



# *Marijuana: The Impacts of Legalization in the Workforce*

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# IL Medical Cannabis Act Program Rpt. 2019

# Background



- On August 12, 2019, changes to the Compassionate Use of Medical Cannabis Program became effective.
- Medical Cannabis Program Act is now a permanent program.
- Illinois residents who have various qualifying debilitating medical conditions, as defined by the Act, have access to medical cannabis and protects qualifying patients, as well as their physicians and providers, from criminal and civil liability.
- Illinois was the 20th state to authorize a legal medical cannabis program.

# Background

Three Illinois agencies oversee the process for providing and obtaining medical cannabis:

- 1) [Illinois Department of Agriculture \(IDOA\)](#): Registration and oversight of cultivation centers.
- 2) [Illinois Department of Financial and Professional Regulation \(IDFPR\)](#): Enforces the Act's provisions relating to registration and oversight of dispensing organizations.
- 3) [Illinois Department of Public Health \(IDPH\)](#): Operates a confidential registry of qualifying patients and their caregivers authorized to use medical cannabis, and distributes educational information about health risks associated with abuse of cannabis and prescription medications.

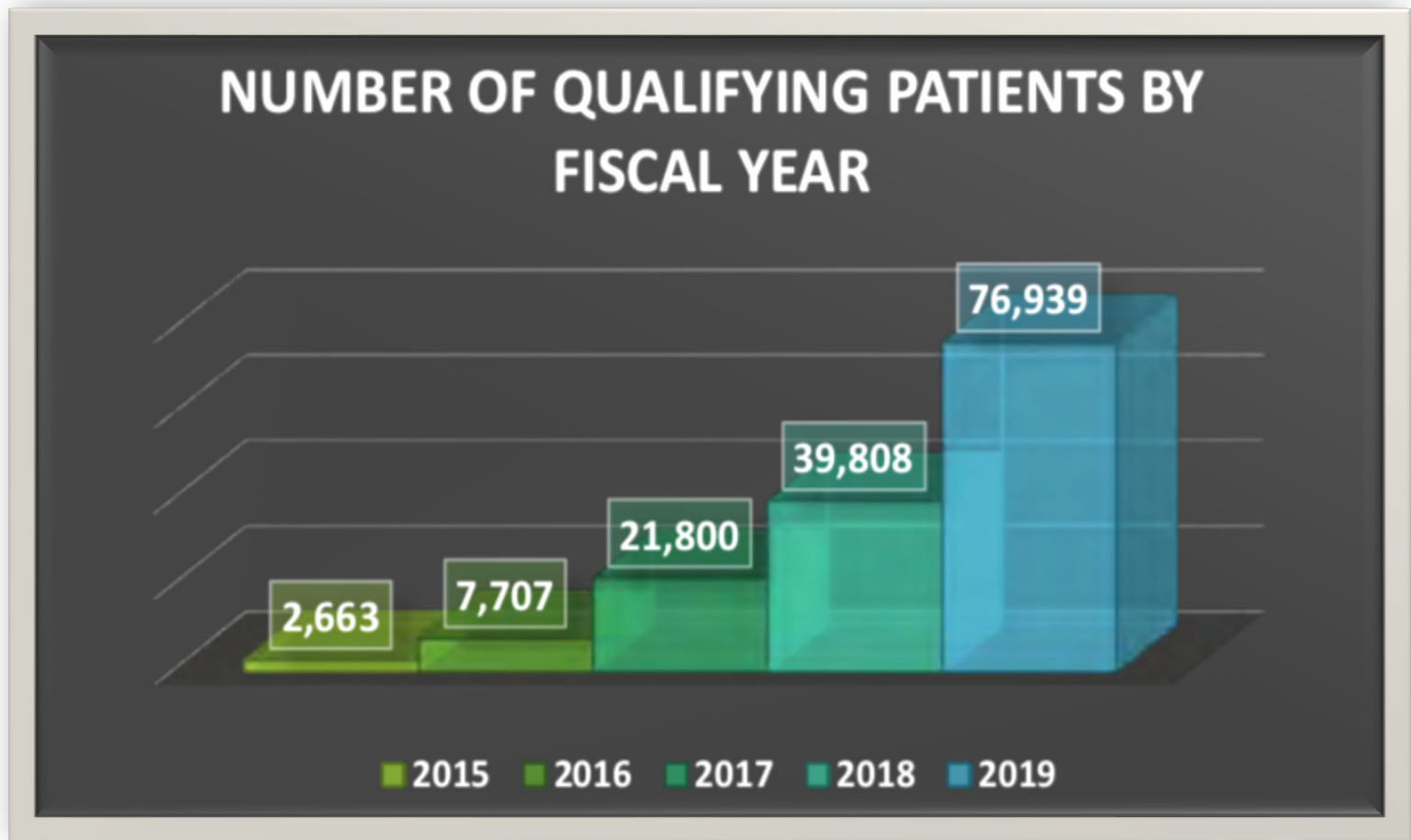


# Medical Cannabis Dispensaries

# Medical Cannabis Dispensaries

- As of June 30, 2019, there were 22 licensed operating cultivation centers and 55 licensed medical cannabis dispensaries in Illinois (first licensed medical cannabis dispensaries opened in November 2015).
- Total medical cannabis sales since November 2015 for the period ending June 30, 2019 were as follows:
  - Total retail sales since November 2015 by licensed medical cannabis dispensaries -- \$363,746,775.55.
  - Total wholesale sales since November 2015 by cultivation centers -- \$201,829,248.37

