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MEDICAL CANNABIS IN THE WORKPLACE

This PSHSA Fast Fact provides Ontario employers, supervisors and workers with basic information on cannabis, the history of medical cannabis in Canada, applicable legislation, considerations for accommodation and suggested control measures for the workplace.

WHAT IS MEDICAL CANNABIS? AND IS IT LEGAL?

Medical cannabis, also known as medical marijuana, refers to cannabis prescribed and used to relieve symptoms and minimize treatment side effects of various medical conditions. Examples of recognized therapeutic uses include managing neuropathic pain in individuals with multiple sclerosis and preventing chemotherapy/radiotherapy-induced nausea and vomiting. Medical cannabis is derived from the leaves and flowering tops of the cannabis plant. The primary compounds within cannabis, called phytocannabinoids, are delta-9-tetrahydrocannabinol (THC), cannabidiol (CBD) and cannabinol (CBN).⁵ The properties of THC and CBD have been extensively studied. Evidence suggests that THC, particularly, is responsible for the physical and psychoactive (“high”) effects commonly attributed to cannabis use. CBD on the other hand apparently has little if any psychoactive effect.⁵ Adverse side effects of cannabis use can include euphoria, anxiety and impairment in short-term memory.⁵

According to the College of Family Physicians of Canada (CFPC), chronic pain and anxiety are the most common reasons for which medical cannabis is requested from treating physicians.¹ The CFPC, however, recommends that family physicians only consider the authorization of dried cannabis for the treatment of neuropathic

pain in those patients that have not responded to standard treatments. In addition, dried cannabis is not recommended as an appropriate therapy for anxiety or insomnia. These positions are among the fifteen recommendations provided to family physicians with regards to prescribing dried cannabis for medical purposes contained within CFPC’s document, “Authorizing Dried Cannabis for Chronic Pain or Anxiety: Preliminary Guidance”.¹ The College of Physicians and Surgeons of Ontario (CPSO) has also outlined their expectations for physicians when prescribing the use of marijuana for medical purposes through their policy statement #8-16.³ These expectations and recommendations are necessary because authorizing the use of medical cannabis lies solely with the patient’s specific healthcare practitioner.

Health Canada has made it clear that cannabis is not an approved therapeutic product⁴ and therefore does not have a drug identification number (DIN). There are, however, two pharmaceutical drugs on the market that have been approved by Health Canada and can be used as alternatives to cannabis. These drugs, Sativex® (Nabiximols) and Cesamet® (Nabilones), contain a liquid extract of cannabis and a synthetic version of THC respectively. Sativex® is an oral-mucosal spray which can be used to treat certain symptoms in adult multiple sclerosis patients and for adult patients with advanced cancer who suffer from severe to moderate pain.⁵ Cesamet® can be used for severe nausea and vomiting

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caused as a result of chemotherapy.⁵

It is legal for individuals to access cannabis for medical purposes if they have been authorized by their physician or nurse practitioner. In Ontario, nurse practitioners (NPs) are now allowed to prescribe controlled substances such as medical cannabis if they have successfully completed approved controlled substances education.²

The use of medical cannabis by a patient without a valid medical document (equivalent to a prescription) continues to be illegal in Canada pursuant to the Controlled Drugs and Substances Act (CDSA). Compassion clubs and dispensaries that provide cannabis products to members are also illegal in Canada. The Government of Canada has said that law enforcement will continue to enforce current laws until the Cannabis Act – which sets out the framework to legalize cannabis, control and strictly regulate its production, distribution and sale – receives Royal Assent and comes into force.

WHAT IS THE RELEVANT LEGISLATION?

