

UPDATE

DRUGS
DON'T
WORK
IN NJ!



Partnership for a Drug-Free New Jersey

In Cooperation with the Governor's Council on Alcoholism & Drug Abuse and the New Jersey Department of Human Services

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Nearly 100 professionals arrived at Saint Peter's University in Jersey City for the 20th Annual Legal Issues of a Drug-Free Workplace Statewide Seminar held by the Partnership for a Drug-Free New Jersey (PDFNJ) on Wednesday, June 7.

Part of PDFNJ's Drugs Don't Work in NJ! program, the event provided attendees with a comprehensive view presented by doctors and lawyers on the current issues confronting employers seeking to institute a drug-free workplace, from the national opioid epidemic to medical and legalized marijuana to drug testing protocols.

"We need to use the workplace as an opportunity to bring education to the employers, and that also is very important because they can bring that information home to their families," said Angelo Valente, Executive Director of the Partnership for a Drug-Free New Jersey.

The seminar was co-sponsored by Saint Peter's University, CarePoint Foundation, CarePoint Health, Mack-Cali, Horizon Health and the United Way of Hudson County.



From left, Daniel A. Altilio, President and CPO, United Way of Hudson County; Eugene J. Cornacchia, President, Saint Peter's University; Angelo Valente, Executive Director, Partnership for a Drug-Free New Jersey; former Gov. James J. Florio; Jeff Mandler, CEO, CarePoint Health; Paula A. Nevoso, President, CarePoint Foundation; Bret Marin, Horizon Health.

Dr. William Holubek, Executive Director Physician Advisor for the WellStar Health System, outlined the current landscape of prescription opioid abuse in the country.

In 2015, more than 22,000 people in the United States died of overdoses involving prescription opioids, according to the Centers for Disease Control and Prevention (CDC). Overdose deaths have quadrupled since 1999, as have the sales of prescription drugs.

Holubek said the rise in the use of prescription opioids resulted from multiple factors in the medical profession, including the adoption of the philosophy of pain as the “fifth vital sign,” the belief that pain was undertreated, the idea that opioid addiction was rare in patients with real pain and the belief that opioids were safe and effective for chronic use.

However, data supporting the safety and efficacy of using opioids to treat chronic pain is limited, and updated CDC guidelines stress that opioids are not “first-line agents” to treat chronic pain and should be used cautiously and monitored carefully when prescribed for that purpose. Holubek said the CDC recommends consideration of opioid alternatives, including non-pharmacologic therapies.

“That needs to happen in congruence with frequent contacts with your provider to come up with the best therapy,” Holubek said.

Increased education for both prescribers and consumers, Holubek said, as well as greater vigilance in monitoring prescribing through initiatives such as the Prescription Drug Monitoring Program are crucial steps in addressing the opioid epidemic.

Drug testing plays an important role in establishing and maintain a drug-free workplace. Dr. Nima Majlesi, Director of Medical Toxicology at Staten Island University Hospital and the founder of Toxicology Consultants of the Tri-State, said that even with testing, the identification of many substances of abuse is still a major challenge.



The standard 5-panel, 8-panel and 10-panel urine drug screenings are limited in efficacy, Majlesi said, because they can detect substances only for sometimes short periods of time after use. Meanwhile, these tests do not detect many types of drugs, including hallucinogens, synthetic cannabinoids and synthetic opioids.

“I have clinicians constantly relying on the results of these tests, and I tell them, ‘Why are you hanging your hat on these tests? They’re not very good,’ ” Majlesi said.

He said it is better to rely on clinical skills to diagnose intoxication and that urine screenings are more useful in legal matters. He added that drug-use trends will always be a few years ahead of the testing procedures, making the process even more complicated.

The emergence of medical marijuana throughout the country has only intensified issues with conducting testing, said attorney Nancy N. Delogu of Littler Mendelson P.C. A total of 29 states so far have adopted medical marijuana laws, and state legislators are increasingly seeking to protect medical marijuana users from adverse employment action.

Delogu cited a Rhode Island case, in which a company withdrew an internship offer because a candidate said she used medical marijuana and would fail a pre-employment drug test. However, the state superior court ruled that the candidate’s status as a cardholder superseded an employer policy requiring an applicant to pass a drug test.

With such rulings in place, one consideration is to use an impairment-based standard for testing, Delogu said. However, the varying detection windows of different types of tests makes it difficult to determine if the detection of marijuana means they were impaired at the time of testing.

With the ambiguity created by state medical marijuana laws, Delogu said some consideration could be made to abandon pre-employment testing, depending on the type of business and laws of its jurisdiction. Other factors in considering that possibility would include if law allows to conduct reasonable suspicion testing later on and if regulatory requirements of the profession mandate pre-employment testing.

One option that Delogu said must be avoided is ignoring a positive marijuana result on a pre-employment test. Doing so could result in liability for an employer if the employee is involved in an accident.

Stephen E. Trimboli, an attorney from Trimboli & Prusinowski, LLC, expanded on the medical marijuana discussion, specifically the “New Jersey Compassionate Use of Medical Marijuana Act” and its implications for employers.

The law requires no protection for employees operating vehicles or heavy equipment while under the influence of marijuana, and employers are not required to accommodate the use of medical marijuana at the workplace. The use of medical marijuana is still a crime under federal law.

Trimboli outlined what information a workplace drug policy should contain, including identifying prohibited conduct, the consequences for engaging in prohibited conduct, the periods during which prohibitions apply, who will be subject to drug and alcohol testing, circumstances in which testing will occur, discussion of testing procedures to be used, description of the effects of drugs and alcohol, signs and symptoms of a substance abuse problem and where to go for assistance.

Trimboli touched on the testing process specifically, differentiating between random and reasonable suspicion testing and the situations in which they are permitted.

“Random testing has been permitted in New Jersey only for employees who hold safety-sensitive positions where the need to function safely is clear,” Trimboli

said. “You’re the acting to ensure that the workplace is safe and that employees are capable and not going to place anyone in danger.”

Reasonable suspicion testing is allowed for private and public sector employees in such cases including observation of conduct, information from a reliable source that has been corroborated finding drugs or alcohol on the person or being in an area where evidence of recent use is present. Unsubstantiated rumors, poor job performance or infractions unrelated to substance use are not grounds for reasonable suspicion.

At the event, PDFNJ also honored former Gov. James J. Florio by presenting him with the Drugs Don’t Work in NJ! Founder’s Award for his active role in establishing the program in 1992.

“The program raised the level of awareness of people of the significance of this problem of drugs in the workplace,” Florio said. “In this country, we don’t really get things done until we get people engaged and informed about the problem.”



Former Gov. James J. Florio delivers a speech after accepting the Drugs Don’t Work in NJ! Founder’s Award.

