

### A Primer on CBD Oil

Recently, I was confronted with a probationer in my Reentry Court who had used CBD oil, and this was discovered after he tested positive for THC. He had been clean for an extended period, so the positive drug test took everyone, the probationer included, by surprise.



*Jennifer Thurston is a magistrate judge in Bakersfield.*

After cautioning him not to use it, it occurred to me that I wasn't quite sure of my facts related to CBD oil. Upon doing some research, I realized that many of my assumptions about CBD come from a long-standing commitment to Nancy Reagan's "Just Say No" program and the fact that I, like most other magistrate judges, have issued search warrants for marijuana dispensaries that conduct all manner of illegal operations including methamphetamine, opioids and gun sales.



What I have learned through my research is that throughout the country, states are lifting prohibitions on the recreational and medicinal use of marijuana. Along with this slackening, entire industries are sprouting up to fill the needs of this developing marketplace. One of the products becoming mainstream is CBD oil.

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*Dropper by lastspark from the Noun Project.*



### Local Community Band Brings Performance to Naturalization Ceremony

On July 3, 2019, participants in Yakima's naturalization ceremony were welcomed into citizenship with a surprise musical performance from their neighbors. In celebration of the event coinciding with the July 4th holiday, 16 members of the Yakima Valley Community Band performed patriotic music as a part of the naturalization ceremony.



*Molly Smith is a term law clerk for Magistrate Judge Mary K. Dimke in Yakima.*

Carrying flutes, an oboe, clarinets, saxophones, trumpets, a French horn, trombones and drums, band members filled the jury box and additional seating in the ceremonial courtroom of the William O. Douglas United States Courthouse. The band played music to both open and close the ceremony and used the historic courtroom's high ceiling to its fullest acoustic potential. Under the direction

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## CEREMONY *continued from page 1*

of Joshua Parrill, the band performed a selection of classic American marches, including John Philip Sousa's "The Stars and Stripes Forever" and "Liberty Bell March," and E.E. Bagley's "National Emblem March." After the new citizens took the Oath of Citizenship and the entire courtroom recited the Pledge of Allegiance, the band performed an arrangement of "The Star-Spangled Banner." The naturalization ceremony and special performance were featured in both the local evening news and on the front page of the local paper's Fourth of July edition.

### Personal Connections to the Ceremony

The naturalization ceremony held special significance for many of the band's members. Several of them teach local citizenship education classes. And although most had never set foot in Yakima's historic federal courthouse prior to the performance, one band member had a strong personal connection to the building and the ceremony. Flute player Xochitl Flores was naturalized in the same courthouse in 2006. Ms. Flores told court staff after the ceremony that being able to observe a second naturalization ceremony was incredibly meaningful to her and that she was grateful to reflect on her own 13 years of citizenship.

### A Local Institution

The Yakima Valley Community Band has provided music to the Yakima area for 100 years. It welcomes musicians from junior high students to octogenarians. The band's members include teachers, college professors, healthcare professionals, students, military veterans, retirees, city transit workers, and a local donut shop owner. Band members practice year-round and perform free community concerts at local parks, schools, and churches.

During my term clerkship with Magistrate Judge Dimke, I played clarinet in the band and



*A new citizen poses for a photo with Judge Dimke.*

coordinated logistics for the day. Unlike the band's usual concert venues, bringing it into federal court presented unique challenges. The Yakima courthouse is a branch courthouse in the Eastern District of Washington and serves a rural community. Naturalization ceremony days are some of its busiest of the year. In addition to conducting security screenings for the citizenship candidates and their friends and family, the Court Security Officers also needed to screen the musicians, music stands, and several bulky but fragile musical instruments. Once inside the courthouse, the band required space to warm up while U.S. Citizenship and Immigration Services prepared for the naturalization ceremony in the ceremonial courtroom. Even inside the courtroom, the band had to arrange itself carefully within the jury box to accommodate people, stands, and traveling trombone slides. But by all accounts, the inspirational event was worth the effort. ■

Cannabidiol (“CBD”) oil is extracted from the flowers or buds of marijuana or hemp plants. According to the World Health Organization, CBD does not produce the high that is commonly associated with marijuana use. Many users tout the effectiveness of CBD oil to treat a range of ailments, but whether this is due to a placebo effect is unknown. Human studies have lagged far behind the onslaught of use, and many of the studies that have occurred lack a control group. In any event, the FDA has approved at least one medication containing CBD to treat epilepsy.

