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Your Responsibility When Using The Information Below:

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library.

MEDICAL PAROLE
(for medically incapacitated prisoners)

and

COMPASSIONATE RELEASE
(for prisoners with a terminal illness who have six months or less to live)

(updated May 2015)

We send you this information because you asked for advice or help about medical parole or compassionate release, or because we think this information might be useful to you. We are sorry we cannot send you a personal response. This letter gives information about how some prisoners with very serious medical conditions might get released from prison – medical parole (for medically incapacitated prisoners referred by medical staff), and recall of sentence, also called compassionate release (for prisoners with a terminal illness who have six months or less to live). Medical parole and compassionate release have different eligibility requirements and procedures.

Medical Parole (for medically incapacitated prisoners)

California law since 2011 has allowed some very ill prisoners to be paroled before they reach their normal release dates.¹ In February 2014, a federal three-judge court ordered California officials to expand the medical parole program as part of the effort to reduce prison crowding.² Prison medical officials, the California Department of Corrections and Rehabilitation (CDCR), and the Board of Parole Hearings (BPH) then started an expanded medical parole program. A June 16, 2014 BPH memo about expanded medical parole is attached to this letter.

Who Is Eligible, Standard Used, and Role of Prison Medical Officials and Staff

Under the expanded medical parole program, medical staff assess prisoners who are medically incapacitated to determine if and how much help is needed by the prisoner regarding mobility in bed, transferring to a chair or standing position, toileting, and feeding. To do this, medical staff now use an assessment tool called the Resource Utilization Guide IV (RUG IV). Prison officials have stated that any prisoner who scores even a single point on the RUG scale will be referred to the BPH for medical parole consideration. Prison medical officials say that under this standard more prisoners will be eligible for medical parole.

Generally, the kind of assistance necessary to be eligible for medical parole will mean that the prisoner is at the Correctional Treatment Center (CTC) level of medical care and housed in a CTC or other medical bed. Note also that the governing statute provides that prisoners sentenced to death or life without the possibility of parole are not eligible for medical parole.³

Prison medical officials should review all potentially eligible prisoners to determine if they should be referred for medical parole consideration. However, a prisoner, a prisoner's family, or other advocate can ask the doctor who is the prisoner's Primary Care Provider (PCP) to evaluate the prisoner for medical parole.⁴

¹ Penal Code § 3550(a); 15 CCR § 3359.1(b).

² Plata/Coleman v. Brown, Nos. C01-1351 TEH/2:90-cv-0520 LKK DAD, Order Granting in Part and Denying in Part Defendants' Request for Extension of December 31, 2013 Deadline, filed Feb. 10, 2014.

³ Penal Code § 3550(b).

⁴ Penal Code § 3550(c)-(d); 15 CCR § 3359.1(b).

A PCP who believes a prisoner meets the medical parole criteria should write a referral on a CDCR Form 7478 Medical Parole Form.⁵ The Chief Medical Executive at the prison must approve or deny the referral. If the referral is approved, the case will go to a Classification & Parole Representative (C&PR) for review and the C&PR will direct the prisoner's correctional counselor to prepare an evaluation report as to the prisoner's level or dangerousness.⁶ The C&PR will then forward the case to the warden or chief deputy warden and, if approved, the case will go the CDCR Classification Services Unit.⁷ The CDCR Classification Services Unit will review the referral and forward the entire packet to the Board of Parole Hearings (BPH).⁸

Role of the Board of Parole Hearings (BPH)

If a prisoner's case is referred, a BPH panel will then decide whether to grant medical parole and if so what parole conditions will be imposed. In deciding whether to grant medical parole, the BPH must determine that the prisoner's release would not pose an unreasonable risk to public safety.⁹

The BPH will hold a hearing and independently determine whether the prisoner's release would endanger public safety.¹⁰ Even though the BPH does not review the medical criteria, the prisoner's RUG score will be relevant because the higher the score (maximum = 16), the more dependent the patient is on others and thus the prisoner may pose less of a risk to public safety.

The BPH hearing will be in front of a two-person (or sometimes three-person) panel.¹¹ The prisoner may hire an attorney to appear at the hearing or an attorney will be appointed by the BPH. The hearing may be held without the prisoner being present.¹²

⁵ 15 CCR § 3359.2(a).

⁶ 15 CCR § 3359.2(b)-(d).

⁷ 15 CCR § 3359.2(e)-(f).

⁸ Penal Code § 3550(c)-(d); 15 CCR § 3359.2(i).

⁹ Penal Code § 3550(a).

¹⁰ Penal Code § 3550(g).

