HEYL ROYSTER VOELKER & ALLEN, P.C.

TRUCKING

SUMMER 2019 NEWSLETTER

INTRODUCTION

Our firm's footprint geographically and in trucking continues to grow. We opened an office in St. Louis early last year, and we just recently opened an office in Jackson, Mississippi. Our Jackson office is the product of a wonderful relationship we have developed with Garner Berry through trucking work. Garner is the most passionate trucking lawyer I have ever met. He is home spun and self-made. If he was not serving the trucking industry through his legal talent, he would undoubtedly be serving it behind the wheel of an 18 wheeler. We are extremely proud to have him part of our firm, and he will have an enormous role in the growth of our trucking practice moving forward.

Garner is assisted in the Jackson office by Ben Mathis. Like Garner, Ben is an Ole Miss grad. He is in the early stages of his practice, but he is quickly developing extensive trucking experience while learning at the hands of Garner.

In this Newsletter, Garner Berry has authored a provocative article that addresses the impact of collision mitigation systems upon trucking litigation, with the focus on what happens if the collision mitigation system fails. Ben Mathis has authored an excellent piece about using the Reverse Reptile to properly examine a plaintiff at deposition and at trial. There are a number of opportunities for us to do this, and we need to pursue them aggressively. Our third article is from Jennifer Maloney of our St. Louis office. Jennifer is an accomplished litigator who is very seasoned in handling complex trucking matters. She has authored an interesting article addressing the impact of medical marijuana in the trucking arena. Her article focuses upon the issues that arise between the safety demands associated with the trucking industry versus the legalization of medical marijuana.

As our firm and trucking practice continue to move forward, I am pleased to report that I am fully admitted in the State of Iowa and in all Federal Courts, as well as the Eighth Circuit Court of Appeals. We have a tremendous team assembled to serve your needs in Iowa.

I want to end the introduction with a short piece from Garner Berry, which I think conveys his (as well as the firm's) commitment to the trucking industry and his character as a person:

> *I am extremely excited to be at Heyl Royster, and I continue to humbly serve the greatest industry in our country. I take my job serving you very seriously. I just don't want to do well on the case. I want to get to know you and your business. I want to convey the same level of passion and commitment that you have for your business to the cases that I handle for you. Thank you to everyone who has blessed me with work, and I am eager to develop new relationships. Let's keep America moving forward!*

Matthew S. Hefflefinger
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SHOULD THE MOTOR CARRIER BE LEFT HOLDING THE BAG WHEN THE COLLISION MITIGATION SYSTEM FAILS?

By: Garner Berry, gberry@heylroyster.com

I love driving. I even used to tell my friends in law school that if I wasn't dating someone when we graduated, I was going to become a truck driver and experience all the American countryside had to offer. Fortunately for me, I *was* dating someone, though my lovely wife and two sons probably wish I would take off on the road sometimes! Also fortunately for me, I ended up defending trucking companies as my primary area of law practice. Funny how God molds and carries out our plans for us. Let's just say that I'm thankful He brought me here because in my mind, this is the best industry to work with and the most important industry to our national economy and international stature.

One of the things that I've noticed in defending and lobbying for this industry is that my involvement doesn't start and end with the motor carrier. In order to be an effective advocate for this industry, one has to know all aspects possible – from the motor carriers, to the brokers, to the truck manufacturers, and down to the vendors providing all of the technological advances and equipment on our trucks and trailers. I have seen how interconnected this industry is. To say that we are all in this together is an understatement. And there's a reason we fight the good fight together…

But what happens when our paths within the industry diverge? What happens when we can no longer be loyal to the industry as a whole and have to pick a side? I don't have all the answers, so let's just call this a retrospective piece based on some recent experiences that have made me rethink how I defend motor carriers in certain situations.

Improvements To Safety Through Technology

We are in the midst of one of the safest times in the history of the trucking industry. Safety innovations are constantly being added to the tractors that our carriers and drivers are operating. Collision mitigation systems are decreasing rear-end collisions and lane departures. Anti-rollover systems keep the rubber right-side-down. Some tractors are equipped with all-around view and blindspot cameras to increase the driver's field of vision. We even have autonomous and semi-autonomous vehicles increasing on the roadways. The list goes on and this is a *good* thing - a *great* thing even.

