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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

THOMAS CREECH et. al.,	)	**CASE NO. 12-00173-S-EJL**
	)	
Plaintiffs,	)	**DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF LEAVITT'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION OR STAY OF EXECUTION [DOCKET NO. 16]**
	)	
vs.	)	
	)	
BRENT REINKE, et. al.,	)	
	)	
Defendants.	)	
	)	

COME NOW Defendants Brent Reinke, Kevin Kempf, Jeff Zmuda, Josh Tewalt and Randy Blades, by and through their attorneys of record, and hereby file Defendants' Response and Objection to Plaintiff Leavitt's Emergency Motion for Preliminary Injunction or Stay of Execution [Docket No. 16]. Based on the reasons stated below, together with the pleadings and

documents on file in this action and the Affidavit of Jeff Zmuda filed herewith, Plaintiff's request for a preliminary injunction or stay of execution should be denied.

INTRODUCTION

The Plaintiff Leavitt has filed an emergency motion for preliminary injunction or stay of execution claiming the Idaho Department of Correction ("IDOC") execution procedures threaten to violate his Fourteenth Amendment right to due process and Eighth Amendment right against cruel and unusual punishment. Specifically Plaintiff claims the IDOC standard operating procedure allows the Director and Defendant Kevin Kempf "to revise, suspend, or rescind any procedural steps, at any time, at his sole discretion", and the execution procedures "create a demonstrated risk of severe pain, does not provide the safeguards relied upon in *Baze*, and are not substantially similar to the Kentucky Protocol at issue in *Baze*."

The IDOC approved Standard Operating Procedure 135.02.01.001 (version 2.9) (hereinafter referred to as "2011 SOP 135") Execution Procedures on October 14, 2011. On November 18, 2011, the State of Idaho executed an offender for the first time since 1994, by lethal injection using the three-drug protocol set forth in 2011 SOP 135. On January 6, 2012, the IDOC approved Standard Operating Procedure 135.02.01.001 (version 3.6) (hereinafter referred to as "2012 SOP 135") Execution Procedures. The IDOC added additional safeguards to the existing execution protocol and approved a one-drug protocol in addition to the three-drug protocol.

Defendants filed an IDOC Notice of Intent to Use One-Drug Protocol in the Execution of Richard Leavitt [Docket No. 18] on May 25, 2012. The IDOC states in its Notice:

> . . . The IDOC will be proceeding with implementing the one-drug pentobarbital protocol (method 4) outlined in SOP 135 for the execution of Richard Leavitt on June 12, 2012. (Id. at p.41).

> Additionally, the IDOC provides notice that it will not invoke its authority to deviate from the one-drug pentobarbital protocol outlined in SOP 135 for the execution of Richard Leavitt on June 12, 2012.

Dkt. No. 18, p.2.

Plaintiffs filed their Opposition to Defendants 12(b) Motion to Dismiss [Docket No. 19] in this matter on May 25, 2012. In their opposition Plaintiffs state "Based on Mr. Leavitt's understanding that the Notice is binding on the IDOC, including Defendants, it appears that his Claims 1 (notice of protocol); 4 (use of pentobarbital in a three-drug protocol), 5 (Idaho should use one-drug protocol), and 6 (Fundamental right against cruel and unusual punishment) are moot." Dkt. No. 19, pp.2-3. Based on the Plaintiffs representations in their Opposition, it appears that the only remaining issue in Plaintiff Leavitt's motion for injunction is whether the 2012 protocol creates a demonstrated risk of severe pain because it fails to incorporate the *Baze* safeguards, and thus violates Plaintiff Leavitt's Eighth Amendment right to be free from cruel and unusual punishment. Dkt. 16-1, pp.8, 15-27.

