Legalized Recreational Marijuana and Safety: Implications for the Workplace

By Peter D. Lowe, Esq.

In November, the northeast states of Maine and Massachusetts became the latest states to legalize recreational marijuana through referendum. Eight states now allow their citizens to use marijuana for recreational purposes. The Maine and Massachusetts state legislatures will no doubt pass additional legislation and state agencies will engage in rule making. However, employers in both states are faced with the immediate prospect of employees failing pre-hire drug tests, possessing marijuana at work and possibly reporting to work impaired by marijuana. As an employment lawyer here in Maine, I have found myself fielding many questions from anxious employers about the enforceability and legality of their current workplace drug policies and how to deal with employees who use recreational marijuana.

All employers and employees need to understand that marijuana remains illegal under federal law. Marijuana remains a Schedule 1 drug, and use and possession is illegal under the Controlled Substances Act. The Obama administration adopted a policy of non-enforcement of federal law for personal use of marijuana in states where use has been legalized for recreational and medical purposes. With a new administration in Washington, it is unclear how it will address the enforcement of federal law. There is some speculation that Attorney General Sessions might be less supportive of state sanctioned use of marijuana, but it is too early to tell.

While there are some differences between the two new state laws in Maine and Massachusetts, there are some common themes:

1. **Use and possession at Work.**

Employers may prohibit the use or possession of recreational marijuana at work.

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Ron and Jay's Truck Stop, or Go?

CDME Case Presentations

By Ron Blum, MD, FACOEM, FAAFP; President of NECOEM and Jay Poliner, MD, MPH, FACOEM

To all our Commercial Driver Medical Examiners...this column is for you. We hope the cases and issues presented will be helpful in your practice. Have an interesting question or problem case to share in a future newsletter? Do you have any other thoughts or opinions about these cases? Send them to Newsletter Editor, Susan Upham, MD, MPH, FACOEM supham@roadrunner.com.

I. Advanced Lung Adenocarcinoma

A NECOEM member shared the case of a 70-year-old driver, under treatment for Stage IV adenocarcinoma of the lung for the past year, who presented for recertification. He had been given six month medical certifications for operating a CMV twice since his diagnosis. His lesion was progressing on lung CT despite standard treatment and he was due to start an experimental protocol with a new oncologist. He had no known metastases. Six weeks prior to this exam, he underwent lung pleurodesis to remove an effusion and continued to have slight drainage from that site, though this was abating.

He admitted to dyspnea on heavy exertion, but not with level walking, climbing a flight of stairs, or lifting. He reported gaining weight, with a poor appetite. He denied chest pain, dizziness, syncope, fatigue or difficulty with balance, cognition or use of extremities. He assured the provider that he had good energy and had been driving without difficulty, and wanted to continue.

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President’s Column
By Ron Blum, MD, FACOEM, FAAFP

The looming new year is anticipated with greater uncertainties than usual, given our nation’s recent dramatic political transition. As I assume the presidency of NEOCoom, I sense our progression will be smooth. I am grateful for the excellent leadership that our outgoing president, Philip Parks, provided for the past two years, despite a busy work schedule and three young children at home. Initiatives started under Philip’s term will define NEOCoom’s continued success. I look forward to working closely with the NEOCoom Board and other members who opt to participate in committees or suggest other programs.

My spirit and commitment are always renewed by attending our Annual Conference, and this December was no exception. Once again, we provided an enlightening learning experience covering a broad range of topics relating to workers in various environments - outer space, 18 wheelers, hospitals, and casinos. Other topics covered related to the fields of neurology, chiropractic, pain management, psychology, infectious disease, and of course orthopedics, to cite a few.

Harriet Hardy awardee Dr. Michael Erdil offered fascinating insights into his professional journey controlling lead exposure of bridge workers, promoting ergonomic standards (despite ultimate political resistance), and managing back pain. A previous Harriet Hardy awardee, Dr. Robert McLellan, gave the William Patterson Memorial Lecture. After sharing a sensitive memoriam, he described his work developing a software interface that will facilitate and enhance the evaluation and management of injured workers by initial injury providers using EMR.

The NEOCoom Board is seeking to enhance the education of primary care providers, urgent care, and other specialists who treat injured workers, by reaching out with a variety of educational opportunities. While improving the management of worksite injuries, we will also establish our specialty as the consultants of choice. We hope to enlist members who can liaison with state professional societies, such as The Academy of Family Physicians and PA/NP associations, to offer lectures, preceptorships, or other support, such as with students. If you have such a connection, an interest, or another idea, please contact me or one of our Board members, or leave information with Dianne Plantamura, Executive Director of NEOCoom. (NEOCoom@comcast.net, phone/fax: 978-373-5597, mobile 978-204-6604.)

