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M.R.,	)	SUPREME COURT OF NEW JERSEY DOCKET NO. 089371
Appellant-Petitioner,	)	<u>Civil Action</u>
v.	)	
NEW JERSEY DEPARTMENT OF CORRECTIONS,	)	On Petition Granted from a Final Judgment of the Superior Court of New Jersey, Appellate Division
Respondent-Respondent.	)	Sat Below: Hon. Allison Accurso, P.J.A.D. Hon. Francis J. Vernoia, J.A.D. Hon. Katie A. Gummer, J.A.D.

SUPPLEMENTAL BRIEF ON BEHALF OF RESPONDENT NEW JERSEY DEPARTMENT OF CORRECTIONS

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PRELIMINARY STATEMENT

This case turns on the proper interpretation of the Compassionate Release Act (CRA), N.J.S.A. 30:4-123.51e. Under the CRA, an inmate seeking release must obtain a "medical diagnosis" by "two licensed physicians designated by the commissioner" of the Department of Corrections to determine if he suffers from a terminal condition or permanent physical incapacity, as those terms are defined in the statute. The CRA provides that any diagnosis offered by these physicians shall include a description of the terminal condition, the prognosis concerning the likelihood of recovery, a description of the inmate's physical incapacity, if appropriate, and a description of any ongoing treatment that may be required. N.J.S.A. 30:4-123.51e(b); N.J.A.C. 10A:16-8.5. The CRA does not, however, require these physicians to conduct physical examinations of every inmate who seeks compassionate release, and instead leaves it to their discretion and expertise whether a physical examination is necessary. Further, the CRA does not, as Petitioner M.R. argues, require the doctors to make "detailed findings" to support their determinations regarding an inmate's eligibility for compassionate release. Rather, the doctors are required to make findings regarding the four criteria included under N.J.S.A. 30:4-123.51e(b).

As the Appellate Division found, the plain language of the CRA says nothing about requiring a physical examination of an inmate seeking

compassionate release. Instead, the CRA and its implementing regulation merely requires the two designated physicians to make a "medical diagnosis" and then enumerates the requisite elements of that diagnosis, none of which are a physical examination. Indeed, the word "examination" appears nowhere in N.J.S.A. 30:4-123.51e, and the Legislature's consistent differentiation between "physical," "mental" and "medical" examinations elsewhere in the statute books confirms that when it intends to impose a "physical examination" requirement, it does so expressly. Dictionary definitions point in the same direction, as at least two medical dictionaries contain definitions of "diagnosis" and "examination" that do not define those terms to include a physical examination.

Furthermore, the Legislature enacted the CRA against the backdrop of established medical practice, which, in M.R.'s case, did not require a physical examination. Instead, the relevant medical guidelines for Adult Medulloblastoma advise medical providers to follow up surgical intervention with MRI brain scans on a staggered basis beginning with every three months for two years following surgery. The record below reveals that M.R.'s doctors followed this procedure, as the Appellate Division noted in its opinion.

Finally, the CRA does not require detailed findings by the designated doctors explaining their medical diagnosis. M.R. identifies nothing in the CRA's text imposing requirements regarding the content of the doctors' reports

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in making a diagnosis. The CRA's purpose was to place the initial eligibility review in the hands of doctors, rather than the Department. Thus, the proper content of the doctors' reports regarding their eligibility determination is for the doctors to decide, consistent with established medical practice. M.R.'s argument that more detailed findings are necessary for appellate review also misunderstands the administrative scheme. While an inmate can appeal the denial of a Certificate of Eligibility and argue that the Department did not follow the procedural requirements governing the eligibility review, they cannot seek judicial review of the doctors' medical conclusions regarding whether the inmate satisfies the criteria for finding a terminal illness or permanent physical incapacity. Simply, a doctor's diagnosis is not administrative action, and doctors' medical conclusions are not subject to judicial review.

For all these reasons, the Court should reject M.R.'s arguments that the CRA requires doctors to perform physical examinations and to provide more detailed information about an applicant's medical condition, and should affirm the Appellate Division's decision.

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

In 2020, the Legislature passed the CRA, N.J.S.A. 30:4-123.51e, which replaced the prior medical parole law, N.J.S.A. 30:4-123.51c. M.R. v. New Jersey Dep't of Corr., 478 N.J. Super. 377, 380 (App. Div. 2024). The new compassionate release statute, which went into effect on February 1, 2021, was enacted following the New Jersey Criminal Sentencing and Disposition Commission's November 2019 Report recommending that the state allow compassionate release beyond what was permitted under the medical parole law. Ibid.

