



April 2019

From: Keith Wattley

Re: Termination of *Johnson v. Shaffer* Class Action

As many of you know, we filed a class action lawsuit, *Johnson v. Shaffer*, in order to protect people from the misuse of Comprehensive Risk Assessments (psychological evaluations, or “CRAs”) in parole consideration hearings. The settlement of that case required the Board of Parole Hearings to establish an appeal process for correcting errors in the CRAs in advance of hearings and to make other changes to make the process more fair. The settlement reaches hearings for everyone appearing before the Board for parole consideration – more than 10,000 class members.

When the Board’s appeal process did not quite meet the terms of the settlement, we went back to District Court, which ordered some changes to be made. As a result, the Board amended its regulations (Title 15 of the California Code of Regulations, Section 2240) in a way that satisfied the Court. After those changes were made, the Court dismissed the case, finding that the Board had substantially complied. Below is a rough timeline of what has happened since the settlement was reached several years ago.

In **October 2017**, the District Court sided with the lifers and ordered the BPH to amend its regulations in three ways: (1) expand the definition of “factual errors” in CRAs that lifers may appeal; (2) create deadlines for the BPH to provide lifers with their CRAs before their parole hearings, and also to provide written responses to lifers who have objected to errors in CRAs; and (3) require the BPH to correct *all* known “factual errors” in CRAs. The Court also ordered the BPH to include clear language in all CRAs stating that the risk ratings (low, moderate, high) reflect a comparison to other lifers, and that recidivism rates for all people serving long terms are lower than for those released from shorter

sentences. In order to give the Board time to address these issues, the District Court extended its jurisdiction over the case for one year.

In **November 2017**, the Office of Administrative Law (OAL) rejected the Board's CRA regulations. The OAL decision pointed to unclear language, along with the BPH's failure to explain why several changes were necessary, as well as the BPH's failure to address several written objections from members of the public.

In **December 2017**, the BPH again revised its regulations in response to both the District Court Order and the OAL decision.

In **January 2018**, we sent a letter to the BPH outlining our concerns about the revised regulations, including our belief that they must provide a remedy for lifers who had CRA appeals wrongly screened out under the previous unreasonable definition of "factual error."

In **March 2018**, the BPH submitted the revised regulations to the OAL. The OAL approved the regulations in **April 2018**. The regulations went into effect in **July 2018**. After careful review, we determined that while the approved regulations are not perfect, it would have been difficult to convince the District Court to reject them. This is because (1) the approved regulations set out a new definition of "factual error" that does not exclude clarifications regarding statements made in the CRA interview; (2) the approved regulations create a deadline by which CRAs must be completed and served prior to the hearing; and (3) the approved regulations create a process through which *all* errors, regardless of material impact, should be corrected.

In **October 2018**, the District Court's Order extending its jurisdiction over the case terminated. This means that this litigation has concluded, and UnCommon Law is no longer engaged in this lawsuit against the Board.

Despite this, we encourage you to continue to raise issues that you experience with the Comprehensive Risk Assessment process and we appreciate any information that you provide to us about your experiences. If you need guidance on how to object to and appeal a CRA, please write to our office and request a copy of our guide titled, “How to Challenge a Comprehensive Risk Assessment.”

We also continue to monitor trends and problems in the parole consideration process. Please feel free to reach out if there is a particular issue you are experiencing. While we cannot guarantee we will be able to take action, we remain committed to advocating for all those serving lengthy or indeterminate prison terms. Please share this update widely.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KW', is positioned below the word 'Sincerely,'.

Keith Wattley,
Attorney for the Class in *Johnson v. Shaffer*