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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IOWA PHARMACIST FACES LAWSUIT FOR FAILING TO PROPERLY DISPOSE OF CONTROLLED SUBSTANCES

***United States v. Joseph G. Rashid, et al.*, U.S. District Court for the Southern District of Iowa, Case No. 3:25-cv-00121-RGE-WPK (suit filed November 6, 2025).** The U.S. Attorney's Office for the Southern District of Iowa has filed charges against pharmacist Joseph Rashid, the owner and operator of Rashid Pharmacy in Fort Madison, Iowa from 1997 until at least 2021. Federal law requires expired controlled substances to be destroyed by the pharmacy possessing and dispensing them (21 C.F.R. § 1317.05). A pharmacy may destroy expired controlled substances through the use of a "reverse distributor" (*i.e.*, a licensed entity authorized to collect and destroy controlled substances), or through its own means, rendering them unusable and "non-retrievable" (21 C.F.R. § 1317.90). Regardless of the way a pharmacy elects to destroy its controlled substances, federal law requires the completion of a Drug Enforcement Administration (DEA) form known as DEA Form 41 (21 C.F.R. § 1317.05(a)(4)(i)) for recordkeeping purposes and to track destroyed drugs. In March 2021, law enforcement officials executed a federal search warrant at Rashid Pharmacy and discovered bags and boxes of unlabeled pill bottles, partially used blister packs, and loose pills in Rashid's personal office space. During the search, law enforcement did not find any completed DEA form 41s at the pharmacy, and the appropriate regional DEA office did not receive any completed Form 41s from the pharmacy during the times relevant to this lawsuit. Law enforcement did find, however, homemade destruction logs signed by Rashid, which alleged to include the names, quantities, and dates of destruction for expired, surrendered, or otherwise unusable controlled substances, but the entries on the destruction log matched drugs found improperly stored during the execution of the search warrant. The U.S. Attorney's Office charged Rashid with 32 counts of violating the federal Controlled Substances Act (21 U.S.C. § 842(a)(5)) for failing to keep accurate records. The prosecution is requesting civil penalties of up to $19,246 per violation. *(Return to In This Issue)*

MOTHER ENTERS NO CONTEST PLEA TO CHILD ABUSE CHARGES AFTER CHILDREN DIE FROM FENTANYL EXPOSURE

***The People of the State of California v. Jestice James*, Los Angeles County Superior Court, Case No. 24VWCF01433-01 (sentence issued October 15, 2025).** For previous updates on this case, please refer to the August 2024 issue of the LAPPA *Case Law Monitor*, available here. Jestice James has pleaded no contest to

child abuse charges in connection with the fentanyl-related deaths of her twin three-year-old sons. According to court records, James had been using fentanyl outside of her apartment and placed the unused remaining fentanyl in a container inside of her purse. The twins got into the purse while James was asleep and ingested the fentanyl. James discovered the boys not breathing the following morning and paramedics transported them to the hospital where doctors pronounced one boy dead that day and pronounced the other boy dead three days later. The medical examiner determined that the children died of fentanyl toxicity. Prosecutors charged James with murder and child abuse, but the murder counts were dismissed as part of her plea deal. The court sentenced James to 18 years in state prison. *(Return to In This Issue)*

EEOC FILES SUIT AGAINST CONCRETE COMPANY ALLEGING IT DISCRIMINATED AGAINST APPLICANTS WHO USE MAT

***U.S. Equal Employment Opportunity Commission v. Wrightway Ready-Mix, LLC, et al.*, U.S. District Court for the Southern District of West Virginia, Case No. 2:25-cv-00711 (suit filed December 2, 2025).** The U.S. Equal Employment Opportunity Commission (EEOC) has brought a lawsuit against the concrete and construction company Wrightway Ready-Mix, LLC (Wrightway) and its parent company over allegations that it violated Title I of the Americans with Disabilities Act (ADA; 42 U.S.C. § 12112) by discriminating against applicants with opioid use disorder (OUD) who use medication for addiction treatment (MAT). John Moore used prescription methadone to manage his OUD. In late 2021, Moore learned that Wrightway was hiring general laborers and applied for one of the positions. According to the complaint, Moore was qualified to perform, with or without reasonable accommodation, the essential functions of the job. The hiring manager for Wrightway invited Moore to come in for a pre-employment interview and asked him to bring with him any medications that he was taking so that he could provide the company with information about those medications prior to taking a pre-employment drug test. On February 9, 2022, Moore went to Wrightway for his interview, and during the interview, he disclosed to the hiring manager that he took methadone and that he brought the prescription with him. The hiring manager informed Moore that he did not need to see the medication because he could not hire Moore due to company policy. The complaint asserts that since the 1990s, Wrightway has had a policy of categorically refusing to employ any workers who use MAT. After speaking with the hiring manager, Moore asked to speak with someone from human resources. Wrightway's head of human resources again informed Moore that the company could not hire him because of its policy on MAT. As per the complaint, no one at Wrightway asked Moore any questions about his use of MAT, any side effects associated with his use of MAT, or any possible risk that his use of MAT might present to his ability to safely perform the essential functions of the job. Moore filed a complaint with the EEOC, and in September 2024, the EEOC issued the defendants an administrative determination that found reasonable cause to believe that they violated the ADA by subjecting Moore to: (1) denial of hire on the basis of disability; (2) an unlawful qualification standard or other selection criterion that screens out or tends to screen out individuals with a disability; (3) an unlawful pre-employment medical inquiry as to whether he is an individual with a disability or as to the nature or severity of such disability; and (4) denial of hire because of information obtained from the unlawful pre-employment medical inquiry. The EEOC also found reasonable cause to believe that the defendants had violated the ADA with respect to a class of aggrieved job applicants by subjecting them to a similar process as Moore. The EEOC subsequently engaged in communication with the defendants to provide them with an opportunity to remedy their discriminatory practices, but it was unable to secure a conciliation agreement from the defendants. This lawsuit followed. The EEOC is asking the court to grant a permanent injunction enjoining and restraining the defendants from engaging in discrimination on the basis of disability. It is also asking the court to order the defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for job applicants with and without disabilities. Finally, the suit requests damages for Moore and the class of aggrieved job applicants. *(Return to In This Issue)*

EVERGREEN RECOVERY FACES WRONGFUL DEATH SUIT AFTER MURDER OF SOBER HOME RESIDENT

***Angela McGowan v. Evergreen Recovery, Inc., et al.*, U.S. District Court for the District of Minnesota, Case No. 0:25-cv-03834-LMP-DJF (suit filed October 3, 2025).** The trustee for the next of kin of a man who died in a recovery home after being attacked by another resident has filed a wrongful death suit against the operators of the recovery home. The website of Evergreen Recovery, Inc. (Evergreen), a Minnesota substance use disorder and mental health disorder treatment services provider, indicates that the company "partners with local community partners and sober homes to assist in free housing while attending outpatient services at Evergreen." Michael Slattery owned numerous houses in the St. Paul area in which he partnered and had a mutual understanding with Evergreen to operate as cooperative living residences described as "sober homes." One such property was located at 1157 Lawson Avenue. Under Minnesota law, "sober homes" are licensed facilities that must prohibit residents from using alcohol or illicit drugs by having policies requiring abstinence from such substances (MINN. STAT. ANN. § 254B.181 (West 2025)). However, the homes at issue in this case did not qualify as sober homes under Minnesota law. The homes operated by Evergreen at 1157 Lawson Avenue and 796 Capital Heights were described by the company as "harm reduction residences," meaning that alcohol and illicit drug use was allowed and that residents were allowed to use such substances.

