



2022 Workers' Compensation Seminar

March 23-25, 2022

THE LEGALIZATION OF MARIJUANA: DAZED AND CONFUSED AS TO WHAT TO DO!

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Workers' Compensation in the **GARDEN** OF **GOOD**, AND **EVIL**?

ALFA INTERNATIONAL 2022 WORKERS' COMPENSATION SEMINAR

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JW MARRIOTT PLANT RIVERSIDE DISTRICT

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Workers' Compensation in the **GARDEN OF GOOD, AND EVIL?**
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**The Legalization of Marijuana: Dazed and
Confused About What to Do!**



Cannabis Testing in the Workplace From a Physician's Perspective

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Editor-in-Chief, American Journal on Drug and Alcohol Abuse

President, Doctors for Cannabis Regulation

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Why Are We Discussing Cannabis in the Workplace? *or Why and How Was Cannabis Criminalized?*





Early History of Cannabis in the U.S.

- 2737 BCE – earliest recorded use of cannabis as medicine
- 1606 - Cannabis sativa L. introduced into North America. Hemp first grown in Jamestown for rope, sails, fishing nets, and clothing
- 1619 – English crown mandates Jamestown grow hemp for export. Virginia Assembly mandates landowners grow hemp.
Hemp cultivation fueled slavery in the early years of the colonies.
- 1774 – Thomas Jefferson grows hemp at his plantations: “hemp [is of] first necessity to the wealth and protection of the country”
- 1850 – U.S. census counts 8327 hemp plantations (average 200 acres each, or 1,666,400 acres)
- 1850 – cannabis added to American Pharmacopeia
- in U.S., value of industrial hemp market in 2014: \$0; in 2021: \$4 billion



How Did the Criminalization Of **Marijuana** Get Started?



Enemies of cannabis (1910-1915)

- Petroleum industry
- Wood pulp industry
- Chemical industry
- Pharmaceutical Industry

The Oasis (Arizola, AZ; Dec 30, 1899)

Two Republics: The Mexican herb called **marihuana**, when smoked as a cigarette, simply makes a man raving and boisterous; he wants at once to kill everybody and anybody; he becomes wholly uncontrollable. The sale of this herb is strictly forbidden; still attempts are made to smuggle it into the city. Yesterday noon the inspector of the first comisaria discovered that two Indians had brought in two large bales of **marihuana**, and at once had them arrested with their bales, which weighed over 70 kilos, enough to make all Mexico howling mad. The two Indians are in Belem prison.



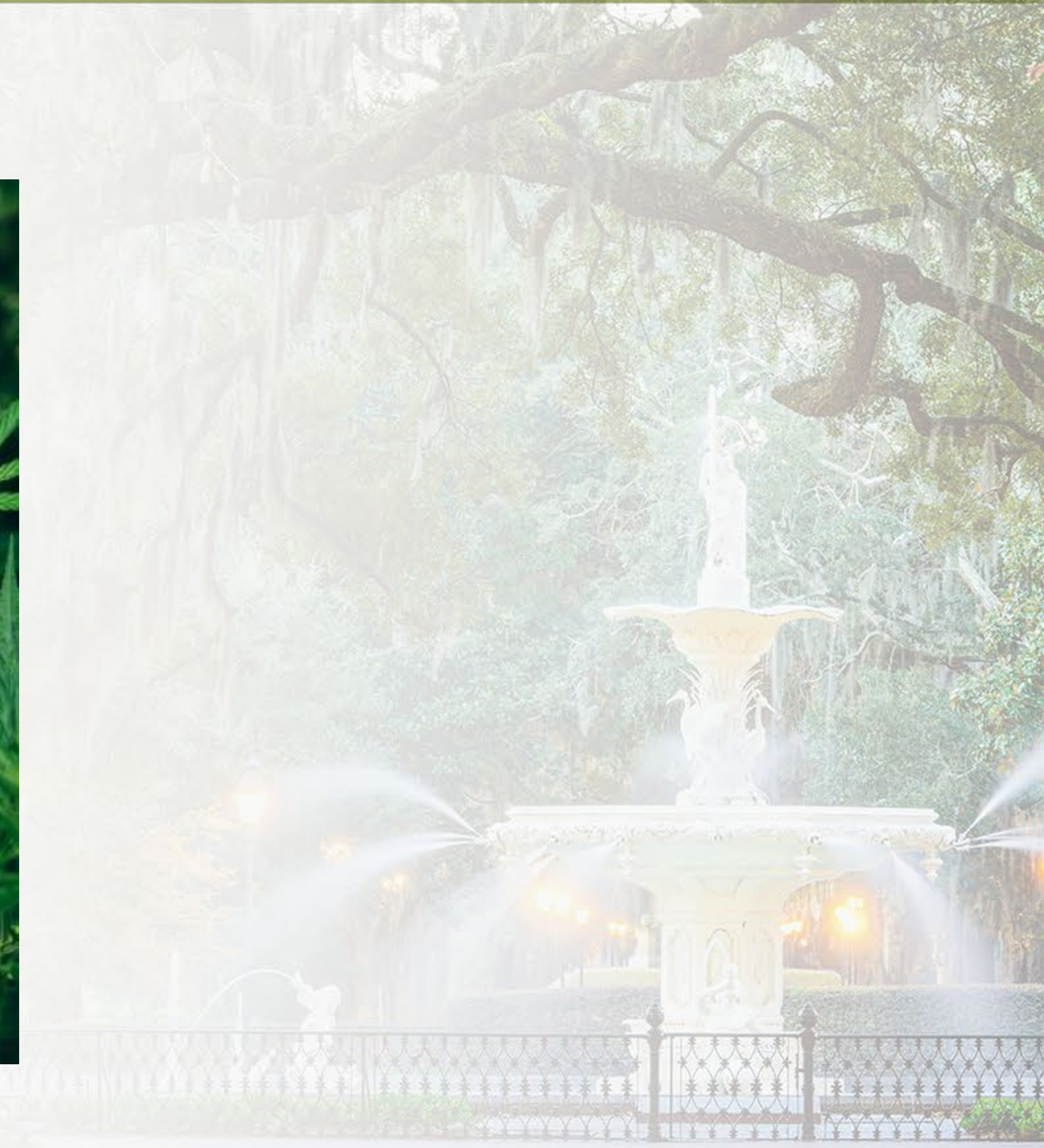


The Marijuana Tax Act, The Schafer Commission & The War on Drugs

- 1937 – The Marijuana Tax Act outlawed the growth, sale, possession, and use without a Marihuana Tax Stamp.
- The Schafer Commission – Formally known as the National Commission on Marihuana and Drug Abuse.
 - Formed by U.S. President Richard Nixon in the early 1970s.
 - Recommended a policy “which prohibits commercial distribution of the drug but does not apply criminal sanctions to private possession or use nor casual, non-profit distribution incidental to use.” [i.e. decriminalization]
- Drug-Free Workplace (DFWP) Act of 1998
 - Implemented at the height of drug war as an effort to decrease drug use. It was *not* to promote workplace safety.
 - DFWP made it illegal “to manufacture, distribute, dispense or have in possession prohibited controlled substances” in the workplace.
 - Noffsinger, 338 F. Supp. 3d 78 (D Conn 2018) “The [Drug-Free Workplace Act] does not require drug-testing.”



