



# SMT Safety Series

## Medical Marijuana in PA

April 18, 2024

BENECON

# A premier group self-funded worker's compensation program for Pennsylvania municipal entities and their employees.



Established in 1995 and administered in partnership with Benecon.

**79 members within a 36-county service area.**

# MEDICAL MARIJUANA IN PA

- ❖ *Two main themes for today:*
  - ❖ *Analysis from Workers' Compensation Perspective*
  - ❖ *Analysis from Employment Law Perspective*

# Workplace Safety Resources Available on the “Members Only” Portal of SMT’s Website



[www.smtpa.org](http://www.smtpa.org)

Questions about SMT’s website? Contact Kelly Holmes: [kholmes@benecon.com](mailto:kholmes@benecon.com)

A screenshot of the Susquehanna Municipal Trust website. The header includes the logo and the text "A regional workers compensation self-insured Trust" and "Providing coverage for Pennsylvania municipalities and authorities". The navigation menu has "Members Only" circled in red. The main content area features a section titled "Providing workers compensation coverage in eastern and central Pennsylvania" with a "Learn More" button and a photo of a snowplow. Below this is another section titled "Susquehanna Municipal Trust" with a photo of workers and descriptive text.

**SUSQUEHANNA MUNICIPAL TRUST**  
A regional workers compensation self-insured Trust  
Providing coverage for Pennsylvania municipalities and authorities

Home Advantages Board of Trustees Join SMT About SMT Contact s **Members Only**

**Providing workers compensation coverage in eastern and central Pennsylvania**

The Susquehanna Municipal Trust is a member owned, non-profit organization providing quality workers' compensation coverage for municipal entities and their employees.

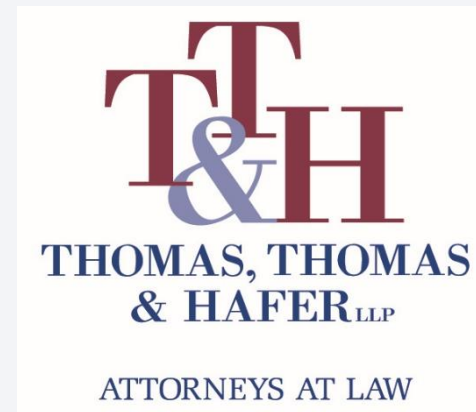
[Learn More](#)

**Susquehanna Municipal Trust**  
A regional workers compensation self-insured Trust

The Susquehanna Municipal Trust (SMT) was established on July 1, 1995, as a non-profit self-insurance program for Pennsylvania municipal entities. SMT members include townships, boroughs and municipal authorities. As of January 2022, membership in the Trust is comprised of 78 municipal entities. Each municipal member strengthens the program and shares in the success of the Trust.

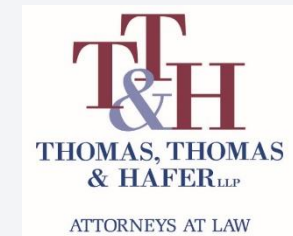
Christopher L. Scott, Esq.

Thomas, Thomas & Hafer, LLP



# Laws at Play

- Federal Controlled Substances Act
- Medical Marijuana Act (“MMA”)
- Workers’ Compensation Act (“WCA”)



# Federal Controlled Substances Act

Prohibits the knowing or intentional manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, of a controlled substance

Identifies marijuana as a controlled substance

21 U.S.C. § 841(a)



# Medical Marijuana Act

**Section 2102-** “nothing in [the MMA] shall be construed to require an insurer or a health plan, whether paid for by Commonwealth funds or private funds, to provide coverage for medical marijuana”

**Section 2103(b)(3)-**“nothing in [the MMA] shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of [f]ederal law.”





# Workers' Compensation Act (“WCA”)

Mandates that employers pay for employees' wage loss benefits arising from a work injury.

Also mandates that employers pay for a claimant's reasonable and necessary medical expenses that arise from and are caused by a work-related injury.

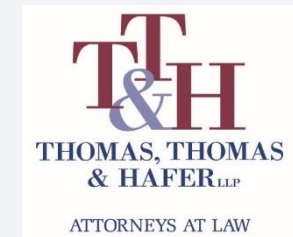


# Most Recent Case Law

*T.L. Fegley, as of the Estate of P. Sheetz v. Firestone Tire & Rubber (WCAB)*, 680 C.D. 2021 (Pa. Commw. Ct. 2023)

*E. Appel v. GWC Warranty Corp. (WCAB)* – 824 C.D. 2021 (Pa. Commw. Ct. 2023)

Both decided on March 17, 2023



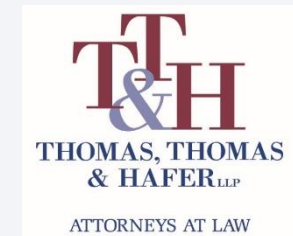
# T.L. Fegley v. (WCAB)

## Issues

Whether the MMA overrides the WCA regarding reimbursement for medical treatment related to work injury  
Whether reimbursement of medical marijuana would violate federal law

**Facts-** UR found medical marijuana reasonable and necessary

**Holding-** While insurers cannot be compelled to provide coverage for medical marijuana under the MMA, they can be compelled to reimburse claimants for medical marijuana causally related to the work injury



# Appel v. (WCAB)

**Issue-** whether the MMA exempts employers from having to pay for medical marijuana

**Facts-** The WCJ determined that medical marijuana was causally related to work injury

**Holding-** The employer was required to reimburse the claimant for the medical marijuana since it was causally-related to the work injury. Doing so would not violate federal law since the employer is not “prescribing” medical marijuana



# How to proceed

Neither *Fegley* nor *Appel* were appealed

## Issues to consider

Medical marijuana not assigned a national drug code and cannot be repriced

Employers left with no remedy to challenge since Utilization Reviews are limited to “providers”

Marijuana comes in various quantities and strains

Nearly impossible to monitor:

If injured worker is using it only for injury

If injured worker is unlawfully distributing



# Options moving forward

IMEs- risk of doctor finding it causally related and/or reasonable and necessary

## Cost-benefit analysis

Cost of UR petition ranges, but is usually over \$1,000.00

Cost of medical marijuana also ranges. Prices found on dispensary websites and average about \$30.00 per gram

## If worth challenging

File UR petitions

Treating doctor

Doctor who approved medical marijuana

Medical marijuana distribution stores

Claimant

Force the courts to cure the employers' lack of remedy



# Use of Medical Marijuana at Work: Employment Law

Employee rights under MMA

Drug-free work-place policies??? Do they exist anymore?

Intoxication defense

Termination for cause following positive drug test



# Employer Rights Under the Law re: MM

Not required to accommodate an employee's possession or use of marijuana on its premises under the Act

May discipline an employee found to be under the influence of medical marijuana in the workplace

May prohibit employees from completing tasks that are life-threatening or which pose a public health or safety risk while the employee is under the influence







# Thank you!

- Roni Ryan, Executive Director: [rryan@benecon.com](mailto:rryan@benecon.com)
- Melissa Kashner, Manager – Risk Control Services: [mkashner@benecon.com](mailto:mkashner@benecon.com)
- SMT website: [www.smtpa.org](http://www.smtpa.org)



# SMT Safety Series

**NEXT MONTH...**

Effective Fleet Management

May 23, 2024

BENECON