

Where's the smoke?

Medical marijuana and workers compensation

16 September 2014



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Speakers/agenda

- **Arthur I. Cohen (Moderator)**

Background on medical marijuana in workers' compensation

- **Alice P. Mead**

Evolution of cannabinoids as modern prescription medicines

- **Phil Natoli**

Estimated cannabinoid financial impact on workers' compensation cost



Legal status of medical marijuana

- Medical marijuana is legal in 23 states and D.C.
- It is a Schedule 1 Drug, and no natural variation of a plant extract has full FDA approval for any use
- Its use is not protected by the Americans with Disabilities Act
- Its use outside of work hours can be considered a violation of drug-free workplace policies



Terminations for off-the-job use of medical marijuana

- **Colorado** Coats v. Dish Network LLC
- **Michigan** Casias v. Wal-Mart Stores, Inc.
- **Washington** Roe v. Teletech Customer Care Management
- **California** Ross v. RagingWire
- **Montana** Johnson v. Columbia Falls Aluminum Company
- **Oregon** Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries



Who pays for medical marijuana in workers' compensation?

- Employer/insurer excluded by statute or regulation:
 - Colorado
 - Michigan
 - Montana
 - Vermont
- Employer/insurer excluded by case law:
 - California: Cockrell v. Farmers Insurance Co.
 - Reimbursement for marijuana ordered by workers' compensation judge
 - Rescinded by appeals board as nothing in the Health & Safety Code required an insurer to be liable for reimbursement for the medical use of marijuana



Chinks in the armor

- States protecting users of medical marijuana from adverse employer actions:
 - Arizona
 - Connecticut
 - Maine
 - Rhode Island



Chinks in the armor

- Employer/insurer pays for medical marijuana
 - New Mexico
Vialpando v. Ben's Automotive Services
Employer and its insurer ordered to **reimburse** injured worker for cost of marijuana to treat chronic back pain
 - Iowa
McKinny v. Labor Ready and Reliance Insurance Co.
Iowa allowed an employee living in Oregon to recover on an Iowa workers' compensation claim for medical marijuana



FDA approval implications

Employment practices

Drug-free workplace – Marijuana use may not be prohibited if used per prescription. It is the employee's responsibility to avoid unsafe workplace practices.

Payment for treatment on
workers' compensation

Yes



FDA approval prospects

- **DEA**

- The clear weight of the evidence is that smoked marijuana is harmful.
- The only drug currently approved by the FDA that contains the synthetic form of THC is Marinol[®].
- Sativex[®], unlike smoked marijuana, removes contaminants, reduces the intoxicating effects, is grown in a structured and scientific environment, administers a set dosage and meets criteria for pharmaceutical products.



FDA approval prospects

- **White House**

The federal government supports studies that meet accepted scientific standards and successfully compete for research funding based on peer review and potential public health significance. The federal government will continue to call for research that may result in the development of products to effectively treat debilitating diseases and chronic pain. Already, there are DEA-registered researchers eligible to study marijuana, and currently there are **phase III clinical trials underway examining the medical utility of a spray containing a mixture of two active ingredients in marijuana (i.e., Sativex).**





FDA approval prospects

April 2014

GW Pharmaceuticals announces that Sativex receives fast track designation in cancer pain



Questions and Discussion

