

1 MICHAEL T. RISHER (State Bar No. 191627)
2 LINDA LYE (State Bar No. 215584)
3 AMERICAN CIVIL LIBERTIES UNION
4 FOUNDATION OF NORTHERN CALIFORNIA
5 39 Drumm Street, 2nd Floor
6 San Francisco, California 94111
7 Telephone: (415) 621-2493
8 Facsimile: (415) 255-1478

9 Attorney for Petitioner
10 AMERICAN CIVIL LIBERTIES
11 UNION OF NORTHERN CALIFORNIA

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION

Respondent.

No. CPF-10-510882

DECLARATION OF MICHAEL T.
RISHER IN SUPPORT OF
PETITIONER'S REPLY

Department: Dept. 302

Hrg. Date: Tuesday, Dec. 14, 2010

Hrg. Time: 9:30 am

1 I, Michael T. Risher, declare:

- 2 1. I am an attorney for Petitioner in this action.
- 3 2. For the court's convenience, this declaration provides a brief background of California's lethal
- 4 injection protocol and summarizes some of the redactions in the documents. I am familiar with
- 5 CDCR's redactions based on my personal review of the documents produced by CDCR in this
- 6 matter. I have also included a description of what the documents state, not for the truth of the
- 7 matters asserted, but to provide the court with context for CDCR's redactions.

8 **Background**

- 9 3. In 2007, CDCR's existing lethal injection protocol was invalidated by both state and federal
- 10 courts as violating the Eighth Amendment and the California Administrative Procedure Act,
- 11 respectively. (Doc. 720); *see Morales v. Tilton*, 465 F.Supp.2d 972 (N.D. Cal. 2006); *Morales*
- 12 *v. California Dept. of Corrections and Rehabilitation*, 168 Cal.App.4th 729, 735 (2008)
- 13 (affirming 2007 trial court order).
- 14 4. The CDCR then engaged in formal rulemaking to promulgate a regulation to govern lethal
- 15 injection. *See* 15 Cal. Code Regs. § 3349 *et seq.* Although litigation over the validity of this
- 16 regulation continues, it was approved by the Office of Administrative Law to be effective on
- 17 August 29, 2010; the very next day, the government set an execution date, which was
- 18 immediately challenged in state and federal court. *See Morales v. Cate*, 623 F.3d 828, 829 (9th
- 19 Cir. 2010) (citing *CDCR v. Superior Court*, 2010 WL 3621873 (Cal.App. 2010) (unreported)).
- 20 5. The documents CDCR released show that during this public regulatory process it was also
- 21 engaged in a struggle to find a supply of a drug that is critical to California's execution
- 22 process: sodium thiopental. This is the first drug in the three-drug process and is the one that is
- 23 supposed to anesthetize; if this anesthetization does not occur properly, administration of the
- 24 second and third drugs, a federal court has held, would violate the Eighth Amendment's
- 25 prohibition on cruel and unusual punishment. *Morales v. Tilton*, 465 F.Supp.2d 972, 975 (N.D.
- 26 Cal. 2006) (discussing use of other two drugs, "pancuronium bromide and potassium chloride,
- 27 drugs that the parties agreed would cause an unconstitutional level of pain if injected into a
- 28 conscious person."); *see id.* at 974-75; 15 C.C.R. § 3349.4.5(g) (current procedure).

**CDCR redacted information regarding the identity of sources, including the prescribing
doctor, involved in obtain thiopental**

6. Although the unredacted portions of the documents produced paint a general picture of CDCR's efforts to obtain sodium thiopental from multiple sources, the documents are heavily redacted to withhold the identity of all of the potential and actual sources of the drug.
7. One of the documents provided by CDCR is captioned "Timeline Pentothal (Sodium Thiopental)"; it is attached to an August 4, 2010 email from a CDCR employee to REDACTED, with CDCR Secretary Matt Cate and Undersecretary Scott Kernan cc'ed. Doc. 719-21, a true and correct copy of which is attached at Exhibit 1 to this declaration.¹ The timeline redacts virtually all information about the sources from which CDCR attempted to obtain sodium thiopental.
8. After noting that thiopental is a controlled substance under federal law, this timeline (Doc. 719-21) reveals that in December 2007 "REDACTED contractor for San Quentin State Prison (SQ) pharmacy [would] not help to procure the Sodium Thiopental." Doc. 720. A subsequent entry dated January 2007 (which probably should be January 2008) states that "CDCR attempt[ed] to recruit private doctors to procure drugs." Then, in April 2008 the "Federal Receiver [would] not allow CDCR to recruit CDCR medical staff"; in October "CDCR attempt[ed] to recruit REDACTED doctors"; in November "CDCR attempt[ed] to recruit REDACTED doctors," and in December it "attempt[ed] to seek proposal from Governor's Office to procure drugs from REDACTED." *Id.* The timeline goes on to indicate that in May 2010 "CDCR reache[d] out to REDACTED" and "CDCR recruit[ed] three doctors with DEA #'s." *Id.* In June 2010, after learning that "Manufacturer (Hospira)" could not supply the drug, CDCR "Contacted REDACTED validated there is shortage"; and July 2010 "CDCR researched possible alternatives; Import from Pakistan; REDACTED." Doc. 721. This same month the CDCR "Secretary contact[ed] REDACTED who agree[d] to help locate the drug" and "Called REDACTED for assistance." In July and August 2010, CDCR contacted the Drug

¹ All references to "Doc. ##" refer to documents produced by CDCR to Petitioner in response to this Court's November 30, 2010 order, with page numbers referring to the Bates numbers used by CDCR.

1 Enforcement Administration for assistance. *Id.* The document concludes by stating that
2 CDCR had located a supply and anticipated receiving some of the drug within 30 days (i.e., by
3 September 4, 2010).

4 9. Other documents indicate that CDCR recruited some person or entity for assistance in locating
5 sodium thiopental but the identity of that person or entity is redacted. Also redacted is
6 information about the doctor whose Drug Enforcement Administration (DEA) number CDCR
7 used to order the drugs:

8 10. An August 4 email from Undersecretary Kernan to REDACTED thanks REDACTED for his
9 help in finding execution drugs and provides information about the physician who is using his
10 Drug Enforcement Agency controlled-substance licence to help CDCR to obtain the drug:
11 "The ordering doctor is REDACTED"; "His DEA number is REDACTED"; "the shipment
12 address [presumably at San Quentin] is REDACTED." Doc. 717-18, a true and correct copy
13 of which is attached at Exhibit 2 to this declaration. Kernan also notes: "Governor's Office
14 very interested in progress." *Id.* at 718. This is apparently because, as Kernan put it two days
15 earlier, the situation was "[g]oing to get very political quick. REDACTED SENTENCE."
16 Doc. 291, a true and correct copy of which is attached at Exhibit 3 to this declaration.

17 11. In an August 4 email chain REDACTED gave Kernan information about an apparent recall of
18 one of the drugs, stating that he "searched for a reason for REDACTED recall and only found
19 this explanation from several s [incomplete]. REASON Impurities/Degradation Products:
20 These products are being recalled because the [incomplete]." He included a link to a webpage
21 which does not now work (as of December 11, 2010). Doc. 273-74, a true and correct copy of
22 which is attached at Exhibit 4 to this declaration.

23 **CDCR attempted to obtain the drug "discretely"**

24 12. Also on August 4, Kernan was discussing conversations with other states and the federal
25 government and how he could get the drug "discretely," writing that "We have contacted all
26 states and Feds for drug with no luck. All states are in the same boat. REDACTED did say
27 they have a quantity of expired Thiopental but would require FDA waiver of expiration date.
28 They ran into brick wall when they tried this with the FDA." Doc. 273, a true and correct copy

1 of which is attached at Exhibit 5 to this declaration.

2 13. In the same email, Kernan also mentioned that he spoke with REDACTED about getting a
3 supply and notes that “I could run into problem with Receiver using the Pharmacy, but think I
4 can work through it REDACTED is using DEA number. The bill will come directly to me and
5 I’ll discretely handle through our procurement.” Exhibit 5. Another version of this email
6 suggests that redacted information was simply the words “our volunteer doctor”: “I could run
7 into problem with Receiver using the Pharmacy, but think I can work through it. **Our**
8 **volunteer doctor** is using his DEA number. The bill will come directly to me and I’ll
9 discretely handle through our procurement.” Doc. 383, a true and correct copy of which is
10 attached at Exhibit 6 to this declaration. “Receiver” presumably refers to the federal receiver
11 who was appointed to “oversee the provision of health care at prisons under the jurisdiction of
12 the California Department of Corrections and Rehabilitation.” *Plata v. Schwarzenegger*, 560
13 F.3d 976, 978 (9th Cir. 2009).

14 14. Two days later, after learning that orders for some of the execution drugs (not thiopental) had
15 been confirmed, Undersecretary Kernan emailed REDACTED to say “Can’t tell you how much
16 I, [Secretary] Matt [Cate] and Governor appreciate” REDACTED’s help. Doc. 267, a true and
17 correct copy of which is attached at Exhibit 7 to this declaration.

18 **CDCR redacted information regarding federal officials**

19 15. The efforts to obtain thiopental continued throughout August. On August 18, Kernan sent a
20 letter to federal DEA Agent REDACTED stating that “CDCR has located a supply of sodium
21 thiopental in Pakistan at REDACTED,” and asked for permission to import thiopental from
22 Pakistan to San Quentin at the following address: REDACTED.” Doc. 709-11, a true and
23 correct copy of which is attached at Exhibit 8 to this declaration. It appears that the first
24 redaction is the source in Pakistan and the second redaction the address of San Quentin State
25 Prison.

26 **CDCR redacted information about the address to which it shipped the drug**

27 16. Finally, on August 24, the CDCR learned that REDACTED had obtained 8 grams of thiopental
28 that would expire on October 1, 2010. Doc. 287-88, a true and correct copy of which is

1 attached at Exhibit 9 to this declaration. Despite the impending expiration date, and despite the
2 fact the CDCR believed it needed 21 grams of the substance, CDCR authorized the order,
3 asking REDACTED to ship it to REDACTED. Doc. 287.

4 **CDCR did not provide information about the hospitals it contacted about obtaining the**
5 **drug**

6 17. The documents also show that CDCR had tried unsuccessfully to obtain drugs from hospitals,
7 although it does not reveal the names of these hospitals. Specifically, it purchased a list of
8 hospitals (which is not among the documents produced) and by September 29 had contacted
9 approximately 100 of them to try to get some thiopental. Docs. 283, 289, 863, a true and
10 correct copy of each is attached at Exhibit 10 to this declaration. All the hospitals refused to
11 provide the drug. Doc. 863. I have been unable to find a copy of this list or the names of any
12 of the hospitals in the documents provided.

13 **CDCR attempted to get more drugs from other states and swapped drugs with Arizona,**
14 **but redacted the name of other states and identity of other state officials with whom it**
15 **dealt**

16 18. An August 2 email from REDACTED to a huge number of REDACTED recipients states that
17 “REDACTED has an execution scheduled for REDACTED and we have not been successful
18 in finding and sodium thiopental.” Doc. 342-43, a true and correct copy of which is attached at
19 Exhibit 11 to this declaration. Secretary Cate forwarded this email to REDACTED. *Id.* at 342.
20 From context, it appears that the redactions include the name of another state that had an
21 execution scheduled.

22 19. CDCR also turned to other states to try to find some drugs. On September 17 REDACTED
23 sent an email to Kernan stating that “REDACTED remains willing to call Governor
24 REDACTED, and ask for his assistance in putting a string on TDCJ's supply.” Doc. 318, a
25 true and correct copy of which is attached at Exhibit 12 to this declaration. This apparently
26 refers to the governor of Texas, since the same email chain continues with Kernan telling
27 REDACTED that he will “let you know how Matt wants to go forward with Texas after talks
28 with Governor.” *Id.* Five days later, REDACTED wrote to Kernan to tell him the following:

1
2 “Per Matt's request, REDACTED has placed a call to Governor REDACTED office and
3 discussed the need for having a commitment to ship, upon request a dose sodium pentothal
4 from REDACTED to CDCR. Governor REDACTED is traveling today, but REDACTED
5 talked with the Governor's assistant, who in turn, will get in touch with Governor
6 REDACTED and get back to REDACTED sometime today or early tomorrow.”

7 Doc. 320, a true and correct copy of which is attached at Exhibit 13 to this declaration.
8 The context suggests that this too may refer to the governor of Texas, but the redactions make
9 it impossible to be sure.

10 20. In the end, Texas apparently refused to help: a September 29 email from REDACTED to
11 Kernan, who forwarded it to Cate, calls it “unfortunate that Texas would not share some of it's
12 ‘well stocked’ supply to help sister states but down the road they may need help in some other
13 way and this position does not help their image.” Doc. 394, a true and correct copy of which is
14 attached at Exhibit 14 to this declaration.

15 21. At the same time, California was talking with other states about the situation. On September
16 22, Arizona officials requested “a follow up discussion ... concerning the availability of ‘any’
17 available chemicals associated with the three chemical process used for a lethal injection.”
18 Doc. 891, a true and correct copy of which is attached at Exhibit 15 to this declaration. Noting
19 that Arizona was “very helpful when we asked in 2007,” CDCR employee John McAuliffe
20 offered to talk with them about “specific needs.” *Id.* Later communications make it clear that
21 Arizona needed to obtain pancuronium bromide, the controversial paralytic drug used in both
22 states’ execution protocol. Doc. 662, a true and correct copy of which is attached at Exhibit 16
23 to this declaration.

24 22. At 8:00 a.m. September 29, Arizona told CDCR that their “need for Pancuronium Bromide is
25 greater than ever today” because of problems “with [their] expected shipment.” Doc. 942-43,
26 at 943, a true and correct copy of which is attached at Exhibit 17 to this declaration. The
27 Arizona Supreme Court had apparently given that state an October 1 deadline to certify that it
28 had all the necessary chemicals to carry-out an October 26 execution. *Landrigan v. Brewer*, ---

1 F.3d ----, 2010 WL 4183075, at *1 (9th Cir. 2010), *stay vacated sub nom Brewer v. Landrigan*,
2 131 S.Ct. 445 (2010).

3 23. At approximately 4:30 that same afternoon, the two states' correctional departments agreed to
4 exchange drugs: California shipped pancuronium bromide to Arizona, and Arizona agreed to
5 provide California with sodium thiopental. Doc. 647 (4:40 email confirming deal on
6 thiopental); Doc. 651 (4:34 email confirming shipment of pancuronium to Arizona); *see* Doc.
7 655 (internal CDCR email about transaction with Arizona: "I guess we pack [pancuronium]
8 with dry ice and ship? Or we could say we will drive it out to you for 21 gram of sodium
9 thiopental."). A true and correct copy of each is attached at Exhibit 18 to this declaration.

10 24. Less than one hour later, Kernan was making arrangements to have CDCR officers from
11 Southern California fly to Arizona the next morning to pick-up the thiopental. Doc. 994, a true
12 and correct copy of which is attached at Exhibit 19 to this declaration. He warned the official
13 involved that warning that the "secret mission" was "very political and media sensitive" and
14 was assured that it would be "done very discreetly." Doc. 991-92, a true and correct copy of
15 which is attached at Exhibit 20 to this declaration.

16 25. The next morning, September 30, the agents flew to Arizona, got the drugs, drove them to
17 Bakersfield where they switched officers, and delivered them to San Quentin that night. Doc.
18 984, 987, a true and correct copy of which is attached at Exhibit 21 to this declaration.

19 **CDCR produced no information about the cost of its trip to Arizona and redacted**
20 **packaging information from drugs in its possession**

21 26. No documents describing the cost of this operation (flight costs, car-rental costs, overtime
22 costs, the original cost to California of the pancuronium provided to Arizona) have been
23 provided. Information about the drugs (presumably the drugs from this mission) -- including
24 the production lot numbers and the name of the manufacturer -- has been redacted from the
25 records provided to Petitioner. Doc. 1-3, a true and correct copy of which is attached at
26 Exhibit 22 to this declaration.

27 **California Attempted to Get More Drugs from Abroad but redacted information about**
28 **the identity of this foreign source**

1 27. In addition to providing the actual drugs, Arizona provided California with information about
2 how it could obtain thiopental from overseas sources. On September 28, an Arizona official
3 sent an email to the CDCR stating that “[a]s we discussed on the phone today, we have
4 followed the lead of REDACTED [presumably, another state] and purchased the drugs we
5 need from a company in London.” Doc. 80, a true and correct copy of which is attached at
6 Exhibit 23 to this declaration. This email provided the name of the company and, it seems,
7 some sort of broker, but this information has been redacted. It also explained that
8 “REDACTED has still not received their drugs and that this may be due to the process of
9 getting the shipment through Customs and the FDA.” Doc. 81, a true and correct copy of
10 which is attached at Exhibit 24 to this declaration. Commenting on this email, Undersecretary
11 Kernan wrote that “I am calling AZ this morning and see if they will lend us enough for one
12 execution and try to contact the vendor and see if they can get us additional quantity.” Doc.
13 80, a true and correct copy of which is attached at Exhibit 23 to this declaration.

14 28. The next day, the same day the states agreed to the drug swap, California started trying to get
15 additional thiopental through the method that Arizona had “so kindly described.” Doc. 338. On
16 September 30, Kernan wrote that “Think I got it figured out how to pay England. Will need
17 specific information on quantity, order numbers, company license number, total costs and
18 location/address to send bill.” Doc. 644. True and correct copies of these two pages are
19 attached at Exhibit 25 to this declaration. He also suggested that they should to combine all
20 the shipping and customs cost into one un-itemized bill so as to eliminate problems with the
21 “state bureaucracy”: “One important fact I learned is that if shipping or customs fees is
22 itemized on their bill it gets into some state bureaucracy we want to avoid. Ask them if they
23 can just include the costs of shipping directly in the bill without itemizing it.” Id. CDCR later
24 asked the importer to do just this, even though he or she had specifically informed them that
25 “FedEx delivery charges is separate item.” Doc. 185, a true and correct copy of which is
26 attached as Exhibit 26 to this declaration. See Doc. 156 (October 6 email to REDACTED with
27 REDACTED subject line stating that “CDCR would like to know if this process of obtaining
28 the thiopental (Duty, Broker, any additional fees to include REDACTED fees) could be billed

1 to CDCR as one invoice?”), a true and correct copy of which is attached at Exhibit 27 to this
2 declaration.

3 29. Also on September 30, CDCR officials discussed whether the importation could be traced to the
4 CDCR: Kernan asked McAuliffe whether “we can be identified as the importer using our doc's
5 DEA number?” McAuliffe responded as follows:

6 “No, DEA tracks drugs by Dr.'s DEA #. Since we can no longer use pharmacy at SQ
7 (which would answer your question as yes) the importer would be REDACTED with final
8 shipment into the USA identified as SQ. Dr,s [sic] can not [sic] import/export scheduled
9 drugs unless DEA approves. That is why we asked the Dr's to get an additional DEA # with
10 SQ address so that we could request DEA to approve the Dr's DEA # for import to SQ thus
11 eliminating the need for REDACTED. I finally talked to REDACTED who is in charge of
12 import/export division and he acknowledged receiving our letter. Unfortunately he said all
13 import approvals are above him? REDACTED or is approving authority). REDACTED did
14 say he would talk to his bosses and get back to me. That was 3 hours ago.”

