

IN THE NEBRASKA SUPREME COURT

STATE OF NEBRASKA,	)	Case No. 95-485
	)	
Appellee,	)	
	)	MOTION FOR
v.	)	EXECUTION WARRANT
	)	
CAREY DEAN MOORE,	)	
	)	
Appellant.	)	
	)	

The appellee State of Nebraska moves this Court to issue an execution warrant for enforcement of the appellant’s death sentences pursuant to Neb. Rev. Stat. § 29-2543 (Supp. 2017). Attached are the Statement of the Attorney General under oath and a Memorandum Brief in support of this motion.

BY Douglas J. Peterson, 18146  
Attorney General

BY /s/ James D. Smith, 15476  
Solicitor General  
2115 State Capitol  
Lincoln, NE 68509-8920  
Tel: (402) 471-2682  
Attorneys for State of Nebraska

Certificate of Service

On April 3, 2018, copies of the above Motion, Statement of Attorney General, and Memorandum Brief were hand delivered to the appellant Carey Dean Moore by staff for the Nebraska Department of Correctional Services.

/s/ James D. Smith

IN THE NEBRASKA SUPREME COURT

STATE OF NEBRASKA,	)	Case No. 95-485
	)	
Appellee,	)	
	)	
v.	)	MEMORANDUM BRIEF IN
	)	SUPPORT OF MOTION FOR
CAREY DEAN MOORE,	)	EXECUTION WARRANT
	)	
Appellant.	)	

**Statement of Facts**

*Moore's Death Sentences*

The appellant Carey Dean Moore's two death sentences are final after having been affirmed by this Court in *State v. Moore*, 250 Neb. 805, 553 N.W.2d 120, as modified on denial of reh'g (Nov. 22, 1996), cert.den., 520 U.S. 1176 (1997). Previous execution warrants issued by this Court have either expired or been withdrawn.

This Court last withdrew an execution warrant by an order entered on May 25, 2011, for the reason that Moore had filed a state postconviction action in the District Court of Douglas County on May 17, 2011. The Douglas County District Court later denied postconviction relief by an order dated December 21, 2011, which became a final judgment on February 2, 2012, when the district court denied Moore's motion to alter or amend in Douglas County District Court case # CR10-9004040, Doc. 106 Page 55. Moore did not file an appeal from the district court's denial of postconviction relief and there is no pending proceeding in the district court under the Nebraska Postconviction Act.

### *No Federal Court Stays*

There are no stays of execution in effect by any federal court concerning the enforcement of Moore's death sentences. See, attached Statement of the Nebraska Attorney General in accordance with *State v. Palmer*, 246 Neb. 305, 308, 518 N.W.2d 899 (1994).

### *Constitutional Method of Carrying Out Death Sentences*

Because capital punishment is constitutional, there must be a constitutional means of carrying it out. *Glossip v. Gross*, 135 S. Ct. 2726 (2015). The State of Nebraska has a constitutionally acceptable method of carrying out Moore's death sentences by lethal injection, which method is both available and can be carried out by the Director of the Nebraska Department of Correctional Services in accordance with the Department's Execution Protocol upon the issuance of an execution warrant. See, Neb. Rev. Stat. §§ 83-964 to 83-972 (Supp. 2017); 69 Neb. Admin. Code, ch. 11 (Execution Protocol, effective Jan. 31, 2017); Statement of the Nebraska Attorney General.

### **Argument**

Neb. Rev. Stat. § 29-2543 imposes a duty on the Supreme Court to issue execution warrants as follows:

(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, under the seal of the

court, reciting therein the conviction and sentence and establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant. The date of execution shall be set no later than sixty days following the issuance of the warrant.

