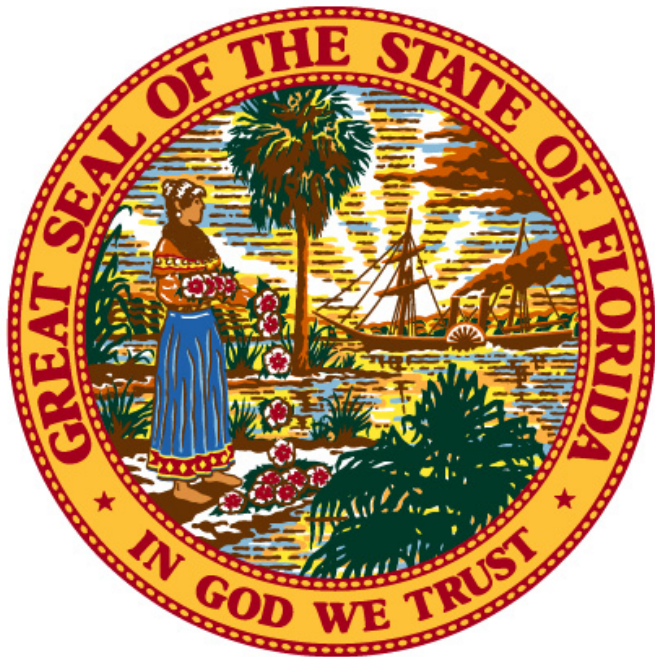


Drug Scheduling & Regulation in Florida



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Presentation Outline:

- Responsibilities of Office of Drug Control
- Organization of key federal agencies
- Relationship between federal and state laws
- “Potential for Abuse” and Schedules I – V
- Regulatory implications of schedule placement
- The formal scheduling process:
 - 8 factors
 - Temporary/emergency scheduling
- The informal scheduling process:
 - Federal example: Anabolic Androgenic Steroids (AAS)
 - FL example: *Salvia divinorum*
- Exceptions and Examples:
 - Off-label prescribing
 - Caffeine
 - OTC = Rx ?
 - “miscellaneous harmful chemical substances”
 - “new drugs”
 - “stop sale orders”

Florida Statute (F.S.) 397.332 – Office of Drug Control

- Develop and implement a strategy
- Coordinate efforts across agencies
- Provide information to the public
- Act as liaison
- Advise the Governor and Legislature
- Secure funding and support

See Florida's 2009 Drug Control Strategy at:
www.flgov.com/drugcontrol/odc_strategies.html

U.S. Department of Justice



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graph TD; DOJ[U.S. Department of Justice] --> AG[Office of Attorney General (AG)]; AG --> DEA[U.S. Drug Enforcement Administration (DEA)]; AG --> ATF[Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF)];
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Office of Attorney General (AG)

**U.S. Drug Enforcement
Administration (DEA)**

**Bureau of Alcohol, Tobacco,
Firearms & Explosives (ATF)**

U.S. Department of Health and Human Services (HHS)

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graph TD; HHS[U.S. Department of Health and Human Services (HHS)] --- FDA[Food and Drug Administration (FDA)]; HHS --- NIH[National Institutes of Health (NIH)]; NIH --- NIDA[National Institute on Drug Abuse (NIDA)];
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Food and Drug Administration (FDA)

National Institutes of Health (NIH)

National Institute on Drug Abuse (NIDA)

Controlling Drugs: Key Federal Legislation

- **Food, Drug and Cosmetic Act (1938)**
 - FDA determines whether a drug will be prescription or over-the-counter.
 - The states get to determine the circumstances and recipients of dispensed drugs.
- **Controlled Substances Act (CSA) (1970)**
 - Formal scheduling
 - Emergency or temporary scheduling
 - Informal scheduling

Uniform Controlled Substances Act (1970/1990)

- Modeled after 1970 federal Controlled Substances Act (CSA).
- Later re-modeled in 1990 after changes to the CSA in the 1980s.
- All states have enacted uniform laws.
- Creates a unified, codified, interlocking system of control and regulation.

Interpretation & Rules of Federal CSA Apply to Florida

- Due consideration and great weight is given to interpretations of U.S. Attorney General and federal courts.
- All substantive rules must be consistent with rules of U.S. Attorney General and federal courts.
 - F.S. 893.035 (11)

“Potential for Abuse” ...

