

FORT MYERS FLORIDA WEEKLY®

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INSIDE: What to know if you're taking medicinal marijuana and employed. **A13** ▶

WEED & WORK

With few protections for workers who use **medical marijuana** in Florida and the drug **still illegal at the federal level**, employers may still turn them down for employment or **fire them if a drug screen** shows they have marijuana in their system

BY EVAN WILLIAMS

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FOR THE GROWING NUMBER of medical marijuana ID card holders in Florida, using the medicine their doctor recommended could keep them from getting work or put their job at risk. The Sunshine State has broadly legalized marijuana as a medicine for almost any condition a doctor believes would help a patient, and recently passed legislation allowing patients to smoke it. But Florida has no protections for employees who use it.

SEE WEED, A12 ▶



Heading to Cuba?

Travel to our southern neighbor is still legal and oh-so-worthwhile. **C1** ▶



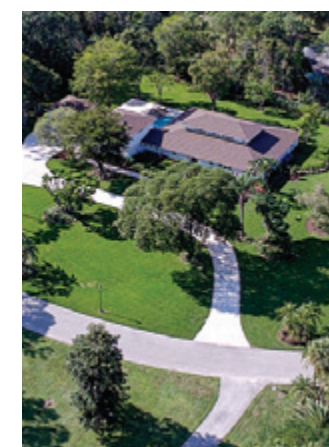
Networking

DAAS Co-op Art Gallery hosts evening at new location, the Butterfly Estates. **A34** ▶



Business

It's a family affair at Larry's Lunch Box Delicatessen. **A30** ▶



Real Estate

House hunting: Exquisite estate in exclusive neighborhood. **B1** ▶

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FGCU, Israeli school team up on entrepreneurial studies

BY RICK WEBER
FGCU360 Magazine

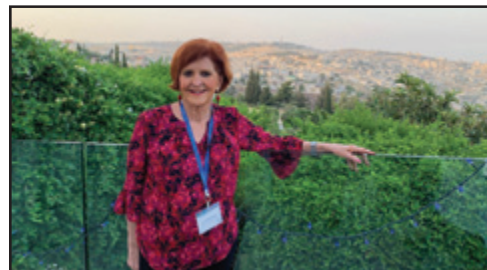
As Dr. Sandra Kauanui stood on Israeli ground and gave a two-minute speech in front of Florida Gov. Ron DeSantis, a 100-person Florida delegation, dignitaries from Israel and officials from Tel Aviv University, she couldn't help but think that she had come full circle.

The trip to Israel heralded the May 28 announcement that FGCU had signed a Memorandum of Understanding with Tel Aviv University, Israel's largest public

SEE STUDIES, A14 ▶

COURTESY PHOTO

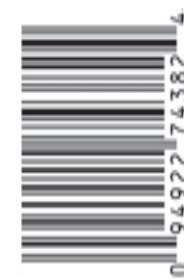
Dr. Sandra Kauanui standing in Israel.



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WEED

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Businesses' official policies on employee drug use, if they have one, are largely governed by decades-old rules. That is primarily Florida's 1990 Drug-Free Workplace Program, which may be used to interpret all forms of marijuana as illegal, including medicinal, under 1970 federal rules in The Controlled Substances Act.

There are also no court cases that have set a different precedent for employees who use medical marijuana. In the Sunshine State, that leaves it entirely up to business owners whether to adopt policies that accommodate medical marijuana and to what extent.

"Under the current state of the law an employer can hold fast and say, 'no marijuana use, period,'" said attorney Christina Harris Schwinn, a partner at Pavese Law Firm based in Fort Myers who practices employment law.

As the drug becomes more common as a medicine and accepted culturally, that leaves some businesses and human resource departments navigating gray areas. Some employers take a zero-tolerance stance on marijuana while an increasing number of businesses are allowing it to varying degrees and for a variety of reasons, including the need to find employees at a time when businesses are facing a shortage.

Companies that adopt Florida's 1990 Drug-Free Workplace Program rules also have a financial incentive to drug screen employees for marijuana. If they comply with the program, whose requirements include pre-employment drug tests, they are eligible for a 5 percent credit on workers compensation insurance. The program could also benefit businesses because they could use a positive test result as a defense against a workers' compensation claim.

Drug-Free Workplace rules also require testing employees believed to be using marijuana as well as other illegal drugs on the job under some conditions, such as a safety accident. But it may be difficult to prove immediate impairment because unlike alcohol, marijuana can stay detectable in the system for days or even a month after use, depending on the person.



"The (Florida medical marijuana) amendment does not address employers or drug free work places ... However, I wouldn't want to work at a place that would rather me use opioids paid for by insurance than medical marijuana paid for out of pocket. Unfortunately, there are still dinosaurs living and among us. Their businesses will ultimately suffer as word gets out and people get new jobs."

