LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Case Law Monitor

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Each issue of *Case Law Monitor* highlights cases from around the United States in the areas of public health and safety, substance use disorders, and the criminal justice system. Every other month, LAPPA will update you on cases that you may have missed but are important to the field. We hope you find the *Case Law Monitor* helpful, and please feel free to provide feedback at info@thelappa.org.

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Jessica Allen v. Myles Brunelle, et al., U.S. District Court for the District of North Dakota, Case No. 3:22-cv-00093-PDW-ARS (suit resolved April 28, 2025). The mother of a woman who died of an overdose while in the custody of the Rolette County Jail in Rolla, North Dakota has agreed to accept a $2 million settlement offered by the county to end the wrongful death lawsuit she filed in 2022 against the county and two former correctional officers. In June 2020, police found Lacey Higdem in the woods hallucinating and under the influence of methamphetamine. After being medically cleared at a hospital, the police took Higdem to jail and charged her with disorderly conduct and resisting arrest. According to the complaint, jail surveillance video showed Higdem exhibiting signs of needing urgent medical attention while in her cell, including struggling to stand, hitting her head on the wall, and urinating on herself. The complaint asserted that the correctional officers did not seek medical care for Higdem despite other inmates repeatedly pressing the emergency button out of concern for her health. Several hours later, a correctional officer found Higdem unresponsive during a cell check. The sheriff ultimately pronounced Higdem dead nine hours after she entered the jail. Higdem's mother, Jessica Allen, filed suit against the county and the correctional officers over claims that they violated the Eighth and Fourteenth Amendments of the U.S. Constitution by deliberately disregarding her daughter's serious medical needs. On April 21, 2025, the court entered an order for judgment against the county defendants due to Allen's acceptance of the settlement offer. Allen also asserted a medical malpractice claim against the medical center and physician that medically cleared Higdem to be transported to the jail, claiming that they failed to properly complete the medical clearance to ensure that Higdem was a proper candidate for admission to the jail. On April 28, 2025, Allen filed a memorandum with the court indicating that the remaining parties have reached a full resolution. The resolution with the medical defendants is confidential pursuant to the parties' agreement. *(Return to In This Issue)*

FEDERAL DISTRICT COURT RULES JAIL STAFF WAS NOT DELIBERATELY INDIFFERENT TO THE SERIOUS MEDICAL NEEDS OF A MAN WHO DIED OF AN OVERDOSE WHILE IN CUSTODY

***Douglas C. Martinson, II v. Southern Health Partners, Inc., et al.*, U.S. District Court for the Northern District of Alabama, Case No. 5:21-cv-01144-MHH (opinion filed March 27, 2025).** For previous updates about this case, please refer to the August 2022 issue of the LAPPA *Case Law Monitor*, available here. A federal district court has granted a motion for summary judgment in favor of the defendants, finding that they were not deliberately indifferent to the serious medical needs of an individual who died of a methamphetamine overdose while in custody of the Madison County Jail. In August 2021, Douglas Martinson, filed a lawsuit on behalf of Christopher Bishop, the decedent, claiming that the nurses and correctional officers at the jail were deliberately indifferent to Bishop's serious medical needs in violation of the Eighth and Fourteenth Amendments of the U.S. Constitution. Martinson also brought forth a claim under the Alabama Medical Liability Act (ALA. CODE § 6-5-480 (West 2025)) against Southern Health Partners, the corporation that provided medical care for the inmates at the jail, and the individual nurses. In June 2022, the court denied Southern Health Partners' motion to dismiss. Subsequently, all parties filed a motion for summary judgment.

The defendants argued that Bishop did not have an objectively serious medical need that could have been observed before he became unresponsive and received medical attention. Agreeing with the defendants, the court determined that the record did not contain evidence indicating that one or more of the defendants knew that Bishop had a serious medical need. The record stated that Bishop informed the intake nurse that he had used methamphetamine and alcohol prior to arriving at the jail, but the nurse observed him to be alert and oriented. The court also found that none of the other defendants interacted with Bishop before he became unresponsive. Thus, the court ruled that the deliberate indifference claim failed as a matter of law. Because the court granted the defendants' motion regarding the deliberate indifference claim, it elected not to exercise supplemental jurisdiction over the state medical malpractice claim. *(Return to In This Issue)*

