

CAPITAL CASE

NOV 15 2007

EXECUTION DATE

07A383

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARK DEAN SCHWAB

Petitioner,
CAPITAL CASE - DEATH WARRANT
EXECUTION SCHEDULED FOR:
NOVEMBER 15, 2007

v.

FLORIDA, et al.
Respondents.

FILED

NOV 14 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

OPPOSITION TO MOTION FOR STAY OF EXECUTION

COME NOW the Respondents, by and through undersigned counsel, and respond as follows to Schwab's application for a stay of execution "pending filing and consideration of a petition for writ of certiorari," which was filed on the afternoon of November 9, 2007, six days before his scheduled execution. For the reasons set out below, Schwab's motion for stay should be denied:

INTRODUCTION

The basis of Schwab's motion for stay of execution is his assertion that he will raise exactly the same issues in his petition for writ of certiorari that are before this Court in *Baze v. Kentucky*. And, to support that claim, Schwab quotes the *Baze* questions verbatim and adopts them as his own. The problem for Schwab with that claim is twofold: first, *Baze's Merits Brief* does

not press each sub-claim subsumed in the questions, and, second, Schwab did not fairly present these issues to the Florida courts.

Further, the Florida Supreme Court's factfindings in this case and in *Lightbourne v. McCollum* demonstrate that there is no probability of success on the merits of Schwab's claim because Florida's execution procedures are designed to ensure that no potentially painful drugs are injected until such time as the inmate is deeply unconscious. Because that is so, Schwab's motion for a stay of execution should be denied.

THE SCHWAB ISSUES

In its decision affirming the trial court's denial of Schwab's successive state postconviction relief motion, the Florida Supreme Court framed the issues as follows:

As to this issue, Schwab asserts that the postconviction court erred by: (1) summarily denying his Eighth Amendment claim; (2) **rejecting a foreseeable risk standard**; (3) rejecting his argument that the use of a paralytic violates the Eighth Amendment; (4) declining to take judicial notice of another case which was also raising this same claim (the case of *State v. Lightbourne*, No. 1981-170CF (Fla. 5th Cir. Ct.)); (5) deferring unduly to the Department of Corrections; (6) declining to find that the problems with Angel Diaz's execution are relevant to this claim; (7) denying Schwab's request for public records; (8) rejecting Schwab's argument that consciousness assessment must meet a clinical standard using medical expertise and equipment; and (9) finding the motion for postconviction relief was insufficiently pled.

Schwab v. State, 32 Fla. L. Weekly S697 (Fla. Nov. 1, 2007).

SCHWAB DID NOT PRESERVE THE ISSUES HE CLAIMS
HE INTENDS TO RAISE

Contrary to Schwab's assertions, he did not claim, before the Florida Courts, that the Eighth Amendment prohibited "unnecessary risk" of pain and suffering in the carrying out of his execution. As the Florida Supreme Court pointed out, Schwab argued for a standard of "foreseeable risk." *Schwab v. State, supra*. Schwab cannot change his claim at this point in order to make his case appear like *Baze* - it is not, because he did not raise the same issues, and, further, Schwab is under an active death warrant and did not come to this Court until six days (**three** business days) before his scheduled execution. Likewise, the second *Baze* question fails because it was not presented to the Florida courts. Schwab alleged nothing about "readily available alternatives," and, in fact, a review of the *Baze Merits Brief* reveals that that petitioner has not done so, either. Finally, the third *Baze* question was not fairly presented to the Florida courts, either, beyond a simplistic claim that the use of a paralytic (pancuronium bromide) violates the Eighth Amendment. **Schwab has never claimed that the use of thiopental sodium or potassium chloride gives rise to an Eighth Amendment claim.** Because Schwab did not raise the issues he now claims he will raise before this Court, there is no basis for a stay of execution based on issues that were not fairly presented to the State courts.