15 Doc. 163, a true and correct copy of which is attached at Exhibit 28 to this declaration.

16 30. Kernan wrote in response that “When he [presumably, the head of the import/export division]
17 responds please get a name and number of superior who can approve an exemption for this
18 specific purpose. I'll call or even get Matt [presumably Secretary Cate] or somebody in Gov's
19 office to call. Thx.” *Id.*

20 31. Although the redactions make it impossible to know exactly what these CDCR officials are
21 discussing, it appears they are trying to avoid public scrutiny of their importation of thiopental
22 into the United States. This is consistent with the CDCR redaction of the names and DEA
23 numbers of all doctors in the documents they have provided, *see supra* ¶ 10, and their desire
24 to avoid the “state bureaucracy” by combining all import expenses into a single, un-itemized
25 bill, as discussed above at ¶ 28. It is also consistent with an October 4 email from
26 REDACTED to CDCR stating that “REDACTED does not have an existing Controlled
27 Substance Import License to support Thiopental Sodium and does not wish to obtain the
28 license for import of this material due to the risk of being the importer of record.” Doc. 445, a

1 true and correct copy of which is attached at Exhibit 29 to this declaration. Finally, it is
2 consistent with an admonition in a September 30, email from Kernan regarding the proposed
3 contract to buy the thiopental that the matter “[n]eeds to be addressed confidentially.” Doc.
4 588, a true and correct copy of which is attached at Exhibit 30 to this declaration.

5 32. A response to this email noted that “If you want to pursue a non-competitive bid purchase, then
6 a justification will need to be developed explaining why this cannot go out for bid.” *Id.* The
7 response also said they should not sign the contract. *Id.*

8 33. An October 4 email from a REDACTED DEA employee to Kernan stated that “[a]ttached is a
9 spreadsheet containing companies who are specifically registered with DEA to import
10 Thiopental.” Kernan forwarded this email to CDCR employees, adding that “Here is what
11 DEA gave me. They are unwilling to provide a waiver.” Doc. 747, a true and correct copy of
12 which is attached at Exhibit 31 to this declaration. No spreadsheet of companies was provided
13 to Petitioner by CDCR.

14 34. CDCR has redacted the first name of a Tennessee state senator from a newspaper article about
15 the situation that is attached to this email. Doc. 394-97 at 396. Other copies of this article
16 contain the name without any redaction. Doc. 75, 203, 211. True and correct copies of these
17 pages are attached at Exhibit 32 to this declaration.

18 **Other Matters**

19 35. Attached to this Declaration as Exhibit 33 are pages 1-3 and 51-53 of the initial transcript of a
20 December 2, 2010 hearing before United States District Judge JEREMY FOGEL in *Morales v.*
21 *Tilton*, No. JF-06-219 et al. (N.D. Cal.). As the transcript indicates, I was present on behalf of
22 the plaintiff in the related case *Pacific News Service v. Tilton*, No. CV-06-1793-JF. The
23 attached transcript pages accurately reflect my memory of the hearing. During a discussion of
24 discovery disputes in the Morales and PNS litigation, the transcript, Judge Fogel mentioned
25 that he had heard of this Court’s November 30 ruling in this case and then said the following:

26 “The reason I’m raising it is not that I have any interest in meddling in a state-court
27 case that has nothing to do with this one. It’s just that there’s information that’s likely
28 to come out or at least that’s ordered released in that case which clearly bears on this

1 case. And rather than have duplicative litigation about where did thiopental come from
2 and is it properly made, I don't want to have to deal with that." (at page 52).

3 36. Attached to this Declaration as Exhibit as Exhibit 34 is a letter from CDCR's attorneys that
4 accompanied the documents they provided in response to this Court's November 30 order,
5 noting the number of total documents (1121) and that some of these would be withheld.

6 37. On December 10, 2010, counsel for CDCR transmitted to me a privilege log with a cover letter
7 explaining the numbers it used in its log to indicate the basis for withholding or redacting
8 documents. The cover letter is attached to this declaration as Exhibit 35. I personally
9 reviewed CDCR's privilege log and it indicates that CDCR withheld approximately 120
10 documents.

11 38. Attached to this Declaration as Exhibit 36 are pages from CDCR's list of documents it
12 withheld under the code 5, "correspondence with Governor's Office," listing Docs. 24, 51, 52,
13 83-85, 236-237, 291, 652-6, 862-64, 941. The log entries for these documents do not indicate
14 if the Governor's office was a party to the correspondence at issue.

15 39. Attached to this Declaration as Exhibit 37 are pages from CDCR's list of documents it
16 withheld under the code 5, "correspondence with Governor's Office," listing Docs. 4, 326-27.
17 The log entries for these documents do not indicate if any of the correspondents are in the
18 Governor's office.

19 40. Attached to this Declaration as Exhibit 38 are pages from CDCR's list of documents it
20 withheld under the code 4, "non-responsive to request," listing Docs. 233, 676, 1075.

21 41. In another email string, a CDCR employee states that the proposed contract with the
22 unidentified drug acquisition broker will "likely far exceed our delegated authority." Text
23 before and after is heavily redacted. Doc. 1083-1085 at 183. In a related email string,
24 Undersecretary Kernan writes of this same proposed contract: "Needs to be addressed
25 confidentially." Doc. 1105. Large redactions appear before and after. Doc. 1105-1108. True
26 and correct copies of these pages are attached at Exhibit 39 to this declaration.

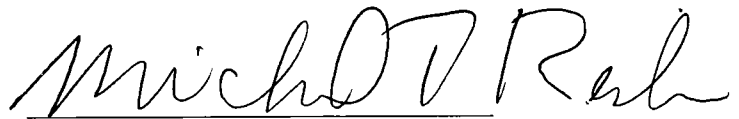
27 42. Some documents are so heavily redacted that the nature of the information redacted is difficult
28 if not impossible to discern. E.g., Doc. 342-43, 657, 867, 874-75, 1045. True and correct

1 copies of these pages are attached at Exhibit 40 to this declaration.

2 43. In the many instances where CDCR has redacted email addresses it has almost always redacted
3 not just the user name (the part before the "@", formally known as the local-part) but also the
4 domain name (the part following the "@," e.g. "@CDCR.ca.gov"). Knowing all or some of
5 the domain name would in many cases allow a reader to determine the name of the user's
6 employer or at least whether that employer is a private entity or a governmental agency
7 without revealing the person's actual identity or email address.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct.

10
11 Dated: December 13, 2010



12 Michael T. Risher
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Subject: FW: California's Lethal Injection Research
Date: Wednesday, August 04, 2010 3:36:23 PM
Attachments: execution (3).doc

Fyi

Scott

From: Allen, Elizabeth@CDCR
Sent: Wednesday, August 04, 2010 2:51 PM
To: [REDACTED]
Cc: Cate, Matt@CDCR; Kernan, Scott@CDCR
Subject: California's Lethal Injection Research

Good Afternoon [REDACTED]

The attached document provides a brief history and a timeline of the steps the CDCR has taken and will be taking to obtain the drugs need for the intravenous injection. Mr. Scott Kernan, the CDCR Operation Undersecretary has been working on this issue. Please feel free to call him at [REDACTED] if you have any questions and of course, Mr. Cate is also available.

Timeline Pentothal (Sodium Thiopental)

Introduction

Since 1993, California law has authorized capital punishment by lethal injection. This protocol, like those used by the Federal Government and most other states, provides for lethal injection by way of three drugs intravenously injected into the condemned inmate scheduled for execution.

On February 21, 2006, Inmate Michael Morales was scheduled to be executed by lethal injection. Morales' execution was stayed on the challenge that his execution would subject him to unnecessary risk of excessive pain violating the Eighth Amendment to the United States Constitution. Since Morales' stay CDCR has taken it's Lethal Injection protocol through the Administrative Procedures Act (APA) and made it a regulation.

One of these drugs and the first to be injected is Sodium Thiopental. Sodium Thiopental is a fast acting short duration anesthetic supplied as a yellowish, hygroscopic powder in a variety of different containers. The State of California's Lethal Injection Protocol (California Department of Corrections and Rehabilitations: CDCR) calls for a 500 mg/2.5% Kit (25 mg/mL) combination package with contents of 500 mg of Sodium Thiopental powder and a 20 mL flip top vial of sterile water.

Sodium Thiopental (pentothal/thiopental) is a Schedule III controlled substance with a Drug Enforcement Agency (DEA) DEA number of 2100 that can only be procured by a pharmacy and/or medical doctor who has a registered DEA number.

CDCR was forced to focus on hiring a medical doctor from outside the Department from the beginning due to the Receiver refusing to allow CDCR to approach and/or ask CDCR medical staff if they were interested in volunteering to help with executions.

The below timeline will illustrate the efforts CDCR has taken in attempting to procure Sodium Thiopental.

Timeline

- Jan 2007 Lethal Injection Protocol review and revision
- May 2007 Revision completed
- May 2007 Receiver will not allow CDCR to recruit CDCR medical staff
- Nov 2007 New Lethal Injection Facility open for training
- Dec 2007 [REDACTED] contractor for San Quentin State Prison (SQ) pharmacy will not help to procure the Sodium Thiopental
- Jan 2007 CDCR attempts to recruit private doctors to procure drugs
- Apr 2008 Baze v. Rees; United States Supreme Court upholds lethal injection
- Apr 2008 New Federal Receiver will not allow CDCR to recruit medical staff
- Oct 2008 CDCR attempts to recruit [REDACTED] doctors
- Nov 2008 CDCR attempts to recruit [REDACTED] doctors
- Dec 2008 CDCR attempts to seek proposal from Governor's Office to procure

- drugs from [REDACTED]
- Feb 2009 CDCR attempts to recruit doctors from CDCR Adult Paroles Division
- Apr 2009 APA Filing
- May 2009 Secretary CDCR sends second request to Federal Receiver to allow to recruit
- Jan 2010 Federal Receiver approached again
 - Apr 2010 Federal Receiver allows CDCR to recruit medical staff and use SQ pharmacy
- May 2010 Federal Receiver will not allow CDCR to order drugs from SQ pharmacy
- May 2010 CDCR reaches out to [REDACTED]
- May 2010 CDCR recruits three doctors with DEA #'s
- Jun 2010 Federal Receiver attempts to locate a source to procure Sodium Thiopental. Manufacturer (Hospira) has drug on back order with no predicted new date for availability. First notice to CDCR that Sodium Thiopental has a national shortage.
- Jun 2010 Federal Receiver's Office gives CDCR list of [REDACTED] possible vendors.
- Jun 2010 Contacted [REDACTED] validated there is shortage
- Jun 2010 [REDACTED] validated there is shortage
- Jun 2010 [REDACTED] stated all suppliers of Sodium Thiopental in the United States do not have a current inventory and have no plans nor a date as to when they (the suppliers) will be producing the drug.
- Jul 2010 [REDACTED] calls CDCR and states due to moral and ethical issues will not help CDCR in procuring any drugs for execution.
- Jul 2010 CDCR researched possible alternatives; Import from Pakistan; [REDACTED]
- Jul 2010 Contacted DEA for assistance
- July 2010 Secretary contacts [REDACTED] who agrees to help locate drug.
- Jul 2010 CDCR finds out for first time that Pancuronium Broide has had a national recall
- July 2010 Called [REDACTED] for assistance.
- Aug 2010 DEA working on import exemption for CDCR to allow overseas shipment.
- Aug 2010 CDCR searching for imports to receive orders
- Aug 2010 [REDACTED] looking for international importers
- Notified today that they found international supply. Working on getting ordered. No confirmed date, but anticipating within 30 days. Formal order with shipping instructions and billing data provided.

Exhibit 2

From: [REDACTED]
To: Kernan.Scott@CDCR
Cc: McAuliffe.John@CDCR
Subject: Re: Per Our Conversation
Date: Wednesday, August 04, 2010 3:43:33 PM

Scott:

We will confirm when orders are placed and keep you and John updated on our progress.

[REDACTED]

----- Original Message -----

From: Kernan.Scott@CDCR
To: [REDACTED]
Cc: McAuliffe.John@CDCR
Sent: Wednesday, August 04, 2010 5:22 PM
Subject: RE: Per Our Conversation

[REDACTED]

Thanks again for all your help on this. Below is the information you requested.

The ordering doctor is [REDACTED]

His DEA number is [REDACTED]

The shipment address is [REDACTED]

The quantities we discussed:

126 grams of Sodium Thiopental
3,150 Milligrams Pancuronium Bromide
12,600 milliequivalents of Potassium Chloride

Billing information will be handled through my office.

Scott Kernan
Undersecretary
1515 S Street, Suite 502S
Sacramento, CA 95811-7243
[REDACTED]

My staff expert and direct point on this issue is John McAuliffe – telephone – [REDACTED]
[REDACTED]

█ again thanks so much. Governor's Office very interested in progress so if any developments please let me know. I assume that you will be able to confirm with the orders are made?

Scott

From: █
Sent: Wednesday, August 04, 2010 11:50 AM
To: Kernan, Scott@CDCR
Subject: Per Our Conversation

Hi Scott:

Once I receive your provider's name, shipping address and DEA Number, I will have our contact █
█ o call (he or she) or whoever you designate to finalize the order.

█

█

p.s. This is my official e-mail address. Inadvertently sent previous e-mail on my person e-mail (sorry)

Exhibit 3

From: Duffy, Brian@CDCR
To: Kernan, Scott@CDCR
Subject: Re: Drugs
Date: Monday, August 02, 2010 11:20:16 AM

I'll come in tomorrow morning and give to you. Do you need it today?

----- Original Message -----

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Cc: Duffy, Brian@CDCR
Sent: Mon Aug 02 09:58:01 2010
Subject: RE: Drugs

Please and let me know. I was under impression that there was no problem with these other two drugs and we had quantity internally. Going to get very political quick. [REDACTED]
[REDACTED]

I know Brian struck out with the big company's for an importer but was looking for some smaller companies that could possibly help out. I also need to know where we are at on the email to DEA (brian?)

Scott

-----Original Message-----

From: McAuliffe, John@CDCR
Sent: Monday, August 02, 2010 9:51 AM
To: Kernan, Scott@CDCR
Subject: Drugs

Scott

Bruce Slavin just called and asked if we are having any problems getting the other two drugs? He said the AG called him and said they (AG) heard there is a shortage of Pancurium Bromide? Not sure where this is coming from but will immediately find out.

John

Exhibit 4

From: Kernan, Scott@CDCR
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: FW: Per Our Conversation
Date: Wednesday, August 04, 2010 12:22:00 PM
Attachments: California Drugs August 2010.xls

Talked with [REDACTED] He is still beating bush for sodium Thiopental. He is placing the order for all three drugs, probably even get done today. His update was:

Sodium Thiopental – No national provider and none anticipated in 2010. Found international provider. Looking for way to import and method to validate correct mix. Sounded positive

Pancuronium Bromide – Hospira does provide and expect availability August/September.

Potassium Chloride – Available no problem.

I am sending him shipping information and billing data. We are going to ship directly to SQ pharmacy for our teams pick up and storage consistent with Reg. I could run into problem with Receiver using the Pharmacy, but think I can work through it [REDACTED] is using [REDACTED] DEA number. The bill will come directly to me and I'll discretely handle through our procurement.

We are still pursuing a DEA exemption and trying to find our own importer just so if this avenue does not work out we have somewhere else to go.

We have contacted all states and Feds for drug with no luck. All states are in the same boat. [REDACTED] did say they have a quantity of expired Thiopental but would require FDA waiver of expiration date. They ran into brick wall when they tried this with the FDA.

I will send you behind this email a timeline prepared by staff of all of our efforts. Let me know if you need anything else.

Scott

From: [REDACTED]
Sent: Wednesday, August 04, 2010 11:50 AM
To: Kernan, Scott@CDCR
Subject: Per Our Conversation

Hi Scott:

Once I receive your provider's name, shipping address and DEA Number, I will have our contact [REDACTED] to call (he or she) or whoever you designate to finalize the order.

[REDACTED]

[REDACTED]

p.s. This is my official e-mail address. Inadvertently sent previous e-mail on my person e-mail (sorry)

Product	Status	Cost
Pavulon Bromide(25x10ml)	manufacturer backorder until mid August	21.25
Pentothal 400mg 25 doses	manufacturer backorder until mid October	448.25
Pentothal 500mg 25 doses	manufacturer backorder until mid October	4 . 5
Pentothal 1000mg 25 doses	manufacturer backorder until mid October	1,38 .00
Potassium Chloride 2MEQ	available 25x30ml	22.50
Potassium Chloride 10MEQ	available 25x5ml	11.00
Potassium Chloride 20MEQ	available 25x10ml	9.50
Potassium Chloride 30MEQ	available 25x15ml	12.50
Potassium Chloride 40MEQ	available 25x20ml	.50

All costs stated above are for a pack of 25 vials or syringes.

FDA has some information on the shortage for Pavulon and Pentothal...scroll down the

I searched for a reason for [REDACTED] recall and only found this explanation from several s

REASON

Impurities/Degradation Products: These products are being recalled because they

[http //www.fda.gov/Drugs/DrugSafety/DrugShortages/ucm05092.htm](http://www.fda.gov/Drugs/DrugSafety/DrugShortages/ucm05092.htm)

Let me know if you need anything else. Thanks



Exhibit 5

From: Kernan, Scott@CDCR
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: FW: Per Our Conversation
Date: Wednesday, August 04, 2010 12:22:00 PM
Attachments: California_Drugs_August_2010.xls

Talked with [REDACTED] He is still beating bush for sodium Thiopental. He is placing the order for all three drugs, probably even get done today. His update was:

Sodium Thiopental – No national provider and none anticipated in 2010. Found international provider. Looking for way to import and method to validate correct mix. Sounded positive

Pancuronium Bromide – Hospira does provide and expect availability August/September.

Potassium Chloride – Available no problem.

I am sending him shipping information and billing data. We are going to ship directly to SQ pharmacy for our teams pick up and storage consistent with Reg. I could run into problem with Receiver using the Pharmacy, but think I can work through it [REDACTED] is using [REDACTED] DEA number. The bill will come directly to me and I'll discretely handle through our procurement.

We are still pursuing a DEA exemption and trying to find our own importer just so if this avenue does not work out we have somewhere else to go.

We have contacted all states and Feds for drug with no luck. All states are in the same boat. [REDACTED] did say they have a quantity of expired Thiopental but would require FDA waiver of expiration date. They ran into brick wall when they tried this with the FDA.

I will send you behind this email a timeline prepared by staff of all of our efforts. Let me know if you need anything else.

Scott

From: [REDACTED]
Sent: Wednesday, August 04, 2010 11:50 AM
To: Kernan, Scott@CDCR
Subject: Per Our Conversation

Hi Scott:

Once I receive your provider's name, shipping address and DEA Number, I will have our contact [REDACTED] to call (he or she) or whoever you designate to finalize the order.

[REDACTED]

[REDACTED]

p.s. This is my official e-mail address. Inadvertently sent previous e-mail on my person e-mail (sorry)

Exhibit 6

From: Cate, Matt@CDCR
To: [REDACTED]
Subject: FW: Per Our Conversation
Date: Wednesday, August 04, 2010 12:23:00 PM
Attachments: California Drugs August 2010.xls

From: Kernan, Scott@CDCR
Sent: Wednesday, August 04, 2010 12:22:57 PM
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: FW: Per Our Conversation
Auto forwarded by a Rule

Talked with [REDACTED] [REDACTED] s still beating bush for sodium Thiopental. [REDACTED] is placing the order for all three drugs, probably even get done today. [REDACTED] update was:

Sodium Thiopental – No national provider and none anticipated in 2010. Found international provider. Looking for way to import and method to validate correct mix. Sounded positive

Pancuronium Bromide – Hospira does provide and expect availability August/September.

Potassium Chloride – Available no problem.

I am sending him shipping information and billing data. We are going to ship directly to SQ pharmacy for our teams pick up and storage consistent with Reg. I could run into problem with Receiver using the Pharmacy, but think I can work through it. Our volunteer doctor is using his DEA number. The bill will come directly to me and I'll discretely handle through our procurement.

We are still pursuing a DEA exemption and trying to find our own importer just so if this avenue does not work out we have somewhere else to go.

We have contacted all states and Feds for drug with no luck. All states are in the same boat. [REDACTED] did say they have a quantity of expired Thiopental but would require FDA waiver of expiration date. They ran into brick wall when they tried this with the FDA.

I will send you behind this email a timeline prepared by staff of all of our efforts. Let me know if you need anything else.

