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Medical Marijuana and Pennsylvania Law Enforcement

Over the course of the past few months, I have been interning at the American Civil Liberties Union of Pennsylvania (ACLU of PA). I have worked within the Legal Intake department where my job has been to process complaints sent into the organization. My role has been to listen or read the calls, voicemails, and emails sent to the ACLU of PA and summarize them to send to an attorney to review. Throughout this experience, I have become aware of the trends and challenges that many complainants faced throughout the commonwealth. One of the issues that have been burdening Pennsylvanians pertains to medical marijuana and those who are incarcerated and on probation. On a federal level, all marijuana sales are illegal. However, in 33 states--including Pennsylvania-- using marijuana for medical purposes has been deemed legal. The Pennsylvania Department of Health's Medical Marijuana Program aims to provide access to medical marijuana for patients with severe medical conditions through a safe and effective method of delivery that balances the patient need for access to the latest treatments with patient care and safety. The implementation of this program accounts for a wide range of medical conditions including Amyotrophic lateral sclerosis, anxiety disorders, autism, cancer, including remission therapy, Crohn's disease, dyskinetic movement disorders, epilepsy, glaucoma, HIV / AIDS, Huntington's disease, inflammatory bowel disease, intractable seizures, multiple sclerosis, neurodegenerative diseases, neuropathies, opioid use disorder for which conventional therapeutic interventions are contraindicated or ineffective, Parkinson's disease, post-traumatic stress disorder, severe chronic or intractable pain of neuropathic origin or severe chronic or intractable

pain, sickle cell anemia, terminal illnesses, and Tourette syndrome. If an individual suffers from one of these conditions, they are able to register for the medical marijuana registry, get certified, and pay for an Identification card. Once an individual has a card, Pennsylvania law dictates that they have the legal right to access medical marijuana. The law protects patients from arrest, prosecution, or penalty and prohibits them from being denied any right or privilege for using marijuana. However, law enforcement authorities in some Pennsylvania counties have refused to honor state law.

Lebanon County is a county in central Pennsylvania that has had a particularly alarming reaction to the legalization of medical marijuana in Pennsylvania. Lebanon County had enacted policies banning people under supervision from using medical marijuana. The policy was based on the typical condition that individuals who are under supervision are not able to break the law without penalty. Due to the discrepancy between federal and state law surrounding marijuana use, judicial figures may be left with some ambiguity in enforcement and punishment. Although the majority of counties in Pennsylvania uphold the legitimacy of medical marijuana cards, Lebanon County Courts turned to federal statute. Defending their policy, the 52nd Judicial District of Lebanon County defended their policy stating that, “the Judicial District promulgated the Policy after the Office began to experience disruption in probation services and persistent difficulty supervising probationers and parolees who use medical marijuana”(Bittner). Regardless of their reasoning, this policy had left those who needed medical marijuana--and were verified by the state of Pennsylvania--for legitimate medical purposes without the substances they needed.

Incarcerated individuals and individuals under probation began writing to the ACLU from Lebanon County, Pennsylvania. Utilizing the complaints that were sent through the

database that I had mentioned earlier, the ACLU compiled information to file a class-action lawsuit against Lebanon County court's policies on prohibiting probation and who are registered medical marijuana patients from using their medication. The lawsuit was filed in Commonwealth Court on behalf of three people who are on probation and who are registered with the state Department of Health as certified medical marijuana patients. The nature of a class action lawsuit entails the representation of a larger group through a few members of that group. Therefore, the three individuals who the ACLU of PA are representing have assisted all people who may face the issue in Lebanon County. When describing the importance of this issue, the executive director of the ACLU of PA--Reggie Shuford-- stated that "Lebanon County is endangering our clients' well-being...Medical marijuana gives our clients' their lives back and helps them manage their daily challenges". One of the individuals who was represented in this suit was Melissa Gass, a woman who suffers from epilepsy and uses medical cannabis to help her manage her seizures. Another individual represented was Ashley Bennett. Bennett suffers from PTSD and chronic abdominal. Medical marijuana allows her to control her nausea and eat more effectively. Finally, Andrew Koch endured a motor vehicle accident in 2014 and is the third representative of the suit. Medical marijuana provides him with relief from the chronic pain that he suffers from.

I worked at the ACLU during the time in which this lawsuit had occurred. There were a considerable amount of complaints relevant to this issue that came through the system. Some were difficult to read and described situations similar to those of the individuals represented through the class action suit. I quickly understood how nonsensical it was to prohibit people in desperate need of medical help from a substance that could easily help them. After combing through several complaints pertaining to the issue, the ACLU eventually saw a victory. The

Supreme Court of Pennsylvania (SCOPA) blocked enforcement of Lebanon County Court's Policy on medical marijuana as applied to those under court supervision, including those on probation. Therefore, any person under court supervision in Lebanon County who have medical marijuana cards are able to legally continue utilizing prescribed medical marijuana until SCOPA finalizes a decision. However, even before the Coronavirus pandemic disrupted the system, SCOPA was not likely to make a final decision until next year. Without this small victory prior to the pandemic, individuals under supervision would have been stuck in legal limbo during this indefinite period of uncertainty.

While this lawsuit pertains to Lebanon County. However, there are other locations in Pennsylvania that may potentially have similar conflicts in the future. Unfortunately, the SCOPA order does not apply directly to any other county. Moreover, the ACLU has compiled a list of other counties that consider the use of medical marijuana to be a violation of community supervision. This includes Elk, Forest, Indiana, Jefferson, Lycoming, and Northampton. Meanwhile, the two largest counties in Pennsylvania, Philadelphia and Allegheny, recognize exemptions for medical marijuana use for people who are on community supervision, such as probation, parole, and accelerated rehabilitative disposition (ARD). It is essential that the rights of those who are incarcerated or under supervision are protected.

Works Cited

- “ACLU-PA Files Lawsuit Challenging Lebanon County Court Policy Prohibiting Medical Marijuana Use by People on Probation.” *ACLU Pennsylvania*, 17 Oct. 2019, www.aclupa.org/en/press-releases/aclu-pa-files-lawsuit-challenging-lebanon-county-court-policy-prohibiting-medical.
- Bittner, Jamie. “Challenge to Lebanon County's Medical Marijuana Policy Heading to PA Supreme Court.” *fox43.Com*, WPMT, 30 Oct. 2019, www.fox43.com/article/news/challenge-to-lebanon-countys-medical-marijuana-policy-heading-to-pa-supreme-court/521-75fb5031-aff6-4ad8-8a1b-1cd1ea767e4f.
- Initiative, Prison Policy. “Virus Response.” *Virus Response | Prison Policy Initiative*, www.prisonpolicy.org/virus/virusresponse.html.
- Lava, Neil. “Medical Marijuana FAQ.” *WebMD*, WebMD, 15 Dec. 2018, www.webmd.com/a-to-z-guides/medical-marijuana-faq#2-4.
- Schwartzapfel, Beth. “Probation and Parole Officers Are Rethinking Their Rules As Coronavirus Spreads.” *The Marshall Project*, The Marshall Project, 3 Apr. 2020, www.themarshallproject.org/2020/04/03/probation-and-parole-officers-are-rethinking-their-rules-as-coronavirus-spreads.
- Shelly, Nora. “ACLU Sues Lebanon County Courts over Medical Marijuana Ban for People on Probation.” *Lebanon Daily News*, Lebanon Daily News, 8 Oct. 2019, www.ldnews.com/story/news/2019/10/08/medical-marijuana-pa-aclu-sues-county-court-over-probation-policy/3844956002/.