The presenters have no conflicts of interest to disclose.

None of the material in this presentation should be taken as legal advice. It is a clinical and scientific approach to the problems that legalized "medical" uses of marijuana present. Courts must follow their state laws, which vary enormously from state to state.

Medical and Legal Recreational Marijuana in Our Treatment Courts: What Do We Do Now?

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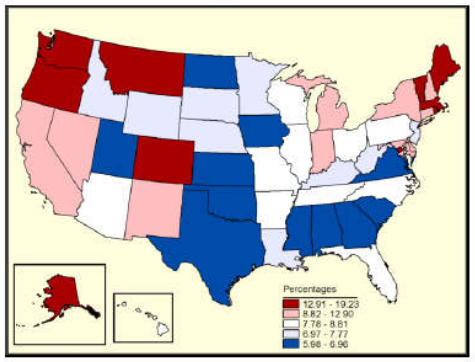
Marijuana Use in Northern New England

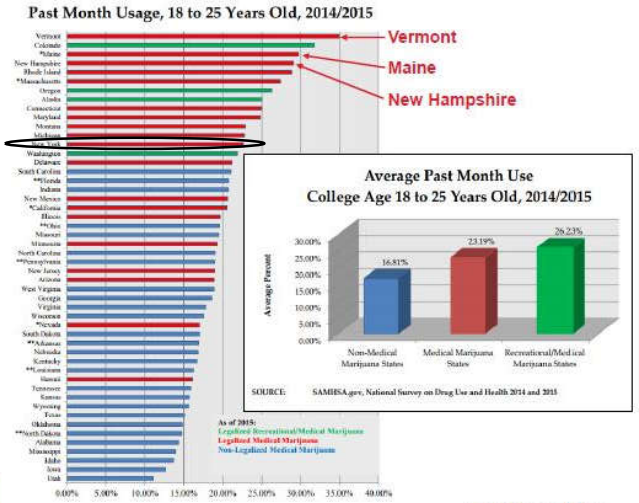
Past-Month Marijuana Use, Ages 12 and Older, 2016-2017



SAMHSA graphic based on 2016 and 2017 NSDUH responses

Northern New England Poison Center

1-800-222-1222
www.nnepc.org



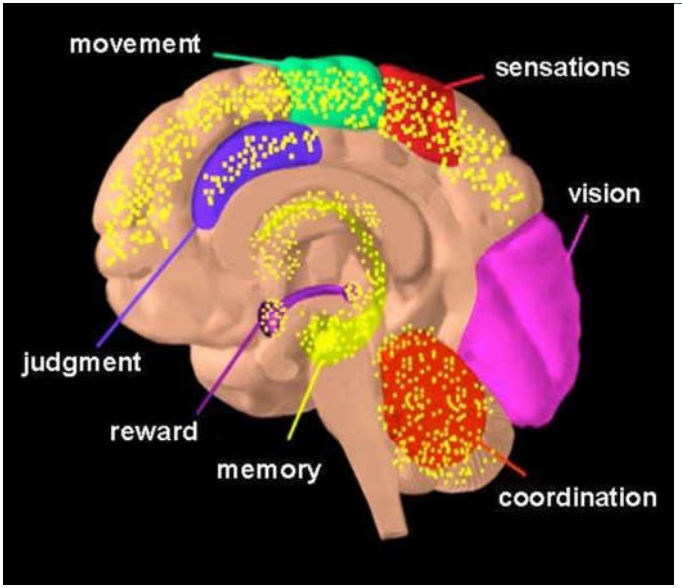
Northern New England Poison Center

1-800-222-1222
www.nnepc.org

CANNABIS USE IN THE U.S.

Legality of Marijuana

- Illegal at federal level
- 16 states plus Washington DC have legalized recreational marijuana
- 33 states have legalized medical marijuana
  - 27 include PTSD
  - 31 include pain
  - 3 include TBI



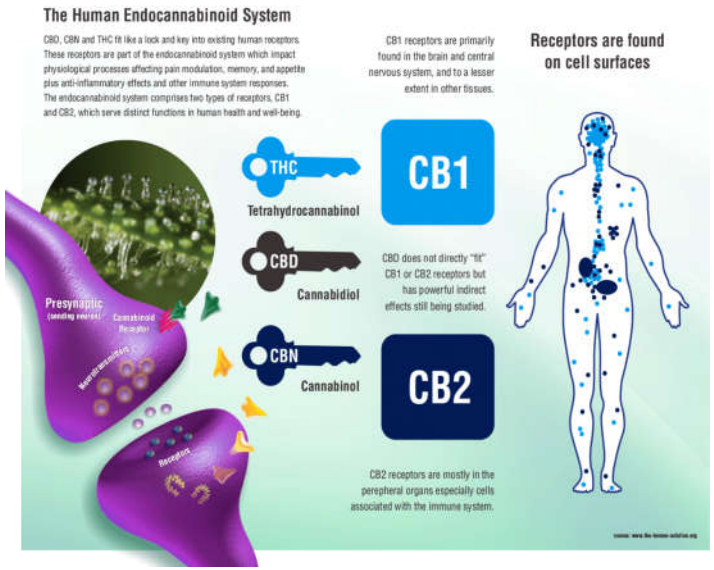
THC Receptors in the Brain

Volkow, NIDA 2014

Cannabis Use

- Cannabis is now the most widely used drug in the U.S.
  - It is used by >15% of the population (NSDUH, 2019)
  - Since 2007, past year usage has increased 37%
  - Using > 200 days/year increased 37% since 2002 (SAMHSA, 2019)
    - Nearly 1/3 marijuana users in 2016

There are at least 113 identified cannabinoids in a cannabis plant. We know very little about most of them, and less about how they affect the human brain and body.



NOW THAT MARIJUANA IS LEGAL IN NY, WHAT ARE ITS EFFECTS? WHEN MARIJUANA IS "MEDICAL", DOES IT HAVE SIDE EFFECTS?