The Defendants oppose a preliminary injunction or stay of execution. As set forth by the Idaho District Court in *Rhoades v. Reinke*, 2011 WL 5520446 (D. Idaho, Nov. 2011) and affirmed by the Ninth Circuit Court of Appeals in *Rhoades v. Reinke*, 671 F.3d 856 (9th Cir. 2011), the IDOC execution protocol is substantially similar to the safeguards established in *Baze v. Rees*, 553 U.S. 35, 128 S.Ct. 1520 (2008), and does not threaten Plaintiff Leavitt's right to be free from cruel and unusual punishment in violation of the Eighth Amendment. Plaintiff Leavitt's request should be denied because he has failed to exhaust his administrative remedies, and also because he is not likely to succeed on the merits.

ARGUMENT

I. PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION OR STAY OF EXECUTION FAILS TO MEET THE REQUIRED LEGAL STANDARD

A. Applicable Standard For Preliminary Injunction Or Stay Of Execution

Filing a § 1983 action does not entitle the complainant to an order staying an execution as a matter of course. *Hill v. McDonough*, 547 U.S. 573, 126 S.Ct. 2096, 2104 (2006). The state and the victims of a crime have an interest in the timely enforcement of a sentence. *Id*. A stay of execution is an equitable remedy and not available as a matter of right. *Id.* "Equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id*., See *Nelson v. Campbell*, 541 U.S. 637, 649-650, 124 S.Ct. 2117 (2004). In seeking to challenge the manner of execution, the inmate must satisfy all the requirements of a stay, including a showing of a significant possibility of success on the merits. *Id*. A court that is considering granting a stay "must also apply 'a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time to allow consideration of the merits without requiring entry of a stay.'" *Id*.

"To be entitled to injunctive relief, a movant must demonstrate (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest." *Beaty v. Brewer*, 2011 WL 2050124 *2 (D. Ariz. 2011); *See Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 129 S.Ct. 365, 374, 376 (2008). The movant has the burden of making "a clear showing." *Id*. In capital cases, these principles apply when a condemned prisoner asks a federal court to enjoin his impending execution because "filing an

action that can proceed under § 1983 does not entitle the complainant to an order staying an execution as a matter of course." *Id*.

B. Applicable Standards Governing Lethal Injection

1. Baze v. Rees

Baze v. Rees, 553 U.S. 35, 128 S.Ct. 1520 (2008), is the controlling case on the constitutionality of lethal injection protocols. "It is difficult to regard a practice as 'objectively intolerable' when it is in fact widely tolerated." *Baze*, 553 U.S. at 53, 128 S.Ct. at 1532 (2008). Thirty-six states have adopted lethal injection as the exclusive or primary method of execution, including the Federal Government. *Id*. The broad consensus goes not to just the method of execution and the three-drug combination used by Kentucky. *Id*. The U.S. Supreme Court has never invalidated a State's chosen procedure for carrying out a sentence of death as the infliction of cruel and unusual punishment. *Id.* at 48, 128 S.Ct. 1530.

The Petitioners in *Baze* were challenging the Kentucky protocol on the possibility of improper administration of sodium thiopental. *Id*. at 53, 128 S.Ct. 1533. Petitioners in *Baze* contended there is a risk of improper administration of thiopental because:

> [t]he doses are difficult to mix into solution form and load into syringes; because the protocol fails to establish a rate of injection, which could lead to a failure of the IV; because it is possible that the IV catheters will infiltrate into surrounding tissue, causing an inadequate dose to be delivered to the vein; because of inadequate facilities and training; and because Kentucky has no reliable means of monitoring the anesthetic depth of the prisoner after the sodium thiopental has been administered.

Id. at 54, 128 S.Ct. at 1533.

Kentucky put in place several safeguards to ensure adequate administration of sodium thiopental. *Id*. at 55, 128 S.Ct. at 1533. The safeguards are (1) "members of the IV team must have at least one year of professional experience as a certified medical assistant, phlebotomist,

EMT, paramedic, or military corpsman," *id*.; (2) the IV team and execution team members participate in at least 10 practice sessions per year to encompass a complete walk through and siting of IV catheters into volunteers, *id*., 128 S.Ct. 1534; (3) "the IV team to establish both primary and backup lines and to prepare two sets of the lethal injection drugs before the execution commences," *id*.; (4) "one hour to establish both the primary and backup IV's", *id*.; and (5) "the presence of the warden and deputy warden in the execution chamber with the prisoner allows them to watch for signs of IV problems," *Id*. at 56, 128 S.Ct. 1534. The Court found that the risks identified by the petitioners are not so substantial or imminent as to amount to an Eighth Amendment violation, *id*. at 56, 128 S.Ct. at 1534

