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 disorder, 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.

IN THIS ISSUE...

EEOC SUES SHIPBUILDER OVER ALLEGATIONS THAT IT DISCRIMINATED AGAINST AN EMPLOYEE USING MAT

***Equal Employment Opportunity Commission v. Bollinger Shipyards*, LLC, U.S. District Court for the Southern District of Mississippi, Case No. 1:25-cv-00288-TBM-RPM (suit filed September 25, 2025).** The Equal Employment Opportunity Commission (EEOC) has filed a complaint against Bollinger Shipyards, LLC (Bollinger) over allegations that the company discriminated against an employee due to her use of medication for addiction treatment (MAT) for opioid use disorder. In February 2024, Keely Senseney began working for Bollinger as a shipfitter. On March 7, 2024, Senseney disclosed her legal use of MAT to Bollinger and on April 12, 2024, the company placed her on involuntary indefinite unpaid leave pursuant to its prohibition against employees working "safety-sensitive positions" while using certain medications, including the MAT that was prescribed to her. Before Bollinger would allow Senseney to return to work, it required her to undergo a fitness-for-duty examination by Occupational Health Centers (OHC), a chain of medical practices that provide occupational medicine services to employers. OHC determined that Senseney was fit for work as a shipfitter, but the complaint claims that despite OHC's determination, Bollinger refused to allow Senseney back to work and instead sought a second opinion from a family medicine practice in Louisiana. A physician from the family medicine practice determined that Senseney posed a safety risk by working as a shipfitter while taking her MAT. Based on FMS's assessment, Bollinger excluded Senseney from work until she agreed to stop taking her MAT. The EEOC asserts that Bollinger unlawfully excluded Senseney from work on the basis of her disability in violation of Title I of the Americans with Disabilities Act (42 U.S.C. § 12117). The EEOC is requesting that the court grant a permanent injunction enjoining Bollinger from discriminating against employees on the basis of disability and order the company to provide Senseney with compensatory and punitive damages. *(Return to In This Issue)*

SKILLED NURSING FACILITIES AGREE TO SETTLE SUD DISCRIMINATION CASES FILED AGAINST THEM

***John Doe v. Sunnybrook Rehabilitation Center, LLC, et al.*, U.S. District Court for the Middle District of North Carolina, Case No. 1:25-cv-00314-UA-JEP (case reported settled August 21, 2025).** Two skilled nursing facilities have agreed to settle a disability discrimination case filed against them over allegations that they denied a patient admission to their facilities because of his substance use disorder (SUD) and recent drug use. According to the complaint, the plaintiff, identified only as John Doe, had several serious physical health issues that resulted in multiple hospitalizations over a two-year period. After each hospitalization, Doe required follow-up care at a skilled nursing facility. Doe sought care at Sunnybrook Rehabilitation Center,

LLC (Sunnybrook) and Treyburn Rehabilitation Center, LLC (Treyburn), but both centers refused to admit Doe upon learning of his SUD. In April 2025, Doe filed a lawsuit against Sunnybrook and Treyburn claiming that they violated Title III Americans with Disabilities Act (ADA; 42 U.S.C. §12182), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), Section 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. § 18116), and the North Carolina Unfair and Deceptive Practices Act (N.C. GEN. STAT. ANN. § 75-1.1 (West 2025)) when they denied him admission to their facilities because of his SUD and relied on methods of administration that screen out individuals with SUD from admission. After participating in mediation, Sunnybrook and Treyburn agreed to pay $55,000 to settle the case. As part of the settlement, the facilities agreed to develop and implement an SUD non-discrimination policy that prohibits the blanket denial of admission to individuals solely on the basis of SUD or recent substance use. The settlement further requires the facilities to: (1) implement a grievance policy for alleged violations of the SUD non-discrimination policy; (2) train their staffs on non-discrimination requirements under the ADA; (3) maintain a log of any admission denials made in accordance with the SUD non-discrimination policy; and (4) evaluate any future applications for admission made by Doe under the SUD non-discrimination policy. *(Return to In This Issue)*

SEVENTH CIRCUIT AFFIRMS HOSPITAL DID NOT DISCRIMINATE AGAINST A NURSE WHEN IT TERMINATED HER FOR SUSPECTED DRUG DIVERSION

***Wendy Lohmeier v. Gottlieb Memorial Hospital and Loyola University Medical Center*, U.S. Court of Appeals for the Seventh Circuit, Case No. 24-1470 (opinion filed August 14, 2025).** For previous updates on this case, please refer to the April 2024 issue of the LAPPA *Case Law Monitor*, available here. The Seventh Circuit has affirmed a district court's ruling that Gottlieb Memorial Hospital and Loyola University Medical Center (collectively "the hospital") did not discriminate against a former nurse when it terminated her for suspected drug diversion. In 2018, the hospital terminated nurse Wendy Lohmeier after an internal investigation determined that she had likely diverted fentanyl and morphine from the hospital's medication dispensing machine. In addition to the possible drug diversion, the investigation also determined that Lohmeier violated the hospital's drug and alcohol use policy, which requires employees to report the use of any prescribed drugs that could affect job performance or safety, as she failed to report her prescription hydrocodone use. After exhausting her administrative remedies, Lohmeier filed suit against the hospital claiming that the investigation and termination were motivated by discriminatory and retaliatory animus. Lohmeier brought forth claims under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, *et seq.*), the Americans with Disabilities Act (ADA; 42 U.S.C. § 12101, *et seq.*), the Family and Medical Leave Act (FMLA; 29 U.S.C. § 2601, *et seq.*), and the Illinois Human Rights Act (775 ILL. COMP. STAT. ANN. 5/1, *et seq.* (West 2025)). The district court granted summary judgment to the hospital on all claims and Lohmeier appealed. On appeal, Lohmeier argued that she was disabled under the ADA because she had: (1) shingles with severe pain; and (2) post-traumatic stress disorder, anxiety, and depression. The Seventh Circuit, however, determined that Lohmeier failed to explain what major life activity was limited by her stated disabilities, a threshold requirement for an individual to be considered disabled under the ADA. The court also noted that Lohmeier never provided the court with any record of impairment or evidence that she was regarded as having an impairment. Accordingly, the court ruled her ADA discrimination claim failed because she could not show that she was disabled. Additionally, her ADA failure to accommodate claim also failed because an employee must be disabled under the ADA to bring forth such claim. The court also affirmed the lower court's decision to grant summary judgment for the remaining claims. *(Return to In This Issue)*

INCARCERATED INDIVIDUALS IN ALASKA ALLEGE STATE DEPARTMENT OF CORRECTIONS FAILS TO PROVIDE ADEQUATE HEALTHCARE

***Rory Vail, et al. v. Michael Dunleavy, et al.*, U.S. District Court for the District of Alaska, Case No. 3:25-cv-00086-SAB (suit filed May 1, 2025).** The American Civil Liberties Union of Alaska has filed a lawsuit on behalf of several individuals currently incarcerated in correctional facilities throughout Alaska over allegations that the state department of corrections (DOC) has failed to provide adequate healthcare to incarcerated individuals. The suit claims that the healthcare provided to individuals incarcerated in Alaskan correctional facilities is so inadequate and deficient that it creates a substantial risk of serious harm. The plaintiffs identify the defendants' failure to provide medication for addiction treatment as part of the suit along with several other deficiencies, including failure to provide individuals with access to medical supplies and devices, medication management, dental care, and mental health care. The plaintiffs seek to represent a class of all individuals who are now, or will be in the future, subjected to the medical, mental health, and dental care policies and practices of the Alaska DOC. The plaintiffs bring forth claims that the defendants violated the plaintiffs' Eighth and Fourteenth Amendment rights under the U.S. Constitution by being deliberately indifferent to the substantial risk of serious harm posed by the deprivation of proper medical care. The suit requests that the court order the defendants to develop and implement, as soon as practical, a plan to eliminate the substantial risk of serious harm and provide adequate healthcare services. The defendants filed a motion to dismiss on July 14, 2025 arguing that the plaintiffs' suit is barred by a settlement agreement in the case *Smith v. Cleary* (24 P.3d 1245) approved by the Alaska Superior Court in 1990. According to the motion to dismiss, the *Cleary* settlement agreement "details the rights of current and future prisoners held in facilities owned or operated by the DOC" and binds "all inmates, with some exceptions, who are or will in the future be incarcerated in correctional facilities owned or operated by the state." The defendants argue that an inmate may not bring a direct action in court alleging non-compliance with the *Cleary* settlement agreement unless he or she exhausts all administrative remedies. The plaintiffs filed their response to the defendants' motion to dismiss on August 29, 2025 arguing that the *Cleary* settlement agreement does not prevent incarcerated individuals from suing in federal court to protect their federal constitutional right to adequate medical care. A ruling on the motion to dismiss has not yet been issued. *(Return to In This Issue)*

