

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

STEPHEN MICHAEL WEST,)	
)	
Plaintiff,)	
)	
)	
BILLY RAY IRICK,)	
)	
Plaintiff/Intervenor,)	
v.)	S. Ct. No. M2010-02275-SC-R11-CV
)	
GAYLE RAY, in her official)	Davidson County Chancery Court
capacity as Tennessee Commissioner)	Case No. 10-1675-I
of Correction, et al.,)	
)	DEATH PENALTY CASES
)	EXECUTIONS SCHEDULED:
Defendants.)	November 30, 2010 and
)	December 7, 2010

**RESPONSE IN OPPOSITION TO MOTIONS TO VACATE OR
FURTHER MODIFY COURT'S ORDERS SCHEDULING
MR. WEST'S AND MR. IRICK'S EXECUTIONS**

On November 6, 2010, this Court issued an order granting plaintiff West's application for permission to appeal under T.R.A.P. 11, vacated the Chancery Court's order denying West a temporary injunction, and remanded the case to the Chancery Court for a hearing. The Court instructed the Chancery Court to particularly address, *inter alia*, "[w]hether the current amount and concentration of sodium thiopental mandated by Tennessee's current lethal injection protocol are insufficient to ensure unconsciousness so as to create an objectively intolerable risk of severe suffering or pain during the execution process." *West v. Ray*. No. M2010-02275-SC-R11-CV (Tenn. Nov. 6, 2010) (Order, p. 4). The Court reset the date of execution of West's

sentence for November 30, 2010. After remand, plaintiff Irick intervened in the case; Irick's sentence is set to be executed on December 7, 2010.

Following a two-day hearing, the Chancery Court issued a bench ruling that was incorporated in an order filed November 22, 2010, granting declaratory judgment in favor of the plaintiffs. The trial court declared that "Tennessee's three-drug protocol violates the prohibition against cruel and unusual punishment contained in Article I, section 16 of the Tennessee Constitution and the Eighth Amendment of the United States Constitution." *West v. Ray*. No. 10-1675-I (Davidson Chanc. Ct. Nov. 22, 2010) (Order, p. 2). On the basis of this ruling, the plaintiffs now move this Court to vacate or modify its previous orders setting their execution dates.

The trial court invalidated Tennessee's lethal injection protocol on the basis of its determination that the current amount of sodium thiopental mandated by the protocol (5 grams) is insufficient to ensure unconsciousness and that "there are feasible and readily available alternative procedures which could be supplied at execution to [e]nsure unconsciousness," which the protocol does not include. (Order, Bench Ruling, p. 37). The State defendants maintain, as discussed below, that the trial court was wrong to find that 5 grams of sodium thiopental is insufficient to ensure unconsciousness. Nevertheless, in response to, and heeding, the trial court's ruling, the State has added an explicit check for consciousness to Tennessee's lethal injection protocol. In so doing, the State has taken the step the trial court deemed necessary to ensure that the plaintiffs' sentences are carried out in a constitutional manner. There being no adequate basis upon which to vacate this Court's previous orders, plaintiffs' motions should be denied.

I. TENNESSEE'S LETHAL INJECTION PROTOCOL NOW INCLUDES AN EXPLICIT CHECK FOR CONSCIOUSNESS.

The trial court determined from the evidence presented that “there are various ways” to check for consciousness prior to the administration of the second and third chemicals and that the State “should have adopted one of the simple ways which appears to be used in other states.” (Order, Bench Ruling, pp. 37-38). The trial court instructed that “it should be done,” (Order, Bench Ruling, p. 37), and so it *has* been done. As of November 24, 2010, Tennessee’s lethal injection protocol requires the executioner to signal the warden after completing the administration of 5 grams of sodium thiopental and wait further direction. The warden shall then “assess the consciousness of the condemned inmate by brushing the back of his hand over the condemned inmate’s eyelashes, calling the condemned inmate’s name, and gently shaking the condemned inmate.” (Exhibit A, p. 65, ¶ 6) (Attached). If the inmate is determined to be unconscious, the warden shall direct the executioner to administer the second and third chemicals. If the inmate is determined to be conscious, the warden shall direct the executioner to switch to the secondary IV line for administration of the second set of chemicals (and, thus, re-administration of 5 grams of sodium thiopental). (*Id.*) Having added this explicit check for consciousness, the State has supplied the procedure at execution deemed necessary by the trial court “to [e]nsure unconsciousness and negate any objectively intolerable risk of severe suffering or pain.” (Order, Bench Ruling, p. 37).