FATHER FILES SUIT CLAIMING THAT THE COOK COUNTY JAIL'S FAILURE TO INITIATE HIS SON ON MAT RESULTED IN HIS DEATH

***Melvin Turner, Sr. v. Thomas Dart, et al.*, U.S. District Court for the Northern District of Illinois, Case No. 1:25-cv-02186 (suit filed March 2, 2025).** The father of a man who died while in custody of the Cook County (Illinois) Jail has filed suit against the Cook County Sheriff, the Cook County Jail, and several medical and correctional personnel employed by the jail over their failure to provide his son with medication for addiction treatment (MAT) while he was in custody. On February 12, 2023, Chicago police arrested Melvin Turner, Jr. for misdemeanor retail theft and transported him to the Cook County Jail. During his intake health screening process, Turner informed the intake screener that he was homeless, that he had been using heroin for the past four years, and that he had last used heroin two days ago. Turner also informed the intake screener that he was currently experiencing withdrawal symptoms. As a result of his intake screening, the intake screener referred Turner to a physician assistant for further evaluation and treatment. The physician assistant determined that Turner was suffering from heroin withdrawal and ordered him to be placed in detox housing for five days. The physician assistant also prescribed him medication intended to alleviate his withdrawal symptoms but did not provide him with MAT. Turner remained in detox housing until February 17, 2023, when another jail physician assistant cleared Turner to be placed in general housing. On February 24, 2023, a psychologist on the jail's medical team approved Turner for release from the jail and placement in a community halfway house under electronic monitoring. Turner arrived at the halfway house on February 28, 2023, and two days later, the house manager found Turner unconscious but was able to revive him with naloxone. Afterward, paramedics transported Turner to Jackson Park Hospital for treatment of a suspected heroin overdose. The drug screen Turner took while in the emergency department screened positive for cocaine and LSD but negative for heroin. However, the complaint noted that the drug screen Turner received did not screen for fentanyl. About four hours after arriving at the hospital, the emergency room physician treating Turner discharged him into the custody of employees of the Cook County Sheriff's Office who transported him back to the Cook County Jail. Upon his return to custody, jail medical staff again placed Turner in detox housing and ordered medication to alleviate his withdrawal symptoms without offering him MAT. The next morning jail staff found Turner stiff and rigid in his cell with blood coming out of his mouth and nose. After jail staff attempted to revive him, paramedics officially pronounced Turner dead. According to the complaint, Turner likely died of sudden cardiac arrest due to the ingestion of adulterated street drugs.

In March 2025, Turner's father filed a suit against several defendants on behalf of his son's estate. The plaintiff claims that the jail and several employees of the jail violated Turner's rights under the Fourteenth amendment of the U.S. Constitution by being deliberately indifferent to his serious medical needs. The lawsuit also alleges that the jail defendants violated Title II of the Americans with Disabilities Act (42 U.S.C. § 12131) by discriminating against Turner due to his opioid use disorder by refusing to provide him with U.S. Food and Drug Administration approved and medically required MAT. Additionally, the suit brings forth medical malpractice and Emergency Medical Treatment and Active Labor Act (EMTALA; 42 U.S.C. s 1395dd) claims against Jackson Park Hospital for failing to properly treat and stabilize Turner before discharging him into the custody of the sheriff's office. On May 19, 2025, the hospital filed an answer to the complaint asserting affirmative defenses to the medical malpractice and EMTALA claims of contributory

negligence and assumption of risk. On May 29, 2025, the county and jail defendants filed their motions to dismiss for failure to state a claim. *(Return to In This Issue)*

FEDERAL DISTRICT COURT CERTIFIES CLASSES IN LAWSUIT INVOLVING THE SALVATION ARMY'S MAT POLICY

***Mark Tassinari, et al. v. The Salvation Army National Corp., et al.*, U.S. District Court for the District of Massachusetts, Case No. 1:21-cv-10806-LTS (motion for class certification granted March 26, 2025).** For previous updates about this case, please refer to the June 2021 issue of the LAPPA *Case Law Monitor*, available here. A federal district court has issued an order certifying classes seeking injunctive relief and damages against the Salvation Army over its categorical ban on individuals who take medication for addiction treatment (MAT) for opioid use disorder (OUD) from accessing housing or services at its Adult Rehabilitation Centers (ARCs). The lawsuit alleges that the Salvation Army's policy prohibiting access to its ARCs for individuals who use MAT constitutes disability discrimination in violation of Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Act (FHA; 42 U.S.C. § 3601 *et seq*.). The court held that the plaintiffs' claims for injunctive relief can proceed as a class action on behalf of "all individuals with opioid use disorder, who, in accordance with a healthcare provider's treatment plan, take any form of prescribed FDA approved methadone or buprenorphine medication for opioid use disorder, including Suboxone and Sublocade, who are participating or seek to participate in any of the Salvation Army, a New York Corporation's Adult Rehabilitation housing or services, and who are otherwise qualified for such housing or services." The court also certified two classes for damages related to Section 504 and the FHA, respectfully, for all individuals with OUD during a defined period for whom the Salvation Army's files "show they were discharged from any of Defendant's ARCs for taking prescribed FDA-approved methadone or buprenorphine medication for opioid use disorder." The case will proceed with a bench trial on the injunction class only, with additional litigation concerning the damages classes stayed at least until judgment is entered on the injunction class. The court has ordered the defendant to file its motion for summary judgment on or before July 1, 2025. *(Return to In This Issue)*

U.S. SUPREME COURT ALLOWS PLAINTIFF TO PROCEED WITH RICO CLAIM AGAINST A CBD MANUFACTURER

***Medical Marijuana, Inc., et al. v. Douglas Horn*, U.S. Supreme Court, Case No. 23-365 (opinion filed April 2, 2025).** In a 5-4 decision, the U.S. Supreme Court issued an opinion holding that a plaintiff can seek treble damages for business or property loss under the Racketeer Influenced and Corrupt Organization Act (RICO) even if the loss resulted from a personal injury. Seeking relief from his accident-related chronic pain, Douglas Horn purchased and began using "Dixie X," an alleged THC-free, non-psychoactive cannabidiol (CBD) product produced by Medical Marijuana, Inc. (Medical Marijuana). After consuming the Dixie X product for a few weeks, Horn's employer selected him for a random drug screen, which came up positive for THC. After he refused to participate in a substance use disorder treatment program, Horn's employer fired him. Horn then sued Medical Marijuana under a civil RICO claim which creates a cause of action for "any person injured in his business or property" by reason of a criminal RICO violation (18 U.S.C. § 1964(c)). He alleged that Medical Marijuana was a RICO enterprise engaged in marketing, distributing, and selling Dixie X. Horn also asserted that Medical Marijuana's false or misleading advertising satisfied the elements of mail and wire fraud and that those crimes constituted a pattern of racketeering activity. The district court granted summary judgment to Medical Marijuana, holding that Horn's lost employment derived from a personal injury and § 1964(c) forecloses recovery not only for personal injuries but also for business or property harms that result from such injuries. The Second Circuit reversed the district court's ruling, concluding that Horn had been "injured in his business" when he lost his job. In so holding, the Second Circuit rejected the "antecedent-personal-injury bar," a rule adopted by several circuits that precludes recovery for business or property losses

that derive from personal injury.

