



**REPRESENTING INJURED WORKERS
FREE OF CHARGE SINCE 1969**
A community directed not for profit legal aid clinic

January 14, 2021

SENT BY EMAIL: WebHSpolicy@ontario.ca

Health Safety and Insurance Policy Branch
Ministry of Labour Training and Skills Development
400 University Avenue, 14th Floor
Toronto ON M7A 1T7

Re: Naloxone in the Workplace Consultation

Injured Workers Community Legal Clinic is a community legal aid clinic funded by Legal Aid Ontario which has assisted injured workers with their claims, free of charge, since 1969. In addition to representing injured workers on individual cases, our mandate includes addressing systemic issues by raising issues of law and policy reform with the government and the WSIB. We have a long historical memory of the difficulties faced by injured workers and the various legislative attempts made to address those difficulties. We are very familiar with not only the legislation, but how that legislation works in terms of policy and practice—in other words, the actual impact on those who have had the misfortune of injury or illness sustained from work. We work closely with injured worker organisations and are familiar with their issues and vision, as well. To that end, we take this opportunity to highlight the interplay between Ontario’s workers compensation system and opioid use by injured workers.

The COVID- 19 pandemic has fueled another growing pandemic across Canada – the opioid pandemic. Since March 2020, rates of emergency medical services for suspected opioid overdoses in Ontario went up by 57 per cent and fatalities because of opioid overdoses increased by 60 per cent.¹ A review of safety measures in workplace is certainly an important and welcome exercise and we wholeheartedly support efforts aimed at increasing workplace safety, including access to naloxone. However, in order find solutions, we urge the Ministry to examine what drives workplace opioid overdoses to occur in the first place, particularly from the perspective of injured workers.

As part of that assessment, it is vital that opioids and the people who use them are not demonized because there are many workers who have a well-managed and appropriate regime of pain killers which may well be the only thing that is effective for them to manage pain and return to some activities of daily living. There are varied reasons why injured workers use opioids, but certain structural policies currently being applied by the Workplace Safety and Insurance Board (“WSIB”) may have harmful unintended consequences. These include increased reliance on opioids in the workplace and unintended termination of

¹ “The Impact of the COVID-19 Pandemic on Opioid-Related Harm in Ontario,” <<https://covid19-sciencetable.ca/sciencebrief/the-impact-of-the-covid-19-pandemic-on-opioid-related-harm-in-ontario/>>

opioid prescriptions. These factors can lead to use of unsafe street drugs, thereby creating unsafe workplaces.

“Better at Work” isn’t always better for workers

Since 2011, the WSIB has been guided by a set of principles aimed at promoting workers getting back to work as soon as possible after an injury. Coined “Better at Work,” these principles are centred on the underlying assumption that returning to work is better all round for a worker’s recovery, rehabilitation, and overall well-being.² The principles are:

- Work is important to overall well-being
- Early intervention is key
- Return to work enhances recovery and is part of the rehabilitation process
- Barriers to return to work are often inappropriately 'medicalized'

The application of these principles translates into thousands of workers across Ontario being pressured to get back to work – even if they’re not physically or psychologically ready to do so. While Section 40(2) of the *Workplace Safety and Insurance Act* requires that workers “cooperate in his or her early and safe return to work,”³ the emphasis all too often seems to be on *early* return to work as opposed to *safe* return to work. Indeed, workers who get injured on the job want to return to work as soon as they can, but the Better at Work policy pushes them to do so without providing proper time to heal. This can increase the risk of re-injury and may stymie the rehabilitative process, which is counterproductive. The question of whether a worker is ready to get back to work can’t be addressed without an individualized assessment based on medical evidence. The “Better at Work” approach is an inadequate one-size-fits-all answer to a complex question that requires the board to look at what an individual worker needs to heal properly. Failing to do this can have significant consequences for the overall health and wellbeing of workers. In a 2003 decision which found the exclusion of entitlement for chronic pain under Nova Scotia’s workers’ compensation program unconstitutional, the Supreme Court of Canada stated:

