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June 26, 2018

Jeffrey G. Harris, Esq.
Good Schneider Cormier & Fried
83 Atlantic Avenue
Boston, MA 02110

RE: Petition for Medical Parole of Benjamin LaGuer (W40280)

Dear Mr. Harris,

I am in receipt of your petition and accompanying documentation, seeking a medical parole for inmate Benjamin LaGuer (W40280), who is currently incarcerated at NCCI Gardner, a medium security correctional facility. Mr. LaGuer has been diagnosed with liver cancer. I am also in receipt of Superintendent Colette Goguen's recommendation concerning your request, as well as written statements from the Worcester County District Attorney's Office and the victim's family. Your request for a medical parole for Mr. LaGuer is hereby denied. While the Department of Correction's (DOC) medical providers confirm that Mr. LaGuer's life expectancy may not exceed six months, Mr. LaGuer nevertheless continues to pose a serious risk to public safety such that his release on medical parole is not appropriate at this time. I am not convinced that Mr. LaGuer would live and remain at liberty without violating the law, or that his release would be compatible with the welfare of society.

Mr. LaGuer is a 55 year old inmate serving a second degree life sentence for the aggravated oral, anal and vaginal rape of an elderly 59 year old woman over an eight hour period in her apartment. According to the official version of the crime, Mr. LaGuer violently beat her about the head and face, binding her hands and feet and threatening to kill her if she identified him. (He also received concurrent 12-15 year sentences for breaking and entering and unarmed robbery, which have since expired.) Mr. LaGuer continues to insist upon his innocence, despite DNA evidence - which he requested - which showed that Mr. LaGuer's DNA profile, which occurs in less than one in 100 million people, matched the DNA profile found in pooled sperm taken from the victim. All of Mr. LaGuer's appeals have been denied by the courts. See Commonwealth v. LaGuer, 20 Mass. App. Ct. 965 (1985); Commonwealth v. LaGuer, 396 Mass. 1103 (1985).

Since Mr. LaGuer adamantly denies the crimes and continues to profess his innocence, the facts of his case can be derived from Commonwealth v. LaGuer, 65 Mass. App. Ct. 612 (2006) and Commonwealth v. LaGuer, 448 Mass. 585 (2007). Notably, Mr. LaGuer refuses to engage in recommended sex offender treatment, despite the Parole Board's recommendation that such programming is needed for his rehabilitation. At his last Parole Board hearing on April 23, 2015, the Parole Board noted:

On at least three occasions since 2000, the Parole Board has denied parole to LaGuer primarily for his failure to engage in sex offender treatment. Yet, LaGuer persists in refusing to engage in treatment to address the crime for which he was convicted, even after multiple failed attempts to reverse his conviction on appeal. Despite the Board's unwavering insistence that he engage in sex offender treatment and other available rehabilitative programming in order to enhance his likelihood of obtaining parole, LaGuer continues to ignore the Board's advice and relentlessly continues to pursue parole on his own terms. This is not a sign of rehabilitation. To the contrary, it is a sign of LaGuer's determination to have things his way or no way at all. Given his intransigence, this Board can have no confidence, even after 32 years of incarceration, that if LaGuer were paroled he would abide by his conditions of release and be amenable to supervision in the community.

Assessing Mr. LaGuer's current medical condition, his fierce determination not to engage in needed sex offender treatment services and his risk of violence to the public should he be released from custody, based on the extensive record before me,

I find that Mr. LaGuer is not a suitable candidate for medical parole at this time. My denial of the request for a medical parole for Mr. LaGuer is further based on the following factors.

First, while Mr. LaGuer's life expectancy is estimated between six months (based on the 3/30/18 prognosis provided by the DOC's medical provider) and three years (based on a July 2017 medical evaluation conducted by a Boston Medical Center doctor), Mr. LaGuer does not meet the statutory definitions for terminal illness or physical incapacitation such that his release on medical parole would not pose a risk to public safety, or be compatible with the welfare of society. See M.G.L. c. 127, sec. 119A. Mr. LaGuer is housed in the general inmate population at NCCI Gardner in Thompson Hall and does not require a walker or other assistive device to ambulate short distances. He receives treatment for his cancer on an outpatient basis. An updated clinical review conducted last month notes that Mr. LaGuer has rebounded from treatments and procedures for his medical conditions.

Concerning the risks posed to public safety should Mr. LaGuer be released on medical parole, I find that Mr. LaGuer has received numerous disciplinary reports throughout his incarceration, most recently in August 2017 for contacting a Massachusetts Appeals Court judge and former prosecutor through the U.S. mail - after specifically being told not to do so - essentially informing the judge "I know where you live." Mr. LaGuer was also found in possession of sexually explicit materials in June 2009, a disciplinary charge to which he pled guilty, yet another indicator of his failure to address his needs as a sex offender. His Personalized Program Plan and classification reports also note his continuous refusal to participate in recommended programming. Specifically, his recent May 29, 2018 classification report recommended his continued placement in medium security and noted his need for sex offender treatment programming, which Mr. LaGuer has refused no fewer than eight times. I find it highly likely that Mr. LaGuer would continue to engage in misconduct were he released on medical parole.

