MARIJUANA MAYHEM: REGULATORY LESSONS FROM TOBACCO CONTROL
LEGAL TECHNICAL ASSISTANCE

- Legal Research
- Policy Development, Implementation, Defense
- Publications
- Trainings
- Direct Representation (crossed out)
- Lobby (crossed out)
EQUALITY does not mean EQUITY
MODERATOR / SPEAKER

Kerry Cork
Senior Staff Attorney
Public Health Law Center
FEATURED SPEAKER

Michael Tynan
Policy Analyst
Centers for Disease Control & Prevention
FEATURED SPEAKER

Char Day

Program Manager
Americans for Nonsmokers’ Rights
FEATURED SPEAKER

D.J. Wilson

Tobacco Control Director
Massachusetts Municipal Association
AGENDA

• Overview - Kerry Cork
• Public Health Issues - Michael Tynan
• Smoke-free Law Considerations - Char Day
• Takeaways from Massachusetts - D.J. Wilson
• Q & A
MARIJUANA MAYHEM:
Where We are Today

Kerry Cork, J.D.
That Train has Left the Station
FEDERAL STATUS

Under Federal Controlled Substances Act
• Classified as a Schedule 1 drug
• Federal offense to –
  – Cultivate, manufacture, distribute
  – Sell, purchase, possess, or use marijuana
IMPLICATIONS OF FEDERAL STATUS

• Lack of commercial banking services
  – Many marijuana businesses operate solely in cash
  – Public safety concern from law enforcement perspective

• Disadvantageous federal income tax terms

• Limited access to legal services

• Possible loss of employment for off-site users

• Role of marijuana use in family law proceedings
Recognizes therapeutic value of cannabinoid drugs (primarily THC)
CONCLUSIVE OR SUBSTANTIAL EVIDENCE

Cannabis effective for –

• Chronic pain in adults
• Chemotherapy-induced nausea & vomiting
• Multiple sclerosis spasticity symptoms

_Nat’l Academies of Sciences, Engineering & Medicine (2017)_
MODERATE EVIDENCE

Cannabis effective for –
Improving short-term sleep outcomes in those with obstructive sleep apnea syndrome, fibromyalgia, chronic pain and multiple sclerosis

_Nat’l Academies of Sciences, Engineering & Medicine (2017)_
“Smoked marijuana is a crude THC delivery system that also delivers harmful substances”
AGENDA

• Overview - Kerry Cork
• **Public Health Issues - Michael Tynan**
• Smoke-free Law Considerations - Char Day
• Takeaways from Massachusetts - D.J. Wilson
• Q & A
Marijuana Smoking & Tobacco Control; Impact on Smokefree Laws

Char Day

Program Manager

TCLC Webinar

December 2017

AMERICAN NONSMOKERS' RIGHTS FOUNDATION

@ANR_Smokefree www.no-smoke.org
Established in 1983, our services include:

✓ Providing resources, tools and strategic planning
✓ Tracking industry or allied opposition tactics
✓ Assisting with message development
✓ Illustrating policy trends via ordinance lists & maps
✓ Providing personalized training, technical assistance and support
Focus on Health Effects on Nonsmokers

Smoke is Still Smoke

www.no-smoke.org
What we are *not* talking about:

Marijuana as medicine  
Personal, private use
Secondhand Marijuana Smoke

- Contains hundreds of chemicals
- Contains many of the same cancer-causing substances and toxic chemicals as secondhand tobacco smoke, including:

  Significant levels of mercury, lead, formaldehyde, benzene, hydrogen cyanide, & toluene.

3 times the amount of ammonia

www.no-smoke.org
Similarities between tobacco and marijuana

• Leaf contains high concentrations of oils and waxes
  – “sticky icky”
• Nicotine and THC both survive combustion
• Combustion creates carcinogens
  – Polycyclic aromatic hydrocarbons
  – Formaldehyde
  – Nitrogen oxides
  – Heavy metals
  – Ultrafine particles

Suzaynn F. Schick, PhD
University of California, San Francisco

www.no-smoke.org
Secondhand Marijuana Smoke

• Contains hazardous **fine particles** that pose a significant health risk to non-smokers.

