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.

IN THIS ISSUE...

Overdose Prevention Group Files Suit to Overturn West Virginia's Moratorium on New Opioid Treatment Programs

Georgia Drug Dealer Liability Act Suit Against McKesson Dismissed Due to Statute of Limitations

U.S. Department of Labor Settles with Kaiser Over Access to Mental Health and SUD Services

United Behavioral Health Settles Class Action Parity Suit

Whistleblower in Walgreens Opioid Suit Asserts He is Entitled to a Portion of the Multi-state Settlement

Maryland Supreme Court Answers Certified Question in PBM Opioid Lawsuit

Insurers Granted Partial Summary Judgment in Endo Insurance Coverage Suit

FATHER ALLEGES SON DID NOT RECEIVE APPROPRIATE WITHDRAWAL MANAGEMENT WHILE IN PHILADELPHIA JAIL

Henry M. Drury III v. Pennsylvania Office of Attorney General, et al., U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:26-cv-00666-PD (suit filed February 2, 2026). The father of a man who died while in custody of the Philadelphia Department of Prisons (PDP) has filed a wrongful death suit against the PDP, the City of Philadelphia, and the Office of the Pennsylvania Attorney General over claims that the defendants failed to provide his son with appropriate medical care and withdrawal management. On March 8, 2025, Andrew Drury was placed into custody of the PDP's Curran-Fromhold Correctional Facility (CFCF). According to the complaint, Drury had opioid use disorder and was at risk of suffering from severe withdrawal symptoms, which the plaintiff argues the defendants knew or should have known. The complaint mentions that Drury previously suffered from opioid withdrawal symptoms during a prior period of custody at CFCF. The plaintiff claims that during Drury's March 2025 intake at CFCF, staff held him in an intake cell for nearly 36 hours despite him allegedly exhibiting signs of severe opioid withdrawal. On March 9, 2025, CFCF staff found Drury unresponsive in his holding cell and pronounced him dead 15 minutes later. Drury's cause of death is listed as "pending" on his death certificate. The plaintiff claims that at no point during Drury's confinement did the defendants provide him with any medical care and asserts that the defendants' negligence and gross indifference caused Drury to experience extreme pain and suffering. The complaint brings forth claims that the defendants violated Drury's Fourteenth Amendment rights under the U.S. Constitution by failing to provide him with adequate medical care. The plaintiff is requesting compensatory and punitive damages in an amount in excess of $50,000. (Return to In This Issue)

SUIT CLAIMS MISSOURI CORRECTIONAL FACILITY FAILED TO PROVIDE LEGALLY REQUIRED MAT

***Angela Ketcherside v. Trevor Foley, et al.*, U.S. District Court for the Western District of Missouri, Case No. 5:26-cv-6042 (suit filed March 3, 2026).** The wife of a man who died while in custody of the Missouri Department of Corrections (MoDOC) has filed a wrongful death suit against MoDOC, Centurion (the prison's healthcare provider), and several members of its staff over claims that her husband died due to their failure to provide him with medication for addiction treatment (MAT). Bradley Ketcherside had opioid use disorder (OUD) and was incarcerated at MoDOC's Crossroads Correctional Center. According to the complaint, Ketcherside overdosed multiple times while in custody of MoDOC, and after each overdose, staff placed him in solitary confinement and did not provide him with further medical care. Ketcherside allegedly repeatedly informed his medical and mental health providers within the facility that he needed access to MAT to manage

his OUD, but MoDOC and Centurion consistently ignored his request. On January 16, 2025, six days after the defendants allegedly formally denied him MAT for the third time, Ketcherside overdosed and died. Missouri law explicitly requires MoDOC to make MAT accessible, without any arbitrary limitations on the type of medication prescribed or who is eligible to receive it, to all incarcerated individuals with OUD (MO. ANN. STAT. § 191.1165 (West 2025)). Ketcherside's wife filed suit against the defendants asserting that they violated § 191.1165 by denying Ketcherside access to MAT. The plaintiff also brought forth claims that the defendants violated Title II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12132 and 12182), Section 504 of the Rehabilitation Act (29 U.S.C. § 749), and Ketcherside's Eighth Amendment rights under the U.S. Constitution by being deliberately indifferent to his serious medical needs. The plaintiff is asking the court for compensatory and punitive damages and for declaratory judgment on all claims. (Return to In This Issue)

NINTH CIRCUIT FINDS IDAHO MEDICAL PROVIDERS CAN BE SUED IN WASHINGTON

***Mark Cox v. Gritman Medical Center, et al.*, U.S. Court of Appeals for the Ninth Circuit, Case No. 24-1947 (opinion filed February 11, 2026).** A federal appeals court found that a federal district court in Washington State had jurisdiction over Idaho medical providers who had been sued for their role in opioid overdoses in Washington. After Susan Cox of Washington died of an opioid overdose in 2022, her husband Mark filed a federal wrongful death and survivor action against Susan's primary care physician and the medical center where she received care in the Eastern District of Washington, alleging that the illegal overprescribing of opioids had caused Susan's death. The defendants moved to dismiss on the grounds that the court lacked personal jurisdiction over them in Washington, arguing that the medical treatments were performed in Idaho, and the medical providers were Idaho residents. The district court granted the defendants' motion to dismiss. Mark appealed to the Ninth Circuit, and on February 11, 2026, the court reversed the district court's ruling, holding that the defendants had sufficient minimum contacts with Washington to establish personal jurisdiction. The court based its decision on the following: (1) the doctors had sent prescriptions to Washington hospitals and pharmacies for years; (2) the practice was located immediately adjacent to the border with Washington; and (3) the owner of the medical practice operated clinics in both Idaho and Washington. The case has been remanded to the district court for further proceedings. (Return to In This Issue)

FIFTH CIRCUIT FINDS DEA IMPROPERLY DEREGISTERED A LOUISIANA PHARMACY

***Neumann's Pharmacy v. Drug Enforcement Administration*, U.S. Court of Appeals for the Fifth Circuit, Case No. 25-60068 (opinion filed February 13, 2026).** The Fifth Circuit has ruled that the Drug Enforcement Administration (DEA) improperly deregistered a Louisiana pharmacy by misinterpreting its own regulations. Under the federal Controlled Substances Act (CSA; 21 U.S.C. § 801, *et seq*.), the DEA, as a designee of the U.S. Attorney General, is empowered to deregister (*i.e.*, suspend or revoke) a pharmacy registration if it is inconsistent with the public interest (21 U.S.C. § 824). Neumann's Pharmacy (Neumann's) in Louisiana was licensed under state law and registered under the CSA. The DEA began investigating Neumann's after receiving a tip that its owner and pharmacist-in-charge, Laura Neumann, filled at least one prescription for herself. Following that investigation, the DEA issued Neumann's an order to show cause why its certificate of registration should not be revoked. The order alleged, and the DEA ultimately found, that Neumann's filled prescriptions while disregarding certain "red flag" indicators that suggested that the prescriptions may not have been valid, such as filling prescriptions for dangerous drug combinations like opioids and benzodiazepines. The investigation also revealed that Ms. Neumann used her pharmacy to fill a prescription for herself. The prescription was written by Ms. Neumann's father in violation of Louisiana law, which deems it unprofessional conduct for a physician to prescribe controlled substances to a family member, including a

child (LA. ADMIN. CODE tit. 46, § 7603 (West 2026)). After an administrative hearing, an administrative law judge (ALJ) concluded that Neumann's violated several provisions of state and federal law and that deregistration was an appropriate sanction. Based on the ALJ's ruling, the DEA Administrator deregistered Neumann's. Neumann's appealed the ALJ's ruling and the subsequent deregistration to the Fifth Circuit, arguing that the DEA misinterpreted its own regulations and Louisiana law.