(Continued from page 1)


Many employers have adopted drug-free workplace policies, which typically state that the workplace is drug-free, and that employees shall not use illegal drugs at any time. The new laws appear to allow an employer to maintain such policies. In Maine, legalization “does not affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees...”. The new Massachusetts law has similar language (“the [legalization] shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees”). Employer advocates will argue that if the employer has a strict policy prohibiting employees from using illegal drugs (under both federal and state law), the employer may take adverse action against an employee who uses recreational marijuana.

3. Workplace Discipline.

Employers are asking how they should deal with an employee who comes to work impaired by recreational marijuana. The Maine statute gives employers the green light to discipline employees “who are under the influence of marijuana in the workplace”. The Massachusetts statute does not state this right explicitly, although I believe that a logical interpretation of the law will allow discipline in these circumstances.


Job applicants will undoubtedly fail pre-employment drug tests because of their off duty use of recreational marijuana. The question for employers is whether they may deny the applicant the job based on the drug test (assuming it is not a position covered by mandatory federal drug testing). The ability of an employer to reject the applicant who tests positive for recreational marijuana may depend on the employer’s adoption of a drug-free workplace policy which covers drugs that are illegal under either federal or state law. Some employers may elect to wait and see if this issue is addressed through rule making.

5. Impairment.

If a forklift operator is observed acting erratically and smells of marijuana, the employer will need to make a determina-
Dr. John Clarke presented his case study on Salami Brusher’s Disease at the NECOEM annual meeting poster session in December, 2016. Sausage workers who are tasked with scraping mold from the surface of salami during the curing process may develop Salami Brusher’s Disease: a subclassification of hypersensitivity pneumonitis. Removal from the exposure at an early stage can result in full recovery in acute cases. This poster featured an interesting case of Salami Brusher’s Disease that progressed over the course of twenty years, resulting in the patient being placed on a lung transplant list and being rendered permanently disabled secondary to chronic lung pathology. During the course of employment, she experienced periods of amelioration of her symptoms when removed from the exposure. Once she stopped working altogether she achieved significant improvement, and was ultimately removed from the lung transplant list. The importance of an occupational history and consideration of hypersensitivity pneumonitis in the differential diagnosis for interstitial lung disease was emphasized, as an early diagnosis with removal from exposure may have prevented the progression of her symptoms, chronic lung changes, and disability from work.

John D. Clarke, MD, FAAFP is the Chief Resident at the Harvard Chan Occupational and Environmental Medicine Residency (OEMR). He is pursuing his training through the “Complementary Pathway,” an opportunity available to those who already hold other board certification and have at least two years of career experience in OEM.

Dr. Clarke practices in NY, concurrently serving as the Medical Director and MRO at Consolidated Edison, Inc. and the Medical Director at Outreach, an adolescent residential substance abuse treatment facility. He previously served as the Medical Director and MRO for the Long Island Rail Road. He is board certified in Family Medicine, having completed residency training at St. Vincent’s Catholic Medical Centers in NY, where he served as Chief Resident. He trained at the Mount Sinai School of Medicine and has a B. A. in Sociology and Music from Columbia University.

Dr. Clarke has a special interest in illness prevention, medical education, and Hip-Hop music. He has combined a desire to bring medical information to people with his experience as a hip-hop song writer and producer to create a new music genre called "Health-Hop®". For more information see http://healthhopmusic.com/.

In Memoriam: NECOEM mourns the loss of Susan Legendre, RN, MS, ANP, COHN-S

Susan T. (Provencher) Legendre, 64, of Laconia, died February 28, 2017 at the Hyder Hospice House in Dover surrounded by her loving family. She earned her nursing degree from the Mary Hitchcock School of Nursing and her bachelor’s degree from Metropolitan State College in Denver. She continued her education at Simmons College and later received a master's degree from Harvard University. Her career started as the Assistant Director of Occupational Health Nursing at Harvard School of Public Health. During her tenure at HSPH, Susan crafted the 1997 Letter of Understanding for a Joint Annual Conference between NECOEM and the MaAOHN. She received numerous awards and recognition throughout her life from various Occupational Health boards that she sat on and chaired. She was recognized for 35 years of outstanding service and dedication to her profession and received the prestigious 2016 Dorothy Reid Lifetime Achievement Award from the Northeast Association of Occupational Health Nurses given at the 2016 NECOEM/MaAOHN Annual Conference. She will be remembered as a great listener which provided her numerous siblings, husband and kids the chance to go to her for help and a guiding hand. She loved people and enjoyed many social activities including boating, hiking in the mountains, swimming in the lakes and ocean, walking, biking and camping. Donations may be made in her memory to the Hyder Hospice House, 285 County Farm Road, Dover, NH 03820. To send an online message of condolence, please go to www.lambertfuneralhome.com.
**Around the Town at NECOEM 2016**