• Fine particles can:
  • Be breathed deeply into the lungs
  • Cause lung irritation, asthma attacks, & increase risk of respiratory infection.
  • Exacerbate respiratory conditions like asthma, bronchitis, or COPD.
Health Effects of Secondhand Exposure

• Secondhand marijuana smoke exposure **impairs blood vessel function.** It has a greater and longer-lasting effect on blood vessel function than exposure to secondhand tobacco smoke.

• People who are exposed to secondhand marijuana smoke can have **detectable levels of THC in their blood and urine.**

www.no-smoke.org
Marijuana and Work-Related Asthma

Work-related asthma is a lung disease caused or made worse by exposure to substances in the workplace. Legal industrial-scale marijuana (*Cannabis sativa*) processing has highlighted a connection between plant dust inhalation and a risk for work-related breathing problems.

Dust from many parts of the marijuana plant (leaves, buds and stems) as well as pollen and smoke are associated with allergic reactions. Common examples of allergic reactions include asthma, rash, and a few case reports of anaphylactic shock. Work-related asthma has been reported in cannabis laboratory workers.

In addition to the marijuana dust itself, industry workers are exposed to other asthma-causing substances such as mold, pesticides, soil components, ozone, and cleaning chemicals.
Law enforcement worker exposed to marijuana.

A 58 year-old male evidence room manager’s asthma became aggravated at work while opening a box containing marijuana paraphernalia and a water bong. Water from the bong had leaked inside the box and released a strong odor that overwhelmed him. His asthma episodes increased following continual exposure to marijuana on the job. He had to take 14 days off work to recover.

Marijuana processor develops breathing problems at work.

A 55 year-old female worker developed asthma on the job when tasked with trimming marijuana leaves in preparation for packaging. Her workspace did not have adequate ventilation and breathing protection was not available. The worker does not intend to return to the jobsite.

Marijuana processor experiences shortness of breath at work.

A 29 year-old male marijuana processor experienced an allergic reaction brought on by handling marijuana. He quickly noticed the following symptoms: shortness of breath, itchiness, watery eyes, and chest tightness. Despite relocating to a different work area his symptoms continued and he left the industry.

**Myth:** Some people believe they can strengthen their lungs to resist the toxic effect of substances.

**Reality:** There is no way to toughen up your lungs. If you experience breathing problems at work, you should speak to your doctor.
The marijuana control movement is in a similar place that nonsmokers’ rights advocates were in the 1970’s.

Seemingly uphill battle against a tsunami of laws legalizing recreational marijuana.
Tobacco Industry Interference Tactics

• Policy Diversion
  • Weak policy language intended to give the appearance of “doing something “ to address the problem
  • Diverting the policy debate away from health

• “Third Party Endorsers”
  • Restaurant, Beverage, Retail Associations
  • State & local front groups

• Propaganda machine
  • Economic scare info—sales, jobs, tourism
  • Health scare tactics: “Quit or Die” argument
  • Attacks on science through 3rd party allies or scientists
  • Individual rights/anti-bureaucracy/anti-government arguments

• Other tactics
  • Litigation
  • Electoral activity – council races, referenda, initiative
  • Preemption
New Industry, Similar Script

20,679 Physicians say "Luckies are less irritating. "It's toasted."

[Image of a vintage advertisement for Luckies cigarettes]

[Image of a diagram comparing different drugs and their effects]

[Image of a stuffed bear with a marijuana leaf on its chest]

www.no-smoke.org
Normalizing Marijuana Use

Marijuana cocktails and other alcohol beverages... “To ensure even non-smokers can enjoy the drink, Lagunitas worked with vape cartridge company, CannaCraft, to separate the fragment compounds called terpenes, from the THC which gets you high...the weed gives a subtle, distinctive flavor.”
Loopr routes reimagine how you experience a city. With an app that connects you with a reliable, curated transit network, we’ll guide you through lifestyle locals that engage the best your city has to offer - of nightlife, craft brewing, food, cannabis tourism, and more. All on a loop that can be joined at anytime! Running Thursdays-Fridays 4pm-midnight, and Saturdays-Sundays 2pm-midnight, please call us toll free at 844-MYLOOPR for more information.

