

## **FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt under Subchapter 4, Article 8 of Title 15, Division 3 of the California Code of Regulations (CCR), new Sections 3359.1, 3359.2, 3359.3, 3359.4, 3359.5, and 3359.6, concerning Medical Parole.

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

On April 11, 2011, the California Department of Corrections and Rehabilitation (CDCR) submitted a request to the Office of Administrative Law (OAL) for the Emergency adoption of these regulations concerning Medical Parole. This request was approved on April 29, 2011, with an effective date of April 29, 2011, as requested by CDCR.

The Notice of Emergency Regulations was published on May 13, 2011, which began the public comment period. The Department's Notice of Change to Regulations (NCR) #11-06 was also mailed the same day in addition to being posted on the CDCR internet and intranet websites. The public hearing was held on July 6, 2011, the final day of the public comment period. No one commented at the public hearing. During the 45-day comment period, six written comments were received. These comments are discussed below under the heading, "*Comments Received During the 45-Day Comment Period.*" During a review of these comments, it was determined that some should be included in a modified text. These changes and reasons for them are found below under the heading, "*Changes to the Text of Proposed Regulations.*"

A 15-Day Renote which included the amended text was distributed to the six commenters who responded during the initial 45-day comment period, on August 24, 2011, and posted on CDCR's intranet and internet websites, with an effective comment period of August 24 – September 12, 2011. No comments were received during the 15-Day Renote.

## **DETERMINATION**

The Department has determined that no reasonable alternatives considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the ISOR support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's determination.

## **ASSESSMENTS, MANDATES, AND FISCAL IMPACT**

This action will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing business, or create or expand business in the state of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government; or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are directly affected by the

internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

## **CHANGES TO THE TEXT OF PROPOSED REGULATIONS**

**Non-substantive formatting changes and typographical errors and/or omissions are corrected throughout the document to ensure clarity and consistency.**

### **Section 3359.1 Medical Parole General Policy.**

**Subsection 3359.1(b)(3) is amended** to delete the existing text of the originally proposed text, “An individual with a designated power of attorney for the health care of the inmate,” and replaced with the text, “An attorney or other individual appropriately authorized to initiate such actions on behalf of the inmate.” This change is necessary to clarify that the prisoner or his or her family member or designee may independently request consideration for Medical Parole, as provided by statute, and it is not necessary for the individual initiating the request on behalf of the inmate to hold a power of attorney for the health care of the inmate.

**Subsection 3359.1(b)(4) is adopted** to state that the inmate may initiate a request for Medical Parole consideration on his or her own behalf.

**Subsection 3359.1(c) is amended** to update the reference to the section as a result of the newly added subsection 3359.1(b)(4), above.

### **Section 3359.3 Pre-Release Process.**

**Subsection 3359.3(e) is adopted** to provide direction to staff, and to clarify to staff and inmates that release allowances will not be issued to medical parolees until such time that they transfer to parole pursuant to PC Section 3000.

### **Section 3359.7 Non-Citizen Inmates.**

**Existing section 3359.7 is deleted** from the originally proposed text.

## **PUBLIC HEARING COMMENTS**

### **Public Hearing: Held July 6, 2011, at 9:00 a.m.**

No one commented at the Public Hearing.

## **SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:**

### **COMMENTS #1**

**Comment 1A:** Commenter states that the final sentence of Section 3359.1(a)(1) of the proposed regulations, should read, “Activities of basic daily living are include breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation.” Commenter states current language implies that to be found incapacitated a person must not be able to perform this entire list of activities, and imprisoned people who can perform only one of the listed activities of basic daily living, may continue to depend on the State for all their health care costs and associated guarding costs even though they are permanently medically incapacitated and otherwise qualify for Medical Parole. Commenter states the class of eligible people for Medical Parole should not be needlessly restricted creating a situation where the State does not realize the savings intended to flow from Medical Parole.

**Accommodation:** None.

**Response 1A:** The comment provided is not grammatically correct. Therefore, the Department is unable to appropriately interpret the comment. Nonetheless, a plain reading of the text shows that it is a list of activities of daily living, and that a severe limitation in one or all of which could result in permanent medical incapacitation requiring 24-hour care.

