COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR MASSACHUSETTS
Docket No.

MASSACHUSETTS APPEALS COURT
Docket No. 2025-J-0023
2025-P-0789
SUFFOLK SUPERIOR COURT
Docket No. 2486CV03220

M.B.

v.

MASSACHUSETTS DEPT OF CORRECTIONS

APPELLANT'S APPLICATION FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. A. P. 11(a), the Appellant, M.B., respectfully petitions the Supreme Judicial Court to grant direct appellate review of *Commissioner of Correction v. M.B.*, an interlocutory appeal currently pending before the Massachusetts Court of Appeals. (See Docket No. 2025-P-0789). As reasons therefore, Appellant states that the Appeals Court has certified this case involves a novel and recurring constitutional question of public importance:

> **What is the proper standard of proof the Department of Correction must meet when petitioning, pursuant to *Commissioner of Correction v. Myers*, 379 Mass. 255 (1979), for a court order to authorize involuntary medical treatment (including force-feeding) of a competent incarcerated individual on the grounds that such treatment is necessary to prevent imminent death?**

I. PRIOR PROCEEDINGS

On December 12, 2024, the Massachusetts Commissioner of Corrections filed a Petition in the Suffolk Superior Court which sought an emergency injunction against the the Appellant/ Respondent M.B. pursuant to Commissioner of Correction v. Myers, 379 Mass. 255 (1979). (See

Docket No. 2486CV03220) The Suffolk Superior Court (Deakin, J.) held hearings on December 13, 2024, and again on December 27, 2024, granting temporary injunctions against M.B. on both dates.

On January 12, 2025, M.B. filed an emergency interlocutory appeal in the Appeals Court which sought review of the Superior Court injunction by a Single Justice pursuant to G.L. c. 231, s. 118. (See Docket No. 2025-J-0023).

On January 17, 2025, the Single Justice (Toone, J.), ordered the Commissioner to file a responsive brief

> "to address the standard the Superior Court should apply in Myers cases, and whether that standard was applied to the circumstances presented in this case. The Commissioner also is requested to provide information on the status of MB's grievance regarding MB's housing placement, which, according to the transcript of the 12/23/24 hearing, has been filed."

On January 31, 2025, the Commissioner filed their responsive brief in the Appeals Court.

On February 11, 2025, a hearing was held in the Superior Court where the question as to what standard of proof should be applied to *Meyers* cases was argued. The Court (Deakin, J.) dismissed the injunction against M.B., but reserved judgment and kept the Superior Court case open pending the Court's pending request to certify the question of law and send it up to the Appeals Court.

On February 20, 2025, the Single Justice (Toone, J.) ordered the Superior Court to file a written decision in this case. On June 2, 2025, the Superior Court (Deakin, J.) filed a Memorandum of Decision in this case, finding that:

> For the reasons set out above, I conclude that proof by clear and convincing evidence is required before a court may order involuntary feeding of an incarcerated person. I further conclude that, even if proof beyond a reasonable doubt were required, the Department sustained that burden in this case.

On June 27, 2025, the Single Justice (Toone, J.) ordered that the Single Justice Petition be transferred to the Appeals Court for hearing before a full panel in accordance with Massachusetts Rule of Appellate Procedure 10(a)(3). (See Docket No. 2025-P-0789). Justice Toon reported the following question to the Appeals Court pursuant to Mass. R. Civ. P. 64 and M.A.C. Rule 1.0:

> **What standard of proof applies when, pursuant to Commissioner of Correction v. Myers, 379 Mass. 255 (1979), the Department of Correction petitions for an order authorizing the use of involuntary medical treatment, including force-feeding, because it claims that such treatment is reasonably necessary to save an incarcerated person's life?**

On July 8, 2025, the Appeals Court issued an invitation to interested parties to submit amicus briefs responding to the above-referenced reported question. This application for Direct Appellate Review from the SJC followed.

II. SHORT STATEMENT OF FACTS RELEVANT TO THE APPEAL

M.B. is a transgender woman of color serving a life sentence at MCI-Norfolk since 1981. M.B. has lived and identified as a female since the 1970's and through the present. In 1984, M.B. was convicted of the First Degree murder of her abusive partner. Since then, M.B. has been serving a life sentence (without the possibility of parole) at MCI-Norfolk. Due to M.B.'s unique medical issues and security needs, M.B. had always had a single cell. While M.B. was at a medical appointment in July 2024, the Commissioner relocated M.B. to an unsafe living situation with a violent male inmate without notice or cause or conducting the statutorily required DOC security, housing and health evaluations. The DOC also took M.B.'s property and electronics

without notice, cause or proper inventory and storage protocols.[1] The DOC failed to properly follow up on M.B.'s oral complaints, leaving M.B. afraid and her safety at risk.

In October 2024, M.B. began a hunger strike and declined medical treatment to prevent malnutrition. In December 2024, M.B. was subject to an injunction issued by the Suffolk Superior Court which allowed the Department of Corrections to make medical decisions on her behalf and use physical force to administer medical treatment to M.B., a competent inmate, against her will.

On appeal, M.B. argues that the Superior Court orders violated her rights and declined to identify or utilize appropriate standards of due process in the hearings before issuing the injunction pursuant to *Commissioner of Correction v. Myers*, 379 Mass. 255 (1979). In this case, the Superior Court:

- Failed to identify or apply a defined standard of proof for the Commissioner to meet;
- Should have applied "beyond a reasonable doubt" as the standard of proof;
- Admitted the Commissioner's submissions of laymen testimony, hearsay, and irrelevant inadmissible evidence in lieu of the expert witness testimony and admissible evidence required to prove a Meyer's case;
- Decided there was no "imminent risk of death", then erroneously denied the Petitioner's motion for required findings;
- Erroneously exceeded the scope of relief requested by the DOC and improperly granted relief and judicial discretion, even guardianship powers to a third non-party—-without a fair hearing.

III. STATEMENT OF THE ISSUES OF LAW RAISED ON APPEAL

[1] Although the confiscation of electronics is ordinarily considered a frivolous matter to people living in free society, it is not frivolous in this case where the affected inmate is cannot read and spends all day every day in her cell alone. M.B. is not afforded opportunities to work, obtain an education or join regular inmate at program due to the prison's unique security concerns. The confiscated electronics also included an electric razor, a TV and a radio. M.B. has no income, no savings and no way to replace these personal belongings.

The following issues of law have been raised on appeal and were properly preserved in the lower court:

1. **Due Process & Standard of Proof:**

   Whether due process requires that, before a court may issue a *Myers* order to forcibly treat a competent patient, the Department must prove beyond a reasonable doubt that death is imminent?

2. **Definition of "Imminent Death":**

   Whether the trial court erred in applying a vague and legally untested definition of "imminent death," and whether a standard grounded in measurable clinical evidence is required to protect patients' rights.

3. **Systemic Integrity and Least Restrictive Means of Treatment Testing.**

   Does the Commissioner have a duty to approach the Court with "clean hands" and only as a "last resort" after he has proven that there are no lesser restrictive alternative treatments available?

4. **Separation of Powers & Overreach:**

   Whether the trial court exceeded its authority by delegating the right to override a competent patient's refusal of treatment to non-party physicians at a private hospital, without due process.

5. **Eighth Amendment & Medical Ethics:**

   Whether compelled medical treatment under vague evidentiary standards violates the Eighth Amendment and undermines the ethical integrity of the medical profession, particularly where the care is administered by for-profit contractors.

6. **Discrimination & Structural Inequity:**

Whether the state's actions in this case reflect a discriminatory pattern of targeting disabled, elderly, transgender, immigrant, or limited-English-speaking prisoners under a lowered evidentiary burden.

IV. BREIF ARGUMENT

1. THE SUPERIOR COURT FAILED TO IDENTIFY THE BURDEN OF PROOF AT THE HEARINGS, BUT ULTIMATELY APPLIED THE WRONG STANDARD OF PROOF, VIOLATING THE APPELLANT'S DUE PROCESS RIGHTS AND REQUIRING REVERSAL

A. What the Commonwealth Must Prove to Prevail in a Myers Petition

Under *Commissioner of Correction v. Myers*, 379 Mass. 255 (1979), the Department of Correction may override a competent inmate's refusal of medical treatment only in extremely limited and specific circumstances. In order to prevail on a Meyers action, the Commissioner must first prove that:

1. The person is mentally competent;
2. The person has a serious, life-threatening medical condition;
3. The person is refusing medical treatment; and
4. The patient's death is imminent absent medical intervention. *Id.* at 263.

Even if these factual predicates are established, the Court may only grant relief after engaging in a constitutional balancing test.

Balancing Test: The SJC has held that "in granting the relief requested in a Myers petition, the court must find that the following four State interests outweigh an individual's right to reject life-saving medical treatment: **(1)** the preservation of life; **(2)** the protection of

the interests of innocent third parties; **(3)** the prevention of suicide; and **(4)** the maintenance of the ethical integrity of the medical profession." *Id.* at 262.

This framework recognizes that the Massachusetts courts recognize that individuals have "*a constitutional right of privacy, arising from a high regard for human dignity and self-determination, and that this right may be asserted to prevent unwanted infringements of bodily integrity.*" Myers at 261, citing Saikewicz at 739-740. Even an incarcerated persons' right to make medical decisions can't be overridden lightly or without meaningful procedural safeguards. *See Saikewicz*, 373 Mass. 728, 739–40 (1977). The government must demonstrate that its claimed interests justify such a profound intrusion into bodily integrity.