**THE FLORIDA EXECUTION PROCEDURES ARE DESIGNED TO
ELIMINATE THE POSSIBILITY OF THE INMATE
EXPERIENCING ANY "PAIN AND SUFFERING"**

Florida's execution procedures are designed to eliminate the possibility of any conscious pain and suffering on the part of the inmate by ensuring that the inmate is unconscious as a result of anesthetic drugs before any potentially painful drugs are administered. In *Lightbourne*, which is the decision supplying the factual underpinnings of the Florida Supreme Court's *Schwab* decision, that Court emphasized that it is undisputed that the 5000 milligram dose of thiopental sodium (Pentothal) used in an execution in Florida is lethal, and that there is no likelihood that an inmate receiving that dose of the anesthetic will regain consciousness during the execution. *Lightbourne v. McCollum*, 32 Fla. L. Weekly S687, 697 n. 25 (Fla. 2007). Likewise, as the *Lightbourne* Court found, "[if] the sodium pentothal is properly injected, **it is undisputed that the inmate will not feel pain from the effects of the subsequent chemicals.**" *Lightbourne, supra*. Those facts are not in dispute, and, in fact, were conceded by *Lightbourne's* counsel during oral argument. *Lightbourne, supra*, n. 25.¹

In deciding this claim, to the extent that *Schwab* raised it in

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The *Baze* petition for writ of certiorari makes little reference to thiopental sodium beyond stating that that drug "could be replaced with propafol." *Baze Pet.* at 4. In his *Merits Brief*, *Baze* has changed his argument to be that the **three-gram** dose of thiopental sodium used in Kentucky is sufficient, **by itself**, to "independently cause death." *Merits Brief*, at 53. Florida uses **five** grams of the same drug. *Lightbourne, supra*.

State Court, the Florida Supreme Court held:

In turning to the evidence presented in *Lightbourne* regarding this claim, we find that the toxicology and anesthesiology experts who testified in *Lightbourne* agreed that if the sodium pentothal is successfully administered as specified in the protocol, *the inmate will not be aware of any of the effects of the pancuronium bromide and thus will not suffer any pain. Moreover, the protocol has been amended since Diaz's execution so that the warden will ensure that the inmate is unconscious before the pancuronium bromide and the potassium chloride are injected. Schwab does not allege that he has additional experts who would give different views as to the three-drug protocol.*² Given the record in *Lightbourne* and our extensive analysis in our opinion in *Lightbourne v. McCollum*, we reject the conclusion that lethal injection as applied in Florida is unconstitutional.

Schwab v. State, 32 Fla. L. Weekly S697, 698 (Fla. Nov. 1, 2007) (emphasis added).

Because the effect of the dose of thiopental sodium used in carrying out an execution in Florida is not in dispute, Schwab is in the peculiar position of asking this Court to grant a stay of execution so he can file a certiorari petition asking this Court to review facts that were undisputed in the State Courts. Given that there is no evidence to dispute the findings of the Florida Supreme Court about the effect of thiopental sodium, there is no case or controversy, and, thus, no matter worthy of this Court's discretionary jurisdiction. The application for stay of execution

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The drugs are contained in six (6) separate syringes, and are injected separately. Between each drug, the intravenous tubing is flushed with saline solution. Appendix A at 6-7.

should be denied.

To the extent that the procedures for carrying out an execution are challenged as inadequate in some way, those procedures set out that the drugs will be mixed by a pharmacist; that medically qualified personnel will establish the intravenous lines; that medically qualified personnel having the necessary training, licensure and certification will be present in the event that a "central line" placement is necessary; that the IV sites will be monitored by a medically qualified person by means of closed circuit television to observe possible problems; that all members of the execution team are familiar with the purpose and effect of the drugs utilized; and that, before any potentially painful drugs are administered, the warden in charge, **in consultation with an appropriate medically-trained person**, will determine that the inmate is unconscious by conducting a basic neurological assessment. Appendix A at 11. Those procedures, as the Florida Supreme Court found, are adequate to avoid either unnecessary or foreseeable pain to the inmate.

