

App. No. 13A788

CAPITAL CASE

EXECUTION SET FOR FEBRUARY 5, 2014

In the

Supreme Court of the United States

Christopher Sepulvado,

Petitioner,

v.

Bobby Jindal et al.,

Respondents.

**PETITIONER'S FEBRUARY 3, 2014
SECOND SUPPLEMENTAL BRIEF**

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PETITIONER'S SECOND SUPPLEMENTAL BRIEF

Pursuant to this Court's Rule 15.8, petitioner respectfully submits this Second Supplemental Brief to inform this Court of intervening developments relevant to his pending application for a stay of execution. Those developments show that what began in this Court as a purely legal dispute has taken a distinctly troubling turn.

STATEMENT

Between January 16 and January 24, Louisiana represented to petitioner that it would execute him using pentobarbital, that it was "in the process of procuring at least 15 grams of pentobarbital," and that there was no indication it would change that protocol. Stay App.¹ 49a (Jan. 24 representation); *see also id.* 39a (Jan. 16 representation that the state was "in the process of implementing the lethal injection protocol, including procuring the pentobarbital"); *id.* 44a (Jan. 22 representation that the state was "not aware of any changes to the current execution protocol").

On January 27, petitioner filed his petition for a writ of certiorari and application for stay of execution. *See* Nos. 13-892, 13A788. The state, however, did not respond on that day to this Court's inquiry regarding when it would file its opposition. The next day, the state advised the Court that it would not respond until February 3, two days before the execution.

¹ Citations to "App." refer to the enclosed Appendix to this Second Supplemental Brief. Citations to "Jan. 30 Supp." refer to petitioner's Supplemental Brief, filed on January 30, 2014. Citations to "Jan. 30 Supp. App." refer to the Appendix to that brief. Citations to "Stay" refer to petitioner's Application for Stay of Execution, filed on January 27, 2014. Citations to "Stay App." refer to the Appendix to that application.

The state has subsequently acknowledged three other relevant events that it had previously withheld from petitioner.

First, by January 27 at the latest, the state in fact decided *not* to use pentobarbital but instead to execute petitioner using an entirely different, two-drug combination of midazolam and hydromorphone. *See* App. 5a (Defendants’ Second Supplemental Responses to Plaintiffs’ First Set of Interrogatories, Feb. 1, 2014), 9a (Defendants’ Supplemental Responses to Plaintiff’s Second Set of Interrogatories, Feb. 1, 2014). Louisiana received Ohio’s execution protocol at 4:51pm that day, *id.* 63a (fax transmittal sheet), and simply adopted it as its own roughly an hour-and-a-half later, *id.* 2a (6:32pm email to petitioner’s counsel).

Rather than advising petitioner or the district court of this critical change, the state modified its execution protocol to provide for the two-drug combination only if pentobarbital is unavailable. *See* Jan. 30 Supp. App. A. But critically, the state – having just represented to petitioner that it was acquiring pentobarbital and that the execution would go forward on that basis – gave no indication to petitioner that pentobarbital in fact was unavailable and that the state would actually use the alternative to execute him. Instead, it represented to petitioner that it was “verifying certain information,” which it would provide to him *after* it executed him. App. 2a (Jan. 27, 2014 6:32 p.m. transmittal email representing that further discovery would be provided by the period of “applicable delay” – *i.e.*, February 6).

Second, on January 28, the state began preparing to implement the new method of execution: having previously acquired one of the two new drugs (midazolam) in July 2013, it acquired the other (hydromorphone) on the 28th. App. 14a-15a (Defendants’ Second Supplemental Responses to Plaintiff’s First Set of Requests for Production, Feb. 1, 2014 (documenting acquisition of hydromorphone)); *id.* 16a (documenting prior acquisition of midazolam). But the state did not then inform petitioner or the district court that it was acquiring either drug.

Third, on January 29, the state continued its preparations by conducting an “Execution Practice,” presumably using the new two-drug protocol. *Id.* 26a. Again, the state did not inform petitioner or the district court of the change in the method of execution.

On the evening of Saturday, February 1 – five days after it secretly changed the manner of conducting the February 5 execution, and under imminent threat of sanctions by the district court² – the state for the first time finally informed petitioner that it would use the new two-drug combination and that it actually had been engaged in preparations to do so for several days. (The disclosure included the documents just cited in the previous paragraphs.) The state also acknowledged that

² The district court had scheduled a hearing for this morning to address matters including whether to sanction the state for its failure to timely provide discovery. *See Hoffman v. Jindal*, No. 12-cv-00796-JJB-SCR, ECF No. 113 (M.D. La. Jan. 30, 2014). The state and the attorneys representing it in this matter have engaged in a pattern of discovery abuse – both in this case, in which they failed to turn over critical information and improperly asserted privilege, *see Hoffman v. Jindal*, No. 12-cv-00796-JJB-SCR, ECF No. 102 (M.D. La. Jan. 13, 2014), and in another recent case for the spoliation of evidence, *see Ball v. LeBlanc*, No. 13-cv-00368-BAJ-SCR, 2013 WL 6705154, at *1 (M.D. La. Dec. 19, 2013) (order to show cause why sanctions should not be imposed on respondents’ counsel for their “alarming lack of candor . . . throughout this litigation”).

it had chosen the new drug combination based not on any medical or scientific inquiry, but rather by copying “Ohio’s lethal injection protocol.” App. 5a (Defendants’ Second Supplemental Responses to Plaintiffs’ First Set of Interrogatories, Feb. 1, 2014).

ARGUMENT

Taking advantage of the Fifth Circuit’s holding that it had no due process obligation to timely inform petitioner of the method by which it will execute him on February 5, the state has purposefully misled petitioner about its intentions. The state decided to change the method of execution by January 27 at the latest, but withheld that fact for the obvious purpose of preventing petitioner’s counsel from assessing – and the district court from determining in a measured fashion – whether the new protocol violates the Eighth Amendment.

The state knew from public reporting that its new two-drug protocol raises serious Eighth Amendment concerns. The only time the two-drug combination has ever been used – in Ohio’s January 16, 2014, execution of Dennis McGuire – raised widely reported concerns because McGuire “took 15 minutes to die,” an “unusually long” period of time, and because the “new, untested cocktail of drugs” employed may have caused McGuire to “struggl[e], gasp[] loudly, snort[] and mak[e] choking noises for nearly 10 minutes” before falling silent and being declared dead. Rick Lyman, *Ohio Execution Using Untested Drug Cocktail Renews the Debate Over Lethal Injections*, N.Y. Times, Jan. 16, 2014, at A15; see also Erica Goode, *After a*

Prolonged Execution in Ohio, Questions Over ‘Cruel and Unusual’, N.Y. Times, Jan. 18, 2014, at A12. Dr. Jonathan Groner, a professor of clinical surgery at the Ohio State University College of Medicine, explained in press reports that midazolam may not prove to be an effective sedative, and that midazolam and hydromorphone together may have a substantial probability of causing the subject of the execution to experience a prolonged, painful feeling of choking to death. *See* Molly Redden, *New Lethal Injections Could Cause Extreme Pain, Make Deaths “Drag On” for Hours*, Mother Jones, Nov. 13, 2013, available at <http://www.motherjones.com/politics/2013/11/ohio-lethal-injection-cocktail-execution-drugs>.

The very limited inquiry petitioner’s counsel has been able to undertake so far reveals – according to an expert affidavit submitted to this Court that avowedly rests on limited information, *see* Jan. 30 Supp. App. 21 – confirms that conclusion. The combination “defies common sense, has no basis in prior human or animal clinical practice, and will foreseeably and inevitably result in regrettable and cruel spectacles” because it is likely to “result in a slow, prolonged death,” including severely painful drug side effects. *Id.* 19a (affidavit of Dr. Mark J.S. Heath, M.D., a board-certified anesthesiologist and cardiothoracic anesthesiologist at Columbia University). Further, there is no evidence that the state’s training regimen has accounted for the substantial differences between the new protocol and the prior pentobarbital protocol – indeed, the revisions to the protocol do not specify any alterations to the training procedures. *Id.* 20a-21a.

The potential Eighth Amendment objections to the state's new method of execution were heightened by the fact that the state apparently did not conduct *any* medical or scientific inquiry into its new drug combination. Rather, it acquired Ohio's protocol by fax and within an hour and a half had adopted it as its own. The state's disclosures just three days earlier revealed no evidence that the state was even considering changes to the protocol. Jan. 30 Supp. App. 6a-7a (Declaration of Gary Clements). Instead, at some point the state merely copied the drug choice of Ohio, which is the only state to select the combination and which has used it only one time. The state apparently had no evidence that Ohio itself had a medical or scientific basis for its choice.

Importantly, although the state's protocol is formally the same as Ohio's (with one critical difference discussed below), the state plainly has not ensured that the drugs it obtains function the same way. The state has inexplicably secured concentrations of midazolam far weaker than its own specification calls for, creating the substantial prospect that the dose of sedative will be too weak, and that petitioner will therefore experience great and unnecessary suffering. *See* App. 52a-53a (Declaration of Mark J.S. Heath explaining that in its response to petitioner's interrogatories, the state "exaggerat[ed], by a factor of 5, the concentration of midazolam that it says it will use compared with the concentration it has available," and that the state's error "demonstrate[s] sloppy, disarrayed, and chaotic last-

minute planning” that “could foreseeably result in a non-lethal dose of drugs,” coupled with permanent and severe injury and suffering).

Facing the obvious prospect that petitioner would develop and pursue an Eighth Amendment challenge if he actually knew how it was going to execute him, the state decided to mislead petitioner’s counsel. Although it copied the drug protocol used by Ohio, the state conspicuously *deleted* Ohio’s requirement that the inmate receive at least fourteen days’ notice of the method of execution, *see* Jan. 30 Supp. App. 32a – notice that of course serves the function of permitting an inquiry into the lawfulness and constitutionality of the method of execution. As the state was well aware, based on its prior representations that it intended to execute petitioner using pentobarbital, petitioner’s counsel was during the week of January 27 engaged in a concentrated, multi-day effort focused not on the Eighth Amendment but on whether the state could lawfully acquire pentobarbital. *See, e.g.,* Stay App. 41a (Jan. 21, 2014 letter expressing petitioner’s position that the state “cannot lawfully acquire” pentobarbital); *see also* App. 48a (Jan. 10 letter from petitioner’s counsel to state’s counsel seeking to “confirm or deny credible reports we have that, in contravention of Louisiana and federal law, the Department of Corrections is seeking lethal-injection drugs from compounding pharmacies in Oklahoma in addition to other states”). By not acknowledging the change in the method of execution, and not withdrawing those representations, the state misled petitioner’s counsel into conducting that worthless wild goose chase and

undertaking only a minimal inquiry into the actual two-drug combination and its constitutionality. The state knew that by withholding the information from at least January 27 until the evening of February 1, it would make the development of facts to raise a potential Eighth Amendment challenge much more difficult.