(2) Thereafter, if the initial execution date has been stayed and the original execution date has expired, the Supreme Court shall establish a new date for enforcement of the sentence upon receipt of notice from the Attorney General that the stay of execution is no longer in effect and issue its warrant to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

The State of Nebraska alleges by the above Statement of Facts and by its Argument that Nebraska's lethal injection statutes and its Execution Protocol adopted by the Nebraska Department of Correctional Services ("Department") and filed with the Secretary State provide a constitutionally acceptable method of carrying out Moore's death sentences. See, *State v. Ellis*, 281 Neb. 571, 592-593, 799 N.W.2d 267, 289-90 (2011) (Rejecting constitutional challenges to Nebraska's statutory method of executions). The State has satisfied its pleading burden for an execution warrant and is not required to present evidentiary proof in the Nebraska Supreme Court. See, order entered by this Court in this case on April 21, 2011, p2.

The Statement of the Nebraska Attorney General satisfies the "no federal stay" assurance requirements of *State v. Palmer, supra*. Additionally, the Statement of the

Nebraska Attorney General informs this Court that the State of Nebraska has satisfied the procedural requirements of the Execution Protocol. This includes, but is not limited to, the Department having possession of the substances to be employed in the execution by lethal injection, which substances have been chemically analyzed and verified at least 60 days prior to requesting an execution warrant, and the Department having given the required 60 days advance notice to Moore of the substances to be employed in the execution prior to requesting an execution warrant from this Court.

### **Conclusion**

The appellee State of Nebraska requests that this Court sustain the State's Motion for Execution Warrant for enforcement of Carey Dean Moore's death sentences pursuant to Neb. Rev. Stat. § 29-2543 (Supp. 2017).

BY Douglas J. Peterson, # 18146  
Nebraska Attorney General

BY **/s/ James D. Smith, #15476**  
Solicitor General  
2115 State Capitol  
Lincoln, NE 68509-8920  
Tel: (402) 471-2682

IN THE NEBRASKA SUPREME COURT

STATE OF NEBRASKA, )  
)  
Appellee, )  
)  
v. )  
)  
CAREY DEAN MOORE, )  
)  
Appellant. )

Case No. 95-485

STATEMENT OF NEBRASKA  
ATTORNEY GENERAL

State of Nebraska )  
) ss.  
County of Lancaster )

Douglas J. Peterson, Attorney General of the State of Nebraska, submits the following sworn statement based on his information and belief:

1. The appellant Moore’s federal litigation history concerning his death penalty sentences includes the following:

- *Moore v. Nebraska*, 520 U.S. 1176 (1997) (denial of certiorari from this Court’s death sentence affirmance in *State v. Moore*, 250 Neb. 805, as modified on denial of reh'g (Nov. 22, 1996)).
- *Moore v. Kinney*, 119 F.Supp.2d 1022 (2000) (habeas corpus relief denied).
- *Moore v. Kinney*, 320 F.3d 767 (8th Cir. 2003) (en banc opinion voided prior panel opinion and affirmed the district court’s denial of federal habeas relief).
- *Moore v. Kinney*, 539 U.S. 930 (2003) (denied petition for writ of certiorari from 8<sup>th</sup> Circuit’s above opinion in 320 F.3d 767).

- *Moore v. Nebraska*, 549 U.S. 1171(2007) (denied petition for writ of certiorari denied seeking review of *State v. Moore*, 272 Neb. 71 (2007 - affirmed denial of Moore's 2<sup>nd</sup> postconviction proceeding).

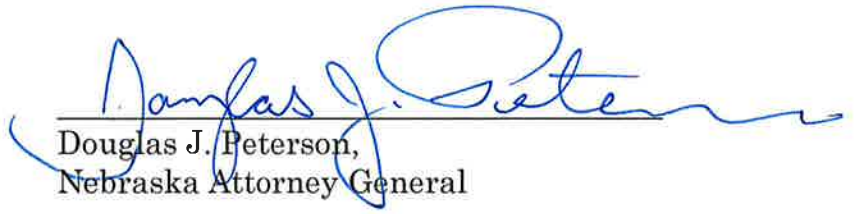
2. There are no stays of execution in effect by any federal court concerning the enforcement of Moore's death sentences. See, attached letters from Clerks of Court for the United States Supreme Court, Eighth Circuit Court of Appeals, and United States District Court for the District of Nebraska. No cases are pending in those courts to seek a stay.