The point in the execution process at which unnecessary or foreseeable pain can occur is with the injection of pancuronium bromide and potassium chloride. However, as the Florida Supreme Court found, Florida's execution procedures are designed to ensure that neither drug is injected until the inmate has been determined to be unconscious. The Florida Supreme Court held:

The next significant issue raised by Lightbourne focuses on whether DOC's protocol for assessing consciousness is adequate. If the inmate is not fully unconscious when either pancuronium bromide or potassium chloride is injected, or when either of the chemicals begins to take effect, the prisoner will suffer pain. Pancuronium bromide causes air hunger and a feeling of suffocation, and potassium chloride burns and induces a painful heart attack.

If the sodium pentothal is properly injected, it is undisputed that the inmate will not feel pain from the effects of the subsequent chemicals. While we cannot determine whether Diaz suffered pain, as detailed above, the protocol has changed since the Diaz execution, with the most significant change consisting of a pause after the sodium pentothal is injected in order to assess the inmate's consciousness. The DOC has clearly attempted to reduce the risk that the human errors will occur in future executions.

Although Lightbourne suggests that trained medical personnel would do a better job of assessing consciousness, based on the evidence presented below and after reviewing the newly revised protocol, we cannot conclude that Lightbourne has sufficiently demonstrated that the alleged deficiencies rise to the level of an Eighth Amendment violation. A claim that the protocol can be improved and the potential risks of error reduced can always be made. However, as this Court has already recognized, the Eighth Amendment is not violated simply because there is a mere possibility of human error in the process.

Moreover, this claim must be reviewed in light of the testimony presented. As mentioned above, sodium pentothal is an extremely fast-acting sedative which will have an immediate effect if it is injected properly. According to Dr. Dershwitz, a person will be rendered unconscious in a minute or less if only a few hundred milligrams are injected into the patient. **In lethal injection procedures in which five grams of this chemical are injected, it should be clear that there is a problem if the inmate is still talking minutes after the injection, as occurred in Diaz's execution. Moreover, the August 2007 procedures requires the warden to determine that the inmate is indeed unconscious "after consultation." Warden Cannon also testified that he would consult the medically**

qualified members of his team in making this assessment. If the warden determines that there is a problem and the inmate is not unconscious, he must suspend the execution process and the execution team will assess the viability of the secondary access site. Once a viable access site has been secured, the team warden will order the execution to proceed, and the executioners will inject another five grams of sodium pentothal into the inmate. Thus, even if the first five grams of the drugs were injected subcutaneously and took longer to be absorbed into the inmate's system, the inmate would have a total of ten grams in his system by the time that the warden made his second assessment of unconsciousness, which is required before the pancuronium bromide is injected.

Lightbourne v. McCollum, 32 Fla. L. Weekly S687, 695 (Fla. Nov. 1, 2007). This issue turns wholly on its facts, and there is no claim that the Florida Supreme Court's factfindings are incorrect. Because of the redundant safeguards contained in Florida's execution procedures, there is no possibility of pain because the inmate will be unconscious before any drugs which could cause pain are allowed to be used. Obviously, if the inmate is unconscious, he is unable to feel pain, and thus unable to invoke the Eighth Amendment. Under Florida's execution procedures, there is no constitutional issue.

Under the facts of this case, the "Constitutional standard" does not make a difference in the result.

The first question at issue in *Baze* is whether the Eighth Amendment prohibits a means for carrying out an execution that creates an "unnecessary" risk of pain and suffering as opposed to

"only a substantial risk of the wanton infliction of pain."³ As the Florida Supreme Court found, there is no dispute that the amount of anesthetic used in carrying out an execution is sufficient to ensure unconsciousness for a lengthy period of time, and, in fact, is given in an amount that is, itself, lethal. As the Florida Supreme Court further found, the Florida procedures are designed to ensure that the inmate is unconscious before any potentially painful drugs are administered. In other words, because the inmate will be unconscious before the other drugs are given, there is no possibility of pain and suffering, because, whatever the effects of the remaining drugs, the inmate will be unaware of them. Because there is no possibility of the inmate perceiving the effects of the remaining drugs, there are no Constitutional implications, because there can be no pain. Because there can be no pain, there is no federal question, and certiorari review is inappropriate.