Download on the App Store  
Get it on Google play

HOW IT WORKS

Get in the loop

Loopr offers both unlimited access to your city and a premium cannabis social lounge experience - on wheels. Just download our app and pick the pass that suits your needs.
Disguising Marijuana to look like Vape pens/e-cigarettes

www.no-smoke.org
Electronic Smoking Devices

- THC oils and dry herbs are being inhaled via electronic smoking devices (and exhaled into the environment).
- “E-cigarettes for marijuana are already widely available, but the mCig is different. It's something of a hybrid between an e-cig and a joint, in that you can put "dry herb" in it and heat it to the edge of combustion.”
Recreational Marijuana Legalized
Ventilation is NOT a solution to secondhand smoke or secondhand aerosol

“At a minimum, establish and maintain smoke-free workplaces that protect those in workplaces from secondhand exposures to tobacco smoke and airborne emissions from e-cigarettes and other electronic nicotine delivery systems. Smoke-free zones should encompass (1) all indoor areas without exceptions (i.e., no indoor smoking areas of any kind, even if separately enclosed and/or ventilated), (2) all areas immediately outside building entrances and air intakes, and (3) all work vehicles. Additionally, ashtrays should be removed from these areas.”
Marijuana Smoking in Policies & Laws

• Legalization and commercialization of marijuana is **posing problems** for public health in general.

• **Smoke is smoke.** Marijuana smoke is a form of indoor air pollution.

• People should not have to breathe secondhand marijuana smoke at work, in public, or at home.

• Marijuana smoking should be **prohibited** in all smokefree environments.
Regulating Marijuana like Tobacco

California Senate Bill (SB 162) by Senator Ben Allen, D-Santa Monica:

• Prohibits billboards along highways
• Prohibits false or misleading advertising
• Prohibits *advertising* cannabis on branded merchandise, including clothing and hats
• Prohibits marketing that suggests a product was cultivated in a certain appellation when it wasn’t
• Prohibits publishing ads that are “attractive to children” or that encourage people under age 21 to consume cannabis, advertising on signs within 1,000 feet of a daycare, K-12 school, a playground or youth center

We would also suggest use excise taxes for prevention and cessation campaigns, retailer licensing and additional zoning rules, and prohibit marijuana use in smokefree environments.

www.no-smoke.org
Protecting Nonsmokers from Secondhand Marijuana Smoke

April, 2017

Many states have now legalized marijuana for medical (26 plus DC) and/or recreational use (seven plus DC), with many more considering it. A new industry for marijuana consumption is being created in the U.S. and it has one goal: to normalize marijuana use, including smoking, everywhere and to have it regulated “just like alcohol.” As the trend toward normalizing public smoking of marijuana grows, we need to be aware that more laws will likely be proposed to weaken smokefree protections and allow for broader use of smoking marijuana in public places and even in workplaces. The marijuana industry wants to accomplish this goal, in part, by borrowing tactics from Big Tobacco’s playbook and chipping away at smokefree protections.

Therefore, it is not surprising that the growing marijuana industry is starting to look more like the tobacco industry — a commercial industry seeking to maximize sales, profits, and product consumption, and backed by marketing campaigns, lobbyists, and lawyers to shape regulation. At the same time, tobacco is starting to look a little more like marijuana — seeking to dovetail on any opportunity to renormalize smoking in social environments, like bars, and pushing to allow for indoor use of e-cigarettes and “vape pens” that can be used to consume both tobacco and marijuana products.

As the marijuana industry grows and is legalized, health professionals are trying to keep up with the changes this entails for their communities, such as an increase in marijuana smoking and exposure to secondhand marijuana smoke. Regardless of the debate of possible benefits of marijuana products, there is simply no need to use them inside shared air spaces (such as workplaces, public places, and multi-unit housing) where others are then subject to the hazardous secondhand smoke. Just like traditional cigarettes, marijuana should be used in ways that don’t impact the health of others.