Plaintiffs assert in their motions that if the State should “change their method of carrying out lethal injections,” plaintiffs should be afforded an opportunity to litigate whether the new method of execution is constitutional. (Motions, ¶¶ 6-8). Here, though, the State has not changed the method of execution but merely added an additional precaution to the existing method in

order to ensure unconsciousness. Any argument that such an addition likewise requires further litigation would not be well taken.

The State has now litigated the constitutionality of its three-chemical lethal injection protocol on three occasions. Twice before it was upheld, see *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292 (Tenn. 2005); *Harbison v. Little*, 571 F.3d 531 (6th Cir. 2009), *cert. denied*, 130 S.Ct. 1689 (2010), and in *Harbison*, the Sixth Circuit expressly rejected the contention that the protocol requires an explicit check for consciousness. See *Harbison*, 571 F.3d at 536-7. The trial court here, of course, has now ruled that an explicit check for consciousness *is* necessary, due to plaintiffs' contention, and the court's ultimate finding, that a proper dose of sodium thiopental is not sufficient to ensure unconsciousness. See Order, Bench Ruling, pp. 31-32 (distinguishing *Baze v. Rees*, 553 U.S. 35 (2008), and *Harbison*, 571 F.3d 531). But the trial court characterized the various ways for checking unconsciousness as "feasible," "readily available," and "simple." (Order, Bench ruling, pp. 36-37). Moreover, the trial court expressly stated that it was not for the court to determine which particular method of checking for consciousness ought to be employed; *that* determination, the court concluded, "should be left to the State." (Order, Bench Ruling, p. 37).¹ Accordingly, granting plaintiff's motion so that the trial court may consider the State's addition of a check for consciousness "would serve no meaningful purpose and would frustrate the State's legitimate interest in carrying out a sentence of death in a timely manner." *Baze*, 553 U.S. at 61.

¹That being said, Tennessee's check for consciousness is much like that of California's, which the trial court referenced in its order. See Order, Bench Ruling p. 21.

II. THE TRIAL COURT ERRED IN FINDING THAT 5 GRAMS OF SODIUM THIOPIENTAL IS INSUFFICIENT TO ENSURE UNCONSCIOUSNESS.

Given the State's acquiescence in the trial court's ruling that Tennessee's protocol must include an explicit check for consciousness, it is unnecessary, for the purposes of plaintiff's motions, for this Court to decide whether the evidence supports the trial court's finding that the current amount and concentration of sodium thiopental are insufficient to ensure unconsciousness. As the trial court concluded, the addition of such a check itself ensures unconsciousness "and negate[s] any objectively intolerable risk of severe suffering or pain." (Order, Bench Ruling, p. 37). Still, the State defendants maintain that the evidence does not support the trial court's finding regarding the sufficiency of administering 5 grams of sodium thiopental.

In *Baze*, the United States Supreme Court held that in order to prevail on a claim that a state's execution protocol violates the Eighth Amendment, a prisoner must establish that it creates an "objectively intolerable risk of harm." 553 U.S. at 50, 53. Citing *Baze*, this Court instructed the Chancery Court that "[t]he heavy burden of proving this risk is on the party challenging the protocol." *West v. Ray*, No. M2010-02275-SC-R11-CV (Tenn. Nov. 6, 2010) (Order, p. 3). In *Workman v. Bredesen*, 486 F.3d 896 (6th Cir. 2007), the Sixth Circuit considered whether Tennessee's protocol involved the unnecessary and wanton infliction of pain:

The whole point of the Tennessee lethal-injection protocol is to avoid the needless infliction of pain, not to cause it. The idea is to anesthetize the individual with one drug before the State administers the remaining two drugs, so that the serial combination of drugs causes a quick and pain-free death. See *Abdur'Rahman*, 181 S.W.3d at 307-08 (noting "that a dosage of five grams of sodium Pentothal as required under Tennessee's lethal injection protocol causes nearly immediate unconsciousness and eventually death [,] ... that such a dose would cause an inmate to be

unconscious in about five seconds and that the inmate would never regain consciousness and would feel no pain prior to dying”).

