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Peri Feldstein ✍ Apr 5 6 min read

Getting Blunt About Civil Commitment:

How NJ's Institutionalized Cannabis-Users Are Systematically Denied Civil Liberties

Some of New Jersey's state-institutionalized psychiatric patients, held by the state in civil confinement at state psychiatric hospitals, use cannabis in violation of hospital rules. When they do so, they are punished in an unconstitutional manner: the judge responsible for their commitment will seek retribution by wrongfully continuing their commitment out of paternalistic fears.

In 2018, a class action complaint was brought by four Greystone patients against the state alleging numerous Constitutional and statutory rights violations occurring daily at the hospital. Included amongst this list was an allegation that Greystone staff are actively involved in the trade and trafficking of illegal drugs in the hospital.[1] "One of the long-standing concerns at Greystone [Park Psychiatric Hospital],[2] one of the most restrictive hospitals in New Jersey] has been the influx of illegal drugs,"[3] the complaint noted. This was further confirmed by complaints of doctors employed at Greystone, who stated that hospital staff members "purposefully ignore the drug trafficking, including possible staff involvement therein, because of fear regarding what may be uncovered." [4]

Punitive measures against government-salaried staff-members who take advantage of the vulnerabilities of the individuals they are supposed to be rehabilitating are rare.[5] In fact, even in the face of such direct allegations of drug trafficking as alleged in 2018, hospital administrators and state lawmakers still chose to neglect meaningful responsibility and the opportunity to make a change. In 2020, the parties in the complaint settled out of court,[6] agreeing to maintain seven Code Carts stocked with Emergency Drug Kits and to institute an Oversight Committee.[7] However, no preventive or punitive actions were put in place for staff members who had been involved in the multitude of drug overdoses.

Despite the hospital's reticence to address the trafficking of drugs while they are in the hands of the staff members, they are quick to punish patients who are caught using drugs during their stay at the hospital.[8] Among other behavioral regulations, the hospital maintains a prohibition against patients using drugs or alcohol while in the hospital, regardless of their legality outside of the facility.[9] The rule itself is justifiable. The application of that rule, however, is not. Violation of the prohibition on drug use is unjustifiably used by the commitment court to hold a patient longer than necessary, and to transfer them to more restrictive hospitals.[10] In violating the hospital rules, the courts opine, a patient displays their propensity for rule breaking, from which the court may infer that they would not be able to follow any eventual rules for their release or take care of themselves upon discharge from the hospital.[11] Fear of decompensation[12] due to their cannabis use, in particular that it would stir up psychiatric conditions and impact their progress, as well as make them unable to tend to their activities of daily life, plays a primary role in keeping cannabis users committed against their will.[13]

This all occurs in violation of a patient's right to liberty as protected by the state statutes on civil commitment. In order to issue an order continuing the commitment of an involuntarily committed patient, the court must determine whether or not, by clear and convincing evidence, that:

- (1) the patient is [presently] mentally ill,
- (2) mental illness causes the patient to be dangerous to self or dangerous to others or property . . . ,

- (3) the patient is unwilling to be admitted to a facility for voluntary care or accept appropriate treatment voluntarily, and
- (4) the patient needs . . . inpatient care at a short-term care or psychiatric facility or special psychiatric hospital because other less restrictive alternative services are not appropriate or available to meet the patient's mental health care needs.[14]

Each of these terms is carefully defined. A “mental illness,” for example, is defined as a “current, substantial disturbance of thought, mood, perception, or orientation which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality, *but does not include simple alcohol intoxication, transitory reaction to drug ingestion.*”[15] For that reason, a showing of drug use while in the hospital may not be used to keep a patient restrained.

Dangerousness has been defined by New Jersey state courts to mean that the individual must pose “a substantial risk of dangerous conduct *within the reasonably foreseeable future.*”[16] As the potential to decompensate has been ruled not to pose that kind of a risk,[17] it is clear that it is impermissible to continue a patient’s civil commitment on the basis of their in-hospital cannabis use.

Lastly, the right to be treated in the least restrictive environment is particularly paramount. Per statutory definition, the term “least restrictive environment” means “the available setting and form of treatment that appropriately addresses a person’s need for care and the need to respond to dangers to the person, others, or property[,] and respects, to the greatest extent practicable, the person’s interests in freedom of movement and self-direction.”[18] When a patient’s only or primary concern is centered on drug use, state psychiatric institutions are far from the least restrictive environment. In many cases, inpatient care would be an unnecessary intervention. However, hospitals and judges fail to consider this, and instead paternalistically hold these patents back. This wastes bed space in cramped hospitals, endangers the safety of the patient, and violates their personal liberty.

This punitive system of commitment ultimately holds patients trapped in a hospital where drugs are still being sold, and will continue to be sold without consequence to the dealer. The patient is, in effect, trapped in a system that exploits their vulnerabilities as prior drug users in a locked facility.[19] By continuing the commitment of rulebreaking patients in these environments, judges authorize their being taken advantage of. Fair punishment for rule breaking must be imposed, but may not include an unlawful restraint upon a patient’s Constitutional right to due process of law.

