

# The Impact of Cannabis Legalization on Maine Summer Camps

## A Presentation for *Maine Summer Camps*

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Drummond Woodsum | Portland, ME

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## Agenda

1. National Trends
2. Federal Law
3. Medical Marijuana in Maine
4. Adult Use Marijuana in Maine
5. Campers
6. Employees
7. A Note on CBD Products
8. Questions and (hopefully) answers

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## I. National Trends

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### A National Trend Toward Legalization

- 33 states (plus D.C. and Puerto Rico) with medical marijuana
- 10 states (plus D.C.) with full "adult use," i.e., recreational legalization (Colorado, Oregon, Washington, Alaska, California, Massachusetts, Nevada, Maine, Michigan, and Vermont)
- More states are moving toward adult use legalization:
  - New Jersey and New Hampshire legislatures may legalize
  - Newly elected Governor of Connecticut and the Governor of New York support it

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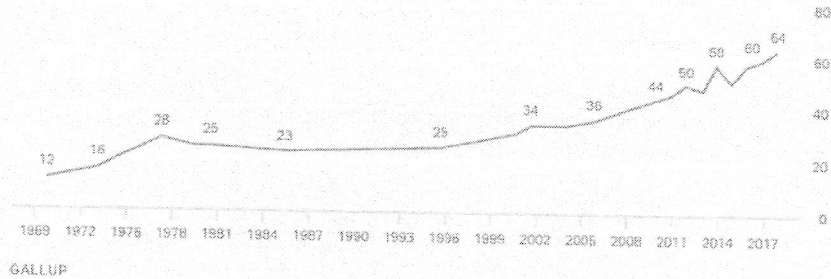
## Changing Public Opinion

National support of legalization 64 % in October 2017

### Americans' Support for Legalizing Marijuana Continues to Rise

Do you think the use of marijuana should be made legal, or not?

■ % Yes, legal



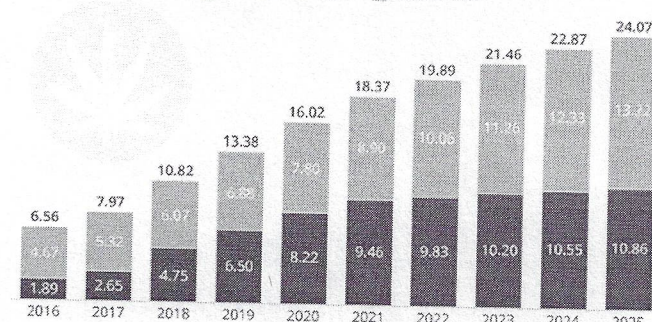
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## Business Opportunities in Cannabis

### U.S. Marijuana Market: The Grass Is Getting Greener

Projected growth of U.S. recreational and medical marijuana sales (billion U.S. dollars)

■ Recreational Total ■ Medical Total



Source: The Cannabis Industry Annual Report

statista

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## II. Federal Law

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### Federal Controlled Substances Act

- Production, processing and sale of marijuana is completely illegal under federal law; everyone producing, processing and selling marijuana – even in a state where it's legal for medical or recreational purposes – is committing a federal crime
- Marijuana is a Schedule I substance under the U.S. Controlled Substances Act, grouped with the most dangerous drugs, including LSD and heroin
- Some bi-partisan bills to change legal status, but so far no changes to federal law

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### Obama Administration

- Obama Justice Department had issued a series of written policy memos instructing U.S. Attorneys not to interfere with state legalization efforts, unless certain enumerated federal enforcement priorities are implicated (Cole Memo)

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### Trump Administration

- President Trump has made a variety of conflicting statements
- Former Attorney General Jeff Sessions has rescinded the Cole Memo
- Has instructed and permitted U.S. Attorneys to use their discretion in determining whether to move against operators in states with legal marijuana
- The views of local U.S. Attorneys on marijuana legalization are (and always have been) extremely critical, and now there is no longer a national standard for prosecutorial discretion
- There have been some legislative efforts to address the disconnect between federal and state law, none of which have been successful

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### III. Medical Marijuana in Maine

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#### Some History

- First legalized in 1999 for medical use
- Substantially over-hauled the program in 2006, creating commercial sources of medical marijuana
- Considered one of the more “liberal” systems in the country, no qualifying conditions (i.e., reasons for getting marijuana), reciprocity (i.e., Maine will recognize out of state patient cards)
- System was substantially overhauled again in July 2008 to make the system even more liberal and to candidly recognize commercial aspects

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### How does it work and who are the players?

