

SAVE THE DATE

2019

UPCOMING CEU SEMINAR

May 9, 2019
11:30am - 2:00pm

“Mental Injuries & Workers’ Compensation from a Legal Perspective” and “Old Law vs New UCC”

Presenters:
Jones, Hurley & Hand P.A. and Unique Connect Consultants

Location:
EVEN Hotel
Sarasota/LWR
(formerly Holiday Inn)
6231 Lake Osprey Dr.
Lakewood Ranch, FL
34240

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JOHNS EASTERN

Claim Adjusters & Third Party Administrators

IS EARLY CLAIM REPORTING IMPORTANT?

Attention Employers - You Can Affect Claims!

When you break it down, the following parties have a direct impact on the administration and successful conclusion of a workers’ compensation claim: employers, adjusters, physicians, the injured employee, nurse case managers and attorneys. Other than the injured employee, the employer has the greatest impact in the initial stages of the claim through their reporting, investigation, and initial decision making. The most important action the employer can take is to promptly and properly report the claim to their Third Party Administrator (TPA) via a First Report of Injury.

While injury reporting is usually relatively straightforward, it can become more difficult in situations involving non standard injuries such as repetitive trauma, chemical

exposure, occupational disease, hypertension, or cardiac claims. The primary reason for prompt reporting of claims is to allow the TPA time to conduct a complete and accurate investigation of the claim early on. If this reporting does not occur, the adjuster may lose the opportunity to speak with the employee directly to obtain an early and precise history of the injury. An early investigation helps to lock in the injured employee’s accident description, affected body parts, past medical history, and names of witnesses. This early information may also prove critical in assisting in the later defense of the claim if it goes on to be litigated. Once an injured employee is represented by an attorney, the opportunity for this early critical investigation may be lost.

Another reason for early reporting of injury is that it allows the employer to conduct a thorough investigation. Typically, this includes a three-point



investigation wherein the claims adjuster will contact the injured employee directly to obtain a statement, contact the employer to determine witnesses and physical evidence, schedule prompt initial medical treatment and initiate physician contact. In addition, in order for the employer to make an informed compensability decision all of the facts must be gathered promptly from the employer, the employee, witnesses, and medical providers. It is also recommended the employer consider completing a separate internal accident report to serve as additional proof of the true and accurate version of events in case the claim goes into litigation.

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DO TOPICAL MEDICATIONS REDUCE PATIENT PAIN?

The *Annals of Internal Medicine* recently published the results of a randomized controlled trial meant to determine the effectiveness of compounded topical pain creams. A total of 399 patients suffering from localized neuropathic pain (related to nerve damage) and/or localized nociceptive pain (caused by tissue injury) were given either one of two compounded pain creams or a placebo for the treatment of pain.

The study found no statistically significant differences in pain reduction between patients using a compounded topical or a placebo, indicating that the compounds offered no clinical benefit, especially considering their high cost.

Topicals – in compounded forms and as private labeled products – can inflate the cost of a claim while offering little-to-no clinical benefit for patients. However, as prescribing trends continue to shift, it appears topicals are seeing greater utilization.

Last month, the California Workers Compensation Institute (CWCI) released a research update that looked at 5.75 million prescriptions dispensed in the California workers' comp system from January 2009 to June 2018. Among many insights, the CWCI report found that prescription and private-labeled dermatological topicals saw a serious increase in spend.

In 2009, these dermatological topicals made up 10.1%

of drug spend, increasing to 17.6% in 2018, making topicals the drug class with the highest spend in 2018, surpassing opioids.

The high prevalence of compound drug denials have resulted in lowered drug sales for certain entities, leading to a new focus in pushing private-labeled topicals to patients, despite high costs and a lack of clinical necessity. The results from the *Annals of Internal Medicine* confirmed what the Healthesystems clinical team has long continued to research, track, and manage the use of these medications through various compound utilization and cost management initiatives, as these medications contribute to higher claim costs, offer no clinical benefit, and pose potential safety risks for patients.



Topical products, be they compounds or private-label products, should be investigated whenever found in a workers' compensation claim, as they do not offer any clinical advantages and serve to inflate claim costs.

Johns Eastern has been consistently working to educate and inform prescribers and patients of these concerns. In fact, 99.7% of claims in 2018 did not utilize any compounds! Improving patient safety while reducing costs continues to set Johns Eastern apart from the rest.

Strategic Partner:
Clinical Services Team, Healthesystems



DON'T TAKE THE BAIT! - STAYING SAFE ONLINE

In the mountain of emails you receive every day, do you know which messages are harmless and which are malicious? It's becoming harder to know the difference and if you're wrong the consequences can be devastating. Phishing messages attempt to fool us into giving away sensitive information. To stay safe online, experts

advise us to stay away from emails with these subject lines:

1. Password Check Required Immediately
2. IT: Syncing Error - Returned Incoming Message
3. Microsoft: Multiple Log In Attempts

KnowBe4

JE GIVES BACK



Rose Rome
Executive Assistant

We have just finished our third year of supporting the Humane Society at Lakewood Ranch (HSLWR). HSLWR is a no-kill, non-profit, rescue organization that provides food, shelter and medical care for companion animals until they are placed in a loving new home.