**Comment 1B:** Commenter states that subsection 3359.1(a)(2) should read, “The medical/physical limitations documented in subsection (a)(1) above did not exist at, or have escalated since, the time the inmate was sentenced to the current incarceration.” Commenter states the current language thwarts the cost-saving intent of Legislature and should be amended to include the text “or have escalated since” as it was not Legislature’s intent to deny inmates Medical Parole merely because their permanent medical incapacitation is remotely traceable to a condition that existed at their sentencing, such as Multiple Sclerosis or Lou Gehrig’s disease. Commenter states that in cases such as those, the inmates may have been completely functional at the time of sentencing, but have suffered deterioration of their medical condition to the point of total incapacitation over a decade or more. Commenter states the current language is broader than statutorily designed.

**Accommodation:** None.

**Response 1B:** The Department disagrees with Commenter. The phrase contained in subsection 3359.1(a): “...and results in the inmate requiring 24-hour care...” contemplates an escalation of a medical condition rendering the inmate permanently unable to perform the activities of daily living, as worded. For instance, an inmate could have a medical condition or limitation at the time of sentencing that renders the inmate permanently unable to perform one or more activities of basic daily living yet still not require 24-hour care. If such an inmate’s medical/physical limitation then escalates to the point where 24-hour care is necessary, the inmate will be considered for medical parole. Use of the conjunction “and” in the relevant language makes clear that 24-hour care and permanent inability to perform activities of basic daily living are both required before an inmate can be considered for Medical Parole.

**Comment 1C:** Commenter states that a new subsection, 3359.1(b)(4), should be added to include the text, “An attorney or outside agent or designee acting on behalf of the inmate” to state this person can initiate a request that an imprisoned person be considered for Medical Parole. Commenter states that people in prison and their families should be able to hire an attorney or designate an agent, at their own cost, to navigate the process and procure information for them. Commenter states that allowing people to be represented allows free flow of communication that can correct errors and omission in the decision process, and allow speedier confirmation of a release plan, facilitating the release of qualified people. Commenter points out that current language of the regulations allows for a person with power of attorney to access such information, but this designation is not the same as being a legal representative, and that correcting this omission will help facilitate the process.

**Accommodation:** Subsection 3359.1(b)(3), is amended, and it now reads, “An attorney or other individual appropriately authorized to initiate such actions on behalf of the inmate.” This change was included in the 15-Day Renotice.

**Response 1C:** For clarity, and for better alignment with PC Section 3550(d), which allows the prisoner or his or her family member or designee to independently request consideration for Medical Parole, which may include a person who possesses a power of attorney for the inmate’s health care, subsection 3359.1(b)(3) was amended. The originally proposed text was deleted and replaced with the following text: “An attorney or other individual appropriately authorized to initiate such actions on behalf of the inmate.”

**Comment 1D:** Commenter states throughout the proposed regulations there are built-in duplicative and unnecessary delays that halt the Medical Parole process for days, and sometimes months on end, delaying cost savings and reducing staffing efficiency. Commenter provides the example of subsection 3359.1(c) because it prohibits imprisoned people from receiving reconsideration for Medical Parole if their primary care physician has previously reviewed their eligibility within the last 90 days. Commenter states that for the subset of people in

prison who will request Medical Parole because of a terminal illness, 90 days may be too long to wait for a reevaluation because their medical condition can dramatically deteriorate over a few days or weeks. Commenter states that subsections 3359.2(b)(1) and 3359.2(c)(1) allow 30 days to pass before the Chief Medical Officer (CMO)/Chief Medical Executive (CME) must inform the inmate of the reasons for his or her Medical Parole denial, but the same information must be communicated to other, prison medical staff within just three working days. Commenter states that these 30-day delays create increased cost and effort for prison employees who will be fielding calls from concerned family members inquiring about the status of their loved one's Medical Parole case. Commenter states that subsection 3359.2(h) allows Parole Agents eight days to assess an inmate's placement plan for Medical Parole before forwarding the assessment to the next level of review. Commenter states this delay is problematic in part because it follows seven other levels of review by CDCR employees that have taken place over at least 25 days. Commenter states that eight working days, and the State resources required to provide health care and associated guarding costs to the Medical Parole applicant during this time, is unnecessary and squanders the resources at a stage in the process when there has already been ample opportunity for review. Commenter states the delay is also problematic because it puts pressure on non-correctional health care providers to keep a bed open for eight days while the placement plan is under review. Commenter states this is something health care providers are not likely to do, and it will deter health care facilities from taking Medical Parole patients because they will face having an empty bed for significant periods of time while cases are reviewed. Commenter states it would be most prudent and cost-effective for the Medical Parole regulations to allow for only one day of placement plan review by the Parole Agent.

