Legalized Marijuana – How Deeply Will The Insurance Industry Inhale?
LEGALIZED MARIJUANA: WILL THE PL INSURANCE INDUSTRY INHALE?

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Usage/Acceptance

• U.S. is largest per capita marijuana consumer (WHO)
• 3.6 million Americans daily or near daily users (2009)
• Gallop poll (late 2013)
  – 58% of Americans think cannabis should be legal, the first majority to express that sentiment
  – Up from only 12% in 1969
Drug Crime

- Marijuana arrests still comprise almost \( \frac{1}{2} \) of all drug arrests reported in the U.S.
The “Green Rush”

• Legal Cannabis Market valued at $1.53 billion (summer 2014)
• Projected to grow 68% to $2.57 billion by end of 2014
• Five-year national market potential is $10.2 billion
Marijuana sales continue to climb

Total sales of recreational and medical marijuana in Colorado, in millions of dollars, Jan. - August 2014

RECREATIONAL
$34.1 mil.

MEDICAL
$33.4 mil.

Source: CO Dept. of Revenue
Where is Big Pharma in the Green Rush?

- Controlled Substances Act
- Patent Issues
- Competition with Existing Drugs
- Partnership for a Drug Free America
What Are The Risks of Usage?

• Perceived lower risk of Cannabis use in the U.S. has led to increase in use
• What is The Current Evidence of Risk?
  – Data is Conflicting
Colorado Traffic Fatalities by Month

- High since 2002
- Average since 2002
- 2013
- 2014
- Low since 2002

Jan | Feb | March | Apr | May | June | July
---|-----|-------|-----|-----|------|------

Graph showing monthly traffic fatalities with different trends for various years.
Risks to Youth

• Remains Off Limits Under Age 21
• Health Concerns
Marijuana use among Colorado high school students

Source: Colorado Department of Public Health and Environment survey
Cannabinoids

• At least 85 different Cannabinoids isolated from Cannabis
• Cannabinoids are one of few natural compounds that pass the blood-brain barrier
• THC
  – Primary psychoactive compound of Cannabis
  – Eases moderate pain and is neuroprotective
• Cannabidiol
  – Primarily binds to receptors in immune system
  – Relieves convulsion, inflammation, anxiety and nausea
Federal Law

• Controlled Substances Act of 1970
  – Schedule I drug
    • “High potential for abuse and no acceptable medical use”

• U.S. Supreme Court
  – Federal government has right to regulate and criminalize cannabis
    • U.S. v. Oakland Cannabis Buyers Cooperative (2001)
    • Gonzales v. Raich (2005)
Federal Law

- DOJ’s “Ogden Memo” (2009)
- DOJ’s “Cole Memo” (2011)
- DOJ’s “Cole II Memo” (August 28, 2013)
  - Current DOJ policy
  - DOJ won’t pursue small scale marijuana possession/consumption offenses in states where legal
  - Announced enforcement priorities
What To Expect Next from Federal Government?

• New Attorney General will Replace Eric Holder Soon

• Congressional Action Needed
  – Reclassify marijuana as a Schedule II drug?
  – Pass legislation prohibiting prosecution of those in compliance with state law?
    • Respect State Marijuana Law (Rep. Dana Rohrabacher, R – CA)
Status of State Law
Colorado

- Recreational use legalized on Jan 1, 2014
  - Purchase of up to 1 ounce allowed per outlet
  - No central registry of accumulated purchases
  - No limit on monthly purchase amount
- Regulated by Dept. of Revenue’s Marijuana Enforcement Division (MED)
  - As of early October 2014
    - 496 licensed medical shops
    - 242 recreational stores
    - 177 pending applications
    - 19,000 individual occupational licenses
Colorado

• 30 New Rules effective October 30, 2014
  – 3600 plants max for most grow operations
  – Minimum “responsible vendor training”
  – Health and safety requirements for edibles
  – Testing requirements
    • Potency of edibles
    • Chemicals (pesticides and solvents)
    • Mold, mildew and fungi
    • BUT, testing only required for licensed cultivation centers, not for home growers or MMJ caregivers
Washington State

• Legal recreational sales began in July 2014
• Regulated by Washington State Liquor Control Board (LCB)
• Will not be prosecuted under state law for:
  – One ounce of usable marijuana
  – Marijuana-related paraphernalia
  – 16 ounces of solid marijuana-infused product
  – 72 ounces of liquid marijuana-infused product
Washington State

• Mandatory CGL coverage (314-55-082 WAC)
  – Minimum limit of $1 million
  – LCB named as additional insured

“This insurance shall cover such claims as may be caused by any act, omission or negligence of the licensee … . The insurance shall also cover bodily injury … and property damage arising out of the licensee’s premises/operations, products, and personal injury.”
Cannabis Delivery Methods

- Smoking
- Vaporizing
- Oral ingestion
- Transdermal patch
- Intravenous injection
- Sublingual absorption
Cannabis Infused Edibles

- 40% of Colorado marijuana industry
- Effects begin more slowly than smoking, and tend to last longer
- Confusion about recommended dose
- Edibles linked to two recent deaths and increase in ER visits
New Rules for Packaging and Warnings
New Rules for Packaging and Warnings

• Marked so consumer can “intuitively determine” how much constitutes a dose of THC
  – Single serving is 10 mg THC
  – Maximum is 100 mg per product

• Solids cannot exceed 10 mg per package
  – Single serve packages
  – Stamped (eg, chocolate bars)

• Liquids must be sold in clear bottles with opaque labels
  – Can tell how much has been consumed
  – Like cough syrup
Professional Liability -- Lawyers

• Rules of Professional Conduct
  – Prohibit lawyer from counseling client to engage in crime or assisting client engaged in crime
  – Colorado and Washington Supreme Courts allow lawyer to assist clients in conduct lawful under state law

• How does a Carrier Underwrite LPL Risks?
  – Evaluate on individual basis?
  – Is lawyer properly vetting his/her clients?
Professional Liability -- Accountants

• AICPA has recommended that CPA’s ask themselves a series of questions:
  – What is the position of my state Board of Accountancy?
  – What are the legal risks of providing these services in my state?
  – Is there a risk of prosecution to a business that provides services to marijuana-related businesses?
  – What is the likelihood that the DEA or DOJ would prosecute this business?
  – How are CPAs in my state offering services to state recognized marijuana businesses?
  – How will the services affect my professional liability insurance?
  – What is the likelihood that I may be disciplined or lose my license?
Professional Liability – Health Professionals

- Individual Reactions to MMJ
- Quality Control / Proper Dosage Control
- No testing required for medical marijuana in many states
  – e.g., Colorado now requires testing for recreational edibles and licensed cultivation centers but not MMJ caregivers
Employment Issues

• Protection under State Statutes Focused on Decriminalization
• Discrimination Issues
  – Coats v. Dish Network LLC, Colorado Supreme Court
  – Donna Smith v. Presbyterian Health Services, New Mexico
• ADA/FMLA
  – Requests for reasonable accommodation
Workers Compensation Issues

• Will insurers start being asked to pay for a substance that the federal government considers illegal?
  – Vialpando v. Ben's Automotive Services and Redwood Fire & Casualty, pending before New Mexico Supreme Court

• Could injured but still working employees start coming to work high? How would you know?
  – What is “impairment” for marijuana?
Indemnity and Additional Insured Issues

• Is an indemnity agreement with a business engaged in the marijuana industry legally enforceable in a state that has not yet legalized marijuana?

• Are there problems caused by naming out of state production and supply chain partners as additional insureds?