To the extent that specific discussion of the applicable standard is necessary, the Florida Supreme Court held:

Alternatively, even if the Court did review this claim under a "foreseeable risk" standard as Lightbourne proposes or "an unnecessary" risk as the *Baze* petitioners propose, we likewise would find that Lightbourne has failed to carry his burden of showing an Eighth Amendment violation. As stressed repeatedly above, **it is undisputed that there is no risk of pain if the inmate is unconscious before the second and third drugs are administered.** After Diaz's execution, the DOC added additional safeguards into the protocol to ensure the

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Schwab framed the issue as being a "foreseeable risk."

inmate will be unconscious before the execution proceeds. In light of these additional safeguards and the amount of the sodium pentothal used, which is a lethal dose in itself, [FN25] **we conclude that Lightbourne has not shown a substantial, foreseeable or unnecessary risk of pain** in the DOC's procedures for carrying out the death penalty through lethal injection that would violate the Eighth Amendment protections.

[FN25] As defense counsel conceded during oral argument,⁴ there was no evidence presented that once the five-gram dose of sodium pentothal has been properly administered and an inmate is rendered unconscious, there is any likelihood that he will become conscious during the execution, even if the procedure lasts for thirty minutes or more. **The evidence clearly established that this dose is lethal and once unconsciousness is reached, the inmate will slip only deeper into unconsciousness until death results.** This conclusion is borne out by the medical testimony.

Ian Deco Lightbourne v. McCollum, 32 Fla. L. Weekly S687 (Fla. Nov. 1, 2007) (emphasis added). Against those facts, it is clear that however this Court may ultimately decide *Baze*, that decision will not benefit Schwab -- whatever standard this Court may decide to apply is satisfied by the Florida procedures.

The second and third questions presented in *Baze* are interrelated, because both questions concern the availability of alternative drugs which are claimed to "pose less risk of pain and suffering." In the context of Schwab's case, he raised no claim relating to the use of thiopental sodium to render the inmate

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Schwab's counsel made the same concession at oral argument.

unconscious. That claim has never been fairly presented to the State Courts, and is not appropriate for certiorari review.

Further, there is, and has been, no claim that the 5000 milligram dose of thiopental sodium used in a Florida execution will not render the inmate rapidly unconscious and maintain that state of unconsciousness for many hours. Likewise, there is no dispute that once an inmate is rendered unconscious by the injection of thiopental sodium, he will not perceive the injection of the other drugs, and will suffer no pain. In other words, because the inmate will not feel anything when the pancuronium bromide and potassium chloride are injected, the existence of "alternative" drugs has no constitutional significance. Because Florida's execution procedures ensure that the inmate has been rendered unconscious from the injection of a massive dose of thiopental sodium⁵ before the remaining drugs are injected, whether or not those drugs might cause "pain and suffering" to a conscious individual is not a factor.

In his *Merits Brief*, the petitioner in *Baze* argues that a barbiturate-only procedure should be used, or that a medical doctor is required to be present to "monitor anesthetic depth." Given that medical doctors make mistakes with anesthesia, *Merits Brief* at 11,

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It is undisputed that the dose of thiopental sodium employed will cause rapid, deep unconsciousness that will last well beyond the duration of the execution process. Because that is so, there cannot be any pain, and there is no Eighth Amendment issue to begin with.

14, it seems that Baze does not intend to rectify any Eighth Amendment issue at all.⁶ In any event, under the undisputed facts of Schwab's case, no constitutional issue exists, and this case is inappropriate for the exercise of this Court's discretionary jurisdiction because it fails on the facts.