B. The State Bears the Burden of Proof, and That Burden Must Be Defined in Advance

In any *Myers* proceeding, the Commonwealth seeks extraordinary relief: the right to forcibly override the fundamental rights of a competent individual. Accordingly, the petitioning Department bears the burden of proof in *Myers* cases. *See Sullivan v. Quinlivan*, 308 Mass. 339, 342 (1941) ("A person who seeks relief under a statute bears the burden of proving that his case falls within its terms.").

The burden of proof is not a procedural formality, it is a constitutional necessity. As the U.S. Supreme Court and the SJC have repeatedly emphasized, the standard of proof defines the degree of certainty required before the government may interfere with fundamental rights of the individual respondent. The purpose of the standard of proof is to "*instruct[s] the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.*" *In re Andrews*, 449

Mass. 587, 592 (2007), quoting *Addington v. Texas*, 441 U.S. 418, 423 (1979); *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring).

Without knowing in advance what standard of proof the judge will must apply when deciding whether the Petitioner has met their burden, the parties cannot meaningfully prepare a defense or litigate. The respondent cannot reasonably understand his circumstances or anticipate what evidence must be presented. Likewise, the court cannot properly assess whether the state has met its burden. The importance of "notice reasonably calculated" to inform the parties of what is at stake is a core requirement of due process. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314–15 (1950).

Here, the Superior Court refused to identify the burden of proof that would be applied at the hearings prior to issuing injunctions that infringed on the Respondent's fundamental liberty interests. Defense counsel repeatedly requested clarification of the standard of proof to be applied during the hearings, but also launched oral motions for a required finding that the Department had failed to meet its' burden, which should have been a "beyond a reasonable doubt" standard. The trial court declined to define the burden, leaving the matter "open and ambiguous" until six (6)months later in June 2025, when, at the order of the Single Justice (Toone, J.), the Superior Court (Deakin, J.) issued a written opinion declaring that the burden applied at the December 2025 *Myers* hearing was "clear and convincing." The Superior Court's omission and concealment of the standard of proof at the time the Myers hearings occurred and prior to the injunctions being issued was not harmless. The Superior Court's error deprived M.B. of her right to prepare a defense and forced her to litigate critical liberty issues in the dark.

C. The Burden of Proof in Myers Cases Must Be Beyond a Reasonable Doubt

Myers injunctions allow prisons to use physical force impose physically invasive procedures on persons against their will, such as nasogastric feeding, chemotherapy, kidney dialysis, and other types of life saving surgeries and procedures.

The SJC has consistently applied "proof beyond a reasonable doubt" as the standard of proof in cases where the bodily autonomy and fundamental rights of competent persons may be at stake. *See Hagberg*, 374 Mass. at 276 (involuntary mental health commitment); *Andrews, petitioner*, 368 Mass. at 488–89 (commitment as a sexually dangerous person); *In re Andrews*, 449 Mass. at 593. In those cases, the Court explicitly rejected lower standards, reasoning that "*[t]hat such a standard is the closest we can come to ensuring a correct outcome when the stakes are so high illustrates our societal commitment to giving defendants the benefit of the doubt in the face of government's awesome power.*" *In re Andrews*, 449 Mass. at 593.

There is no principled reason to depart from that high standard here. The forced imposition of medical care on a competent adult is one of the most serious forms of government intrusion. As the U.S. Supreme Court observed in *Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261, 278 (1990), a competent person has a constitutionally protected liberty interest in refusing unwanted medical care. That interest does not vanish at the prison gates. *See Washington v. Harper*, 494 U.S. 210, 221 (1990) (recognizing due process protections for prisoners subject to forced treatment).

When the Commonwealth seeks to impose bodily invasion by force, particularly against a vulnerable, incarcerated individual like M.B., it must bear the burden of proving the necessity of such action beyond a reasonable doubt. No lesser standard is adequate to protect against erroneous or arbitrary deprivations of rights.

D. The Superior Court Erred in Applying the Clear and Convincing Standard

The Superior Court's application of the clear and convincing standard was legal error. The judge reasoned that because Myers petitions involve something "less than incarceration," but more than a routine civil interest, a middle-ground burden was appropriate. That analysis is flawed in three respects.

First, it mischaracterizes the scope of the liberty deprivation. The government here sought to use physical force to subject M.B. to forced feeding, IV fluids, gastric tube placement, and prolonged hospitalization against her will while M.B. remained incarcerated. The violent intrusion on M.B.'s bodily sovereignty is not simply emotionally indignant; it is brutally physical, painful, and ongoing.

Second, the Court's reliance on guardianship and pretrial detention cases is misplaced. In *Guardianship of Doe*, 411 Mass. at 525, the Court applied a lower burden in part because the court determined that the patient was legally incompetent to make medical decisions for themselves, and the guardian in the case was a private party appointed to act in a manner which would vindicate, not override, the person's rights. Here, the Court found M.B. fully competent to make medical decisions on her own behalf, and it is the State that seeks to use brute force to impose treatment on M.B. over her clear objection. That distinction is constitutionally significant.

Third, the clear and convincing standard has historically been applied only where the liberty interest is *attenuated,* such as in proceedings involving temporary pretrial detention or reputation-based classifications. See *Commonwealth v. Vega*, 490 Mass. 226, 237 (2022); *Doe No. 496501 v. SORB*, 482 Mass. 643, 649 (2019). Neither scenario compares to the bodily intrusion contemplated by a *Myers* order, which allows the prison industrial complex to use physical force to impose medical treatment on subjectively powerless inmates who don't willingly submit to the prison's demands.

In short, the Superior Court adopted a compromise standard for the sake of the appearance of "balance" in a court proceeding where prisons hold all the power and inmates are severely disadvantaged. But when fundamental rights are on the line, balance is not enough. The law demands certainty that errs on the side of the individual rights guaranteed by the Constitution.

E. Preponderance of the Evidence Is Entirely Inappropriate in Myers Cases

The Commissioner's suggestion that a preponderance of the evidence standard should apply in *Myers* is contrary to all applicable law and constitutional doctrine. This standard may be acceptable in ordinary civil disputes between two private parties, but not when the government seeks to override a person's Constitutional right to bodily autonomy and sovereignty by force.

The U.S. Supreme Court has repeatedly rejected the use of preponderance in liberty-infringing cases. *See Santosky v. Kramer*, 455 U.S. 745, 756–57 (1982) (requiring clear and convincing evidence to terminate parental rights); *Addington*, 441 U.S. at 425 (rejecting

preponderance in mental health commitments). These cases make clear that when the risk of error endangers fundamental rights, the law requires heightened scrutiny.

To allow the Commonwealth to prevail in a Myers case, without expert evidence, without defining "imminent," and without meeting a heightened burden, would be to reduce the standard of proof to little more than a coin toss. That is intolerable under our Constitution. It invites arbitrary results, undermines judicial integrity, and erodes public confidence in the legal system.

2. **TRIAL COURT ERRED IN APPLYING A VAGUE AND LEGALLY UNTESTED DEFINITION OF OF "IMMINENT DEATH." THE COURT'S FAILURE TO APPLY A LEGAL STANDARD GROUNDED IN MEASURABLE ADMISSIBLE CLINICAL EVIDENCE RENDERED FROM EXPERTS SHOULD BE REQUIRED TO PROTECT PATIENT'S RIGHTS.**

A legally valid definition of "imminent death" must be set forth by the SJC in order to ensure courts are making decisions in Myers cases that are anchored in objective, admissible clinical evidence that certain death is expected within days, not weeks or months, to ensure consistent application and to safeguard patients' constitutional rights.

In *Myers*, the SJC made clear that "imminent death" refers to an objectively identifiable and immediate medical crisis that would result in certain death within a matter of days, not weeks or months. The Court credited expert medical testimony from Myer's treating doctor that the patient would die within "three to five days" without both dialysis and kayexalate, or within "ten to fifteen days" if he took kayexalate alone. *Myers*, 379 Mass. 255, 258 (1979). The threshold set in Myers for "imminent death" reflects a concrete, clinically measurable standard of physiological deterioration resulting in "certain death" within a reasonable degree of medical certainty, not just a speculative fear or potential risk playing out in the hypothetical and distant

future. The Court's holding in Myers was predicated on the immediacy and certainty of death, not on the generalized potential for decline or couched upon institutional convenience. "Imminent" in the *Myers* framework means certain death within a narrow, immediate window of time; DAYS, not weeks or months into the future.

In the M.B. case, the trial court erred by ignoring the standard of "imminent certain death" set in Myers. Instead, the Superior Court applied its' own vague, subjective, and legally untested definition of "imminent death" that was not tethered to objective and admissible medical evidence and findings. The Commissioner presented one witness, a lay witness who was not certified to testify as an expert where she had been a licensed nurse for less than a year. Relying on the clinically unsubstantiated fears and uncertainty expressed by the Commissioner's inexperienced lay witness (a nurse from the prison had not seen M.B. in weeks or a month), the Superior Court failed to identify any specific timeline or clinical tipping point that would identify whether death was imminent. Instead, the Superior Court deferred to speculative subjective concerns about "rapid shifts" in electrolytes and the logistical time it may hypothetically take for a prison to seek court intervention for an ailing inmate. This approach departs from the standard set in *Myers* and violated the due process rights of M.B. As the Appeals Court emphasized in *In re G.P.*, 473 Mass. 112, 120 (2015), when the government seeks to override the medical rights of a patient, "*[v]ague generalities and subjective impressions are insufficient to support a finding*" on the record, and "imminent death" must be defined in days, not weeks. A constitutionally adequate standard for "imminent death" must be grounded in measurable clinical evidence of a life-threatening crisis expected within days. Otherwise, courts risk substituting subjective fears for legal thresholds and opening the door to arbitrary state intrusion.

