

**Doctor's Orders: Examining Medical Cannabis in Our Community**  
Berks County Bench-Bar Conference  
Wednesday, April 17, 2019 at 10:15 AM

**PRESENTERS:**

John T. Adams, Berks County District Attorney  
Benjamin Brooks, Director of Security, Prime Wellness  
Brandon Miller, Director of Production, Prime Wellness

**MODERATOR:** Justin D. Bodor, Berks County Assistant District Attorney

**TOPICS FOR CONSIDERATION:**

Public support for medical marijuana is broad and based on the following arguments:

- Medical marijuana is safer than alcohol, which has been legal for decades.
- Medical marijuana is a safe, natural treatment for a range of chronic illnesses, such as Parkinson's Disease, Alzheimer's, cancer and Multiple Sclerosis as well as pain.
- Other opiate-based prescription drugs readily available, including Vicodin, OxyContin and Valium, pose a greater risk of addiction.
- Marijuana has been used for centuries as a medicinal agent with positive results.

Still, medical marijuana has its detractors who offer the following arguments:

- Frequent use can impair cognitive ability and short-term memory.
- Insufficient evidence to support medical marijuana's effectiveness as a pain reliever
- Minors would have easier access to a drug that poses harm to their development.
- Marijuana may be abused and become addictive, lowering the quality of life for patients, potentially creating health issues and financial hardship.
- Medical marijuana opens the door to outright legalization for recreational use.

Pennsylvania's Medical Marijuana Program (Source: PA Department of Health)

- The Pennsylvania Department of Health is in the process of implementing the state's Medical Marijuana Program, signed into law on April 17, 2016. When fully implemented, the Medical Marijuana Program will provide access to medical marijuana for patients with a serious medical condition through a safe and effective method of delivery that balances patient need for access to the latest treatments with patient care and safety.
- The Pennsylvania Medical Marijuana Advisory Board's Qualifying Conditions for Medical Marijuana Usage Application  
<https://www.health.pa.gov/topics/Documents/Programs/Medical%20Marijuana/PA%20MMAB%20->

[%20Process%20for%20adding%20changing%20or%20deleting%20serious%20medical%20conditions.pdf.](#)

- The Pennsylvania Medical Marijuana Advisory Board's Final Report from April 2018

[https://www.health.pa.gov/topics/Documents/Programs/Medical%20Marijuana/Final%20Report%20-%20Pennsylvania%20Medical%20Marijuana%20Advisory%20Board%20-%20April%209%202018.pdf.](https://www.health.pa.gov/topics/Documents/Programs/Medical%20Marijuana/Final%20Report%20-%20Pennsylvania%20Medical%20Marijuana%20Advisory%20Board%20-%20April%209%202018.pdf)

*Reading Eagle*: January 24, 2019

### **Berks DA sees medical marijuana complicating DUI enforcement**

John Adams says the state Department of Health should provide training to police in handling people with the newly legal prescriptions.

Written by Steven Henshaw

Reading, PA -- For William Stoebenau, who has been battling cancer for a decade, ingesting a single drop of a cannabis oil product about an hour before bedtime almost guarantees he'll sleep like a baby.

As a pain reliever and sleep aid, the concentrated liquid extract of the marijuana plant beats Tylenol PM, without the lingering morning grogginess, said Stoebenau of Reiffton.

"For a cancer patient, the biggest thing is you can't sleep, and you feel sick to your stomach," Stoebenau said. "I had really uncomfortable sleep, and nausea. The nights I've had the oil, I've had the deepest sleep

I've had in years - it's like being in heaven - and I feel great the entire next day."

Stoebenau wouldn't advise driving the same day as taking the product, known as Rick Simpson Oil, which contains higher levels of THC, the compound that gets people high, than other cannabis oils.

Berks County District Attorney John T. Adams might advise others to do as Stoebenau suggests. It's only a matter of time, Adams said, before police here make their first arrest of a driver impaired by medical marijuana.

Adams foresees a number of legal issues playing out with people carrying driver's licenses and medical marijuana cards.

"I expect it to be a pretty big issue," said Adams, who serves on the statewide medical marijuana advisory board.

A medical marijuana ID isn't a free pass to drive under the influence of the drug, even if it was purchased at a medical cannabis dispensary, law enforcement officials said.

More than 52,000 patients have registered since Pennsylvania's medical marijuana program launched in mid-February.

Those who received their identification cards from the state Department of Health are able to buy cannabis products - in pill, concentrated oil or whole-flower form - from state-licensed dispensaries such as Harvest Dispensary in Muhlenberg Township. The department recently announced approvals of three other dispensaries to open in Berks within six months, bringing the number of licensed facilities in the county to four.

