Caye v. Thyssenkrupp Elevator

CASE NO. 6296 CRB-1-18-11

COMPENSATION REVIEW BOARD

WORKERS' COMPENSATION COMMISSION

OCTOBER 29, 2019

EDWARD C. CAYE

CLAIMANT-APPELLEE

v.

THYSSENKRUPP ELEVATOR

EMPLOYER

and

SEDGWICK CMS, INC.

INSURER

RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Olin Grant, Esq., P.O. Box 165, Somersville, CT 06072.

The respondents were represented by Ryan Dacey, Esq., Mullen & McGourty, 2 Waterside Crossing, Suite 102A, Windsor, CT 06095.

This Petition for Review from the October 18, 2018 Finding and Award by Daniel E. Dilzer, the Commissioner acting for the First District, was heard on March 29, 2019 before a Compensation Review Board panel consisting of Commissioners Peter C. Mlynarczyk, David W. Schoolcraft and Michelle D. Truglia.

OPINION

PETER C. MLYNARCZYK, COMMISSIONER. This appeal requires us to address an issue which has challenged many states that have instituted medical marijuana programs: Does the federal Controlled Substances Act, 21 U.S.C. § 801 et seq. (CSA), proscribe a state agency from ordering an insurance carrier to pay or reimburse for marijuana prescriptions? The respondents have appealed from a Finding and Award (finding) issued on October 18, 2018, by Commissioner Daniel E. Dilzer (commissioner) directing them to pay for the claimant's medical marijuana prescriptions and reimburse his expenses in obtaining medical marijuana. They argue that the Supremacy Clause of the U.S. Constitution[1] acts to preempt any inconsistent state statute such as General Statutes § 21a-408 et seq., and because the federal statute criminalizes "aiding and abetting" the procurement of marijuana, they cannot be ordered by a state court or administrative agency to violate the federal statute.

The claimant argues that the state medical marijuana statute and the federal statute criminalizing marijuana are not inherently incompatible and that recent federal legislative activity evinces a clear public policy against enforcing the CSA against state medical marijuana programs. Consequently, the claimant argues that it is implausible for the respondents to assert a credible concern as to being prosecuted should they comply with the commissioner's finding.

We have wrestled with this dilemma as we must acknowledge we are a tribunal of limited jurisdiction and must apply both federal and state laws in the manner they have been written. We are also cognizant of the principle that when one has a legal right, one must also be afforded a remedy to vindicate that right. Marbury v. Madison, 5 U.S. 137, 163, 1803 WL 893 (1803). Were we to rule in the respondents' favor, the claimant, notwithstanding our decision upholding Connecticut's medical marijuana program in Petrini v. Marcus Dairy, Inc., 6021 CRB-7-15-7 (May 12, 2016), *appeal withdrawn*, S.C. 19973 (March 29, 2018), would be unable to obtain medically necessary treatment. Since we determine the respondents would not face a material risk of federal prosecution for after-the-fact reimbursement of the claimant's medical marijuana expense, we affirm the finding in regard to continuing the reimbursement to the claimant for his expense in obtaining medical marijuana. To the extent that the finding is construed to authorize direct payment to a pharmacy for such treatment, we vacate that element of relief.

The following facts are relevant to our consideration of this appeal. The claimant was employed by the respondent employer, ThyssenKrupp Elevator, on May 7, 2012, when he fell while in the course of employment, sustaining catastrophic injuries. These injuries led "to a five-level back fusion surgery caused by an L1 burst fracture. He also required several surgeries to reconstruct his right leg which were

unsuccessful." Findings, ¶ 4. Due to these unsuccessful surgeries, the right leg was amputated below the knee in 2014. See Findings, ¶ 4. The commissioner noted that "[f]ollowing the leg surgeries, the Claimant went to Gaylord Hospital for rehabilitation services. In addition to therapy, he was given opioid prescription medications. Gabapentin, Lorazepam, Oxycodone and Famotidine are among the many medications he was prescribed. He also suffers from depression." Findings, ¶ 6.

Jonathan A. Kost, M.D., the claimant's board-certified pain management physician, prescribed medical marijuana in June of 2017 "to treat the claimant's postlaminectomy syndrome, lumbar facet syndrome, post amputation stump neuralgia pain and phantom limb pain." Findings, ¶ 7. The commissioner found that "[t]he Claimant met all the requirements necessary to obtain a medical marijuana registration certificate from the State of Connecticut Department of Consumer Protection."[2] Findings, ¶ 8. The commissioner also found that "[t]he Claimant met with a licensed pharmacist from the medical marijuana pharmacy on July 17, 2017 and the medication was dispensed."[3] Findings, ¶ 9. The pharmacist reported that the claimant has been compliant with all facets of the marijuana program and the pharmacy has no concerns with his usage. Id. The commissioner found that "[t]he Claimant testified that the medical marijuana has helped with his depression, enabled him to sleep, alleviated his anxiety; he reports that he is less volatile in interacting with his family since taking medical marijuana, and it has diminished the phantom pain he experienced due to his lost limb." Findings, ¶ 10. See also July 17, 2018 Transcript, pp. 50-51.

The commissioner considered the opinions of a number of expert witnesses regarding the efficacy and need for medical marijuana in this matter. Kost noted that the claimant's use of medical marijuana helped his sleep, enabled the claimant to reduce his Oxycodone intake, and reduced pain levels. See Findings, ¶ 11. In addition, the medical marijuana has improved the claimant's activities of daily living and his overall functional state. Kost believes the use of medical marijuana by the claimant is related to his work injury and medically necessary. See Findings, ¶ 11. The claimant's treating physician for his amputation maintenance, Michael P. Leslie, D.O., of Yale Medicine Orthopaedics & Rehabilitation Trauma & Fracture Care, has advocated for continuation of the medical marijuana prescription for the claimant because he believed the claimant was doing well on the medical marijuana program. See Findings, ¶ 12.

The respondents obtained a medical examination of the claimant on May 31, 2018, by Pietro A. Memmo, M.D., a board-certified pain management specialist. The commissioner noted that "[Memmo] opined, within a reasonable degree of medical probability and state[d] that: 'Medical marijuana has shown to be effective for individuals with central neurological system complaints and conditions such as spinal cord injury as well as phantom pain. I would recommend that medical marijuana be authorized as a treatment regimen for this [Claimant]. In addition, I do believe it will help to reduce his need for opioid medications and hopefully will help him advance to a more productive life."' Findings, ¶ 13, *quoting* Respondents' Exhibit 12, pp. 27-28.