Neonatal Effects of Exposure to Cannabis In Utero

Laboratory exposure to THC and other cannabinoids leads to the formation of functionally impaired neurons. (Miranda et al., 2020)

- Vasoconstriction, which reduces blood supply and oxygenation, which can lead to hypoxia and possible ischemic injury (Thompson et al., 2009)
- Low birth weight babies
- Mild withdrawal symptoms at birth
- Increased newborn morbidity, especially susceptibility to illness (Metz et al., 2017)
- Increased NICU admissions (Warshak et al., 2015)

Short-Term Effects of Marijuana

- Mild euphoria, "High", "buzz"
- Appetite stimulation, "munchies"
- Altered senses (for example, seeing brighter colors)
- Altered sense of time
- Changes in mood from euphoria to anxiety and panic
- Impaired body movement
- Difficulty with thinking and problem-solving
- Impaired memory
- Hallucinations (when taken in high doses)
- Delusions (when taken in high doses)
- Psychosis (risk is highest with regular use of high potency marijuana)

NIDA, 2019

Effects of Prenatal Exposure to Cannabis

In Children

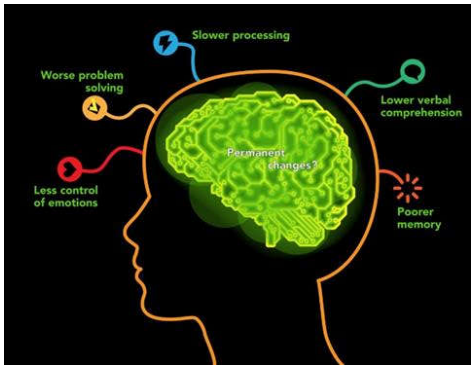
- Poorer school achievement, especially in reading and spelling
- Poorer problem-solving
- Impaired attention
- Deficit in memory
- Learning disabilities
- Impaired planning
- Increased impulsivity
- Hyperactivity
- Depressive symptoms

In Adolescents

- Decreased working memory
- Impaired executive function
- 2X risk of tobacco and marijuana use, starting earlier
- Delinquent behaviors
- Increased risk for psychiatric disorders

Goldschmidt et al., 2004; Minnes et al., 2011; Smith et al., 2004

Acute Cognitive Effects



- Decline in verbal fluency
- Decline in memory recall
- Changes in sensory perception
- Slower reaction time, including driving
- Decreased attention span
- Decreased accuracy in assessing time and distance
- Slower ability to shift sets
- Decreased psychomotor coordination
- Decreased problem solving
- Declines in academic performance

Long-Term Effects

Impaired memory

Decreased attention

Impaired learning ability

Slowed information processing

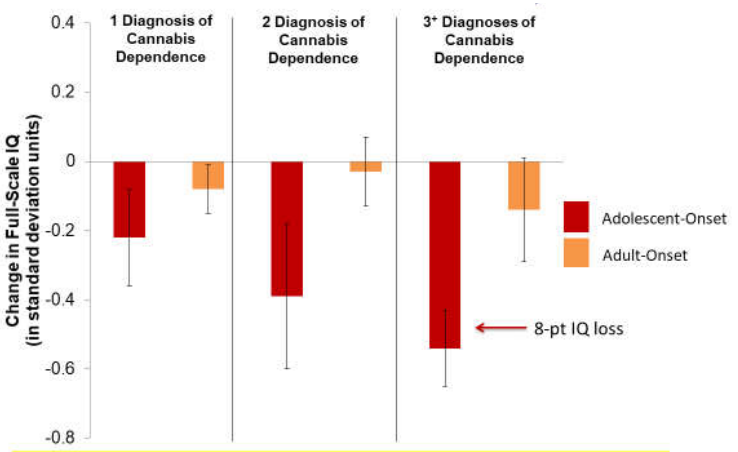
Decreased motivation

- These all worsen with increasing usage
- These all worsen when usage begins in childhood or adolescence

Adolescent Onset of Cannabis Use Results in IQ Decline

Longer persistence of use led to greater impairment.

IQ did not rebound after cannabis use stopped.



Effects on Major Organ Systems

Respiratory
- Many of the same mutagens and carcinogens in nicotine are found in marijuana smoke
- Impact on lung function and respiratory cancer is being studied

Immunologic
- Evidence of immunosuppression due to impact on CB2 receptor
- Observed increase in mortality of HIV positive patients with cannabinoid abuse
- Increased incidence of viral infections

Cardiovascular
- Increases heart rate and produces orthostatic hypotension
- May impact platelet function and play a role in atherogenesis

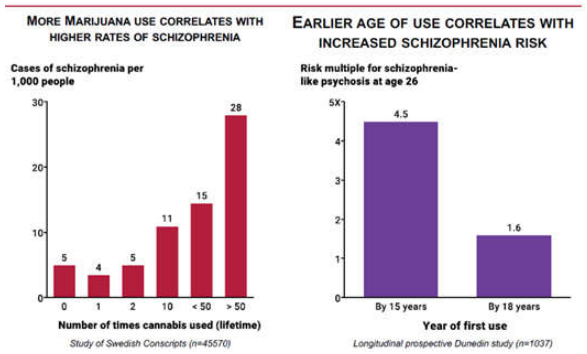
Information from Ilene Robeck

Cannabis and Fertility

- Cannabis decreases sperm count, seminal fluid, and causes abnormal sperm behavior (Burkman et al., 2019)
- It decreases sperm motility
- Cannabis causes changes in DNA of sperm (Kollins et al., 2018)
- Marijuana may delay or prevent ovulation
- Marijuana use during pregnancy may lead to low birth weight, developmental delays, and behavioral problems

Mental Health Effects of THC

Pot use is strongly correlated with psychosis



- Increased paranoia
- Can trigger psychosis, including schizophrenia (Andreasson et al., 1987; Arseneault, 2002)
- Paranoid psychotic disorder in adulthood (D'Souza et al., 2016)
- Increased panic
- Increased anxiety disorders
- Increase depressive disorders

