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92101

August 4, 2014

MEDICAL REPORT

1. My name is Dr. Kent Diveley. I am a board certified Anesthesiologist in full time clinical practice at Scripps Mercy Hospital, a level one trauma center located in San Diego, California. I have practiced as an Anesthesiologist in San Diego since 1990. At Mercy hospital I've held positions as the Chief of Anesthesia, Chief of Surgery, and Chief of the Medical Staff. Currently I hold the positions of Medical Director of the operating room and Chair of the Credentials Committee. Included is a copy of my curriculum vitae.
2. 80 percent of my work is providing clinical anesthesia care. The other 20 percent is devoted to administrative work. This is the first time I have been asked to provide testimony in a lethal injection case. I am not an academic physician and have not published literature in this area. Personally I've attended more than 20,000 patients undergoing anesthetics for a wide range of procedures and am intimately familiar with the clinical applications of the drugs used for lethal injection in the state of Ohio. It is from my many years of work in rendering patients unconscious and working with these medications that I draw my opinions and conclusions in this case.
3. I am providing my opinions regarding the State of Ohio Department of Rehabilitation and Correction Policy 01-COM-11, effective October 10, 2013 for execution by lethal injection and its application to Dennis B. McGuire, January 16, 2014.
4. Informing my opinions and conclusions, I have reviewed the following documents:
  - A. State of Ohio Department of Rehabilitation and Correction execution policy. (effective date October 10, 2013).
  - B. Death Certificate, Dennis B. McGuire January 16, 2014
  - C. Affidavit of Amber N. McGuire January 24, 2014
  - D. Affidavit of Dennis R. McGuire January 24, 2014
  - E. Document labeled "Execution Time Line"
  - F. Ohio Department of Rehabilitation and Correction After Action Review January 16, 2014
  - G. Death Warrant
  - H. Ohio Department of Rehabilitation and Correction Executive Summary April 28, 2014
  - I. Package insert for Versed and Dilaudid
  - J. Declaration of Dr. David Waisel
  - K. Expert Declaration of Dr. Mark Dershiwitz

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5. In the Department of Rehabilitation and Correction Standards for Execution it states all execution processes shall be performed in a professional, humane, sensitive, and dignified manner. The question is did the state of Ohio comply with its own policy in the execution of Dennis B. McGuire using the method chosen to carry it out.
6. The State of Ohio used a combination of two drugs given intravenously for the execution. 10 mg. of midazolam and 40 mg. of hydromorphone were administered. These are both drugs which are used frequently in the clinical practice of Anesthesia and thus familiar to any practicing Anesthesiologist.
7. Midazolam is used as a sedative and as an adjunctive drug in general anesthesia. To render an individual unconscious much higher doses would be needed. An Anesthesiologist would not depend on a 10 mg dose of midazolam to provide for total loss of memory, or to produce an unconscious state.
8. Hydromorphone is an older narcotic used to treat pain and or noxious stimuli. In higher doses like the one used in the execution it will cause respiratory depression and eventual death due to a lack of oxygen and metabolic disturbance related to the retention of carbon dioxide. This drug would not be depended on to render a person immediately unconscious.
9. Neither of these drugs combined in the doses used can be depended upon to produce a rapid loss of consciousness and death. It is possible that when this combination of drugs is used for lethal injection there will be a delay of several minutes before the inmate loses consciousness preceding death. Mr. McGuire was noted to be straining against his restraints, struggling to breathe, and making hand gestures. More likely than not these represent conscious voluntary actions by Mr. McGuire. They exemplify true pain and suffering in the several minutes before he lost consciousness. To a degree of medical certainty this was not a humane execution.
10. These drugs do not fulfill the criteria set forth by the state of Ohio. They do not provide for an execution in a professional, humane, sensitive, and dignified manner. Allowing the inmate to suffer for a prolonged period struggling to get free and gasping for air before death certainly is not dignified nor humane.
11. There are other drug combinations that could be used to render the inmate immediately unconscious leading to a dignified and expeditious death. The State of Ohio needs to reconsider the drug combinations they are currently employing.

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Otherwise other inmates in the future could suffer egregious inhumane deaths like Mr. McGuire.

Respectively submitted,

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