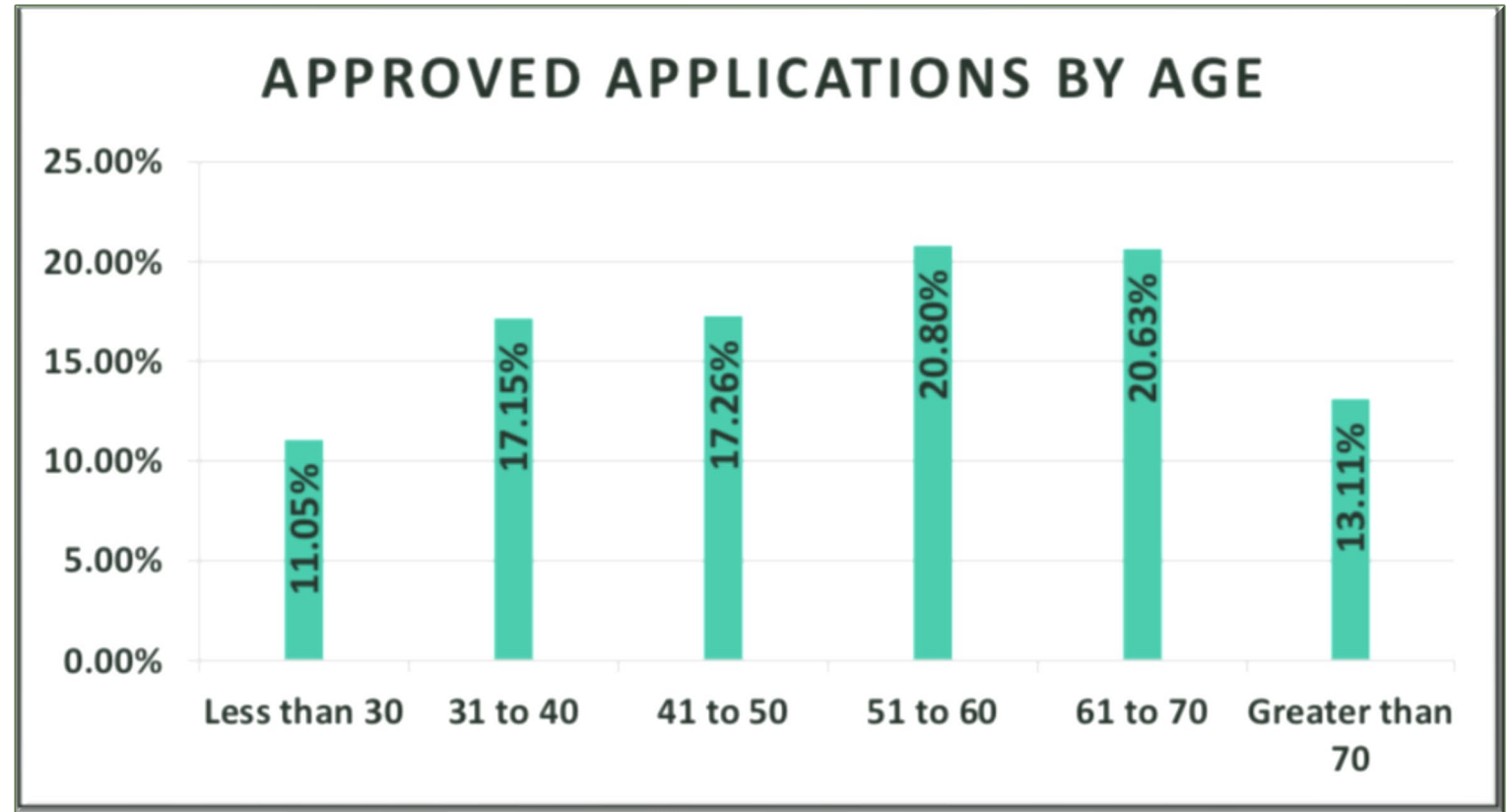
\* IL  
Department of  
Public Health-  
Division of  
Medical  
Cannabis



- ❖ Medical cannabis registry identification cards may be valid for up to three years, with option to renew.
- ❖ In fiscal year 2019, more than 10,800 extension and renewal applications were processed and approved.