First, Neumann's challenged the DEA's interpretation of 21 C.F.R. § 1306.04(a) which places primary "responsibility for the proper prescribing and dispensing of controlled substances" on the prescribing physician, while imposing a "corresponding responsibility" on "the pharmacist who fills the prescription." Read as a whole, the regulation imposes liability on a pharmacist only if the pharmacist: (1) fills; (2) an invalid prescription; (3) knowingly. A pharmacist violates § 1306.04(a) only when he or she fills a prescription that was invalid when issued—that is, one written outside of the prescribing physician's usual course of professional practice. The court noted that neither the DEA Administrator nor the ALJ analyzed whether the prescribing physician issued the prescriptions at issue outside of the usual course of professional practice; instead, they focused exclusively on whether Neumann's dispensed the prescriptions outside of the course of professional practice for a pharmacy, which is irrelevant under the plain text of § 1306.04(a). The court determined that by finding a violation of § 1306.04(a) without first determining that any of the prescriptions were invalid when issued, the DEA misapplied the regulation. Second, the DEA found that Neumann's violated 21 C.F.R. § 1306.06, which requires a pharmacist to fill prescriptions only in the usual course of his or her professional practice, on the theory that Neumann's failure to resolve certain red flags fell beneath the Louisiana standard of care. The court determined that equating the usual course of professional practice with the state law standard of care was a legal error and concluded that a violation of the state law standard of care alone is not sufficient to establish a violation of § 1306.06. Finally, the court determined that the DEA improperly found that Neumann's violated § 7603 of the state administrative code when Ms. Neumann filled the prescription written for her by her father because the alleged misconduct fell outside of the provision's scope. By its terms, § 7603 only applies to the act of prescribing controlled substances and only when performed by a physician. Because Neumann's is a pharmacy, not a physician, and because it filled a prescription rather than prescribing a controlled substance, the court ruled that its conduct did not fall within the provision's reach. Accordingly, because the DEA's decision rested on erroneous interpretations of its regulations and a misapplication of Louisiana law, the court vacated the deregistration order and remanded the case for further proceedings consistent with its opinion. The DEA has until April 29, 2026 to file a petition for rehearing. (Return to In This Issue)

TEXAS ATTORNEY GENERAL SUES KRATOM RETAILERS FOR SELLING HIGH CONCENTRATION 7-OH PRODUCTS

***The State of Texas v. Kunkka Enterprise Co., et al.*, Texas District Court (Ellis County), Case No. 119665 (suit filed February 6, 2026).** Texas Attorney General Ken Paxton has filed a lawsuit against two kratom retailers who both operate under the name Smokey's Paradise (Smokey) for deceptively marketing and selling kratom products in violation of the Texas Kratom Consumer Health and Safety Protection Act (Kratom Act; TEX. HEALTH & SAFETY CODE ANN. § 445.001, *et seq*. (West 2025)). Kratom is an herb derived from a leafy Southeast Asian tree, known formally as *Mitragyna speciosa*.[1] Over 50 alkaloids[2] have been identified in the kratom plant, but the two most studied alkaloids are mitragynine, which is the most abundant alkaloid in the plant, and 7-hydroxymitragynine (7-OH), which is a minor alkaloid that comprises less than two percent of the total alkaloid content in natural kratom leaves. Both mitragynine and 7-OH can bind to mu-opioid receptors in the brain and produce a pharmacological response similar to effects produced by other mu-opioid agonists,

[1] For more information about kratom, please refer to LAPPA's Kratom: Summary of State Laws research document and its factsheet entitled, Regulation of Kratom in America.

[2] Alkaloids are a class of naturally occurring, organic, nitrogen-containing bases that are mainly found in plants and have significant physiological effects on humans and other animals. Examples of other alkaloids include morphine, quinine, ephedrine, and nicotine. *Alkaloid*, BRITANNICA (Dec. 24, 2025), https://www.britannica.com/science/alkaloid.

such as morphine; however, 7-OH demonstrates substantially greater mu-opioid receptor potency than mitragynine and morphine. Natural kratom products contain very little 7-OH, but there has been an increase in the availability of concentrated 7-OH products that contain very high levels of synthetic 7-OH and pose a very high potential for dependance, addiction, withdrawal, respiratory depression, and overdose. To protect consumers from the risks of using concentrated 7-OH products, the Texas Legislature in 2023 enacted the Kratom Act, which imposed clear labeling, testing, and potency limits on kratom products for sale in the state. Specifically, the Kratom Act limits the 7-OH level of any kratom product sold in the state to only two percent of the product's total alkaloid content (§ 445.003). Additionally, the Kratom Act prohibits the sale of kratom products containing any synthetic alkaloids (§ 445.003). Laboratory testing revealed that Smokey sold kratom products containing up to 96 percent 7-OH, which was 49 times the legal limit established by the Kratom Act. Testing also revealed that the products sold by Smokey also contained mitragynine pseudoindoxyl, which is a synthetic alkaloid not naturally present in the kratom plant and is a potent mu-opioid receptor with even higher potency than 7-OH. In addition to claims that Smokey violated the Kratom Act, the state attorney general also brought forth claims that the defendants violated the Texas Deceptive Trade Practices Act (DTPA; TEX. BUS. & COM. CODE § 17.46 (West 2025)). The attorney general is requesting that the court imposes injunctive relief prohibiting Smoky from preparing, distributing, selling, or offering to sell kratom products in the state and assesses civil penalties against Smokey for violating the Kratom Act and the DTPA. On February 9, 2026, the court issued a temporary restraining order against Smokey, which is to remain in place until the court rules on the state's application for temporary injunction. (Return to In This Issue)

