

Testimony of  
American Property Casualty Insurance Association (APCIA)  
House Economic Matters Committee and  
House Health and Government Operations Committee  
HB 683 Workers' Compensation - Medical Cannabis - Compensation and Benefits  
February 9, 2021

### **Letter of Opposition**

The American Property Casualty Insurance Association (APCIA) is a national trade organization representing nearly 60 percent of the U.S. property casualty insurance market. APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 461. Senate Bill 461 would (i) require the employer/carrier to provide injured workers with medical cannabis, which would be characterized as “medicine”; and (ii) require compensability even where an accident is solely caused by medical cannabis, if it was administered or taken in accordance with a physician’s or certified provider’s written certification and instructions. APCIA policy opposes mandatory reimbursement under workers’ compensation, based on both the federal illegality of cannabis and the lack of sufficient objective medical evidence of its efficacy in treating workplace injuries.

### **Federal / State Conflict**

- Marijuana is classified as a Schedule I drug under the Controlled Substances Act (CSA)<sup>1</sup>, making it illegal under federal law.
- The CSA does not make an exception for marijuana used for medical purposes and prohibits the possession or distribution of even small amounts of marijuana.
- By requiring reimbursement for medical marijuana under workers’ compensation, the state would force the employer and/or insurance carrier to become an accomplice to a federal crime as identified in the CSA.
- Until the US Congress resolves the conflicts between federal law and state law, states should respect the Supremacy Clause and not force unwilling stakeholders to violate federal law.

### **Lack of Established Standards**

- Medical marijuana is not prescribed by a physician. While a physician does evaluate if a patient meets the state’s established criteria; the strain, amount, and “dosage schedule” is chosen by the patient at the marijuana dispensary.

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<sup>1</sup> 21 U.S. Code §§ 812, 822, 823(f)

- Recommendations for medical marijuana use are anecdotal. Without high quality scientific study into marijuana's efficacy and treatment applications, it is not appropriate for use in an evidence-based treatment plan.
- Medical marijuana is not regulated by the FDA. The potential for significant variances in purity and potency prevents the development of any type of treatment standard.

### **State Activity**

- At least seven states<sup>2</sup> have language within the medical marijuana law excluding reimbursement under workers' compensation. Several other states exempt governmental, private, or other health insurers.
- In Vermont, this provision was upheld in a March 2018 decision<sup>3</sup>, which held that the medical marijuana law and its exclusion controlled.
- In June 2018, Maine's state Supreme Court overturned prior decisions which ordered an employer to reimburse for medical marijuana on a workers' compensation claim. The Court cited the supremacy of federal law, stating that the CSA, which established marijuana as an illegal drug, controlled over the Maine Medical Use of Marijuana Act.<sup>4</sup>
- Most recently, in October 2020, the Massachusetts Supreme Judicial Court concluded that a workers' compensation insurer cannot be required to pay for medical marijuana expenses.<sup>5</sup> In its decision upholding the underlying denial, the court cited marijuana's continued illegal status under the CSA and the state's Medical Use of Marijuana law.

For these reasons, the APCIA urges the Committee to provide an unfavorable report on Senate Bill 461.

Respectfully submitted,

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<sup>2</sup> AZ, FL, MI, MT, ND, LA, VT

<sup>3</sup> *Michael Hall v. Safelite Group Inc.*, Op. No. 06-18WC (2018)

<sup>4</sup> *Bourgoin v. Twin Rivers Paper Co., LLC*, 2018 ME 77

<sup>5</sup> *Wright v. Central Mutual Insurance Company*, SJC-12873

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