3. Also attached are:

- Nebraska Secretary of State's certified copy of 69 Neb. Admin. Code, ch. 11 (Execution Protocol for Department of Correctional Services, effective Jan. 31, 2017).
- Notice of the substances to be employed in lethal injection that was hand delivered to Moore on January 19, 2018, by the Director of the Nebraska Department of Correctional Services. The notice contains the substances and quantity to be employed in the execution of Moore and was delivered at least 60 days prior to the Attorney General requesting an execution warrant, all in compliance with 69 Neb. Admin, Code, ch. 11, § 008.

4. The Department has possession of the substances, which have been chemically analyzed and verified as also required by 69 Neb. Admin. Code, ch. 11, § 008.05 at least 60 days prior to requesting an execution warrant from this Court.

5. The Director's determination of the substances and quantities to be used, as stated in the attached January 19, 2018, notice of substances, was based upon the Director's reliance on the expert opinions of qualified pharmacological and medical anesthesiology experts after also obtaining legal advice from Nebraska Assistant Attorneys General.

  
Douglas J. Peterson,  
Nebraska Attorney General

Subscribed in my presence and sworn to before me on April 3, 2018.



  
Notary Public



## **Attachments to Statement of Nebraska Attorney General**

- Letter of March 22, 2018, from Clerk of Supreme Court, United States Supreme Court, received April 3, 2018.
- Letter of March 21, 2018, from Clerk of Court, United States Court of Appeals for the Eighth Circuit.
- Letter of March 22, 2018, from Clerk of Court, United States District Court for the District of Nebraska.
- Notice of the substances to be employed in lethal injection, dated January 19, 2018.
- Nebraska Secretary of State's certified copy of 69 Neb. Admin. Code, ch. 11 (Execution Protocol for Department of Correctional Services, effective Jan. 31, 2017).

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

March 22, 2018

Attn: James D. Smith


Mr. Douglas J. Peterson  
Attorney General  
Office of the Attorney General  
2115 State Capital Building  
Lincoln, NE 68509-8920

Re: Carey Dean Moore

Dear Mr. Peterson:

The Supreme Court of the United States has not issued a currently valid stay of execution in the case of Carey Dean Moore. As of this date, Carey Dean Moore does not have anything pending before this Court.

Sincerely,  
Scott S. Harris, Clerk

  
Mara Silver  
Advising Attorney/Emergency Applications  
Clerk

DEPARTMENT OF JUSTICE

APR 03 2018

STATE OF NEBRASKA

United States Court of Appeals  
For the Eighth Circuit  
Thomas F. Eagleton U.S. Courthouse  
111 South 10<sup>th</sup> Street, Room 24.329  
St. Louis, Missouri 63102

Michael E. Gans  
Clerk of Court

VOICE (314) 244-2400  
FAX (314) 244-2780  
[www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)

March 21, 2018

Mr. James D. Smith  
Solicitor General  
Office of the Attorney General  
State of Nebraska  
2115 State Capitol Building  
Lincoln, Nebraska 68509-8920

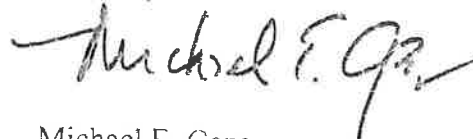
Re: Carey Dean Moore

Dear Mr. Smith:

This will acknowledge your letter of March 21, 2018, asking me to certify that no stays are in place in the United States Court of Appeal for the Eighth Circuit which would prevent the Nebraska Supreme Court from establishing a new execution date for Mr. Moore. As the Clerk of the Court, I have searched this court's official records, and I hereby state that no stay is in effect in the Eighth Circuit in Mr. Moore's cases.