Had they known the truth, petitioner's counsel would have been securing detailed expert assessments of the new two-drug combination to permit the district court to give thoughtful, measured consideration to any Eighth Amendment challenge. But the state's deception has made the timely presentation of such a challenge all but impossible. Such challenges require substantial time to prepare. While the state has apparently been comfortable radically changing the method of execution on an *ad hoc*, non-scientific basis, gathering and presenting the legal and medical expertise necessary to challenge any lethal injection protocol – and especially a new protocol that has only a single, recent, and highly controversial precedent for its use – is a substantial undertaking. It requires “intensely fact-specific and complex” litigation, including not only propounding interrogatories and requests for documents, but then receiving responses and liaising with experts who can provide reasoned analysis of the answers, and suggest further productive avenues for discovery. App. 56a (Declaration of David Rudovsky). Attorneys must familiarize themselves with the medical science, retain a physician who can examine the inmate and assess the proposed protocol's likely effect on him, and review completely the relevant medical records. *Id.* Given the burdens, an

experienced capital defense attorney unconnected with this case has explained that “no lawyer, no matter how talented, could thoroughly, ethically and competently litigate the Eighth-Amendment issue under the time-constraints in Mr. Sepulvado’s case. Louisiana’s abrupt and novel change to the lethal injection protocol requires far more than 4 days to reliably litigate the serious constitutional questions in this case.” *Id.* 57a.

In total, although the state made the decision to replace pentobarbital with the new two-drug combination by January 27 at the latest, it nonetheless allowed at least five of the remaining nine days before the execution to pass before – at 9 p.m. EST on Saturday, February 1 – it finally elected to tell petitioner the truth, in the face of imminent sanctions by the district court. The state knew that by the time of this purposely belated disclosure – on the Saturday evening before the Wednesday execution – it could become impossible for petitioner’s counsel to secure additional expert support and analysis necessary to prove whether the new protocol would cause petitioner unnecessary suffering – or indeed, whether there was an unreasonable risk that the protocol would fail altogether. No doubt, throughout this period, the state was also preparing a legal defense of its new protocol to present once it eventually disclosed its intentions on the eve of the execution. So the state deceived petitioner’s counsel to diminish petitioner’s ability to develop any Eighth Amendment challenge, using the time to prepare its own defense.

It would be impossible to craft a set of facts that better illustrates why – as the petition for certiorari demonstrates – a condemned inmate has a due process right to timely notice of the information necessary to determine whether the method by which he will be executed violates the Eighth Amendment. The Fifth Circuit’s holding that the inmate has no such right has, regrettably, functioned as an open invitation to the state to obfuscate and mislead petitioner and the federal courts in an attempt to avoid a thoughtful, reasoned inquiry into the constitutionality of its new, novel, and dubious method of execution. The state literally attempted to run the clock out on petitioner’s life. Now the state has placed the courts – including this Court – in the middle of a rushed dispute over whether to issue a last-minute stay of execution. Whatever the precise amount of notice to which the condemned inmate is entitled, due process must at the least guarantee that the state will not engage in a conscious, duplicitous effort to deceive him into not being able to assert his Eighth Amendment rights.

The state’s conduct is still more troubling because the belated nature of this dispute is *entirely* the state’s fault. Petitioner has consistently been seeking information on the method by which he would be executed for *years*. *See* Stay 9, 23-26. The state determined not to make a final decision on what drugs it would use until late January, when it could have done so many months before. When petitioner’s execution was set for February 2014, the state already knew that it could not lawfully conduct the execution using pentobarbital. Its only stores of that

drug would be expired before that time, *see* Stay App. 35a, and there was no other lawful means to acquire more, *see* Stay 14-15. Indeed, the state had secretly *already returned* its only stores of pentobarbital on December 16, 2013 – roughly fifty days before the execution. App. 18a (Defendants’ Second Supplemental Responses to Plaintiffs’ First Set of Requests for Production, Feb. 1, 2014). Yet the state waited until roughly ten days before the execution to decide on a substitute, and then it hid the decision from petitioner and the courts.

At a minimum, when, as here, a state engages in behavior that so strongly signals a deliberate intent to exclude the federal courts from the process of judicial review, it violates an inmate’s basic right to due process, and does violence to society’s interest in upholding the Eighth Amendment. The state’s scheming – resulting in unnecessary last-minute requests for execution – only undermines the public’s faith in the death penalty and its administration. The state’s repeated efforts to conceal its failure to acquire pentobarbital and its chosen alternative to that drug warrant close judicial scrutiny. And that is especially so because the protocol the state has chosen is untested and dangerous, resulting in visible suffering the only time it was ever used.

In sum, it is obvious from the events of the past several days that there is no substitute for the requirements of the Due Process Clause. The state views itself as empowered to take the position – offensive to every basic notion of procedural due process and simple decency – that it can provide petitioner with information

required by ordinary civil discovery on the day after it kills him. Even now, the state refuses to provide a variety of information through discovery, filing a motion for a protective order in the district court (*weeks* after petitioner promulgated the discovery requests), *see* App. 9a, 29a – a motion that of course will take still more time to resolve.

CONCLUSION

The stay of execution and writ of certiorari should be granted.

Respectfully submitted,

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February 3, 2014

APPENDIX A

From: Jeffrey Cody [<mailto:jeffreyc@scwllp.com>]
Sent: Monday, January 27, 2014 6:32 PM
To: 'Kathy Kelly'; Gary Clements (GClements@cpcpl.org); Michael D. Rubenstein (mdrubenstein@liskow.com); Mercedes Montagnes
Cc: James L. Hilburn (jameshilburn1@gmail.com); Jackie Wilson
Subject: RE: SEPULVADO: Plaintiff's Discovery

Kathy,

Defense counsel previously requested notice of any changes that DOC makes to the current protocol. Attached please find an update to the protocol that was just made by DOC this evening.

As for your request earlier, I have had a chance to touch base with my clients. Please be advised that the Defendants and DOC do object to the filing of any amici briefs.

Finally, we are still in the process of verifying certain information in order to finalize the responses to Mr. Sepulvado's Second Set of Requests for Production. Rest assured that the responses, though not produced today, will be furnished to you as quickly as possible and will be well within the applicable delay.

Thank you,

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APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JESSIE HOFFMAN * CIVIL ACTION No. 12-796
VERSUS * JUDGE JAMES BRADY
BURL CAIN ET AL. * MAG. JUDGE STEPHEN RIEDLINGER

SECOND SUPPLEMENTAL RESPONSES ON BEHALF OF DEFENDANTS, BURL CAIN, WARDEN, JAMES LEBLANC, SECRETARY, AND ANGELA NORWOOD, WARDEN, TO PLAINTIFF JESSIE HOFFMAN'S AND CHRISTOPHER SEPULVADO'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

NOW COME, Defendants, BURL CAIN, Warden, Louisiana State Penitentiary, JAMES LEBLANC, Secretary, Louisiana Department of Public Safety and Corrections ("DOC"), and ANGELA NORWOOD, Warden, Death Row, who, in regards to Plaintiff Jessie Hoffman's First Set of Interrogatories, submit the following responses:

Please note that Defendants' Supplemental Responses to Plaintiff's First Set of Interrogatories are limited as follows:

Defendants are not responding to Plaintiff's First Set of Interrogatories on behalf of BOBBY JINDAL, Governor of Louisiana, or LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, as those parties were previously dismissed from this proceeding. Also, Defendants are not responding to Plaintiff's First Set of Interrogatories on behalf of any JOHN DOES, unknown executioners, as no such parties have been identified or joined as parties in this proceeding.

Interrogatory No. 1:

Identify, by manufacturer, lot number, quantity, expiration date, and source, the pentobarbital used or to be used by the DOC in the lethal injections given to death row inmates.

2nd Supplemental Answer to Interrogatory No. 1:

DOC has been unable to procure pentobarbital.

Interrogatory No. 6:

Identify the person or persons responsible for ordering, procuring, receiving, preparing, delivering and/or inspecting all drugs to be used in lethal injection.

2nd Supplemental Answer to Interrogatory No. 6:

Jonathan A. Roundtree, M.D., will write any prescription necessary to order the drugs.

Louisiana State Penitentiary Pharmacy, with the assistance of Warden Seth Smith, will procure the drugs.

Louisiana State Penitentiary will receive the drugs.

Louisiana State Penitentiary Pharmacy will inspect the drugs' labeling and documentation.

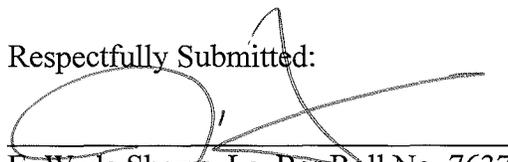
Interrogatory No. 10:

Identify all persons consulted in designing or modifying Louisiana's lethal injection procedures and explain why those person(s) were selected for planning, reviewing and consultation.

2nd Supplemental Answer to Interrogatory No. 10:

A revision to the protocol was recently made on January 27, 2014. The revision permits the use of 10 mg of midazolam, at a 5 mg/ml concentration, and 40 mg of hydromorphone, at a 10 mg/ml concentration, if pentobarbital cannot be obtained for the execution. The change was made after DOC's efforts to obtain pentobarbital were not successful. The change was patterned after Ohio's lethal injection protocol, which was utilized by Ohio on January 16, 2014. The changes were made at the direction of Secretary James LeBlanc and were made by Angela Whittaker, CCE, Assistant to the DOC Secretary, and Deputy Warden Seth Smith.

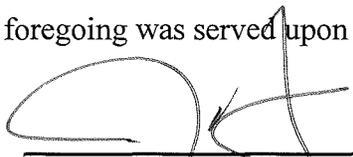
Respectfully Submitted:



E. Wade Shows, La. Bar Roll No. 7637, wade@scwllp.com
James L. Hilburn, La. Bar Roll No. 20221, jamesh@scwllp.com
Jeffrey K. Cody, La. Bar Roll No. 28536, jeffreyc@scwllp.com
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon counsel for Plaintiffs via e-mail on this 1st day of February, 2014.



James L. Hilburn

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JESSIE HOFFMAN * CIVIL ACTION No. 12-796
VERSUS * JUDGE JAMES BRADY
BURL CAIN ET AL. * MAG. JUDGE STEPHEN RIEDLINGER

SUPPLEMENTAL RESPONSES ON BEHALF OF DEFENDANTS, BURL CAIN, WARDEN, JAMES LEBLANC, SECRETARY, AND ANGELA NORWOOD, WARDEN, TO PLAINTIFF CHRISTOPHER SEPULVADO'S SECOND SET OF INTERROGATORIES TO DEFENDANTS

NOW COME, Defendants, BURL CAIN, Warden, Louisiana State Penitentiary, JAMES LEBLANC, Secretary, Louisiana Department of Public Safety and Corrections ("DOC"), and ANGELA NORWOOD, Warden, Death Row, who, in regards to Plaintiff Christopher Sepulvado's Second Set of Interrogatories, submit the following responses:

Please note that Defendants' Responses to Plaintiff's Second Set of Interrogatories are limited as follows:

Defendants are not responding to Plaintiff's Second Set of Interrogatories on behalf of BOBBY JINDAL, Governor of Louisiana, or LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, as those parties were previously dismissed from this proceeding. Also, Defendants are not responding to Plaintiff's First Set of Interrogatories on behalf of any JOHN DOES, unknown executioners, as no such parties have been identified or joined as parties in this proceeding.

Interrogatory No. 1:

Identify, by type, manufacturer, lot number, quantity, expiration date, and source, the drug or drugs to be used by the DOC in the lethal injections given to death row inmates.

Supplemental Answer to Interrogatory No. 1:

DOC has been unable to procure 15 grams of pentobarbital. DOC has acquired midazolam and hydromorphone as alternative drugs for execution in compliance with the recently revised protocol.