We know almost nothing about marijuana with > 16% THC content

Effects on Major Organ Systems

Liver

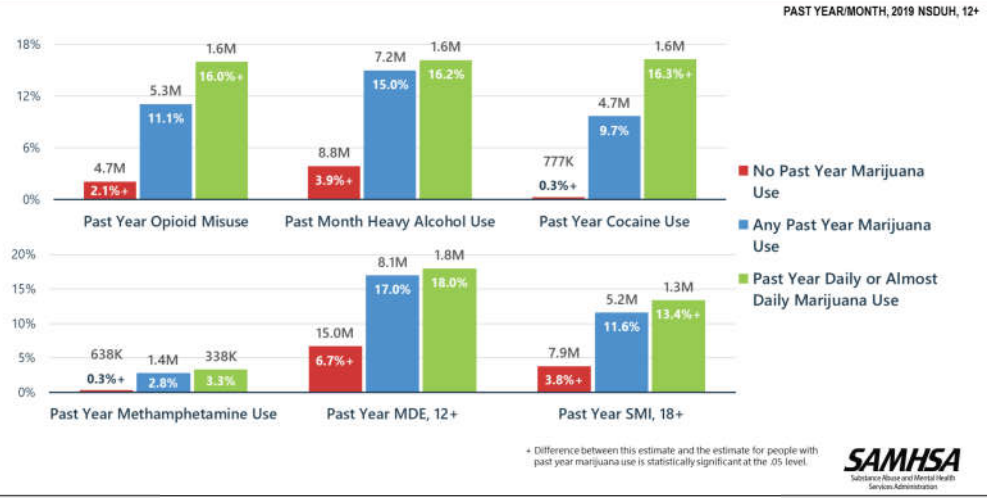
- **Daily** cannabinoid use is associated with liver steatosis that can lead to fibrosis

Endocrine

- Inhibition of Pituitary Luteinizing hormone, Prolactin, and Growth Hormone
- Induction of ACTH and Corticosterone Secretion

Information from Ilene Robeck

Marijuana Use Related to Other Substance Use, MDE and SMI



Brain Aging

- The largest known study of brain aging (Amen et al., 2018)
  - 62,454 SPECT tomography scans of 30,000 brains from individuals 9 months-105 years
  - Studied 128 different brain regions
- It examined disorders that aged the brain
  - Schizophrenia was #1
  - Cannabis abuse was #2, aging the brain an average of 2.8 years
  - This was more than Bipolar Disorder, ADHD, or Alcohol Abuse
  - Cannabis aged the brain almost 5 times more than Alcohol Abuse

The cannabis abuse finding was especially important, as our culture is starting to see marijuana as an innocuous substance. This study should give us pause about it.

Daniel Amen

Other Problems Associated with Marijuana

- Anxiety
- Agitation
- Impaired judgment
- Apathy (Cannabis Amotivational Syndrome)
- Cannabis Hyperemesis Syndrome
- Impaired balance and coordination
- Unemployment
- Legal problems
- Motor vehicle accidents (Washington Post, June, 2017)

Cannabis Can Be Addictive

- Regular cannabis users can develop tolerance, cravings, and withdrawal symptoms
- 10-20% become dependent on cannabis (Volkow et al., 2016)
  - 9% dependence for adult starters
  - 17% dependence for teenage starters
  - 25-50% for daily users
- Psychological dependence is also possible

ARE THERE POSSIBLE MEDICAL USES OF MARIJUANA?

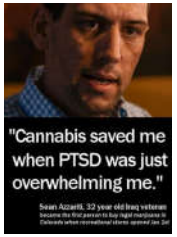
What Happened in Colorado after Medical Legalization

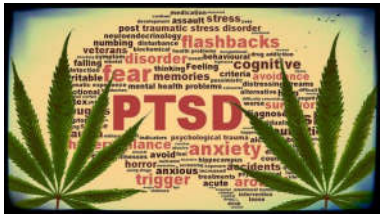
- An increase in ED visits for marijuana-associated illnesses
- An increases of marijuana-related burns, including some over 70% of the body and requiring as many as 21 skin grafts
- A doubling of Cannabis emesis syndrome, which involves cyclic vomiting, severe abdominal pain, and sweating
- Unintentional marijuana ingestion by children, sometimes requiring admission to pediatric intensive care
  - This is increased by edibles that are appealing to children
  - Childproof packaging is no longer childproof after opening
- Dosages that bring on delirium in adults can cause respiratory arrest in children
- Marijuana's involvement in fatal crashes doubled from 10% to 20% from 2013-2016 (Denver Post, 8/25/17)

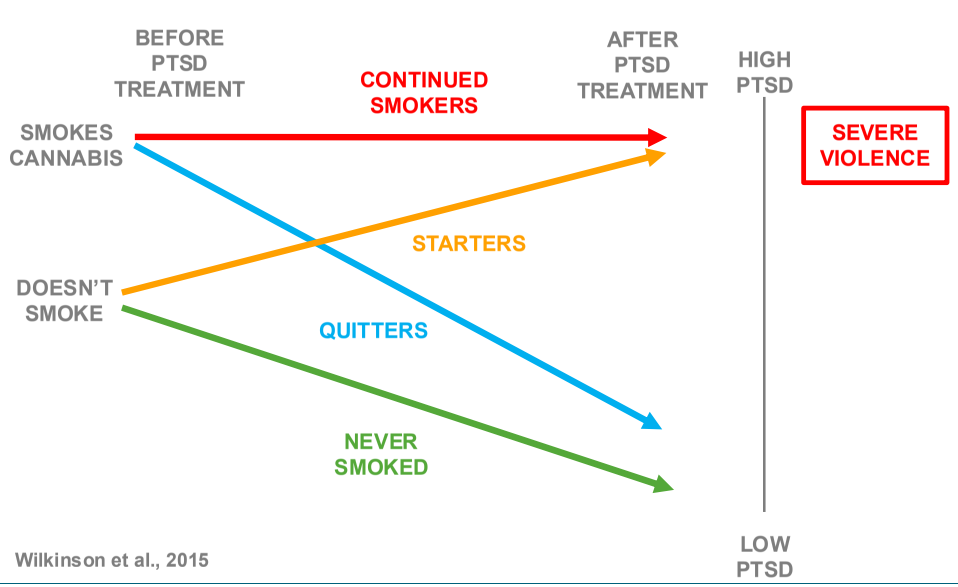
Monte et al., 2014

Does Marijuana Treat PTSD?

- Many people with PTSD claim that marijuana is the only thing that helps their PTSD
  - Some Veterans are lobbying Congress to allow the VA to prescribe medical marijuana
- There is no research evidence for this claim
  - The first two studies shows that marijuana makes PTSD *worse*
  - One found that cannabis use prolonged PTSD symptoms (Bonn-Miller et al., 2011)







Wilkinson et al., 2015

Conditions that Qualify for Medical Marijuana in New York

- Cancer
- HIV infection or AIDS
- Amyotrophic lateral sclerosis (ALS)
- Parkinson's disease
- Multiple sclerosis
- Spinal cord injury with spasticity
- Epilepsy
- Inflammatory bowel disease
- Neuropathy
- Chronic pain
- Pain that degrades health and functional capability as an alternative to opioid use or substance use disorder
- The severe debilitating or life-threatening condition must also be accompanied by one or more of the following associated or complicating conditions: cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures, or severe or persistent muscle spasms, PTSD or opioid use disorder.

