

Legal Representation in the Cannabis and Psilocybin Industries: Ethical Considerations

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Navigating the Intersection of Emerging Markets, Shifting Legality, and Professional Ethics

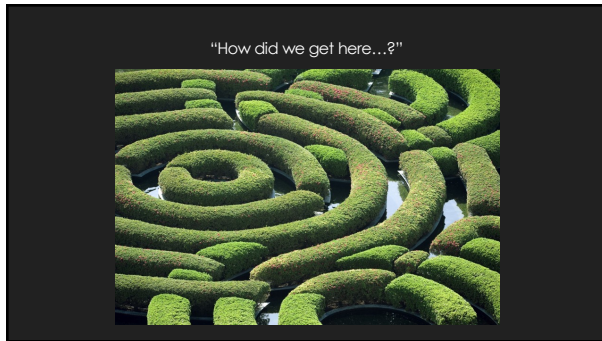
- Increasing probability that cannabis business client will approach you or someone at your firm.
 - Existing clients: landlords, investors, partnerships
- Millions in potential revenue and taxes drive strong business incentives for states
 - Combined U.S. medical and recreational cannabis sales could reach \$33.6 billion by the end of 2023, largely driven by the opening of new adult-use markets.
 - Retail cannabis sales are projected to be upwards of \$33.5 billion by 2027
- Complexity for businesses and attorneys in rapidly changing regulations
- Significant questions for lawyers advising clients in these emerging industries
- Conflicting state and federal laws create ethical challenges for attorneys
- Careful navigation allows lawyers to uphold ethical practice in burgeoning industries.

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Here's our current situation:

- Cannabis Legalization Across the Nation: A Majority of States Onboard
 - A growing trend as the majority of states embrace cannabis through legislative measures.
- Psilocybin on the Horizon: Several States Pioneering New Programs
 - Momentum building as several states explore and initiate psilocybin programs.
- Federal Stance: Severe Prohibition Persists
 - Cannabis and psilocybin face federal prohibition at the most stringent level.
- Federal Authority: Broad Prosecution Powers
 - The federal government possesses the authority to prosecute various stakeholders:
 - Customers, Business Owners, Banks, Lawyers, Investors, Insurers, Landlords.
- Selective Enforcement: Federal Government's Current Approach
 - Despite its authority, the federal government has not consistently pursued prosecution in the cannabis/psilocybin industry.

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Tracing the Historical Regulation and Prohibition of Cannabis and Psilocybin

- Ismail L. Ali, J.D., Director of Policy and Advocacy at MAPS: prohibition against such substances began with colonialization
- States: laws regulating opium in 1800s
- Federal: The Pure Food and Drug Act of 1906
- Patchwork of state laws
- Controlled Substances Act of 1970

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Current Cannabis and Psilocybin Regulation

- | | |
|---|--|
| Federal | State |
| ○Drug Abuse Prevention and Control Act, which later became known as the Controlled Substances Act | ○Miniature Controlled Substances Acts, or similar provisions in a state's criminal code. |

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Federal Controlled Substances Act (CSA)

Passed in 1970

Regulates manufacturing, distributing, or dispensing controlled substances deemed dangerous. Categorizes controlled substances into five different levels, referred to as "schedules". Schedule I is the highest rank and contains those substances with the strictest regulations, which the DEA determined have "high potential for abuse" and "no currently accepted medical use in the United States."

- Repealed some extant federal drug laws
- Combined existing federal drug laws and expanded their scope
- Expanded federal law enforcement pertaining to controlled substances
- Gave Attorney General enforcement authority, which delegated its authority to the Drug Enforcement Authority (DEA).

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CSA

SCHEDULE I
"Marihuana"
Percocin
Peyote

SCHEDULE II
Fentanyl
Methamphetamine
Cocaine

Two conflicting arguments for the CSA's creation:

- Numerous laws present between 1914 and 1970, consisting of a patchwork of drug regulation. Accordingly, the CSA was an effort to unite and merge "these diverse laws in one piece of legislation."
- Created and used to destroy political and cultural enemies such as the "New Left."

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128 PUBLIC LAW 91-513-OCT. 27, 1970. In Stat.