Be prepared!

Nobody should have to breathe secondhand marijuana smoke at work or where they live, learn, shop, or play. Smoke is smoke and marijuana smoke is a form of indoor air pollution. Therefore, it is important to strengthen all smokefree laws – both existing and new -- to include marijuana in the definitions of

Fact Sheets @ www.no-smoke.org/marijuana
Opposition Arguments

• Marijuana is **natural** and therefore cannot be harmful
• Marijuana smoke is **different** from tobacco smoke
• Marijuana smoke is **not as bad / dirty** as tobacco smoke
• There is **no / not enough science** to document hazards of secondhand marijuana smoke exposure
• There is **no secondhand high** from marijuana smoke
• No one has **died** from marijuana secondhand smoke
• Just put in a **ventilation** system then its all good
Marijuana

Marijuana, legal or not, creates secondhand smoke, which is a form of indoor air pollution. If we truly want safe, healthy, smokefree spaces, then they should be free from particulate matter created by tobacco cigarette smoke, marijuana smoke, and secondhand aerosol from electronic smoking devices. Nobody should have to breathe secondhand marijuana smoke at work or where they live, learn, shop, or play.

Smoke is smoke and marijuana smoke is a form of indoor air pollution. Read ANR’s position paper, Protecting Nonsmokers from Secondhand Marijuana Smoke for more information.

To assist the tobacco control movement with facts and resources about secondhand marijuana smoke, we have created a few fact sheets and infographics. Our subject matter experts are also available to speak to groups and coalitions about preparing for and responding to marijuana secondhand smoke issues and policies. Contact us at 510-841-3032 or anr@no-smoke.org.

Secondhand Marijuana Smoke Contains Hundreds of Chemicals - Just Like Secondhand Tobacco Smoke

Secondhand marijuana smoke contains many of the same cancer-causing substances and toxic chemicals as secondhand tobacco smoke, including:

- 20 times the amount of ammonia
- 3-5 times more hydrogen cyanide
- Significant levels of mercury, lead & formaldehyde
Conclusions

• Consider a campaign focused on nonsmokers’ rights vs. an industry focused on profits over health.

• **Include marijuana** in definitions of “smoking” in smokefree laws.

• **Be prepared** for marijuana industry tactics:
  • Push to expand legality & normalize marijuana use
  • Deny health concerns
  • Weaken smokefree laws → allow marijuana smoking

• **Stick to health messages** about secondhand smoke, even when referring to use of medical marijuana.
Conclusions and Recommendations

- Marijuana, legal or not, creates *secondhand smoke*.
- **There is science** about the particulate matter created by secondhand marijuana smoke, and more is coming.
- **There is science** about the health effects of secondhand marijuana smoke, and more is coming.
- If we truly want to have safe, healthy, smokefree spaces, then they should be devoid of particulate matter created by *tobacco cigarette smoke, marijuana smoke, and secondhand aerosol* from electronic smoking devices.
- Research demonstrates that *ventilation systems cannot remove all of the hazardous gases, toxins, and particulate matter created by secondhand smoke and aerosol*; therefore, *ventilation is not a solution*. *Smokefree environments protect workers and patrons from exposure to secondhand smoke and aerosol.*

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Medical and Adult-Use of Cannabis in Massachusetts

December 13, 2017

D.J. Wilson, Tobacco Control Director
David Lakeman, Legislative Analyst
Massachusetts Municipal Association
Chris Walsh, Editorial Director of *Marijuana Business Daily* said at CSP’s Total Nicotine Conference:

• “This is a professional industry now. . .”

• 2016 election: “This will move quickly.” “… More than 50% of Americans support recreational marijuana.”

• “At some point, legislatures will have to address that.”

• Industry will generate $14 billion to $17 billion in 2016, according to Walsh.

• “Baby boomers are huge for this industry.” Wide consumer base.

• “Absolutely, Big Tobacco is looking at this.”