- A substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being:
 - a) Used in amounts that create a hazard to the user’s health or the safety of the community;
 - b) Diverted from legal channels and distributed through illegal channels;
 - c) Taken on the user’s own initiative rather than on the basis of professional medical advice.

“Potential for Abuse”

- Proof can be based upon a showing that these activities (use of hazardous amounts, diversion, user initiated) are already taking place; or
- Upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

SCHEDULE I

- High potential for abuse
- No currently accepted medical use in treatment in the U.S.
- Its use under medical supervision does not meet accepted safety standards.
- Examples: Heroin, Cannabis, LSD, MDMA, Psilocybin, Mescaline.

SCHEDULE II

- High potential for abuse.
- Has a currently accepted but severely restricted medical use in treatment in the U.S.
- Abuse may lead to severe psychological or physical dependence.
- Examples: Cocaine, Morphine, Methadone, Codeine, Hydrocodone, Oxycodone, PCP, Amphetamine, Methamphetamine.

SCHEDULE III

- Less abuse potential than substances in Schedules I and II.
- Has a currently accepted medical use in treatment in the U.S.
- Abuse may lead to moderate or low physical dependence or high psychological dependence.
- Examples: Anabolic steroids, Dronabinol (synthetic THC), Ketamine, GHB, limited quantities of morphine, codeine, hydrocodone.

SCHEDULE IV

- Low abuse potential relative to substances in Schedule III.
- Has a currently accepted medical use in treatment in the U.S.
- Abuse may lead to limited physical or psychological dependence relative to substances in Schedule III.
- Examples: Alprazolam (Xanax), Diazepam (Valium), Lorazepam (Ativan).

SCHEDULE V

- Low abuse potential relative to substances in Schedule IV.
- Has a currently accepted medical use in treatment in the U.S.
- Abuse may lead to limited physical or psychological dependence relative to substances in Schedule IV.
- Examples: Buprenorphine, limited quantities of codeine and dihydrocodeine

Federal Regulatory Requirements

	Schedule I	Schedule II	Schedule III	Schedule IV	Schedule V
Registration	Required	Required	Required	Required	Required
Dispensing Limits	Research use only	Written Rx, no refills	Written or oral Rx, refills*	Written or oral Rx, refills*	OTC
Security	Vault / safe	Vault / safe	Secure storage area	Secure storage area	Secure storage area
Production Quotas	Yes	Yes	No	No	No

* With medical authorization, up to 5 refills within 6 months.

Formal Scheduling Process: Federal vs. Florida

	<u>Initiation</u>	<u>Recommendations</u>	<u>Final Authority</u>
<u>Federal:</u>	Anyone → DEA →	HHS (FDA + NIDA) + 8 Factors →	<input checked="" type="checkbox"/> HHS if <i>against</i> scheduling » U.S. Attorney General
<u>Florida:</u>	Attorney General →	DOH + FDLE + 8 Factors →	<input checked="" type="checkbox"/> Both DOH & FDLE if <i>against</i> scheduling » Attorney General*

* AG's rules expire unless Legislature adopts provisions.

Rule Making Authority of Florida Attorney General (AG)

- AG may add to, remove from, and transfer substances between schedules if...
 - It has potential for abuse AND...
 - It is appropriate for classification in the particular schedule.
- In making findings, the AG shall consider the following factors...

8 Factors AG Shall Consider:

- a) Its actual or relative potential for abuse.
- b) Scientific evidence of its pharmacological effect, if known.
- c) The state of current scientific knowledge regarding the drug or other substance.
- d) Its history and current pattern of abuse.
- e) The scope, duration, and significance of abuse.
- f) What, if any, risk there is to the public health.
- g) Its psychic or physiological dependence liability.
- h) Whether the substance is an immediate precursor of an already controlled substance.

Temporary Scheduling & Emergency Rulemaking to Prevent Imminent Hazard

- AG may schedule by rule, w/o regard to DOH or FDLE, if necessary to avoid “imminent hazard”:
 - Actual or potential abuse
 - Scope, duration, and significance of abuse
 - Risk to the public health
 - Diversion from legitimate channels
 - Clandestine importation, manufacturing, or distribution

Limitations on Rule Making Authority of Attorney General (AG)

- Adopted rules are in effect until:
 - *Repealed*
 - *Declared invalid* under Administrative Procedure Act (F.S. Chapter 120) or by courts.
 - *Expired*: Rules expire on the following June 30 unless the Legislature adopts the provisions (by amending statutes).