Public Law 91-513

AN ACT

To amend the Public Health Service Act and other laws to provide increased research info, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Drug Abuse Prevention and Control Act of 1970".

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SCHEDULE I

Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylphenanthrene.
- (2) Allylprodine.
- (3) Alphamethylprodine.
- (4) Alphaprodine.
- (5) Alphathienylprodine.
- (6) Benzoethidine.
- (7) Betacetylmorphine.
- (8) Betamorphine.
- (9) Betanaphthol.
- (10) Betaprodine.
- (11) Clonazepam.
- (12) Dextromoramide.
- (13) Dextropropion.
- (14) Dimepomid.
- (15) Diethylthiambutene.

Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine.
- (2) 5-methoxy-3,4-methylenedioxy amphetamine.
- (3) 3,4,5-trimethoxy amphetamine.
- (4) Bufotenine.
- (5) Diethylpropamine.
- (6) Dimethyltryptamine.
- (7) 4-methyl-3,5-dimethoxyamphetamine.
- (8) Ecgonine.
- (9) Ecgonic acid diethylamide.
- (10) Marimastat.
- (11) Mesoline.
- (12) Peyote.
- (13) N-ethyl-3-piperidyl benzoate.
- (14) N-methyl-3-piperidyl benzoate.
- (15) Psilocybin.
- (16) Psilocyn.
- (17) Tetrahydrocannabinol.

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Cannabis

Original definition:

(15) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

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Psilocybin

Definition?

Psilocybin.

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Note:

marihuana

(16) (A) Subject to subparagraph (B), the term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. (B) The term "marihuana" does not include— (i) hemp, as defined in section 1639a of title 7; or (ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

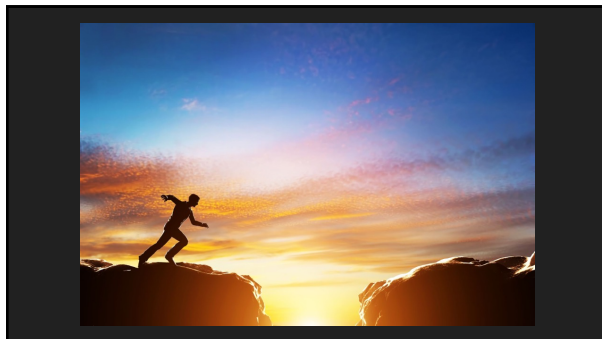
"(1) HEMP.—The term 'hemp' means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

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THE GREAT DIVIDE

States began moving away from cannabis prohibition in the 1970s

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Post 1970 Pro-Cannabis Efforts

- Oregon: Decriminalized Cannabis 1973
- Illinois: Cannabis Control Act of 1978 | medical cannabis | never implemented
- Maine: Decriminalized Cannabis 1976
- Minnesota: Decriminalized Cannabis 1976
- Mississippi: Decriminalized Cannabis 1978
- North Carolina: Decriminalized 1977
- Virginia: Legislation allowed doctors to recommend cannabis for Glaucoma and Chemo
- Alaska: legalized recreational in 1975 by *Ravin v. State*, recriminalized in 1990.

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The Age of Active Medical and Recreational Legalization

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1990s

- Medical Cannabis
- Alaska: 1998
 - California: 1996
 - Maine: 1999
 - Oregon: 1998
 - Washington: 1998

Recreational Cannabis

ZERO

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2000s

Medical Cannabis

- Colorado 2000
- Hawaii 2000
- Michigan 2008
- Montana 2004
- Nevada 2000
- New Mexico 2007
- Rhode Island 2006
- Vermont 2004
- Washington D.C. 2009

Recreational Cannabis

ZERO

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THE COLE MEMO

A document that simultaneously meant everything, and nothing, for the cannabis industry.

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U.S. Department of Justice
Office of the Deputy Attorney General

Memorandum for ALL UNITED STATES ATTORNEYS

FROM: James M. Cole, Deputy Attorney General

SUBJECT: Guidelines Regarding the Federal Enforcement of Marijuana Laws

On October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of more than a decade of legislative and judicial action, the passage of state laws of medical and recreational marijuana, and the passage of federal laws relating to the trafficking of other illegal drugs and the use of firearms in the cultivation and distribution of marijuana.