— **John Morgan**, a champion of medical marijuana in Florida who promotes making his workplace friendly to people who use marijuana as medicine

Ms. Schwinn doesn't see the rules in Florida changing soon.

"As long as Florida has a Republican-controlled legislature you're not going to see a repeal of the Drug-Free Workplace Act," she said. "There's too much investment. Five percent off your workers compensation policy can be huge ... You've got a huge insurance lobby behind the Drug-Free Workplace Act."

Ms. Schwinn and others are planning a seminar on navigating medical marijuana in the workplace hosted by the Lee County Building Industry Association later this year. The association says it's a "hot topic"

in the construction industry.

Businesses governed by federal rules, such as many banks, as well as those that receive federal grants, may also be obligated to prohibit any marijuana use.

"There are certainly employers that have to follow federal law," said attorney Dori K. Stibolt, a partner at Fox Rothschild in West Palm Beach who practices employment law and often represents employers. "They can lose their federal contracts if they're not utilizing a Drug-Free Workplace Act testing."

"So there are still employers who do still have a zero tolerance policy. At this

point it's really untested whether or not that's going to hold up in court."

Florida Weekly asked local businesses how they are navigating drug testing policies with more and more people using medical marijuana. There are currently 169,000 medical marijuana ID cards issued in Florida.

"The only way we can navigate it is by drug testing prior to employment since we are a Drug-Free Workplace," said Justin Lee, vice president of Lee Drywall Inc., a construction company based in Fort Myers that has operated for more than 25 years.

"We tend to still have potential employees thinking that they can still work for us if they have this medical marijuana card. They end up failing the drug test and in turn lose the opportunity to work for our firm. We do let them know if they want they can come back in 30 days to see if the position has been filled or not and then at that time can re-take the drug test."

"The last five years has had its challenges hiring drug-free workers. Due to the medical marijuana laws changing and it becoming legalized in the last year it has seemed to be much more challenging for our staff to retain and find good employees that can pass the drug test."

Lee Drywall also absorbs the cost of each drug test at \$50 to \$75 each, he added, every time they send a potential new employee to take it:

"This cost alone could eventually eat up that actual credit we get from our insurance company each year on our premium, but for our firm it's not all about the credit, it's about making sure our employees are safe and can go back to their families at the end of the day."

Chad Sorenson, president of the HR Florida State Council and an HR consultant based in Jacksonville, said that most of his clients ban marijuana in any form because they take the workers comp credit.

"So, if you look at trades or construction companies like that if they're doing work that involves machinery or manufacturing then they're going to have higher workers comp rates so higher savings on those rates," Mr. Sorenson said.

Other companies allow use of medical marijuana to varying degrees. Ms. Stibolt sees her clients slowly changing to accom-



moderate medical marijuana.

"I think most employers are moving away from arbitrary drug testing for positions that are not safety sensitive," she said, safety sensitive such as a commercial driver, airline pilot, or train engineer.

"We definitely have situations where a company has a long standing drug free workplace policy and we are starting to see employers changing those policies and thinking about being a little more proactive on the issue and not reactive."

For his part, Mr. Sorenson advises businesses that are handling employee drug testing to take a close look at their policy.

"The decisions they're making now will impact the decision they have to make later because they're setting precedent within their organization," he said. "In other words, have a much longer conversation instead of just making a snap decision on how to implement this."

Attorney John Morgan of Morgan & Morgan, known as a champion of medical marijuana in Florida, promotes making his workplace friendly to people who use marijuana as medicine.

While he allows that Florida rules on medical marijuana do not protect employees, he sees the job marketplace as ultimately favoring employees on this issue as more and more businesses take progressive stances to attract workers.

He also suggests the layers of irony in old federal and state rules that consider marijuana more harmful than legally prescribed opioids, which have caused tens of thousands of overdose deaths, while marijuana has caused none.

The federal government still considers marijuana a Schedule I drug with no medical purpose and just as dangerously addictive as heroin.

As a result of that and Florida rules, an employee could pass a pre-employment drug screen if he uses an opioid if it was legally prescribed for him and would not affect his job performance. But he would fail if he tested positive after using medical marijuana, which some are now using help wean themselves off opioid addictions as well.

"The (Florida medical marijuana) amendment does not address employers or drug free work places," Mr. Morgan responded in an email, so it is still up to employers if they will allow employees to use medical marijuana.

"However, I wouldn't want to work at a place that would rather me use opioids paid for by insurance than medical marijuana paid for out of pocket.

"Unfortunately, there are still dinosaurs living and among us. Their businesses will ultimately suffer as word gets out and people get new jobs."

Are there companies out there who he believes offer progressive policies on allowing medical marijuana use among employees?

