

## **Kevin Glennon: Use of Medical Marijuana in Workers' Compensation: Where Are We Today?**

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If marijuana has been shown to effectively treat pain, why should injured workers be denied access to or reimbursement for it?

This question isn't easy to answer. Controversy exists because of the conflict between state and federal laws. Some medical evidence shows marijuana is effective in treating pain, but these clinical trials have been small in scale. In the workers' compensation (WC) industry, an injured worker may receive a recommendation from their physician for medical marijuana, but only in the states that have legalized it. In the past few years, courts have had to rule the drug necessary and order employers and insurers to reimburse workers. However, the worker can be fired if marijuana is detected in a drug screening.

This is a complicated scenario, and one that I'll be addressing on April 25 at 11 a.m. EST at the [RIMS Conference](#) in Philadelphia, Pa. If you're attending the event, be sure to watch the session. For now, let's review some of key factors at play.

### **Legalization Varies**

At the federal level, marijuana is illegal, as it is classified as a Schedule 1 drug under the Controlled Substance Act (CSA). According to the act, marijuana is considered to have the highest potential for abuse and no accepted medical use. However, since the November 2016 elections, 28 states and the District of Columbia have legalized medical marijuana, but the state laws vary widely. As of January 2017, seven states and the District of Columbia have legalized marijuana for recreational use.

### **Reclassification Is Stalled**

Legislation, such as the CARERS (Compassionate Access, Research Expansion and Respect

States) Act and the Regulate Marijuana Like Alcohol Act, has been proposed to change marijuana's Schedule 1 classification at the federal level, but those bills are stalled.

In August 2016, the U.S. Drug Enforcement Administration (DEA) was asked to reconsider marijuana's classification, but it ultimately decided against changing it. The DEA has not ruled out that marijuana has medical value, but it is hoping the medical community can provide stronger evidence to support that claim. To this end, the DEA increased the number of entities registered under the CSA to grow and supply marijuana to researchers. This will increase availability, but there are still significant hoops to jump through in order to conduct marijuana research. If the FDA does approve a marijuana-based drug, the DEA would likely reclassify marijuana within a short period of time.

For marijuana legalization advocates, Trump's election served a substantial blow for reform. On Feb. 23, 2017, White House Press Secretary Sean Spicer stated that while President Trump is sympathetic toward those using medical marijuana for serious ailments, recreational use was a different matter and one that could warrant further attention from the Justice Department. This insinuates the federal government could strengthen enforcement against recreational use, which could in turn slow legalization of medical marijuana in other states.

### **Pot as a Possible Replacement for Opioid Painkillers**

Initial clinical trials analyzing the pain-relieving effects of marijuana have been promising. In June 2015, *Journal of the American Medical Association (JAMA)* showed that medical marijuana effectively treated chronic and neuropathic (nerve) pain.

Many medical experts believe that marijuana could play a critical role in combating the opioid epidemic. In July 2016, *Time* magazine noted that overdose deaths in the U.S. involving opioids (prescription painkillers and heroin) quadrupled since 1999. Opioid abuse totaled \$72 billion in medical costs alone each year.

In February 2017, *The Atlantic* also published an article, "Patients Ditching Opioids for Weed," in which a Connecticut surgeon reported that many of his patients were turning down prescriptions painkillers like oxycodone for marijuana. Many studies have shown a correlation between states legalizing medical marijuana and a drop in painkiller prescriptions, opioid use and deaths from opioid overdoses.

## **State Use of Medical Marijuana in WC**

In April 2015, the American College of Occupational & Environmental Medicine (ACOEM) issued practice guidelines. It recommended employers continue to ban or restrict the use of marijuana, as this approach is consistent with federal laws. In particular, it recommended employers closely monitor marijuana use among employees in safety-sensitive positions, such as drivers, who could jeopardize the safety of others.

In a few states, medical marijuana was recommended for injured workers if traditional therapies failed to relieve their pain. New Mexico has been a prime example. Its Court of Appeals ruled three times since May 2014 that medical marijuana was a “reasonable and necessary” treatment.

In November 2015, New Mexico took another step, becoming the first state to propose a reimbursement rule for medical marijuana in WC. However, the rule became complicated when a New Mexico employer, Tractor Supply, fired a prospective employee for using medical marijuana, as it went against their drug-free workplace policy. A federal court upheld the termination. Following this case, in February 2016, New Mexico put forward a bill in which WC insurers and employers would not be liable to reimburse injured workers for medical marijuana. The bill is still pending.

New Mexico is not the only state involved in the conflict. The Louisiana Court of Appeal upheld a ruling by a WC judge that an employee’s prescription of a drug containing tetrahydrocannabinol (THC), the compound in marijuana that’s responsible for inducing a “high” feeling, was deemed a “necessary medical expense.” And in December 2015, Minnesota’s health commissioner included intractable pain as a condition that could be treated with medical marijuana. This opened the door for one injured worker’s attorney to file a WC claim, but a decision has not yet been reached.

## **Workplace Risks**

In states that have legalized medical or recreational marijuana, workplace safety is a concern. Employers have a responsibility to create an environment devoid of recognizable hazards that could cause harm or death. If a company employs a medical marijuana user, this person might experience side effects, such as impaired cognition, balance and coordination; or, decreased alertness and delayed reaction time—all of which could result in workplace injuries.

Since marijuana is still categorized as a Schedule I substance, there are also ramifications regarding drug-free workplace policies, as noted with the Tractor Supply case above. This case decision mirrored the one made by the Colorado Supreme Court back in June 2015. In *Brandon Coats v. Dish Network LLC*, the court affirmed Dish Network's termination of an employee for smoking marijuana outside of work, even though the employee was legally registered under Colorado law to use medical marijuana.

### **A Hazy Future Ahead**

The conflict between state and federal law will not be resolved any time soon. In the meantime, WC professionals must continue to review policy guidelines issued by organizations like the Work Loss Data Institute's Official Disability Guidelines (ODG), ACOEM and OSHA. They should also monitor continued state legalization efforts, case verdicts and clinical trials—these all have ongoing ramifications for the industry and could possibly forecast a tipping point toward reclassification.

### **About Kevin Glennon**

Kevin Glennon, RN, BSN, CDMS, CWCP, QRP, is Vice President of Clinical Programs at One Call Care Management ([www.onecallcm.com](http://www.onecallcm.com)). He has over 30 years of experience in healthcare encompassing clinical and claims management for workers' compensation, auto and general liability. His background includes medical case management of complex and catastrophic injuries and long-term disabilities. As VP of Clinical Programs, he manages an extensive clinical education and quality assurance program for home care providers, and an in-house staff that oversees medical care coordination for post-discharge injuries. He also partners with One Call's rehab specialists to provide solutions for both short and long-term claims.

### **About One Call Care Management**

One Call is the nation's leading provider of specialized solutions to the workers' compensation industry. One Call has six locations across the United States with its corporate headquarters located in Jacksonville, Florida. One Call's solutions enable faster, more efficient and more cost-effective claims resolution with a focus on injured workers' needs across the continuum of care. One Call provides reliable, consistent connections to care with expertise in high-end diagnostics, physical therapy and transportation services, post-discharge home care and durable medical equipment, dental and doctor specialty services, complex care management, and the language services required for today's multicultural workforce. For more information, visit [www.onecallcm.com](http://www.onecallcm.com).