Scott

From: [REDACTED]
Sent: Wednesday, August 04, 2010 11:50 AM
To: Kernan, Scott@CDCR
Subject: Per Our Conversation

Hi Scott:

Exhibit 7

From: Kernan, Scott@CDCR
To: [REDACTED]
Subject: Re: Drug Order
Date: Friday, August 06, 2010 12:11:47 PM

Can't tell you how much I, Matt and Governor appreciate it. Have a great weekend
Scott

From: [REDACTED]
To: Kernan, Scott@CDCR; McAuliffe, John@CDCR
Cc: [REDACTED]
Sent: Fri Aug 06 12:01:21 2010
Subject: Drug Order

Scott/John:

Your order has been placed and John will get a call from [REDACTED] on Monday should there be any questions. Please be assured that partial shipments will be sent as soon as received.

We continue to do a worldwide search for Sodium Thiopental

[REDACTED]

From [REDACTED]

All products have been ordered, The Potassium Chloride is being shipped to us now (should arrive in Nashville next week). The Pancuronium and Pentothal will ship when they are available.

Purchase Order # [REDACTED] dtd 8/5/2010
Hospira Confirmation # [REDACTED]

Contact:

[REDACTED]

Exhibit 8

From: Acosta-Hoshall, Christina@CDCR
To: [REDACTED]
Cc: Kernan, Scott@CDCR; McAuliffe, John@CDCR
Subject: letter from Scott Kernan, Undersecretary, Operations, California Department of Corrections and Rehabilitation regarding procurement of Sodium Thiopental
Date: Wednesday, August 18, 2010 1:10:04 PM
Attachments: Drug Enforcement Administration 081820100001.pdf

SENT ON BEHALF OF SCOTT KERNAN, UNDERSECRETARY, OPERATIONS

Please see the attached letter from Scott Kernan, Undersecretary, Operations, California Department of Corrections and Rehabilitation regarding procurement of Sodium Thiopental.

Thank you,

Christina Acosta-Hoshall
Executive Assistant to Terri McDonald, Chief Deputy Secretary, Adult Operations
California Department of Corrections and Rehabilitation
1515 S Street, Suite 502-S
Sacramento, CA 95811
[REDACTED]
[REDACTED]
[REDACTED]

OFFICE OF THE SECRETARY

P.O. Box 942883
Sacramento, CA 94283-0001



August 18, 2010

[REDACTED]
Office of Diversion Control
Drug Enforcement Administration
United States Department of Justice

Dear [REDACTED]

Thank you again for taking the time to talk and assist us in finding a solution in procuring Sodium Thiopental. As you are well aware, Title 21, United States Code (USC) Controlled Substances Act; Section 952; Importation of Controlled Substances; outlined below are exceptions for importation of Scheduled III controlled substances:

- The Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States.
- During an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate.
- The Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 823 of title 21.
- The Attorney General finds that such controlled substance is in limited quantities exclusively for scientific, analytical or research uses; may be so imported under such regulations as the Attorney General shall prescribe.

The California Department of Corrections and Rehabilitation (CDCR) finds itself unfortunately meeting all of the above exceptions. As we have discussed, John McAuliffe contacted the Diversion Control Units in San Francisco [REDACTED]; Sacramento [REDACTED]; Oakland (Helpline) and Washington D.C. to get assistance in the procurement of Sodium Thiopental, a scheduled III controlled substance.

Sodium Thiopental is one of three chemicals authorized by the state of California for capital punishment by lethal injection. In May 2010 it was reported by the American Society of Health-System Pharmacists that there was a shortage of Sodium Thiopental. This shortage was sparked by a manufacturing problem of Sodium Thiopental as well as a shortage of Propofol (a popular anesthetic used by anesthesiologists) which forced anesthesiologists to further deplete supplies of Sodium Thiopental as a substitute. Additionally, CDCR had contact with numerous compounding pharmacies around the

[REDACTED]
Page 2

San Francisco Bay area with the same result. CDCR has located a supply of Sodium Thiopental in Pakistan at [REDACTED]

CDCR is requesting help from your office to assist with the process of procuring the Sodium Thiopental through the Import/Export Permit Application. We are requesting for the Warden of San Quentin State Prison be permitted to directly order the Sodium Thiopental from Pakistan for delivery to San Quentin State Prison at the following address:

[REDACTED]

CDCR would be ordering 210 grams or 420 individual package kits of Sodium Thiopental. The state of California's Lethal Injection Regulation, California Code of Regulations, Title 15; Section 3349; calls for a 500-mg/2.5 percent kit (25 mg/mL) combination package with contents of 500-mg of Sodium Thiopental powder and 20mL flip top vial of sterile water to be mixed by appropriate execution team members.

I look forward to talking to you and discussing this matter. If you have any further questions, please contact me at (916) 323-6001.


SCOTT KERNAN

Undersecretary, Operations
California Department of Corrections and Rehabilitation

cc: Benjamin T. Rice Rice, General Council, Legal Affairs
Terri McDonald, Chief Deputy Secretary, Adult Operations
Vince Cullen, Warden (A), San Quentin State Prison

Exhibit 9

From: Duffy, Brian@CDCR
To: Kernan, Scott@CDCR
Subject: RE: [REDACTED]
Date: Tuesday, August 24, 2010 12:53:24 PM

Just looked it up. Need 21 grams per event. Only receiving 8 grams in this shipment.

From: Kernan, Scott@CDCR
Sent: Tuesday, August 24, 2010 12:45 PM
To: Gaddi, Kathy@CDCR; Duffy, Brian@CDCR
[REDACTED]

From: McAuliffe, John@CDCR
Sent: Tuesday, August 24, 2010 12:45:01 PM
[REDACTED]

Cc: Kernan, Scott@CDCR; Rice, Benjamin@CDCR; Cullen, Vincent@CDCR;
Curzon, John@CDCR
[REDACTED]

Auto forwarded by a Rule

[REDACTED]
Please go ahead and ship the 8 grams of Thiopental.....Thank you...
John McAuliffe

From: [REDACTED]
Sent: Tuesday, August 24, 2010 12:19 PM
To: McAuliffe, John@CDCR
Subject: [REDACTED]

John,

We have received 8 grams of Thiopental Sodium. It expires Oct 1, 2010.

Is this ok?

[REDACTED]

From: McAuliffe, John@CDCR [mailto:John.McAuliffe@cdcr.ca.gov]
Sent: Tuesday, August 24, 2010 12:09 PM
To: [REDACTED]
Subject: [REDACTED]

[REDACTED]
Great news! Hope some of the product is Sodium Thiopental.....Ship to;

[REDACTED]

[REDACTED]
Thanks
John McAuliffe

From: [REDACTED]
Sent: Tuesday, August 24, 2010 9:27 AM
To: McAuliffe, John@CDCR
Subject: [REDACTED]

John,

We have received some of the product and can ship today.

Please let me know what shipping address to use. I will also email you what is being shipped today.

Thanks,
[REDACTED]

From: McAuliffe, John@CDCR [mailto:John.McAuliffe@cdcr.ca.gov]
Sent: Thursday, August 19, 2010 4:16 PM
To: [REDACTED]

[REDACTED]
Just would like to follow up on the status of the order. Mainly I would like to know if you have any status as to when or if you have been contacted as to a possible date the order can be filled. Thanks in advance
John McAuliffe
[REDACTED]

Exhibit 10

From: [Duffy, Brian@CDCR](mailto:Duffy,Brian@CDCR)
To: [McAuliffe, John@CDCR](mailto:McAuliffe,John@CDCR)
Cc: [Kernan, Scott@CDCR](mailto:Kernan,Scott@CDCR)
Subject: FW: Approved purchase
Date: Thursday, August 19, 2010 1:25:17 PM

John,

Here is the approval from Brett Morgan. Let me know.

Brian

From: Morgan, Brett@CDCR
Sent: Thursday, August 19, 2010 1:24 PM
To: Gilpin, Timothy@CDCR
Cc: Duffy, Brian@CDCR
Subject: Approved purchase

John McAuliffe, who works on contract for us on lethal injection and death penalty issues, will be contacting you. He needs to purchase a list on-line of community hospitals. The list costs about \$65. Please assist John in purchasing the list.

From: Duffy, Brian@CDCR
To: Kernan, Scott@CDCR
Subject: [REDACTED]
Date: Friday, August 20, 2010 11:07:39 AM

FYI

From: McAuliffe, John@CDCR
Sent: Friday, August 20, 2010 11:04 AM
To: Duffy, Brian@CDCR
Subject: [REDACTED]

Going down the list.....Same response so far with 23 called....Who are you? Why are you asking?
And we do not give out that information to the public!
John

From: Duffy, Brian@CDCR [mailto:Brian.Duffy@cdcr.ca.gov]
Sent: Friday, August 20, 2010 10:43 AM
To: McAuliffe, John@CDCR
Subject: RE: [REDACTED]

John,

Any luck with calling hospitals? Anything I can do to help?

Brian

From: Kernan, Scott@CDCR
Sent: Friday, August 20, 2010 9:47 AM
To: Gaddi, Kathy@CDCR; Duffy, Brian@CDCR
Subject: FW: [REDACTED]

From: McAuliffe, John@CDCR
Sent: Friday, August 20, 2010 9:46:50 AM
To: Kernan, Scott@CDCR
Subject: Fw: [REDACTED]
Auto forwarded by a Rule

Scott
See email. I called yesterday and said we needed a date. Also told [REDACTED] if he got a hold of any ship it to us immediately.
John

From: [REDACTED]
To: McAuliffe, John@CDCR
Sent: Fri Aug 20 06:19:22 2010
Subject: RE: [REDACTED]

From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Subject: Re:
Date: Wednesday, September 29, 2010 3:37:30 PM

I called approximately 100 Hospitals and local general surgery centers.

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Sent: Wed Sep 29 15:32:23 2010
Subject: RE:

Didn't we also canvass local hospitals?

From: McAuliffe, John@CDCR
Sent: Wednesday, September 29, 2010 3:17 PM
To: Kernan, Scott@CDCR
Subject: Re:

Scott

No we did not. With [REDACTED] and the Receiver changing their positions on helping then not helping the National shortage had come in play. We did ask Feds VA OK and TN.
John



Exhibit 11

From: Cate, Matt@CDCR
To: [REDACTED]
Subject: FW: Lethal Injection/Sodium Thiopental
Date: Monday, August 02, 2010 4:20:12 PM

[REDACTED]

From: [REDACTED]
Sent: Monday, August 02, 2010 6:15 AM
To: [REDACTED]
Cc: [REDACTED]

[REDACTED]

[REDACTED]

Subject: Lethal Injection/Sodium Thiopental

In [REDACTED] the law provides that an execution must be inflicted by an ultra short-acting barbiturate, as well as other drugs. As many of you are aware, sodium thiopental is in short supply. At this point, [REDACTED] has an execution scheduled for [REDACTED] and we have not been successful in finding any sodium thiopental to carry out the execution. I understand that other states have run into this problem. Can you please advise me of the course of action that has been taken in this situation? Or, if anyone has any information on how to obtain this drug or any other ultra short-acting barbiturate, that would be extremely helpful.

Thank you.

Exhibit 12

From: Cate, Matt@CDCR
To: [REDACTED]
Subject: FW: Ca Drugs
Date: Monday, September 20, 2010 6:32:06 AM

From: Kernan, Scott@CDCR
Sent: Monday, September 20, 2010 6:32:02 AM
To: [REDACTED]
Cc: [REDACTED] Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: RE: Ca Drugs
Auto forwarded by a Rule

[REDACTED]

Thank you very much. We sure appreciate all your efforts. I'll let you know how Matt wants to go forward with Texas after talks with Governor. Let you know hopefully today.

Scott

From: [REDACTED]
Sent: Friday, September 17, 2010 3:02 PM
To: Kernan, Scott@CDCR
Cc: [REDACTED]
Subject: Fw: Ca Drugs

Scott:

One of the lessons of life is that bad news doesn't get better with time. Unfortunately, despite numerous calls and contacts **yesterday and today**, we have been unable to secure any additional supplies of sodium pentothal **at this time**.

Scott, we will continue to search but as I promised you and Matt, I wanted to give you a definitive answer before Monday.

While we continue to look for an existing supply, [REDACTED] remains willing to call Governor [REDACTED] and ask for his assistance in putting a string on TDCJ's supply should you need it before new production resumes.

Please let us know how to proceed.

[REDACTED]

Exhibit 13

From: Cate, Matt@CDJR
To: [REDACTED]
Subject: FW: Call Placed
Date: Wednesday, September 22, 2010 8:14:39 AM

From: Kernan, Scott@CDJR
Sent: Wednesday, September 22, 2010 8:12:46 AM
To: Cate, Matt@CDJR
Subject: FW: Call Placed
Auto forwarded by a Rule

FYI

Scott

From: [REDACTED]
Sent: Wednesday, September 22, 2010 8:06 AM
To: Kernan, Scott@CDJR
Cc: [REDACTED]
Subject: Call Placed

Good Morning Scott:

Per Matt's request, [REDACTED] has placed a call to Governor [REDACTED] office and discussed the need for having a commitment to ship, upon request, a dose of sodium pentothal from [REDACTED] to CDJR. Governor [REDACTED] is traveling today, but [REDACTED] talked with the Governor's assistant, who in turn, will get in touch with Governor [REDACTED] and get back to [REDACTED] sometime today or early tomorrow.

I will keep you advised.

[REDACTED]

Exhibit 14

From: Cate, Matt@CDCR
To: [REDACTED]
Subject: FW: sodium thiopental
Date: Wednesday, September 29, 2010 8:10:53 AM

From: Kernan, Scott@CDCR
Sent: Wednesday, September 29, 2010 8:10:49 AM
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: FW: sodium thiopental
Auto forwarded by a Rule

Fyi

Scott

From: [REDACTED]
Sent: Wednesday, September 29, 2010 6:05 AM
To: Kernan, Scott@CDCR
Cc: [REDACTED]
Subject: sodium thiopental

Scott:

Today's article in the Texas prison system's back yard. It is unfortunate that Texas would not share some of it's "well stocked" supply to help sister states but down the road they may need help in some other way and this position does not help their image. Nevertheless, in the prison business things are always changing and Texas is no exception. Sorry we were not able to help more.

Best regards,

[REDACTED]

The Huntsville Item, Huntsville, TX

September 29, 2010

Texas well stocked with lethal injection drugs

From Staff and Wire Reports

Exhibit 15

From: McAuliffe, John@CDCR
To: ["McDonald@cdcr.ca.gov"](mailto:McDonald@cdcr.ca.gov)
Subject: Fw: ARIZONA DEPARTMENT OF CORRECTIONS REQUEST FOR EXECUTION CHEMICALS
Date: Wednesday, September 22, 2010 7:16:44 PM

FYI
John

----- Original Message -----

From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Sent: Wed Sep 22 19:13:33 2010
Subject: Fw: ARIZONA DEPARTMENT OF CORRECTIONS REQUEST FOR EXECUTION CHEMICALS

Scott

If AZ is talking about the 2nd and 3rd drug (Pancuronium Bromide and Potassium Chloride) we could help. This is based on the email stream and AZ asking about "other drugs". If you agree I am ok with them calling me to deal with specific needs. They were very helpful when we asked in 2007.
John

----- Original Message -----

From: McDonald, Terri@CDCR
To: Giurbino, George@CDCR
Cc: McAuliffe, John@CDCR
Sent: Wed Sep 22 17:41:11 2010
Subject: RE: ARIZONA DEPARTMENT OF CORRECTIONS REQUEST FOR EXECUTION CHEMICALS

Let's have them talk to John McAuliffe as first discussion and he can elevate to Scott if necessary. I tagged him on the email.

-----Original Message-----

From: Giurbino, George@CDCR
Sent: Wednesday, September 22, 2010 4:58 PM
To: McDonald, Terri@CDCR
Subject: ARIZONA DEPARTMENT OF CORRECTIONS REQUEST FOR EXECUTION CHEMICALS

Hi Terri,

The Arizona Department of Corrections would like to have a follow up discussion with an appropriate CDCR representative concerning the availability of "any" available chemicals associated with the three chemical process used for a lethal injection. I provided preliminary information to the representative below earlier today; however, it appears that they would like more specific information. Is there someone specific in agency that we would want to contact and work with Arizona on this issue??

Thank you,

George

George J. Giurbino, Director
Division of Adult Institutions/
California Department of Corrections and Rehabilitation
[REDACTED]

Exhibit 16

From: Cullen, Vincent@CDCR
To: McAuliffe, John@CDCR
Subject: FW: ADC assistance
Date: Tuesday, September 28, 2010 12:27:35 PM

John,
What quantity did you and I agree we could provide AZ?

VINCENT S. CULLEN
Warden (A)
San Quentin State Prison
[REDACTED]

-----Original Message-----

From: Luna, Rudy@CDCR
Sent: Tuesday, September 28, 2010 12:11 PM
To: Cullen, Vincent@CDCR
Cc: Rodriguez, William A.@CDCR
Subject: FW: ADC assistance

Warden,

Below, is the request from Arizona Corrections regarding Pancurium Bromide.

Luna

-----Original Message-----

From: THERESE SCHROEDER [REDACTED]
Sent: Tuesday, September 28, 2010 12:03 PM
To: Luna, Rudy@CDCR
Cc: CARSON McWILLIAMS; KAREN INGRAM; TARA DIAZ
Subject: ADC assistance

Lt. Luna, as discussed per John McAuliffe, you are the POC for Arizona Department of Corrections and the obtaining of Pancurium Bromide.

We are in need of this medication and will arrange shipping/delivery and payment through our Procurement Department.

We would like the medication delivered to:

Warden Carson McWilliams

ASPC- Florence
P O Box 629
Florence, Az 85232-0629

I am available at BB- [REDACTED]

office- [REDACTED]

or call Warden McWilliams at [REDACTED] and speak with Warden or [REDACTED].

Thank you,
Therese Schroeder
Security Operations Administrator

Exhibit 17

From: Cullen, Vincent@CDCR
To: Giurbino, George@CDCR
Subject: RE: Pancuronium Bromide
Date: Wednesday, September 29, 2010 10:13:07 AM

K... I will await word from Scott. I do have sufficient quantities.

VINCENT S. CULLEN
Warden (A)
San Quentin State Prison
[REDACTED]

-----Original Message-----

From: Giurbino, George@CDCR
Sent: Wednesday, September 29, 2010 10:07 AM
To: Cullen, Vincent@CDCR
Cc: Kernan, Scott@CDCR
Subject: Re: Pancuronium Bromide

Hi Vince,

I would not have any issue w/ providing a portion of our available PB to AZ. I am unaware of current available doses, but would recommend retention to meet potential local needs for balance of Calendar Year.

As there are more issues beyond my knowledge potentially involved in this issue, I defer final authorization to Mr. Kernan and Mr. Ben Rice.

----- Original Message -----

From: Cullen, Vincent@CDCR
To: Giurbino, George@CDCR; Kernan, Scott@CDCR
Sent: Wed Sep 29 10:01:10 2010
Subject: FW: Pancuronium Bromide

George/Scott,
Myself and John McAuliffe are ok with loaning some Pancuronium Bromide to AZ. I just need your OK.

VINCENT S. CULLEN
Warden (A)
San Quentin State Prison
[REDACTED]

-----Original Message-----

From: Luna, Rudy@CDCR
Sent: Wednesday, September 29, 2010 9:12 AM
To: Cullen, Vincent@CDCR; Rodriguez, William A.@CDCR
Subject: FW: Pancuronium Bromide

FYI...

-----Original Message-----

From: THERESE SCHROEDER [REDACTED]
Sent: Wednesday, September 29, 2010 8:08 AM
To: Luna, Rudy@CDCR

Subject: Pancuronium Bromide

Lt. Luna, ADC's need for Pancuronium Bromide is greater than ever today. We have had issues with our expected shipment and are not sure if we will have enough.

We are so appreciative of California DOC's offer of assistance. Please let me know what I can do to make this easier on you. I am available all day today.