**Accommodation:** None.

**Response 1D:** The Department disagrees. The 30-day timeline is statutory, and the Department has built in time frames into the proposed regulations to meet the mandate. As referenced in the ISOR of these regulations, the adoption of the 30 "working" day time frame is necessary and reasonable to meet the Department's operational and procedural needs, and the specific time frames built into each step of the Medical Parole process ensure the review is completed within the 30-day period mandated by PC Section 3550(c). Important public safety and medical decisions must be made when considering Medical Parole.

Commenter specifically asks the Parole Agent's review time be shortened from eight days to one day. The Department cannot make this change because the Parole Agent's review is a significant step in releasing an inmate on Medical Parole and is necessary to help ensure the public's safety. The Department needs to provide ample time to the Parole Agent for a thorough review including any further investigation the Parole Agent deems appropriate.

**Comment 1E:** Commenter states the regulations do not speak to methods the Board of Parole Hearings (BPH) must use in their review process, or to the time constraints of their review process, or information they must make available to the person requesting Medical Parole. Commenter states BPH has a terrible record of delayed or cancelled hearings, and the State shoulders the financial burden by continuing to imprison people who pose no threat to society. Commenter states that placing BPH in charge of Medical Parole without mandated deadlines for how quickly cases must be heard will result in delays in the release of eligible incapacitated people, at great State cost. Commenter states that beyond medical and custodial costs, leaving these elements unaddressed will also create increased cost and effort for prison employees who will be fielding calls from concerned family members inquiring about the status of their loved one's Medical Parole cases. Commenter suggests adding a new subsection 3359.2(i) to include additional language addressing these elements of the Medical Parole process.

**Accommodations:** None.

**Response 1E:** The regulations under consideration (Title 15, Division 3) govern the activities of Adult Institutions Programs and Parole. BPH regulations reside in Title 15, Division 2. Commenter should direct this comment to BPH. The Department notes, however, that as of September 26, 2011, 11 of 13 cases brought before BPH for Medical Parole consideration have been granted.

**Comment 1F:** Commenter states that subsection 3359.2(d)(6) requires the evaluation of a needlessly narrow range of factors in determining a person’s institutional adjustment and suggests including the text, “laudatory chronos and evidence of family and community support for release.” Commenter states that arbitrary omission of evidence of good conduct can result in unnecessary denial of eligibility for release, thus obstructing the cost-savings intent of the Legislature.

**Accommodation:** None.

**Response 1F:** Existing language in the regulations allows for the type of information requested by the Commenter. The last part of subsection 3359.2(d)(6) reads, “and other information deemed pertinent to the inmate’s case factors.” This statement allows for other documentation, which is not specifically stated, but is relevant to the inmate’s Medical Parole request, to be considered.

**Comment 1G:** Commenter suggests adding a new subsection, 3359.2(d)(16), to read, “Any letters of support of lifer parole suitability filed on behalf of inmates sentenced to indeterminate terms who have been reviewed for parole suitability, as applicable.” Commenter states that such letters provide evidence of community support for a person’s release, and that absent this support, a person could be unnecessarily denied eligibility for Medical Parole, thus obstructing the cost-savings intent of the Legislature.

**Accommodation:** None.

**Response 1G:** See Commenter #1, Response 1F.

**Comment 1H:** Commenter suggests amending Section 3359.3 to include a timeline for release once a person is approved by BPH for Medical Parole. Commenter suggests adopting identical language to that in the Recall of Commitment statute, PC Section 1170(e), as follows, “If the Board of Parole Hearings grants the Medical Parole application, the inmate shall be released by the department within 48 hours of the Board’s approval, unless a longer time period is agreed to by the inmate.” Commenter states this is the customary time period allotted to CDCR for the release of a person as a result of court order. Commenter further states that the Medical Parole process provides for repeated review and confirmation of the release plan throughout the entire process, and that no further time is needed for review upon the court’s order for release.