Does Marijuana Treat PTSD?

There is no current scientific evidence that *the cannabis plant* is an effective treatment for PTSD. What we have:

- Anecdotal evidence from cannabis users that drug helps with PTSD
- Preclinical studies testing a specific pharmaceutical cannabinoid
- Few studies of pharmaceutical cannabinoids in humans
- Case studies
- No randomized controlled trials studying the cannabis plant
- Long term effects are largely unknown

Browne, 2019

Does Marijuana Decrease Opioid Deaths?

- Some people have argued that marijuana can be used to decrease opioid deaths
- A 2014 study (Bachhuber et al., 2014) of the years 1999-2010 found that there were 25% fewer opioid overdose deaths in states with medical marijuana laws compared to those without
  - This was trumpeted by the marijuana industry
- However, a 2019 follow-up study (Shover et al., 2019) found that this was true only for the years 1999-2010
  - It found that, when the analysis was extended to 2017, there were 23% *more* opioid overdose deaths in states with medical marijuana laws

Does Marijuana Reduce the Incidence of Opioid Use Disorder?

- This hypothesis is based on the idea that marijuana may substitute as a treatment for pain, thus reducing the need for opioids
- The effects of cannabis and cannabinoids on chronic noncancer pain are small to none, and the likelihood of harm is moderate to high (Hauser et al., 2019; Stockings et al., 2018)
- Sativex, a pharmaceutical mix of THC and CBD not available in the U.S., has failed Phase III clinical trials in reducing cancer pain (Fallon et al., 2015)

To Be Fair, There Are Problems in Marijuana Research

- The federal government has limited research on marijuana
- All marijuana used for federally-approved research comes from one 12 acre farm at the University of Mississippi
  - It is one strain
  - It is less potent than most marijuana available today
  - Often there are more approved studies than marijuana available
- Many studies have been done with pharmaceutical THC or CBD, not the cannabis plant

Therefore, most research that has been conducted is not generalizable

Does Marijuana Reduce the Incidence of Opioid Use Disorder?

- Cannabis use is associated with opioid misuse (Reisfield et al., 2009)
- Cannabis use increases the risk of developing nonmedical prescription opioid use and Opioid Use Disorder (Olfson et al., 2018)

Meta-analyses…do not strongly support the use of cannabinoids for chronic pain nor do prospective studies demonstrate significant cannabinoid-mediated opioid sparing effects.

Babalonis & Walsh, 2019

Different Types of Marijuana?

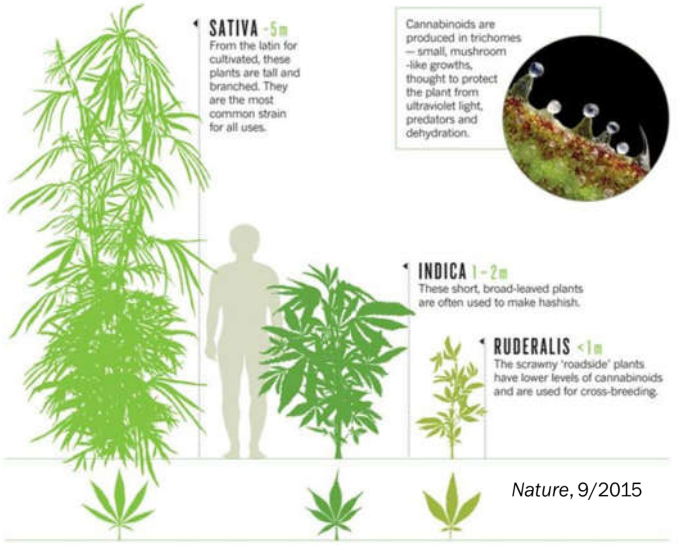
- **Hemp** is a strain of cannabis sativa with less than 0.3% THC content
- **Sinsemilla** is a strain of cannabis sativa in which female plants are kept seedless to produce high THC content
- Potency of marijuana varies from crop to crop and even plant to plant

IS MARIJUANA MEDICINE?

What Do You Get When You Buy Marijuana Products?

We don't know

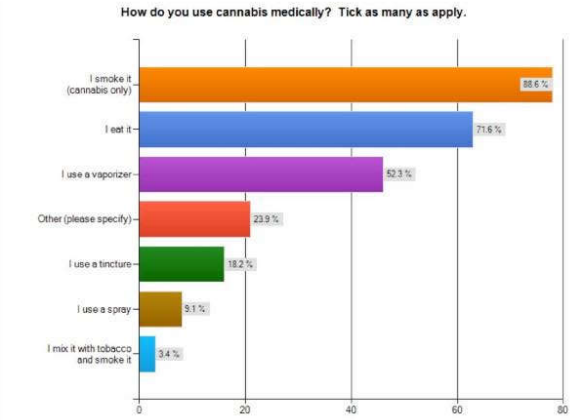
- A study of 84 CBD products made by 31 companies sold online (Bonn-Miller et al., 2013) found:
  - Only 26 were accurately labeled
    36 underestimated the amount of CBD
    22 overestimated the amount of CBD
  - THC was detected in 18 samples
  - Cannabidiolic acid was found in 13 samples
  - Cannabigerol was found in 2 samples



Species of Cannabis

Despite many claims otherwise, there is little to no research indicating that ingestion of different species results in different effects.

Routes of Cannabis Administration



Lucas, 2012

What Do You Get When You Buy Edible Marijuana?