To prevail on an Eighth Amendment claim in challenging the administration of lethal injection, "'there must be a substantial risk of serious harm,' an 'objectively intolerable risk of harm' that prevents prison officials from pleading that they were 'subjectively blameless for purposes of the Eighth Amendment.'" *Id*. at 50, 128 S.Ct. at 1531 (quoting *Farmer v. Brennan*, 511 U.S. 825, 842, 846 in n.9 (1994)). "[A] condemned prisoner cannot successfully challenge a State's method of execution merely by showing a slightly or marginally safer alternative. *Baze*, 553 U.S. at 51, 128 S.Ct. at 1531(citations omitted). An inmate cannot succeed on an Eighth Amendment claim simply by showing one more step the State could take as a failsafe for other, independently adequate measures. This approach would serve no meaningful purpose and would frustrate the State's legitimate interest in carrying out a sentence of death in a timely manner." *Id*. at 60, 128 S.Ct. at 1537. The suggested alternative "'must effectively address a 'substantial risk of serious harm.' To qualify, the alternative procedure must be feasible, readily implemented, and in fact significantly reduce a substantial risk of severe pain." *Id*. at 52, 128 S.Ct. at 1532.

In *Baze* the Court held:

> A stay of execution may not be granted on grounds such as those asserted here unless the condemned prisoner establishes that the State's lethal injection protocol creates a demonstrated risk of severe pain. He must show that the risk is substantial when compared to the known and available alternatives. A state with a lethal injection protocol substantially similar to the protocol we uphold today would not create a risk that meets the standard.

Id. at 62, 128 S.Ct. 1537. (Emphasis added.) The Kentucky Protocol is believed to be the most humane available, one shared with 35 other states. *Id*. Kentucky's decision to adhere to its protocol, despite the asserted risks by Petitioners and adoption of safeguards to protect against the asserted risks, "cannot be viewed as probative of the wanton infliction of pain under the Eighth Amendment." *Id*. The Court held that Kentucky's procedure is consistent with the Eighth Amendment. *Id*. at 63, 128 S.Ct. 1538

2. Dickens v. Brewer

In *Dickens v. Brewer*, 631 F.3d 1139, 1141 (9th Cir. 2011), the Ninth Circuit was asked to decide whether, despite Arizona's safeguards, "Arizona's protocol creates an unconstitutional risk that an inmate will be properly anesthetized and thus experience extreme pain and suffering while dying." Dickens did not assert that the Arizona safeguards were inadequate. Instead Dickens asserted that evidence gathered during discovery raised issues of whether Arizona would follow their protocol and ensure the existing safeguards were properly implemented. *Id*. Additionally, Dickens asserted that Arizona should be required to adopt some additional safeguards. *Id*. at 1146.

In *Dickens*, Arizona used a three-drug lethal injection. *Id*. at 1142. The Ninth Circuit held that "Arizona's Protocol falls within the safe harbor—it incorporates even more safeguards against maladministration than Kentucky's protocol, including requirements that the Medical Team monitor the inmate with a microphone and camera and physically confirm consciousness."

Id. at 1146; *See Baze*, 553 U.S. at 55, 128 S.Ct. at 1520. Dickens was asking the Ninth Circuit to consider "whether there is a substantial risk that it will be implemented in an unconstitutional manner." *Id*. at 1146. The Ninth Circuit found that "absent any evidence that Arizona failed to adhere to execution procedures in the past, it would be pure speculation to conclude that Arizona might fail to follow the Protocol in the future." *Id*. at 1149. In response to Dickens' argument that Arizona should be required to add three safeguards to the Protocol, the Ninth Circuit found "the Protocol contains more safeguards than the Kentucky protocol and there is no evidence that Arizona might fail to follow it in future executions." *Id*. at 1149. The Ninth Circuit relied on *Baze* stating:

> An inmate cannot succeed on an Eighth Amendment claim simply by showing one more step the State could take as a failsafe for other, independently adequate measures. *Baze*, 553 U.S. at 60-61, 128 S.Ct. 1520. Where an execution protocol contains sufficient safeguards, the risk of not adopting an additional safeguard is too 'remote and attenuated' to give rise to a substantial risk of serious harm. *Id*. at 58-59, 128 S.Ct. 1520.