**Schwab was dilatory in raising
his "lethal injection claim."**

For all of these reasons, none of the claims Schwab says he intends to raise in his certiorari petition provide a colorable basis for granting relief, and no stay of execution is justified in this case. See *Delo v. Stokes*, 495 U.S. 320 (1990); *Antone v. Dugger*, 465 U.S. 200 (1984); *Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998), citing *Bowersox v. Williams*, 517 U.S. 345 (1996) (recognizing that stay of execution on second or third petition for

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In fact, Baze does not agree that either option would **satisfy** the Constitution -- he states only that the existence of these "alternatives" demonstrates that Kentucky's procedures are unconstitutional. *Merits Brief*, at 59. That *ipso facto* argument tips his hand that his true objective (as evidenced by his request for a remand) is to avoid his execution for as long as possible. And, by pleading in qualified alternatives, Baze shows that what today he likes, tomorrow he will complain about. In Florida, the clamor to change to lethal injection came after the argument was made that electrocution was untoward. Today, electrocution has not been found unconstitutional -- indeed recently this year there was an electrocution in Tennessee. When Florida enacted lethal injection as an alternative to electrocution, it was clear at that time that the defense was willing to change the method despite litigation in other states as to the possible concerns about the additional method. Now the defense is really only asking that the States bend to their will and set an execution under their most current plan, which will likely be challenged by another inmate who has another idea about what the "best" procedure would be.

postconviction relief is warranted only where there are substantial grounds upon which relief might be granted). Schwab's request must be denied. See *Booker v. Wainwright*, 675 F.2d 1150 (11th Cir. 1982) (proper to grant a stay only if the petitioner has presented colorable, non-frivolous issues); *Barefoot v. Estelle*, 463 U.S. 880 (1983) (stay only justified when the petitioner presents claims which are debatable among jurists of reason).

It is undisputed that the events giving rise to Schwab's challenge to lethal injection took place on December 13, 2006, when Angel Diaz was executed. It is likewise undisputed that Schwab raised no claim challenging lethal injection as a means of execution until August 15, 2007, when he filed his first state postconviction relief motion. There is no claim that Schwab could not have raised this claim in December of 2006, and, in fact, no such claim can be made, given that Lightbourne and a large number of other death-sentenced inmates raised just such a challenge on December 14, 2006, **the day after the Diaz execution**. Schwab's death warrant was not signed until July 18, 2007, some seven months later. It was not until a month after that when Schwab first raised such a claim. As Justice Rehnquist, writing as Circuit Justice pointed out in a similar last-minute case:

There may be very good reasons for the delay, but there is also undoubtedly what Mr. Justice Holmes referred to in another context as a "hydraulic pressure" which is brought to bear upon any judge or group of judges and inclines them to grant last-minute stays in matters of this sort just because no mortal can be totally satisfied

that within the extremely short period of time allowed by such a late filing he has fully grasped the contentions of the parties and correctly resolved them. To use the technique of a last-minute filing as a sort of insurance to get at least a temporary stay when an adequate application might have been presented earlier, is, in my opinion, a tactic unworthy of our profession.

Evans v. Bennett, 440 U.S. 1301, 1307 (1979). In discussing last-minute stay applications, this Court has emphasized:

Equity must take into consideration the State's strong interest in proceeding with its judgment and Harris' obvious attempt at manipulation. See *In re Blodgett*, 502 U.S. 236, 116 L. Ed. 2d 669, 112 S. Ct. 674 (1992); *DeLo v. Stokes*, 495 U.S. 320, 322, 109 L. Ed. 2d 325, 110 S. Ct. 1880 (1990) (KENNEDY, J., concurring). This claim could have been brought more than a decade ago. There is no good reason for this abusive delay, which has been compounded by last-minute attempts to manipulate the judicial process. A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief.

Gomez v. United States Dist. Court, 503 U.S. 653, 654 (1992). Schwab has not been diligent in raising this claim, with the result that this Court received his stay application 3 business days before his scheduled execution, even though the claim could have been raised months before. Schwab's lack of diligence is not a basis for a stay of execution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by **e-mail** and **U.S. Mail** to: **Mark Gruber**, Assistant CCRC-Middle, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619 (813)740-3554 on this _____ day of November, 2007.