Hydromorphone HC 150mg/5ml vial

Manufacturer	*****
Lot #	*****
Quantity	10 vials
Exp Date	April 1, 2015
Source	*****

Midazolam 2mg/2ml

Manufacturer	*****
Lot #	*****
Quantity	25 vials
Exp Date	January 2015
Source	*****

Defendants object to releasing any information which identifies or may be used to identify any company that was the manufacturer or source of the midazolam and/or the hydromorphone. The respective drug manufacturers are FDA-approved. That information has been redacted from this response and will be submitted to the Court under seal along with a Motion for Protective Order per FRCP 26(c).

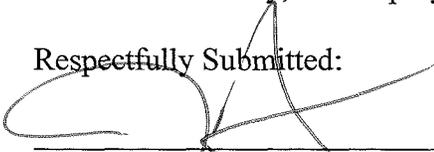
Interrogatory No. 2:

State whether there have been any revisions to State of Louisiana's lethal injection protocol between October 1, 2013, and the present, and if so, provide a description of such revisions and identify the individuals responsible.

Supplemental Answer to Interrogatory No. 2:

A revision to the protocol was recently made on January 27, 2014. The revision permits the use of 10 mg of midazolam, at a 5 mg/ml concentration, and 40 mg of hydromorphone, at a 10 mg/ml concentration, if pentobarbital cannot be obtained for the execution. The change was made after DOC's efforts to obtain pentobarbital were not successful. The change was patterned after Ohio's lethal injection protocol, which was utilized by Ohio on January 16, 2014. The changes were made at the direction of Secretary James LeBlanc and were made by Angela Whittaker, CCE, Assistant to the DOC Secretary, and Deputy Warden Seth Smith.

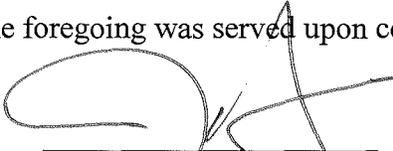
Respectfully Submitted:



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon counsel for Plaintiffs via e-mail on this 1st day of February, 2014.



James L. Hilburn

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JESSIE HOFFMAN * CIVIL ACTION No. 12-796
VERSUS * JUDGE JAMES BRADY
BURL CAIN ET AL. * MAG. JUDGE STEPHEN RIEDLINGER

SECOND SUPPLEMENTAL RESPONSES ON BEHALF OF DEFENDANTS , BURL CAIN, WARDEN, JAMES LEBLANC, SECRETARY, AND ANGELA NORWOOD, WARDEN, TO PLAINTIFF JESSIE HOFFMAN'S AND CHRISTOPHER SEPULVADO'S FIRST SET OF REQUESTS FOR PRODUCTION

NOW COME, Defendants, BURL CAIN, Warden, Louisiana State Penitentiary, JAMES LEBLANC, Secretary, Louisiana Department of Public Safety and Corrections, and ANGELA NORWOOD, Warden, Death Row, who, in regards to Plaintiff Jessie Hoffman's First Set of Requests for Production, submit the following responses and attached documents:

Please note that Defendants' Responses to Plaintiff's First Set of Requests for Production are limited as follows:

Defendants are not responding to Plaintiff's First Set of Requests for Production on behalf of BOBBY JINDAL, Governor of Louisiana, or LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, as those parties were previously dismissed from this proceeding. Defendants are not responding to Plaintiff's First Set of Requests for Production on behalf of any JOHN DOES, unknown executioners, as no such parties have been identified or joined as parties in this proceeding.

Request for Production of Documents No. 1:

Any and all documents created by, received by, or otherwise in your custody or control relating in any manner to the administration of lethal injection in the State of Louisiana (whether currently in force or not) including, but not limited to, all rules,

regulations, or procedures promulgated or revised.

2nd Supplemental Response to Request for Production No. 1:

Please see documents submitted in response to the first set of requests for production. Please see additional documents attached.

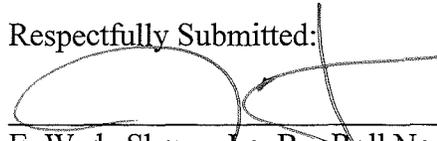
Request for Production of Documents No. 18:

All documentation of all training exercises related to lethal injection carried out since January 1, 2007.

2nd Supplemental Response to Request for Production No. 18:

Please see documents submitted in response to the first set of requests for production. Please see additional documents attached.

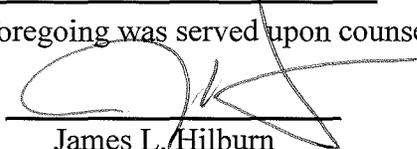
Respectfully Submitted:



E. Wade Shows, La. Bar Roll No. 7637, wade@scwllp.com
James L. Hilburn, La. Bar Roll No. 20221, jamesh@scwllp.com
Jeffrey K. Cody, La. Bar Roll No. 28536, jeffreyc@scwllp.com
Jacqueline B. Wilson, La. Bar Roll No. 31055, jbw@scwllp.com
SHOWS, CALI, & WALSH, L.L.P.
628 St. Louis Street (70802)
P.O. Drawer 4425
Baton Rouge, Louisiana 70821
Telephone: (225) 346-1461
Facsimile: (225) 346-1467

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon counsel for Plaintiffs via e-mail on this 1st day of February, 2014.



James L. Hilburn

See Reverse of PURCHASER'S Copy for Instructions
No order form may be issued for Schedule I and II substances unless a completed application form has been received. (21 CFR 1305.04)
OMB APPROVAL No. 1417-0010

TO: (Name of Supplier) [REDACTED] STREET ADDRESS [REDACTED]

CITY and STATE [REDACTED] DATE [REDACTED]

Item No.	TO BE FILLED IN BY PURCHASER			NATIONAL DRUG CODE	TO BE FILLED IN BY PURCHASER	
	No. of Packages	Size of Package	Name of Item		No. of Packages Received	Date Received
1	2	10	Hydrocodone Bitartrate 50 mg / 10 mL	731001	2	1/28/14
2						
3						
4						
5						
6						
7						
8						
9						
10						

LAST LINE COMPLETED (MUST BE 10 OR LESS) SIGNATURE OF PURCHASER OR ATTORNEY OR AGENT [REDACTED]

Date Issued 08/02/2011	DEA Registration No. [REDACTED]	Name and Address of Registrant HUNT CORRECTIONAL CENTER MEDICAL UNIT P. O. BOX 124 6925 HIGHWAY 74 ST GABRIEL, CA 90776-0000-000
Schedules 2, 3, 4, 5	No. of this Order Form [REDACTED]	
Registered as a [REDACTED]		

Borrow, Loan and Sell

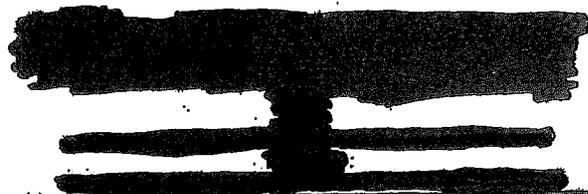
Begin Date: 01/28/2014 00:00:00

End Date: 01/28/2014 23:59:59

01/28/2014 12:55:43

Page 1 of 1

Generic Name	DEA	Date	Qty	Status	Pharmacist	Facility Name
Sell						
HYDROMORPHONE 10MG/ML 50MG 5 ML VIAL	2	01/28/2014 12:27:59	20	Sell	FOREMAN, GLYN	ELAYN HUNT CORRECTIONAL CE



 * Stickers *

CUST NO	DEA REG NO	INVOICE NO
ORD TYPE	PO NUMBER	DATE
3		7/25/13
SHIP VIA	DEPT NUMBER	PAGE
	Pharmacy	1

41
5
P1

ELAYN HUNT CORRECTIONAL CENTER
 6925 HIGHWAY 74
 ST GABRIEL, LA 70776
 (225) 319-4546

ELAYN HUNT CORRECTIONAL CENTER
 P.O. BOX 94304
 BATON ROUGE, LA 70804

ACK # 23004

ITEM	QTY	UNIT	DESCRIPTION	MFG	NDC/UPC	CLS	RETAIL	LIST	PROMO%	COST	GP%	C	EXTENSION
775288	8	EA	DIPHENOX/AT 100	MYL	378-0415-01	4		53.330		10.504		G	84.03
269456	6	ST	MIDAZOLAM VL 2MG/2ML CT25	W-W	641-6057-25	4		19.500		12.299		G	78.79
779702	8	EA	PHENOB 32.4 MG 1/2GR 1000	QLT	603-5166-32	4		224.390		146.981		M	1175.85

16

*PG - Price Change
 Prom % - Mfg Promotion Disco
 C - Contract Item
 G - Group
 V - Prime Vendor
 P - NSHIP

*CLS = Drug Class
 2 = prescriptions
 4 = Schedule 4-5
 5 = LA Only
 6 = Schedule 3

Promo% - CMS
 "CMS NON-MATCH NDC"

GROSS TOTAL 1403.86

Pay by 8/24/13
 and Deduct 70.19

TOTAL TAX NETAMOUNT 1333.67



Louisiana Board of Pharmacy

3388 Brentwood Drive
 Baton Rouge, Louisiana 70809-1700
 Telephone 225.925.6496 ~ Facsimile 225.925.6499
www.pharmacy.la.gov ~ E-mail: info@pharmacy.la.gov



November 6, 2013

Mary E. Labatut
 Pharmacist-in-Charge
 Louisiana State Penitentiary Pharmacy
 PO Box 133
 911 Warehouse Airport Rd.
 Angola, LA 70712

Via Facsimile: (225) 655-2725

Re: Louisiana Pharmacy Permit No. PHY.001271-PEX & Case No. 13-0445

Dear Ms. Labatut:

We have received a complaint alleging your pharmacy is in possession of an unknown quantity of expired pentobarbital, and further, that your pharmacy intends to use this expired drug product at some time in the future.

We call your attention to the Louisiana Pharmacy Law Book, and more specifically LAC 48:111.2501.D, which provides:

"Expired drugs shall not be dispensed and shall be removed from the pharmacy drug inventory."

For the Board:

Malcolm J. Broussard
 Malcolm J. Broussard
 Executive Director

Pharmacy Program
 Tel. 225.922.0852
 Fax. 225.925.6499

CDS Program
 Tel. 225.925.4770
 Fax. 225.925.6499

RMP Office
 Tel. 225.925.4767
 Fax. 225.925.6408

Executive Office
 Tel. 225.925.6496
 Fax. 225.922.0316



RETURN AUTHORIZATION



Please complete and send back original with your return goods.
Please copy for your records.

100 Colin Drive
Holbrook, NY 11741-4306
1-800-473-2138 Customer Service

Please call 800-473-2138 if the
wholesaler information listed is
incorrect. DO NOT change this form.

W

DATE	GRX NO.
12-16-13	15648-1505

CUSTOMER #	PHONE	CREDIT THROUGH
116675	225-655-2308	
LOUISIANA STATE PENITENTIARY 17544 TUNICA TRACE RM 150 ANGOLA, LA 70112		MORRIS DICKSON

Call if wholesaler listed is incorrect. Do not change wholesaler listed above.