On July 1, 2021, the Hennepin County District Court civilly committed Joseph Sandoval II after it found that he had substantial psychiatric disorders that grossly impaired his "judgment, behavior, capacity to recognize reality, and ability to reason or understand." The civil commitment order described Sandoval as having a lengthy history of violence, substance use disorder, and an inability to care for his daily needs. Pursuant to the commitment order, the court placed Sandoval at Anoka Metro Regional Treatment Center (Anoka), and then 30 days later, Anoka discharged him to a supervised living facility. On December 1, 2021, due to staff shortages, the supervised living facility discharged Sandoval and transferred him directly to Evergreen, which placed him in the harm reduction residence at 796 Capitol Heights. According to the complaint, while residing at 796 Capitol Heights, Sandoval continued to use alcohol and illicit drugs, had been non-compliant with his anti-psychotic medication, and experienced a decline in his mental health. On October 20, 2022, an issue arose between Sandoval and another individual at 796 Capitol Heights that prompted Evergreen to transfer Sandoval to the harm reduction residence at 1157 Lawson Avenue. Per the complaint, at the time of the transfer Sandoval was under the influence of illicit drugs, and Evergreen left him unattended and unsupervised after dropping him off at the new residence. Shortly after being dropped off at 1157 Lawson Avenue, Sandoval went upstairs into the personal area of resident Jon Ross Wentz and assaulted him with a knife and hammer, killing Wentz. Sandoval then went into the basement of the residence and killed a contractor who was working in the home. Afterward, Sandoval encountered another tenant in the stairwell and attacked him, but the victim was able to get away, exit the home, and call for help, which resulted in police officers arriving at the scene and arresting Sandoval. In July 2024, Sandoval pleaded guilty to two second-degree murder charges and was sentenced to 38 years in prison.

On October 3, 2025, Angela McGowan, the trustee for the next of kin of Wentz filed suit against Evergreen claiming that the company's negligence contributed to Wentz's death. McGowan argues that Evergreen knew or should have known that Sandoval suffered from severe psychological conditions that made him a danger to others. The complaint asserts that Evergreen moved Sandoval into an occupied premise without alerting or warning those present of the dangers presented and abandoned Sandoval in the home without supervision or oversight. Because of the foreseeable risk of Sandoval injuring someone, McGowan claims that Evergreen had a duty to protect Wentz from harm. By failing to oversee Sandoval or protect the other residents, McGowan asserts that Evergreen negligently breached its duty of care to Wentz and argues that Wentz's death was the direct and proximate result of Evergreen's negligence. McGowan also brought forth a vicarious liability claim against Slattery, arguing that he had a duty to ensure that reasonable policies were in place at the residences that he provided to Evergreen. Additionally, McGowan brought forth civil assault and battery claims against

Sandoval. McGowan is asking the court to find the defendants jointly and severally liable for damages in an amount greater than $50,000. *(Return to In This Issue)*

OWNER OF PENNSYLVANIA RECOVERY NON-PROFIT CHARGED WITH HUMAN TRAFFICKING

***Commonwealth of Pennsylvania v. Lawrence Arata*, Pennsylvania Magisterial District Court (Delaware County), Case No. MJ-32134-CR-0000181-2025 (suit filed November 18, 2025).** The district attorney for Delaware County, Pennsylvania has filed criminal charges against Lawrence Arata, the executive director of the non-profit Opioid Crisis Action Network (OCAN), over allegations that he used opioid settlement funds received from the Pennsylvania Opioid Misuse and Addiction Abatement Trust to sexually prey on women suffering from substance use disorder. The lawsuit claims that Arata coerced women seeking services from OCAN to provide him with sexual favors in exchange for money, gift cards, bus passes, meal credits, and rental assistance. According to court documents, Arata regularly used the hotel and asked his victims to meet him there. Clients of OCAN reported feeling like they had to stay in contact with Arata and give into his demands because they needed the program's benefits to survive. The district attorney has charged Arata with 33 criminal counts including trafficking in individuals, patronizing prostitutes, witness intimidation, obstruction of justice, and harassment. Arata turned himself into the police and posted bail. *(Return to In This Issue)*

GROUP OF RETAILERS AND INDIVIDUALS CHALLENGE FLORIDA'S EMERGENCY RULE ON 7-OH

***The Mystic Grove LLC, et al. v. Department of Legal Affairs, Office of the Attorney General*, Florida Division of Administrative Hearings, Case No. 25-005864RE (suit filed November 10, 2025).** A group of businesses that sell and distribute concentrated 7-Hydroxymitragynine (7-OH), a naturally occurring compound in the kratom plant (*Mitragyna speciosa*), products along with a group of individuals who use 7-OH products have filed a lawsuit against the Florida Attorney General's Office to challenge the Attorney General's emergency rule prohibiting 7-OH products in the state. The compound is found in low concentrations in the kratom plant, but can be extracted and sold in a more potent form.[1] In 2023, the Florida Legislature enacted the Florida Kratom Consumer Protection Act (FLA. STAT. ANN. § 500.92 (West 2025)), which authorized the sale of kratom and kratom products, which includes concentrated 7-OH products, in the state for individuals aged 21 and older.[2] On August 12, 2025, the Florida Attorney General issued Emergency Rule 2ER25-1, which temporarily scheduled 7-OH as a Schedule I controlled substance at concentrations greater than one percent of total weight. Seven days later, the attorney general issued Emergency Rule 2ER25-2, which superseded Emergency Rule 2ER25-1 to further reduce the allowable concentrations of 7-OH in products to 400 parts per million. According to the complaint, the attorney general did not provide notice or opportunity for public comment before enacting either emergency rule. The petitioners assert that the attorney general's claims that 7-OH presents an imminent hazard to public safety are unfounded. Specifically, the petitioners challenge the validity of the emergency rule on the grounds that it: (1) fails to comply with the rulemaking requirements of FLA. STAT. ANN. §§ 120.54(4) and 893.035(7) and violates the due process rights of consumers, manufacturers, importers, distributors, and retailers of 7-OH in the state; (2) exceeds the attorney general's rulemaking authority; (3) is arbitrary and capricious; and (4) is vague and fails to establish adequate standards. The petitioners are asking the administrative law judge to declare the emergency rule invalid. On November 18, 2025, the attorney general filed a motion to dismiss, arguing that the complaint exceeded the scope of a permissible challenge under Florida administrative law. *(Return to In This Issue)*

[1] For more information about kratom, please refer to LAPPA's "Regulation of Kratom in America: Update" factsheet, available here.
[2] For more information on Florida's kratom law, please refer to LAPPA's "Kratom: Summary of State Laws" document, available here.

COURT APPROVES SETTLEMENT IN BOTANIC TONICS' FEEL FREE KRATOM DRINK CLASS ACTION LAWSUIT

***In re Botanic Tonics Litigation* (previously cited as *Romulo Torres v. Botanic Tonics, LLC, et al.*), U.S. District Court for the Northern District of California, Case No. 3:23-cv-01460-TSH (settlement approved October 20, 2025).** For previous updates on this case, please refer to the February 2024 issue of the LAPPA *Case Law Monitor*, available here. A federal judge has approved the plaintiffs' motion for final approval of a $8.75 million settlement in a class action lawsuit against Botanic Tonics over their "Feel Free" kratom drinks. The lawsuit claimed that Botanic Tonics failed to disclose the harmful impacts of consuming the beverage. Individuals who purchased Feel Free drinks containing kratom between March 28, 2019 and March 5, 2025 will be able to submit a claim form to receive a *pro rata* payment based on the number of bottles of Feel Free purchased.[3] Individuals will be able to claim up to 10 bottles without proof of purchase, and can claim more than 10 bottles with proof of purchase. The four named plaintiffs who were appointed as class representatives will be awarded $5,000 each. *(Return to In This Issue)*