In the Department's view, the federal government's role in enforcing the CSA with respect to marijuana is to prevent the diversion of marijuana from states where it is legal under state law to other parts of the country. The Department is also committed to working with federal, state, and local law enforcement agencies to prevent the diversion of marijuana from states where it is legal under state law to other parts of the country. In the Department's view, the federal government's role in enforcing the CSA with respect to marijuana is to prevent the diversion of marijuana from states where it is legal under state law to other parts of the country. In the Department's view, the federal government's role in enforcing the CSA with respect to marijuana is to prevent the diversion of marijuana from states where it is legal under state law to other parts of the country.

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Key Paragraph:

In these circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

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2010s

Medical Cannabis

- Arizona 2010
- Arkansas 2016
- Connecticut 2012
- Delaware* 2016 expanded
- Florida 2016
- Illinois 2013
- Louisiana 2015
- Maryland 2014

Recreational Cannabis

- Alaska 2014
- California 2016
- Colorado 2012
- Illinois 2019
- Maine 2016
- Massachusetts 2016
- Michigan 2018
- Nevada 2016

*Delaware suspended medical cannabis in 2012 after threat of federal prosecution

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2010s Continued

Medical Cannabis

- Massachusetts 2012
- Minnesota 2014
- Missouri 2018
- New Hampshire 2013
- New Jersey 2010
- New York 2014
- North Dakota 2016
- Ohio 2016

Recreational Cannabis

- Oregon 2014
- Vermont 2018
- Washington 2012
- Washington D.C. 2014
- Guam 2019
- Northern Mariana Islands 2018

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2010s Continued Again

Medical Cannabis

- Oklahoma 2018
- Pennsylvania 2016
- Utah 2018
- Virginia 2018
- West Virginia 2017
- Guam 2014
- Puerto Rico 2015
- U.S. Virgin Islands 2019

Recreational Cannabis

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2020s

Medical Cannabis

- Nevada 2020 (A.8 g THC per 350 edibles)
- Mississippi 2022* (Determined by Mississippi Supreme Court)
- South Dakota 2020
- Arizona 2022
- Kentucky 2022

Recreational Cannabis

- Illinois 2020
- Minnesota 2022 (5mg THC per serving)
- Montana 2020
- Vermont 2020
- New Jersey 2020
- South Dakota 2020 (State Circuit Court found Measure unconstitutional)
- Connecticut 2021
- New Mexico 2021
- New York 2021
- Virginia 2021
- Rhode Island 2022
- Ohio 2022
- Delaware 2022

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PROBLEM

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Aligning Legal Practice with Ethical Standards:
Model Rules of Professional Conduct

American Bar Association: The Model Rules of Professional Conduct

Most states have adopted some or similar rules to govern the practice of law

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Rule 1.2(d)

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENTS

- [9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

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Rule 8.4(b)

It is professional misconduct for a lawyer to:
....
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