The Ninth Circuit further found that the "risk that Dickens will be improperly anesthetized if Arizona fails to adopt the additional safeguards is too remote and attenuated to raise questions of fact as to the Protocol's constitutionality." *Id*. at 1150.

3. <u>Rhoades v. Reinke</u>

In *Rhoades v. Reinke*, 2011 WL 5520446 (D. Idaho, Nov. 2011), Rhoades filed a §1983 action and sought a stay of execution claiming there was a substantial risk that the state would carry out his execution in a manner to cause serious harm by causing him excruciating pain and suffering. The district court denied Rhoades' request for a stay finding that Rhoades was not likely to succeed on the merits. *Rhoades*, 2011 WL 5520446, *4. Rhoades argued that 2011 SOP 135 was not substantially similar to Kentucky's lethal injection protocol and the availability

of a one-drug protocol further established that 2011 SOP 135 violated the Eighth Amendment. *Id*. at *5.

Rhoades argued that 2011 SOP 135 did not contain the *Baze* safeguards contending specifically that:

> SOP 135 (1) "does not contain the 'most significant' safeguard, a required medical credential 'combined with at least one year of professional experience'"; (2) "does not contain the second *Baze* requirement, daily experience"; (3) "does not contain the third *Baze* safeguard, in-house training"; (4) "does not contain the fourth *Baze* safeguard, meaningful redundancy"; and (5) "does not contain the final *Baze* safeguard, a meaningful consciousness check."

Id. at *7. The District Court stated, however, rejected Rhoades' arguments and held 2011 SOP was a substantially similar protocol to that approved in *Baze*. "Rhoades overstates the holding of *Baze* to the extent he equates the identified 'safeguards' as mandatory requirements that must each be in place in order for a State's three-drug lethal injection protocol to pass constitutional muster." *Id*. The District Court was persuaded, "that the record developed thus far reveals that the safeguards contained in SOP 135—as further elaborated upon by Jeff Zmuda in his affidavit and his testimony during the evidentiary hearing—satisfies these requirements in any event. Indeed, <u>on its face</u> SOP 135 contains even more safeguards than those referenced and relied upon in *Baze*." *Id*., (Emphasis added).

In addition to holding that SOP 135 met the *Baze* safeguards, the District Court held that it incorporated even more safeguards than *Baze*. *Id*. at *14. The District Court found areas in SOP 135 that contained additional safeguards with respect to medical services on-site, monitoring potential IV problems, timing between administration of chemicals, equipment condition and drug chain of custody. *Id*. at ** 14-16.

Rhoades argued there was a substantial risk that IDOC officials would commit mistakes in implementing the protocol even if there were adequate safeguards. *Id*. Rhoades' sole support

of this argument was reports of problems in other jurisdictions. *Id*. Rhoades also argued that the late adoption of SOP 135, resulted in a rushed atmosphere to practice. *Id*. As the District Court correctly noted, it was Rhoades' burden to "raise issues of fact as to whether there is a substantial risk that he will be improperly anesthetized despite the Protocol's safeguards, including those added through amendment." *Id*. (citing *Baze*, 553 U.S. at 56, 128 S.Ct. 1520). In concluding Rhoades failed to meet his burden, the District Court rejected Rhoades' hypotheses supported solely by isolated reports from other jurisdictions: "Mishaps of varying degree in other states with different personnel under varying protocols are not necessarily probative of how Idaho will implement its own protocol." *Id*. at *17.