MISSOURI MAN CLAIMS COMPANY FRADULENTLY MISREPRESENTED ITS 7-OH PRODUCTS

***Joseph Maguire v. Relax Relief Rejuvenate Trading LLC d/b/a EDP Kratom*, Missouri Circuit Court (St. Louis County), Case No. 26SL-CC01270 (suit filed February 3, 2026).** A Missouri man has filed a suit against Relax Relief Rejuvenate Trading LLC, which does business under the name EDP Kratom (EDP), over claims that the company's fraudulent, misleading, deceptive, and negligent sales practices of its 7-hydroxymitragynine (7-OH) products resulted in serious injuries. 7-OH is an alkaloid found naturally in the kratom plant *Mitragyna speciosa* in small quantities, but it can also be synthetically produced and sold in a concentrated form. 7-OH binds to mu-opioid receptors in the body and can cause dependance, addiction, withdrawal, respiratory depression and overdose. According to the complaint, in 2025, Joseph Maguire broke a tooth and was experiencing pain. While browsing in a convenience store, a store employee overheard Maguire complaining about his pain and suggested that he try one of EDP's 7-OH products to help manage his pain. Maguire bought and tried the 7-OH product and after a few weeks of continued use of the product, he claimed that he became addicted to it. Maguire claimed that he progressed to spending hundreds of dollars a day on 7-OH products to fuel his addiction, which depleted his savings account. He tried to stop using 7-OH products on his own but was unsuccessful and eventually sought help from a substance use disorder treatment facility. While receiving treatment, Maguire was forced to close the ice cream shop that he owned, which resulted in lost profit, revenue, and income. The suit brings forth claims that EDP violated the Missouri Merchandising Practice Act (MO. ANN. STAT. § 60-9.100 (West 2025)) by failing to disclose that 7-OH is addictive and can cause opioid-like withdrawal. Maguire also brings forth a claim of negligent misrepresentation, asserting that EDP misrepresented material facts by advertising and marketing its products as a safe pain reliever. Note that Missouri currently does not have a kratom consumer protection law. Maguire is asking the court for damages in excess of $25,000. (Return to In This Issue)

MISSOURI ATTORNEY GENERAL FILES SUIT AGAINST 7-OH MANUFACTURER

***State of Missouri ex rel., Attorney General Catherine L. Hanaway, et al. v. Shaman Botanicals, LLC, et al.*, Missouri Circuit Court (Jackson County), Case No. 2616-CV11773 (suit filed March 31, 2026).** Missouri Attorney General Catherine Hanaway has filed suit against Shaman Botanicals (Shaman) and its related subsidiaries for unlawfully manufacturing and selling 7-hydroxymitragynine (7-OH) products in the state. 7-OH is an alkaloid found naturally in the kratom plant *Mitragyna speciosa* in small quantities, but it can also be synthetically produced and sold in a concentrated form.[3] 7-OH binds to mu-opioid receptors in the body and can cause dependance, addiction, withdrawal, respiratory depression, and overdose. The attorney general's suit, filed in collaboration with the Missouri Department of Health and Senior Services, asserts that Shaman markets its 7-OH products without the safety testing and regulatory approvals required by state and federal law. The suit further alleges that Shaman fails to adequately disclose the risks associated with 7-OH. The attorney general brings forth claims that Shaman violated the Missouri Merchandising Practices Act (MO. ANN. STAT. § 407.020 (West 2025)) because the company is not in compliance with state and federal regulations on food additives and dietary supplements. The suit also asserts that Shaman violated the Missouri Food, Drugs, and Cosmetics Act (MO. ANN. STAT. § 196.015 (West 2025)). Finally, the suit brings forth a claim that Shaman violated the Drug-den Public Nuisance law (MO. ANN. STAT. § 195.253 (West 2025)), which states that "[a]ny store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to for the purpose of possessing, keeping, transporting, distributing or manufacturing controlled substances shall be deemed a public nuisance." The suit alleges that because 7-OH binds to mu-opioid receptors and shares the addictive properties of morphine, it constitutes an opioid under Missouri law and is comparable to various Schedule I controlled substances under MO. CODE REGS. ANN. tit. 19, § 30-1.002 (West 2025). The attorney general is asking the court to issue a permanent injunction prohibiting and enjoining Shaman from advertising, soliciting, selling, providing, or accepting payment for any kratom product, including any 7-OH product. Additionally, the attorney general is asking the court to require Shaman to pay the state a civil penalty of up to $1,000 per violation pursuant to MO. ANN. STAT. § 407.140 (West 2025). Note that Missouri does not have a kratom consumer protection act. (Return to In This Issue)

NINTH CIRCUIT HOLDS DORMANT COMMERCE CLAUSE DOES NOT APPLY TO STATE CANNABIS LICENSING RESTRICTIONS, CREATING CIRCUIT SPLIT

***Peridot Tree WA, Inc. v. Washington State Liquor and Cannabis Control Board*, U.S. Court of Appeals for the Ninth Circuit, Case No. 24-3481 (opinion filed January 2, 2026).** In a case of first impression, the Ninth Circuit has ruled that the Dormant Commerce Clause[4] of the U.S. Constitution does not apply to state restrictions on interstate markets for cannabis. In Sacramento, California, the Cannabis Opportunity Reinvestment and Equity (CORE) program is the city's mechanism for licensing cannabis dispensaries. The CORE program established five classifications for licensing, and two of those classifications, which are identified as Classifications 1 and 2, require participants to be current or former Sacramento residents. After implementing the CORE Program, Sacramento set aside 10 storefront cannabis dispensary permits specifically for Classification 1 and 2 participants only. A city ordinance limited the total number of permits to 40, and during the time at issue in this case, the 30 non-Classification 1 and 2 permits had already been granted. Thus, only individuals eligible to apply for an available permit at the time were those who met the residency

[3] For more information about kratom and 7-OH, please refer to LAPPA's Kratom: Summary of State Laws research document and its factsheet entitled, Regulation of Kratom in America.

[4] 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).

requirement. Like California, Washington has legalized cannabis and since 2015, the state has imposed a six-month residency requirement for cannabis dispensary licenses. Kenneth Gay, a Michigan resident, is the majority owner of Peridot Tree, Inc., a California corporation, and Peridot Tree WA, a Washington corporation (both companies singularly referred to as "Peridot"). Peridot applied for a cannabis license in King County, Washington and in September 2023, the Washington State Liquor & Cannabis Control Board notified Peridot that its application would not be considered because it failed to meet the minimum residency qualifications. A similar situation occurred in Sacramento with the city rejecting Peridot's license application for failing to meet the residency requirement. Peridot claimed that in both Washington and Sacramento it met all of the application requirements except for the residency requirement. Peridot filed two identical lawsuits claiming that the cannabis dispensary licensing schemes in Sacramento and Washington violated the Dormant Commerce Clause by preferring in-state interests over out of state competitors. Both district courts dismissed Peridot's suits, holding that the Dormant Commerce Clause does not apply to resident requirements for cannabis dispensaries because marijuana is illegal under federal law. The two cases were consolidated on appeal before the Ninth Circuit. On appeal, the court affirmed the rulings of the district courts, holding that the Dormant Commerce Clause does not protect "the free-flowing operation of national markets that Congress has already made illegal." The Ninth Circuit also determined that extending the Dormant Commerce Clause to cannabis dispensary licensing schemes would go against Congress's judgment about the harmfulness of Schedule I controlled substances. The Ninth Circuit's ruling created a circuit split between it and the First and Second Circuits, which both previously ruled that the Dormant Commerce Clause applies to cannabis even though it is illegal under federal law. On March 17, 2026, Peridot filed a petition for a rehearing *en banc*.
(Return to In This Issue)