Of Counsel

APPENDIX A



**FLORIDA
DEPARTMENT of
CORRECTIONS**

An Equal Opportunity Employer

2601 Blair Stone Road • Tallahassee, FL 32399-2500
Phone: (850) 488-7480

Governor
CHARLIE CRIST

Secretary
JAMES R. McDONOUGH

<http://www.dc.state.fl.us>
Fax: (850) 922-2848

July 31, 2007

The Honorable Charlie Crist
Executive Office of the Governor
PL 05, The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

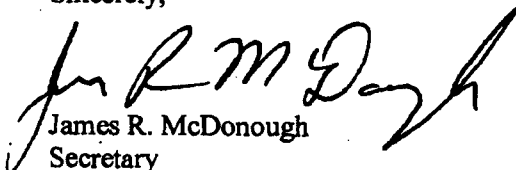
Dear Governor Crist:

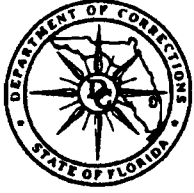
For your consideration, enclosed please find the revised lethal injection procedures that I have signed today, effective for executions after August 1, 2007. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process is not going to involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,


James R. McDonough
Secretary



FLORIDA
DEPARTMENT of
CORRECTIONS

Governor
CHARLIE CRIST

Secretary
JAMES R. McDONOUGH

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EXECUTION BY LETHAL INJECTION PROCEDURES

Effective for executions after August 1, 2007

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

DEFINITIONS:

- (1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.
- (2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden, that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.
- (3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.
- (4) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal

injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

- (1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement, any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.
- (2) **Selection of the Executioners:**
 - (a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.
 - (b) The team warden will designate one of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.
- (3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.
 - (a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist certified by the American Society of Clinical Pathologists (ASCP), National Certification Agency for Medical Laboratory Personnel (NCA), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes, or a

physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

- (b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes; a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes, or a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes, or a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes or a pharmacist licensed under Chapter 465, Florida Statutes.
- (f) The team warden shall select other execution team members to carry out the following tasks:
 - 1. Showering and preparation of the inmate.
 - 2. Ensuring that the equipment necessary for an execution is in proper working order.
 - 3. Escorting the inmate from his/her cell to the execution chamber.
 - 4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.
 - 5. Maintaining the open telephone line with the Office of the Governor.
 - 6. Reporting the actions inside the executioner's room to the team warden.
 - 7. Maintaining the checklists that detail the events surrounding the execution.
 - 8. Opening and closing the window covering to the witness gallery and turning on and off the public address system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted the week prior to any scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

- (a) Issues related to problems with equipment needed to carry out an execution.
- (b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.
- (c) The inmate is not rendered unconscious after the administration of the sodium pentothal.
- (d) Combative inmate.
- (e) Incapacity of any execution team member or executioner.
- (f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.
- (g) Problems related to the order and security at the Florida State Prison.
- (h) Power failure or other facility problems.

This list is not meant to be exhaustive but only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of

monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

- (a) Two FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.
- (b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.
- (c) The second FDLE agent shall be located in the execution chamber, and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

- (a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.
- (b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the day of execution:**

- (a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars (\$40) or less, is available at the institution, and is approved by the food service director.
- (b) The inmate will be escorted by one or more team members to the shower area where a team member of the same gender will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