DEPT. NO.	BUYER	NUMBER OF BOXES BEING SHIPPED	WHOLESALE ACCT. #
AS3351335	MARK ROETEN	3 + 1 CR	21512

QTY.	MANUFACTURER	DESCRIPTION	QTY.	MANUFACTURER	DESCRIPTION
	Shipper Receipt 7019022 00948279				
	Shipper Receipt 7019022 00948262				
	Shipper Receipt 7019022 00948071				
	Shipper Receipt 7019022 00948064				
		Reverse Link One™			
		OPTIONAL SECTION			
		(Merchandise included by USA)			

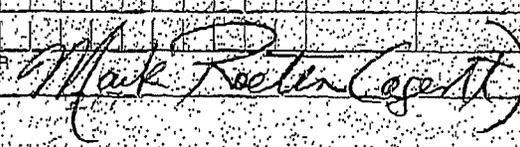
AUTHORIZED SIGNATURE	DATE	E-MAIL ADDRESS:	PROCESS DATE	NEXT PROCESSING DATE
<i>[Signature]</i>	12-16-13			

FOR ADDITIONAL INVENTORY SPACE AND SHIPPING LABELS, PLEASE PHOTOCOPY THIS FORM AND THE LABELS BELOW. YOU CAN ALSO GET FORMS AND LABELS AT WWW.GUARANTEEDRETURNS.COM.

THE WHOLESALER LISTED ABOVE WILL RECEIVE YOUR CREDIT MEMOS. IF THE WHOLESALER ABOVE IS INCORRECT YOU MUST CALL 800-473-2138.

DO NOT USE THIS FORM IF YOU DO NOT USE THE WHOLESALER LISTED.

RETURN GOODS POLICY AND INSTRUCTIONS ON BACK

See Reverse of PURCHASER'S Copy for instructions		No order form may be issued for Schedule I and II substances unless a completed application form has been received. (21 CFR 1305.04)			OMB APPROVAL No. 1117-0010	
TO: (Name of Supplier)				STREET ADDRESS		
LOUISIANA STATE PENITENTIARY				17544 TUNICA TRACE ROOM 150		
CITY and STATE		DATE		TO BE FILLED IN BY SUPPLIER		
ANGOLA LA 70712		12/16/13		SUPPLIERS DEA REGISTRATION NO.		
TO BE FILLED IN BY PURCHASER				AS3351335		
LINE No.	No. of Packages	Size of Package	Name of Item	National Drug Code	Packages Shipped	Date Shipped
1	6	300ml/50ml	NEBUTAL SODIUM (50MG/ML)	006788650155	6	
2	9	14/100	MORPHINE SULFATE (30 MG)	000406888001	9	
3						
4						
5						
6						
7						
8						
9						
10						
2		LAST LINE COMPLETED (MUST BE 10 OR LESS)		SIGNATURE OF PURCHASER OR ATTORNEY OR AGENT		
Date Issued		DEA Registration No.		 DEVOS LTD D/B/A GUARANTEED RETURNS 100 COLIN DRIVE HOLBROOK, NY 11741-0000-000		
10/03/2013		RDO188311				
Schedules						
2, 2N, 3, 3N, 4, 5						
Registered as a		No. of this Order Form				
REVERSE DISTRIBUTOR		134479673				
DEA Form - 222 (AUGUST 2011)				U.S. OFFICIAL ORDER FORMS - SCHEDULES I & II		162843362
				DRUG ENFORCEMENT ADMINISTRATION		
				SUPPLIER'S Copy 1		



Louisiana Board of Pharmacy

3388 Brentwood Drive, Baton Rouge, Louisiana 70809-1700

www.pharmacy.la.gov Telephone: 225-925-6496 Fax: 225-925-6499 E-Mail: info@pharmacy.la.gov



Pharmacy Inspection Report

Permit Data		Report No. 007	Inspected by: Trisler		Territory: Trisler	Date: 01/14/14
1. Pharmacy Name Louisiana State Penitentiary Pharmacy			2. Permit No. 1271	3. CDS License 40278	4. Classification (Select)	5. Renewal Yr. 2014
6. Physical Address REBTC, Rm150, 17544 Tunica Trace		7. Mailing Address same		8. City, State, Zip Angola, LA 70712		
9. Phone No. 225-655-2307	10. Fax No. 225-655-2725	11. E-mail Address mlabatut@corrections.state.la.us		12. J.C.A.H.O. Accredited Yes <input type="checkbox"/> () No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>		
13. Compounding Sterile <input type="checkbox"/> Non-Sterile <input type="checkbox"/> N/A <input checked="" type="checkbox"/>		14. AMS Permit No. n/a	15. Rx Software CIPS	16. DEA No. AS3351335 DEA Expiration 3/31/15		
17. Store Hours N/A			18. Pharmacy Hours 6:30am-5:00pm M-F			

Pharmacist-in-Charge					
19. PIC Name (Last, First, MI) Labatut, Mary E.		20. Sex female	21. License No. 13632	22. Renewal Year 2014	23. CE Compliant Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
24. Address of Record 7717 La. Hwy 418		25. City, State, Zip Batchelor, LA 70715			26. Phone 225-492-2422

27. Pharmacy Staff	License No.	Renewal Year	C.E. Compliant		
Jules "Jay" Labatut, PST	13743	2014	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Douglas J. Pafin, PST	15473	2014	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
John Robichaux, PST	15897	2014	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Stacy Wilson, CPT	2841	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Juanita L. Taylor, CPT	7438	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Kimberly Dixon, CPT	2317	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Heather L. Stutzman, CPT	11398	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Carrie L. Bordelon-Bibbee, CPT	2614	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Shayla N. Howard, CPT	10706	13/14	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Exempt <input checked="" type="checkbox"/>

Professional and Occupational Standards

	Compliance				Compliance		
	Yes	No	N/A		Yes	No	N/A
28. Credentials Displayed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	39. Emergency Drug Cabinet	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
29. Premises Clean/Orderly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	40. Electronic Record Keeping	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30. Adequate Lighting/Ventilation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	41. Required Info. on CDS Rxs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
31. Adequate Refrigeration/Temperature	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	42. CDS Invoices Retrievable/Dated	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
32. Min. Rx Dept. Size/Aisle Space	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	43. C-II Order Forms	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
33. Sterile Compounding	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	44. Perpetual CII/CDS Annual Inventory Inventory Date (5/1/13)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
34. Sink (Location & Temperature)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	45. Policy & Procedure Manual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
35. Required References	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	46. Pharmacist Register	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
36. Security (Alarm) (Restricted Access)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	47. Patient Counseling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
37. Adequate Equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	48. Intern/CPT/Tech Trainee I.D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
38. Meds. Misbranded, Non-Labeled, Exp.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

52. Prior Inspection Date: 3/12/13	53. Deficiencies/Non-Compliance on Prior Inspection 27-CE,38,42,43	54. Correction(s) Observed yes,yes,yes,yes
--	--	--

55. **Comments:** NOTE: A finding of satisfactory compliance is not indicative of a detailed inspection/investigation and does not exclude the permit and/or staff from possible future violations of compliance. Additional Personnel: Chandricka N. Roach CPT #11601, Christie E. Parker, CPT #11436.

44. Must indicate quantity and date of receipt per line on the DEA 222 form.

Note: Expired CDS drugs are segregated from the current stock in a locked cabinet.

EDK Permit #8160 for Dixon Correctional; Permit #8157 for AVC Correctional Center.

Mary Labatut
Authorized Signature & Title

Robert Trisler
Compliance Officer, Louisiana Board of Pharmacy (Rev.050611)

10/4/13 - Execution Practice

Practice held at Camp F @ 9⁰⁰ AM
Team members practiced step down
techniques, escorts, and injection set ups

- Darrel Vannoy
- Joseph Lamarche
- ROBERT B. LEE
- Shirley Coody
- Tim Delaney Jr.
- Shirley Whitcraft
- Amanda Linnhardt
- Kevin Benjamin
- Orville Lamartine
- TRAY PORT

Execution EMS Box Unventored
P.A. system and phones working
properly - practice concluded at 9¹² AM
Daryl V

10/29/13 Execution Practice

Practice held at 10 AM - Camp F - Below
Attended

- Leslie Dupont
- KEVIN BENJAMIN
- Orville Lamartine
- DONALD K BARR
- Shirley Coody
- ROBERT B. LEE
- Kevin Benjamin
- Orville Lamartine
- Shirley Coody
- R.H. [unclear]
- PERRY STRUBB
- Shirley Whitcraft
- Darrel Vannoy
- Orville Lamartine

Practice ~~was~~ as ~~was~~
 Team members practiced strap downs
 techniques, escorts, and infection set ups
 Darrel Vanney ~~Clara Vanney~~
 Joseph Hamantovene ~~McKee~~
 Robert Butler ~~R.H. Butler~~
 Shirley Coody ~~Shirley Coody~~
 Tim Delaney Sr. ~~in charge~~
 Shirley Whitcraft ~~EMP~~
 Amanda Linnam ~~EMT~~ ~~Mandalan~~
 Kevin Benjamin
 Deelle Lamartinee
 Tary Port
 Execution EMS Box Unventored
 Shirley ~~EMP~~
 P.A. system and phones working
 properly. Practice conducted at 9:12 AM
 Jan 13

10/29/13 Execution Practice
 Practice held at 10 AM - Camp F - Below
 Attended

- | | | |
|---|----------------|-------------------|
| Leslie Dupont | Kevin Benjamin | Deelle Lamartinee |
| Donald K. Barr Army Res. Service | Shirley Coody | Robert Butler |
| Shirley Coody | Robert Butler | Shirley Coody |
| Shirley Coody | Robert Butler | R.H. Butler |
| Shirley Coody | Robert Butler | Chip Venzani |
| Shirley Coody | Robert Butler | Perry Stragg |
| Shirley Coody | Robert Butler | Shirley Coody |
| Shirley Coody | Robert Butler | Darrel Vanney |
| Shirley Coody | Robert Butler | Deelle Lamartinee |
| Shirley Coody | Robert Butler | Tim Delaney Sr. |

10/22/13

Execution Crash Cart inventoried & replaces
Expired IV Fluids

SW

practice over at 10:30am.

1/8/14 - Execution Practice
Practice held at 10am. at Camp 3
below in attendance:

Angie Nourpod	Angie Nourpod	
Joseph Hamarkniere	Joseph Hamarkniere	AWT
Jy Ho	Trey Hest	Outlines
Leslie	Deyont	Deputy Warden
James Smith	James Smith	MP
Robert Butler	RH Bids	Capt J
Chad Murrell	Chad Murrell	8h CAMP 3
Richard L. Penbody	Richard L. Penbody	Deputy Warden
Kevin Benjamin	Kevin Benjamin	MP
Lobby Roblin	Lobby Roblin	Legal Program
Cathy Fink	Cathy Fink	AWT Program
Shirley Cook	Shirley Cook	AWT/s
Grville P. Lamarkniere	Grville P. Lamarkniere	AWT MP
DONALD K. BARR	DONALD K. BARR	Bus. OFF SHS
LT Shirley Whittrig	LT Shirley Whittrig	EMS
Wanda Veerchin	Wanda Veerchin	MPW

Execution Crash Cart inventoried

MICHAEL L. M. Oms
Capt James Summers

EMS - C
EMS B

1/14/14 - Execution Practice start 9am -
Held @ Camp F below listed
on attendance -

Joseph Abhamartian Richard D. Hall

~~Support~~ Deputy Director
~~DR~~ Therese Peet Curtis
Jim Adm Jimmy 1/14 1/15

Elizabeth Robyn Elizabeth Bell Legal Programs
Shirley Whitford Sig EMS

RH Bell
PERRY STASS Camp C

Annie Norwood David prewood DR/F

David Vaachon MP/CS

Donna F Lamant MP/TM
Chad Mezina

Kevin Kevin 1/14
Chad Chad 1/15
Chad Darren EMS

James Summers EMS

Tim Detaney Tim Camp D
Richard L Peabody Richard Peabody 1/14

Shirley Cook Shirley Cook 1/15
Donald H. Barr DONALD BARR CROSS-OFF 8/1

CRASH CART inventoried Expired items
replaced

1

1/21/14 Execution Practice Start 9:00 AM
Held @ Camp F Below listed in
attendance: Crash cart untorqued

Joseph E. Hamartistone (Signature) A/C Sec
1 Ray Torst (Signature)

David R. Baker Donald Ben BUS. OFF. SHAS

Kevin Benjamin (Signature) MP SHR

Angie Norwood (Signature) DRE

Shirley Coody (Signature) HW/SS

Chad Menzic (Signature) J

Perry Stog (Signature) C

James Caspio (Signature) EMS

Shirley Whittrugh (Signature) EMS

(Signature) Deputy Widery

(Signature) ASST - (Signature)

James Smith (Signature) MPW
J.M. MAGEE TELEPHONE REPAIR (Signature)

Execution Practice 1-29-14 at Camp F.