In Findings, ¶ 14, the commissioner stated, "[t]he Respondents were reimbursing the Claimant's out-of-pocket costs for the medical marijuana prescription. The costs associated with administering this claim have reached the level where the excess insurance carrier is now required to begin making payment. That

excess carrier is now refusing to reimburse the Respondent insurer for the cost of medical marijuana because it is considered a controlled substance that is still illegal under federal law." Claimant's Exhibit L. Subsequent to that decision, "the Respondent[s] [are] now refusing to reimburse the Claimant for medical marijuana he had purchased and [are] also refusing to authorize payment for any medical marijuana prescriptions going forward." Findings, ¶ 15.

Donna Welsh, the claims adjuster for Sedgwick CMS, Inc., testified at the formal hearing that "the Respondent's policy was to reimburse the Claimant for the medical marijuana prescription until the excess carrier became involved and refused to authorize payment, because it is still illegal under federal law." Findings, ¶ 16; July 17, 2018 Transcript, pp. 80-82. The claimant said that his medical marijuana license had expired, but he would like to renew it and resume this mode of treatment. He also sought to have the respondent-insurer pay the pharmacy directly for the prescription. In addition, he sought reimbursement for the medical marijuana that he had previously obtained but for which he had not yet been reimbursed by the respondent. See Findings, ¶ 17; July 17, 2018 Transcript, pp. 51-54.

Based on that record, the commissioner reached the following conclusions:

A. I find at all times the Claimant was employed by the Respondent and subject to the provisions of Chapter 568 of the Connecticut General Statutes.

B. I find the Claimant sustained catastrophic injuries from the May 7, 2012 work-related incident, and the Respondent has accepted this claim.

C. I find the Respondent's medical examiner has agreed with the Claimant's treating physicians that medical marijuana for pain management constitutes reasonable and necessary medical treatment and reasonable medication.

D. I find the Claimant has met the qualifications under the State of Connecticut Medical Marijuana program, and find that the use of medical marijuana by the Claimant has been beneficial in reducing his symptoms and improving his quality of life.

E. The Respondent is hereby ORDERED to reimburse the Claimant for the medical marijuana he purchased lawfully through the State of Connecticut Department of Consumer Protection's medical marijuana program, and the Respondent is hereby ORDERED to authorize ongoing prescriptions for medical marijuana, provided the prescription is lawfully obtained pursuant to the State of Connecticut Department of Consumer Protection medical marijuana program.

(Emphasis in original.) Conclusion, ¶¶ A-E.

The respondents filed a motion to correct the findings. The motion sought to modify the findings as to the testimony of Welch, correct the date of injury in the original finding, and remove the order to the respondents to pay for medical marijuana, substituting instead a conclusion that such relief was barred by

federal statutes applicable to this matter due to the Supremacy Clause. The commissioner denied this motion in its entirety and the respondents have pursued this appeal.[4]

The respondents' argument on appeal is that the CSA makes it illegal to finance a marijuana transaction and, were they to do so, they could be prosecuted under that statute as well as the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. (RICO). Since the Supremacy Clause invalidates any inconsistent state legislation, the respondents believe that no Connecticut tribunal can order them to pay for medical marijuana. They believe that even were they to continue to reimburse the claimant for his out-of-pocket expenditures on medical marijuana, this would violate federal law, as they would be "aiding and abetting" an illegal transaction. They note that recently both the Maine Supreme Court, in Bourgoin v. Twin Rivers Paper Co., LLC, 187 A.3d 10 (Me. 2018), and the Massachusetts Department of Industrial Accidents, in Wright v. Pioneer Valley and Central Mutual Insurance, No. 04387-15; 2019 WL 3323160 (Mass. Dept. Ind. Acc., February 14, 2019), determined that the CSA and federal preemption barred a state administrative tribunal from ordering an employer to pay for medical marijuana.

The claimant, on the other hand, argues that the state medical marijuana law is not incompatible with the CSA and the respondent will not be violating the CSA by distributing or dispensing marijuana. He believes that reimbursement of his expenses in obtaining this treatment is not incompatible with the CSA. To this end, he notes that Congress has routinely passed stopgap legislation to prevent the federal Department of Justice (DOJ) from prosecuting participants in state-authorized medical marijuana programs. Finally, he does not believe the RICO statute is applicable to these circumstances.

Since the parties agree the evidence presented herein supported a finding that the claimant's use of medical marijuana was reasonable and necessary medical treatment, our analysis will focus solely on whether the commissioner appropriately applied the law. The standard of deference we are obliged to apply to a commissioner's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

We note that in their motion to correct, the respondents placed their arguments pertaining to federal preemption under the CSA squarely before the commissioner; given that he denied the motion to correct, we must presume that he rejected them. We must ascertain if this was a legally sound decision. We note that Connecticut courts have frequently considered whether federal law preempts state laws. In Sarrazin v. Coastal, Inc., 311 Conn. 581 (2014), our Supreme Court noted:

> There are three types of preemption: (1) express preemption, where Congress has expressly preempted local law; (2) field preemption, where Congress has legislated so comprehensively that federal law occupies an entire field of regulation and leaves no room for state law; and (3) conflict preemption, where local law conflicts with federal law such that it is impossible for a party to comply with both or the local law is an obstacle to the achievement of federal objectives. (Citations omitted; internal quotation marks omitted.)

Id., 592-93, *quoting* Sosnowy v. A. Perri Farms, Inc., 764 F. Supp. 2d 457, 463 (E.D.N.Y. 2011).

Given the circumstances in the present matter, we believe that the claim presented is one of conflict preemption; i.e., an argument that a party in compliance with the CSA cannot participate in the state medical marijuana program, or that a party complying with the state program would inevitably violate the federal CSA. The decisions in Massachusetts and Maine cited by the respondent determined that this conflict was irreconcilable.[5] We will examine those decisions.

