

For Immediate Release
Tuesday, May 11, 2021

**NH Supreme Court Issues Ruling in Jane Doe Case on Emergency
Department Boarding of Mental Health Patients
*Court Affirms Patient's Legal Rights Violated***

The New Hampshire Supreme Court today unanimously affirmed the State of New Hampshire violated the legal rights of a mental health patient held against her will in a hospital emergency room for seventeen days without being afforded judicial review of her detention. The Court held that New Hampshire law requires that if such persons are held against their will, they must be given access to court review within three days of their detention. The Court rejected the argument that no such review is required until the patient reaches a designated receiving facility.

In 2013, NAMI New Hampshire, together with 15 other key stakeholders, held a press conference regarding the emerging emergency department boarding crisis. NAMI NH Executive Director Ken Norton opened the press conference by stating, "Emergency department boarding is wrong medically, legally, ethically, morally, and economically."

Emergency department boarding is a visible example of the discrimination faced by people with mental illness in accessing treatment. It has been NAMI NH's position since 2013 that the intent of NH RSA 135c, which allows for involuntary emergency admissions, is that people in a mental health crisis should have immediate access to mental health treatment. The decision issued by the NH Supreme Court endorses that interpretation of RSA 135c.

This case exposes the fact that emergency room boarding of mental health patients is now common in New Hampshire. NAMI NH filed an amicus (friend of the court) brief with the New Hampshire Supreme Court in this case, noting that on many recent days more than 80 mental health patients had been involuntarily detained in emergency rooms, including record numbers of children this year. Like Jane Doe, many are held for days or weeks before an inpatient psychiatric bed becomes available. Emergency rooms are not designed to provide mental health care. Boarding violates the medical ethic rule that treatment should "do no harm" because emergency room detention can often aggravate rather than help a mental crisis, and many patients and their families report that the process of being held in windowless rooms, or in gurneys on hallways is dehumanizing and traumatizing. Hospitals, emergency departments, health insurance companies, and other key care providers do not delay other essential treatments – such as for cancer, heart disease, stroke or any other life threatening non-mental health illness. It is morally unjustifiable that mental health patients are provided less adequate

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treatment than those experiencing a physical health crisis. Moreover, emergency room boarding is economically inefficient because, aside from intensive care units, emergency departments are among the costliest of all hospital services.

NAMI NH's brief to the NH Supreme Court* established that the failure to provide patients their legal rights in emergency rooms is directly related to the long-term failure of the State of New Hampshire, its hospitals, and the health care system generally, to develop an adequate system of community-based services for people with serious mental illnesses. The emergency rooms are the entry point into a system that is overburdened at every stage, from entry, to treatment facilities, to transition arrangements that permit appropriate accommodation after a hospital stay before full re-entry into the community.

NAMI NH Executive Director Ken Norton stated, "During the past eight years, thousands of Granite Staters have experienced emergency department boarding. When justice is denied to one person, it is denied to all. Today's decision on behalf of Jane Doe is a decision in favor of all Granite Staters. We are all Jane Doe."

The NH Supreme Court has held that the State of New Hampshire must respect the constitutional due process rights of patients hospitalized with a mental illness. More broadly, the State must see this decision as a call to move rapidly to address the deeper need to provide adequate mental health treatment to its citizens. NAMI NH calls on the Department of Health and Human Services, the Department of Justice, Governor Sununu, the Legislature, Hospitals, and the Courts to work together to immediately comply with the court's decision.

* A copy of the Amicus brief filed by NAMI NH can be found here:

<https://tinyurl.com/NAMINHAMicusBrief2021>

ABOUT NAMI New Hampshire

NAMI New Hampshire is a grassroots organization working to improve the lives of all people affected by mental illness and suicide through support, education and advocacy. Learn more at NAMINH.org.