**Accommodation:** None.

**Response 1H:** The Department disagrees with Commenter. Section 3359.3, as presently worded, is consistent with PC Section 3550; therefore, the suggested change is not necessary and exceeds the scope of the language in PC Section 3550. The statutes that govern Medical Parole and Recall of Commitment are different, and the explicit 48-hour release language in PC Section 1170(e)(4) governing Recall of Commitment is not contained in PC Section 3550 which governs Medical Parole.

**Comment 1I:** Commenter states that transportation and detention costs of federal immigration authorities may be more expensive than an inmate’s release, and suggests amending Section 3359.7 to read, “An inmate who is not a citizen of the United States may be released to Medical Parole, provided either a stay of deportation has been secured or he or she is released to federal immigration authorities pending deportation.” Commenter also suggests adding a new subsection in Section 3359.7 to read, “Federal immigration authorities shall be contacted for the purpose of requesting a stay of deportation.”

**Accommodation:** Existing Section 3359.7 is deleted. This change was included in the 15-Day Renotice.

**Response 1I:** The Department, in reviewing the suggestion from Commenter, and to be in compliance with PC Section 3550, deleted Section 3359.7 of the originally proposed text from the proposed regulations. There is no designation within statute that states undocumented inmates are excluded from Medical Parole consideration, and therefore, the suggested changes are outside the scope of PC Section 3550.

**Comment 1J:** Commenter states that Section 3359.6 provides for removal from Medical Parole and requires the addition of language that guarantees due process rights, including the right to a Medical Parole revocation hearing with legal representation. Commenter states that people are constitutionally guaranteed right to a hearing at parole revocation. Further, Commenter states that if a person is unable to represent him or herself, the person is constitutionally entitled to counsel. Commenter states that since the issue to be determined at the initial Medical Parole hearing is the incapacitation of the inmate, and if the inmate is unable to represent him or herself, they must be guaranteed legal counsel at a revocation hearing. Commenter states failure to add such language will leave the regulations subject to Constitutional challenge.

**Accommodation:** None.

**Response 1J:** Proposed section 3359.6 describes the circumstances and processes for recommending changes in the status or location of a medical parolee to BPH. The ability to process, determine and implement those and other modifications in a medical parolee's status, including any due process requirements, are set forth in the existing rules and regulations governing BPH actions. Any additions or changes to the existing due process protections would be promulgated by BPH pursuant to PC Section 3052, and set out in Title 15 of the California Code of Regulations, Division 2.

**Comment 1K:** Commenter states the Medical Parole regulations duplicate consideration of release of incapacitated people, as allowed under the Recall of Commitment law, but omit reference to the release of the terminally ill. Commenter states that since the 2008 revision to the Recall of Commitment law, allowing for the release of incapacitated people in addition to the terminally ill, prison custodial and medical staff have consistently conflated the two classes of people, and routinely deny consideration of Recall of Commitment to terminally ill people who are able to ambulate (even if it is just a few steps), citing that the people are not incapacitated. Commenter states that since the enactment of Medical Parole, there has been regular confusion on the part of BPH commissioners as well as CDCR administrative and medical staff, conflating the Medical Parole and Recall of Commitment processes. Commenter states that this conflation creates a common misunderstanding that non-incapacitated terminally ill people, and some incapacitated people statutorily precluded from release under Medical Parole, are eligible for Recall of Commitment consideration, while not eligible for Medical Parole. Commenter states that without clear affirmation and support of the existing Recall of Commitment law, Medical Parole regulations will be misinterpreted to further this confusion and render it more challenging to achieve release of non-incapacitated terminally ill people who pose no threat to society. Commenter states that this unintended obstruction of the Recall of Commitment law results in unintended lost fiscal savings to the State, and a statement that the Medical Parole law does not replace or amend the Recall of Commitment law is needed in Section 3359.1. Commenter suggests adding a new subsection, 3359.1(e), to read, "The Medical Parole statute and regulations shall not replace or amend the recall and resentencing under PC Section 1170(e), nor shall the use of the Medical Parole process disqualify a person from seeking recall and resentencing under Penal Code Section 1170(e). Recall and resentencing and medical parole may be pursued simultaneously, or recall and resentencing may be pursued if a person is denied medical parole, provided the person qualifies under Penal Code Section 1170(e)." Commenter also states that it would be helpful to provide BPH and other interested parties with directives reiterating that the Medical Parole law is not intended to replace or amend the Recall of Commitment law.