Under the CRA, any inmate seeking release must obtain a "medical diagnosis" by "two licensed physicians designated by the commissioner" of the Department. N.J.S.A. 30:4-123.51e(b). If an inmate obtains the requisite medical diagnosis that "determines that [he] is suffering from a terminal condition, disease or syndrome, or permanent physical incapacity," his eligibility to apply for compassionate release is triggered. N.J.S.A. 30:4-123.51e(d)(2). A "terminal condition, disease, or syndrome" is defined as a prognosis by the designated physicians that the "inmate has six months or less to live." N.J.S.A. 30:4- 123.51e(l). "Permanent physical incapacity" is the

[1] Because they are closely related, the procedural history and counterstatement of facts are presented together for efficiency and the Court's convenience.

prognosis that "an inmate has a medical condition that renders the inmate permanently unable to perform activities of daily living, results in the inmate requiring 24-hour care, and did not exist at the time of sentencing." Ibid.[2] Upon the inmate receiving either of those diagnoses, the statute requires that DOC "shall promptly issue to the inmate a Certificate of Eligibility for Compassionate Release." N.J.S.A. 30:4-123.51e(d)(2).

Upon completion of the required examinations, the two designated physicians "shall forward their attestations, and all related medical records, to the health services unit medical director for review. Following review of the medical records, the medical director shall make a medical determination of eligibility or ineligibility and issue a memo to the Commissioner of the Department of Corrections detailing the same." N.J.A.C. 10A:16-8.6(a). If the

[2] There is a third classification: a "grave medical condition" is defined as having "more than six months but not more than 12 months to live" or "a medical condition that did not exist at the time of sentencing and for at least three months has rendered the inmate unable to perform activities of basic daily living, resulting in the inmate requiring 24-hour care." N.J.S.A. 30:4-123.51e(l). However, a diagnosis of a "grave medical condition" does not establish eligibility to apply for compassionate release. Rather, a grave medical condition diagnosis anticipates potential deterioration, and the statute sets forth process requirements to allow the inmate to be able to petition for release should his health suffer further decline. N.J.S.A. 30:4-123.51e(d)(1). Indeed, a petition seeking compassionate release "shall not be filed until a subsequent medical diagnosis determines that the inmate is suffering from" a more advanced medical condition: "a terminal condition, disease, or syndrome" or "a permanent physical incapacity." Ibid.

inmate is deemed eligible for compassionate release, the Commissioner will sign a Certificate of Eligibility. After a compassionate release package (Compassionate Release Request Form, medical records, attestations, memo to the Commissioner and Certificate of Eligibility, if issued) is completed, the health services unit shall forward the package to the Department's Division of Operations for review and notification to the inmate regarding eligibility. N.J.A.C. 10A:16-8.6(c)-(d).

After receiving a Certificate of Eligibility, the inmate may file a petition for compassionate release with the Superior Court. N.J.S.A. 30:4-123.51e(e). If the court does not receive an objection from the prosecutor or notice that a victim or family heard wishes to be heard, the court may make a determination on the petition without holding a hearing. N.J.S.A. 30:4-123.51e(e)(7). If the prosecutor objects or if a victim or family member wishes to be heard, the court shall conduct an expedited hearing on the petition. The court determines whether there is "clear and convincing evidence that the inmate is so debilitated or incapacitated by the terminal condition, disease, or syndrome, or permanent physical incapacity so as to be permanently physically incapable of committing a crime." N.J.S.A. 30:4-123.51e(f)(1). If so, the court may order compassionate release of the inmate. Ibid. In cases where the inmate has a permanent physical incapacity, the court must also find by clear and convincing evidence that the

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inmate's release plan, which is issued by the State Parole Board, "would not pose a threat to public safety." Ibid.

Petitioner, M.R., was an inmate at Northern State Prison. M.R.'s medical records confirmed that he underwent surgery and other treatment for medulloblastoma, a malignant form of brain cancer. M.R., 478 N.J. Super. at 382. A February 4, 2021 chart note stated that M.R. has a past medical history of diabetes, "medulloblastoma [status post] tumor resection and C1 and partial C2 laminectomy on 1/14/21." Ibid. Subsequent medical records from September and November 2022 specifically described the successful treatment that M.R. received for medulloblastoma, including "'chemo and radiation treatment and craniectomy suboccipital resection cerebellar tumor.'" Ibid. Under an "Oncology Follow-up Visit" heading in the November 2022 record, his current treatment was described as "none." Ibid. Another November 2022 medical record stated, under the heading "Chronic Care Assessment & Plan," that "'[n]o evidence of any mass lesion in last [Magnetic Resonance Imaging (MRI)] brain in 9/2022,'" that there was "'no evidence of any metastasis in MRI spine" in September 2022, and that M.R. had a follow-up MRI of his head scheduled for December 2022. Ibid.