[REDACTED]

[REDACTED]

Therese Schroeder
Security Operations Administrator

Exhibit 18

From: Kernan, Scott@CDCR
To: Chaus, Anthony@CDCR
Cc: McAuliffe, John@CDCR
Subject: FW: Execution Protocol Drugs
Date: Wednesday, September 29, 2010 5:13:03 PM

Tony,

As you can see below, this is very political and media sensitive. I need to have one or two of your SoCal agents ready to go to Florence, AZ tomorrow morning and pick up the drug and drive to SQ directly. I am having John McAuliffe contact the warden first thing in the morning and work through all the logistical chain of custody information necessary to do this legal. As soon as I get the go ahead from him I'd like to direct your agents to Florence. Can you work on getting your folks ready for this mission and advise me of how long it will take them to get to the Florence prison once we get the go ahead. Thx

Scott

-----Original Message-----

From: CHARLES FLANAGAN [REDACTED]
Sent: Wednesday, September 29, 2010 4:40 PM
To: Kernan, Scott@CDCR
Cc: CARSON McWILLIAMS; ROBERT PATTON
Subject: Re: FW: Execution Protocol Drugs

Scott:

To confirm our verbal conversation, Director Ryan has authorized the Arizona Department of Corrections (ADC) to provide you with 12 grams of the Thiopental Sodium we have just acquired. You also have our thanks for the Pancuronium Bromide your agency has provided to ADC. Please let us know when your employees would like to arrive at the Arizona State Prison Complex-Florence, located at Florence, Arizona, in order to pick up the drugs, as you indicated this is your preferred method of delivery and transportation.

Warden Carson McWilliams will facilitate the transfer to your staff. His contact information is:

[REDACTED]

I understand from you that your staff will contact him tomorrow morning to arrange a time to meet the Warden and take possession of the drug.

Charles

>>> "Kernan, Scott@CDCR" <Scott.Kernan@cdcr.ca.gov> 9/29/2010 11:04 AM >>>
Mr. Flanagan,

Sorry for delay in getting this information. Just wanted to make sure. Appears that we would need 12 grams minimum. We are going to start working now on procuring via the method you so kindly described. Thanks again for your help. Please let me know what your Director thinks and am sure either the Secretary or even the Governor could make a call if necessary. Look forward to hearing from you.

Scott

-----Original Message-----

From: [REDACTED]
To: McAuliffe, John@CDCR
Subject: Re: Dr 's SQ DEA #
Date: Wednesday, September 29, 2010 4:34:49 PM

John,
Just returned back from Fed Ex. Drugs are on their way to Arizona.

----- Original Message -----

From: McAuliffe, John@CDCR
To: Cullen, Vincent@CDCR
Cc: Kernan, Scott@CDCR; Rice, Benjamin@CDCR; Slavin, Bruce@CDCR; McCleave, Kelly@CDCR
Sent: Wed Sep 29 16:16:33 2010
Subject: Dr 's SQ DEA #

Warden

DEA called me and gave me 2 of our 3 Dr 's SQ DEA #s. The third Dr was emailed and told to reapply due to having an incomplete address. These additional numbers will be used when ordering the drugs I will put together a book with all of the Dr 's names, contact info, DEA #'s and CDCR work info. I will include the Nurses with same info. Additionally, I will include the DEA agent info assigned to SQ with point of contact information.

John

From: [Cullen, Vincent@CDCR](mailto:Cullen.Vincent@CDCR)
To: McAuliffe, John@CDCR
Subject: Re: AZ
Date: Wednesday, September 29, 2010 2:08:04 PM

John,
How many bottles equates to 350mg?

----- Original Message -----

From: McAuliffe, John@CDCR
To: Cullen, Vincent@CDCR
Sent: Wed Sep 29 13:07:41 2010
Subject: Re: AZ

I guess we pack with dry ice and ship? Or we could say we will drive it out to you for 21 gram of sodium thiopental.
John

----- Original Message -----

From: Cullen, Vincent@CDCR
To: McAuliffe, John@CDCR
Sent: Wed Sep 29 12:43:42 2010
Subject: Re: AZ

Thanks John. How will we get it to them?

----- Original Message -----

From: McAuliffe, John@CDCR
To: Cullen, Vincent@CDCR
Cc: 'McDonald@cdcr.ca.gov' <McDonald@cdcr.ca.gov>; Giurbino, George@CDCR; Kernan, Scott@CDCR
Sent: Wed Sep 29 12:32:38 2010
Subject: AZ

Warden

Just got off the phone with DEA concerning AZ request for Pancuronium Bromide ((350 mg). For accountability we should use a blank chain of custody form that we use for LI. List the drug: amount: lot numbers: number of vials: Dr.'s DEA # (SQ and AZ). DEA #'s will reflect transfer to Feds.
John

Exhibit 19

Chaus, Anthony@CDCR

From: Kernan, Scott@CDCR
Sent: Wednesday, September 29, 2010 5:45 PM
To: Chaus, Anthony@CDCR
Subject: Re: FW: Execution Protocol Drugs

Have them fly tonight and stage in Florence. Get me the advance stuff and I'll get staff paid. Thx

----- Original Message -----

From: Chaus, Anthony@CDCR
To: Kernan, Scott@CDCR
Sent: Wed Sep 29 17:39:16 2010
Subject: Re: FW: Execution Protocol Drugs

Scott,
It's about 1 hour south of Phoenix. If we drive it will take about 5 hours for my nearest SoCal agent to get there. I recommend we fly to Phoenix and rent a car. If we do that tonight and my agents spend the night in Phoenix or Florence, I can have two agents there at whatever given time you want. They can also fly out in the morning and be at the prison probably within 2 - 3 hours of the notification to go. Alternately, they can drive out tonight or in the morning. No matter how we accomplish the pickup, I will have two more agents standing by to take the handoff in L.A/Bakersfield (depending on time of day) to make the remainder of the trip to SQ. I will assign one supervisor and one agent to each team. If you think it necessary, I can fly to Phoenix and accomplish the pickup and first leg of the trip. Let me know which plan you like best.
Tony

----- Original Message -----

From: Kernan, Scott@CDCR
To: Chaus, Anthony@CDCR
Cc: McAuliffe, John@CDCR
Sent: Wed Sep 29 17:13:01 2010
Subject: FW: FW: Execution Protocol Drugs

Tony,

As you can see below, this is very political and media sensitive. I need to have one or two of your SoCal agents ready to go to Florence, AZ tomorrow morning and pick up the drug and drive to SQ directly. I am having John McAuliffe contact the warden first thing in the morning and work through all the logistical chain of custody information necessary to do this legal. As soon as I get the go ahead from him I'd like to direct your agents to Florence. Can you work on getting your folks ready for this mission and advise me of how long it will take them to get to the Florence prison once we get the go ahead. Thx

Scott

-----Original Message-----

From: CHARLES FLANAGAN [REDACTED]
Sent: Wednesday, September 29, 2010 4:40 PM
To: Kernan, Scott@CDCR
Cc: CARSON McWILLIAMS; ROBERT PATTON
Subject: Re: FW: Execution Protocol Drugs

Scott:

Exhibit 20

Chaus, Anthony@CDCR

From: Kernan, Scott@CDCR
Sent: Wednesday, September 29, 2010 4:22 PM
To: Chaus, Anthony@CDCR
Subject: RE:

Great let you know

From: Chaus, Anthony@CDCR
Sent: Wednesday, September 29, 2010 4:08 PM
To: Kernan, Scott@CDCR
Subject: Re:

Scott,
Absolutley. Give me the green light and It will be done very discreetly.
Tony

From: Kernan, Scott@CDCR
To: Chaus, Anthony@CDCR
Sent: Wed Sep 29 16:02:30 2010
Subject:

Tony,

May have a secret and important mission for you. Not sure you are following, but we are unable to do the execution because nationwide we have been unable to procure one of the three drugs needed. The quantity we currently have expires 10/1/10. So, out of the blue I find some from AZ. I might need one of your So Cal guys to go to Florence, AZ and pick up a quantity of the drug and drive it to SQ. Not asking you to do anything just yet, will let you know. Could you handle something like this.

Scott

Chaus, Anthony@CDCR

From: Kernan, Scott@CDCR
Sent: Wednesday, September 29, 2010 5:13 PM
To: Chaus, Anthony@CDCR
Cc: McAuliffe, John@CDCR
Subject: FW: FW: Execution Protocol Drugs

Tony,

As you can see below, this is very political and media sensitive. I need to have one or two of your SoCal agents ready to go to Florence, AZ tomorrow morning and pick up the drug and drive to SQ directly. I am having John McAuliffe contact the warden first thing in the morning and work through all the logistical chain of custody information necessary to do this legal. As soon as I get the go ahead from him I'd like to direct your agents to Florence. Can you work on getting your folks ready for this mission and advise me of how long it will take them to get to the Florence prison once we get the go ahead. Thx

Scott

-----Original Message-----

From: CHARLES FLANAGAN [REDACTED]
Sent: Wednesday, September 29, 2010 4:40 PM
To: Kernan, Scott@CDCR
Cc: CARSON MCWILLIAMS; ROBERT PATTON
Subject: Re: FW: Execution Protocol Drugs

Scott:

To confirm our verbal conversation, Director Ryan has authorized the Arizona Department of Corrections (ADC) to provide you with 12 grams of the Thiopental Sodium we have just acquired. You also have our thanks for the Pancuronium Bromide your agency has provided to ADC. Please let us know when your employees would like to arrive at the Arizona State Prison Complex-Florence, located at Florence, Arizona, in order to pick up the drugs, as you indicated this is your preferred method of delivery and transportation.

Warden Carson McWilliams will facilitate the transfer to your staff. His contact information is:

[REDACTED]

I understand from you that your staff will contact him tomorrow morning to arrange a time to meet the Warden and take possession of the drug.

Charles

>>> "Kernan, Scott@CDCR" <Scott.Kernan@cocr.ca.gov> 9/29/2010 11:04 AM >>>
Mr. Flanagan,

Sorry for delay in getting this information. Just wanted to make sure. Appears that we would need 12 grams minimum. We are going to start working now on procuring via the method you so kindly described. Thanks again for your help. Please let me know what your Director

Exhibit 21

Memorandum

Date : October 1, 2010

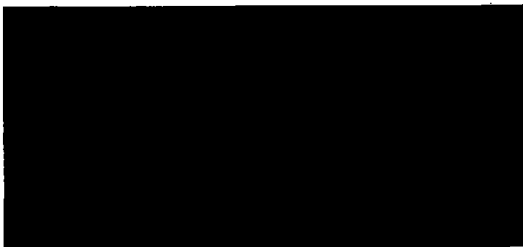
To : Anthony Chaus
Assistant Secretary
Office of Correctional Safety

Subject: CHAIN OF CUSTODY – THIOPENTAL SODIUM

On Thursday, September 30, 2010, I traveled to the Arizona State Prison Complex located at 1305 E. Butte Avenue, Florence, Arizona, to pick up Thiopental Sodium being provided by the Arizona Department of Corrections to the California Department of Corrections and Rehabilitation.

I met with Warden Carson McWilliams who relinquished to me twenty four (24) vials of Thiopental Sodium. I visually inspected each vial and confirmed they contained 500 mg of Thiopental Sodium BP. I also confirmed the expiration date to be 05/2014 and the lot number to be [REDACTED] on each vial as listed on the item transfer sheet. I signed for receipt of the items at 0900 hours and departed the facility.

I maintained custody and control of the items until I met with [REDACTED] in Gorman, CA. On September 30, 2010, at 1720 hours I relinquished custody and control of the items to [REDACTED] for delivery to San Quentin State Prison.



Memorandum

Date : October 1, 2010

To : Anthony Chaus
Assistant Secretary
Office of Correctional Safety

Subject: CHAIN OF CUSTODY – THIOPENTAL SODIUM

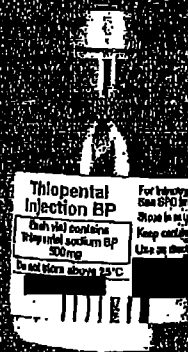
On Thursday, September 30, 2010, I traveled to Gorman, California, to meet with [REDACTED] to pick up Thiopental Sodium being provided by the Arizona Department of Corrections to the California Department of Corrections and Rehabilitation.

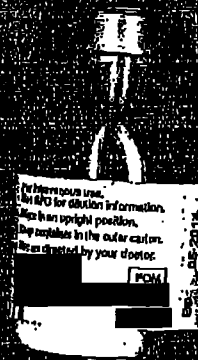
At 1720 hours, [REDACTED] relinquished to my custody and control, twenty four (24) vials of Thiopental Sodium (TS). I visually inspected each vial and confirmed they contained 500 mg of Thiopental Sodium BP. I also confirmed the expiration date to be 05/2014 and the lot number to be [REDACTED] on each vial as listed on the item transfer sheet. I signed for receipt of the 24 TS vials and departed to deliver the vials to [REDACTED] California State Prison, San Quentin (CSP-SQ).

I maintained custody and control of the 24 TS vials until 2210 hours, when I met with [REDACTED] at the CSP-SQ East Gate. [REDACTED] provided his signature then took sole custody and control of the 24 TS vials.

[REDACTED]

Exhibit 22





For intravenous use.
See package insert for full prescribing information.
Keep in an upright position.
Do not shake in the outer carton.
Use as directed by your doctor.

POM

Thiopental Injection BP 25 x 500mg vials

Each 20ml vial of powder for solution for injection contains: Thiopental sodium BP 500mg.

Contains no preservative.

For intravenous use.

The contents of the 500mg vial should be reconstituted with 20ml of Water for injections for a 2.5% (w/v) solution or 10ml of Water for injections for a 5.0% (w/v) solution and administered by intravenous injection.

Store reconstituted solution between 2°C and 8°C in an upright position and use within 7 hours. Use once following reconstitution and discard any residue.

KEEP OUT OF REACH AND
SIGHT OF CHILDREN

Do not store above 25°C

Keep container in outer carton.

Administration and dosage: see SPC.

To be used as directed by your doctor.

Exp: 05 2014
Lot: [REDACTED]

Exhibit 23

From: Kernan, Scott@CDCR
To: [REDACTED]@CDCR; Duffy, Brian@CDCR
Subject: FW: Execution Protocol Drugs
Date: Wednesday, September 29, 2010 10:25:03 AM

From: [REDACTED]
Sent: Wednesday, September 29, 2010 10:25:26 AM
To: Kernan, Scott@CDCR
Subject: Re: Execution Protocol Drugs
Auto forwarded by a Rule

Scott:

We will check it out and let you know.

[REDACTED]

----- Original Message -----
From: "Kernan, Scott@CDCR" <Scott.Kernan@cdcr.ca.gov>
To: [REDACTED]
Sent: Wednesday, September 29, 2010 10:19 AM
Subject: FW: Execution Protocol Drugs

[REDACTED]

Please check out this email string. Sounds like Arizona has found a way to get it via customs. I am calling AZ this morning and see if they will lend us enough for one execution and try to contact the vendor and see if they can get us additional quantity. What do you think?

Scott

-----Original Message-----
From: McAuliffe, John@CDCR
Sent: Tuesday, September 28, 2010 6:21 PM
To: Kernan, Scott@CDCR
Subject: Fw: Execution Protocol Drugs

Fyi

----- Original Message -----
From: CHARLES FLANAGAN [REDACTED]
To: McAuliffe, John@CDCR
Cc: THERESE SCHROEDER [REDACTED]
Sent: Tue Sep 28 17:38:36 2010
Subject: Execution Protocol Drugs

John:

As we discussed on the phone today, we have followed the lead of [REDACTED] and purchased the drugs we need from a company in London. Frankly, there was no possibility of getting the Thiopental Sodium/Sodium Pentothal from any source in the U.S., to include from any of the departments of corrections in other states that use the same 3-drug protocol as us.

Exhibit 24

The name of the company and the person with whom we arranged the purchase is:



We were able to purchase enough of each drug in our protocol for each of the upcoming executions:

Sodium Pentothol as Thiopental Sodium (could not acquire in U.S.)
Pancuronium Bromide (could not acquire enough in the U.S.)
Potassium Chloride (could get in the U.S., but not necessarily in time).

We understand that [REDACTED] has still not received their drugs and that this may be due to the process of getting the shipment through Customs and the FDA. We have followed the following process to try and expedite the shipment through Customs and the FDA to us:

- We hired our own customs broker, locally, and mandated that the sender, who actually hires Fed Ex to transport, fills out the paperwork to ensure Fed Ex uses our broker, not theirs.

- We ensured that Fed Ex knew, and we documented clearly on all forms, that the "Port of Unladen" be Memphis, TN (the Fed Ex hub for all overseas transports), and the "Port of Entry" be Phoenix, AZ. This gives absolute jurisdiction to the Customs and FDA to the local people and not to those offices in Memphis.

- We called and explained to the [REDACTED] what we were doing and why, as well as the time-sensitivity and criticality of the issue. He provided us with e-mail verification that the shipment was to be expedited through customs.

- We called and spoke with the [REDACTED], explaining the same issues and background as we did with Customs (and Customs had already communicated their promise of expeditious handling and why to the FDA). He notified his chain of command to Washington DC, with his recommendation that the shipment be processed expeditiously to us as it was for the purpose of executions and not for use by the general public. That was approved.

- We communicated the same issues to the local Fed Ex folks, who have been helpful in ensuring the refrigerated drugs be refrigerated while held in Phoenix for the few hours between arrival and customs clearance.

- We are sending our Pharmacy Program Manager, along with the Deputy Warden of Operations for the Florence prison (where executions are performed and the drugs are stored) to meet with the FDA official. The FDA will photograph and inventory the contents of the shipment in the presence of our staff. He will then turn the drugs over to us to transport to our secure storage at the prison.

This has been a very staff-intensive and difficult road. I anticipate having the drugs at some time between 0830 and 1000 hrs. tomorrow morning. That

Exhibit 25

From: Cate, Matt@CDCR
To: [REDACTED]
Subject: FW: Execution Protocol Drugs
Date: Wednesday, September 29, 2010 4:52:25 PM

From: Kernan, Scott@CDCR
Sent: Wednesday, September 29, 2010 4:52:22 PM
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: FW: FW: Execution Protocol Drugs
Auto forwarded by a Rule

Written confirmation. I am arranging to have OCS agents pick up the drug and transport directly to SQ. When I tie it down I'll give you an ETA.

Scott

-----Original Message-----

From: CHARLES FLANAGAN [REDACTED]
Sent: Wednesday, September 29, 2010 4:40 PM
To: Kernan, Scott@CDCR
Cc: CARSON McWILLIAMS; ROBERT PATTON
Subject: Re: FW: Execution Protocol Drugs

Scott:

To confirm our verbal conversation, Director Ryan has authorized the Arizona Department of Corrections (ADC) to provide you with 12 grams of the Thiopental Sodium we have just acquired. You also have our thanks for the Pancuronium Bromide your agency has provided to ADC. Please let us know when your employees would like to arrive at the Arizona State Prison Complex-Florence, located at Florence, Arizona, in order to pick up the drugs, as you indicated this is your preferred method of delivery and transportation.

Warden Carson McWilliams will facilitate the transfer to your staff. His contact information is:

[REDACTED]

I understand from you that your staff will contact him tomorrow morning to arrange a time to meet the Warden and take possession of the drug.

Charles

>>> "Kernan, Scott@CDCR" <Scott.Kernan@cdcr.ca.gov> 9/29/2010 11:04 AM >>>
Mr. Flanagan,

Sorry for delay in getting this information. Just wanted to make sure. Appears that we would need 12 grams minimum. We are going to start working now on procuring via the method you so kindly described. Thanks again for your help. Please let me know what your Director thinks and am sure either the Secretary or even the Governor could make a call if necessary. Look forward to hearing from you.

