

RESOLUTION 02.2021-03 (A-22)
MARIJUANA DRIVING

ISMS Board Action Taken on 06/26/2021

Adopted Resolution 02.2021-03 (A-22), as amended by the Medical Legal Council.

Medical Legal Council Recommendation to ISMS Board on 06/26/2021

After considering the current Illinois Vehicle Code Sec. 11-501.6, which addresses consent to breath or chemical tests in certain situations, the Council supported amending the first resolved to adopt as new policy that the ISMS support such statutory language with the specific inclusion of marijuana in the types of intoxicating substances that are tested after a motor vehicle accident which is fatal or results in a personal injury.

Regarding the second resolved, the Council engaged in a thorough discussion of the benefits and downsides to changing the Illinois Vehicle Code per se limit for THC concentration for determining intoxication. The Council took note that the Illinois Vehicle Code was amended in 2016 to change from a zero-tolerance state to creating a per se limit for THC concentration, meaning a person is presumed to be under the influence of cannabis if there was a THC concentration of 5 nanograms or more in whole blood or 10 nanograms or more in another bodily substance (see Illinois Vehicle Code, Sec. 11-501.2). The Council was informed that five other states have per se limits: Colorado (5 ng/ml) Montana (5 ng/ml), Nevada (2 ng/ml), Ohio (2 ng/ml), Pennsylvania (1 ng/ml), and Washington (5 ng/ml). Colorado has a reasonable inference law providing that where THC is identified in a driver's blood in quantities over 5 ng/ml or higher, it is permissible to assume the driver was under the influence. Eleven states have zero tolerance laws for THC (Arizona, Delaware, Georgia, Indiana, Iowa, Michigan, Oklahoma, Rhode Island, South Dakota, Utah and Wisconsin).

The Council additionally considered the 44-page Marijuana Impaired Driving Report to Congress from the National Highway Traffic Safety Administration which details how alcohol and THC are metabolized differently (water soluble vs. fat soluble). The report describes the difficulty with establishing per se limits, as THC is stored in fatty tissues in the body and can be released back into the blood long after ingestion. This is particularly common where there is chronic use: there can be low levels of THC in blood where no recent ingestion has occurred and no impairment is present.

37 Ultimately, the Council opined that there is a lack of scientific evidence to support
38 changing the current statutory limit to any other amount, including 2 ng/ml: no evidence
39 was presented in the resolution itself, and the Marijuana Impaired Driving Report to
40 Congress from the National Highway Traffic Safety Administration specifically calls
41 for continued research in this area, as a scientifically-based per se limit remains to be
42 determined.

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44 The Medical Legal Council recommends that the ISMS Board of Trustees adopt
45 Resolution 02.2021-03 (A-22), as amended:

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47 RESOLVED, that ISMS supports Illinois law which requires that any driver
48 involved in a personal injury or fatal motor vehicle accident be given a breath test or
49 chemical test of blood, breath, other bodily substance, or urine for the purpose of
50 determining the content of alcohol, marijuana, other drugs, or intoxicating compounds
51 when arrested endorse the concept that Illinois drivers in fatal vehicle accidents be tested
52 for drugs including marijuana; and be it further

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54 ~~RESOLVED, that ISMS recommend that the acceptable Illinois standards for~~
55 ~~marijuana be lowered to 2 mil THC ng.~~