

36431

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

ABU-ALI ABDUR'RAHMAN)

Plaintiff,)

vs.)

DON SUNDQUIST, et al.)

Defendants.)

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APR 30 2003

Day Co. Chancery Court

No. 02-2236-III

CLERK & MASTER
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ORDER

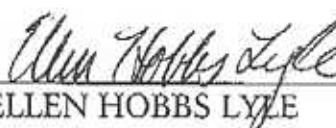
This cause came before the Court on the motion of the defendants seeking partial dismissal of the complaint, including: Count I (plaintiff's claim for violation of Uniform Administrative Procedures Act (UAPA)), Count II (plaintiff's claim for violation of the Open Meetings Act), Count III (plaintiff's claim for violation of the Nonlivestock Animal Human Death Act); Count IV (plaintiff's claim for the unlawful practice of medicine and provision of healthcare services and for the unlawful use of controlled and unprescribed drugs), and Count V (plaintiff's claim for violation of Tennessee's public policy). After consideration of the motion, the plaintiff's response, and the argument of counsel, the Court grants the motion for all of the reasons stated by defendants, with refinement. Specifically, the Court finds that plaintiff's claim that the TDOC's lethal injection protocol was not promulgated in accordance with the rule-making procedures set forth under the UAPA (Count I) is controlled by the Tennessee Supreme Court's decision in *Coe v. Sundquist*, No. M2000-00897-SC-R9-CV (Tenn. April 19, 2000), in which the Court determined

that the lethal injection protocol was not a "rule" as defined under the UAPA because it fit squarely both within the UAPA's exclusion for "statement[s] concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public" and "[s]tatements concerning inmates of a correctional facility." Tenn. Code Ann. §§ 4-5-101. Regardless of whether or not the Court's statements in *Coe* were *dicta*, as argued by plaintiff, *Coe* fits within the proscription stated in *Holder v. Tennessee Judicial Selection*, 937 S.W.2d 877 (Tenn. 1996), against ignoring the directives of the Tennessee Supreme Court, particularly when the "court has given definite expression to its views in a case after careful consideration." 937 S.W.2d 877, 881. Furthermore, even if the decision in *Coe* did not apply, the Court is persuaded that the Department of Correction's Execution Manual is not "rule" within the meaning of the UAPA.

Therefore, the Court dismisses Counts I through V of the complaint for failure to state a claim for relief. Defendants have not moved for dismissal of Count VI (plaintiff's claim for cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and Article I, § 16 of the Tennessee Constitution) and, accordingly, this claim remains pending.

All of the above is ORDERED, ADJUDGED AND DECREED.

This the _____ day of _____, 2003.



ELLEN HOBBS LYLE
Chancellor