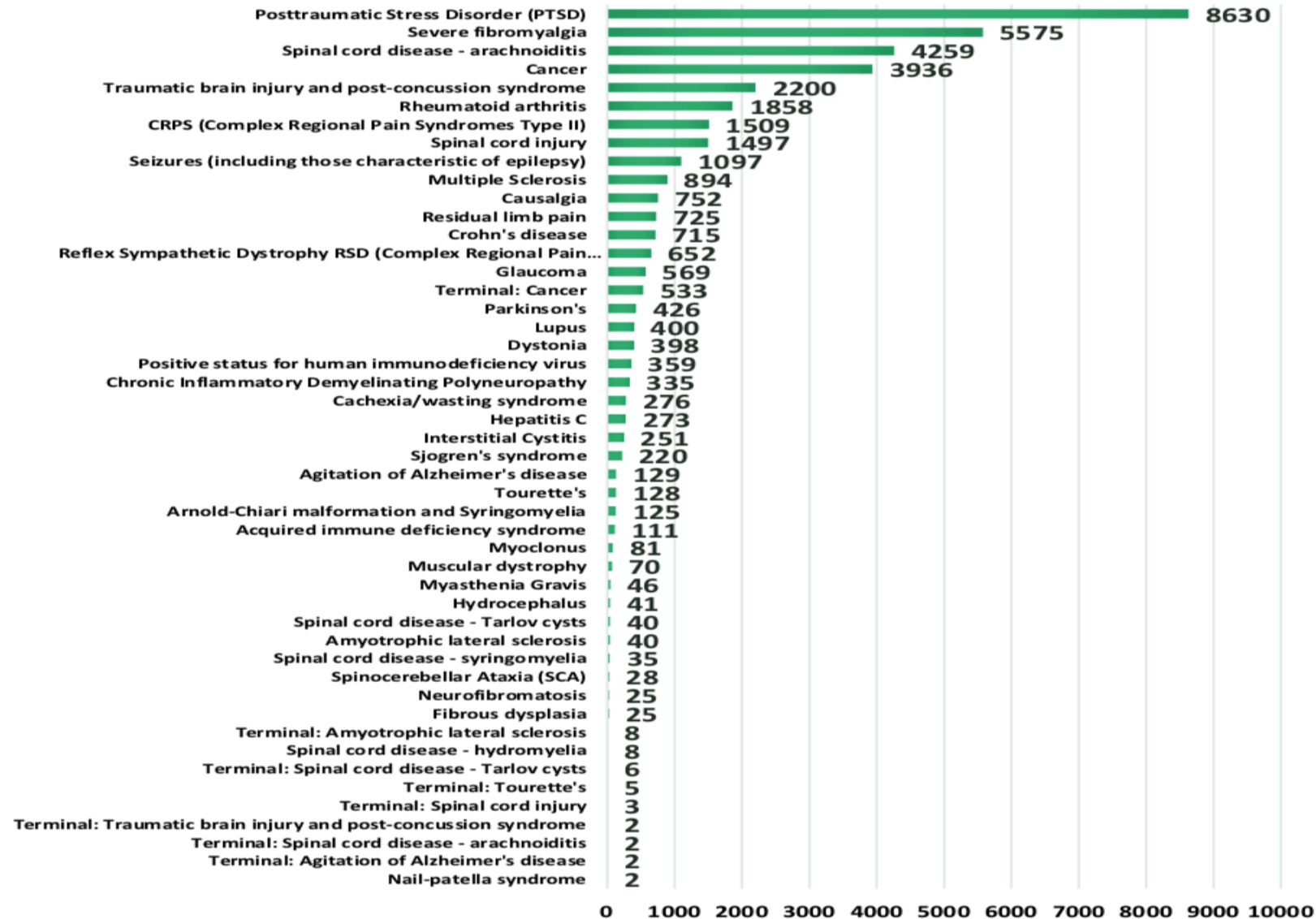
July 1, 2018 - June 30, 2019.