- (c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.
- (d) A designated execution team member will ensure that the public address (P.A.) system is fully functional.
- (e) The only staff authorized to be in the Execution Chamber area are members of the execution team and others as approved by the team warden, including two monitors from the Florida Department of Law Enforcement.
- (f) A designated execution team member, in the presence of one or more additional team members and an independent observer from the Florida Department of Law Enforcement, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:
 - (1) Sodium pentothal: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw ten milliliters (10ml) of sterile water for injection from a vial containing same and then inject those ten milliliters (10ml) of sterile water for injection into a vial containing 500 milligrams of sodium pentothal to create a five percent (5%) solution of sodium pentothal. This procedure will be repeated until twenty (20) vials of sodium pentothal have been reconstituted, for a total of ten grams (10g) of sodium pentothal in solution. The syringe used to reconstitute the sodium pentothal will be discarded. A new, sterile, disposable, sixty cubic centimeter (60cc) syringe and needle will be used to draw the entire contents of five vials of sodium pentothal in solution, for a total of two and one-half grams (2.5g) of sodium pentothal in solution. That syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
 - (2) Pancuronium bromide: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw fifty milligrams (50mg) of pancuronium bromide from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing fifty milligrams (50mg) of pancuronium bromide, for a total of 200 milligrams. Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and

placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

- (3) Potassium chloride: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium chloride from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium chloride, for a total of 480 milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
 - (4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
- (g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.
 - (h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal

chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

- (i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered an intramuscular injection of diazepam, in an appropriate dosage relative to weight, to ease anxiety.
 - (j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.
 - (k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.
- (10) **Approximately Thirty (30) Minutes Prior to Execution:**
- (a) A designated execution team member will establish telephone communication with the Governor's office on behalf of the team warden. The phone line will remain open to the Governor's office during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Governor's office.
 - (b) A designated member of the execution team will escort the two executioners into the executioner's room, where they will remain until the execution process is complete.
 - (c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.
 - (d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.
 - (e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

- (f) Designated members of the execution team will secure the restraining straps.
 - (g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.
 - (h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.
 - (i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.
 - (j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.
- (11) **Approximately Fifteen (15) Minutes Prior to Execution:**
- (a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.
 - (b) Authorized media witnesses will be secured in the witness room of the execution chamber.
 - (c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Any exception must be approved by the institutional warden.
 - (d) The execution chamber will be secured. Only the team warden, one additional execution team member and one FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exception must be approved by the team warden.

- (e) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.
- (12) **Administration of Execution:**
- (a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.
 - (b) An execution team member will turn on the public address (P.A.) system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the P.A. system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the P.A. system.
 - (c) In the presence of the secondary executioner and within sight of one or more execution team members and one of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:
 - (1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains two and one-half grams (2.5g) of sodium pentothal in solution, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains two and one-half grams (2.5g) of sodium pentothal in solution, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

- (4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (6).
- (5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of sodium pentothal, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (4) and assess whether the inmate is unconscious.
- (6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains fifty milligrams (50mg) of pancuronium bromide, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains fifty milligrams (50mg) of pancuronium bromide, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium chloride, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents

of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

- (10) The executioner will remove from the stand on the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium chloride, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one executioner inject any lethal chemicals to complete the execution.
- (d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of sodium pentothal, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (c)(4), as described above.
 - (e) Throughout the execution process, one or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.
 - (f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.
 - (g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.
 - (h) A designated execution team member will turn on the P.A. system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

- (i) The designated Department of Corrections escort staff will escort the official witnesses and all of the media pool from the witness room of the execution chamber.

(13) **Immediate Post-Execution Procedures:**

- (a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.
- (b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.
- (c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.
- (d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.
- (e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.
- (f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

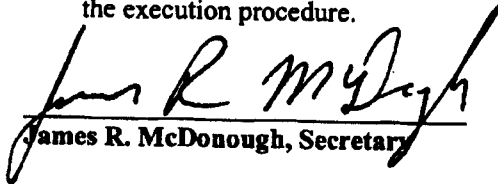
- (a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.
- (b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.
- (c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

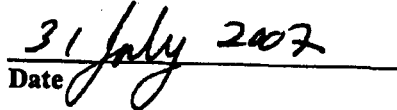
- (15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum, once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process is not going to involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.


James R. McDonough, Secretary


Date