The sole question before the Supreme Court was whether civil RICO categorically bars recovery for business or property losses that derive from a personal injury. Section 1964(c) provides that "any person injured in his business or property by reason of a violation of RICO may sue. . ." The majority noted that the ordinary meaning of "injure" is to "cause harm or damage to" or to "hurt." As such, the majority found the meaning of the relevant phrase to be straightforward: a plaintiff has been "injured in his business or property" if his business or property has been harmed or damaged. Medical Marijuana argued that "injured in his business or property" carries a specialized meaning, claiming that while "injury" ordinarily means harm, it can also refer to the "invasion of a legal right." Using the latter definition, Medical Marijuana argued that "injured in his business or property" means "suffered an invasion of a business or property right." While the majority agreed that "injury" can mean "invasion of a legal right," it noted that when a word carries both an ordinary and specialized meaning, it is necessary to look to context to choose the correct interpretation. The majority determined that the context cuts decisively in favor of the ordinary meaning of the word. Thus, the majority ruled that the phrase "injured in his business or property" within the civil RICO statute does not preclude recovery for all economic harms that result from personal injuries, affirming the Second Circuit's ruling and remanding the case for further proceedings. The dissent argued that the majority's ruling will eviscerate RICO's "business or property" limitation by allowing a plaintiff to characterize any economic harm flowing from a personal injury as a harm to his business or property in order to file a RICO suit for treble damages. *(Return to In This Issue)*

FEDERAL COURT RULES THAT THE NATIONAL LABOR RELATIONS ACT LIKELY APPLIES TO CANNABIS BUSINESSES

***Casala, LLC, et al. v. Tina Kotek, et al.*, U.S. District Court for the District of Oregon, Case No. 3:25-cv-00244 (opinion filed May 20, 2025).** A federal district court has ruled that an Oregon law requiring cannabis businesses to sign agreements with labor unions in order to obtain licenses is unconstitutional. In November 2024, Oregon voters approved Measure 119, which "ensures that businesses licensed to sell or process cannabis enter into an agreement that allows their employees to organize and speak out without fear of retaliation." The measure also states that the Oregon Liquor and Cannabis Commission (OLCC) "shall require the applicant to submit, along with an application for a license or certification or renewal of a license or certification [to dispense cannabis]" a "signed labor peace agreement entered into between the applicant and a bona fide labor organization actively engaged in representing or attempting to represent the applicant's employees" or an "attestation signed by the applicant and the bona fide labor organization stating that the applicant and the bona fide labor organization have entered into and will abide by the terms of a labor peace agreement." Oregon law defines a "labor peace agreement" as "an agreement under which, at a minimum, an applicant or licensee agrees to remain neutral with respect to a bona fide labor organization's representatives communicating with the employees of the applicant or the licensee about the rights afforded to such employees under OR. REV. STAT. § 663.110." Casala, LLC and Rec Rehab Consulting, LLC, a state-licensed recreational cannabis retailer and a state-licensed recreational cannabis processor, respectfully, filed a lawsuit against the governor, the attorney general, and the chair of the OLCC arguing that Measure 119 is preempted by the National Labor Relations Act (NLRA; 29 U.S.C. § 151, *et seq*.) and requested a permanent injunction. Section 7 of the NLRA protects the right of employees "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." (29 U.S.C. § 157). Section 8 bars unfair labor practices and makes it illegal "for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in" Section 7. (29 U.S.C. § 158).

U.S. Supreme Court precedent has established that the NLRA preempts "(1) laws that regulate conduct that is either protected or prohibited by the NLRA, and (2) laws that regulate in an area Congress has intended to leave unregulated or controlled by the free play of economic forces." The court determined that the NLRA

"likely" applies to cannabis businesses. Unlike some other federal laws, the court noted that the NLRA does not limit its jurisdiction to lawful commerce or legal substances. The court also mentions that in 2013 the National Labor Relations Board issued an advisory memorandum stating that the medical cannabis industry is within its jurisdiction if the business meets the NLRA's jurisdictional monetary requirements. With the court concluding that the NLRA likely applies to cannabis businesses, it ruled that Measure 119 impermissibly conditions a state license on an employer refraining from conduct that is protected by federal labor law. The court granted the plaintiffs' motion for declaratory relief that Measure 119 is preempted by the NLRA and entered a permanent injunction in favor of the plaintiffs. This court's ruling is in conflict with a March 2025 ruling by the Southern District of California regarding a similar California law that has been appealed to the Ninth Circuit (*Ctrl Alt Destroy, Inc. v. Nicole Elliot, et al.*, Case No. 25-2419). In that case, the court focused on how cannabis is illegal at the federal level. *(Return to In This Issue)*