On or about February 9, 2023, M.R. submitted a compassionate release request to the Department to determine his eligibility for compassionate release

under N.J.S.A. 30:4-123.51e. Ibid. In response to this request, Drs. Jeffrey Pomerantz, M.D., and Ruppert Hawes, M.D., reviewed M.R.'s medical records to determine if he satisfied the criteria for compassionate release. M.R., 478 N.J. Super. at 383.

Dr. Pomerantz reviewed M.R.'s medical records and issued a report on February 9, 2023 regarding his eligibility for compassionate release. Ibid. The report noted that M.R.'s diagnoses included medulloblastoma, type two diabetes, and hyperlipidemia, and that he suffered from a terminal condition, disease, or syndrome. Ibid. However, Dr. Pomerantz further found that M.R. did not suffer from a permanent physical incapacity, "meaning he did not believe M.R. was unable to perform two activities of daily living such that he needed 24-hour care." Ibid. Dr. Pomerantz observed that M.R.'s "neurologist [had] document[ed] 'progressive neurological deficits with ataxic gait, speech dysarthia, and loss of dexterity on his hands predominantly on the right'" and that M.R. used a walker and wheelchair. Ibid. Dr. Pomerantz also concluded that M.R. would continue to require oncologic and neurologic care "as well as generalist control of [his diabetes and] hyperlipidemia." Ibid.

Dr. Hawes reviewed M.R.'s medical records and issued a report on February 16, 2023 regarding his eligibility for compassionate release. Ibid. Dr. Hawes noted that M.R.'s diagnosis included medulloblastoma, diabetes, and

hyperlipidemia. Ibid. Dr. Hawes concluded that M.R. did not suffer from a terminal condition, disease, or syndrome, and he did not suffer from a permanent physical incapacity requiring 24-hour care. Ibid. Dr. Hawes concluded that M.R. would continue to require oncologic and neurologic care, as well as continued management of his diabetes and hyperlipidemia, and that he had an ongoing need for physical and speech therapy "due to residual neurologic deficits (dysarthria, cranial 7 palsy, lack of coordination)." Ibid.

On February 22, 2023, Dr. Herbert Kaldany, the Department's Director of Psychiatry and Acting Medical Director, issued a memorandum to the Corrections Commissioner regarding M.R.'s request for compassionate release. Ibid. In the memo, Dr. Kaldany stated that, based on Drs. Hawes' and Pomerantz's reports, "there is no evidence that [M.R.] is suffering from a terminal condition, disease or syndrome, or permanent physical incapacity." M.R., 478 N.J. Super. at 383-84. Dr. Kaldany further reported (incorrectly) that both doctors' attestations stated that M.R. did not have a diagnosis that has a prognosis of less than six (6) months. M.R., 478 N.J. Super. at 384. Dr. Kaldany concluded that, pursuant to N.J.S.A. 30:4-123.51e(d)(2), M.R. was not medically eligible for consideration for compassionate release. Ibid.

On February 27, 2023, Lisa Palmiere, the Director of Classification for the Department's Division of Operations, issued correspondence to M.R.

notifying him of the decision to deny his request for a certificate of compassionate release under N.J.S.A 30:4-123.51e. Ibid.

M.R. appealed to the Appellate Division from the Department's February 27, 2023 final decision denying his request for a certificate of compassionate release. Ibid. After the filing of the notice of appeal, the Department moved for a remand to reevaluate M.R.'s request for compassionate release "in light of the fact that the two doctors who [had] evaluated M.R. . . . reached different conclusions about his eligibility." Ibid.

On August 22, 2023, in response to the remand, Drs. Pomerantz and Hawes prepared updated reports regarding M.R.'s prognosis and his eligibility for compassionate release. Ibid. In his updated report, Dr. Pomerantz indicated that, contrary to his initial report, M.R. did not suffer from a terminal condition nor from a permanent physical incapacity requiring twenty-four-hour care. Ibid. As the Department explained in its decision following remand, there was no change in M.R.'s prognosis, but rather, in his February 9 report, Dr. Pomerantz had made an error in indicating that M.R. had a terminal illness when he intended to indicate otherwise. (Cra1).[3] In his updated report, Dr. Hawes noted

[3] "Psb" refers to petitioner's supplemental brief and "P2ca" refers to the confidential appendix to petitioner's supplemental brief. "Cra" refers to the confidential appendix to the Department's Appellate Division brief, and "Scra" refers to the confidential appendix to the Department's supplemental brief.

that, "[a]s of 7/17/23, there was no evidence of recurrence [of cancer] on MRI," and again indicated that M.R. did not suffer from a terminal condition or from a permanent physical incapacity requiring twenty-four-hour care. M.R., 478 N.J. Super. at 385.