In Bourgoin, supra, the majority noted that the CSA classified marijuana as a Schedule I drug, for which the only recognized exception for legal use was its use in approved research projects, and for which no therapeutic use was recognized.[6] Id., 15, n.5. The court also noted that federal law authorized prosecution of any individual who "aids, abets, counsels, commands, induces or procures" a violation of the CSA. Id., 17. The decision further points out that a party can be prosecuted under federal law even if he or she does not carry out an illegal act themselves if he or she takes "an affirmative act in furtherance of the offense with the intent of facilitating the offense's commission." Id., 17, *quoting* Rosemond v. United States, 572 U.S. 65, 134 S.Ct. 1240, 1245 (2014).

In addition, the majority opinion concluded that compliance with both the CSA and Maine's medical marijuana law was an impossibility. Id., 19. The majority reviewed court decisions from other states which reached a different conclusion, and found none of them persuasive or apposite. The majority in Bourgoin also found that reliance on a DOJ memo issued in October 2009 directing that the department should not enforce the CSA in a manner thwarting state based medical marijuana programs (the "Ogden Memo") was misplaced because under the auspices of former Attorney General Jeff Sessions, this memo was rescinded. See id., 20-21, n.10. Ultimately, the majority found that the CSA acted to preempt state law and as long as marijuana was classified as a Schedule I drug under federal statute, a state tribunal could not order an employer to reimburse an employee for the cost of medical marijuana. Id., 22.

The decision of the Massachusetts Department of Industrial Accidents in Wright, supra, relied heavily on the Maine precedent in Bourgoin. Although a case involving workplace discrimination had upheld Massachusetts' medical marijuana law [see Barbuto v. Advantage Sales and Marketing LLC, 477 Mass. 456, 78 N.E.3d 37 (2017)], the reviewing board in Wright found that in Barbuto "[t]he only person at risk of Federal criminal prosecution for her possession of medical marijuana is the employee." Id., 465. Noting that the insurer asserted that they would violate the CSA were they to reimburse the injured worker, Daniel

Wright, for the purchase of medical marijuana, the reviewing board in Wright relied on the holding of Bourgoin to find that "state laws ... do not-and cannot-create a 'state right to commit a federal crime.'" Bourgoin, supra, 19, *quoting* Mont. Caregivers Ass'n, LLC v. United States, 841 F. Supp. 2d 1147, 1150 (2012).

While the respondents do note that our tribunal in Petrini, supra, affirmed the right of a claimant to receive treatment under our state's medical marijuana act when it was reasonable or necessary under General Statutes § 31-294d, they note that the decision did not deal with the constitutional preemption issues raised herein. Since they believe the question presented in the present matter is indistinguishable from the issues resolved in Bourgoin and Wright, they believe we must vacate the commissioner's findings as inconsistent with federal law.

The claimant does not believe that the CSA acts to preempt the operation of a state medical marijuana program. He cites Wyeth v. Levine, 555 U.S. 555, 129 S.Ct. 1187 (2009), and Gonzales v. Oregon, 546 U.S. 243, 126 S.Ct. 904 (2006), for the proposition that unless it is clear that the federal government has preempted a state's police powers, the state retains the ability to make its own decisions as to how to best protect its own citizens. He argues that in these circumstances, the federal government has essentially decided to tolerate a certain level of tension between the CSA and the growing number of state-authorized medical marijuana programs. He points to annual legislative action by Congress since 2015 (the "Rohrabacher-Farr Amendment" and "Blumenauer Amendment") which has incorporated into the federal budget legislation proscribing the use of federal funds to prosecute anyone in compliance with a state authorized medical marijuana program.[7] Therefore, the claimant argues that Congress has decided not to enforce the CSA against state medical marijuana programs.

Regarding the respondents' argument that reimbursement of a claimant's expenses for medical marijuana prescription would violate RICO, the claimant argues the factual predicate for such a prosecution is not present, because such an activity does not resemble money laundering or illicit narcotics trafficking. He also notes that courts in New Mexico have considered this issue, and reached a different result than the Maine Supreme Court.

We find many of these arguments were advanced in the dissenting opinion in Bourgoin, supra, authored by Justice Joseph Jabar. In addressing the asserted preemption conflict, the dissent noted that nothing in the order under appeal required the appellant to physically possess or distribute marijuana, which would run afoul of 21 U.S.C. § 841(a). Id., 24. Justice Jabar cited a Colorado case, People v. Crouse, 388 P.3d 39 (Colo. 2017), which barred police officers from physically distributing seized marijuana, to highlight what he deemed a material distinction.

> There is a difference in both nature and degree between following a WCB order to reimburse a worker for medical treatment authorized by a physician and approved by the WCB and a state law that requires police officers to physically distribute marijuana.... Here, unlike in Crouse, the employer's reimbursement

> does not fall into any category of defined or proscribed activity under the CSA. Because the employer is not required to physically engage in activity that the CSA proscribes, there is no positive conflict in this case.

Bourgoin, supra, 24-25.

In the dissenting opinion, Justice Jabar was not persuaded by the argument that someone paying for medical marijuana would face legal liability for "aiding and abetting" a CSA violation, terming such a concept "hypothetical" and *citing* Rice v. Norman Williams Co., 458 U.S. 654, 659, 102 S.Ct. 3294 (1982), for the proposition that "[a] state regulatory scheme is not preempted by the federal ... laws simply because in a hypothetical situation a private party's compliance with the statute might cause him to violate the [federal] laws." Bourgoin, supra, 25. Discussing the concept of *mens rea*, the dissent concluded that in this instance where a state regulatory board had ordered that a party undertake an action, such an order removed the specific intent element that the party intended to perform the proscribed act, noting "the existence of this litigation vitiates the specific intent element that the government would have to prove if it even decided to prosecute the employer." Bourgoin, supra, 27.

This opinion noted that although at least twenty nine states had authorized the use of medical marijuana, the defendants "could not point to any federal prosecution against a medical provider for authorizing a patient to use marijuana for medicinal purposes, much less to an employer or insurance carrier providing reimbursement for authorized medical marijuana treatment." Id., 28-29. The dissent also found that it was "speculative to anticipate a federal prosecution of an employer who reimburses an employee for medical expenses pursuant to a WCB [Maine's Workers' Compensation Board] order mandating it to do so." Id., 29. As a result, the dissent in Bourgoin did not find that the CSA acted to preempt Maine's medical marijuana program.