Apart from Mr. LaGuer's refusal to participate in needed programming and receipt of disciplinary reports highlighting his continued failure to follow set rules, Mr. LaGuer has also shown himself to be an untrustworthy individual, having falsified evidence by tampering with his saliva sample before trial and filing a false letter in support of his eighth new trial motion, resulting in a finding of fraud on the court. The Worcester County Assistant District Attorney who testified at Mr. LaGuer's

parole hearing emphasized that this tampering with court-ordered saliva is indicative of Mr. LaGuer's consciousness of guilt.

In sum, no reasons have been provided to me that Mr. LaGuer would be a law abiding citizen upon any release on medical parole. To the contrary, Mr. LaGuer engages in denial regarding the vicious crimes he committed, has perpetrated a fraud upon the court, contacted a judge in an effort to intimidate him, and leaves no impression other than that he will continue to reoffend should he be released on medical parole at this time.

Apart from these many reasons why Mr. LaGuer would continue to pose a risk to public safety should he be released at this time, he also has not provided a suitable medical parole plan with the petition for medical parole. An individual representing himself as having some familiarity with hospice care has offered to house Mr. LaGuer in his private home. There has been no mention of any safety/security issues that need addressing; Mr. LaGuer could simply leave the premises of his own free will and commit additional heinous crimes. Nor does the petition provide information that medical providers qualified to provide services to Mr. LaGuer are prepared to do so, or what financial plan or other adequate resources are in place to cover the cost of any continuing medical treatment for the duration of any medical parole.

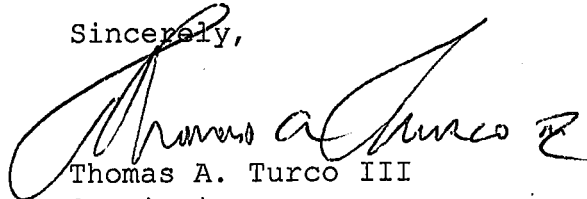
In denying the petition for medical parole for Mr. LaGuer, I have also taken into consideration the powerful written statements received from the Worcester County District Attorney's (DA) Office and victim's family, adamantly opposing medical parole for Mr. LaGuer. The statement from the Worcester DA's Office bases its opposition on the grounds that Mr. LaGuer has failed to show that he is suffering from a terminal illness so debilitating that he does not pose a risk to public safety, and on the insufficiency of the medical parole plan submitted on his behalf. The DA's statement notes that based on Mr. LaGuer's own medical exhibits accompanying the petition for medical parole, he is not bedbound but able to walk around and perform the activities of daily living. The DA's statement also succinctly notes the petition's omission of any mention of security measures to limit the risk to public safety inherent in the proposed release from a medium security prison of a still ambulatory inmate serving a life sentence for a violent sex crime. As noted in the DA's statement, "Mr. LaGuer would be unsupervised and free to walk away, leave the [proposed hospice] house, and do whatever he wants... The petition's complete failure to address security concerns is particularly alarming,

because Mr. LaGuer is a violent sexual offender who, as the Parole Board recently found, is 'not rehabilitated' and willfully refuses to follow the rules." I am in total agreement with the District Attorney's Office that Mr. LaGuer inarguably poses a substantial risk to public safety and should not be released on medical parole at this time.

I have also taken into consideration the extremely moving statement I received from the victim's family, adamantly opposing Mr. LaGuer's release on medical parole, in which they express the lifelong suffering endured by the now deceased victim as the result of Mr. LaGuer's actions and the continuing impact his horrific crime has had on them. The statement emphasizes that since Mr. LaGuer's incarceration, he has neither accepted responsibility for his actions nor apologized for them, and tellingly notes that although Mr. LaGuer seeks a "compassionate release", his own behavior when he violently raped their loved one and throughout his incarceration has been far from compassionate.

Should Mr. LaGuer's medical condition deteriorate to the point where he meets the statutory definitions of terminal illness or permanent incapacitation such that his release would not be incompatible with public safety and the welfare of society, as set forth in M.G.L. c. 127, sec. 119A, he can submit a request for a medical parole at that time.

Sincerely,



Thomas A. Turco III
Commissioner

cc: Colette Goguen, Superintendent
Carol Mici, Deputy Commissioner
Stephanie Y. Collins, Assistant Deputy Commissioner
Victim Services Unit (for notification to victim's family)
Joseph D. Early, Jr., Worcester County District Attorney
Sandra L. Hautanen, Asst. District Attorney, Worcester County
Sex Offender Registry Board
Benjamin LaGuer (W40280), NCCI Gardner