MINNESOTA ADMINISTRATIVE LAW JUDGE INVALIDATES INTERPRETIVE RULE BANNING DIRECT-TO-CONSUMER SHIPPING OF HEMP PRODUCTS

***In the Matter of the Petition of Crested River Cannabis Company, et al.*, Minnesota Court of Administrative Hearings, Case No. 24-4800-41292 (opinion filed February 12, 2026).** A Minnesota Administrative Law Judge (ALJ) issued a ruling prohibiting the Minnesota Office of Cannabis Management (OCM) from enforcing an unadopted rule related to direct-to-consumer sales of certain hemp products. In 2022, the Minnesota Legislature legalized the sale of edibles containing cannabinoids derived from hemp at specific low concentrations, known as low-potency hemp edibles (LPHE) (MINN. STAT. ANN. § 151.72 (West 2025)). The original statute regulating these sales was silent on the delivery or shipment of such products directly to consumers, but since 2022, businesses have developed a practice of shipping LPHE directly to consumers. In 2023, the Minnesota Legislature created the OCM and empowered it to regulate the sale and distribution of cannabis and related products. Chapter 342 of the Minnesota Code creates 14 different licenses that the OCM may issue, and MINN. STAT. ANN. § 342.46 specifically addresses LPHE retail licenses. Section 342.46 also creates a "delivery endorsement" for which licensed retailers may apply. Obtaining a delivery endorsement requires licensees to submit additional information to OCM, including: (1) proof of insurance for each vehicle or general liability insurance; (2) a business plan demonstrating policies to avoid sales of LPHE to individuals who are under age 2; and (3) evidence that the business will comply with applicable operation requirements for the license being sought. In October 2025, OCM added a frequently asked questions (FAQ) page to its website. One question in the FAQ was "[c]an a hemp edible business ship products directly to a consumer?" OCM's answer to this question included the following statement: "[u]nder Minnesota Statutes, chapter 342, LPHE retailers are not permitted to ship directly to consumers." The petitioners, who are businesses registered with the OCM to sell LPHE, filed this action arguing that the OCM's statement on the FAQ page that LPHE retailers are not permitted to ship directly to consumers constituted an unlawfully promulgated new rule under the Minnesota Administrative Procedure Act (MAPA; MINN. STAT. ANN. § 14.001, *et seq.* (West 2025)). The OCM argued that its interpretation of chapter 342 on the FAQ page is consistent with and authorized by the plain and unambiguous language of relevant statutes and rules.

Under the MAPA, interpretive rules are statutorily required to be properly promulgated, unless one of two exceptions exist: (1) the agency's interpretation of a statute corresponds with its plain meaning; or (2) the statute is ambiguous, and the agency interpretation is a longstanding one. If an exception applies, then the agency is deemed not to have promulgated a new rule, and its interpretation is valid, but if an agency's unpromulgated interpretive rule does not qualify for an exception, it is invalid. The petitioners argued that nothing in the plain text of Chapter 342 bars the practice of shipping LPHE to consumers. The OCM asserted that the legislature enacted a series of provisions that require in-person sales and deliveries of LPHE to consumers, and as a result, the FAQ statement was consistent with the plain language of the statute. Specifically, OCM focused on three aspects of § 342.46 to support its claim: (1) the requirement that licensees must verify a customer's age at the moment of sale and when delivering an LPHE; (2) the requirement that licensees may not sell or deliver LPHE to visibly intoxicated individuals; and (3) the availability of a delivery endorsement to LPHE retailers. The ALJ disagreed with the OCM, determining that § 342.46 does not: (1) state the methods by which age verification must take place, much less require it to be conducted in person; (2) establish requirements regarding what methods licensees must employ to be in compliance with the statute; and (3) require licensees with the delivery endorsement to be the exclusive method by which LPHE maybe shipped or delivered to customers. Based on those determinations, the ALJ ruled that the FAQ statement at issue went beyond the plain and unambiguous language of chapter 342 and thus, was an interpretive rule that did not meet one of the exceptions to the promulgation requirement. The ALJ held that the interpretive rule was invalid and ordered OCM to immediately cease enforcement of the rule. (Return to In This Issue)

NEW YORK APPELLATE COURT RULES STATE CANNABIS REGULATIONS ARE NOT PREEMPTED BY FEDERAL LAW

***In the Matter of Cannabis Impact Prevention Coalition LLC, et al. v. Kathy Hochul, et al.*, New York Supreme Court, Appellate Division, Case No. CV-24-1706 (opinion filed March 19, 2026).** A New York intermediate appellate court has ruled that New York's cannabis regulations are not preempted by the federal Controlled Substances Act (CSA; 21 U.S.C. § 801, *et seq*.). In March 2021, the New York Legislature passed the Marihuana Regulation and Taxation Act (MRTA). This law legalized adult-use cannabis and further created the Cannabis Control Board and the Office of Cannabis Management (OCM) to oversee and implement the new law. As relevant to this case, the OCM promulgated various regulations pertaining to medical cannabis (N.Y. COMP. CODES R. & REGS. tit. 9, Part 113 (West 2026)), adult-use packaging and labeling (N.Y. COMP. CODES R. & REGS. tit. 9, Part 128 (West 2026)), and adult-use marketing and advertising (N.Y. COMP. CODES R. & REGS. tit. 9, Part 129 (West 2026)) (regulations hereinafter referred to as 9 NYCRR parts 113, 128, and 129). The petitioners, which consists of a group of individuals and organizations whose members allege that New York's cannabis laws and regulations cause harm, filed suit against the respondents seeking to annul 9 NYCRR parts 113, 128, and 129 and have them declared by the court as being preempted by the federal CSA. The respondents filed a motion to dismiss, which the lower court granted after it determined that the CSA did not preempt the challenged regulations. The petitioners appealed and the appellate court affirmed the lower court's ruling. The appellate court in reaching its holding noted that neither the MRTA nor the challenged regulations pose any requirements on an individual or entity to manufacture, distribute, or possess cannabis in violation of the CSA. Additionally, the court noted that the challenged regulations do not prohibit the enforcement of the CSA in any way. Accordingly, the court held that 9 NYCRR parts 113, 128, and 129 are not preempted by the CSA. (Return to In This Issue)

OHIO SUPREME COURT DECLINES TO DELAY STATE BAN ON CERTAIN HEMP BEVERAGES

***Fifty West Brewing Company, et al. v. James V. Canepa, et al.*, Supreme Court of Ohio, Case No. 2026-0264 (motion to dismiss granted March 20, 2026).** The Ohio Supreme Court has refused to override

Governor Mike DeWine's decision to deny certain businesses a grace period to sell cannabis derived drinks while a broader ban on intoxicating hemp products goes into effect. In December 2025, Governor DeWine signed S.B. 56 into law, which, among other things, replaced the definition of hemp in state law with the new federal definition of hemp established by the federal Continuing Appropriations and Extensions Act of 2026 (H.R. 5371).[5] Governor DeWine vetoed a section of S.B. 56 that would have created an exclusion that would have allowed the non-dispensary sale of drinkable cannabinoid products until December 31, 2026; the rest of S.B. 56 went into effect on March 20, 2026. On March 6, 2026, the petitioners, which included breweries and cannabis beverage manufacturers and distributors, filed an emergency complaint for writ of mandamus[6] arguing that the governor's line-item veto of the drinkable cannabinoid products section of S.B. 56 was invalid because Article II, Section 16 of the Ohio Constitution only allows the governor to line-item veto items "making an appropriation of money." On March 20, 2026, the Ohio Supreme Court denied the emergency request and dismissed the case, but the justices did not issue an opinion explaining their legal reasoning for the decision. The court, however, granted the petitioners leave to file a second amended complaint. (Return to In This Issue)

