



## THE LEGALIZATION OF MARIJUANA AND ITS IMPACT ON WORKERS COMPENSATION

2019 Oregon Workers Compensation Educational Conference  
October 17, 2019

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### Cannabis/Marijuana

Cannabis

- Main ingredient—THC
- Strongest preparation—hash oil
  - THC content—15-30%
- Second strongest preparation—hash
  - THC content 10-20%
- Lowest THC level—marijuana
  - THC content—1-20%

University of Washington, Alcohol & Drug Abuse Institute

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### Cannabidiol (CBD)

Hemp Extracts—CBD


- No psychotropic effects by itself
- Medical marijuana
  - Leni's Law, Carly's Law, Alison Neustrom Act, Clara Madeline Gilliam Act, Harper Grace's Law
  - Variety of forms




Oil




Pill



Nasal Spray



Dried Leaves

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### Statutory Treatment

Medical marijuana statutory treatments:

- Amyotrophic lateral sclerosis (ALS)
- Anorexia due to HIV/AIDS
- Chronic pain
- Chron's disease
- Epilepsy seizures
- Glaucoma (American Academy of Ophthalmology does not recommend)
- Nausea, vomiting, or sever wasting associated with cancer
- Terminal illness
- Tourette's Syndrome

Source: Mayo Clinic, Mayo Foundation for Medical Education and Research

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### State Enforcement Agencies

- AK: Alcohol & Marijuana Control Office
- CA: Bureau of Medical Cannabis Regulation/Marijuana Control
- CO: Department of Revenue, Marijuana Enforcement
- ME: Department of Agriculture, Conservation and Forestry
- MA: Cannabis Control Commission
- NV: Department of Taxation
- OR: Oregon Liquor Control Commission (recreational) and Oregon Health Authority (medical)

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### A Look at Earlier Court Cases

- Colorado Supreme Court
  - *Coats v. Dish Network*
- New Mexico Court of Appeals
  - *Vialpando v. Ben's Automotive Services*
- *Nebraska and Oklahoma v. Colorado*

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### Colorado Supreme Court

Coats v. Dish Network (2015)



Employers can lawfully **terminate** workers for using marijuana outside of work hours **even though** the **drug** is **LEGAL** in the state.

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### New Mexico Court of Appeals

Vialpando v. Ben's Automotive Services and Redwood Fire & Casualty (2014)

- An insurer **MUST** **reimburse** a "qualified" workers comp claimant for the **cost of medical marijuana** to treat low back pain
- Appealed** to NM Supreme Court: Certiorari **denied**



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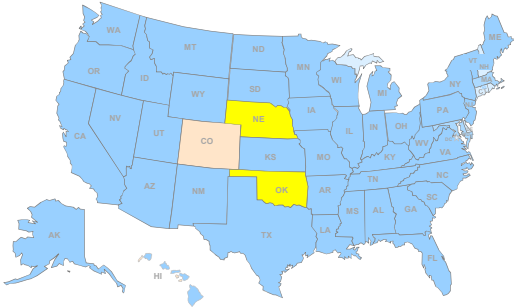
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### Supreme Court of the United States

Nebraska and Oklahoma v. Colorado



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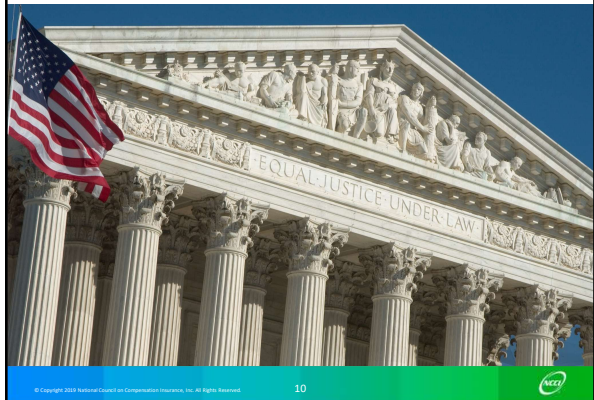
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## Recent Cases



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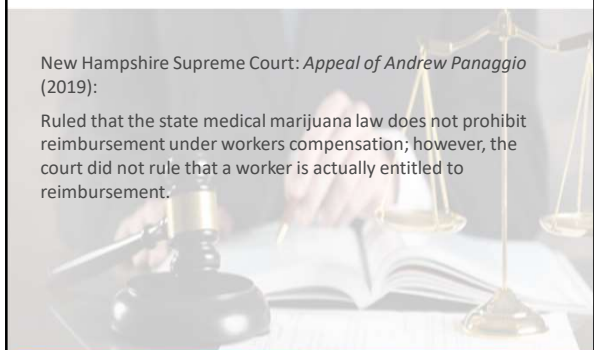
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## NH Supreme Court

New Hampshire Supreme Court: *Appeal of Andrew Panaggio* (2019):

Ruled that the state medical marijuana law does not prohibit reimbursement under workers compensation; however, the court did not rule that a worker is actually entitled to reimbursement.



