

CANNABIS AND NURSING

“The illegality of cannabis is outrageous, an impediment to full utilization of a drug which helps produce serenity and insight, sensitivity and fellowship so desperately needed in this increasingly mad and dangerous world.” ~Carl Sagan



Cathy A. Klein, J.D., M.S.N., M.S. Ed., APN

CATHY A. .KLEIN, P.C.

27 Blue Heron Drive


Greenwood Village, CO 80121

(303) 721-1200 Main

(303) 721-1218 Fax

Cathy@KleinLawRN.com

A. Brief History of Cannabis

1. Originated in Central Asia and foothills of Himalayas – one of the earliest cultivated crops. Grown 1000s years for several uses, including oil, fiber, medicines, spirited purposes, etc. Evidence in pottery 10,000 years old.
2. Essential herbal medication in U.S. and world in 1800’s and was even added to official U.S. Pharmacopeia in 1850.
3. Along with movement to ban alcohol at turn of 20th century, came a change in American attitude toward what was beginning to be called by the derogatory term “marijuana’ – as used by immigrants, African-Americans, entertainers.
4. In 1937, the U.S. Federal Bureau of Narcotics under the initial direction of Harry Anslinger banned cannabis in the U.S. Remember “Reefer Madness”. The American Medical Association and others testified in Congress that the medication was necessary for treatment and poses no known risks. In 1942, it was removed from U.S. Pharmacopeia. By 1960, it was illegal throughout most of the world.
5. In October 2009, Ogden Memo directed U.S. attorneys to refrain from prosecuting those obeying their own state’s laws. Now – unknown.
6. As of August 2018, cannabis is recreationally legal in : Colorado, Washington, Alaska, Washington D.C., California, Maine, Oregon, Nevada, New Hampshire.
7. As of August 2018, cannabis medically legal in 29 states.
8. Canada just legalized medical use, and anticipates legalizing recreational use in the Fall 2018. It is also available in Holland and Uruguay.
9.  Future in U.S. is unclear due to federal government.

B. Ethical Considerations

1. Most states where cannabis is legal in various forms have modified Rule 1.2(d) which prevents lawyers from counseling clients to engage in criminal or fraudulent acts, thereby allowing us to counsel clients with respect to specified state cannabis laws so long as the lawyer also advises the client about related federal law and policy.
2. Colorado initiated Formal Opinion 124 allowing lawyers' personal use of medical and recreational cannabis.
3. U.S. District Court, D.C. COLO. Attny R 2(b)(2) makes an exception for Colorado lawyers to advise clients regarding Colorado Constitution Article XVIII, §§14 and 16 and the statutes, regulations orders, etc. while also advising clients regarding federal law and policy.

C. Regulatory Issues and Nursing

1. BIG PROBLEM
2. Three possible reasons:

- a. Remains federal crime

1. Coats v. Dish Network, LLC, 303 P.3d 147 (Colo. App. 2013), 2015 CO44

- a) OK to terminate an employee with a valid medical marijuana license who tests positive during random employer drug testing.

2. Ogden Memo – January 4, 2010

Prosecuting significant drug trafficking is a core priority, and not an efficient use of federal resources to focus enforcement efforts on medical marijuana patients complying with state law.

3. Cole Memo – June 29, 2011



4. Cole Memo – August 21, 2013

Purpose

1. Minors
2. Prevent revenue from passing to other states
3. Prevent transport interstate
4. Marijuana as pretext for trafficking other drugs
5. Prevent violence and use of fire arms
6. Prevent drugged driving
7. Prevent growing on public lands
8. Prevent possession on federal property

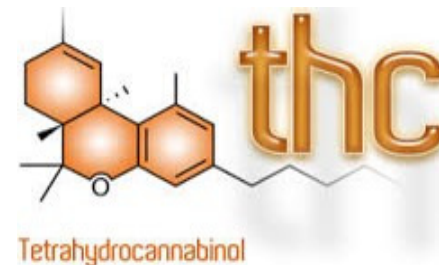
b. No valid test for current impairment

1. CBD vs. THC

a. Understanding how long THC remains in the body after use

1. Marijuana Drug Detection Time Chart by Medical Disposables, Inc.

1 time only	5-8 days
2-4 times per month	11-18 days
2-4 times per week	23-35 days
5-6 times per week	33-48 days
Daily Usage	49-90 days
● Hair Drug Test	Up to 90 days, some States 120 days
● Saliva Drug Test	1-20 days



- Blood Drug Test 2 days
- Fingernail Drug Test 90 days
- Alcohol Drug Test 3-5 days via Ethyl Gluconoride (EGT) or 10-12 hours via traditional method

2. Hair Dry Test

- a. Blood nourishes the hair as it grows.
- b. If drugs are in the blood, they will reach the hair and be embedded in the hair shaft.
- c. It takes about a week after drug use for the drug affected hair to grow above the scalp.
- d. Accuracy requires at least 100-120 strands of hair, cut as closely to the scalp as possible and must be at least a half-inch long.
- e. This gives your 30 days drug history, as hair grows about a half-inch a month.
- f. One and a half inches of hair gives 90 day drug history.

