Disclosures & Conflicts

- None
- Here in my personal capacity
Overview

- Federal law and state law are inconsistent – why?
- Colorado as a case study
  - Differences between medical & recreational marijuana
  - Specific MMJ requirements (patients & physicians)
- Federal law
  - Controlled Substances Act (and its enforcement)
  - Indirect consequences of federal illegality
  - Hemp, CBD issues
  - Potential laws of note (Hemp Act, STATES Act)
Americans live under both national and state governments.

**NATIONAL POWERS**
- Maintain military
- Declare war
- Establish postal system
- Set standards for weights and measures
- Protect copyrights and patents

**SHARED POWERS**
- Collect taxes
- Establish courts
- Regulate interstate commerce
- Regulate banks
- Borrow money
- Provide for the general welfare
- Punish criminals

**STATE POWERS**
- Establish local governments
- Set up schools
- Regulate state commerce
- Make regulations for marriage
- Establish and regulate corporations
Both the **federal** government and **state** governments can criminalize certain conduct.

Including the use of marijuana.
Or not.
Colorado – brief history

2000 – Amendment 20 to Colo. Constitution

- Authorized the “medical use of marijuana” for “debilitating medical conditions”
- Limited criminal protection
- No legalized sale of medical marijuana
Colorado – brief history

- 2010 – Medical Marijuana Code
  - Authorized new suppliers of MMJ
  - Localities have a choice
  - New physician regulations
Colorado – brief history

- 2012 – Amendment 64
  - Authorized personal (non-medical, recreational) use of marijuana
  - Localities have a choice
  - Separate regulation of industrial hemp
Medical v. Recreational

And some medical marijuana specifics
## Medical v. Recreational

<table>
<thead>
<tr>
<th>Medical</th>
<th>Recreational</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Quantity</strong></td>
<td><strong>Quantity</strong></td>
</tr>
<tr>
<td>6 plants/2 ounces +</td>
<td>6 plants/1 ounce</td>
</tr>
<tr>
<td><strong>Price</strong></td>
<td><strong>Price</strong></td>
</tr>
<tr>
<td>Lower tax</td>
<td>Higher tax</td>
</tr>
<tr>
<td><strong>Availability</strong></td>
<td><strong>Availability</strong></td>
</tr>
<tr>
<td>Centers* &amp; PCGs</td>
<td>Centers*</td>
</tr>
</tbody>
</table>
Medical Marijuana Specifics

- Physician role in medical marijuana
  - Providing a recommendation
  - Bona-fide physician-patient relationship
  - Special rules for minor patients

- Selected restrictions on MMJ
  - Caregiver & patient cultivation restrictions
  - Restrictions on use of MMJ
  - Local government restrictions
Physician Role

- Providing a recommendation for a patient
  - What is this for?
  - Why a “recommendation?”
  - (1) qualifying condition & (2) might benefit from using MMJ

- Bona-fide physician-patient relationship
  - Valid license, in good standing
  - Treatment or counseling relationship
  - Full assessment of medical history and current condition
  - Appropriate personal physical examination
  - Minor patients slightly different
Physician Oversight

- Professional oversight
  - Colorado Medical Board
  - General standards
  - MMJ-specific guidance

- Related oversight
  - Department of Public Health
  - Pecuniary interest oversight

- Criminal law
  - People v. Montante
  - Guilty - attempt to influence a public servant
  - Other crimes possible
Selected Restrictions

- Caregiver & patient cultivation restrictions
  - Registration with DOR
  - Location, patient card #s, plant count
  - Residential property limits

- Other restrictions on use of MMJ
  - Can’t endanger health & well-being
  - Not in plain view
  - Negligent behavior or professional malpractice
  - Not on school grounds*
Selected Restrictions, cont.

