



TENNESSEE DEPARTMENT OF CORRECTION

INMATE GRIEVANCE

**EMERGENCY**

Philip Workman  
NAME

95920  
NUMBER

RMSI - Unit 2  
INSTITUTION & UNIT

DESCRIPTION OF PROBLEM: see attached

REQUESTED SOLUTION: see attached

Philip R. Workman  
Signature of Grievant

5-2-07 3:18 p.m.  
Date

TO BE COMPLETED BY GRIEVANCE CLERK

\_\_\_\_\_  
Grievance Number

\_\_\_\_\_  
Date Received

\_\_\_\_\_  
Signature Of Grievance Clerk

INMATE GRIEVANCE COMMITTEE'S RESPONSE DUE DATE: \_\_\_\_\_

AUTHORIZED EXTENSION: \_\_\_\_\_  
New Due Date

\_\_\_\_\_  
Signature of Grievant

INMATE GRIEVANCE RESPONSE

Summary of Supervisor's Response/Evidence: \_\_\_\_\_

Chairperson's Response and Reason(s): \_\_\_\_\_

DATE: \_\_\_\_\_ CHAIRPERSON: \_\_\_\_\_

Do you wish to appeal this response? \_\_\_\_\_ YES \_\_\_\_\_ NO

If yes: Sign, date, and return to chairman for processing within five (5) days of receipt of first-level response.

\_\_\_\_\_  
GRIEVANT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
WITNESS

Distribution Upon Final Resolution:

White - Inmate Grievant    Canary - Warden    Pink - Grievance Committee    Goldenrod - Commissioner (if applicable)

## EMERGENCY GRIEVANCE

**Philip Ray Workman      # 95920      Riverbend Maximum Security Institution, Unit 2**

### **Description of Problem:**

On January 17, 2007, the Tennessee Supreme Court scheduled Mr. Workman's execution for May 9, 2007.

On February 1, 2007, Tennessee's Governor Phil Bredesen issued an Executive Order directing the Department of Corrections to "complete a comprehensive review of the manner in which the death penalty is administered in Tennessee" by May 2, 2007. The Order further directed that by May 2, 2007 the Commissioner of Corrections should "establish and provide to me new protocols and related written procedures for administering death sentences in Tennessee, both by lethal injection and electrocution." To that end, the Governor issued a Reprieve to four individuals who had death sentences "scheduled to be carried out within the next ninety (90) days" and ordered that the Reprieve remain in place until May 2, 2007. Mr. Workman's execution date was not included in the Reprieve, although it was scheduled for just one week (7 days) after the May 2, 2007 deadline. On April 30, 2007, Mr. Workman's attorneys received a copy of the New Execution Protocols promulgated by the Tennessee Department of Corrections. See New April 30, 2007 Protocol, Exhibit 1. Mr. Workman initially objects to the time frame created by the Tennessee Department of Corrections and the Governor he has to review the New April 30, 2007 Protocol (just one week prior to his scheduled execution) as unfair, biased against him, and violating his rights to due process and to be free from cruel and unusual punishment.

Further, Mr. Workman objects to the New April 30, 2007 Protocol and the use of the New April 30, 2007 for his proposed May 9, 2007 execution for the following reasons:

1. Mr. Workman objects to the failure of the Warden to properly give him "the opportunity to select electrocution or lethal injection as a legal means of execution at least 30 days before the execution." See Exhibit 1, p. 12. Indeed, Mr. Workman's proposed execution is only 7 days away and he has not yet been presented with that opportunity. Mr. Workman specifically reserves the right to amend his grievance as other pertinent information is made known to him.

2. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the use of the three-drug cocktail ("Lethal Injection Chemicals") outlined in the New April 30, 2007 Protocol. See Exhibit 1, p. 35. The New April 30, 2007 Protocol instructs that an inmate will be injected with 5 grams of sodium thiopental, 100 cc of pancuronium bromide (Pavulon), and 100 mg/mL of 2 mEq/mL concentrate of potassium chloride. See Exhibit 1, p. 35. The use of this New April 30, 2007 Protocol is unconstitutional as it is cruel and unusual punishment. The sodium thiopental does not sufficiently anesthetize any individual and is contraindicated for use on individuals such as Mr. Workman. The use of pancuronium bromide is arbitrary, serves no legitimate interest, unreasonably risks the infliction of torture, and, at bottom, offends the dignity of humanity: Indeed, it cannot be used in Tennessee to kill a dog. Its use violates equal protection. The potassium chloride, as used, does not stop the heart. The use of this mixture of

chemicals causes an unnecessarily painful and prolonged death experienced without total unconsciousness.

3. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the use of 5 grams of sodium thiopental in the New April 30, 2007 Protocol for the purpose of “general anesthesia.” See Exhibit 1, p. 35. Sodium thiopental is an ultra-short acting barbiturate wherein the induction of anesthesia occurs quickly, but its effect wears off in a matter of minutes. The New April 30, 2007 fails to educate its readers (the execution team) that thiopental not only has a rapid onset, but also has a rapid withdrawal and that it may cause pain if the drug is infiltrated. See Exhibit 1, p. 35. Mr. Workman objects to the use of sodium thiopental in the New April 30, 2007 Protocol for the following reasons:

a. Sodium thiopental reacts differently based on a person’s weight. The New April 30, 2007 Protocol fails to address an individual prisoner’s weight as related to the dosage of sodium thiopental necessary to effectively anesthetize him, but instead just indicates that a 5 gram dose will be given. See Exhibit 1, p. 35. In a study published just last week, Leonardis Koniaris found that body weight must be taken into account when using sodium thiopental as the sodium thiopental reacts differently in the body depending on weight. See Leonardis Koniaris et al, *Lethal Injection For Execution: Chemical Asphyxiation?*, PLOS Medicine, Vol. 4, Issue 4, April 2007 (Attached as Exhibit 2).

b. The New April 30, 2007 Protocol also fails to address the individual prisoner’s medical condition and history as related to the effectiveness of sodium thiopental. See Exhibit 1, p. 35. Several regularly prescribed drugs at Riverbend Maximum Security Institution interfere with the ability of sodium thiopental to act properly as an anesthetic.

c. The New April 30, 2007 Protocol uses sodium thiopental despite the fact that findings made as a result of the autopsy of Robert Coe, who was executed in Tennessee in 2000, show that his serum thiopental levels were 10 mg/l, which as recent research establishes, is inadequate to establish unconsciousness. See Leonidas Koniaris et al, *Inadequate Anaesthesia In Lethal Injection For Execution*, 365 *Lancet* 1412-1414 (2005) (Attached as Exhibit 3). The New April 30, 2007 Protocol ignores this medical evidence and instead calls for the same dosage of sodium thiopental (5 grams) that was purportedly given to Robert Coe in 2000. See Exhibit 1, p. 35.

d. The New April 30, 2007 Protocol fails to take into account a new study by Leonard Koniaris examining toxicology reports from prisoners executed by California and North Carolina, along with reports from witnesses to executions in other states, that confirms that some prisoners remained conscious during the administration of lethal drugs due to the ineffectiveness of sodium thiopental. See Leonardis Koniaris et al, *Lethal Injection For Execution: Chemical Asphyxiation?*, PLOS Medicine, Vol. 4, Issue 4, April 2007 (Attached as Exhibit 2).

e. The New April 30, 2007 Protocol fails to provide for any monitoring of anesthetic depth as is necessary when using sodium thiopental. See Exhibit 1, p.43. The only monitoring provided for by the New April 30, 2007 Protocol is monitoring of the IV site via close-circuit camera, which is inadequate. See Exhibit 1, p. 43. There is no monitoring of the inmate for anesthetic depth or of the IV lines and tubing during the administration of the drugs. This lack of monitoring coupled with the ineffectiveness of sodium thiopental has caused

numerous botched executions in the United States.

i. The two most well-known botched executions in the United States related to the failure of sodium thiopental. In Florida in December 2006, Mr. Angel Diaz did not get an effective amount of sodium thiopental because the IV lines were improperly seated in his veins with through and through punctures. As a result, none of the materials injected went to the right place. Instead, the drugs entered his bloodstream first through his flesh and muscle tissue. This process caused foot-long chemical burns on both arms from the sodium thiopental. During execution, observers reported that Mr. Diaz moved and tried to mouth words. It took 34 minutes and 14 syringes of chemicals for Mr. Diaz to die, during which he was clearly in pain, struggling for breath and grimacing. Following the Diaz execution, Governor Bush ordered that all executions be stayed while a committee undertook a review of the Diaz execution and of lethal injection protocols in Florida in general, which were exactly the same as the New April 30, 2007 Protocol here. Executions remain stayed in Florida under the Governor's order. See Florida Commission Report (Attached as Exhibit 4).

