way to accurately underwrite marijuana exposure
  - ▶ Potentially high concentrations of value in any one structure.
  - ▶ Potential liability exposure for an insured who makes marijuana available to a third party
  - ▶ Workers Compensation coverage issues

- ### Problems for Life & Health Insurers
- ▶ Limited research has been done to know and understand health effects of ongoing use, thus...
    - ▶ How do we underwrite that risk?
  - ▶ In states where medical marijuana is legal, should health plans pay for it?

- ### Medical Marijuana Insurance
- ▶ Handled through excess & surplus lines markets
  - ▶ Available Coverages Include:
    - ▶ Theft coverage (for valuable crops and harvested products)
    - ▶ Workers compensation coverage (for employees of the facilities)
    - ▶ Auto liability (for employees who deliver marijuana to customers)
    - ▶ Professional liability (for doctors that prescribe it)
    - ▶ Product liability (for producers and growers)
    - ▶ Electronic data (for dispensaries if client database is breached or stolen)
- Source: Geniceros (2010)

## Example Policy Analysis: Homeowner Policies



## HO Section I: Property Coverage

- ▶ No explicit exclusion for loss of contraband, including marijuana.
- ▶ But, the courts would not make insurers pay for something against public policy, right?
- ▶ Conflict between state and federal law:
  - ▶ If it's legal at the state level and illegal at the Federal level, is it against public policy?
  - ▶ Insurance exempts itself from federal oversight
    - ▶ One could argue that state law should also prevail in these cases.

## Provisions for Harvested Marijuana


- ▶ Business Personal Property limitation of \$1,500 off premises and \$2,500 on premises
  - ▶ Would apply to marijuana if kept for business purposes
- ▶ Appears to be no other limitation on recreational or medicinal supplies of marijuana

## Provisions for Live Marijuana Plants

- ▶ Additional coverages for trees/shrubs/plants limit coverage to selected perils, up to 5% of limit of liability, but no more than \$500 per tree or plant.
  - ▶ Specific exclusion for items grown for "business purposes."
  - ▶ So, it seems:
    - ▶ No coverage whatsoever for business plants
    - ▶ Limit of \$500 per plant for recreational or medicinal plants, but only where legal


## Barnett v. State Farm

- ▶ In 2007, a California man had marijuana plants confiscated and destroyed by police officers.
- ▶ He filed a claim with State Farm
  - ▶ Theft of the \$98,000 worth of plants
  - ▶ Plants were prescribed by a physician
- ▶ The carrier denied the claim—denial was upheld on appeal.
- ▶ WHY???



## Medical Marijuana Coverage Challenge

- ▶ Claim denial was based on the fact that the police seizure by did not meet the definition of "theft"
  - ▶ There was no criminal intent behind the seizure (Murphy, 2011)



## Tracy v. USAA

- ▶ Hawaii resident asked her homeowner's carrier to pay over \$45,000 for 12 marijuana plants.
  - ▶ Initially, USAA offered to settle with her for approximately \$8,800.
  - ▶ Tracy demanded more money, plus bad faith damages.
- ▶ USAA asserted there was no valid insurable interest in the plants, because of Haw. Rev. Stat. § 431:10E-101, which states:
  - ▶ *"No contract of insurance on property or of any interest therein or arising therefrom shall be enforceable... except for the benefit of persons having an insurable interest... Insurable interest means any lawful and substantial economic interest..."*
  - ▶ USAA argued that because the plants were illegal under Federal law, to cover marijuana would be against public policy.
- ▶ The court agreed with USAA. Tracy's claim was denied entirely.

## Section II: Liability Coverage

- ▶ Business pursuits exclusion
  - ▶ Bodily injury" or "property damage" arising out of the use, sale, manufacture, delivery, transfer or possession by any person of ... marijuana and all narcotic drugs.
  - ▶ However, *this exclusion does not apply to the legitimate use of prescription drugs by a person following the lawful orders of a licensed health care professional."*

## Section II: Insurer Responsibilities

- ▶ No responsibility to cover any liability for damages caused out of the homeowner's recreational possession or use of marijuana, whether it is legal or illegal in the state.
- ▶ Possible (?) responsibility to cover liability arising out of the use of medical marijuana in a state where medical marijuana is legal.

