

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

STEPHEN MICHAEL WEST,)
)
Plaintiff,)
)
v.)
)
GAYLE RAY, in her official)
capacity as Tennessee Commissioner)
of Correction, et al.,)
)
Defendants.)

No. 10-1675-I
2010 DEC 20 PM 2:21

MOTION TO AMEND FINDINGS OF FACT AND TO ALTER OR AMEND JUDGMENT

On November 22, 2010, this Court filed an Order Granting Declaratory Judgment on behalf of the plaintiff. The order incorporated the Court's bench ruling in which the court made findings of fact. Pursuant to Tenn. R. Civ. P. 52.02, the defendants move the Court to make additional findings as follows:

1. On November 24, 2010, Gayle Ray, Commissioner of the Tennessee Department of Correction approved revisions to pages 65, 67, 85, and 86 of the Lethal Injection Procedures Manual which, in effect, add an explicit check for consciousness to Tennessee's lethal injection protocol. Exhibit A (attached).

2. As of November 24, 2010, the lethal injection protocol provides as follows:

6. After 5 grams of sodium thiopental and a saline flush have been dispensed, the Executioner shall signal the warden, and await further direction from the warden.

7. At this time the Warden shall assess the consciousness of the condemned inmate by brushing the back of his hand over the 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 be determined 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,

Exhibit A, p. 65, ¶¶ 6, 7.

3. As of November 24, 2010, the Lethal Injection protocol provides for the following contingency:

If the condemned inmate is responsive after the 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.

Exhibit A, p. 67.

4. As of November 24, 2010, the Lethal Injection Chemical Administration Record includes a time slot for "Signal to Warden and pause for consciousness Assessment" and a time slot for "Warden directs resumption of chemical administration." Exhibit A, pp. 85-86.

Based on the foregoing additional facts, and for the reasons set forth in the accompanying memorandum of law, the defendants further move pursuant to Tenn. R. Civ. P. 59.04 that the judgment of the Court be altered or amended and that the court conclude that the modified lethal injection protocol does not violate the prohibition against cruel and unusual punishment contained in Article 1, section 16, of the Tennessee Constitution and the Eighth Amendment to the Constitution of the United States.¹

¹ This Court invalidated Tennessee's lethal injection protocol on the basis of its determination that the 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

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter



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NOTICE

THIS MOTION IS SCHEDULED TO BE HEARD BY THE COURT ON January 28, 2011. FAILURE TO FILE AND SERVE A TIMELY RESPONSE TO THE MOTION WILL RESULT IN THE MOTION BEING GRANTED WITHOUT FURTHER HEARING.

unconsciousness," which the protocol does not include. *West v. Ray*, No. 10-1675-I (Davidson Chanc. Ct. Nov. 22, 2010) (Order, Bench Ruling, p. 37). The Tennessee Supreme Court directed the State to file a motion in the trial court presenting for determination in the first instance the issues of whether the revised protocol eliminates the constitutional deficiencies the trial court identified in the prior protocol and whether the revised protocol is constitutional. *State v. West*, No. M1987-000130-SC-DPE-DD (Tenn. Nov. 29, 2010) (Order, p. 3).

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2010, a copy of the foregoing was forwarded by e-mail and U.S. Mail to:

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EXHIBIT A
LETHAL INJECTION MANUAL UPDATE

PHIL BREDESEN
GOVERNOR



GAYLE RAY
COMMISSIONER

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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

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GR

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"