ii. During the May 2006 lethal injection of Joseph Lewis Clark, execution team members took over twenty minutes to insert one IV catheter into Mr. Clark's arm. According to protocol two catheters were necessary, but the team proceeded with only one. After the single IV was inserted and the chemicals began to flow, Mr. Clark remained breathing, legs moving, arms strapped down. After minutes, he sat up several times and told executioners, "It's not working, it's not working." Minutes later, Mr. Clark raised up again and said, "can't you just give me something by mouth to end this?" At that point, the team closed the curtain, and witnesses heard groans and moans from Mr. Clark as if he was in agony. Witnesses reported that the cries of pain lasted for about five or ten minutes and were followed by snores from Mr. Clark. Obviously if the sodium thiopental had worked properly then Mr. Clark would not have been able to cry out in pain, feel pain, or sit up during the execution. Ohio uses a lethal injection protocol that is similar to the New April 30, 2007 Protocol here.

f. Thus, Mr. Workman objects to the use of sodium thiopental in the New April 30, 2007 Protocol. As is clear from both medical studies and from experiences of other states, sodium thiopental, as used in the New April 30, 2007 Protocol (without the assistance of an anesthesiologist or certified nurse anesthetist and at such a low dosage that fails to take into account either body weight or drug interaction), does not adequately anesthetize a person prior to the introduction of pancuronium bromide and potassium chloride, resulting in an excruciatingly painful and horrifying death as a result of the conscious asphyxiation by pancuronium bromide followed by the painful intense burn and cardiac arrest of potassium chloride.

4. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the use of pancuronium bromide in the New April 30, 2007 Protocol as a "muscle paralytic" that will "assist in the suppression of breathing and ensure death." See Exhibit 1, p. 35. Pancuronium Bromide, marketed under the name Pavulon, is a neuromuscular blocking agent which causes paralysis of the skeletal muscles but does not affect the brain or nervous system. Thus, Pancuronium Bromide does not affect consciousness or the sensation of pain or suffering. An individual under the influence of pancuronium bromide, though paralyzed, still has the ability to think, to be oriented to where he is, to experience fear or terror, to feel pain, and to hear. While

pancuronium bromide paralyzes the diaphragm to prevent breathing, it does not affect the heart muscle. Thus pancuronium bromide would ultimately cause someone to asphyxiate or suffocate to death while still conscious. And if an individual is not properly anesthetized when injected with pancuronium bromide, he will consciously experience extreme pain of suffocation while being completely paralyzed and unable to cry out. Thus, the paralyzing effect of pancuronium bromide also prevents any expression of the pain, horror, or suffering from any other source, such as potassium chloride which will activate the nerves of the venous system causing an extreme burning pain. The New April 30, 2007 Protocol fails to educate its readers (the execution team) regarding the true nature of pancuronium – that its paralytic nature blocks the ability to determine if someone is in pain. See Exhibit 1, p. 35. Moreover, because there is no legitimate penological purpose articulated in the New April 30, 2007 Protocol for the use of pancuronium bromide, Mr. Workman objects to its use. See Exhibit 1, p. 35.

5. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the use of pancuronium bromide as it is arbitrary, unreasonable, degrading to human dignity, and serves no legitimate interest. Because pancuronium bromide causes paralysis, suffocation, and the suffering attendant to such paralysis and suffocation, in 2001, Tennessee declared in the “Nonlivestock Humane Death Act” (Tenn. Code Ann. 44-17-301 *et seq.*) that pancuronium bromide cannot be used to euthanize animals, because its use is not humane. Where the use of pancuronium bromide is not “humane” to use on non-humans, it is arbitrary to claim that its use is “humane” on humans, and its use on humans to cause death violates basic precepts of human dignity.

6. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the use of pancuronium bromide where its use serves no legitimate state interest and is not narrowly tailored to any compelling state interest. As Chancellor Ellen Hobbs Lyle has explained: [T]he use of Pavulon is . . . unnecessary. . . [T]he State [has] failed to demonstrate any reason for its use. The record is devoid of proof that the Pavulon is needed. Thus, the Court concludes that . . . the State’s use of Pavulon is . . . in legal terms ‘arbitrary.’

Abdur’Rahman v. Sundquist, No. 02-2236-III, In The Chancery Court For The State Of Tennessee, Twentieth Judicial District, p. 13 (June 2, 2003).

7. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the use of potassium chloride in the New Protocol as the means for “cardiac arrest and rapid death.” See Exhibit 1, p.35. See Leonardis Koniaris et al, *Lethal Injection For Execution: Chemical Asphyxiation?*, PLOS Medicine, Vol. 4, Issue 4, April 2007 (Exhibit 2). Moreover, the New April 30, 2007 Protocol fails to educate its reader (the execution team) about the true nature of potassium chloride – that it would cause extreme pain in someone who is not properly anesthetized. See Exhibit 1, p. 35.

8. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate how persons on the Execution Team are

qualified to participate in an execution, or what screening, if any, has been done to insure that these persons do not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues. See Exhibit 1, p.32.

9. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate how specialized members of the execution team identified as “two (2) EMTs - Paramedic - Certified Emergency Medical Technician” are qualified to participate, how they were chosen to participate, by whom they were chosen, or what screening, if any, has been done to insure that these members do not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues. See Exhibit 1, p.32. Moreover, the New April 30, 2007 Protocol fails to indicate what role these EMTs - Paramedic - Certified Emergency Medical Technician” play on the execution team. See Exhibit 1, p. 32.

10. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate how the “three correctional officers” who “received IV training through the Tennessee Correction Academy by qualified medical professionals” are qualified to participate as part of the IV team, how they were chosen to participate on the IV team, by whom were they chosen to participate, what screening, if any has been done to insure that these specific members do not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues, and what screening has been done, if any, to insure that they can competently perform their duties as part of the IV team. See Exhibit 1, p.32. Moreover, the New April 30, 2007 Protocol fails to specifically indicate that these “three correctional officers” actually make up the IV team. See Exhibit 1, p. 21, 32. In addition, the New April 30, 2007 Protocol fails to explain or elaborate on the alleged “IV training through the Tennessee Correction Academy by qualified medical professionals.” See Exhibit 1, p. 32.

11. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate what training is required for members of the execution team. See Exhibit 1, p. 33. The New April 30, 2007 Protocol only indicates that execution team members are required to read the manual and that “the Warden or his designee holds a class during which the manual is reviewed and clearly understood by all participants.” See Exhibit 1, p. 33. The New April 30, 2007 Protocol does not explain how the Warden insures that the manual is clearly understood by all participants nor does it explain who teaches the science and medical technique to be utilized in the manual. See Exhibit 1, p. 33.

12. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate what instruction the Executioner receives, by whom that instruction is given, and what qualifications, education, training, and licensing that individual has to provide any such instruction. The New April 30, 2007 Protocol only says that “The Executioner receives initial and periodic instruction from a qualified medical professional.” See New Protocol, p. 33. Moreover the New April 30, 2007 Protocol fails to define the role of

Executioner, fails to identify the Executioner, how he or she is chosen, by whom he or she is chosen, what qualifications or training he or she has, or what screening, if any, has been done to insure that the Executioner does not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues.

13. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate what training, education, or licensing the IV Team and the medical doctor has, if any, and if any training, education, or licensing is required for their selection for those positions. See Exhibit 1, pp.20, 21, 32. Moreover, the New April 30, 2007 Protocol fails to indicate how the medical doctor is qualified to participate, how he or she is chosen, by whom he or she is chosen, or what screening, if any, has been done to insure that the medical doctor does not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues.

14. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate how “the Warden or his designee” chooses one member from the execution team who has access to the Lethal Injection Chemicals during their procurement and storage. See Exhibit 1, p. 36. The protocol indicates that “the Warden or his designee” (the designee is not identified) instructs one member of the execution team to “check[] the supply of chemicals and expiration dates,” to order additional chemicals, to pick up the additional chemicals and deliver them to RMSI, and to “inventory” the chemicals prior to an execution date. See Exhibit 1, p. 36. The New April 30, 2007 Protocol fails to indicate what qualifications, training, and screening is done to insure that the execution team member who is given this access to the lethal injection chemicals does not have a criminal background, mental health issues, personnel and disciplinary issues, or drug or alcohol issues.

15. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate who prepares and mixes the “Lethal Injection Chemicals” (other than “one member of the execution team”) and what training, education, or licensing any member of the execution team has in the preparation and mixing of chemicals. See Exhibit 1, p. 38. Based on the vague descriptions of the execution team, there is no one who has pharmaceutical training or knowledge of drug compounding to mix the drugs. Moreover, the New April 30, 2007 Protocol provides only that “another member of the execution team observes and verifies that the procedure has been carried out correctly.” See Exhibit 1, p. 38. Again, the New April 30, 2007 Protocol fails to indicate what training, education, or licensing, or any other qualifications any execution team member has for observing the mixing of the “Lethal Injection Chemicals” to make sure it is done correctly. There is no quality control to assure that the chemicals have actually been mixed correctly and at the proper dosage.

16. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to include the proper instructions for mixing sodium thiopental by failing to identify what the sodium thiopental should be mixed in, whether it is to be mixed all together (10 boxes in one mixing container) or one box at a time, what instrument is

to be used to actually mix the solution, how many syringes should be filled per box of powder, or what precautions are taken to avoid settling or contamination of the sodium thiopental. See Exhibit 1, p. 38.

17. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because, having been an IV drug user prior to his incarceration, there is a greater risk that the veins in his arms will be inaccessible and that surgical measures, like the cutdown proposed by the New April 30, 2007 Protocol, will be necessary to insert the IV catheters. See Exhibit 1, pp. 41, 67.

a. The New Protocol indicates that a cut-down may be used but does not indicate at what point in the procedure the IV technicians would resort to this option or who would make the determination that a cutdown is necessary.

b. The New April 30, 2007 Protocol is silent as to the physician's qualifications to perform a cutdown. Only 15% of physicians in the United States are qualified to perform a cutdown.

c. Any cutdown procedure is a dangerous and antiquated medical procedure that is rarely performed in the practice of medicine.

d. A cutdown procedure involves making a series of sharp incisions through the skin and through several layers of connective tissue, fat, and muscle - all with only local anesthetic – to expose a suitable vein for IV catheterization.

e. A cutdown is a complicated medical procedure requiring equipment and skill that has a very high probability of not proceeding properly in the absence of adequately trained and experienced personnel, and without the necessary equipment. If done improperly, the cut-down process can result in very serious complications including severe hemorrhage (bleeding), pneumothorax (collapse of a lung which may cause suffocation), and severe pain.

f. Thus, cutdowns are out-dated and are only used in clinical situations that are not pertinent to executions by lethal injection, including emergency scenarios where there has been extensive blood loss, and in situations involving very small pediatric patients and premature infants.

g. Cutdowns have been replaced by the percutaneous technique which is less invasive, less painful, less mutilating, faster, safer, and less expensive than the cut-down technique.

h. The use of a cutdown as a back-up before trying to find percutaneous access is a profound departure from standard medical methods and from the standard of care used in executions in other jurisdictions.

i. To use a cut-down as the backup method of achieving IV access would defy contemporary medical standards and would be a violation of any modern standard of decency.

j. The New April 30, 2007 Protocol is completely silent on the procedures that will be followed by the physician should a cutdown become necessary. See Exhibit 1, pp. 41, 67.

18. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New



April 30, 2007 Protocol because it fails to indicate whose responsibility it is to watch the IV lines for leaks in the tubing, junctions, and valves during the administration of the Lethal Injection Chemicals and what any member of the execution team would do should a leak be found. See Exhibit 1, p. 43. A leak in the tubing, junctions, or valves can result in the failure to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death. The only monitoring prescribed by the New April 30, 2007 Protocol during the administration of the Lethal Injection Chemicals is “by watching the monitor in his room which displays the exact location of the catheter(s) by means of a pan-tilt zoom camera” and allows for the “monitoring the catheter sites for swelling or discoloration.” See Exhibit 1, p. 43. Thus, there is no monitoring of the IV tubing or the drip chamber during the administration of Lethal Injection Chemicals. Moreover, the monitoring of an IV site from a remote camera is not medically proper – in order to insure that an IV does not migrate, infiltrate, move, and is working properly, the IV site must be monitored from the bedside. The New April 30, 2007 Protocol does not provide for anyone to monitor the IV site from the bedside, nor is there any qualified medical personnel in the room to do any personal, medical monitoring of the process. See Exhibit 1, p. 43.

19. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate what Defendants will do if the inmate has small veins or general venous incompetence and which member of the execution team will make a decision surrounding those issues. Small veins or venous incompetence can result in an inability to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death. See Exhibit 1, p. 41. Moreover, the New April 30, 2007 Protocol fails to identify any execution team member who has medical training in general venous incompetence.

20. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate what any member of the execution team will do if the catheter migrates during the lethal injection. See Exhibit 1, p. 67. The migration of an IV catheter can result in an inability to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death.

21. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate what any member of the execution team will do if the inmate has a collapsed vein, perforation or leakage of the vein, or a blown vein from the pressure of the syringe plunger. See Exhibit 1, pp. 41-42, 67. A collapsed, torn, or blown vein can result in an inability to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death.

22. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New Protocol because it fails to indicate which member of the execution team, if any, is responsible for loosening the tourniquets or restraining straps. See Exhibit 1, pp. 41-42. The failure to properly loosen the tourniquets or restraining straps on an inmate can result in an inability to

properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death.

23. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate the length of time between the administration of each drug. See Exhibit 1, pp. 43-44. This is important to ensure that an inmate is adequately anesthetized by the sodium thiopental prior to the introduction of the pancuronium bromide and potassium chloride.

24. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate who, if anyone, is monitoring the inmate during the administration of the drugs to assure that the sodium thiopental (anesthesia) is working. See Exhibit 1, pp. 43-44.

25. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it fails to indicate the presence of an anesthesiologist or a certified nurse anesthetist who could properly monitor consciousness. See Exhibit 1, pp. 43-44. Indeed, there is no one present on the execution team who is qualified to monitor the anesthetic depth of the inmate. Moreover, the New April 30, 2007 Protocol fails to indicate the presence of any medical technology that might be used to monitor consciousness. See Exhibit 1, pp. 43-44.

26. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because it does not indicate what plan is in place if the execution must be stopped because the Governor or the courts have entered a stay or reprieve. See Exhibit 1, p. 67. The New May 2, 2007 Protocol does not indicate if anyone on the execution team is qualified to resuscitate the inmate or if any of the necessary equipment is present for resuscitation.

27. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because the Governor and the TDOC were aware of the risks inherent in the New April 30, 2007 Protocol, based on prior lethal injection litigation in this state and ongoing lethal injection litigation in 14 other states (all of which have almost identical protocols to the New Protocol), but persisted with deliberate indifference in promulgating a protocol that has been declared unconstitutional by other federal courts and unusable by Governors of other states, and that will cause an excruciatingly painful and horrifying death from the use of these three drugs by untrained personnel. See Report on Administration of Death Sentences in Tennessee (Attached as Exhibit 5).

28. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because the Governor and the TDOC failed to consult with and request documents from correctional officials, state officials, or medical experts with experience in lethal injection and lethal injection litigation from any of the listed states or jurisdictions as a part of its review and development of the New Protocol despite their knowledge of the ongoing lethal

injection litigation in multiple states and jurisdictions. See Exhibit 5.

29. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because the TDOC's analysis and promulgation of the New April 30, 2007 Protocol, approved by the Governor, was one-sided, unscientific and failed to take into account the serious known and demonstrated risks of the use of the chemicals and procedures selected for the New Protocol. See Exhibit 5.

30. Under the Eighth and Fourteenth Amendments, Mr. Workman objects to the New April 30, 2007 Protocol because TDOC's failure to properly consult, review, and research in promulgating its New April 30, 2007 Protocol (a failure which was approved by the Governor), despite the ready availability of experienced state officials and medical experts, demonstrates a deliberate indifference to the excruciatingly painful and horrifying death that will result from the use of these three drugs by untrained personnel under the new execution protocol. See Exhibit 5.

In conclusion, the New April 30, 2007 Protocol, including the combination of chemicals (sodium thiopental, pancuronium bromide, and potassium chloride); the lack of proper training, qualifications, screening and review of the persons involved in the process; the absence of standardized procedures for administration of the chemicals; the absence of a sufficient anesthetic and any monitoring of anesthetic depth; and the absence of a back-up plan should problems arise during the protocol, creates a grave and substantial risk that Mr. Workman will be conscious throughout the execution process and, as a result, will experience an excruciatingly painful and protracted death in violation of his constitutional rights and substantive due process under the Eighth, Ninth, and Fourteenth Amendments. In addition, the New April 30, 2007 Protocol, devised and promulgated by the TDOC and approved by the Governor violates evolving standards of decency. See Trop v. Dulles, 356 U.S. 86 (1958). Finally, the New April 30, 2007 Protocol, devised and promulgated by TDOC and approved by the Governor, demonstrates a deliberate indifference to the excruciatingly painful and horrifying death that will result from its use in violation of the Fourteenth Amendment.

**Requested Solution:**

Mr. Workman respectfully requests that the Department of Corrections refrain from carrying out his execution as scheduled until the TDOC addresses each of these concerns and provides a new protocol that comports with the United States Constitution and evolving standards of decency.