Please contact me if you need any additional information. I would appreciate notice of any execution date so that I may inform my Court.

Sincerely,



Michael E. Gans  
Clerk of Court

UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA  
OFFICE OF THE CLERK  
[www.ned.uscourts.gov](http://www.ned.uscourts.gov)

Denise M. Lucks  
Clerk of Court

Gabriela Acosta  
Chief Deputy Clerk

March 22, 2018

Sent by e-mail to: [james.smith@nebraska.gov](mailto:james.smith@nebraska.gov)

James D. Smith  
Solicitor General  
2115 State Capitol Building  
Lincoln, NE 68509-8920

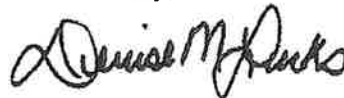
Re: Carey Dean Moore

Dear Mr. Smith:

Attached to this letter is a copy of an e-mail dated March 21, 2018, from Senior United States Judge Richard Kopf, the assigned judge in Carey Dean Moore's habeas corpus case in this district, *Moore v. Kinney*, 4:99-cv-03263-RGK. The e-mail message serves as Judge Kopf's written assurance that there is no current stay of execution pending in *Moore v. Kinney*, 4:99-cv-03263-RGK.

Based on Judge Kopf's written assurance and my review of the court's records, I can confirm that no current stay of execution has been issued by the Nebraska United States District Court for Carey Dean Moore.

Sincerely,



Denise M. Lucks  
Clerk of Court


Enclosure

cc: Senior Judge Richard G. Kopf  
Attorney General Douglas J. Peterson

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111 South 18th Plaza, Suite 1152, Omaha, NE 68102-1322

Omaha: (402) 661-7350 | Fax: (402) 661-7387 | Toll Free: (866) 220-4381  
Lincoln: (402) 437-1900 | Fax: (402) 437-1911 | Toll Free: (866) 220-4379

Re: Fw: Neb. Attorney General response request : Carey Dean Moore   
 Richard Kopf (Dist Judge) Gabriela Acosta 03/21/2018 03:06 PM  
 Debbie Mackling, Denise Lucks, Jennifer Stone, Kristin Leininger,  
 Susie Cordero

I so verify.

**Richard G. Kopf**

Senior United States District Judge  
 Suite 561A  
 Federal Building  
 100 Centennial Mall North  
 Lincoln, NE 68508

Land Line (Judicial Assistant): 402.437.1640  
 Cell (Direct to Judge): 402.504.0265  
 E-Mail: Richard\_Kopf@ned.uscourts.gov  
 Fax: 402.437.1641

Gabriela Acosta Judge Kopf, The clerk's office received a letter fr... 03/21/2018 02:22:59 PM

From: Gabriela Acosta/NED/08/USCOURTS  
 To: Richard Kopf/NED/08/USCOURTS@USCOURTS  
 Cc: Kristin Leininger/NED/08/USCOURTS@USCOURTS, Denise Lucks/NED/08/USCOURTS@USCOURTS, Susie Cordero/NED/08/USCOURTS@USCOURTS, Debbie Mackling/NED/08/USCOURTS@USCOURTS, Jennifer Stone/NED/08/USCOURTS@USCOURTS  
 Date: 03/21/2018 02:22 PM  
 Subject: Fw: Neb. Attorney General response request: Carey Dean Moore

Judge Kopf,

The clerk's office received a letter from the Nebraska Attorney General requesting confirmation that "no current valid stay of execution has been issued by the Nebraska United States District Court" for Carey Dean Moore. (See attached.)

I have searched CM/ECF by Carey Dean Moore's name and by his inmate number and the only case in our records is *Moore v. Kinney*, 4:99-cv-03263-RGK. I have attached a copy of the docket sheet for you reference (see attached). My review of the docket sheet suggests you have not imposed any stay of execution in this case.

Will you please verify that you have not imposed any current stay of execution for Carey Dean Moore?