For the last seven years, HSLWR had been operating out of a donated commercial space which was made possible by a generous donor. To keep-up with the increasing demand for displaced animals in the Manatee and Sarasota County area, in 2018 HSLWR acquired a new home. They have been busy renovating the space for the last year and are now awaiting their occupancy license. During this time of transition, the rescue animals have been placed in foster homes until they are adopted or the shelter is operational.

Thanks to the generosity of our employees, we raised over \$825 and donated over 100 office items to assist with the outfitting of the new shelter. Johns Eastern will make a matching donation to HSLWR for a total donation of \$1,660.



OVERTIME RULE CHANGES



On March 7th, the Department of Labor announced that it would begin the process of changing the current minimum salary that executive, administrative, professional, outside sales, and employees with computer-related occupations must make weekly in order to be exempt from the overtime provisions of the Fair Labor and Standards Act (FLSA).

The proposed rule would increase the current minimum salary of \$455 per week (\$23,660 per year) to \$679 per week (\$35,308 per year). This increase is notable in that it represents a dramatic reduction from the embattled rule released by the Department of Labor in 2016, which increased the minimum salary \$913/week (\$47,476 per year), and resulted in the filing of numerous lawsuits by States and businesses which eventually resulted in the rule being repealed.

The Notice of Proposed Rulemaking for the current rule has been published and is open for public comment until May 21, 2019. More information is available at <https://www.dol.gov/whd/overtime2019/>

U.S. Department of Labor

CONFERENCE CONNECTION

Plan now to meet representatives from Johns Eastern at an upcoming conference:

Georgia Workers' Compensation Association (GWCA) Summer Conference
June 5 - 7 • Jekyll Island, GA

Virginia Self-Insurers Association (VSIA) Summer Meeting
June 6 - 7 • Williamsburg, VA

Public Risk Management Association (PRIMA) Annual Conference
June 9 - 12 • Orlando, FL

Workers' Compensation Claims Professionals (WCCP) Claims & Leadership Conference
June 9 - 12 • Bonita Springs, FL

Florida Educational Risk Management Association (FERMA) Summer Conference
July 15 - 19 • Sarasota, FL

Florida Association of Self insureds (FASI) Annual Educational Conference
July 21 - 24 • Naples, FL

MEDICAL MARIJUANA IN WORKERS' COMPENSATION

Medical marijuana in America has been a hot topic in the medical field, for good reason. The medical use of cannabis is now available with doctor approval in 33 states and the District of Columbia. An additional 14 states have legal medical marijuana with limited THC content, allowing access to products high in cannabidiol (CBD). While marijuana remains classified as a Schedule I substance under federal law, the movement for full medical legalization is well under way.

There is scientific evidence that cannabis contains ingredients with therapeutic potential for pain relief, nausea control, stimulating appetite, and decreasing ocular pressure. Because of the complications with opioid addictions, marijuana is an attractive potential alternative to opioid pain medication going forward. However, some barriers stand in the way of full utilization in workers' compensation cases.

Complications

The major concern with medical marijuana is with dosing. Because marijuana remains federally illegal, there is less pharmaceutical research available. This has prevented physicians from developing appropriate treatment and dosage guidelines. No insurance carrier is willing to allow unlimited dosing for any substance and, with chronic pain, optimal dosage of marijuana can be incredibly difficult.

Another issue is how to reconcile post-accident drug testing. Now that several states allow for recreational use, and coupled with the fact that marijuana can stay in the user's system for weeks afterwards, it's impossible to determine whether someone was inebriated at the time of an accident. This suggests that as more states legalize some form of marijuana, it may be time to reconsider the way we test post-accident.

Going Forward

The FDA is putting several policies in place to progress marijuana towards regulation. If the results are positive, we may see FDA approval for more marijuana-based medications. This would make it more likely that doctors would prescribe or recommend the drugs.

One of the methods they are employing is a public hearing to gather scientific data and public comments about the safety, quality, and marketing of various marijuana derived products. Among the data of interest, is modes of delivery, potency, effects, and potential drug interactions of various compounds. It would also allow people from various professions related to the industry to offer input on the regulation and legality of future marijuana sales.

There are also now several states who are considering legislation that would affect the prescription of marijuana in workers' compensation cases. In particular, Maryland passed a state bill that would require employers to allow for medical marijuana under certain circumstances. It still needs to be signed by the Maryland House of Representatives, however, and would go into effect later this year.

How to Handle Medical Marijuana as an Employer

- Stay educated on your state's marijuana laws, particularly related to medical marijuana.
- Keep up to date with your workers' compensation laws about what substances are illegal.
- Consider updating your company's policy on drug use, as more information becomes available. Being progressive on your policies may be beneficial to current and future injured workers, by allowing them to get the most effective treatment.