TWO EVERGREEN RECOVERY EXECUTIVES PLEAD GUILTY IN MEDICAID FRAUD SUIT

***United States v. Shawn Grygo, et al.*, U.S. District Court for the District of Minnesota, Case No. 0:24-cr-00337-KMM-JFD (plea agreement entered October 21, 2025).** Two executives of Evergreen Recovery, Inc. (Evergreen), a substance use and mental health disorder treatment services provider in Minnesota, have pleaded guilty to federal charges following their participation in a Medicaid fraud scheme. In December 2024, the U.S. Attorney's Office in Minnesota indicted three Evergreen executives for fraud over allegations that they billed Medicaid for substance use disorder treatment services that they did not provide. In addition to the false billing allegations, Evergreen allegedly participated in a kickback scheme with the sober housing provider, Second Chances Sober Living (Second Chances). Evergreen offered its clients free housing at Second Chances but only if they agreed to attend a certain amount of programming at Evergreen, which could be billed to Medicaid. According to the indictment, the defendants used the false billing and kickback funds to purchase private jet charters, luxury vehicles, country club memberships, and designer clothes. On October 21, 2025, Shantel Magadanz, Evergreen's chief executive officer, and Heather Heim, Evergreen's chief financial officer, pleaded guilty to one count of conspiracy to commit wire fraud. The U.S. Attorney's office also brought forth charges against Shawn Grygo, Evergreen's owner, and proceedings continue against him. *(Return to In This Issue)*

JURY CONVICTS EXECUTIVES OF ADHD TREATMENT STARTUP FOR ILLEGALLY DISTRIBUTING ADDERALL

***United States v. Ruthia He and David Brody*, U.S. District Court for the Northern District of California, Case No. 3:24-cr-00329-CRB (jury verdict reached November 18, 2025).** A federal jury has convicted Ruthia He, the founder and chief executive officer of Done, a California-based digital health company, and David Brody, Done's clinical president, over their roles in a scheme to illegally distribute the stimulant Adderall (amphetamine/dextroamphetamine), which is classified as a Schedule II controlled substance, over the internet and commit healthcare fraud. According to court documents and evidence presented at trial, He and Brody's company claimed to provide easy access to Adderall and other attention-deficit/hyperactivity disorder (ADHD) medications in exchange for a monthly subscription fee. Done spent over $40 million on

[3] The term "*pro rata*" is used to denote proportional distributions or allocations based on a fractional share of ownership, responsibility, or time. *Pro rata*, CORNELL LEGAL INFORMATION INSTITUTE (Aug. 2020).

deceptive advertisements meant to convince Americans that they were suffering from ADHD and paid for targeted keyword search advertisements in an effort to reach individuals who were looking to obtain Adderall without a legal prescription. In order to facilitate the illegal prescriptions, He paid nurse practitioners up to $60,000 per month to refill prescriptions without clinical interaction and enabled an "auto-refill" technology feature where patients could receive prescriptions without clinical interaction for years based on a monthly auto-generated email requesting additional prescriptions. The defendants told staff to continue prescribing Adderall even to patients who were suspected of misusing the medication. He and Brody also prohibited clinical practitioners from discharging patients, even after concerned family members of patients repeatedly notified Done that their children were suffering from bipolar disorder, Adderall-induced psychosis, or other mental health conditions that could be worsened by continued stimulant use. Additionally, He and Brody submitted false and fraudulent prior authorization requests to insurers, which resulted in Medicare, Medicaid and commercial insurers paying out approximately $14 million in false claims. The jury convicted He and Brody of one count of conspiracy to distribute controlled substances, four counts of distribution of controlled substances, and one count of conspiracy to commit healthcare fraud. Additionally, the jury convicted He of one count of conspiracy to obstruct justice. Both He and Brody each face a maximum penalty of 20 years in prison on the conspiracy to distribute controlled substances and distribution of controlled substances counts. The court has scheduled their sentencing for February 25, 2026. *(Return to In This Issue)*

AMERICAN ADDICTION CENTERS REACHES SETTLEMENT IN DATA BREACH CASE

***In re American Addiction Centers Inc. Data Breach Litigation* (previously cited as *Ethan Parker v. American Addiction Centers, Inc.*), U.S. District Court for the Middle District of Tennessee, Case No. 3:24-cv-01505 (settlement reached November 21, 2025).** For previous updates on this case, please refer to the February 2025 issue of the LAPPA *Case Law Monitor*, available here. American Addiction Centers (AAC) has reached a $2.75 million settlement with plaintiffs who alleged that the substance use disorder treatment services provider failed to sufficiently protect their personal information. In 2014, ACC informed over 400,000 people that their personal information may have been compromised when an unauthorized party gained access to the company's computer systems. Class action participants will be eligible for up to $5,000 in reimbursement for documented expenses, and a $50 *pro rata* cash payment. The settlement will also provide class participants with up to two years of credit monitoring and at least $1 million in identity theft insurance. Around one-third of the settlement funds will go toward attorneys' fees. The settlement needs to be approved by a judge before it can go into effect. *(Return to In This Issue)*

UPMC MUST FACE DISABILITY DISCRIMINATION AND RETALIATION CLAIMS BROUGHT BY A FORMER EMPLOYEE WHO WAS TERMINATED AFTER TESTING POSITIVE FOR THC

***David Rheem v. UPMC Pinnacle Hospitals*, U.S. District Court for the Middle District of Pennsylvania, Case No. 1:23-cv-00075-KM (motion for summary judgment granted in part and denied in part October 27, 2025).** A federal court has ruled that UPMC Pinnacle Hospitals (UPMC) must face disability discrimination and retaliation claims related to an employee who it terminated after he tested positive for THC. UPMC employed David Rheem as an imaging manager of nuclear medicine. At all times throughout his employment with UPMC, Rheem suffered from a condition called spondylolisthesis which causes severe lower back and leg pain. During November 2017 through May 2020, Rheem underwent three separate but unsuccessful surgical procedures in an effort to alleviate his pain. Due to these surgical procedures, Rheem requested several leaves of absence and a modified work schedule to allow him to attend physical and pain management therapies. On his surgeon's recommendation, in October 2020, Rheem began using over-the-counter cannabidiol (CBD) oils and gummies to help manage his pain. Rheem alleges that his coworkers and

supervisors were aware that he used CBD oils and gummies and that he never used THC. After allegedly appearing "lethargic and overmedicated" at a staff meeting, UPMC suspended Rheem pending a drug test. The drug test came back positive for THC and in February 2021, UPMC terminated Rheem's employment.

In January 2024, Rheem filed a lawsuit against UPMC alleging that it violated Title I of the Americans with Disabilities Act (ADA; 42 U.S.C. § 12112) and the Pennsylvania Human Relations Act (PHRA; 43 PA. STAT. AND CONS. STAT. ANN. § 955 (West 2025)) by:

(1) Discriminating against him due to his disability by not permitting him to take part in the hospital's programs for employees who test positive for drugs after his own positive THC result;
(2) Retaliating against him because he required reasonable accommodations following his spinal surgeries; and
(3) Interfering with his rights under both the ADA and PHRA.

In an amended complaint filed on January 3, 2024, Rheem alleged that UPMC also violated the Family and Medical Leave Act (FMLA; 29 U.S.C. § 2615) by interfering with his ability to exercise his rights under the law. On March 12, 2025, UPMC filed a motion for summary judgment, arguing that it provided legitimate, non-discriminatory, and non-pretextual reasons for Rheem's termination. On October 27, 2025, the court granted in part and denied in part UPMC's motion. The court dismissed Rheem's claims that UPMC interfered with his rights under the ADA, the PHRA, and the FMLA but denied the motion with regard to the ADA and PHRA discrimination and retaliation claims. The court determined that there was a genuine dispute of material facts as to the credibility of UPMC's stated reasons for terminating Rheem and noted that a jury could infer that the proposed reasons for Rheem's termination were pretextual. A trial date has yet to be determined.
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CLOSURE OF DISTRICT OF COLUMBIA CANNABIS BUSINESS NOT PREEMPTED BY FEDERAL LAW