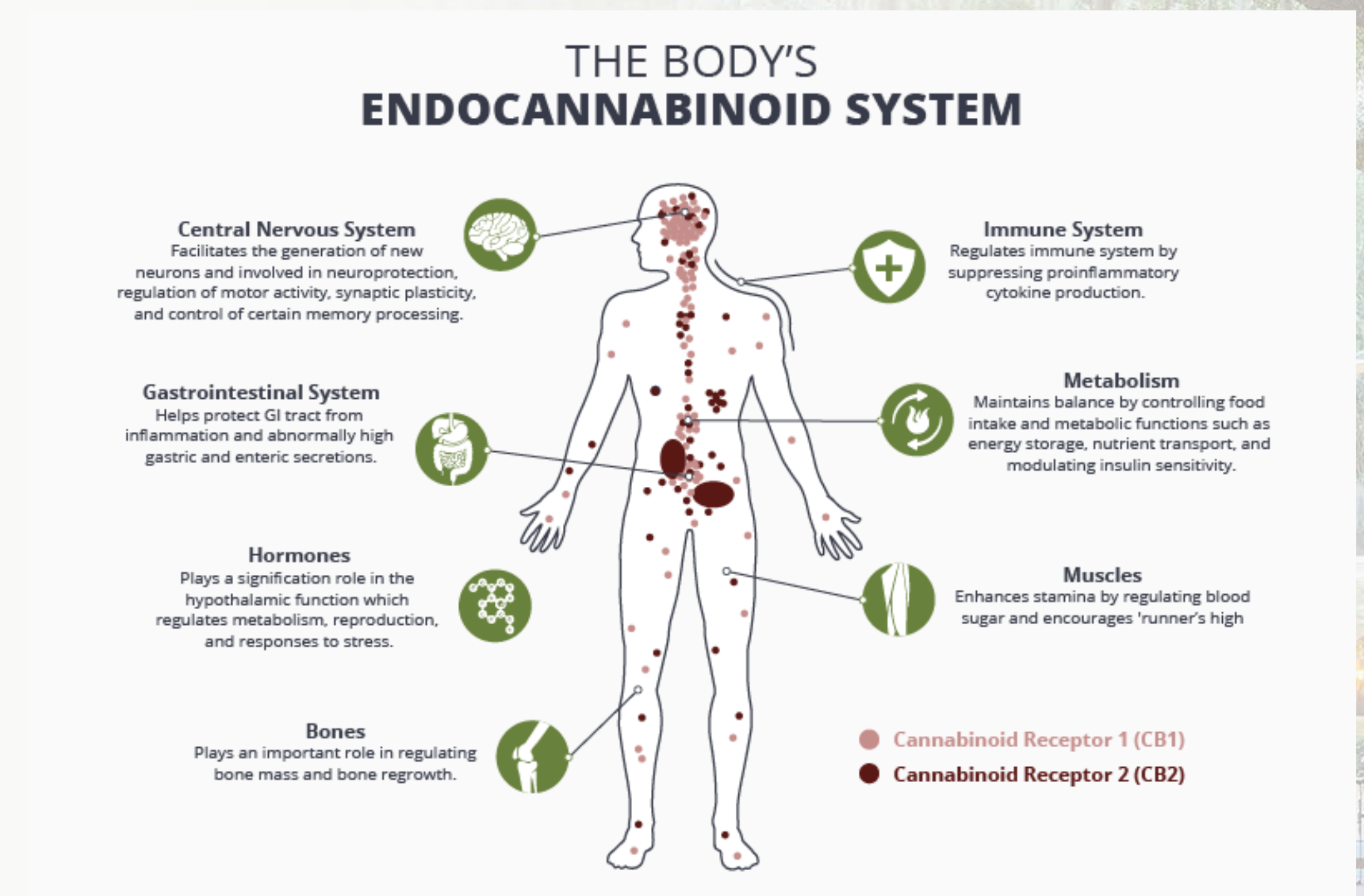
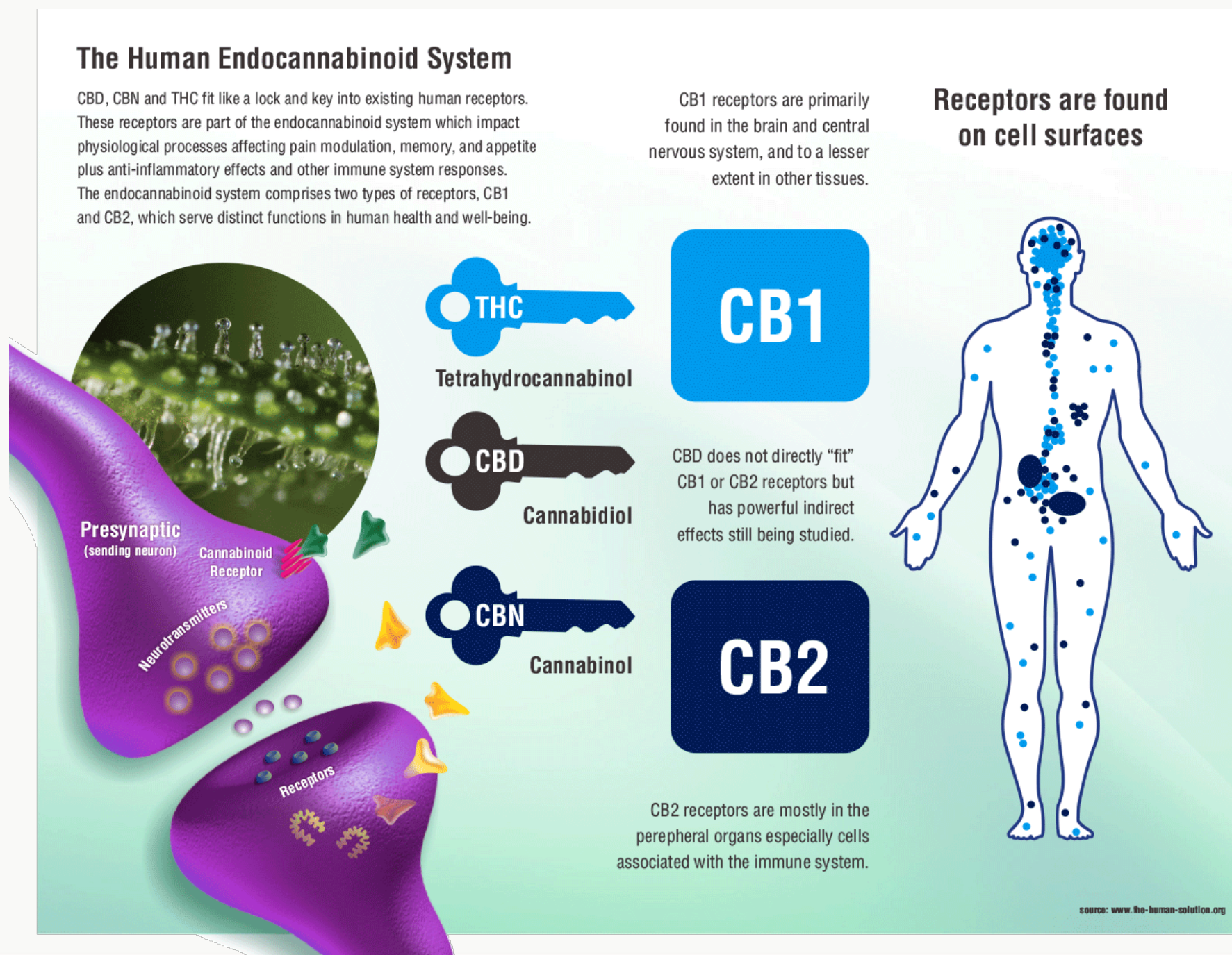
Cannabinoids, Endocannabinoids and Cannabis





Cannabinoids, Endocannabinoids and Cannabis

- **The Endocannabinoid System (ECS):** serves as a primary biological harm reduction system tasked with bringing the body back into balance (homeostasis) whenever it is challenged by stress, infection, injury or lifestyle.





The Two Most Prominent Cannabinoids in Cannabis: THC and CBD



Cannabis Plant with THC



CBD Cannabis Plant with CBD
($< 0.3\%$ THC, probably)

Cannabis: 100+ cannabidiols
Terpenes
Flavonoids



Acute Effects of Cannabis (primarily due to THC)

Cannabis Can Cause Impairment

Smoked Marijuana

Onset: 2 minutes (oral onset is much longer)

Duration: 2-4 hours

Impaired cognitive impairment may last > 24 hours

Effects depend on:

route of administration

concentration (potency) of THC

history of use

age, sex, other individual characteristics

amount used



Motor and Cognitive

Impaired motor coordination, attention, judgement, memory, learning, concentration, decision-making, perceptual skills (recognition, insight, interpretation)

Distorted sensory perception

Mood

Euphoria

Anxiety

Relaxation

Social withdrawal

Paranoia

Other Signs/Symptoms

Conjunctival injection (bloodshot eyes)*

Increase appetite

Dry mouth

Tachycardia



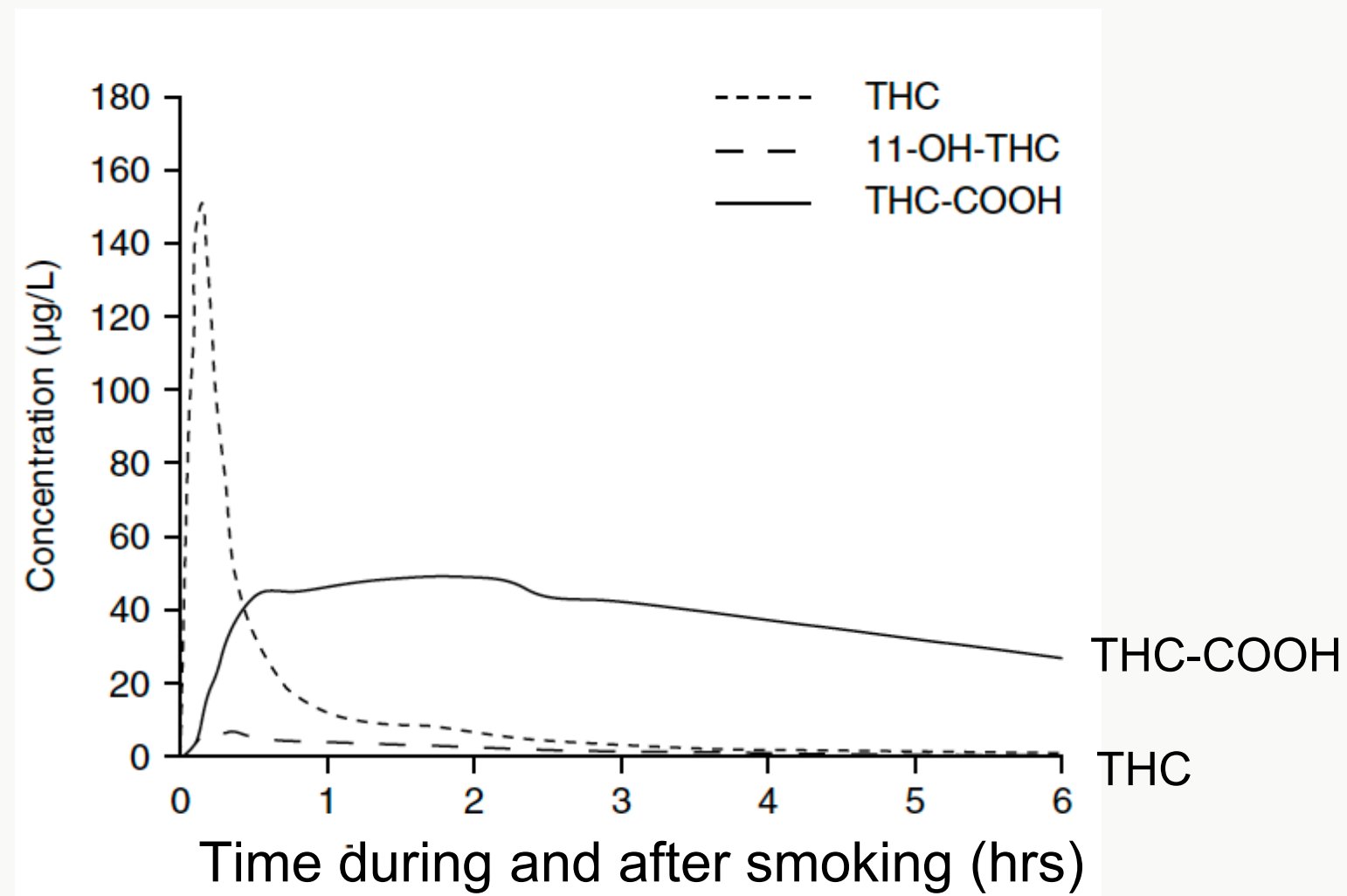
Potential Harms from Cannabis Use

- Cannabis Use Disorder
- Psychosis (particularly those at risk)
- Suicidal ideation
- Worsening of anxiety and depression
- Worsening of other substance use disorders
- Hyperemesis
- Possible persistent cognitive impairment (particularly if use started in adolescence)
- Politicogenic effects*