"Me," he wrote. "My brother Tim used it every day when he worked here (at Morgan & Morgan).

"He could not have done it without it. It was illegal then."

In Punta Gorda, Phil's 41 Restaurant owner Artur Janta-Lipinski said that drug testing could inhibit his ability to find good employees.

If someone has a medical marijuana ID card, "then I accept this," he said. They would not be allowed to smoke or use marijuana at work. But what they do at home he considers private and he respects their doctors' orders.



MORGAN



SONN

in the know



Florida Statute 381.986

>> "This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy. This section does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana. This section does not create a cause of action against an employer for wrongful discharge or discrimination."

Individual state policies

Iris Hentz, policy associate with the National Conference of State Legislatures, based in Denver, Colo., responded to Florida Weekly questions by email.

>> In general, most states that have legalized medical or recreational marijuana use leave testing and decisions made thereafter up to the individual employer's discretion. A handful of states have policies in place somehow addressing an accommodation or carve-out for medical marijuana patients. The states are Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New York, Pennsylvania and Rhode Island.

>> The trend among states with these policies seems to be that as long as employees aren't bringing their medical marijuana to work or working in a job where impairment may result in serious harm to others, employers can't take medical marijuana use or positive drug test results into consideration when making hiring and firing decisions.

>> Most states, however, do not require any special workplace accommodations for medical marijuana patients and leave policies relating to marijuana use and subsequent disciplinary actions up to individual employers. Nevada is a state that notably deviates from this trend as their policy requires any employer to allow the medical use of marijuana in the workplace as long as it does not pose a threat of harm or danger to persons or property. Nevada also passed (a law) this year which now allows for employment protections for recreational users as well, becoming the first state in the nation with such a provision on the books.

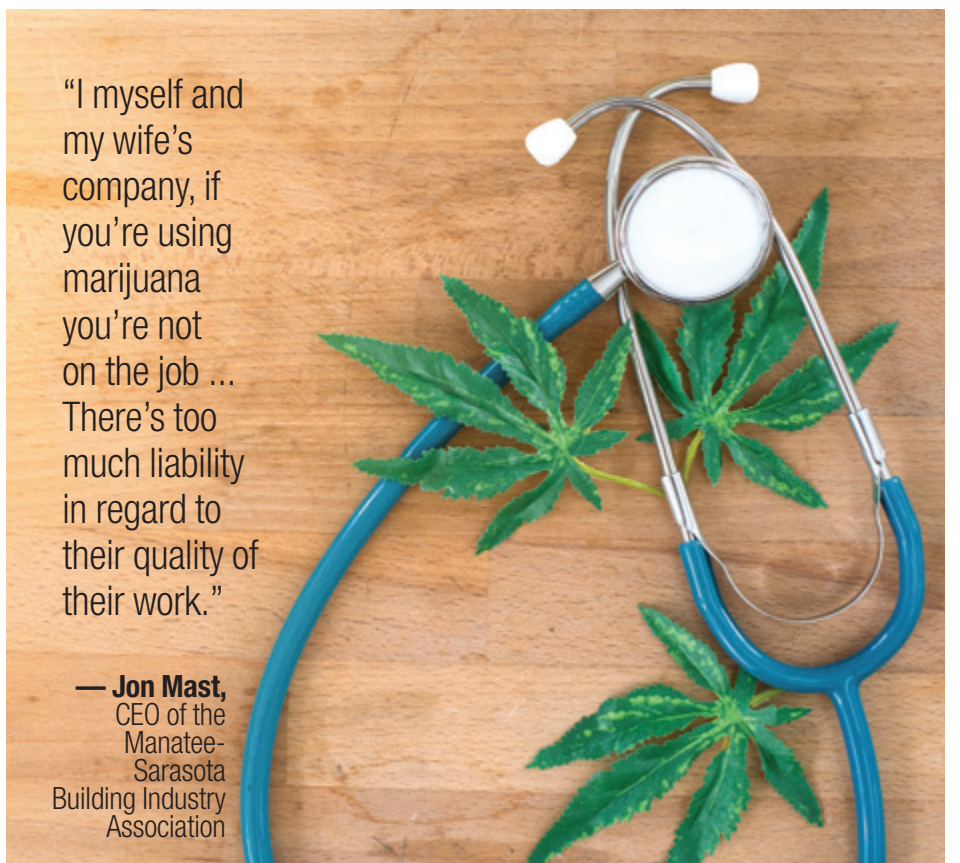
>> Maine passed an initiative in 2016 permitting the recreational use, retail sale and taxation of marijuana, the only other state that had a similar policy in place at one time. The initiative passed in 2016 included an employment anti-discrimination provision for recreational users as well as medical users. However, Maine's General Assembly appealed this statute through legislation in 2017.