16-26% of patients using medical marijuana consume edibles (Grella et al., 2014; Walsh et al., 2013)

We don't know

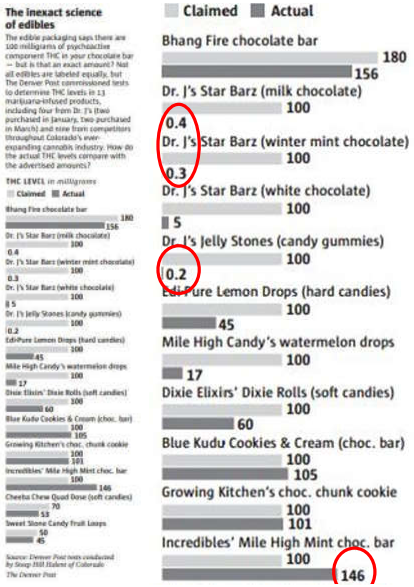
- A study of 75 edible products from 47 brands sold in California and Washington (Vandrey et al., 2015) found that:
  - 13 were accurately labeled for THC
    17 were underlabeled for THC
    40 were overlabeled for THC
  - 44 had detectable levels of CBD
    Only 13 had CBD labeled
    4 were underlabeled for CBD
    9 were overlabeled for CBD
  - Other cannabinoids were found

Short-Term Effects of Marijuana Vary Depending on:

- Proportions and concentration of cannabinoids
- Route of administration
- Dose and quantity consumed
- Frequency of use
- Gender
- Genetic vulnerability
- History of use/prior experience
- Mood state
- Environment/context of use
- Concurrent drug use

Crippaet al., 2009; WHO, 2016

slide information by Browne, 2019



What Do You Get When You Buy Edible Marijuana?

You don't know

- Inconsistent dosing: An examination in the Denver Post (3/9/14) of 10 edibles claiming to contain 100 mg. of THC found that the actual amounts varied from <1mg. To 146 mg.
- The delayed effects of ingestion may cause some people to ingest more of the product

Is Marijuana Medicine?

- All FDA-approved medicines have clearly-defined and measurable ingredients that are consistent from one dose to the next
- Cannabis plants contain hundreds of chemical compounds that vary from plant to plant
- Medicine from a pharmacy provides information on:
  - Brand/manufacturer
  - Drug strength
  - Directions for administration
  - Indications for use (that have been proven by research)
  - Reactions/side effects
- Marijuana is not a single entity

Problems in Determining What People Get When They Use Cannabis

- Different subtypes of cannabis
- Unknown concentrations of THC, CBD, and other cannabinoids in individual plants
- Differing ratios of THC:CBD
- Differing methods of ingestion can increase percentage of THC ingested
- Inaccurate labeling
- Lack of information about dosages
- Lack of research

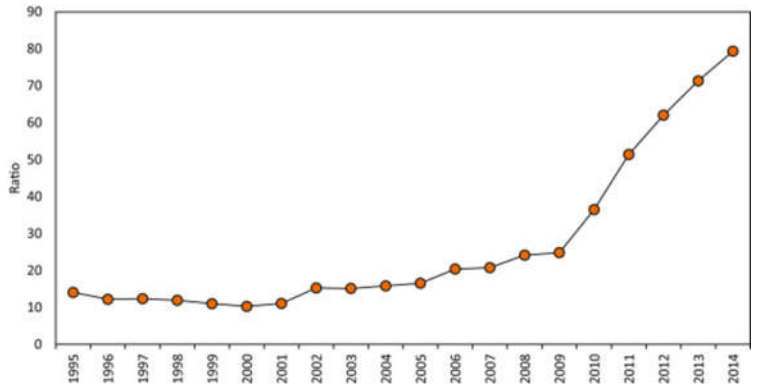
CANNABINOIDS

Is Marijuana Medicine?

- According to the federal Food and Drug Administration (FDA), a drug is defined as:
  - A substance recognized by an official pharmacopoeia or formulary.
  - A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.
  - A substance (other than food) intended to affect the structure or any function of the body.
  - A substance intended for use as a component of a medicine but not a device or a component, part or accessory of a device.
- FDA considers drug products to be pharmaceutical equivalents if they meet these three criteria:
  - They contain the same active ingredient(s)
  - They are of the same dosage form and route of administration
  - They are identical in strength or concentration

FDA, 2019

The Ratio of THC:CBD Has Increased in Cannabis 1995-2014



ElSohly et al., 2016

Types of Cannabinoids

Phytocannabinoids are compounds produced by the cannabis plant (e.g., THC, CBD, CBN)

Endocannabinoids are neurotransmitters produced naturally in the body

- They play roles in cognition, emotion, and memory

Pharmaceutical cannabinoids are synthetic analogs produced in a lab or pharmaceutically prepared as a whole plant extract

- Marinol (dronabinol), Nabilone
- Nabiximols, Epidiolex

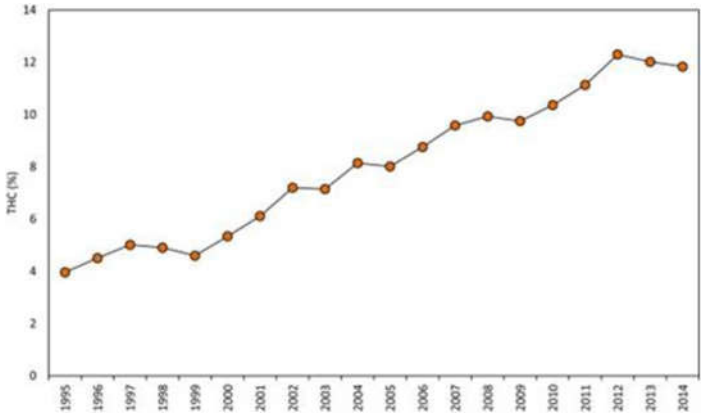
Synthetic cannabinoids are man-made chemicals sprayed on dried plants or sold as liquids (e.g., k2, spice)

Herkenhamet al., 1990; Mechoulam& Parker, 2013; Moreira & Lutz, 2008; WHO, 2016

This Is Not Your Father's Cannabis

- A study of 38,681 samples of cannabis from 1995-2014 (Elsohly et al., 2016)
- The THC potency rose from an average of 4% in 1995 to 12% in 2014
- CBD content fell from an average of 0.28% to <0.15%
- The ratio of THC to CBD changed from 14:1 to 80:1
- Some extracts are above 50% THC

Tripling of THC Percentage in Cannabis 1995-2014



SUMMARY

THC vs. CBD

THC	CBD

• Psychoactive
• Get high/euphoric
• Illegal
• Proven to help:
  ▫ Decrease nausea
• Alleged to help many problems
• Relaxing/drowsy
• Can trigger paranoid psychosis
• Can increase anxiety
• Damages memory
• Apathy
	• Not psychoactive
	• No high
	• Legal
	• Proven to help:
	  ▫ Decrease childhood epileptic seizures
	• Alleged to help many problems, including pain and anxiety
	• Minimal side effects

There is no current scientific evidence that marijuana is in any way beneficial for the treatment of any psychiatric disorder. In contrast, current evidence supports, at minimum, a strong association of cannabis use with the onset of psychiatric disorders. Adolescents are particularly vulnerable to harm, given the effects of cannabis on neurological development.

