



# Medical Marijuana in Workers' Compensation



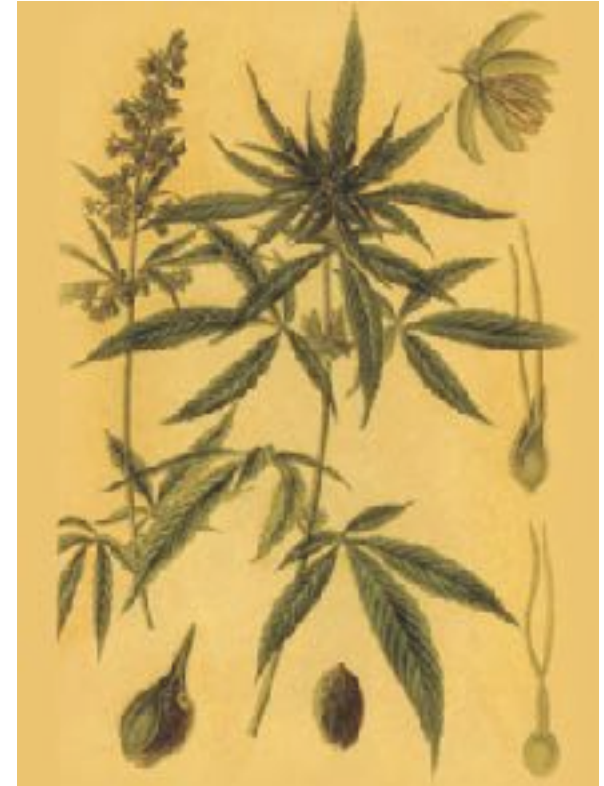
# Agenda

In this session, we will...

- Discuss potential medicinal benefits of marijuana
- Learn the U.S. states that have legalized marijuana for medical use and those considering it.
- Understand the status of medical marijuana in workers' compensation
- Discuss current legislation at Federal Level, and whether classification of marijuana might change in the future



- **Number of slang terms**
  - Weed, pot, grass, etc.
- **Cannabis sativa** – From green mixture of dried, shredded leaves and flowers
  - Hemp plant
- **Over 100 different cannabinoids**
  - THC, most common and most psychoactive
  - Cannabidiol and Cannabinol also prevalent forms