Scott

-----Original Message-----

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Date: Thursday, September 30, 2010 7:54:49 AM

John,

I know we just talked but wanted to be clear. Think I got it figured out how to pay England. Will need specific information on quantity, order numbers, company license number, total costs and location/address to send bill. One important fact I learned is that if shipping or customs fees is itemized on their bill it gets into some state bureaucracy we want to avoid. Ask them if they can just include the costs of shipping directly in the bill without itemizing it. When I get the information I will have necessary paperwork done immediately to affect payment. Thx

Scott

Exhibit 26

Subject: FW: Thiopental Injection
Importance: High

Thank you again here is the information and email.
John McAuliffe

From: [REDACTED]
Sent: Thursday, September 30, 2010 5:27 AM
To: McAuliffe, John@CDCR
Subject: Thiopental Injection
Importance: High

30-09-10

Dear Mr. McAuliffe,

Thank you for your call and thank you for your interest in [REDACTED]

I would be happy to supply you:

Thiopental Injection , powder for reconstitution, thiopental sodium, 500-mg vial-packs of 25's £196.75 (pounds sterling)
The current expiry date is February 2014.

POTASSIUM CHLORIDE 1.5GM 10ML INJ. PACKS OF 10 £15.55
Expiry date: 01/13

Pancuronium Injection, pancuronium bromide 2 mg/mL, 2-mL amp packs of 10's
£58.73
Expiry date: 11/11

If you could supply me with the following information, I can produce a proforma invoice:
Invoice address
Delivery address, including contact person and contact person phone number

I will dispatch the goods to you by FedEx,
FedEx delivery charges is separate item.

In order to get the product easier through US customs, I think it would be a goods idea for you to write a letter in the department letterhead, attention of US custom and let them know why you need this product. I would include this letter in your shipment.
Please also email or fax me a copy of your DEA license, to include it in your shipment.

Please let me know if you need further information.

Many thanks,
Kind regards

[REDACTED]

Exhibit 27

From: Kernan, Scott@CDCR
To: [REDACTED]@CDCR; Duffy, Brian@CDCR
Subject: FW: ATTN: [REDACTED]
Date: Wednesday, October 06, 2010 10:39:36 AM

From: McAuliffe, John@CDCR
Sent: Wednesday, October 06, 2010 10:38:53 AM
To: [REDACTED]
Cc: Kernan, Scott@CDCR
Subject: [REDACTED]
Auto forwarded by a Rule

Sir
I am forwarding this email to you for your record. CDCR would like to know if this process of obtaining the thiopental (Duty, Broker, any additional fees to include [REDACTED] ees) could be billed to CDCR as one invoice? Additionally, can you give a possible estimate as to how long this process will take before we receive the thiopental? Again, thank you for your assistance.
John McAuliffe

From: [REDACTED]
Sent: Wednesday, October 06, 2010 1:34 AM
To: McAuliffe, John@CDCR
Subject: Re: [REDACTED]

Thank you. I'll make DEA's import/export unit aware of this matter.

[REDACTED]

From: McAuliffe, John@CDCR <John.McAuliffe@cdcr.ca.gov>
To: [REDACTED]
Cc: Kernan, Scott@CDCR <Scott.Kernan@cdcr.ca.gov>
Sent: Tue Oct 05 14:08:55 2010
Subject: [REDACTED]

[REDACTED]
Thank you for the list of companies listed with the DEA to import Thiopental. We have contacted [REDACTED] who has initially agreed to procure the Thiopental from London. We gave [REDACTED] your email as a point of contact with DEA since you know exactly what we have been doing and to whom we have been in contact with in your Department. Again thank you for your help and assistance.
John McAuliffe

Exhibit 28

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection
Date: Thursday, September 30, 2010 2:19:00 PM

When he responds please get a name and number of superior who can approve an exemption for this specific purpose. I'll call or even get Matt or somebody in Gov's office to call. Thx

Scott

From: McAuliffe, John@CDCR
Sent: Thursday, September 30, 2010 1:59 PM
To: Kernan, Scott@CDCR
Subject: Re: Thiopental Injection

No, DEA tracks drugs by Dr.'s DEA #. Since we can no longer use pharmacy at SQ (which would answer your question as yes) the importer would be [REDACTED] with final shipment into the USA identified as SQ. Dr.s can not import/export scheduled drugs unless DEA approves. That is why we asked the Dr's to to get an additional DEA # with SQ address so that we could request DEA to approve the Dr's DEA # for import to SQ thus eliminating the need for [REDACTED] I finally talked to [REDACTED] who is in charge of import/export division and he acknowledged receiving our letter. Unfortunately he said all import approvals are above him? [REDACTED] or is approving authority). [REDACTED] did say he would talk to his bosses and get back to me. That was 3 hours ago.
John

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Sent: Thu Sep 30 13:33:57 2010
Subject: RE: Thiopental Injection

Does this mean that we can be identified as the importer using our doc's DEA number?

From: McAuliffe, John@CDCR
Sent: Thursday, September 30, 2010 12:56 PM
To: Kernan, Scott@CDCR
Subject: FW: Thiopental Injection

Scott
Please look at and advise and I will complete.....
John

From: [REDACTED]
Sent: Thursday, September 30, 2010 12:50 PM
To: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection

I need to know the entity that will serve as the actual importer...

- Name of entity (California Department of Corrections)
- Address of entity
- DEA Registration #

Exhibit 29

From: [REDACTED]
To: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection
Date: Monday, October 04, 2010 12:38:30 PM

John,

[REDACTED] does not have an existing Controlled Substance Import License to support Thiopental Sodium and does not wish to obtain the license for import of this material due to the risk of being the importer of record.

I wish you all the best.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: McAuliffe, John@CDCR [mailto:John.McAuliffe@cdcr.ca.gov]
Sent: Thursday, September 30, 2010 12:05 PM
To: [REDACTED]
Subject: FW: Thiopental Injection
Importance: High

[REDACTED]
Thank you again here is the information and email.
John McAuliffe

From: [REDACTED]
Sent: Thursday, September 30, 2010 5:27 AM
To: McAuliffe, John@CDCR
Subject: Thiopental Injection
Importance: High

30-09-10

Dear Mr. McAuliffe,

Thank you for your call and thank you for your interest in [REDACTED]

I would be happy to supply you:

Thiopental Injection , powder for reconstitution, thiopental sodium, 500-mg vial packs of 25's £196.75 (pounds sterling)

The current expiry date is February 2014.

POTASSIUM CHLORIDE 1.5GM 10ML INJ. PACKS OF 10 £15.55

Exhibit 30

From: Alston, Steve M@CDCR
To: Kernan, Scott@CDCR
Cc: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection
Date: Thursday, September 30, 2010 3:51:45 PM
Importance: High

Scott,

Here is our take on the issue:

- The attached MSA is a vendor provided agreement covering a number of services, which, based on your note below, we should not sign.
- Based on your note this appears to be a straight purchase and not a service contract. Consequently, if [REDACTED] is in fact the vendor of choice, we will need to see if they will accept a CDCR issued purchase order.
- If you want to pursue a non-competitive bid purchase, then a justification will need to be developed explaining why this cannot go out for bid.
- The dollar value of the purchase will dictate required approvals:
 - Less than \$5,000 can be approved by OBS without an NCB.
 - If the purchase is \$5-25,000 an NCB will be required, but will not require DGS review / approval.
 - If the purchase is in excess of \$25,000 then DGS review / approval will be required.

Hope this helps!

Steve

From: Kernan, Scott@CDCR
Sent: Thursday, September 30, 2010 1:44 PM
To: Alston, Steve M@CDCR
Cc: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection

Steve,

Thanks for your help. Needs to be addressed confidentially.

I assume the 3 year noted in the agreement is standard. Fact is we are buying enough of the drugs to last until 2014 and would not think, but not impossible, that we would need any more during the three years. So one time transaction.

I'll have to get back to you on cost. Don't know.

The contractor would facilitate the one time purchase of the drug and we would take possession

Exhibit 31

From: McAuliffe, John@CDCR
To: [REDACTED]
Subject: Fw: DEA Registered Importers of Thiopental
Date: Monday, October 04, 2010 2:53:57 PM
Attachments: Importers of Thiopental.xml

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Cc: Duffy, Brian@CDCR
Sent: Mon Oct 04 14:50:26 2010
Subject: FW: DEA Registered Importers of Thiopental

John,

Here is what DEA gave me. They are unwilling to provide a waiver. I would think we need to engage off this list and see if any are willing to help. Would you like Brian to help? I would like to document who we talked to and if necessary I will engage Matt or Gov Office to assist. Let me know what you think.

By the way, I called the head guy this morning and that is how we got a hold of [REDACTED]

Scott

From: [REDACTED]
Sent: Monday, October 04, 2010 1:19 PM
To: Kernan, Scott@CDCR
Subject: DEA Registered Importers of Thiopental

Attached is a spreadsheet containing companies who are specifically registered with DEA to import Thiopental. We are looking to send you an expanded list of companies as Thiopental belongs to a larger class of barbiturates. I'll send additional information if the additional importers are pertinent to your issue.

<<Importers of Thiopental.xml>>

[REDACTED]

[REDACTED]

Office of Diversion Control

Drug Enforcement Administration

[REDACTED]

[REDACTED]

Exhibit 32

From: Cate, Matt@CDCR
To: [REDACTED]
Subject: FW: sodium thiopental
Date: Wednesday, September 29, 2010 8:10:53 AM

From: Kernan, Scott@CDCR
Sent: Wednesday, September 29, 2010 8:10:49 AM
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: FW: sodium thiopental
Auto forwarded by a Rule

Fyi

Scott

From: [REDACTED]
Sent: Wednesday, September 29, 2010 6:05 AM
To: Kernan, Scott@CDCR
Cc: [REDACTED]
Subject: sodium thiopental

Scott:

Today's article in the Texas prison system's back yard. It is unfortunate that Texas would not share some of it's "well stocked" supply to help sister states but down the road they may need help in some other way and this position does not help their image. Nevertheless, in the prison business things are always changing and Texas is no exception. Sorry we were not able to help more.

Best regards,

[REDACTED]

The Huntsville Item, Huntsville, TX

September 29, 2010

Texas well stocked with lethal injection drugs

From Staff and Wire Reports

HUNTSVILLE — Despite a nationwide shortage of one of a trio of drugs used in the lethal injection of condemned inmates, Texas is well stocked with the drug, sodium thiopental, according to Texas prison officials in Huntsville.

Some executions in the U.S. have been put on hold because of a shortage of the drug — an anesthetic that in Texas renders the condemned inmate unconscious before other drugs in the lethal cocktail are administered.

“Texas has an ample supply of the drug in reserve so we have not been affected by the nationwide shortage,” said Michelle Lyons, spokeswoman for the Texas Department of Criminal Justice. “Currently, there are three executions scheduled to take place through the end of the year, and we have a supply sufficient to carry out those executions.”

TDCJ has requested an opinion from the Texas Attorney General in an move to prevent disclosure of how much sodium thiopental it has on hand, Lyons said.

Several of the 35 states that rely on lethal injection are either scrambling to find sodium thiopental or considering using another drug. But both routes are strewn with legal or ethical roadblocks.

The shortage delayed an Oklahoma execution last month and led Kentucky’s governor to postpone the signing of death warrants for two inmates. Arizona is trying to get its hands on the drug in time for its next execution, in late October. California said the shortage will force it to stop executions on Friday, three hours after an inmate is scheduled to die, when its stock expires.

The sole U.S. manufacturer, Hospira Inc. of Lake Forest, Ill., has blamed the shortage on unspecified problems with its raw-material suppliers and said new batches of sodium thiopental will not be available until January at the earliest.

Nine states have a total of 17 executions scheduled between now and the end of January, including Missouri, Ohio, Oklahoma, Tennessee and Texas.

“We are working to get it back onto the market for our customers as soon as possible,” Hospira spokesman Dan Rosenberg said.

But at least one death penalty expert was skeptical of Hospira’s explanation, noting that the company has made it clear it objects to using its drugs for executions. Hospira also makes the two other chemicals used in lethal injections.

Sodium thiopental is a barbiturate, used primarily to anesthetize surgical patients and induce medical comas. It is also used to help terminally ill people commit suicide and sometimes to euthanize animals.

Thirty-three of the states that have lethal injection employ the three-drug combination that was created in the 1970s: First, sodium thiopental is given by syringe to put the inmate to sleep. Then two other drugs are administered: pancuronium bromide, which paralyzes muscles, and potassium chloride, which stops the heart.

Ohio and Washington state use just one drug to carry out executions: a single, extra-large dose of sodium thiopental.

Hospira has blamed the shortage on “raw-material supplier issues” since last spring, first promising availability in July, then October, then early 2011. The company has refused to elaborate on the problem. But according to a letter obtained by The Associated Press from the Kentucky governor’s office, Hospira told state officials that it lost its sole supplier of the drug’s active ingredient and was trying to find a new one.

As for the possibility of obtaining the drug elsewhere, the Food and Drug Administration said there are no FDA-approved manufacturers of sodium thiopental overseas.

Switching to another anesthetic would be difficult for some states. Some, like California, Missouri and Kentucky, adopted their execution procedures after lengthy court proceedings, and changing drugs could take time and invite lawsuits.

Obtaining sodium thiopental from hospitals does not appear to be an option, either. Sodium thiopental has been largely supplanted by other anesthetics in the U.S., and hospitals do not stock much of it.

Also, drug purchasing and use rules — and ethical guidelines that bar the medical profession from getting involved in executions — could prevent hospitals from supplying prisons with the drug, according to industry experts.

“Many of these cases, the victims have waited for 20 years, some of them longer than that. If we’re out of that drug, we need to have an alternative,” said Tennessee state Sen. [REDACTED] Tracy. Tennessee said it has enough of the drug for a November execution and expects to be able to carry out another in December.

Last spring, Hospira, a publicly traded company, sent a letter to all states outlining its discomfort with the use of its drugs for executions, as it has done periodically.

“Hospira provides these products because they improve or save lives and markets them solely for use as indicated on the product labeling,” Kees Groenhout, clinical research and development vice president, said in a March 31 letter to Ohio, obtained by the AP. “As such, we do not support the use of any of our products in capital punishment procedures.”

Jonathan Groner, an Ohio State University surgeon and death penalty opponent who researches the issue, speculated the real reason for the unavailability of sodium thiopental is that its medical uses “have shrunk to the point that the company doesn’t want to make a drug that has no use but to kill people.”

However, Rosenberg, the company spokesman, said the shortage has nothing to do with that.

Last month, an Oklahoma judge delayed the execution of Jeffrey Matthews when the state tried to switch anesthetics after running out of its regular supply in August. Matthews was convicted of killing his 77-year-old great-uncle during a 1994 robbery. Oklahoma finally found enough sodium thiopental from another state, but the court-ordered delay continues.

A few weeks ago, Kentucky’s governor held off signing death warrants — which set execution dates and allow executions to proceed — for two inmates because the state is almost out of sodium thiopental. The state’s lone dose hits its expiration date Oct. 1.

Kentucky officials said they have contacted other states unsuccessfully in a search for sodium thiopental and have gotten calls from states looking for the drug.

Kent Cattani, Arizona's top death penalty prosecutor, said Wednesday that the state doesn't have the drug and he is not optimistic it can be obtained in time for the Oct. 26 execution of Jeffrey Landrigan, who was sentenced to death for stabbing and strangling a man in 1989. But later, an Arizona Corrections Department spokesman said the agency has placed orders for sodium thiopental and expects to have it by next week.

Georgia pressed ahead with an execution Monday night, putting Brandon Joseph Rhode to death for the 1998 killings of Steven Moss, 37, his 11-year-old son Bryan and 15-year-old daughter Kristin during a burglary. Georgia's Corrections Department said it has an "appropriate supply" of sodium thiopental. The California attorney general's office had said it only has enough of the drug for Thursday's scheduled execution of Albert Brown, who was condemned to die in 1982 for the rape and murder of a 15-year-old girl, though a federal appeals court ordered a trial judge late Monday to reconsider his ruling that paved the way for the execution.

Virginia apparently had enough of the drug Thursday to execute Teresa Lewis, the first woman put to death in the U.S. since 2005. But officials suggested the state could have a problem after that, though Virginia has no executions scheduled.

"We are in the same position as every other state regarding this matter," said Larry Traylor, Virginia prisons spokesman. He would not be more specific.

Missouri has enough for an October execution, but its supply expires in January.

Ohio, which spends about \$350 for the drug for each execution, ran out of the amount state procedures call for just three days before a May 13 execution. The state obtained enough in time but won't say where.

Missouri and Kentucky, adopted their execution procedures after lengthy court proceedings, and changing drugs could take time and invite lawsuits.

Obtaining sodium thiopental from hospitals does not appear to be an option, either. Sodium thiopental has been largely supplanted by other anesthetics in the U.S., and hospitals do not stock much of it.

Also, drug purchasing and use rules — and ethical guidelines that bar the medical profession from getting involved in executions — could prevent hospitals from supplying prisons with the drug, according to industry experts.

“Many of these cases, the victims have waited for 20 years, some of them longer than that. If we’re out of that drug, we need to have an alternative,” said Tennessee state Sen. Jim Tracy. Tennessee said it has enough of the drug for a November execution and expects to be able to carry out another in December.

Last spring, Hospira, a publicly traded company, sent a letter to all states outlining its discomfort with the use of its drugs for executions, as it has done periodically.

“Hospira provides these products because they improve or save lives and markets them solely for use as indicated on the product labeling,” Kees Groenhout, clinical research and development vice president, said in a March 31 letter to Ohio, obtained by the AP. “As such, we do not support the use of any of our products in capital punishment procedures.”

Jonathan Groner, an Ohio State University surgeon and death penalty opponent who researches the issue, speculated the real reason for the unavailability of sodium thiopental is that its medical uses “have shrunk to the point that the company doesn’t want to make a drug that has no use but to kill people.”

However, Rosenberg, the company spokesman, said the shortage has nothing to do with that.

Last month, an Oklahoma judge delayed the execution of Jeffrey Matthews when the state tried to switch anesthetics after running out of its regular supply in August. Matthews was convicted of killing his 77-year-old great-uncle during a 1994 robbery. Oklahoma finally found enough sodium thiopental from another state, but the court-ordered delay continues.

A few weeks ago, Kentucky’s governor held off signing death warrants — which set execution dates and allow executions to proceed — for two inmates because the state is almost out of sodium thiopental. The state’s lone dose hits its expiration date Oct. 1.

Kentucky officials said they have contacted other states unsuccessfully in a search for sodium thiopental and have gotten calls from states looking for the drug.

Kent Cattani, Arizona’s top death penalty prosecutor, said Wednesday that the state doesn’t have the drug and he is not optimistic it can be obtained in time for the Oct. 26 execution of Jeffrey Landrigan, who was sentenced to death for stabbing and strangling a man in 1989. But later, an Arizona Corrections Department spokesman said the agency has placed orders for sodium thiopental and expects to have it by next week.

Georgia pressed ahead with an execution Monday night, putting Brandon Joseph Rhode to death

there are no FDA-approved manufacturers of sodium thiopental overseas.

Switching to another anesthetic would be difficult for some states. Some, like California, Missouri and Kentucky, adopted their execution procedures after lengthy court proceedings, and changing drugs could take time and invite lawsuits.

Obtaining sodium thiopental from hospitals does not appear to be an option, either. Sodium thiopental has been largely supplanted by other anesthetics in the U.S., and hospitals do not stock much of it.

Also, drug purchasing and use rules — and ethical guidelines that bar the medical profession from getting involved in executions — could prevent hospitals from supplying prisons with the drug, according to industry experts.

“Many of these cases, the victims have waited for 20 years, some of them longer than that. If we’re out of that drug, we need to have an alternative,” said Tennessee state Sen. Jim Tracy. Tennessee said it has enough of the drug for a November execution and expects to be able to carry out another in December.

Last spring, Hospira, a publicly traded company, sent a letter to all states outlining its discomfort with the use of its drugs for executions, as it has done periodically.