On August 23, 2023, Dr. Kaldany issued an updated memorandum to the Commissioner regarding M.R.'s request for compassionate release. Ibid. Dr. Kaldany stated that Drs. Pomerantz and Hawes had prepared new reports following the remand, and that, based upon his review of those reports, there was no evidence that M.R. was suffering from a terminal condition, disease or syndrome, or permanent physical incapacity. Ibid. Dr. Kaldany further noted that M.R. was "'currently undergoing adjuvant chemotherapy with craniospinal radiation treatment,' that a July 17, 2023 MRI had shown no evidence of recurrence, and that M.R. would 'need repeated MRIs to monitor his condition.'" Ibid. Dr. Kaldany concluded that, pursuant to N.J.S.A. 30:4-123.51e(d)(2), M.R. was not medically eligible for consideration for compassionate release. Ibid.

On August 24, 2023, Palmiere issued correspondence to M.R. notifying him of the updated decision to deny his request for a certificate of compassionate release on the basis that he did not have a terminal condition or a permanent physical incapacity. Ibid.

M.R. filed an amended Notice of Appeal to include the August 24, 2023 decision. Ibid.

On April 19, 2024, the Appellate Division issued a published opinion affirming the Department's decision, rejecting M.R.'s arguments that the Department failed to comply with the CRA and its implementing regulations by not physically examining M.R. and had failed to make requisite findings in determining his medical eligibility for compassionate release. M.R., 478 N.J. Super. at 380.

On May 15, 2024, M.R. filed a petition for certification, which the Department opposed. On May 28, 2024, M.R. filed a renewed request for compassionate release due to recent deterioration in his medical condition. (Scra1). This was confirmed by an MRI, performed on May 12, 2024, which indicated a recurrence of M.R.'s brain tumor. (Scra2). In addition, an oncologist and a neurologist concluded that M.R. was not eligible for surgery or chemotherapy "due to high risk of complications and low benefit in preserving function." Ibid. On June 5, 2024, the Department determined that M.R. was medically eligible for compassionate release after two doctors found that he was suffering from both a terminal condition and a permanent physical incapacity. (Scra4). On June 12, the Commissioner of the Department of Corrections signed the certificate for compassionate release. (P2ca1). On June 17, 2024, M.R.

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passed away. (P2ca2).

On July 26, 2024, this Court granted the petition for certification.

ARGUMENT

POINT I

NEITHER THE CRA NOR ITS IMPLEMENTING REGULATIONS CATEGORICALLY REQUIRE PHYSICAL EXAMINATIONS OF INMATES SEEKING A CERTIFICATE OF COMPASSIONATE RELEASE

Nothing in the CRA's plain language categorically requires the two designated doctors to conduct a physical examination prior to every eligibility determination under the Act. The Legislature spelled out specific requirements for the compassionate release process, including that the physicians be licensed, but did not require physical examinations. N.J.S.A. 30:4-123.51e(b). Had the Legislature intended for the CRA to require physical (in-person) examinations prior to diagnosis, it would have said so clearly. This plain-text reading is consistent with established medical practice, which does not require a physical examination for every diagnosis, and with the CRA's purpose to minimize administrative burdens that delay this eligibility process. To the degree any ambiguity remains on this question, the Department's interpretation of the CRA and its implementing regulations is entitled to deference. The Appellate Division thus correctly rejected M.R.'s reading of the CRA to categorically

require the designated physicians to physically examine an applicant to determine their medical eligibility for compassionate release.

A. The plain language of the CRA and its implementing regulation do not require physical examinations.

Begin with the CRA's plain text. The paramount goal of all statutory interpretation is to carry out the Legislature's intent. Nicholas v. Mynster, 213 N.J. 463, 480 (2013) (citing Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012)). Accordingly, courts give the words in a statute "their ordinary meaning and significance." DiProspero v. Penn, 183 N.J. 477, 492 (2005). Courts must construe a statute sensibly and consistent with the objectives that the Legislature sought to achieve, "so as to give sense to the legislation as a whole." Ibid.; see Burnett v. Cnty. of Bergen, 198 N.J. 408, 421 (2009). Thus, if the statute's plain language reveals the Legislature's intent, the Court's "task is complete." Conforti v. Cnty. of Ocean, 255 N.J. 142, 163 (2023). Only if "there is ambiguity in the statutory language that leads to more than one plausible interpretation," or "if a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language" should courts resort to extrinsic evidence, such as legislative history. DiProspero, 183 N.J. at 492-93.