3. K2/Spice Test (Synthetic Marijuana Test)

- a. “Spice” refers to herbal mixtures that produce experiences similar to marijuana and are marketed as safe alternatives.
- b. K2, fake weed, Yucatan Five, Skunk, Moon Rocks, etc.
- c. Contains dry shredded plant material and chemical additives
- d. Urine
- e. Immunochemical reaction between antibodies and antigens





b. Using Doctor Testimony to Disprove your Client's Impairment

1. **National Highway Traffic Safety Administration states marijuana impairment testing is unreliable.**

(See Attachment.)

2. **National Institute on Drug Abuse also states marijuana impairment testing is unreliable.** (See Attachment.)

3. Qualifications

4. Marijuana impairment is not the same as alcohol – thus, detection is not the same.

5. Marijuana has many psychoactive components, most THC, and many non-psychoactive components.

6. THC is immediately taken up by fat cells and released slowly over time which is generally not a contributor of intoxication, but is reason why it can be detected so long after consumption.

7. Difficulty in accurately establishing an absolute correlation between some measured value and intoxication is complex pharmacology and pharmacokinetics.

8. Behavioral tests would have to be performed.

9. Some states have instituted legal limits of THC which is not due to intoxication or impairment, but a zero tolerance policy.

10. Diagnostic and Statistical Manual IV – DSM IV – uses behavioral criteria to diagnose marijuana intoxication and does not mention blood levels.

11. No reliable method to quantitatively determine if a person is impaired.

c. History of "Reefer Madness"

1. Insufficient research to support health risks to occasional use of marijuana.

2. Insufficient research to show effective treatment for various conditions.

- a. University of Mississippi
 - b. Uniform samples
 - c. FDA
 - d. Federal Law
- 3. Antidotal stories of successful treatment
- 3. How Nurses Usually Get “Caught”
 - a. Employee drug tests
 - 1. Pre-employment
 - 2. Random
 - a. Triggered by inaccurate narcotic count
 - b. Triggered by suspicious behavior
 - c. Odor
 - 3. Why test for marijuana?
 - 4. Zero tolerance drug policy
- 4. Positive drug test for marijuana
 - a. Nurse usually terminated
 - 1. Zero tolerance drug policy
 - b. Nurse usually gets reported to Board of Nursing
 - 1. Check your state BON practice and policy
 - a. Colorado – Nurse usually end up with a Board-ordered drug evaluation with diversion program (Peer Assistance Services – PAS)



- b. PAS evaluation usually concludes in recommendation for drug probation 3-5 years with required random drug tests, counseling and therapy, group meetings, practice restrictions.
- c. Public discipline

D. Employment Considerations

- 1. Zero tolerance drug policy
 - a. Results in termination usually
 - b. Mostly without recourse
 - c. On-the-clock use
 - d. Off-the-clock use, but under influence at work
 - e. Off-the-clock use and tests positive, but not impaired.



- 2. Coats v. Dish Network, LLC, 303 P.3d 147 (Colo. App. 2013), 2015 CO44
- 3. Defenses
 - a. National Highway Traffic Safety Administration (NHTSA) states testing for marijuana is not reliable to determine current impairment. (See attachment.)
 - 1. DUI limits for drugs, including marijuana, is inappropriate because a positive test does not indicate the person is currently impaired.
 - 2. Difficult to correlate relationship between THC level and performance impairing effect.
 - 3. Positive THC only indicates it is in the body, not necessarily impaired.
 - 4. Presence of THC in body can be detected long after any impairment.

- b. U.S. Government Accountability Office Report to Congressional Committees of 2015 (See attached.)
 - 1. Drug testing for marijuana is not reliable to test for current impairment.
 - 2. It is inadvisable to predict effects based on THC levels alone.
- c. Expert Testimony
 - 1. Toxicologist or other qualified professional with education, background and experience to serve as an expert on the issue.
 - 2. Cannot compare marijuana with alcohol – cannot be correlated.
 - 3. THC taken up by fat cells and released slowly over time which is generally not a cause of intoxication, but is reason it is detected over time.
- d. Behavioral tests
 - 1. Usually too late