WRONGFUL DEATH SUIT FILED AGAINST CITY OF PHILADELPHIA AFTER WOMAN DIES OF SUSPECTED OVERDOSE IN CUSTODY

***Ian M. Richetti v. City of Philadelphia, et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 5:25-cv-05289-JMG (suit filed September 15, 2025).** The administrator of the estate of a woman who died of a suspected fentanyl overdose while detained at the Philadelphia Institutional Correctional Center (PICC) has filed a wrongful death suit against the city and unnamed city employees. On September 4, 2024, police arrested Amanda Cahill on possession of drugs during a coordinated police sweep of the Kensington neighborhood of Philadelphia. The sweep was part of the city's ongoing initiative to reduce open air drug use and sales and included the dismantling of homeless encampments and coordinated mass arrests in the area. After being arrested and booked at police headquarters, emergency medical services transported Cahill to the hospital for an evaluation. After being evaluated at the hospital, police transported Cahill to PICC and, according to the complaint, placed her in general population despite the availability of medical treatment housing. The complaint asserts that Cahill did not receive regular medical evaluations or monitoring during her few days at PICC, despite allegedly "exhibiting outward and obvious symptoms" of substance use disorder. The estate claims that during the early morning hours of September 7, 2024, Cahill repeatedly asked for medical attention, but staff failed to evaluate her or provide her with any medical assistance. Later in the morning, staff found Cahill unresponsive in her cell. The estate asserts that her cause of death was a suspected fentanyl overdose. Autopsy reports indicated that the fentanyl was consumed within hours of her death, leading the estate to believe that Cahill was sold or given fentanyl while in custody at PICC. The complaint alleges that the use and trafficking of illegal drugs within Philadelphia correctional facilities is widespread and is exacerbated by the chronic understaffing of the jails. The suit brings forth violations of Cahill's Fourteenth Amendment rights under the U.S. Constitution as a result of the defendants being deliberately indifferent to Cahill's serious medical needs and failing to render medical care. The estate is requesting damages in excess of $10 million. *(Return to In This Issue)*

FEDERAL COURT ALLOWS DELIBERATE INDIFFERENCE CLAIM TO PROCEED AGAINST TWO MICHIGAN JAIL OFFICERS

***Dana Hale et al., v. Clinton County et al.*, U.S. District Court for the Western District of Michigan, Case No. 1:23-cv-01063-JMB-PJG (opinion filed September 16, 2025).** For previous updates on this case, please refer to the December 2023 issue of the LAPPA *Case Law Monitor*, available here. A federal court has ruled that deliberate indifference claims can proceed against two staff members of the Clinton County Jail (jail) in a case involving the overdose death of a man in the jail's custody. On December 13, 2022, police transported Christopher Fisher to jail after a traffic stop revealed that he had outstanding warrants. During the intake and booking process, video evidence shows booking officer Jeffery Armbrustmacher conducting a pat down search of Fisher. When questioned by officer Chad Bashore during a medical screening, Fisher denied any drug use and denied that he needed any medical attention. Officer Bashore reported that he did not observe any unusual behavior by Fisher that would suggest that he was on drugs. Officers placed Fisher in a cell that was monitored by a video camera. Video evidence showed Fisher appearing "normal" when he entered the cell. After being in the cell for about 30 minutes, Fisher covered himself with a blanket for about a minute. Investigators later hypothesized that Fisher may have taken drugs while under the blanket. As time when on, the video captures Fisher starting to exhibit unusual behavior, including stumbling, scratching himself, swaying, and looking disoriented. The recording shows Fisher lying down at around 7:45 PM and not moving again after that. Per jail policy, officers are supposed to perform visual checks on detainees every hour throughout the night. The next morning, officers discovered Fisher dead in his cell. An autopsy report revealed that Fisher died of a drug overdose of methamphetamine and fentanyl. Following Fisher's death, the Michigan State Police conducted an investigation into his death. The investigation examined Fisher's property seized at the jail and discovered a plastic tube in Fisher's sweatshirt pocket that appeared to have drug residue on it. In January 2024, Fisher's estate filed a claim of deliberate indifference to serious medical needs in violation of the Fourteenth Amendment of the U.S. Constitution against individual jail officers and a municipal/supervisory liability claim against Clinton County. The defendants moved for summary judgment.

Regarding the deliberate indifference claim, the court found that, at minimum, genuine issues of material fact exist concerning whether Fisher's medical need was sufficiently serious and obvious to a layperson. However, to succeed on a deliberate indifference claim, the plaintiff must not only show that the plaintiff had an objectively serious medical need but also that the defendant recklessly acted or recklessly failed to act where a reasonable official in his or her position would have recognized such a need. First, the plaintiffs took issue with the initial search conducted by Officer Armbrustmacher. The plaintiffs believed that Armbrustmacher should have made Fisher turn his pockets inside out during the pat down, and that if he had done so, he would have found the alleged drug paraphernalia, which would have triggered increased monitoring of Fisher. The court determined that Armbrustmacher was, at most, negligent in conducting the pat-down search of Fisher and noted that allegations of negligence fall short of the deliberate indifference standard. Next, the plaintiffs argued that Officer Bashore should have recognized Fisher's medical need during the medical screening that he conducted. The court, however, determined that because Fisher was acting "normal" at the time of the screening and denied using drugs, there was no indication that Bashore acted deliberately indifferent while performing the medical screen. Finally, the plaintiffs argued that the two officers that were responsible for conducting checks of the detainees throughout the night, Devin Hummel and Alexis Chapko, should have identified Fisher's unusual behavior and provided him with medical attention. The court determined that a reasonable jury could find that Officers Hummel and Chapko recklessly disregarded Fisher's serious medical needs. Thus, the court dismissed the plaintiffs' deliberate indifference claims against defendants Bashore and Armbrustmacher, but allowed the deliberate indifference claims to proceed against defendants Hummel and Chapko. In addition to the ruling on the individual defendants, the court also dismissed the plaintiffs' municipal liability claim against Clinton County, finding that the county did not enact any unconstitutional policies or procedures and that it provided its staff with proper training and supervision. On September 30, 2025, defendants Chapko and Hummel filed a motion for reconsideration. The plaintiffs have until October 28, 2025 to respond to the motion. *(Return to In This Issue)*

MOTHER FILES WRONGFUL DEATH SUIT ALLEGING HER DAUGHTER DIED AFTER CONSUMING A TIANEPTINE SUPPLEMENT

***Angela Roos v. MRSS Inc., et al.*, Pennsylvania Court of Common Pleas (Philadelphia County), Case No. 250802433 (suit filed August 21, 2025).** The mother of a woman who died after consuming a supplement product containing tianeptine has filed a wrongful death suit against the manufacturer and distributor of the product and the convenience store that sold her daughter the product. According to the complaint, on October 6, 2023, Angelina Jenkins purchased two bottles of ZAZA from the Qtown Mini Mart. Jenkins was only 20 years old at the time of the purchase, but the store allegedly sold her the bottles despite the label stating that the product was only to be sold to individuals over the age of 21. ZAZA is marketed as a dietary supplement and contains the substance tianeptine. Tianeptine is an antidepressant drug sold as a prescription medication in some European, Asian, and Latin American countries, but it is not approved for any use in the U.S. by the Food and Drug Administration (FDA).[1] On October 7, 2023, Jenkins' family found her unresponsive and unconscious on her bed. Doctors pronounced Jenkins dead the next day, and the complaint asserts that post-mortem testing confirmed the cause of death to be tianeptine toxicity. The administrator of Jenkins' estate asserts that the defendants knew, or should have known, that continuing to sell ZAZA would result in serious injury, addiction, or even death to their consumers. The complaint cites instances in which the FDA issued warnings to tianeptine manufacturers and consumers about the possible dangers of using tianeptine, including a January 2024 letter in which the FDA urged all retailers to stop selling any tianeptine-containing products. The suit brings forth product liability, negligence, breach of warranty, and wrongful death claims against the defendants. The estate is seeking compensatory and punitive damages as allowed under Pennsylvania's Survival Act (42 PA. STAT. AND CONS. STAT. ANN. § 8302 (West 2025)). *(Return to In This Issue)*