FIRST CIRCUIT REJECTS CANNABIS COMPANIES' CHALLENGE TO FEDERAL CANNABIS BAN

***Canna Provisions, Inc., et al. v. Pamela Bondi*, U.S. Court of Appeals for the First Circuit, Case No. 24-1628 (opinion filed May 27, 2025).** For previous updates on this case, please refer to the August 2024 issue of the LAPPA *Case Law Monitor*, available here. The First Circuit has rejected the arguments brought by four Massachusetts cannabis businesses seeking to overturn the federal government's prohibition of cannabis. In 2005, the U.S. Supreme Court ruled in *Gonzalez v. Raich* (545 U.S. 1) that under the Commerce Clause of the U.S. Constitution, Congress has the authority to criminalize the possession and use of cannabis even where it is legal under state law and the cannabis does not enter interstate commerce. A decade after the Supreme Court decided *Raich*, Congress began attaching a rider to its annual appropriations bill, known as the Rohrabacher-Farr Amendment, which limited federal prosecutors' ability to enforce the Controlled Substances Act (CSA; 21 U.S.C. § 801, *et seq*.) with respect to certain conduct involving medical cannabis. Additionally, in 2010, Congress permitted the District of Columbia to enact a medical cannabis program. The plaintiffs argued that these post-*Raich* developments show that "Congress has abandoned its goal of controlling all marijuana in interstate commerce" and that the decision in *Raich* is no longer applicable. The First Circuit rejected that argument, holding that the appropriations rider is limited in scope and does not apply to the cultivation and distribution of cannabis for non-medical purposes. The court determined that, notwithstanding the appropriations riders, the CSA remains fully intact as to the regulation of commercial activity involving cannabis for non-medical purposes, which is the activity in which the plaintiffs are engaged. The plaintiffs also separately argued that the CSA is unconstitutional under the Fifth Amendment's Due Process Clause as applied to their intrastate commercial activity involving cannabis because it violates their right "to cultivate and transact in cannabis." The court rejected the plaintiffs' argument holding that there is no fundamental right to grow and sell any product. Additionally, the court noted that there is no authority that supports the proposition that an activity not otherwise protected as a fundamental right under the Due Process Clause may become protected solely because several states have provided legislative protection for that activity. In sum, the First Circuit affirmed the ruling of the district court. The plaintiffs have indicated to reporters that they plan on appealing the ruling to the Supreme Court. *(Return to In This Issue)*

TEXAS APPEALS COURT RULES AUSTIN'S CANNABIS DECRIMINALIZATION ORDINANCE IS PREEMPTED BY STATE LAW

***State of Texas v. City of Austin, et al.*, Texas Court of Appeals (Fifteenth Court of Appeals), Case No. 15-24-00077-CV (opinion filed April 24, 2025).** For previous updates about this case, please refer to the August 2024 issue of the LAPPA *Case Law Monitor*, available here. An intermediate Texas appellate court has ruled that the City of Austin's (city) ordinance that prohibits law enforcement from making citations or arrests for low-level possession of cannabis misdemeanors is preempted by state law. On May 7, 2022, citizens of Austin

approved an ordinance entitled the "Elimination of Marijuana Enforcement" through a ballot initiative process, with 85 percent of individuals voting in favor. The ordinance prohibits Austin police officers from issuing citations or making arrests for Class A or B misdemeanor possession of cannabis offenses, except in limited circumstances, such as when citations are part of: (1) the investigation of a high-priority felony level narcotics case; or (2) the investigation of a violent felony. If an officer has probable cause to believe that a substance is cannabis, the officer may seize the cannabis, write a detailed report, and release the individual if possession of cannabis is the sole charge. The state filed a suit for declaratory judgment and injunctive relief against the city, its mayor and city council members, its city manager, and the chief of police arguing that the ordinance violated Article XI, Section 5 of the Texas Constitution and Section 370.003 of the Local Government Code (TEX. LOC. GOV'T CODE ANN. § 370.003 (West 2025)). The state further sought a temporary injunction to preserve the status quo while its claims proceeded and asked the court to issue a declaratory judgment that the ordinance was void. In June 2024, the trial court denied the state's request for a temporary injunction to block enforcement of the ordinance and granted the city's motion to dismiss the case. This appeal followed.

On appeal, the state sought a declaration that the ordinance is preempted by § 370.003, which prohibits the "governing body of a municipality, . . . municipal police department, municipal attorney, county attorney, district attorney, or criminal district attorney from adopting a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483 [of the Texas] Health and Safety Code, and federal law." The city argued that the ordinance does not conflict with § 370.003 but rather prioritizes law enforcement resources to focus on violent felonies and narcotics cases while still allowing enforcement of cannabis misdemeanors through seizures. Additionally, the city argued that because police officers are afforded discretion in enforcement, § 370.003's requirement that drug laws be "fully enforced" cannot be interpreted literally, and therefore, it does not preempt the ordinance. The court rejected the city's arguments, stating that § 370.003 is not a mandate that local governments actually enforce all laws related to drugs but rather prohibits local governments from putting up any barrier to the full enforcement of state drug-related laws. The court determined that the ordinance's prohibition on citations and arrests for misdemeanor possession of cannabis offenses is a barrier to the full enforcement of Texas drug laws and thus conflicts with § 370.003. Accordingly, the court ruled that the state pleaded a viable claim that the ordinance is preempted by § 370.003. The court reversed the trial court's order denying the state's request for a temporary injunction prohibiting enforcement of the ordinance and remanded the case to the trial court. The appeals court also issued a similar opinion in a sister suit involving the City of San Marcos. On May 9, 2025, the city filed a motion for rehearing, which the court denied on May 27, 2025. The city has until July 11, 2025 to file a petition for review by the Texas Supreme Court. *(Return to In This Issue)*

COURT RULES THAT PENSKE MUST FACE MEDICAL CANNABIS CARD HOLDER'S DISCRIMINATION CLAIMS

***Hosea Tyler v. Penske Truck Leasing Co., L.P., et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 5:24-cv-05369-CH (motion to dismiss denied May 21, 2025).** A federal district court has denied Penske Truck Leasing Co.'s (Penske) motion to dismiss in a lawsuit brought against it by an individual who had his job offer rescinded by the company after he disclosed that he possessed a Pennsylvania medical cannabis card. Hosea Tyler has a medical cannabis card for his anxiety disorder. Tyler applied for a job with Penske and the company contingently offered him the position of "sales and operations management trainee." According to the posting, the position "is regulated by the [U.S.] Department of Transportation or designated as safety sensitive by the company." The qualifications for the position included "the ability and willingness to drive our Penske vehicles." In the complaint, however, Tyler claimed that he was "never once informed" that he would actually need to drive any vehicle for the position. He also claimed that during his orientation, the company informed him that he would never have to operate any vehicles on any public roadway. After Tyler received his offer letter, he informed the recruiter that he had a medical cannabis card.