486, F.3d at 907 (emphasis added). The Sixth Circuit further noted:

Under its lethal-injection protocol, Tennessee administers 5 grams of sodium thiopental to anesthetize the inmate. *See* Execution Procedures for Lethal Injection at 35. That lethal dosage represents the highest level that other States use, and it renders the inmate unconscious “nearly immediate[ly],” *Abdur'Rahman*, 181 S.W.3d at 308. *This 5-gram dose thus reduces, if not completely eliminates, any risk that Workman would “incur constitutionally excessive pain and suffering when he is executed.” See id. at 308 (“Dr. Heath [Workman's expert] ... testified that a lesser dosage of two grams of sodium Pentothal would cause unconsciousness in all but ‘very rare’ cases and that a dosage of five grams would ‘almost certainly cause death.’”).*

486 F.3d at 910 (emphasis added). This is consistent with the expert testimony in *Baze*.² *See Baze*, 553 U.S. at 59 (“[A] proper dose of thiopental obviates the concern that a prisoner will not be sufficiently sedated. All the experts who testified at trial agreed on this point.”). Here, however, the trial court found that 5 grams of sodium thiopental is *not* sufficient to ensure unconsciousness, “because the body’s ability to and the body’s actual use of this drug depends on so many variables.” (Order, Bench Ruling, p. 35)

A. Five grams of sodium thiopental is sufficient to ensure unconsciousness.

Dr. Feng Li, the defendants’ expert forensic pathologist, testified that, based on the five-gram quantity of thiopental administered, which is many times more than the dosages normally administered as part of surgical anesthesia, three inmates whose sentences were previously executed under Tennessee’s lethal injection protocol (Robert Coe, Philip Workman and Steve Henley) would have been rendered unconscious within a matter of minutes after the administration of sodium thiopental and would not have been aware of the effects of the Pavulon

² The Kentucky lethal injection protocol upheld in *Baze* calls for the injection of 3 grams of sodium thiopental.

or potassium chloride. (Day 2, Rough Draft Transcript, pp. 44-56). Edwin Voorhies, South Regional Director for the Ohio Department of Rehabilitation, testified that Ohio adopted a one-drug protocol utilizing 5 grams of sodium thiopental introduced by 5 IV syringes, in November 2009. He testified that Ohio has executed nine condemned inmates since adopting that protocol and that he has been in attendance at each execution. All nine executions resulted in death of the condemned inmate, without the necessity of utilizing the additional 5 grams of sodium thiopental as provided by the protocol. Voorhies is positioned within four feet of the condemned inmate's feet when the sodium thiopental is administered, so that he can observe the condemned inmate as the sodium thiopental is introduced. He testified that the inmates appeared to lose consciousness after the conclusion of the first syringe and that by the end of the second syringe, one could see no visible signs of the chest rising and falling. (Day 1, Afternoon, Rough Draft Transcript, pp. 72-87). This is consistent with, and supportive of, the testimony of Dr. Li to the effect that following the administration of 5 grams of sodium thiopental inmates Coe, Workman, and Henley were rendered unconscious at the time of their executions. (Day 2, Morning, Rough Draft Transcript, pp. 54-55).

For his part, the plaintiffs' expert, Dr. David Lubarsky, acknowledged that 5 grams of sodium thiopental is many times the amount used to induce anesthesia and that 5 grams was a sufficient amount to put someone to sleep. (Day 1, Morning, Rough Draft Transcript, p. 59). Dr. Lubarsky stated only that he was not confident that it was a sufficient amount to keep someone asleep, because "we don't really understand" the many variables involved. (Day 1, Morning, Rough Draft Transcript, p. 62). He therefore relied on post-mortem sodium thiopental levels to conclude that Coe, Workman, and Henley were conscious following the administration of 5 grams of sodium thiopental. (Day 1, Afternoon, Rough Draft Transcript pp. 6, 14, 17-18).

B. Post-mortem serum levels of sodium thiopental are an unreliable basis on which to determine consciousness at the time of execution.

This Court directed the Chancery Court and the parties to address “[t]he scientific basis for and reliability of Dr. Lubarsky’s or any other expert’s opinion.” *West v. Ray*, No. M2010-02275-SC-R11-CV (Tenn. Nov. 6, 2010) (Order, p. 4). Dr. Lubarsky opined that the post-mortem serum levels of sodium thiopental for the inmates Coe, Workman, and Henley were inadequate to establish unconsciousness. (Day 1, Afternoon, Rough Draft Transcript pp. 6, 14, 17-18). Although the trial court found Dr. Lubarsky’s testimony “convincing” (Order, Bench Ruling, p. 17), his opinions were based on the research presented in the now well-known 2005 article in the medical journal *Lancet* coauthored by Dr. Lubarsky. In this Court’s November 6, 2010, order remanding this matter to the trial court, the Court noted that it has joined the United States Supreme Court and other jurisdictions “in declining to afford constitutional weight to the *Lancet* study as a basis for rejecting the three-drug lethal injection protocol.” *West v. Ray*, No. M2010-02275-SC-R11-CV (Tenn. Nov. 6, 2010) (Order, p. 3 n.1). *See also Harbison v. Little*, 2010 WL 2736077, *8 (M.D.Tenn. July 12, 2010) (post-mortem sodium thiopental serum levels are insufficient to show that lethal injection protocol is unconstitutional).

