

Medical Marijuana – Workplace Challenges



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[AYR, ON] – The use of medical marijuana is expected to grow by leaps and bounds in the near future. With this reality looming, it is up to Canadian companies to proactively pursue implementing procedures that guide how they will address medicinal marijuana in the workplace.

Health Canada estimates 450,000 authorized patients by 2024, up from 40,000 patients in 2014.

With the number of authorized medical marijuana users set to increase dramatically, there is the potential to have serious implications for safety sensitive industries. Companies should put in place medicinal marijuana procedures, which can supplement their existing alcohol and drug policies.

The primary concern is ‘fitness for duty’ of workers, if they are in safety sensitive positions. From a workplace safety perspective, patients who have been legally authorized to use cannabis as a medical treatment must be evaluated to rule out potential danger to themselves, co-workers, the workplace, the environment, and the general public, if they are in safety sensitive positions. In the United States, federal government agencies such as the U.S. Department of Transportation (DOT), have banned medicinal marijuana for those workers in safety sensitive positions covered by federal regulations. The Canadian government has taken no steps in this area.

Be prepared.

Barbara Butler, President of Barbara Butler & Associates, has been specializing in workplace alcohol and drug policy and implementation programs for over twenty-five years, and acknowledges that there is a lack of direction for employers in Canada.

“Companies need to have internal procedures in place to respond to the situation as it comes up. Cannabis is not an authorized medication and employers should not be treating it as such. Originally, authorized use was intended for assisting severely ill patients who did not find relief from other medications. However, there are a number of doctors who are authorizing use for a wide range of medical conditions without any thought to the impact it may have on job functions and safety.”

Ms. Butler reminds us that Health Canada continues to reinforce the fact that cannabis is not an approved drug or medicine in Canada.

“The Government of Canada does not endorse the use of marijuana but the courts have required reasonable access to a legal source of marijuana when authorized by a healthcare practitioner.” ([Health Canada](#))

There is no gold standard, yet.

Dr. Barry Kurtzer, a physician with more than thirty years of experience providing occupational health programs to employers, is recognized as one of Canada’s leading medical experts on the impact of substance use on workplace safety. Dr. Kurtzer helps to educate employers and address the increasingly complex workplace problems created by Canada’s evolving medical marijuana industry.

Dr. Kurtzer explains, “The complex world of medical marijuana is evolving and changing quite rapidly, both from a medical perspective as well as from a legal perspective. In fact, this is true not only for medical marijuana, but also for all occupational health matters. Therefore, we need to refer clients to legal counsel or policy specialists who are experts in this field.”

“There is no single gold standard “one shoe fits all” workplace policy relating to medical marijuana. That all said, the only exception is where firm and fixed applicable law and regulations exist, such as U.S. DOT Drug and Alcohol Testing Regulations (which automatically ban medical marijuana use) where such regulations contain mandatory backbone procedures and outcomes that are to be taken into consideration as part of testing policy and program development,” Dr. Kurtzer adds.

Every company must certainly comply with all applicable federal and provincial laws (provinces don’t necessarily act alike in all matters), and where collective bargaining agreements exist, actions must be consistent with the form and language of that agreement. There is an enormous amount of complexity and liability potential related to this issue.

Examples of Issues to Consider for Company Procedures’

- Self declaration of use, change of dose, change of strength, change of frequency and side effects reporting
- Identification of use through a positive test result
- Adherence to human rights and privacy law provisions
- Accommodation if not fit for safety sensitive work

- Identify means and methods to be used to verify authenticity of use (verify MD/NP and Licensed Producer)
- Determine state of health problem being treated
- Is it safe for the worker to perform safety sensitive work?
- Will you allow medical marijuana to be used at work?
- Is arranging for an Independent Medical Evaluation part of the company's procedure?

Automatic job termination without case by case review could result in Human Rights complaints.

Ms. Butler's advice is "employers should ensure they have issued and communicated a clear alcohol and drug policy with prevention components (education, confidential assistance, and directed referral for assessment as required) balanced with deterrence processes (investigation tools to identify a violation and consequences for a confirmed violation). The policy should be absolutely clear about a prohibition on the use of illicit drugs, alcohol, and other mood altering substances in conjunction with work. It needs to reinforce and communicate the objective of safety and fitness for duty at all times."

