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To: All Robert A. Lees & Associates clients who are mandatory reporters

**Re: Issues surrounding marijuana and child abuse**

The legalization of marijuana in Colorado has created challenges for mandated reporters. Over 50 different professions are classified as mandatory reporters, with the burden to report being exceedingly low. Per CRS 19-3-304, a report should be made when the mandatory reporter has (1) "reasonable cause to know or suspect that a child has been subjected to abuse or neglect," or has (2) "observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect." This is very different from having to prove beyond a reasonable doubt that abuse or neglect has occurred or is occurring—the mandated report is only required to have cause to suspect that harm is being done.

But when the "reasonable cause" or "observed circumstances or conditions" relate to marijuana, which is a legal substance to possess and use, how should mandated reporters respond? When is the presence of marijuana or the evidence of marijuana use grounds for making a report to state authorities?

First, it's important to understand that this is a very gray area with little definition or universally accepted standards where much more research is desperately needed. For example, what is the impact of children being exposed to secondhand marijuana smoke? In a study conducted by medical professionals here in Colorado between 2013 and 2015, they found that "Marijuana metabolites are detectable in young children with exposure to secondhand marijuana smoke. These children are exposed to the psychoactive compounds in marijuana, and are potentially at risk for negative health effects." (foot note needed) While more study in this area is necessary, health experts

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are already concerned about the negative effects that repeated and prolonged exposure to secondhand marijuana smoke pose for children.

A study conducted by the Colorado School of Public Health surveyed how the different counties within Colorado assessed marijuana-related child abuse or neglect. Of the counties who participated, most based their assessments on two factors: (1) the impact to parenting that marijuana use caused, and (2) the child's access to marijuana.<sup>1</sup> This same study conducted a thorough literature review looking for studies linking adult marijuana use with child abuse and neglect, and the results were underwhelming. Only one study was found that demonstrated a link between marijuana use and maladaptive parenting behaviors, yet this same study also found that marijuana use by parents was not related to physical neglect. Without questions, more studies are needed in this area, something which the Colorado School of Public Health called for in its conclusion.

It's helpful to consider the criteria the Department of Human Services utilizes when determining if child abuse/neglect with relation to marijuana use has occurred. The four criteria are:

- 1) The child's cleanliness and visual welfare
- 2) The amount of marijuana in the home
- 3) The child's accessibility to marijuana
- 4) The odor of cannabis in the home

Keep in mind that as a mandatory reporter, it is **not** your job to take these criteria into account. Your job is **not** to determine if child abuse or neglect has occurred—that is for DHS to decide. Your job is to make a report when you have reasonable cause to suspect or you observe circumstances that would reasonably result in abuse or neglect. It's important to realize that there are no clear standards or protocols in this area at present, and even DHS is having to evaluate reports on a case-by-case basis.

Obviously, in cases where a parent or guardian is showing up to pick up a child from school or a counseling appointment and they are incapacitated because of marijuana use, you should not release the child to their care anymore than you would release a child to the care of a parent/guardian who was intoxicated with alcohol. Those cases are clear cut and your actions at that point, though challenging, should be obvious. But what of those cases that are less obvious and clear cut? What should you do then?

Jade Woodard, the Executive Director of Illuminate Colorado, an organization dedicated to eliminating child abuse in Colorado, reminds us why our roles as mandatory reporters are so vital to the fabric of our communities. Her presentation titled "Children & Marijuana: Safe, Unsafe, or At-Risk?" reminds us that every child needs a Safe Sober Caregiver and a Safe Healthy Home.<sup>2</sup> A Safe Sober Caregiver can be a parent, grandparent, babysitter, etc., who is capable of providing appropriate

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<sup>1</sup><http://www.ucdenver.edu/academics/colleges/PublicHealth/Academics/departments/HealthSystems/Research/Documents/MJ%20CW%20HIA%20Final%20Report%2011.3.2016.pdf>

<sup>2</sup>[https://www.colorado.gov/pacific/sites/default/files/PF\\_WIC\\_Marijuana\\_Jade-Woodard.pdf](https://www.colorado.gov/pacific/sites/default/files/PF_WIC_Marijuana_Jade-Woodard.pdf)



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supervision, nutrition and emotional connection and is ready to respond in a crisis to ensure the child's health and well-being. A Safe Healthy Home means substances such as marijuana are stored and locked beyond a child's access and the home is free from drug dealing, meth labs/chemicals, unsafe marijuana grows, hash oil labs, violence, strangers, or any other criminal activity.

Ms. Woodard also offers advice to mandatory reporters on how to approach situations where you might suspect marijuana use in or around children. Her recommendations are the best we've found in this area, and we offer them to you as guidance. If you as a mandated reporter encounter a situation where you detect or become aware of marijuana use by a parent or guardian of a child, we recommend approaching the situation with the following questions, aimed at asking the parent/guardian and yourself.

- Ask them questions like:
- Tell me more about your use. How often?
- For what purpose?
- What are you like when you use?
- Where are your children when you use?
- How do you store your marijuana?
- What steps have you taken to protect your children?

Based on the answers they give you to these questions, then ask yourself:

- Do I believe that the conditions in this home (or just described to me) could **reasonably result** in harm to this child?

We believe these questions will effectively guide you in deciding whether or not to make a report to DHS.

One final word. Remember: it is **NOT** your job to determine if a situation constitutes child abuse or neglect. That is for DHS to decide based on the information at their disposal and their own investigation into the matter. Your job is to make a report if and when you have reasonable cause to suspect child abuse or neglect or you observe conditions that would reasonably result in a child's harm. We will continue to keep you informed as this area of concern develops. Bear in mind that there are **no** clear standards or protocols as of yet, but as this area continues to change, you will know more as soon as we know it.

Best regards,



Robert A. Lees