The recruiter informed Tyler that Penske "doesn't like medical marijuana cards" and probably would not proceed with the hiring. A few weeks later, the recruiter told Tyler that the company was not going to hire him because it would not be able to accommodate his medical cannabis card. Tyler informed the recruiter that he was willing to refrain from any cannabis use and find alternative treatments, but Penske did not change its decision to rescind Tyler's job offer. Tyler filed suit against Penske claiming that the company's decision to revoke his job offer violated Title I of the Americans with Disability Act (42 U.S.C. § 12112) and the Pennsylvania Medical Marijuana Act (35 PA. STAT. AND CONS. STAT. ANN. § 10231.2103 (West 2025)) and was wrongful termination under Pennsylvania common law. Penske filed a motion to dismiss.

Under U.S. Department of Transportation (DOT) regulations, drivers of commercial motor vehicles cannot use cannabis because it is a Schedule I substance under federal law. (49 C.F.R. § 391.1). Because Penske is subject to DOT regulations, it argued that it is prohibited from hiring Tyler. Tyler counterargued that, despite his possession of a medical cannabis card, the complaint does not reveal any use of cannabis at the time Penske rescinded his job offer. Per the complaint, Tyler informed the recruiter that he only used his prescription cannabis as needed. Additionally, Penske rescinded Tyler's job offer before he could submit to the required drug screen, so there is no record that he had cannabis in his system at the time that Penske revoked the offer. Because of the scant information to determine whether Tyler was unqualified to drive under DOT regulations, the court determined that the complaint narrowly permitted the reasonable inference that Tyler was not a user of cannabis at the time Penske revoked his job offer. An additional question for the court was whether commercial driving was really part of the job Tyler was offered or whether it was used as a pretext for discrimination. While the job posting stated that the position included commercial driving as an essential duty, the court determined that the complaint offered sufficient facts to reasonably infer that the driving requirement was pretextual. The court cited Tyler's claim that he was never informed about the need to drive for the position and the recruiter's statement that Penske didn't like medical cannabis cards as plausible allegations that the position did not require driving and that the requirement was only included in the job posting to permit the company to discriminate against people with disorders that are treated with cannabis. For the state law claims, Penske argued that they were preempted because federal law prohibits the hiring of commercial drivers who are cannabis users. The court rejected Penske's argument to dismiss the state law claims, finding that Tyler sufficiently pleaded these claims based on his allegation that the recruiter informed him that he was not hired because of his status as a medical cannabis cardholder. The court denied Penske's motion to dismiss on all counts and ordered the company to file its answer by June 10, 2025. *(Return to In This Issue)*

NEW YORK CODIFIES CANNABIS LICENSING FEE, MAKING LAWSUIT MOOT

***New York Medical Cannabis Industry Association, Inc. v. New York State Cannabis Control Board, et al.*, Supreme Court of New York, Albany County, Case No. 911952-24 (suit dismissed May 19, 2025).** For previous updates on this case, please refer to the December 2024 issue of the LAPPA Case Law Monitor, available here. The New York Medical Cannabis Industry Association, which is comprised of nine registered medical cannabis providers, has voluntarily dismissed without prejudice its lawsuit against the New York State Cannabis Control Board after the state legislature codified a special licensing fee for cannabis operators. In 2023, New York's Office of Cannabis Management established regulations allowing registered medical cannabis providers to enter the adult-use cannabis market if they paid four payments of $5 million. (N.Y. COMP. CODES R. & REGS. tit. 9, § 120.4(b)(11)). The plaintiffs argued that the fee was unconstitutional because it did not align with New York's Marihuana Regulation and Taxation Act (MRTA; N.Y. CANNABIS LAW § 63 (McKinney 2025)). On May 8, 2025, the New York Legislature approved the New York State Budget Amendment, Part DDD (S. 3008-C), which amended the MRTA by codifying the special licensing fee proscribed by N.Y. CANNABIS LAW § 63. This amendment superseded N.Y. COMP. CODES R. & REGS. tit. 9, § 120.4(b)(11), which made the plaintiffs' suit moot. *(Return to In This Issue)*