“Hospira provides these products because they improve or save lives and markets them solely for use as indicated on the product labeling,” Kees Groenhout, clinical research and development vice president, said in a March 31 letter to Ohio, obtained by the AP. “As such, we do not support the use of any of our products in capital punishment procedures.”

Jonathan Groner, an Ohio State University surgeon and death penalty opponent who researches the issue, speculated the real reason for the unavailability of sodium thiopental is that its medical uses “have shrunk to the point that the company doesn’t want to make a drug that has no use but to kill people.”

However, Rosenberg, the company spokesman, said the shortage has nothing to do with that.

Last month, an Oklahoma judge delayed the execution of Jeffrey Matthews when the state tried to switch anesthetics after running out of its regular supply in August. Matthews was convicted of killing his 77-year-old great-uncle during a 1994 robbery. Oklahoma finally found enough sodium thiopental from another state, but the court-ordered delay continues.

A few weeks ago, Kentucky’s governor held off signing death warrants — which set execution dates and allow executions to proceed — for two inmates because the state is almost out of sodium thiopental. The state’s lone dose hits its expiration date Oct. 1.

Kentucky officials said they have contacted other states unsuccessfully in a search for sodium thiopental and have gotten calls from states looking for the drug.

Kent Cattani, Arizona’s top death penalty prosecutor, said Wednesday that the state doesn’t have the drug and he is not optimistic it can be obtained in time for the Oct. 26 execution of Jeffrey Landrigan, who was sentenced to death for stabbing and strangling a man in 1989. But later, an Arizona Corrections Department spokesman said the agency has placed orders for sodium

there are no FDA-approved manufacturers of sodium thiopental overseas.

Switching to another anesthetic would be difficult for some states. Some, like California, Missouri and Kentucky, adopted their execution procedures after lengthy court proceedings, and changing drugs could take time and invite lawsuits.

Obtaining sodium thiopental from hospitals does not appear to be an option, either. Sodium thiopental has been largely supplanted by other anesthetics in the U.S., and hospitals do not stock much of it.

Also, drug purchasing and use rules — and ethical guidelines that bar the medical profession from getting involved in executions — could prevent hospitals from supplying prisons with the drug, according to industry experts.

“Many of these cases, the victims have waited for 20 years, some of them longer than that. If we’re out of that drug, we need to have an alternative,” said Tennessee state Sen. Jim Tracy. Tennessee said it has enough of the drug for a November execution and expects to be able to carry out another in December.

Last spring, Hospira, a publicly traded company, sent a letter to all states outlining its discomfort with the use of its drugs for executions, as it has done periodically.

“Hospira provides these products because they improve or save lives and markets them solely for use as indicated on the product labeling,” Kees Groenhout, clinical research and development vice president, said in a March 31 letter to Ohio, obtained by the AP. “As such, we do not support the use of any of our products in capital punishment procedures.”

Jonathan Groner, an Ohio State University surgeon and death penalty opponent who researches the issue, speculated the real reason for the unavailability of sodium thiopental is that its medical uses “have shrunk to the point that the company doesn’t want to make a drug that has no use but to kill people.”

However, Rosenberg, the company spokesman, said the shortage has nothing to do with that.

Last month, an Oklahoma judge delayed the execution of Jeffrey Matthews when the state tried to switch anesthetics after running out of its regular supply in August. Matthews was convicted of killing his 77-year-old great-uncle during a 1994 robbery. Oklahoma finally found enough sodium thiopental from another state, but the court-ordered delay continues.

A few weeks ago, Kentucky’s governor held off signing death warrants — which set execution dates and allow executions to proceed — for two inmates because the state is almost out of sodium thiopental. The state’s lone dose hits its expiration date Oct. 1.

Kentucky officials said they have contacted other states unsuccessfully in a search for sodium thiopental and have gotten calls from states looking for the drug.

Kent Cattani, Arizona’s top death penalty prosecutor, said Wednesday that the state doesn’t have the drug and he is not optimistic it can be obtained in time for the Oct. 26 execution of Jeffrey Landrigan, who was sentenced to death for stabbing and strangling a man in 1989. But later, an Arizona Corrections Department spokesman said the agency has placed orders for sodium

Exhibit 33

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

13
14
15
16
17
18
19
20
21
22
23
24
25

15
16
17
18
19
20
21
22
23
24
25

19
20
21
22
23
24
25

23

24

25

24

25

1 FOR THE PLAINTIFF: MCBREEN & SENIOR
2 BY: DAVID SENIOR
2029 CENTURY PARK EAST
3 3RD FLOOR
LOS ANGELES, CA 90067

4 FOR THE PLAINTIFF: KEKER & VAN NEST, LLP
PACIFIC NEWS BY: JAY KRISHNAN
5 SERVICE 710 SANSOME STREET
SAN FRANCISCO, CA 94111

6
7 FOR THE PLAINTIFF: ACLU, NORTHERN CALIFORNIA
PACIFIC NEWS BY: MICHAEL RISHER
8 SERVICE 39 DRUMM STREET
SAN FRANCISCO, CA 94111

9
10 FOR THE PLAINTIFF: JENNER & BLOCK, LLP
BY: RICHARD STEINKEN
11 ONE IBM PLAZA
CHICAGO, IL 60611

12
13 ALSO PRESENT: JEAN DOHERTY
14
15
16
17
18
19
20
21
22
23
24
25

1 SAN JOSE, CALIFORNIA

DECEMBER 2, 2010

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE COURT: THIS IS THE MATTER OF MORALES
6 VERSUS TILTON, AND PACIFIC NEWS SERVICE VERSUS
7 TILTON.

8 COULD I GET APPEARANCES, PLEASE.

9 MR. GRELE: GOOD AFTERNOON, YOUR HONOR.
10 JOHN GRELE ON BEHALF OF PLAINTIFFS MICHAEL MORALES.

11 MR. SENIOR: DAVID SENIOR ON BEHALF OF
12 MICHAEL MORALES.

13 MS. DOHERTY: JEAN DOHERTY.

14 MR. KRISHNAN: GOOD AFTERNOON,
15 YOUR HONOR. JAY KRISHNAN ON BEHALF OF PACIFIC NEWS
16 SERVICE.

17 MR. RISHER: MICHAEL RISHER ON BEHALF OF
18 PACIFIC NEWS SERVICE.

19 THE COURT: MR. STEINKEN, ARE YOU WITH
20 US?

21 MR. STEINKEN: I AM, YOUR HONOR.

22 THE COURT: OKAY. THANK YOU.

23 MR. GOLDMAN: GOOD AFTERNOON, YOUR HONOR.
24 JAY GOLDMAN ON BEHALF OF DEFENDANTS.

25 MR. QUINN: GOOD AFTERNOON. MICHAEL

1 AND PLAINTIFF'S STATE THAT WHAT THEY ARE
2 CONCERNED ABOUT IS TRANSPARENCY, BUT REALLY WHAT
3 THEY ARE REALLY DOING IS ATTEMPTING TO ALTER THE
4 EXECUTION PROCEEDINGS TO CHANGE THE MANNER IN WHICH
5 THE STATE CONDUCTS THE PROCEEDINGS.

6 AND THERE'S NOTHING IN THE 1ST AMENDMENT
7 OR THE CFAC CASE THAT GIVES THEM THAT RIGHT. SO WE
8 WOULD JUST ASSERT THAT.

9 THE COURT: OKAY. THANK YOU. I GOT WHAT
10 I NEED ON THAT.

11 SO LET ME TALK TO YOU A LITTLE BIT ABOUT
12 WHERE WE GO FROM HERE.

13 I'M GOING TO TRY TO GET AN ORDER OUT --
14 TODAY IS THE 2ND -- END OF NEXT WEEK, I THINK, BY
15 THE LATEST. AND I WOULD LIKE TO TALK ABOUT
16 DISCOVERY BECAUSE I THINK THERE CLEARLY IS GOING TO
17 BE LITIGATION ABOUT THAT.

18 FIRST OF ALL, I JUST HAPPENED TO READ
19 THIS MORNING THAT THERE WAS A DISCLOSURE ORDER IN
20 THE SAN FRANCISCO SUPERIOR COURT.

21 IS THE STATE PREPARED TO COMMENT ON THAT
22 ABOUT THE SOURCE OF THE THIOPENTAL?

23 MR. QUINN: WE ARE NOT PREPARED TO
24 COMMENT. WE FILED A NOTICE LAST WEEK THAT WE
25 WERE --

1 THE COURT: I'VE GOTTEN THE TWO NOTICES
2 THAT YOU FILED ABOUT THE FACT THAT THE STATE HAS
3 THIOPENTAL OR IS ABOUT TO RECEIVE IT. I THOUGHT A
4 JUDGE ORDERED IN SAN FRANCISCO -- ISSUED AN ORDER
5 ABOUT THE SOURCE OF THE THIOPENTAL.

6 MR. QUINN: I'M NOT AWARE OF THAT.

7 MR. GRELE: YES, YOUR HONOR, I SAW THE
8 ORDER. I BELIEVE MR. RISHER WAS INVOLVED IN THAT,
9 SO MAYBE HE CAN COMMENT ON IT.

10 I WANT TO SAY FROM OUR PERSPECTIVE THERE
11 WAS A COUPLE THINGS NOT PART OF THE PUBLIC RECORD I
12 REQUEST THAT I THINK ARE MORE GERMANE TO OUR
13 LITIGATION, AND WE ARE PREPARED TO FILE SOMETHING.

14 THE COURT: WELL, THAT'S -- THE REASON
15 I'M RAISING IT IS NOT THAT I HAVE ANY INTEREST IN
16 MEDDLING IN A STATE COURT CASE THAT HAS NOTHING TO
17 DO WITH THIS ONE. IT'S JUST THAT THERE'S
18 INFORMATION THAT'S LIKELY TO COME OUT OR AT LEAST
19 THAT'S ORDERED RELEASED IN THAT CASE WHICH CLEARLY
20 BEARS ON THIS CASE.

21 AND RATHER THAN HAVE DUPLICATIVE
22 LITIGATION ABOUT WHERE DID THIOPENTAL COME FROM AND
23 IS IT PROPERLY MADE, I DON'T WANT TO HAVE TO DEAL
24 WITH THAT.

25 MR. GRELE: WELL, WE HAVEN'T SEEN THE

1 STATE'S RESPONSE THERE. AND I BELIEVE -- WELL, I
2 DON'T KNOW WHAT THEY ARE GOING TO ASSERT IN TERMS
3 OF THEIR ABILITY TO WITHHOLD THAT INFORMATION IN
4 THE FACE OF A COURT ORDER.

5 BUT WHAT ALSO I WANTED TO SAY TO THE
6 COURT WAS I HAVE REVIEWED THAT LITIGATION SO I'M
7 FAMILIAR WITH IT AND I CAN TELL THE COURT THERE ARE
8 MAYBE FIVE OR SIX QUESTIONS WE HAVE ABOUT THE
9 THIOPENTAL AND THE DISCLOSURE, IF IT'S IN FACT
10 ACCOMPLISHED, MAYBE ADDRESSES TWO OR THREE OF THEM.

11 THE COURT: ALL RIGHT.

12 SO IT DOESN'T GET THIS COURT OUT OF THE
13 WOODS ON THIOPENTAL.

14 MR. GRELE: EXACTLY.

15 THE COURT: BUT I GUESS THE REASON I
16 RAISE THIS, AND I'M KIND OF COMING IN BACKWARDS, IS
17 TO THE EXTENT THAT THESE ISSUES HAVE BEEN LITIGATED
18 OR ARE BEING LITIGATED IN THE STATE COURT, I DON'T
19 WANT TO HAVE TO DEAL WITH YOUR DISPUTES ABOUT THEM
20 HERE.

21 IN OTHER WORDS, THERE'S A HUGE RECORD IN
22 THE MARIN CASE ABOUT THE MANNER IN WHICH THE REGS
23 WERE ADOPTED. AND IT SEEMS TO ME ALL OF THAT OUGHT
24 TO BE, TO THE EXTENT THAT IT'S GERMANE TO THIS
25 CASE, THERE SHOULDN'T BE A FIGHT ABOUT. I DON'T

Exhibit 34

MENNEMEIER, GLASSMAN
& STROUD LLP

980 9th Street • Suite 1700 • Sacramento, California 95814-2736
Telephone 916-553-4000 • Facsimile 916-553-4011

e-mail
gosling@mgsllaw.com

Direct Dial
551-2581

December 7, 2010

Via Federal Express

Michael T. Risher
Linda Lye
American Civil Liberties Union
Foundation of Northern California
39 Drumm Street, Second Floor
San Francisco, California 94111

Re: *American Civil Liberties Union of Northern California v. California
Department of Corrections & Rehabilitation*

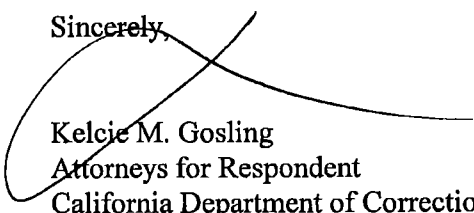
Dear Mr. Risher and Ms. Lye:

I enclose documents Bates-stamped numbers 1 through 1121. As I advised Ms. Lye in our telephone conversation this morning, we have the documents available for pick up in Sacramento today but, at Ms. Lye's request, are instead sending them to you via Federal Express for priority delivery tomorrow.

You will note some missing Bates stamp numbers. They represent documents that have been withheld from production due to an applicable privilege or exemption, and will be listed on the log we provide you in accordance with the Court's order.

Please call me if you have any questions about this document production. Thank you.

Sincerely,



Kelcie M. Gosling
Attorneys for Respondent
California Department of Corrections and Rehabilitation

KMG/me

Exhibit 35

MENNEMEIER, GLASSMAN
& STROUD LLP

980 9th Street • Suite 1700 • Sacramento, California 95814-2736
Telephone 916-553-4000 • Facsimile 916-553-4011

e-mail
gosling@mgsllaw.com

Direct Dial
551-2581

December 10, 2010

Via Email

Michael T. Risher
Linda Lye
American Civil Liberties Union
Foundation of Northern California
39 Drumm Street, Second Floor
San Francisco, California 94111

Re: *American Civil Liberties Union of Northern California v. California
Department of Corrections & Rehabilitation*

Dear Mr. Risher and Ms. Lye:

I enclose CDCR's list of documents that have been redacted or withheld from production. We have used numbers to indicate the reason for redacting or withholding each document, as follows:

- 1 - Attorney Client Privilege
- 2 - Attorney Work Product
- 3 - Safety/Security
- 4 - Non-responsive to request
- 5 - Correspondence with Governor's Office
- 6 - Personal Information
- 7 - Pending Litigation
- 8 - Official Information
- 9 - Protective Order
- 6255 - balancing test or deliberative process

Due to time constraints, and the volume of documents reviewed, CDCR has been unable at this time to log approximately 1879 pages of documents, predominantly emails, that were sent either to or from an attorney. Based on its review, CDCR believes that the bulk of these documents are protected by the attorney-client privilege, the attorney work product doctrine, the exemption for records relating to pending litigation, and/or the deliberative process

MENNEMEIER, GLASSMAN
& STROUD LLP

Michael T. Risher
Linda Lye
December 10, 2010
Page 2

privilege. As CDCR continues to process these documents, we will immediately forward any non-protected documents to you. But, at this point, they are not described on the log.

Please call contact me to discuss this situation. CDCR is fully committed to complying with the Court's order, and CDCR's staff counsel have been working virtually around the clock to locate, review and produce responsive documents, and redact and log documents that are partially or wholly exempt from disclosure. I will be in the office and checking email throughout the weekend should you wish to talk then.

One additional note about the documents that CDCR has already produced. Due to an apparent software glitch, the program may have inadvertently redacted additional information – that is, information that CDCR did not intend to redact – from some documents. CDCR is working to remedy this situation and provide the ACLU with corrected copies of these documents.

Again, please call me to discuss these issues. And please be assured that we are doing our utmost to provide the ACLU with all responsive, non-protected documents, as well as sufficient information to allow the ACLU to evaluate CDCR's assertion that other documents are exempt from disclosure. The only issue is one of logistics, which we are attempting to resolve.

Thank you for your attention to this matter.

Sincerely,

/s/

Kelcie M. Gosling
Attorneys for Respondent
California Department of Corrections and Rehabilitation

KMG/me
Enclosure

Exhibit 36

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
1		labels			Redact	3,6
2		labels			Redact	3,6
3		labels			Redact	3,6
4	10/6/2010	email	Hildago	Rice, Kernan	withhold	5
5	10/4/2010	email	McAuliffe	Kernan	Redact	3,6
6	10/4/2010	list			withhold	3,6,8,6255
7	10/4/2010	list			withhold	3,6,8,6255
8	10/4/2010	list			withhold	3,6,8,6255
9	9/30/2010	email	Kernan	Chaus	Redact	3,6,9,6255
10					Produce	
11	9/30/2010	email	Kernan	Chaus	Redact	3,6
12	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
13	9/30/2010	email	Kernan		Redact	3,6
14	9/30/2010	email	kernan		Redact	3,6
15	9/30/2010	email	kernan		Redact	3,6
16	9/30/2010	email	Kernan	Chaus	Redact	3,6
17	9/30/2010	email	Kernan	Chaus	Redact	3,6
18	9/30/2010	email	Kernan	Chaus	Redact	3,6
19					Produce	
20	9/30/2010	email	Kernan	Chaus	Redact	3,6
21	9/29/2010	email	Flanagan	Kernan	Redact	3,6
22					Produce	
23	9/29/2010	email	Cate	Kernan	Redact	3,6
24	9/29/2010	email	Cate	Kernan	Redact	3,5,6
25	9/29/2010	email	Kernan	McAuliffe	Redact	3,6
26	9/29/2010	email	Kernan	McAuliffe	Redact	3,6
27	9/29/2010	email	Kernan	McAuliffe	Redact	3,6

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
28	9/28/2010	email	Kernan	McAuliffe	Redact	3,6
29	9/28/2010	email	Kernan	McAuliffe	Redact	3,6
30	9/28/2010	email	Kernan	McAuliffe	Redact	3,6
31	9/9/2010	email	Kernan	External	Redact	3,6
32	8/24/2010	email	Kernan	Duffy	Redact	3,6
33	8/24/2010	email	Kernan	Duffy	Redact	3,6
34	8/24/2010	email	Kernan	Duffy	Redact	3,6
35	8/24/2010	email	Kernan, Rice	McAuliffe	Redact	3,6
36	8/24/2010	email	Kernan, Rice	McAuliffe	Redact	3,6
37	8/20/2010	email	Kernan	Duffy	Redact	3,6
38	8/20/2010	email	Kernan	Duffy	Redact	3,6
39	8/17/2010	email	Kernan	Rice	Redact	3,6
40	8/17/2010	email	Kernan	Rice	Redact	3,6,6255
41	8/2/2010	email	Other State	McAuliffe	Redact	3,6,9
42	8/2/2010	email	Kernan	Rice	Redact	3,6,8,6255
43	8/2/2010	email	Kernan	Rice	redact	3,6,8,6255
44	8/17/2010	email	Duffy	McAuliffe	Redact	3,6
45	8/17/2010	email	Duffy	McAuliffe	Redact	3,6,6255
46	8/18/2010	email	Kernan	Duffy	Redact	3,6
47	8/18/2010	email	Kernan	McAuliffe	Redact	3,6
48	8/18/2010	email	Kernan	McAuliffe	Redact	6255
49	8/18/2010	email	Duffy	McAuliffe	Redact	3,6
50	8/18/2010	email	Duffy	McAuliffe	Redact	3,6, 6255
51	8/23/2010	email	Kernan, Cate	Rice	Redact	1, 2, 3, 5, 6
52	8/23/2010	email	Duffy	Kernan	Redact	1, 2, 3, 5, 6
53	8/23/2010	email	Cullen, McAuliffe	Duffy	Redact	1,2,3,5,6,6255
54	8/24/2010	email	External	McAuliffe	Redact	3,6

