IMPLICATIONS FOR USE OF MARIJUANA AND MARIJUANA CONTAINING PRODUCTS AMONG NURSES

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CE 1 CONTACT HOUR

Nurses will have enhanced knowledge of federal and North Carolina laws related to the legal use of marijuana. Nurses will gain an understanding that the legal use of marijuana and CBD oil would not be a defense for THC positive drug screens.

Disclosure:

The authors and planners of this CE activity have disclosed that there are no conflicts of interest related to the content of this activity. See the last page of the article to learn how to earn CE credit.

North Carolina has approximately 162,000 licensed RNs (including Advanced Practice RNs) and LPNs. Less than 1% of North Carolina nurses are charged with violations of the Nursing Practice Act and those that are disciplined, are monitored by the Board in a carefully constructed remediation process. Through the lens of what is most important – protection of the public – the Board has the imperative to gain insight into potential threats to licensee and patient safety and to intervene when necessary to reduce the impact of such threats when identified. The central goal of this article is to provide information about marijuana and to provoke thoughtful discussion among licensees and employers about the use of marijuana and marijuana containing products by licensees in an environment punctuated by changes in state laws and lacking in science to support efficacy for use.

Introduction

Over the past decade, there has been an increase in the number of states legalizing the use of marijuana for recreational and/or medicinal purposes. Further, states are trending toward the decriminalization of marijuana despite Federal laws classifying marijuana as a Schedule I drug and prohibiting its use. In 2018, the US Drug Enforcement Agency removed hemp, a "cousin" of the marijuana plant (Cannabis) from the list of controlled substances allowing for manufacture and marketing of products including cannabidiol ("CBD"). Medical marijuana and CBD are being marketed for sale to the public without the protections afforded through the rigorous processes imposed by the Federal Drug Administration (FDA) prior to release of pharmaceutical products. While anecdotal evidence on the benefits of medical marijuana and CBD exists, with the exception of a few drugs, the FDA, has not determined their safety and efficacy for use. This lack of evidence on the safety and efficacy of medical marijuana and CBD; the prevalence of legal recreational use of marijuana with its rising potency; the availability of marijuana laced edibles and the inability to assign a legal numerical level to define marijuana impairment or intoxication (similar to the numerical level defining Driving While Impaired) is a concern for public safety as it relates to marijuana use by healthcare workers in safety-sensitive positions, like nursing. In 2019, the North Carolina Board of Nursing ("Board") saw an increase in the number of licensees reporting use of legally procured CBD oil as a defense in drug screens reported to be positive for delta-9 tetrahydrocannabinol ("THC"), the psychoactive chemical in marijuana. Regardless of the source of the THC, the mode of ingestion or whether the drug was legally purchased and consumed in a state or country that has legalized recreational and/ or medical use, testing positive for the presence of THC remains a violation of the North Carolina Nursing Practice Act.

Marijuana Use

Marijuana is the most commonly used illicit drug in the United States according to the National Institute of Drug Abuse (NIDA 2019). The sale, purchase, distribution and use of marijuana remains illegal in North Carolina. In stark contrast to North Carolina laws, marijuana is legal for recreational use by adults age 21 years and older in Canada and in 11 US states and the District of Columbia. Adding to the complexity of the regulatory environment, medical marijuana is now legal in 33 US states, however neither medical nor recreational use of marijuana is legal in North Carolina. Moreover, under Federal Law, specifically the Controlled Substance Act of 1970: Title 21 United States Code (USC) Controlled Substances Act, Marijuana use remains illegal in every state. Schedule I drugs like marijuana are those determined to have no acceptable medical use, a high potential for addiction and they are determined not to be safe for use. Other Schedule I drugs include but are not limited to heroin, LSD and ecstasy.

