

Labor & Employment Alert
November 10, 2020

**THE HAZY THICKET OF MEDICAL MARIJUANA INSURANCE
COVERAGE:**

**The Massachusetts Supreme Judicial Court Holds That Insurers Do Not Need to
Reimburse Medical Marijuana Claims**

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On October 27, 2020, the Supreme Judicial Court of Massachusetts (SJC) provided guidance amidst the tension between Massachusetts law and federal law with regards to insurance coverage for medical marijuana. In its decision in Daniel Wright's Case ("Wright"), the SJC held that a worker compensation insurer ***did not*** have to reimburse an insured party's claim for medical marijuana.

In the past few years, there has been a national movement in legalizing medical marijuana. Today, a majority of states have legalized marijuana for medicinal purposes. In Massachusetts, marijuana was legalized for medical purposes in 2012 in the Massachusetts Medical Marijuana Act (Marijuana Act). This Marijuana Act was then codified in a larger marijuana law in 2018.

Despite this legalization in Massachusetts, marijuana remains an illegal Schedule 1 drug under the under the federal Controlled Substance Act (CSA). This classification means that it is illegal under federal law to manufacture, distribute, dispense, or possess marijuana, whether medical or recreational. Of concern to insurers and health plans, the CSA also states that a person who "aids, abets, counsels, commands, induces or procures" marijuana for another may also be subject to the same penalties as the principal.

The Wright decision dealt with an injured employee, Daniel Wright, who was receiving insurance benefits under a worker's compensation plan. The insurer agreed to cover expenses that were reasonable, necessary, and related to Wright's on the job injury to his right knee. When presented with a bill for medical marijuana, the insurer did not argue about the reasonableness or necessity of Wright's medical marijuana usage, but rather argued that providing such reimbursements put the insurer at risk of federal prosecution under the CSA.

The SJC held that the insurer was not required to reimburse for the medical marijuana expenses Wright had incurred. The SJC's decision was rooted in the plain language of the Marijuana Act, which expressly states that **"nothing in this law requires any health insurance provider, or any government agency or authority, to reimburse any person for the expenses of the medical use of marijuana"** – even though such use is not illegal in Massachusetts.

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Further, the SJC found that this plain language prevailed over the provision in the Massachusetts workers compensation law requiring insurers to reimburse costs for “adequate and reasonable” medical expenses that are “necessarily incidental” to an employee’s injury. Ultimately, the SJC found that compelled reimbursement of medical marijuana “affirmatively entangles the insurer in the Commonwealth’s medical marijuana scheme,” and that could create a legitimate fear of federal prosecution. Thus, the SJC found that workers compensation carriers may not be compelled to reimburse medical marijuana claims.

The SJC then went on to say that the same result would apply to health insurers. Under the court’s reasoning, it appears that the SJC would likely do the same for insured medical plans and their employer plan sponsors. In the case of collectively bargained or multi-employer Taft-Hartley health plans, applying the same logic would appear to indicate that neither the trustees, nor the sponsoring employers or unions should be put in the position of being forced by state law to risk prosecution under federal law. That risk alone could arguably be an “undue hardship” under the reasonable accommodation provisions of state and federal disability law.

Other state courts have addressed this issue with conflicting results, but for now, the SJC has cut a clear path through the hazy thicket of marijuana law to make it clear that neither workers comp insurers nor health insurers in Massachusetts need to reimburse for medical marijuana expenses even if prescribed and used in accordance with state law.

This Client Alert was prepared by Brendan Collins and was reviewed with Katherine Hesse and Kathy Murphy. If you have any questions about this issue, please contact the attorney responsible for your account, or call (617) 479-5000.

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