CONNECTICUT COURT PRECLUDES CERTAIN EVIDENCE RELATED TO ROADSIDE SOBRIETY TESTS IN DRUGGED DRIVING CASE

***State of Connecticut v. Michael Langshaw*, Superior Court of Connecticut (New London), Case No. K10K-CR21-0373037-S (opinion filed July 23, 2025).** A Connecticut court ruled to preclude certain testimony regarding roadside sobriety tests from being admitted as evidence in a driving under the influence case due to the lack of science establishing the validity of the tests in detecting non-alcohol, drug impairment. On October 10, 2021, police dispatch received a call from a concerned citizen about an individual, later identified as the defendant, sitting in a parked car in the parking lot of a gas station with the engine running. A police officer responded to the call and observed that the defendant spoke in a very slow and sluggish manner, had slack jaw, slurred speech, droopy eye lids, and glassy eyes. The officer instructed the defendant to exit the vehicle and administered a Standardized Field Sobriety Test (SFST)[2] and the Advanced Roadside Impaired Driving Enforcement (ARIDE) test.[3] During the officer's investigation, the defendant admitted to consuming Klonopin (clonazepam), but he did not specify when he last consumed the medication, what dosage he consumed, or whether he had a prescription for the medication. A search of the car revealed a plastic bag containing pills that were later identified as gabapentin. The defendant submitted to a breathalyzer test, which produced a result of zero percent blood alcohol content, but he refused to provide a urine sample for toxicology testing. The officer ultimately arrested and charged the defendant with driving under the influence of drugs and failure to keep narcotics in their original container.

[1] For more information about tianeptine, please refer to LAPPA's "Novel Psychoactive Substances: Tianeptine" factsheet, available here.

[2] The SFST consists of three roadside tests: (1) the horizontal gaze nystagmus (HGN) test; (2) the walk and turn test; and (3) the one leg stand test. The HGN test is a law enforcement tool to detect alcohol or drug impairment by observing the involuntary jerking of an individual's eyes, known as nystagmus.

[3] ARIDE includes a set of three tests: (1) the lack of convergence eye test; (2) the finger to nose coordination test; and (3) the modified Romberg balance test.

The defendant filed a motion in limine[4] to preclude testimony regarding the roadside sobriety tests, asserting that the tests are not reliable in cases involving non-alcohol related driving under the influence cases and that allowing the results into evidence would be more prejudicial than probative. The state argued that the roadside tests are reliable in detecting drug impairment because drugs classified as central nervous system (CNS) depressants would produce the same effects and results on the test as alcohol.[5] The defendant argued that the state failed to present medical evidence demonstrating that CNS depressants have the same effects on the tests as alcohol, and the court agreed. During the hearing for the motion in limine, witnesses for the state testified that an individual under the influence of CNS depressants would have the same performance on the tests as an individual under the influence of alcohol but failed to provide a scientific basis for their claims. Regarding the SFST, the court determined that the state failed to sufficiently establish the reliability of the horizontal gaze nystagmus (HGN) test and its relevance in a drug impairment case involving suspected benzodiazepine use. Accordingly, the court ruled to preclude testimony and any reference to the HGN test but allowed testimony regarding the officer's observation of the defendant's performance on the walk and turn and one leg stand tests. As for the admissibility of the ARIDE tests, the court found that the state failed to demonstrate that the lack of convergence, finger to nose, and modified Romberg balance test were scientifically reliable in detecting non-alcohol, drug impairment. Accordingly, the court precluded scientific expert testimony regarding the ARIDE tests, the defendant's performance on the ARIDE tests, and whether the defendant passed or failed the tests. However, the court noted that this ruling does not prevent the state from presenting testimony from the arresting officer's observation of the defendant's performance on the ARIDE test subject to admissibility under the state rules of evidence. *(Return to In This Issue)*

WASHINGTON CHURCH ARGUES COUNTY'S SYRINGE SERVICES PROGRAM ORDINANCE VIOLATES FEDERAL AND STATE LAW

***Gather Church v. Lewis County, et al.*, U.S. District Court for the Western District of Washington, Case No. 3:25-cv-05850-DWC (suit filed September 22, 2025).** A Church in Lewis County, Washington has filed suit against the county and several county officials over a 2024 county ordinance that targets certain harm reduction programs. The Gather Church (Gather) is a 501(c)(3) religious organization whose mission is to serve those "whom others have forgotten or try to ignore—the poor, the hungry, the addicted, the lonely, [and] the unhoused." Since 2010, Gather has devoted its ministry to helping Lewis County residents in need, with a particular focus on supporting residents who struggle with substance use disorder (SUD). In 2019, to address rising overdose deaths, Gather opened two different types of state-authorized and funded syringe services programs (SSPs).[6] The first operated out of a church property in Centralia, Washington and the second was a mobile SSP clinic for individuals across Lewis County who could not travel to the Centralia location. The complaint states that almost all of Gather's patients chose to use the mobile clinic rather than the fixed location due to transportation barriers. In April 2024, Lewis County enacted Ordinance 1354, which Gather asserts limited its SSP operations. The ordinance restricted the operation of SSPs in the county in several ways by: (1) limiting where and how SSPs can operate by prohibiting mobile units and prohibiting fixed location SSPs from operating in residential areas or within 750 feet of any school, library, or public park; (2) prohibiting SSPs from distributing any "drug paraphernalia" other than sterile syringes; (3) requiring SSPs to operate a "one-to-one exchange," whereby a participant shall receive one sterile syringe in exchange for each used one; and (4) prohibiting any individual from working or volunteering for an SSP if he or she has been convicted of any drug related offense in the prior 24 months or has used the services of the SSP in the prior 24

[4] A "motion in limine" is a pretrial request that certain inadmissible evidence not be referred to or offered at trial. Typically, a party makes this motion when it believes that mere mention of the evidence during trial would be highly prejudicial and could not be remedied by an instruction to disregard. *Motion in limine*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[5] Central nervous system depressants are drugs that slow down brain activity and reduce nervous system function. Examples include alcohol, opioids, benzodiazepines, barbiturates, and cannabis. *See* Jena Hilliard, *Central Nervous System Depressants*, ADDICTION CENTER (Sept. 8, 2025), https://www.addictioncenter.com/drugs/drug-classifications/central-nervous-system-depressants/.

[6] SSPs provide individuals with sterile syringes and disposal for used syringes and tend to also provide individuals with overdose reversal medication, wound care, first aid supplies, drug testing kits, and referrals to health care and recovery support services.

months. SSPs that violate the ordinance face civil and criminal penalties. Gather claims that by enacting the ordinance, the county has all but eliminated access to its SSPs for most residents. According to the complaint, Gather shut down its mobile SSP clinic to comply with the ordinance and now only operates a one-to-one exchange SSP from its Centralia location. Gather is challenging the ordinance under Title II of the Americans with Disabilities Act (42 U.S.C. § 12131) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794, *et seq*.) arguing that it discriminates against disabled individuals on its face and in its application by impairing access to SSP services that are "designed for and required by individuals with SUD." Gather also brings forth claims that the ordinance violates the Washington Constitution's Free Exercise Clause by preventing the church from caring for the most vulnerable members of the community, which is an essential part of the church's mission and faith. Gather is seeking declaratory and injunctive relief from the court that would invalidate the ordinance and prohibit its application to Gather. *(Return to In This Issue)*

SECOND CIRCUIT RULES THAT NEW YORK'S CANNABIS DISPENSARY LICENSING SCHEME IS UNCONSTITUTIONAL

***Variscite NY Four, LLC v. New York State Cannabis Control Board, et al.*, U.S. Court of Appeals for the Second Circuit, Case No. 24-384 (opinion filed August 12, 2025).** In a 2-1 decision, the Second Circuit ruled that New York's cannabis dispensary licensing scheme, which prioritizes certain New York applicants, is unconstitutional under the Dormant Commerce Clause.[7] Under New York law any individual may apply for a license to cultivate, process, distribute, deliver, or dispense cannabis for sale, but the state gives special priority to anyone who: (1) is a member of a community disproportionately impacted by the enforcement of cannabis prohibition; (2) has an income lower than 80 percent of the median income of the county in which the applicant resides; and (3) was convicted of a New York cannabis related offense prior to March 31, 2021, or had a parent, guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to March 31, 2021, was convicted of a New York cannabis related offense. (N.Y. CANBS. LAW § 87(3) (McKinney 2025)). The plaintiffs are limited liability corporations (LLCs) that are majority-owned by California residents and applied for licenses to operate cannabis dispensaries in New York. The majority owners of the LLCs claimed to live in communities disproportionately impacted by cannabis prohibition in Los Angeles and had incomes lower than 80 percent of the median income of Los Angeles County, where they reside. However, the owners had cannabis convictions under California law, as opposed to New York law, and thus they were not eligible for special priority status.