Effects of Marijuana

Recreational users cite the pleasurable effects of the drug when ingested orally or when inhaled. The duration of effects depends on the concentration of THC in the marijuana, the amount used, and the

mode of ingestion. Inhalation causes THC to enter the circulatory system and the brain more quickly than ingestion through edibles. The drug reaches the brain within minutes of inhalation causing the mood and mind-altering effects. In the brain, THC causes the release of dopamine – a naturally occurring neurotransmitter. When a large amount of dopamine is released, the individual experiences the "high" or the pleasurable sensation. The user's experience with marijuana is not universally pleasant. Feelings of anxiety, paranoia or psychosis have been reported when too much is used, if the user has consumed highly potent marijuana or if the consumer is self-medicating to treat an underlying mental health problem. According to the Substance Abuse and Mental Health Services Administration ("SAMHSA") marijuana use comes with risks which include impairment of the following:

1. Memory
2. Learning
3. Concentration
4. Attention
5. Thinking
6. Problem solving
7. Reaction time

It goes without saying that abuse of other substances, mental health disorders and/or sleep deprivation are known causes of impairment, however the topic of this article relates to what is known about marijuana. While there are no studies of the effects on healthcare workers using THC during delivery of patient care it is worth noting that studies on drivers using marijuana have documented significant impairment in judgment, reaction time and motor coordination. Higher THC levels correlate with a higher degree of impairment (Lenne et al, 2010; Hartman et al 2013; Hartman et al 2015). Continued research on the effects of episodic use and long-term marijuana use is scant because marijuana is categorized by the federal government as a drug that has no medical value.

THC may be detected in the body for weeks after use. The level reported by the lab depends upon many factors including the date of last use, the frequency of use, and the amount and potency used. Testing positive for an illicit substance as described above is a violation of the NPA

continued on page 8

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and as required by law, licensees "shall" be reported to the Board [§ 90-171.47].

CBD

With the removal of hemp from the federal Controlled Substance Act in 2018, the sale of CBD oil derived from hemp has exploded. Hemp and marijuana are different but from similar types of cannabis plants, and are often referred to as "cousins". There is significant variation in the amount of psychoactive and other chemical compounds between them. Hemp does not contain an amount of THC that would produce a high. The level of THC in hemp-based CBD oil is negligible but if present at all, by law the oil cannot contain more than 0.3 % THC dry weight. Testing positive due to use of legally produced CBD oil according to package recommendations is unlikely.

There is no government oversight over the production of CBD oil marketed to the public. Hemp consumers should be aware that lack of regulation in CBD oil production means there is no required quality control of the manufacturing process and there exists the potential for contamination with other substances, including THC. CBD oil derived from hemp is legal while CBD derived from Marijuana is illegal (apart from a drug known to treat seizures in children). In 2019, the Board began to see reports of THC positive screens from licensees acknowledging use of CBD oil to self-treat chronic pain, to aid with sleep or to manage depression and anxiety. The only FDA approved CBD oil product with evidence to support a therapeutic effect is Epidiolex which became available in the US on November 1, 2018. Epidiolex is approved for use in the treatment of rare forms of childhood seizures.

Patient Safety

Drug screens reported as THC positive, are tests that have been determined by a Medical Review Officer to contain an amount the psychoactive ingredient in marijuana that measures at or above an administrative cut-off. There is no scientific mechanism to determine the source of the THC, the date of use or the amount used. Use of CBD oil is not accepted as a defense against a THC positive drug screen. Moreover, detection of THC regardless of the source or mode of ingestion is a cause for concern for nursing regulation as it relates to the potential for impaired practice. More recently the growth in the availability of marijuana edibles raises a concern for workplace safety in that consumption of edibles is more difficult to detect in the workplace.

So why the concern? The short answer is patient safety. In 1999, the Institute of Medicine "IOM" (renamed to the National Academy of Medicine) released a landmark report called "To Err is Human: Building a Safer Health System" in which it reported nearly 98,000 patient deaths occur in hospitals each year due to preventable error. Following the release of the report, healthcare organizations recognized that efforts needed to be directed toward improving patient safety. The IOM report defined safety as "prevention of harm to patients." The report stressed the need for quality improvement processes designed to identify and mitigate risk events before they reach the patient.

