FILED, Clerk of the Supreme Court, 06 Nov 2024, **089371**, **AMENDED**

M.R.,	SUPREME COURT OF NEW JERSEY DOCKET NO. 089371
Appellant-Petitioner,	Civil Action
v.	On Petition Granted from a Final Judgment of the Superior Court of New Jersey, Appellate Division
NEW JERSEY DEPARTMENT OF CORRECTIONS,	
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.

AMENDED BRIEF ON BEHALF OF RESPONDENT NEW JERSEY DEPARTMENT OF CORRECTIONS IN RESPONSE TO BRIEF OF AMICUS CURIAE, ASSOCIATION OF CRIMINAL DEFENSE LAWYERS OF NEW JERSEY

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 116
Trenton, New Jersey 08625
(609) 376-2765
christopher.josephson@law.njoag.gov
Attorney for Respondent,
New Jersey Department of Corrections

DONNA ARONS
Assistant Attorney General
Of Counsel

CHRISTOPHER C. JOSEPHSON - ATTY NO. 014101999
Deputy Attorney General
On the Brief

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

PRELIMINARY STATEMENT

Under the Compassionate Release Act (CRA), N.J.S.A. 30:4-123.51e, an inmate seeking release must obtain a "medical diagnosis" by "two licensed physicians designated by the commissioner" of the Department of Corrections (Department) to determine if he suffers from a terminal condition or permanent physical incapacity, as those terms are defined in the statute. The 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.

But the CRA does not impose a categorical requirement that these physicians conduct a physical examination of every inmate who seeks release, and Amicus Association of Criminal Defense Lawyers (ACDL) identifies nothing in the text, purpose, or medical practice to compel such a rule. ACDL primarily relies on N.J.S.A. 30:4-123.51e(i), which states that inmates already granted release must "submit to periodic medical diagnoses by a licensed physician" to determine if they still satisfy the eligibility requirements. But "submit to" has little bearing on the interpretive dispute here. For one, subsection (i) applies only to the process for inmates who have already been granted compassionate release (to confirm they still meet the medical diagnosis

and public-safety prerequisites), whereas this case is about the process set forth in subsection (b) that must be followed in determining initial eligibility. And it makes sense that subsection (i) would use the word "submit," but for reasons unrelated to what process is required for initial applicants: an inmate already granted release has little incentive to comply with any further medical diagnosis, which can then only be used to return the inmate to confinement. The use of "submit" in a different subsection of the CRA thus does not make "medical diagnosis" in subsection (b) synonymous with "physical examination." But nor does the CRA preclude physical examinations; instead, the CRA entrusts the decision of whether a physical examination is necessary to the medical expertise of the diagnosing physicians on a case-by-case basis. The Appellate Division thus correctly held that the CRA requires a "medical diagnosis," but none of the requisite elements of that diagnosis is a physical examination.

Further, contrary to ACDL's arguments, the CRA does not require the two physicians to produce an expert-type report detailing their methodology and the documents they reviewed in making an eligibility determination. Aside from the fact these requirements are not found in the CRA's text, they would likely contravene the Legislature's goal of expediting the compassionate release process. If the Department was obliged to schedule two in-person physical examinations—each documented in a detailed report—as a prerequisite to

granting compassionate release, the review process for every applicant would be prolonged unnecessarily. That additional time is precious to those eligible for release. To streamline the process, the Legislature requires physicians only to make a medical diagnosis concerning the criteria in N.J.S.A. 30:4-123.51e(b).

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

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

The Department relies on the procedural history and counterstatement of facts set forth in its letter brief opposing M.R.'s petition for certification, and on the procedural history and counterstatement of facts in its supplemental brief,[2] except to add the following.

On October 21, 2024, the Court granted the motion to appear as amicus curiae and file an amicus brief of the ACDL, which argues that the CRA requires

---

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

[2] "Ab" refers to ACDL's brief, and "P2ca" refers to the confidential appendix to petitioner's supplemental brief. "Rsb" refers to the Department'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.

"independent physical examinations" of every petitioning inmate and further requires the physicians to provide detailed findings specifying their "reasoning, methodology, or documents reviewed in reaching their conclusions." (Ab15, 19). This Court ordered that the parties file any response to the ACDL's brief by November 4, 2024. This brief follows.

ARGUMENT

POINT I

THE ACDL FAILS TO JUSTIFY A CATEGORICAL PHYSICAL-EXAMINATION REQUIREMENT FOR EVERY INMATE SEEKING A CERTIFICATE OF COMPASSIONATE RELEASE

As the Department has consistently explained in briefing, 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. It also aligns with the CRA's goal of minimizing administrative

burdens that delay the eligibility process.

ACDL echoes M.R.'s argument that a "medical diagnosis" under the CRA requires a physical examination, and that in M.R.'s case, the designated physicians improperly relied upon M.R.'s medical records without also conducting a physical examination. (Ab5-12). But ACDL does not engage with the particular circumstances surrounding M.R.'s medical diagnosis or the relevant information about the successful treatment that he received before seeking compassionate release.