American Psychiatric Association, 2013

The Potential Promise of CBD

Anti-Anxiety	Anti-Pain
• Studies of laboratory animals and of people suggest that CBD may have anxiolytic properties (Fusar-Poli et al., 2009)	• Some small studies show that CBD may have analgesic properties • This is true at low doses • Higher doses do not bring more pain relief (Wilsey et al., 2013) • Two studies show that CBD may be helpful in decreasing spasticity and its pain in people with Multiple Sclerosis

Is There Medical Use for Marijuana?

- Evidence for some medical value of some components
  - CBD and seizure disorder (Dravet's syndrome and Lennox-Gastaut syndrome)
  - THC products for wasting illnesses and appetite production
- Medications must have undergone substantial research to answer critical questions before getting to market and widespread use in humans:
  - Isolation of single components; manufacture processes
  - Delivery mechanism
  - Pharmacokinetics/pharmacodynamics
  - Dose-response relationships (e.g.: doubling a dose may or may not double the effect)
  - Therapeutic range
  - Adverse events: what are they and how best to avoid/address should they occur?
- These types of studies would be difficult for marijuana because there are so many components

SAMHSA

21

Summary of Recent Meta-analysis of Cannabinoid Effects on Mental Health Problems

- 83 studies from 40 randomized controlled trials
- N=3,067

There is scarce evidence to suggest that cannabinoids improve depressive disorders and symptoms, anxiety disorders, attention-deficit hyperactivity disorder, Tourette syndrome, post-traumatic stress disorder, or psychosis. There is very low quality evidence that pharmaceutical THC (with or without CBD) leads to a small improvement in symptoms of anxiety among individuals with other medical conditions. There remains insufficient evidence to provide guidance on the uses of cannabinoids for treating mental disorders within a regulatory framework.

Black et al., *The Lancet,* 10/28/19

Summary

- Synthetic THC has been shown to decrease appetite and increase nausea
- Synthetic CBD has been shown to decrease seizures
- Mixed results of THC/CBD combination
- Some small N studies and animal model studies show possibility of that CBD may help chronic pain and/or anxiety
- Few blinded RCTs, the gold standard of research
- No studies show that cannabis leaves, oils, waxes, creams, edibles, or other forms of ingestion result in effective treatment of any problem
- Much more research needs to be done

The use of medical marijuana for a wide range of disorders is inconsistent with the science supporting its effectiveness.

Andrew Monte, Richard Zane, & Kennon Heard, 2015

WHAT CAN TREATMENT COURTS DO?

Which Conditions Are Proven to Respond to Some Part of Marijuana among Those That are Legal in New York?

- Cancer
- HIV infection or AIDS
- Amyotrophic lateral sclerosis (ALS)
- Parkinson's disease
- Multiple sclerosis
- Spinal cord injury with spasticity
- Epilepsy
- Inflammatory bowel disease
- Neuropathy
- Chronic pain
- Pain that degrades health and functional capability as an alternative to opioid use or substance use disorder

- The severe debilitating or life-threatening condition must also be accompanied by one or more of the following associated or complicating conditions: cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures, or severe or persistent muscle spasms, PTSD or opioid use disorder.

Treatment Courts Must:

- Be familiar with the laws of your state
- Be aware of the rapidly-changing nature of the science of cannabis and cannabinoids
- Take into account how marijuana can impact treatment (e.g., for PTSD)
  - This includes interactions with medications taken

Conditions That Are Proven to Respond to Some Part of Marijuana among Those That are Legal in New York

- Two rare childhood types of Epilepsy

- cachexia or wasting syndrome,
- severe nausea associated with chemotherapy,
- maybe severe or persistent muscle spasms

Treatment Court Options

Always follow state law!

- Hold to the principle of total abstinence
- Allow the use of already-approved synthetic medicines like Marinol, Nabilone, Sativex, and Epidiolex, but only for on-label uses
- Decline to allow the use of any unproven substance or formulation (leaves, vaping, waxes, oils, creams, etc.)
- Decline to allow any alternative method of ingestion other than taking a pill composed of a synthetic cannabinoid
- Hold participants responsible for any THC showing up in their urine or blood
- Allow participants to use CBD products if they have a prescription from a physician, holding them responsible if any THC shows up in their urine or blood

Cannabis Interferes with Treatment

- Cannabis interferes with new learning and with the formation of memories
  - This makes it more difficult to learn new behaviors
- Cannabis interferes with treatment for PTSD
- Cannabis worsens Opioid Use Disorders
- Cannabis is associated with increased severity of Drug Use Disorders

If cannabis interferes with treatment, and you are working in a treatment court, how can you provide treatment that works?

WHAT WILL YOUR COURT DECIDE TO DO?

FOLLOW THE LAW.

TRUST THE SCIENCE.

What Can You Tell Participants?

- Those that claim it is legal: "So is alcohol, and we don't allow alcohol consumption in Treatment Court."
- Those who claim it is their right: "You do not have a legal right to participate in treatment court."
- Those who claim it is medicine: "There are many medicines that we do not allow in treatment courts: opioids, benzodiazepines, stimulants, and others. All have the potential for abuse and addiction, which cannabis also does."
- You may have to change your acceptance criteria when you screen potential participants.

Brief reminder:

- Don't practice medicine without a license, ask questions, inform, and adopt the doctor's orders as part of the case plan and Court orders.
- IF there is a question about use of any mind- or mood-altering substance, request a second opinion and one primary reviewing physician for ALL medications being used.
- Identical procedures as a Court would use for persons who are misusing prescription medications or having challenges due to the impact of medication use.
- Team attorneys should be familiar with the procedures used for MAT laws, including procedure for challenging MAT for prior diversion or sales of MAT externally.

The Legal Stuff:
What We Know and What We Don't about the New Laws regarding Cannabis, THC, and CBD, and How Treatment Courts Can Respond

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Issues:

- The reality of cannabinoids-you must know in order to shape argument. *Brian Meyer knows stuff!*
  - Route of administration and types make a huge difference in treatment.
- The pervasive nature of cannabinoids in over-the-counter commerce which can disrupt treatment, and drug testing. ** This is recreational at best, and should be banned in treatment courts, like energy drinks, alcohol, cold medications etc.*
- The medical legal issues: extremely thorny issues. State vs. Fed rules
- The recreational legal issues. Appears you can bar recreational cannabis in a treatment court, but not on regular probation unless related to the specifics of the underlying crime.
- Differing impacts across family, criminal, generic probation, and treatment courts, including impaired driving courts.