In fact, as far back as 2015, NHTSA began calling for a DOT mandate for collision avoidance systems on all commercial motor vehicles. Generally speaking, collision mitigation systems include automatic emergency braking systems or forward collision warning systems, or both. Manufacturers of these systems have also weighed in on what their systems are designed and intended to do. The newer generation systems are capable of applying half to two-thirds of the available braking power, reducing the speed at impact by 25-35 mph, and maintaining following distances of around three seconds. One manufacturer's spokesperson stated "We've seen fleets go as high as 70-90% reduction in the number of rear-end collisions that they're having, or that they had been having, and even a reduction upwards of 70% in the severity of the remaining rear-end collisions that they still had."

The Insurance Institute for Highway Safety reported in a 2016 study that vehicles with automatic braking systems reduced rear end crashes by 40%. Most strikingly, the same study showed that forward-collision warning alone reduces accidents by 23%. A September 2017 study by the AAA Foundation For Traffic safety found that installing collision avoidance systems on CMV's would prevent 5,294 crashes, 2,753 injuries and 55 deaths annually. There is very little question that these innovations have a huge positive effect on safety.

What Happens When The Technology Doesn't Work Like It Should?

Without a doubt, the systems do reduce the number of accidents, as well as the severity of accidents. But what happens when they don't? Or even when you have a high suspicion that it may not have worked as intended? Who does that fall on? The driver? The carrier? The manufacturer? All of the above? Do motor carriers take it on the chin for the greater good of the *entire* industry? These are the questions that we have to think long and hard about in representing motor carriers. In some cases, motor carriers may have to diverge from the (rightly) interconnected pack.

Shortly after their emergence, low rumblings of systems not working began appearing. In the infamous 2014 Tracy Morgan accident, the National Transportation Safety Board's investigation revealed "[b]ased on the data recorded by the system, the system did not provide a pre-crash alert [although investigators say it's possible an alert was sent, but not recorded due to limitations in the device's storage capacity]." One motor carrier removed the systems due to false warnings constantly going off. In our era of technology, the data is almost endless. So the accuracy of what did or did not work, what did or did not happen, is ever more apparent. We have ECM modules, air bag modules, outward facing video, inward facing video, and hundreds of other monitored systems. Collision avoidance systems even have their own "black box." It's no surprise that some view the systems with suspicion.

In our industry, someone is always looking for a deeper pocket than our own. Or maybe you are the deeper pocket being picked! Dan Murray, vice president of research for American Transportation Research Institute, stated both of the above world's when he stated "when there are crashes, regardless of fault, the trucking industry always finds itself in the courtroom . . . these devices [collision mitigation systems] are negligence agnostic and will kick in and do it at a speed faster than human reaction, so the investment is a win-win." But that got me wondering . . . in our defense of motor carriers and brokers, should *we* also be looking for the deeper pocket to justly and adequately defend and protect our clients?

Should Manufacturers Be Liable If The System Doesn't Work?

When you have a high suggestion that the system didn't engage, is that enough to pursue, or direct a plaintiff to pursue, a claim for breach of warranties and representations when the system didn't do what it was intended to do? I have been in the bus/train crash game before that involved a products claim against the bus manufacturer. I'll give you one guess who the manufacturer pointed to as the main culprit! The user and service manuals for these systems always come back to an attentive driver, but the manuals are unequivocal about what to expect from the system. Stealing from the recent Geico commercials, we wouldn't expect the manufacturers to advertise the systems are just "okay." They don't say it "may" do X, or "we think" it will do Y. They say this is what our system does and this is what our system "will" do. If a manufacturer says their system "will" do X, but doesn't, then maybe they *ought* to be held accountable.

What I'm proposing is not just my novel idea. It has been done in other areas of litigation. The scooter rental company, Lime, was recently sued in Florida over allegedly advising riders to "break the law" when using its electric scooters. It is alleged that the company's terms of service and stickers on the scooter instruct riders not to ride on sidewalks. This contradicts a Florida law allowing motorized scooter riders to use sidewalks and prohibiting motorized scooters on streets. Riders must agree to the terms of service, including that "[riders] agree that such risks, dangers, and hazards are your sole responsibility." That suit directly challenges the idea that a company's terms of service [or user manuals] can be used to protect itself from liability for its product's failures. That sort of "waiver" very well may be invalid in scooters and, by analogy, in trucking safety technologies too.

So is it all about deep pockets? Maybe it is. But is it also about fairly sharing liability among potential wrongdoers? Or your ethical obligation to zealously represent and protect your carrier from potential excess exposure? Are we doing our clients a disservice by not seeking to share the liability when there may be a malfunction in the system? I am hired by motor carriers to defend them. And defend them I shall – with *all* the means available to me.