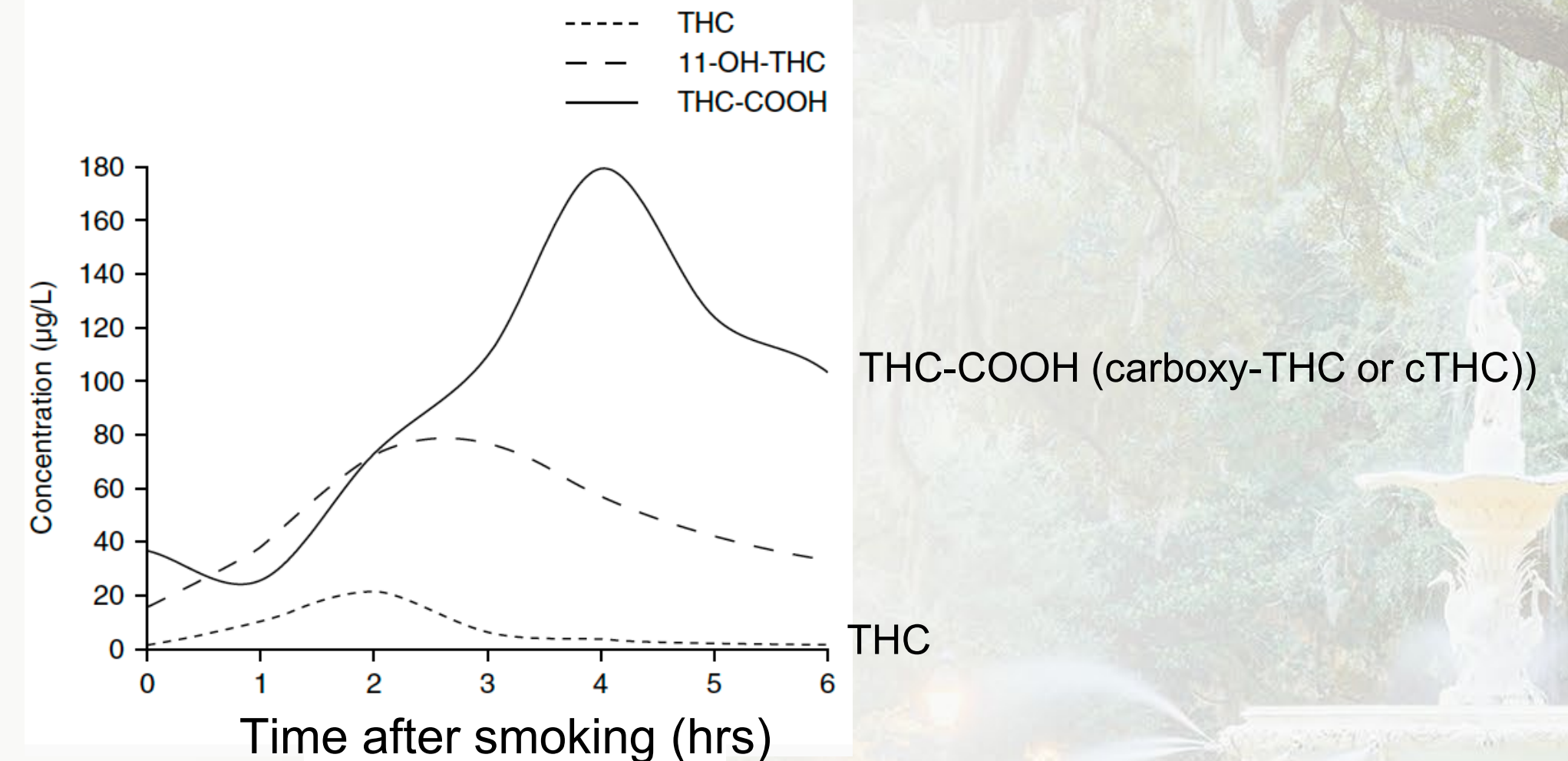
Workplace Testing for Cannabis Use:

How Long Does Cannabis Use Show Up in Blood or Urine?

THC and metabolite **plasma** concentrations after smoking a cannabis cigarette



THC and metabolite **urine** concentrations after smoking a cannabis cigarette



- THC rapidly leaves the blood and is rapidly absorbed into fat cells, where it accumulates over time.
- Positive and negative urine positive/negative may fluctuate over several days.
- THC = delta-9-THC; THC-COOH = 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid (9-carboxy-THC)

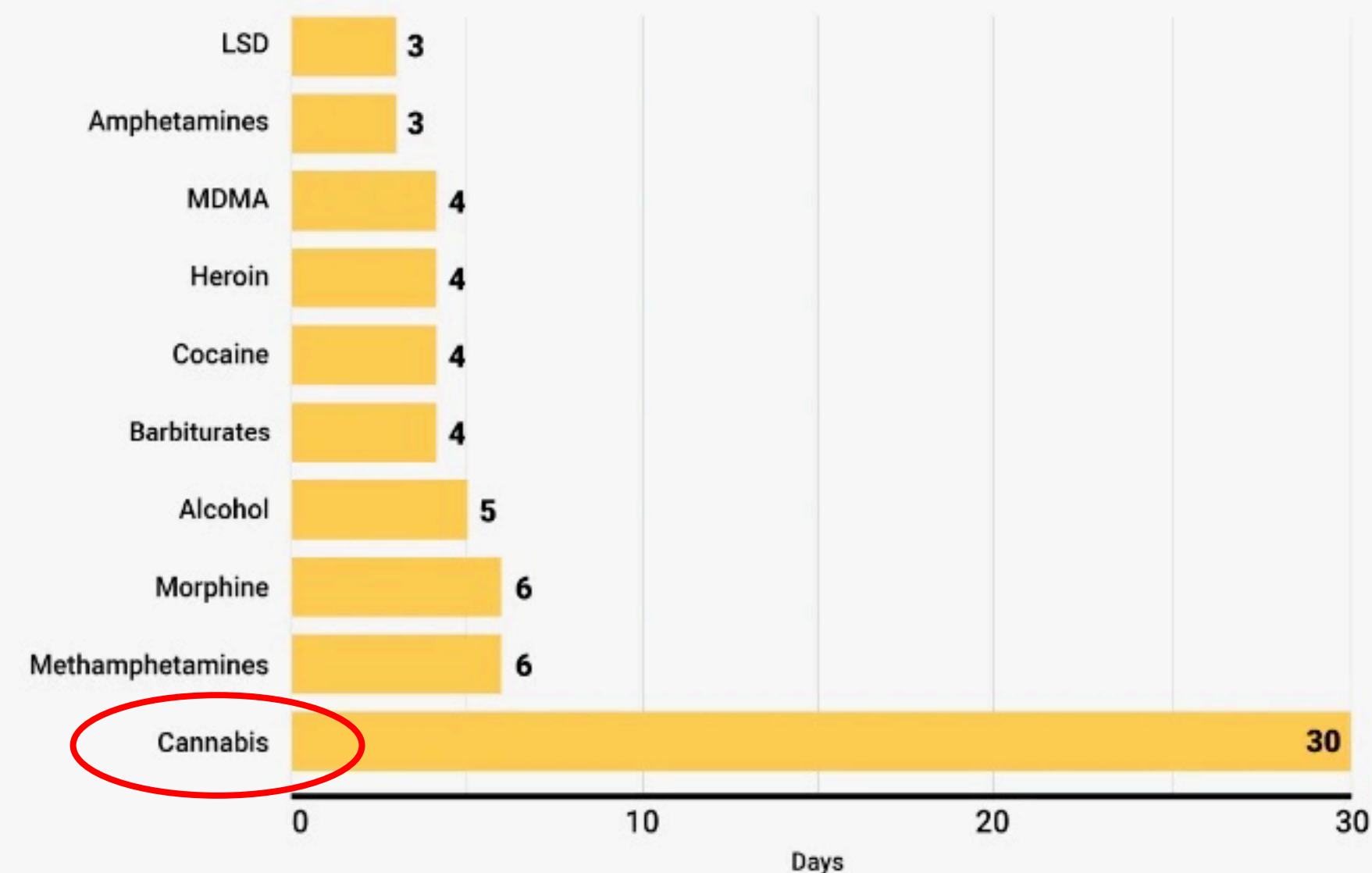
Grotenhermen F. Pharmacokinetics and pharmacodynamics of cannabinoids. Clin Pharmacokinet 2003; 42 (4), 327-360.



Workplace Testing for Cannabis Use:

Other Issues Related to Testing for Cannabis Use

HOW LONG DRUGS STAY IN YOUR URINE



90 days in hair

SOURCE: DRUGS.ie

BUSINESS INSIDER

Second-hand cannabis smoke will not test positive for THC



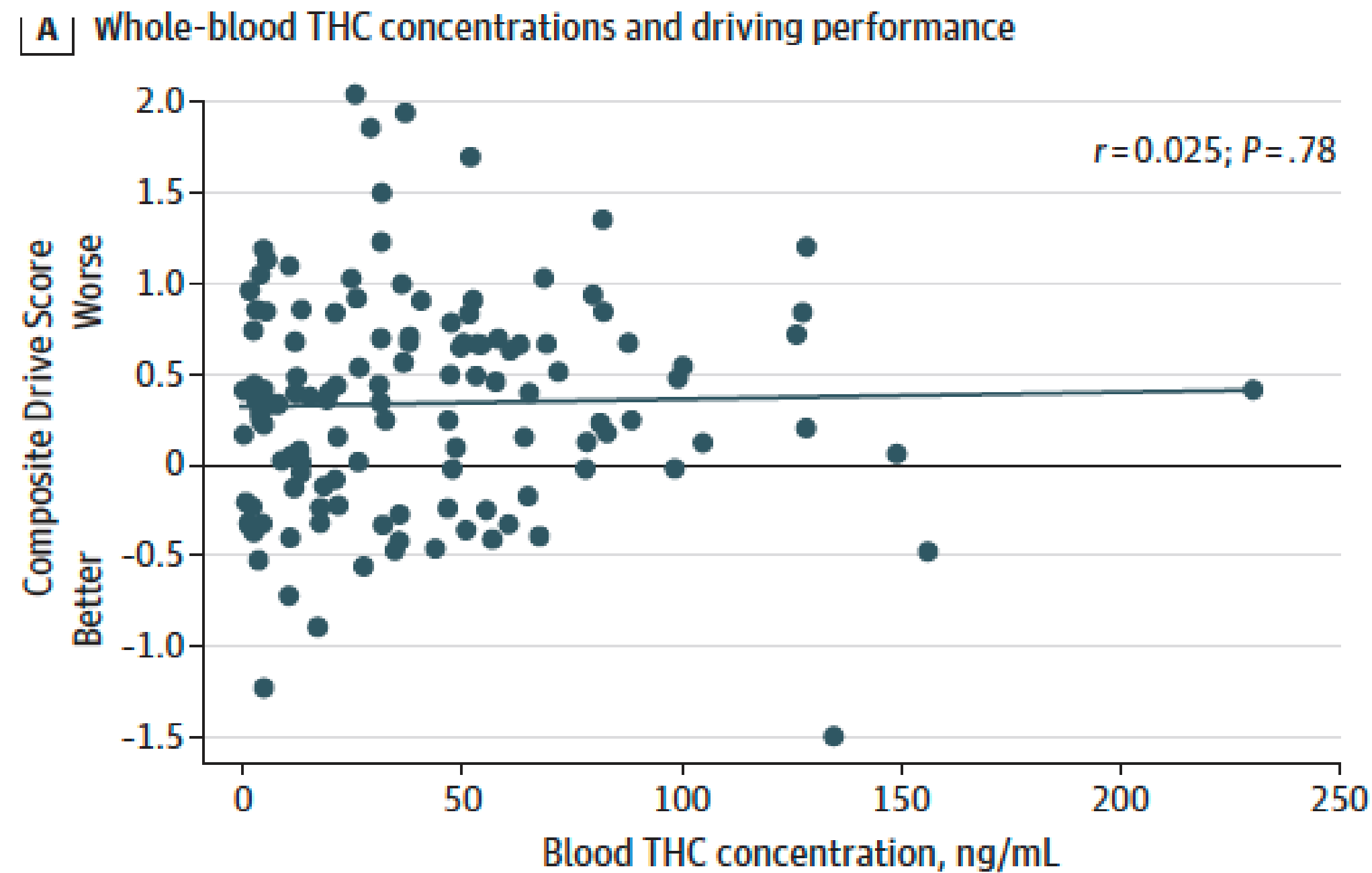
<https://www.sciencealert.com/here-s-how-long-drugs-stay-in-your-body-weed-cocaine-MDMA-science>



Workplace Testing for Cannabis Use:

There is No Valid Method for Assessing Cannabis Intoxication or Impairment

“Smoke the cigarette the way you do at home to get high. You may take up to 10 minutes.”



