

# Does Worker's Comp Cover Medical Marijuana Used to Treat Pain from Compensable Injury?



## SITUATION

A worker in Alberta is injured on the job when his vehicle rolls over. His workers' comp claim for neck and shoulder injuries is approved. However, these injuries cause him muscle spasms, pain and depression. He tries standard pain medications, but they provide only short term relief. These medications also cause him to suffer side effects, such as nausea, fatigue, diarrhea and constipation. And they reduce his ability to concentrate. Therefore, his treating physician and a pain specialist authorize him to use medical marijuana. The marijuana reduces his pain and irritability, and allows him to sleep better and engage in more daily activities, improving his quality of life. But his workers' comp request for coverage for the use of medical marijuana is denied.

## QUESTION

**Should Alberta workers' comp cover the worker's medical marijuana'**

- A. No, because medical marijuana is illegal in Canada.
- B. No, because workers' comp doesn't cover any medication.
- C. Yes, because the worker tried conventional aids to treat the pain from his compensable injury without success.
- D. Yes, because the worker's doctor authorized its use.

## ANSWER

**C. Medical marijuana should be covered because it alleviated the pain from his compensable injury and standard treatment was ineffective.**

## EXPLANATION

This hypothetical is based on a decision of the Alberta Workers' Comp Appeals

Commission, which found evidence sufficiently demonstrating that the use of medical marijuana was a reasonable and necessary medical aid for the treatment of a worker's compensable injuries. The Commission noted that Alberta's workers' comp policies state that non-standard or experimental treatment will be compensable when:

- Other 'conventional medical aid has been tried or at least considered and found to be medically inappropriate';
- The evidence indicates it has a positive health effect in helping the worker get back to work;
- The benefits outweigh the risks; and
- It can be provided legally in Canada.

In this case, the worker tried or considered all other conventional medical aids and found them to be medically inappropriate to treat his pain caused by injuries he'd suffered on the job. The Commission found that there was sufficient evidence to indicate that the use of medical marijuana has a positive health effect 'that is part of a comprehensive work return or rehabilitation program.' And the worker can legally get medical marijuana from an accredited source. So the Commission ruled the medical marijuana treatments were compensable.

#### **WHY THE WRONG ANSWERS ARE WRONG**

**A is wrong** because medical marijuana *isn't* illegal in Canada. Although marijuana's illegal for general recreational use, a physician may legally authorize a patient's use of marijuana for medical conditions, including pain management. So here, because the worker's treating physician and a pain specialist authorized him to use marijuana to treat his pain, he's legally allowed to possess and use marijuana for medical purposes.

**Insider Says:** For more information about the legality of medical marijuana and its impact on the workplace, watch this recorded webinar. Also see, *Medical Marijuana in the Workplace: Risks for Employers*.

**B is wrong** because workers' comp does, in fact, cover medications. Workers' comp generally covers the cost of medical aid and reasonable methods of treatment for compensable conditions or injuries and their health effects. Sec. 1(p) of Alberta's *Workers' Compensation Act*, for example, specifically defines medical aid to include drugs. Here, the workers' neck and back pain and muscle spasms were caused by a compensable injury. Therefore, medication to treat pain and other symptoms caused by those injuries is compensable.

**D is wrong** because a doctor's authorization of the use of medical marijuana doesn't always mean such use is compensable. Workers' comp laws and policies don't generally cover unconventional treatments such as marijuana simply because a physician issues a prescription. They may impose additional requirements for such treatments to be paid for by workers' comp. For example, Sec. 21 of BC's *Workers' Compensation Act* says the workers' comp board can adopt rules as to what types of healthcare it'll cover. And BC workers' comp policies indicate that the board has ultimate authority to determine the need for and sufficiency of medications based on factors including 'but not limited to' patient preference and a doctor's prescription. In this case, Alberta policy requires other treatments to be ineffective and for the benefits of the unconventional treatment to outweigh its risks. This worker tried other standard treatments for

his pain to no avail and got the most relief from marijuana. It's those factors, in addition to his physician's authorization, that render the use of medical marijuana compensable here.

***Insider Says:*** For a description of two cases in which workers' comp appeals resulted in opposite conclusions regarding compensation for medical marijuana prescriptions, see 'Winners & Losers: Does Workers' Comp Cover Medical Marijuana'' Sept. 2013, p. 10.

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