The plaintiffs filed suit against New York cannabis regulators claiming that the state's procedure for issuing cannabis dispensary licenses violated the Dormant Commerce Clause of the U.S. Constitution because it establishes a preference for New York applicants. New York argued that: (1) its licensing scheme does not violate the Dormant Commerce Clause because its purpose is restorative justice, not economic protectionism; (2) in any event, the Dormant Commerce Clause does not bear upon its licensure scheme because cannabis is a federally illegal drug; and (3) the plaintiffs do not have a justiciable challenge. The district court denied the plaintiffs' request for preliminary relief on the grounds that the Dormant Commerce Clause does not apply to markets that Congress has criminalized. On appeal, the Second Circuit majority determined that the district court erred in denying the plaintiffs' request for relief, finding that New York's prioritization of applicants with convictions under New York law is a protectionist measure prohibited by the Dormant Commerce Clause. The majority noted that the only thing Congress has clearly authorized by criminalizing cannabis is federal prosecution for the manufacture, distribution, and possession of cannabis. The federal criminalization of cannabis does not give New York permission to "favor its residents over others whose businesses skirt the federal drug laws." The majority vacated the district court's decision and remanded the case for further proceedings. The dissent argued that it is not practical to conclude that the Dormant Commerce Clause bars

[7] The Dormant Commerce Clause is a constitutional principle that the Commerce Clause of the U.S. Constitution prevents state regulation of interstate commercial activity even when Congress has not acted under its Commerce Clause power to regulate that activity. *Dormant Commerce Clause*, BLACK'S LAW DICTIONARY (12th ed. 2024).

partial state restrictions on federally illegal interstate commerce. On September 25, 2025, the plaintiffs filed a petition for a rehearing. *(Return to In This Issue)*

FLORIDA MEDICAL CANNABIS USERS CAN SUE FEDERAL GOVERNMENT OVER FIREARM PROHIBITIONS

***Florida Commissioner of Agriculture, et al. v. Attorney General of the United States, et al.*, U.S. Court of Appeals for the Eleventh Circuit, Case No. 22-13893 (opinion filed August 20, 2025).** The Eleventh Circuit has ruled that medical cannabis users have the ability to sue the federal government over prohibitions on firearm ownership. Two Florida medical cannabis users who wished to purchase guns, and one gun owner who wished to participate in Florida's medical cannabis program, filed a lawsuit against the federal government to challenge the constitutionality of prohibiting medical cannabis users from purchasing and possessing firearms. Specifically, the plaintiffs challenged the constitutionality of 18 U.S.C. § 922(d)(3) and (g)(3) and the Bureau of Alcohol, Tobacco, Firearms, and Explosive's implementation of these statutes through 27 C.F.R. § 478.11. The challenged statutes and regulations prohibit "unlawful users" of controlled substances from being sold or possessing firearms. Because cannabis is still a Schedule I controlled substance on the federal level, the firearm prohibition applies to cannabis use. The federal government moved to dismiss the complaint, which the district court granted, holding that prohibiting medical cannabis users from possessing firearms was consistent with the nation's historical tradition of keeping guns out of the hands of individuals who: (1) engage in criminal conduct; and (2) are deemed dangerous—the two historical analogues offered by the federal government. On appeal, the plaintiffs argued that the district court should not have accepted the federal government's offered analogues because nothing in the complaint indicates that they are engaging in felonious conduct, and they cannot fairly be labeled as dangerous individuals based solely on their general use of medical cannabis. Accordingly, the plaintiffs argued that the federal government failed to meet its burden of showing that disarming state-law compliant medical cannabis users comports with the history and tradition of the Second Amendment. The Eleventh Circuit agreed with the plaintiffs and determined that the district court erred in granting the federal government's motion to dismiss. The court noted that, while there is a history of disarming convicted felons, there was nothing in the complaint indicating that the plaintiffs have ever been convicted of any crime. The only crime that the complaint plausibly alleges is simple possession of a controlled substance, which is a misdemeanor, and the federal government did not point to any historical tradition of disarming individuals engaged in misdemeanor conduct. Thus, the court determined that the plaintiffs are not "relevantly similar" to felons who have historically been disarmed. Furthermore, the court determined that the plaintiffs cannot be fairly labeled as dangerous individuals solely due to their medical cannabis use because there is no indication that the plaintiffs are engaged in any drug market aside from the Florida medical cannabis market. Thus, the court ruled that the federal government failed to establish that disarming the plaintiffs is consistent with the nation's history of firearm regulation. The court vacated the district court's order and remanded the case for further proceedings. *(Return to In This Issue)*

PENNSYLVANIA MEDICAL CANNABIS RETAILERS SUE UNLICENSED CANNABIS RETAILERS FOR UNFAIR COMPETITION

***Agape Total Health Care Inc., et al. v. Golden Hour LLC, et al.*, Pennsylvania Court of Common Pleas (Philadelphia County), Case No. 250803198 (suit filed August 27, 2025).** Three subsidiaries of Jushi Holdings Inc., a publicly traded, vertically integrated cannabis company, has filed suit against several unlicensed cannabis retailers, including vape shops, convenience stores, and online vendors in Pennsylvania over allegations that they are deliberately eroding Pennsylvania's heavily regulated medical cannabis market by manufacturing, distributing, marketing, and selling intoxicating cannabinoid products disguised as lawful hemp. Per Pennsylvania's Medical Marijuana Act (MMA), cannabis products may only be cultivated and processed by state-licensed growers and processors. (35 PA. STAT. AND CONS. STAT. ANN. § 10231.301, *et seq*.

(West 2025)). To participate in Pennsylvania's regulated cannabis market, entities must undergo a competitive application process, invest in secure infrastructure, submit to regular inspections, track products from "seed-to-sale," comply with mandatory testing, and adhere to strict packaging and marketing rules. Each of the plaintiffs holds one or more licenses issued by the Pennsylvania Department of Health under the MMA authorizing the cultivation, processing, and dispensing of medical cannabis within the Commonwealth. The plaintiffs assert that the defendants, as unlicensed processors, distributors, and sellers of intoxicating THC hemp-derived cannabinoid products, are evading the laws designed to protect consumers and maintain the integrity of the cannabis market. By evading the law, the plaintiffs claim that the defendants create unfair price competition because they can sell their products at significantly lower price points, as they do not bear the price of compliance. Additionally, the plaintiffs claim that the defendants' participation in the illegal cannabis market confuses consumers and diverts them from the regulated cannabis market, which results in lost sales and reduced profitability for the plaintiffs. By evading testing and safety requirements for cannabis products, the plaintiffs further assert that the defendants have eroded public confidence in the safety and legitimacy of legal cannabis products. The plaintiffs bring forth claims of common law unfair competition, conversion, tortious interference with contract, tortious interference with business relations, and civil conspiracy. The plaintiffs are requesting compensatory, consequential, and punitive damages, and have asked the court to enter injunctive relief prohibiting the defendants from marketing, selling, or distributing any cannabinoid product that is non-compliant with Pennsylvania law. *(Return to In This Issue)*