REVERSE REPTILE: THE DEFENDANTS' COUNTER-REVOLUTION

By: Ben Mathis, bmathis@heylroyster.com

By now, most defense attorneys are familiar with the popular Reptile method employed by plaintiff attorneys. The verdicts attained have been difficult to ignore: an Upshur County, Texas jury recently returned a $260 million verdict in favor of a plaintiff who was represented by a well-known Reptile attorney. I'd venture to say that most of us, as trucking litigators, have learned how to prepare for and defend against the complicated tactics that constitute the Reptile method. Numerous articles and lectures have taught us how to do just that. Is it possible, though, to not only defend against Reptile, but also to turn a Reptile attack right back around on a plaintiff? By utilizing Reverse Reptile strategies, we can not only defend against the Reptile, but, under the right circumstances, turn it on its head and use it to bring legitimate doubt to a plaintiff's claims.

Since Keenan & Ball's book "Reptile: The 2009 Manual of the Plaintiff's Revolution" was published, many of you have become familiar with it and may have even defended claims where it was employed. The following is a brief, general refresher on the Reptile method:

1. Plaintiff attorneys point out "safety rules" and get defendants and defense witnesses to agree to these general rules. Once established, plaintiff attorneys then point out that the defendant broke these rules, which in turn put both the plaintiff and the entire community at risk. This effectively establishes a plaintiff attorney's argument that the defendant presented a danger to the community and awakens a juror's "reptile brain."
2. Once it is established that a defendant presents a danger to the community, plaintiff attorneys seek to make jurors feel empowered in their ability to eliminate the kind of danger presented by a defendant. Jurors have the power, as argued by plaintiff attorneys, to eliminate such danger by awarding a large amount of monetary damages to punish a defendant and deter others from such conduct in the future.

As suggested above, many of us have experience defending against the Reptile. We have prepared witnesses, illustrating to them exactly the types of "safety rule" questions to expect in depositions and at trial. What's good for the goose is good for the gander. If courts are going to let defendants be attacked by the Reptile method, shouldn't

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plaintiffs be attacked the same way? The time has come for the defense bar to level the playing field and turn these Reptile tactics around on unsafe plaintiffs. Here are the components of the Reverse Reptile for trucking litigation.

Make Sure Your Case Is Ripe For Reverse Reptile

The first step is a no-brainer. Before you dive headlong into the Reverse Reptile and formulating a strategy, you need to make sure a Reptile strategy would even make sense with the facts of your case. Simply put, there must be an issue of liability. Hammering a plaintiff with safety rule-type questioning wouldn't accomplish much, if anything, for the defense if the plaintiff was not at fault for the accident and liability lies solely with the defendant. Don't blame a blameless victim, but do blame a plaintiff who may be responsible, in whole or in part, for causing an accident.

Formulate Your Own General Safety Rule Outline

When liability is disputed, the same types of general safety and danger questions that Reptile plaintiff attorneys employ can be useful for the defense as well. These questions include, but certainly are not limited to, those regarding safety as a priority, certain conduct threatening safety, and the hazards to the plaintiff, the defendant, and the community when safety rules are not followed. I encourage you to work with your defense counsel and develop these Reverse Reptile-type questions so you're fully prepared to go on a Reptile attack yourself in the future.

Establish General Safety Rules

Begin by using the same line of questioning a plaintiff attorney may use when employing the Reptile method by asking the easily agreeable, general safety and rules of the road-type questions described above at the plaintiff's deposition or at trial. Out of instinct, a plaintiff witness will agree to these questions because of the importance placed on safety. Then move on to questions that illustrate a connection between a threat to safety and a certain type of conduct. Again, a plaintiff witness will be inclined to agree to these general questions. Once they do, they have become rigid in their stance on safety as a priority and how it must be maintained, no matter the circumstances.

Use the Safety Rules Against the Plaintiff Witness

Once a plaintiff or plaintiff witness has become firm on their stance regarding safety and danger, present case-specific questions, showing how the plaintiff neglected to follow the rules which they agreed were of the utmost importance just moments prior. This casts a hypocritical shadow on the plaintiff in the eyes of the jury. The plaintiff must then admit that if he or she had followed these rules, their injuries and damages would have been prevented. Once this is admitted, defense counsel has all the ammunition needed to present an argument to the jury that the plaintiff's own negligence was the cause of his or her injuries, and he or she should not be entitled to recover at all from the defendant.