From 2001 to 2014, the Marihuana Medical Access Regulations (MMAR) governed the use of medical cannabis in Canada. Under the old MMAR, Health Canada authorized individuals to either: 1) purchase medical marijuana directly from Health Canada; 2) grow their own medical marijuana; or 3) designate a non-commercial grower. The MMAR was replaced by the Marihuana for Medical Purposes Regulations (MMPR) which was fully implemented on April 1, 2014 and was in effect until August 24, 2016. The MMPR outlined provisions for the authorized possession of marijuana for medical purposes; the production and distribution of marijuana by licensed producers; and the ability of the patient to purchase medical marijuana from licensed producers after receipt by the licensed producer of a signed medical document from the patient's physician.⁸

Since August 24, 2016, the Access to Cannabis for Medical Purposes Regulations (ACMPR) has been the current legislation that applies to legal access to cannabis for medical purposes. The ACMPR sets out the framework for the production and distribution of dried/fresh marijuana, cannabis oil or starting materials (e.g. marijuana seeds and plants) by licensed producers. As with the old MMPR, the ACMPR gives health care practitioners the authority to provide a medical document to a patient under their professional treatment.⁹ Individuals can obtain cannabis by: 1) obtaining fresh/dried marijuana or cannabis oil from a licensed producer by registering with them; 2) producing a limited amount of medical cannabis for themselves; or 3) designating someone else to produce it for them. If a patient wishes to produce a limited amount of medical cannabis for themselves or have someone else produce it for them, they must submit an application with

their medical document to register with Health Canada. If successful in the application process, the registered person will receive a registration certificate from Health Canada; and the designated individual will receive a document from Health Canada to outline what activities are permitted. These documents offer legal proof of the ability to possess and produce cannabis by a registered person or designated person.

WHAT ONTARIO LEGISLATION APPLIES?

Under the Ontario Human Rights Code (OHRC), employers are required to accommodate workers who have a disability up to the point of undue hardship. This accommodation extends to disabled workers prescribed the use of medical cannabis. The use of medical cannabis, however, does not permit the worker to be impaired at work or endanger their safety or the safety of others. In other words, the requirement to accommodate disabled workers does not equate to being required to allow for unsafe work. There are approximately 18.4 million workers in Canada¹¹ of which a significant proportion work in safety-sensitive industries such as agriculture, forestry, construction, healthcare and transportation. According to market data from Health Canada, at the end of June 2017 there were a total of 86,196 active client registrations with a licensed cannabis producer in Ontario, with 201,398 active client registrations for the same time period Canada-wide.⁶ It is possible for patients to be registered with more than one licensed producer if they provide each licensed producer with an original medical document for their registration. Employers must be proactive and have a plan to respond accordingly.

Here are the details of one case that took place in Ontario in 2011 highlighting the need for protecting individuals from passive exposure to cannabis smoke:

Ivancicevic v Ontario (Consumer Services and the Alcohol and Gaming Commission of Ontario)

Ivancicevic had an Authorization to Possess (ATP) under the old MMAR regime. He challenged s. 45(2) of the Licences to Sell Liquor Regulation 719 which excludes individuals from possessing or using cannabis in licensed establishments which serve alcohol. He challenged this legislation in order to be allowed to smoke cannabis on uncovered patios of licensed establishments (restaurants, bars, etc) that allow tobacco smoking. In striking down his complaint, the Tribunal found through expert evidence that sidestream cannabis smoke poses a risk to inhaling individuals on uncovered patios possibly leading to some level of impairment.⁷ The potential for impairment depends on varying factors including the distance from the source, duration of exposure, the size and number of joints smoked, the percentage of THC in the cannabis, and the biological characteristics of inadvertent passive

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inhalers.

The *Ivancicevic* case brings up the point of what happens if a home care worker is exposed to second-hand marijuana smoke from their client. While the *Smoke-Free Ontario Act (SFOA)* seeks to prohibit smoking tobacco or holding lighted tobacco in an enclosed public space and an enclosed workplace, it does not include prohibiting smoking cannabis as it is not a tobacco product.¹⁰

There are proposed amendments to the *SFOA* related to smoking prohibitions of “prescribed products and substances” in any enclosed public spaces, any enclosed workplace and other specified outdoor areas, however, these amendments are not yet in force.