Here, the plain language of the CRA reveals the Legislature's intent to require a specific diagnosis, but says nothing about the designated doctors'

discretion in choosing the procedures used to render a diagnosis. Under the statute, courts may consider compassionate release of an inmate after a medical diagnosis of either a "terminal condition" or "permanent physical incapacity" by two licensed physicians. N.J.S.A. 30:4-123.51e(b). To aid the court in interpreting whether a diagnosis is terminal or permanent, the statute specifies that this medical diagnosis must: (1) describe the terminal condition; (2) provide a prognosis concerning the likelihood of recovery; (3) describe the inmate's physical incapacity; and (4) describe any required ongoing treatment. Ibid.

M.R. offers no textual support for his argument that the two physicians must always "physically examine" the inmate to make a diagnosis. Neither these words, nor any synonyms, appear in the text, and M.R. cites no precedent interpreting the statute as such. See M.R., 478 N.J. Super. at 388 (noting the CRA "enumerates the requisite elements of" a medical diagnosis, "none of which is a physical examination."). Instead, M.R. cites to a single online dictionary defining "diagnosis" as "the making of a judgment about the exact character of a disease or other problem, esp. after an examination, or such a judgment." (Psb11) (emphasis in original). But, first, the phrase "esp[ecially] after an examination" is not essential. It merely provides an example of a single context in which the word can be used. Moreover, medical dictionaries do not define the terms "diagnosis" and "examination" to require a physical

examination in every case.

For instance, the American Heritage Stedman's Medical Dictionary defines "diagnosis" as the "determination of the nature of a cause of a disease" or "a concise technical description of the cause, nature, or manifestations of a condition, situation, or problem." *Diagnosis*, American Heritage Stedman's Medical Dictionary, (2nd ed. 2004). Likewise, Webster's online medical dictionary defines it as "the art or act of identifying a disease from its signs and symptoms." *Diagnosis*, Merriam-Webster.com Medical Dictionary, (accessed Sept. 23, 2024). Neither of these definitions includes the word "examination" nor requires in-person examination or interaction as a prerequisite. Furthermore, the American Heritage Stedman's Medical Dictionary defines "examination" as an "inspection or investigation, especially as a means of diagnosing disease." *Examination*, American Heritage Stedman's Medical Dictionary (2nd ed. 2004). Webster's online medical dictionary defines it as "the act or process of inspecting or testing for evidence of disease or abnormality." *Examination*, Merriam-Webster.com Medical Dictionary, (accessed Sept. 23, 2024). Both of these medical dictionaries provide separate entries for "physical examination" that include examinations of the patient's body.[4]

[4] Webster's defines "physical examination" as "an examination of the bodily functions and condition of an individual," (*Physical Examination*, Merriam-Webster.com Dictionary, (accessed Sept. 23, 2024), and the Stedman's Medical

Uses of the word "examination" in New Jersey law are in accord. New Jersey statutes, rules and regulations not only specify when they require a physical examination, but they explicitly distinguish between "physical," "mental" and "medical" examinations. For example, state education statutes state that, "[n]o pupil whose parent or guardian objects to such pupil receiving medical treatment or medical examination or physical examination shall be compelled to receive such treatment or examination …" N.J.S.A. 18A:35-4.8. Where the Legislature required a physical examination, it was explicit: "the student shall have a physical examination using the 'Preparticipation Physical Evaluation' form…" N.J.S.A. 18A:40-41.7. Similarly, New Jersey Boxing, Wrestling and Combative Sports Statutes separate "regulations, rules and standards for the physical and mental examination of all participants," and also refer to "medical" examinations. N.J.S.A 5:2A-8(b). The Tort Claims Act likewise states that a public entity is not liable for injury "caused by the failure to make a physical <u>or</u> mental examination…" N.J.S.A. 59:6-4 (emphasis added). State Rules of Civil Procedure specify that an adverse party may require a plaintiff to "submit to a physical or mental examination by a medical or other

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Dictionary defines the phrase as the "examination of the bodily state of a patient by ordinary physical means, as inspection, palpation, percussion, and auscultation." *Physical Examination*, <u>American Heritage Stedman's Medical Dictionary,</u> (2nd ed. 2004).

expert." R. 4:19-1.[5] The Workman's Compensation Act states that the employee, if requested, "must submit himself for physical examination and X-ray at some reasonable time." N.J.S.A. 34:15-19. Further, the personal injury protection (PIP) statutes require that an injured claimant "submit to mental or physical examination conducted by a health care provider." N.J.S.A 39:6A-13. The Legislature's consistent differentiation of "physical" and "mental" examinations reveals a clear intent that only the word "physical" denotes a physical examination requirement. Accordingly, there is no basis to incorporate "physical examination" into the meaning of "diagnosis."