3. **THE SUPERIOR COURT INJUNCTION WAS UNCONSTITUTIONAL BECAUSE THE COURT LACKS JURISDICTION OR AUTHORITY TO OVERRIDE A COMPETENT INMATE'S CONSTITUTIONAL RIGHTS TO DELEGATE THE INMATE'S MEDICAL DECISION MAKING AUTHORITY AND THE RIGHT TO USE PHYSICAL FORCE TO ADMINISTER TREATMENT TO ANYONE EXCEPT THE PRISON.**

In *Myers*, the Supreme Judicial Court made clear that a Myers petition is an extraordinary remedy available only to the Commissioner of Correction for use in the prison context. The Court's holding was grounded in the unique security and order concerns present in 1970's era correctional institutions, but it is not applicable in the context of general medical ethics or hospital practice. Hospitals have no statutory authority to seek court orders to override the a mentally competent patient's decision to refuse ***medical*** treatment or care, no matter how close to death that person may be. Every person in Massachusetts, regardless of prognosis, has the right to decline treatment for any reason, even if that decision will result in certain death. *Myers* does not allow the the Court to delegate the petitioning Correctional facility's rights or the rights of the responding inmate's rights in a Myers case to third parties, present or not.

Certainly the law restricted the Court in M.B. from going beyond the scope of the relief requested in the petition by the Commissioner of Corrections. The Petition filed by the Commissioner asked the court to grant an injunction to allow *the Commissioner* to override M.B.'s medical decision making rights, to allow *the Commissioner* to make medical decisions for M.B., and to allow *the Commissioner* to use physical force to administer medical treatment to M.B. against her will-in a correctional setting. All of these requests were within the scope of the Myers decision.

In this case, the Superior Court erred by granting an injunction to the Department of Corrections that granted decision making and enforcement authority (powers exclusively designated to Correctional facilities under *Myers*) to **unnamed hospital staff and outside providers**. The SJC has never recognized, and no statute provides for, the delegation of medical decision-making power over a competent patient to unnamed third parties, and the Commissioner's petition never requested that relief. Yet in this case, the trial court did exactly that; the Superior Court's injunction ceded the parties' decision-making authority to "treating clinicians" at St. Vincent Hospital, without ever naming them or identifying what standards they were to apply.

This willy nilly delegation of M.B.'s constitutional rights to due process, bodily autonomy, and to make medical decisions for herself is not only unauthorized, it is unconstitutional. In *Myers*, the Court required that any order for involuntary treatment be based on findings that **the Department of Correction** had proven that the Respondent inmate was at imminent risk of certain death and that the State's interests outweighed the patient's fundamental rights. But here, the court avoided making that determination by punting the authority to unnamed providers. Such a structure violates Constitutional due process because it strips M.B., a mentally competent adult, of her legal right to make medical decisions, without ever identifying who will make those decisions in her place or under what criteria. The order in this case replaced M.B.'s constitutionally protected autonomy and decision making authority with a vague instruction empowering "anyone except M.B.at the hospital" to make irreversible, invasive medical decisions on M.B.'s behalf. The injunction was contrary to the legal framework set out in *Myers* and the protections guaranteed by due process, and must be reversed.

4. EIGHTH AMENDMENT AND MEDICAL ETHICS: COMPELLED MEDICAL TREATMENT UNDER CONSTITUTIONALLY VAGUE EVIDENTIARY STANDARDS VIOLATES M.B.'S EIGTH AMENDMENT RIGHTS AND UNDERMINES THE ETHICAL INTEGRITY OF THE MEDICAL PROFESSION.

The reality for Massachusetts is that more inmates will likely die waiting for the Department of Corrections to provide medically necessary treatment that those inmates have requested and consented to than the reverse that is described in Myers. The Department of Corrections, if probed, may prove highly skilled at neglecting to provide Constitutionally sufficient care to those inmates in their care.

Regardless, compelled medical treatment under vague or ill-defined evidentiary standards violates the Eighth Amendment's prohibition on cruel and unusual punishment by subjecting incarcerated individuals to invasive, painful, and nonconsensual medical procedures and experiments without adequate judicial safeguards. The trial court's reliance on speculative risks and undefined timelines instead of admissible evidence and qualified expert testimony to identify clinically measurable indicators of imminent death, opens the door to arbitrary state action cloaked in the language of "care giving" to powerless inmates who serve as unwilling patients. When the state's power to override bodily autonomy is triggered not by established imminently lethal medical crisis but by institutional impatience or fear of delay, the result is not medical necessity-the consequence is unconstitutional state-sponsored coercion. The Eighth Amendment requires more than good intentions; it requires restraint, especially here in M.B.'s case where the deprivation of dignity and integrity is physical, permanent, and deeply personal.

The harm described above is compounded when court ordered medical care is delivered by force not by neutral public institutions but by private, for-profit contractors whose financial incentives often conflict with patient well-being. As M.B.'s case illustrates, the

DOC's medical care was contracted out to Wellpath, who sent their own attorney to the Superior Court to argue on the corporation's behalf. Both the DOC and the Court outsourced M.B.'s medical decisions and care to private corporate entities (Wellpath and St. Vincent's Hospital) with no transparency, accountability, or even the name of the decision-maker appointed to assume authority over M.B. The trial court's blind deference to such a system [under the guise of preventing suicide or maintaining prison order] undermines the very ethical integrity *Myers* sought to preserve. Courts cannot promote "the ethical integrity of the medical profession" while simultaneously enabling medical decisions driven by cost-cutting and legal expediency, rather than informed consent and patient-centered ethics. By permitting forced care under vague, untested standards, the court not only failed M.B., it sanctioned a model of punishment disguised as treatment.

5. DISCRIMINATION AND STRUCTURAL INEQUITY: THE STATE'S ACTIONS IN M.B. REFLECT A DISCRIMINATORY PATTERN TARGETING DISABLED, ELDERLY, TRANSGENDER, IMMIGRANT, AND LIMITED ENGLISH SPEAKING PRISONERS USING AN UNCONSTITUTIONAL LOWERED EVIDENTIARY BURDEN.

The Superior Court's decision to allow the Commissioner to obtain injunctions against powerless inmates using a lowered evidentiary burden in M.B.'s case reflects a discriminatory pattern of targeting the most vulnerable incarcerated populations; disabled individuals, transgender women, people of color, immigrants, the elderly, and those who are illiterate with limited English proficiency, for coercive medical intervention under the guise of care. These vulnerable inmates are precisely the individuals least able to navigate the prison grievance system, retain expert witnesses, or advocate for their rights in a system stacked against them. M.B., a transgender immigrant with limited English literacy, was subjected to rushed proceedings where the state controlled all discovery, withheld critical documentation, and came

armed with weeks of expert preparation in what were extremely rare legal circumstances, and M.B.'s counsel had less than 24 hours to respond, drive out to MCI-Souza Baranowski in Shirley to meet her client, then drive back to Boston to defend her client in a formal contested evidentiary hearing. M.B. is serving a life sentence and cannot hire private counsel. M.B. was not given an opportunity to meaningfully meet with her counsel and learn her rights, to conduct discovery, or to obtain experts and evidence in her own defense.

This imbalance of power between the prison industrial complex and the Commonwealth's most vulnerable inmates is not incidental; it is structural. It enables the Commonwealth to manufacture "emergencies" and exploit procedural shortcuts to force treatment on people it deems inconvenient or noncompliant. These fast-tracked *Myers* hearings are unconstitutional because they deny Respondents basic rights of due process, any real opportunity to collaborate with counsel, contest the state's claims, or present expert evidence. When the court allows *Myers* cases to proceed without a clear, high burden of proof, it does more than erode due process; it entrenches a two-tiered system of medical rights: one for free citizens and another, far more fragile, for incarcerated people from historically marginalized communities who are stuck at the mercy of the prison industrial complex. *Massachusetts can do better.*

V. GROUNDS FOR DIRECT APPELLATE REVIEW

M.B.'s case meets the criteria for direct appellate review under Rule 11(a)(1)–(4):

1. **Novel Constitutional Question:** The SJC has never decided what burden of proof applies in a *Myers* petition involving a competent patient refusing treatment. The lower courts acknowledged that no such precedent exists in Massachusetts or other jurisdictions.
2. **Conflict with Existing Precedent:** The trial court held that a "clear and convincing evidence" standard applied, but reached this decision only after the preliminary orders were

issued, without prior notice to the parties. The Appellee has argued that preponderance of the evidence is the appropriate standard in *Myers* cases. Appellant argues that the appropriate legal standard is "beyond a reasonable doubt," consistent with SJC decisions involving civil commitment and forced treatment of competent individuals, but also application of Myers in 2025 is unconstitutional given the enactment of various civil rights laws since Myers was decided (in 1979) which provide greater protections to persons from certain minority groups (such as the Americans With Disabilities Act, Olmstead v. L.C., 527 U.S. 581 (1999), the Prison Litigation Reform Act (PLRA), etc.).