Nick Hart, Johns Eastern

Myth #1

There is insufficient evidence for the clinical benefits of marijuana.

FACT: Despite federal Schedule I status that claims marijuana has no medical use, several comprehensive reviews of medical literature found substantial evidence that marijuana can help treat chronic pain, nausea and seizures.

Myth #2

Unlike opioids, marijuana does not present a significant risk to injured workers.

FACT: While marijuana does not share all of the adverse effects of opioids, such as addiction and overdose-related death, it can present some risks, including drowsiness, dizziness, anxiety, short-term memory loss & hallucinations.

Myth #3

WC benefits won't have to cover marijuana because it's federally illegal.

FACT: While the government currently defers to states in regard to marijuana regulations, new legislation in some states has required insurers to reimburse medical marijuana when deemed clinically necessary.

Healthsystems

THE IMPORTANCE OF EARLY CLAIM REPORTING

Continued from page 1

The employer should also be familiar with the potential defenses to compensability of a claim, including the *going and coming* rule, work break injuries, deviation from employment, misconduct, major contributing cause, preexisting condition, idiopathic condition, the drug/alcohol defense, horseplay, or fraudulent claim. If the employer has information which may support one of these defenses, please notify your TPA immediately so that further investigation may be initiated.

As state law gives employers the right to require the claimant submit to drug/alcohol testing immediately after a work-related injury to determine if the injury may have been caused by the use of illegal drugs or alcohol, it is important that the testing take place immediately following an accident and within the first 24 hours if possible. If the injury is not made known to the employer for several days after the injury date, it is recommended that it be ordered immediately since scientific studies have shown that some illegal drugs, such as cocaine, remain in the system for up to seven days and marijuana 30 to 60 days. As a result, testing may take place up to several days following a work-related injury. If the injured employee refuses to take a drug/alcohol test, this is grounds to deny the workers' compensation claim in entirety. A positive test for drugs or alcohol results in a presumption that the accident was primarily caused by the use of drugs or alcohol and the claim may be denied. It is thus important for supervisors to notify the employer immediately upon an injury occurring if there is suspicion of drug or alcohol use by the injured employee.

Another important way the employer affects workers' compensation claims is in its cooperation in a return-to-work program. It is recommended the employer maintain regular contact with the injured employee and request physician reports including disability certificates on a regular basis. Once the injured employee is released to light-duty work, it is strongly recommended the employer consider returning the



employee to work in a light-duty position. This serves multiple purposes including showing the employee you are interested in his wellbeing and recovery, initiating return-to-work toward full recovery and return to previous position, reducing indemnity exposure, and minimizing attorney representation and litigation. This return to work can also be required by state law if the employer can feasibly and economically provide a light-duty position.

If a case does become litigated, it is recommended the employer maintain regular contact with the attorney regarding case status, mediation and hearing dates. The employer is permitted to attend mediations and hearings and should maintain regular contact with the adjuster and attorney to determine if strategically this will assist in the defense and closure of the claim. The employer is also permitted to provide input towards strategic decisions including resolution of issues, settlement of the workers' compensation case, and proceeding to a full hearing before the Judge of Compensation Claims.

Finally, it is recommended the employer assist in the identification of potential workers' compensation fraud by promptly reporting to the claims adjuster any questionable injuries, unwitnessed injuries, late reported injuries, questionable physician reports, unauthorized medical treatment, inconsistent history of accident, or any other inconsistent information which could suggest a fraudulent or exaggerated claim. As noted above, the employer is the eyes and ears of the workplace and is in the best position to identify and pass on this information to the claims adjuster.

As is evident from the above suggestions, our employers can have a major impact on workers' compensation claims, exposures and litigation, and their partnership with Johns Eastern is very important to a successful conclusion of each claim.

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EXPANDING PTSD PROTECTIONS

Several states, including Florida, have recently introduced or passed bills expanding workers compensation protections to first responders suffering from post-traumatic stress disorder (PTSD).

► **North Carolina**
Lawmakers introduced a bill that would entitle first responders and emergency management personnel to workers' compensation benefits for



mental or nervous injuries, regardless of whether they are accompanied by physical injuries, under specific circumstances.

► **Maryland**
Newly passed legislation expands presumptions for diseases and cancers which are presumed to be caused by contact with a toxic substance encountered in the line of duty.

Business Insurance

WC TRENDS REPORT

The Workers Compensation Research Institute has released its latest set of state reports, updating workers compensation policymakers and stakeholders on trends and cost-drivers in 18 individual states.

Key findings in the report include:

- The median indemnity costs per claim across the states for three years starting in 2015 was \$17,778, with North Carolina, Pennsylvania and Georgia ranked in the top three.
- Twenty-nine percent was the median percentage of 2015 claims with more than seven days of lost time.

Workers' Compensation Research Institute

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Follow us today on:



And don't forget to play Trivia Tuesday every week! If you have the correct answer, you could win a prize!

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