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## MEDICAL MARIJUANA IN THE WORKPLACE

According to Health Canada, the number of Canadians authorized to use medical marijuana is increasing and is expected to reach approximately 1% of the Canadian population by 2024<sup>5</sup>. This PSHSA Fast Fact provides Ontario employers, supervisors and workers with basic information on cannabis, the history of medical marijuana in Canada, applicable legislation, considerations for accommodation and suggested control measures for the workplace.

### WHAT IS MEDICAL MARIJUANA? AND IS IT LEGAL?

Medical marijuana refers to cannabis prescribed and used to relieve symptoms and minimize treatment side effects of various medical conditions. Examples of therapeutic uses include managing neuropathic pain in individuals with multiple sclerosis and preventing chemotherapy/radiotherapy-induced nausea and vomiting. Medical marijuana 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 cannabitol (CBN)<sup>4</sup>. 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<sup>4</sup>. Adverse side effects of cannabis use can include euphoria, anxiety and impairment in short-term memory<sup>4</sup>.

According to the College of Family Physicians of Canada (CFPC), chronic pain and anxiety are the most common reasons for which medical marijuana is requested from treating physicians<sup>1</sup>. 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 are among the fifteen recommendations provided for 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”<sup>1</sup>. The College of Physicians and Surgeons of Ontario (CPSO) has also outlined their expectations for physicians when prescribing the use of dried marijuana for medical purposes through their policy statement #1-15<sup>3</sup>. These expectations and recommendations are necessary because authorizing a prescription to use medical marijuana now lies solely with the patient’s physician.

Health Canada has made it very clear that dried marijuana is not an approved drug<sup>4</sup> 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

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extract of marijuana 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<sup>4</sup>. Cesamet® can be used for severe nausea and vomiting caused as a result of chemotherapy<sup>4</sup>.

The possession and use of medical marijuana in Canada is legal provided that a valid and current prescription (medical document) is obtained from a physician or nurse practitioner (NP). In Ontario, regulations under the Ontario Nursing Act, prohibit nurse practitioners from prescribing controlled substances such as medical marijuana<sup>2</sup>.

The use of medical marijuana by a patient without a valid medical document continues to be illegal in Canada pursuant to the Controlled Drugs and Substances Act (CDSA). Compassion clubs and dispensaries that provide marijuana products to members are also illegal in Canada. As further detailed within this document, current legislation also restricts the production and distribution of medical marijuana to licensed producers approved by Health Canada only.

\*As a result of a Supreme Court of Canada ruling (R v Smith) on June 11, 2015, those individuals authorized to possess marijuana for medical purposes can also possess marijuana derivatives (i.e. cannabis oil, fresh marijuana buds and leaves) in addition to dried marijuana<sup>6</sup>. Health Canada issued a section 56 exemption under the CDSA to allow licensed producers the ability to produce fresh marijuana and cannabis oil. Licensed producers approved by Health Canada to sell cannabis oil will be posted on their website.

## WHAT IS THE RELEVANT LEGISLATION?

From 2001 to 2014, the Marijuana Medical Access Regulations (MMAR) governed the use of medical marijuana in Canada. This was the case until this regulation was repealed on March 31, 2014. Under the old MMAR, Health Canada authorized patients 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 Marijuana for Medical Purposes Regulations (MMPR), which was fully implemented on April 1, 2014. The MMPR outlines provisions for the authorized possession of dried marijuana\* for medical purposes; the production and distribution of dried 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<sup>9</sup>. This medical document is required to legally obtain cannabis.

## WHAT ONTARIO LEGISLATION APPLIES?

Under the Ontario Human Rights Code (OHRC), employers are required to accommodate workers who are deemed to have a disability to the point of undue hardship. This accommodation extends to disabled workers prescribed the use of medical marijuana. The use of medical marijuana, however, does not permit the worker to be impaired at work or endanger their safety or the safety of others. There are approximately 17.9 million workers in Canada<sup>11</sup> of which a significant proportion work in safety-sensitive industries such as agriculture, forestry, construction, healthcare and transportation. According to Health Canada, the use of medical marijuana is increasing and is expected to reach approximately 1% of the Canadian population by 2024 under the MMPR<sup>5</sup>. Employers must be proactive and have a plan to respond accordingly.

The Human Rights Tribunal of Ontario ("Tribunal") has not yet dealt with the issue of medical marijuana in the workplace<sup>9</sup> so we need to look to other case law to provide some guidance for employers.

Here are the details of one case that took place in Ontario in 2011:

*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 marijuana in licensed establishments. He challenged this legislation in order to be allowed to smoke marijuana 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 marijuana smoke poses a risk to inhaling individuals on uncovered patios possibly leading to some level of impairment<sup>7</sup>. This 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 marijuana, and the biological characteristics of inadvertent passive inhalers.

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This 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 marijuana as it is not a tobacco product<sup>10</sup>. When the worker is present in the home, however, it is a workplace for which the *Occupational Health and Safety Act* (OHSA) applies. Under 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 marijuana 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 marijuana smoke in home care or other care environment, 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"> <li>• have client smoke outside the home if possible</li> </ul>
Administrative/Work Practice (along the path)	<ul style="list-style-type: none"> <li>• client to stop smoking sixty minutes (or as determined in contract) ahead of worker visit to home</li> <li>• use of fans and opening of windows to dissipate smoke in home prior to worker arrival</li> <li>• designate room in home for care that is deemed smoke-free</li> <li>• rotate staff attending to client</li> </ul>
Personal Protective Equipment (PPE) (at the worker)	<ul style="list-style-type: none"> <li>• 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</li> </ul>

## AS AN EMPLOYER, HOW DO I ACCOMMODATE A WORKER?

Accommodating a worker prescribed the use of medical marijuana 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 marijuana 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 marijuana 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 a request from a worker to use medical marijuana in the workplace:

1. Does your organization have a written medical marijuana 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 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 marijuana policy to all appropriate workplace parties?
6. Have you conducted training on your policy?

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7. Have you considered what an accommodation plan might look like for a worker required to use medical marijuana in the workplace?
8. Has your organization's medical marijuana 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 advice when developing the components of your policy.

## WHERE CAN I FIND MORE INFORMATION?

College of Family Physicians of Canada  
[www.cfpc.ca/Home/](http://www.cfpc.ca/Home/)

College of Physicians and Surgeons of Ontario  
[www.cpso.on.ca](http://www.cpso.on.ca)

E-laws [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) (for Ontario legislation: OHSA, SFOA)

Health Canada [hc-sc.gc.ca/index-eng.php](http://hc-sc.gc.ca/index-eng.php)

Justice Laws [laws-lois.justice.gc.ca](http://laws-lois.justice.gc.ca) (for federal legislation: MMPR)

McMillan LLP [www.mcmillan.ca/index.aspx](http://www.mcmillan.ca/index.aspx)

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

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