***Delorean 88 LLC v. District of Columbia*, et al., U.S. District Court for the District of Columbia, Case No. 1:25-cv-2458 (opinion filed October 8, 2025).** A federal court has rejected a District of Columbia (District) hemp retailer's challenge to the city's closure of its business, finding that the District's laws governing cannabis businesses are not preempted by federal law. In its laws, the District does not distinguish between "hemp" and "marijuana" and instead generally prohibits the sale, possession, or manufacturing of cannabis (D.C. CODE ANN. § 48-904.01 (West 2025)). The District, however, has two exceptions to this prohibition: (1) it permits personal possession and personal sharing of small amounts of cannabis; and (2) it permits cannabis possession, manufacture, and distribution within the contours of its medical cannabis program (D.C. CODE ANN. § 48-904.01 (West 2025)). A business must have a license from the D.C. Alcoholic Beverage and Cannabis Administration (ABCA) to produce, sell, or distribute cannabis as part of the medical cannabis program. The ABCA has the power to impose penalties on any "unlicensed establishment" that "knowingly engages or attempts to engage in the purchase, sale, exchange, delivery, or any other form of commercial transaction involving cannabis" (D.C. CODE ANN. § 7-1671.08 West 2025)). DeLorean 88 LLC (DeLorean) applied for a medical cannabis license, but the ABCA denied the request because the store was within 300 feet of an elementary school. Despite not receiving a medical cannabis license, DeLorean opened a cannabis retail business and maintained that its cannabis products qualified as "hemp" under federal law. In July 2025, the ABCA determined that DeLorean was an unlicensed establishment and took enforcement actions to shut down the business. District law permits the ABCA to summarily close an unlicensed establishment if the business "presents an imminent danger to the health or safety of the public" (D.C. CODE ANN. § 7-1671.08(g)(1) (West 2025)). The ABCA found that DeLorean's store was an imminent danger to the public for two reasons: (1) the store sold cannabis or a cannabis product untested by a licensed testing laboratory; and (2) the store sold cannabis or a cannabis product that failed to contain labeling required by District law. Five days after the ABCA shut down the store, DeLorean filed a lawsuit against the District seeking a preliminary injunction. The District filed a motion to dismiss.

DeLorean primarily argued that the laws that the District invoked to summarily close DeLorean's business are preempted by federal law. The 2018 Farm Bill[4] prevents a state or tribe from "impeding the shipment of federally compliant hemp within their borders" (Pub. L. No. 115-334; codified at 7 U.S.C. § 1639o note). The 2018 Farm Bill, however, does not state anything about whether a jurisdiction may prohibit possession or sale of industrial hemp. The court noted that nothing in the 2018 Farm Bill indicates that Congress intended to create a nationwide hemp market, and that it merely created space for states to legalize hemp production if they wished to do so. The court also noted that the 2018 Farm Bill expressly permits states to enact laws that are more stringent than what federal law requires for hemp production (7 U.S.C. § 1639p(a)(3)(A)). Because nothing in the 2018 Farm Bill prohibits the District from enforcing local laws preventing unlicensed establishments from selling cannabis or closing such establishments when they present a safety concern, the court ruled that DeLorean's preemption claims failed. The court granted the District's motion to dismiss without prejudice and denied DeLorean's motion for preliminary injunctive relief as moot. *(Return to In This Issue)*

OHIO COURT ISSUES TEMPORARY RESTRAINING ORDER AGAINST GOVERNOR'S INTOXICATING HEMP BAN

***Titan Logistics Group LLC, et al. v. Mike DeWine, et al.*, Ohio Court of Common Pleas (Franklin County), Case No. 25 CV 008646 (suit filed October 8, 2025).** An Ohio judge has issued a temporary restraining order to prevent the enforcement of the governor's executive order banning intoxicating hemp. On October 8, 2025, Ohio Governor Mike DeWine issued Executive Order 2025-05D, which declared a public health state of emergency for all forms of consumer products containing "intoxicating hemp." The order: (1) requires all consumer products containing intoxicating hemp to be removed from public display; (2) prohibits the sale of all consumer products containing intoxicating hemp; and (3) mandates retailers to segregate consumer products containing hemp from other merchandise and hold them for disposition by the Ohio Department of Agriculture (ODA) or designated law enforcement officers. The order was to go into effect on October 14, 2025 and be in effect for 90 days unless the governor modified or terminated the order. A group of hemp retailers in the state filed suit against the governor and the ODA arguing that the order is overly broad because it applies to all hemp and hemp products including those that are legal under the 2018 Farm Bill (Pub. L. No. 115-334) and Ohio's current laws (OHIO REV. CODE ANN. § 928.01, *et seq*. (West 2025)). The plaintiffs also argued that the order is vague because there is no definition of "intoxicating hemp" in Ohio statutes or regulations. The complaint asserted that the governor's basis for invoking emergency rulemaking authority is that consumer products containing intoxicating hemp are adulterated. The plaintiffs argued that the governor's justification is invalid because state law specifically states that "notwithstanding any other provision of the revised code to the contrary, the addition of hemp or a hemp product to any other product does not adulterate that other product" (OHIO REV. CODE ANN. § 928.02(D) (West 2025)). The plaintiffs requested a temporary restraining order and an injunction that would enjoin the defendants from implementing the order or taking any action to enforce the order. On October 14, 2025, the court granted the plaintiffs' motion for a temporary restraining order, finding that the order attempts to exercise legislative power reserved by the Ohio Constitution to the General Assembly and facially attempts to supersede the statutory framework already enacted by the General Assembly. The court's restraining order was initially set to last for 14 days. After the court continued a scheduled October 27, 2025 preliminary injunction hearing until January 29, 2026 , it ruled to extend the temporary restraining order until further order of the court. *(Return to In This Issue)*

[4] The federal government spending bill (H.R. 5371) signed into law on November 12, 2025 fundamentally redefines "hemp" under federal law. The changes will go into effect November 12, 2026.

TENTH CIRCUIT RULES WYOMING'S HEMP LAWS ARE CONSTITUTIONAL

***Green Room LLC, et al. v. State of Wyoming, et al.*, U.S. Court of Appeals for the Tenth Circuit, Case No. 24-08053 (opinion filed October 27, 2025).** The Tenth Circuit has affirmed the dismissal of a suit brought forth by a group of Wyoming hemp businesses, finding that Wyoming's hemp laws are constitutional. Following the 2018 Farm Bill's legalization of hemp (7 U.S.C. § 1639o), in 2019, Wyoming enacted legislation that legalized and regulated the production and sale of hemp. Wyoming's 2019 definition of hemp was the same as that of the 2018 Farm Bill. In 2024, however, the Wyoming legislature changed its position on hemp and enacted three major changes to Wyoming's regulation of hemp through Senate Enrolled Act 24 (SEA 24) which: (1) narrowed the definition of hemp to exclude synthetic substances; (2) expanded the definition of THC; and (3) added both naturally occurring and synthetic delta-8 THC[5] to Schedule I of the Wyoming Controlled Substances Act (WYO. STAT. ANN. § 35-7-1014 (West 2025)). Thus, SEA 24 made it unlawful in Wyoming to "manufacture, deliver, or possess with intent to manufacture or deliver" hemp or hemp products containing more than 0.3 percent THC (including delta-8 and delta-9) or synthetic substances even if those products may be legal under federal law (WYO. STAT. ANN. § 35-7-1063 (West 2025)). In June 2024, the plaintiffs brought a lawsuit against the state and various state officials seeking declaratory and injunctive relief from SEA 24. They claimed that SEA 24 is unconstitutional because it: (1) is preempted by the 2018 Farm Bill; (2) violates the Dormant Commerce Clause of the U.S. Constitution[6]; (3) constitutes an unconstitutional taking of their personal property; and (4) is unconstitutionally vague. The defendants filed a motion to dismiss for failure to state a claim, which the district court granted.