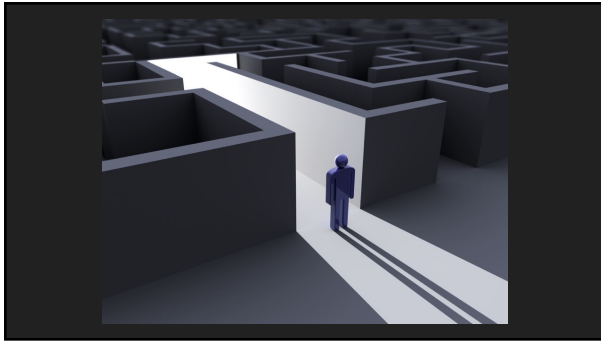
COMMENT

- [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

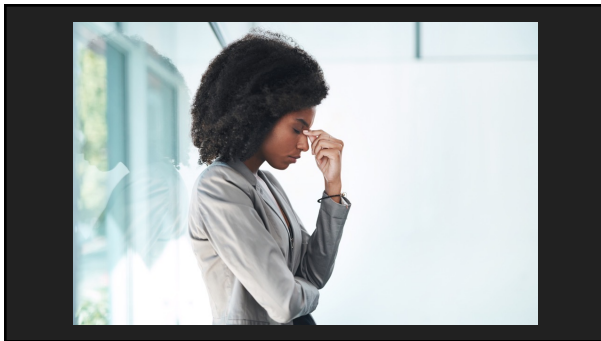
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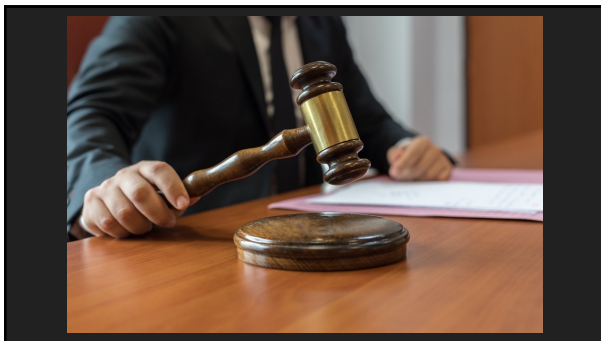
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State Changes

States began changing rules of professional conduct

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Three categories of rule adjustments

- 1) Strict Prohibition: example- Georgia
- 2) State Non-disciplinary Policy: example- Massachusetts
- 3) Strict Allowance: example- Washington

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Washington

- Remember the Cole Memo?
- 2014: added Comment 18 to Rule 1.2:
 - "At least until there is a subsequent change of federal enforcement policy, a lawyer may counsel a client regarding the validity, scope and meaning of Washington Initiative 502 (Laws of 2013, Ch. 3) and may assist a client in conduct that the lawyer reasonably believes is permitted by this statute and the other statutes, regulations, orders and other state and local provisions implementing them."

1.2(d)

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Washington

1.2(d)

- 2018:
- Jeff Sessions revokes Cole Memo
- Washington Supreme Court amended Comment 18 to Rule 1.2:
 - "Under paragraph (d), a lawyer may counsel a client regarding Washington's marijuana laws and may assist a client in conduct that the lawyer reasonably believes is permitted by those laws. If Washington law conflicts with federal or tribal law, the lawyer shall also advise the client regarding the related federal or tribal law and policy."

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Washington

8.4(b)

- No comment on use/consumption/possession
- "A lawyer who counsels a client regarding Washington's marijuana laws or assists a client in conduct that the lawyer reasonably believes is permitted by those laws does not thereby violate RPC 8.4"

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The Emergence of Psilocybin Legislation and Industry

What do the rules for professional conduct look like in this emerging field?

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Psilocybin Legislative Activity

- 22 state legislatures have introduced bills and ballot initiatives across the U.S.
- Only three show significant development so far:
 - Oregon
 - Colorado
 - Washington
- Legislative trend:
 - - Reflects a broader trend toward a public health approach to drug regulation.
 - - Mirrors the evolution seen in cannabis legislation, starting with medical use before potential expansion to adult or recreational use.
- Potential Challenges:
 - - Largest roadblock is federal inaction on drug decriminalization.
 - - Partisan divide may hinder progress amid the U.S. mental health crisis.

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1. Arizona
 - House Bill 2486 would have appropriated \$30 million for psilocybin research grants and establish an advisory council
 - \$5 million appropriated in health care budget for psilocybin studies on PTSD, depression, CDMQ, and inflammatory disorders
 - Died in the process
2. California
 - Several cities have passed resolutions making personal psilocybin use lowest law enforcement priority
 - SB 98 to decriminalize certain natural psychedelics was passed by legislature but vetoed by Governor
3. Colorado
 - Voters passed Proposition 122 in November 2022 to legalize and regulate psilocybin healing centers
 - SB23-260 passed to implement Proposition 122 with penalties, local preemption, and consumer protections
 - Psilocybin industry set to begin in late 2024
4. Connecticut
 - 2021 law convened working group to study medical use of psilocybin
 - 2023 budget bill earmarked funds for psychedelic-assisted therapy programs with psilocybin
5. District of Columbia
 - Initiative Measure 85 makes investigation and arrest for personal entheogenic use lowest priority
6. Hawaii
 - Bills introduced to decriminalize or legalize psilocybin, establish working groups to study therapeutic use