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. had 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. Thus, in arguing that a "medical diagnosis" under the CRA requires a physical examination, ACDL overlooks M.R.'s particular diagnosis and treatment of his medulloblastoma, which guided the doctors' CRA eligibility decision in his case.

ACDL provides no basis to conclude that a physical examination would have changed M.R.'s eligibility for release. ACDL also overlooks that the CRA permits—and doctors do conduct—physical examinations when necessary to evaluate an applicant's eligibility. However, not every case necessitates a physical examination. That decision is better left to the judgment of medical professionals.

Recognizing this, the Legislature neither requires nor prohibits physical examinations. In M.R.'s case, the physicians relied on MRIs of the brain to determine that his medulloblastoma was not terminal, which the CRA defines as having less than six months to live. There is no reason to suspect an in-person physical examination of M.R. would have altered their diagnosis given the objective radiological information they already had. Indeed, time proved that the determination by the diagnosing physicians was correct, given that M.R. survived longer than six months after the doctors' decision.

Nor does ACDL justify reading into the CRA a categorical physical-examination requirement to determine eligibility in every case. ACDL largely relies upon two subsections of the CRA that do not involve the doctors' initial eligibility determination, but rather a subsequent determination *after* an inmate is granted compassionate release. (Ab5-10). Under the CRA, if the Superior Court grants an inmate compassionate release, he thereafter becomes subject to Parole Board (Board) supervision as if on parole. N.J.S.A. 30:4-123.51e(a). As a condition of compassionate release, the Board "may require an inmate to submit to periodic medical diagnoses by a licensed physician." N.J.S.A. 30:4-123.51e(i). If, after review of the medical diagnosis required under Subsection (i), the Board determines that an inmate granted compassionate release is no longer debilitated or incapacitated by a terminal condition or a permanent physical incapacity, it shall notify the prosecutor, who may initiate proceedings to return the inmate to confinement. N.J.S.A. 30:4-123.51e(j).

Thus, the initial determination of an inmate's eligibility for compassionate release differs from the Parole Board's subsequent determinations as to whether the inmate continues to satisfy the compassionate release criteria. In the former case, the CRA provides that the inmate may obtain a medical diagnosis, and dictates the requirements of that diagnosis, which does not include a physical examination requirement. N.J.S.A. 30:4-123.51e(b). The latter case involves a

different type of determination of whether an inmate previously diagnosed with a terminal condition or permanent physical incapacity still suffers from one or the other (or both), which would require the inmate to submit to a medical diagnosis by a physician. N.J.S.A. 30:4-123.51e(i).

ACDL heavily relies on the words "submit to" in N.J.S.A. 30:4-123.51e(i), arguing that the use of that phrase in that subsection presupposes a physical examination in all cases. (Ab1-2; Ab5-10). But that overlooks the important difference between an instance of an inmate seeking release and one already released. As noted, subsection (i) does not refer to the process the Department must follow in determining eligibility in the first instance, but rather refers to inmates who have already been granted release to confirm they still meet the medical-diagnosis and public-safety prerequisites. Thus, the placement of "submit to" in a section of the CRA dealing only with already-released inmates undercuts the inference that "submit" modifies the requirements for the medical diagnosis of initial *applicants* for release. See, e.g., Shelton v. Restaurant.com, Inc., 214 N.J. 419, 440 (2013) ("Words in a statute should not be read in isolation," and courts "must consider the context" of the words used); Tarr v. Ciasulli, 181 N.J. 70, 83 (2004) (courts interpret statutory phrases "consistent with the words surrounding them.").

Indeed, an inmate who has already been granted compassionate release likely has no interest in any further review occurring to verify their medical condition, since by now it can only be used against them – by the prosecutor using this information to seek "return" to confinement, N.J.S.A. 30:4-123.51e(j). In other words, the text "submit to" not only appears in a section of the statute that only relates to inmates already granted compassionate release, but the need for this "submit" qualifier also appears to be unique to that specific context.

However, even in this context, the need for a physical examination is not compulsory, but left to the discretion of the diagnosing physicians. That "submit to" does not imply a categorical in-person examination requirement is also consistent with the term "medical diagnosis," and with the Department's position that in-person physical examinations are appropriate in some instances to be determined by the diagnosing physicians when medically appropriate. See, e.g., State v. A.M., 252 N.J. 432, 446 (2023) (noting that, in one inmate's case, two doctors conducted physical examinations and diagnosed her with progressive end-stage multiple sclerosis, and in another inmate's case, the doctors conducted physical examinations 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.'").

ACDL's reliance on other uses of the word "submit" in New Jersey statutes only bolsters the Department's reading of "medical diagnosis" as used in the CRA.[3] (Ab9). See, e.g., N.J.S.A. 34:15-19 (in workmen's compensation context, stating an injured employee "must submit himself for physical examination and X-ray" if requested by his employer) (emphasis added). That the Legislature elsewhere, as in N.J.S.A. 34:15-19, coupled "submit" with "physical examination" confirms that the Legislature uses express language to denote a physical-examination requirement, even where the word "submit" also appears, but has not required a physical examination when not clearly indicated.