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
80	9/29/2010	email	Kernan	External	Redact	3,6
81	9/29/2010	email	Kernan	External	Redact	3,6
82	9/29/2010	email	Kernan	External	Redact	3,6
83	9/29/2010	email	Kernan	McAuliffe	Redact	3,5,6
84	9/29/2010	email	Kernan	McAuliffe	Redact	3,5,6
85	9/29/2010	email	Kernan	McAuliffe	Redact	3,5,6
86	9/29/2010	email	Kernan	Chaus	Redact	3,6
87	9/29/2010	email	Kernan	Flanagan	Redact	3,6
88					Produce	
89	9/29/2010	email	Kernan	Chaus	Redact	3,6
90					Produce	
91	9/29/2010	email	Kernan	Chaus	Redact	3,6
92	9/29/2010	email	Kernan	Chaus	Redact	3,6
93	9/29/2010	email	Kernan	Chaus	Redact	3,6
94	9/29/2010	email	Kernan	Chaus	Redact	3,6
95	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
96	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
97	9/30/2010	email	Kernan	Cate	Redact	3,6
98	9/30/2010	email	Kernan	Cate	Redact	3,6
99	9/30/2010	email	Kernan	Chaus	Redact	3,6,6255
100	9/30/2010	email	Kernan	Chaus	Redact	3,6,6255
101	9/30/2010	email	Kernan	McAuliffe	Redact	3,6,6255
102	9/30/2010	email	Kernan	McAuliffe	Redact	3,6,6255
103	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
104	9/30/2010	email	Kernan	McAuliffe	Redact	3,6,6255
105	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
106	9/30/2010	email	Kernan	McAuliffe	Redact	3,6

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
215					Produce	
216					Produce	
217	9/28/2010	email	McAuliffe	Kernan	Redact	1,2,6255
218	9/28/2010	email	McAuliffe	Kernan	Redact	1,2,6255
219	9/28/2010	email	Gaddi, Duffy	Kernan	Redact	3,6,6255,8
220	9/28/2010	email	Gaddi, Duffy	Kernan	Redact	3,6,6255,8
221					Produce	
222					Produce	
223					Produce	
224					Produce	
225					Produce	
226					Produce	
227					Produce	
228					Produce	
229					Produce	
230					Produce	
231					Produce	
232	9/28/2010	email	Rice	Kernan	Redact	3,6
233	9/28/2010	email	McAuliffe	Kernan	Redact	4
234					Produce	3
235	9/28/2010	email	Rice	Kernan	Redact	3,6
236	9/27/2010	email	Rice	Kernan	withhold	1,2,5,6255
237	9/27/2010	email	Rice	Kernan	withhold	1,2,5,6255
238	9/22/2010	email	External	Kernan	Redact	3,6
239	9/22/2010	email	Cate	Kernan	Redact	3,6
240	9/20/2010	email	External	Kernan	Redact	3,6
241	9/20/2010	email	External	Kernan	Redact	3,6

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
269	8/6/2010	email	Cate, Rice	Kernan	Redact	3, 6, 6255
270					Produce	
271	8/4/2010	email	External	Kernan	Redact	3, 6, 9, 10, 6255, 8
272	8/4/2010	email	External	Kernan	Redact	3, 6, 6255
273	8/4/2010	email	Cate, Rice	Kernan	Redact	3, 6, 9, 6255
274	8/4/2010	email	Cate, Rice	Kernan	Redact	3, 6
275					Produce	
276					Produce	
277					Produce	
278	8/2/2010	email	Cate, Rice	Kernan	Redact	3, 6, 6255
279	8/2/2010	email	Cate, Rice	Kernan	Redact	3, 6, 8, 6255
280	8/2/2010	email	Cate, Rice	Kernan	Redact	3, 6
281	8/20/2010	email	McAuliffe	Duffy	Redact	3, 6
282	8/20/2010	email	McAuliffe	Duffy	Redact	3, 6, 6255
283					Produce	
284					Produce	
285	8/24/2010	email	Kernan	Duffy	Redact	3, 6
286	8/24/2010	email	Kernan	Duffy	Redact	3, 6
287	8/24/2010	email	Kernan	Duffy	Redact	3, 6
288	8/24/2010	email	Kernan	Duffy	Redact	3, 6, 6255
289	8/20/2010	email	Kernan	Duffy	Redact	3, 6
290	8/20/2010	email	Kernan	Duffy	Redact	3, 6, 6255
291	8/2/2010	email	Kernan	Duffy	Redact	1, 2, 5, 4
292	9/27/2010	email	Cate	Rice	withhold	1, 2, 7
293	9/27/2010	email	Cate	Rice	withhold	1, 2, 7
294	9/27/2010	email	Cate	Rice	withhold	1, 2, 7
295	9/27/2010	email	Cate	Rice	withhold	1, 2, 7

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
633		attachment			Redact	3,6
634		attachment			Redact	3,6
635		attachment			Redact	3,6
636		attachment			Redact	3,6
637		attachment			Redact	3,6
638	9/30/2010	email	McAuliffe	External	Redact	3,6
639	9/30/2010	email	McAuliffe	Kernan	Redact	3,6,6255
640	9/30/2010	email	McAuliffe	Kernan	Redact	3,6,6255
641	9/30/2010	email	McAuliffe	Kernan	Redact	3,6,6255
642					Produce	
643	9/30/2010	email	Chaus	Kernan	Redact	3,6,6255
644					Produce	
645	9/30/2010	email	McAuliffe	External	Redact	3,6
646	9/30/2010	email	McAuliffe	External	Redact	3,6
647	9/29/2010	email	Chaus	Kernan	Redact	3,6
648					Produce	
649	9/29/2010	email	McAuliffe	Kernan	Redact	3,6
650					Produce	
651	9/29/2010	email	McAuliffe	External	Redact	3,6,9
652	9/29/2010	email	McAuliffe	Kernan	Redact	3,6,5,6255
653	9/29/2010	email	McAuliffe	Kernan	Redact	3,6,5,6255
654	9/29/2010	email	Kernan, McAuliffe, Guirbino	Cullen	Redact	3,6,9,6255
655					produce	
656					Produce	
657	9/29/2010	email	McAuliffe	Kernan	Redact	3,6,6255,8

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
842		attachment			Redact	3,6
843		attachment			Redact	3,6
844					Redact	
845					Redact	
846					Redact	
847					Redact	
848					Redact	
849					Redact	
850					Redact	
851	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
852	9/30/2010	email	Kernan	McAuliffe	Redact	3,6,6255
853	9/30/2010	email	Kernan	McAuliffe	Redact	3,6,6255
854	9/30/2010	email	External	McAuliffe	Redact	3,6
855	9/30/2010	email	External	McAuliffe	Redact	3,6
856	9/30/2010	email	Kernan	McAuliffe	Redact	3,6,6255
857					Produce	
858	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
859	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
860	9/29/2010	email	Kernan	McAuliffe	Redact	3,6,9
861	9/29/2010	email	Cullen	McAuliffe	Redact	3,6,9
862	9/29/2010	email	Kernan	McAuliffe	Redact	3,6,5,6255
863	9/29/2010	email	Kernan	McAuliffe	Redact	3,6,5,6255
864	9/29/2010	email	Kernan	McAuliffe	Redact	3,6,5,6255
865					Produce	
866					Produce	
867	9/29/2010	email	Kernan	McAuliffe	Redact	3,6,6255,8
868	9/29/2010	email	Kernan	McAuliffe	Redact	3,6,6255,8

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
918	8/19/2010	email	Acosta-Hoshall	McAuliffe	Redact	3,6,6255
919	8/17/2010	email	Duffy	McAuliffe	Redact	3,6
920	8/17/2010	email	Duffy	McAuliffe	Redact	3,6
921	8/17/2010	email	Kernan	McAuliffe	Redact	3,6
922	8/17/2010	email	Kernan	McAuliffe	Redact	3,6,6255
923					Produce	
924	8/6/2010	email	Cullen	McAuliffe	Redact	3,6,6255
925					Produce	
926	8/4/2010	email	Kernan	McAuliffe	Redact	3, 6255
927					Produce	
928		attachment			Redact	3,6,9,6255
929		attachment			Redact	3,6,9,6255
930		attachment			Redact	3,6,9,6255
931		attachment			Redact	3,6,9,6255
932	8/4/2010	email	Gaddi	McAuliffe	Redact	6
933	8/2/2010	email	Kernan	McAuliffe	Redact	3,6
934	8/2/2010	email	Kernan	McAuliffe	Redact	3,6
935		attachment			Redact	3,6,9,6255
936		attachment			Redact	3,6,9,6255
937	8/2/2010	email	Other State	McAuliffe	Redact	3,6,9
938	8/2/2010	email	Kernan	McAuliffe	Redact	3,6
939	8/2/2010	email	Kernan	McAuliffe	Redact	3,6,8,6255
940	8/2/2010	email	Kernan	McAuliffe	Redact	3,6
941	9/29/2010	email	McAuliffe	Kernan	Withhold	5, 6255
942	9/29/2010	email	Giurbino	Cullen	Redact	3,6,6255
943	9/29/2010	email	Giurbino	Cullen	Redact	3,6

Exhibit 37

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
1		labels			Redact	3,6
2		labels			Redact	3,6
3		labels			Redact	3,6
4	10/6/2010	email	Hildago	Rice, Kernan	withhold	5
5	10/4/2010	email	McAuliffe	Kernan	Redact	3,6
6	10/4/2010	list			withhold	3,6,8,6255
7	10/4/2010	list			withhold	3,6,8,6255
8	10/4/2010	list			withhold	3,6,8,6255
9	9/30/2010	email	Kernan	Chaus	Redact	3,6,9,6255
10					Produce	
11	9/30/2010	email	Kernan	Chaus	Redact	3,6
12	9/30/2010	email	Kernan	McAuliffe	Redact	3,6
13	9/30/2010	email	Kernan		Redact	3,6
14	9/30/2010	email	kernan		Redact	3,6
15	9/30/2010	email	kernan		Redact	3,6
16	9/30/2010	email	Kernan	Chaus	Redact	3,6
17	9/30/2010	email	Kernan	Chaus	Redact	3,6
18	9/30/2010	email	Kernan	Chaus	Redact	3,6
19					Produce	
20	9/30/2010	email	Kernan	Chaus	Redact	3,6
21	9/29/2010	email	Flanagan	Kernan	Redact	3,6
22					Produce	
23	9/29/2010	email	Cate	Kernan	Redact	3,6
24	9/29/2010	email	Cate	Kernan	Redact	3,5,6
25	9/29/2010	email	Kernan	McAuliffe	Redact	3,6
26	9/29/2010	email	Kernan	McAuliffe	Redact	3,6
27	9/29/2010	email	Kernan	McAuliffe	Redact	3,6

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
323	8/6/2010	email	Cate, Rice	Kernan	Redact	3,6
324	8/6/2010	email	Cate, Rice	Kernan	Redact	3,6
325	9/9/2010	email	Cate, Rice	Kernan	Redact	3,6
326	9/30/2010	email	Cate	Gore	withhold	5, 6255
327	9/30/2010	email	Cate	Gore	withhold	5, 6255
328					Produce	
329					Produce	
330					Produce	
331					Produce	
332					Produce	
333					Produce	
334					Produce	
335					Produce	
336					Produce	
337					Produce	
338	9/29/2010	email	Cate, Rice	Kernan	Redact	3,6
339	9/29/2010				Produce	
340	8/17/2010	email	Cate, Rice	Kernan	Redact	3,6
341	8/17/2010	email	Cate, Rice	Kernan	Redact	3,6,6255
342	8/2/2010	email	Kernan	Rice	Redact	1,2,3,6,8,6255
343	8/2/2010	email	Kernan	Rice	Redact	1,2,3,6,8,6255
344	10/6/2010	email	Cate, Morgan, Hidalgo	Rice	withhold	1,2,7
345	10/6/2010	email	Cate, Morgan, Hidalgo	Rice	withhold	1,2,7
346	10/6/2010	email	Cate, Morgan, Hidalgo	Rice	withhold	1,2,7

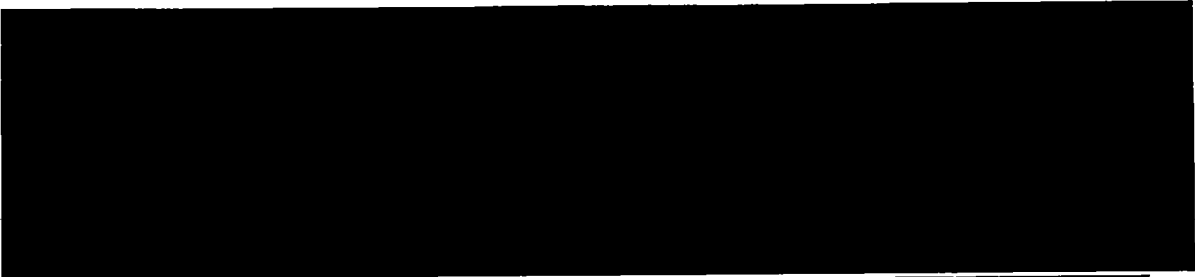
Exhibit 38

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
215					Produce	
216					Produce	
217	9/28/2010	email	McAuliffe	Kernan	Redact	1,2,6255
218	9/28/2010	email	McAuliffe	Kernan	Redact	1,2,6255
219	9/28/2010	email	Gaddi, Duffy	Kernan	Redact	3,6,6255,8
220	9/28/2010	email	Gaddi, Duffy	Kernan	Redact	3,6,6255,8
221					Produce	
222					Produce	
223					Produce	
224					Produce	
225					Produce	
226					Produce	
227					Produce	
228					Produce	
229					Produce	
230					Produce	
231					Produce	
232	9/28/2010	email	Rice	Kernan	Redact	3,6
233	9/28/2010	email	McAuliffe	Kernan	Redact	4
234					Produce	3
235	9/28/2010	email	Rice	Kernan	Redact	3,6
236	9/27/2010	email	Rice	Kernan	withhold	1,2,5,6255
237	9/27/2010	email	Rice	Kernan	withhold	1,2,5,6255
238	9/22/2010	email	External	Kernan	Redact	3,6
239	9/22/2010	email	Cate	Kernan	Redact	3,6
240	9/20/2010	email	External	Kernan	Redact	3,6
241	9/20/2010	email	External	Kernan	Redact	3,6

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
658	9/29/2010	email	McAuliffe	Kernan	Redact	3,6,6255,8
659	9/28/2010	email	McAuliffe	Flannagan	withhold	3,6,6255,8
660	9/28/2010	email	McAuliffe	Flannagan	withhold	3,6,6255,8
661	9/28/2010	email	McAuliffe, Luna	Schroeder	Redact	3,6,6255
662	9/28/2010	email	McAuliffe	Cullen	Redact	3,6,6255
663					Produce	
664	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
665	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
666	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
667	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
668	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
669	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
670	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
671	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
672	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
673	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
674	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
675	9/28/2010	email	McAuliffe	Gaddi	withhold	6255
676	9/28/2010	email	McAuliffe	Kernan	Redact	4
677					Produce	
678					Produce	
679					Produce	
680	9/23/2010	email	McAuliffe	Kernan	Redact	6,3,6255
681	9/23/2010	email	McAuliffe	Schroeder	Redact	3,6,6255
682	9/22/2010	email	McAuliffe	Kernan	Redact	6255
683	9/22/2010	email	McAuliffe	Kernan	Redact	3, 6255
684	9/22/2010	email	Giurbino	McDonald	Redact	3, 6255

ACLU PRA Log						
Bates Number	Date	Type	To	From	Produce, Withhold, or Redact	Reason
1074		attachment			Redact	3,6
1075	9/30/2010	email	Alston	Kernan	Redact	4
1076	9/30/2010	email	Alston	Kernan	Redact	1,2,3,6,6255
1077	9/30/2010	email	Alston	Kernan	Redact	3,6
1078	9/30/2010	email	Alston	Kernan	Redact	3,6
1079	9/30/2010	email	Alston	Kernan	Redact	3,6,4
1080	9/30/2010	email	Alston	Kernan	Redact	1,2,3,6,6255
1081	9/30/2010	email	Alston	Kernan	Redact	1,2,3,6,6255
1082	9/30/2010	email	Alston	Kernan	Redact	3,6,6255
1083	9/30/2010	email	Alston	CDCR	Redact	1,2,3,6,6255,4
1084	9/30/2010	email	Alston	CDCR	Redact	3,6
1085	9/30/2010	email	Alston	CDCR	Redact	3,6
1086	9/30/2010	email	CDCR	Alston	Redact	1,2,3,6,6255,4
1087		attachment			Redact	3,6
1088		attachment			Redact	3,6
1089		attachment			Redact	3,6
1090		attachment			Redact	3,6
1091		attachment			Redact	3,6
1092		attachment			Redact	3,6
1093		attachment			Redact	3,6
1094		attachment			Redact	3,6
1095		attachment			Redact	3,6
1096		attachment			Redact	3,6
1097	9/30/2010	email	CDCR	Alston	Redact	3,6
1098	9/30/2010	email	CDCR	Alston	Redact	3,6
1099	9/30/2010	email	CDCR	Alston	Redact	1,2,3,6,6255,4
1100	9/30/2010	email	CDCR	Alston	Redact	3,6

Exhibit 39




From: [REDACTED]
Sent: Thursday, September 30, 2010 10:48 AM
To: Alston, Steve M@CDJR
Cc: [REDACTED]
Subject: RE: Thiopental Injection

Do you want me to schedule a meeting for us to discuss?

From: Alston, Steve M@CDJR
Sent: Thursday, September 30, 2010 9:52 AM
To: [REDACTED]
Subject: FW: Thiopental Injection

My read of the attached is that it is a service contract and not a purchase as suggested in Scott's note. Additionally, it contains language that I suspect the State would not agree to include full indemnification of the contractor. Lastly, my guess is this would follow the NCB process and likely far exceed our delegated authority.

Before I respond to Scott I am interested in your thoughts.



From: McAuliffe, John@CDJR
Sent: Thursday, September 30, 2010 9:20 AM
To: Kernan, Scott@CDJR
Subject: FW: Thiopental Injection

FYI
John

From: [REDACTED]
Sent: Thursday, September 30, 2010 9:15 AM
To: McAuliffe, John@CDCR
Cc: [REDACTED]
Subject: RE: Thiopental Injection

Received.

I have attached our standard contract (MSA). A Statement of Work (SOW) will define exact work to be conducted.

Please review and redline any issues.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: McAuliffe, John@CDCR [REDACTED]
Sent: Thursday, September 30, 2010 12:05 PM
To: [REDACTED]
Subject: FW: Thiopental Injection
Importance: High

[REDACTED]
Thank you again here is the information and email.
John McAuliffe

From: [REDACTED]
Sent: Thursday, September 30, 2010 5:27 AM
To: McAuliffe, John@CDCR
Subject: Thiopental Injection
Importance: High

30-09-10

Dear Mr. McAuliffe,

Thank you for your call and thank you for your interest in [REDACTED]
I would be happy to supply you:

Thiopental Injection , powder for reconstitution, thiopental sodium, 500-mg vial packs of 25's £196.75 (pounds sterling)
The current expiry date is February 2014.

POTASSIUM CHLORIDE 1.5GM 10ML INJ. PACKS OF 10 £15.55
Expiry date: 01/13

Pancuronium Injection, pancuronium bromide 2 mg/mL, 2-mL amp packs of 10's
£58.73

Expiry date: 11/11

If you could supply me with the following information, I can produce a proforma invoice:

Invoice address

Delivery address, including contact person and contact person phone number

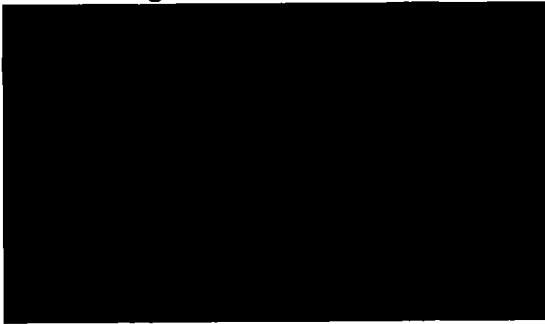
I will dispatch the goods to you by FedEx,
FedEx delivery charges is separate item.


