

7 February 2019

WSIB  
Tom Teahen, President and CEO  
Angela Powell, VP of Policy  
200 Front Street West  
Toronto, Ontario M5V 3J1

Dear Mr. Teahan and Ms. Powell,

**RE: WSIB Draft Policy 17-01-10 on Marijuana for Medical Purposes**

Injured Worker Community Legal Clinic is a non-profit legal clinic assisting workers free of charge since 1969.

We are writing to share our concerns with the lack of consultation in the development of the WSIB's policy on Marijuana for Medical Purposes, as well as with its content. While our understanding is that this policy is to come into effect on 1 March 2019, we are asking that this policy not be implemented until the WSIB conducts a proper consultation with all stakeholders and made necessary revisions.

Should such a consultation take place, we would certainly make a substantial submission on behalf of the workers we represent. However, some of our immediate concerns about the proposed policy as it is written include:

- Policy makers at the WSIB have opted to set up thresholds for approval that are significantly higher than the Ontario College of Physicians and Surgeons have suggested for their membership.<sup>1</sup>
- The policy will effectively bar people with certain medical conditions from having their prescribed medical marijuana treatment covered, regardless of what their treating physicians think. Workers who:
  - have a current mood or anxiety disorder

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<sup>1</sup> CPSO Policy 8-2 "Marijuana for Medical Purposes" Updated December 2016

- are heavy users of alcohol
  - are taking opioids or benzodiazepines, or
  - have risk factors for cardiovascular disease,
- are not likely to get Board approval for Medical Marijuana. Aside from offering no substantive reasons for these exclusions, they run counter to broader medical and societal approaches to harm reduction (which was a component of the New Brunswick policy the WSIB claimed to be using a guiding document) and emerging alternatives to pharmacological treatment of anxiety and depression.
- The policy's statement "medical cannabis is not necessary, appropriate, or sufficient health care treatment for most medical conditions" is unnecessarily restrictive. No treatment of any nature is necessary, appropriate, or sufficient for "most medical conditions," and few treatments (especially pharmacological and surgical treatments) are without known harms. The WSIB is implying here that the threshold that must be met is one in which treatments must be necessary, appropriate and sufficient for most conditions for most people. This threshold is not how the WSIB adjudicates other healthcare entitlement decisions
  - While the WSIB notes that this is an emergent area of medical research, to limit approval to neuropathic pain, spasticity, side-effects of cancer treatment, HIV/AIDS, and palliative pain due a lack of research consensus is not at all consistent with the WSIB's practice of sometimes approving so-called "off label" uses of other pharmaceutical drugs.
  - The policy states that the decision maker must use the opinion of the workers treating doctor. As you know, there is significant support within the worker community for policy that requires the decision maker to prioritize the opinions of workers' treating medical professionals.<sup>2</sup> However, the rest of the policy essentially contradicts this sentiment, and effectively instructs decision makers to reject the advice of the treating doctor in all but very narrow circumstances.

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<sup>2</sup> See for example: Ontario Federation of Labour "Prescription Overruled," 2015.  
Ontario Network of Injured Workers' Groups "Workers Comp Is A Right," 2017.

- WSIAT has established a measured, consistent and functional set of protocol for approval of medical marijuana that the WSIB seems to have ignored in favour of this more restrictive policy. While not perfect, the Tribunal's approach has been reasoned and fair over the years. A review of Tribunal case-law suggests a consistent set of reasons for not approving medical marijuana coverage, including:
  - The worker has a significant history of ongoing substance abuse (*Decision Nos. 323/16; 427/16*).
  - No Health Canada approval or insufficient evidence of proper approval procedures (*Decision Nos. 1645/16; 427/16; 882/15; 40/11*).
  - Worker was not cooperative with initial treatment attempts (*Decision No. 2311/14*)
  - Marijuana not for treatment of compensable issue (*Decision Nos. 2137/09; 40/11*)
  - Worker did not provide evidence of benefit (*Decision Nos. 2311/14; 588/11*)

We encourage the WSIB to read and consider decisions like *Decision Nos. 2007/07 and 2335-061*, which very clearly analyze the cases and provide sound reasons why the workers' requests meet the threshold set out in the WSIA, as opposed to the artificial (potentially unlawful) thresholds established in the proposed policy.

Finally, the WSIB's Framework for Operational Policy Development and Renewal opens by stating:

*The approach is based on the premise that regular consultation and communication with stakeholders and the public are vital to designing good public policy and maintaining productive relationships with the individuals and groups most affected by the WSIB's decisions.*

We are requesting that the WSIB follow its own framework, and provide us and all interested stakeholders with the opportunity to participate in a broad consultation. We would hope that such a consultation would lead to a more reasonable policy that better aligns with the legislation. These are simply some of the concerns that are being raised within the community of advocates who assist injured workers.

Should you have any questions or concerns, please do not hesitate to contact me directly.

Sincerely,  
INJURED WORKERS COMMUNITY LEGAL CLINIC  
Per:

A handwritten signature in black ink, appearing to be 'DN', written in a cursive style.

David Newberry  
Community Legal Worker