*Special Guest*

Dr. James Tacci, President of ACOEM

Speaks at the Annual Meeting

Dr. George Dreher, speaker on Physician Burnout

Drs. Tom Winters and Glenn Pransky

Drs. David Dickison and Betsy Buehrer: Friends enjoying reconnecting at the conference

Becky More (middle) and Drs. David Rainey (L) and Fabianne P. Bonnet (R)

Gail Carchietta, President, MaAOHN & Anne LaFontaine, Vendor Chairperson MaAOHN

AnnMarie DeSarno, ANP

Dr. Robert McClellan – past Harriet Hardy Award winner and Dr. Philip Parks – outgoing NECOEM president.

DOT Presentation Highlights the Challenges of CDME Work - Drs. Ron Blum and Jay Polliner fielded many questions after the lecture

Thanks for your service!
Introducing NECOEM’s New President Dr. Ron Blum

Dr. Matthew Lundquist

Jazz at the President’s Dinner Reception

Dr. Thomas Luna presents lecture on Interplanetary Transportation Health Risks

Drs. Chen and Torres, front
Drs. Celona and Lee, back

Beverly Young, RN and Maria Korre, MSc, ScD, poster presenter

Many thanks to NECOEM’S conference chair

Drs. John Bielecki and Bill Boucher

Drs. S. Sax, X. Fan, and K. Corbet

Colleen Foley, NP, Karen Siemering, NP, David Morse, PA, Scott King, PA
His medical history included the diagnosis of COPD, former cigarette use, and an aortic aneurysm, monitored, with size acceptable per FMCSA guidelines. His current medications were Advair and Spiriva.

On exam, he was alert and in no distress. A ten-pound weight loss was noted since his last exam. A Steri-Strip covered the recent chest pleuritis site with no visible drainage; breath sounds were diminished bilaterally. Sensation was diminished under the toes of both feet. The rest of the exam, including the Mini Mental Status, was normal.

Because of the examiner’s concerns about his progressing disease, poor response to treatment, neurologic signs, and risk of decompensation (due risk of development of metastases, respiratory compromise, side effects of new treatment, nonspecific effects of the cancer, other unknowns), she deferred a decision, and contacted his new oncologist. He defined the disease as Stage III, minimized the risk of brain involvement, and suggested that regular brain scans could be done for early detection. Further, he suggested that not allowing the patient to drive was an infringement on his civil liberty. The examiner decided not to medically certify him.

Research sheds light on the risk of brain metastases with lung adenocarcinoma. Per Ali et al (Survival of Patients with Non-Small-Cell Lung Cancer after a Diagnosis of Brain Metastases. Curr Oncol 2013), “brain metastases are a common problem in patients with metastatic nsclc. About 7%–10% of nsclc patients present with brain metastases at the time of initial diagnosis, and as many as 20%–40% of patients develop brain metastases at some point during their illness. In this study, most patients (n = 79, 87%) were symptomatic when diagnosed with brain metastases.”

Per Tse V et al. (Brain Metastasis Clinical Presentation. Medscape. May 5, 2016) about 60% of patients present with subacute symptoms, such as morning headache with nausea and vomiting or with nuchal rigidity and photophobia. “Headache (42%) and seizure (21%) are the 2 most common presenting symptoms.” Other symptoms include cognitive dysfunction (35%), motor dysfunction (30%) and hemorrhage (10%).

R & J: The progress of this man’s disease warrants caution. His response to the planned treatment or it’s side effects is unpredictable, and there is further risk were he to develop metastasis, especially to the brain. One would need to reevaluate and possibly scan him every two or three months for reasonable reassurance of his safety to be on the road. The costs of such monitoring, even if an employer or insurer were willing to cover them (unlikely), may exceed his potential earnings. While one might defend issuing a certificate for one to two months and then reassessing his response, we concur with the examiner that it was most prudent to err on the side of caution and deny certification. The patient died 18 months later.

A literature search was conducted to identify the risk of seizures after Camino device insertion, and no information was found.

Dr. L submitted the case of a driver who had a stereotactic brain biopsy for a cerebral abscess with no complications. He recently completed a three-month course of prophylactic Keppra. He had no neurologic complaints and had a normal neurological examination. His neurosurgeon had cleared him to return to driving.

R & J: The issue with both cases is the Guidelines notation, “Surgical procedures involving dura penetration have a risk for subsequent epilepsy similar to that of severe head trauma. Individuals who have undergone such procedures, including those who have had surgery for epilepsy, should not be considered eligible for certification.”