Upon this landscape, in 2018, Congress amended the Controlled Substances Act to lift the ban on hemp products that have a tetrahydrocannabinol (“THC”) concentration lower than 0.3 percent. 21 U.S.C. § 802(16)(B)(i); 7 U.S.C. 1639o(1). Along with the amendment to the CSA, Congress enacted 7 U.S.C. § 5940, which authorizes “institutions of higher education and State departments of agriculture” to grow hemp plants, consistent with the state’s laws. The purpose of the change in the agricultural law is “to determine the economic viability of the domestic production and sale of industrial hemp.” *Id.* This seems to signal a change in the tolerance level Congress has traditionally had regarding THC.

Because THC can be derived from either marijuana or hemp plants, determining the legality of using products laced with it is tricky. Hemp plants naturally contain a low level of THC. CBD derived from hemp is often advertised as having no THC, but as the probationer from my Reentry Court can attest, this claim is not always correct. As with many other homeopathic remedies, the FDA has

not yet set labeling or quality assurance standards for CBD, leaving users at the mercy of producers and dispensaries to tell them if the CBD product comes from hemp or marijuana. Likewise, a consumer has no way to verify, absent having the product analyzed, to ensure that the CBD product has the low level of THC that is expected from hemp derivatives.

**Those facing federal criminal charges or on probation may face conflicting or confusing information.**

According to WebMD, a 2017 study determined that about 43 percent of CBD products contained less THC than advertised and 26 percent had more. This is significant because even if the CBD is derived from hemp, the product is illegal under federal law if the THC concentration is too high.

States also are lagging in regulating this burgeoning industry. One recent packaging change in California requires manufacturers to place the “Prop 65” warning on all products where there is a risk of exposure

to marijuana smoke, regardless of whether the THC-laced product is designed to be smoked or eaten. Once again, however, without quality and labeling standards – even with this warning – a user cannot be certain the product is derived from marijuana. Moreover, there is no obligation for manufacturers to list the amount of THC in the product or to list it in a way that allows prospective users an easy way to determine whether the THC concentration is sufficiently low as to comply with federal law.

Those facing federal criminal charges or on probation may face conflicting or confusing information. For example, a typical condition of pretrial release or term of probation prohibits

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the defendant from using marijuana even if a doctor has prescribed it. Such a prohibition does not prohibit using THC and the defendant may believe that using CBD oil is permitted despite the fact that it contains THC. In states with permissive marijuana use laws, the 2018 change in the CSA means that the admonition that the defendant not violate federal, state or local law does not prohibit the use of low-level THC found in hemp-derived CBD.

The conundrum for the court is whether to determine low-level uses are acceptable for releases or probationers, or whether all THC use should be prohibited. If the former, the court must figure out protocols for determining whether the defendant's low-level THC drug test results stem from hemp use or from a decreasing level of THC caused by an earlier marijuana use. If the latter, the court must be convinced that doing so meets the goals of pretrial release and probation, and then fashion more explicit and comprehensive orders.

No matter how courts decide to respond to it, the 2018 change in the CSA means we can no longer assume that the increasing number of jurisdictions allowing recreational marijuana use doesn't affect how those in the federal system address it, and the issue requires more than the knee-jerk response that many of us have given it in the past. ■

The Magistrate Judges Executive Board encourages magistrate judges throughout the Ninth Circuit to contribute articles to this quarterly newsletter.

Please contact Magistrate Judge Heather Kennedy for more information at [heather\\_kennedy@nmid.uscourts.gov](mailto:heather_kennedy@nmid.uscourts.gov).

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