Nursing is a safety-sensitive health-care position. Licensing of health occupations, like nursing, assures the public that controlled entry into the profession and monitoring through the regulatory Board are necessary to prevent incompetent and unsafe persons from engaging in activities that pose a risk of harm to the public. The General Assembly of North Carolina established through the Nursing Practice Act ("NPA") that licensure of nurses is necessary "to ensure minimum standards of competency and to provide the public safe nursing care" [§ 90-171.19]. The mission of the Board is to "Protect the Public by Regulating the Practice of Nursing". Regardless of the practice setting, nurses hold significant responsibility and accountability for performing duties in a manner that ensures that patients are safely being cared for. This requires that the individual has the knowledge, skills and ability to engage in practice and that nurses are physically and mentally fit to perform their duties.

In a recent article published in the British Medical Journal (Panagioti et al, 2019), the authors conducted a meta-analysis of 70 studies related to preventable patient harm. The studies included records of 337,025 patients and 47% of the studies were conducted in the US. The authors concluded that around 1 in every 20 patients across all healthcare settings is exposed to preventable harm. The incidence of preventable harm was in direct proportion to the complexity of the environment i.e. there were more incidents reported in specialty care units such as ICUs.

Mandatory Reporting § 90-171.47

When should an employer report? Employers or prospective employers receiving information on positive screens (including but not limited to THC positive screens) collected pre-employment, for-cause, post-accident or randomly are required by law to report the results to the Board. This includes but is not limited to reports on NC licensees who may be assigned through a travel nurse agency and test positive in another compact state. It also includes licensees who test positive after reported use of Marijuana in a state where it is legal recreationally. THC positive screens on Licensees who report use of CBD oil or accidental ingestion of edibles are required to be reported. In summary, any screen deemed by a Medical Review Officer to be positive for the intoxicant THC, is a mandatory reporting event regardless of whether there are signs of physical or cognitive impairment.

Testing positive for THC is a violation of the NPA. The licensee's history in NC and in any other state or jurisdiction is taken into consideration before the Board responds. If the nurse is suffering from a Substance Use Disorder ("SUD"), he/she would most likely be offered participation in a recovery

and monitoring program. A SUD is characterized by continued use of a mood/mind altering substance (including but not limited to marijuana and alcohol) despite adverse consequences. Patient safety is compromised when a nurse with an untreated SUD continues to practice.

Today's healthcare environment is complex, and the nature of the profession is stressful. Often the stress of the environment impacts the well-being of the nurse who may respond in unhealthy ways to cope. Coping mechanisms may include self-medicating with alcohol or drugs. Eventually, continued use of the substance interferes with the nurse's ability to carry out day to day activities including responsibilities of nursing. This is the point at which patients may be exposed to harm.

Teaching Scenarios:

Scenario A: Nurse 1, travels to Washington state for vacation. While there, she legally purchases and smokes Marijuana. Two weeks later, after returning to work, her name appears on the list for random drug screening. Nurse 1 was informed the drug screen was positive for the presence of THC. When contacted by the Board, Nurse 1 admitted smoking marijuana but argued that the Board had no jurisdiction as she had legally obtained and used the drug while on vacation.

> **Board Response:** Testing positive for an illicit substance is a violation of the NPA, the Board has authority to act.

Scenario B: Nurse 2 and Nurse 3 graduated on May 12, 2019. At an after-graduation party, they consumed THC laced brownies. Prior to taking NCLEX and being licensed, both were offered positions in a new nurse residency program. Nurse 2, eager to begin employment on July 1, 2019 took the NCLEX exam in late May 2019. He successfully passed the exam and was issued a license on June 6, 2019. Nurse 3 wanted to take an NCLEX review course prior to taking the exam. As a condition of the offer for the residency program, both submitted to a pre-employment drug screen on June 12, 2019. The following week both Nurse 2 and Nurse 3 were informed by the employer that the offer of employment was being rescinded as a result of their THC positive drug screens. Both Nurse 2 and Nurse 3 argued that they were being treated unfairly and that because they had not begun their internship programs, the Board had no authority to act.

> **Board Response:** In this matter Nurse 2 is incorrect and Nurse 3 is correct. Why the difference? Nurse 2 held a license at the time he submitted to the screen and therefore the laws and rules of the NPA apply.

continued on page 10

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continued from previous page

Conversely, Nurse 3 had not taken the NCLEX exam and had not been licensed at the time she submitted to the screen. While her offer of employment was rescinded, the Board did not have the authority to act without a license having been issued to Nurse 3.