3. **Substantial Public Interest:** The question is capable of repetition, yet evading review. It implicates the rights of some of the most vulnerable people in the carceral system (e.g., competent patients, including transgender and elderly prisoners), against the backdrop of a growing State reliance on for-profit prison healthcare systems and hospital systems. See *Myers*, 379 Mass. at 261. As the Court has recognized in cases such as Guardianship of Erma, 459 Mass. 801 (2011) and In the Matter of NL, 476 Mass. 632 (2017), appellate review may proceed despite mootness where a legal question is likely to recur and has systemic implications. The Massachusetts Supreme Judicial Court has traditionally treated issues involving the involuntary emergency admission and treatment of patients in hospitals as matters of public importance which "*present 'classic examples' of issues that are capable of repetition, yet evading review*." See Newton-Wellesley Hosp. v. Magrini, 451 Mass. 777, 782 (2008), quoting Acting Supt. of Bournewood Hosp. v. Baker, 431 Mass. 101, 103 (2000).
4. **Inefficiency of Further Review:** Multiple parties, including the DOC, the Attorney General, and private contractors, are now involved in Myers litigation. Fragmented lower court

rulings without statewide precedent and legal standards to provide appellate guidance risk duplicitous proceedings, further procedural chaos and unequal treatment of similarly situated litigants.

VI. CONCLUSION AND RELIEF REQUESTED

Appellant respectfully requests that this Court:

1. **Grant this application for direct appellate review;**
2. **Accept transfer of Appeals Court Docket No. 2025-P-0789;**
3. **Schedule the matter for full briefing, request amicus briefs in anticipation of oral argument.**

Respectfully submitted,
M.B., Appellant
By her attorney,

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DATE: August 6, 2025

APPEALS COURT
Full Court Panel Case
Case Docket

COMMISSIONER OF CORRECTION vs. M.B.
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
2025-P-0789

CASE HEADER

Case Status	No briefs yet
Status Date	06/27/2025
Nature	Prisoner's rights & Claims
Entry Date	06/27/2025
Appellant	Defendant
Case Type	Civil
Brief Status	Awaiting blue brief
Brief Due	08/06/2025
Arg/Submitted	
Decision Date	
Panel	
Citation	
Lower Court	Appeals Ct-Single Justice
TC Number	2025-J-0023, 2484CV03220
Lower Ct Judge	
TC Entry Date	01/13/2025
SJ Number	
FAR Number	
SJC Number	

INVOLVED PARTY	ATTORNEY APPEARANCE
Commissioner of Correction Plaintiff/Appellee Awaiting red brief Due 09/05/2025	Scott David McLean, Esquire
M.B. Defendant/Appellant Awaiting blue brief Due 08/06/2025	Anne Stevenson, Esquire Joseph A. Robinson, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
06/27/2025		IMPOUNDED INFORMATION: Due to the privacy interests at issue in this appeal, and subject to any further action by the panel designated to decide this appeal, the defendant's name is impounded. All filings in this appeal are to refer to the plaintiff as "M.B." To the extent any documents in this matter include the defendant's name, prior to filing in this court, the documents are to be redacted.
06/27/2025	#1	Lower Court Assembly of the Record Package
06/27/2025		Notice of entry sent.
06/27/2025		This case is opened without payment of fees as provided in the last sentence of the order in 25-J-0023.

06/27/2025 #2 Copy of Order from 2025-J-0023:
ORDER AND REPORT OF CASE:

This case came before me on a request of M.B., pursuant to G. L. c. 231, § 118, par. 1, for review of two Superior Court orders allowing M.B.'s treating clinicians to use involuntary medical treatment, including force-feeding. Pursuant to Mass. R. Civ. P. 64 and M.A.C. Rule 1.0, I report the case to a panel of this court for decision.

Background. M.B. was born a genetic male but has lived and identified as a female since the 1970s. She is serving a life sentence without parole in the custody of the Department of Correction (Department). In October 2024, the Department moved M.B. from her single cell at MCI-Norfolk, where she had been living for the past seven years, to a double occupancy cell with a male cellmate. On or about October 24, 2024, after the Department declined her request to return to a single cell, M.B. began refusing meals but continued to consume liquids.

On November 26, 2024, the Department transferred M.B. to the health services unit at the Souza-Baranowski Correctional Center in Shirley. On December 12, 2024, it filed in the Superior Court a petition for an order authorizing the involuntary medical treatment of a prisoner, pursuant to Commissioner of Correction v. Myers, 379 Mass. 255 (1979). Accompanying the petition was a request for a temporary restraining order authorizing, among other treatment, the forced feeding of M.B. The Department alleged that M.B., while competent to make decisions regarding her medical care and well-being, was refusing medical treatment for malnutrition and that her refusal caused her to be at imminent risk of death.

In Myers, the Supreme Judicial Court held that the Department has authority "to compel an unconsenting, adult prisoner to submit to medications . . . when such measures are reasonably necessary to save [her] life." Myers, 379 Mass. at 265. The court explained that while "a person has a strong interest in being free from nonconsensual invasion of [her] bodily integrity," along with "a constitutional right of privacy, arising from a high regard for human dignity and self-determination," that right is "not absolute" and may be enforced only "in appropriate circumstances." Id. at 261, quoting Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 738-739 (1977). Determining whether particular circumstances warrant overriding a person's right to refuse unwarranted medical treatment involves the "proper balancing of applicable State and individual interests." Myers, supra, quoting Saikewicz, 373 Mass. at 744. State interests that may justify overriding a person's right to refuse medical treatment include "(1) the preservation of life; (2) the protection of the interests of innocent third parties; (3) the prevention of suicide; and (4) the maintenance of the ethical integrity of the medical profession." Myers, supra at 262, citing Saikewicz, 373 Mass. at 741. In making this determination, a court must carefully balance "the relevant State and individual interests, the weight of which must be determined by the particular facts of each case." Myers, supra at 265.

At a hearing on December 13, 2024, the Department presented two expert witnesses: a psychiatrist and a nurse practitioner. The psychiatrist testified that M.B. was competent to make her own medical decisions but was choosing not to eat food or accept medical treatment for her malnutrition. The nurse practitioner testified that she believed M.B.'s malnutrition placed her at imminent risk of death. That day, the judge issued a temporary order allowing the Department to use reasonable force to hospitalize M.B. and to perform certain medical treatment against her wishes, but denied the Department's request to use a gastric feeding tube for nourishment, hydration, and medication.

At a hearing on December 27, 2024, the same nurse practitioner testified that M.B. was at imminent risk of electrolyte imbalances that could lead to sudden death. At this hearing, M.B. presented a doctor who, after reviewing records and meeting with M.B.'s treating physician, testified that he did not believe that M.B. was at imminent risk of death and that neither he nor M.B.'s treating physician believed that she required emergency treatment. After denying M.B.'s motion for a required finding that the Department failed to meet its burden of proving beyond a reasonable doubt that emergency medical treatment was necessary to prevent her imminent death, the judge ruled that while the Department could use reasonable force to carry out certain treatment measures, medical staff could use more invasive treatment, such as nasal and gastric feeding tubes, only if M.B.'s treating physicians agreed that she was at imminent risk of death and such treatment was necessary to prevent such death.

On January 16, 2025, M.B. filed this petition, seeking relief from the emergency preliminary injunction and temporary orders issued by the judge on December 13 and December 27, 2024. M.B. claimed that the judge erred by failing to identify and apply a particular burden of proof in entering the orders. On January 17, 2025, I issued an order requesting the Department to address the standard of proof applicable in Myers cases and whether that standard was applied in this case. I also directed the parties to immediately notify the court in the event that M.B.'s treating physicians authorized any of the feeding treatments referenced in the judge's December 27, 2024 order. On February 3, 2025, the Department filed a status report with this court stating that it had informed M.B. that, once she was stabilized, she would be returned to the prison and be provided with a single cell, and that M.B. returned to her single cell on January 29, 2025.

On February 7, 2025, I issued another order requiring status reports from each of the parties and allowing the parties to request that the judge address the standard of proof applicable in Myers cases. On June 2, 2025, the Superior Court judge issued a thoughtful memorandum of decision concluding that the applicable standard of proof required before a court may order the involuntary feeding of an incarcerated person was clear and convincing evidence, and that the Department had met that standard in this case. The judge further concluded that, even if proof beyond a reasonable doubt were required, the Department met that standard as well.

This case presents a significant question of constitutional law involving the application of the Myers decision and how the important State and individual interests at issue should be balanced when an incarcerated person engages in a hunger strike. Although it appears that M.B. is no longer refusing meals or medical treatment for malnutrition, "the question of the right of prisoners to refuse life-saving treatment in what amounts to an emergency situation is one of 'public importance, capable of repetition, yet evading review.'" Myers, 379 Mass. at 261, citing Superintendent of Worcester State Hosp. v. Hagberg, 374 Mass. 271, 274 (1978). "Other instances of inmate refusal could become factually moot by the mere passage of time before appeal, either because the untreated prisoner has died or because he has voluntarily submitted to treatment." Myers, supra. Further, as the judge noted, there does not appear to be

	authority -- "either in Massachusetts or in any other jurisdiction" -- that addresses the standard of proof applicable to determinations in these cases. Report. Pursuant to Mass. R. Civ. P. 64 and M.A.C. Rule 1.0, the following question is reported to the Appeals Court: What standard of proof applies when, pursuant to Commissioner of Correction v. Myers, 379 Mass. 255 (1979), the Department of Correction petitions for an order authorizing the use of involuntary medical treatment, including force-feeding, because it claims that such treatment is reasonably necessary to save an incarcerated person's life? The Appeals Court clerk's office is directed to assemble the record in 25-J-23 and to send notice to the parties of assembly of the record. Further, the clerk's office shall docket the appeal as 25-P-789 without the need for further payment of fees. The defendant shall be deemed the appellant for briefing purposes. See Mass. R. A. P. 5. (Toone, J.) Notice/attest/Deakin, J. .
06/27/2025 #3	ORDER: Due to the privacy interests at issue in this appeal, and subject to any further action by the panel designated to decide this appeal, the defendant's name is impounded. All filings in this appeal are to refer to the defendant as "M.B." To the extent any documents in this matter include the plaintiff's name, prior to filing in this court, the documents are to be redacted. (Toone, J.) *Notice/attest
07/08/2025	ANNOUNCEMENT: The Appeals Court invites and encourages interested parties to file amicus curiae ("friend of the court") briefs in Commissioner of Correction v. M.B., 2025-P-0789, a case civil in nature. Any party not directly involved in this case, but that has an interest or opinion about the following issues may file an amicus brief in accordance with Rules 17, 19, and 20 of the Massachusetts Rules of Appellate Procedure, on the following question: What standard of proof applies when, pursuant to Commissioner of Correction v. Myers, 379 Mass. 255 (1979), the Department of Correction petitions for an order authorizing the use of involuntary medical treatment, including force-feeding, because it claims that such treatment is reasonably necessary to save an incarcerated person's life? It is anticipated that the case will be scheduled for oral argument during the Appeals Court's 2025-2026 winter sittings. . *Notice.