We also note that in a recent Connecticut Superior Court case wherein the employer asserted an inability to comply with the state medical marijuana act due to the CSA and the federal Americans with Disabilities Act (ADA), the court denied the employer's motion to strike. In Smith v. Jensen Fabricating Engineers, Inc., Superior Court, judicial district of Hartford, Docket No. CV-18-6086419 (March 4, 2019), the plaintiff asserted that he had been denied employment due to his status as a medical marijuana patient. The employer argued that the CSA and the ADA preempted state regulation of this dispute. Superior Court Judge Matthew Budzik summarized the CSA as follows:

> The CSA makes it a federal crime to use, possess or distribute marijuana. The main objective of the CSA is to "to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." Gonzales v. Raich, 545 U.S. 1, 12, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005). To carry out these goals, "Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA." Id., 13. Nevertheless, the CSA also states

> that it does not preempt state law "unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together." 21 U.S.C. § 903; see also Callaghan v. Darlington Fabrics Corp., supra, 2017 WL 2321181, at *15 ("[t]he case for federal preemption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them" [internal quotation marks omitted]); Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 166-67, 109 S.Ct. 971, 103 L.Ed.2d 118 (1989).

Id., 3.

Judge Budzik found that the CSA did not criminalize the employment of marijuana users. He also noted that Congress was aware of state medical marijuana programs and had acted to allow them to continue. Since the employer was not required to engage in any conduct that was prohibited under the CSA, there was no obstacle preemption present.[8]

After lengthy consideration, we find the analysis performed in the Bourgoin dissent more persuasive than the authority relied upon by the respondents in this action. In part, we note the reliance by a federal Circuit Court of Appeals on the various congressional proscriptions on prosecuting participants in medical marijuana programs. In United States v. McIntosh, 833 F.3d 1163 (9th Cir. 2016), various parties sought injunctive relief from federal marijuana prosecution.[9] The Ninth Circuit found that § 542 of that fiscal year's federal budget act proscribed DOJ from interfering with states that had implemented medical marijuana programs. As a result:

> We therefore conclude that, at a minimum, § 542 prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws.[10]

Id., 1177.

The McIntosh decision is consistent with another state case, Lewis v. American General Media, 355 P.3d 850 (N.M. Ct. App. 2015). In Lewis, the New Mexico Court of Appeals considered the same scenario as the present dispute: the employer challenged their obligation to reimburse a workers' compensation claimant for her medical marijuana prescription due to alleged preemption by the CSA. The employer asserted fear of facing prosecution for "aiding and abetting" a CSA violation. The New Mexico court rejected this argument.

> However, Employer's argument raises only speculation in view of existing Department of Justice and federal policy. Nothing in the Department of Justice's

> second memorandum alters its position regarding the areas of enforcement set forth in the initial memorandum. Medical marijuana is not within the list. Moreover, on December 16, 2014 the Consolidated and Further Appropriations Act of 2015 to fund the operations of the federal government was enacted. It states "[n]one of the funds made available in this Act to the Department of Justice may be used, with respect to the [s]tates of ... New Mexico, ..., to prevent such States from implementing their own state laws that authorize the use, distribution, possession or cultivation of medical marijuana." We reach the same conclusion that we did in Vialpando [v. Ben's Automotive Service], 331 P.3rd 975 (2014). In view of the equivocal federal policy and the clear New Mexico policy as expressed in the Compassionate Use Act, we decline to reverse the WCJ's amended compensation order.

Id., 858.

We conclude that the appellants' fear of federal prosecution for compliance with a lawful order of this commission is speculative at best. Should an employer or insurer being ordered by this commission to reimburse a claimant for a medical marijuana prescription fail to do so, it could be subject to monetary sanction pursuant to Chapter 568.[11] We believe that these penalties would negate the *mens rea* of willfulness necessary to sustain a criminal prosecution for "aiding or abetting" a criminal act pursuant to the CSA or the RICO Act, because an employer or insurer reimbursing a claimant for medical marijuana prescriptions clearly would not be acting volitionally, but under an order from a state agency exercising its statutory police powers and empowered to sanction noncompliance.

We believe this risk is particularly theoretical in a circumstance in which the respondent never violates the CSA by actually possessing marijuana or engaging prospectively in a marijuana transaction. We note that the dissenting jurists in Bourgoin, supra, found that reimbursement of expenses for marijuana, in contrast to physical possession of marijuana, were materially distinct types of transactions relative to liability under the CSA. Id., 24-25. We adopt that framework herein. We believe that retrospectively making a claimant whole does not constitute the level of involvement which would place the respondent within the ambit of physically conducting a proscribed transaction under the CSA. Instead, the transaction having previously occurred, the respondent would be solely acting under their obligations pursuant to Chapter 568 of the General Statutes to make the claimant whole after he sustained a compensable injury.

Taking a wider view, we also note that there is no indication we have found that Congress is likely to stop passing legislative measures such as the Rohrabacher-Blumenauer Amendment on an annual basis so as to protect the various medical marijuana programs across the nation. In addition, while there was some speculation that former Attorney General Jeff Sessions might institute litigation or prosecutions adverse to medical marijuana programs, to date this has not occurred, and there has been no indication that the DOJ under Attorney General William Barr will do so.

Obviously, these circumstances could change. The respondents correctly point out that Congress, for whatever reason, has not enacted a substantive permanent amendment to the CSA to carve out statutory protections for state medical marijuana programs or to reclassify marijuana from its current status as a dangerous Schedule I drug.[12] Indeed, Congress could stop passing stopgap legal protections for medical marijuana through annual budget acts. A future Attorney General could direct the DOJ to commence prosecutions against individuals engaged in this business. However, we must deal with the claimant's situation in the here and now and, as of today, he requires pain medication, and all the medical experts on the record concur that the use of marijuana for this purpose is reasonable and necessary. On the other hand, the respondents in our considered opinion face only a speculative threat of legal liability and, as we held in Meloni v. Raymark Industries, Inc., 5838 CRB-4-13-5 (June 1, 2017), we cannot offer relief today in regards to a speculative, unripe dispute which may occur in the future.

We are mindful of the respondents' concerns that they could face federal legal consequences in the future. Our precedent permits them to seek relief when these consequences become more tangible than theoretical. At a future date, pursuant to the precedent in Gill v. Brescome Barton, Inc., 5659 CRB-8-11-6 (June 1, 2012), *aff'd*, 142 Conn. App. 279 (2013), *aff'd*, 317 Conn. 33 (2015), the respondents can present evidence of changed legal circumstances since the issuance of the commissioner's findings and seek modification of the finding pursuant to General Statutes § 31-315. We believe that this framework should adequately accommodate their legitimate concerns.