Thank you,  
 Gabi



Moore\_Docket\_Sheet.pdf

--- Forwarded by Gabriela Acosta/NED/08/USCOURTS on 03/21/2018 02:08 PM ---

From: Denise Lucks/NED/08/USCOURTS  
 To: Gabriela Acosta/NED/08/USCOURTS@uscourts  
 Cc: Susie Cordero/NED/08/USCOURTS@uscourts  
 Date: 03/21/2018 01:06 PM  
 Subject: Fwd: Neb. Attorney General response request: Carey Dean Moore

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The Nebraska Department of Correctional Services  
P.O. Box 94661  
Lincoln, NE 68509

January 19, 2018

Carey D. Moore #32947  
Tecumseh State Correctional Institution  
P.O. Box 900  
Tecumseh, NE 68450

Re: Notice of substances to be employed in an execution by lethal injection

Mr. Moore,

In accordance with Nebraska law, you are hereby notified that the director of the Nebraska Department of Correctional Services has determined that the following substances, quantity, and sequence will be administered for execution by lethal injection to carry out and enforce the final court judgments that have sentenced you to death:

1. **Diazepam:** An initial dose of 2 (two) milligrams of diazepam per kilogram of body weight, to be followed by additional identical doses of diazepam if unconsciousness is not achieved after each successive dose. A 50cc saline flush will be administered following each injection of diazepam.
2. **Fentanyl Citrate:** 25 (twenty-five) micrograms of fentanyl citrate per kilogram of body weight. A 50cc saline flush will be administered following the injection of fentanyl citrate.
3. **Cisatracurium Besylate:** 1.6 (one and six-tenths) milligrams of cisatracurium besylate per kilogram of body weight. A 50cc saline flush will be administered following the injection of cisatracurium besylate.
4. **Potassium Chloride:** 240 (two hundred forty) milliequivalents of potassium chloride. A 50cc saline flush will be administered following the injection of potassium chloride.

The Nebraska Supreme Court has not issued an execution warrant. Thus, no date has been set for carrying out your death sentences by lethal injection.

BY:



Scott R. Frakes, Director

Copy: Douglas J. Peterson, Attorney General

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**INTENTIONALLY**



# STATE OF NEBRASKA

United States of America,     } ss.  
State of Nebraska             }

Secretary of State  
State Capitol  
Lincoln, Nebraska

I, John A. Gale, Secretary of State of the State of Nebraska, do hereby certify that

*The attached is a true and correct current copy of TITLE 69-Nebraska Administrative Code-Chapter 11, Execution Protocol-as adopted by the Nebraska Department of Correctional Services and filed in the office of the Secretary of State. The attached regulations were approved and filed in the office of the Secretary of State on January 26, 2017 and became effective on January 31, 2017.*

*I further certify that there have been no amendments nor changes to the above mentioned Rules and Regulations since the above date and these regulations were in full force and effect through and including this current date of certification.*

*Finally, I hereby certify that said Rules and Regulations were signed and approved in the offices of the ATTORNEY GENERAL and the GOVERNOR of the State of Nebraska.*

In Testimony Whereof,



I have hereunto set my hand and affixed the Great Seal of the State of Nebraska on this date of