Ms. Butler suggests the company alcohol and drug policy should be clear when it comes to medication use, and provides the following examples:

- Set out the requirement for responsible use of medications, and the requirement to use a safe alternative wherever available
- Expect employees to consult with their physician or pharmacist regarding the side effects of medication use by explaining their job functions
- Require employees to advise management of any need for modified work resulting from medication use
- Reserve the right to confirm the nature and duration of work modification associated with the medication use while ensuring the physician fully understands the nature of safety risk associated with the individual's position



Companies should be aware of applicable scenarios where a person may be authorized to use medical marijuana. Ongoing education is of the utmost importance. The list is growing daily and can include:

Applicable Disease States

- HIV/AIDS
- Epilepsy
- Chronic Non-Cancer Neuropathic Pain
- Multiple Sclerosis
- Cancer chemotherapy induced nausea
- Post-Traumatic Stress Disorder (PTSD)
- Arthritis

Treatable Symptoms

- Neuropathic Pain
- Spasticity
- Insomnia
- Anxiety
- Nausea

Therapeutic Applicability

- Antiemetic
- Appetite Stimulant
- Antispasmodic
- Analgesic
- Sedative
- Anti-Inflammatory
- Anti-seizure

Ms. Butler summarizes, “employers must determine if they can allow the employee to safely continue working in their regular job, or whether alternative work can be accommodated and for how long. In the case of medical marijuana use, it may well be that the authorizing physician offers no cautions, even for those operating vehicles and equipment, which is why a second, more knowledgeable medical opinion may be required. Legal advice should be obtained regarding whether accommodation is possible and what that should look like. The question comes down to whether there is a legitimate medical condition that requires accommodation in the first place, and if yes, is the employer obliged to accommodate their choice of medication in situations where safety may be at risk for the user and others on the job site?”

Independent Medical Evaluation (IME)

Dr. Kurtzer recommends that an IME be initiated for any individual who is using medical marijuana in safety sensitive positions. It is imperative that the IME is carried out by physicians who are qualified and experienced in medical marijuana, addictions, and occupational medicine.

“Examiners should be knowledgeable about health, safety, and workplace matters relating to medical marijuana use. Examiners should be provided with a detailed job description and physical demands analysis, along with identification of any and all safety related functions. A detailed review of the health condition being treated should be done, with an evaluation of its impact on health and safety.”

Employers need a game plan

Ms. Butler and Dr. Kurtzer agree that employers need a game plan in place, including identified steps they will take if a worker advises they have authorization to use cannabis.

Medical marijuana use is here to stay. Its impending explosion of usage is imminent. When properly authorized and properly used, medical cannabis offers patients meaningful therapeutic benefits. Safety risks may exist, but may also be significantly reduced through proper medical management.”

Employers can take control of their destinies and enhance workplace health and safety with a properly created alcohol and drug policy and a properly constructed game plan.

The question is, how will your organization react?

Have questions or comments regarding this article? Please contact PR@DriverCheck.ca.

About Barbara Butler, BES, MBA:

Barbara Butler is the President of Barbara Butler & Associates Inc., specializing in workplace alcohol and drug policy and programs for over twenty-five years. Ms. Butler has been an integral player in assisting governments, industry and labour associations, and private business in dealing with the issue of workplace alcohol and drug issues since starting her business in 1989. She has worked with organizations in a wide variety of sectors across the country to help them develop and implement alcohol and drug policies. To learn more about Barbara Butler & Associates, visit www.ButlerConsultants.com.

About Dr. Barry Kurtzer, BSc, MD, MRO:

Dr. Kurtzer is DriverCheck's Medical Director and Chief Medical Review Officer. He has practiced Occupational Medicine since 1977, running a full-scale occupational health clinic in Ontario for fifteen years. Dr. Kurtzer has worked as a Medical Director for several large and small corporations alike, and has served as Chair of the Medical Advisory Group at Toronto-Pearson International Airport, and Occupational Medicine Consultant to the Government of Ontario's workforce. He has provided Drug and Alcohol Testing Programs and services to Canadian business and industry since 1977, including the introduction of U.S. DOT regulatory testing programs to Canada's trucking sector in 1996. His experience in expert witness testimony and consultation is extensive. Dr. Kurtzer has testified at arbitration hearings, court cases, Labour Relations Board hearings, and Human Rights Commission hearings, and has provided expert written submissions to Child Custody courts, Workers' Compensation Boards, and private companies in preparation for hearings of various types. Dr. Kurtzer also sits on the Executive Committee of the Occupational and Environmental Medicine Section of the Ontario Medical Association (OMA).

About DriverCheck Inc.:

Since its inception in 1996, DriverCheck Inc. (DC) has been the leading provider of medical testing and assessments in Canada. Physician-owned and operated, DC has grown to become the largest national provider of workplace medical testing, and was one of the first Third Party Administrators in Canada to offer DOT-regulated alcohol and drug testing. DC's head office is located in the village of Ayr, the heart of Ontario's transportation hub. DC currently serves over 5,000 employers, with access to over 1,000 testing facilities strategically located across the country, providing easy access to all medical services. As a 'fitness for duty' company, DC's top priority is to provide safety to your organization, staff and workplace. To learn more about DriverCheck, visit www.DriverCheck.ca or call 1 (800) 463-4310.