¹¹ Penal Code § 3550(f).

¹² Penal Code § 3550(f).

The first medical parole hearings under the expanded criteria took place in August 2014. BPH says it generally expects to hold hearings between 45 and 120 days after receiving the referral from the CDCR.

According to the BPH, if the panel decides to grant medical parole, the two next steps will take place simultaneously. The BPH will review the panel's decision and either approve or disapprove it.¹³ Meanwhile, the CDCR medical and parole staff will attempt to find a community Skilled Nursing Facility (SNF) in which to place the prisoner.¹⁴ When an appropriate facility is identified, the prisoner will be transferred to it as a medical parolee. However, if no appropriate facility is identified within 120 days of the panel decision, the medical parole grant will lapse and the prisoner will remain in a CDCR institution.

As with other parolees, a person on medical parole may be subject to special conditions. These may include GPS monitoring, examinations by a doctor to determine if the person remains medically incapacitated, and restrictions on visitors or types of staff that assist the prisoner.¹⁵ A person with a determinate sentence can remain on medical parole until his or her normal release date, at which point any normal parole or Post-Release Community Supervision (PRCS) period kicks in. A person with an indeterminate sentence will become eligible for consideration under regular parole suitability provisions once the prisoner reaches his or her minimum eligible parole date.¹⁶

A medical parolee can be returned to custody if the parolee's condition improves to the extent that he or she no longer qualifies for medical parole or if the medical parolee is a threat to himself or herself, another person, or public safety.¹⁷ Under the expanded medical parole program, the parolee can be returned if he or she violates any conditions of parole or if the community SNF can no longer care for the prisoner.

¹³ It is not currently known whether the Governor can or will exercise review authority for medical parole decisions in any lifer cases.

¹⁴ The law authorizes the CDCR to enter into agreements with health care providers and to reimburse those providers for medical care costs that are not covered by Medi-Cal. Penal Code § 2065. Unfortunately, even with this provision, it may be difficult for the CDCR to find suitable medical parole placements for some prisoners.

¹⁵ Penal Code § 3550(h); 15 CCR § 3359.5.

¹⁶ Penal Code § 3550(h).

¹⁷ 15 CCR § 3359.6.

Recall of Sentence (Compassionate Release) (for prisoners with a terminal illness who have six months or less to live)

In certain very limited circumstances, the court that sentenced someone to state prison can change the sentence after the prisoner has begun to serve it, such that the prisoner is paroled early. The sentencing court can do this if more than four months have passed only if CDCR or the Board of Parole Hearings (BPH) asks it to recall a prisoner's sentence and re-sentence the prisoner to a shorter term.

The most common use of this procedure is to get compassionate release for prisoners who are, to use the language of the law, terminally ill with an incurable condition that is expected to cause death within six months. In addition, the prisoner's release must not pose a threat to public safety.¹⁸ Also, compassionate release is not available for prisoners who are sentenced to death or life without the possibility of parole.¹⁹

The first step in getting a compassionate release usually begins with a request by the prisoner or the prisoner's family or advocate. The request can be made by contacting either the chief medical officer at the prison or the CDCR Secretary.²⁰ Also, if prison medical staff determine that a prisoner has six months or less to live, then the prison warden is supposed to inform the prisoner about the compassionate release process.²¹

CDCR rules describe in detail the process and timelines for a considering a compassionate release request; there are tight timelines for each step of the process and the CDCR should complete the process within 30 days.²² A prison doctor must first determine whether the prisoner meets the medical criteria and prepare a CDCR Form 128C Chrono describing the reasons why the inmate has six months or less to live or is medically incapacitated; the prison's chief medical executive and headquarters medical staff must

¹⁸ Penal Code § 1170(e)(1) and (2); 15 CCR § 3076(b). Compassionate release is also available for prisoners permanently medically incapacitated with a condition that did not exist at the time of the original sentencing and that makes the prisoner permanently unable to perform activities of basic daily living and in need of 24-hour care. Such prisoners can also qualify for medical parole, discussed above.

¹⁹ Penal Code § 1170(e)(2); 15 CCR § 3076(b).

²⁰ Penal Code § 1170(e)(6).

²¹ Penal Code § 1170(e)(4).