As of 07/29/2025 10:15am

2484CV03220 Commissioner of Correction vs. [redacted]

- Case Type:
- Equitable Remedies
- Case Status:
- Open
- File Date
- 12/12/2024
- DCM Track:
- F - Fast Track
- Initiating Action:
- Other Equity Action
- Status Date:
- 12/12/2024
- Case Judge:
-
- Next Event:
-

All Information | Party | Event | Tickler | Docket | Disposition

Party Information

Commissioner of Correction
- Plaintiff

Alias

Party Attorney
- Attorney
- McLean, Esq., Scott David
- Bar Code
- 687557
- Address
- Massachusetts Department of Correction
  Bridgewater State Hospital
  20 Administration Road
  Bridgewater, MA 02324
- Phone Number
- (508)279-4518

More Party Information

[redacted]
- Defendant

Alias

Party Attorney
- Attorney
- Stevenson, Esq., Anne
- Bar Code
- 699431
- Address
- PO Box 1382
  Marblehead, MA 01945
- Phone Number
- (617)762-8357

More Party Information

Events

Date	Session	Location	Type	Event Judge	Result
12/20/2024 02:00 PM	Civil E	BOS-9th FL, CR 916 (SC)	Motion Hearing	Deakin, Hon. David A	Not Held
12/23/2024 12:00 PM	Civil E	BOS-9th FL, CR 916 (SC)	Motion Hearing	Deakin, Hon. David A	Rescheduled
12/27/2024 11:00 AM	Civil E	BOS-9th FL, CR 916 (SC)	Hearing on Preliminary Injunction	Deakin, Hon. David A	Held as Scheduled
02/11/2025 03:00 PM	Civil E	BOS-9th FL, CR 916 (SC)	Motion Hearing	Kim, Hon. Sarah G	Held via Video/Phone

Date	Session	Location	Type	Event Judge	Result

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	12/12/2024	03/12/2025	90	
Answer	12/12/2024	04/11/2025	120	
Rule 12/19/20 Served By	12/12/2024	04/11/2025	120	
Rule 12/19/20 Filed By	12/12/2024	05/12/2025	151	
Rule 12/19/20 Heard By	12/12/2024	06/10/2025	180	
Rule 15 Served By	12/12/2024	04/11/2025	120	
Rule 15 Filed By	12/12/2024	05/12/2025	151	
Rule 15 Heard By	12/12/2024	06/10/2025	180	
Discovery	12/12/2024	10/08/2025	300	
Rule 56 Served By	12/12/2024	11/07/2025	330	
Rule 56 Filed By	12/12/2024	12/08/2025	361	
Final Pre-Trial Conference	12/12/2024	04/06/2026	480	
Judgment	12/12/2024	12/14/2026	732	

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/12/2024	Attorney appearance On this date Scott David McLean, Esq. added for Plaintiff Commissioner of Correction		
12/12/2024	Case assigned to: DCM Track F - Fast Track was added on 12/12/2024		
12/12/2024	Petition for Order Authorizing Involuntary Medical Treatment of a Prisoner	1	Image
12/12/2024	Civil action cover sheet filed.	2	Image
12/12/2024	Plaintiff Commissioner of Correction's EMERGENCY Motion for Temporary Restraining Order Authorizing Involuntary Medical Treatment of a Prisoner	3	Image
12/12/2024	Attorney appearance On this date Joseph A Robinson, Esq. added as Limited Appearance Counsel for Defendant [redacted]		Image
12/12/2024	Notice of Limited appearance electronically filed.		Image
12/12/2024	Defendant [redacted] Motion for Funds for Independent Medical Examination	4	Image
12/12/2024	Affidavit of Counsel in Support of Motion for IME Funds		Image
12/12/2024	Certificate of Service		Image
12/17/2024	ORDER: Temporary Order See paper #5 dated (12/13/24)	5	Image
12/18/2024	Event Result:: Motion Hearing scheduled on: 12/20/2024 02:00 PM Has been: Not Held For the following reason: By Court prior to date Hon. David A Deakin, Presiding Staff: Philip Drapos, Assistant Clerk Magistrate		
12/19/2024	Endorsement on Motion for funds for independent medical examination (#4.0): ALLOWED After review, and after learning from Session Clerk Brenda Shisslak that the Department of Correction does not object to the terms of the proposed order, the Motion for Finds is ALLOWED in an amount not to exceed $2,500.00 (twenty-five hundred dollars), the amount requested in the supporting affidavit of counsel for the defendant, Anne M. Stevenson, Esq. (Dated 12/18/24) (Notice emailed 12/18/24)		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/23/2024	Event Result:: Motion Hearing scheduled on: 12/23/2024 12:00 PM Has been: Rescheduled For the following reason: Request of Defendant Hon. David A Deakin, Presiding Staff: Philip Drapos, Assistant Clerk Magistrate		
12/23/2024	Petitioner Commissioner of Correction's Assented to Motion to Continue Hearing	6	Image
12/24/2024	Endorsement on Motion to Continue Hearing (#6.0): ALLOWED by agreement and for good cause shown. (dated 12/23/2024) Notice Sent 12/30/24		Image
12/27/2024	Event Result:: Hearing on Preliminary Injunction scheduled on: 12/27/2024 11:00 AM Has been: Held as Scheduled Hon. David A Deakin, Presiding Staff: Philip Drapos, Assistant Clerk Magistrate		
12/30/2024	Affidavit of Indigency and request for waiver substitution of state payment of fees and costs filed without Supplemental affidavit ALLOWED - TRANSCRIPTS ONLY	7	
12/31/2024	Defendant [redacted] Motion for required findings that the petitioner has failed to sustain their burden as a matter of law After hearing, the Motion for required findings is DENIED without prejudice to the respondent to renew it at the close of the evidence. (Dated 12/27/2024) After further hearing, following the respondent presentation of evidence, the Motion is DENIED. (Dated 12/27/2024) Notice sent 01/02/2025,	8	Image
12/31/2024	ORDER: Temporary Order See paper #9 (Dated 12/27/2024) Notice sent 01/02/2025.	9	Image
01/08/2025	Endorsement on Motion for Funds for Independent Medical Examination (#4.0): ALLOWED After review, and after learning from Session Clerk Brenda Shisslak that the Department of Correction does not object to the terms of the proposed order, the Motion for Funds is allowed in an amount not to exceed $2,500.00(twenty-five hundred dollars), the amount requested in the supporting affidavit of counsel for the defendant, Anne M. Stevenson, Esq. (dated 12/13/2024)		Image
01/10/2025	Attorney appearance On this date Joseph A Robinson, Esq. dismissed/withdrawn as Limited Appearance Counsel for Defendant Mario Brito		
01/17/2025	Notice of docket entry received from Appeals Court Please take note that, with respect to the Petition pursuant to G.L. c. 231, s. 118 filed by [redacted] (Paper #1),on January 16, 2025, the following order was entered on the docket of the above-referenced case: ORDER (RE #1): A response from the Commissioner of Correction is requested and due on or before 1/22/25. In the response, the Commissioner is requested to address the standard the Superior Court should apply in Myers cases, and whether that standard was applied to the circumstances presented in this case. The Commissioner also is requested to provide information on the status of MB's grievance regarding MB's housing placement, which, according to the transcript of the 12/23/24 hearing, has been filed. Upon the filing of the Commissioner's response, MB may respond within 3 business days thereafter. Review of this matter is stayed pending receipt and review of the Commissioner's response, and any reply filed by MB. The Superior Court's orders that are the subject of MB's G.L. c. 231, s. 118 (par. 1) petition are not stayed and are to remain in effect. However, while this matter is pending, should MB's treating physician authorize any of the treatments described in provisions (e), (f), or (g) of the Superior Court's 12/27/24 Temporary Order, the parties are to immediately notify this court of the administration of such treatment(s). (Toone, J.) *Notice/attest/Deakin, J.	10	Image
01/23/2025	Notice of docket entry received from Appeals Court Please take note that, with respect to the Motion to enlarge time to file response filed for Commissioner of Corrections by Attorney Scott McLean. (Paper #9),on January 23, 2025, the following order was entered on the docket of the above-referenced case: RE#9: Allowed to 1/31/25. (Toone, J). *Notice/Attest IMPORTANT INFORMATION ABOUT ELECTRONICALLY FILING IN THE APPEALS COURT	11	Image
02/07/2025	Notice of docket entry received from Appeals Court Please take note that on February 7, 2025, the following entry was made on the docket of the above-referenced case: ORDER: The parties' papers and the trial court docket indicate a hearing is scheduled in this matter for 2/11/25. A status report is due from each of the parties regarding the outcome of the hearing, due on or before 2/18/25. At the hearing, the parties are not precluded from requesting the trial judge to	12	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	address the issue raised in this petition regarding the standard of proof applicable to a court's authorization of a Myers order. (Toone, J.) Notice/attest		
02/11/2025	Event Result:: Motion Hearing scheduled on: 02/11/2025 03:00 PM Has been: Held via Video/Phone Hon. Sarah G Kim, Presiding Staff: Philip Drapos, Assistant Clerk Magistrate		
02/20/2025	Notice of docket entry received from Appeals Court Please take note that, with respect to the Status report filed for Commissioner of Corrections by Attorney Scott McLean. (Paper #17),on February 20, 2025, the following order was entered on the docket of the above-referenced case: RE #17 & 18: Appellate proceedings are stayed pending further status reports from the parties, due 3/20/25 or within 7 days of the Superior Court's decision related to the standard of proof applicable to Meyers petitions, whichever date is sooner. (Toone, J.) Notice/attest	13	Image
03/24/2025	Notice of docket entry received from Appeals Court Please take note that, with respect to the ,on March 24, 2025, the following order was entered on the docket of the above-referenced case (2025-J-0023): RE##19 & 20: Appellate proceedings are stayed pending further status reports from the parties, due 4/22/25 or within 7 days of the Superior Court's decision related to the standard of proof applicable to Meyers petitions, whichever date is sooner. (Toone, J.) *Notice/attest	14	Image
06/02/2025	MEMORANDUM OF DECISION ON PETITION FOR ORDER AUTHORIZING INVOLUNTATRY MEDICAL TREATMENT OF A PRISONER (See P#15 for complete memorandum(CONCLUSION - For the reasons set out above, I conclude that proof by clear and convincing evidence is required before a court may order involuntary feeding of an incarcerated person. I further conclude that, even if proof beyond a reasonable doubt were required, the Department sustained that burden in this case. Dated: May 29, 2025 Judge: Deakin, Hon. David A Notice Sent 6/3/25	15	Image
06/27/2025	Notice of docket entry received from Appeals Court Please take note that, with respect to the ,on June 27, 2025, the following order was entered on the docket of the above-referenced case (2025-J-0023): Appellate proceedings are stayed pending a decision in 25-P-0789. Status report due within 7 days of the decision. *Notice/attest	16	Image
06/27/2025	Notice of docket entry received from Appeals Court Please take note that on June 27, 2025, the following entry was made on the docket of the above-referenced case (2024-J-0023): ORDER AND REPORT OF CASE. (See p#17 for full order)	17	Image
06/27/2025	Notice of docket entry received from Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case (2025-P-0789) was entered in this Court on June 27, 2025.	18	Image
06/27/2025	Notice of docket entry received from Appeals Court Please take note that on June 27, 2025, the following entry was made on the docket of the above-referenced case (2025-J-0023): Further ORDER: The ORDER issued this date is revised to the extent that the last paragraph is to read: The Appeals Court clerk's office is directed to assemble the record in 25-J-23 and to send notice to the parties of assembly of the record. Further, the clerk's office shall docket the appeal as 25-P-789 without the need for further payment of fees. The defendant shall be deemed the appellant for briefing purposes. See Mass. R. A. P. 5. (Toone, J.) *Notice/attest/Deakin, J.	19	Image
06/27/2025	Notice of docket entry received from Appeals Court Please take note that on June 27, 2025, the following entry was made on the docket of the above-referenced case (2025-P-0789): ORDER: Due to the privacy interests at issue in this appeal, and subject to any further action by the panel designated to decide this appeal, the defendant's name is impounded. All filings in this appeal are to refer to the defendant as "M.B." To the extent any documents in this matter include the plaintiff's name, prior to filing in this court, the documents are to be redacted. (Toone, J.) *Notice/attest	20	Image
06/27/2025	Notice of docket entry received from Appeals Court Please take note that on June 27, 2025, the following entry was made on the docket of the above-referenced case 2025-P-0789): Copy of Order from 2025-J-0023: ORDER AND REPORT OF CASE (See p#21 for full order)	21	Image
07/25/2025	Notice of docket entry received from Appeals Court Please take note that on July 8, 2025, the following entry was made on the docket of the above-referenced case: ANNOUNCEMENT: The Appeals Court invites and encourages interested parties to file amicus curiae ("friend of the court") briefs in Commissioner of Correction v. M.B., 2025-P-0789, a case civil in nature. Any party not directly involved in this case, but that has an interest or opinion about the following issues may file an amicus brief in accordance with Rules 17, 19, and 20 of the Massachusetts Rules of Appellate Procedure, on the following question: What standard of proof applies when, pursuant to Commissioner of Correction v. Myers, 379 Mass. 255 (1979), the Department of Correction petitions for an order authorizing the use of involuntary medical treatment, including force-feeding, because it claims that such treatment is reasonably necessary to save	22	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	an incarcerated person's life? It is anticipated that the case will be scheduled for oral argument during the Appeals Court's 2025-2026 winter sittings. . *Notice.		