“When experienced users control their own intake, driving impairment cannot be inferred based on THC content of the cigarette, behavioral tolerance, or THC blood concentrations.”

Urine drug screen for cannabis will only inform whether the person has used cannabis, not whether it’s causing the impairment.

Marcotte et al. Driving Performance and Cannabis Users' Perception of Safety: A Randomized Clinical Trial. JAMA Psychiatry 2022.



Workplace Testing for Cannabis Use: *Considerations for Testing*



Why test?

- The primary purpose of a drug test should be to conclusively identify drug usage that poses an unacceptable risk for the occupational activities in question *and/or*
- Establish that a problem exists in the workplace.

What does a positive cannabis test tell us and *not* tell us?

- A positive cannabis drug test *does not identify impairment.*
- Drug testing reduces the number of cannabis positive tests among employees, but this does not necessarily mean that there are fewer cannabis users (employees just avoid using cannabis prior to testing).
- Urine cannabis testing *has not been shown to have a meaningful impact on job injury/accident rates.*
- NASEM: “There is no or insufficient evidence to support or refute a statistical association between cannabis use and occupational accidents or injuries.” *Cannabis users are not at increased risk of occupational injury.*

Risks

Macdonald et al. Testing for cannabis in the work-place: a review of the evidence. Addiction 2010; 105 (3), 408-416.

Biasutti et al. Systematic Review of Cannabis Use and Risk of Occupational Injury. Substance use & misuse 2020; 55 (11), 1733-1745.

The National Academies of Sciences Engineering and Medicine. The health effects of cannabis and cannabinoids: The current state of evidence and recommendations for research; Washington, D.C., 2017.



Workplace Testing for Cannabis Use: *Considerations for Testing (con't)*



What are the downsides to testing?

- Drug testing is intrusive and demeaning.
- Drug testing is expensive.
- Qualified prospective employees/employees who might benefit the company may not be employed due to a positive cannabis test.

Risks

A drug test should have sufficient benefits to justify the consequences. The improvements in workplace safety should outweigh the breach of employee privacy.

Employers must consider whether the benefits of testing are worth the cost.





Workplace Testing for Cannabis Use: *Politcogenic Effects (due to effects of cannabis criminalization, not due to the direct effects of cannabis)*



Abraham Benavides, MD

- First-generation Costa Rican immigrant
- Scholarships supported his undergraduate education at Boston University
- Full ride to medical school at George Washington University in Washington, D.C.
- Tested positive on his pre-employment test for residency in Denver, CO.
- Several colleagues who tested positive were allowed to enter the residency following a repeat negative test. Dr. Benavides was ultimately denied employment because he *admitted* to using cannabis. Dr. Benavides has since returned to Costa Rica.

See Dr. Benavides' story at <https://www.veriheal.com/blog/cannabis-testing-keeps-qualified-talent-out-of-the-game/>

Workplace Testing for Cannabis Use:

Safety sensitive positions

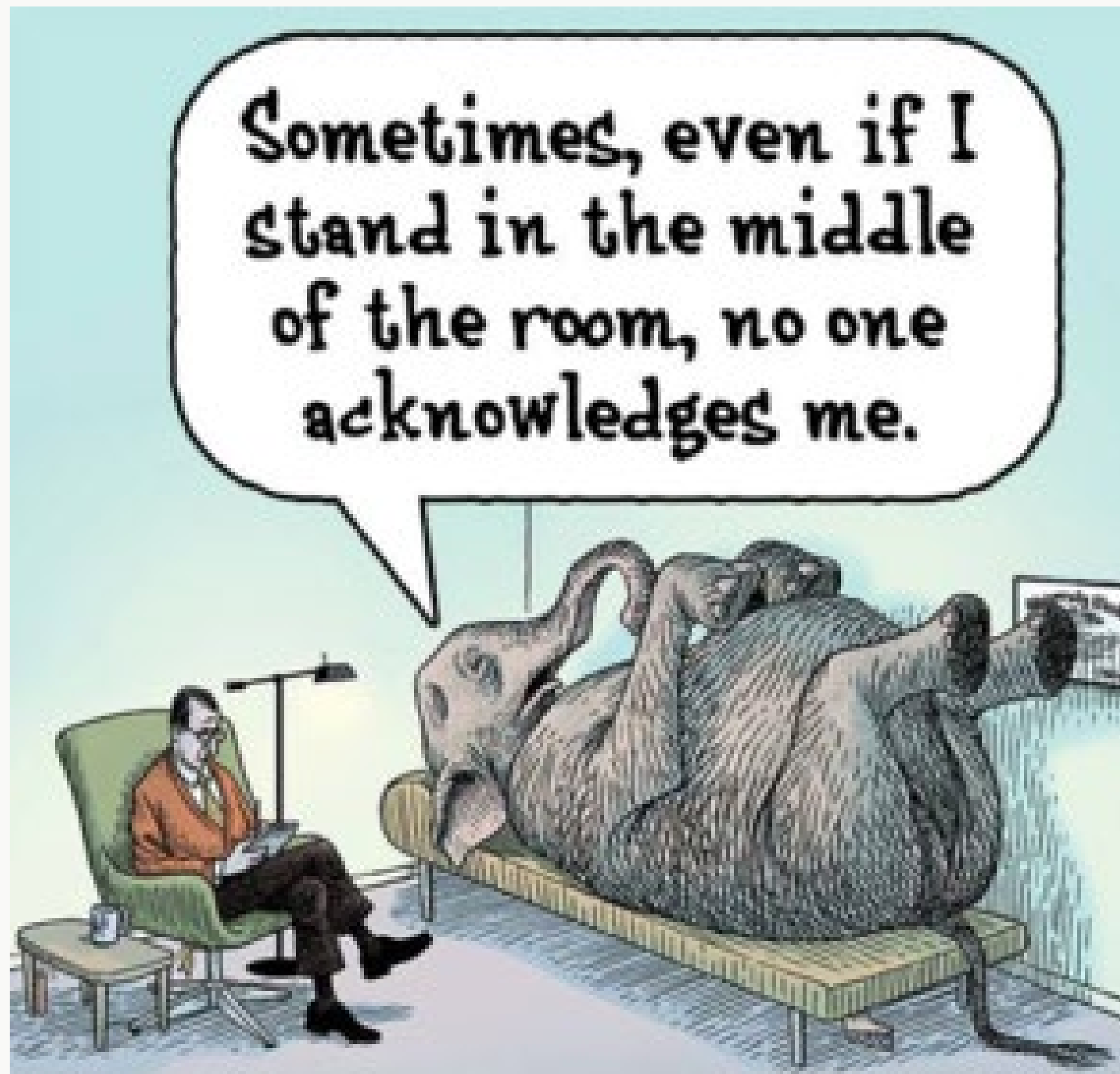


Risks

- Cannabis testing is often required for safety sensitive positions.
- A safety-sensitive position refers to **a job in which the employee is responsible for his or her own or other people's safety.**
- Companies must determine how they define a safety sensitive position.
- Under Executive Order 12564, all federal employees involved in "law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of public trust" are subject to mandatory drug testing. Testing must occur pre-employment and whenever there is "reasonable cause or suspicion."



Workplace Testing for Cannabis Use: *What About Alcohol?*



5-panel test: cocaine, amphetamines, opiates, PCP, and marijuana.

10-panel test: 5-panel + barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene.

Alcohol is far more commonly used by employees than cannabis (or other drugs) and far more likely to cause acute injury.

Driving while intoxicated increases motor vehicle accidents 20-fold (vs. up to 2-fold for cannabis).

Alcohol intake over the past several days can be assessed with urine and blood tests (EtG, EtS, PEth). Is it?



Prescribed or Over-the-Counter Medication Use That Can Cause Impairment*

- Opioids
- Sleep medications
- Anxiety medications (e.g. benzodiazepines)
- Anti-seizure medications
- Antihistamines
- Muscle relaxants
- Motion sickness medications
- Stimulants

*If your company has a Medical Review Officer (MRO), the presence of prescribed drugs will probably not be reported to HR.

Medications Associated With Motor Vehicles Accidents in Individuals Over 50 years Old

Drug Class	Odds Ratios (Likelihood)
Barbiturates	7.5 (2.35-23.91)
Antihistamines	3.0 (1.05-8.55)
Antitussives (cough medicine)	2.23 (1.30-3.82)
Muscle Relaxants	2.09 (1.71-2.55)
Anticonvulsants	1.97 (1.97-2.38)
Insulin	1.80 (1.45-2.22)
Anti-hypertensive Meds	1.79 (1.17-2.74)
SSRIs (e.g. Prozac)	1.78 (1.19-2.66)

National Highway Traffic Safety Administration (NHTSA).
*Multiple medications and vehicle crashes: Analysis of
Databases, 2005.*



Workplace Testing for Cannabis Use: *Impairment*



Impairment refers to a variety of conditions and/or substances that *impact a worker's normal ability to work safely*.

- personality changes or erratic behavior (e.g. increased interpersonal conflicts; overreaction to criticism)
- appearance of impairment at work (e.g., odor of alcohol or drugs, glassy or red eyes, unsteady gait, slurring, poor coordination)
- working in an unsafe manner or involvement in an incident
- consistent lateness, absenteeism, or reduced productivity or quality of work

Impairment criteria is the same whether due to alcohol, drugs, prescribed or over-the-counter medications, psychiatric or physical illness, personality disorder, or family discord.

Test *everyone* being evaluated for impairment.

