# NJ Workers' Compensation Judge Rules Respondent Cannot Oppose Payment For Medical Marijuana

July 17, 2018 | by Christine McCarthy

In a June 28, 2018 opinion, a Freehold Workers' Compensation judge ruled that Freehold Township must pay the cost of a petitioner's medical marijuana prescription.

In opposing Petitioner's request for coverage of his prescription, Respondent, Freehold Township, sought refuge on constitutional grounds, arguing the NJ Medical Marijuana Act is in conflict with federal law. They relied upon a recently decided case from Maine, *Bourgoin v. Twin Rivers Paper Co.*, LLC, 2018 ME 77, which held that it is constitutionally impermissible for a court to order an insurance company to pay for something in conflict with federal law.

Judge Lionel Simon declined to follow the *Bourgoin* holding and instead noted the medical evidence of necessity and the concern of petitioner's potential to become addicted to opioid pain killers. He further discussed the opioid crisis and did not express "any moral or legal hesitancy" in permitting a less addictive treatment for pain. He also remarked that the Worker's Compensation statute is social legislation which "changes with the times". Respondent was ordered to reimburse Petitioner for all out-of-pocket expenses and continue payment until the medical marijuana is no longer medically necessary.

As prescriptions for medical marijuana become more prevalent, this issue will surely arise again. The lower courts could certainly benefit from guidance from the Appellate Division in navigating the conflict between federal and state law.