*March 22, 2018*

*John A. Gale*  
Secretary of State

NEBRASKA ADMINISTRATIVE CODE

TITLE 69, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 11

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

EXECUTION PROTOCOL

APPROVED  
BY BEN S. J. PETERSON  
ATTORNEY GENERAL

JAN 20 2017

JAN 26 2017  
*Ben Peterson*

APPROVED

JAN 26 2017 *PD*

*Pete Ricketts*  
PETE RICKETTS  
GOVERNOR

BY *James D. Smith*  
ASSISTANT ATTORNEY GENERAL

NEBRASKA ADMINISTRATIVE CODE

TITLE 69 DEPARTMENT OF CORRECTIONAL SERVICES  
CHAPTER 11—EXECUTION PROTOCOL

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Authority	§§ 83-964 and 83-965	001
Location	§§ 83-964 and 83-965	002
Execution Team	§§ 83-964 and 83-965	003
Execution Team Qualifications	§§ 83-964 and 83-965	004
Execution Team Duties	§§ 83-964 and 83-965	005
Execution Team Training	§§ 83-964 and 83-965	006
Consciousness Checks	§§ 83-964 and 83-965	007
Substance or Substances to be Employed in an Execution by Lethal Injection	§§ 83-964 and 83-965	008
Documented Process for Obtaining the Necessary Substances	§§ 83-964 and 83-965	009
Determination of Death	§§ 83-964 and 83-965	010

STATE OF NEBRASKA  
DEPARTMENT OF CORRECTIONAL SERVICES  
COMMUNITY GENERAL

JAN 20 2017

BY *James J. Smith*  
SHERIFF

JAN 26 2017  
*Ben Sawyer*

APPROVED

JAN 26 2017

*Pete Ricketts*  
PETE RICKETTS  
GOVERNOR

NEBRASKA ADMINISTRATIVE CODE

TITLE 69 DEPARTMENT OF CORRECTIONAL SERVICES  
CHAPTER 11—EXECUTION PROTOCOL

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Authority	§§ 83-964 and 83-965	001
Consciousness Checks	§§ 83-964 and 83-965	007
Determination of Death	§§ 83-964 and 83-965	010
Documented Process for Obtaining the Necessary Substances	§§ 83-964 and 83-965	009
Execution Team	§§ 83-964 and 83-965	003
Execution Team Duties	§§ 83-964 and 83-965	005
Execution Team Qualifications	§§ 83-964 and 83-965	004
Execution Team Training	§§ 83-964 and 83-965	006
Location	§§ 83-964 and 83-965	002
Substance or Substances to be Employed in an Execution by Lethal Injection	§§ 83-964 and 83-965	008

**NEBRASKA ADMINISTRATIVE CODE**

**TITLE 69—DEPARTMENT OF CORRECTIONAL SERVICES**

**CHAPTER 11—EXECUTION PROTOCOL**

**001 Authority.** When the Director of the State of Nebraska Department of Correctional Services (Director) receives an order of the Nebraska Supreme Court directing the enforcement of a sentence of death, that order will be carried out pursuant to Laws 2009, L.B. 36. The Director has the authority to create and modify this protocol.

**002 Location.** Executions will be performed in the execution chamber at the Nebraska State Penitentiary.

**003 Execution Team.** The Director shall appoint and remove all members of the Execution Team at his or her discretion. The Execution Team may consist of the following:

**003.01** The Director

**003.02** The Warden of the Nebraska State Penitentiary (Warden)

**003.03** The Public Information Officer

**003.04** An Escort Team consisting of an Escort Team Leader and an Escort Team comprised of a sufficient number of individuals, as determined and selected by the Director, to provide security escort for the condemned prisoner.

**003.05** An IV Team consisting of an IV Team Leader and at least one additional IV Team Member.

**003.06** A pharmacist or pharmaceutical chemist.

NEBRASKA ADMINISTRATIVE CODE

TITLE 69—DEPARTMENT OF CORRECTIONAL SERVICES  
CHAPTER 11—EXECUTION PROTOCOL

004 Execution Team Qualifications.

004.01 The Director, Warden and Public Information Officer are qualified by the responsibilities of the positions they hold within the Department and the completion of any specific training required by this protocol.

004.02 **Escort Team.** The Escort Team shall be correctional employees with training or experience in escorting secured prisoners on behalf of the Department.

004.03 **IV Team.** The IV Team Leader and IV Team Member(s) shall be individuals trained in venipuncture and catheter placement to maintain an open intravenous line; shall have completed training as an emergency medical technician and training in phlebotomy; shall have completed training to determine and reasonably verify whether a person is unconscious; shall have completed training to initiate the flow of saline solution by IV, the injection of substances into an IV line, and to select the equipment capable of accomplishing the requirements of this protocol.