M.R.'s argument that the implementing regulations also require a physical examination gets no further. M.R. argues that the Appellate Division incorrectly interpreted the term "required examinations" under N.J.A.C. 10A:16-8.6(a), and that "examination" must mean a physical examination. (Psb22-24). According to M.R., the panel ignored how the regulations distinguish the designated doctors' "required examinations" when making the medical diagnosis from the medical director's "review of the medical records." Ibid. However, the phrase "required examinations" must be understood in context. Mirroring the CRA, the

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[5] The Federal Rules of Civil Procedure likewise require a plaintiff "to submit to a physical or mental examination by a suitably licensed or certified examiner." Fed. R. Civ. P. 35.

Department's regulations require the physicians to be licensed and designated by the DOC Commissioner as part of the necessary process. N.J.S.A. 30:4-123.51e(b); N.J.A.C. 10A:16-8.6(a). They also require that any diagnosis offered by these licensed physicians shall include, at a minimum, a description of the condition; the prognosis concerning the likelihood of recovery; a description of the incapacity; and a description of any ongoing treatment that may be required. N.J.S.A. 30:4-123.51e(b); N.J.A.C. 10A:16-8.5. But neither the CRA nor the regulations impose further conditions on how the physicians reach this diagnosis, nor do they qualify that the examination must be a physical one. Rather, both the CRA and the regulations leave this in the hands of the licensed physicians charged with offering the supporting attestations. Further, the fact that the medical director's role in the process refers to a "review of the medical records" does not support a conclusion that the examination performed by the two designated physicians must be a physical examination.

In appropriate circumstances, the Department's doctors may conduct a physical examination of the incarcerated person to determine their eligibility for a Compassionate Release Certificate. See, e.g., State v. A.M., 252 N.J. 432, 446 (2023) (noting that, in A.M.'s case, the two doctors conducted a physical examination and diagnosed her with progressive end-stage multiple sclerosis, and in Kamau's case, the doctors conducted a physical examination and

"diagnosed him with a serious medical condition and reported that he suffered from a 'terminal condition,' with less than six months to live, as well as a 'permanent physical incapacity'"). But unlike in A.M., where both doctors evidently deemed a physical examination medically necessary, M.R. had already been previously diagnosed with medulloblastoma, and successfully treated for it, at the time that Drs. Pomerantz and Hawes evaluated him. M.R., 478 N.J. Super. at 382. They concurred with the diagnoses, and both ultimately concurred that his prognosis did not meet the CRA's requirement of a terminal condition or a permanent physical incapacity, as those terms are defined, see N.J.S.A 30:4-123.51e(l). Id. at 383-85. Their finding that M.R. did not then suffer from a terminal condition (defined as having six months or less to live) was borne out by the length of time that he lived following their initial February 2023 examination, sixteen months, and following the subsequent August 2023 examination, ten months. Ibid.; (P2ca1; Cra1).

M.R. also argues that a physical examination is required because the CRA mandates that the doctors must determine whether the applicant is medically eligible at the time of the application, and not at the time of his last doctor's visit or test, and therefore the medical records must be "current." (Psb12-15). However, M.R. ignores the fact that, whether the applicant satisfies the eligibility criteria, and the manner in which the doctors make that determination,

is a question for the doctors based on their medical expertise. This would include the precise ailment involved, and the amount of time that has passed since the last diagnostic exam (in-person or test, depending on ailment, and the symptoms the applicant previously and subsequently described). Based on that information, the doctors, using their expertise, will know if the circumstances/symptoms suggest a need for an updated review, whether in-person or by ordering tests, or whether they indicate the condition is worsening. These are all medical questions to be determined by the doctor, and are not for the Court to mandate in every instance where an inmate seeks compassionate release.

The Appellate Division thus correctly concluded that the regulations are consistent with the CRA, and that they "say nothing about a 'physical examination'" but rather require "the physicians to forward to the medical director 'relevant medical records.'" M.R., 478 N.J. Super. at 389. As the panel explained, a "comprehensive reading" of the regulation establishes that "'examination' is a reference to a medical-record examination and not a requirement for a physical examination." Id. at 389-90.