- Local government restrictions
  - Ordinances to address public safety
  - Types of residences (single-family v. multi-family)
  - Plants per residence
  - Permissible lights
  - Odor controls
  - Building & fire codes (electric, plumbing, etc.)
  - Nuisance & abatement
  - Supplier restrictions
Federal Law
Federal Law

- Why do we care?
- Controlled Substances Act (CSA)
- Enforcement discretion
  - Dept. of Justice memos; Congress-imposed limits
- Indirect consequences of federal illegality
- CBD issues
- Farm Bill (hemp)
- Potential laws of note
  - Hemp Act
  - STATES Act
Gonzalez v. Raich

- Angel Raich & Diane Monson
  - California residents using MMJ under California law
  - DEA seized and destroyed Monson’s 6 plants
- They sued DEA
- Issue: Can the federal government prohibit use of marijuana that is in compliance with California law?
- Answer: Yes.
- Federal government can enforce federal criminal law (the CSA) against marijuana use that is otherwise lawful under state law.
Establishes a closed regulatory system
Regulates manufacturing, distribution, and possession of “controlled substances”
Five schedules based on medical use, abuse potential, physical & psychological effects
Schedule 1 is highest and includes marijuana
Manufacture, distribution, and possession of marijuana is a criminal offense
Under *Raich*, these criminal prohibitions can be enforced against those who are using marijuana lawfully under State law
CSA – provider provisions

- Not just prohibitions
- Allows providers to administer, research, manufacture, or dispense controlled substances.
- Must be consistent with the public interest
- Control against unlawful diversion
- Conant v. Walters
- Massachusetts physicians (2014)
- Colorado physicians (2017)
Enforcement of CSA

- The federal government has discretion (and limited resources).
- DOJ memos (2009 – 2018)
- Rohrabacher-Blumenauer amendment
Indirect consequences of federal illegality

- Definitions, Grants, Contracts & Preemption

- Examples
  - *Coats v. Dish Network* ("lawful")
  - School programs to prevent illicit drugs
  - Drug-Free Workplace Act
  - Disability discrimination claims
  - *People v. Crouse*
Hemp & CBD issues

- Hemp
  - What is hemp?
  - Federal legality
  - Preview of possible new law

- CBD
  - What is CBD?
  - Federal legality
  - Open questions
Hemp

- Why do we care?
  - 2014 farm bill
- Definition of hemp
  - *Cannabis sativa* L. and any part of such plant with no more than 0.3% delta-9 THC.
- Research institutions and state agriculture depts.
- Rohrabacher-Blumenauer enforcement parallel
- Carve-out from CSA
- HIA v. DEA
First, the thing to keep in mind:
"Anybody out there that says the law on CBD is definite one way or another is lying."

- Jonathan Miller, Attorney, US Hemp Roundtable
  (reported by Ben Adlin of Leafly.com)
CBD

- What is CBD?
- What law regulates CBD?
  - CSA
  - Farm bill impact
IS YOUR CBD LEGAL?

WHERE DID IT COME FROM?

- cannabis
  - DOES IT COMPLY WITH THAT STATE’S CANNABIS LAWS?
    - yes
      - LEGAL within that state, illegal under federal law
        - IS IT MEDICAL MARIJUANA?
          - yes
            - Protected from enforcement under R-B
          - no
            - Not protected
    - no
      - ILLEGAL under state and federal law

- hemp
  - WAS IT GROWN IN THE U.S. OR IMPORTED?
    - imported
      - ILLEGAL (gray area)
    - domestically
      - Grown in compliance with 2014 farm bill
        - yes
          - LEGAL under federal law
        - no
          - ILLEGAL under federal law

* The DEA does not necessarily agree with this interpretation. This does not constitute legal advice.
CBD, cont.

- Online sales
- FDA warning letters, guidance
  - (1) unsubstantiated claims
  - (2) false #s
  - Not a supplement or food additive
- State-level regulation
- Possible rescheduling of CBD
Possible upcoming laws

- Hemp Farming Act of 2018
  - Removes hemp from CSA
  - Applies nationwide

- STATES Act
  - Removes state-compliant use from CSA
  - Medical and recreational (21+)
  - Changes federal status
  - Removes industrial hemp from CSA