

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MICHAEL ANTHONY TAYLOR)
)
 Plaintiff,)
)
 v.) No. 05-4173-CV-W-FJG
)
 LARRY CRAWFORD, et al.,)
)
 Defendants.)
 _____)

**PLAINTIFF'S OPPOSITION TO THE STATE'S RESPONSE TO
COURT ORDER OF SEPTEMBER 12, 2006**

Plaintiff submits this brief in opposition to the Defendant Correctional Officials' Response to this Court's September 12, 2006, Order rejecting the State's July 14 proposed protocol.

Rather than attempting to comply with the remedial portion of the Court's September 12 Order, or even litigating the propriety of the modified remedy that Order sets out, the State has submitted a motion for reconsideration of the September 12 Order. Response at 2 ("[We] ask the Court to reconsider its conclusion that [the July 14] protocol is not constitutionally sufficient."). The State's refusal even to attempt to comply with -- or litigate -- the Court's remedial order is yet more evidence that the State does not comprehend what is at stake in this litigation.

An execution procedure that involves an unnecessary risk of significant pain violates the Eighth Amendment. *See* Order of June 26, 2006, at 10-11. In order to minimize the unnecessary risk of excruciating pain, while continuing to use potassium chloride as the means of execution, the State must provide for effective assessment of the inmate's anesthetic depth prior to and

during the administration of pancuronium and potassium. *See id.* at 14; Order of July 25, 2006, at 1; Order of Sept. 12, 2006, at 2 (“The State’s proposal is rejected in favor of that proposed by the Court.”). The State’s proposed July 14 protocol does not come close to providing for effective assessment of anesthetic depth, and it also fails to correct additional flaws in the State’s lethal injection procedure identified by this Court. *See* Order of June 26, 2006, at 10-15.

The State has provided no grounds for reconsidering the September 12 Order. *See Elder-Keep v. Aksamit*, 460 F.3d 979, 984-85 (8th Cir. 2006). For a more detailed discussion of the insufficiency of the July 14 proposed protocol, and the need to meaningfully assess anesthetic depth when using potassium as the means of execution, Plaintiff respectfully refers the Court to his Opposition to the July 14 proposed protocol, filed on July 24, 2006, as well as the accompanying affidavit of Dr. Mark Heath and other exhibits. For the reasons stated therein, the State’s motion for reconsideration should be denied.

Respectfully submitted,

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Dated this 12th day of October, 2006.

Certificate of Service

I hereby certify a true and correct copy of the foregoing was forwarded by electronic mail and Federal Express this twelfth day of October, 2006, to the offices of:

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