SECOND CIRCUIT FINDS MEDICAL CANNABIS CANNOT BE REIMBURSED THROUGH FEDERAL WORKERS' COMPENSATION LAWS

***Luis Peña Garcia v. U.S. Department of Labor*, U.S. Court of Appeals for the Second Circuit, Case No. 23-8066 (opinion filed March 5, 2026).** The Second Circuit ruled that an otherwise eligible worker cannot receive federal workers' compensation reimbursement for medical cannabis treatments. Luis Peña Garcia, a resident of Puerto Rico, was diagnosed with chronic pain from work-related injuries and rendered permanently disabled, and under the federal Longshore and Harbor Workers' Compensation Act (LHWCA; 33 U.S.C. § 907), he was entitled to reimbursement for any reasonable and necessary medical expenses. Consistent with local law, Peña Garcia's physician recommended cannabis-containing edibles to manage his pain, but his insurance carrier then denied his reimbursement request on the grounds that the LHWCA did not authorize reimbursement for substances that are categorized as Schedule I controlled substances under the federal Controlled Substances Act (CSA; 21 U.S.C. § 801, *et seq*). Under the CSA, Schedule I controlled substances do not have any currently accepted medical use (21 U.S.C. § 812). Peña Garcia petitioned the U.S. Department of Labor's Benefits Review Board (Board) for an order approving the reimbursement, but after a hearing before an administrative law judge (ALJ), the Board and the ALJ denied the petition. Peña then sought review from the Second Circuit, arguing that medical cannabis is a reasonable and necessary treatment for pain management and, as a result, he is entitled to reimbursement for the drug under the LHWCA. He further argued that because Congressional appropriation riders, such as the Rohrabacher-Farr amendment,[7] prohibit the U.S. Department of Justice (DOJ) from interfering with state-level medical cannabis laws, the federal government accepted cannabis's medical value by implication. The Second Circuit disagreed with Peña Garcia and denied his petition for review. The court determined that the Congressional appropriation riders cited by Peña Garcia only govern the manner in which the DOJ spends funds that Congress allocates; the riders do not change federal law with respect to controlled substances and cannot be interpreted as having implicitly repealed Congress's statutory classifications of controlled substances in the CSA. The court also noted that the riders do not state anything about cannabis's classification as a reasonable and necessary medical expense for purposes of federal workers' compensation programs. Peña Garcia followed up by arguing that state laws have trended toward reimbursement of claims for medical cannabis in state workers' compensation regimes, but the

[5] For more information on the new federal definition of hemp, please refer to LAPPA's "Closing the Hemp Loophole: The New Federal Definition of Hemp and Its Impact" factsheet, available here.
[6] A writ of mandamus is a writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usually to correct a prior action or failure to act. *Mandamus*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[7] First passed in 2014, the Rohrabacher-Farr amendment prohibits the U.S. Department of Justice from using federal funds to prevent states from implementing their own medical cannabis laws.

court rejected this argument, holding that state policies on medical cannabis do not bear any relation to whether medical cannabis can be reimbursed under federal law. Thus, because cannabis remains classified as a Schedule I substance under the CSA, the court ruled that it cannot be treated as reimbursable medical treatment under the LHWCA and denied Peña Garcia's petition for review. (Return to In This Issue)

OHIO SUES CANNABIS RETAILERS IN ANTITRUST SUIT CLAIMING THEY CREATED BARRIERS FOR SMALLER COMPANIES

***Ohio ex rel. Yost v. Ascend Wellness Holdings Inc., et al.*, Ohio Court of Common Pleas (Franklin County), Case No. 26 CV 001146 (complaint filed February 5, 2026).** Ohio Attorney General Dave Yost has filed an antitrust lawsuit against nine cannabis retailers for allegedly colluding to keep prices high and reduce competition from smaller sellers. According to the complaint filed in Ohio state court on February 5, 2026, the defendants, a group of nine multistate cannabis companies, have formed a "cartel" to limit independent Ohio companies' abilities to enter the local cannabis market. The complaint alleges that the defendants achieved this goal by adopting reciprocal agreements to offer shelf space for each other's products, offer promotional terms unavailable to smaller local companies, and shared non-public competitive information. The attorney general seeks a judicial declaration that these actions constitute an unlawful conspiracy in restraint of trade in violation of OHIO REV. CODE ANN. § 1330.04 (West 2025) and seeks further relief in the form of an injunction forbidding the defendants from participating in anticompetitive acts. Additionally, the attorney general seeks a monetary penalty of $500 from each defendant for each day they engaged in anticompetitive acts pursuant to OHIO REV. CODE ANN. § 1331.03 (West 2025). A discovery cutoff date for the case has been set for October 29, 2026, with the trial assigned for February 2027. (Return to In This Issue)

PENNSYLVANIA SUPREME COURT RULES CANNABIS TRADE ASSOCIATION LACKS STANDING TO CHALLENGE COURT'S MEDICAL CANNABIS POLICY

***Pennsylvania Cannabis Coalition v. 23rd Judicial District, Berks County*, Supreme Court of Pennsylvania, Case No. 73 MAP 2024 (opinion filed March 26, 2026).** In a 4-3 decision, the Supreme Court of Pennsylvania ruled that a cannabis trade association does not have standing to challenge a judicial district's policy concerning the use of medical cannabis by participants in a treatment court. The 23rd Judicial District of Pennsylvania in Berks County offers several treatment court programs designed to help defendants with substance use disorder and mental health issues. Per the 23rd Judicial District's policy and procedure manual, treatment court enrollees are subject to periodic drug testing and are prohibited from using certain substances. As originally conceived, this policy prohibited the use of medical cannabis. In 2020, the Pennsylvania Supreme Court ruled in *Gass v. 52nd Judicial District, Lebanon County*[8] (232 A.3d 706) that affirmatively prohibiting all probationers and all other individuals under court supervision from using medical cannabis violated the immunity provision of the Pennsylvania Medical Marijuana Act (PMMA; 35 PA. STAT. AND CONS. STAT. ANN. § 10231.101, *et seq*. (West 2026)). However, the court clarified that judges and probation officials may make reasonable inquiries into the lawfulness of an individual's medical cannabis use. After the *Gass* decision, the 23rd Judicial District amended its policy to state that medical cannabis will be addressed on a case-by-case basis. The Pennsylvania Cannabis Coalition (PCC) is a trade organization comprised of 75 percent of Pennsylvania permit holders authorized to dispense medical cannabis. Following the policy change, the PCC filed a petition for review in the commonwealth court, claiming that the amended policy violates the PMMA's immunity provision. The PCC argued that the policy allows treatment courts to reject applicants based solely upon their lawful use of medical cannabis, thus violating the PMMA as interpreted in

[8] For more information on the *Gass* case, please refer to the August 2020 issue of the LAPPA *Case Law Monitor*, available here.