Soon after opening, Harvest was drawing daily traffic of more than 60 customers, company officials said. Many of the customers had waited for years for a cannabis option to help them deal with cancer, chronic pain, anxiety disorders and a host of other debilitating conditions.

### **Law enforcement concerns**

This has caused some anxiety among police and other law enforcement officials over what they see as a very fine line dividing when it's legal to drive and when it's not.

Adams said that in each of the DUI arrests from other counties that have been brought to his attention as a member of the advisory board, the driver had a medical marijuana card and was found in field sobriety and blood testing to be too impaired to drive safely.

"The fact remains you cannot drive a motor vehicle under the influence of a substance if the substance impairs your ability to operate a motor vehicle," Adams said.

Under no circumstances, he said, should medical marijuana recipients have opened packages of the product in their cars.

The difficulty for drivers with medical marijuana prescriptions is that the drug falls into the same category in the state vehicle code as any street drug. They're all classified by the federal government as Schedule I controlled substances.

With alcohol, a person could drink a couple of beers or glasses of wine and legally drive a car - provided his blood-alcohol concentration doesn't exceed 0.08 percent.

No such legal threshold exists for marijuana, cocaine, heroin and other controlled substances. The same driver could be charged with DUI if even a trace of a controlled substance is detected in a blood test.

"In Pennsylvania, our driving under the influence of alcohol law is driving under the influence of alcohol or a controlled substance," Bern Township Police Chief Wesley R. Waugh said. "You may not drive with any amount of a Schedule I controlled substance or any amount of the metabolite (byproducts of parent drug)."

Adams made a similar point.

"If they had ingested marijuana three days ago, I doubt they would still be impaired," Adams said. "However, it would show up still in a blood test that they have marijuana in their system."

Stoebenau, like many medical cannabis users, is more concerned with improving his quality of life while fighting the effects of his disease than getting arrested for DUI.

"This is the first thing that actually alleviates and allows you sometimes to have a little normalcy in your life," he said. "It's absolutely a miracle drug."

He takes a dose of the nighttime version of Rick Simpson Oil at about 8:30 p.m., no more than twice a week, as he winds down for the night before going to sleep. He places a drop from the syringe on a single oat ring from a box of Cheerios.

To take the substance more often would risk building a tolerance, negating its effects. Not to mention, at about \$7 per dose, it's expensive.

To drive the same day after taking it would be stupid, he said.

Stoebenau doesn't like some of the comments he's heard from law enforcement around the time the medical marijuana law was enacted. To him, it sounds like they want to penalize sick people.

Their efforts, he said, would be better focused on solving the opioid crisis.

"My argument is people have been on the road for 50 years now and all of the sudden they're acting like this is brand new," he said of marijuana in dry or whole-flower form. "If you're going to target people that are sick you'd better have a system that has scientific backing, because right now they're pulling stuff out of their hat."

Waugh said police have no way of knowing what, if any, substance is causing a driver to drive in an unsafe manner.

"It all starts with the officer just seeing there's evidence of impaired or unsafe driving," he said. "The officer begins a chain of observation at that point that ultimately leads to the car being stopped."

### **Big change in DUIs**

More and more these days, as the opioid crisis plays out, drivers are impaired by substances such as painkillers that may have been prescribed by a physician.

"When I came to Bern Township in 2012 the vast majority of DUI cases were alcohol," Waugh said. "Now the vast majority are either driving under the influence of a controlled substance or a combined influence of alcohol and controlled substances."

At the same time, appeals of DUI cases have been on the rise as a result of a 2016 U.S. Supreme Court ruling that banned warrantless blood tests, said Assistant District Attorney Alisa Hobart, who serves as chief of appeals in Adams' office.

In *Birchfield v. North Dakota*, the justices said a search warrant is needed for a person who refuses a blood test after being stopped for driving under the influence, and that person cannot automatically be charged with DUI.

Previously, refusing a blood test brought an automatic DUI charge.

Adams said he expects medical marijuana to be the focus of some legal challenges to the DUI law.

Legislation is in the works to tweak the DUI law so medical marijuana card holders won't be technically breaking the law every time they drive, which in legal vernacular is a per se violation.

The legislation has yet to be introduced, but Adams said he favors the change, which would make it clear that having THC in one's blood is not, by itself, a violation.

"In order for a police officer to establish the requisite probable cause to request that the individual submit to a blood test, he's going to have to establish certain specific facts that led him to request a blood test," he said.

Adams added he's disappointed that, to date, law enforcement has had little training in this area.

"It's a potential problem as we move forward," he said. "The Pennsylvania Department of Health has failed to provide training. They have not provided a method of how law

enforcement can find out if an individual does have a medical marijuana card, and frankly it does behoove us to provide law enforcement with training on this issue."