Rhoades also challenged Jeff Zmuda's failure to verify the employment history and relevant medical experience of the execution team members. *Id*. Jeff Zmuda testified about the execution team members' background, qualifications and certificates including IDOC interviews and selection of team members, which were preformed with the assistance of the Medical Team Leader. *Id*. The Court found Zmuda to be a credible witness who acted in good faith as such accepted Zmuda's explanations. *Id*.

The District Court held that Rhoades had not shown a substantial risk that 2011 SOP 135 would be implemented in an unconstitutional manner. *Id*. at *16. The District Court did find that Rhoades was likely to be irreparably harmed absent a stay and that his execution was an irrevocable event. *Id*. at *21-22. However, this factor alone did not warrant a stay due to Rhoades' inability to show a substantial likelihood of success on the merits or that the equities tip sharply in his favor. *Id*.

With respect to whether the equities tipped in favor of Rhoades, the District Court held that the equities did not tip in favor of either party, but the public interest in proceeding was

compelling. *Id*. The District Court stated "the citizens of the State of Idaho and the families of the individual victims in this case have a compelling interest in seeing that Idaho's lawful judgments . . . are enforced." *Id*. Much has been said and written about the uncertainties and expense of death-penalty cases, the impact the length of time such cases place on victims and families and communities of victims. *Id*. "Continued delay compounds those uncertainties, expenses and impacts, and therefore is not in the public interest." *Id*.

The Ninth Circuit Court of Appeals affirmed the District Court holding in *Rhoades v. Reinke*, 671 P.3d 856 (9th Cir. 2011.) The Ninth Circuit held 2011 SOP 135 did not violate the Eighth Amendment, Rhoades failed to show a substantial risk that the protocol would be improperly implemented in his case and that the availability of a one-drug lethal injection protocol did not render SOP 135 unconstitutional. 671 F.3d 856. The Ninth Circuit framed the issue as "whether the procedure Idaho uses is similar to or materially different from the procedures approved in *Baze* and *Dickens*. *Id*. at 859. The Ninth Circuit held the District Court correctly concluded 2011 SOP 135 includes more safeguards than the Kentucky protocol when the District Court held:

> 1) Members of the SOP 135 Medical Team and Injection Team responsible for IV insertion had the requisite experience. Indeed, the member with the least amount of experience had 15 years of experience in his/her professional field; (Footnote omitted)
>
> 2) The Medical and Injection Team members (except for the Medical Team Leader) had ongoing, regular experience establishing IV catheters, in line with the experience required in *Baze*;
>
> 3) Sufficient training practices and implementation of such practices, namely Escort, Medical, and Injection Team members have been receiving regular training in the execution procedures, in the execution unit itself, since October 20, 2011. (Footnote omitted). Between October 20, 2011 and November 18, 2011, the date of execution, there will be 10 training sessions, including several full rehearsals during which team members will practice placing IV lines in volunteer subjects;

4) Sufficient redundancy measures including three complete sets of chemicals and the prior identification of the best sites on Rhoades to insert the primary IV catheter as well as two separate locations for a backup IV catheter; (Footnote omitted)

5) Meaningful consciousness checks if Rhoades remains conscious after administration of the sodium pentothal, including an initial check by the Medical Team as to why Rhoades is still conscious. After this check, the Medical Team leader will pass the information to the warden, along with the Medical Team's input. The warden then decides how to proceed, including whether to restart the procedure or to stop the procedure; and

6) Expanded safeguards, including the presence of a medical doctor licensed by the Idaho Board of Medicine to give first aid and resuscitation, if a problem occurs in execution, and emergency technicians and an ambulance to give emergency medical assistance and transport if the need arises.

Id. at 861-862.

Rhoades challenged the District Court's finding that he did not show a substantial risk that 2011 SOP 135 would be implemented in an unconstitutional manner. *Id*. at 862. Rhoades argued "the IDOC did not engage in meaningful screening of candidates for the Execution Team or meaningful in-house training sessions, and will not engage in meaningful consciousness checks during Rhoades execution." *Id*. The Ninth Circuit held that Rhoades had the burden of raising issues of fact as to whether there is a substantial risk that he will be improperly anesthetized despite the protocol's safeguards as was held in *Dickens*. *Id*.; See *Dickens*, 631 F.3d at 1146 (citing *Baze*, 553 U.S. at 56, 128 S.Ct. 1520). After reviewing the record the Ninth Circuit concluded "Rhoades does not meet this burden." *Id*.

