

# Insurer, business must cover medical pot for injured worker

By Milan Simonich

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Gregory Vialpando, in chronic pain since his lower back was damaged 14 years ago in a workplace accident, is one of more than 11,000 people certified to use marijuana in New Mexico's medical cannabis program.

What makes Vialpando different is that his former employer's insurance company must pay for his marijuana.

Vialpando, now 56, persuaded a judge and then an appeals court that the cost of his marijuana should be covered as part of his workers' compensation benefits. His old company fought him, saying it should not have to finance use of a drug that is illegal under federal law.

Vialpando's injury occurred on June 9, 2000, while he was working as a mechanic at Ben's Automotive Services in Santa Fe. Everyone involved in Vialpando's case agreed that he had a 99 percent permanent, partial disability, according to court records.

Vialpando in 2013 filed an application with a workers' compensation judge for treatment with medical marijuana. He was certified for the marijuana program by the state Health Department.

The workers' compensation judge, Terry Kramer, found that Vialpando's use of marijuana through the state-sanctioned program was "reasonable and necessary medical care."

Marijuana is intended to lessen what one doctor called "high intensity" pain directly related to Vialpando's back injury, for which he has had numerous surgeries.

Kramer ruled that Vialpando should buy his own medical marijuana but then be reimbursed by Ben's Automotive Services through its insurance company.

Both Ben's Automotive Services and the insurance provider, Redwood Fire & Casualty, appealed that decision. They argued that they would be breaking a law by buying marijuana for Vialpando.

A three-member panel of the state Court of Appeals ruled for Vialpando last spring. More recently, the New Mexico Supreme Court declined to hear the case, leaving in place the decision favoring Vialpando.

Vialpando declined to comment. His attorney, Peter D. White, said Vialpando doesn't want to be in the public eye.

White, though, said he believed Vialpando's case is unusual, not only in New Mexico but nationally.

The New Mexico Workers Compensation Administration does not collect information about drug prescriptions as they relate to claims, said its spokeswoman, Diana Sandoval-Tapia.

"That is not information required to be reported to us," she said. "We only learn when disputes such as the Vialpando case arise."

The Workers Compensation Administration is conducting a drug and alcohol survey, but participation is voluntary and it's too early to have any data, Sandoval-Tapia said.

In Vialpando's case, the Court of Appeals said the U.S. Department of Justice had made "what we view as equivocal statements about state laws allowing marijuana use for medical and even recreational purposes."

The Department of Justice has said marijuana remains illegal under the Controlled Substances Act, but in the same documents it also has said it would defer in certain instances to state and local authorities.

"In addition, the Department of Justice stated that it informed the governors of Washington and Colorado, two states that voted to legalize possession of marijuana and regulate its production and distribution, that it would defer its right to challenge those laws," the Court of Appeals said in its decision.

Judge James Wechsler wrote the opinion in Vialpando's case. Judges Cynthia Fry and Michael E. Vigil concurred with it.

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