Case Disposition

Disposition	Date	Case Judge
Pending		

COMMONWEALTH OF MASSACHUSETTS NOTIFY 15

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2484CV03220

COMMISSIONER OF CORRECTION,

PETITIONER,

vs.

M.B.,[1]

RESPONDENT.

MEMORANDUM OF DECISION
ON PETITION FOR ORDER AUTHORIZING
INVOLUNTARY MEDICAL TREATMENT OF A PRISONER

On or about October 24, 2024, the respondent, M.B., an incarcerated person, began a hunger strike protesting having to share a cell with another incarcerated person and the alleged loss or destruction of her personal property by the Department of Correction ("the Department" or "the DOC"). In December 2024, the Department filed a petition to use involuntary medical treatment, including force-feeding, to prevent M.B.'s death from the hunger strike, which was ongoing. After I entered orders – on December 13 and December 27, 2024 – permitting her treating clinicians to use involuntary medical treatment, including involuntary feeding, M.B. asked me to issue written findings setting out: (1) the standard of proof that I applied in entering the orders, and (2) the basis for

[1] Following the convention of the parties on appeal, I refer to the respondent by her initials. Further, as the respondent, although incarcerated in a prison for men, is a transgender woman, I adopt the parties' convention of referring to her by her preferred, female, pronouns.

my conclusion that the Department had sustained its burden of proving that, without such orders, M.B.'s death was imminent. This Memorandum of Decision is issued in response to that request.

In summary, I need not decide the applicable standard of proof because I conclude that, under any standard, the Department established that M.B.'s death was imminent and that, therefore, involuntary medical treatment – including forced feeding – was justified. That said, I conclude that the applicable standard of proof is clear and convincing evidence.

FACTS & PROCEDURAL HISTORY[2]

M.B., who at that time was incarcerated at the Massachusetts Correctional Institution at Norfolk ("MCI Norfolk"), began refusing meals on or about October 24, 2024. She did so to protest her transfer to a cell with a male cellmate – M.B. had been assigned to her own cell for several years prior – and what she believed was the DOC's destruction or discarding of her personal belongings.

On November 26, 2024, the Department transferred M.B. to the Health Services Unit ("HSU") at the Souza-Baranowski Correctional Center at Shirley ("SBCC" or "Souza-Baranowski"). She was transferred there because the medical facilities at MCI Norfolk could no longer meet M.B.'s medical needs as she continued her hunger strike.

The December 13, 2024, Hearing and Order

On December 12, 2024, the Commissioner of the DOC (the "commissioner") filed in this court a Petition for Order Authorizing Involuntary Medical Treatment of a Prisoner ("petition," Paper No. 1). Accompanying the petition was a request for a temporary restraining order authorizing, among other medical treatment, the forced feeding of M.B. See Emergency Motion for Temporary Restraining Order Authorizing Involuntary Medical Treatment of a Prisoner ("emergency motion" or "motion for TRO,"

[2] Except as otherwise noted, the facts set out in this section are undisputed. With respect to disputed facts, my resolution of them reflects findings that I made based on the testimony at the hearings on December 13 and 27, 2024.

Paper No. 3). The petition and the emergency motion relied on several accompanying affidavits. At the initial hearing on December 13, 2024, however, the Department relied primarily on the testimony of Adult-Gerontology Primary Care Nurse Practitioner Claire Johannes, MSN, one of M.B.'s treating clinicians.[3]

Nurse Practitioner Johannes testified that M.B. – who is 5' 10" tall and, before her hunger strike, weighed 140 pounds – weighed 104 pounds on December 12, 2024. Nurse Practitioner Johannes testified that M.B.'s body mass index ("BMI") of 14.9 meant that she was moderately to severely underweight. M.B. had missed 144 meals as of December 12, 2024, and was only intermittently drinking liquids. Nurse Practitioner Johannes testified that the primary risks M.B. faced were: dehydration; the potential for electrolyte imbalances, which can shift very rapidly in a patient who is starving; and cardiac complications, including cardiac dysrhythmias, which can lead to sudden death. In addition to cardiac complications, Nurse Practitioner Johannes explained, prolonged starvation can lead to kidney failure. Nurse Practitioner Johannes reported that, over the preceding week, M.B. had grown progressively weak, had difficulty getting out of bed, and had very limited mobility. Staff in the HSU were checking on M.B. frequently, to make sure that they could detect signs of life.