The above method works well as long as a plaintiff admits their own negligence after being driven into a stance against safety and danger. Logically, they *would* admit they broke the rules and were negligent – thus allowing us to argue for a reduced recovery or zero verdict. But people aren't always logical. If the plaintiff denies they broke the rules – or denies that the rules apply to them – then they can be portrayed and characterized as hypocritical liars who caused their own injury. Either way, the plaintiff will lose much, if not all, of their credibility with a jury.

Conclusion

Turning plaintiff attorney's strategy right back around and using it against plaintiffs and their witnesses is a powerful tool. The Reverse Reptile, used in conjunction with thorough defense witness preparation to fend off a Reptile attack, is a useful strategy that can aid you in depositions, settlement negotiations, and at trial.

KEEP ON TRUCKING – NAVIGATING THE POTENTIAL POTHOLES OF MEDICAL MARIJUANA IN MISSOURI AND ILLINOIS

By: Jennifer Maloney, jmaloney@heylroyster.com

Safety. A common word used in most, if not all, articles discussing the trucking industry. But how does the legalization of cannabis for medical purposes co-exist with safety-sensitive transportation employment and mandatory drug testing? Missouri brought this question to the forefront on November 8, 2018, when Constitutional Amendment 2 was approved, legalizing marijuana for the purposes of medicinal use.[1] The Missouri Department of Health and Senior Services is the entity tasked with implementing the procedures for applicants and medical marijuana businesses. According to the latest update from DHSS, medical marijuana may be available for purchase in the State of Missouri as early as January 2020. Thus, Missouri truck drivers with any of the "covered conditions" could have the

ability purchase and use marijuana for medicinal purposes by early 2020 under Missouri law.

Section I of the new amendment provides that "[t]he section does not allow for the public use of marijuana and driving under the influence of marijuana." However, the amendment is silent as to drug testing or what constitutes "under the influence." The Missouri amendment does not contain express anti-employment discrimination protections for Missouri employees. It does, however, expressly protect employers by including a provision preventing claims against any employer, former employer, or prospective employer for wrongful discharge, discrimination, or any similar cause of action or remedy, based on the employer, former employer, or prospective employer prohibiting the employee, former employee, or prospective employee from using marijuana while at work or disciplining the employee or former employee, up to and including termination from employment, for working or attempting to work while under the influence of marijuana. Further, the Missouri amendment does not prohibit an employer from establishing and/or enforcing policies related to drug testing, maintaining a drug-free workplace policy or a zero-tolerance policy.

This is not completely new territory. Missouri joins 33 other states and the District of Columbia in legalizing the use of marijuana for medical purposes. The use of cannabis for medical purposes has been legal in Illinois since 2014. The Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1, allows persons over the age of 18 to apply for inclusion in a state-monitored registry and for an ID card. The list of covered "debilitating" conditions under the Act is even broader than Missouri's.[2]

Employee anti-discrimination protections are expressly provided in the Act — No employer may otherwise penalize a person solely for his or her status as a registered qualifying patient or a registered designated caregiver, unless failing to do so would put the employer in violation of federal law or unless failing to do so would cause it to lose a monetary or licensing-related benefit under federal law or rules. However, the Act also permits employers to enforce policies concerning drug testing, zero-tolerance, or a drug free workplace, with the caveat that the policies are applied in a non-discriminatory manner.

Further, the Act does not limit an employer's ability to discipline an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding. It provides a safeguard for claims against employers for actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment, was impaired while working on the employer's premises during the hours of employment; or injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired. The Act also provides guidelines for what is to be considered "impairment." Finally, the Act specifically states that it should not be construed to interfere with any federal restrictions on employment including but not limited to Department of Transportation regulation 49 CFR 40.151(e).

What do these laws mean for commercial trucking companies attempting to comply with state and federal regulations?

Marijuana is a Schedule I controlled substance under the Controlled Substances Act, 21 U.S.C. §801. The Federal Motor Carrier Safety Regulations prohibit drivers from possessing, being under the influence of, or using a Schedule I substance "to a degree which renders the driver incapable of safely operating a motor vehicle." 49 C.F.R. §392.4. The Department of Transportation has not changed its drug testing requirements and has taken a no-nonsense approach to specifically address medical marijuana with a DOT "Medical Marijuana" Notice issued in October 2017. Its position is clear – DOT's Drug and Alcohol Testing Regulation, 49 C.F.R. §40.151(e), does not authorize medical marijuana under a state law to be a valid medical explanation for a transportation employee's positive drug test result. Pursuant to 49 C.F.R. §40.151(e), a Medical Review Officer "must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the 'medical marijuana' laws that some states have adopted)."