We wish to address one other matter. During the pendency of this appeal, the claimant filed a motion on November 6, 2018, pursuant to General Statutes § 31-301 (f), seeking reimbursements for his medical marijuana prescriptions for which he paid during the course of this appeal. We hereby grant this motion and direct the respondents to continue making the reimbursements going forward until they have obtained the approval of the commission to discontinue doing so.

We note that in Findings, ¶ 17, the claimant sought to have the respondents make direct payment to medical pharmacies prospectively for medical marijuana prescriptions. Such relief, however, exceeds the scope of Conclusion, ¶ E, of the findings, which only directed the respondents to continue the past practice of reimbursing the claimant after he obtained his prescriptions. We clarify that the respondents are only obligated to adhere to the relief specifically authorized in the finding, i.e., reimbursement, which in our opinion constitutes conduct which does not "aid or abet" a drug transaction under the CSA. To the extent that Conclusion, ¶ E, can be construed as directing the respondents to pay prospectively for any marijuana prescriptions, we vacate that element of relief.

Therefore, as we find the matter of federal preemption of Connecticut law to be potential and not actual at this time, we affirm the Finding and Award.

Commissioner Michelle D. Truglia concurs in this opinion.

DAVID W. SCHOOLCRAFT, COMMISSIONER, DISSENTING. The trial commissioner's (commissioner) findings make a compelling case for the value of using medical marijuana to mitigate the

serious consequences of this claimant's catastrophic injuries; and that use of marijuana is medically reasonable in this case has been stipulated to by the parties. The question before us does not involve the merits or validity of the medical marijuana program,[13] and claimant's right to purchase and use medical marijuana under that program is not in dispute. The question before us is much narrower, specifically: Did the commissioner, acting under the powers granted to him by the Workers' Compensation Act, have the legal authority to order the insurer to subsidize the claimant's purchase and use of medical marijuana? As I am convinced he had no such authority, I respectfully dissent.

It is axiomatic that, under the supremacy clause of the United States Constitution, whenever there is a conflict between state and federal law, federal law prevails. U.S. Const., art. VI, § 2, cl. 2. In the present case there is no disagreement about this: If the respondent's compliance with the commissioner's order would violate federal law, the commissioner's order cannot stand. See, e.g., Hillsborough County v. Automated Medical Laboratories, Inc., 471 U.S. 707, 713, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985).

Through the Controlled Substances Act (CSA), the United States Congress has classified marijuana as a Schedule I substance. This means Congress has determined marijuana has a high potential for abuse, does not have a currently accepted medical use for treatment, and poses unacceptable safety risks, even under medical supervision. 21 U.S.C. § 812(b)(1). See, United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 491, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001). See also, State v. Padua, 273 Conn. 138, 155, n.23 (2005). Historically, the justifications for that classification may be dubious, and marijuana's continued classification as a Schedule I substance may seem archaic at this point in time; nevertheless, repeated efforts to reclassify marijuana over the years have all failed. See, e.g., Gonzales v. Raich, 545 U.S. 1, 15, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005).

Because marijuana is a Schedule I controlled substance, the CSA makes it illegal just to possess it. 21 U.S.C. § 844(a). It is serious felony for anyone to "manufacture, distribute, or dispense" marijuana, or to possess marijuana "with intent to manufacture, distribute, or dispense ...." 21 U.S.C. § 841(a)(1). Clearly, in this case it would be the claimant and the dispensary that would physically possess and distribute the marijuana. However, culpability has never been limited to just those who personally carry out criminal acts. Federal statutes provide that "[w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." 18 U.S.C. § 2(b). Thus, if the respondent were to arrange to have marijuana delivered to the claimant at his home – as it might reasonably do with other medications – it would certainly risk prosecution for causing the distribution and/or dispensing to take place. But this kind of affirmative participation is not required in order to run afoul of the criminal law. Congress has expressly extended criminal culpability to anyone who *assists* another in the commission of a crime by including such persons in the definition of a principal, specifically: "[w]hoever commits an offense against the United States or *aids*, *abets*, counsels, commands, *induces or procures its commission*, is punishable as a principal." 18 U.S.C. § 2(a). [Emphasis added.] Regardless of the equities in this case, the claimant's purchase and possession of marijuana is a federal crime. The seller's dispensing of marijuana is a federal crime. I believe that any order this commission

issues that forces a respondent to participate in – directly or indirectly – the commission of either of those crimes would be in direct conflict with federal law and cannot stand.

The commissioner in this case issued two orders. First, he ordered the respondent to reimburse the claimant for medical marijuana already purchased. Second, he ordered the respondent to "authorize ongoing prescriptions for medical marijuana, provided the prescription is lawfully obtained pursuant to the State of Connecticut Department of Consumer Protection medical marijuana program." Conclusion, ¶ E.

Regarding the second order, the language used by the commissioner is a little unclear as to the transactional process he envisioned. We know, however, the claimant wants to have the respondent pay the dispensary directly for his future purchases of marijuana, and this seems to be the intent of the commissioner's second order. From a purely mechanical point of view, an order to pay the dispensary directly is logical; our act specifically provides that a respondent must make payment for medications directly to a pharmacy, rather than making claimants purchase their medications and then seek reimbursement. General Statutes § 31-294d (a) (1). This, however, only serves to highlight why medical marijuana cannot be treated like just another prescription medication. Putting aside the implications of an insurance company purchasing an illegal substance by mailing checks through the United States Postal Service, and/or transferring funds through federally regulated banks, it seems clear that requiring the respondent to send funds directly to the dispensary, so that the claimant may come in and pick up his marijuana, would fall squarely within the scope 18 U.S.C. § 2(a) – both as to the dispensary's sale and the claimant's purchase and possession. The respondent would not only be aiding and abetting the illegal transaction, it could be argued to have induced or procured its commission. For this reason, I agree with the majority that, to the extent the commissioner's order requires the respondent to make direct payment to the dispensary, that order must be overturned. The respondent simply cannot comply with such an order without violating federal law.