Adapting to new laws and emerging issues

*** This section is generalized and ***does not constitute legal advice*** regarding New York State treatment court policy or mandates regarding cannabinoids.

Always distinguish between the requested use(s)

- Recreational?
- Medical?
- Both? OTC combined with medical?

Terminology in the law is both clear and vague

- People v Stanton 2018 NY Slip Op 28221 Decided on July 16, 2018
- The discussion from this case appears to be adopted by the Legislature.
- The Legislature appears to have not heard, or discarded the notion of treatment courts (NB: MM for SUD in text of law).

What are we talking about?

- Recreational use? Get a waiver for use during treatment court period.
  - Lay a good record for appeal, if no waiver of appeal.
  - Have a uniform pleading with relevant science and citations, providing a broad and accurate factual basis for the parties' position and adequate factual grounds for the lower Court's decision.
  - Be certain to tie a ruling to reasonable relationship of facts of the case, challenges raised by assessment(s), and success on probation.
- Medical? Tread carefully, and watch your record.
  - Follow the law as it relates to any other substance used by participants.
  - Follow the law as it relates to legally prescribed FDA approved substances
  - Follow the law as it relates to legally prescribed MAT.
    - *Each MAY be different.*

OPEN QUESTIONS:

- Does the New York statute create cannabis as non-FDA MAT?
  - Do you follow the MAT rules?
- Does the New York statute allow felony probationers and treatment court participants to work in marijuana stores, or be caregivers? (*appears yes*)
- Does the New York statute create a local ADA issue

Consider:

- Ban recreational, and CBD products which are NOT FDA approved.
- Medical, create a separate track for those persons who are unwilling to forego cannabis while in a treatment court.
- See them independently, treat them independently, and develop the expertise in motivational interviewing to let them explore the relationship with cannabis and if it is impacting their SUD, or their lives.
- Persons who have an acute need for specific medications in treatment courts should be treated similarly. Temporary accommodations are made for surgery, etc. Thus, a second opinion would be in order.

Medical: Definition of "condition"

18. "Condition" means having one of the following conditions: cancer, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington's disease, post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical cannabis is an alternative to opioid use, ***substance use disorder***, Alzheimer's, muscular dystrophy, dystonia, rheumatoid arthritis, autism or ***any other condition certified by the practitioner.***

Due Process and Blanket prohibitions of MAT

Constitutional due process requires reasonableness or a rational basis for conditions of treatment and supervision of persons on probation or in drug court.

- Probation terms and conditions should be reasonably related to the crime and the rehabilitative needs of the individual and protection of the community People v. Beaty, 181 Cal.App.4th 644, 105 Cal.Rptr.3d 76 (2010)
- Judge must impose individualized conditions to meet community and individual needs. Commonwealth v. Wilson, 11 A.3d 519 (Pa. Super. 2010).

Section 854-A

- 6. A person currently under parole, probation or other state super-
- vision, or released on recognizance, non-monetary conditions, or bail
- prior to being convicted, shall not be punished or otherwise penalized
- for conduct allowed under this chapter *unless the terms and conditions*
- *of said parole, probation, or state supervision explicitly prohibit a*
- *person's cannabis use or any other conduct otherwise allowed under this*
- *chapter. A person's use of cannabis or conduct under this chapter shall*
- *not be prohibited unless it has been shown by clear and convincing*
- *evidence that the prohibition is reasonably related to the underlying*
- *crime.* Nothing in this provision shall restrict the rights of a *certi-*
- *fied medical patient.*

- *Does not seem to allow for SUD treatment restrictions.*

What is requested or currently being used?

- Cannabinoids?
  - CBD?
    - Over the counter?
    - Route of ingestion?
    - Type(s) being used?
    - Dosage and frequency?
  - FDA approved via prescription? Use standard protocol for meds.
  - "Recommendation" with OTC access.

Medical may consider conditional approval or use

- You may consider monitoring treatment personal capabilities. If persons can engage, can remember lessons, and are not disengaged or distracting others in group, revisit approval at regular intervals.
- Generally, over time, as other withdrawal and treatment issues clarify, the impact of cannabinoids may require adjustments, and some motivational interviewing may assist with considering voluntary termination.
- Re-consult a physician, or a specialist via Telehealth.

FDA approved cannabinoids:

- If prescribed pursuant to FDA approval, by a physician, I suggest the legal procedure is *exactly the same* as Courts should be using for any prescription medication.
  - 42 USC waiver, and HIPAA waiver execution and communication with physician to be certain the medical professional is aware of the SUD diagnosis.
  - Communication between team and provider about changes, observations, etc.
  - Continued consultation between the team and the physician, as needed, examination of medical records. (rare)

Other considerations regarding cannabinoids What is requested or currently being used?

- Determine what cannabinoids are being requested or used! It makes a difference legally and for treatment!
  - Cannabis?
    - Route of ingestion?
      - Plant material? Smoked, vaped, vaporizer? (harm reduction)
      - Nugs? Bud…soaked in honey oil…rolled in powdered hash.
    - Refined or concentrated cannabis?
      - Type(s) being used? Hashish?
      - Concentrates? Honey oil? Dabs? Wax? Shatter? Tinctures? Edibles?
    - Dosage and frequency as to each?

Things to consider:

- Legal waiver and agreement of non-use during treatment as a condition of plea bargain in all non-medical cases.
- Courts commonly ban legal items which interfere with
  - Drug testing (poppy seeds, kratom, over the counter energy products, decongestants, any products containing CBD or creatine sold over the Counter, etc.
  - Treatment: alcohol, including ETOH based cooking materials and kombucha.
- ***In consultation with physicians***, Courts currently limit access to benzodiazepines, opioid and synthetic opioid substances, etc.

Non-FDA approved uses

- "Wild Wild West" meets the law.
- Challenges with overlapping formulas, inconsistent concentrations, consumer fraud, and cumulative uses on a brain and body suffering from distressed neurotransmitters and moderate to severe substance use disorders.

Legal issues abound!

My advice!

Always start from here:

1. **Are you a medical doctor?**
2. Do you have a license to practice medicine?
3. Do you specialize in addiction medicine?