Nurse Practitioner Johannes's concern was that, in her condition then, M.B.'s electrolyte balance could shift rapidly, causing cardiac dysrhythmias and, potentially, sudden death. She testified that, with proper treatment in a hospital setting – including involuntary feeding – M.B.'s prognosis was very good. Without such treatment, Nurse Practitioner Johannes testified, M.B.'s prognosis was "very poor," and she was concerned that M.B.'s death could be imminent.

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[3] Also testifying at the hearing was Herbert Berger-Hershkowitz, MD, a psychiatrist who had evaluated M.B. on November 15 and 26, 2024. The thrust of Dr. Berger-Hershkowitz's testimony was that M.B. was competent to make medical decisions for herself – a conclusion that M.B. does not challenge.

At the conclusion of the hearing on December 13, 2024, I scheduled a further hearing[4] and issued a temporary order permitting the involuntary medical care requested by the commissioner up to, but not including, "the use of a percutaneous enterogastric tube for nourishment, hydration, and medication." Temporary Order of 12/13/25 ("December 13 order," Paper No. 5).

The December 27, 2024, Hearing and Order

Testifying at the December 27, 2024, hearing were Nurse Practitioner Johannes, for the Department, and Mark Friedman, M.D., for M.B.. I credit both witnesses' testimony fully. The dispute between them was one of medical judgment as to the imminence of M.B.'s death, rather than any dispute as to the medical facts.

Nurse Johannes testified that, after M.B. had been transferred to St. Vincent Hospital ("St. Vincent" or "the hospital") in Worcester on December 13 or 14, 2024, she was observed to be cachectic. Cachexia, Nurse Practitioner Johannes testified, is a wasting syndrome. A cachectic patient is in a hypermetabolic state in which the body has begun to break down bone and muscle because there are no remaining fat stores.

Nurse Practitioner Johannes also testified that the hospital records reflect "EKG changes." Specifically, M.B. exhibited "J-point elevations," which can be normal but can also be a sign of myocardial ischemia, an indication of a decrease in the blood supply to the heart.

Nurse Practitioner Johannes acknowledged that M.B. was not in organ failure, and thus agreed with Dr. Friedman in that respect. Nurse Practitioner Johannes testified, however, that her main concern was the risk of electrolyte imbalances, which could lead to cardiac dysrhythmias and sudden death. Nurse Practitioner described this risk as "imminent," and I credit her testimony on this point.

Nurse Practitioner Johannes further testified that, on December 19, 2024, staff at St. Vincent had initiated partial parenteral nutrition ("PPN"), which was authorized by

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[4] The further hearing was initially scheduled for December 23, 2024, but was later continued for four days by request of the Department, with M.B.'s assent.

the December 13 order. PPN is administered through a peripheral vein and can be administered only for a matter of a few days because the treatment can damage the vein. At the hospital, M.B. was eating Jello, drinking orange juice, and taking intravenous ("IV") fluids. She continued, however, to refuse solid foods.

Nurse Practitioner Johannes testified that, as of December 27, 2024, M.B. was faring better but still required hospital care because she continued to refuse solid food. Further Nurse Practitioner Johannes explained that, if M.B. were to resume eating, she would continue to require hospital care to avoid the risks of "refeeding syndrome." Nurse Practitioner Johannes explained that, if a patient who is starving resumes eating, the patient is at risk of electrolyte abnormalities that can lead to cardiac dysrhythmias, which can be fatal.

After I denied M.B.'s motion for required findings, her counsel called Dr. Friedman, who testified that M.B., although ill, was not at imminent risk of death. Dr. Friedman emphasized that M.B. was not experiencing organ failure. He also testified that she did not demonstrate physical signs suggestive of imminent death, including changes in the skin, hair, and complexion. Moreover, Dr. Friedman explained, M.B. was not suffering from a diminished ability to think and react and had not become withdrawn.

Dr. Friedman conceded that M.B. was at risk of death if she continued her hunger strike, but he concluded that death would result "in a matter of weeks," not days. Dr. Friedman could not offer testimony as to why PPN had been initiated at St. Vincent.

At the conclusion of the hearing, I made factual findings on the record, many of which are set out in the text, *supra*. As I explained on the record then, I credited the testimony of both Nurse Practitioner Johannes and Dr. Friedman. I concluded that the dispute between them was limited to the narrow question of whether to measure in hours, days, or weeks the period in which M.B.'s death might be anticipated and, thus, how to define imminence in this context.

I further concluded that Nurse Practitioner Johannes's opinion was more useful in the context of the decision with which I was faced. That is, by the time the symptoms of imminent death emphasized by Dr. Friedman – changes in skin, hair, complexion, and

mental status – manifested themselves, it likely would be too late for the Department to seek emergency court intervention. Dr. Friedman, I concluded, was describing imminent death in the medical or clinical sense. Such a definition, while valid, does not address the precise issue facing the court in such a situation – the point at which, if the court does not act, death likely will follow. Nurse Practitioner Johannes, in contrast, was describing imminence in the context of a timeframe in which court intervention might alter the fatal outcome. Nurse Practitioner Johannes's opinion as to imminence was, therefore, more useful to me than Dr. Friedman's.

At the conclusion of the December 27, 2024, hearing, I thus issued a revised temporary order, further permitting involuntary medication. In that order ("December 27 order," Paper No. 9), however, I conditioned "[t]he use of a nasogastric tube for nourishment, hydration, and medication[;] the use of partial parenteral nutrition, and the use of total parenteral nutrition" on a conclusion by M.B.'s physicians that such treatment "is necessary to prevent imminent death." December 27 Order at 2.

A further hearing on the petition was scheduled for February 11, 2025. In the meantime, counsel for M.B. requested that I reduce my findings to writing so that she might appeal the decision. Not long after the December 27, 2024, hearing, the Court was notified by the parties that M.B. had ended her hunger strike.

DISCUSSION

Competent persons have "a constitutionally protected liberty interest in refusing unwarranted medical treatment." *In re Guardianship of L.H.*, 84 Mass. App. Ct. 711, 718 (2014), quoting *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U.S. 261, 278 (1990). See also *Guardianship of Doe*, 411 Mass. 512, 517, cert. denied, 503 U.S. 950 (1992) ("The right to refuse treatment or to discontinue treatment is based on a person's strong interest in being free from nonconsensual invasions of the person's bodily integrity."). This right, however, "is not absolute and . . . may be enforced only 'in appropriate circumstances.'" *Commissioner of Correction* v. *Myers*, 379 Mass. 255, 261 (1979) ("*Myers*"), quoting *Superintendent of Belchertown State School* v. *Saikewicz*, 373 Mass. 728, 739 (1977) ("*Saikewicz*").

Determining whether a set of circumstances warrants overriding a person's right to refuse unwanted medical treatment involves the "proper balancing of applicable State and individual interests." *Myers*, 379 Mass. at 261, quoting *Saikewicz*, 373 Mass. at 744. State interests that can justify, in appropriate circumstances, overriding a person's right to refuse medical treatment are: "(1) the preservation of life; (2) the protection of the interests of innocent third parties; (3) the prevention of suicide; and (4) the maintenance of the ethical integrity of the medical profession." *Id.* at 262, citing *Saikewicz*, 373 Mass. at 741.

That a person is incarcerated "does not per se divest him of his right of privacy and interest in bodily integrity . . . ." *Id.* at 264, citing *Coffin* v. *Reichard*, 143 F.2d 443, 445 (6th Cir. 1944), cert. denied, 325 U.S. 887 (1945). A petitioner's incarceration, however, "does impose limitations on those constitutional rights in terms of the State interests unique to the prison context." *Id.*, citing *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125 (1977); *Pell* v. *Procunier*, 417 Mass. 817, 822 (1974). In balancing the relevant factors in the prison context, a court may consider

> first, that the maintenance of proper discipline and the supervision of inmates mandate an authority to administer life-saving medical treatment without consent and, second, that the State's failure to prevent . . . [an incarcerated person's] death would present a serious threat to prison order and security, not only by generating a possibly 'explosive' reaction among other inmates, but also by encouraging them to attempt similar forms of coercion in order to attain illegitimate ends.

Id. at 264. In assessing these issues, courts are required to give "wide-ranging deference to . . . the decisions of prison administrators." *Id.*, quoting *Jones*, 433 U.S. at 126. "'In the absence of substantial evidence in the record to indicate that the officials have exaggerated their response . . .', it should not be gainsaid that correctional needs in a case such as this are urgent and ought to be given considerable weight, especially when the prisoner's refusal of life-saving treatment is predicated on an attempt to manipulate . . . [the incarcerated person's] placement within the prison system." *Id.* at 264-265 (initial ellipses in original; second ellipses supplied), quoting *Jones*, 433 U.S. at 128.

I. The Standard of Proof in *Myers* Hearings

M.B. contends that I erred in failing to require the Commonwealth to prove beyond a reasonable doubt that her death was imminent before issuing an order permitting forced nutrition. M.B. further contends that the evidence did not establish beyond a reasonable doubt that her death was imminent and that, therefore, the Department should not have been permitted to administer compelled nutrition. The Department responds that the applicable burden of proof is a preponderance of the evidence and that the evidence established – by at least that standard – that M.B.'s death was imminent. Neither party has directed my attention to any authority that resolves the issue – either in Massachusetts or in any other jurisdiction – and I have found none.

