Hemp CBD: What Seniors Should Know
By: Lisa L. Pittman
Partner, Thomas Pittman, P.C.
Austin, Texas

In stark contrast to the world we grew up in, cannabis legalization has been sweeping the
nation, with “marijuana” as cannabis is defined by the U.S. Controlled Substances Act (CSA),
legal in medical programs in 34 states and adult use legal in 11 states and the District of Columbia.
Cannabis reform is the subject of over 1,200 bills pending before the U.S. Congress, several with
the support of the American Bar Association!

On January 1, 2019, hemp, which is a type of cannabis plant, became legal after President
Trump signed the 2018 Farm Bill on December 20, 2018. Hemp is rising even faster from the
shadows of prohibition than marijuana. While you may not know much about hemp, you may have
heard about cannabidiol (commonly known as CBD). Products containing hemp extracts high in
CBD, such as oils, topicals, and infused products, are gaining mainstream popularity and
acceptance, and are now carried in major grocery chains, online, and in boutique CBD shops
designed to look like pleasant, earthy pharmacies.

For a quick introduction to hemp, it is a varietal of the cannabis plant that is naturally low
in THC (the cannabinoid causing euphoria) and rich in CBDs and other cannabinoids. Hemp can
be bred to enhance certain therapeutic cannabinoids of the plant and to minimize the THC levels.
Marijuana, on the other hand, has higher THC levels and is tightly regulated from a law
enforcement perspective because of its status on Schedule 1 of the CSA. To be considered hemp,
the plant or product from the plant must contain < 0.3% THC. Hemp CBD is currently subject to
much less regulation than marijuana – though that regulation is coming from multiple federal
agencies including the USDA and the FDA, along with state health departments. The FTC has
recently gotten on board as well to combat false advertising.

The regulation of hemp is new. Under the 2014 Farm Bill, hemp could be grown in states
that allowed an industrial program or in conjunction with a contract with a research university.
Four states principally participated in this and regulated hemp production within their borders.
However, 2014 Farm Bill hemp, nor products made from it, were supposed to leave state
boundaries. But by around 2016, word was out about the soothing properties CBD seemed to
have, and products became available online and throughout the country, albeit not legally, and
wholly without regulation.

Hemp CBD’s popularity increased exponentially to the point where Sen. Mitch McConnell
of Kentucky, a prominent hemp producing state, introduced the Hemp Farming Act into the 2018
Farm Bill to legalize hemp nationwide as an agricultural commodity. The USDA just released its
proposed rules for regulating hemp farming under the 2018 Farm Bill on October 31, 2019, with
a commenting period through December 30. State Agriculture departments must receive approval
from the USDA for their state regulated hemp programs. The hemp CBD market has leapfrogged
over the FDA’s ability to regulate it, but the FDA is working on creating standards to regulate the
quality and safety of hemp CBD Products. The 2018 Farm Bill retained FDA authority over CBD
containing products.
CBD can also be derived from the marijuana cannabis plant, and is considered more effective due to the higher levels of THC that allow a more natural whole plant effect, but marijuana derived CBD is considered a drug by the DEA because of its THC levels, and by the FDA because it approved such a derivative for Epidiolex, a drug to treat rare forms of epilepsy. The 2018 Farm Bill expressly retained FDA regulatory authority over hemp CBD products as well, and the FDA takes the position that CBD cannot be marketed as a “dietary supplement” because it is a drug, and that it may not be infused into foods or beverages placed in interstate commerce because CBD is not generally recognized as a safe ingredient (GRAS) by the FDA. Despite the FDA’s position, in 2017, the World Health Organization (WHO) determined, “CBD is generally well tolerated with a good safety profile. Reported adverse effects may be as a result of drug-drug interactions between CBD and patients’ existing medications. … To date, there is no evidence of recreational use of CBD or any public health related problems associated with the use of pure CBD.” The caveat here is “pure” CBD—what the FDA has to regulate are the pesticides, metals, and other unsafe contaminants that could be in a hemp CBD product.

Part of CBD’s immediate mass popularity is its capability to reduce inflammation, pain, and anxiety. How it works is not well understood yet because cannabis’ classification as a Schedule 1 substance prohibited research in the United States for 100 years. Studies in other countries have demonstrated that formulations of the cannabis plant can destroy cancer and brain tumors, among other miraculous results that seem to demonstrate the cannabis plant was intended to interact with the body’s natural endocannabinoid system. The endocannabinoid system has receptors throughout our bodies that interact with CBDs, and our bodies actually produce cannabinoids already. Where some companies are getting in trouble is by making claims about what their CBD products can do to treat diagnosable conditions in violation of FDA guidelines and rules against making unsubstantiated health condition or curative claims.

For a brief history of hemp, industrial hemp used to be legal—indeed, required to be grown by early Colonists, and it was used for clothing, paper, rope, and fuel. But in 1937, Congress passed the Marihuana Tax Act, which made all species of the Cannabis sativa L. plant illegal, including hemp. While the purported purpose was to eliminate the use of cannabis as a drug, some theorists posit that the real intent of the Act was to eliminate the competition hemp posed to paper and steel manufacturers by referring to cannabis as “marijuana” as a scare tactic in relation to its use as a drug.