Attendance

Debra J. Heabody	Deputy Warden Security
Cheryl Fontenot	Deputy Warden TX
MP Menzies	Asst. Warden TX/MP
Chad Dargatzis	"
Scott H. Hester	AW / Sec
PERRY STAGG	AW Camp C
Angie Norwood	AW DR/E
DONALD K. BARK	AW OFF SHR
TIM BYRID	MP
TIM DeLaney	AW Camp D
KEVIN BENJAMIN	MP 8 HR
Liam [unclear]	MP 8 HR
TREY FORB	Camp Out
Drville [unclear]	MP 8 hr
JC SWIFT	MP 8 hr
T. MICHAEL STON	MP 8 hr
Warren Ceshys	MP 8 hr
Wanda Veachin	MP 8 hours
ROBERT BUTLER	MP 8 hr
JAMES SUMMERS	EMS 8-Team
Randy Ducele	EMS 8 HR

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JESSIE HOFFMAN * CIVIL ACTION No. 12-796
VERSUS * JUDGE JAMES BRADY
BURL CAIN ET AL. * MAG. JUDGE STEPHEN RIEDLINGER

**RESPONSES ON BEHALF OF DEFENDANTS, BURL CAIN, WARDEN, JAMES
LEBLANC, SECRETARY, AND ANGELA NORWOOD, WARDEN, TO PLAINTIFF
CHRISTOPHER SEPULVADO’S SECOND SET OF REQUESTS FOR PRODUCTION**

NOW COME, Defendants, BURL CAIN, Warden, Louisiana State Penitentiary, JAMES LEBLANC, Secretary, Louisiana Department of Public Safety and Corrections (“DOC”), and ANGELA NORWOOD, Warden, Death Row, who, in regards to Plaintiff Christopher Sepulvado's Second Set of Requests for Production, submit the following responses:

Please note that Defendants’ Responses to Plaintiff’s Second Set of Requests for Production are limited as follows:

Defendants are not responding to Plaintiff’s Second Set of Interrogatories on behalf of BOBBY JINDAL, Governor of Louisiana, or LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, as those parties were previously dismissed from this proceeding. Also, Defendants are not responding Plaintiff’s Second Set of Requests for Production on behalf of any JOHN DOES, unknown executioners, as no such parties have been identified or joined as parties in this proceeding.

Request for Production of Documents No. 1:

Any and all documents reflecting the inventory of supplies (including all purchase records) maintained by DOC for the purpose of administering lethal injections between October 1, 2013, and the present.

Response to Request for Production No. 1:

DOC has no records reflecting an inventory of pentobarbital that was being maintained for the purpose of administering lethal injections between October 1, 2013, and the present. DOC did have an expired inventory of pentobarbital during that time which was *not* being maintained for the purpose of administering lethal injections, and that inventory of pentobarbital was returned to the manufacturer.

Please see attached documents reflecting DOC's purchase and possession of midazolam and hydromorphone. Defendants object to releasing any information which identifies or may be used to identify any company that was the manufacturer or source of the midazolam and/or the hydromorphone. The respective drug manufacturers are FDA-approved. That information has been redacted from this response and will be submitted to the Court under seal along with a Motion for Protective Order per FRCP 26(c).

Request for Production of Documents No. 2:

Any and all documents related to any actions taken by the DOC regarding the stock of pentobarbital in possession of the DOC which expired as of "9/13", including but not limited to all documents of communications, including emails, with DOC employees, the federal Drug Enforcement Agency, or the Louisiana Board of Pharmacy regarding the maintenance or disposal of the pentobarbital.

Response to Request for Production No. 2:

Louisiana State Penitentiary Pharmacy received a letter from the Louisiana Board of Pharmacy dated November 8, 2013. DOC returned the drug to the manufacturer who would have disposed of the pentobarbital. On January 14, 2014, the Louisiana Board of Pharmacy conducted an inspection of the Louisiana State Penitentiary Pharmacy. See documents attached.

Request for Production of Documents No. 3:

Any and all documents that describe any revisions or changes in the administration of lethal injection from October 1, 2013, to the present, including but not limited to any changes in the type or quantity of the lethal substance.

Response to Request for Production No. 3:

The only documents that describe any revisions or changes in the administration of lethal injection from October 1, 2013, to the present were provided to Plaintiffs' counsel via e-mail on January 27, 2014, which show revisions made that same day.

Request for Production of Documents No. 4:

Any and all documents reflecting any communications, including emails, with any other prisons or state officials regarding the administration of lethal injection, between October 1, 2013, and the present.

Response to Request for Production No. 4:

Upon information and belief, Defendants received Ohio's execution protocol via fax from the Ohio DOC on January 27, 2014. There may be a fax coversheet of this transmittal in DOC's possession, which will be confirmed on Monday, February 3, 2014, and a supplementation to this response will be made at that time.

Request for Production of Documents No. 5:

Any and all documents, including email communications, reflecting any attempt by the DOC to acquire any supplies related to lethal injection, including pharmaceutical agents, between September 1, 2013, and the present.

Response to Request for Production No. 5:

Please see documents submitted in response to the first set of requests for production. Defendants have no additional documents.

Request for Production of Documents No. 6:

Any and all documents reflecting any communications, including emails, with any pharmacies regarding the procurement of any drug which may be used in lethal injection, between September 1, 2013, and the present.

Response to Request for Production No. 6:

Please see documents submitted in response to the first set of requests for production. Please also see documents in response to Request for Production No. 1.

Request for Production of Documents No. 7:

Any and all documents reflecting DOC's acquisition of the active pharmaceutical ingredient ("API") in any execution drug, including any and all attempts to acquire said API whether successful or not, and all documentation reflecting that a compounding pharmacy, or any individual(s) inside or outside of DOC, planned to prepare or actually prepared a drug from the API.

Response to Request for Production No. 7:

Please see documents submitted in response to the first set of requests for production. Defendants have no additional documents.

Request for Production of Documents No. 8:

All documentation reflecting efforts by the DOC to seek or obtain information regarding the Food & Drug Administration (FDA) approval status of any and all execution drugs, or API, and all correspondence concerning the FDA approval status of such drug(s).

Response to Request for Production No. 8:

Please see documents submitted in response to the first set of requests for production. Defendants have no additional documents.

Request for Production of Documents No. 9:

All documentation of all training exercises related to lethal injection carried out since October 1, 2013.

Response to Request for Production No. 9:

Please see documents submitted in response to the first set of requests for production. Please see additional documents attached.

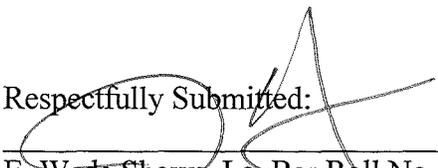
Request for Production of Tangible Things No. 10:

Mr. Sepulvado requests, pursuant to Rule 34(a)(1)(B), for the Defendants to permit him or his representative to inspect, test, and sample the drug(s) that the DOC intends to use in its lethal injection protocol.

Response to Production of Tangible Things No. 11:

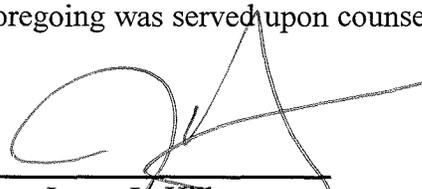
Objection. Plaintiff has no right to inspect, test, and/or sample the drugs that DOC intends to use in the lethal injection protocol. Further, Plaintiff's request is overbroad and does not designate a quantity that is to be tested, who is to conduct the testing, or the protocol to be utilized for the testing.

Respectfully Submitted:


E. Wade Shows, La. Bar Roll No. 7637, wade@scwllp.com
James L. Hilburn, La. Bar Roll No. 20221, jamesh@scwllp.com
Jeffrey K. Cody, La. Bar Roll No. 28536, jeffreyc@scwllp.com
Jacqueline B. Wilson, La. Bar Roll No. 31055, jbw@scwllp.com
SHOWS, CALI, & WALSH, L.L.P.
628 St. Louis Street (70802)
P.O. Drawer 4425
Baton Rouge, Louisiana 70821
Telephone: (225) 346-1461
Facsimile: (225) 346-1467

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon counsel for Plaintiffs via e-mail on this 1st day of February, 2014.


James L. Hilburn

See Reverse of PURCHASER'S Copy for Instructions

No order form may be issued for Schedule I and II substances unless a completed application form has been received. (21 CFR 1305.04)

OMB APPROVAL No. 1417-0010

TO: (Name of Supplier)

STREET ADDRESS

CITY and STATE

DATE

TO BE FILLED IN BY PURCHASER

LINE No.	TO BE FILLED IN BY PURCHASER			NATIONAL DRUG CODE	No. of Packages Received	Date Received
	No. of Packages	Size of Package	Name of Item			
1	2	10	Hydrocodone Bitartrate, 20 mg, Vial	2220000000		1/28/14
2						
3						
4						
5						
6						
7						
8						
9						
10						

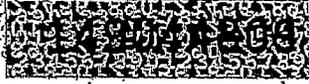
LAST LINE COMPLETED (MUST BE 10 OR LESS)

SIGNATURE OF PURCHASER OR ATTORNEY OR AGENT

Date Issued 01/03/2014	DEA Registration No. [REDACTED]	Name and Address of Registrant HUNT CORRECTIONAL CENTER MEDICAL UNIT P. O. BOX 154 6725 HIGHWAY 74 ST. GABRIEL, CA 95774-0000-0000
Schedules 2, 3, 4	Registered as a [REDACTED]	No. of this Order Form [REDACTED]

DEA Form 222 (JANUARY 2010)

U.S. OFFICIAL ORDER FORMS - SCHEDULES I & II
DRUG ENFORCEMENT ADMINISTRATION
PURCHASER'S Copy 3



Borrow, Loan and Sell

Begin Date: 01/28/2014 00:00:00

End Date: 01/28/2014 23:59:59

01/28/2014 12:55:43

Page 1 of 1

Generic Name	DEA	Date	Qty	Status	Pharmacist	Facility Name
Sell						
HYDROMORPHONE 10MG/ML 50MG 5 ML VIAL	2	01/28/2014 12:27:59	20	Sell	FOREMAN, GLYN	ELAYN HUNT CORRECTIONAL CE



Louisiana Board of Pharmacy

3945 Brentwood Drive
Baton Rouge, Louisiana 70809-1700
Telephone 225.925.6496 ~ Facsimile 225.925.6499
www.pharmacy.la.gov ~ E-mail: info@pharmacy.la.gov



November 6, 2013

Mary E. Labatut
Pharmacist-in-Charge
Louisiana State Penitentiary Pharmacy
PO Box 133
911 Warehouse Airport Rd.
Angola, LA 70712

Via Facsimile: (225) 855-2725

Re: Louisiana Pharmacy Permit No. PHY.001274-PEX & Case No. 13-0445

Dear Ms. Labatut:

We have received a complaint alleging your pharmacy is in possession of an unknown quantity of expired pentobarbital, and further, that your pharmacy intends to use this expired drug product at some time in the future.