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7. Illinois
 - 2023 HB0001 would establish Psilocybin Advisory Board, psilocybin services, expunge records
8. Michigan
 - Several cities have passed resolutions making personal psilocybin use lowest law enforcement priority
 - Legislation ballot initiative deferred to 2024
9. Minnesota
 - Bill passed establishing Psychedelic Medicine Task Force to study and advise on legalizing psilocybin
10. Missouri
 - Bills introduced to legalize psilocybin for terminal illness patients and reduce penalties
 - Died in process
11. Nevada
 - Bill passed to establish the Psychedelic Medicines Working Group to study psilocybin therapy
12. New Jersey
 - 2021 bill reduced penalty for personal psilocybin possession under 1 oz to disorderly person offense

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13. New Mexico
HP 3013 11/25

- 13. **New Mexico**
 - 2023 House bill introduced legislation to establish a Psilocybin Advisory Group to study legal regulated access
 - Died in process
- 14. **Oklahoma**
 - 2023 House Bill passed promoting research into psilocybin therapy for mental health treatment
 - No activity since March 2023
- 15. **Oregon**
 - Measure 109 legalized and regulated psilocybin services, passed in November 2020, being implemented
- 16. **Pennsylvania**
 - Bills introduced to promote research into therapeutic potential of psilocybin
 - Died in process
- 17. **Rhode Island**
 - 2023 bill introduced to legalize psilocybin possession and cultivation for personal use
 - Referred to Rhode Island Senate

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18. Texas

- 18. Texas
 - 2021 bill passed, allowing veterans to participate in clinical trials using psilocybin, MDMA, and ketamine.
 - 2021 bill established working group to research therapeutic efficacy of psilocybin
- 19. Utah
 - 2022 law established task force to study mental health benefits of psychedelic psychotherapy
 - 2023 bill introduced to legalize psilocybin therapy, died in the process.
- 20. Vermont
 - Bills introduced to decriminalize entheogenic plants and establish psilocybin therapy working group
- 21. Virginia
 - Bills introduced to legalize psilocybin treatment and establish Psilocybin Advisory Board
 - Died in process.

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22. Washington

Washington Psilocybin Services Act
(the "Act" — Washington 2nd Sub. Senate Bill 5263, Chapter 364, 2023, Washington Sixty-Eight Legislative)
Washington is the third state exploring therapeutic benefits of psilocybin

Governor Jay Inslee signed the Act on May 9, 2023.

- Governor Jay Inslee signed the Act on May 9, 2023.
- Creates a policylink task force and a clinical pilot program administered by the University of Washington.
- The Act takes a cautious and measured step to evaluate policylink for therapeutic uses.
- Targets Washington residents aged 21 and older, addressing mental health treatment needs.
- Under the Inslee's plan (Section 6), effective from May 9, 2023.
- Policylink therapy services pilot program outlined in Section 9, effective from July 23, 2023, administered by the University of Washington.
- Cautiously follows Oregon and Colorado but doesn't broadly legalize adult use.
- The Act was watered down by Governor Inslee's modifications.

Other States

- Oregon regulates manufacture, transportation, delivery, and distribution with a licensing program.
- Colorado allows supervised adult usage and personal use of psilocybin-containing mushrooms.
- Psilocybin laws may be the next wave of drug legislation.
- Potential for greater impact and rapid legalization depending on the outcome of the 2024 elections.

- Similar trajectory cannabis laws, starting with medical use before potential adult, personal, or recreational use.

Retail sales of magic mushrooms and psychedelics are currently not in the picture.

- Act follows the lead of Oregon and Colorado but doesn't broadly legalize adult use.
- Oregon allows supervised adult use, and Colorado legalizes personal use, including cultivation of psilocybin-containing mushrooms.
- Act allows a measured dose, featuring a psilocybin test kit and a therapy services pilot program.
- Prohibits sale to minors, possession of more than 1 adult dose.

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Institutional Investment Trends: Psychedelics vs. Cannabis

1. **Businesses receiving investment campaigns**
 - Activision Blizzard, Conagra, L3Harris, and others raised more than \$100 million from institutional investors for an average 10% premium.
2. **Capital inflows in psychedelics**
 - The psychedelics sector experienced a substantial increase of 100% in capital investment over the past year.
 - Activision Blizzard, Conagra, L3Harris, and others raised more than \$100 million from institutional investors for an average 10% premium.
 - Over all, capital investment in psychedelics has increased by 100% over the past year, compared to the same period in 2022.
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3. **ESG Provisions**
 - ESG provisions are increasingly being included in corporate governance documents in the psychedelic sector.
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 - ESG provisions are increasingly being included in corporate governance documents in the psychedelic sector.