004.04 **Pharmacist.** Any pharmacist team member is qualified by an educational degree in pharmacy and professional training as a pharmacist.

004.05 **Pharmaceutical Chemist.** Any pharmaceutical chemist team member is qualified by a Bachelor of Science degree in chemistry and specialty training or experience in drug compounding.

**NEBRASKA ADMINISTRATIVE CODE**

**TITLE 69—DEPARTMENT OF CORRECTIONAL SERVICES  
CHAPTER 11—EXECUTION PROTOCOL**

**005 Execution Team Duties.**

**005.01** The Director (1) has the responsibility to obey orders of the Nebraska Supreme Court directing the enforcement of a sentence of death; (2) appoints and removes members of the Execution Team at his or her discretion; (3) supervises, directs and maintains a record of the qualifications and training of the Execution Team pursuant to this protocol; (4) shall be physically present at the execution; (5) shall direct the administration of all substances to the prisoner in accordance with this protocol; (6) shall procure the coroner or a health professional qualified to determine the death; (7) shall summon the county coroner to pronounce the death of the condemned inmate; and (8) shall certify the death of the condemned inmate to the appropriate court.

**005.02** The Warden, under the supervision of the Director, shall (1) assure that court ordered executions in Nebraska are conducted pursuant to this protocol; and (2) be physically present at the execution.

**005.03** The Public Information Officer, under the supervision of the Warden, shall (1) maintain a written record of activities related to this protocol beginning when the Escort Team delivers the condemned prisoner to the execution chamber; and (2) serve as the Director's communication liaison with representatives of the Nebraska Department of Justice.

**005.04** The Escort Team shall (1) deliver the condemned inmate to the execution chamber; (2) place and secure the condemned inmate on the table in the execution chamber; (3) exit the execution chamber; and (4) remain outside the execution chamber to respond to any inmate control issues that may arise until dismissed by the Director.

**NEBRASKA ADMINISTRATIVE CODE**

**TITLE 69—DEPARTMENT OF CORRECTIONAL SERVICES**

**CHAPTER 11—EXECUTION PROTOCOL**

**005.05** The IV Team Leader shall (1) obtain and maintain appropriate materials and equipment to accomplish his or her responsibilities under this protocol; (2) at least 48 hours before the scheduled execution date examine the condemned inmate to determine appropriate locations for intravenous catheter placement and report the results of that examination to the Director; (3) if the Execution Team does not include a pharmacist or pharmaceutical chemist, deliver to the execution chamber the substance or substances and quantity determined by the Director under subsection 008 of this protocol for injection into the condemned inmate; (4) once the condemned inmate is secured by the Escort Team on the table in the execution chamber, establish a functioning intravenous line capable of administering the substance or substances into a vein of the condemned inmate; (5) establish a backup functioning intravenous line capable of administering the substance or substances into a vein of the condemned inmate; (6) test the viability of the intravenous sites with a low-pressure saline drip through intravenous tubing; (7) attach a heart monitor to the condemned inmate; (8) be prepared to correct any issues with respect to the intravenous line or condemned inmate's vascular system that might prevent or impede the injection of the lethal substances; (9) at the order of the Director, administer to the condemned inmate through the established intravenous line the substance or substances and quantity determined by the Director under subsection 008 of this protocol; (10) throughout the procedure, monitor the condemned inmate's level of consciousness and heart monitor readings; (11) remain at his or her post until dismissed by the Director; (12) dispose of any substances or equipment employed in meeting the requirements of this protocol after the inmate has been pronounced dead.

**005.06** The IV Team shall assist the IV Team Leader as directed and at least one IV Team member shall be prepared to assume the responsibilities of the IV Team Leader should the IV Team Leader become unable to perform his or her responsibilities.



