The State Cannot Force Medications on Committed Patients Who Are No Longer Considered Dangerous

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In New Jersey, Patients Who Are Civilly Committed but Are Awaiting Discharge and Are No Longer Dangerous Cannot be Administered Medications Against Their Will

Nondangerous patients who are otherwise competent generally have a right to refuse medication. The status of committed, nondangerous patients awaiting placement had not been formally adjudicated. In *Disability Rights New Jersey v. Commissioner*, 796 F.3d 293 (3d Cir. 2015), a patient-advocacy group sued New Jersey over its policies, asserting that involuntarily medicating this group of patients is unconstitutional.

Facts of the Case

In New Jersey, a person can be civilly committed after a probable-cause hearing for up to 20 days on grounds of dangerousness due to a mental illness and unwillingness to accept treatment. At a hearing held within the 20 days, the state must show that there are grounds for continued commitment, including dangerousness, by clear and convincing evidence. Patients have rights to counsel, to be present, to present evidence, and to cross-examine witnesses. If the patient is committed, the state retains the burden of persuasion at periodic hearings. If dangerousness is not shown, the court can discharge the patient or enter a judgment of "conditional extension pending placement" (CEPP). Patients on CEPP status, while not meeting New Jersey's commitment standard, must remain in the hospital until appropriate placement is available. Their status is reviewed within 60 days of the CEPP order and then periodically. The courts had never decided whether civilly committed patients have a constitutional right to refuse medication. However, New Jersey adopted Administrative Bulletin 78–3 after a patient's challenge to involuntary medication in nonemergency situations (*Rennie v. Klein*, 462 F. Supp. 1131 (D.N.J. 1978)). The *Rennie* procedures provide a mechanism for adjudicating treatment refusals. The three-stage process includes psychoeducation, a treatment team meeting, and evaluation by the facility's medical director or designee. If that psychiatrist concurs on clinical grounds, the facility staff can forcibly medicate, with weekly review.

In August 2010, Disability Rights New Jersey, a nonprofit organization advocating for civil and legal rights of New Jersey citizens with disabilities, filed a complaint in federal district court. The plaintiffs alleged that the *Rennie* process was unconstitutional, violating the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973. The complaint requested relief, asserting that the *Rennie* process was a "rubber stamp" for the hospital to medicate patients involuntarily. It asked the court to order the state to provide judicial hearings for administration of involuntary medication in nonemergent situations for due process protection, including the requirement that the facility involuntarily medicate only patients who are incompetent to make medical decisions and know their rights.

In June 2012, while the lawsuit was pending, the state replaced the *Rennie* process with two comprehensive policies governing forcible medication in emergent (AB 5:04A) and nonemergent (AB 5:04B) situations. Under the emergency policy, a patient can be forcibly medicated for up to 3 days while imminently dangerous, but must be reassessed every 24 hours. Under the nonemergency policy, an involuntarily committed patient can be forcibly medicated only when the untreated mental illness poses a serious risk of harm to self, others, or property. The policy also specified procedures for forcible medication in nonemergent situations, including submission of a medication administration report by the treating psychiatrist, followed by a review hearing within 5 days before a three-person panel appointed by the medical director of the hospital. According to the policy, a patient has the right to be notified of the hearing, attend the hearing, testify, present evidence and witnesses, cross-examine witnesses, have legal counsel and an expert witness present, and be assisted

by an advocate. After the hearing, involuntary medication is authorized only if the chair and one other panel member agree that the substantive standard is satisfied. The patient has the right to appeal the decision to the medical director and, upon denial, medication is administered. That decision may be appealed to the Appellate Division of the New Jersey Superior Court. The initial approval of forcible medication is valid for 14 days, and the treating psychiatrist must report the medication response within 12 days. Another panel can authorize involuntary medication for up to 90 days, wherein the treating psychiatrist must provide biweekly follow-up reports. If, at the end of 90 days, the patient continues to refuse treatment, the process is repeated. This policy was applicable to all civilly committed patients, including those who had CEPP status. Disability Rights claimed that the new policy also violated the ADA, the Rehabilitation Act, and the Due Process Clause of the Fourteenth Amendment.

The district court held that New Jersey's new policy withstood Disability Rights' challenges except those pertaining to patients on CEPP. The court rejected the ADA and Rehabilitation Act claims because the policy was a legitimate safety requirement permitted by federal regulation. There was also adequate justification for deferential treatment of these patients because justification for treatment was not based on disability, but on the finding of dangerousness. The district court held further that the nonemergent procedure cannot be applied to patients who have CEPP status, because these patients have already been found nondangerous, and any relapse of their illness leading to dangerousness can be addressed through the emergent-situations policy.

The district court also rejected Disability Rights' due process claims pertaining to patients who were not on CEPP on the grounds that the policy was "strikingly similar" to the procedure the U.S. Supreme Court endorsed in *Washington v. Harper*, 494 U.S. 210 (1990). This decision permitted the state to treat dangerous incarcerated inmates with serious mental illness against the inmates' wishes. The district court agreed with Disability Rights and held that the state had "no interest in continuing to forcibly medicate" patients judged CEPP (*Disability Rights*, p 300). Disability Rights and the state filed appeals and the U.S. Court of Appeals for the Third Circuit reviewed the matter.