Dr. Feng Li, the defendants’ expert, testified that, with regard to the Coe, Workman, and Henley autopsies, the concentration of thiopental indicated in their respective autopsy reports do not accurately reflect actual blood level during or soon after the executions. (Day 2, Morning, Rough Draft Transcript pp. 48, 49, 53, 54). Dr. Li testified that the concentration of thiopental would be much higher. This is consistent with the peer responses to the *Lancet* article referred to by Justice Breyer in *Baze*. *See* 553 U.S. at 110. For instance, Jonathan Groner, who had previously expressed strong support for the *Lancet* article, later expressed concerns about its findings:

In their zeal to “prove” that thiopental concentrations during execution were low, Koniaris and colleagues may have erred in their reporting of the crucial measurement of the elapsed time between the moment of death and the retrieval of blood samples, stating that the samples were collected the “same day or next day”. In fact, a graph provided to reviewers, but not included in the paper, suggests that most samples were obtained 12 or more hours after death. This graph clusters nine samples exactly 1 day after death, and 15 or more at about 0.5 days, suggesting that these times were rounded off. Most importantly, only two samples seem to have been obtained within a few hours of execution.

The elapsed time is critical because thiopental—a lipid-soluble and ultra-short-acting anaesthetic agent—redistributes into fat and muscle, even after death. In addition, a lethal injection is a unique clinical event, in that death occurs within a few minutes of injection of a large bolus of this drug, therefore a steady-state is not present. Under these circumstances, post-mortem serum concentrations are not reliable if a substantial amount of time has elapsed, because the high concentration of drug in the blood rapidly diffuses across a concentration gradient into the surrounding tissues after death. To state that “thiopental concentrations did not fall with increased time between execution and blood sample collection... consistent with data showing that thiopental is quite stable in stored human plasma” is erroneous since few samples were taken within the first few hours after death. Furthermore, there is a huge difference between the behaviour of thiopental in a corpse (where it diffuses out of the blood and into tissues in the body) and in a test tube of serum (where it has nowhere else to go). Other studies, not cited by Koniaris and colleagues, suggest that post-mortem serum thiopental concentrations in thiopental-caused deaths are lower in blood than in tissue, and could be unreliable.

Exhibit 10, “Lancet Responses” Vol. 365, April 16, 2005. The response of Mark J. S. Heath, Donald R. Stanski, and Derrick J. Pounder to the Lancet article was, likewise, consistent with Dr.

Li’s testimony:

It is widely accepted that concentrations of a drug in post-mortem blood might not reflect the concentrations present at the time of death because of post-mortem drug redistribution—i.e., site-dependent and time-dependent changes in drug concentration that occur after death.

These problems are particularly significant with thiopental, a highly lipophilic drug. Thiopental can take many minutes to reach equilibrium in highly perfused compartments, and longer in less well perfused tissues. When death ensues before equilibrium, as is the case during lethal injection, post-mortem passive diffusion from blood into tissues can cause thiopental concentrations in blood to decline. Results of studies on post-mortem drug diffusion effects suggest that this is a likely explanation for low concentrations of thiopental in blood sampled several hours to days after death. The absence of samples drawn in the first hours after death, the use of samples drawn from different anatomical sites, and the failure to characterise accurately the time between death and blood-drawing probably contributed to Koniaris and colleagues' flawed conclusions. Notably, Koniaris and colleagues have retracted three critical data points and recognise that they incorrectly estimated the times between autopsy and blood sampling in numerous cases (T Zimmers, written communications), eroding support for their statement that "[t]hiopental concentrations did not fall with increased time between execution and blood sample collection."

Id. Even the authors of the *Lancet* article conceded that "[e]xtrapolation of antemortem depth of anaesthesia from post-mortem blood thiopental concentrations is admittedly problematic." Exhibit, 8, *Inadequate Anaesthesia in Lethal Injection for Execution*, 365 *Lancet* 1412, 1413. Yet, the conclusions of this article form the basis for the Chancery Court's conclusion that execution pursuant to Tennessee's lethal injection protocol constitutes cruel and unusual punishment.