Lastly, Rhoades argued "because of the existence of a one-drug protocol that does not pose a risk of severe pain, the three-drug protocol, which does pose some risk of severe pain, violates the Eighth Amendment because 'the risk [of severe pain] is substantial when compared to the known and available alternatives". *Id*. at 862; quoting *Baze*, 553 U.S. at 62, 128 S.Ct.

1520. The Ninth Circuit rejected Rhoades' argument on the same basis it rejected the same argument in *Dickens*. Rhoades offered no evidence that SOP 135 is likely to involve a substantial risk of severe pain. *Id*. at 863. The Ninth Circuit stated:

> Considerations of federalism tells us that it does not matter if several states have decided to adopt one-drug protocols after *Baze*. What is important is that Idaho is free to choose to use the three-drug protocol if it does so in a way that is not likely to cause substantial risk of serious pain to Rhoades.

Id.

C. Plaintiff Fails To Meet The Standard For A Preliminary Injunction Or A Stay of Execution

To be entitled to injunctive relief, a movant must demonstrate: (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest." *Beaty v. Brewer*, 2011 WL 2050124 *2 (D. Az. 2011); *see Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 129 S.Ct. 365, 374, 376 (2008). The movant has the burden of making "a clear showing" on these elements *Id*. In capital cases, these principles apply when a condemned prisoner asks a federal court to enjoin his impending execution because "filing an action that can proceed under § 1983 does not entitle the complainant to an order staying an execution as a matter of course." *Id*.

Plaintiff claims that he is likely to succeed on the merits because the 2012 SOP 135 clearly creates a demonstrated risk of severe pain. Dkt. No. 16-1, p.15. Additionally, Plaintiff argues he should prevail because he will suffer irreparable harm, the balance of equities strongly tips in his favor, and a stay is in the public's interest. *Id*. at pp.27-28. As demonstrated below, however, Plaintiff is not likely to succeed on the merits.

1. Plaintiff Failed to Exhaust His Administrative Remedies Prior to Filing Suite

First and foremost, Plaintiff failed to exhaust his administrative remedies as required by the PLRA. In order for the Plaintiff to proceed with his claims in this matter he must overcome the Defendants' motion to dismiss for failing to exhaust. As set forth in IDOC's Motion to Dismiss (Dkt. No. 10), in this matter, Plaintiff failed to exhaust his remedies concerning the 2012 SOP 135, and therefore has failed to satisfy the requirements of the PLRA. As such, his claims must be dismissed.

2. Plaintiff Is Not Likely To Succeed On The Merit Because SOP 135 Does Not Create A Demonstrated Risk Of Severe Pain

A. The 2012 SOP 135 Is Substantially Similar To The Kentucky Protocol

The Plaintiff would like the Court to believe that 2012 SOP 135 does not contain the "safeguards" set forth in *Baze*. As explained previously herein, this same argument was rejected in *Rhoades v. Reinke*, 2011 WL 5520446 (D. Idaho 2011). Plaintiff argues the 2012 SOP 135 must mirror the same exact "safeguards" as set forth in the Kentucky protocol. Plaintiff is flatly wrong. *Baze* stands for the proposition that, "A state with a lethal injection protocol substantially similar to the protocol we uphold today would not create a risk that meets the standard." *Id*.; (emphasis added). The Idaho District Court recognized that Idaho's protocol does not need to be the same as Kentucky's and stated:

> *Baze* neither operates as a doctrinal blueprint, instructing States on the exact type or quantum of safeguards needed to insulate a three-drug lethal injection protocol from challenge, nor does it foreclose the possibility that different, more, or even fewer safeguards could offer the same assurances against the understood risks present in similar cases. *Baze* stands for the proposition that Kentucky's lethal injection protocol, as well as substantially similar lethal injection protocols, are constitutional.