**Accommodation:** None.

**Response 1K:** The Department disagrees with Commenter. A terminal illness is not one of the eligibility criteria for Medical Parole contained in PC Section 3550. Recall of Commitment (commonly referred to as Compassionate Release) in PC Section 1170(e) does include terminal illness in its eligibility criteria. Inmates who do not meet eligibility for Medical Parole but are terminally ill within the meaning of PC Section 1170(e) will be considered for Recall of Commitment. PC Section 3550 contains language that specifically contemplates that other laws remain applicable during Medical Parole consideration by use of the phrase, "Notwithstanding any other provision of law..." throughout the section. Both the statutory and regulatory language are clear as written and do not state or imply that Medical Parole negatively impacts recall of commitment laws.

## **COMMENTS #2**

**Comment 2A:** Commenter states that the regulations do not list the inmate as a person who may initiate a request for Medical Parole consideration, and suggests listing the inmate in subsection 3359.1(b).

**Accommodation:** New subsection 3359.1(b)(4), which reads, “The inmate,” was added. This change was included in the 15-Day Renote.

**Response 2A:** The Department, in reviewing the suggestion from Commenter, and to be in compliance with PC Section 3550(d) added new subsection 3359.1(b)(4) to include the inmate as an authorized person who may initiate a request for Medical Parole consideration on his or her own behalf. This addition also corrects the inadvertent omission of this language from the originally proposed text.

## **COMMENTS #3**

**Comment 3A:** Commenter states that page 2 of the ISOR states: “CDCR will assist inmates released on Medical Parole into applying for public assistance to help pay for their healthcare costs,” yet there is no mention of this assistance in the regulations. Commenter states there are no regulations outlining the process by which CDCR or the State will pay for any remaining portion of the medical parolee’s healthcare costs that are not covered by the public assistance program, and suggests adding language to Section 3359 to outline the assistance that CDCR will provide, and the State’s responsibility for healthcare costs that are not covered by other entities.

**Accommodation:** None.

**Response 3A:** PC Section 2065 describes the financial component of Medical Parole, including the Department’s financial responsibilities. Because the provisions outlined in the PC are self-executing, and free from interpretation, no implementing or interpreting regulation is necessary to give them effect.

**Comment 3B:** Commenter states that Section 3359.6 of the ISOR identifies the term “assaultive behavior” as a basis for removal from Medical Parole. Commenter suggests including a definition of “assaultive behavior” in Section 3359 or Section 3000 of Title 15.

**Accommodation:** None.

**Response 3B:** The Department disagrees with the Commenter. Merriam-Webster defines the term assaultive as, “having an intense or abrasive effect on the senses or emotions,” and Dictionary.com defines the term as, “extremely aggressive or forcefully assertive.” Because the term is clearly defined by plain English texts, it is not necessary to further define the term in the proposed regulations.

**Comment 3C:** Commenter states there is no mention or regulation indicating that a denial of Medical Parole can be appealed. Commenter states that such a regulation is needed to provide a pathway to exhaust administrative relief and pursuit of relief from a court of law.

**Accommodation:** None.

**Response 3C:** The statute does not provide that Medical Parole is standard parole, as described under PC Section 3000, and therefore, a denial of Medical Parole cannot be appealed. As written, Medical Parole can be granted only if an inmate meets the criteria for release as outlined by statute. PC Section 3550(a) reads in part, “any prisoner who the head physician of the institution where the prisoner is located determines...is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, shall be granted medical parole if the Board of Parole Hearings determines that the conditions under

which the prisoner would be released would not reasonably pose a threat to public safety.” PC Section 3550(b) reads in part, “Subdivision (a) shall not apply to any prisoner sentenced to death or life in prison without possibility of parole...” A denial for Medical Parole release by the Department is based on the inmate’s failure to meet these criteria, and therefore, the decision is dictated by statute and cannot be appealed.