With medical marijuana allowed under Illinois and Missouri law, the mandatory drug testing scheme poses a significant question with regard to the FMCSA and DOT's zero-tolerance policy: What happens when a current or prospective driver who used medical marijuana – legally – fails a drug test? Are reasonable accommodations required under the ADA or state anti-discrimination laws? Can the motor carrier hire an applicant who possesses a medical marijuana card? As a Schedule I substance, marijuana cannot be legally prescribed and is not recognized under the American with Disabilities Act. A plain reading of the ADA should lead the conclusion that if medical marijuana is a Schedule I substance and cannot be legally prescribed under federal laws, a reasonable accommodation in the workplace (a protection afforded by the ADA) is not required.

While the majority of cases across the country have favored employers in determining whether the provisions of the Controlled Substances Act and ADA preempt state medical marijuana laws, four recent cases tell us that courts in legalized medical marijuana states may treat their interpretation of federal law differently and could indicate a swing in support for employees' rights under state medical marijuana laws.

In *Barbuto v. Advantage Sales & Mktg., LLC*, 477 Mass. 456 (2017), the Supreme Court of Massachusetts held that the fact that an "employee's possession of medical marijuana is in violation of Federal law does not make it *per se* unreasonable as an accommodation." *Barbuto*, 477 Mass. at 465 [emphasis added]. The Court went on to state "[t]o declare an accommodation for medical marijuana to be per se unreasonable out of respect for Federal law would not be respectful of the recognition of Massachusetts voters, shared by the legislatures or voters in the vast majority of States, that marijuana has an accepted medical use for some patients suffering from debilitating medical conditions." *Id*. at 465-66. The Court further concluded the employer here still owed the plaintiff an obligation, prior to termination of employment, to participate in the interactive process to explore with her whether there was an alternative, equally effective medication she could use that was not prohibited by the employer's drug policy. *Id*. at 466. An interesting takeaway is that like Missouri's Amendment 2, Massachusetts' medical marijuana law does not contain express employee protections. Instead the Court granted the plaintiff rights through the state's prohibition of discrimination against disabled employees.

In *Noffsinger v. SSC Niantic Operating Co., LLC*, 273 F. Supp. 3d 326 (D. Conn., 2017), a federal district court held that federal law does not preclude enforcement of a Connecticut law prohibiting employers from firing or refusing to hire someone who uses marijuana for medicinal purposes. The court further held that a plaintiff who uses marijuana for medicinal purposes in compliance with the state law may maintain a cause of action against an employer who refuses to employ her for this reason. *Noffsinger*, F. Supp. 3d at 330. The plaintiff in *Noffsinger* filed her employment discrimination claim after her offer of employment as an activities manager for a nursing facility was rescinded based on a positive drug test. The Connecticut statute contains an employee protection provision similar to Illinois' (refusal to hire "solely on the basis of such person's or employee's status as a qualifying patient.") The district court subsequently granted summary judgment in favor of the plaintiff on her discrimination claim. *See Noffsinger v. SSC Niantic Operating Co., LLC*, 338 F. Supp. 3d 78 (D. Conn., 2018).

In *Callaghan v. Darlington Fabrics Corp.*, No. PC-2014-5680, 2017 R.I. Super. LEXIS 88 (May 23, 2017), the Superior Court of Rhode Island was tasked with determining whether the plaintiff, alleging employment discrimination with respect to hiring for an internship position because she held a medical marijuana card pursuant to the provisions of Rhode Island's medical marijuana statute was preempted by the Controlled Substances Act. The plaintiff was never actually required to submit to drug testing. The Rhode Island statute states that no employer may refuse to employ, or otherwise penalize, a person solely for his or her status as a cardholder. The Court ultimately concluded that the plaintiff's claim was not preempted because no direct conflict exists the federal and state statutes.

In a recent decision discussing federal preemption of a state's medical marijuana law, the Superior Court of Delaware addressed whether the Delaware medical marijuana statute was preempted by the Controlled Substances Act. *Chance v. Kraft Heinz Foods Co.*, No. K18C-01-056 NEP, 2018 Del. Super. LEXIS 1773 (Dec. 17, 2018). The plaintiff in *Chance* brought a discrimination claim under the medical marijuana statute's express anti-discrimination employee protection language after he was fired for failing a drug test. Relying on the same reasoning of *Noffsinger* and *Callaghan*, the *Chance* court concluded that the state's medical marijuana statute was not preempted and the employee's termination was improper.