*\*IL Department of Public  
Health-Division of Medical  
Cannabis*



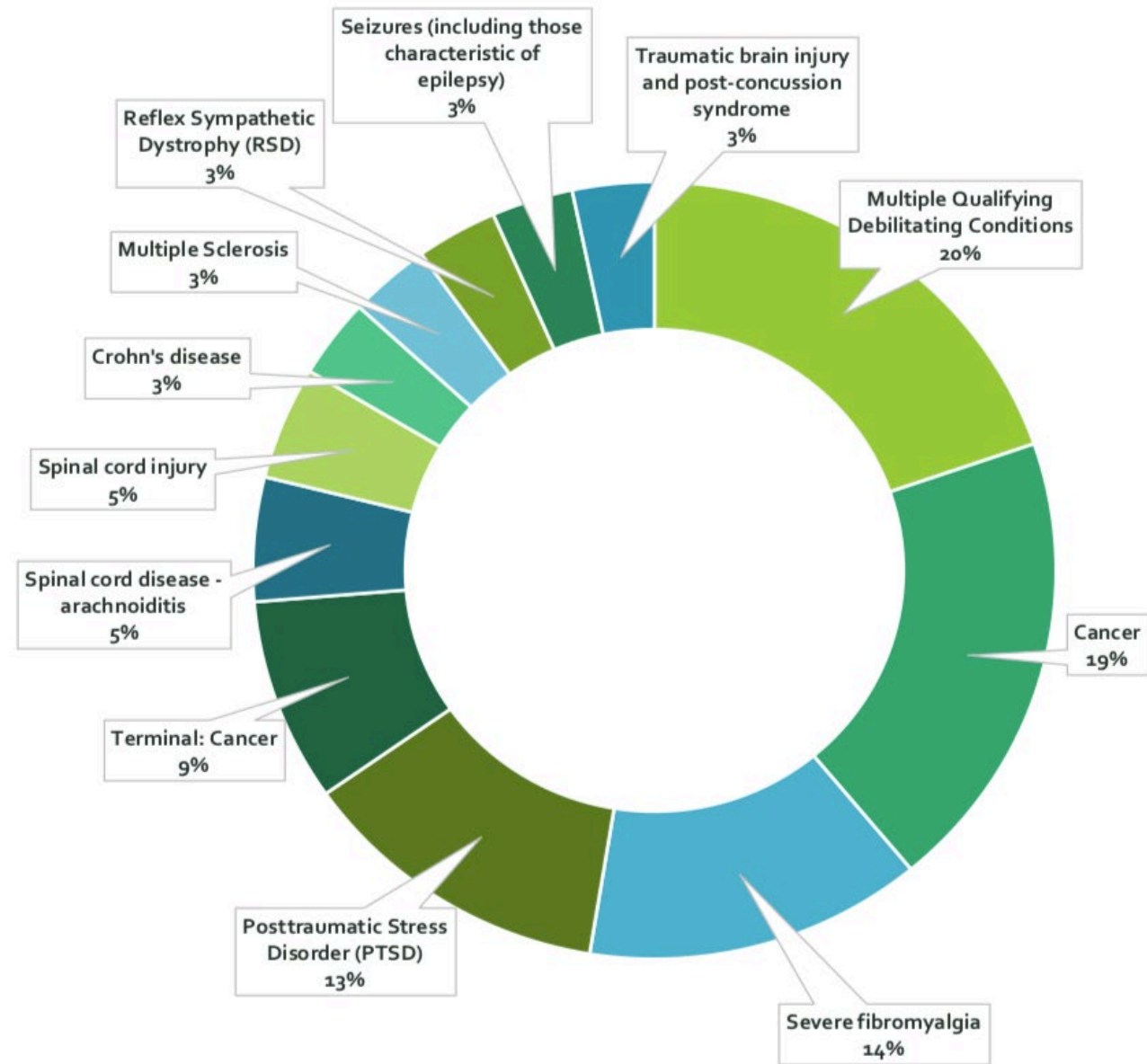


## NUMBER OF PATIENTS BY DEBILITATING CONDITION



- Registered qualifying patient may purchase up to 2.5 ounces of medical cannabis during 14-day period.
- Registered patient's physician may submit a signed, written statement, asserting that 2.5 ounces is an insufficient adequate supply (i.e. waiver).
- Waiver must be accompanied by \$25 check.
- If granted, can be increased from 2.6 ounces to 14 ounces.
- Total of 445 waivers were granted.
- 89% of waivers were for between 2.6 – 5 ounces.

#### ADEQUATE SUPPLY WAIVERS ISSUED BY DEBILITATING CONDITIONS





# IL Medical Cannabis Act

# Who Can Legally Use Marijuana?

Allows registered qualifying patients in Illinois with debilitating conditions to legally obtain prescriptions for marijuana.



## Definitions:

- "**Qualifying patient**" means a person who has been diagnosed by a physician as having a debilitating medical condition.
- "**Physician**" means a doctor of medicine or doctor of osteopathy licensed under the Medical Practice Act of 1987 to practice medicine and who has a controlled substances license under Article III of the Illinois Controlled Substances Act. It does not include a licensed practitioner under any other Act including but not limited to the Illinois Dental Practice Act.
- Statute also states that the physician shall be currently licensed to practice medicine in "**all of its branches.**" 410 ILCS 130/35.



# IL Medical Cannabis Act

Several key changes are being made to expand the medical marijuana law:

- No longer a pilot program: SB 2023 removes “Pilot” from the Act which becomes the Compassionate Use of Medical Cannabis Program Act.
- Certification by health care professional: In addition to a licensed physician, an advanced practice registered nurse or a licensed physician assistant will be eligible to diagnose an individual’s debilitating medical condition

# Who Can Legally Use Marijuana?



## Definitions:

“Debilitating medical condition” means one or more of the following:

Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, cachexia/wasting syndrome, muscular dystrophy, severe fibromyalgia, spinal cord disease, including but not limited to arachnoiditis, Tarlov cysts, hydromyelia, syringomyelia, Rheumatoid arthritis, fibrous dysplasia, spinal cord injury, traumatic brain injury and post-concussion syndrome, Multiple Sclerosis, Arnold-Chiari malformation and Syringomyelia, Spinocerebellar Ataxia (SCA), Parkinson's, Tourette's, Myoclonus, Dystonia, Reflex Sympathetic Dystrophy, RSD (Complex Regional Pain Syndromes Type I), Causalgia, CRPS (Complex Regional Pain Syndromes Type II), Neurofibromatosis, Chronic Inflammatory Demyelinating Polyneuropathy, Sjogren's syndrome, Lupus, Interstitial Cystitis, Myasthenia Gravis, Hydrocephalus, nail-patella syndrome, residual limb pain, seizures (including those characteristic of epilepsy), Post Traumatic Disorder (PTSD) or the treatment of these conditions;

(2) any other debilitating medical condition or its treatment that is added by the Department of Public Health by rule as provided in Section 45. 410 ILCS 130/10.

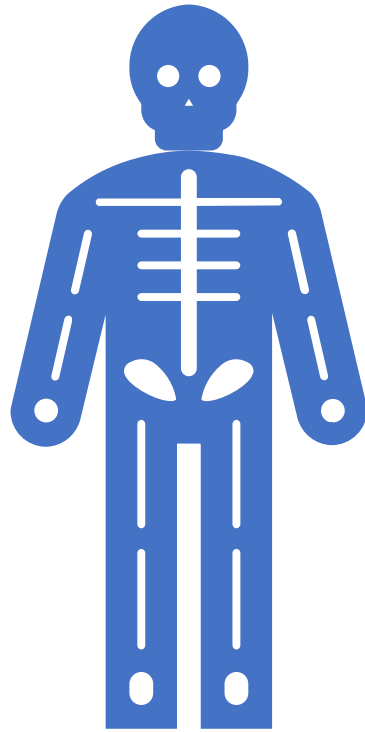
# IL Medical Cannabis Act

“Debilitating medical condition” means one or more of the following:

- Newly added conditioners are ulcerative colitis, autism, chronic pain, irritable bowel syndrome, migraines, osteoarthritis, anorexia nervosa, Ehlers-Danlos, Syndrome, Autoimmune Disease, neuropathy, polycystic kidney disease, superior canal dehiscence syndrome.

Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, cachexia/wasting syndrome, muscular dystrophy, severe fibromyalgia, spinal cord disease, including but not limited to arachnoiditis, Tarlov cysts, hydromyelia, syringomyelia, Rheumatoid arthritis, fibrous dysplasia, spinal cord injury, traumatic brain injury and post-concussion syndrome, Multiple Sclerosis, Arnold-Chiari malformation and Syringomyelia, Spinocerebellar Ataxia (SCA), Parkinson's, Tourette's, Myoclonus, Dystonia, Reflex Sympathetic Dystrophy, RSD (Complex Regional Pain Syndromes Type I), Causalgia, CRPS (Complex Regional Pain Syndromes Type II), Neurofibromatosis, Chronic Inflammatory Demyelinating Polyneuropathy, Sjogren's syndrome, Lupus, Interstitial Cystitis, Myasthenia Gravis, Hydrocephalus, nail-patella syndrome, residual limb pain, seizures (including those characteristic of epilepsy), Post Traumatic Disorder (PTSD) or the treatment of these conditions;

(2) any other debilitating medical condition or its treatment that is added by the Department of Public Health by rule as provided in Section 45. 410 ILCS 130/10.



# Who Can Legally Use Med Marij?



The patient must have a bona fide physician-patient relationship with the doctor providing the diagnosis of the debilitating disease. Must conduct physical exam but NOT at a location where cannabis is sold. 410 ILCS 130/35.



The patient must be under that doctor's care for treatment of the disease.



The doctor must provide written certification of the disease, that the patient is likely to receive therapeutic benefit from the medical use of cannabis to treat the disease or its symptoms, and that the doctor is providing treatment for the debilitating medical condition.



Once the individual has received the physician's written certification, the individual must register with the Department of Public Health and be issued a valid registry identification card by the Department before he or she can purchase marijuana from a state-licensed cultivation center.





