



## Legal and Clinical Considerations with Legalization of Recreational Cannabis Use

by C.Scott Litch

Chief Operating Officer and General Counsel



In recent years, many states have moved towards legalization of cannabis for recreational use, beyond just medical use for alleviation of pain.<sup>1</sup> This raises issues for your patients, their families and your staff.

As noted in a *Chicago Dental Society* magazine article from 2019<sup>2</sup>:

- “Patient use. All staff members need to know how to recognize and talk with patients about their marijuana use with tact and discretion. Other considerations include whether an impaired patient can provide informed consent and how to approach discussions about the effect marijuana use has on a patient’s mouth and overall health.
- Staff use. Because marijuana use affects productivity and cognitive function, dentists should review, sooner rather than later, their employment policy manuals and spell out how and when medical marijuana use is permitted and the practices of documentation and consequences for recreational use. A clear and enforced policy – on both medical and recreational use – provide valuable legal protection for your practice, employees and their rights, and patients.”

Other key points from the article are:

- In similar mode to alcohol use, while recreational marijuana use may be legal in your state, employees should not be impaired at work. In others words, it is a perfectly acceptable employee handbook policy to clearly state an employee cannot work under the influence of alcohol or marijuana.
- A significant current challenge is that, unlike alcohol, there is a lack of a reliable test for marijuana use and current impairment/level of intoxication.
- Smoking marijuana has a more immediate effect than consuming edibles.
- Employment policies must allow reasonable accommodation for those cases of documented medical marijuana usage.

The AAPD has a policy on *Substance Misuse in Adolescent Patients* that was just updated and approved by the General Assembly in 2021.<sup>3</sup> Note the following excerpts (with emphasis added in **bold**, footnotes omitted):

“Findings from the 2019 Monitoring the Future (MTF) survey demonstrate the strong desire for vaping in adolescence, as seen in the increased prevalence of marijuana use as well as nicotine vaping. **Past-month marijuana vaping among twelfth graders nearly doubled in a single year from 7.5 to 14 percent. Marijuana was the most commonly used illicit drug among teenagers.**”

“A 2015 survey found more than 2.3 million youth aged 12-17 years were current (i.e., in the past 30 days) users of illicit drugs, equivalent to 9.4 percent of adolescents. In 2015, alcohol use was higher, reported at 11.5 percent, corresponding to 2.9 million adolescents, with binge drinking shown to occur in 6.1 percent. **Among the same age group, marijuana use was at 7.4 percent (approximately 1.8 million adolescents).**”

**“Thirteen percent of those who developed an SUD [substance use disorder] began using marijuana by the time they were 14 years of age.”**

“Due to the prevalence of substance misuse, it would not be uncommon for the dental provider to encounter signs of substance misuse. Staff should be attentive to similar signs displayed by the patient. Clinical presentations of substance use may include odor of alcohol on breath, odor of marijuana on clothing, impaired behavior, slurred speech, staggering gait, visual hallucinations, disorientation, rhinitis, scratching, physical injuries including lacerations, needle marks, cellulitis, diaphoresis, tachycardia, sensory impairment, and pupillary dilation or constriction.”

The ADA offers a helpful resource on its website entitled *Cannabis: Oral Health Effects*.<sup>4</sup> Some excerpts are provided below:

### **“Dental Care Implications**

Signs and symptoms of an active (intoxicated) cannabis user include:

- Euphoria
- Hyperactivity
- Tachycardia
- Paranoia
- Delusions
- Hallucinations

A currently intoxicated (i.e., “high”) user may present several difficulties for the dental practitioner. Increased anxiety, paranoia and hyperactivity may heighten the stress experience of a dental visit. Increased heart rate and other cardiorespiratory effects of cannabis make the use of epinephrine in local anesthetics (for procedural pain control) potentially life-threatening. Patients may be unwilling to self-report marijuana use or unable to answer reliably, but determination of intoxication may be possible during the routine cardiac risk assessment. It is because of the dangers of administering epinephrine or products containing alcohol to a “high” patient, in addition to increased anxiety and paranoia, that dentists may refuse to treat the intoxicated patient, or consider postponing non-emergency treatment for at least 24 hours. Additionally, there may be legal implications regarding validity of informed consent with intoxicated patients, especially with irreversible procedures like extractions. Effects of acute intoxication effects are reported to subside within two to three hours.

For further information, contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169, ext. 29 or [slitch@aapd.org](mailto:slitch@aapd.org).

*This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members.*

<sup>1</sup> <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>

<sup>2</sup> Sisk S. *Is your practice READY FOR LEGAL POT?* *cds review*, December 2019: 10-14.

<sup>3</sup> [https://www.aapd.org/globalassets/media/policies\\_guidelines/p\\_substanceabuse.pdf](https://www.aapd.org/globalassets/media/policies_guidelines/p_substanceabuse.pdf)

<sup>4</sup> <https://www.ada.org/en/member-center/oral-health-topics/cannabis-oral-health-effects>

The following dental findings may indicate a chronic recreational cannabis user:

- Xerostomia
- Leukoplakia
- Periodontitis
- Gingival enlargement/hyperplasia
- Increased decayed, missing or filled teeth
- Stomatitis
- Candidiasis
- Alveolar bone loss

If the patient appears to be a user, it may be helpful to understand whether the use is medicinal, as this may suggest relevant comorbidities. Verification of cannabis use may be an opportunity to discuss other health consequences and inform the patient of the importance of fluoride, good oral hygiene practices, and healthy snacking.

When dental health care providers suspect cannabis use, it is recommended to:

- Complete a comprehensive oral examination and include questions about cannabis use in a thorough dental and medical history.
- Emphasize the importance of regular dental visits and oral care.
- Encourage healthy, nutritious snacks over sweet, cariogenic snacks.
- Consider employing preventive measures, such as topical fluorides.
- Consider treatment for xerostomia, while avoiding alcohol-containing products.
- Keep advised of current changes in applicable laws on recreational or medicinal cannabis.”