Executive Office of Public Safety and Security John H. Melander, Jr., Esq.
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RE: 501 CMR 17.00, et. sec. Medical Parole
Request for Comments and proposed changes,
Due on or before 9/16/20 10:00 AM Dear Mr. Melander,

I am an elder prisoner in the custody of the MDOC and very interested in proposing changes to the above referenced Regulation/s. Thank you for this opportunity to express my comments and suggested changes.

1. A Preamble should be included to the Regulation that informs the parties of a petition for Medical Parole, pursuant to G.L. c. 127, s119A. s119A in particular should inform the prisoner (petitioner) that the very nature of such petition invokes the protections of Title II of the Americans with Disabilities Act (Amended) of 2008 (ADAAA), 42 U.S.C., ss12131 et. seq., the Rehabilitation Act (RA), 29 U.S.C., s 794, and the Massachusetts Equal Rights Act (MERA), G.L. c.127, s103, as well as all relevant federal regulations, e.g., Department of Justice (DOJ), 28 CFR 35.101 et. seq..

The above would be in keeping with the directives of the Supreme Judicial Court. See Crowell v. Massachusetts Parole Board, 477 Mass. 106, 111 (2017) - (in Parole proceedings, parole and correctional authorities should "consider adequately the application of the ADA and our own constitutional and statutory provisions."); See also, Buckman v. Commissioner of Correction, 484 Mass. 14, 29 n.24 (2020) ("ADA requires Parole Board to make reasonable accommodations for prisoners with disabilities to give them access to benefits of State program.")

The application of the ADAAA to s 119A proceedings is particularly appropriate in areas of medical evaluations of a prisoner where most, if not all, evaluations include statements by the "licensed physician" that the medical condition is well controlled by medication or some other mitigating measures. ADAAA Statutory and Regulatory provisions prohibit the consideration of amellorative effects of mitigating measures, such as medication. See 42 U.S.C., s12102(4)(E), and 2B CFR 35.108(d)(1)(viii); Turcotte v. Comcast Cable Comm., LLC, 2019 DNH 024 (DNH 2019), ("diabetes will be assessed in terms of its limitations on major life activities when diabetic does not take his insulin injections.").

Please Note: The application of the above ADAAA and DOJ Regulations to s 119A medical evaluations is currently the subject of a current pending Civil Action in Suffolk Superior Court; Emmett S. Muldoon v. Department of Correction, et.al., - Docket # 2084cv01978H. (for: INJUNCTIVE RELIEF) In Particular, the issue of whether Title II of the ADAAA preempts the medical evaluation procedure under s 119A(a) is before the court.

2. 501 CMR 17.03. Petitioners physician of choice: Under s 119A(c)(1), it provides; "(ii) a written diagnosis by a physician licensed to practice medicine under section 2 of chapter 112;"

In the original medical parole regulations, at 501 CMR 17.03(3)(b), it explicitly granted the petitioner, in lieu of "a medical provider utilized by the Department," the right to obtain his/her own physician and diagnosis, i.e., "or a medical provider identified by the petitioner." The Court in Buckman supra, voided section 17.03(3) in its entirety, including subparagraphs (3)(b), other grounds. Id., pg.33. This right of a petitioner to choose his/her own physician to evaluate his/her medical impairments has been REMOVED from the proposed amended regulations. See, e.g., section 17.03. Although the clause, "as determined by a licensed physician," remains unchanged in the definitions for "Permanent Incapacitation" and "Terminal Illness," at 501 CMR 17.02, that phrase will without a doubt be construed narrowly to prohibit petitioners from relying on his/her own physician and an independant evaluation. The stautory right to a physician under s 119A(c)(1)(ii) should be made EXPLICIT.

It should be recognised that there exists an obvious CONFLICT OF INTEREST between the DOC's Contracted medical provider as a paid employee (contractor) of the Department and that the DOC has a long (sad) history of imposing it's desires and outcomes upon the "Medical Provider" and medical staff employees.

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Furthermore, outside of proposed changes in the above regulations:

Qualified prisoners (with demonstrated "good conduct" - regardless of sentence structure) over the age of 60, having served 20+ years of incarceration, and who have serious medical conditions should be remanded to the care of the Department of Health and Human Services and seriously considered for a PRESUMPTIVE Medical Parole.

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I thought that you (and/or other colleagues) may be VERY interested in this. Those of us in the Norfolk Lifer's Group seriously appreciate the work you and others are doing.

Very truly, 9/08/20 7:40 PM

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