Over the counter items are pervasive and disrupt drug testing

CBD maple nitro coffee

Energy drink with super creatine

Medically Assisted Treatment

BONUS primer on the law.

How to object depends on a variety of issues, notably federal funding.

It is not clear if federal MAT law applies to non-FDA approved "MAT".

Blanket denial of MAT is a due process violation-what about objections?

- All Judges should:
  - Consider relevant information before making a factual decision.
  - Hear arguments from all sides of the controversy and receive evidence from scientific experts, if the subject matter is beyond that of lay person knowledge.

There is a federal presumption tied to funding.

- The matter is settled (Presumption) in most instances if: (1) the physician has legal authority to write the prescription, (2) the medication is indicated to treat the patient's illness, (3) the prescription was not obtained fraudulently, and (4) the patient agrees to take the medication as prescribed. If prescribed: Presumption in favor of MAT **Burden of proof is on the objector to show it is inappropriate by preponderance**.

No federal funding:

- (1) the physician has legal authority to write the prescription, (2) the medication is indicated to treat the patient's illness, (3) the prescription was not obtained fraudulently, and (4) the patient agrees to take the medication as prescribed.
- But the burden is different. The moving party makes a prima facie case, then opposition may introduce evidence of prior abuse of MAT, or MAT deception in treatment.

If not, hold a hearing when medical cannabis is the issue.

- Follow due process
- Hold a hearing with expert testimony
- Preserve the transcript for frequent use.

- NDCI legal updates at the "law" section of their website.

The Bottom Line

Under no circumstances may a drug court judge, other judicial official, correctional supervision officer, or any other staff connected to the identified drug court deny the use of these medications when made available to the client under the care of a properly authorized physician and pursuant to regulations within an Opioid Treatment Program or through a valid prescription.

Much of the litigation around MAT involves criminal cases not family treatment courts-but they are instructive

- But there are lessons to be learned and things to watch out for!
- Beisel v. Espinosa, Florida, 2017, United States District Court Tampa Division, case No.8:17-cv-51-T-33TBM, pro per misfires, but has instructive language. [Adult Drug Court allows MAT but local FDC does not-equal protection and discrimination]
- ADA, RA, and some of 42 USC Section 1983 applies to FTC. Some tort claims may also lie.

- Monitor the Legal Action Center, NY NY for updates

Challenging Blanket MAT prohibitions:

- The Americans with Disabilities Act (ADA)
  - Prohibits discrimination by state and local governments
- Rehabilitation Act of 1973 (RA)
  - Prohibits discrimination by federally operated or assisted programs.
  - See: Discovery House, Inc. v. Consol. City of Indianapolis, 319 F.3d 277, 279 (7th Circuit. 2003) ("the ADA and The RA...fun along the same path, and can be treated in the same way".
- Due Process protections of the 14th Amendment
  - 1983 Civil Rights violations....
- 8th Amendment-cruel and unusual punishment.

Can we mandate cessation as a condition of Drug Court graduation?

NO- In all cases, MAT must be permitted to be continued for as long as the prescriber determines that the medication is clinically beneficial. Grantees must assure that a drug court client will not be compelled to no longer use MAT as part of the conditions of the drug court, if such a mandate is inconsistent with a licensed prescriber's recommendation or valid prescription.

Eligible Participants disqualified due to blanket MAT policy but would be otherwise qualified?

- Thompson v. Davis, 295 F.3d 890, 896 (9th Circuit, 2002) Incarcerated individuals who were illegally denied parole because of their disability (drug addiction) sufficiently alleged that there were otherwise qualified for parole.

"This drug court isn't a program under the ADA and RA"

Wrong.

- Pennsylvania Dep't of Corrections v. Yesky 524 U.S. 206, 210 (1999) (ADA applies to correctional programs)
- People v. Brathwaite, 11 Misc. 3d 918, 816 N.Y.S. 2nd 331 (Crim. Ct., Kings County 2006) (Brooklyn's alternative sentencing program falls under Title II's definition of "state service or program.")
- Evans v. State, 667 S.E. 2d 183, 186 (Ga. App. 2008) (A drug court is a "public entity" under the ADA).

MAT users are not a significant risk to health or safety

- New Directions Treatment Services v. City of Reading, 490 F.3d 293, 305 (3rd Cir. 2007) (NIMBY case) General statements about heroin users does not establish substantial risk to community. Must establish nature, severity and duration of risk, based on current medical knowledge and best evidence.
- Start, Inc. v Baltimore County, Md. Et alia, 295 F. Supp.2d 569, 577-78 (D.Md. 2003) Risks of diversion and concerns can be mitigated by protocols and administration.
- There are several cases in this area.

But they aren't disabled simply because they need MAT!

Addiction is a disability.

MX Group, Inc. v. City of Covington, 293 F.3d 326, 336 (6th Circuit 2002)

*It is well established that drug addiction constitutes and "impairment" under the ADA and that drug addiction necessarily substantially limits major life activities of "employability, **parenting**, and functioning in everyday life". (emphasis added)*

US v. City of Baltimore, 845 F. Supp. 2nd 640 (D. Maryland 2012) Residents of substance abuse facility were individuals with a disability.

GENERAL RULE:

- blanket prohibitions of MAT are a due process violation because they are not rationally (scientifically based).
- They are not reasonable because they are not consistent with individualized sentencing and treatment
- They do not give parties a fair opportunity to present their case, since one alternative is foreclosed.

Blanket Denial of MAT access is discrimination because of a disability.

- Disparate treatment
  - Thompson v. Davis, 295 F.3d 890 (9th Circuit 2002) denial of parole because of addiction is subject to disparate treatment analysis of ADA.
- Reasonable Accommodation
  - ADA requires reasonable accommodation to avoid discrimination.
- Disparate Impact
  - Title II ADA prohibits eligibility requirements that screen out or tend to screen out individuals with a disability, unless the criteria are essential to the provision of services.

QUESTIONS?

Watson v. Kentucky, E.D Kentucky, 7/7/15 (F. Supp.2d)

- Watson requires the state court take her off the conditional release terms or remove the "blanket prohibition on her taking suboxone, methadone or any other drugs that she needs to treat her addiction. The state attorney clarified that there was not a Blanket prohibition on MAT, but agreed that "it's generally the Court's practice to allow MAT if the doctor will show medical need."
- Relief denied. Her challenge on federal grounds was denied stating the claim could be handled on the state level.

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