²² 15 CCR §§ 3076.34; see also Penal Code § 1170(e)(4) and (6)-(7).

approve or reject the physician's prognosis.²³ If approved, the case must be sent to a Classification and Parole Representative (C&PR), who will have the prisoner's correctional counselor prepare a report on the prisoner's case factors.²⁴ The regulations list factors that the C&PR is supposed to consider in deciding whether to recommend compassionate release.²⁵ In turn, the warden or chief deputy warden will review the report and forward it to CDCR headquarters.²⁶

If the CDCR Secretary approves the recommendation for recall, the Secretary must submit the case to the sentencing court (for determinately-sentenced prisoners) or to the BPH (for indeterminately-sentenced life prisoners).²⁷ If the case is submitted to the BPH, then the BPH must independently evaluate whether the prisoner qualifies for compassionate release before making a recommendation to the sentencing court. The BPH decision should be made at the next scheduled BPH meeting (usually within a month).²⁸

In exercising discretion as to whether to grant or deny compassionate release, CDCR and BPH officials may not rely on factors or criteria other than those set forth in the governing statute; for example, it is improper to consider whether a prisoner's period of confinement has been proportionate to the seriousness of his or her crime.²⁹

The sentencing court must hold a hearing within 10 days of receiving a compassionate release recommendation from the CDCR or BPH.³⁰ If a recall of sentence is granted, the CDCR must release the prisoner within 48 hours after receiving the court's order, unless the prisoner agrees to be held a longer period of time.³¹

²³ 15 CCR § 3076.4(a) and (b).

²⁴ 15 CCR § 3076.4(c) and (d).

²⁵ 15 CCR § 3076.3.

²⁶ 15 CCR § 3076.4 (e)-(f).

²⁷ Penal Code § 1170(e)(6).

²⁸ Penal Code § 1170(e)(6).

²⁹ Martinez v. Board of Parole Hearings (2010) 183 Cal.App.4th 578, 595 [107 Cal.Rptr.3d 439].

³⁰ Penal Code § 1170(e)(3).

³¹ Penal Code § 1170(e)(9).

Challenging Medical Parole or Compassionate Release Denials

A prisoner who believes she or he should be referred for medical parole consideration, or who is denied medical parole, may be able to challenge the decision. The same is true for compassionate release matters. The steps to take depend on the circumstances.

Medical Parole

If a doctor refuses to refer a prisoner for medical parole or determines that the prisoner is not eligible, the prisoner should file a medical appeal (pink sheet 602-HC). The prisoner should pursue the medical appeal until receiving a Third Level Response (TLR), and then send the TLR to the Prison Law Office. We will consider at that time whether we can help. After completing the 602 process, a prisoner who wants to challenge a doctor's decision about medical parole eligibility may be able to file a state court habeas corpus decision challenging the decision.

If a prisoner is referred for a medical parole hearing and the BPH either does not schedule a timely hearing or denies parole, the prisoner should write to Prison Law Office. We will consider at that time whether we can help. The prisoner does not need to file an administrative appeal, because the BPH does not have a general administrative appeal process. A prisoner denied expanded medical parole by the BPH may be able to file a state court habeas corpus decision challenging the denial. Under traditional medical parole rules, the court would determine whether some evidence supports the CDCR or BPH's decision.³²

Compassionate Release

If a prison doctor refuses to determine whether the prisoner has a qualifying terminal illness, or determines that the prisoner does not have such an illness, then the prisoner should file a medical appeal (pink sheet 602-HC). The prisoner should pursue the medical appeal until receiving a Third Level Response (TLR), and then send the TLR to the Prison Law Office. We will consider at that time whether we can help. A prisoner who wants to challenge a doctor's decision may also be able to file a state court habeas corpus decision challenging the decision.

If prison medical staff determine that a prisoner has a qualifying terminal illness, but CDCR staff do not timely process the prisoner's compassionate release request or decide not to refer the case to the BPH or the sentencing court, then the prisoner should file a regular

³² In re Martinez (2012) 210 Cal.App.4th 800, 811-814, 820-824 [148 Cal.Rptr.3d 657] (finding BPH decision not supported and ordering that prisoner be released on medical parole).

administrative appeal (green sheet 602). A prisoner who believes he or she has less than six months to live should label the 602 as an emergency appeal to try to get a quicker response.

If the BPH refuses to recommend compassionate release or denies a request for medical parole, a prisoner does not need to file an administrative appeal. This is because the BPH does not have a general administrative appeal process. The prisoner can proceed directly to filing a court action.

After completing any required administrative appeal proceedings, the prisoner can file a state court petition for writ of habeas corpus challenging the CDCR's or BPH's decision to deny medical parole or not to recommend compassionate release. On review, the court will determine whether some evidence supports the CDCR or BPH's decision.³³

If a superior court denies compassionate release, a prisoner may file a direct appeal in the court of appeal.³⁴

Prisoners can request more free information on administrative appeals or state habeas actions by writing to the Prison Law Office. Those information manuals are also available on the Prison Law Website Resources page at www.prisonlaw.com.