Turning now to the first order, I do not see how ordering the respondent to reimburse the claimant for purchases after the fact relieves it of criminal complicity. The entire argument in this case is that the claimant cannot afford to purchase the marijuana unless the respondent insurance company provides the money to do so. Whether the respondent pays the money directly to the dispensary or creates a de facto revolving fund on which the claimant may draw as needed, it would still be financing the purchase and sale of the marijuana. It would be aiding and abetting the illegal acts by giving the claimant the resources to make the purchases, using funds paid to him expressly for the purpose of causing the criminal act to take place. While checks issued to a workers' compensation claimant are less likely to come to the attention of federal authorities than would payments made directly to the dispensary, the nature of the respondent's role in the transaction is not materially changed.

The claimant's principal argument is that the respondent's concerns about criminal liability are not well founded and are, in fact, speculative. Put another way, the claimant argues that there is no harm in ordering the respondent to pay for marijuana because it is unlikely it would ever be successfully prosecuted. I disagree with this rationale.

When California broke ground by legalizing medical marijuana, the United States Justice Department did not sit idly by. It definitively established that Congress had the power to outlaw marijuana-related activities, including marijuana activities the state deemed legal and which took place entirely within the borders of the state. United States v. Oakland Cannabis Buyers' Cooperative, supra; and Gonzales v. Raich, supra. There were criminal prosecutions of persons involved in the medical marijuana business. See, e.g., United States v. Rosenthal, 454 F.3d 943 (9th Cir. 2006), and United States v. Stacy, 734 F. Supp. 2d 1074 (S.D. Cal. 2010). Under the Obama administration, the United States Department of Justice had a policy of not enforcing the CSA in a manner that would interfere with state medical marijuana programs. This policy was set out in an October 19, 2009 memorandum from Deputy Attorney General David W. Ogden to various United States Attorneys. As the Maine Supreme Court has pointed out, the Ogden Memorandum did not challenge the validity or preemptive scope of the U.S. government's laws regarding marijuana, it merely advised that prosecutorial resources be directed elsewhere. Bourgoin v. Twin Rivers Paper Co., LLC, 187 A.3d 10, 21 (Me. 2018). In any event, with the change of administrations the Ogden Memorandum was rescinded, on January 4, 2018, by then Attorney General Jeff Sessions. Id., n.10.

Despite the fact that the Justice Department expressly rescinded its policy of not enforcing the CSA against participants in state medical marijuana programs, the majority still considers the prospect of prosecution to be speculative. It seems to place great weight on the fact that, in funding the federal government through continuing resolutions over the past few years, Congress has included amendments proscribing the use of federal funds to prosecute persons complying with state medical marijuana programs. While this has been comfort enough to convince some employers to voluntarily pay for medical marijuana, I do not believe we have the right to *order* any respondent to violate federal law on such a transient premise.

The majority stresses that its decision is based on circumstances as they currently exist, i.e., that the Justice Department is not currently prosecuting medical marijuana cases and Congress is currently opting not to fund such prosecutions. That the Justice Department is not inclined to prosecute such cases assumes too much given past prosecutions and the revocation of the Ogden Memorandum. As for the fact that Congress is not currently funding such enforcement, there is no guaranty that will continue.

The majority deals with this uncertainty about the future by arguing that, should the situation change, "the respondents can present evidence of changed legal circumstances since the issuance of the commissioner's findings and seek modification of the finding pursuant to General Statutes § 31-315." Majority Opinion, p. 20. There are two major flaws with this argument. First, criminal prosecutions are invariably brought for offenses that have already occurred. If the actions we force the respondent to take today are currently illegal, the fact they were committed before the government decided to resume prosecuting such offenses will be no defense. We have no rational basis to assume that, should the Justice Department suddenly become unshackled by Congress, it will fire some sort of warning shot, and then benignly limit its prosecutions to only offenses that occur thereafter. Second, as the majority points out, the respondent cannot simply stop paying for marijuana if the government suddenly begins prosecuting

these cases; the respondent would need the permission of a commissioner to stop paying. The notion that the respondent should have to petition a commissioner for permission to stop doing something for which it is facing criminal prosecution is, I have to believe, unprecedented. In any event, it is hard to see how this framework can be said to "adequately accommodate [the respondent's] legitimate concerns." Majority Opinion, p. 20.

Beyond what I believe to be an overly optimistic assessment of the benignity of the executive branch and the rationality and efficacy of Congress, the core of the majority's opinion in this case is based on this assertion: If at some point the respondent were to be prosecuted by federal authorities, it would likely be found to have lacked the necessary *mens rea* to be convicted. The majority bases this assertion on an argument advanced by the dissenting judges in the opinion out of Maine in Bourgoin, supra. In that case, Maine's high court held that that state's Workers' Compensation Board could not order a respondent to reimburse a claimant for the purchase of medical marijuana because such a transaction, though legal under the Maine Medical Use of Marijuana Act (MMUMA), conflicted with the CSA. In reviewing the provisions of the U.S. Code regarding culpability of those who aid or facilitate the commission of a crime, the Maine court held that in paying for the marijuana the employer could be subject to federal criminal prosecution to the same extent as the claimant or the seller. The Maine court reasoned that the *mens rea* required to be convicted of aiding and abetting was merely having participated in the crime with full knowledge of the circumstances of the offense. Bourgoin, 17, *citing* Rosemond v. United States, 572 U.S. 65, 134 S.Ct. 1240, 1248-49 (2014). The dissent in Bourgoin spent numerous pages trying to show that common law principles would require the Justice Department, in a prosecution against the employer, to prove the employer had *desired* the crimes (sale and possession) to be committed. The dissent argued that, having appealed the order of the workers' compensation commissioner to pay for the marijuana, the respondent would have a solid defense in a federal prosecution.

Following the lead of the dissent in Bourgoin, the majority in our case argues that if this commission orders the respondent to pay for the claimant's marijuana, the respondent would be subject to monetary sanctions were it to fail to pay – and the fact that we had forced it to violate the federal law under threat of monetary sanctions would mean it did not violate federal law "willingly." The majority argues that willfulness is part of the *mens rea* necessary to be guilty of aiding and abetting, so the respondent would be acquitted. I disagree. I find the Bourgoin majority's analysis of *mens rea* more persuasive than that of the dissent. When it comes to an abettor's culpability: "[t]he law does not, nor should it, care whether he participates with a happy heart or a sense of foreboding. Either way, he has the same culpability, because either way he has knowingly elected to aid in the commission of a [crime]." Rosemond, supra, 1250.