While there is no ambiguity in the CRA's text, the Appellate Division properly found that, even if there was ambiguity, the legislative history underscores that "the Legislature did not intend in the CRA to require physical

examinations of inmates seeking compassionate release." Id. at 390. As the panel explained, the Legislature enacted the CRA to streamline the compassionate release process "with fewer, not more hurdles in the path of inmate applying for compassionate release[,]" and "[r]equiring inmates to undergo physical examinations before the designated physicians render their medical diagnoses would have the effect of delaying and complicating the process, not streamlining it." Ibid. Importantly, the Appellate Division further recognized that, if a designated doctor believes that medical records are insufficient to make a diagnosis, nothing in the CRA prevents the doctor from performing a physical examination. Ibid.

Finally, to the extent any doubt remains on this interpretive question, the Court should defer to the Department's interpretation that neither the CRA nor its implementing regulations require a physical examination. This Court has long deferred to an administrative agency's interpretation of ambiguous statutes that it implements and ambiguous regulations it promulgates. See, e.g., In re Young, 202 N.J. 50, 63 (2010) (where the statute's plain language does not yield an unambiguous result, "interpretations of the statute and cognate enactments by agencies empowered to enforce them are given substantial deference") (citation omitted); Haley v. Bd. of Review, Dep't of Labor, 245 N.J. 511, 519 (2009) (same). While the Department maintains that there is no ambiguity to

begin with, should this Court find otherwise, it should follow longstanding principles of agency deference and uphold the Department's interpretation that the CRA does not require physical examination.

B. In enacting the CRA, the Legislature acted against the backdrop of established medical practice, and medical practice does not require physical examinations for every diagnosis.

M.R. argues that the medical community "recognizes" that a physical examination is "fundamental to an accurate medical diagnosis." (Psb12). Citing to the Committee on Diagnostic Error in Healthcare, and the American Medical Association, M.R. argues that, because physical examination is identified among four key information-gathering activities for the diagnostic process, it must be mandatory for the diagnosis of all maladies. M.R. is mistaken.

M.R. was diagnosed with Adult Medulloblastoma, a type of brain cancer that requires specialized treatment. M.R., 478 N.J. Super. at 382. According to the Dana-Faber Cancer Institute, the National Comprehensive Cancer Network (NCCN) Clinical Practice Guidelines in Oncology provide the recognized standards for cancer treatment. Rob Levy, "How is Standard of Care for Cancer Treatment Determined?" (Published: May 9, 2023, Medically Reviewed By: Harold Burstein, M.D., PhD, and Peter Enzinger, M.D.). The guidelines are developed and updated by sixty-one individual panels comprising more than

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1,700 clinicians and oncology researchers from the 32 NCCN member institutions. Ibid.

Rather than requiring physical examinations for ongoing treatment monitoring, the NCCN's 2024 Guidelines for Adult Medulloblastoma (Guidelines) advise medical providers to follow up surgical intervention with MRI brain scans every three months for two years, then every 6-12 months for 5-10 years; then every 1-2 years or as clinically indicated. Louis Burt Nabors, MD, ET AL., NCCN Clinical Practice Guidelines in Oncology (Ver. 2.2024, 2024). Notably, there is no mention anywhere in the Guidelines of physical evaluations for diagnosing medulloblastoma. Instead, the NCCN reiterates that an "MRI scan is the gold standard in the assessment of medulloblastoma," id. at 6, and "responses on imaging are benchmarks of successful therapy." Id. at 8. While the Guidelines provide that other indicators of treatment success such as "overall well-being, function in day-to-day activities, social and family interactions, nutrition, pain control, long-term consequences of treatment, and psychological issues must be considered," they are all secondary to MRI scans. Ibid. Accordingly, the NCCN Guidelines advise doctors to carefully question patients for "subtle symptoms…if edema is extensive on imaging." Id. at 9.

Importantly, none of the Guidelines support M.R.'s contention that a physical exam is "fundamental" to diagnosing Adult Medulloblastoma. M.R.

was diagnosed with Adult Medulloblastoma in 2021, and by the time of his February 2023 request for release under the CRA, he had been receiving treatment for two years. M.R., 478 N.J. Super. at 382. As noted, the Guidelines recommend MRI images taken every three months for the first two years, then every six to twelve months. The record below reveals that M.R.'s doctors followed this procedure. As the Appellate Division noted, the Department's doctors' review of M.R.'s September 2022 MRI found "[n]o evidence of any mass lesion in last MRI brain," "[n]o evidence of any metastasis in MRI spine in 9/2022," and scheduled a follow up MRI for three months. Ibid. Further, the panel noted that both Dr. Hawes' and Dr. Kaldany's August 2023 reports found that as of July 17, 2023, "there was no evidence of recurrence on MRI," and that follow up MRIs will continue every three months until October 2023, at which point imaging would be scheduled every six months. Id. at 384-85.