Gass, and asserted that when patients stop purchasing medical cannabis based on the policy, its member dispensaries are financially harmed, and hence, are aggrieved by the policy. The 23rd Judicial District asserted that it does not ban the use of medical cannabis and filed a motion for summary relief arguing that the PCC did not have standing. The commonwealth court dismissed the suit for lack of standing, and the PCC appealed.

An association has standing to sue, absent injury to itself, if it alleges that at least one of its members has suffered, or will suffer, an immediate or threatened injury as a result of the challenged action. As applied in this case, the PCC would have standing if at least one of its member dispensaries had a substantial, direct, and immediate interest affected by the 23rd Judicial District's medical cannabis policy. While it is undisputed that the 23rd Judicial District's policy does not regulate medical cannabis dispensaries, the PCC argued that the policy does regulate treatment court applicants in a way that financially affects dispensaries. In other words, the PCC claimed that the policy will lead some individuals to cease purchasing medical cannabis, which will financially harm its members. The majority ruled that the alleged financial consequences are too remote or speculative for the PCC to qualify for standing because for the policy to result in such harms, a number of events tangential to the dispensaries' business would have to occur. The majority noted that a dispensary consumer would have to be charged with a crime, referred to a treatment court, evaluated for his or her use of medical cannabis on a case-by-case basis, and denied such use by the treatment court before the PCC members would even potentially be financially affected. Additionally, the majority noted that the PMMA's immunity provision is not designed to protect the financial interest of dispensaries. The majority concluded that the commonwealth court properly held that the PCC lacked standing to challenge the 23rd Judicial District's policy and affirmed the dismissal of the case. The dissenting justices argued that the PCC had standing to challenge the policy, finding that there was a causal connection between the policy and the PCC's interest. (Return to In This Issue)

CANNABIS OPPOSITION GROUPS SUE FEDERAL GOVERNMENT OVER NEW CANNABIS PROGRAM FOR MEDICARE

***Smart Approaches to Marijuana, et al. v. Robert F. Kennedy, Jr., et al.*, U.S. District Court for the District of Columbia, Case No. 1:26-cv-01081-TNM (suit filed March 30, 2026).** A coalition of 11 cannabis opposition groups have filed a lawsuit against the U.S. Department of Health and Human Services, Robert F. Kennedy Jr., Mehmet Oz, MD, and the Centers for Medicare and Medicaid Services (CMS) over its implementation of a new program that allows physicians to distribute hemp-derived cannabis products to certain Medicare patients. On March 20, 2026, CMS created a program called the Substance Access Beneficiary Engagement Incentive (BEI) which gives physicians participating in certain CMS pilot programs the ability to consult with eligible Medicare beneficiaries about the possible use of hemp products to improve their medical symptoms. Patients in the program can receive up to $500 worth of hemp-derived cannabis products per year subject to certain requirements and safeguards; the cost is covered by the provider group, not Medicare. The lawsuit alleged that the BEI program violates the Administrative Procedure Act (5 U.S.C. §§ 552, 553, and 706) because CMS failed to undergo the required notice-and-comment rulemaking procedure before announcing the program. The plaintiffs also argued that the BEI program is arbitrary and capricious because it conflicts with an April 2025 CMS rule (90 Fed. Reg. 15,792) stating that medical cannabis is illegal under federal law and does not qualify for coverage under Medicare Advantage plans, and CMS did not provide an explanation for the inconsistency. Moreover, the plaintiffs claimed that CMS failed to consider the hazards that may arise from this policy reversal, including the risk of adverse health outcomes. The plaintiffs asked the court to issue a permanent injunction prohibiting CMS from implementing, applying, or enforcing the BEI, which officially went into effect on April 1, 2026. On March 31, 2026, the court denied the plaintiffs' motion for a temporary restraining order, finding that they did not demonstrate that they faced irreparable harm in the absence of preliminary relief. A hearing on the request for a preliminary injunction is set for April 20, 2026. (Return to In This Issue)

WASHINGTON COUNTY ORDINANCE RESTRICTING MOBILE SYRINGE SERVICES PROGRAMS REPEALED AS PART OF SETTLEMENT

***Gather Church v. Lewis County, et al.*, U.S. District Court for the Western District of Washington, Case No. 3:25-cv-05850-DWC (settlement announced February 10, 2026).** For previous updates on this case, please refer to the February 2026 issue of the LAPPA *Case Law Monitor*, available here. On February 10, 2026, Gather Church (Gather) announced that it reached a settlement with Lewis County, Washington and that as part of the settlement, the county agreed to repeal Ordinance 1354. The ordinance restricted who may work at a syringe services program (SSP), the quantity of needles an individual may exchange, and where an SSP could be located, as well as prohibited mobile SSPs from operating. The settlement followed a December 2025 ruling by a federal court that granted Gather's motion for a preliminary injunction. The court, in granting the preliminary injunction, held that the ordinance likely violated the Americans with Disabilities Act (42 U.S.C. § 12131), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), and state laws that permit and encourage harm reduction services. In addition to a total repeal of the ordinance, the settlement agreement included $500,000 in attorneys' fees. (Return to In This Issue)

OVERDOSE PREVENTION GROUP FILES SUIT TO OVERTURN WEST VIRGINIA'S MORATORIUM ON NEW OPIOID TREATMENT PROGRAMS

***Solutions Oriented Addiction Response West Virginia v. State of West Virginia, et al.*, U.S. District Court for the Southern District of West Virginia, Case No. 3:26-cv-00175 (suit filed March 5, 2026).** The largest overdose prevention group in West Virginia has filed a federal lawsuit against the state and state officials in an attempt to overturn the state's moratorium on new methadone clinics. In 2007, the West Virginia legislature passed a law that instituted a moratorium on the licensure of new opioid treatment programs (OTPs; W. VA. CODE ANN. § 16B-13-12 (West 2026)), which are the only facilities federally authorized to dispense methadone for the treatment of opioid use disorder (OUD). Specifically, the moratorium prohibits the licensing of any new OTPs that lack a certificate of need, while also prohibiting the West Virginia Health Care Authority from issuing a certificate of need to any new OTPs. West Virginia is the only state in the country with a moratorium on new OTPs, and it has resulted in only nine OTPs being able to operate in the state for almost two decades. In addition to the moratorium, West Virginia has a zoning requirement that prohibits "medication-assisted treatment programs" from being located within one-half mile of a daycare center or K-12 school (W. VA. CODE ANN. § 16B-13-6 (West 2026)). Solutions Oriented Addiction Response West Virginia (SOAR-WV) is a non-profit organization that works with individuals who have OUD and other substance use disorders to connect them with treatment, recovery, and overdose prevention services. SOAR-WV filed this lawsuit against the defendants arguing that the moratorium and zoning restrictions violate Title II of the Americans with Disabilities Act (42 U.S.C. § 12132) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794) by singling out and banning only new medical clinics that dispense methadone, which in turn discriminates against individuals with OUD. In the complaint, SOAR-WV asserts that it has been injured by the moratorium and zoning restrictions in two primary ways: (1) by limiting its ability to refer the individuals it serves to effective treatment options, forcing them to expend resources providing services to individuals who would otherwise be receiving effective treatment and not in need of SOAR-WV's services; and (2) by forcing them to expend more resources in its statewide naloxone distribution efforts because there is a larger pool of individuals who are at risk of overdose due to the moratorium and zoning restrictions. SOAR-WV argues that if the moratorium and zoning restrictions were lifted, numerous OTPs would open across the state, which would allow more West Virginians with OUD to access and receive treatment. SOAR-WV is asking the court to enjoin the defendants from enforcing the moratorium and zoning restrictions. The defendants' answer is due by April 16, 2026. (Return to In This Issue)