Components of Formal Scheduling

FEDERAL

Potential for abuse

DEA → FDA + NIDA

8 factor analysis

Imminent hazard

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FLORIDA

Potential for abuse

AG → DOH + FDLE

8 factor analysis

Imminent hazard

Analogues

- Substances that...
 - are structurally or pharmacologically related to schedule I and II substances,
 - have no legitimate medical use...
- ...are prohibited as analogues by the Anti-Drug Abuse Act of 1984.

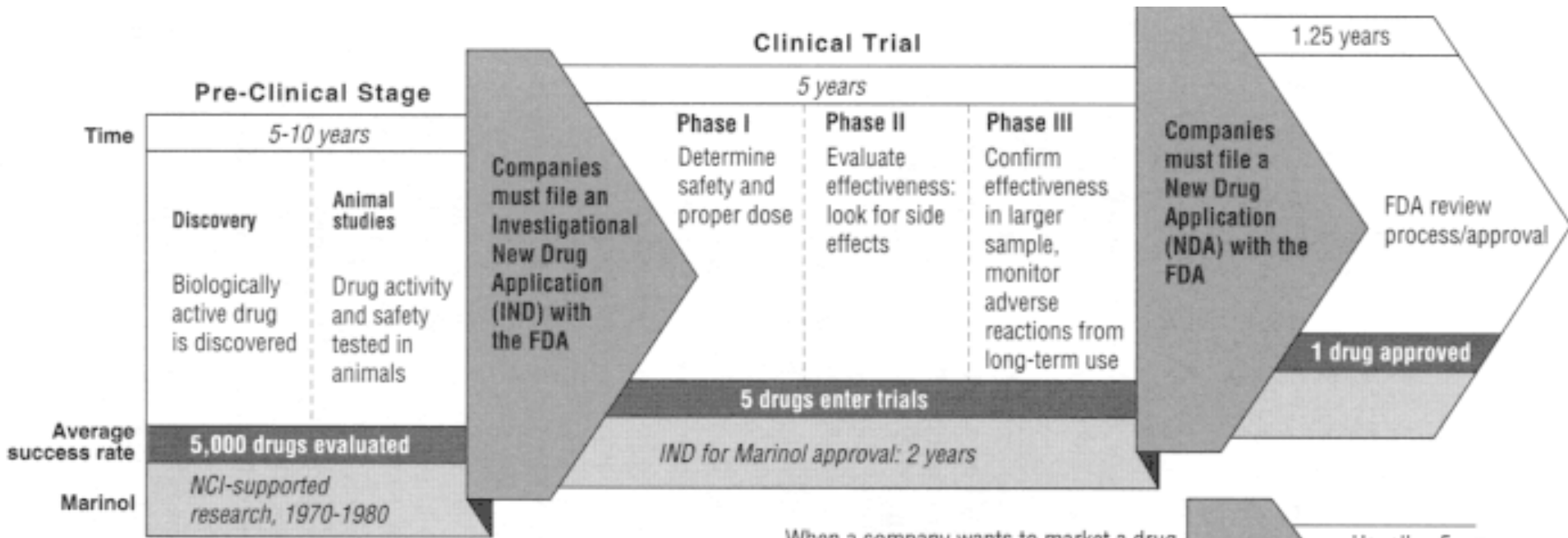
Informal Scheduling: Anabolic Androgenic Steroids (AAS)

- For nearly 50 years, AAS were classified as prescription drugs and regulated by FDA.
- After 1988 Olympic scandal, the Anabolic Steroid Control Act of 1990 added AAS to Schedule III of the CSA.
- DEA, HHS, FDA, and AMA all recommended ***against*** scheduling.
- Congress circumvented the 40-year old administrative scheduling process, setting a regulatory precedent.