STATE APPELLATE COURT RULES HEMP-DERIVED PSYCHOACTIVE PRODUCTS ARE ILLEGAL IN MARYLAND

***Governor Wes Moore, et al. v. Maryland Hemp Coalition, et al.*, Appellate Court of Maryland, Case No. ACM-REG-1590-2023 (opinion filed September 9, 2025).** A Maryland intermediate appellate court has ruled that hemp-derived psychoactive products[8] are illegal in the state. In 2019, the Maryland General Assembly legalized agricultural hemp cultivation by excluding hemp from the definition of marijuana under the state's criminal code (MD. CODE ANN. CRIM. LAW § 5-501(e-1)(2) (West 2025)), but the General Assembly made it clear that the change also did not authorize the use or creation of hemp-derived psychoactive products. In 2022, the General Assembly passed legislation that prohibited the sale of delta-8 and delta-10 THC[9] products to individuals under the age of 21 as a piecemeal measure designed to protect children and young adults from hemp-derived psychoactive products while the state developed a comprehensive regulatory scheme. Then, later in 2022, Maryland voters approved a constitutional amendment that legalized cannabis use for adults. To carry out the regulatory mandate created by the constitutional amendment, the General Assembly enacted the Cannabis Reform Act which bans the sale of most hemp-derived psychoactive products by prohibiting products "not derived from naturally occurring biologically active chemical constituents." (MD. CODE ANN. ALCOHOLIC BEVERAGES & CANNABIS LAW § 36-1102(c) (West 2025)). For those products that are derived from naturally occurring biologically active chemical compounds, the Cannabis Reform Act established a licensing scheme administered by the Maryland Cannabis Administration. (MD. CODE ANN. ALCOHOLIC BEVERAGES & CANNABIS LAW § 36-401 through 411 (West 2025)). Under this framework, businesses may only sell edible or smokable products containing psychoactive levels of cannabis if the businesses have a license. (MD. CODE ANN. ALCOHOLIC BEVERAGES & CANNABIS LAW § 36-1102(b)(1) (West 2025)). In July 2023, the Maryland Hemp Coalition (Hemp Coalition) filed suit in the circuit court for Washington County, Maryland, seeking a declaratory judgment that the Cannabis Reform Act's licensing scheme violated Articles 24 and 41 of the Maryland Declaration of Rights and Article III, Section 40 of the Maryland Constitution. The Hemp Coalition sought a preliminary injunction, which the circuit court granted and enjoined the state from enforcing § 36-1102 against any person who was already

[8] The opinion refers to hemp that has been synthetically treated to increase its THC content to make edible or smokable products with psychoactive properties as "hemp-derived psychoactive products."
[9] For more information on delta-8 and delta-10 THC and how they differ from delta-9 THC, please refer to LAPPA's "Explaining Cannabinoids" factsheet, available here.

lawfully in the business of selling hemp-derived products prior to July 1, 2023. However, the circuit court permitted the state to continue its process for granting new cannabis licenses. In response to the preliminary injunction, the state appealed. The Hemp Coalition filed a cross-appeal arguing that the circuit court's injunction did not go far enough because it failed to extend the preliminary injunction to the ongoing issuance of cannabis licenses.

On appeal, the state argued that the circuit court abused its discretion in granting the preliminary injunction. The circuit court granted the preliminary injunction after it determined that the Hemp Coalition was likely to succeed on the merits on three grounds: (1) that the 2018 federal Farm Bill (Pub L. No. 115-334) preempted the Cannabis Reform Act's licensing scheme; (2) that the Cannabis Reform Act violated Article 41 of the Maryland Declaration of Rights; and (3) that the Cannabis Reform Act violated Article 24 of the Maryland Declaration of Rights. The circuit court determined that the 2018 Farm Bill preempted the Cannabis Reform Act's licensing scheme because it found that the state had failed to submit a regulatory plan to the U.S. Department of Agriculture (USDA). The appeals court, however, determined that the circuit court erred as a matter of law in finding preemption because Maryland in fact did submit a hemp plan to the USDA in 2020. As a result, by the plain text of the federal law, Maryland's law is not preempted, and, thus, the Hemp Coalition has no likelihood of succeeding in any argument regarding preemption. Next, the circuit court found that the Hemp Coalition is likely to succeed on the merits of its claim that the Cannabis Reform Act creates an unconstitutional monopoly under Article 41 of the Maryland Declaration of Rights. Under Article 41, an unconstitutional monopoly is an exclusive grant given by the state to operate a business in a particular industry. However, even if a state grant satisfies the definition of an unconstitutional monopoly, it may nevertheless be permissible if it falls under an exception. A state grant does not violate Article 41 if either: (1) the monopoly grant is "given in reference to some matter not of common right;" or (2) the monopoly grant is "reasonably required for the protection of some public interest." The appeals court determined that the Cannabis Reform Act does not create an unconstitutional monopoly because it satisfies the common right exception to Article 41 by granting exclusive rights to markets that were previously prohibited. In defense of its conclusion that the Cannabis Reform Act does not infringe on a matter of common right, the appeals court stated that the 2022 Maryland law prohibiting the sale of delta-8 and delta-10 THC products to those under 21 did not create a common right to engage in the limited hemp-derived psychoactive products market because the legislative history of the bill indicates that it was not endorsing or legalizing the sale of delta-8 and delta-10 products for those 21 or older. In other words, the court determined that the law did not make hemp-derived psychoactive products legal for adults just because it made them illegal for minors. Additionally, the court noted that the fact that the regulation of Maryland's hemp market has been lax and that many hemp-derived psychoactive products are sold in stores across the state does not mean that engaging in this limited market was a common right. Regardless of the reason why the enforcement of prohibitions on selling hemp-derived psychoactive products was lax, the court ruled that the lack of enforcement did not create a common right to engage in the hemp-derived psychoactive products market in the state prior to the enactment of the Cannabis Reform Act. In sum, the court determined that hemp-derived psychoactive products are now and have always been illegal in Maryland. In addition to satisfying the "common right" exception, the court determined that the Cannabis Reform Act is also permissible under Article 41 because it is reasonably required for the public interest.

The circuit court also found that the Hemp Coalition was likely to succeed on the merits of its argument that the Cannabis Reform Act violated the equal protection component of Article 24 of the Maryland Declaration of Rights because the social equity applicant designation in the law was irrational. The appeals court disagreed, finding that the Cannabis Reform Act's social equity applicant designation is rationally related to a legitimate, non-arbitrary government interest. The social equity applicant designation was intended to redress the harms to communities affected by the "War on Drugs" and create a more inclusive cannabis industry, which the court determined the state had a legitimate interest in doing. Accordingly, the court ruled that the Hemp Coalition cannot establish a likelihood of success on its Article 24 claim and that the circuit court erred in finding otherwise. Finally, in its cross-appeal, the Hemp Coalition argued that the circuit court's refusal to enjoin the state from issuing future licenses was erroneous because the state could continue to commit the

alleged constitutional violations. In response, the state argued that the Hemp Coalition does not have standing to challenge the issuance of licenses. The appeals court determined that the Hemp Coalition has standing to challenge the issuance of licenses but ruled that its challenge ultimately failed because the Hemp Coalition's challenge to the first round of licenses is moot and its challenge to subsequent license rounds is not yet ripe. Thus, the court affirmed the circuit court's order permitting the state to continue issuing licenses. The court reversed the circuit court's preliminary injunction against the enforcement of § 36-1102 for individuals selling hemp-derived psychoactive products prior to the enactment of the Cannabis Reform Act and affirmed the circuit court's decision to permit the issuance of licenses under the Cannabis Reform Act. *(Return to In This Issue)*

CALIFORNIA CANNABIS COMPANY ASSERTS IRS TAX PROVISION IS UNCONSTITUTIONAL

***California Organic Treatment Center v. Commissioner of Internal Revenue*, U.S. Tax Court, Case No. 13316-25 (suit filed September 15, 2025).** A California licensed medical and recreational cannabis retailer has filed suit against the Internal Revenue Service (IRS) arguing that the agency is applying Internal Revenue Code Section 280E (26 U.S.C. § 280E) in an unconstitutional manner. The California Organic Treatment Center (California Organic) filed a petition before the U.S. Tax Court after the IRS determined that the company was not entitled to deduct its cost of goods sold on its 2021 tax return, thereby increasing its taxable income by the amount of $15.9 million for the 2021 tax year. As a result, the IRS issued a $3.3 million tax deficiency and a $668,000 penalty against the company. The IRS determined that California Organic was not permitted to deduct its costs of goods sold due to Section 280E, which is a provision that prohibits deductions for businesses that partake in the trafficking of Schedule I and II controlled substances under the federal Controlled Substances Act (CSA; 21 U.S.C. § 801, *et seq*.). The IRS has enforced Section 280E as it relates to federal taxes, even if a company's business is legal in its home state. California Organic argues that the IRS erred in serving it with a notice of deficiency for the 2021 tax year because the company is not trafficking in a controlled substance as required under Section 280E.