On appeal, the plaintiffs first argued that SEA 24 is preempted by the 2018 Farm Bill because it "imposes an impermissibly narrower definition of hemp that conflicts with the federal standard." The plaintiffs claimed that states have the ability to regulate the production of hemp but that they do not have the authority to change the definition of hemp. The Tenth Circuit disagreed with the plaintiffs, explaining that "the mere fact federal law defines hemp, does not mean it confers a right to hemp under that definition." Second, the plaintiffs argued that SEA 24 discriminates against interstate commerce since it does not distinguish between hemp produced within the state and that which is produced outside of the state. Specifically, the plaintiffs claimed that the law imposes a substantial burden on interstate transportation because if certain hemp products are illegal to possess in the state, then it is also illegal to transport or ship those products. The Tenth Circuit determined that the plaintiffs' argument was not enough to prevail under the Dormant Commerce Clause and also noted that the plaintiffs failed to unambiguously show that they in fact transport hemp products from one foreign state to another through Wyoming. Furthermore, the court reasoned that it should not interpret SEA 24 to prohibit such transportation before the state courts have had an opportunity to interpret the law.

Third, the plaintiffs argued that SEA 24 constituted an unconstitutional regulatory taking of their property without just compensation. The plaintiffs asserted that they reasonably relied on the federal definition of hemp and similar language in Wyoming's 2019 hemp law in developing their businesses. They claimed that SEA 24's new restrictions on the production and sale of certain hemp products impermissibly interfered with their investment-backed expectations. The Tenth Circuit rejected the plaintiffs' claims, finding that they "should have been well aware that the Wyoming legislature might not continue to look favorably upon hemp and hemp products." The court also noted that a state does not have to provide just compensation every time it adjusts its regulatory scheme, even if those changes incidentally impair or destroy a business. Finally, the plaintiffs claimed that SEA 24 was unconstitutionally vague because the statute's definition of "synthetic substances" is

[5] For more information on delta-8 THC and how it differs from delta-9 THC, please refer to LAPPA's "Explaining Cannabinoids" factsheet, available here.

[6] The "Dormant Commerce Clause" is a constitutional principle that the Commerce Clause 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).

unclear and could be interpreted to include many substances, including cannabidiol (CBD). SEA 24 defined "synthetic substances" as "any synthetic THC, synthetic cannabinoid, or any other drug or psychoactive substance" (WYO. STAT. ANN. § 11-51-101 (West 2025)). The district court determined that the word "psychoactive" modified all terms in the definition. On appeal, the plaintiffs argued that a substance could be considered psychoactive under SEA 24 depending on how that term is defined, and because the statute does not define "psychoactive," it is unconstitutionally vague. The Tenth Circuit disagreed that the use of "psychoactive" in the definition of "synthetic substances" is unconstitutionally vague, noting that the word "psychoactive" does not "readily invite a string of different applications that would encourage arbitrary and discriminatory enforcement." The court determined that "a reasonable reader of the statute would conclude that psychoactive substances are those that affect the mind in ways similar to marijuana and other controlled substances." Having rejected all of the plaintiffs' arguments, the Tenth Circuit affirmed the district court's dismissal of the complaint. *(Return to In This Issue)*

OREGON CANNABIS WHOLESALER CLAIMS STATE'S CANNABIS IMPORT/EXPORT RESTRICTIONS ARE UNCONSTITUTIONAL

***Jefferson Packing House, LLC v. Tina Kotek, et al.*, U.S. District Court for the District of Oregon, Case No. 3:25-cv-01791-AR (suit filed October 1, 2025).** An Oregon cannabis wholesaler has filed suit against Oregon's governor and other state officials over claims that a state law prohibiting the import and export of cannabis products discriminates against interstate commerce and violates the Dormant Commerce Clause of the U.S. Constitution. In 2014, Oregon enacted a recreational cannabis program through Ballot Measure 91. At the time Measure 91 was drafted and passed, the U.S. Department of Justice adhered to an enforcement memorandum, known as the "Cole Memo," which provided that enforcement of the federal Controlled Substance Act (21 U.S.C. § 801, *et seq*.) against state-legal cannabis businesses was deprioritized to the extent that cannabis from legal states was not being trafficked to other states.[7] In an effort to insulate Oregon's cannabis program from federal scrutiny, the state enacted OR. REV. STAT. ANN. § 475C.229 (West 2025) which made it illegal for anyone to import or export a cannabis item from Oregon. Section 475C.229 prohibits the import and export of federal legal cannabis products (*i.e.* hemp), as well as federally illegal products (*i.e.* marijuana). Jefferson Packing House (JPH) holds an Oregon Liquor and Cannabis Commission (OLCC) marijuana wholesale license and engages in the business of buying and selling cannabis products. JPH's OLCC license allows it to purchase and sell cannabis products within the state of Oregon, but § 475C.229 prohibits it from importing or exporting any type of cannabis outside of the state. But for § 475C.229, JPH argues that it would distribute its products to wholesale customers in other states and would purchase products from out-of-state producers for sale in both Oregon and in other states. The company claims that § 475C.229 harms its business by increasing its operating costs, preventing it from taking advantage of economies of scale, and putting it at a competitive disadvantage in the cannabis market. JPH asserts that § 475C.229 should be held unconstitutional because it violates the antidiscrimination principles of the Dormant Commerce Clause and facially discriminates against interstate commerce without any legitimate, non-protectionist purpose. JPH is requesting the court to declare that § 475C.229 is unconstitutional and enjoin the defendants from restricting the interstate commerce of cannabis products. The defendants have until January 8, 2026 to file an answer to the complaint. *(Return to In This Issue)*

CANNABIS TRADE GROUP CLAIMS NEW YORK CANNABIS REGULATORS HAVE FAILED TO CONTROL THE INFLUX OF ILLICIT CANNABIS INTO THE STATE'S LICENSED CANNABIS SUPPLY CHAIN

[7] Memorandum from James M. Cole, Deputy Attorney General, on Guidance Regarding Marijuana Enforcement to all U.S. Attorneys (Aug. 29, 2013). https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

***New York Medical Cannabis Industry Association, Inc. v. New York State Cannabis Control Board, et al.*, New York Supreme Court (Albany County), Case No. 912347-25 (suit filed November 19, 2025).** The New York Medical Cannabis Industry Association (Association) has filed a lawsuit against the New York State Cannabis Control Board, the New York State Office of Cannabis Management (OCM), and other state officials seeking a declaratory judgment compelling the defendants to fulfill their legal responsibility to curtail the influx of illicit cannabis products into the state's licensed adult-use cannabis supply chain. In 2021, the state enacted the Marihuana Regulation and Taxation Act (MRTA; N.Y. CANNABIS LAW § 1, *et seq*. (McKinney 2025)), which legalized cannabis for adult-use and established the OCM. The MRTA tasked OCM with, among other things, reducing the illegal drug market and reducing the participation of otherwise law-abiding citizens in the illicit market. To accomplish this task, the MRTA requires the defendants to "establish a seamless, closed-loop adult-use cannabis supply chain circumscribed within the State's boarders" by: (1) subjecting cannabis product[s] to rigorous compliance and regulatory oversight; (2) promulgating rules and regulations to prevent the diversion and inversion of cannabis to and from other states; and (3) implementing a track and trace program that obligates licensees to adopt and maintain security, tracking, record keeping, record retention, and surveillance systems that enables regulators to trace the origin of every finished retail cannabis product through the supply chain back to its mother plant through real-time transaction data. The Association claims that the defendants have disregarded these regulatory and statutory mandates and have allowed a prolific supply of illicit and unregulated cannabis to enter the New York cannabis market. The Association argues that the influx of illicit and unregulated cannabis into the state has placed adult-use consumers and medical cannabis users at risk, threatened the financial viability and reputation of the regulated adult-use market, and resulted in the loss of critical tax revenue. Due to the defendants' alleged failure to act, the Association is asking the court for a declaratory judgment that compels the defendants to: (1) promulgate rules and regulations, as required by MRTA, to prevent the inversion and diversion of adult-use cannabis into and out of New York; (2) promulgate rules that expressly require the defendants to rescind the licenses of cannabis companies found to have imported and/or exported cannabis across New York state lines in violation of MRTA; (3) enforce rules and regulations that require cannabis licensees to tag, label, and/or record all raw material and/or finished products in an inventory tracking system; (4) establish a seed-to-sale tracking system no later than December 31, 2025, and set a deadline no later than January 12, 2026 for all adult-use licensees to integrate their electronic inventory system with the seed-to-sale tracking system; and (5) refer to the state attorney general's office the names of all cannabis licensees cited for inverting/importing or diverting/exporting adult-use cannabis across state lines for further legal action and/or to suspend their cannabis licenses. The defendants have until January 30, 2026 to file an answer with the court. *(Return to In This Issue)*

