

BIANCAMANO
& DI STEFANO, P.C.



Marijuana and New Jersey Workers' Compensation

BIANCAMANO
& DI STEFANO, P.C.

10 Parsonage Road, Suite 300
Edison, New Jersey 08837
(732) 549-0220 ph
(732) 549-0068 fax
(908) 239-0475 cell
www.bdlawfirm.com

Matthew Gitterman, Partner
m.gitterman@bdlawfirm.com

NJSA 34:15-15 states “The employer shall furnish to the injured worker such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the worker of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible...”



Palliative treatment is required by employers where it will relieve symptoms and improve or maintain function. Hanrahan v. Township of Sparta, 284 N.J. Super. 327 (App. Div. 1995)



Vincent Hager, born in 1973, suffered an injury involving his back while working for M & K Construction on 08/21/2001.



Hager Treatment:

- ▶ 2003 – lumbar laminectomy
- ▶ 2011 – lumbar fusion with cages
- ▶ Oxycodone



April 2016 – Chronic Pain Syndrome

Medical Marijuana



Trial of Case in Division of Workers' Compensation
Judge Kovalcik Decision July 26, 2018

NJ Appellate Division
Decision January 13, 2020

NJ Supreme Court
Argued December 1, 2020



Arguments

Dr. Liotta v. Dr. Brady

Health Insurance Carriers Excluded

Federal Preemption



Federal Law Prohibits Furnishing Marijuana –
Constitutes Aiding and Abetting a Federal Crime

Employer or Insurance Carrier Pays for Marijuana

Employer Knowingly Facilitates Possession



Is Federal Preemption Avoided by an Order from a State Court Judge?

Can a State Judge Lawfully Order an Employer or Insurance Carrier to Violate Federal Law?



Does Preemption Still Apply in the Absence of a
Real Threat of Criminal Prosecution?



Where do we go from here – will President Biden and current legislature legalize marijuana?



Questions?

Visit ddw.drugfreenj.org and...

- ▶ Register for our next webinar in the series
 - ▶ Review the employer's digital toolkit
(password is "ddw123")
- ▶ Sign up for the employer's bimonthly news update