[1] *J.M., et. al. v. Phillip D. Murphy et. al.*, No. 2:18-cv-17303, paragraph 102 (D. N.J. filed Dec. 17, 2018) <https://www.nj.gov/defender/documents/Greystone%20Lawsuit.pdf>.

[2] Greystone Park Psychiatric Hospital, located in Morris Plains, is one of New Jersey’s four state psychiatric hospitals. *Greystone Park Psychiatric Hospital*, STATE OF NEW JERSEY, DEPARTMENT OF HEALTH, <https://www.nj.gov/health/integratedhealth/hospitals/greystone/> (last visited Feb. 21, 2021).

[3] *J.M., et. al. v. Phillip D. Murphy et. al.*, No. 2:18-cv-17303, paragraph 102 (D. N.J. filed Dec. 17, 2018) <https://www.nj.gov/defender/documents/Greystone%20Lawsuit.pdf>.

[4] *J.M., et. al. v. Phillip D. Murphy et. al.*, No. 2:18-cv-17303, paragraph 102 (D. N.J. filed Dec. 17, 2018) <https://www.nj.gov/defender/documents/Greystone%20Lawsuit.pdf>.

[5] Interview with Cynthia Seda-Schreiber, Christina Salabert, and Kelli-Ann Dreisbach, Public Defenders, Office of the Public Defender, Department of Mental Health Advocacy, in Trenton, N.J. (Sept. 24, 2021).

[6] [nj.gov/defender/documents/Greystone%20Settlement%20Agreement%20\(11-12-20\).pdf](https://www.nj.gov/defender/documents/Greystone%20Settlement%20Agreement%20(11-12-20).pdf)

[7] [nj.gov/defender/documents/Greystone%20Settlement%20Agreement%20\(11-12-20\).pdf](https://www.nj.gov/defender/documents/Greystone%20Settlement%20Agreement%20(11-12-20).pdf)

[8] Interview with Cynthia Seda-Schreiber, Christina Salabert, and Kelli-Ann Dreisbach, Public Defenders, Office

of the Public Defender, Department of Mental Health Advocacy, in Trenton, N.J. (Sept. 24, 2021).

[9] New Jersey Department of Health, Division of Behavioral Health Services, *New Jersey State Psychiatric Hospitals' Family Resource Handbook* (Nov. 2018), https://www.nj.gov/health/integratedhealth/documents/hospitals/NJ_StatePsychiatricHospitalHandbook.rev.11.2018.pdf. (“11. Abstain from the use of alcoholic beverages, non-prescribed or illegal drugs either on or off the Hospital grounds. Report to staff when there are drugs/alcohol on the grounds; ... 13. Will not bring into the Hospital accept from others, or possess, items that are prohibited because they could be harmful to self or others;”).

[10] Interview with Cynthia Seda-Schreiber, Christina Salabert, and Kelli-Ann Dreisbach, Public Defenders, Office of the Public Defender, Department of Mental Health Advocacy, in Trenton, N.J. (Sept. 24, 2021). *See, eg., In re Civil Commitment of T.S.*, No. A-3844-14T2, 2016 N.J. Super. Unpub. LEXIS 861 (Super. Ct. App. Div. Apr. 15, 2016).

[11] Interview with Cynthia Seda-Schreiber, Christina Salabert, and Kelli-Ann Dreisbach, Public Defenders, Office of the Public Defender, Department of Mental Health Advocacy, in Trenton, N.J. (Sept. 24, 2021).

[12] Decompensation is “a breakdown in an individual’s defense mechanisms, resulting in progressive loss of normal functioning or worsening of psychiatric symptoms.” *Decompensation, APA Dictionary of Psychology*, <https://dictionary.apa.org/decompensation> (last visited Mar. 16, 2022).

[13] Interview with Cynthia Seda-Schreiber, Christina Salabert, and Kelli-Ann Dreisbach, Public Defenders, Office of the Public Defender, Department of Mental Health Advocacy, in Trenton, N.J. (Sept. 24, 2021).

[14] R. 4:74-7(f)(1); *See also* N.J.S.A. 30:4-27.2(m) (defining “in need of involuntary commitment”). *See also* *State v. Krol*, 68 N.J. 236, 261-262 (1975).

[15] N.J. Stat. § 30:4-27.2(r). (Emphasis added).

[16] *In re Commitment of T.J.*, 401 N.J. Super. 111, 119 (App. Div. 2008), quoting *In re S.L.*, 94 N.J. 128 (1983).

[17] *In re Commitment of T.J.*, 401 N.J. Super. 111, 119 (App. Div. 2008).

[18] N.J. Stat. § 30:4-27.2(gg).

[19] Interview with Cynthia Seda-Schreiber, Christina Salabert, and Kelli-Ann Dreisbach, Public Defenders, Office of the Public Defender, Department of Mental Health Advocacy, in Trenton, N.J. (Sept. 24, 2021).