FLORIDA APPEALS COURT MAJORITY RULES CANNABIS SMELL ALONE CANNOT JUSTIFY A POLICE SEARCH

***Darrielle Ortiz Williams v. State of Florida*, District Court of Appeal of Florida, Second District, Case No. 2D2023-2200 (opinion filed October 1, 2025).** In an *en banc* decision, a Florida appeals court majority has ruled that smelling cannabis on an individual cannot justify a police search due to the expansion of legal medical cannabis in the state. Darrielle Williams was a passenger in a car when police stopped it for a traffic violation. At trial, the police officers that pulled over the car testified that they smelled cannabis as they approached the vehicle and initiated a search of the car based on the plain smell doctrine, which provides that the smell of cannabis by itself is sufficient probable cause to permit a search without a warrant. The officers discovered cannabis in the car during the search, and they arrested both Williams and the driver. A subsequent search of Williams at the police station found MDMA ("molly") in a baggie in his sock. At trial, Williams filed a motion to suppress the search, which the trial court denied. He appealed to Florida's Second District Court of Appeal arguing that, due to changes in state and federal law related to cannabis, the plain smell doctrine by itself should no longer be a valid basis for a search.

In most cases, the evidence supporting a warrantless search is determined by what is known as the totality of the circumstances; that is, that the entirety of the circumstances must be considered when determining whether there was a sufficient basis to authorize the search. There are exceptions to such a standard including what is known as the plain view doctrine. The plain view doctrine provides that a "search" under the Fourth Amendment of the U.S. Constitution does not take place when a police officer can discern the illegal nature of an item from a lawful vantage point (*e.g.*, seeing a cannabis cigarette in a car's ashtray while conducting a traffic stop). The plain view doctrine has been expanded to include other senses, including smell. Prior to the majority's decision in this case, the appeals court consistently held that the smell of cannabis alone was sufficient to establish probable cause to conduct a search due to its status as an illegal drug under Florida law. However, in this case, the majority agreed with Williams' argument, specifically finding that, with the legalization of medical cannabis in the state, the smell of cannabis alone is no longer automatically an indication of illegal activity, and police officers must now meet the totality of the circumstances standard. Despite this finding, the majority upheld the trial court's decision to deny Williams' motion to suppress because the officers in this case were operating under the law as it existed at the time of the search. The majority also certified a question to the Florida Supreme Court to determine whether the plain smell doctrine continues to establish probable cause based only on the odor of cannabis. It is uncertain whether the Florida Supreme Court will provide an opinion on that question. One of the dissenters stated that the court should have preserved the plain smell doctrine because, except in narrow circumstances, the consumption of cannabis is unlawful for drivers. *(Return to In This Issue)*

MICHIGAN CANNABIS TRADE GROUP ASKS COURT TO BAR ENFORCEMENT OF STATE'S EXCISE TAX ON WHOLESALE CANNABIS

***Michigan Cannabis Industry Association v. State of Michigan, et al.*, Michigan Court of Claims, Case No. 25-000160-MM (suit filed October 7, 2025).** A Michigan cannabis trade association has asked a state court to bar enforcement of the state's excise tax on wholesale cannabis. In 2018, Michigan voters approved the Michigan Regulation and Taxation of Marihuana Act (MRTMA; MICH. COMP. LAWS ANN. § 333.27951, *et seq*. (West 2025)), which governs the licensing, regulation, and taxation of cannabis. The MRTMA is known as an "initiated law," meaning that it was initiated by voters and ratified in accordance with the Michigan Constitution. On October 3, 2025, the Michigan legislature passed House Bill 4951 (H.B. 4951) which imposes an excise tax of 24 percent on the wholesale price of the sale or transfer of cannabis in certain circumstances, and the governor signed it into law on October 7, 2025. The plaintiff, the Michigan Cannabis Industry Association (MCIA), a trade association representing approximately 400 licensed cannabis businesses in Michigan, filed this lawsuit on the same date as the governor's signature. The complaint alleges that, because the MRTMA is an initiated law, amendments require either ratification by voters or passage by vote of three-fourths of the legislature. MCIA contends that imposition of the cannabis excise tax as set forth in H.B. 4951 is a violation of Article 2, Section 9 of the Michigan Constitution as it was neither ratified by voters nor passed by a vote of three-fourths of the legislature. The complaint also alleges certain procedural issues with H.B. 4951, including that the bill's title did not accurately identify the content of the law and that the bill was substantially amended such that the purpose of the bill was substantially changed. Article 4, Section 24 of the Michigan Constitution prohibits any bill from being amended such that the final bill is so changed from its original purpose as to be entirely new. MCIA requested the court to find that the law is unconstitutional and without legal effect. Holistic Research Group, Inc., a licensed cannabis cultivator and processor, filed a separate lawsuit, under case number 25-000159-MT, and the two cases were consolidated on October 9, 2025. MCIA filed an amended complaint on October 20, 2025, and the court granted Holistic Research Group's motion to file an amended complaint on November 10, 2025. Additionally, both plaintiffs filed motions for a preliminary injunction to prohibit the state treasury from collecting the excise tax. At this time, the consolidated cases are awaiting responses from the defendants to the amended complaints and motions. *(Return to In This Issue)*

FEDERAL JUDGE PAUSES ENFORCEMENT OF CALIFORNIA CITY'S PROHIBITION ON CANNABIS BILLBOARDS

***Lamar Central Outdoor, LLC v. City of Perris*, U.S. District Court for the Central District of California, Case No. 5:25-cv-02557 (temporary restraining order granted October 10, 2025).** A federal judge has granted a temporary restraining order to pause the enforcement of a California city's prohibition on cannabis billboard ads. On August 26, 2025, the city council of Perris, California amended the municipal code to ban cannabis advertising on off-site freeway signs. While the city does allow cannabis sales within its borders, the new ordinances (Ordinance 1460 and 1461) specifically prohibit dispensaries and commercial cannabis operation permittees from advertising on billboards that are: (1) located within the city limits; (2) within a one-mile radius of the city; or (3) within 660 feet of the nearest edge of a freeway right-of-way line. Lamar Central Outdoor (Lamar) is an outdoor billboard advertising company that owns and operates billboards in the city, within a one-mile radius of the city limits, and within 660 feet of a freeway. Lamar contracts with a number of cannabis businesses for billboard advertisements. As a result of the new ordinances, Lamar lost multiple advertising contracts and filed this lawsuit on September 26, 2025. The complaint alleges that the city ordinances are content-based restrictions and, as such, violate the First Amendment of the U.S. Constitution. After filing the complaint, Lamar filed an *ex parte*[8] request for a temporary restraining order prohibiting the city from enforcing the ordinances. On October 10, 2025, the court granted the temporary restraining order, finding that: (1) Lamar is likely to succeed on the merits of the case; (2) the city has not asserted a substantial government interest that justifies the restriction on commercial speech; (3) the ordinances do not directly advance the city's interests, as the city permits cannabis businesses to operate within the city; (4) the restrictions are more extensive than necessary; and (5) there is a likelihood of irreparable harm if the temporary restraining order is not granted. The city filed an answer to the complaint on November 7, 2025, arguing that the ordinances are valid regulations of commercial speech. A full hearing on the application for a temporary restraining order is set for December 4, 2025. *(Return to In This Issue)*

