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We have been receiving many inquiries and request for assistance from our clients to help them understand the implications of medical marijuana and the potential effect on their drug testing policies. Medical marijuana has strong support from voters and health organizations. Marijuana is not prescribed by physicians in Colorado. Instead, doctors issue recommendations for the use of marijuana to relieve the effects of certain medical conditions. But the federal government has resisted any change to marijuana's illegal status at the federal level. The Supreme Court ruled in 2005 in *Raich vs. Gonzales* that the federal government can prosecute medical marijuana patients, even in states (i.e., Colorado) with compassionate use laws. Colorado's constitutional Amendment 20 that authorizes medical marijuana states **"Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place."**

The following article was written by Dr. Alan W. Burgess, a certified medical review officer (MRO) with HealthOne Occupational Medicine & Rehabilitation. He offers some practical and useful information on this subject.

"MEDICAL MARIJUANA" AND THE WORK PLACE

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Recent news reports have highlighted the rapid growth of "medical marijuana" dispensaries in Colorado. This apparent legitimacy of marijuana has led to a sharp upturn in THC positive drug tests in the employment setting, especially in younger age groups. The THC users believe that possession of a "medical marijuana card" will be adequate explanation of a positive drug test. The following points are true:

- The only legitimate **medically prescribed** form of cannabinoid is

in tablet form as **dronabinol** (DEA Schedule III). Marijuana is a DEA Schedule I drug. Drugs in this scheduled class have no accepted medical use for treatment in the United States and have high abuse potential.

- The DOT and a recent U.S. Department of Justice ruling have firmly stated that State law regarding THC use has no bearing on Federally regulated employees who test positive for THC.
- In Colorado, there is no such thing as a "prescription" for marijuana. Clients of THC dispensing physicians receive a **recommendation** to use THC, making them immune from **prosecution for possession** or use of small quantities of THC.
- There is **no scientific evidence** that smoking THC cures or in any way ameliorates any disease.
- One of the disease criteria on the State of Colorado marijuana physician recommendation form is simply: "Severe Pain".
- "Medical" marijuana users **do not yet** have any **legal employment rights**.

I have always advised client **employers** who perform drug testing to have policies that mimic the DOT regulations since 1990. The same is true in this era of legalized THC use. **A POSITIVE drug test using DOT standards for THC should be considered as evidence of impairment.** Therefore, it should disqualify them from work regardless of whether or not the drug was obtained legally (as it is for alcohol).

I recommend that **all employers** amend their drug testing and fitness for duty policies to include language that specifically states that **medical marijuana use does not mitigate the consequences of a positive test for THC.**