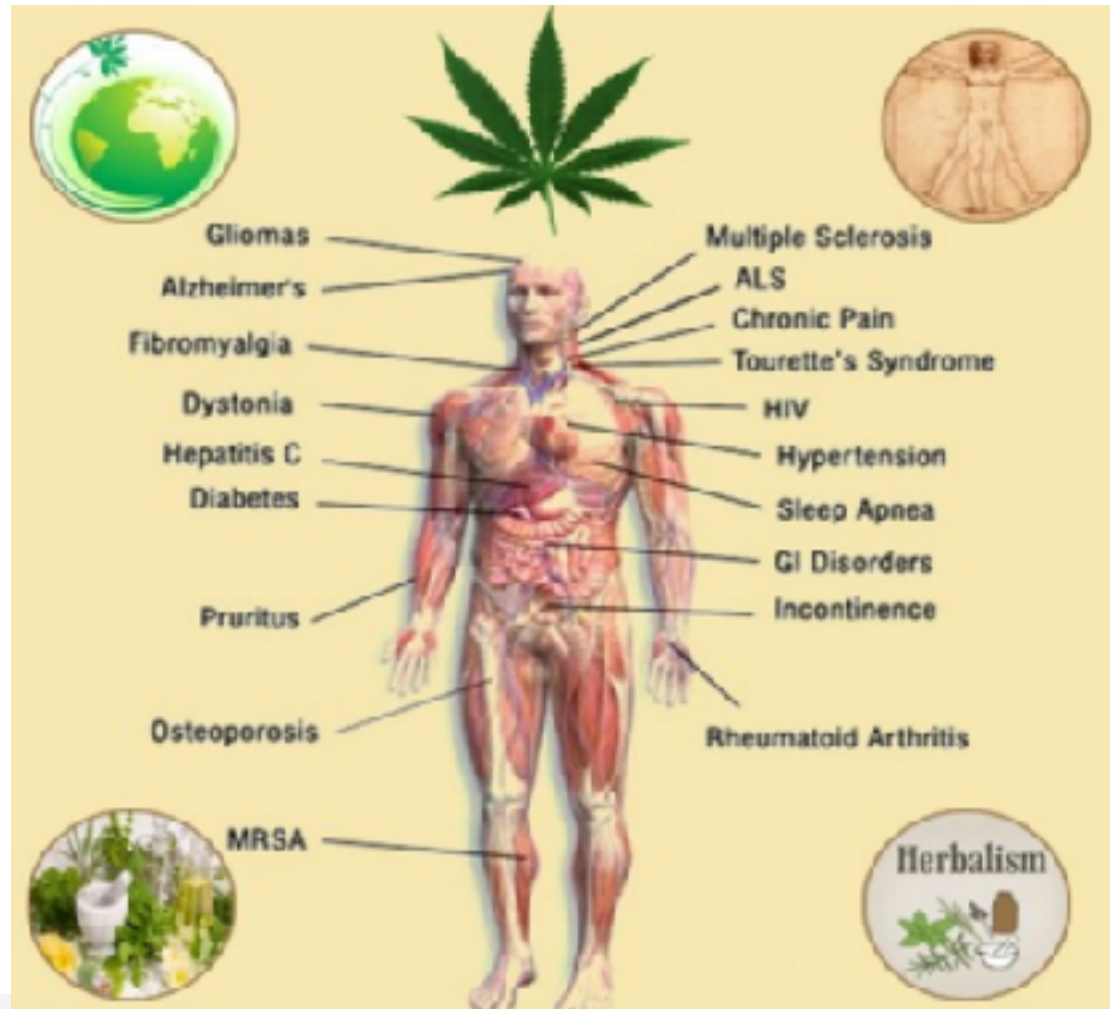


- Current literature documents various medical uses (below)
- Delivery: Inhalation (smoked, vaporized) or oral ingestion (pill form or edible version can be added to foods)



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



- **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





- Since 1999, overdose deaths in the U.S. involving opioids (prescription painkillers and heroin) have quadrupled
- Opioid abuse totals over \$72 billion in medical costs alone each year in the U.S.
- Many legal medical experts believe that medical marijuana could play a critical role in combating the opioid epidemic
  - Epidemic kills 80 Americans every day
  - Marijuana enhances pain relief of opioids; working together, the effect is more powerful
- In 2014, *JAMA* published a study – states with medical marijuana laws experienced a nearly 25% drop in deaths from opioid overdoses compared to states that did not have those laws
- In 2015, *JAMA* published an analysis of 79 studies – 30% or greater reduction in pain from cannabinoids compared to placebo





- Patients turning down opioids like oxycodone in favor of medical marijuana; anecdotally, it's working well
- James Feeney, a surgeon, is conducting a trial at St. Francis Hospital & Medical Center in Hartford, CT
  - Self-funded study, comparing opioids and medical marijuana for treating acute pain
  - Medical marijuana has the advantage of being much less dangerous and addictive than opioids
- Avoid opioids side effects, including dizziness, constipation, sexual dysfunction and breathing problems
- Many studies show correlation between states legalizing medical marijuana and a drop in painkiller prescriptions, opioid use, and deaths from opioid overdoses







## Side effects of Oxycodone

Red color - more serious effect



**Central:**

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

**Mouth, tongue or lips:**

- Swelling
- Dryness

**Eyes:**

- Swelling
- Smaller pupil
- Redness

**Face:**

- Swelling

**Throat:**

- Hoarseness
- Swelling
- Difficulty swallowing

**Heart:**

- Fast or slow heartbeat

**Skin:**

- Hives
- Rash
- Flushing
- Sweating
- Itching

**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

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

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

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

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# Review Legal Status of Medical Marijuana in United States