Scenario C: Nurse 4 is the holder of a multi-state NC license. He is a travel nurse and has been assigned to work a contract in Arizona. A pre-employment screen was collected in Arizona. Prior to his first day, Nurse 4 was informed that the screen was positive for THC. Nurse 4's contract with the hospital was terminated, and he was released from employment with the travel agency. The travel agency reported the results of the drug screen to the North Carolina Board of Nursing and to the Arizona Board of Nursing. Nurse 4 argued that if any Board had authority, it was the Arizona Board of Nursing because he had provided the drug screen in Arizona.

Board Response: Nurse 4's privilege to practice in Arizona is granted by his NC multi-state license. If he were to have been employed in Arizona, he would be held to the laws and regulations of the Arizona NPA. In this case, Nurse 4 did not actually engage in nursing practice in the state, so the Arizona Board of Nursing deferred the complaint of the positive drug screen to the NC Board of Nursing. NC, as his home state, has ultimate authority over his multi-state license regardless of which of the compact state a licensee may be employed.

Scenario D: Nurse 5 is the holder of a multi-state NC license. While caring for a combative patient with head trauma, she is struck by the patient. As part of the employer's policy for post-incident follow up, Nurse 5 is required to submit to a drug screen. Nurse 5 was surprised to receive a call informing her that the specimen was positive for THC. Nurse 5 denied use of THC and had no plausible explanation for the result. When contacted by the Board, Nurse 5 recalled having used CBD oil she purchased on-line. Nurse 5 argued that the Board has no authority to act when the likely cause of the THC positive screen was legally purchased CBD oil.

Board Response: Production of evidence to support the legal purchase of CBD oil does not absolve Nurse 5 in this matter. While the level of THC in CBD oil legally cannot exceed 0.3%, there are no regulations in place governing its manufacturing. The Board responds to the report of a positive specimen, regardless of the source of the THC, the mode of ingestion or whether the drug was legally purchased and consumed in a state or country that has legalized recreational and/ or medical use.

Scenario E: Nurse 6 relocated to NC from Maine 16 months ago. She began employment in NC shortly thereafter and declared NC as her home state 10 months later. Nurse 6 was issued NC multi-state license. While a resident of Maine, she held a Medical Marijuana card and was legally permitted to consume marijuana for treatment of anxiety and depression. For the past six months Nurse 6 had not been eligible to use her Maine Medical Marijuana card and subsequently began to purchase marijuana illicitly to self- treat her symptoms. Nurse 6's employer noticed a change in her ability to concentrate and her ability to perform her duties. She was asked to submit to a for-cause drug screen which was positive for THC. When contacted by the Board, Nurse 6 acknowledged illicit purchase and use of marijuana but argued that the Board should dismiss the complaint due to the fact that she was legally able to procure medical marijuana up until 6 months prior to being confronted by her employer.

Board Response: Nurse 6's employer was prompted to screen her when changes in her ability to perform her duties became evident. An expired prescription for medical marijuana is not accepted as a mitigating factor.

Scenario F: The Board received an anonymous complaint alleging that a Nurse Manager determined that a positive marijuana screen was not a reportable event and therefore a complaint was never filed. When contacted by the Board, the Nurse Manager acknowledged that Nurse 7 tested positive for THC but that after consulting with HR, no report was filed. The Nurse Manager justified the agency's decision based upon three facts: 1). no evidence of impairment; 2). Nurse 7 produced a bottle of CBD oil and 3). Nurse 7 had recently returned from a vacation in Colorado where he admitted that he had smoked marijuana legally. The agency found these to be mitigating circumstances in their decision not to report.

Board Response: The Board does not dismiss an anonymous complaint. In this scenario, the agency is in violation of the NPA and the requirements for reporting. The failure to report in a timely manner did not absolve Nurse 7 of being cited for a violation of the NPA as a result of the positive screen.