GEORGIA DRUG DEALER LIABILITY ACT SUIT AGAINST MCKESSON DISMISSED DUE TO STATUTE OF LIMITATIONS

***McKesson Corporation v. Angel and Christopher Bolton*, Court of Appeals of Georgia, Case No. A25A2089 (opinion filed February 12, 2026).** A Georgia intermediate appellate court has dismissed a suit brought forth by the adult children of a man who was dependent on prescription controlled substances against the pharmaceutical distributor McKesson Corporation (McKesson). According to the record, Angel and Christopher were the adult children of Kevin Bolton, who suffered from a substance use disorder (SUD) and would often obtain prescriptions for opioids and other controlled substances without a legitimate medical purpose. Their father overdosed and died on February 21, 2016, but while their father was alive, the Boltons stated that his SUD caused them physical, mental, emotional, and economic harm. The pharmacy at which their father would obtain his prescriptions was serviced by McKesson, and the Boltons alleged that the pharmacy made excessive purchases of controlled substances and that McKesson did not report these purchases to the Georgia Drug and Narcotics Agency as required by GA. CODE ANN. § 26-4-115 (West 2025). On April 5, 2018, the Boltons filed suit against McKesson, bringing forth a claim under Georgia's Drug Dealer Liability Act (DDLA; GA. CODE ANN. § 51-1-46 (West 2025)). Established in 1997, Georgia's DDLA was intended to "provide a civil remedy for damages to persons in a community injured as a result of illegal drug use" (§ 51-1-46(b)). Under the Act, "a person injured by an individual drug abuser may bring an action under this Code section for damages against a person who participated in illegal marketing of the controlled substance used by the individual abuser" (§ 51-1-46(d)(1)). The DDLA does not contain its own statute of limitations. McKesson filed a motion to dismiss, arguing that: (1) the complaint was time barred by a two-year statute of limitations; and (2) the DDLA did not apply to it as a licensed distributor of controlled substances. The trial court concluded that it was incapable of determining whether McKesson had immunity from the DDLA as a licensed distributor at the motion to dismiss stage. As for the statute of limitations arguments, the court granted McKesson's motion to dismiss in response to certain personal injury damages related to the wrongful death of Kevin Bolton and his medical expenses that were not paid by his children. However, the trial court concluded that the Boltons could seek recovery for the amount that they spent on their father's healthcare and could seek non-economic damages under the DDLA that would be otherwise unavailable in a traditional tort action because the 20-year statute of limitation established in GA. CODE ANN. § 9-3-22 (West 2025) applied to any part of their DDLA claim that was not cognizable under standard tort law. McKesson filed a request for an interlocutory appeal,[9] which the court granted.

On appeal, McKesson argued that the Boltons sought remedies for personal injury, which has a statute of limitations of only two years under GA. CODE ANN. § 9-3-33 (West 2025), and that the trial court erred when it applied the 20-year statute of limitations established by § 9-3-22. In reaching its decision, the trial court determined that the Boltons' claims were authorized solely by the DDLA and not by any other law and, as such, the 20-year statute of limitations in § 9-3-22 applied. However, the appeals court noted that § 9-3-22's 20-year statute of limitations only applies when the traditional general statute of limitations does not cover a claim. Furthermore, the appeals court noted that the two-year general statute of limitations for personal injury claims established by § 9-3-33 is broadly written and covers any claim that seeks to recover for personal injuries, regardless of the underlying legal basis that establishes liability. The appeals court determined that the Boltons' claims in this case are to recover for personal injuries and that the DDLA is merely acting as a way to expand the scope of liability beyond that imposed by traditional tort law. Thus, the two-year personal injury statute of limitations applies in this case. Applying the two-year statute of limitations, the court ruled that the Boltons' claims were time-barred and reversed the ruling of the trial court. Because the court determined that the action was barred by the statute of limitations, it did not consider McKesson's argument that it is immune from the DDLA as a licensed practitioner. On March 13, 2026, the Boltons filed a petition for writ of *certiorari* with the Georgia Supreme Court. (Return to In This Issue)

[9] An interlocutory appeal is an appeal that occurs before the trial court's final ruling on the entire case. *Interlocutory appeal*, BLACK'S LAW DICTIONARY (12th ed. 2024).

U.S. DEPARTMENT OF LABOR SETTLES WITH KAISER OVER ACCESS TO MENTAL HEALTH AND SUD SERVICES

(Settlement reached February 10, 2026). The Kaiser Foundation Health Plan, Inc. ("Kaiser") has accepted a settlement to resolve investigations by the U.S. Department of Labor (DOL) into Kaiser's provision of mental health and substance use disorder (SUD) care. Kaiser offers health insurance coverage through employer-provided plans to millions of Americans and is subject to DOL oversight under the Employee Retirement Income Security Act of 1974 (ERISA; 29 U.S.C. §§ 1001, *et seq).* The DOL, through multiple investigations of Kaiser's operations in California, concluded that Kaiser had violated a component of ERISA and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA; 29 USC § 1185a) by preventing plan members from obtaining in-network treatment for mental health and SUD care. Instead, Kaiser directed patients toward out-of-network providers with higher out-of-pocket costs. The MHPAEA requires that health insurance providers offer mental health and SUD benefits on terms that are no more restrictive than those for medical or surgical care, and limiting network access is a prohibited non-quantitative treatment limitation. On February 10, 2026, Kaiser agreed to a settlement with the DOL. Kaiser will pay $28 million to reimburse its members for excessive out-of-pocket costs and $2.8 million as a penalty to the federal government. Kaiser further agreed to revise its internal policies to improve patient access to medically necessary care and to better monitor the adequacy of its provider networks. (Return to In This Issue)

UNITED BEHAVIORAL HEALTH SETTLES CLASS ACTION PARITY SUIT

***R.B. v. United Behavioral Health*, U.S. District Court for the Northern District of New York, Case No. 1:21-cv-00553-MAD-PJE (settlement approved March 30, 2026).** United Behavioral Health (United), a subsidiary of UnitedHealth Group, agreed to pay $1.4 million to settle a class action suit alleging that it denied insurance coverage for certain types of experimental mental health treatment services. In May 2021, Plaintiff R.B. brought forth a class action suit against United claiming that it violated the Employee Retirement Income Security Act of 1974 (ERISA; 29 U.S.C. § 1132), and the Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a) by excluding from insurance coverage all mental health and substance use disorder treatment services rendered at residential treatment centers where any component of the center's programming was considered "unproven, experimental, or investigational." R.B. argued that United does not impose a similar restriction on coverage for comparable medical and surgical services. Class members will receive a payout ranging from $937 to $18,734. The settlement also includes $471,667 in attorneys' fees. On March 30, 2026, the court granted final approval for the settlement, finding it to be fair and reasonable, and dismissed the case with prejudice. (Return to In This Issue)

