

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT

C.A. 24-2914 H

COMMISSIONER OF CORRECTION,

Petitioner,

v.

EDWARD STARLING,

Respondent.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2024 NOV -5 P 2:25
JOHN F. FOWERS III
ACTING CLERK/HONORARY

PETITION FOR ORDER AUTHORIZING INVOLUNTARY
MEDICAL TREATMENT OF A PRISONER

1. This petition is brought pursuant to G.L. c. 231A and the decision of the Supreme Judicial Court in Commissioner of Correction v. Myers, 379 Mass. 255 (1979) (a copy of which is attached hereto as Exhibit A).
2. The petitioner seeks a temporary restraining order and/or preliminary injunction, and ultimately a declaratory judgment and permanent order, authorizing the use of reasonable force to monitor and administer involuntary medical treatment to the respondent, who is a competent adult prisoner. The petitioner states that the emergency medical treatment is necessary to prevent the respondent from causing serious illness to himself, which would ultimately result in death.
3. The petitioner Commissioner of Correction is statutorily responsible for the administration of state correctional institutions, and the care and custody of inmates who have been committed to these institutions.
4. The respondent, Edward Starling, is a 70-year old state prisoner who on December 16, 1976, was committed to the custody of the Massachusetts

Department of Correction (DOC) to serve a sentence of fifteen years to life for the charge of Second Degree Murder. Affidavit of Erin Jablonski, MSN, BSN, CNL, APRN-BC (“Jablonski Affidavit”), attached hereto as Exhibit B, ¶2. He was eligible for parole as of January 16, 1991. Id.

5. Mr. Starling arrived at the Souza Baranowski Correctional Center on October 18, 2024. Affidavit of Robert Normandin, APRN, PMHNP-BC (“Normandin Affidavit”) attached hereto as Exhibit C, ¶3.
6. Mr. Starling has a recent history of engaging in a prolonged hunger strike. Jablonski Affidavit, ¶4.
7. Mr. Starling began refusing meals on or about October 8, 2024 and continues to refuse offers of food to the present time. Jablonski Affidavit, ¶5. He has taken small amounts of fluids, and generally refuses to allow the monitoring of his vital signs. Id.
8. As a result of Mr. Starling’s current ongoing refusals to eat, drink, or to allow medical monitoring, there are grave concerns regarding his medical condition. Jablonski Affidavit, ¶6.
9. Although Mr. Starling has generally refused to allow staff to monitor his vital signs, it is likely that she has developed orthostatic hypotension. Jablonski Affidavit, ¶7. This condition is usually due to blood volume depletion, it is also attributed to the strength of the heart when it comes to pumping blood throughout the body against gravity, and is a common consequence to a diminished intake. Id.

10. It is also likely that his sodium, chloride, and potassium levels are low. There are concerns about his cardiac status and how it might be affected by such electrolyte abnormalities. Jablonski Affidavit, ¶8.
11. Mr. Starling's refusal to eat, drink, or allow medical monitoring does not result from his lack of competency to make decisions regarding his medical care and well-being. Rather, his refusals to eat, drink and allow medical monitoring stem from his perception of injustice and despondency regarding his incarceration status. Normandin Affidavit, ¶¶8, 9.
12. Unless Mr. Starling receives immediate treatment, he will be exposed to the increasing risk of dehydration, kidney failure, electrolyte (blood chemistry) abnormalities, cardiac complications, shock and death. Jablonski Affidavit, ¶10.
13. The treatment that is needed is as follows:

placement of a nasogastric tube via the nose into the stomach for provision of nutrition, hydration, and medication; taking of vital signs and physical examination; blood tests, and all other necessary and appropriate tests/studies; urinalysis; x-rays; and possible subcutaneous or intravenous medication or fluids.

Jablonski Affidavit, ¶12.
14. Should Mr. Starling continue to refuse to accept nutrition on a long-term basis, he may need to have a percutaneous entero-gastric tube created in order to obtain nourishment, because use of a nasogastric tube may only be used on a short-term basis; on a long-term basis its use is impractical as it may be a source of infection.