We call your attention to the Louisiana Pharmacy Law Book, and more specifically LAC 46:LI.2501.D, which provides:

"Expired drugs shall not be dispensed and shall be removed from the pharmacy drug inventory."

For the Board:

Malcolm J. Broussard
Malcolm J Broussard
Executive Director

Pharmacy Program
Tel. 225 922 0822
Fax. 225 925 6499

CDS Program
Tel. 225 925 4770
Fax. 225 925 6499

PHF Office
Tel. 225 925 4767
Fax 225 925 6408

Executive Office
Tel. 225 925 6496
Fax. 225 922 0315



RETURN AUTHORIZATION



Please complete and send back original with your return goods.
Please copy for your records.

100 Colin Drive
Holbrook, NY 11741-4306
1-800-473-2138 Customer Service

Please call 800-473-2138 if the
wholesaler information listed is
incorrect. **DO NOT** change this form.

W

DATE: 12-16-13 GRX NO. 15648-1505

CUSTOMER # 116675	PHONE 225-655-2308	CREDIT THROUGH
LOUISIANA STATE PENITENTIARY 17544 TUNICA TRACE RM 150 ANGOLA, LA 70112		MORRIS DICKSON
DEPT NO. AS 3351335	BUYER NAME ROETEN	WHOLESAKER ACCT# 21512
		NUMBER OF BOXES BEING SHIPPED: 3 + 1 CR

Call if wholesaler listed is incorrect. Do not change wholesaler listed above.

QTY.	MANUFACTURER	DESCRIPTION	QTY.	MANUFACTURER	DESCRIPTION
	Shipper Receipt 7019022 00948279				
	Shipper Receipt 7019022 00948262				
	Shipper Receipt 7019022 00948071				
	Shipper Receipt 7019022 00948064	Reverse Link One™			
		NATIONAL			
		SECTION			
		(Merchandise Inventory by SA)			

AUTHORIZED SIGNATURE <i>[Signature]</i>	DATE 12-16-13	E-MAIL ADDRESS:	PROCESS DATE	NEXT PROCESSING DATE
---	---------------	-----------------	--------------	----------------------

FOR ADDITIONAL INVENTORY SPACE AND SHIPPING LABELS, PLEASE PHOTOCOPY THIS FORM AND THE LABELS BELOW. YOU CAN ALSO GET FORMS AND LABELS AT WWW.GUARANTEEDRETURNS.COM.

THE WHOLESALER LISTED ABOVE WILL RECEIVE YOUR CREDIT MEMOS. IF THE WHOLESALER ABOVE IS INCORRECT YOU MUST CALL 800-473-2138.
DO NOT USE THIS FORM IF YOU DO NOT USE THE WHOLESALER LISTED.
RETURN POLICY AND INSTRUCTIONS ON BACK

See Reverse of PURCHASER'S Copy for Instructions		No order form may be issued for Schedule I and II substances unless a completed application form has been received. (21 CFR 1305.04)		OMB APPROVAL No. 1117-0010		
TO: (Name of Supplier) LOUISIANA STATE PENITENTIARY CITY and STATE ANGOLA LA 70712			STREET ADDRESS 17544 TUNICA TRACE - ROOM 150			
DATE 12/16/13			TO BE FILLED IN BY SUPPLIER SUPPLIER'S DEA REGISTRATION No. AS3351335			
TO BE FILLED IN BY PURCHASER						
LINE No.	No. of Packages	Size of Package	Name of Item	National Drug Code	Packages Shipped	Date Shipped
1	6	300ml/50ml	NEBUTAL SODIUM (50MG/ML)	006738650155	6	
2	9	114/100	MORPHINE SULFATE (30 MG)	000406830001	9	
3						
4						
5						
6						
7						
8						
9						
10						
2 LAST LINE COMPLETED (MUST BE 10 OR LESS)			SIGNATURE OF PURCHASER OR ATTORNEY OR AGENT <i>Mark Roeder Agent</i>			
Date Issued 10/03/2013		DEA Registration No. RDO188311		Name and Address of Registrant DEVOS LTD D/B/A GUARANTEED RETURNS 100 COLIN DRIVE HOLBROOK, NY 11741-0000-000		
Schedules 2, 2N, 3, 3N, 4, 5		Registered as a REVERSE DISTRIBUTOR		No. of this Order Form 134479673		
DEA Form - 222 (AUGUST 2014)		U.S. OFFICIAL ORDER FORMS - SCHEDULE I & II DRUG ENFORCEMENT ADMINISTRATION		162843362		
SUPPLIER'S Copy 1						



Louisiana Board of Pharmacy

3388 Brentwood Drive, Baton Rouge, Louisiana 70809-1700
 www.pharmacy.la.gov Telephone: 225-925-6496 Fax: 225-925-6499 E-Mail: info@pharmacy.la.gov



Pharmacy Inspection Report

Permit Data		Report No. 007	Inspected by: Trisler		Territory: Trisler	Date: 01/14/14	
1. Pharmacy Name Louisiana State Penitentiary Pharmacy			2. Permit No. 1271	3. CDS License 40278	4. Classification (Select) PEX	5. Renewal Yr. 2014	
6. Physical Address REBTC, Rm150, 17544 Tunica Trace			7. Mailing Address same		8. City, State, Zip Angola, LA 70712		
9. Phone No. 225-655-2307		10. Fax No. 225-655-2725		11. E-mail Address mlabatut@corrections.state.la.us		12. J.C.A.H.O. Accredited Yes <input type="checkbox"/> () No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
13. Compounding Sterile <input type="checkbox"/> Non-Sterile <input type="checkbox"/> N/A <input checked="" type="checkbox"/>			14. AMS Permit No. n/a	15. Rx Software CIPS	16. DEA No. AS3351335	DEA Expiration 3/31/15	
17. Store Hours N/A				18. Pharmacy Hours 6:30am-5:00pm M-F			

Pharmacist-in-Charge					
19. PIC Name (Last, First, MI) Labatut, Mary E.		20. Sex female	21. License No. 13632	22. Renewal Year 2014	23. CE Compliant Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
24. Address of Record 7717 La. Hwy 418			25. City, State, Zip Batchelor, LA 70715		26. Phone 225-492-2422

27. Pharmacy Staff	License No.	Renewal Year	C.E. Compliant		
Jules "Jay" Labatut, PST	13743	2014	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Douglas J. Patin, PST	15473	2014	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
John Robichaux, PST	15897	2014	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Stacy Wilson, CPT	2841	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Juanita L. Taylor, CPT	7438	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Kimberly Dixon, CPT	2317	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Heather L. Stutzman, CPT	11398	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Carrie L. Bordelon-Bibbee, CPT	2614	13/14	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Exempt <input type="checkbox"/>
Shayla N. Howard, CPT	10706	13/14	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Exempt <input checked="" type="checkbox"/>

Professional and Occupational Standards

	Compliance				Compliance		
	Yes	No	N/A		Yes	No	N/A
28. Credentials Displayed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	39. Emergency Drug Cabinet	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
29. Premises Clean/Orderly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	40. Electronic Record Keeping	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30. Adequate Lighting/Ventilation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	41. Required Info. on CDS Rxs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
31. Adequate Refrigeration/Temperature	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	42. CDS Invoices Retrievable/Dated	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
32. Min. Rx Dept. Size/Aisle Space	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	43. C-II Order Forms	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
33. Sterile Compounding	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	44. Perpetual CII/CDS Annual Inventory			
34. Sink (Location & Temperature)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Inventory Date (5/1/13)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
35. Required References	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	45. Policy & Procedure Manual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
36. Security (Alarm) (Restricted Access)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	46. Pharmacist Register	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
37. Adequate Equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	47. Patient Counseling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
38. Meds. Misbranded, Non-Labeled, Exp.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	48. Intern/CPT/Tech Trainee I.D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

52. Prior Inspection Date: 3/12/13	53. Deficiencies/Non-Compliance on Prior Inspection 27-CE,38,42,43	54. Correction(s) Observed yes,yes,yes,yes
--	--	--

55. **Comments:** NOTE: A finding of satisfactory compliance is not indicative of a detailed inspection/investigation and does not exclude the permit and/or staff from possible future violations of compliance. Additional Personnel: Chandricka N. Roach CPT #11601, Christie E. Parker, CPT #11436.
 44. Must indicate quantity and date of receipt per line on the DEA 222 form.
 Note: Expired CDS drugs are segregated from the current stock in a locked cabinet.
 EDK Permit #8160 for Dixon Correctional; Permit #8157 for AVC Correctional Center.

mary labatut PIC
 Authorized Signature & Title

[Signature]
 Compliance Officer, Louisiana Board of Pharmacy (Rev.050611)

10/4/13 - Execution Practice

Practice held at Camp F @ 9⁰⁰ AM
Team members practiced step down techniques, escorts, and infection set ups.

- Darrel Vannoy
- Joseph Lamantone
- Robert BILK
- Shirley Coody
- Tim Delaney Jr.
- Shirley Whitcraft
- Amanda Linnaments
- Kevin Benjamin
- Orville J. Martin
- TRAY PORT

Execution EMS Box mentioned
Switched EMS

P.A. system and phones working properly. Practice concluded at 9¹⁵ AM
Darrel Vannoy

10/29/13 Execution Practice

Practice held at 10 AM - Camp F. Below
Attended

- Leslie Dupont
- KEVIN Benjamin
- Orville J. Martin
- Donald K Barr A/upt AEM Service
- Shirley Coody
- ROBERT BILK
- Kevin Benjamin
- Orville J. Martin
- Shirley Coody
- TRAY PORT
- Kevin Benjamin
- Orville J. Martin
- Shirley Coody
- TRAY PORT
- Kevin Benjamin
- Orville J. Martin
- Shirley Coody
- TRAY PORT

Machine room as
 42a
 Team members practiced steps down
 techniques, escorts, and infection set ups
 Darrel Vanney
 Joseph Hamartwise
 Robert P. T. L. K.
 Shirley Coody
 Tim Delaney Sr.
 Shirley Whittay
 Amanda Linnamont
 Kev-Long
 C. J. [unclear]
 Execution EMS Box Unventured
 P.A. system and phones working
 Properly Practice concluded at 9:12 PM
 [Signature]

10/29/13 Execution Practice
 Practice held at 10 Am - Camp F - Below
 Attended

- | | |
|---|----------------|
| Leslie Dupont | [Signature] |
| KEVIN BENJAMIN | [Signature] |
| Donal K. B... [unclear] [unclear] [unclear] | [Signature] |
| Shirley Coody | Shirley Coody |
| ROBERT P. T. L. K. | R. P. T. L. K. |
| [Signature] | [Signature] |
| NT Sweet Whittay | [Signature] |
| Major [unclear] [unclear] | [Signature] |
| [Signature] | [Signature] |
| Joseph Hamartwise | [Signature] |
| Paul [unclear] | [Signature] |
| Tim Delaney Sr. | [Signature] |