“...the treatment of injured workers suffering from chronic pain under the Act is not based on an evaluation of their individual situations, but rather on the indefensible assumption that their needs are identical. In effect, the Act stamps them all with the "chronic pain" label, deprives them of a personalized evaluation of their needs and circumstances, and restricts the benefits they can receive to a uniform and strictly limited program.”⁴

The continued existence of a “Better at Work” approach perpetuates a similar “indefensible assumption” that all injured workers have identical needs or experiences when it comes to being able to return to work. Some workers who are pushed back to work prematurely often find themselves relying on opioids just to get through the day and manage pain levels so that they are not cut off by the WSIB for not cooperating in their return-to-work plans. This is an unfortunately common experience for injured workers, as detailed in a June 2020 *Globe and Mail* article entitled “How workers compounded the flames of the opioid crisis.”

² WSIB Document “Better at Work,” (WSIB) <<https://www.wsib.ca/en/better-work>>

³ *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A at s. 40(2).

⁴ *Nova Scotia (Workers’ Compensation Board) v. Martin; Nova Scotia (Workers’ Compensation Board) v. Laseur*, [2003] 2 S.C.R. 504, 2003 SCC 54 at para 99.

Injured workers shared harrowing details of their experiences being pushed back to work by the workers compensation system even as they were still reeling from their injuries.⁵

We call on the Ministry to recommend that the WSIB develop stronger policies that explicitly assert the importance of time to heal as part of the process of developing return to work plans for injured workers. We note that the WSIB previously had a Best Practices Document called “Recognizing Time to Heal- Assessing Timely and Safe Return to Work” which was subsequently replaced with “Better at Work.” Restoring this Best Practice Document and elevating it to a board policy is a fundamental first step in creating safer workplaces for injured workers.

Listening to Treating Doctors

The doctors who treat injured workers are best placed to assess the timing and nature of a workers’ safe return to work following an injury. It is vital that the WSIB respect the opinions of medical professionals when it comes to recommended timelines and necessary modifications and accommodations for a worker’s re-entry to their workplaces. We have seen and heard countless examples ⁶ of doctors’ opinions being disregarded in favour of a sped-up timeline imposed by the board that sees a worker back on the job even when their doctor doesn’t believe they are ready. This makes re-injury much more likely and can force workers to turn to opioids for pain management and to cope with the demands of being back to work before they have fully healed.

We have also heard from injured workers with permanent disabilities that their treating doctors are often frustrated by the onerous and overly bureaucratic protocols they must go through to get approval to prescribe opioids for their patients. Unfortunately, some doctors decide not to continue to treat a worker when they feel their professional opinions are being disregarded by the board on top of being inundated with requirements for multiple in-depth reports just to get a prescription approved by the board. These issues came up in a 2017 Human Rights Tribunal of Ontario case where an injured worker alleged that the WSIB failed to accommodate his disabilities in the provision of its services to him. The decision documents the worker’s position that the WSIB did not adequately communicate its narcotics approval process to him or his family doctor, and didn’t provide its reasoning when declining to cover medications recommended by the family doctor. During his testimony, the worker noted that his family doctor “eventually told him she could not respond to the repeated requests for forms because they took too long to complete and because there did not seem to be any point since her professional opinion about his medication needs seemed to be ignored.”⁷

Faced with few options, workers are vulnerable to reliance on unsafe drugs if they can’t continue with their physician-approved prescription opioid treatment. The WSIB must respect the opinions of the health care practitioners who treat injured workers when it comes to return to work and treatment plans and take their

⁵ The Globe and Mail, “How workers comp fanned the flames of the opioid crisis,” (June 18, 2020) <<https://www.theglobeandmail.com/canada/article-how-workers-comp-fanned-the-flames-of-the-opioid-crisis/>>

⁶ See Ontario Federation of Labour Report “Prescription Over-ruled”(2015); < <https://ofl.ca/wp-content/uploads/2015.11.05-Report-WSIB.pdf>> and IVAGO’s Report “Bad Medicine: A Report on the WSIB’S Transformation of its Healthcare Spending,” (2017) < <http://iavgo.org/wp-content/uploads/2013/11/Bad-Medicine-Report-Final.pdf>>

⁷ *Lawson v Workplace Safety and Insurance Board* 2017 HRTO 851 at para 65.

professional opinions into account when developing appropriate return to work plans for individual workers.