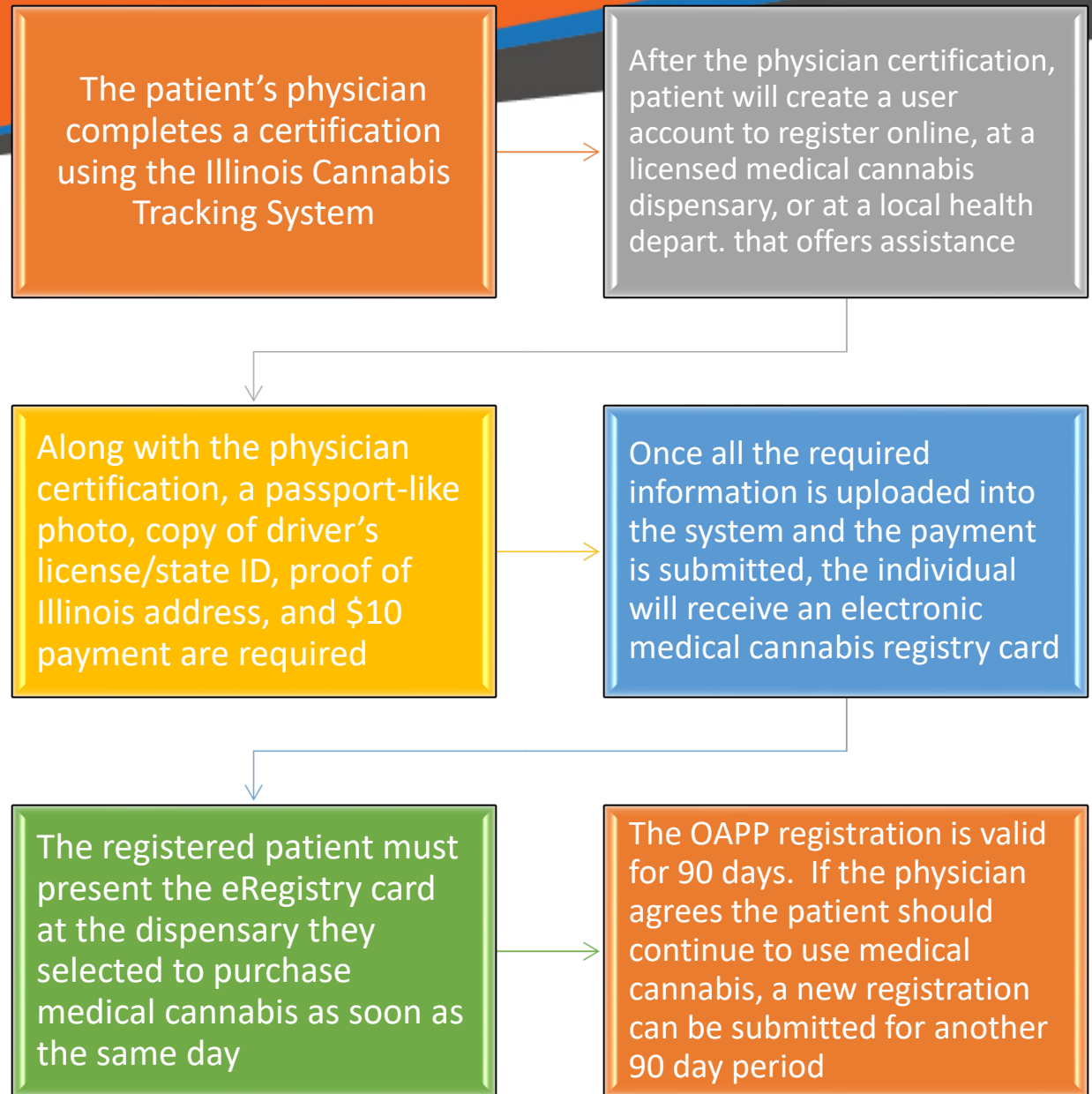
# Opioid Alternative Pilot Program

# Opioid Alternative Pilot Program



- On August 28, 2018, the Alternatives to Opioids Act of 2018 was signed into Illinois law.
- The act established the Opioid Alternative Pilot Program, which allows certain patients who otherwise would or could be prescribed opioids, or have already been prescribed opioids, access to medical cannabis as an alternative.
- 39 patients registered for the Opioid Alternative Pilot Program on its first day.
- 52,000 people currently qualify for medical cannabis in Illinois, according to the state Department of Public Health.
- Almost 2.5 million Illinois residents had an opioid prescription in 2017.

# Opioid Alternative Pilot Program Process





An individual does not need to have a debilitating condition as defined by the Compassionate Use Act or the associated rules.



No longer will any applicants have to be fingerprinted and undergo criminal background checks.

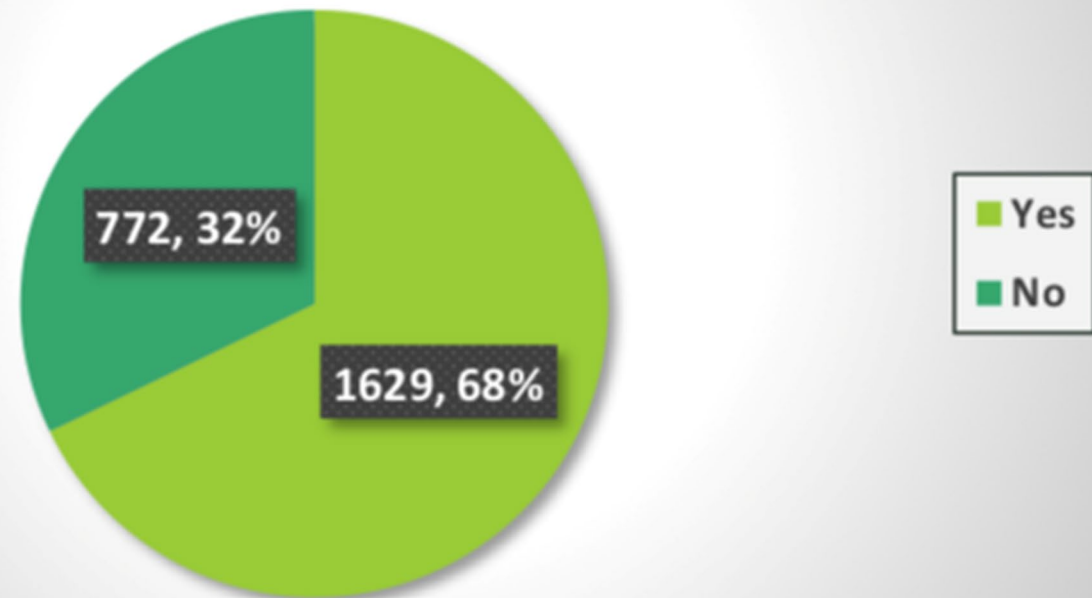


Those who complete an online application with a doctor's authorization will get a provisional registration to buy medical cannabis while they wait for state officials to make a final review of their request.