"It's not my business" if they use medical marijuana at home, he said.

The federal rule banning all weed creates complications for patients in Florida and across the country who use medical marijuana, said Dr. Gregory R. Sonn, a family practice and palliative medicine physician who runs Iona Cannabis Clinic in Fort Myers. Patients often ask how to handle their use of medical marijuana in the workplace.

"For companies that have decided they're not going to allow it, you can have a human resources policy that says if pre-employment drug testing is required and you test positive for any illicit federal drug than you can't be hired," he said. "So I do have that question pretty regularly."

"I usually counsel people to find out the employers' understanding of the medical marijuana laws in Florida by simply asking what is their policy. I would encourage them to do that anonymously, is what I tell them. And that goes



"I myself and my wife's company, if you're using marijuana you're not on the job ... There's too much liability in regard to their quality of their work."

— Jon Mast, CEO of the Manatee-Sarasota Building Industry Association

for patients who are already employed and want to know as well. You need to ask the HR department and understand what your employers' expectations are."

There may also be a misperception by some people that having a medical marijuana ID card gives them carte blanche to use the drug whenever they want to.

"Just because you have a medical marijuana card doesn't give you the right to be impaired," Dr. Sonn says.

Companies still weigh the cultural perception of marijuana along with potential safety issues on the job.

"I myself and my wife's company, if you're using marijuana you're not on the job," said Jon Mast, CEO of the Manatee-Sarasota Building Industry Association and a licensed general contractor. "There's too much liability in regard to their quality of their work, if they get injured, if they offend a client or a project manager sees them smoking marijuana, they don't want them on the job. It's not something that's going to be quickly assimilated into normal construction life or practices."

But he adds that he may be willing to consider employee use of CBD, an element in the cannabis plant that does not get you high, on a "case by case" basis. He notes that opioid addiction is in his opinion and for many construction firms a more serious problem for workers than marijuana, and many are using it to wean themselves off opioids.

"I think (CBD) is a good alternative to opioid use for those that have pain, that have disease that need to have that as a way to mitigate their pain or symptom."

Dr. Sonn of Iona Cannabis Clinic often recommends "micro-dosing" for patients, or taking small quantities throughout the day that will not get them high even though it is a combination of CBD and THC, the element that gets you high in larger quantities. For many of his patients that's much more effective than CBD alone.

Some employers also have the misconception that a patient who uses medical marijuana must be so sick that he wouldn't be able to do his job anyway. Florida rules lists a dozen qualifying conditions for medical marijuana, including debilitating illnesses such as cancer and Parkinson's disease, but also post traumatic stress syndrome.

Too, the rules give doctors wide latitude to recommend marijuana for "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient" such as chronic pain or mental health disorders.

"For me I would say that for example depression; marijuana has great benefits to enhance or improve mood," Dr. Sonn said.

States and municipalities that have legalized marijuana have varying levels of protection for employees. Nevada in June took credit as the "first state to ban employers from refusing to hire job applicants who test positive for marijuana during the hiring process," a press release reads. "The bill contains notable common-sense exceptions for certain professions, such as public safety and transportation." New York City in April also banned pre-employment testing for marijuana and THC, with exceptions for safety-related positions. The rules take effect in 2020.

"Case law all across America right now is deciding some of these factors (on medical marijuana in the workplace), whether it's in the Northeast, whether it's out West," said HR consultant Mr. Sorenson. "But individually the national marijuana laws are being decided by two sides: one is the state legislature, the second is the courts. And an employer is often caught in the middle trying to figure it out."

Company policy

A range of businesses responded to Florida Weekly questions on how their company handles medical marijuana in the workplace. Liberate Physician Centers allows it, as you might expect. The Michigan-based company provides medical marijuana diagnosis across Florida including in West Palm Beach, Port Charlotte and Venice.

"We consider it to be a private matter," said founder and CEO Daniel Reid. "We're a company that's based on performance."

"We don't presently have these types of issues. But as a matter of policy, no, if someone had a medical card and was using it to be treated and was able to perform their job, of course they would be kept on. We would like to see more companies accept that policy and recognize that marijuana is a medicine and not a recreational drug."

Lee Health, which operates hospitals and urgent care centers throughout Lee County, does not allow the use of medical marijuana. The health care system offered this statement:

"For the safety of our patients and employees, Lee Health remains committed to maintaining our designation as a Drug-Free Workplace. To keep this status, Lee Health conducts pre-employment, reasonable suspicion, post-accident and follow-up drug testing in accordance with the Drug-Free Workplace Program requirements of Florida law. This includes testing for marijuana. Our policy has not been affected by the medical marijuana amendment, and we will continue to comply with all drug-free workplace requirements." ■