Testimony in Opposition to LD 1881
An Act to Clarify the Laws Related to the Use of Medical Marijuana and Workers' Compensation
Jan. 28, 2022
Presented by Elizabeth Brogan

Senator Daughtry, Representative Sylvester and members of the Joint Committee on Labor and Housing, my name is Elizabeth Brogan and I am the Executive Director of the Workers' Compensation Coordinating Council and Maine Council of Self-Insurers. I appear before you today in opposition to LD 1881.

The Maine Medical Use of Marijuana Act strikes a balance between protecting an authorized user of medical marijuana, while imposing reasonable limits on the right to use medical marijuana in the workplace or in other circumstances which would pose a threat to public safety.

While one section of the law states that a person whose conduct is authorized under [the MMUMA] "may not be denied any right or privilege" (See §2430-C 1. and 3.), another section states that "the medical marijuana law may not be construed to require an employer to accommodate the ingestion of medical marijuana in any workplace or any employee while under the influence of marijuana." (See § 2426, sub-§2 B.)

Two parts of LD 1881 would pose a risk to workplace and public safety; conflict with employer rights under Maine Medical Use of Marijuana Act; and unnecessarily restrict Administrative Law Judges from doing their job, harming both injured workers and employers. (The first part of this bill would make clear that a workers' compensation insurer is not required to reimburse for medical marijuana. We are not opposed to this part of the bill but note that the Maine Law Court, in its 2018 decision in *Bourgoin v. Twin Rivers Paper Company,* already decided that a workers' compensation insurer does not need to reimburse for medical marijuana while it is a Schedule I drug under the federal Controlled Substances Act.)

It is a fact that employers may legally prohibit medical marijuana use in the workplace and may prohibit working while under the influence of medical marijuana. To prohibit acknowledgement of this reality in workers' compensation agreements does not serve anyone. There are circumstances in which an "agreement" under the Maine Workers' Compensation Act might be contingent upon an employee being able to return to the workplace without being under the influence of marijuana. If this bill were to become law, an employer might be prohibited from resolving a case with a return to work, something generally desired by all parties, if the employee is using medical marijuana. Even if medical marijuana use could be accommodated, this bill would not allow the parameters of that use to be made clear in an agreement. If an employer were induced to return an employee to work, without asking about the use of medical marijuana, that could jeopardize the safety of the employee and other workers or the public at large, a result the MMUMA sought to avoid.

If a workers' compensation case is not resolved by agreement, but rather through litigation, this bill would prohibit a judge from seeing any evidence of medical marijuana use, regardless of its

relevance to a range of issues which could include work capacity; causation (particularly if the employee was “intoxicated” at the time of injury); the reasonableness of other medications (which might be contraindicated with marijuana use); or a refusal of suitable work. This could result in decisions that are unfair to either or both parties.

It should also be noted that Workers’ Compensation Board judges are uniquely qualified to sift through evidence in a workers’ compensation case. They know what is relevant and have the authority to exclude that which is not. To deny these judges the ability to consider all relevant evidence, including medical evidence (because we are considering *medical* marijuana here) does not serve the best interests of anyone in the workers’ compensation system.

For these reasons, I urge the committee to vote “ought not to pass” on LD 1881. I am happy to answer any questions.