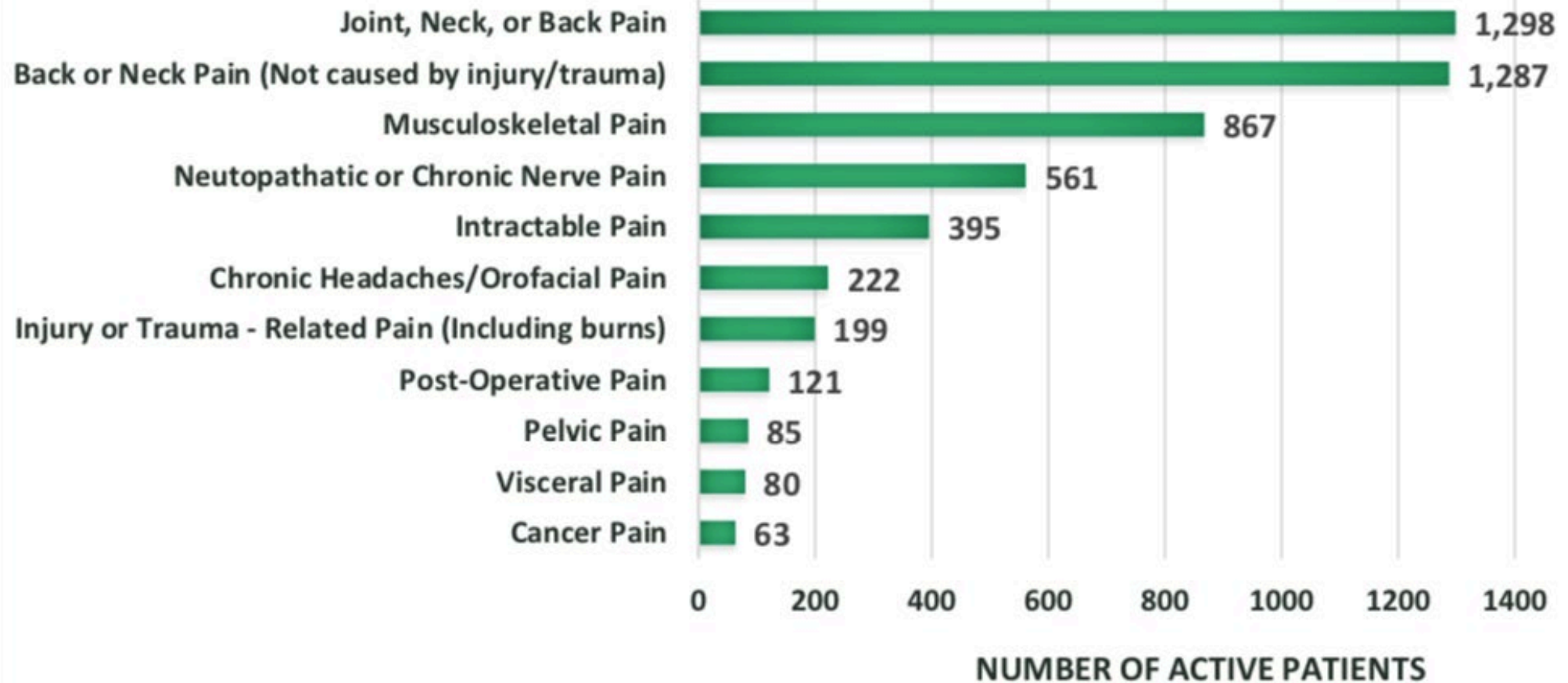
## What Changed With the Opioid Alternative Pilot Program?

2019

## NUMBER OF ACTIVE PATIENTS WITH AN OPIOID PRESCRIPTION DURING FY2019



## NUMBER OF REGISTERED PATIENTS BY CONDITION DURING FY2019



# Recreational Marijuana Legislation

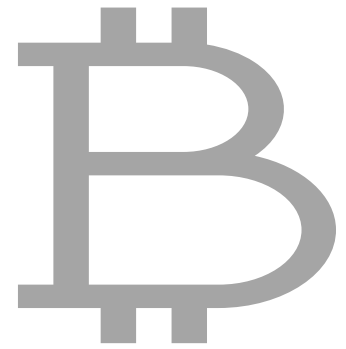
HB 1438

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# Recreational Marijuana



Signed on June 25, 2019  
into law by Gov. Pritzker.



Effective January, 2020.



# Not All Pot is Created Equal!

## Medical

- Lower costs and taxes;
- Higher THC potency limits;
- Higher quantity of Cannabidiol (CBD);
- Higher quantity restrictions;

## Recreational

- Higher taxes;
- Higher THC;
- Lower CBD;
- Medical Card not required.

# IMPACT ON EMPLOYERS

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## Impact on Employers

**Discrimination prohibited.** Registered patients are protected under the Act from “arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by an occupational or professional licensing board, for the medical use of cannabis in accordance with this Act.” Indeed, there is a rebuttable presumption that a registered qualifying patient is engaged in the medical use of cannabis if he or she is in possession of a valid registry identification card and is in possession of an amount of cannabis that does not exceed 2.5 ounces in a 14-day period. 410 ILCS 130/40.

➤ **Exceptions** (410 ILCS 130/30): Individual can be penalized for undertaking any task under the influence of cannabis when doing so would constitute negligence, or professional malpractice or misconduct. An individual also cannot possess or use cannabis in a school bus; on the grounds of any preschool, primary, or secondary school; or in a daycare or correctional facility. Further, an individual can be penalized for smoking marijuana in a public place where he or she could reasonably be observed by others, in a healthcare facility, or any other place where smoking is prohibited under the Smoke Free Illinois Act. In addition, certain professions cannot use medical marijuana, including active duty law enforcement officers, correctional officers and probation officers, firefighters, and those who have a school bus permit or commercial driver’s license.



## Impact on Employers

**Zero-tolerance policies allowed.** (a) Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner. 410 ILCS 130/50.

b) Nothing in this Act shall require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.

C). Nothing in this Act shall limit or prevent an employer from disciplining an employee or terminating employment of an employee for violating an employer's employment policies or workplace drug policy.

# Impact on Employers

An employer may consider a registered qualifying patient to be impaired when the employee manifests specific articulable symptoms while working that lessen performance of employment duties, including the employee's speech, physical dexterity, coordination, negligence or carelessness of operating equipment or machinery...carelessness that results in injury to self or others. 410 ILCS 130/50.