• “They know how to cultivate crops, they know how to market adult products, they know how to distribute.”
DPH’s **Medical** Marijuana Program

- Ballot initiative 2012 – 63% to 37% - only 2 out of 351 municipalities voted no.
- Program housed and regulated at Department of Public Health.
- Edibles not considered “food” for purposes of Food Code.
  - Locals do not need to enforce, unless they want to.
- Local permitting and regulation allowed.
  - **No preemption**
- Non-refundable state application fee of $30,000.
- Annual state registration fee of $50,000 – supports funding DPH program.
Recreational Marijuana Question:

Results of November 2016 ballot question “to regulate cannabis like alcohol”
260 – yes/91 - no

• Housed at the Office of the Treasury (where ABCC is located).

• Cannabis Control Commission (CCC) of 5 members with following backgrounds:
  • Steven J. Hoffman, Chair: retired Bain and Company executive
  • Kay Doyle, J.D., former DPH attorney for Medical Marijuana Program
  • Jennifer Flanagan, former legislator
  • Shaleen Title, co-founder of THC Staffing, cannabis advocate
  • Britte McBride, former assistant attorney general

• Commission appoints Executive Director, Sean Collins, J.D.
  • Chief financial and account officer and other employees.
Responsibilities of CCC

- Promulgate regulations prior to licensing.
- Supervise industry.
- Implement state licensing system.
- Issue licenses to operate.
- Investigate and enforce violations.
Cannabis Advisory Board (25)

- Executive Director
- Commissioner of Public Health
- Department of Housing and Economic Development
- Commissioner of Revenue
- Commissioner of Agricultural Resources
- State police representative
- Massachusetts Municipal Association
- Massachusetts Patient Advocacy Alliance
- Qualifying Medical Marijuana Patient
- ACLU of Massachusetts
- Marijuana cultivation expert
- Marijuana retailing expert
- Marijuana manufacturing expert
- Expert in laboratory sciences and toxicology
- Legal expert in representing marijuana businesses
- Expert in minority business development
- Expert in economic development strategies for under-resourced communities.
- Expert in farming
- Expert in municipal law enforcement
  - Experience in impairment detection and evaluation
Cannabis Advisory Board (continued)

- Expert in social justice
- Expert in criminal justice reform
  - To mitigate disproportionate impact of drug prosecutions on communities of color
- Expert in minority-owned businesses
- Expert in women-owned businesses
- Expert in prevention and treatment of substance use disorders
Funding Mechanism

• 20% tax on product.
  • 10.75% excise tax on retail marijuana sales.
  • 6.25% sales tax.
  • 3% local tax if desired by municipality.
Local Control

1. Locality may not prohibit an RMD licensed by July 1, 2017, from becoming a recreational marijuana store. Head start for RMD’s?

2. May not limit to less than 20% of the number of retail off-premises alcoholic beverage licenses (package stores) issued under G.L. c. 138 (or prohibit) the number of marijuana stores, except:
   1. If the city/town voted FOR legalization, voters at annual or special election can vote the bylaw or ordinance up or down.
   2. If city or town voted AGAINST legalization Board of Selectmen or City Council can prohibit marijuana establishments.

3. May require “community impact fee’’
   1. Must be related to costs imposed on community; not more than 3% of gross sales of establishment or be effective for more than 5 years.

4. Can’t require signage more restrictive than alcohol signage.
Local Control (continued)

5. Can pass reasonable zoning ordinances and by-laws.
   5. Temporary moratoria enacted in dozens of city/towns.

6. Cannot be “unreasonably impracticable.”
   5. “subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment.”
   5. What does this mean?

7. Can enforce the food code.
   5. But what about medical marijuana?
   6. Current DPH regulations say medical marijuana edibles are not food.
CCC will develop regulations to address:

- Licensing requirements
  - Who gets a license – “expedited review” for RMD’s?
  - Minimum security requirements
  - Health and safety standards (in consultation with DPH)
  - Requirements for packaging, including certified child-resistant and resealable
  - Require the division of each servings so that a person can identify a single serving
  - Ban use of bright colors, cartoon characters
  - Assure packaging is opaque or plain in design
Labeling Requirements

