

Gormley, Elizabeth (MSP)

From: Choate, Bradley (MSP)
Sent: Monday, August 10, 2015 11:03 AM
To: Gormley, Elizabeth (MSP)
Subject: FW: Casework Guidelines

From: Hoskins, Kyle (MSP)
Sent: Friday, February 14, 2014 6:16 PM
To: Choate, Bradley (MSP)
Cc: Daniels, Gary (MSP); Bowen, John (MSP)
Subject: Re: Casework Guidelines

I'd like to keep moving, let's continue working on the wording as a team via email. This effects all 7 labs, all six supervisors are sending minor changes to the first draft. Lansing has held the strongest opinion of keeping the conclusion as marijuana. The remaining are ok reporting THC. Please, send me some thoughts of a possible additional statement of how this was the conclusion based on results/data that was derived. Also, what are your thoughts of how many cannabinoids need to be shown, should they be identified vs only GC MS observation? Swgdrug does have direct comments on this topic that you may want to review if you haven't already. I've already sent your comments on to the other supervisors so that they understand Lansing's concerns. Send me some thoughts next week and we can keep this rolling.

F/S Kyle Ann Hoskins
Technical Leader Controlled Substances
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6296 Dixie Hwy.
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On Feb 14, 2014, at 4:28 PM, "Choate, Bradley (MSP)" <ChoateB@michigan.gov> wrote:

That is why Inspector Bowen would like us to get together when you get back in March. We can set up a time then?

Brad

From: Hoskins, Kyle (MSP)
Sent: Friday, February 14, 2014 3:06 PM
To: Choate, Bradley (MSP)
Cc: Daniels, Gary (MSP); Bowen, John (MSP); Rosenthal, Jeffrey (MSP)
Subject: RE: Casework Guidelines

Brad,

I've understood the argument between the two sides. What I need help on is a solution that all can live with the interpretation of the report. Having a similar beginning product and different end conclusion from lab to lab isn't going to work even though we have been doing it for 19 years.

What about an additional statement attached to the report to actually educate our reader what identifying the THC and any other cannabinoid actually means?

Kyle

From: Choate, Bradley (MSP)
Sent: Friday, February 14, 2014 2:24 PM
To: Hoskins, Kyle (MSP)
Cc: Daniels, Gary (MSP); Bowen, John (MSP)
Subject: RE: Casework Guidelines

I disagree with the changes being made for a few reasons:

The Controlled Substances Procedure Manual specifically states that Marihuana is a special case and was written that way due to the Michigan statutory definition of Marihuana. Nowhere does it say that THC is a special case.

Oils and solids where no plant material is present is included here because it represents resins extracted from the Marihuana plant which is controlled as Marihuana by statute.

When THC is identified in a case the analyst has two choices:

- 1) Identify it as Marihuana which for possession is a Schedule I misdemeanor
- 2) Identify it as a synthetic equivalent of THC which for possession is a Schedule I felony.

There is not a third choice. The question then becomes is the THC from a natural source i.e., Marihuana, or a synthetic source. The presence of other cannabinoids indicates that the substance is from a natural source. I don't know of any way to determine that THC was synthesized unless a lab was found and the precursor substances to make THC were present.

Prosecutors rely on our reports to determine what to charge a person with. A report that states delta-1-THC without any other statement would lead a Prosecutor to the synthetic portion of the law since this is the only place where THC is specifically listed. **This could lead to the wrong charge of possession of synthetic THC and the ultimate wrongful conviction of an individual.** For the laboratory to contribute to this possible miscarriage of justice would be a huge black eye for the Division and the Department.

We are Forensic Scientists which means that we have to apply science to the law. It is our responsibility to learn and interpret the law in regards to Controlled Substances. We do this with every report we issue since we determine whether a substance is controlled and then list what schedule it is in. We don't leave it up to the prosecutor to figure this out, otherwise, we would just identify the compound and not say if it is controlled or not.

In the case *People v Carruthers* case that was heard by the State of Michigan Court of Appeals where THC was identified in brownies with testimony from the analyst that no plant material was present it was stated by the court that "The parties agree, however, as do we, that the brownies did constitute "marihuana" under its statutory definition. **Possession of THC extracted from marijuana is possession of marijuana. See *People v Campbell*...**"

Food cases that have extracted resins from marihuana in them but no visible plant material should still be charged as possession of marihuana. I have a problem with the procedure manual stating that a conclusion of marihuana cannot be stated in the report. It would follow then, that we could not state on the stand that it is marihuana which would make it hard, if not impossible for the Prosecutor to prove possession of marihuana. This conclusion is incorrect because the resins are Marihuana. **Apparently analysts in our system are hung up on the fact that to identify marihuana they need to see plant material.** The concept that they are missing is that the resins are part of marihuana and can be

conclusively identified. We are not making an identification of marihuana in most cases because of a botanical analysis. We are relying on the Duquenois Levine test coupled with the presence of cystolithic hairs. With resins, the presence of THC and other cannabinoids replaces the identification of the cystolithic hairs.

Finally, if THC is identified in the results the Duquenois Levine test does not satisfy the selective test. It is an accepted test for the identification of marihuana but it is not selective for just one cannabinoid. For all other controlled substances tested the only selective tests listed in our Procedure Manual are GC, TLC, LC, Crystal and physical recognition of marked pharmaceutical products. One of these would be necessary for a complete analysis.

I will also forward Mr. Rosenthals feedback.

Bradley D. Choate
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From: Hoskins, Kyle (MSP)
Sent: Tuesday, February 11, 2014 9:21 AM
To: Kidd, Anne (MSP); Choate, Bradley (MSP); Knoll, Derek (MSP); Chirackal, George (MSP); Gooden, Dale (MSP)
Subject: Casework Guidelines

Good Morning,

The procedure manual for guidelines of marihuana will be changed to conform with the conclusion of cannabinoids to be used as a result when no visible morphological characteristics of plant material can be microscopically visualized.

This change is being put in place so that our reporting is uniform across the state in regards to oils, food products and other substances that are not grossly plant.

Please, read the attached and offer any thoughts or concerns of the policy. I'd appreciate a response by Friday, February 14th.

Thank you,

Kyle Ann Hoskins
Technical Leader Controlled Substances
Forensic Science Division
Michigan State Police