In the absence of authority – controlling or otherwise – I must turn to analogous situations to discern the applicable standard of proof. Because I conclude that the standard of proof beyond a reasonable doubt is limited, at least in the Commonwealth, to circumstances in which a person is subject to incarceration or its equivalent, I conclude that the Department need not prove beyond a reasonable doubt that a prisoner's death is imminent to secure an order for forced nutrition. That said, I also conclude that impositions on a competent person's liberty or bodily integrity, short of incarceration, that nonetheless inflict discomfort and/or pain and intrude on the person's right to refuse medical care require something more than proof by a preponderance of the evidence. I thus conclude that an order of compelled nutrition requires the Department to prove by clear and convincing evidence that forced nutrition is necessary to prevent the death of an incarcerated person on a hunger strike. As noted *supra* at 2, however, had I applied a standard of proof beyond a reasonable doubt, I would have reached the same conclusion, albeit with greater difficulty.

A. Proof Beyond a Reasonable Doubt

As a general matter, the standard of proof beyond a reasonable doubt is applied in cases in which government action "deprive[s] an individual of liberty." *In re Andrews*,

449 Mass. 587, 593 (2007).[5] Thus, as the Department notes, in the Commonwealth, the proof beyond a reasonable doubt standard is applied only to criminal prosecutions, see *In re Andrews*, 449 Mass. at 592, citing *Addington* v. *Texas*, 441 U.S. 418, 423 (1979), involuntary commitments to mental institutions under G. L. c. 123, see *Superintendent of Worcester State Hosp.* v. *Hagberg*, 374 Mass. 271, 276 (1978) and petitions for indefinite commitment of an offender as a sexually dangerous person, see *In re Andrews, petitioner*, 368 Mass. 468, 488-489 (1975).[6] Although a very significant intrusion on M.B.'s autonomy and bodily integrity, an order of compelled medical treatment – including forced nutrition – does not involve a deprivation of liberty equivalent to the near-total deprivation of liberty involved in incarceration.

B. Proof by a Preponderance of the Evidence

The Department, in turn, relies on the general rule that "the fact finder in a civil case usually employs a fair preponderance of the evidence standard." *In re Andrews*, 449 Mass. at 591 (citations omitted). It also notes that a court may order the involuntary medical treatment of an incompetent person based on a preponderance of the evidence that such treatment is necessary. See *Doe*, 411 Mass. at 523. This reliance, however, is

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[5] In *In re Andrews*, the Supreme Judicial Court also noted that "the risk of stigmatization is an additional concern for defendants who are faced with conviction of a crime or commitment as a sexually dangerous persons." 449 Mass. at 593 n.8. The SJC went on to observe, however, that it did not consider the risk of stigmatization in that case – which involved a re-commitment hearing for a person already adjudicated as sexually dangerous – "as those patients have by definition already been adjudged appropriate for commitment in a mental health facility . . ." and, therefore any "additional stigma [that] would attach from a ruling that such commitment continues to be appropriate is de minimis." *Id.* This reasoning applies with equal force in this situation, in which the defendant has been convicted of first-degree murder and is serving a life sentence.

[6] In the context of a hearing for the pretrial detention of a criminal defendant under G. L. c. 276, § 58A, on grounds of dangerousness, a court may detain the defendant for a limited period on a showing of clear and convincing evidence. *Commonwealth* v. *Vega*, 490 Mass. 226, 237 (2022). There are also limited situations, not relevant in this case, in which judges must make factual findings in civil cases beyond a reasonable doubt.

unpersuasive. In the case of a patient in a persistent vegetative state, as was Doe, the guardian was "attempting to determine Doe's preference in order to vindicate Doe's rights to bodily integrity and privacy." *Id.* at 525. Determining what an incompetent person – virtually certain never to regain competency – would want done in that circumstance is often an inherently speculative endeavor. In this case, by contrast, we know precisely what M.B. wanted when she engaged in her hunger strike. Determining whether the protection of life – and the Department's interest in maintaining good order in the penal institution – warrant overriding M.B.'s wishes should require proof by a higher standard than the case in which the court seeks to determine the wishes of a patient incapable of expressing them.

C. The Clear and Convincing Evidence Standard

Although, in the past, the Supreme Judicial Court expressed skepticism about the need for a standard of proof lower than beyond a reasonable doubt and higher than a preponderance of the evidence, see *Guardianship of Roe*, 383 Mass. 415, 424 (1981) ("[W]e doubt the utility of employing three standards of proof when two seem quite enough."), quoting *Hagberg*, 374 Mass. at 276, it has since applied a clear and convincing evidence standard. See, e.g., *Vega*, 490 Mass. at 237 (temporary pretrial detention based on dangerousness); *Doe No. 496501* v. *Sex Offender Registry Bd.*, 482 Mass. 643, 649 (2019) (Sex Offender Registry Board's classification of sex offender must be established by clear and convincing evidence). A review of the cases in which the Supreme Judicial Court has applied the clear and convincing evidence standard reveals that it does so in cases in which the restriction on liberty is essentially total but in which the duration of the intrusion is limited or in which the deprivation of liberty is indefinite but the imposition on an offender's autonomy is less total. So, for example, the Commonwealth may seek the temporary detention of a criminal defendant on grounds of dangerousness based on clear and convincing evidence. *Vega*, 490 Mass. at 237. The duration of such detention, however, is limited by the provisions of G. L. c. 276, § 58A. Similarly, clear and convincing evidence is required to classify a sex offender. See *Doe No. 496501*, 482 Mass. at, 649.

In the situation of force-feeding, the restriction of liberty is not total. As the Department notes, M.B. was deprived of her liberty by her criminal conviction. See *In re Andrews*, 449 Mass. at 593 n.8. I am fully prepared, however, to accept M.B.'s representation that force-feeding involves discomfort, perhaps serious discomfort, at the least and, quite possibly, pain. It is, therefore, further distinguished from involuntary medication of incompetent persons, which, generally, involves much less intrusive procedures. Force-feeding thus involves a degree of intrusion greater than involuntary medication, although it involves a deprivation of liberty less total than incarceration. It follows that the standard of proof applicable in force-feeding cases ought to be higher than in forced medication of incompetent patients but less than that for incarceration. The clear and convincing evidence standard, therefore, suggests itself as appropriately stringent.

II. Imminent Death

The testimony in this case, from Nurse Practitioner Johannes, for the Department, and Dr. Friedman, for M.B., is at least as notable for its consistency as for its contradiction. Both witnesses agree that, as of December 27, 2024, M.B. had refused solid §food for almost two months. They agreed that this lack of nutrition had seriously compromised her health. Dr. Friedman did not contradict any of Nurse Practitioner Johannes's conclusions regarding the risks M.B. faced, including: dehydration; the potential for electrolyte imbalances, which can shift very rapidly in a patient who is starving; and cardiac complications, including cardiac dysrhythmias, which can lead to sudden death. Dr. Friedman did not contest Nurse Practitioner Johannes's conclusion that M.B. was cachectic. He did not contest that M.B. had demonstrated "J-point elevations" or that she would require hospitalization if she began to eat. Similarly, Nurse Practitioner Johannes did not challenge Dr. Friedman's conclusion that, as of the December 27, 2024, hearing, Ms. Birto was not in organ failure.

The only substantial disagreement between Nurse Practitioner Johannes's testimony and Dr. Friedman's was their definition of imminence. Nurse Practitioner Johannes opined that M.B. was at risk of death in a matter of days, if not hours. Dr. Friedman concluded that M.B.'s death was more likely to occur within weeks, rather than days. I found Nurse Practitioner's testimony substantially more persuasive on this point.

Fundamentally, however, I conclude that Nurse Practitioner Johannes and Dr. Friedman were approaching the concept of imminence from different perspectives. Black's Law Dictionary defines *imminent* as, "threatening to occur immediately, dangerously impending." Black's Law Dictionary (12th ed. 2024). Dr. Friedman's definition of *imminent* appears to be a strictly medical one. Death is imminent, in Dr. Friedman's view, when the patient enters organ failure and/or experiences physical changes – in skin, hair, or complexion – or mental changes indicative of oncoming organ failure. I have no reason to question this, as a strictly medical matter, but it does not appear to be a useful definition for a judge deciding whether to order forced nutrition. By the time death is imminent in Dr. Friedman's sense, it is likely that nothing that a court could do could alter the outcome. This, obviously, is not a helpful definition for a court to apply in this context.

Nurse Practitioner Johannes, by contrast, applies a definition of imminence that acknowledges that it takes time for the Department to file an emergency petition for compelled nutrition and for the court to act on it. Thus, Nurse Practitioner's definition of imminence is more useful – and, therefore, appropriate – for a court to apply. I thus accept her definition of imminence and her conclusion that M.B. was at a substantial risk of death at any moment. Her death, therefore, was imminent, in the legal sense, on December 13, 2024, and an order of forced nutrition was appropriate.

By December 27, 2024, the situation had changed. As a result of the use PPN, as authorized by the December 13, 2024, order, M.B.'s condition had improved somewhat. Although I continued to accept Nurse Practitioner Johannes's opinion that M.B.'s continued hunger strike placed her at a substantial risk of death, it was clear that the use of PPN had led to some improvement in her condition. I, therefore, modified my initial

order to permit forced nutrition only after confirmation from M.B.'s treating clinicians that, in their opinions, her death was imminent.

Also on December 27, 2024, a further hearing was scheduled for February 11, 2025, to address these issues further. That hearing became unnecessary, however, after M.B. discontinued her hunger strike.

CONCLUSION

For the reasons set out above, I conclude that proof by clear and convincing evidence is required before a court may order involuntary feeding of an incarcerated person. I further conclude that, even if proof beyond a reasonable doubt were required, the Department sustained that burden in this case.

David A. Deakin
Associate Justice

Dated: May 29, 2025