DRUG DISTRIBUTOR FILES ANTITRUST SUIT AGAINST ALKERMES OVER ALLEGED VIVITROL MONOPOLY

***Value Drug Company v. Alkermes, Inc.*, U.S. District Court for the District of Massachusetts, Case No. 1:25-cv-12872 (suit filed October 2, 2025).** The wholesale drug distributor, Value Drug Company (Value Drug) has filed a class action suit against the pharmaceutical company Alkermes, Inc. (Alkermes) over allegations that it conspired to delay the generic version of Vivitrol (naltrexone). Value Drug claims that in 2011, Alkermes fraudulently obtained a key patent for Vivitrol by intentionally withholding information on material prior art[9] that would have rendered the patent invalid and used it to block generic competition. Per the complaint, Alkermes improperly listed the 2011 patent in the U.S. Food and Drug Administration's (FDA) Orange Book, which is a catalog of patents covering FDA-approved drugs. Patents listed in the Orange Book can trigger automatic delays in generic approvals. In 2018, the U.S. Patent Trial and Appeal Board granted a petition by generic drug manufacturer Amneal challenging Alkermes' 2011 patent. Value Drug asserts that Alkermes induced Amneal to settle the suit by providing it with a license to market generic Vivitrol in 2028. The lawsuit also claims that Alkermes convinced Teva Pharmaceuticals (Teva) to settle a lawsuit it had filed in 2020 challenging the 2011 patent by granting a license to sell its generic Vivitrol starting in 2027. Alkermes' 2011 patent is the only patent protecting Vivitrol and has a 2029 expiration. Alkermes had 18 other

[8] "*Ex parte*" requests involve a court action taken or received by one party without notice to the other usually for temporary or emergency relief. *Ex parte*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[9] "Prior art" is knowledge that is publicly known, used by others, or available on the date of invention to a person of ordinary skill in an art, including what would be obvious from that knowledge. Prior Art includes: (1) information in applications for previously patented inventions; (2) information that was published more than one year before a patent application is filed; and (3) information in other patent applications and inventor's certificates filed more than a year before the application is filed. *Art (3)*, BLACK'S LAW DICTIONARY (12th ed. 2024).

patents that protected Vivitrol, but they expired in 2020, leading Value Drug to argue that a generic version of Vivitrol should have been available in the U.S. by mid-2020. Drug Value brings forth claims that Alkermes violated Section 2 of the Sherman Act (15 U.S.C. § 2) by attempting to monopolize the injectable naltrexone market by artificially extending Vivitrol's exclusivity beyond 2020. As a result of the unlawful monopoly, Drug Value asserts that it and other class members paid artificially inflated prices for injectable naltrexone. Alkermes' answer is due by December 19, 2025. *(Return to In This Issue)*

FOURTH CIRCUIT RULES OVER-DISTRIBUTION OF OPIOIDS CAN CONSTITUTE A PUBLIC NUISANCE IN WEST VIRGINIA

***City of Huntington, West Virginia, et al. v. AmerisourceBergen Drug Corporation, et al.*, U.S. Court of Appeals for the Fourth Circuit, Case no. 22-1819 (opinion filed October 28, 2025).** For previous updates on this case, please refer to the June 2025 issue of the LAPPA *Case Law Monitor*, available here. The Fourth Circuit has ruled that the distribution of opioids to pharmacies may qualify as a public nuisance in West Virginia under certain circumstances, reversing the district court's ruling. In 2017, two West Virginia local governments, Cabell County and the City of Huntington, filed a lawsuit against three pharmaceutical distributors, AmerisourceBergen (now known as Cencora), Cardinal Health, and McKesson, over allegations that they created a public nuisance by shipping large quantities of prescription opioids into the area and failing to prevent diversion. After holding a bench trial in 2021, the district court entered judgment in favor of the distributors, holding that West Virginia's common law of public nuisance does not encompass the subject matter of the plaintiffs' claims. West Virginia's high court had not ruled on the issue, but the district court predicted that the state supreme court would decline to extend West Virginia's common law of public nuisance to the sale, distribution, and manufacture of opioids. The district court also made an alternative holding, finding that even if a public nuisance claim based on the distribution of opioids was permitted under West Virginia law, the plaintiffs nonetheless failed to prove the elements of such a claim. The plaintiffs appealed, and the Fourth Circuit certified the following question to the state supreme court: "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 a public nuisance claim?" In May 2025, the state supreme court issued an opinion declining to answer the certified question based on the conclusion that any answer it provided would result in an advisory opinion.

On appeal, the Fourth Circuit first considered whether the district court erred in concluding that the conditions caused by the distribution of a controlled substance cannot constitute a public nuisance under West Virginia law. The court observed that a public nuisance under West Virginia law is broadly defined as "an act or condition that unlawfully operates to hurt or inconvenience an indefinite number of persons." The defendants argued that mass harm caused by dangerous products like opioids are better addressed through products liability laws because applying public nuisance law to harms caused by the distribution of opioids would mean that every seller of a product that affects public health could be liable for creating a public nuisance. The court noted that the state supreme court has not identified any particular type of product-based harm that should be excluded from qualifying as a public nuisance and that there is nothing in the court's jurisprudence that indicates that public nuisance law should be restricted by carving out any product-based harm. Furthermore, the court noted that the state supreme court has not restricted the definition of public nuisance by requiring a defendant's unreasonable conduct to also be unlawful. Based on these findings, the Fourth Circuit held that, under West Virginia law, an "unreasonable interference with a right common to the general public resulting from the distribution of opioids may qualify as a public nuisance when the evidence establishes that distribution of this product unreasonably operates to hurt or inconvenience an indefinite number of persons." In reaching this conclusion, the court disagreed with the defendants' argument that all product-based harms are better addressed through products liability laws, stating that public nuisance claims allow governmental entities to obtain relief for a broader population, including individuals who have not used a particular product but nonetheless have suffered an unreasonable interference with the public health or welfare of their

community. Ultimately, the court held that West Virginia's highest court would not exclude as a matter of law any common law claim for public nuisance caused by the distribution of a controlled substance and necessarily concluded that the district court erred when it held that a public nuisance claim based on the distribution of opioids was per se legally insufficient under West Virginia law.

Next, the court considered the plaintiffs' challenge to the district court's alternative holding that their public nuisance claims fail on the merits. To create a public nuisance under West Virginia law, an act or condition must cause "unreasonable interference" with a public right. One means of demonstrating an unreasonable interference with a public right is to show that a defendant's act or causal contributions to that act were unlawful. An alternative means of analyzing whether a defendant unreasonably interfered with a public right is having the trial court perform a balancing test, "in which the court determines whether the utility of the defendant's conduct is greater than the gravity of, and the ability to avoid, the potential harm that may result from the defendant's conduct." This alternative test presupposes that the defendant's conduct at issue was lawful. The district court used the balancing test in determining that the defendants did not unreasonably interfere with a public right. The district court's conclusion was that "the distribution of medicine to support the legitimate medical needs of patients as determined by doctors exercising their medical judgment in good faith cannot be deemed an unreasonable interference with a right common to the general public." Because the balancing test used by the district court only applies when the defendant's conduct complies with governing law, the Fourth Circuit was first required to consider the issue of whether the district court correctly interpreted the distributors' duties under the federal Controlled Substances Act (CSA; 21 U.S.C. § 801, *et seq*.). The plaintiffs asserted that the district court erred in concluding that the CSA only requires the distributors to maintain effective controls against supplying pharmacies that essentially serve "as adjuncts of the illicit market." Instead, the plaintiffs argue that the defendants engaged in unlawful conduct under the CSA by failing to stop suspicious orders placed by individual pharmacies. After reviewing the distributors' statutory and regulatory duties to prevent diversion, the Fourth Circuit determined that the district court committed a legal error in construing the scope of the distributors' obligations under the CSA, as the law directs that distributors develop a system to examine individual orders of controlled substances placed by pharmacies for evidence of diversion. When the district court found that the distributors substantially complied with their duties under the CSA and did not unreasonably interfere with a public right, its findings were based on its incorrectly narrow perception of what those duties were. Thus, the Fourth Circuit vacated the district court's findings that the local governments failed to prove that the distributors unreasonably interfered with a public right and remanded the issue back to the district court for determination under the correct legal standard. The Fourth Circuit also vacated the district court's conclusion that intervening causes rendered the distributors' acts too remote to be a proximate cause of the alleged harm. Furthermore, the court held that under West Virginia law, the remedy of abatement may be applied both to compel the cessation of wrongful conduct and provide for the remediation of harmful conditions caused by that conduct. The Fourth Circuit directed the district court to analyze the plaintiffs' proposed abatement plan on its merits to determine whether all aspects of the plan are reasonably calculated to abate the public nuisance if it reaches the issue of abatement on remand. *(Return to In This Issue)*