- "Qualifying patient" has a right to use medical marijuana
  - The law used to require that you had one on an enumerated list of "qualifying conditions"
  - Recent overhaul got rid of that, now you just need a doctor to certify that it will be helpful
  - First state to eliminate enumerated conditions
- Certification from a physician or nurse practitioner licensed in the state of Maine
  - Bona fide patient provider relationship
  - In person examine

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### Minor Qualifying Patient

- Physicians can issue certifications for medical marijuana to individuals under the age of 18 if the patient has a medical diagnosis of:
  - epilepsy,
  - cancer, or
  - a developmental disability or an intellectual disability that, in the medical provider's professional opinion, may be alleviated by the therapeutic or palliative medical use of marijuana
- If the patient does not have one of the above diagnosis, a physician can issue a certification only after consulting with and obtaining an advisory opinion from a physician approved by DHHS that the minor patient is likely to receive a therapeutic or palliative benefit from medical marijuana
- Qualifying patients under the age of 18 may not smoke marijuana (includes vaporizing). For purposes of this limitation, the definition of smoking excludes nebulizer.

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### Where can patients get medical marijuana?

- Grow it themselves
- Buy it at one of the 8 "dispensaries" in Maine
- Buy it from a medical marijuana "caregiver" (over 4,100 in Maine now)
- NOTE: "dispensaries" and "caregivers" are different – the words get used interchangeably but they are different types and scales of enterprise

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### IV. Adult Use Marijuana in Maine

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### Some History

- Recreational or “adult use” marijuana legalized by voters in 2016
- Legislature overhauled voter passed law in 2018
- In the process of creating commercial cultivation and sales system (likely first sales in 2020)

### Limitations on Adult Use

- Must be 21 or older
- May consume marijuana or marijuana products only if that person is:
  - (1) In a private residence, including curtilage; or
  - (2) On private property, not generally accessible by the public, and the person is explicitly permitted to consume marijuana or marijuana products on the property by the owner of the property.

## Limitations on Adult Use, Cont.

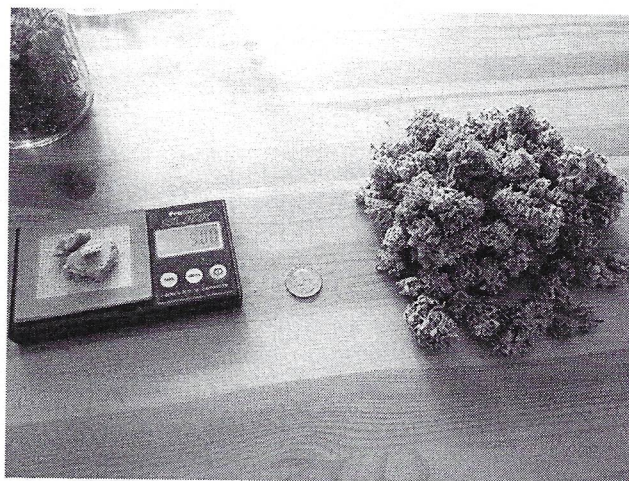
A person 21 years of age or older may NOT consume marijuana or marijuana products:

- (1) If that person is the operator of a vehicle on a public way or a passenger in the vehicle. As used in this subparagraph, "vehicle" has the same meaning as in Title 29-A, section 101, subsection 91;
- (2) In a private residence or on private property used as a day care or baby-sitting service during the hours in which the residence or property is being operated as a day care or baby-sitting service;
- (3) By means of smoking the marijuana or marijuana product in a designated smoking area as provided under the Workplace Smoking Act of 1985; or
- (4) By means of smoking the marijuana or marijuana product in a public place or in a public area where smoking is prohibited under Title 22, chapter 262.

## What can people do now?

- Adult Use
  - Possess up to 2.5 oz. of marijuana or 5 grams of concentrate
  - Grow up to three plants
  - Use marijuana in a private place
  - No commercial sales!!!





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V. Campers

### Federal Disability Discrimination Laws

Americans with Disabilities Act does NOT require that public accommodations accommodate the use of medical marijuana, which is a scheduled I controlled substance under federal law.

***James v. City of Costa Mesa***, 700 F.3d 394 (9<sup>th</sup> Cir. 2012) holding that “doctor-recommended marijuana use permitted by state law, but prohibited by federal law, is an illegal use of drugs for purposes of the ADA, and that the plaintiffs’ federally proscribed medical marijuana use therefore brings them within the ADA’s illegal drug exclusion.”)

Several federal district courts have reached a similar conclusion with regard to the accommodation and anti-discrimination protections in Section 504 of the Rehabilitation Act of 1973.