The company claims that the application of Section 280E does not turn on whether a substance is, in fact, scheduled as Schedule I or II under the CSA but instead depends on the nature of the drug itself and whether its characteristics meet the requirements of a Schedule I or II controlled substance, as determined by the federal government. The complaint references the U.S. Department of Health and Human Services' (HHS) August 2023 determination that cannabis does not meet the definition of a Schedule I or II controlled substance and should be reduced to Schedule III. (Letter from Rachel L. Levine, Assistant Secretary for Health, Department of Health and Human Services, to Anne Milgram, Administrator, Drug Enforcement Administration (Aug. 29, 2023)). Per the complaint, HHS's determination noted several developments that occurred with respect to cannabis, including the passage of the 2018 Farm Bill (Pub L. No. 115-334), the U.S. Food and Drug Administration's approval of Epidiolex, which is a medication that contains cannabidiol, and the U.S. Drug Enforcement Administration's rescheduling of cannabidiol drugs and that these developments were persuasive in HHS's recommendation to reschedule cannabis. California Organics asserts that taken together, these facts and federal developments indicate that cannabis was not within the meaning of a Schedule I or II controlled substance as early as 2018, and thus, the company was not subject to Section 280E during the year in question. California Organics also argues that during the year in question, cannabis was not "prohibited" by state or federal law as required by Section 280E because: (1) federal Attorney General memoranda since 2009 have provided that it is not a priority of the U.S. Department of Justice (DOJ) to prosecute those participating in state-legal medical cannabis programs; and (2) beginning in 2014 and each year thereafter, Congress approved appropriations riders barring the DOJ from enforcing the CSA against those participating in state-legal medical cannabis programs. In addition to California Organics' claims that Section 280E does not apply to its business, the company also argues that the facts necessary for federal jurisdiction over state-legal intrastate cannabis activities as established by the 2005 U.S. Supreme Court Case *Gonzales v. Raich* (545 U.S. 1) are no longer satisfied and, as such, the federal government no longer has the

authority to enforce the CSA via the Commerce Clause of the U.S. Constitution in states with legal cannabis activity. Furthermore, the suit asserts that Section 280E is unconstitutional under the Sixteenth Amendment of the U.S. Constitution because it results in businesses having to pay income taxes on amounts far greater than their realized income. California Organics is asking the IRS to redetermine the deficiency and penalty asserted in the notice of deficiency letter that the company received for the 2021 tax year. *(Return to In This Issue)*

TENTH CIRCUIT RULES OKLAHOMA ATTORNEY CAN FACE FEDERAL DRUG CHARGES FOR VIOLATING STATE MEDICAL CANNABIS LAW

***United States v. Matthew Alan Stacy*, U.S. Court of Appeals for the Tenth Circuit, Case No. 25-6029 (opinion filed September 26, 2025).** The Tenth Circuit has ruled that federal drug charges can proceed against an individual who violated Oklahoma's medical cannabis law (OKLA. STAT. ANN. tit. 63, § 420, *et seq*. (West 2025)). In June 2018, Oklahoma legalized medical cannabis through a state ballot initiative. Under Oklahoma law, an individual seeking to establish a medical cannabis business must have two types of authorizations. First, the individual must receive a medical cannabis business license from the Oklahoma Medical Marijuana Authority (OMMA). The law delineates various requirements for the license, including a residency requirement. To meet the residency requirement, any applicant applying as an entity must show that 75 percent of all members, managers, executive officers, partners, board members, or any other form of business ownership are Oklahoma residents. (OKLA. STAT. ANN. tit. 63, § 427.14 (West 2025)). Second, the individual must obtain a registration issued by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBN). This registration allows the individual to manufacture, distribute, or dispense medical cannabis, and without such registration, those acts violate the Oklahoma Uniform Controlled Substances Act. (OKLA. ADMIN. CODE § 475:10-1-9(c) (West 2025)). From August 2019 to June 2021, defendant Matthew Alan Stacy allegedly conspired with others to subvert Oklahoma's residency requirements for medical cannabis businesses through a "ghost-licensing scheme." As a licensed attorney, Stacey set up a business structure designed to hide the true owners of various cannabis businesses via his law firm. First, Stacy formed a limited liability company (LLC) with Oklahoma resident ownership of at least 75 percent to meet the license requirements. This LLC served as the license holding entity and would apply for the requisite OMMA license and OBN registration. Second, Stacy formed another LLC owned by his non-resident clients. The non-resident clients would manage and operate the commercial medical cannabis grow through this second LLC, which did not apply for either an OMMA license or an OBN registration. Third, Stacy drafted a management agreement between the licensing company and the operating company. As part of the agreement, the licensing company would grant the operating company: (1) sole responsibility for the lawful and profitable growth, cultivation, harvest, and production of cannabis; (2) the right to sell the cannabis production; and (3) a management fee equal to 100 percent of the revenue generated by the sale of the grown cannabis. In exchange, the operating company would pay an annual fee of up to $15,000 to the licensing company, which compensated the Oklahoma residents in the licensing company.

In October 2022, after his scheme was discovered, Oklahoma filed 34 felony charges against Stacy. The state charges remain pending against Stacy, with a jury trial set for January 2026. Then in April 2024, a federal grand jury returned an indictment against Stacy, charging him with drug conspiracy in violation of 21 U.S.C. § 846 and maintaining a drug-involved premises in violation of 21 U.S.C. § 856. Stacy moved for the district court to enjoin his federal prosecution arguing that the Rohrabacher-Farr amendment[10] bars the U.S. Department of Justice (DOJ) from spending funds to prosecute him. The district court denied Stacy's motion, and he appealed. On appeal, the parties asserted two issues: (1) whether the Rohrabacher-Farr amendment bars the DOJ from funding the prosecutions of private individuals; and (2) whether the district court abused its discretion by denying Stacy's motion to enjoin the prosecution. Stacy argued that the rider bars the DOJ from funding the prosecutions of private individuals who comply with state medical cannabis laws, while the

[10] In 2014, Congress began to enact an annual appropriations rider, known as the Rohrabacher-Farr amendment, to bar the DOJ from using appropriated funds to impede medical cannabis laws at the state level.

government argued that the rider bars the prosecution of only state officials who implement a state's medical cannabis laws. The court concluded, based on the plain language of the rider, that it bars prosecutions of private individuals who comply with state medical cannabis laws. The court reasoned that if the DOJ were to prosecute individuals under federal law for conduct that complies with state law, those prosecutions would deter the state-authorized use of medical cannabis and cumulatively prevent the state from giving practical effect to its laws. Based on the court's conclusion, Stacy then argued that he complied with Oklahoma's medical cannabis laws, such that the government's funding of the prosecution against him would violate the rider. To fall within the rider's protection, the court noted that the moving party must prove by a preponderance of the evidence that he or she complied with the state's medical cannabis law. Stacy argued that his two-entity business structure complied with Oklahoma law, but the court determined that his failure to disclose the operating companies and their owners amounted to a failure to substantially comply with the law. Based on the conclusion that Stacey failed to substantially comply with Oklahoma law, the court ruled that the district court did not abuse its discretion in declining to enjoin the federal prosecution against him. *(Return to In This Issue)*

NEW YORK ATTORNEY GENERAL ANNOUNCES SETTLEMENT WITH INDIVIOR TO STOP THE MISLEADING MARKETING OF ITS OVERDOSE REVERSAL MEDICATION