Urine drug screen for cannabis will only inform whether the person has used cannabis, not whether it's causing the impairment.

In individuals with cannabis use disorder, routine, random testing for cannabis testing is very useful for assuring treatment-adherence. This is similar to assessing blood pressure in an individual with hypertension.



Workplace Testing for Cannabis Use: *Assessing Use of Medical Cannabis*

Indications for Cannabis Use in U.S. States

- Alzheimer's disease
 - Autism
 - Appetite loss
 - Cancer
 - Chemotherapy/radiation therapy
 - Chronic Pain
 - Cirrhosis
 - Crohn's Disease
 - Diseases affecting the immune system like HIV/AIDS, multiple sclerosis, or ALS
 - Eating disorders such as anorexia
 - Epilepsy
 - Glaucoma
 - Hepatitis C
 - Inflammatory bowel disease
 - Less than 12 months to live
 - Mental health conditions like anxiety, depression, schizophrenia, and post-traumatic stress disorder
 - Multiple sclerosis
 - Muscle spasms
 - Nausea/vomiting (intractable)
 - Nail patella
 - Pain (chronic/severe)
 - Parkinson's disease
 - Seizures
 - Sleep disorders
 - Substance use disorders (addiction)
 - Tourette Syndrome
 - Traumatic brain injury
 - Wasting syndrome (cachexia)
 - Chronic or debilitating disease or medical condition
 - Serious medical conditions for which the use of medical cannabis is beneficial
 - Any condition approved by Board of Health
 - Unapproved conditions that the recommending physician says is an approved condition
 - Is it necessary for the employer to know why cannabis has been recommended?
 - What is the policy for other medications and illnesses?
- What about on-the-job use of medical cannabis?
- Consider dose, route, impairment.
 - What is the company's policy for FDA-approved Marinol (THC) if prescribed for chemo-induced nausea?



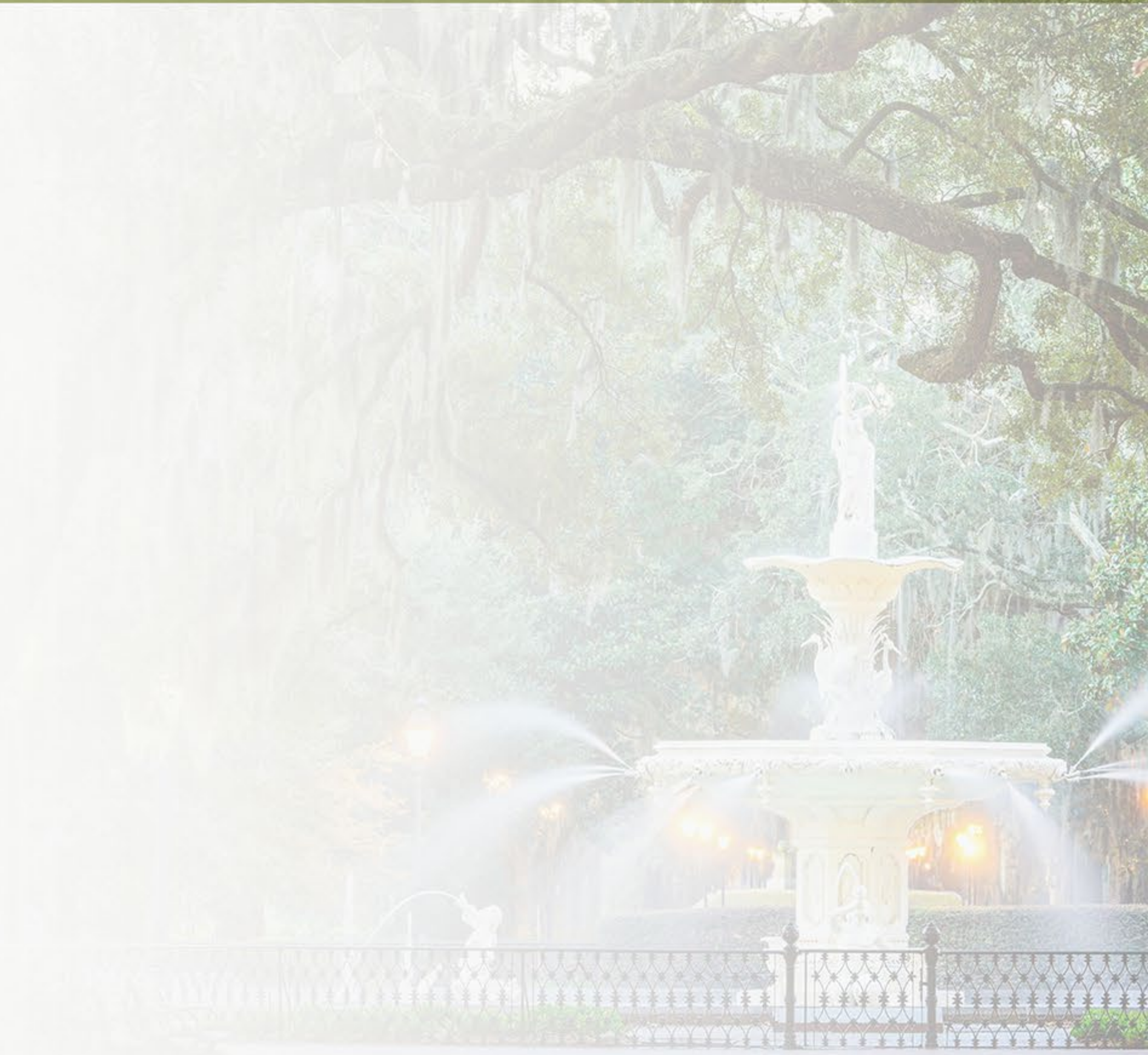
Understanding the Cannabis Regulatory Environment: Barbara Brohl

- Barbara consults on drug policy strategies for the 21st century. She believes that successful reform can occur when drug policy and effective regulation intersect.
- Formerly, Barbara was the Executive Director of the Colorado Department of Revenue, where she regulated Medical & Adult Use Cannabis. Her most significant and historic responsibility was the development and implementation of the first-in-the-world regulatory program for adult-use cannabis.
- An expert in Marijuana Regulation, Barbara has consulted with governments nationally and internationally to present “The Colorado Model.”
- In 2016, she spoke at a Washington Office of Latin America panel at the Commission on Narcotic Drugs at the United Nations in Vienna, Austria. Barbara was a keynote speaker at The Transparent Chain Conference in the Netherlands advising government and key stakeholders regarding their move toward full regulation of cannabis.
- Additionally, she was a member of the expert review panel for the 2018 Report on Regulation by the Global Commission on Drug Policy.
- Barbara began her legal career as a judicial law clerk for Colorado Supreme Court Justices Gregory J. Hobbs, Jr. and William H. Erickson, before specializing in regulatory law.



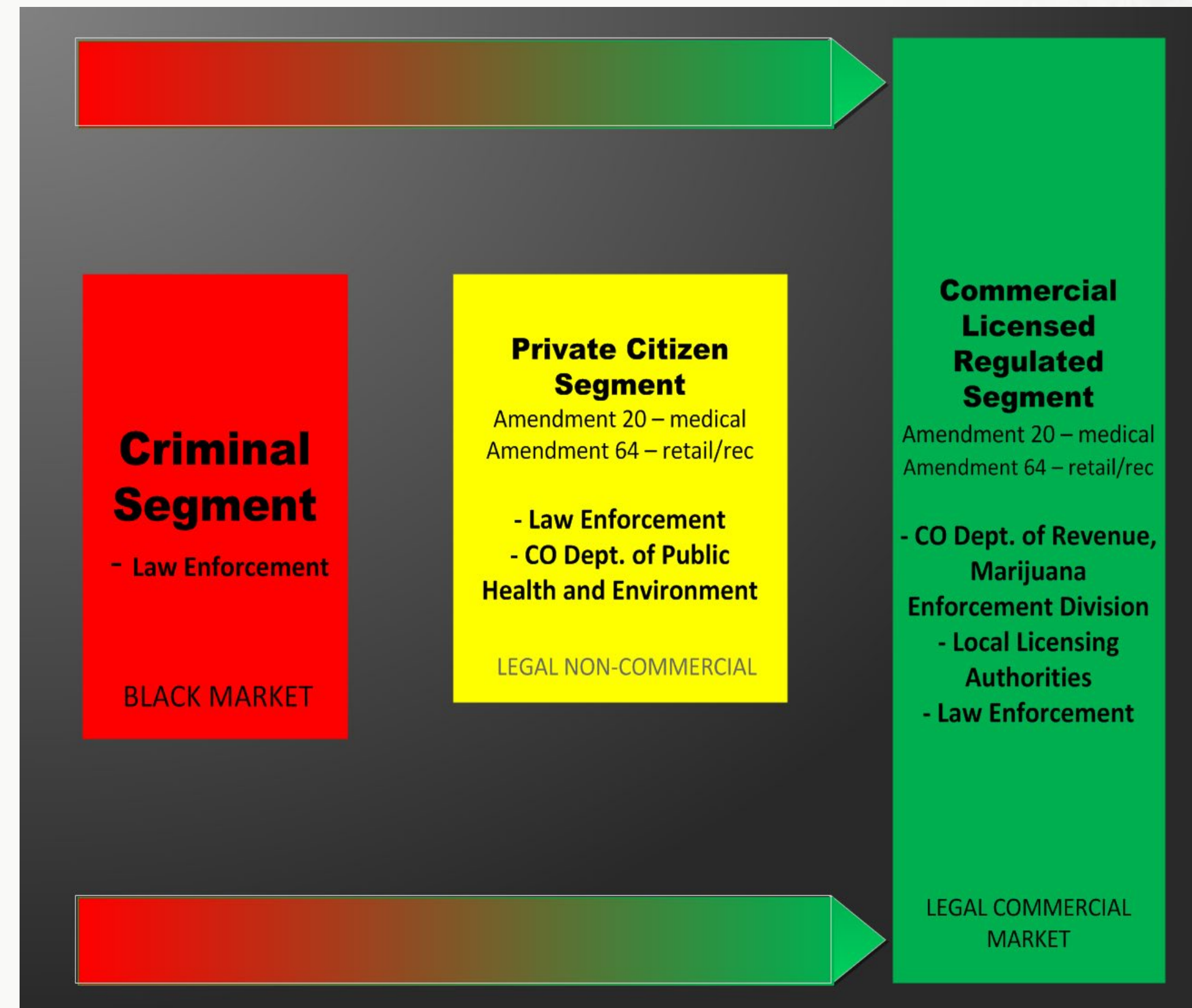
Regulatory Framework Agenda

- Overview & Background
- Structure of a Regulatory Program
- State of Legalization / Regulation
- Hot Topics