Rhoades, 2011 WL 5520446 *7. In *Rhoades* the District Court held that: 1) "SOP 135 ensures that members of the medical and injection teams have at least one year of professional medical

experience" *id*. at *8; 2) "SOP 135 ensures that medical and injection team members have regular experience establishing IV catheters", *id* at *9; 3) "provides for in-house training", *id*; 4) "SOP 135 outlines meaningful redundancy", *id*. at *11; 5) "SOP 135 includes meaningful consciousness checks", *id*. at *12; and 6) "SOP 135 incorporates even more 'safeguards' than *Baze*", *id*. at *13. As set forth below, the 2012 SOP 135 incorporates, all of the "safeguards" articulated in the 2011 SOP 135 and therefore contains all the safeguards in *Baze*.

a. Professional Experience

Plaintiff argues the 2012 SOP 135 fails to contain the most significant safeguard found in *Baze*, that "members of the IV team have at least one year of professional experience as a certified medical assistant, phlebotomist, EMT, paramedic, or military corpsman." Dkt. No. 16-1, p.16; quoting *Baze*, 553 U.S. at 55. The 2012 SOP 135 contains a requirement that exceeds the Baze safeguard by requiring the Medical Team[1] individuals "must have at least three (3) years of medical experience as an EMT, LPN, military corpsman, paramedic, phlebotomist, physician assistant, RN, or other medically trained personnel including those trained in the United States Military. *Dkt. No*. 10-3, p.10. As set forth in the Affidavit of Jeffrey Zmuda filed herewith ("Aff. of Zmuda"), the 2012 SOP 135 contains all of the same criteria and selection requirements contained in the 2011 SOP 135 which was found unlawful by the District Court. *Aff. of Zmuda*, ¶ 12. The 2012 SOP 135 Medical Team members' criteria and selection requirement goes beyond the *Baze* requirement of one (1) year. See Dkt. No. 10-3, p.10. The 2012 SOP 135 states in part:

> [T]he Medical Team shall consist of volunteers whose training and experience include administering intravenous (IV) drips. The Medical Team shall be responsible for inserting the IV catheters, ensuring the line is functioning properly

[1] The 2011 SOP 135 consisted of a separate Medical Team and Injection Team. The 2012 SOP 135 combined the Medical and Injection team into one team. *Aff. of Zmuda*, ¶ 14.

> throughout the procedure, mixing the chemicals, preparing the syringes, monitoring the offender (including the level of consciousness), and administering the chemicals as described in Appendix A, Execution Chemicals Preparation and Administration.

Dkt. No. 10-3, p.10.

The Medical Team for the upcoming execution of the Plaintiff is the exact same Medical Team that was used in the Rhoades execution in November 2011. *Aff. of Zmuda*, ¶ 21. As set forth in the Zmuda Affidavit, all members of the Medical Team for Plaintiff's execution have more than the required one year of professional experience set forth in *Baze*. *Aff. of Zmuda*, ¶ 24. The Medical Team members are assigned to the exact same roles as they performed during the Rhoades' execution in November 2011. *Id*. at ¶ 21.

In addition, following the execution in November 2011, the IDOC re-established the selection process in selecting the Medical Team leader and Medical Team members. *Id*. at ¶¶ 22-23. Each Medical Team member was selected based on the criteria and selection requirements set forth in the 2012 SOP 135. *Id*. Each Medical Team members' professional qualifications, training, experience, professional license(s) and certification(s) and criminal history were reviewed and verified by Jeff Zmuda in conjunction with the Administrative Team. *Id*. In preparation for Plaintiff's execution, each Medical Team member was again subjected to a personal interview conducted by Jeff Zmuda and the Administrative team and Medical Team Leader. *Id*. The selection criteria used by the IDOC for Plaintiff's execution was consistent with the safeguards set forth in *Baze*. In fact, the professional disciplines outlined in 2012 SOP 135 are the same disciplines identified in *Baze*, with the exception of a certified medical assistant. *See Dkt. No*.10-3, p.9; see *Baze*, 553 U.S. at 55, 128 S.Ct. at 1533.