Assuming no disabling orthopedic defects, Dr. S’s patient primarily presented with a moderate to severe head injury. He has not had a seizure nor been on anti-seizure medications for over 10 years, so there is no limiting seizure risk, per Guidelines. We agree with Dr. S who certified him for one year, considering his normal neurological exam, the 17-year seizure free period, and no anti-seizure medication, coupled with the absence of information of seizure risk for intracranial pressure monitors.

Dr. L’s patient might be considered under the same logic, barring new information to the contrary and if he continues neurologically clear and seizure free for ten years.

These two are cases which exemplify why and how you might make an independent decision in contrast to the Guidelines, documenting the basis for your deviance from the guidance in your record.

"Opinions expressed here are those of the authors and do not necessarily reflect those of NECOEM nor represent the FMCSA."
On November 17, 2016, Raytheon hosted 31 NECOEM and community clinicians at their “Physician Summit.” This CME program and site tour was located at their flagship plant in Andover, MA, a 1.2 million square foot facility which is occupied by approximately 4,000 employees.

Bob McGrath, Senior Director of Operations, welcomed the group and described the commitment of the organization to safety. Their mission reflects this - “Making Safety Our Business – 24/7.” Their success is evidenced by the fact that the Andover plant and seven other facilities have been recognized by OSHA as VPP Star Sites for their exemplary health and safety management system.

The facility tour overviewed some of the processes for manufacturing advanced defense products for their military customers. Ergonomics is an important component in their safety approach. For example, manual lifting is extremely light (no more than 25 lbs.) and a variety of assistive devices such as cranes, robotics, and fork trucks are used to handle heavier loads. Sit/stand work stations are offered to allow frequent position changes. The group was also introduced to “The Cave,” otherwise known as an Immersive Design Center. By being surrounded by a circular wall of computers with 3-D capability and accessible to staff across the globe, a design group can “remotely collaborate.” Among its many capabilities, the cave allows these groups to view and analyze various types of designs, such as a product model, a proposed manufacturing and assembly process, or a facility layout on the computer pre-construction/production. While in the cave, the 3-D feature allows the operator to rotate the designs and look at them from every angle. One can inspect the tiniest features. This allows the team to add/subtract/resize a component, analyze for weaknesses, assess safety concerns and ultimately produce a design that saves money, drives a faster time to market, improves quality, and reduces risk.

Dan Knight, Sr. Manager of WC, Dr. Arnold Soslow, Senior Physician, Donna Ferreira, Bus. Operations Mgr., Premise Health, and Alan Rodgers, Lead Physician, offered lectures regarding their approach to injury/illness management and their onsite occupational health services. Raytheon is proud of its IADC Health Center which operates 6:30 AM to 10:30 PM Monday through Friday, and 7:30 AM to 3:30 PM on Saturday. This is one of their 28 onsite health centers company wide, 8 of which are in New England. They partner with Premise Health to office a broad spectrum of onsite services, including injury/illness management, urgent care, wellness programs, absence management, travel health and consolation, fitness for duty evaluations, medical surveillance, deployment exams, FAA exams, and ergonomic evaluation. They also have a Virtual Medical Team which is responsible for various services including deployment exams, telehealth, remote site services, and medivacs. They offer modified duty for employees with work or non-work related conditions, work with the private medical providers to identify appropriate work capacity and employ an onsite vocational rehabilitation counselor who performs RTW assessments and can offer guidance and coaching related to return to work barriers. Considering the facility’s giant size, they can even offer a motorized scooter to help the employee navigate the extremely long hallways!
ANSWER TO LAST ISSUE’S “WHAT IS IT?”

CHEMICAL: Vinyl Chloride Monomer (chloroethane)
END RESIN PRODUCT: Polyvinyl Chloride (PVC)
HEALTH EFFECTS ON THE UPPER EXTREMITIES: Acroosteolysis (Raynaud phenomenon, osteolysis in the terminal phalanges of fingers, thickening or raised nodules on the hands and forearms. These are often seen in workers employed in production and polymerization and reactor cleaning).

Congratulations to the following individuals for their correct responses:

Glenn Pransky, MD
Donna Ferreira ANP, MS, COHN-S, FAAOHN
Alan Rodgers, MD, MSc

WELL DONE!!

“What Is It” features a series of trivia, facts, figures, etc. related to the field of occupational medicine. If you have any such interesting or fun-filled material, please e-mail it to the associate editor at dr_abhik@yahoo.com. All material should be related to the specialty of occupational and environmental medicine and have an educational, inspirational, historic or other relevant value.