Ruling and Reasoning

The appellate court affirmed the district court's decision. New Jersey's policy, the court said, fulfilled the Due Process Clause, ADA, and Rehabilitation Act requirements as they applied to civilly committed patients in psychiatric state hospitals. The new policy outlines adequate procedures to administer medication involuntarily to such patients in nonemergency situations. However, patients who no longer fulfill civil commitment requirements but remain in the hospital pending appropriate placement cannot be forcibly administered medications in nonemergent situations.

In arriving at its decision, the court relied on the balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The test guides determinations of whether individuals have received due process. It balances governmental against individual interests based on three factors: how the governmental action will affect private interests; the risk of erroneous deprivation of the particular interest; and the government's interest. In cases of patients with CEPP status, using the *Mathews* test, the court noted that these patients have a substantial interest in avoiding unwarranted administration of psychotropic medication. In accordance with *Harper*, the court reasoned:

> Psychotropic medication alters and regulates the patient's cognitive processes and can trigger serious side effects. A patient's interest in avoiding such an invasion of his bodily integrity can only be greater when a court of law has already declared him fit to return to life in the community [*Disability Rights*, p 309].

The court also noted that the risk of an erroneous result is much higher if patients on CEPP are forcibly medicated without a hearing. Thus, "[w]hen New Jersey applies the policy to a CEPP patient, it effectively vacates a court's prior determination that the patient is not dangerous" (*Disability Rights*, p 309). The state's interest in refusing patients on CEPP a judicial hearing is minimal. The court found that New Jersey's updated policy violated due process rights of patients with CEPP status who had a legitimate interest in avoiding forcible medication. If the state believes that a patient has now become dangerous, a civil commitment hearing must follow.

Discussion

In this case, the Third Circuit Court of Appeals balanced an individual's right to avoid unwarranted psychotropic medications against the state's interest in forcing medications to limit dangerousness. It emphasized that medical professionals should handle decisions regarding medical treatment and reaffirmed the district court's decision to medicate individuals forcibly only for imminent dangerousness. The distinction between active civil committees and patients on CEPP is logical, given that no currently dangerous person would be ordered to CEPP status and patients on CEPP are not currently committable by ordinary standards. The court summed it up this way:

> In implementing the Policy, the State of New Jersey discharged one of its most important and daunting responsibilities: the care and custody of people too mentally ill to live in freedom. New Jersey determined that, while judges have an important role to play in the civil commitment process, matters of medical treatment are more appropriately handled by medical professionals [*Disability Rights*, p 310].

We agree that the court's nuanced reasoning will advance these adjudications.

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Retention of the Court's Jurisdiction after Conditional Release of Individual Found Not Criminally Responsible

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The Court Retains Jurisdiction for a Reasonable Time When Faced With Extending a Conditional Release Order Beyond its Original Expiration, Without Necessarily Violating Due Process

In *Harrison-Solomon v. State*, 112 A.3d 408 (Md. 2015), Aaron Harrison-Solomon was found guilty but not criminally responsible for various crimes and committed to the Department of Health and Mental Hygiene. The department filed for a four-year extension five days before expiration. Meanwhile, he was released on an order of conditional release (OCR). Approximately two months later, the court granted the department's application to extend his previous OCR, and denied his petition to alter or amend it. He then appealed to the Maryland Court of Special Appeals, which affirmed the lower court's decision. Finally, he petitioned for a writ of *certiorari*, and the Maryland Court of Appeals also affirmed the extension.

Facts of the Case

On June 15, 1999, Mr. Harrison-Solomon pleaded guilty to two counts of second-degree assault. The Circuit Court of Prince George's County found him not criminally responsible, committing him to inpatient treatment within the Department of Health and Mental Hygiene. After nine months, he was released on a three-year OCR. The OCR outlined specific guidelines: for example, that he remain on medications, reside with his mother, submit to urine drug screens, and receive his therapist's written approval for various decisions.

On December 21, 2001, Mr. Harrison-Solomon was again indicted, this time for attempted murder, armed robbery, and weapon offenses. Consequently, the circuit court rescinded his previous OCR and recommitted him to inpatient treatment. On December 12, 2002, a jury found him not criminally responsible.

In July 2006, an Administrative Law Judge (ALJ) conditionally released Mr. Harrison-Solomon. The facial duration of this order was through July 3, 2011. Slightly over three years after the conditional release, the state petitioned to revoke his OCR because he had violated its guidelines. The state's petition was granted, and Mr. Harrison-Solomon was once again committed to inpatient treatment.

On June 15, 2010, the circuit court ordered Mr. Harrison-Solomon's release per an ALJ's recommendation. The ALJ found that even though Mr. Harrison-Solomon had violated the 2006 OCR, at the present time, he did not appear to pose a threat to himself or others. Accordingly, Mr. Harrison-Solomon was released conditionally for the remaining duration of the 2006 order.

Five days before the expiration of the 2006 OCR, the state filed for an application to extend it by four