



Rod Kight <rod@kightlaw.com>

Katie Delong- CBD story regarding Racine County, WI

Rod Kight <rod@kightlaw.com>

Thu, Jun 14, 2018 at 8:46 AM

To: fox6news@fox6now.com, witi_public_file@fox6now.com
[REDACTED]

Dear Ms. Delong,

I am an attorney who represents lawful cannabis businesses in the US and the world. A large number of my clients are in the hemp-derived cannabidiol (CBD) industry. This email is in reference to your story, "[Racine County DA warns against sale of CBD oil products, legal only under 'very limited circumstances'](#)", published on June 13 for Fox News 6.

I represent [REDACTED]. My client's products were prominently featured in your story. Unfortunately, your story contains significant inaccuracies. I am hopeful that I can clear up some common misunderstandings with an eye towards a follow up story regarding the distinction between unlawful marijuana and lawful industrial hemp. My client's products do not contain marijuana. Rather, they contain industrial hemp. (They also do not contain any tetrahydrocannabinol (THC).) Contrary to the pronouncement by DA Hanson, they are lawful in WI, including Racine County.

The legal status of CBD is based on its source. To be clear, CBD is not scheduled in the federal [Controlled Substances Act](#) (CSA). (Take a look. You won't find it.) Also, and importantly, "cannabis" is not a controlled substance in the USA. "[Marijuana](#)" is a controlled substance, as are derivatives of it (see, for instance, the [Marihuana Extract Rule](#)). It is true that CBD derived from marijuana is also controlled. This is because CBD derived from an unlawful source is itself unlawful. But that's just the beginning of the inquiry. There are legal forms of cannabis, including [industrial hemp](#), [non-psychoactive hemp](#), and the [mature stalks of the plant](#), which are an exception to the definition of marijuana. (Additionally, CBD can be derived from [sources other than cannabis](#).) [When CBD is derived from a lawful source it is lawful](#).

This is not just my assertion. The law is replete with statutes, case rulings, and even official releases by the DEA stating that not all cannabis is unlawful and that cannabinoids from lawful sources are themselves lawful. Both the [industrial hemp provisions of the 2014 Agricultural Act](#) (Farm Act) and the recent [ruling in Hemp Indus. Ass'n v. United States DEA, 2018 U.S. App. LEXIS 11005 \(9th Cir. 2018\)](#) (HIA) confirm that the industrial hemp provisions of the Farm Act preempt the CSA. Industrial hemp is not a controlled substance and neither is CBD derived from it. Additionally, the [ruling in Hemp Indus. Ass'n v. DEA, 357 F.3d 1012 \(9th Cir. 2004\)](#) found that "non-psychoactive hemp", which can contain CBD, is lawful to import. And, the DEA itself has stated on at least three specific occasions that the Marijuana Extract Rule (cited above) only applies to extracts of marijuana, not to forms of cannabis that do not meet the definition of marijuana (such as industrial hemp). The first occasion was in a [Clarification](#) issued on March 24, 2017, which stated:

"The new drug code (7350) established in [the Rule] does not include materials or products that are excluded from the definition of marijuana set forth in the Controlled Substances Act (CSA). The new drug code includes only those extracts that fall within the CSA definition of marijuana. If a product consisted solely of parts of the cannabis plant excluded from the CSA definition of marijuana, such product would not be included in the new drug code (7350) or in the drug code for marijuana (7360)." (emphasis added)

The second occasion was in its [legal brief to the 9th Circuit Court of Appeals](#) in HIA, submitted on June 2, 2017, in which it stated:

"To the extent that a product consisting solely of exempt parts of the cannabis plant contained trace amounts of cannabinoids, such product would not be included in the new drug code"; "DEA's Rule does not control cannabinoids in their own right"; and "DEA is not seeking to schedule cannabinoids."

The third occasion was in an [Internal Directive](#) issued on May 22, 2018, in which it stated:

"The mere presence of cannabinoids is not itself dispositive as to whether a substance is within the scope of the CSA; the dispositive question is whether the substance falls within the CSA definition of marijuana." (emphasis added)

Importantly, and to DA Hanson's message, CBD from industrial hemp is lawful in Wisconsin. In 2017 Wisconsin enacted [Wis. Stat. §94.55](#), which created its industrial hemp program. Subsection 2(a) states:

"[A] person may plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import, and export industrial hemp in this state to the greatest extent allowed under federal law." (emphasis added)

You may be aware that on May 10 WI Attorney General Brad Schimel announced that farmers who grow industrial hemp under the state's pilot program will not be prosecuted for producing CBD oil. This announcement came in the immediate wake of his meeting with the Wisconsin Farm Bureau Federation (WFBF), the state Department of Agriculture (SDA), Trade and Consumer Protection (TCP), and state legislators. What is striking about this announcement is that it is a complete turnabout from an April 27 unclassified [Analytical Note](#) by the Wisconsin Department of Justice (DOJ) and Wisconsin Statewide Intelligence Center (WSIC) stating that CBD was unlawful in the state. In a mere two weeks Wisconsin flipped from being a CBD pariah to a CBD haven. In a word, DA Hanson's message about CBD's illegality in WI is wrong. It runs directly counter to the law and to the position of the Attorney General.

In addition to being legal under both federal and WI state law, my client's products pose no health risk whatsoever. The World Health Organization released a preliminary report on CBD last Fall and a follow up report last week. Both of the reports found that CBD is non-toxic, has no abuse potential, is non-addictive, is not psychoactive, and has a wide range of health benefits. It is no exaggeration to state that the sugar in my client's products is significantly more harmful than the CBD in them. (To be clear, the sugar my client uses is normal. The point is that CBD is simply non-toxic. You cannot overdose on it and it will not harm you to ingest it.)

Finally, and to circle back to the legal status of CBD, in a joint policy position entitled "Statement of Principles on Industrial Hemp", issued jointly by the Office of the Secretary, USDA; Drug Enforcement Administration, DOJ; Food and Drug Administration, HHS (collectively "Federal Agencies") on August 12, 2016 (Joint Statement), the Federal Agencies acknowledged that industrial hemp produced under the Farm Act is legal. Specifically, the Federal Agencies stated:

"Section 7606 of the Agricultural Act of 2014 legalized the growing and cultivating of industrial hemp for research purposes in States where such growth and cultivation is legal under State law, notwithstanding existing Federal statutes that would otherwise criminalize such conduct."

In the same Joint Statement, the Federal Agencies also noted that:

"[I]ndustrial hemp products may be sold in a State with an agricultural pilot program or among States with agricultural pilot programs but may not be sold in States where such sale is prohibited."

As I stated above, WI has a pilot program and it is legal to sell industrial hemp products, such as CBD, in it. You spend a significant portion of your article discussing Wisconsin's medical marijuana law, [Wis. Stat. s. 961.34\(2\)](#). Although that law is laudable, it exists wholly separate and apart from Wisconsin's industrial hemp laws, which allow for broad processing, sale, and use of hemp-derived CBD without a physician's recommendation.

I hope that you will update your story with this important information. Please do not hesitate to reach out if you have any questions.

Sincerely,

Rod Kight

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Rod Kight

Attorney, Kight Law Office

828-255-9881 | rod@kightlaw.com |

<https://cannabusiness.law/> | <http://kightlaw.com/> |

84 West Walnut Street, Suite 201, Asheville, NC 28801



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