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### **Employers and Insurers are NOT Required to Reimburse Injured Employees for the Cost of Medical Cannabis**

By James Fritz Hauschild

The Minnesota Supreme Court issued two opinions regarding medical cannabis on October 13, 2021, and both are favorable for employers and insurers.

The major takeaway from the Minnesota Supreme Court's decisions, Musta v. Mendota Heights Dental Center, A20-1551 (Minn. Oct. 13, 2021) and Bierbach v. Digger's Polaris, A20-1525 (Minn. Oct. 13, 2021), is that employers and insurers are **NOT** legally required to reimburse injured employees for costs associated with medical cannabis.

To understand the rationale behind the Minnesota Supreme Court decisions, and why the Court reversed the decisions of the Workers' Compensation Court of Appeals (W.C.C.A.), a review of the appellate level decisions is useful. In Susan K. Musta v. Mendota Heights Dental Ctr., No. WC19-6330 (W.C.C.A. November 10, 2020) and Bierbach v. Digger's Polaris, No. WC19-6314 (W.C.C.A. November 10, 2020), the W.C.C.A. made two significant conclusions:

1. Workers' compensation judges and the W.C.C.A. have jurisdiction to adjudicate whether the use of medical cannabis is reasonable and necessary medical care and treatment as the result of a work-related injury and, furthermore, to award reimbursement of costs associated with the use of medical cannabis; and
2. Whether the federal Controlled Substances Act (CSA), 21 U.S.C. §§ 801-971, which makes the possession of cannabis a federal crime, pre-empts the Minnesota Medical Cannabis Therapeutic

Research Act, is beyond the jurisdiction of both workers' compensation judges and the W.C.C.A.

In its October 13, 2021, decisions, the Minnesota Supreme Court agreed that the W.C.C.A. lacks jurisdiction to determine the preemption issue because it requires the interpretation and application of federal law. Most importantly, the Minnesota Supreme Court also concluded that the federal CSA preempts any order under Minn. Stat. § 176.135, subd. 1, that obligates an employer to reimburse an employee for the cost of medical cannabis. The Court reasoned that compliance with that order would expose the employer to criminal liability under federal law for aiding and abetting an employee's unlawful possession of cannabis. Therefore, employers cannot legally be required to reimburse an employee's expenses associated with the use of medical cannabis.

It is worth noting that the Minnesota Supreme Court's decisions do not overturn Minnesota's laws regarding the use of medical cannabis. As a result, it is anticipated that some injured employees will continue to use medical cannabis. There may also be instances where employers and insurers may actually consider voluntarily approving medical cannabis treatment as an alternative to some other treatment (e.g., prolonged opioid use). Such determinations will need to be made on a case-by-case basis and we are here to help when those situations arise.

If you have questions about medical cannabis or any other workers' compensation matter, please feel free to reach out to myself, or any of the attorneys here at Brown & Carlson. Additionally, if this is an urgent matter, please feel free to contact the Brown & Carlson Hotline at (855) 844.7070, as someone will always be available to answer your call.

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