Overview & Background: Market Segmentation





Components of the Commercial Market

- Two Industry Segments
 - Medical
 - Adult Use / Retail
- Licensee Based
 - State Licensing
 - Local Licensing
 - Regulatory and/or Criminal
- Stores, Cultivations, Infused Manufacturers, Testing Facilities, Operators, Transporters, Delivery Services, Social Equity, Social Consumption & Hospitality



Guideposts

- Preventing Distribution of Marijuana to Minors
- Preventing the Involvement of Criminal Enterprises, Gangs, and Cartels in the Legal Marijuana Industry
- Preventing the Diversion of Legalized Marijuana to Other States



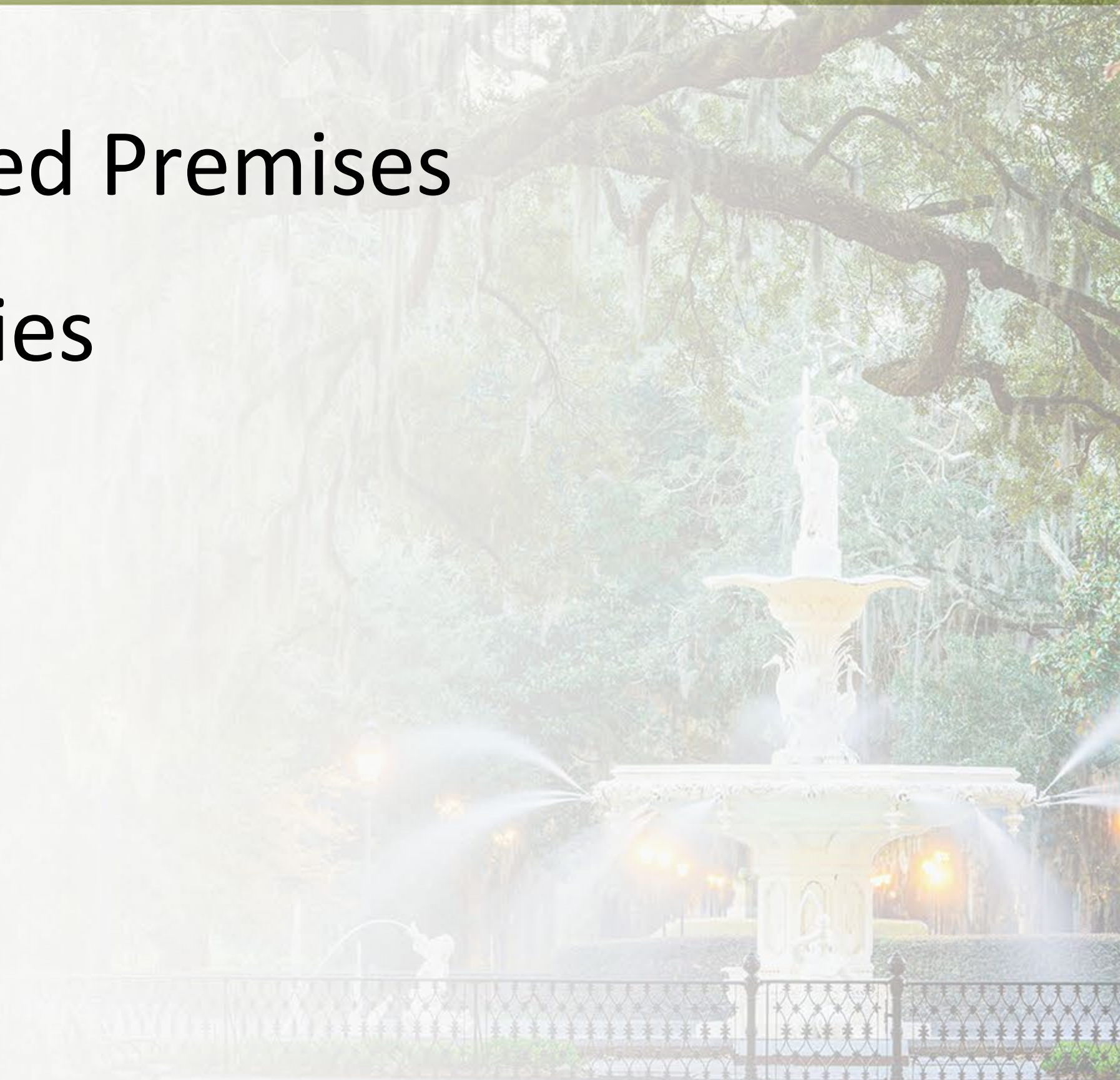
Regulatory Objectives

- Preventing Distribution of Marijuana to Minors
- Preventing the Involvement of Criminal Enterprises, Gangs, and Cartels in the Legal Marijuana Industry
- Preventing Diversion of Regulated Marijuana to Other States and Criminal Markets
- Transparent Regulatory Oversight



Structure of a Regulatory Program: Regulatory Oversight and Protections

- Regulations Protecting Public Safety – Licensed Premises
- Regulations Protecting Public Safety – Activities
- Rules to Ensure Worker Protection
- Rules to Prevent Accidental Ingestion
- Tracking, Tracing, Taxing, Tagging





