

Medical Marijuana in New Jersey Workers' Compensation Law

New Jersey Law Journal
July 11, 2025
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There has been a shift in the legal landscape as state and federal laws have developed (sometimes inconsistently) with regard to medical marijuana. While New Jersey has legalized it, and the federal government has not, the question for employers and employees within the workers' compensation system is, what does the current federal and state system mean for us?

In the New Jersey Supreme Court case, *Vincent Hager v. M&K Construction*, 246 N.J. 1 (2021), the petitioner was using medical marijuana to treat his chronic back pain. The judge of compensation ordered the employer to reimburse the petitioner for the cost of the medical marijuana. The employer appealed, first to the Appellate Division and then to the Supreme Court of New Jersey, asking the court to answer the following questions:

- Does an employer reimbursing an injured worker for the costs of medical marijuana break federal law?
- Can marijuana be considered appropriate medical treatment for workers' compensation purposes?

Addressing the first point, the court found there to be no basis to hold that an employer reimbursing the cost of medical marijuana would be in violation of federal law.

Under the Controlled Substances Act (CSA), the federal government still classifies marijuana as a Schedule 1 drug. Substances in this category have no accepted medical use and a high likelihood of misuse and, therefore, cannot be prescribed or used. However, under the Compassionate Use Act, the state of New Jersey recognizes the beneficial uses of marijuana and permits its use under certain circumstances.

As the state and federal approaches to medical marijuana appear to conflict, the respondent raised the understandable concern that reimbursing an injured worker for the cost of a Schedule 1 controlled substance would be a violation of federal law. However, the court held that it is not a violation. In reviewing congressional appropriations, they noted that the Department of Justice has been explicitly instructed not to interfere with state laws regarding medical marijuana. This indicates to the court that both the federal CSA and the NJ Compassionate Use Act co-exist, with space for the state to operate without any pre-emption for the federal system. Therefore, an employer reimbursing an injured worker for medical marijuana under the Compassionate Use Act does so without any violation of federal law.

In considering the second point, the court found that medical marijuana can be consid-

ered appropriate medical treatment for purposes of workers' compensation. But as with all forms of treatment, just because the court found it appropriate in one case does not guarantee that outcome for every case. In articulating its reasoning, the court stated it is not enough to argue that the injured worker may have some benefit from a given treatment but, rather, the injured worker has the burden to establish, by competent medical testimony, that the treatment being sought is reasonable and necessary to cure or relieve the injuries.

This is a fact-sensitive analysis and decided on a case-by-case basis. In *Hager*, one of the medical experts testified that the petitioner's best chance for pain relief was either marijuana or opioids. By that time, the petitioner had already developed an addiction to the opioids he was taking. This played a role in the judge of compensation's ruling as he grimly considered the alternative to ordering reimbursement of the medical marijuana, noting that continued use of opioids would place the petitioner on a "likely path... [of] worsening addiction and ultimately death."

Importantly, the court reached a different conclusion in *Martin v. Newark Pub. Sch.*, 461 N.J. Super. 330, 339 (App. Div. 2019). In that case, the judge of compensation heard medical testimony that the medication the petitioner had been on for six years had not brought relief or an increase in function, and that the only means to accomplish this was surgery. Finding this testimony to be persuasive, the judge denied that petitioner's request for reimbursement of the costs of his pain medication. This denial was upheld on appeal.

If an injured worker is seeking medical marijuana, the question should be presented to the authorized treating physician, as they would be in the best position to determine whether it is reasonable and necessary to cure or relieve the workers' injuries.

While *Hager* brought some clarity to the issue of medical marijuana in New Jersey workers' compensation cases, there is still a gray area regarding safety. In their amicus brief, the American Property Casualty Insurance Association (APCIA) raised the issue of workplace safety, noting the unique concerns that marijuana brings, as:

appropriate dosages of marijuana are not sufficiently defined, the effects of marijuana vary significantly from product to product and from individual to individual, and currently-available testing cannot measure impairment at the time of the test, the timing of the exposure, or the dose consumed.

While the court acknowledged these concerns, it did not provide any guidance with which to address them. In cases where injured workers are treating with medical marijuana, employers need to proceed carefully in balancing the concerns of workplace safety with the rights of their workers to obtain treatment. A helpful resource in this regard is the authorizing treating physician. They should be provided with a detailed description of the worker's job duties and a description of their medical marijuana usage, and should be asked to provide their assessment regarding the worker's ability to work safely. Based upon the job duties and the marijuana use, the physician may feel there are no issues or they may determine that a temporary period of restriction is necessary to ensure safety.

With the *Hager* decision, medical marijuana has become another form of accepted treatment within the New Jersey workers' compensation system. As with all other forms of treatment, the injured worker has a burden to establish that it is reasonable and necessary to cure or relieve his or her symptoms. However, if that burden is met and the medical marijuana provided, the

employer can do so without fear of running afoul of federal law.



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