Summary

1. Use of recreational and medical marijuana is illegal in NC.
2. Production and sale of CBD oil containing 0.3% or less THC is legal in the US, however there is no regulation over its production and labeling.
3. The minute amount of THC in legally produced CBD oil is virtually undetectable and does not cause a "high".
4. The use of CBD oil, a medical marijuana prescription, consumption of marijuana in states or countries where it is legal for recreational use, unknowingly ingesting THC or THC- laced edibles, and exposure to second-hand smoke cannot be used as a defense in a THC positive screen.
5. A positive drug screen is a violation of the NPA and results in Board action.
6. THC is known to impair key brain processes required for delivery of safe patient care.
7. Prevention of patient harm and/or

continued on page 12

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Today's marijuana is stronger.

Today's marijuana has more than **3 times** the concentration of THC than marijuana from 25 years ago. More THC — the mind-altering chemical in marijuana — may lead to an increase in dependency and addiction.

Risk of addiction.

About **1 in 10** people who use marijuana may become addicted to marijuana — and **1 in 6** when use begins before age 18.

Lowers brain power.

Marijuana affects your brain development. Use by adolescents has been linked to a decline in IQ scores — up to 8 points! Those are points you don't get back, even if you stop using.

Impairs your memory.

Using marijuana can affect your memory, learning, concentration, and attention. Other effects include difficulty with thinking and problem solving.

Affects your performance.

Using marijuana can lead to worse educational outcomes. Compared with teens who don't use, students who use marijuana are more likely not to finish high school or get a college degree.

Can harm your baby.

Using marijuana when you're pregnant can affect your baby's development. It's linked to lower birth weight, preterm birth and stillbirth, increased risk of brain and behavioral problems.

Driving danger.

People who drive under the influence of marijuana can experience dangerous effects: slower reactions, lane weaving, decreased coordination, and difficulty reacting to signals and sounds on the road.

Marijuana use comes with real risks. Learn more at SAMHSA.gov/marijuana

If you or someone you know needs help with a substance use disorder, including marijuana, call SAMHSA's National Helpline at 1-800-662-HELP (4357) or TTY: 1-800-487-4889, or use SAMHSA's Behavioral Health Treatment Services Locator at SAMHSA.gov to get help.

SAMHSA
Substance Abuse and Mental Health Services Administration

continued on page 12

continued from previous page

injury is every nurse's responsibility.

Conclusion

Preventable medical errors continue to be a real threat to patient safety. Nurses comprise the largest healthcare workforce and remain at the forefront of keeping patients safe. Nursing requires complex mental reasoning in everyday practice, in interactions with patients and with other members of the healthcare team. Errors can occur when nurses are incompetent, stressed, fatigued, understaffed or under the influence. Use of marijuana and marijuana containing products is considered at-risk behavior, use of the drug is illegal in North Carolina and it is a violation of the NPA. Marijuana use has known side-effects on a person's ability to perform complex tasks. Being fit for duty both mentally and physically is what we owe our patients. Eliminating exposure to and use of illicit substances for recreational or perceived therapeutic purposes is one factor that is within the control of the individual, and one factor that when eliminated contributes positively to delivery of higher quality and safer care.

Most employers have policies in place authorizing them to request "for-cause" drug screening in situations where there may be signs of impairment or when drug diversion is suspected; or to request "post-accident/incident" screens when the employee is injured on the job. Employers considering the implementation of a true "random" workplace drug screening policy as an adjunct to a drug-free workforce policy should engage the workforce in an educational campaign on how a drug-free workplace policy improves patient safety and mitigates risk for the organization. Through an educational blitz, drug screening policies should be explained to employees making it clear that even in the absence of a "cause" to screen, the employer has the right to screen. Consequences for positive screens and/or failure to comply with drug screening should be included in the policies and communicated through educational programs.

For more information on substance use disorders, readers may refer to the Board's website under Drug Monitoring Programs. Additional resources are available through the National Council of State Boards of Nursing ("NCSBN") at https://www.ncsbn.org/resources.htm. Nurses are encouraged to read the U.S. FDA brief "what you need to know (and what we are working to find out)" about products containing cannabis to cannabis-derived compounds, including CBD. https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis

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continued on next page

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