When the worker is present in the home, it is a workplace for which the *Occupational Health and Safety Act (OHSA)* applies. Under the *OHSA*, employers are required to take every precaution reasonable in the circumstances for the

protection of a worker. This includes protecting them from passive exposure to marijuana smoke, highlighted in the *Ivancicevic* case. Workers also have rights under *OHSA* to refuse to perform unsafe work. The same principals under the *SFOA* should also be considered and used as best practice in these instances even though this legislation has not been amended to include cannabis smoke.

WHAT ARE SOME SUGGESTED CONTROL MEASURES?

Controls to mitigate the risk of exposure can be implemented at the source, along the path or at the worker. This is known as the hierarchy of controls. Reducing the risk of passively inhaling cannabis smoke in home care or other environments requires a comprehensive strategy that may include the following suggestions depending on the circumstances:

Control Measures	Home or other care environment
Engineering (at the source)	<ul style="list-style-type: none"> • have client smoke outside the home if possible
Administrative/Work Practice (along the path)	<ul style="list-style-type: none"> • client to stop smoking sixty minutes (or as determined in contract) ahead of worker visit to home • use of fans and opening of windows to dissipate smoke in home prior to worker arrival • designate room in home for care that is deemed smoke-free • rotate staff attending to client
Personal Protective Equipment (PPE) (at the worker)	<ul style="list-style-type: none"> • may not be practical due to cost, communication restrictions (for a self-contained breathing apparatus, SCBA) and lack of air purifying disposable respirators designed and tested specifically for marijuana smoke and its toxic byproducts

AS AN EMPLOYER, HOW DO I ACCOMMODATE A WORKER?

Accommodating a worker prescribed the use of medical cannabis is a complex issue that needs to be investigated on a case-by-case basis through the assistance of legal and medical (cannabinologist) expertise. Questions to answer can include: Can the worker do their job safely? Do they have a safety-sensitive job or non-safety sensitive job? How are safety-sensitive jobs determined? Can a worker use their medical cannabis at work if it is needed during work hours? What role must the employer play to monitor potential impairment?

The employer, again under the *OHSA*, must take every precaution reasonable in the circumstances for the protection of a worker. This may include conducting a risk assessment to identify hazards which may arise from working while under the influence of medical cannabis and taking proactive measures to eliminate or minimize risks to health and safety in the workplace.

Consider the following general questions related to policy development prior to receiving or responding to a request from a worker to use medical cannabis in the workplace:

1. Does your organization have a written medical cannabis usage policy* including roles and responsibilities of workplace parties?
2. Are details on when to disclose use, change of dose, side effects, etc. to the employer included within your policy?
3. Is a definition of what constitutes risk of impairment included in your policy?
4. Have you consulted your Occupational Health Nurse, Occupational Health Physician or legal counsel, if available?
5. Have you communicated your medical cannabis usage policy to all appropriate workplace parties?

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6. Have you conducted training on your policy?
7. Have you considered what an accommodation plan might look like for a worker required to use medical cannabis in the workplace?
8. Has your organization's medical cannabis usage program and return to work program been evaluated in conjunction with your Joint Health and Safety Committee (JHSC)/Health and Safety Representative (HSR)?

*It is important to obtain expert legal, medical and occupational health and safety advice when developing the components of your policy.

WHERE CAN I FIND MORE INFORMATION?

College of Family Physicians of Canada
www.cfpc.ca/Home/

College of Physicians and Surgeons of Ontario
www.cpso.on.ca

E-laws www.e-laws.gov.on.ca (for Ontario legislation:
OHS, *SFOA*)

Health Canada hc-sc.gc.ca/index-eng.php

Justice Laws www.laws.justice.gc.ca (for federal
legislation: *ACPMR*)

McMillan LLP www.mcmillan.ca/index.aspx

The Canadian Legal Information Institute www.canlii.org
(for court judgments, tribunal decisions, statutes and
regulations)

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