10/22/13

Execution Crash Cart inventoried & replaced
Expired IV Fluids

SW

practice over at 10:30am

11/5/14 - Execution Practice
Practice held at 10am. at Camp 3
below in attendance:

Angie Nauwood	Angie Nauwood	
Esperanza Martinez	R. G. Galt	AWT
Jyoti	Troy Pickett	Outlines
Leticia	Deyont	Deputy Warden
James Jackson	James Jackson	MP
ROBERT BUTLER	RH Butts	PH CAMP 3
Chad Murray	Gene	
Richard G. Peabody	Richard Peabody	Deputy Warden
Kevin Benjamin	Kevin Benjamin	MP
Lobby Roblin	Billy Roll	Legal Programs
Cathy Lambert	Cathy Lambert	AWT Training
Shirley Coody	Shirley Coody	AWT/S
Carville Lamartine	Carville Lamartine	AWT MP
DONALD K. BARR	Donald K. Barr	Bus. OFF SHS
LT Shirley Whittegriff	Shirley Whittegriff	EMS
Wanda Vaccaro	Wanda Vaccaro	MPW

Execution Crash Cart inventoried SW

MP CAEL L. G. Galt	EMS - B
Capt James Summers	EMS B

1/14/14 - Execution Practice start 9am -
Held @ Camp F below listed
on attendance -

Joseph Abhamartimer ~~Richard Hart~~

~~Edward~~ Deputy Director
Mary Boer
Jim Holt Jimmy Smith Camp 5

Elizabeth Roblin Elizabeth Roff Legal Programs
Shirley Whittigt Sig EMS

RH Bubb
PERRY STAGS Camp C

Angie Norwood David PROWOOD DR/F

Marci Vaarha MARS

Donna F Lamartina MPTM

Chad Mezina

Kari Ben Kenyon Paul

Chad Leonard Chad Nelson field

Don Cross Darren Cashid EMS

James Summers EMS

Tim Detaney Sr Camp D

Richard L Probert Richard Probert Deputy

Shirley Coad Shirley Coad HWS

Donald L Paan DONALD PAAN CROSS-OFF 8/1

CRASH CAR inventoried. Expired items
replaced

1

1/21/14 Execution Practice Start 9 AM
Held @ Camp F Below listed in
attendance: Crash cart inventoried

Joseph J. Hamantisene	Joseph J. Hamantisene	MP/Sec
Troy Torbet	J. Torbet	
David R. Baker	Donald R. Baker	POW-Off. SHMS
Kevin Benjamin	Kevin Benjamin	MP/SHR
Angie Norwood	Angie Norwood	DR
Shirley Cook	Shirley Cook	AW/SS
Cheryl Menzies	Cheryl Menzies	J
Perry Stob	Perry Stob	C
James Cashio	James Cashio	EMS
Shirley Whittrugh	Shirley Whittrugh	EMS
Deputy	Deputy	
Asst	Asst	
David Voelker	David Voelker	MPU
John M. J. J. J. J.	John M. J. J. J. J.	C-75
J.M. MALLEE	J.M. MALLEE	TELEPHONE ROOM

Execution Practice 1-29-14 at Camp F.

Attendance

Support	Deputy Warden Security
Michael Peabody	Deputy Warden TX
Carlos Fonteno	Asst of Warden TX/MP
Chris Menzies	"
Chris Darbonne	
Scott Houchens	AW/Sec
Perry Stagg	AW Camp C
Angie Norwood	Deputy Warden AW DR/E
DONALD K. BARK	Deputy Warden
TIM BYRID	MP
TIM Delaney	MP Camp D
KEVIN BENJAMIN	MP 8 HR
LEON FINE	MP 8 HR
TROY FORCE	Camp Out
DRILLER	MP 8 hr
J.C. SWIFT	MP 8 hr
J. MICHAEL STAN	MP 8 hr
TANNER CASH	MP 8 hours
Wendy Veatch	MP 8 hours
ROBERT BUTLER	
JAMES SUMMERS	EMS B-team
RANDY DUCHE	EMS 8 hr

APPENDIX F

CAPITAL POST-CONVICTION PROJECT OF LOUISIANA

1340 POYDRAS STREET, SUITE 1700

NEW ORLEANS, LOUISIANA 70112

PHONE: (504) 212-2110 / FAX: (504) 212-2130

ATTORNEYS

GARY CLEMENTS, DIRECTOR
KATHY KELLY, DEPUTY DIRECTOR
J. SAM SWEENEY, DEPUTY DIRECTOR
GRACE MCLEAN*
JANE EGGERS
D. AARON NOVOD
MATILDE J. CARBIA
LISA BAKALE-WISE
JENNIFER REIF

PROJECT COORDINATOR

LETHA RATLIFF

EXEC ADMINISTRATIVE ASST

MWALIMU JOHNSON

*LICENSED ONLY IN NC & CA

PARALEGALS

SHANNA HUGLE
DENISE NICHOLL
MALAIKA JOHNSON
JOHN CRAWFORD

MITIGATION INVESTIGATORS

JUDITH EICHENBAUM, MSW
DANIELLE MICKENBERG, JD
HEATHER CANFIELD

ADMINISTRATIVE ASSISTANTS

TANNA BARTHOLOMEW
GLENDA HAMLIN

January 10, 2014

Jacqueline B. Wilson
Wade Shows
Shows, Cali & Walsh, LLP
628 St. Louis Street (70802)
P.O. Drawer 4425
Baton Rouge, Louisiana 70821
SENT VIA ELECTRONIC MAIL

Re: 12-796 Hoffman v. Jindal

Dear Counsel:

We write to you with some urgency to confirm or deny credible reports we have that, in contravention of Louisiana and federal law, the Department of Corrections is seeking lethal-injection drugs from compounding pharmacies in Oklahoma in addition to other states. On behalf of Christopher Sepulvado, we demand that the Department cease and desist from pursuing this illegal activity.

If these reports are accurate your clients' actions violate Louisiana law in two ways. First, the emergency rules of the Louisiana Board of Pharmacies effective May 29, 2013, any compounding pharmacy is prohibited from dispensing drugs to anyone unless there is a patient prescription or the drug is dispensed directly to a doctor who will administer the drug directly to a patient.¹ LAC 46:LIII.2535 (2013) (Compounding pharmacy – General Standards).

Second, the Louisiana Administrative Code requires that any out of state pharmacy dispensing drugs bound for Louisiana must comply with the following regulations:

¹ This latter practice can only make up 10% of the compounding pharmacies.

§ 2303. Out-of-State Pharmacy Requirements

- A. The out-of-state pharmacy shall hold a current pharmacy permit in good standing in the state(s) in which it is located and/or practicing pharmacy.
- B. Each pharmacist dispensing drugs into Louisiana shall be licensed as a pharmacist in good standing in the state(s) where he practices.
- C. Every out-of-state pharmacy doing business in Louisiana by dispensing and delivering prescription drugs and devices to Louisiana residents shall designate a resident agent and a registered office in Louisiana for the service of process.

LAC 46:LIII.2303 (2013)

§ 2305. Out-of-State Pharmacy Permit Requirements

- A. The out-of-state pharmacy shall apply for a permit and annual permit renewals on forms provided by the board. The board may require such information as reasonably necessary to carry out the provisions of R.S. 37:1232, including, without limitation, the name, address, and position of each officer and director of a corporation or of the owners, if the pharmacy is not a corporation.
- B. The out-of-state pharmacy shall pay an annual permit fee as defined in R.S. 37:1184.

LAC 46:LIII.2305 (2013). All of these regulations have been promulgated in accordance with power afford to the Louisiana Board of Pharmacies

Further, your clients' actions also violate the federal Food, Drug, and Cosmetic Act ("FDCA") as well as the Controlled Substances Act ("CSA"). Licensed pharmacies are obligated to comply with these statutes under federal law as enacted, as well as the Board's regulations, even when the pharmacy is not physically located within the State of Louisiana.

The actions violate the FDCA in two ways. First, the Department of Corrections is obtaining, dispensing, and administering the prescription-only drug pentobarbital without a valid medical prescription, in violation of 21 U.S.C. 353(b).

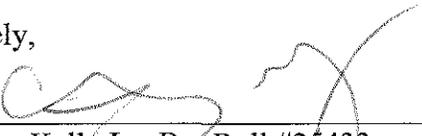
The "prescription" issued by the Department's physician is ineffective because it is not administered in the course of usual medical practice. *See, e.g., United States v. Nair*, 211 F. Supp. 2d 1372, 1374-76 (S.D. Fla. 2002).

Second and more broadly, the FDCA has now been supplemented by the Drug Quality and Security Act, which President Obama signed into law on November 27, 2013. Under this statute, the Department of Corrections' compounded "copy" of an FDA-approved drug constitutes an illegal and unapproved "new drug" under 21 U.S.C. 355. *See* Pub. L. No. 113-54, 127 Stat. 587 (Nov. 27, 2013), 102(a) (modifying scope of FDCA 505). Even in the unlikely event that the Department's anonymous pharmacy were registered as a federally-regulated "outsourcing facility," its product here is forbidden as "essentially a copy of an approved drug." *Id.* (FDCA, new section 503B(a)(5)).

Your clients are also violating the Controlled Substances Act. Pentobarbital is a Schedule III controlled substance. Without a legitimate medical purpose found by a medical practitioner acting within the usual scope of his or her professional practice, there can be no valid prescription. 21 C.F.R. 1306.04(a); *United States v. Smith*, 573 F.3d 639, 646, 650-52 (8th Cir. 2009). The request, issuance, and use of the Department's invalid prescriptions are criminal acts. See 21 C.F.R. 1306.04(a) ("An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.").

Please take immediate action to ensure that you and your clients are in compliance with federal and state law.

Sincerely,



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Attorneys for Jessie Hoffman

Cc: Louisiana Board of Pharmacies

The Drug Enforcement Agency

APPENDIX G

Supplemental Declaration of Mark J. S. Heath, M.D.

1. My name is Mark J.S. Heath, and I am writing to supplement the declaration that I submitted on January 30, 2014.
2. In the declaration of January 30th I reserved the right to supplement my opinion should additional facts or material become available.
3. Yesterday, on February 1st, 2014, the attorneys representing Mr. Sepulvado were provided with additional discovery material. This material consists of the following documents:
 - A. Defendants' Second Supplemental Response to Plaintiffs' First Set of Interrogatories
 - B. Defendants' Second Supplemental Response to Plaintiffs' First Set of Requests for Production of Documents
 - C. Defendants' First Supplemental Response to Sepulvado's Second Set of Interrogatories
 - D. Defendants' Response to Sepulvado's Second Set of Requests for Production of Documents
4. These documents reveal a substantial flaw with the Louisiana Department of Public Safety and Corrections' ("LDOC") protocol and intended plan for executing Mr. Sepulvado.
5. The material states that the LDOC intends to use the drug midazolam "at a 5 mg/ml concentration." (2nd Supp Response to 1st INTs, page 2, 2nd Supplemental Answer to Interrogatory No. 10)
6. Directly contradicting this, a second document states that the LDOC has acquired midazolam at in the form of "2mg/2ml". (Defendants First Supplemental Response to Sepulvado's Second Set of Interrogatories, Supplemental Answer to Interrogatory No. 1)
7. Additional discovery material appears to consist of an invoice or requisition or order for midazolam 2 mg/2ml dated 7/25/13. (Defendants Second Supplemental Response to Plaintiffs' First Set of Request for Production of Documents, Page 5)
8. 2 mg in 2 ml is the same as 1 mg in 1 ml, which is the same as 1 mg/ml.
9. Thus, the concentration of midazolam that the LDOC states it will use in the execution (5 mg/ml) is not the same as the concentration that it actually has in its possession (1 mg/ml).
10. In fact, the LDOC is exaggerating, by a factor of 5, the concentration of midazolam that it says it will use compared with the concentration it has available.
11. This very large discrepancy represents a major inconsistency in the stated intentions of the LDOC.
12. A fivefold error in the amount of midazolam administered could foreseeably result in a non-lethal dose of drugs.