- Symbol or recognizable mark issued by the CCC
- Warning that product is harmful to children
- Name and contact information of cultivator or manufacturer
- Lab that tested the product
- Certification that product meets testing standards
- Unique batch number
- List of ingredients
- Percentage of THC in each serving
- Disclaimer – product not FDA approved
Illegal on Federal Level

- U.S. Attorney General for continued Controlled Substance categorization
- Cash business – banks won’t touch it.
- Previous administration’s standard operating procedures vs. current administration.
- Proceed at your own risk.
Advertising Requirements

- Not restricted like we are with tobacco because product is still illegal federally.
- No deceptive, false or misleading ads.
- No ads on TV, radio, internet, billboard or sponsorship of charity events
  - **UNLESS 85% of audience is “reasonably expected” to be more than 21.**
  - Up-to-date audience composition data.
- Can’t portray anyone less than 21.
- No mascots, cartoons, brand sponsorships and celebrity endorsements **DEEMED TO APPEAL TO A PERSON LESS THAN 21.**
- No giveaways, coupons or free or donated marijuana.
- Reasonable local regulation on timing and use of illuminated external signage and neon signs.
Marijuana Regulation Fund

- To implement, administer and enforce the law
- Public and behavioral health
  - Evidence-based and evidence-informed substance use prevention, treatment and early intervention services
    - School districts and community coalitions
- Public safety
- Municipal police training
- Prevention and trust fund
- Programing for restorative justice
- Jail diversion
- Workforce development
- Technical assistance for industry
- Mentoring service for economically-disadvantaged persons in communities disproportionately impacted by high arrest rates and incarceration for marijuana offenses
Research Agenda of CCC

• Study social and economic trends of marijuana in Massachusetts.
• How to close illicit marketplace.
• Public health impacts of marijuana.
• Patterns of use.
• Methods of consumption.
• Sources of purchase.
• Marijuana use among minors, etc.

• Conduct baseline study.
• Incidents of impaired driving.
• Ownership and employment trends in marijuana industry.
Timetable

- Dec. 15, 2016: Personal use legal – up to 12 plants in home – up to 2 ounces on person.
- Aug. 1, 2017: Governor must make initial appointments to CAB
- Sept. 1, 2017: State Treasurer must make initial appointments to CCC.
- Mar. 15, 2018: CCC must promulgate regulations.
- Apr. 1, 2018: CCC must begin accepting licensing applications from all retailers, manufacturers and cultivators. Conundrum #6:
  - RMD’s and provisional RMD’s get an “expedited” review process.
  - How do we tell the difference between nontaxable and taxable marijuana?
  - Profit or not for profit?
- First draft of proposed CCC regulations due 12.29.17.
- Dec. 31, 2018 – Medical program moves to CCC – but what about now?
Tobacco Interaction #1

• Used to be called “drug paraphernalia.”
  • Only permitted if retailer had a tobacco sales permit.
• Now called “marijuana accessories.”
  • “equipment, products, devices or materials of any kind that are intended or designed for use in ... ingesting, inhaling or otherwise introducing marijuana into the human body.”
• Head shops are perfectly legal.
• No need for tobacco sales permit.
Tobacco Interaction #2

- Tobacco sales sample regulation would be perfect for this topic but legality of use unclear
- Tobacco Retailers are asking for the “Marijuana Sales Permit“
- Retailer confusion around Synthetic Marijuana and Hemp
- Tobacco Control personnel not funded to work on marijuana

Tobacco Interaction #3

- Our current Statewide Smoke-Free Workplace Law uses this definition:
  "Smoking" or "smoke", the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.
Omnibus Tobacco Bill (HB2864)

• Increase minimum legal sales age to 21
  • 66.1% of residents covered by local regulation that does this (156)
• Add e-cigarettes to smoke free workplace law
  • 56% of residents covered by local regulation that does this (130)
• Prohibit sale of tobacco in pharmacies
  • 67.2% of residents covered by local regulation that does this (152)
• Also, ban RYO machines, vending machines, blunt wraps
• Hearing before Joint Public Health Committee May 2017
• Still in committee - Legislative drops 3 times a week.
QUESTIONS?
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