NEW YORK STATE COURT DENIES HEMP BUSINESS' REQUEST FOR PRELIMINARY INJUNCTION AFTER RAID

***MNG New York Holdings, LLC d/b/a CBD Kratom v. New York State Cannabis Control Board et al.*, New York Supreme Court (New York County), Case No. 160287/2024 (opinion filed April 8, 2025).** For previous updates on this case, please refer to the December 2024 issue of the LAPPA *Case Law Monitor*, available here. A New York state court has denied a request for a preliminary injunction by a New York state-licensed hemp retailer and distributor and vacated the temporary restraining order that allowed the business to remove violation notices from its store front. MNG New York Holdings, LLC has a hemp retail license from the New York State Office of Cannabis Management (OCM). On July 17, 2024 and October 15, 2024, OCM conducted raids on the petitioner's businesses. Immediately following the raids, OCM affixed large violation signs on the petitioner's storefronts reading "WARNING: THIS BUSINESS IS ORDERED TO STOP ILLEGAL ACTIVITY" and "ILLICIT CANNABIS SEIZED." On November 5, 2024, the petitioner commenced a special proceeding, and the court signed a temporary restraining order permitting the petitioner to remove the signs. The petitioner sought to have the signs removed from its storefronts pending final adjudications and argued that OCM acted in excess of its authority in relying upon "general" New York Cannabis Law provisions to search the premises. N.Y. CANNABIS LAW § 138-a authorizes OCM to "order any person who is unlawfully cultivating, processing, distributing or selling cannabis, cannabis product, cannabinoid hemp, or hemp extract product, or any products marketed or labeled as such in this state without obtaining the appropriate registration, license, or permit therefor, or engaging in an indirect retail sale to cease such prohibited conduct." The petitioner argued that because it is a licensed hemp purveyor, N.Y. CANNABIS LAW § 138-a does not apply to it since the statute only prohibits the sale of cannabis and hemp by unlicensed stores. The court rejected the petitioner's argument holding that N.Y. CANNABIS LAW § 138-a "clearly and broadly references OCM's authority over 'any person.'" Because OCM acted within the scope of its authority when it searched the petitioner's stores and posted the signs, the court ruled that the petitioner cannot demonstrate a likelihood of ultimate success on the merits. Therefore, the court denied the petitioner's motion for a preliminary injunction, vacated the temporary restraining order, and granted the respondent's cross-motion to dismiss. *(Return to In This Issue)*

STATE ATTORNEYS GENERAL SUE HHS OVER ITS AGENCY RESTRUCTURING PLAN

***State of New York, et al. v. Robert F. Kennedy, Jr., et al.*, U.S. District Court for the District of Rhode Island, Case No. 1:25-cv-00196-MRD-PAS (suit filed May 5, 2025).** Twenty attorneys general[1] have filed a lawsuit against the U.S. Department of Health and Human Services (HHS) and Secretary Robert F. Kennedy, Jr. over claims that the Trump Administration, by firing workers and cutting programs, has deprived HHS of the resources necessary to do its job. This lawsuit comes amid a massive restructuring of HHS, which involves cutting about 10,000 agency employees and downsizing or combining certain offices, including the Substance Abuse and Mental Health Services Administration. The plaintiffs bring forth claims of violation of the separation of powers doctrine (U.S. Const. Art. I, Sec. 1), violation of the appropriations clause (Const. Art. I, § 9, cl. 7), conduct outside the scope of statutory authority conferred on the executive branch, and violations of the Administrative Procedure Act (5 U.S.C. § 706). The state attorneys general are requesting an injunction to "prevent the unconstitutional and illegal dismantling" of HHS. *(Return to In This Issue)*

[1] The jurisdictions involved in the lawsuit are Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin.

TRUMP ADMINISTRATION REQUESTS STAY IN MENTAL HEALTH PARITY RULE CASE

***ERISA Industry Committee v. Department of Health and Human Services, et al.*, U.S. District Court for the District of Columbia, Case No. 1:25-cv-00136 (case stayed May 12, 2025).** For previous updates about this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. On May 9, 2025, the Trump Administration moved to hold in abeyance a case involving a September 2024 administrative rule implementing mental health insurance parity legislation while the U.S. Departments of Health and Human Services, the Treasury, and Labor (the Departments) reconsider the rule challenged in the litigation. The suit involves a challenge to a rule issued by the Departments that implements the requirements imposed by the Mental Health Parity and Addiction Equity Act (Pub. L. No. 110-343). The rule at issue is Requirements Related to the Mental Health Parity and Addiction Equity Act (89 Fed. Reg. 77586 (Sept. 23, 2024)). In their motion for abeyance, the Departments expressed that they intend to reconsider the rule at issue, including whether to issue a notice of proposed rulemaking rescinding or modifying the regulation. On May 12, 2025, the court granted the motion and ordered the case stayed until further notice. The parties are required to file a joint status report on August 7, 2025, and every 90 days thereafter, to report on the progress of the defendants' reconsideration of the rule at issue. *(Return to In This Issue)*

FEDERAL DISTRICT COURT DISMISSES WHISTLEBLOWER'S FALSE CLAIMS ACT SUIT AGAINST PUBLIX

***Publix Litigation Partnership, LLP v. Publix Super Markets, Inc.*, U.S. District court for the Middle District of Florida, Case No. 8:22-cv-02361-TPB-AAS (motion to dismiss granted May 13, 2025).** A federal district court has granted Publix Super Markets, Inc.'s (Publix) motion to dismiss a whistleblower's False Claims Act (FCA; 31 U.S.C. § 3729) suit for failure to state a claim. In 2022, the Publix Litigation Partnership, which is a partnership comprised of two former Publix pharmacists, filed a whistleblower suit against Publix, claiming that the company violated the FCA by knowingly and unlawfully dispensing controlled substances and submitting reimbursement requests for those improper prescriptions. Publix filed a motion to dismiss for failure to state a claim. The court granted Publix's motion, finding that the plaintiff failed to allege that any of the prescriptions listed in the complaint were actually invalid. The court noted that the plaintiff's complaint failed to provide any health information on the patients that would allow for any sort of evaluation as to whether the prescriptions mentioned were valid or issued in the usual course of practice. Additionally, the complaint did not allege that Publix failed to properly investigate the prescriptions in question. By failing to specifically identify any reimbursement requests submitted to the federal government for prescriptions that Publix knew to be invalid, the court determined that the plaintiff failed to provide any sufficient representative example to support its FCA claims. The court dismissed the case without prejudice and on May 30, 2025, it directed the parties to file a notice of mediation. *(Return to In This Issue)*