**Defense to Cause of Action.** Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for: (1) actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment; (2) actions based on the employer's good faith belief that a registered qualifying patient was impaired while working on the employer's premises during the hours of employment; (3) injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired. *Id.*



## Impact on Employers

If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination.

**Please Note:** Under current law (section 11-501.2 of the Vehicle Code): 1. If there was a tetrahydrocannabinol concentration of 5 nanograms or more in whole blood or 10 nanograms or more in an other bodily substance as defined in this Section, it shall be presumed that the person was under the influence of cannabis.

2. If there was at that time a tetrahydrocannabinol concentration of less than 5 nanograms in whole blood or less than 10 nanograms in an other bodily substance, such facts shall not give rise to any presumption that the person was or was not under the influence of cannabis, but such fact may be considered with other competent evidence in determining whether the person was under the influence of cannabis.

# Impact on Employers



- **Zero-tolerance policies allowed.** The Medical Cannabis Act does not prohibit an employer from adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical marijuana. It also does not prohibit an employer from enforcing a policy on drug testing, zero-tolerance, or a drug-free workplace, so long as the policy is applied in a “nondiscriminatory manner.” 410 ILCS 130/50.
- **OSHA Section 1904.35(b)(1)(iv)** does not prohibit employers from drug testing employees who report work-related injuries or illnesses so long as they have an objectively reasonable basis for testing, and the rule does not apply to drug testing employees for reasons other than injury-reporting. Moreover, OSHA will not issue citations under section 1904.35(b)(1)(iv) for drug testing conducted under a state workers’ compensation law or other state or federal law. Drug testing under state or federal law does not violate section 1904.35(b)(1)(iv)."

# Impact on Employers



- Sec. 5. Discrimination for use of lawful products prohibited.
- (a) ....shall be unlawful for an employer to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual uses lawful products off the premises of the employer during nonworking and non-call hours.





IMPACT ON  
IL WORKERS  
COMP.



## Impact on IL Workers Compensation

**Employee Intoxication.** Under the Illinois Workers Compensation Act, an employee is barred from recovering compensation for work injuries caused by his or her intoxication, **including impairment due to consumption of marijuana.** For accidents on or after September 1, 2011, recovery is barred if the employee's **intoxication** was the proximate cause of his injury, or if the employee's level of intoxication was sufficient to constitute a departure from employment.

**Intoxication is presumed** if:

- An employee's level of intoxication is at a BAC level of .08 or greater;
- There is evidence of **impairment due to ingestion of cannabis** or controlled substances; or
- An employee refuses to submit to a test.

# Impact on IL Workers Compensation



**Employee Intoxication.** Evidence must show that the employee was so intoxicated that, as a matter of law, the injury arose out of employee's intoxication which was to a sufficient degree so as to be viewed as an abandonment or departure from employment. *Paganelis v. Indus. Comm'n*, 132 Ill. 2d 468 (1989).



**Rebuttable presumption.** Intoxication is the proximate cause of the injury when there is evidence of impairment due to unlawful or unauthorized drug use. 820 ILC 305/11.



Evidence of Impairment” same as “impairment” defined under Cannabis Act 410 ILCS 130/50 (lower standard)?

How to determine proximate cause when marijuana can be in the system longer than alcohol, it is difficult to objectively measure whether the use of marijuana was the proximate cause of the work injury. Marijuana can remain in the person’s system anywhere from 24 hours to 30 days, depending upon usage, proving whether the worker was impaired at the time of the work injury may be difficult.



## Impact on Employers

- Can employer still be entitled to the presumption, even though drug use may have been authorized and/or lawful?
- How does the employer go about preserving objective measurable use?

So if the employer adopts a “zero tolerance” policy, and denies medical marijuana due to the exclusion, the employer is safe, right?



# WC Liability

**Impact on Liability for Payment of TTD Benefits.** While employers are able to adopt and enforce a “zero tolerance” policy under the Cannabis Act, what happens when the employee has a pending workers compensation claim?

# WC Liability

1

Injured worker has work restrictions that can be accommodated by the employer but for the “zero tolerance” policy, is the employer still obligated to pay for TTD?

2

Injured worker is able to return to work, unrestricted, but for worker's need for ongoing cannabis use and the employer has a “zero tolerance” policy. Is TTD owed?





An injured worker otherwise entitled to receive workers compensation benefits as a result of the work related injury is later terminated for conduct unrelated to the injury, the employer's obligation to pay temporary total disability benefits continues until the employee's medical condition has stabilized and a state of maximum medical improvement has been reached. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill.2d 132 (2010).



Injured employee has permanent work restrictions that cannot be accommodated by worker's prior position. Worker requires regular use of medical marijuana. Worker is scheduled for vocational assessment.

## Vocational Rehabilitation

# Vocational Rehabilitation



- Given worker's required use of medical marijuana, is the worker a vocational candidate?
- Likelihood of worker being able to secure subsequent employment given majority employers have "zero tolerance" drug use policy.



## Bring It Home

- Adopt Human Resource Policy:
  - Zero Tolerance;
  - Policy must not discriminate;
  - Use of lawful products;
  - Drug testing;
  - Procedures for preserving drug tests;
  - Disciplinary action for violation of drug free policy;
  - Procedure for employees to contest Impairment determination;
  - Coordination with Managers/Supervisors regarding proper paperwork for write up;
  - Policies for employees with pending workers compensation claims.



**THANK YOU!**