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Schedule I under the CSA

Psilocybin or Psilocyn, including "any material, compound, mixture, or preparation, which contains any quantity [those substances], or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation[.]"

Applies if you:

- Possess, manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense.

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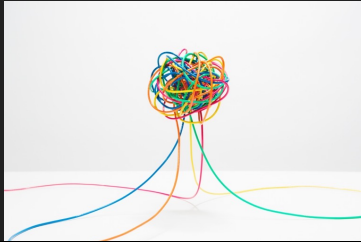
Model Rules

- 1.2 (d): A lawyer shall not **counsel** a client to engage, or assist a client, in conduct that the lawyer knows is **criminal** or fraudulent...
 - Definitely applies
- 8.4 (b): A lawyer shall not **commit** a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness in other respects...
 - Likely applies in some cases
 - New Jersey
 - Negative-Implication Canon

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Psilocybin Businesses Need Representation

- Example of complexity:
 - Oregon
 - OHA
 - OPAB
 - 5 Subcommittees
 - Rules for each type of license



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Cannabis as the Trailblazer?

Similarities

- Schedule I
- Derive directly from nature

Differences

- No Cole Memo for Psilocybin
- Cannabis in state laws since 1970s
- Cannabis had medical precursors
- No tax incentive for Psilocybin

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Oregon Psilocybin Attorneys

- Cannabis- 1.2(d): Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon's marijuana-related laws. In the event Oregon law conflicts with federal or tribal law, the lawyer shall also advise the client regarding related federal and tribal law and policy.
- Nothing for psilocybin yet

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Oregon Attorney Use

- Rule 8.4 (a) (2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- Nothing for Cannabis or Psilocybin

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Psilocybin Attorney Outlook in Oregon

- Vince Sliwoski of Harris Bricken Sliwoski LLP:
- Firms that specialize in Cannabis have already started marketing psilocybin advisory services. (No big firms yet)
- Oregon Bar Association already renamed the Cannabis Law Section, and is now the Cannabis and Psychedelics Law Section

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Washington Psilocybin Attorneys

- Washington Psilocybin Services Act.
 - Washington attorneys will likely act similar to Oregon attorneys.
 - I.e., Washington firms that specialize in Cannabis will likely start marketing psilocybin advisory services.
 - Possible effect: potential new clients or existing clients may approach you for advice.

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Possible Solutions for the Future

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Status Quo: State-By-State

The Cannabis approach

- Tried and true, but...
- Slow
- Requires an amendment every time state endorses a federally controlled substance
- Varying degrees
 - Inconsistent for lawyers licensed in multiple states
- Most are done under the radar
- Cautionary tale: Georgia

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Federal Rescheduling: less than perfect

- Schedule II: heavily regulated prescription drugs
- Schedule III: Ketamine
- Good: allow lawyers to advise clients with no strict federal prohibition
- Bad: same problem – if state law does not align with federal regulations, advising clients would technically violate 1.2(d).
 - Example: state recreational cannabis vs. federal requirement for cannabis prescription

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ABA Model Rules Amendment

- Model rule 1.2(d) – to include cannabis and psilocybin
- Good: consistency among states; encourage reluctant states
- Bad: not bonding; would need to be amended every time majority of states endorse a federally controlled substance
 - Too many federally controlled substances to adequately encapsulate all possible endorsements with a single amendment.
- Amending Model rule 8.4(b) – not really necessary

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Federal Legalization

- Would solve most, if not all of these issues.
- No indication of how realistic of an expectation

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Until this is resolved...

- Stay updated on your local bar rules and advisory opinions.
- Washington:
 - Washington State Supreme Court
 - Committee on Professional Ethics – issues advisory opinions
 - Washington State Bar News at wabarnews.org
 - Ethics Line: 206-727-8284

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Questions?

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American Bar Association, Tort
Trial and Insurance Practice
Section, Cannabis Law and
Policy Committee

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