³³ Martinez v. Board of Parole Hearings (2010) 183 Cal.App.4th 578, 582 [107 Cal.Rptr.3d 439] (finding some evidence to support denial of compassionate release, but ordering remand because BPH considered factors not authorized by statute and failed to articulate factual findings).

³⁴ People v. Loper (2015) 60 Cal.4th 1155 [184 Cal.Rptr.3d 715].

Memorandum

Date : June 16, 2014

Subject: **EXPANDED MEDICAL PAROLE**

The purpose of this memorandum is to provide an overview of the new Expanded Medical Parole process. On February 10, 2014, the Three Judge Panel in the *Plata/Coleman* class action lawsuit ordered CDCR in consultation with the Receiver's office to "finalize and implement an expanded parole process for medically incapacitated inmates." The procedures for the new Expanded Medical Parole process will apply to medical parole hearings conducted on or after July 1, 2014. Significant features of the program are as follows:

Eligibility for Expanded Medical Parole

- The inmate suffers from a significant and permanent condition, disease, or syndrome, resulting in the inmate being physically or cognitively debilitated or incapacitated.
- The inmate qualifies for placement in a licensed health care facility, as determined by the Resource Utilization Guide IV (RUG IV) Assessment Tool.¹
- The inmate will not pose an unreasonable risk to public safety if placed in a licensed health care facility.
- The inmate is not condemned or serving a sentence of life without the possibility of parole.

Pre-Hearing Procedures

- Medical personnel, the inmate, or the inmate's family or attorney may request that the inmate's CDCR primary care physician consider the inmate for expanded medical parole.
- The inmate's CDCR primary care physician will complete the Medical Parole Form (CDCR Form 7478) along with a RUG IV assessment.
- The forms will be reviewed by the chief medical executive at the facility where the inmate is housed. If approved by the chief medical executive, the forms will be submitted to the classification and parole representative at the institution where the inmate is housed for review. If approved by the classification and parole representative, the forms will be forwarded to the Division of Adult Institutions headquarters, which will prepare a packet for referral to the Board of Parole Hearings.

Hearing Procedures

- Hearings will be conducted by two or three person panels using the same structure as parole suitability hearings.
- A panel's approval of an inmate's placement in a licensed health care facility will be conditioned upon CDCR identifying a licensed health care facility that meets specified requirements identified by the panel. The panel will specify those facility requirements deemed necessary for the inmate's placement to not pose an unreasonable risk to public safety. Facility requirements will address issues such as applicable statutory residency

¹ The RUG IV is a tool used to evaluate eligibility for Medicare and Medicaid reimbursement for placement in a skilled nursing facility.

restrictions, facility security, limitations on visitation and contact with persons under the age of 18, and any other special care provisions rationally related to the inmate's prior misconduct.

- In addition to the above, the panel may condition the inmate's placement on the inmate's compliance with a variety of other requirements and restrictions, such as periodic medical evaluations, compliance with the skilled nursing facility's rules, alcohol and drug restrictions, electronic monitoring, and restrictions on communication with specified persons.
- All other existing Board of Parole Hearings' medical parole hearing procedures not impacted by the provisions outlined herein will be applied to expanded medical parole hearings, including appointment of counsel, and all applicable hearing notifications, including notice to law enforcement, prosecutors, and 90-day notice to registered victims and victims' next-of-kin.

Post-Hearing Procedures

- The board's proposed decision to approve placement of an inmate in a licensed health care facility will be valid for 120 days, during which time CDCR will work to identify a licensed health care facility that meets the requirements specified by the board and secure a bed for the inmate. If an available and appropriate facility is identified that meets the specified requirements, the inmate will be processed for transfer. If no such facility can be identified within 120 days, the board's proposed decision will be invalid and the inmate will remain in a CDCR institution.
- All existing statutory notification requirements governing release of inmates will apply to medical parole placements, including notification to law enforcement, prosecutors, victims, and victim's next-of-kin.

Return from Placement in a Licensed Health Care Facility

- CDCR will monitor the inmate's medical condition and behavior while he or she is placed in a licensed health care facility. Significant improvements in the inmate's medical condition will be reported to the board. The board will determine if the inmate no longer qualifies for medical parole. In addition, material violations of law, facility requirements, or inmate restrictions shall be reported to the board. The board will determine if additional facility requirements and restrictions are warranted.

Miscellaneous

- Inmates qualifying for medical parole as defined in Penal Code section 3550 et seq., or expanded medical parole, or both will be processed under expanded medical parole effective July 1, 2014.