Flowering Plants



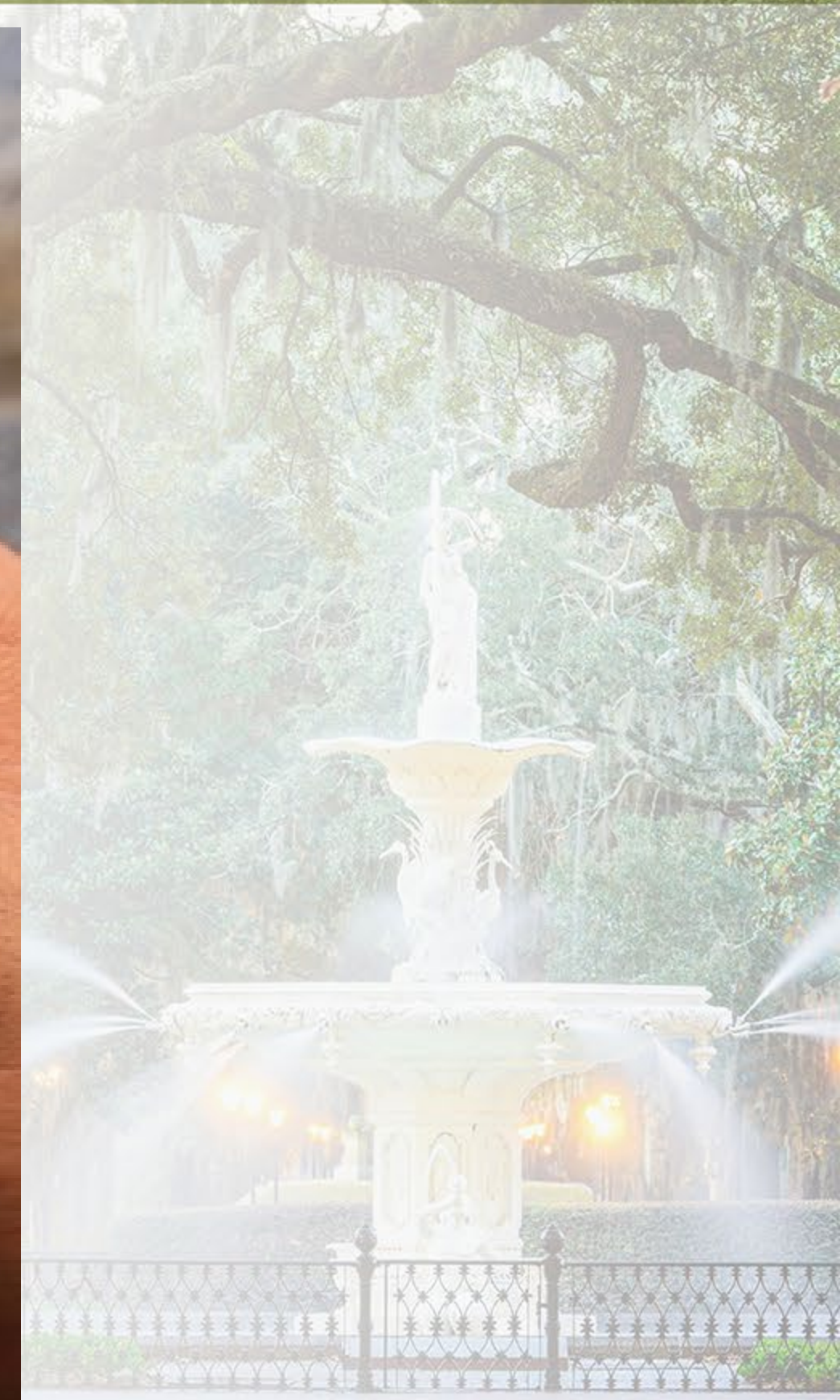


Cultivation Room





RFID Tag



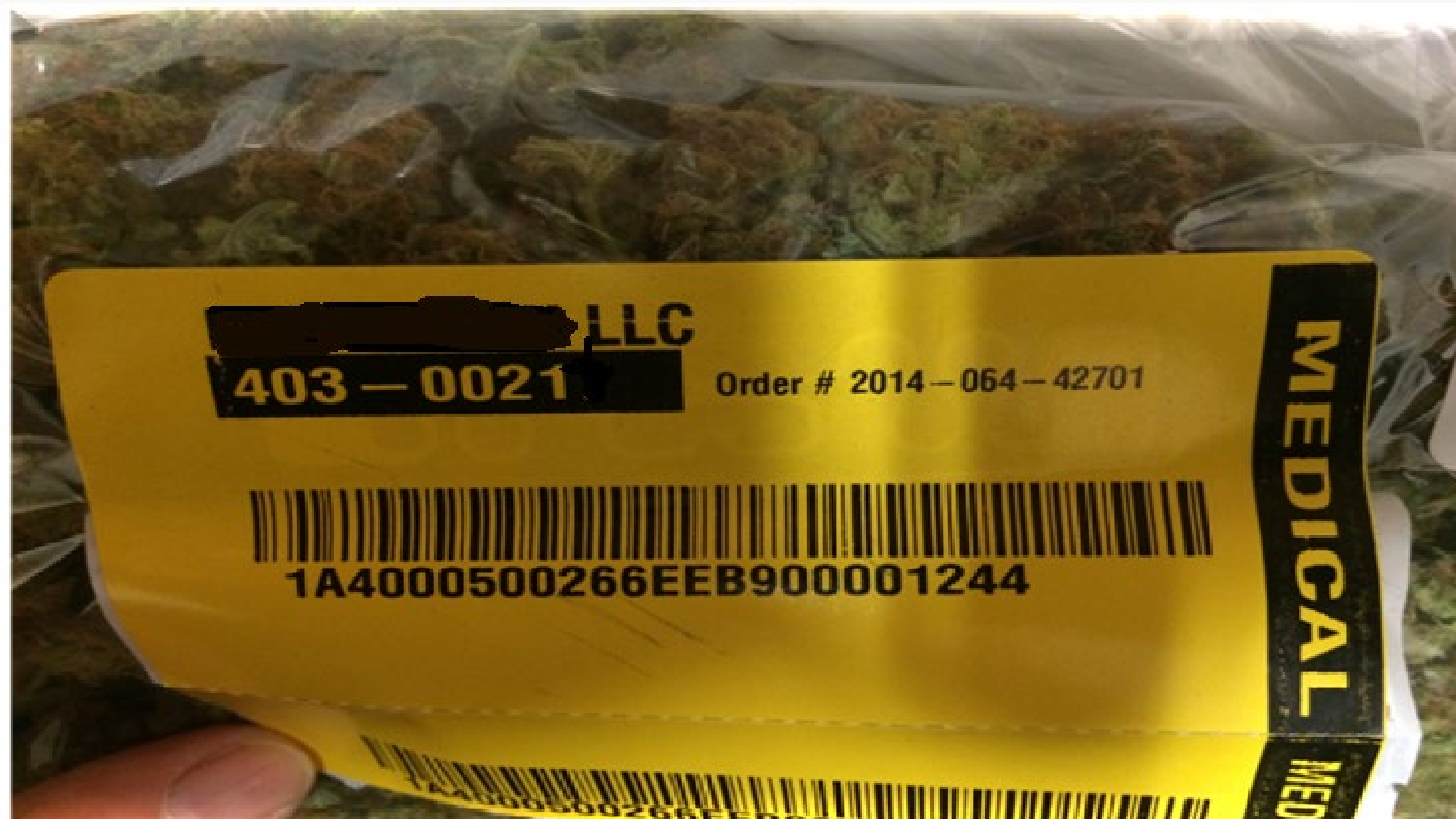


RFID Placement





RFID Tags



RFID Tags are required to Be attached to Marijuana packages during Transport and once received, entered into the inventory of the facility *receiving* the package



CO2 Extraction





Demarcation and the Universal Symbol





Examples of Edible Universal Symbols





Container Labeling

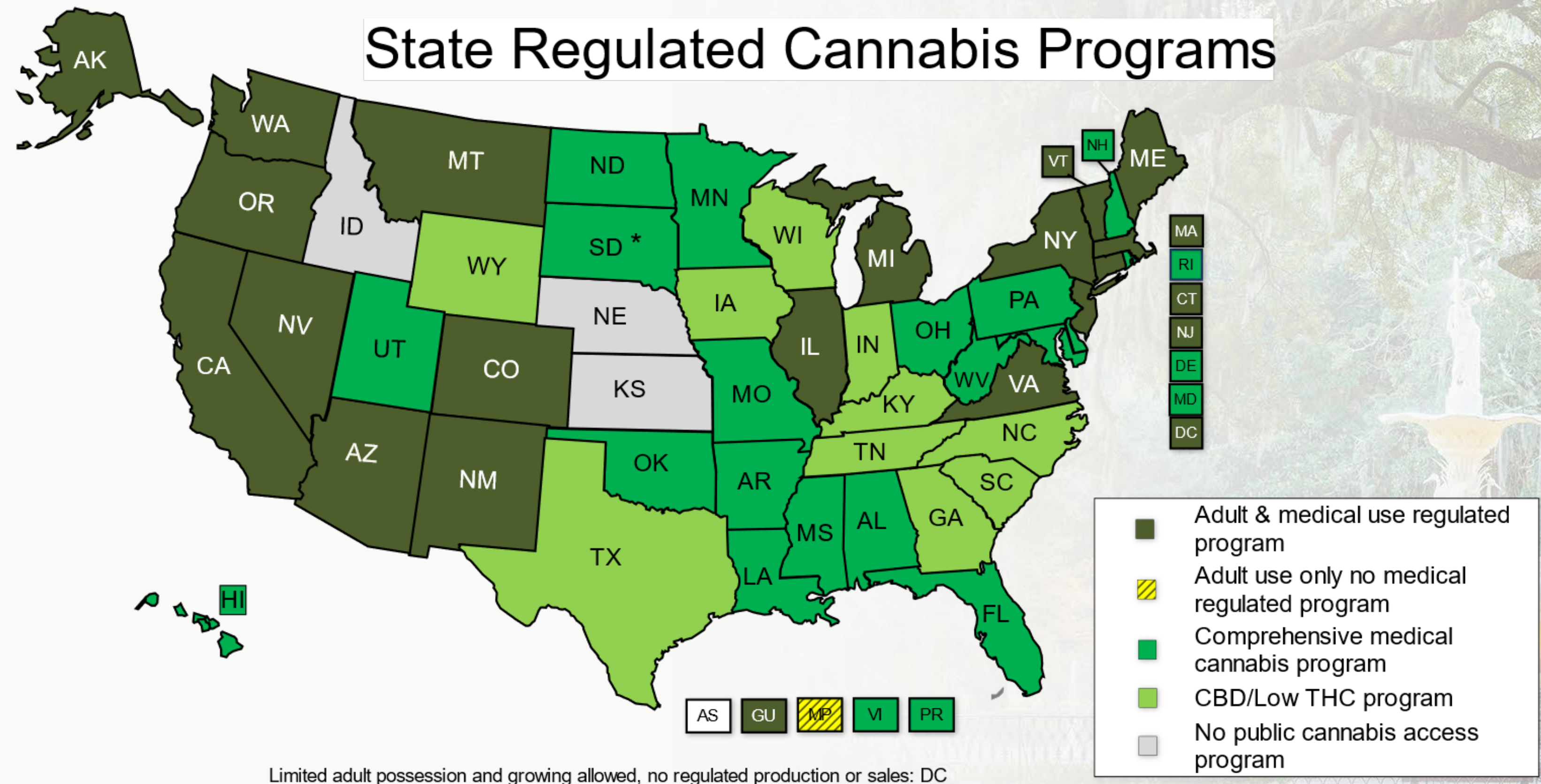




Marijuana Current Legalization Status – USA (2/2022)

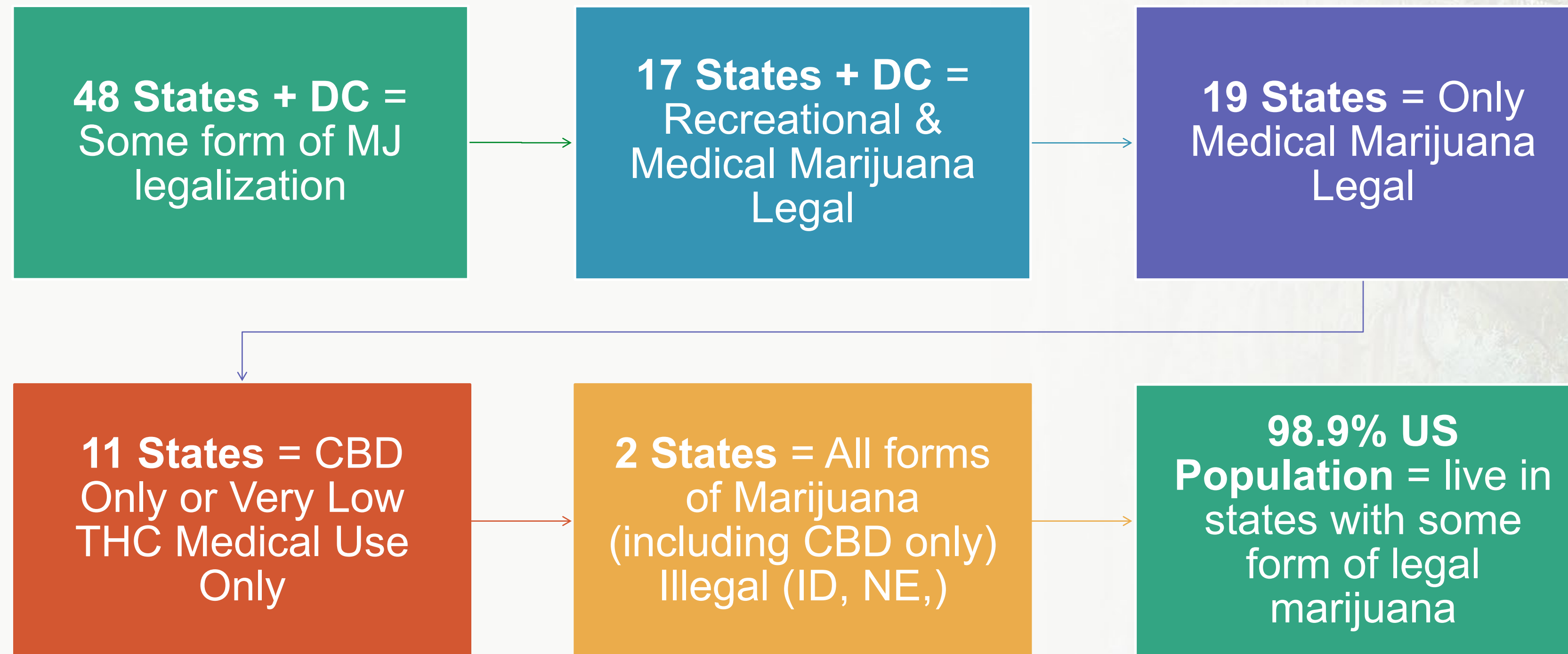
This map DOES NOT reflect the Mississippi legislation signed on Feb. 2, 2022.