(Settlement announced September 30, 2025). New York Attorney General Letitia James announced a settlement with the pharmaceutical company Indivior to stop the company's misleading promotion of its overdose reversal medication, Opvee (nalmefene), in the state. Despite knowing that Opvee is not authorized by the New York State Department of Health (DOH) for use without a prescription, Indivior marketed the drug to state public officials and promoted the drug's availability as if it were interchangeable with Narcan (naloxone). An investigation by the state attorney general's office found that Indivior promoted Opvee to county administrators, commissioners, sheriffs, mental health officers, and emergency medical services chiefs in various counties. In 2024, a sheriff's office asked the DOH if it could use Opvee instead of Narcan. The DOH responded that Opvee was an unauthorized medication and explained that Opvee was not approved for non-prescription use or use with a standing order. When the sheriff's office shared this information with Indivior, the company falsely advised the sheriff's office to write its own standing order for Opvee. The sheriff's office then purchased $22,500 worth of the drug from Indivior in violation of state law. As part of the settlement, Indivior must refund the $22,500 purchase price of the improperly sold doses and accept the return of all unused units. Additionally, the settlement requires Indivior to overhaul its marketing practices in New York to ensure that sales staff accurately represents Opvee's legal status and refrain from making any false or misleading claims. Indivior is also prohibited from selling Opvee to public agencies in New York unless and until it is expressly authorized by state regulators. Two days after signing onto the settlement, Indivior informed its stakeholders that it would discontinue the promotion of Opvee altogether. *(Return to In This Issue)*

BALTIMORE ACCEPTS REDUCED JURY AWARD TO AVOID NEW TRIAL WITH OPIOID DISTRIBUTORS

***Mayor & City Council of Baltimore v. Purdue Pharma L.P., et al.*, Circuit Court of Maryland (Baltimore City), Case No. 24-C-18-000515 (reduced award accepted August 14, 2025).** For previous updates about this case, please refer to the August 2025 issue of the LAPPA *Case Law Monitor*, available here. The City of Baltimore has agreed to accept a reduced jury award in its litigation against the drug distributors McKesson and AmerisourceBergen (now known as Cencora) to avoid a new trial. Instead of the $266 million verdict originally awarded by the jury, the city will receive $52 million, plus an additional abatement of $100 million. While the amount is lower than the jury awarded the city, the mayor informed the press that the reduced

amount is still more than the city would have received had it joined the global settlement agreement with the distributors. *(Return to In This Issue)*

CENCORA REACHES SETTLEMENT WITH PENSION FUNDS OVER COMPANY'S HANDLING OF OPIOIDS

***Lebanon County Employees' Retirement Fund, et al. v. Steven H. Collis, et al.*, Delaware Chancery Court, Case No. 2021-1118 (settlement announced August 15, 2025).** For previous updates on this case, please refer to the February 2024 issue of the LAPPA *Case Law Monitor*, available here. Directors of Cencora, Inc. (formerly AmerisourceBergen) have agreed to an $111 million settlement to resolve claims by pension funds that they ignored years of red flags about the company's handling of opioids and failed to set up required systems to monitor sales of the drugs. The deal ends litigation accusing the directors of violating their legal duties to investors by failing to adopt and implement policies and practices to prevent the unlawful distribution of opioids. Cencora officials stated in a court filing that their handling of opioids did not violate any law and that the company agreed to the deal to "eliminate the burden, expense, disruption, and distraction inherent in further litigation." *(Return to In This Issue)*

DELAWARE SUPREME COURT AFFIRMS THAT CVS CANNOT USE INSURANCE POLICIES TO COVER OPIOID LAWSUITS

***In re CVS Opioid Insurance Litigation*, Delaware Supreme Court, Case No. 482, 2024, (opinion filed August 18, 2025).** For previous updates on this case, please refer to the October 2024 issue of the LAPPA *Case Law Monitor*, available here. The Delaware Supreme Court affirmed the superior court's ruling that insurers do not have an obligation to defend or indemnify CVS Health (CVS) in litigation involving the pharmacy chain's role in the opioid epidemic. On appeal, CVS argued that its policies' pharmacist liability endorsement afforded broader coverage than the policies at issue in *ACE American Insurance Co. v. Rite Aid Corp.* (270 A.3d 239). The court disagreed with CVS, holding that the pharmacist liability endorsement included in the policies do not modify the threshold policy requirement that damages must be "because of bodily injury or property damage." Thus, because the underlying suits against CVS did not seek damages because of any specific individual's bodily injury or damage to any specific property, the insurance carriers did not have a duty to defend or indemnify the company. *(Return to In This Issue)*

FEDERAL DISTRICT COURT AGAIN DISMISSES WHISTLEBLOWER 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 August 27, 2025).** For previous updates on this case, please refer to the June 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal district court has again granted Publix Super Markets, Inc.'s (Publix) motion to dismiss a whistleblower suit alleging opioid prescription fraud, but this time with prejudice. Despite the whistleblower, which is a partnership comprised of two former Publix pharmacists, amending the complaint, the court determined that the complaint failed to adequately allege that Publix violated the False Claims Act (31 U.S.C. § 3729) by billing federal healthcare programs after overlooking prescription red flags. The court ruled that the whistleblower again failed to provide representative examples of actual claims that Publix submitted to the government that were based on invalid prescriptions. *(Return to In This Issue)*

DOJ INVESTIGATING KROGER FOR ALLEGED FALSE MEDICARE OPIOID CLAIMS

(Investigation revealed August 2025). The U.S. Department of Justice (DOJ) is investigating the supermarket chain Kroger over potential False Claims Act (31 U.S.C. § 3729) violations involving opioid prescriptions. As part of the investigation, the DOJ has asked Kroger to disclose certain patient information, including prescribers' names, prescription histories, and underlying diagnoses. Kroger has refused to provide certain personal health information requested by the DOJ without a court order. Kroger stated that it refused to release the information because of potential liability if the information were to be accidentally released to the public. The DOJ is arguing that it has the authority to obtain patient data and that Kroger lacks legal standing to withhold the information. The investigation remains ongoing. *(Return to In This Issue)*

BANKRUPTCY COURT DISMISSES MOST OF ENDO TRUSTEE'S CLAIMS AGAINST MCKINSEY & CO.

***Matthew Dundon v. McKinsey & Company, Inc., et al.*, U.S. Bankruptcy Court for the Southern District of New York, Case No. 24-07027-jlg (opinion filed September 29, 2025).** For previous updates on this case, please refer to the October 2024 issue of the LAPPA *Case Law Monitor*, available here. A bankruptcy court has ruled to dismiss most of the claims brought by a trustee for Endo International, PLC's (Endo) bankruptcy plan against the consulting firm McKinsey & Company (McKinsey). Endo's trustee filed the suit against McKinsey in August 2024 on behalf of a trust created to pay Endo's unsecured creditors over allegations that the consulting firm caused Endo harm through its advice on marketing and selling opioids. The suit had accused McKinsey of implementing an aggressive sales campaign between 2015 and 2016 to increase sales of Endo's branded oxymorphone drug, Opana ER. The trustee claimed that McKinsey's tactics led to widespread addiction, large corporate liabilities, and financial ruin for Endo. McKinsey argued that the trustee's suit improperly tried to shift blame onto the consulting firm when it was Endo's leaders who were actually to blame for the company's demise. The court dismissed eight of the nine claims brought forth by the trustee. The court ruled that the trustee's allegations that McKinsey aided and abetted breaches of fiduciary duty by Endo's officers and directors by steering them toward reckless sales strategies were untimely. Additionally, the court rejected the trustee's attempt to recover around $8.5 million in payments between Endo and McKinsey between 2015 and 2016, finding that the trustee could not prove that the payments were made without fair consideration or reasonable value. The only claim that the court allowed was for the trustee to continue to pursue an indemnification claim under an agreement between Endo and McKinsey for $344 million in defense costs and $240 million in professional fees. *(Return to In This Issue)*

OPIOID=RELATED LITIGATION AGAINST PHARMACY BENEFIT MANAGERS

- ***State of West Virginia v. Evernorth Health, Inc., et al.*, U.S. District Court for the Northern District of West Virginia, Case No. 5:25-cv-00182-JPB (suit filed August 15, 2025).** West Virginia has joined the growing list of states that have filed lawsuits against pharmacy benefit managers (PBMs) over allegations that they exacerbated the opioid crisis. The state claims that the PBM Express Scripts violated state and federal law by: (1) conspiring with opioid manufacturers to deceptively market opioids to the public; (2) using rebates and fees to incentivize the increased prescribing and sale of opioids; (3) reducing protocols that placed limits on the amount of opioids prescribed; and (4) dispensing opioids through mail-order pharmacies that lacked adequate controls and oversight. The suit asserts that Express Scripts violated the federal Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961, *et seq*.) and the West Virginia Consumer Credit and Protection

Act (W. VA. CODE ANN. § 46A-6-104 (West 2025), as well as created a public nuisance. The state is requesting the abatement of the public nuisance claim and actual and punitive damages.