Based on the proof presented in this case, the plaintiffs failed to meet their "heavy burden" of proving an "objectively intolerable risk of harm." A risk can hardly be said to be objectively intolerable when the science upon which the risk is based is subject to substantial criticism. Accordingly, the Chancery Court erred in relying on the testimony of Dr. Lubarsky in concluding that the Tennessee lethal injection protocol constitutes cruel and unusual punishment.

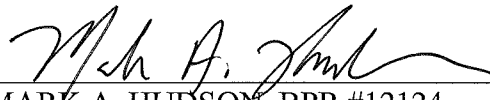
CONCLUSION

Because Tennessee's lethal injection protocol now includes an explicit check for consciousness, plaintiffs' motions to vacate or modify this Court's previous orders setting the dates for execution of their sentences should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I hereby certify that on November 24, 2010, a copy of the foregoing was forwarded by e-mail and U.S. Mail to:

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EXHIBIT A

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MEMORANDUM

TO: Warden Ricky Bell
Riverbend Maximum Security Institution

FROM: Gayle Ray *GR*

DATE: November 24, 2010

SUBJECT: Lethal Injection Manual Update

Please be advised that I have approved revisions to pages 65, 67, 85, and 86 of the Lethal Injection Procedures Manual. The revisions are effective immediately.

The revised pages are attached, along with a Lethal Injection Update Log. Please insert the revised pages into the Lethal Injection Procedures Manual and remove the old pages in accordance with TDOC Policy 506.16.3.

GR:DI:PC
Attachments

4. The Warden gives the signal to proceed and the Executioner begins to administer the first chemical. The Lethal Injection Recorder documents the time the process begins.
5. After 5 grams of sodium thiopental and a saline flush have been dispensed, the Executioner shall signal to the Warden, and await further direction from the Warden.
6. At this time, the Warden shall assess the consciousness of the condemned inmate by brushing the back of his hand over the condemned inmate's eyelashes, calling the condemned inmate's name, and gently shaking the condemned inmate. Observation shall be documented. If the condemned inmate is unresponsive, it will demonstrate that the inmate is unconscious, and the Warden shall direct the Executioner to resume with the administration of the second and third chemicals. If the condemned inmate is responsive, the Warden shall direct the Executioner to switch to the secondary IV line. See Contingency Issues on p. 67.
7. Following the completion of the lethal injection process, and a five-minute waiting period, the blinds to the official witness room are closed, the closed-circuit TV camera is disengaged, and the privacy curtain is closed. The Warden then asks the physician to enter the room to conduct an examination. The physician reports his findings to the Warden or designee.
8. The inmate is pronounced deceased by the physician. The Administrative Assistant or designee records the time that death is pronounced.
9. The Warden or designee announces that the sentence has been carried out and invites the witnesses to exit. The Warden announces the following: "The sentence of _____ has been carried out. Please exit."
10. The witnesses are then escorted from the witness rooms by Escort Officers.
11. The Commissioner or designee notifies all appropriate State officials that the sentence has been carried out. Media representatives are notified by the TDOC Communications Officer or designee.
12. The Extraction Team removes restraints.
13. The Medical Examiner staff assists in removal of the body and placement in the Medical Examiner's vehicle, which is in the capital punishment garage.
14. The Medical Examiner's vehicle is cleared to exit the facility.
15. The Lethal Injection Recorder completes the Lethal Injection Execution Recorder Checklist.

CONTINGENCY ISSUES

IV Line Alternatives

The cut-down procedure is used unless the physician chooses a different method to find an IV site.

Any interruption of the delivery of the lethal injection drugs in the primary IV line

The Executioner switches to the secondary IV line and, starting with **syringe #1 (blue)**, begins the administration of the second set of syringes using the reserve tray.

If the condemned inmate is responsive after administration of the first chemical and saline flush

The Warden shall check for consciousness after the sodium thiopental and a saline flush have been administered. If the condemned inmate is determined to be responsive by the Warden, the Executioner shall switch to the secondary IV line at the direction of the Warden and begin administration of the second set of chemicals.

Repeating the Lethal Injection Process

If the inmate is not deceased after the initial set of syringes has been injected, the physician returns to the designated waiting area. The curtain is opened, blinds raised, camera activated, and the Warden gives the command to repeat the lethal injection procedure with the second set of syringes (blue). After this procedure is completed, the blinds will once again be closed, closed-circuit TV camera disengaged, and the privacy curtain closed. The Warden will once again ask the physician to enter the room and check for signs of life.

LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD

Inmate Name _____ Inmate # _____

Date _____

SET 1 (Red)	Drug	Time Begin
Syringe 1	Sodium Thiopental	_____
Syringe 2	Sodium Thiopental	_____
Syringe 3	Sodium Thiopental	_____
Syringe 4	Sodium Thiopental	_____
Syringe 5	Saline	_____
Signal to Warden and pause for consciousness assessment		_____
Warden directs resumption of chemical administration		_____
Syringe 6	Pancuronium Bromide	_____
Syringe 7	Pancuronium Bromide	_____
Syringe 8	Saline	_____
Syringe 9	Potassium Chloride	_____
Syringe 10	Potassium Chloride	_____
Syringe 11	Saline	_____

End Time _____

Recorder Signature _____

Warden _____

LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD

Inmate Name _____ Inmate # _____

Date _____

SET 2 (Blue)	Drug	Time Begin
Syringe 1	Sodium Thiopental	_____
Syringe 2	Sodium Thiopental	_____
Syringe 3	Sodium Thiopental	_____
Syringe 4	Sodium Thiopental	_____
Syringe 5	Saline	_____
Signal to Warden and pause for consciousness assessment		_____
Warden directs resumption of chemical administration		_____
Syringe 6	Pancuronium Bromide	_____
Syringe 7	Pancuronium Bromide	_____
Syringe 8	Saline	_____
Syringe 9	Potassium Chloride	_____
Syringe 10	Potassium Chloride	_____
Syringe 11	Saline	_____

End Time _____

Recorder Signature _____

Warden _____

Lethal Injection Update Log

Date	Page	Item
5-8-07	p. 35	In the description of Pancuronium Bromide, changed "100 mg/ 100 mL" to "100 mg (1 mg/ ml)".
		In the description of Potassium Chloride, changed "100 mg /mL" to "100 mL".
5-8-07	p. 38	Changed "Pancuronium Bromide (100 mg/mL)" to "Pancuronium Bromide (1 mg/mL concentration)".
5-8-07	p. 81	Changed "100 mg/mL Pancuronium Bromide" to "100 mg Pancuronium Bromide (1mg/ml)".
		Changed "100 mg/mL Potassium Chloride" to "100 mL of 2 mEq/mL Potassium Chloride, for a total of 200 mEq".
2-2-09	p.96	Updated TDOC Policy 506.16.1 – Execution: Facility Control and Access
11-02-09	p. 57, D# 7	Changed "disposable" razor to "electric" razor
5-28-10	p. 3	In Section VI, Death Watch Procedures, removed Day 4 and combined with Day 3.
		In Section X TDOC Policies, updated policy listing to applicable current TDOC policies.
5-28-10	p. 5	Updated Commissioner signature. Capitalized "Commissioner" in second paragraph.
5-28-10	p. 33	Changed Execution Team Simulation to Day 3 and removed Day 4.
5-28-10	p. 46	3.G. Changed to electric razor. 3.I. Changed to: Two pairs of shorts and t-shirts (male inmates). Two pairs of panties and bras (female inmates). Underwear will be exchanged daily.
5-28-10	p. 49	B.2. Changed last visit by minister to 6:00 pm – 8:00 pm.
5-28-10	p. 57	D.7. Changed to electric razor. D.9. Same as page 46, 3.I.

Lethal Injection Update Log – Page 2

Date	Page	Item
5-28-10	p. 60	16. Added use of privacy screen for female inmates when inmate showering, using toilet or changing clothing.
5-28-10	p. 62	Added Execution Day 4 to Day 3.
5-28-10	p. 63-64	Combined Day 4 into Day 3 and adjusted time schedule for new execution time of 10:00 pm.
5-28-10	p. 77-78	Draft letter to Sheriff and inmate's family, changed time of arrival and time of execution.
5-28-10	p. 96	Added updated applicable TDOC policies.
11-24-10	p. 65	Inserted paragraph # 5 - Executioner to signal Warden after sodium thiopental and saline flush have been dispensed. Inserted paragraph # 6 - Warden to check consciousness of the condemned inmate.
11-24-10	p. 67	Inserted contingency if the condemned inmate is responsive after administration of the first chemical and saline flush.
11-24-10	p. 85-86	Inserted time slot for "Signal to Warden and pause for consciousness Assessment" Inserted time slot for "Warden directs resumption of chemical administration"

11/24/2010