WHISTLEBLOWER IN WALGREENS OPIOID SUIT ASSERTS HE IS ENTITLED TO A PORTION OF THE MULTI-STATE SETTLEMENT

***United States ex rel. Novak v. Walgreens Boots Alliance, Inc., et al.*, U.S. District Court for the Northern District of Illinois, Case. 1:18-cv-05452 (objections to preliminary injunction filed February 3, 2026).** For previous updates about this case, please refer to the June 2025 issue of the LAPPA *Case Law Monitor*, available here. A whistleblower in a federal opioid case against Walgreens Boots Alliance, Inc. (Walgreens) is claiming that he is entitled to a portion of a group of states' settlement with the pharmacy chain. This dispute stems from a federal suit brought forth by former Walgreens' pharmacist T.J. Novak who alleged that the pharmacy chain filled illegal opioid prescriptions and sought reimbursement for those prescriptions from government health programs, including Medicare and Medicaid, in violation of the federal False Claims Act (FCA; 31 U.S.C. § 3729). The federal government intervened in Novak's suit, and in April 2025, it reached a $300 million settlement with Walgreens. Half of the total settlement amount was allocated to Novak's FCA claims and as a whistleblower, Novak was entitled to a percentage of the settlement amount. The federal

government paid Novak a 17.25 percent whistleblower share in connection with the FCA settlement, which amounted to more than $25 million. In addition to the April 2025 federal settlement with Walgreens, in 2022 there was a multi-state settlement with the company for more than $4.7 billion. On November 26, 2025, Novak filed a motion for declaratory judgment with the court arguing that he is entitled to a share of the states' 2022 settlement with Walgreens. Novak claimed that the states have refused to comply with the provisions of their state FCA laws that expressly require them to pay Novak a share of the states' settlement for his role as a whistleblower. Furthermore, Novak asserted that the states' ability to reach a settlement was dependent on their release of his state FCA claims. Novak requested that the court enter a declaratory judgment declaring that he is entitled to at least the statutory minimum 15 percent share of the value of the states' settlement that is allocated for the release of his FCA claims. On February 3, 2026, the states filed objections to Novak's motion for declaratory judgment, arguing that he does not have a right to a share of the states' settlement because the funds are meant to address the alleged public nuisance caused by Walgreens, not to resolve his state FCA claims. The states also argued that it would be too difficult for the court to determine which part of each state's allocated settlement funds, if any, could be subject to whistleblower compensation. On February 24, 2026, Novak filed his reply to the states' objections. The court has not yet ruled on the matter. (Return to In This Issue)

MARYLAND SUPREME COURT ANSWERS CERTIFIED QUESTION IN PBM OPIOID LAWSUIT

***Anne Arundel County, Maryland v. Express Scripts, Inc., et al.*, Supreme Court of Maryland, Case No. Misc. No. 1 September Term, 2025 (opinion filed March 23, 2026).** In answering a certified question from the U.S. District Court for the District of Maryland, in a 6-1 decision, the Maryland Supreme Court ruled that a Maryland county may not sue pharmacy benefit managers (PBMs), mail-order pharmacies, or retail pharmacies for common law public nuisance in connection with the opioid epidemic. In 2024, Anne Arundel County (county), Maryland filed a lawsuit against multiple PBMs, including Express Scripts, OptumRx, and CVS Caremark, arguing that they created a public nuisance in the county by conspiring with drugmakers to deceptively market opioids, and by facilitating and encouraging opioid use. In February 2025, the federal district court issued the following certified question to the Maryland Supreme Court: "Under Maryland's common law, can the licensed dispensing of, or administration of benefit plans for, a controlled substance constitute an actionable public nuisance? If so, what are the elements of such public nuisance claim and what types of potential relief can a local government plaintiff seek when asserting such a claim?" The majority answered "no" to the first question, holding that the licensed dispensing of, or administration of benefit plans for, a controlled substance does not constitute an actionable public nuisance. The majority noted that the court has never recognized a government actor's ability to recover damages in a public nuisance action and declined to expand the common law of public nuisance in this case because the county failed to satisfy a primary requirement of a public nuisance claim. Specifically, the majority determined that the county failed to show that the defendants' conduct of dispensing opioids and the administration of benefit plans for opioids affected a common public right. The majority declined to recognize a public right to be free from the adverse effects associated with a lawful product being diverted, misused, or abused because recognizing such public right would permit nuisance liability to be imposed on an "endless list" of manufacturers, distributors, and retailers. The majority further recognized that even if the county were able to establish that the alleged conduct interfered with a public right, it would still decline to expand the common law of public nuisance in this case because of the extensive federal and state statutory and regulatory framework that governs the licensed prescribing, dispensing, and administration of benefit plans related to opioids. Such complex issues, the majority determined, were better suited for the legislature as opposed to the judiciary. The dissenting justice rejected the majority's conclusion that the county's complaint failed to allege a violation of a common public right. The suit was remanded to the federal district court for continued proceedings in light of the Maryland Supreme Court's ruling. (Return to In This Issue)

INSURERS GRANTED PARTIAL SUMMARY JUDGMENT IN ENDO INSURANCE COVERAGE SUIT

***Matthew Dundon v. ACE Property & Casualty Insurance Co., et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:24-cv-04221 (opinion filed February 10, 2026).** For previous updates on this case, please refer to the October 2024 issue of the LAPPA *Case Law Monitor*, available here. A federal judge granted summary judgment in part to several insurers, including units of Chubb Ltd. and Travelers, in a suit against the Endo General Unsecured Creditors' Trust (Endo Trust). The Endo Trust was formed following the bankruptcy of opioid manufacturer Endo International PLC (Endo) and was meant to obtain funding to cover the thousands of underlying lawsuits brought against Endo by governments, third-party payors, and individuals seeking money for harms that allegedly resulted from the opioid epidemic. The Endo Trust, through trustee Matthew Dundon, filed this lawsuit in August 2024 against nearly 40 insurers who disputed their duty to cover Endo's underlying claims related to opioids. Dundon argued that Endo's policies for product liability and commercial general liability insurance covered its liabilities related to opioid litigation and that the insurers were obligated to pay. In a series of opinions issued on February 10, 2026, the court ruled that a products exclusion provision in the commercial general liability policies issued to Endo generally barred coverage for suits related to the company's role in the opioid crisis. The court determined that many of the governmental and third-party payor suits against Endo were not covered under the policies because they did not seek damages because of bodily injury; however, it noted that at least one of the suits potentially sought covered damages. The court also determined that claims based on Endo's unbranded marketing and promotion of opioids were barred by the products exclusion provision. (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 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 disorder, medication for addiction treatment in correctional settings, and the involuntary commitment of individuals with alcohol or substance use disorder.

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