

Medical Marijuana in PA



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Marijuana and Workers' Comp:

How to Navigate this Uncharted Territory

Featuring:

- **Critical Case Law Updates About Required Reimbursement of Medical Marijuana**
- **Interplay between Medical Marijuana Act and Workers' Comp**
- **Use of Medical Marijuana at Work**
- **Recommendations from Our Attorneys on how to Best Control Expense and Exposure**



Laws at Play

- Federal Controlled Substances Act
- Medical Marijuana Act (“MMA”)
- Workers’ Compensation Act (“WCA”)



Federal Controlled Substances Act

- Prohibits the knowing or intentional manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, of a controlled substance
- Identifies marijuana as a controlled substance
- 21 U.S.C. § 841(a)



Medical Marijuana Act

- **Section 2102-** “nothing in [the MMA] shall be construed to require an insurer or a health plan, whether paid for by Commonwealth funds or private funds, to provide coverage for medical marijuana”
- **Section 2103(b)(3)-**“nothing in [the MMA] shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of [f]ederal law.”



Workers' Compensation Act (“WCA”)

- Mandates that employers pay for employees' reasonable and necessary medical treatment of work injuries
- Mandates that employers pay for a claimant's medical expenses that arise from and are caused by a work-related injury



Critical Case Law Updates

- T.L. Fegley, as of the Estate of P. Sheetz v. Firestone Tire & Rubber (WCAB), 680 C.D. 2021 (Pa. Commw. Ct. 2023)
- E. Appel v. GWC Warranty Corp. (WCAB) – 824 C.D. 2021 (Pa. Commw. Ct. 2023)
- Both decided on March 17, 2023



Fegley

- **Issues**
 - Whether the MMA overrides the WCA regarding reimbursement for medical treatment related to work injury
 - Whether reimbursement of medical marijuana would violate federal law
- **Facts-** UR found medical marijuana reasonable and necessary
- **Holding-** While insurers cannot be compelled to provide coverage for medical marijuana under the MMA, they can be compelled to reimburse claimants for medical marijuana causally related to the work injury



Appel

- **Issue-** whether the MMA exempts employers from having to pay for medical marijuana
- **Facts-** The WCJ determined that medical marijuana was causally related to work injury
- **Holding-** The employer was required to reimburse the claimant for the medical marijuana since it was causally-related to the work injury. Doing so would not violate federal law since the employer is not “prescribing” medical marijuana

How to proceed

- Neither Fegley nor Appel have been appealed
- Issues to consider
 - Medical marijuana not assigned a national drug code and cannot be repriced
 - Employers left with no remedy to challenge since Utilization Reviews are limited to “providers”
 - Marijuana comes in various quantities and strains
 - Nearly impossible to monitor:
 - If injured worker is using it only for injury
 - If injured worker is unlawfully distributing



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Options moving forward

- IMEs- risk of doctor finding it causally related and/or reasonable and necessary
- Cost-benefit analysis
 - Cost of UR petition ranges, but is usually over \$1,000.00
 - Cost of medical marijuana also ranges. Prices found on dispensary websites and average about \$30.00 per gram
- If worth challenging
 - File UR petitions
 - Treating doctor
 - Doctor who approved medical marijuana
 - Medical marijuana distribution stores
 - Claimant
 - Force the courts to cure the employers' lack of remedy

Use of Medical Marijuana at Work

- Employee rights under MMA
- Drug-free work place policies
- Intoxication defense
- Termination for cause following positive drug test



Employer Rights Under the MMA

- Not required to accommodate an employee's possession or use of marijuana on its premises under the Act
- May discipline an employee found to be under the influence of medical marijuana in the workplace
- May prohibit employees from completing tasks that are life-threatening or which pose a public health or safety risk while the employee is under the influence





Questions?
Thanks for
joining!

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