13. If, instead of dying, Mr. Sepulvado spends several 10s of minutes with severely reduced respiration, it is likely that he will survive the procedure with severe hypoxic injury to organs such as his brain, heart, and kidneys.
14. Conditions such as brain damage, heart attack, and renal failure are associated with substantial suffering.

Conclusion

15. The LDOC appears to have procured the wrong concentration of midazolam.
16. The LDOC, or counsel representing the LDOC, appear to not understand the importance of procuring the correct concentration of midazolam.
17. The timing and inconsistencies in the stated intentions of the LDOC demonstrate sloppy, disarrayed, and chaotic last-minute planning.
18. The LDOC is not presently prepared to conduct a safe and humane execution of Mr. Sepulvado.
19. I hold the above opinions to a high degree of medical and scientific certainty.
20. In view of the extremely limited time available to review the newly revised and release protocol I reserve the right to supplement this opinion should additional facts or material become available.

Executed on February 2nd, 2014, in New York City, NY.



Mark J. S. Heath, M.D.

APPENDIX H

STATE OF PENNSYLVANIA

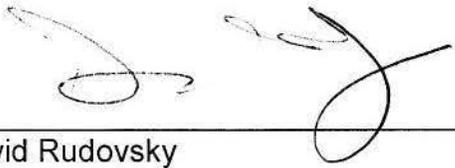
COUNTY OF PHILADELPHIA

DECLARATION OF DAVID RUDOVSKY

1. My name is David Rudovsky. I am an attorney, licensed to practice law since 1967. I am a member of the Bars of the Supreme Court of Pennsylvania and the United States Supreme Court.
2. I am a Founding Partner at Kairys, Rudovsky, Messing & Feinberg, LLP where I specialize in civil rights and civil liberties litigation. I am also a Senior Fellow at Penn Law School where I teach courses in Criminal Law, Criminal Procedure and Evidence. I have litigated 28 U.S.C. § 1983 ("Section 1983") civil rights cases for over 40 years and I have a full comprehension of the legal and practical issues in such litigation. A copy of my resume is attached.
3. I have received numerous awards for my work in civil rights and civil liberties litigation, including the ACLU Keystone Award for Lifetime Achievements (2009), the Philadelphia Bar Association Cesare Beccaria Award for Work in Criminal Justice (2006), and the MacArthur Foundation Fellowship and Award for Accomplishments in Civil Rights Law and Criminal Justice (1985).
4. Since 2008, I have been co-counsel in a Section 1983 class action litigation challenging Pennsylvania's lethal injection protocol under the Eighth Amendment to the United States Constitution. See *Chester v. Beard*, C.A. No. 08-1261, MD PA.
5. In order to establish a violation of the Eighth Amendment, a litigant must prove that a practice is inconsistent with "the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).
6. Eighth Amendment claims involving lethal injection procedures are particularly difficult to litigate and to prove. A prisoner is required to show that "the conditions presenting the risk [of cruel and unusual punishment] must be sure or very likely to cause serious illness and needless suffering, and give rise to `sufficiently imminent dangers.'" *Baze v. Rees*, 553 U.S. 35, 50 (2008) (Roberts, C.J., plurality opinion) (quotations omitted). "[T]o prevail on such a claim there must be a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment." *Id.*
7. To compound the difficulty, lethal injection procedures change quite rapidly and even during the course of litigation. For example, when I first began representing the plaintiffs in *Chester v. Beard*, Pennsylvania's protocol called for a three-drug sequential injection of sodium thiopental, pancuronium bromide, and potassium chloride. Initial discovery focused on that method. However, by 2012, at the time of a hearing for a stay of a newly scheduled

- execution, Pennsylvania had changed its lethal injection protocol to substitute pentobarbital for sodium thiopental. It also became known that the pentobarbital was available only from a compounding pharmacy, in a form not approved by the United States Food and Drug Administration. This change necessitated a whole new round of discovery and an evidentiary hearing on the Eighth Amendment issues.
8. The litigation is intensely fact-specific and complex. Propounding interrogatories and requests for production of documents, and receiving responses, is but a preliminary step. Counsel for the Section 1983 litigant must then consult experts who have experience with the type of drugs used in a lethal injection cocktail. As the cocktails change, so must the experts' analysis especially where there is a novel combination of drugs.
 9. Further, the expert must review with counsel what additional discovery is necessary, to review this new discovery, and to assess the safety and efficacy of the new drug protocol.
 10. Even where counsel is able to find an expert in this highly specialized field, the expert may not be instantly available to consult, do the work necessary to craft an affidavit, be deposed, or to testify. Experts generally have full working lives with many other responsibilities and commitments that cannot be rearranged or easily cancelled.
 11. Preparing an expert to testify or to draft an affidavit is likewise time-consuming. Experts address facts underlying the legal determination a court must make, and must be able to assess both medical and legal standards that are often novel and difficult.
 12. In addition, preparation of any expert necessarily requires that counsel master the information. Lawyers are trained in the law, and not in science. Mastery of the scientific knowledge which shapes an expert's opinion requires additional research and reading by the lawyer.
 13. Further, where the person scheduled for execution may present health issues related to the Eighth Amendment issues, counsel should retain a doctor to assess the prisoner's physical condition as it relates to possible individual based pain and suffering. A prisoner's poor health could mean a particular drug cocktail would be more likely to cause serious and unnecessary pain and harm to the prisoner.
 14. The expert would need to examine the prisoner and/or review the prisoner's medical records, both of which can be time consuming and cannot be scheduled on a short time deadline given the location and confidentiality issues involved.

15. My own experience litigating lethal injection has not involved simultaneous representation of clients in their substantive capital appeals. If an attorney is handling both the civil and criminal litigation, under a warrant of execution, the time pressures are even more difficult as both proceedings need full time attention and preparation.
16. It is my understanding the State of Louisiana has only recently turned over discovery pertaining to its June 2013 lethal injection protocol, which called for a single-drug execution using pentobarbital. I also understand that just a week ago, the State of Louisiana changed its protocol, adding a second method of lethal injection involving a combination of drugs used for the first time ever in the execution of an Ohio inmate less than three weeks ago. I further understand that on February 1, 2014, four days before the scheduled execution of Christopher Sepulvado, the State of Louisiana informed counsel that it would use the newly-added method, a combination of midazolam and hydromorphone, to execute Mr. Sepulvado. I have also been informed that the use of drugs other than pentobarbital has not been previously disclosed just four days before the scheduled execution and that counsel had been led to believe that pentobarbital would be used.
17. It is my opinion, based on my experience detailed above, that no lawyer, no matter how talented, could thoroughly, ethically and competently litigate the Eighth-Amendment issue under the time-constraints in Mr. Sepulvado's case. Louisiana's abrupt and novel change to the lethal injection protocol requires far more than 4 days to reliably litigate the serious constitutional questions in this case.
18. I swear, under penalty of perjury, that the statements contained herein are true and correct to the best of my knowledge.



David Rudovsky

2/3/2014

Date



Witness

2/3/2014

Date

DAVID RUDOVSKY

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EDUCATION

B.A., 1964, Queens College, City University of New York (American Studies).

LL.B., 1967 New York University School of Law.

1967, Fellow, Arthur Garfield Hays Civil Liberties Program (NYU Law School).

PROFESSIONAL BACKGROUND

1967-1971, Staff Attorney and Chief, Motions Division, Defender Association of Philadelphia.

1971-present, Founding Partner, Kairys, Rudovsky, Messing & Feinberg (a law practice focused on civil rights and civil liberties litigation).

1983-1986, First Assistant Defender, Defender Association of Philadelphia.

1972-1986, Instructor of Law, University of Pennsylvania School of Law. Courses in Trial Advocacy and Clinical Education.

1987, Visiting Associate Professor of Law, University of Pennsylvania Law School.

1988-present, Senior Fellow, University of Pennsylvania Law School. Teaching courses in Criminal Law, Evidence and Constitutional Criminal Procedure.

ACTIVITIES:

Lecturer at numerous seminars and continuing legal education presentations on criminal procedure, constitutional law and civil rights and civil liberties litigation.

1994-2007, President, Board of Directors, Pennsylvania Institutional Law Project.

President, Board of Directors, Defender Association of Philadelphia (2006-)

Vice President, Board of Directors, Pennsylvania Innocence Project (2008-).

1991-2003, Member, Board of Directors, American Civil Liberties Union; 1990-present, General Counsel to Pennsylvania ACLU.

1979-1980, National Vice-President, National Lawyers Guild.

PUBLICATIONS

Michael Avery, Karen Blum and David Rudovsky, Police Misconduct: Law and Litigation (West, 2009, 3rd ed.).

David Rudovsky, Alan Bronstein and Ed. Koren, The Rights of Prisoners (1990).

David Rudovsky and Leonard Sosnov, Criminal Law in Pennsylvania (West Publ. Co. 2007, 2nd ed.).

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“Litigating Prison Conditions in Philadelphia,” 65 *Prison Journal* 64 (1985).

Op-Ed Articles

“Bar Testimony of Jailhouse Informants,” *Philadelphia Inquirer*, March 18, 1989.

“Courts Gave OK to Brutal cops,” *Philadelphia Inquirer*, March 27, 1991.

“Do Criminal Suspects Have a Right to Privacy?” *Philadelphia Inquirer*, November 19, 1991.

“What are the Limits of Free Speech?” *Philadelphia Inquirer*, August 16, 1992.

“Schools Are Cut Back While Prisons Get More,” *Philadelphia Inquirer*, June 4, 1993.

“When Should a Police Raiding Party Knock?” *Philadelphia Inquirer*, March 2, 1994.

“Why It Was Hands Off On the Police,” *Philadelphia Inquirer*, August 28, 1995.

AWARDS

Judge Gerald F. Flood Memorial Award (For Public Interest Accomplishments), Philadelphia Bar Foundation (1985).

MacArthur Foundation Fellowship and Award for Accomplishments in Civil Rights Law and Criminal Justice (1986).

ACLU Civil Liberties Award (1990).

Bread and Roses Community Fund Social Justice Award (1995).

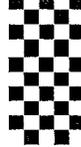
Harvey Levin Memorial Award for Teaching Excellence, 1990 and 1993, 2004, 2007.

University of Pennsylvania Lindback Award for Teaching Excellence, 1996.

Cesare Beccaria Award for Work in Criminal Justice (Philadelphia Bar Association, 2006).

ACLU Keystone Award for Lifetime Achievements, 2009

APPENDIX I



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FAX

TO: Louisiana Department of Correction
Attn. Director Lablanc

FROM: Ohio Department of Rehabilitation and Correction
Director, Gary C. Mohr

DATE: January 27, 2014

SUBJECT: Execution Protocol

Please feel free to contact me if you have any questions or concerns @ 614-752-1161.