Fast forward to 2014, and under the Agricultural Improvement Act, known as the “Farm Bill,” licensed hemp producers began to multiply in states such as Colorado, Oregon, Kentucky, and Montana. Extracts derived from hemp plants can be infused into a variety of products to produce therapeutic effects sometimes rivaling or surpassing pharmaceutical counterparts, with none of the side effects of synthetic pharmaceutical drugs. As the public becomes more aware, businesses have been aggressively pursuing market share by peddling their own versions of hemp CBD products for humans and pets across all types of marketing platforms, despite recent illegality and the growing regulatory presence of the FDA over hemp derived CBD.

1 [https://www.who.int/medicines/access/controlled-substances/5.2_CBD.pdf](https://www.who.int/medicines/access/controlled-substances/5.2_CBD.pdf) at page 5.
Thus, there remains much confusion about hemp and the nuanced new law. For example, state law enforcement often intervenes and is frequently unclear about the legality of the substance they may discover in a vehicle or on the shelves of a health food store. The latest issue surrounds hemp flowers that can be smoked, and there have been many seizures from smoke shops on the allegation that the flowers are marijuana. They look and smell the same. If you are buying a CBD product and carrying it with you, know that there is some risk to it, especially if in leaf form, even though it is now legal.

From both an agricultural and medicinal standpoint, the hemp movement—largely unbeleaguered by the crushing compliance and taxing obligations of cannabis businesses—is on an exponential rise in the United States and internationally. A leading trade publication states that by 2020, annual sales of CBD products will exceed $1 billion.

Top concerns of someone considering incorporating CBD into their routines as a means of wellness and perhaps even as a means of relieving pain and reducing opioid use are that currently, the market is new and not regulated yet, it is unknown how CBD may interact with your other medications, and it is unknown what the long term effect is of using CBD daily. Things to look for when purchasing a hemp CBD product include: whether it was grown from a licensed hemp producer, whether quality genetics producing high CBD concentrations were used, whether the product was tested for pesticides, contaminants, mold, and metals, and whether there is a Certificate of Analysis (COA) showing these test results along with THC levels.

Unfortunately, many questionable products are flooding the market that have been found to contain no CBD at all or varying levels of it, and higher concentrations of THC than expected, among other contaminants and dangerous chemicals, some of which should not be heated before intake into the lungs, in the case of vaping for example. To avoid these issues, ensure your retailer has a legitimate business with ample educational materials, and that their products are transparently labeled and provide some means of accessing the product’s COA. Also, there are importations of hemp from other countries of questionable origin, so if you are starting out trying CBD, stick to 2014 hemp states (with experience) such as Colorado, Oregon, Montana, and Kentucky. Ensure the retailer has a basic understanding of the legality of hemp CBD and what claims can be made about it. If CBD is being presented as a panacea for all ailments, pass that one up. The promise of CBD is real, but we are still in the early stages of understanding how it works and how it should be dosed.

At the end of November, the FDA issued a consumer advisor alert as follows:

- CBD has the potential to harm you, and harm can happen even before you become aware of it.
- CBD can cause liver injury.
- CBD can affect the metabolism of other drugs, causing serious side effects.
- Use of CBD with alcohol or other Central Nervous System depressants increases the risk of sedation and drowsiness, which can lead to injuries.

2 https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis.
CBD can cause side effects that you might notice. These side effects should improve when CBD is stopped or when the amount ingested is reduced.

- Changes in alertness, most commonly experienced as somnolence (drowsiness or sleepiness).
- Gastrointestinal distress, most commonly experienced as diarrhea and/or decreased appetite.
- Changes in mood, most commonly experienced as irritability and agitation.
- There are many important aspects about CBD that we just don’t know, such as:
  - What happens if you take CBD daily for sustained periods of time?
  - What is the effect of CBD on the developing brain (such as children who take CBD)?
  - What are the effects of CBD on the developing fetus or breastfed newborn?
  - How does CBD interact with herbs and botanicals?
  - Does CBD cause male reproductive toxicity in humans, as has been reported in studies of animals?

The FDA also warns that some CBD Products are being marketed with unproven medical claims and could be produced with unsafe manufacturing practices because they have not been subject to FDA evaluation for their effectiveness to treat a particular disease. The FDA is also concerned that misleading, unproven, or false claims associated with CBD products may lead consumers to put off getting important medical care, such as proper diagnosis, treatment, and supportive care. CBD is not yet a substitute for traditional medical care!

The FDA is continuing to evaluate the regulatory frameworks for products containing hemp CBD, and its position is that it is better to utilize FDA approved drugs only. However, for those that believe in herbal medicine and plant based therapies, as long as you are not on another medication for a serious condition or are in a “vulnerable population,” such as with a compromised immune system, trying some hemp CBD from a reliable source might surprise you! Start with a topical you can rub on an aching joint or tight muscle and see if it alleviates the pain. The author personally uses an oral spray to mitigate the onset of migraine headaches, and a topical cream to relieve TMJ muscle tightness. Apart from the unknowns and the warnings contained herein, as articulated by the WHO, CBD itself is not known to have any negative consequences except when combined with certain pharmaceuticals. Be informed before you try it, and do not buy your CBD from a gas station!