The most notable difference between the plaintiffs in these cases and potential drivers' claims in the highly regulated trucking industry, is that none of the plaintiffs were employed in safety-sensitive positions. If that were the case, the weighing of state versus federal law may have had a different outcome. For example, the *Barbuto* court noted that employers may still raise undue hardship as a defense and specifically noted that transportation employers are subject to regulations promulgated by the United States Department of Transportation that prohibit any safety-sensitive employee subject to drug testing under the department's drug testing regulations from using marijuana. Employment discrimination laws in Illinois and Missouri both provide employers with an undue hardship defense to a requested accommodation.

What does this mean for companies employing drivers?

Do these cases lead to the conclusion that trucking companies are going to have to accommodate drivers with medical marijuana cards and positive drug test results, even when federal law requires a zero-tolerance drug testing policy? As of now, probably not. However, the industry should be

aware of the emerging trend of employee-friendly interpretations of state medical marijuana laws.

Companies should review current drug policies and testing procedures and consider the addition of language to reflect the changes to the laws in both states. In addition, companies should consider conducting additional training for driver awareness of the implications of medical marijuana use, company drug policies, and federal drug policies and testing procedures. In Missouri and Illinois, as well as in many other states, truck drivers must be aware that just because they have been prescribed a legally allowable substance, those drivers are still subject to DOT zero-tolerance regulations and their job could be on the line.

At present, the road map to compliance with multiple medical marijuana laws is complex. Companies will have to complete a state-by-state analysis to ensure that drug testing policies are consistent with legal requirements. The ever-changing legal landscape dealing with both medical and legalized marijuana could require new hiring and drug testing practices. It is important to pay close attention to such decisions, especially those involving possible claims of employment discrimination and reasonable accommodation related to medical marijuana.

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[1] The list of covered conditions under Amendment 2 includes: cancer; epilepsy; glaucoma; intractable migraines unresponsive to other treatment; a chronic medical condition that causes severe, persistent pain or persistent muscle spasms, including but not limited to those associated with multiple sclerosis, seizures, Parkinson's disease, and Tourette's syndrome; debilitating psychiatric disorders, including, but not limited to, post-traumatic stress disorder, if diagnosed by a state licensed psychiatrist; human immunodeficiency virus or acquired immune deficiency syndrome; a chronic medical condition that is normally treated with a prescription medication that could lead to physical or psychological dependence, when a physician determines that medical use of marijuana could be effective in treating that condition and would serve as a safer alternative to the prescription medication; any terminal illness; or in the professional judgment of a physician, any other chronic, debilitating or other medical condition, including, but not limited to, hepatitis C, amyotrophic lateral sclerosis, inflammatory bowel disease, Crohn's disease, Huntington's disease, autism, neuropathies, sickle cell anemia, agitation of Alzheimer's disease, cachexia and wasting syndrome.

[2] Illinois' qualifying conditions include: cancer; glaucoma; positive status for human immunodeficiency virus; acquired immune deficiency syndrome; hepatitis C; amyotrophic lateral sclerosis; Crohn's disease, agitation of Alzheimer's disease; cachexia/wasting syndrome; muscular dystrophy; severe fibromyalgia; spinal cord disease, including but not limited to arachnoiditis, Tarlov cysts, hydromyelia, syringomyelia, Rheumatoid arthritis, fibrous dysplasia, spinal cord injury, traumatic brain injury and post-concussion syndrome; Multiple Sclerosis; Arnold-Chiari malformation and Syringomyelia; Spinocerebellar Ataxia (SCA); Parkinson's; Tourette's; Myoclonus; Dystonia; Reflex Sympathetic Dystrophy; RSD (Complex Regional Pain Syndromes Type I); Causalgia; CRPS (Complex Regional Pain Syndromes Type II); Neurofibromatosis; Chronic Inflammatory Demyelinating Polyneuropathy; Sjogren's syndrome; Lupus; Interstitial Cystitis; Myasthenia Gravis; Hydrocephalus; nail-patella syndrome; residual limb pain; seizures (including those characteristic of epilepsy); post-traumatic stress disorder (PTSD); terminal illness with a diagnosis of 6 months or less; and any other debilitating medical condition or its treatment that is added by the Department of Public Health.

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