## Controlled Substances Act (CSA) of 1970

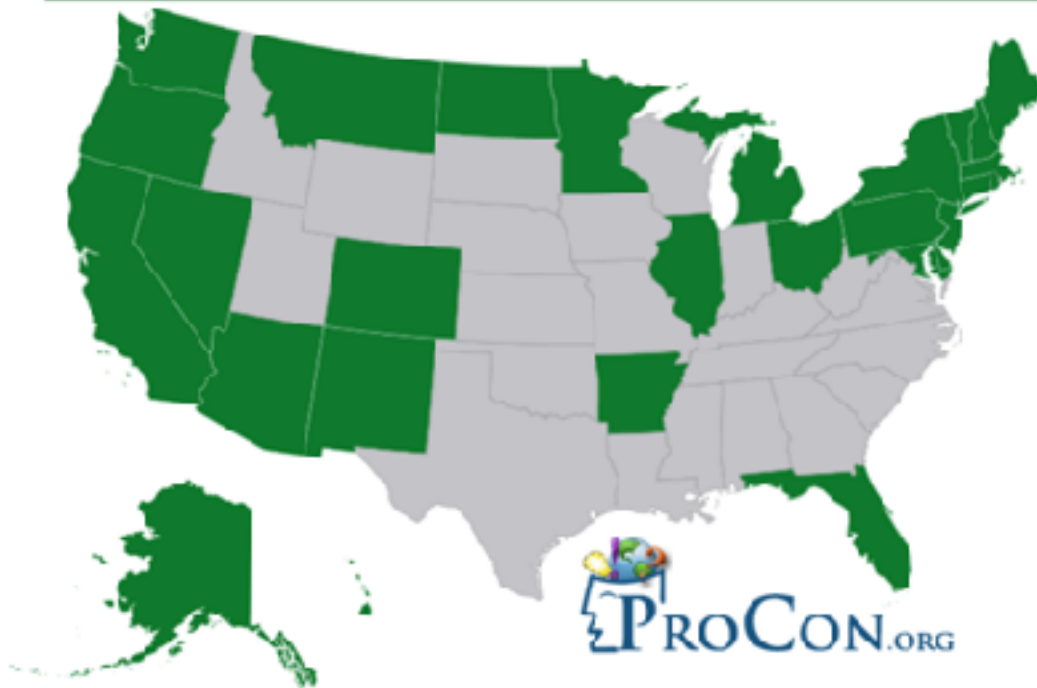
- Categorizes marijuana as Schedule I substance, with a high potential for abuse and no legitimate therapeutic uses
- Cultivation and distribution (which includes gifts as well as sales) are felonies
- Possession for personal use is a misdemeanor
- Use is not itself a crime, but there is no way to use 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



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### 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



# Medical Marijuana in WC



- **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



- **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





- **Defining “reasonable and necessary” treatment is an enduring challenge**
  - Determinations of “necessary” care rely on medical evidence, as encapsulated in clinical guidelines
  - Determinations rarely straightforward, given the complexity of individual cases
  - Evidence based medicine – consider that there are currently no WC treatment guidelines that support marijuana recommendations
- **In many states, medical marijuana recommended but not prescribed by doctor**
  - Treatment guidelines – will claimants find increased support in states?



- **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



- **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



- **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



- **Employers are in a difficult position, trying to accommodate state laws, while enforcing polices 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



### 1. U.S. Dept. of Transportation (DOT) regulations, marijuana use unacceptable for safety-sensitive employee subject to drug testing, including

- Pilots
- Bus and truck drivers
- Locomotive engineers
- Subway operators
- Aircraft maintenance personnel
- Transit fire-armed security personnel
- Ship captains



### **2. 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

# Reclassification: Is it Possible?



# 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



- 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



- 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





- 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





# Summary of Key Takeaways



- 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



# THANK YOU



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