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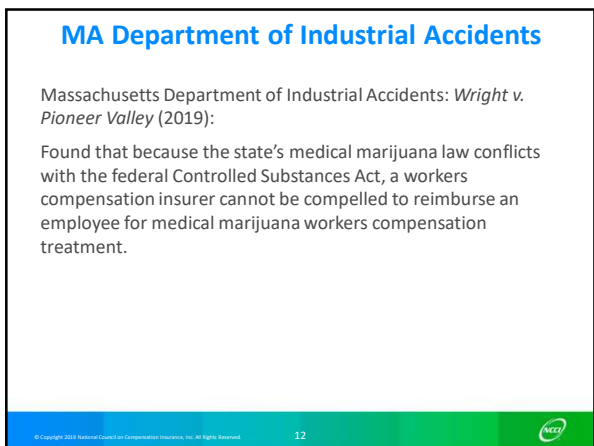
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## MA Department of Industrial Accidents

Massachusetts Department of Industrial Accidents: *Wright v. Pioneer Valley* (2019):

Found that because the state's medical marijuana law conflicts with the federal Controlled Substances Act, a workers compensation insurer cannot be compelled to reimburse an employee for medical marijuana workers compensation treatment.



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### Legalization of Marijuana—State Activity

States that passed marijuana-related legislation in 2019:

- Illinois—Legalized recreational marijuana (HB 1438)
- Nevada—Prohibits an employer from denying employment because a prospective employee tests positive for marijuana in a preemployment drug screening test (AB 132)
- Rhode Island—Provides that the state medical marijuana law does not require workers compensation reimbursement for cost of medical marijuana (HB 5151)
- Utah—Allows certain insurers to issue workers compensation coverage to an employer located in the state that is a cannabis production establishment or a medical cannabis pharmacy (SB 161)



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### Legalization of Marijuana—State Activity

- Hawaii  
HB 1534/SB 1523—Makes medical cannabis reimbursable via the workers compensation system in certain circumstances for patients registered with the department of health's medical cannabis program. (Did not pass.)
- Illinois  
HB 1438—Provides that it is lawful for persons 21 or older to possess, use, and purchase limited amounts of cannabis for personal use. (Enacted.)
- Kansas  
HB 2303/SB 195—States that the purpose of the Kansas Safe Access Act is to, in part, "recognize that workers compensation should cover medical cannabis as it would all other medications." (Did not pass.)



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### Legalization of Marijuana—State Activity

- Kentucky  
HB 136/SB 170—A workers compensation carrier or self-funded employer providing workers compensation benefits is not required to reimburse a person for costs associated with the medicinal use of marijuana. (Did not pass.)
- Maine  
LD 942—Requires an employer to reimburse an employee eligible for workers compensation benefits for the costs of obtaining a medical marijuana certificate and the costs of medical marijuana. (Did not pass.)
- Maryland  
SB 854—Includes medical cannabis in the medicine that an employer or its insurer is required to provide to a covered employee under certain circumstances. (Did not pass.)

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## Legalization of Marijuana—State Activity

### ■ New Jersey

- A 4097—Provides that nothing in current law precludes any employer or workers compensation insurer from reimbursing a person for costs associated with the medical use of marijuana. (Pending.)

- A 4505—Provides that personal injury protection automobile insurance benefits and workers compensation benefits must include coverage for costs associated with the medical use of marijuana, provided that the insured or the employee is a qualifying patient authorized for medical marijuana pursuant to the Compassionate Use Medical Marijuana Act, and at least one other medication or treatment has been attempted and found to be unsuccessful in treating the debilitating medical condition that qualified the patient for the medical use of marijuana. (Pending.)



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## Legalization of Marijuana—State Activity

### ■ New York

- A 2824/S 2054—In part, deems medical marijuana a “prescription drug,” “covered drug,” or “healthcare service” as necessary to authorize coverage under workers compensation and clarifies that it may be covered as a prescription drug under commercial insurance coverage. (Pending.)

### ■ Oklahoma

- HB 1124—Provides that a compensable injury does not include an accident caused by the use of marijuana without possession of a state-issued medical marijuana license, or testing positive within 24 hours of being injured or reporting an injury without possession of a state-issued medical license. (Did not pass.)
- SB 305—In part, prohibits an employer from penalizing an applicant or employee on the basis of a positive test for marijuana use unless that person is not a medical marijuana license holder, the person is under the influence while at the place of employment, or the position is safety-sensitive. (Did not pass.)

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## Legalization of Marijuana—State Activity

### ■ Rhode Island

- HB 5151 Substitute A—Provides that nothing in the state medical marijuana law shall be construed to require a workers compensation insurer, workers compensation group self-insurer, or employer self-insured for workers compensation to reimburse a person for costs associated with the medical use of marijuana. This bill states that an employer may not refuse to employ, or otherwise penalize, a person solely for their status as a medical marijuana cardholder, with certain exceptions. (Enacted.)

### ■ Utah

- SB 161—Allows certain insurers to issue workers compensation insurance coverage to an employer located in the state that is a cannabis production establishment or a medical cannabis pharmacy. (Enacted.)