Ultimately, I think parsing the meaning of the words "aiding and abetting," and engaging in technical debates over the subtleties of common law principles of *mens rea* and their interaction with the United States Code, misses the larger point. The commissioner's order in this case would require an insurance company, operating in interstate commerce, to affirmatively act to participate in the purchase and sale of a substance which is illegal to purchase or sell. Whether we think the respondent is likely to someday be

prosecuted or convicted is immaterial. It is a risk we may believe acceptable, but we are not entitled to force our view of the odds onto the respondent.

Medical marijuana laws are being enacted by more states every year, but in many ways we are still in a frontier wilderness. The legal dangers associated with the sale and possession of medical marijuana – so long as it remains classified as a Schedule I substance – are widely recognized. Medical marijuana remains a largely cash-based industry due to fear of running afoul of federal regulation of banking institutions, and accusations of money laundering. (While there are bills pending before Congress that would provide a safe-haven for monetary transactions pertaining to medical marijuana, as of this writing no such legislation has become law.) No physician wishing to keep his/her DEA license can "prescribe" marijuana. United States v. Oakland Cannabis Buyers' Cooperative, supra, 1718, n.5. Indeed, when the General Assembly crafted this state's medical marijuana program, it took great pains to keep all attendant activity squarely within the four corners of this state. The marijuana must be grown here, it cannot be transferred in or out of the state, it must be sold only by instate dispensaries and only to Connecticut residents. See General Statutes §§ 21a-408h and 21a-408i. Clearly, in putting together its carefully crafted plan for legalizing medical marijuana, our legislature was very much conscious of the federal law and did all it could to try to avoid running afoul of it.

In crafting the marijuana program, the legislature expressly provided that health insurance companies cannot be forced to pay for marijuana products. General Statutes § 21a-408o. The statute is silent as to the reasons for this. To be sure, this policy decision is consistent with the notion that a health insurer should not be forced to pay for a treatment modality Congress has expressly said is of no medical value. However, like the geographical precautions taken, this provision also serves to minimize the potential pitfall of having our domestic medical marijuana program spill over unnecessarily into the realm of interstate commerce – something which might invite a confrontation with federal authorities and, arguably, put the entire medical marijuana scheme at risk. To the extent that is a concern, there is no logical distinction to be drawn between a health insurer and a workers' compensation insurer.

In any event, I disagree with the majority's position that the fact the legislature only referred to health insurers in this caveat was an invitation for us to order workers' compensation insurers to pay for marijuana. The Workers' Compensation Act contains no provision authorizing a commissioner to order an employer or workers' compensation insurer to finance the purchase and use of marijuana. The order of the commissioner in this case – without express authority in either the Workers' Compensation Act or the medical marijuana legislation – would force an insurance company, in interstate commerce and subject to interstate banking regulations, to do something no other insurer could be forced to do under the legislature's comprehensive and carefully crafted scheme.

Due to marijuana's status as a Schedule I substance, there is presently little hard science on its long-term medical benefits. On the other hand, cases such as this provide anecdotal evidence that medical marijuana may well serve to mitigate a claimant's symptoms and, as a result, reduce an employer's long term exposure. Employers and insurers are entitled to weigh the odds of prosecution against these

potential benefits and elect, as some have done, to voluntarily pay for medical marijuana in appropriate cases. The question here is whether a workers' compensation commissioner can *force* a respondent to run the risk. I understand the majority's reasoning, and am sympathetic to what it is trying to accomplish in this case. However, no state agency can grant someone the right to violate federal law; and this commission certainly cannot order someone to do that which is illegal simply because we think it unlikely he/she will ever be punished.

I am convinced the commissioner exceeded his powers. Accordingly, I respectfully DISSENT.

[1] U.S. Const., art. VI, § 2, cl. 2. BACK TO TEXT

[2] The commissioner in footnote 2 of the finding states: "The State of Connecticut allows a licensed physician to certify an adult patient's use of marijuana after determining that the patient has a debilitating medical condition and could potentially benefit from the palliative use of marijuana, among other requirements. The act lists certain conditions that qualify as debilitating (e.g., cancer, AIDS or HIV, and Parkinson's disease) and also allows the Department of Consumer Protection (DCP) commissioner to approve additional conditions. C.G.S. § 21-408 et seq." BACK TO TEXT

[3] Findings, ¶ 9, reflects that the claimant met with a licensed pharmacist on July 17, 2017, while Claimant's Exhibit J states July 6, 2017. We deem this harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003). We also note the term "medical marijuana pharmacy" is not a defined term under General Statutes § 21-408 et seq. and we are merely adopting the terminology utilized by the trial commissioner. BACK TO TEXT

[4] The commissioner did, however, issue an errata on December 18, 2018, correcting the date of injury cited in the original finding. We have used the correct date in this opinion. BACK TO TEXT

[5] The claimant cites Coppola v. Logistec Connecticut, Inc., 283 Conn. 1 (2017), for the proposition that this is actually an issue of "concurrent jurisdiction" between the state and federal government. We note that in footnote 4 of that decision, our Supreme Court found that case did not involve a conflict between state and federal law but, rather, involved the scope of exclusive federal jurisdiction over maritime matters. Id., 6. Given the factual distinctions herein, we afford this precedent limited weight. BACK TO TEXT

[6] In Bourgoin v. Twin Rivers Paper Co., LLC, 187 A.3d 10 (Me. 2018), the Maine Supreme Court noted that although Section 844(a) of the CSA carved out an exception permitting possession of a controlled substance when it "was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of [that practitioner's] professional practice," this exception was inapplicable to a Schedule I drug such as marijuana. Id., n.5. BACK TO TEXT

[7] The "Rohrabacher-Farr Amendment" was first enacted in federal budget legislation signed by President Obama on December 16, 2014 [https://www.upi.com/Health News/2014/12/16/Congress-ends-federal-medical-marijuana-ban/2001418755596/]. Now known as the "Rohrabacher-Blumenauer Amendment," it was most recently extended in P.L. 116-6, the Consolidated Appropriations Act of 2019, as Section 537 of the DOJ appropriations. It was signed into law by President Trump on February 15, 2019. https://www.whitehouse.gov/briefings-statements/statement-by-the-president-28/. BACK TO TEXT