COURT DENIES PHARMACY BENEFIT MANAGERS' REQUEST TO HAVE JUDGE RECUSE HIMSELF IN MULTIDISTRICT OPIOID CASE

***In re: National Prescription Opiate Litigation*, U.S. District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP (motion to recuse denied April 29, 2025).** For previous updates on this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. The pharmacy benefit managers (PBMs), OptumRx and Express Scripts, who are defendants in the National Prescription Opiate Litigation, filed a motion requesting that U.S. District Court Judge Dan Polster recuse himself from the cases against them, claiming that the judge has had frequent *ex parte* communications with the plaintiffs' attorney. Within the motion for recusal, the PBMs cited reports that Michael Kahn, a Florida lawyer

representing some of the cities and counties suing the companies, had repeatedly told potential clients that Peter Weinberger, a leading plaintiffs' attorney in the litigation, spoke with the judge every day and received insider information from him. The PBMs also asserted that Kahn claimed that the judge was a "tremendous plaintiff-oriented judge" who put "enormous pressure" on defendants to settle. In February 2025, the PBMs informed the court of Kahn's statements and moved for disclosure of all *ex parte* communications between any plaintiffs' counsel and the court. The court denied the PBMs' motion but agreed to conduct an evidentiary hearing to question Kahn. Prior to the hearing, the PBMs requested that the court reconsider its order denying disclosure of all *ex parte* communications, an order directing Weinberger to testify under oath, and an appointment of a neutral judicial officer to preside over the March 2025 evidentiary hearing, but the court denied all of the PBMs' requests. Under the court's questioning in the evidentiary hearing, Kahn claimed that he misspoke and that he "should have used another word" when advising prospective clients that Weinberger regularly communicates *ex parte* with the court. Kahn also claimed that he meant to say that the judge was "encouraging" settlements, rather than "compelling" them. After the hearing, the court assessed a $100,000 sanction against Kahn for making statements without any factual basis and "improperly cast[ing] aspersions upon the integrity of the court." The PBMs, however, argued that the judge's refusal to disclose the communications that they requested and require Weinberger to testify under oath is justification for recusal because it leaves unanswered serious questions about the court's impartiality. On April 29, 2025, the court denied the PBMs' motion to recuse, holding that once Kahn, under oath, retracted his statements and testified that he did not have a basis for his assertions, the PBMs did not have credible or admissible evidence that the court engaged in any unconsented *ex parte* communication with anyone. *(Return to In This Issue)*

WEST VIRGINIA SUPREME COURT DECLINES TO ANSWER FOURTH CIRCUIT'S PUBLIC NUISANCE QUESTION

***City of Huntington, West Virginia, et al. v. AmerisourceBergen Drug Corporation et al.*, Supreme Court of West Virginia, Case No. 24-166 (opinion filed May 12, 2025).** For previous updates about this case, please refer to the April 2024 issue of the *LAPPA Case Law Monitor*, available here. In a 3-2 decision, the Supreme Court of West Virginia has declined to answer a certifying question from the Fourth Circuit. The certifying question emerged from lawsuits filed by the City of Huntington, West Virginia and the Cabell County, West Virginia Commission against the drug distributors AmerisourceBergen (now Cencora), Cardinal Health, and McKesson Corp. over allegations that the distributors fueled the opioid epidemic in the state. A district court judge had ruled that West Virginia's common law of public nuisance did not apply to the plaintiffs' case, and the plaintiffs appealed. As part of the appeal, the Fourth Circuit certified a question of law to the West Virginia high court, asking: "under West Virginia's common law, can conditions caused by the distribution of a controlled substance constitute a public nuisance and, if so, what are the elements of such public nuisance claim?" The majority determined that it cannot answer the question at this time due to the "disputed factual findings, and related legal conclusions resting on those factual findings, on appeal from the federal district court in this case." The majority stated that in order to answer the Fourth Circuit's question, it would have to assume that some or all of the district court's disputed facts and legal conclusions were incorrect. Because the court cannot disregard the district court's findings, related conclusions, and the parties' arguments on appeal, the majority declined to answer the certified question. The declination of the question by the majority does not preclude future considerations of the same question. The dissent asserted that the question "clearly falls within the parameters" of the court's authority to answer and noted that it would have held that the distribution of drugs is actionable under West Virginia's public nuisance law if it causes a condition of widespread harm. *(Return to In This Issue)*

