

MEDICAL MARIJUANA STATE LAWS **Implications for Workplace Testing Programs**

With the U.S. Supreme Court decision June 6, 2005 (*Gonzales v. Raich*), state laws permitting the use of marijuana for medical purposes are again front-page headlines. The Court's decision upholding the Federal government's right to regulate and enforce the Controlled Substances Act (CSA) regardless of state laws that allow the possession, distribution or consumption of Schedule I drugs, essentially means that persons who use marijuana (a Schedule I drug) for medical purposes can be prosecuted for violations of the CSA. Bottom line—marijuana possession, distribution or use is illegal drug activity.

Eleven states have laws that allow citizens to use marijuana for medical purposes. The state laws differ on the amount of controls or limits that are placed on obtaining, distributing and using the drug. How does this impact Drug Free Workplace Programs, specifically drug testing programs? Generally DFWRPs prohibit employees from possessing, distributing, and using controlled substances in the workplace unless medically authorized and legally dispensed. In addition, DFWRPs prohibit employees from having unauthorized controlled substances in their system, as detected by analysis of a body fluid or biological specimen. In drug testing programs mandated by the Federal government (e.g. DOT, DHHS, NRC) Schedule I drugs are unilaterally prohibited. If an employee tests positive for a drug or drug metabolite, use of a Schedule I drug cannot be medically authorized use that explains the drug test result. In addition to marijuana, heroin, phencyclidine, LSD, other opiates and hallucinogens are Schedule I drugs under the CSA.

This decision means that employers conducting testing under their own authority do not have to consider "reasonable accommodations" of employees or applicants who use marijuana based on a doctor's recommendation. The decision also supports Medical Review Officers' verifying a test as positive for marijuana even if the employee is using the drug under the terms of a state law. There is no exception for marijuana under the CSA which prohibits medical use of a Schedule I drug.

The 11 states that currently have laws permitting the medical use of marijuana are: Alaska, Arizona, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington. An additional 23 states have medical marijuana legislation pending.

For employers conducting drug testing under their own authority in any of the 11 states that have "medical marijuana" laws, it makes sense to include language in Drug-Free Workplace Program policies that clearly prohibits use of Schedule I drugs—for any purpose. This can be accomplished in the definitions of legal, illegal or prescription drugs or controlled substances. Appropriate text can also be included in sections of the policy that discuss test results, their interpretation and reporting.

Sample text for DFWP policies:

Prescription drugs. Any Schedule II-V drug authorized or prescribed by a physician or other licensed medical practitioner. Authorization or recommendations for use of Schedule I drugs such as marijuana or heroin are illegal under Federal law, and therefore are not legally prescribed medications

Use of drugs obtained outside the U.S., use of medications prescribed to family members or friends, use of food products containing drugs (including hemp products), and use of marijuana, heroin, or other Schedule I drug for health or medicinal purposes, cannot be accepted by the MRO as legitimate medical explanations of a positive result.

For the complete text of the US Supreme Court Decision, Gonzales v. Raich, please go to www.firstlab.com on our website under News/FirstLab Reports. For assistance with DFWP policy development, please contact Dr. Donna Smith at 727-343-0283.

**FOR FURTHER INFORMATION PLEASE CONTACT FIRSTLAB'S BUSINESS DEVELOPMENT
DEPARTMENT AT 800-732-3784, MKT@FIRSTLAB.COM FOR POLICY DEVELOPMENT PLEASE
CONTACT DONNA SMITH AT DSMITH@FIRSTLAB.COM**