**NEBRASKA ADMINISTRATIVE CODE**

**TITLE 69—DEPARTMENT OF CORRECTIONAL SERVICES**

**CHAPTER 11—EXECUTION PROTOCOL**

**005.07** If the Execution Team includes a pharmacist or pharmaceutical chemist, such person shall deliver to the execution chamber the substance or substances and quantity determined by the Director under subsection 008 of this protocol for injection into the condemned inmate.

**006 Execution Team Training.**

**006.01 Training schedule.**

**006.01.01** When no execution date has been set by the Nebraska Supreme Court, the members of the Execution Team shall train at least once every six months at a time established by the Director. The Escort Team and the IV Team may train independently of the other members of the Execution Team.

**006.01.02** When an execution date has been set by the Nebraska Supreme Court the Execution Team will train at least weekly at times established by the Director.

**006.02 Training required.** In addition to the qualifications noted in this protocol, the Execution Team shall train as follows.

**006.02.01 Execution Team as a Whole.** When the training schedule requires weekly training, all members of the Execution Team shall participate in training as a unit, review this protocol, and engage in training activities so that all members will be adequately trained to carry out their individual responsibilities.

NEBRASKA ADMINISTRATIVE CODE

TITLE 69—DEPARTMENT OF CORRECTIONAL SERVICES  
CHAPTER 11—EXECUTION PROTOCOL

**006.03 Training documentation.** All training of the members of the Execution Team will be documented noting the date and duration of the training, who supervised the training, and the activities undertaken.

**007 Consciousness Checks.**

**007.01** The first or only substance injected must be capable of rendering the convicted person unconscious. The IV Team Leader shall make a determination sufficient to reasonably verify that the convicted person is unconscious before administering any second or additional substances.

**008 Substance or substances to be employed in an execution by lethal injection.**

**008.01** Executions shall be accomplished by the intravenous injection of a substance or substances in a quantity sufficient to cause death without the unnecessary and wanton infliction of pain. The substance or substances shall be administered in compliance with this execution protocol.

**008.02** The Director shall determine which substance or substances and quantity are to be employed in an execution by lethal injection. If more than one substance is to be employed in an execution by lethal injection, the first substance injected must be capable of rendering the convicted person unconscious. The Director's determination of the substance or substances to be employed in an execution by lethal injection may be based on the availability of necessary substances provided that the substance or substances can be intravenously injected in a quantity sufficient to cause death without the unnecessary and wanton infliction of pain. The Director shall notify the condemned inmate of the determination of the substance or substances, quantity and, if more than

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one substance is to be employed in an execution by lethal injection, the order the substances will be administered, at least 60 days prior to the Nebraska Attorney General requesting an execution warrant from the Nebraska Supreme Court.

**008.03** The substance or substances may be directly purchased or obtained through the Department Pharmacy or obtained through any other appropriate source, including pharmaceutical or chemical compounding.

**008.04** The substances shall be clearly labeled and maintained by the Department in a clean, secure, and safe environment under controlled room temperature storage conditions.

**008.05** A chemical analysis to verify the substance or substances to be employed in the execution by lethal injection shall be performed at least 60 days prior to the Nebraska Attorney General requesting an execution warrant from the Nebraska Supreme Court.

**008.06** The inventory of substances will be reviewed every six months, and upon receipt of an execution order from the Nebraska Supreme Court.

**008.07** Any expired substances will be removed from inventory.

**009 Documented process for obtaining the necessary substances**

**009.01** Documentation shall include the Director's orders, directions, and all Department records for obtaining the necessary substances for execution.

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009.02 Records of any order to obtain the necessary substances as well as the acquisition and receipt of the substances shall be maintained by the Department.

010 Determination of death

010.01 The coroner or a health professional qualified to determine death shall be designated by the Director to determine whether the inmate is deceased at the conclusion of the execution process. If the coroner or designated health professional determines that the condemned inmate is not dead, the Director shall order that the intravenous injection of the substance or substances shall be repeated by the IV Team Leader.

APPROVED

JAN 26 2017

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