[8] Though it is not directly relevant to the outcome of this case, in Smith v. Jensen Fabricating Engineers, Inc., Superior Court, judicial district of Hartford, Docket No. CV-18-6086419 (March 4, 2019), the court also determined there was no federal preemption of the Connecticut medical marijuana program under the ADA. BACK TO TEXT

[9] While we acknowledge that precedent from the Ninth Circuit is not binding on Connecticut, a state within the Second Circuit, we have not been presented with evidence of any controlling authority from a Second Circuit opinion regarding this issue. Therefore, we may place substantial weight on an opinion from another Circuit Court of Appeals. BACK TO TEXT

[10] In United States v. McIntosh, 833 F.3d 1163 (9th Cir. 2016), the Ninth Circuit clearly limited the safe harbor from federal CSA prosecution pursuant to federal budget amendments to those individuals strictly complying with applicable local laws. "Individuals who do not strictly comply with all state-law conditions regarding the use, distribution, possession, and

cultivation of medical marijuana have engaged in conduct that is unauthorized, and prosecuting such individuals does not violate § 542." Id., 1178. BACK TO TEXT

[11] General Statutes § 31-288 (a) states: "(a) If an employer wilfully fails to conform to any other provision of this chapter, he shall be fined not more than two hundred fifty dollars for each such failure." General Statutes § 31-288 (b) states: "(b) (1) Whenever through the fault or neglect of an employer or insurer, the adjustment or payment of compensation due under this chapter is unduly delayed, such employer or insurer may be assessed by the commissioner hearing the claim a civil penalty of not more than one thousand dollars for each such case of delay, to be paid to the claimant. (2) Whenever either party to a claim under this chapter has unreasonably, and without good cause, delayed the completion of the hearings on such claim, the delaying party or parties may be assessed a civil penalty of not more than five hundred dollars by the commissioner hearing the claim for each such case of delay. Any appeal of a penalty assessed pursuant to this subsection shall be taken in accordance with the provisions of section 31 301."

General Statutes § 31-300 states: "As soon as may be after the conclusion of any hearing, but no later than one hundred twenty days after such conclusion, the commissioner shall send to each party a written copy of the commissioner's findings and award. The commissioner shall, as part of the written award, inform the employee or the employee's dependent, as the case may be, of any rights the individual may have to an annual cost-of-living adjustment or to participate in a rehabilitation program administered by the Department of Aging and Disability Services under the provisions of this chapter. The commissioner shall retain the original findings and award in said commissioner's office. If no appeal from the decision is taken by either party within twenty days thereafter, such award shall be final and may be enforced in the same manner as a judgment of the Superior Court. The court may issue execution upon any uncontested or final award of a commissioner in the same manner as in cases of judgments rendered in the Superior Court; and, upon the filing of an application to the court for an execution, the commissioner in whose office the award is on file shall, upon the request of the clerk of said court, send to the clerk a certified copy of such findings and award. In cases where, through the fault or neglect of the employer or insurer, adjustments of compensation have been unduly delayed, or where through such fault or neglect, payments have been unduly delayed, the commissioner may include in the award interest at the rate prescribed in section 37-3a and a reasonable attorney's fee in the case of undue delay in adjustments of compensation and may include in the award in the case of undue delay in payments of compensation, interest at twelve per cent per annum and a reasonable attorney's fee. Payments not commenced within thirty-five days after the filing of a written notice of claim shall be presumed to be unduly delayed unless a notice to contest the claim is filed in accordance with section 31-297. In cases where there has been delay in either adjustment or payment, which delay has not been due to the fault or neglect of the employer or insurer, whether such delay was caused by appeals or otherwise, the commissioner may allow interest at such rate, not to exceed the rate prescribed in section 37-3a, as may be fair and reasonable, taking into account whatever advantage the employer or insurer, as the case may be, may have had from the use of the money, the burden of showing that the rate in such case should be less than the rate prescribed in section 37-3a to be upon the employer or insurer. In cases where the claimant prevails and the commissioner finds that the employer or insurer has unreasonably contested liability, the commissioner may allow to the claimant a reasonable attorney's fee. No employer or insurer shall discontinue or reduce payment on account of total or partial incapacity under any such award, if it is claimed by or on behalf of the injured person that such personâ€™s incapacity still continues, unless such employer or insurer notifies the commissioner and the employee of such proposed discontinuance or reduction in the manner prescribed in section 31-296 and the commissioner specifically approves such discontinuance or reduction in writing. The commissioner shall render the decision within fourteen days of receipt of such notice and shall forward to all parties to the claim a copy of the decision not later than seven days after the decision has been rendered. If the decision of the commissioner finds for the employer or insurer, the injured person shall return any wrongful payments received from the day designated by the commissioner as the effective date for the discontinuance or reduction of benefits. Any employee whose benefits for total incapacity are discontinued under the provisions of this section and who is entitled to receive benefits for partial incapacity as a result of an award, shall receive those benefits commencing the day following the designated effective date for the discontinuance of benefits for total incapacity. In any case where the commissioner finds that the employer or insurer has discontinued or reduced any such payment without having given such notice and without the commissioner having approved such discontinuance or reduction in writing, the commissioner shall allow the claimant a reasonable attorney's fee together with interest at the rate prescribed in section 37-3a on the discontinued or reduced payments." BACK TO TEXT

[12] It is possible that pending federal legislation may render many of the respondents' concerns moot. We note that on September 25, 2019, the U.S. House of Representatives passed the "SAFE Banking Act of 2019"; HR 1595, which would provide a safe harbor for financial institutions doing business with cannabis related businesses [https://www.congress.gov/bill/116th-congress/house-bill/1595/text]. A companion bill has yet to be acted on by the U.S. Senate. See https://www.congress.gov/bill/116th-congress/senate-bill/1200/related-bills. Nonetheless, we must rule on

this decision based on the state of the law as it existed when Commissioner Dilzer issued the Finding and Award which is the subject of this appeal. BACK TO TEXT

[13] There is nothing in our state's medical marijuana statutes that requires a workers' compensation insurer to pay for medical marijuana. If there were, the respondent's challenge would necessarily be addressed to the validity of that statute and this body has no authority to hear such challenges. The question here is whether the Workers' Compensation Act, which also makes no reference to marijuana, can be read to give the commissioner the power to make the order to pay for medical marijuana. BACK TO TEXT

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