Informal Scheduling in Florida: *Salvia divinorum*

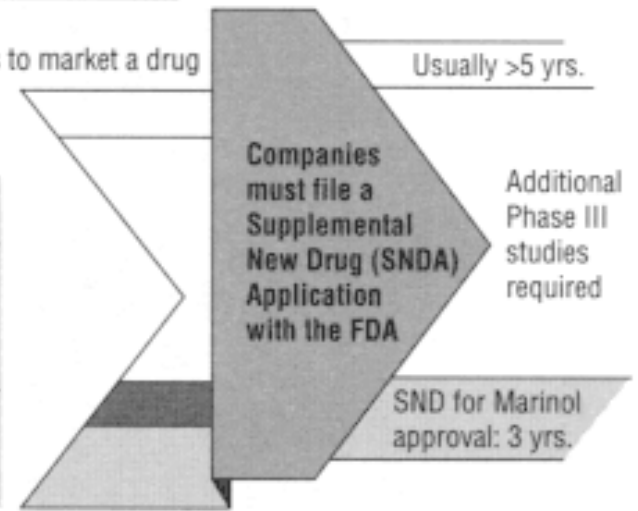
- **Initiation:** Constituent letters, anti-drug coalitions, and FL Senate Committee on Criminal Justice.
- **Recommendations:** Sought from DOH, FDLE, and ODC by Senate Committee.
- Legal analysis of potential for abuse:
 - Used in amounts hazardous to user's health or safety of community: **CHECK.**
 - Diverted from legal channels: **NOT RELEVANT.**
 - Self-initiated use (not based on professional medical advice): **CHECK BY DEFAULT.**

Stages of Clinical Testing for FDA Approval



When a company wants to market a drug for a new indication

Average cost to develop a drug:	\$200-300 million
Average cost of an SNDA application:	\$10-40 million
Cost to develop Marinol:	Unimed estimates that approximately 75% of the preclinical and clinical research on THC that led to FDA's 1985 approval was supported by the National Cancer Institute (NCI)
Cost of supplemental indication for Marinol:	\$5 million (treatment of anorexia associated with weight loss in AIDS)



Off-Label Prescribing

- It is legal for physicians to prescribe an FDA-approved drug for indications other than its approved indication.
- Examples:
 - Antidepressants to treat pain and pre-mature ejaculation.
 - Opioids approved for cancer pain used for non-malignant pain.
 - Stimulants approved for treating ADHD in children used in adults.

The Confusing Case of Caffeine

- In over-the-counter drugs like NoDoz, caffeine is regulated as a drug by the FDA and FTC.
- In beverages it is regulated by FDA as a food (not a drug).
- In natural form (as coffee and tea) it is essentially unregulated.

Q. Can the same drug be both over-the-counter and prescription?

- Yes, due to slight variations in dosage or dosing.
- Examples:
 - Prilosec (OTC) and Nexium (Rx)
 - Ibuprofen: 400mg (OTC), 600mg (Rx)
- Manufacturers can market to both insured and uninsured consumers.
- HMOs have petitioned to move drugs from Rx to OTC (not covered by their plans) to save money.

Miscellaneous Crimes: Harmful Chemical Substances (F.S. 877.111)

- Prohibits inhalation, ingestion, or possession with intent to breathe, inhale, or drink, any compound, liquid, or chemical containing:
 - Toluol
 - Hexane
 - Trichloroethylene
 - Acetone
 - Toluene
 - ethyl acetate
 - methyl ethyl ketone
 - diethyl ether
 - alkyl nitrites (butyl nitrite)
 - Trichloroethane
 - Isopropanol
 - methyl isobutyl ketone
 - ethylene glycol
 - monomethyl ether acetate
 - cyclohexanone
 - nitrous oxide
- ...or any similar substance for the purpose of inducing a condition of intoxication or which distorts or disturbs the auditory, visual, or mental processes.

F.S. 499.023 New Drugs

- A person may not sell, offer for sale, hold for sale, manufacture, repackage, distribute, or give away any new drug unless an approved application has become effective under s. 505 of the federal act or unless otherwise permitted by the Secretary of the U.S. HHS for shipment in interstate commerce.

F.S. 499.003 Definition of “Drug”

- "Drug" means an article that is:
 - (a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications;
 - (b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;
 - **(c) Intended to affect the structure or any function of the body of humans or other animals**

Department of Agriculture – Stop Sale Orders

- In the past, the Florida Department of Agriculture issued a stop sale order on dietary supplements containing ephedrine (after tourist death and FDA warning).
- This is a potential avenue for restricting new products that exist in the regulatory “grey” zone.