In order to get the product easier through US customs, I think it would be a good idea for you to write a letter in the department letterhead, attention of US custom and let them know why you need this product. I would include this letter in your shipment.

Please also email or fax me a copy of your DEA license, to include it in your shipment.

Please let me know if you need further information.

Many thanks,
Kind regards





From: Alston, Steve M@CDCR
Sent: Thursday, September 30, 2010 3:52 PM
To: Kernan, Scott@CDCR
Cc: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection
Importance: High

Scott,

Here is our take on the issue:

- The attached MSA is a vendor provided agreement covering a number of services, which, based on your note below, we should not sign.
- Based on your note this appears to be a straight purchase and not a service contract. Consequently, if [REDACTED] is in fact the vendor of choice, we will need to see if they will accept a CDCR issued purchase order.
- If you want to pursue a non-competitive bid purchase, then a justification will need to be developed explaining why this cannot go out for bid.
- The dollar value of the purchase will dictate required approvals:
 - Less than \$5,000 can be approved by OBS without an NCB.
 - If the purchase is \$5-25,000 an NCB will be required, but will not require DGS review / approval.
 - If the purchase is in excess of \$25,000 then DGS review / approval will be required.

Hope this helps!

Steve

From: Kernan, Scott@CDCR
Sent: Thursday, September 30, 2010 1:44 PM
To: Alston, Steve M@CDCR
Cc: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection

Steve,

Thanks for your help. Needs to be addressed confidentially.

I assume the 3 year noted in the agreement is standard. Fact is we are buying enough of the drugs to last until 2014 and would not think, but not impossible, that we would need any more during the three years. So one time transaction.

I'll have to get back to you on cost. Don't know.

The contractor would facilitate the one time purchase of the drug and we would take possession for storage at SQ. no need for them to store it.

Scott

From: Alston, Steve M@CDCR
Sent: Thursday, September 30, 2010 11:21 AM
To: Kernan, Scott@CDCR
Subject: RE: Thiopental Injection

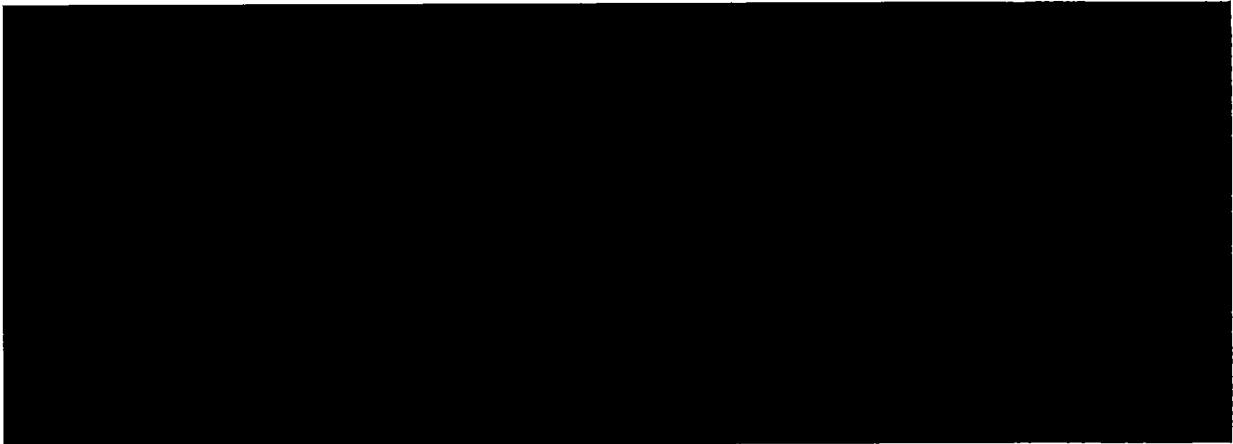
Scott,

Pulling our team together this afternoon to discuss in detail after which I will get back to you on this. A few questions for you:

1. Looks like a proposed three year agreement, right?
2. Estimated cost?
3. Will the proposed contractor store the inventory and ship it to CDCR on an as needed basis?

THANKS!

Steve



From: McAuliffe, John@CDCR
Sent: Thursday, September 30, 2010 9:20 AM
To: Kernan, Scott@CDCR
Subject: FW: Thiopental Injection

FYI
John

From: [REDACTED]
Sent: Thursday, September 30, 2010 9:15 AM
To: McAuliffe, John@CDCR
Cc: [REDACTED]
Subject: RE: Thiopental Injection

Received.

I have attached our standard contract (MSA). A Statement of Work (SOW) will define exact work to be conducted.

Please review and redline any issues.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: McAuliffe, John@CDCR [mailto:John.McAuliffe@cdcr.ca.gov]
Sent: Thursday, September 30, 2010 12:05 PM
To: [REDACTED]
Subject: FW: Thiopental Injection
Importance: High

Mike
Thank you again here is the information and email.
John McAuliffe

From: [REDACTED]
Sent: Thursday, September 30, 2010 5:27 AM
To: McAuliffe, John@CDCR
Subject: Thiopental Injection
Importance: High

30-09-10

Dear Mr. McAuliffe,

Thank you for your call and thank you for your interest in [REDACTED]
I would be happy to supply you:

Thiopental Injection , powder for reconstitution, thiopental sodium, 500-mg vial packs of 25's £196.75 (pounds sterling)

The current expiry date is February 2014.

POTASSIUM CHLORIDE 1.5GM 10ML INJ. PACKS OF 10 £15.55

Expiry date: 01/13

Pancuronium Injection, pancuronium bromide 2 mg/mL, 2-mL amp packs of 10's
£58.73

Expiry date: 11/11

If you could supply me with the following information, I can produce a proforma invoice:

Invoice address

Delivery address, including contact person and contact person phone number

I will dispatch the goods to you by FedEx,
FedEx delivery charges is separate item.

In order to get the product easier through US customs, I think it would be a good idea for you to write a letter in the department letterhead, attention of US custom and let them know why you need this product. I would include this letter in your shipment.

Please also email or fax me a copy of your DEA license, to include it in your shipment.

Please let me know if you need further information.

Many thanks,
Kind regards

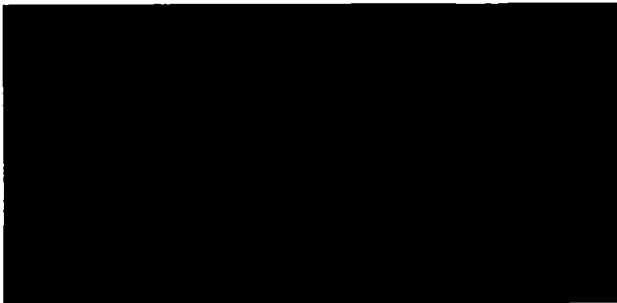


Exhibit 40

From: Cate, Matt@CDCR
To: [REDACTED]
Subject: FW: Lethal Injection/Sodium Thiopental
Date: Monday, August 02, 2010 4:20:12 PM

[REDACTED]

From: [REDACTED]
Sent: Monday, August 02, 2010 6:15 AM
To: [REDACTED]
Cc: [REDACTED]

[REDACTED]

[REDACTED]

Subject: Lethal Injection/Sodium Thiopental

In [REDACTED] the law provides that an execution must be inflicted by an ultra short-acting barbiturate, as well as other drugs. As many of you are aware, sodium thiopental is in short supply. At this point, [REDACTED] has an execution scheduled for [REDACTED] and we have not been successful in finding any sodium thiopental to carry out the execution. I understand that other states have run into this problem.

Can you please advise me of the course of action that has been taken in this situation? Or, if anyone has any information on how to obtain this drug or any other ultra short-acting barbiturate, that would be extremely helpful.

Thank you.

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Subject: RE: Execution Protocol Drugs
Date: Wednesday, September 29, 2010 10:05:18 AM

John,

Need to know exact quantity we will need for one execution if AZ loans it to us. Need asap.

You and I also have to talk today about FDA and Customs.

Scott

-----Original Message-----

From: McAuliffe, John@CDCR
Sent: Tuesday, September 28, 2010 6:21 PM
To: Kernan, Scott@CDCR
Subject: Fw: Execution Protocol Drugs

Fyi



From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Subject: Re: Execution Protocol Drugs
Date: Wednesday, September 29, 2010 12:03:42 PM

Scott

Just got off the phone with DEA. No problem with going to AZ and picking up drugs. I have names and details on what to do.

John

----- Original Message -----

From: Kernan, Scott@CDCR

To: McAuliffe, John@CDCR

Sent: Wed Sep 29 10:05:16 2010

Subject: RE: Execution Protocol Drugs

John,

Need to know exact quantity we will need for one execution if AZ loans it to us. Need asap.

You and I also have to talk today about FDA and Customs.

Scott

-----Original Message-----

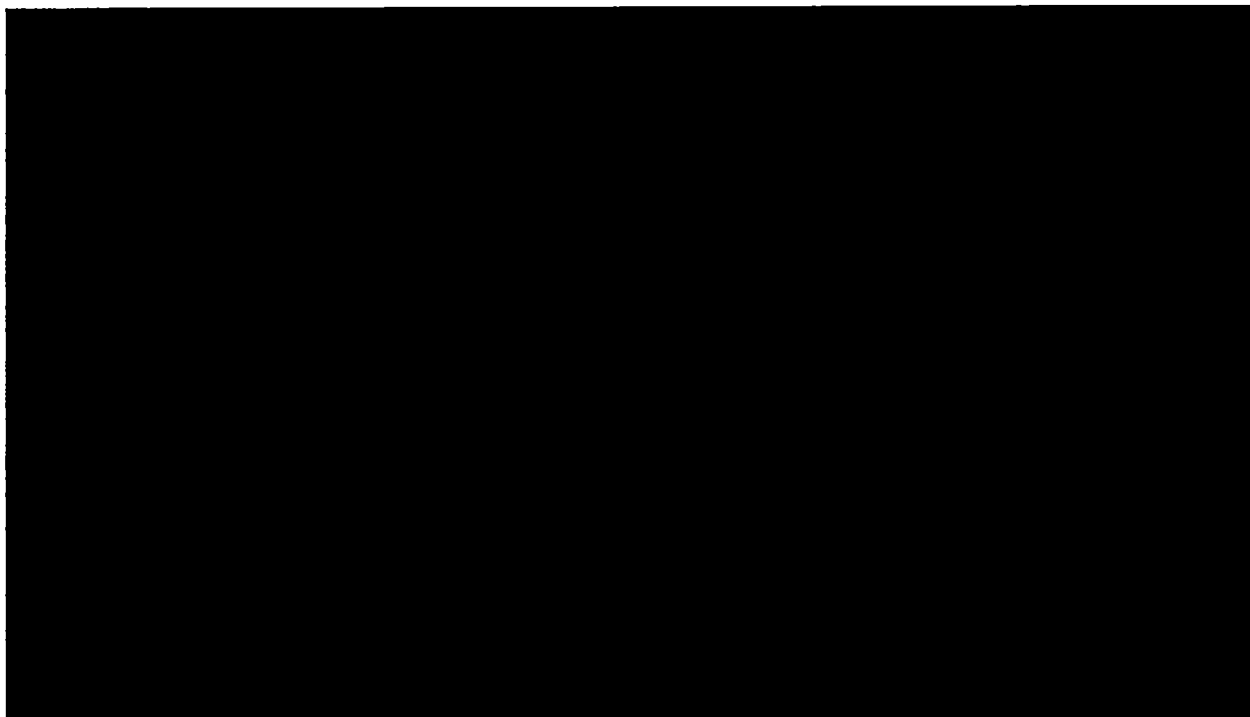
From: McAuliffe, John@CDCR

Sent: Tuesday, September 28, 2010 6:21 PM

To: Kernan, Scott@CDCR

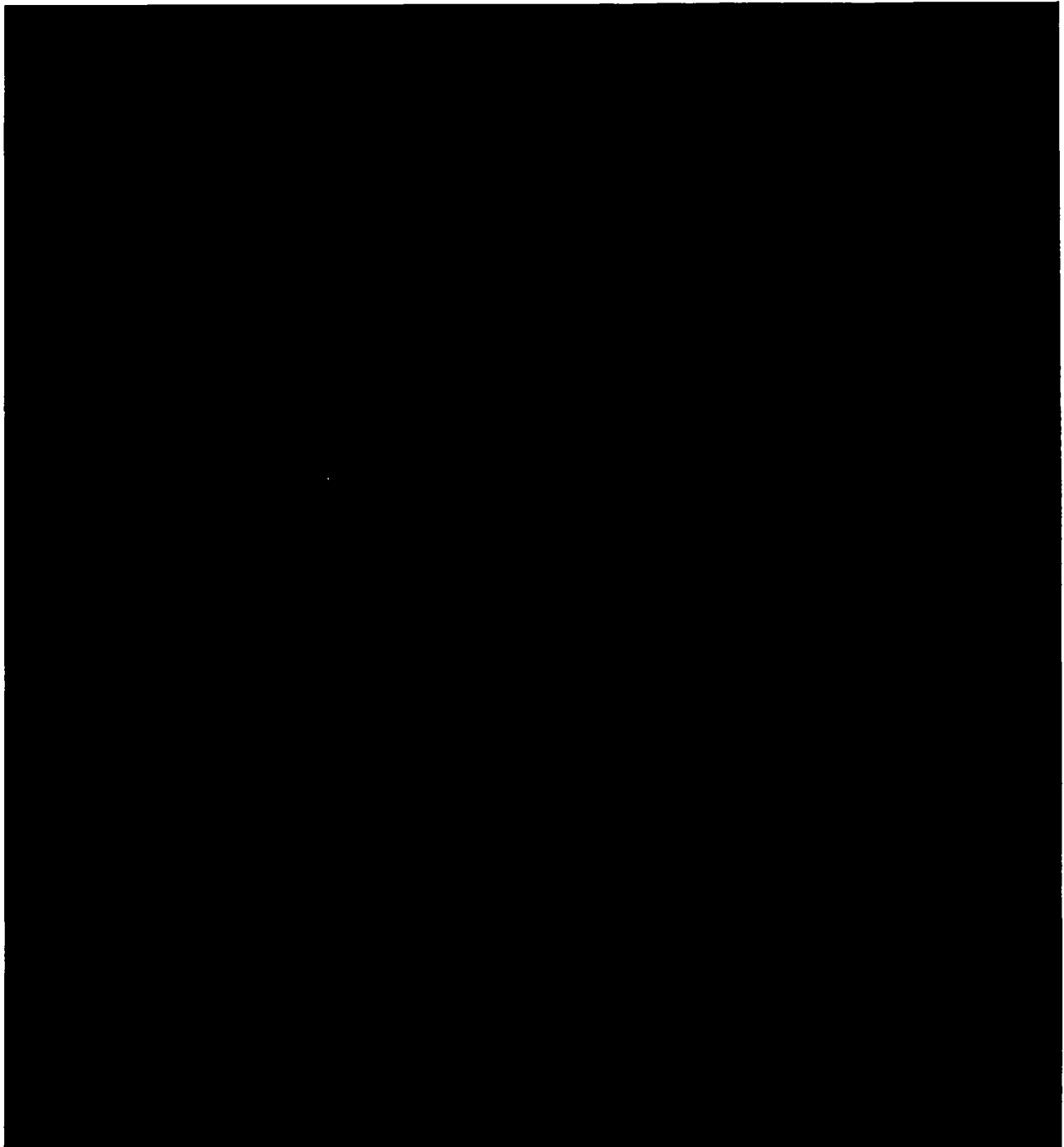
Subject: Fw: Execution Protocol Drugs

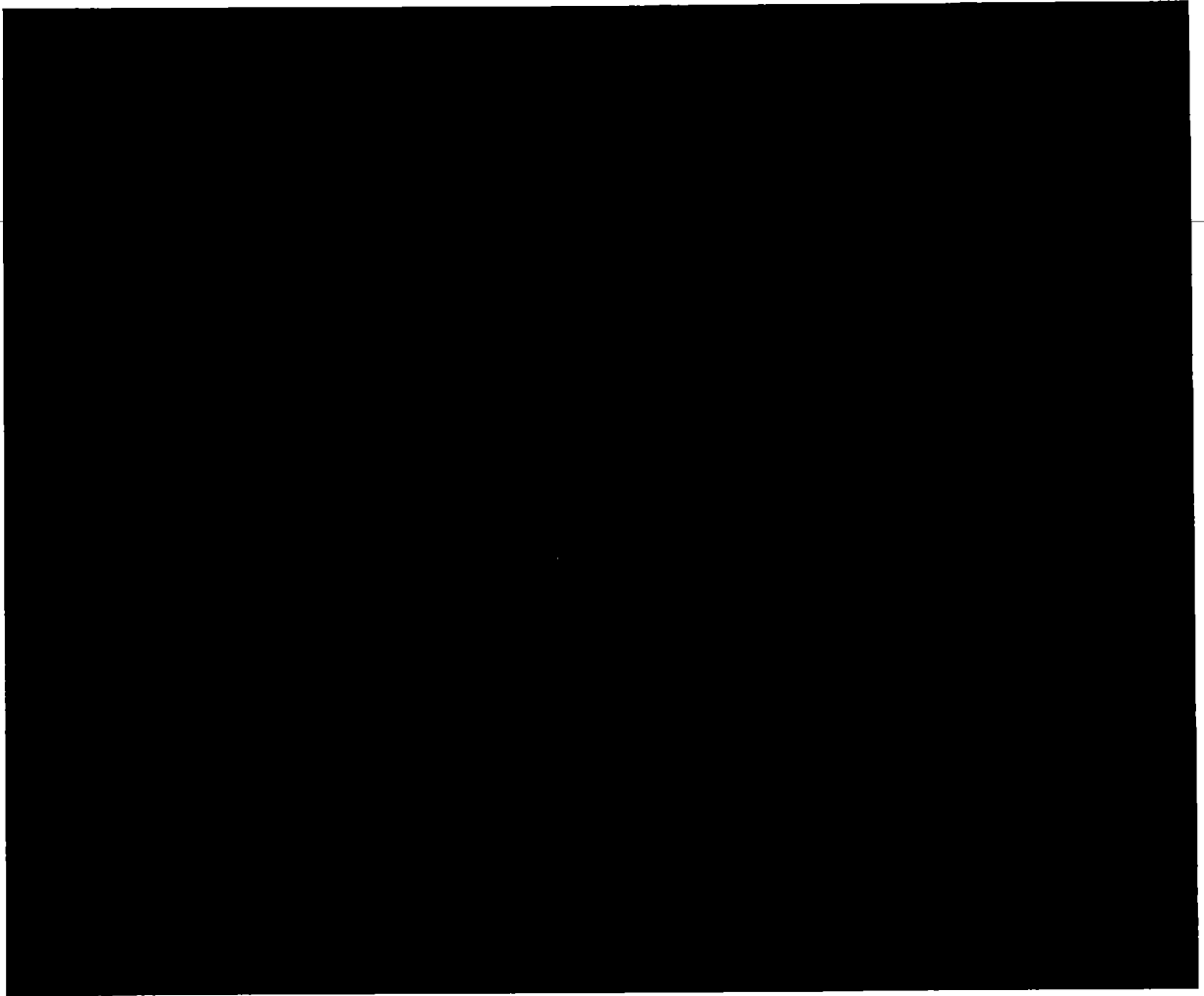
Fyi



From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Subject: Fw: Execution Protocol Drugs
Date: Tuesday, September 28, 2010 6:21:20 PM

Fyi





From: [REDACTED]
To: [REDACTED] CDCR
Date: Friday, October 01, 2010 2:13:49 PM