CVS FILES MOTION TO DISMISS IN U.S. DEPARTMENT OF JUSTICE'S CIVIL SUIT AGAINST THE COMPANY

***United States ex rel. Hillary Estright v. CVS Health Corporation, et al.*, U.S. District Court for the District of Rhode Island, Case No. 1:22-cv-00222-WES-PAS (motion to dismiss filed April 1, 2025).** For previous updates on this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. CVS Pharmacy, Inc. (CVS) has filed a motion to dismiss arguing that the civil lawsuit filed in December 2024 by the U.S. Attorney's Office in Rhode Island fails to show that the prescribing doctors behind the more than 9,500 prescriptions in question wrote them unlawfully. The suit claims that CVS violated the Controlled Substance Act (CSA; 21 U.S.C. §§ 842 & 829) by knowingly filling prescriptions that lacked a legitimate medical purpose, were not valid, or were not issued in the usual course of professional practice. The motion to dismiss asserts that for the vast majority of the prescriptions identified in the complaint, the government did not allege any facts about the doctors, their practices, their treatment decisions, or their care of their patients. CVS also claims that the complaint improperly placed the CSA's knowledge requirement (21 C.F.R. § 1306.04) not on the pharmacists who actually filled the prescriptions but rather on the corporate personnel at CVS headquarters. The motion to dismiss avers that it is the pharmacist who must possess the knowledge that the prescription is invalid, not other individuals at the company who are not present at the pharmacy counter and who are not involved in the pharmacist's assessment of the prescription and the decision to fill it. Accordingly, CVS argues that the government's attempt to plead intent or knowledge of wrongdoing through corporate personnel who did not fill the prescriptions, did not see the prescriptions or patients in real time, and were not even present in the pharmacy when the prescriptions were filled fails to state a claim. CVS also seeks to dismiss the government's False Claims Act (31 U.S.C. § 3729) claim, arguing that the government had more information about the prescriptions in question than CVS did, and it still accepted them for reimbursement. *(Return to In This Issue)*

VIATRIS REACHES NATIONWIDE SETTLEMENT TO RESOLVE OPIOID-RELATED CLAIMS

(Settlement announced April 7, 2025). On April 7, 2025, the pharmaceutical company, Viatris announced that it reached a nationwide settlement to resolve opioid-related claims brought by states, local governments, and tribes against the company and some of its subsidiaries. Under the agreement, the company will pay up to $335 million, depending on the level of participation in the settlement, with the payments being made over a nine-year period. Viatris did not admit to wrongdoing or liability as part of the settlement. In a press release, the company stated that it would continue to manufacture a generic injectable version of naloxone and generic buprenorphine/naloxone products. *(Return to In This Issue)*

WALGREENS AGREES TO SETTLE WITH U.S. DEPARTMENT OF JUSTICE TO RESOLVE OPIOID LAWSUIT

***United States ex rel. Novak v. Walgreens Boots Alliance, Inc., et al.*, U.S. District Court for the Northern District of Illinois, Case. 1:18-cv-05452 (settlement reached April 21, 2025).** For previous updates about this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. Walgreens Boots Alliance, Walgreen Co., and various subsidiaries (collectively "Walgreens") has agreed to a settlement with the U.S. Department of Justice to resolve allegations that the pharmacy chain illegally filled millions of invalid prescriptions for controlled substances in violation of the Controlled Substances Act (CSA; 21 U.S.C. §§ 842(a)(1) & 829) and then sought payment for those invalid prescriptions in violation of the False Claims Act (FCA; 31 U.S.C. § 3729). As part of the settlement, Walgreens will pay the federal government $300 million over the next six years. Walgreens also will owe the United States an additional $50 million if the

company is sold, merged, or transferred prior to fiscal year 2032. In addition to the monetary payments, Walgreens entered into an agreement with the Drug Enforcement Administration (DEA) and the U.S. Department of Health and Human Services' Office of Inspector General (HHS-OIG) to address the company's future obligation in dispensing controlled substances. Walgreens and the DEA entered into a memorandum of agreement that requires the company to implement and maintain certain compliance measures for the next seven years. With the HHS-OIG, Walgreens entered into a five-year corporate integrity agreement, which further requires Walgreens to establish and maintain a compliance program that includes written policies and procedures, training, board oversight, and periodic reporting to the HHS-OIG related to Walgreens's dispensing of controlled substances. On the same day that Walgreens agreed to the settlement, it also filed a motion to voluntarily dismiss its case against the DEA in the U.S. District Court for the Eastern District of Texas, which the court granted. (Information on *Walgreen Co. v. U.S. Drug Enforcement Administration, et al.* is also available in the February 2025 issue of the LAPPA *Case Law Monitor*). *(Return to In This Issue)*

FORMER SENIOR PARTNER AT MCKINSEY & COMPANY SENTENCED TO SIX MONTHS IN PRISON

***United States v. Martin Eric Elling*, U.S. District Court for the Western District of Virginia, Case No. 1:24-cr-00045-RSB-PMS-1 (sentence issued May 22, 2025).** For previous updates about this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal district court has sentenced Martin Elling, a former senior partner at McKinsey & Company (McKinsey), to six months in prison for obstruction of justice. In January 2025, Elling pleaded guilty to one count of knowingly destroying records with the intent to impede, obstruct, and influence an investigation related to his consulting work with Purdue Pharma. According to court documents, forensic analysis of Elling's McKinsey-issued laptop revealed that he deleted materials related to McKinsey's work for Purdue from the laptop as well as a Purdue-related folder from his email account. *(Return to In This Issue)*

RECENT EVENTS IN THE PURDUE PHARMA BANKRUPTCY CASE

***In re Purdue Pharma L.P.*, U.S. Bankruptcy Court for the Southern District of New York, Case No. 19-23649 (extension of injunction granted May 22, 2025).** For previous updates on this case, please refer to the April 2025 issue of the LAPPA *Case Law Monitor*, available here. The bankruptcy court judge overseeing Purdue Pharma's (Purdue) bankruptcy case has granted the company's motion to extend an injunction that halts litigation against Purdue through at least the June 18, 2025 hearing on voting and disclosures for its bankruptcy plan proposal. The judge overruled the lone objection to the extension which came from an individual litigant. The remaining parties agreed that the additional time was necessary to help reach a resolution for the creditors. The judge noted in his order granting the extension of the injunction that he understood the frustrations of everyone waiting for a resolution.
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ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to model laws and policies that can be used by national, state, and local criminal justice and substance use disorder practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication for addiction treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

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