- **Optum Rx sues five Kentucky counties in an attempt to force them out of national opioid litigation against the company.** In June 2025, the PBM Optum Rx sued Anderson (25-CI-00184), Boyd (Case No. 25-CI-00491), Christian (Case No. 25-CI-00599), Nicholas (Case No. 25-CI-00060), and Oldham (Case No. 25-CI-00403) counties in Kentucky state court over allegations that the counties violated Kentucky's open meetings law (KY. REV. STAT. ANN. § 61.800, *et seq*. (West 2025)) when they decided to join a motion seeking leave to amend the complaint in the national opioid multidistrict litigation (*In re National Prescription Opiate Litigation*, U.S. District Court for the Northern District of Ohio, Case No. 1:17-md-2804) to assert claims against Optum Rx without holding a public meeting or vote on the matter. Optum Rx asserts that Kentucky's attorney general and appellate courts have both determined that any final decision about whether to initiate litigation against a particular party must be made at a meeting open to the public. Optum Rx is asking the courts to force the counties to make their decisions again but this time, in an open meeting. As of late July 2025, all five counties have filed motions to dismiss Optum Rx's claims, arguing that asking a judge to amend a complaint was a routine, procedural step that did not require a public meeting. The counties also asserted that they held an open meeting in 2017 that kicked off their involvement in the national litigation and authorize future amendments to that litigation. Hearings on the counties' motion to dismiss occurred in late August and early September.
- ***The People of the State of California v. Express Scripts, Inc., et al.*, U.S. Court of Appeals for the Ninth Circuit, Case No. 24-1972 (opinion filed September 8, 2025).** For previous updates on this case, please refer to the October 2023 issue of the LAPPA *Case Law Monitor*, available here. The Ninth Circuit has ruled that Express Scripts and Optum Rx must face allegations in state court that they contributed to the opioid crisis in California. Affirming a district court's ruling, the Ninth Circuit rejected the PBMs' appeal to remove the case to federal court, finding that California sufficiently narrowed its case to focus on actions within the state. The PBMs had argued that their business under state and federal law warranted removal to federal court. The court disagreed, ruling that the PBMs' federal and non-federal business were not "inextricably intertwined." *(Return to In This Issue)*

OPIOID-RELATED SECURITIES LITIGATION

- ***David Holland, et al. v. John T. Standley, et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:23-cv-02962-KBH (opinion filed August 21, 2025).** A federal district court has ruled that Rite Aid Corp. (Rite Aid) investors cannot proceed with a proposed class action against several Rite Aid executives over the company's opioid liability. The investors alleged that in an effort to increase prescription revenue from at least 2015 to 2019, Rite Aid improperly and knowingly filled unnecessary prescriptions for opioids in violation of U.S. law. The plaintiffs asserted that the defendants concealed evidence demonstrating that Rite Aid had significant legal and regulatory exposure. In March 2023, the U.S. Department of Justice filed a complaint against Rite Aid alleging that the company failed to implement effective controls to prevent the illegal and improper dispensing of opioids. News of the lawsuit resulted in Rite Aid's stock falling over 18 percent. The plaintiffs brought forth claims alleging that the defendants violated the Securities Exchange Act (15 U.S.C. 78j(b)), which prohibits fraud in connection with the sale or purchase of a security. The plaintiffs contended that the defendants failed to adequately disclose in Rite Aid's Securities and Exchange Commission (SEC) filings the risk of legal liability as it related to potential and/or active opioid litigation. The defendants argued that the challenged statements in the filings were not false or misleading because the risk of pending litigation was adequately disclosed with the amount of knowledge that was available to the company at the time. The defendants also argued that securities laws do not require a company to accuse itself of wrongdoing, therefore making the disclosures accurate and in compliance with relevant regulations. The court determined that the statements in Rite Aid's SEC filings were not false or misleading because the company repeatedly acknowledged in the filings that its statements on the litigation before it were beliefs and opinions, not statements of facts. The court also noted that the statements in the filings were accompanied by cautionary language throughout, asserting that "[Rite Aid] is not able to predict the outcome of these matters." Furthermore, the court ruled that the plaintiffs' arguments that the risks of litigation had already transpired

because the defendants knew that they were distributing illegal prescriptions failed because securities law does not require a company to accuse itself of wrongdoing. Thus, because the statements in the filings were not false or misleading, the court granted the defendants' motion to dismiss.

- ***In re Walmart Inc. Securities Litigation*, U.S. Court of Appeals for the Third Circuit, Case No. 24-1818 (opinion filed August 29, 2025).** For previous updates on this case, please refer to the June 2024 issue of the LAPPA *Case Law Monitor*, available here. The Third Circuit has affirmed a district court's dismissal of a shareholder lawsuit against Walmart, Inc. (Walmart) alleging violations of the Securities Exchange Act. The investors had alleged that Walmart failed to sufficiently disclose U.S. government criminal and civil investigations against the company in certain annual and quarterly SEC filings. The Third Circuit agreed with the district court that Walmart's statements in the SEC filings were not misleading and that its disclosures as the investigations progressed were sufficient. The court ruled that the information that Walmart disclosed was adequate, as it described that the company was under investigation, what the investigation was for, and that the company could not provide an estimated liability at that time.
- ***In re Indivior PLC Securities Litigation* (formerly captioned *Herbst Capital Management, LLC v. Indivior PLC, et al.*), U.S. District Court for the Eastern District of Virginia, Case No. 3:24-cv-00554 (opinion filed August 6, 2025).** For previous updates on this case, please refer to the August 2023 issue of the LAPPA *Case Law Monitor*, available here. A federal court has ruled to dismiss a securities fraud suit against the pharmaceutical company Indivior PLC in which investors alleged that the company misrepresented information about the market for Sublocade (extended-release buprenorphine). Investors sued Indivior after the company announced that it was cutting its 2024 revenue forecast for Sublocade citing Medicaid disenrollments triggered by the end of the COVID-19 Public Health Emergency in early 2023. The adjusted revenue forecast resulted in Indivior's stock price falling almost 34 percent. The plaintiff alleged that Indivior knowingly or recklessly misled investors regarding the impact of Medicaid disenrollments on the sales of Sublocade. Indivior argued that its statements were not false or misleading because they constituted future performance projections which were not guarantees, were stated in the form of opinions, and ultimately fell within the safe harbor provisions of the Private Securities Litigation Reform Act (PSLRA; 15 U.S.C. § 78u-4). The PSLRA safe harbor provision prevents liability for certain forward-looking statements when such statements are accompanied by meaningful cautionary language or when the plaintiff fails to prove that the speaker made the statements with actual knowledge that the statement was false or misleading. The court determined that Indivior's language fell under the PSLRA safe harbor provision "because it provided meaningful, extensive, and specific caution directly related to the statements concerning Medicaid disenrollment. The court also ruled that the plaintiffs failed to show the necessary level of intent for securities fraud. The plaintiff chose not to file an amended complaint and instead requested an entry of judgment, which the court granted on September 15, 2025. The plaintiff has until October 15, 2025 to file a notice of appeal. *(Return to In This Issue)*

BANKRUPTCY JUDGE APPROVES BONUS PLAN FOR PURDUE PHARMA CEO

***In re Purdue Pharma L.P.*, U.S. Bankruptcy Court for the Southern District of New York, Case No. 19-23649 (bonus plan approved September 17, 2025).** For previous updates on this case, please refer to the August 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal bankruptcy court judge has approved Purdue Pharma's (Purdue) request to pay its chief executive officer (CEO) up to nearly $3 million in annual performance incentive pay as the company continues to work through its bankruptcy proceedings. The judge determined that Purdue's 2025 key employee bonus program is consistent with prior iterations over the course of the company's Chapter 11 case and is acceptable. The proposed incentive plan was met without objection following creditor committee discussions and some modifications to the CEO's compensation target. According to court documents, the CEO agreed to reduce his potential March 2026 payout by $250,000 and further agreed to donate another $250,000 to "a nationwide not-for-profit organization that addresses opioid use and addiction." *(Return to In This Issue)*

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 disorder, 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 policymakers and practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone access laws, law enforcement deflection to treatment, medication for addiction treatment in correctional settings, diversion in healthcare settings, and the involuntary commitment of individuals with substance use disorder.

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