### ■ Vermont

- HB 14—Extends benefit payments in workers compensation insurance claims to the prescription of medical marijuana. (Did not pass.)

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### Federal Activity

- Federal level—Marijuana is an illegal Schedule I drug under the Controlled Substances Act
- August 2016—The US Drug Enforcement Administration announced it will not reclassify marijuana
- January 2018—The US Department of Justice rescinded the former Administration's policy guidance regarding federal intervention in states that have legalized marijuana
- March 2018—The passed budget includes the Rohrabacher–Blumenauer (Farr) Amendment, prohibiting federal funds from interfering with the implementation of state medical marijuana laws

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### Federal Marijuana Activity

- Classification of marijuana under the Controlled Substances Act (Schedule 1)
- Key issue: inconsistency between state law and federal law
- Federal legislative approaches include:
  - De-schedule
  - States rights approach
  - Allow research
  - Financial services safe harbor
- Congressional activities:
  - House and Senate hearings
  - House passage of H.R. 1595—SAFE Banking Act



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### Legalization of Marijuana—Summary



States are increasingly legalizing marijuana in some form for medical use.

Courts are increasingly dealing with contested cases of medical marijuana in the work environment.

Inconsistent regulation on federal state levels continues to pose challenges.

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### Questions Raised by WC Stakeholders

- Is marijuana a safer alternative to opioids for pain management? Is it a less expensive alternative to other drugs?
- When a state legalizes marijuana, what is the potential impact on neighboring states?
- Should states like New Mexico consider fee schedules for marijuana?
- How are appropriate dosage levels determined?
- What is the impact on Medicare Set-Aside Allocations since marijuana is still illegal under federal law?

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### Questions Raised by WC Stakeholders

- What is the impact on workers compensation when an employee is injured on the job while under the influence of marijuana?
- How do employers handle issues like administering a drug-free workplace policy and establishing hiring practices when employees are legally using marijuana under state law?
- Can employees use medical marijuana to treat a workplace injury?
- How is "impairment" determined for marijuana?

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### NCCI Resources

The screenshot displays the NCCI website interface. At the top, a navigation bar includes links for 'About Us', 'Careers', 'Contact Us', 'Learning Center', 'Log In', and 'My Profile'. A search bar is located on the right. Below the navigation bar, a main content area features a large banner for 'FORUMS 2019' with a 'REGISTER NOW!' button. To the right of the banner are several interactive buttons: 'Gain State Insight', 'View Legislative Activity', 'View PEO Information', 'Look Up a Class Code or Rate', 'Access Circulars', and 'Access Manuals'. Below the main content area, there are four distinct sections: 'TOOLS' (listing various reports and tools), 'REGULATORY & LEGISLATIVE ACTIVITIES' (listing legislative updates and federal issues), 'PUBLICATIONS / REPORTS', and 'LEARNING CENTER' (listing webinars and presentations). A red arrow points to the 'Insights' tab in the top navigation bar.

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## Legislative Resources

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## Regulatory and Legislative Trends Report

Available on [ncci.com](http://ncci.com).

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## THE MARIJUANA CONVERSATION

A five-part series exploring marijuana's impact on the workers compensation system.

Find it on [ncci.com](http://ncci.com).

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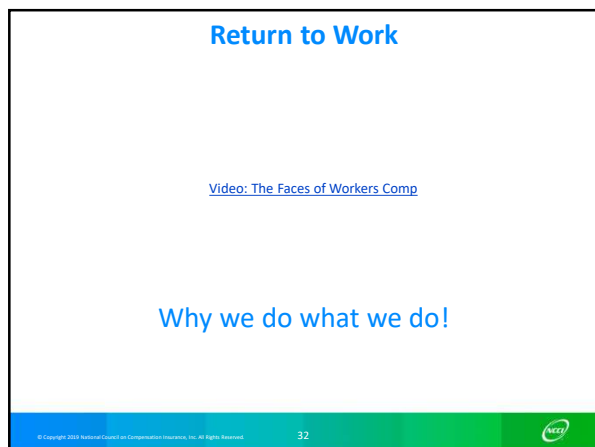
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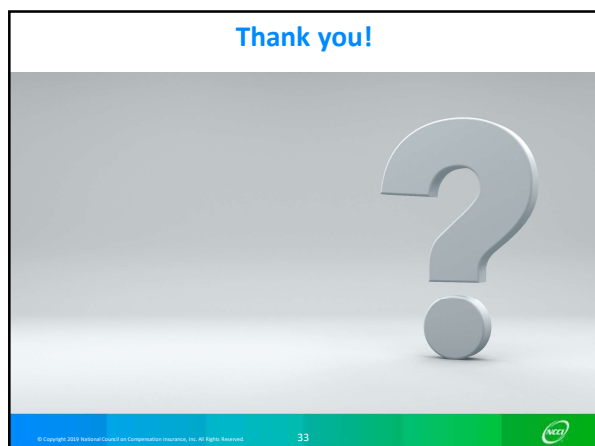
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