## Conclusions and Trends for Homeowners

- ▶ As states legalize marijuana
  - ▶ Claims adjusters will see more claims and challenges in this arena
  - ▶ ISO standard forms need modification to preclude coverage for marijuana supplies, stock, and growing crops
  - ▶ The personal and commercial lines underwriting processes need refinement to evaluate the exposure to loss

## Workplace Issues



## Issues

- ▶ Because of its Schedule 1 Classification:
  - ▶ There is virtually no research on side effects and long-term use effects, and thus...
  - ▶ No established medical guidelines
  - ▶ No quality control or grading standards in place


## Potential Side-Effects

- ▶ Respiratory damage/cancer
- ▶ Memory loss
- ▶ Impaired judgment
- ▶ Inability to focus
- ▶ Loss of coordination
- ▶ Loss of balance
- ▶ Depression
- ▶ Anxiety
- ▶ Decreased motivation



## Employer Concerns

- ▶ Must we provide medical marijuana as a w.c. benefit?
- ▶ Workers are asking for it more frequently
- ▶ Absence of a National Drug Code (NDC) makes reimbursement a problem



## National Drug Code Directory

Search Results: Proprietary Name = "Victoza"

Sort by: Proprietary Name

1-5

**Victoza | 0189-4060-12**

- Product NDC: 0189-4060
- Proprietary Name: Victoza
- Non-Proprietary Name: Saxagliptin (C20A) injection
- Product Type Name: HUMAN PRESCRIPTION DRUG
- Market Category Name: NDA
- Application Number: NDA022241
- Route Name: SUBCUTANEOUS
- Substance Name: LIRAGLUTIDE
- Package Description: 2.519MG/ML PLASTIC IN 1 CARTON (0189-4060-12) - 3 mL IN 1 SYRINGE, PLASTIC
- Pharm Class: N/A
- CDER ID: N/A
- Labeler Name: Novo Nordisk
- Start Date: 01-25-2010 / End date: N/A

## Employer Concerns

- ▶ Is marijuana addictive or harmful to employees?
  - ▶ Possible liability for future rehab treatments
  - ▶ Delays in return to work
- ▶ Many patients experience lingering side effects which may impact performance of regular work duties
  - ▶ 1991 Study: showed that performance of aircraft pilots was impaired 24 hours after consumption of marijuana
- ▶ Impossible through urine testing to quantify how much is being used, therefore it is:
  - ▶ Impossible to set a "safe" or "acceptable" level of consumption
  - ▶ Impossible to determine if employee is "intoxicated"

## Today

- ▶ No states
  - ▶ Allow employees to use in the workplace
  - ▶ Require employers to allow its use on the job.
- ▶ An employee who can legally use medical marijuana while off duty may still face consequences (i.e., termination) for arriving at work with detectable amounts of marijuana in his/her system
  - ▶ Rulings in California, Michigan, Oregon and Washington upheld the firing of medical marijuana users who test positive.
  - ▶ Some states have introduced legislation preventing employee termination for off duty medical marijuana use

## New Mexico (2014)



- ▶ August: Court ruled that worker's compensation insurance policies in the state must cover medical marijuana
- ▶ *Vialpando v. Ben's Automotive Services and Redwood Fire & Casualty*

## Colorado

- ▶ *Coats v. Dish Network LLC*
- ▶ Coats, an injured worker, was fired for using medical marijuana off duty.
  - ▶ Colorado Court of Appeals Upheld
  - ▶ Colorado Supreme Court has agreed to hear the case.

## Americans with Disabilities Act

- ▶ "Must make reasonable accommodation..."
- ▶ Worker must still be able to do the job
  - ▶ We would not let a crane operator work under the influence of oxycontin, but...
  - ▶ ...what about a retail sales clerk?
  - ▶ ...what about a computer programmer?
- ▶ If marijuana is reclassified as Schedule 2, will we have to accommodate workers who are prescribed marijuana?

## Conclusions and Trends for the Workplace


- ▶ As states legalize medical marijuana:
  - ▶ Employers will see more claims and challenges in this arena
  - ▶ States need to prepare for these claims in advance, determining whether or not marijuana is required to be covered
- ▶ Clarification on how the ADA impacts coverage for marijuana is sorely needed.

## One Final Note...

**Who is ready to feel REALLY old????**

## This is Cheech and Chong... today.

## This is Cheech and Chong... today.



Questions?

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