In addition to the review of MRI images, the doctors considered M.R.'s physical symptoms, noting his "moderate-severe dysarthria and suspected voice impairment…[and] moderate cognitive-linguistic impairment with deficits in the areas of memory, problem solving/ reasoning and orientation." Ibid. In making their diagnoses, the doctors followed up-to-date medical guidelines, finding that M.R. did not have a terminal condition or a permanent physical incapacity, that he did not need twenty-four-hour care, and that he required the

same continuing care needs he had listed in his prior report. Ibid. Thus, contrary to M.R.'s argument, established medical practice does not require a physical examination prior to every diagnosis under the CRA.

The Department's approach thus furthers the purposes of the CRA, given the Legislature's intent to place the threshold eligibility question in the hands of "licensed physicians." N.J.S.A. 30:4-123.51e(b). Here, there is no dispute that brain cancer is a serious condition, but having a serious condition does not alone qualify an inmate for compassionate release—instead, the CRA's eligibility requirements are either a terminal illness or permanent physical incapacity, as diagnosed by two licensed physicians. And the Department has based its evaluation of M.R.'s applications on those diagnoses by licensed physicians. The Department appropriately denied his first application in 2023 because two doctors correctly determined that, at that time, he did not satisfy the criteria for compassionate release. Then, in June 2024, the Department granted his second application because two doctors determined, in light of a documented deterioration in M.R.'s health, that he had satisfied the criteria. (Scra2-4). Nothing in the CRA requires an in-person examination even when a physician following established medical practice deems it unwarranted.

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POINT II

THE DESIGNATED DOCTORS MADE ALL REQUISITE FINDINGS IN DETERMINING M.R.'S ELIGIBILITY

Further, the CRA did not require the designated doctors to provide "detailed" findings in support of their eligibility decisions. See (Psb25-29). M.R. maintains that Drs. Pomerantz and Hawes failed to provide an explanation for their findings that he did not suffer from a terminal condition, disease, or syndrome or permanent physical incapacity. Ibid. But those terms are defined by the CRA, N.J.S.A 30:4-123.51e(l), and both doctors referred to this standard in their evaluations. M.R., 478 N.J. Super. at 383-85. Thus, by indicating that M.R. does not suffer from a terminal condition, disease, or syndrome, the doctors confirmed that he had more than six months to live, and by indicating that he does not suffer from a permanent physical incapacity, they confirmed that he was not permanently unable to perform daily living activities requiring 24-hour care. Ibid. No additional findings are required by the CRA.

The CRA's language says nothing about the content of the doctors' reports in making a diagnosis, and M.R. does not point to anything in the text supporting any such mandate. As discussed, the Legislature acted against the backdrop of established medical practice, and its purpose was to put the initial eligibility review in the hands of doctors rather than an administrative agency. Thus, what

is necessary to explain those determinations of medical eligibility is a call for the doctors to make consistent with established medical practice—and is not for the Department or courts to mandate instead. The Appellate Division thus found no merit in M.R.'s argument that the physicians failed to make requisite findings in determining his eligibility under the CRA. M.R., 478 N.J. Super. at 390. The court correctly found that the physicians had properly addressed "each of the four subject matters" under N.J.S.A. 30:4-123.51e(b), and that "the reasons for their conclusions are clear." Ibid. The court further noted the doctors' findings that M.R.'s "MRIs have shown no evidence of a recurrence of the medulloblastoma since [his] surgery nor was there evidence of a permanent physical incapacity as defined by the statute." Ibid.

Finally, M.R.'s argument that more detailed findings are necessary to enable appellate review misunderstands the administrative scheme. (Psb25-29). It is true that an inmate can appeal the denial of a Certificate and argue that Department did not follow the procedural requirements that govern the eligibility review (e.g., that it did not appoint two doctors, or denied the Certificate when the two doctors found the inmate was eligible). But the appeal does not include judicial review of the two doctors' own conclusions regarding whether the inmate satisfies the criteria for finding a terminal illness or permanent physical incapacity. A doctor making a diagnosis under the CRA is

not agency administrative action, and doctors' medical conclusions, and the extensiveness of their findings supporting the conclusion, are not subject to judicial review. M.R. does not identify any analogous circumstance in which doctor notes are an administrative action subject to direct appellate review. As such, more detailed findings by the doctors are irrelevant to judicial review of the Department's action, and there is no basis to require them.

CONCLUSION

This Court should affirm the Appellate Division's judgment.

Respectfully submitted,

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