Jablonski Affidavit, ¶13.

15. Because Mr. Starling currently requires a higher level of care than can be provided at SBCC, he should be transported to the Lemuel Shattuck Hospital. Jablonski Affidavit, ¶14. Such transportation will need to occur via ambulance because Mr. Starling's condition increases the risk of passing out if sitting upright for a prolonged period of time as, for example, in a DOC transportation van. Id.
16. Implementation of intravenous hydration, blood tests, including finger sticks, blood draws and all other necessary and appropriate tests/studies, x-rays, taking of vital signs, physical examination, and possible subcutaneous or intravenous medication or fluids are all considered to be minimally invasive medical actions that pose no serious risks to Mr. Starling. Placement of a nasogastric tube may cause some discomfort, but generally poses no risks to the patient. The risks of such medical procedures are far outweighed by the risks of failing to treat Mr. Starling's ongoing refusals to eat, drink, or allow for monitoring of his condition. Jablonski Affidavit, ¶15.
17. Implantation of a percutaneous entero-gastric tube involves a surgical procedure where a feeding tube is placed into the abdomen. This procedure carries a minimal risk of perforating the abdominal organs, bleeding, infection, and adverse reaction to medications. Jablonski Affidavit, ¶16.
18. The risks of such medical procedures are far outweighed by the risks of failing to treat Mr. Starling's ongoing refusals to eat. Jablonski Affidavit, ¶17.
19. It is anticipated that Mr. Starling will refuse to consent to the above-described treatments and to enter an ambulance. Jablonski Affidavit, ¶ 18. Therefore, it is necessary to seek Court authority for staff to use reasonable force in

implementing the treatments and securing Mr. Starling in an ambulance for transport. Id. Should it become necessary to use force to perform any of the procedures sought by the petitioner, staff may place their hands onto Mr. Starling to guide his movement. Id. He may also be placed into restraints. Id. This may also entail use of a sedative. Id. This prospect carries no additional risk to Mr. Starling than is otherwise present for any other incarcerated individual. Id. Staff have been trained in the procedure to place a person in restraints and staff monitor the safety of individuals so placed and so the risks of being so placed are viewed to be fairly minimal. Id.

20. The Commonwealth has a legitimate interest in preserving respondent's life, and in maintaining the "ethical integrity of the medical profession." Myers, 379 Mass. at 262. The Commonwealth, and particularly the petitioner, also have a significant "interest in upholding orderly prison administration." Id. at 264.
21. Superior Courts have previously granted orders allowing for the use of reasonable force to provide medical treatment to other competent inmates refusing such treatment thereby creating an imminent risk of death. See, e.g. Exhibits D -G (attached hereto).

WHEREFORE, the Commissioner of Correction respectfully prays:

1. That this Court issue a preliminary order authorizing the Department of Correction and its health care providers, their agents and employees, and any appropriate outside medical or emergency medical personnel to use reasonable force to monitor and treat Mr. Starling's medical conditions and to transport him to an outside hospital.

2. That the Court enter a declaratory judgment that the Department of Correction and its health care providers, and their agents and employees, and any appropriate outside medical or emergency medical personnel may use reasonable force to monitor and treat Mr. Starling's medical conditions and to transport him to an outside hospital.
3. That this Court issue a permanent order that the Department of Correction and its health care providers, and their agents and employees, and appropriate outside medical or emergency medical personnel may use reasonable force to monitor and treat Mr. Starling's medical conditions and to transport him to an outside hospital as necessary.

Respectfully submitted,

NANCY ANKERS WHITE
Special Assistant Attorney General

Dated: November 5, 2024

/s/Scott McLean
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CERTIFICATE OF SERVICE

I, Scott McLean counsel for the petitioner, hereby certify that on this day, Edward Starling, W35911, was served a copy of the Petition For Order Authorizing Involuntary Medical Treatment Of A Prisoner, in-hand by facility staff, at Souza Baranowski Correctional Center, 100 Harvard Road, Shirley, MA 01464.

Dated: November 5, 2024

/s/Scott McLean
Scott McLean
Supervising Counsel