PHILADELPHIA FILES LAWSUIT AGAINST PHARMACY BENEFIT MANAGERS

***City of Philadelphia v. CVS Health Corporation, et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:25-cv-06185 (suit filed October 30, 2025).** The City of Philadelphia joins the growing list of jurisdictions filing lawsuits against pharmacy benefit managers (PBMs), the intermediates between health insurance plans, pharmacies, and drug manufacturers. Philadelphia's suit brings forth claims against three PBMs: CVS Caremark, Express Scripts, and OptumRx and alleges that the companies actively worked with drug manufacturers to increase the prescribing, dispensing, and sale of prescription opioids. The complaint further alleges that the PBMs maximized their profits by conspiring with opioid manufacturers to give prescription opioids favorable placement on covered drug lists in exchange for rebates and other fees.

The city brings forth claims of public nuisance, violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 PA. STAT. AND CONS. STAT. ANN. § 201-1, *et seq*. (West 2025)), violations of the Philadelphia Consumer Protection Ordinance (Phila. Code § 9-6301); negligence, violations of the federal civil Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. 1961, *et seq*.), and civil conspiracy. The city is requesting an abatement of the public nuisance, actual and punitive damages, and equitable and injunction relief in the form of court-enforced corrective action. *(Return to In This Issue)*

MCKESSON APPEALS $152 MILLION JUDGMENT IN BALTIMORE'S OPIOID LAWSUIT

***Mayor & City Council of Baltimore v. Purdue Pharma L.P., et al.*, Circuit Court of Maryland (Baltimore City), Case No. 24-C-18-000515 (appeal filed October 1, 2025).** For previous updates on this case, please refer to the October 2025 issue of the LAPPA *Case Law Monitor*, available here. The drug distributor McKesson has filed an appeal in Baltimore's opioid lawsuit. In a statement, McKesson announced that it was pleased that the court reduced the jury award from $266 million to $152 million, but that it disagreed with the court's decision to approve even part of the city's abatement plan. McKesson argued that the remedies put forth in the abatement plan do not bear any relation to McKesson's alleged conduct or its business practices. On November 3, 2025, Baltimore filed a petition to have the appeal heard directly by the Maryland Supreme Court, skipping the intermediate appellate court. In its petition, Baltimore argued that the high court should immediately review the case because of the continuing effects that the opioid crisis has on the city. As of December 2, 2025, the Maryland Supreme Court has not yet announced whether it will take up the appeal. *(Return to In This Issue)*

KROGER ORDERED TO TURN OVER UNREDACTED DOCUMENTS TO DOJ AS PART OF OPIOID INVESTIGATION

***United States v. The Kroger Company*, U.S. District Court for the Southern District of Ohio, Case No. 1:25-mc-00017-DRC-KLL (petition for summary enforcement granted November 25, 2025).** For previous updates on this case, please refer to the October 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal district court has ruled that the supermarket chain Kroger must provide the U.S. Department of Justice (DOJ) with unredacted documents as part of an investigation into whether the company submitted false claims to Medicare for opioid prescriptions. The DOJ is investigating whether Kroger violated the False Claims Act (31 U.S.C. § 3729) by seeking payment for opioid prescriptions that were ineligible for reimbursement under Medicare. As part of the investigation, the DOJ asked Kroger to disclose certain patient information. Kroger argued that handing over documents with protected health information, such as patients' names and birth dates, would violate the Health Insurance Portability and Accountability Act (HIPAA; 45 C.F.R. Part 164). The court disagreed with Kroger, holding that HIPAA's health oversight agency exception applies to the DOJ's demand because courts have routinely held that the DOJ is a health oversight agency. The order requires Kroger to provide the DOJ with all non-privileged documents previously withheld, de-identified, or redacted by January 9, 2025. *(Return to In This Issue)*

BANKRUPTCY JUDGE APPROVES PURDUE PHARMA'S REVISED BANKRUPTCY PLAN

***In re Purdue Pharma L.P.*, U.S. Bankruptcy Court for the Southern District of New York, Case No. 1923649 (bankruptcy plan approved November 18, 2025).** For previous updates on this case, please refer to the October 2025 issue of the LAPPA *Case Law Monitor*, available here. A federal bankruptcy judge has granted Purdue Pharma (Purdue) approval to exit bankruptcy. The current bankruptcy plan was in negotiations

for more than one year following the U.S. Supreme Court's June 2024 decision overturning a prior plan that provided blanket liability to the Sackler family in exchange for them paying up to $6 billion in settlement contributions. Under the revised plan, the Sacklers will contribute approximately $6.5 billion in settlement installments over 15 years, and creditors will have the opportunity to opt out of releasing claims against the Sacklers in exchange for a smaller settlement distribution. In total the plan will include $7.4 billion in payments to address nationwide harm caused by Purdue's mass marketing and production of OxyContin. About $850 million in funds will be set aside for individual victims, including children born with opioid withdrawal. Individuals with opioid use disorder and survivors of those who have died must have proof that they were prescribed OxyContin in order to participate in the settlement. Those who can provide documentation could receive between $8,000 and $16,000 depending on how long they received the drug and how many other individuals qualify. The money for individual victims is to be distributed next year. Additionally, under the plan, Purdue must transfer its business assets to a public benefit company called Knoa Pharma that will develop and distribute opioid overdose reversal and substance use disorder treatment medications. Purdue will also publicly release internal company documents to provide transparency on how it promoted and monitored opioids. Over 99 percent of voting creditors supported the updated settlement plan, which included all U.S. states and territories, along with groups of local government entities, hospitals and medical professionals, schools, tribes, and individuals with personal injury claims. The City of Baltimore was one of the few entities that filed an objection, arguing that the plan unlawfully discriminates against creditors that do not agree to drop litigation against the Sackler family. However, during the three-day hearing for the approval of the plan, the judge repeatedly explained that the revised plan does not force anyone to settle claims against the Sacklers and that the bankruptcy proceedings do not relieve any parties of criminal liability. In approving the plan, the judge stated that the "plan is not perfect," but that it is equitable and offers more certainly and value than litigation would. *(Return to In This Issue)*

MCKINSEY & CO. INSURANCE CASES

***Ace Property & Casualty Insurance Co. v. McKinsey and Company, Inc.*, Delaware Superior Court, Case No. N25C-01-353 (motion to dismiss granted October 21, 2025); and *McKinsey & Co. Inc. v. National Union Fire Insurance Company of Pittsburgh, et al.*, New York Supreme Court (New York County), Case No. 650480/2025 (motion to dismiss withdrawn October 23, 2025).** For previous updates on this case, please refer to the April 2025 issue of the LAPPA *Case Law Monitor*, available here. A Delaware court granted the consulting firm McKinsey & Company's (McKinsey) motion to dismiss in a suit brought by its liability insurers over coverage for opioid-related litigation. The Delaware court ruled that it lacked specific jurisdiction over McKinsey, which is incorporated and headquartered in New York. The court determined that the insurers lawsuit is a matter of contract interpretation and lacks a connection to Delaware, adding that the coverage dispute does not turn on McKinsey's conduct in Delaware but rather on the underlying opioid lawsuits. The dismissal of the Delaware case put an end to the forum fight between McKinsey and the insurers and allows the case to proceed in New York state court. Based on the Delaware ruling, the insurers withdrew their motion to dismiss in the New York case. *(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 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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