NATIONAL INTERDISCIPLINARY CANNIBIS SYMPOSIUM

CANNABIS AND THE COURTS PANEL December 2, 2023 11:15-12:30

MEDICAL MARIJUANA AND TREATMENT COURTS (15-20 minutes): Judge Janet Holmgren

I. What is a Treatment Court?

* Voluntary Program
* Criminal Justice Professionals paired with Treatment Professionals as the Treatment Court team
* Wraparound Intensive Treatment Services
* Intensive Court Oversight/Probation or Pre-Trial Supervision

2. Types of Treatment Courts

* Drug Court
* Mental Health Court
* DUI Court
* Veterans Court

3. Target Population

* Defendants with behavioral health disorders—substance use disorder; serious mental illness; co-occurring disorders
* Target population defendants often have co-occurring co-morbidities—chronic pain; diabetes; medical/dental issues, etc.

4. Federal Law

* Marijuana remains illegal under federal law
* U.S. Dept. of Justice declines to prosecute persons buying selling or possessing medical marijuana
* Congress defunded DOJ prosecutions of the exchange of medical marijuana in states that have legalized medical marijuana

5. Jurisdictions allowing medical marijuana use for debilitating medical conditions

* 38 states
* 3 Territories
* District of Columbia

6. Examples of state law "debilitating medical conditions" allowing for authorizing MM use

* Cancer
* Glaucoma
* Tourette's syndrome
* Multiple sclerosis
* Epilepsy
* PTSD
* Autism
* Chronic pain
* Osteoarthritis

7. Two Major Groups of State Laws authorizing MM use

* Medical marijuana is expressly permitted
* Medical marijuana may be prohibited on a case-by-case basis

8. States where MM is expressly permitted

* Courts have no discretion to prohibit a probationer's use of medical marijuana if state law requirements are followed

9. States where MM may be prohibited on a case-by-case basis

* Court may consider the individualized circumstances of each case—history of Cannabis Use Disorder, whether THC use is related to or contributes to criminal conduct,
* State law may create a presumption that medical marijuana use may be allowed unless judge makes express findings of individualized circumstances to prohibit use
* Ensure that if MM is prohibited that the participant is subject to frequent, random, observed drug testing and is sanctioned for violations

10. Treatment Court Supervision of MM use when permitted

* Verify that authorization of use complies with state law
* Verify Dr./Patient relationship
* Ensure that MM use complies with authorized time period

11. Advise to Treatment Courts

* Know the laws of your state!
* Stay abreast of the scientific research regarding the effects and nature of cannabis and cannabinoids
* Stay abreast of advances in scientific research regarding drug products
* Have a supervision plan for medical marijuana use if permitted in your program
* Address medical marijuana in your program criteria for eligibility and participation in your program

12. FDA-approved cannabis-derived (occur naturally in the plant) and cannabis-related (synthetic compounds created in a lab) drug products

* Epidolex: cannabis-derived CBD drug product to treat seizures associated with Lennox-Gestaut syndrome or Dravet syndrome
* Marinol: cannabis-related THC drug product for nausea from chemotherapy and weight loss in AIDS patients
* Syndros: same uses as Marinol
* Cesamet: cannabis-related drug product for nausea associated with cancer chemotherapy

13. Treatment Court Options

* Require abstinence and sanction for use or deny entry into program under Treatment Court rules
* Limit MM use to on-label uses of FDA-approved medicines and prohibit use of any non-FDA approved substances (vapes, leaves, waxes, etc.)
* Allow use of CBD products but sanction for positive THC drug test results

14. Justifications for limitations or prohibitions on MM use

* Treatment court participation is voluntary, not a participant's right
* Correlation between THC use and psychosis and schizophrenia onset
* Use of other controlled substances in treatment courts is prohibited or requires physician verification of medical necessity and a prescription
* Only FDA-approved medications and uses are proven to be safe

15. Federal funding prohibitions

* Two largest sources of federal grant funds for treatment court programs, Bureau of Justice (BJA) and Substance Abuse and Mental Health Services Administration (SAMHSA) prohibit the use of any federal funds to support programs or activities that violate the Controlled Substances Act, 21 U.S.C. Sec. 801 et seq. or to be used to purchase, prescribe or provide marijuana or treatment using marijuana, 45 C.F.R. 75.300(a).