Measures approved by voters in Mississippi for medical use and South Dakota for nonmedical use were overturned in 2021. The Mississippi legislature passed new medical cannabis legislation which the governor signed on Feb. 2, 2022. (Kansas has a CBD-only program)





MJ Legalization Breakdown

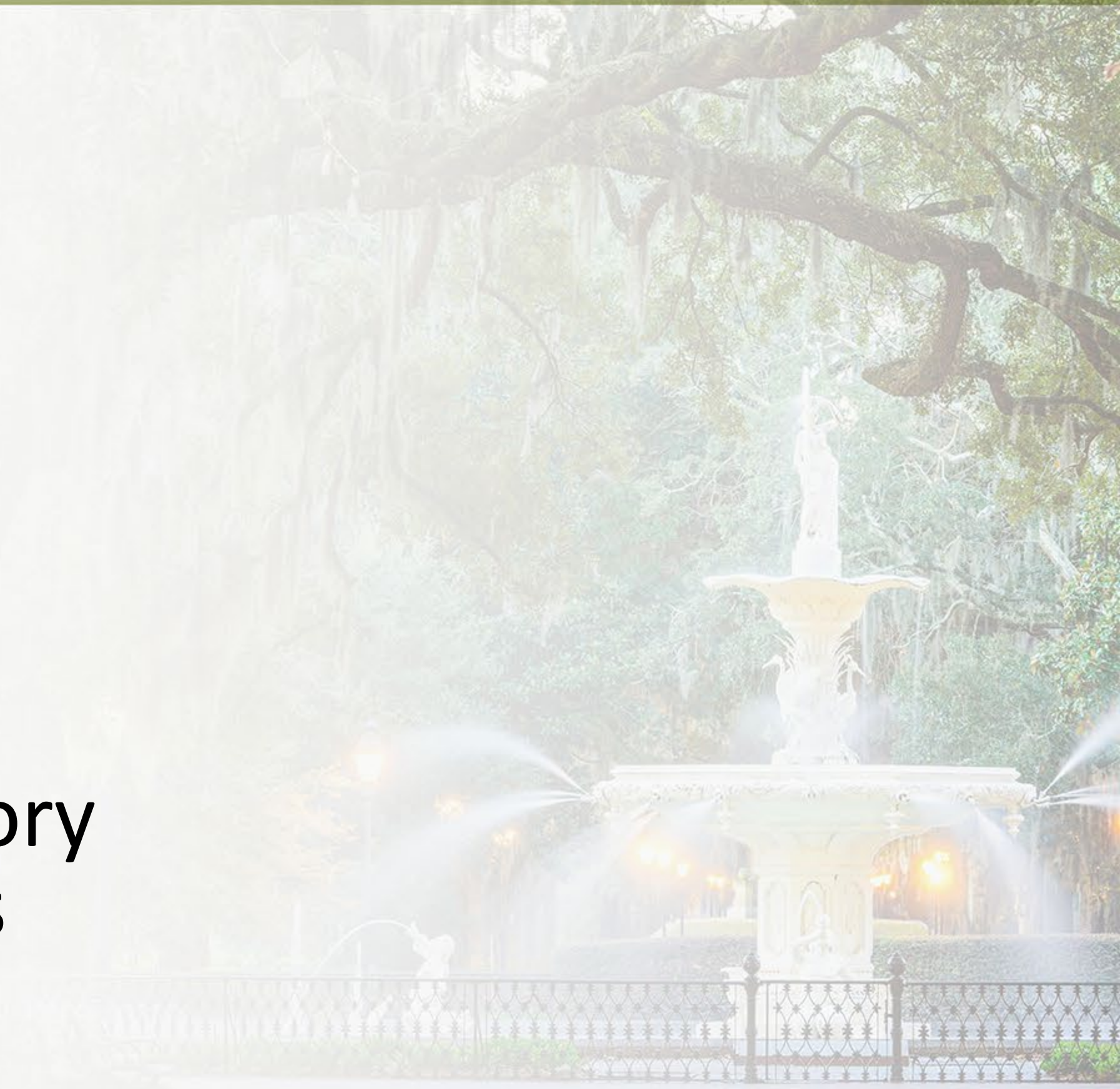




Cannabis Legalization – World View

Adult Use

- Uruguay
- Canada
- Mexico
- Georgia
- Malta
- South Africa
- The Australian Capital Territory
- Portions of the United States





Cannabis Legalization – World View

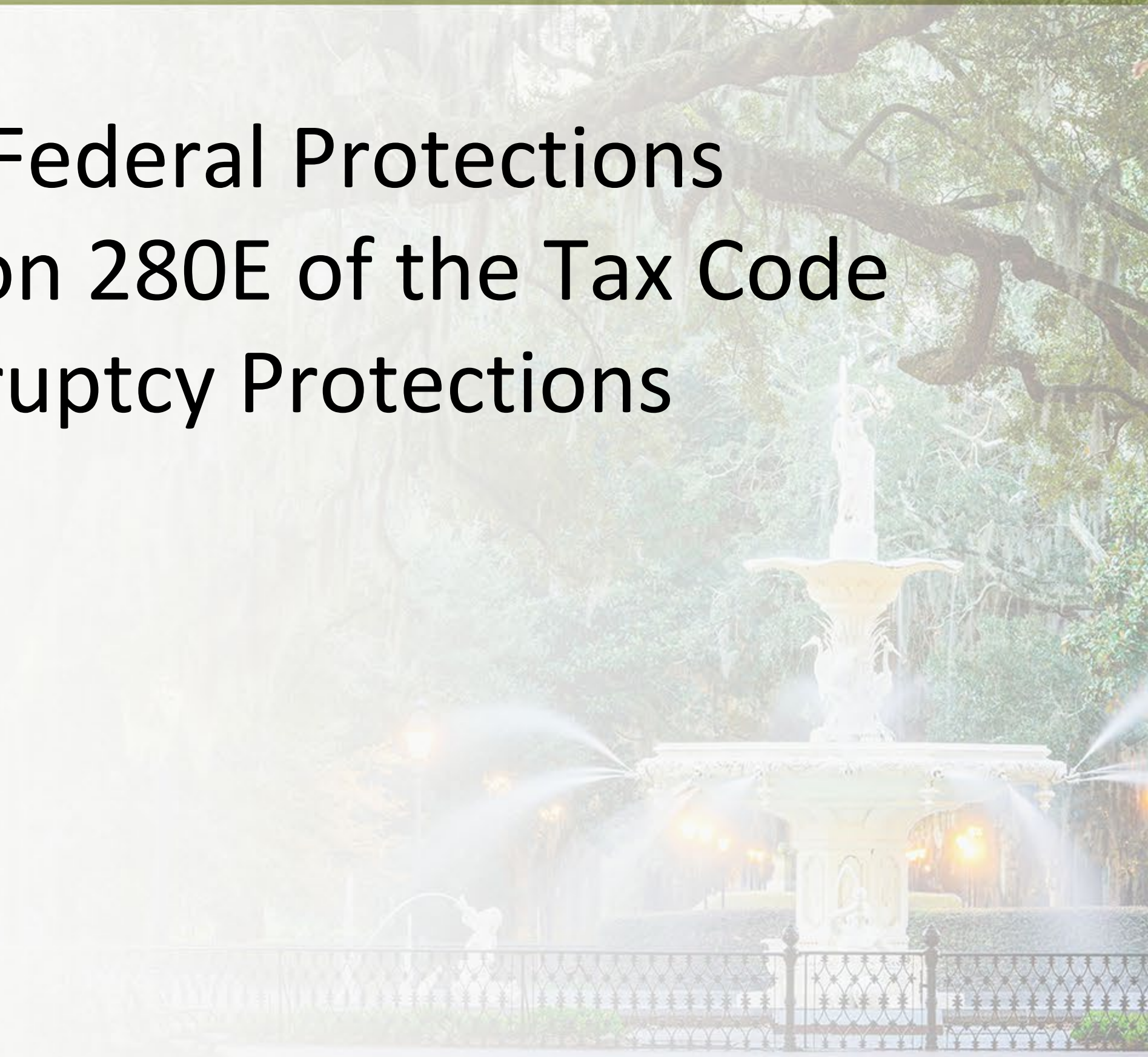
Medical

Argentina, Australia, Barbados, Brazil, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, Germany, Greece, Ireland, Israel, Italy, Jamaica, Lebanon, Lithuania, Luxembourg, Malawi, Malta, the Netherlands, New Zealand, North Macedonia, Norway, Panama, Peru, Poland, Portugal, Rwanda, Saint Vincent and the Grenadines, San Marino, Sri Lanka, Switzerland, Thailand, the United Kingdom, Uruguay, Vanuatu, Zambia, and Zimbabwe.



Challenges in the Legal Cannabis Industry

- Access to Banking & Financial Services
 - Credit Unions
 - State Chartered Banks
 - SAFE Banking Act
- Lack of Federal Protections
 - Section 280E of the Tax Code
 - Bankruptcy Protections





Hot Topics in the Legal Cannabis Industry



DELIVERY SERVICES



SOCIAL CONSUMPTION &
HOSPITALITY



VAPING



SOCIAL EQUITY



Regulatory Wrap-Up

- Cannabis Laws and their Implementing Rules & Regulations are complex.
- Sometimes they complement existing Legal Constructs.
- Sometimes they supersede them.
- Always check to see what your state prohibits, allows, or mandates.



Issues Involved In Requiring An Employer (or Insurer) To Pay For Medical Marijuana

- The feds, of course.
- Lack of physician involvement and oversight.
 - Physicians will not write scripts for medical marijuana.
- Lack of quantifiable metrics for prescribing.
 - Certification is written and then dispensary determines the amount and dosage.
- Lack of monitoring.
- Liability for Employers.
 - “Aiding and abetting” and “knowing violation” with fines up to \$1M.
- Liability for Commissioners/Judges.





Compensability for Employees Injured While Using Medical Marijuana

- Intoxication defense.
- Primary cause vs. contributing cause.
- Length of time marijuana remains in system and need for corroborating evidence to prove intoxication.



The Drug-Free Workplace

- Employers still have the right to a drug-free workplace and to set parameters for their employees.
- OSHA: Employers must provide a safe work environment for ***all*** employees.
- Drug-Free Workplace Act of 1988: If a company receives federal contracts, it cannot accommodate employees using medical marijuana.
- DOT guidelines: Medical marijuana is not a valid reason for a positive drug test, regardless of state law.
- In 2015, Colorado courts ruled that an Employer can have a drug-free workplace and still fire an employee for testing positive, even if marijuana is legal. (*Coates v. Dish Network*, 350 P.3d 849 (2015)).



The ADA, Medical Marijuana and the Employee's Rights



- Several states have now held that employees who have legal prescriptions for medical marijuana **can sue** Employers for disability discrimination if they are fired **solely** for their use of the drug.
- Example: Maine: Employers cannot drug test job applicants for marijuana or fire employees for positive drug test **unless** they can prove use or impairment on the job.
 - Prevents Employers from conducting drug tests unless there is “reasonable suspicion.”



Issues With Post-Accident Drug Testing and Marijuana

- Burden of proof: No way to tell when the marijuana was ingested.
 - Need witness testimony to buttress positive drug test.
- No breathalyzer.
- Issues with THC level testing.
- Specific issues with CDL drivers.
 - CDL drivers prohibited from using Schedule I drugs, including medical marijuana, regardless of state law.
- OSHA requirements.



Return to Work Issues

- Ability of vocational counselor to locate employment with regular marijuana usage.
- Limitations on pre-injury employment with a zero-tolerance drug use policy.
- Limitations on ability to retain commercial driving licenses or other certifications.
- Retraining issues if employee is utilizing marijuana.



QUESTIONS? THANK YOU!

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