Furthermore, as argued in the Department's supplemental brief, 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

[3] ACDL's reliance on Black's Law Dictionary's definition of "diagnosis" is also misplaced. (Ab9). ACDL does not grapple with the multiple medical dictionary definitions cited in respondent's supplemental brief, which do not define the industry terms "diagnosis" and "examination" to require a physical examination in every case. (Rsb15-16). See Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 372 (1986) ("technical terms of art should be interpreted by reference to the trade or industry to which they apply"); see also Verizon New Jersey, Inc. v. Borough of Hopewell, 258 N.J. 255, 257 (2024) (similar).

physicians. N.J.S.A. 30:4-123.51e(b). The text specifies that a 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. But ACDL offers no textual support for its reading that the CRA requires the two physicians to always "physically examine" the inmate to make a diagnosis. Nor does ACDL cite any precedent supporting such an interpretation of the CRA's text. See M.R., 478 N.J. Super. at 388 (noting CRA "enumerates the requisite elements of" a medical diagnosis, "none of which is a physical examination.").

ACDL also argues that the denial of M.R.'s request for compassionate release "undermined" the CRA's purposes of showing compassion to terminally ill inmates and reducing prison medical costs. (Ab15-19). This presumes all physical examinations would redound to the benefit of the applicants. It overlooks the reality that scheduling and conducting two in-person physical examinations—even when not medically necessary—would delay the compassionate release process and deprive eligible applicants of valuable time. It also does not account for the fact that requiring two doctors to examine each applicant would increase the time necessary to process applications, thus prolonging the review process for all applicants so that in-person examinations for some seriously ill inmates may take place much later than if doctors had not

been mandated to physically examine all applicants.

The Department's approach, by contrast, furthers the purposes of the CRA by putting the threshold eligibility question in the hands of "licensed physicians" in accordance with the Legislature's intent. N.J.S.A. 30:4-123.51e(b). By doing this, valuable time is saved by conducting physical examinations only when medically necessary.

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. The CRA requires either a terminal illness or permanent physical incapacity based on the diagnosis of two licensed physicians. The Department based its evaluation of M.R.'s applications on diagnoses by two licensed physicians who, as time would reveal, correctly determined that M.R. was neither terminally ill as defined in the CRA, nor permanently incapacitated. They did not deem a physical examination medically necessary. Accordingly, the Department appropriately denied his first application in 2023. M.R. applied again in June 2024, and the Department granted his application because two doctors determined, without conducting a physical examination, that he satisfied the criteria for compassionate release based on review of his medical records, which reflected a deterioration in his condition. (Scra2-4).

POINT II

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

ACDL also argues that the CRA requires the two designated physicians to produce an expert-type report that not only lays out their "reasoning," but details their "methodology" and the documents they reviewed in making an eligibility determination. (Ab13-15). Aside from the fact these requirements are not found in the CRA's text, such requirements would contravene the Legislature's goal of having an expedited process by invariably lengthening the review process for every applicant, including inmates who are being granted release because they have a qualifying diagnosis.

That is not to say the CRA allows the two physicians to "rubber-stamp" a different reviewing physician's findings with no independent review. (Ab2). Instead, the CRA explicitly precludes that from happening by requiring the two physicians, at a minimum, to make the four findings under N.J.S.A. 30:4-123.51e(b). Under the Act, the physicians may also include additional findings regarding eligibility when they deem it appropriate, based on their medical judgment. Ibid. But the Legislature did not impose additional requirements regarding the content of physicians' reports. This decision reflects a reasoned balance between expanding eligibility on the one hand, and ease of

administration and expediency on the other, since mandating lengthy reports would invariably delay the process for all applicants, including those eligible for release.

ACDL, like M.R., argues 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. (Ab13-15). 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. did not suffer from a terminal condition, disease, or syndrome, the doctors concluded that he had more than six months to live (a conclusion that proved to be correct), and by indicating that he did not suffer from a permanent physical incapacity, they concluded that he was not permanently unable to perform daily living activities requiring 24-hour care. Ibid. The CRA does not require any further medical analysis.

Beyond the required findings in N.J.S.A. 30:4-123.51e(b), the CRA says nothing about the content of the doctors' reports in making a diagnosis, and ACDL 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 decision for physicians to make on a case-by-case basis consistent with established medical practice, not for the Department or courts to mandate through one-size-fits-all requirements.

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, ACDL's argument that more detailed findings are necessary to enable appellate review misunderstands the administrative scheme. (Ab13-15). As the Department explained in its supplemental brief, an inmate can appeal the denial of a Certificate and argue that the 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. ACDL does not identify any analogous circumstance in which doctors' medical determinations are considered an administrative action subject to direct appellate review. As such, there is no basis to require more detailed findings by the doctors to enable judicial review of the Department's action.

CONCLUSION

For these reasons, and those set forth in the Department's supplemental brief, this Court should affirm the Appellate Division's judgment in this case upholding the Department's denial of M.R.'s application for a Certificate of Compassionate Release.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Christopher C. Josephson
Christopher C. Josephson
Deputy Attorney General

Dated: October 31, 2024