

## NJ Appellate Court Rules Medical Marijuana Act Not Preempted by Federal Law - *NJ Cannabis Blog*

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As medical marijuana use expands in New Jersey — more than 66,000 patients are now registered — our businesses and our courts will be forced to reconcile potentially inconsistent state and federal laws.

On January 13, 2020, the New Jersey Appellate Division issued an important decision in a case arising in the context of a worker's compensation claimant seeking reimbursement for his use of medical marijuana.

The former employee had endured 18-years of chronic disabling pain from a workplace injury, despite multiple surgeries and years of taking opioids. He then began finding relief from his pain by using medical marijuana. The employer objected to paying for the medical marijuana arguing that state law permitting medical marijuana use was in conflict with federal law, and it could not be compelled to pay for its former employee to commit a federal crime.

The court disagreed and affirmed the decision compelling the employer to reimburse the medical marijuana usage.

The court's decision is important not just for this worker's compensation issue, but for a variety of situations that have and will arise where federal and state law could be in conflict. The court explained that the Controlled Substances Act ("CSA") "only preempts a state law that requires the performance of an action specifically forbidden by the federal statute." The CSA criminalizes the possession, manufacture and distribution of marijuana. But the court concluded that reimbursing an employee for the costs of his medical marijuana was not possession, manufacture or distribution and therefore not in violation of the CSA.

The court also rejected the employer's claim that it would be forced to aid and abet in the commission of a crime. The court explained that under federal law "one cannot aid and abet a completed crime". The reimbursement for the prior purchase of medical marijuana comes after the fact of the federal crime – the crime is completed before the employer is involved and therefore there can be no aiding and abetting liability. The court also explained that complying with a worker's compensation order to reimburse the employee could not satisfy the "intent" element and active participation required to commit the crime of aiding and abetting.

Hager v M&K Construction, Docket No. A-102-18T3 (App. Div. Jan. 13, 2020)