#### **COMMENTS #4**

**Comment 4A:** Commenter states that Section 3359.2 lists as the first step of the Medical Parole process for the inmate’s attending physician to conduct a medical evaluation to determine whether the inmate meets the medical criteria for Medical Parole. Commenter states that inmates serving life without the possibility of parole or inmates sentenced to death are statutorily ineligible for Medical Parole, but that the inmate’s Central File is only reviewed for these statutory exclusions after the medical evaluation has already been conducted. Commenter suggests amending the regulations to specify that prior to the medical evaluation; staff will review the inmate’s Central File to determine that the inmate is statutorily eligible for Medical Parole. Commenter states the Department will save time by avoiding the unnecessary work and cost of conducting medical evaluations of inmates who are statutorily ineligible for Medical Parole.

**Accommodation:** None.

**Response 4A:** The Department disagrees with the Commenter. PC Section 3550(a) mandates the Department to consider for Medical Parole all inmates who are determined by a Department physician to be permanently medically incapacitated. PC Section 3550(b) reads in part, “any prisoner who the head physician...determines...is permanently medically incapacitated...shall be granted medical parole if...” The case record review by custody staff will determine early in the process whether the inmate is statutorily ineligible because they are condemned or serving life without the possibility of parole.

**Comment 4B:** Commenter states that Section 3359.6 of the regulations discusses the circumstances under which an inmate may be removed from Medical Parole, which include, 1) when a medical examination of the parolee determines that their condition has improved to the extent that they no longer qualify for Medical Parole; and, 2) when the parole agent determines that the medical parolee is a threat to him or herself, another person, or there has been a significant change in their conditions of release. Commenter states there needs to be an expedited process to return a medical parolee to the custody of CDCR when a medical parolee is determined to be a threat to public safety, including the safety of patients or staff of the health facility, and suggests an expedited time frame of 24-hours.

**Accommodation:** None.

**Response 4B:** The Department disagrees with the Commenter. PC Section 5054 grants the Secretary of the Department the authority for the management, supervision, and control of the state prisons, and further PC Section 5055 allows this power to be exercised by a subordinate officer to the Secretary or by a person authorized by the Secretary. Within the Department, the Division of Adult Parole Operations is charged with preserving the public safety, and established a protocol for the immediate removal of a medical parolee from Medical Parole. A removal from Medical Parole status however may not necessarily mean a removal of an individual from their current physical location where they are receiving treatment. It could mean that correctional officers are posted to safeguard the individual from others, or to deter the individual from threatening others, or the individual may be reincarcerated within a CDCR facility if their health improves to the point where their treatment can be met within a secure facility.

#### **COMMENTS #5**

**Comment 5A:** Commenter states the Section 3359.2 does not provide for a reasonable resolution in the event the head physician disagrees with the treating physician as to whether the inmate qualifies for Medical Parole, but just disqualifies the inmate from consideration for Medical Parole at that point. Commenter states the request for

Medical Parole consideration should not simply terminate, and suggests the request instead go to a higher medical authority to resolve the difference, preferably a non-departmental medical expert.

**Accommodation:** None.

**Response 5A:** The Department disagrees with the Commenter. PC Section 3550(c) states that the head physician of the institution where the prisoner is located must concur with the treating physician's recommendation of the inmate. Statute does not allow for a third party to settle a dispute between the doctors when determining an inmate's medical eligibility for Medical Parole; rather, it mandates the head physician's concurrence before proceeding with the Medical Parole process. The suggested request is outside the scope of PC Section 3550. Furthermore, retaining a non-departmental medical expert would drive an additional expense to the State not contemplated in the legislation or in the Department's budget.

#### **COMMENTER #6**

**Comment 6A:** Commenter gives information about his own medical ailments, and ultimately inquires how he can qualify for Medical Parole.

**Accommodation:** None.

**Response 6A:** The comment is personalized to the extent that no meaningful response can be formulated. The comment has been forwarded to the Correspondence Control Unit for processing.

#### **SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE RENOTICE.**

##### **Public comment period: August 24, 2011 through September 11, 2011.**

The 15-Day Renotice period was forwarded to the six Commenters who provided written comment during the initial 45-Day public comment period. In addition, the Renotice was placed on the Department's website. No comments were received.