### State Anti-discrimination Provision

- “A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person’s status as a qualifying patient or a primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding.” 22 M.R.S. § 2423-E(2)
  - Applies ONLY to medical marijuana
  - Does NOT apply to campers (likely applies to camp employees)



### Administration in Schools

- The law requires school to allow an adult caregiver to administer medical marijuana on school grounds
  - Parent or a designated caregiver may possess medical marijuana on school grounds for the purposes of administer medical marijuana to minor qualifying patient
  - School staff are not permitted to posses
  - or use medical marijuana on school grounds
  - Minor qualifying patients are not permitted to smoke medical marijuana on school grounds (includes vaporizing), but may be a nebulizer
- A prior version of the law required schools to allow a parent to administer medical marijuana to a minor qualifying patient off school grounds

DOES NOT APPLY TO CAMPS

### Campers from Out of State

- Even though medical marijuana is legal in Maine it CANNOT be transported over state lines, even from a state that has also legalized medical marijuana
- Each state has different laws regarding who qualifies to legally use medical marijuana
- Maine is one of the only states that recognizes patient cards from other states and allows for qualifying patients in Maine to purchase medical marijuana from Maine caregivers or dispensaries

## American Camp Association Guidance

- Consult with legal counsel should you be confronted with prospective campers using or seeking to use medical marijuana.
- If you are inclined to accommodate the use of medical marijuana on or off your premises by one of your campers, **consider the consequences**. Even if you choose to allow such use, consider that there is a well-documented body of research identifying that use of marijuana impairs an individual's ability to function — and that impairment would logically extend to many traditional camp activities.

### Bottom Line

- You are not required to permit use of medical marijuana by campers.
- If you do choose to accommodate camper use of medical marijuana you should:
  - consult legal counsel
  - have tightly written policies governing such use
  - consult your insurance company
  - consider additional waiver language



## VI. Employees

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### Adult Use Marijuana

#### Employer rights:

- **Employment policies.** This chapter may not be construed to require an employer to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or growing of cannabis in the workplace. This chapter does not affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace. 7 MRSA § 2454(2).

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## Medical Marijuana

Medical marijuana law contains similar employment provisions:

- **Construction.** This chapter may not be construed to require . . . An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana. 22 MRSA § 2426(2).
- **School, employer or landlord may not discriminate.** A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord or business owner may prohibit the smoking of marijuana for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises. 22 MRSA § 2423-E

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## Employer Concerns and Considerations

1. Conflict with federal laws
  - DOT drug testing requirements.
  - Federal weapons laws. *E.g.*, It is a federal crime to sell/dispose of a firearm to any unlawful user of a controlled substance. See Maine Chiefs of Police Association Model Marijuana Policy.
  - Controlled Substances Act
2. Federal Drug Free Workplace Act of 1988
  - Applies to all federal grantees and some federal contractors
  - Requires grantee/contractors to provide a "drug-free workplace"
  - Among other things, requires policy statement to EEs informing them that the unlawful possession/use, etc. of a controlled substance is prohibited in the workplace
  - Must report drug convictions to federal agency
  - Does not require drug testing
  - Does not encompass off-duty drug use

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## Employer Concerns and Considerations, Cont.

### 3. OSHA

- General duty clause: Employer must furnish a workplace that is free from "recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees."
- No explicit requirement for drug free workplace

### 4. Criminal accomplice liability

- "Whoever commits an offense against the United States or aids, abets, counsels, commands induces or procures its commission, is punishable as a principal . . ." 18 U.S.C. § 2(a)-(b).

### 5. Civil liability

- Negligent hiring and retention
- Respondent Superior

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## Potential Claims

- Disability discrimination/failure to accommodate
- Independent claim under applicable state legalization statute
- "Wrongful termination" in violation of public policy
- Claim under Maine Substance Abuse Testing Law
- Invasion of privacy tort (when drug testing used)
- Invasion of the constitutional right to privacy (when drug testing used)

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### Litigation in Maine and Other Jurisdictions

*There have been a few court cases in Maine and around the country providing guidance on marijuana in the workplace.*

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### Bottom Line

- Employers may prohibit the possession and use of marijuana at work.
- Employers may prohibit employees from being impaired by marijuana at work.
- Maine law prohibits Employers from discriminating against employees solely on the basis of the employees' being a qualified patient or a primary caregiver unless failing to do so would put the Employer in violation of federal law or cause it to lose a federal contract or funding.



## VII. CBD Products

### Status of CBD Products

- CBD produced from industrial hemp is no longer a Schedule I drug under the federal CSA
- However, must be produced pursuant to an approved state plan or USDA Regulations
- Also subject to other federal regulations, such as the Food, Drug, and Cosmetics Act
- FDA has taken the position that CBD is an approved drug and cannot be marketed or sold as a dietary supplement or food additive
- Epidiolex is the only CBD drug approved by the FDA. This product can be treated like any other prescription drug.

## VIII. Questions

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**DrummondWoodsum**  
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## Thank You



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