Availability of Alternative Treatments for Pain Management

The healthcare needs of many injured workers who have work-related acute or chronic pain are often not adequately met because of the WSIB's reduction in spending on healthcare benefits and denial of claims. Without access to alternative treatments, workers turn to opioids to treat their pain. Approval for treatments like physiotherapy can be difficult to get and may only be approved for a short period of time and then be cut off even if a worker needs ongoing treatment to prevent deterioration of their condition.⁸ Workers can sometimes be caught up in years of appeals just to access additional therapy.

The overly restrictive policies around approving alternative treatments like medical cannabis only compound the barriers that many injured workers face when trying to manage pain. The board's policy on medical cannabis makes clear that it is to be as compared to other types of healthcare, which are adjudicated based on whether they are "necessary, appropriate and sufficient"⁹ to treat an injured workers' injury. The board explicitly states that medical cannabis is not "necessary, appropriate and sufficient for most medical conditions"¹⁰ as a rule, and will only be considered as such in very restricted situations which require an injured worker to jump through a lot of hoops to get coverage. But no treatment of any kind can meet the high bar of being necessary, appropriate or sufficient for "most medical conditions," and few treatments come without any degree of potential harm. The threshold used by the board for medical cannabis approval is higher than for other healthcare entitlement issues and more restrictive. The Policy only contemplates coverage where medical cannabis is prescribed for a "designated condition," defined as one of the following:

- neuropathic pain
- spasticity resulting from a spinal cord injury
- nausea and vomiting associated with cancer chemotherapy
- loss of appetite associated with human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS), or
- pain and other symptoms experienced in a palliative setting;¹¹

And it similarly further restricts eligibility for workers with cardiovascular disease or current or past substance abuse disorder, for example, on the basis that "the risks of medical cannabis treatment will generally outweigh any potential therapeutic benefits."¹²

⁸ Ontario Federation of Labour Report "Prescription Over-ruled" at p 6.

⁹ Workplace Safety and Insurance Act s. 33.

¹⁰ WSIB Policy 17-01-10 "Cannabis for Medical Purposes" < <https://www.wsib.ca/en/operational-policy-manual/cannabis-medical-purposes> >

¹¹ WSIB Policy 17-01-10 "Cannabis for Medical Purposes"

¹² WSIB Policy 17-01-10 "Cannabis for Medical Purposes"

The Policy does not align with emerging research, growing medical support, and the objective experience of workers who have turned to the medication as an alternative to opioid-based pain killers. The workers compensation legislation is clear that workers have the right to choose their treating medical practitioners and by extension, have the right to access the treatments recommended by those very practitioners. The restrictive approach to approving requests for medical cannabis is yet another example of how the WSIB disregards the opinions of medical practitioners who are best placed to develop a responsive and individualized treatment plan. Medical cannabis should not be unduly stigmatized by the WSIB, but instead should be assessed using the legislative guidance applied to all other proposed healthcare – whether it is necessary, appropriate and sufficient.

Conclusion

The use of opioids connected to the workplace impacts injured workers in individualized ways, but in order to enhance overall safety, it is imperative that the Ministry examine the harmful impacts that WSIB policies and practices have on contributing to potentially unsafe use of opioids. We urge the Ministry to immediately recommend that the board revise its return to work policies to ensure that the individual needs of workers to properly heal are enshrined in policy. We reiterate our calls for the WSIB to ensure that recommendations of treating doctors are duly considered when it makes crucial decisions about an injured workers' return to work following an injury and to provide adequate healthcare to workers so that they can access alternative treatments to manage pain, like physiotherapy and medical cannabis. Creating barriers to such treatments narrows the options available to workers and can contribute to a reliance on opioids.

All of which is respectfully submitted this 14th day of January 2022.

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