The Plaintiff claims that the 2012 SOP 135 protocol does not "require that these workers be currently licensed or have any recent experience and competence in initiating IV catheters."

Dkt. No. 16-1, p.17. *Baze* does not require what Plaintiff contends. In fact, *Baze* states "Kentucky uses a phlebotomist and an EMT, personnel who have daily experience establishing IV catheters for inmates in Kentucky's prison population." See *Baze*, 553 U.S. at 55. The Plaintiff misconstrues the language in *Baze* as a requirement. In *Baze*, the court was commenting on the make-up of Kentucky's team, and namely that team members had daily experience establishing IV catheters for inmates in Kentucky's prison population. The IDOC is not required to mirror Kentucky's safeguards but rather, is only required to employ "substantially similar" safeguards.

In *Rhoades*, the District Court addressed the exact same issues raised by Plaintiff in this proceeding. The District Court in *Rhoades* stated:

> SOP 135 does not require Medical Team members to " 'have at least one year of professional experience' " as was the case in *Baze*. Still, Zmuda's affidavit addresses this concern.
>
> SOP 135 requires verification of the Medical Team and Injection Team (footnote omitted) candidates' professional licensure of certification before approval. *See* SOP 135, p. (Docket No. 7, Att. 4). Selection of the Team members includes a review of each member's professional qualifications, training, experience, professional license(s) and certification(s), criminal history, with a personal interview. *See id*. at pp.9-10. According to Zmuda, all the member of the current Medical Team and Injection Team are qualified medical providers (footnote omitted) and "have professional qualifications and experience exceeding one year of professional training and experience. *See* Zmuda Aff. at ¶ 13 (Docket No. 50). Going further, Zmuda says that "[t]he team member with the least amount of experience has 15 years experience in his/her professional field." *See id*.

Rhoades, 2011 WL 5520446, *8. In *Rhoades* the court also addressed Plaintiff's argument in this case that the 2012 SOP 135 does not state that Medical Team members be currently licensed or have actual experience in initiating IV catheters. The District Court stated in *Rhoades*:

> SOP 135 does not state that the Medical Team members have at least one year of professional training and practical experience, however, all Medical Team members selected for the preparation of chemicals have at least one year of

> professional training and practical experience necessary to prepare the chemicals. See Zmuda Aff. at ¶¶ 18, 24 (Docket No. 50) With Zmuda's testimony in mind, this Court cannot agree with Plaintiff that SOP 135's Medical and Injection Team members do not (or, in the case of replacements, will not) have the requisite medical credentials and experience over time. *See* Mem. in Supp. of Mot. for Prelim. Inj. or Stay of Execution, p. 14 (Docket No. 18). To the contrary, consistent with *Baze*, SOP 135 ensures that members of the Medical and Injection Teams have at least one year of professional medical experience.

Id. at **8-9. The Ninth Circuit in affirming the District Court also pointed out that Zmuda testified about the involved process by which he and the Medial Team leader interviewed and selected candidates and relied on the district court's finding that Zmuda "understood the enormity of his responsibilities, was candid on the limits of his medical knowledge, and relied on the expertise of the Medial Team leader, a trained medical professional, to assess the technical competency of the selected team members." *Rhoades*, 671 F.3d at 862.

Because the IDOC is using the same Medical Team used in the Rhoades execution, the 2012 SOP 135 and the Medical Team members' qualifications meet the *Baze* safeguards. Each Medical Team member has the experience necessary in establishing IV catheters members meet the criteria in the 2012 SOP 135 in having more than three years of medical experience. *Aff. of Zmuda*, ¶ 24.

b. Inadequate On-Site Training

Plaintiff argues that 2012 SOP 135 fails to contain the "'in-house training' safeguard of at least 10 practice session per year" and "complete walk-through of the execution procedures, including the siting of IV catheters into volunteers." Dkt. No. 16-1, p.20; *quoting Baze*, 553 U.S. at 55. Plaintiff is incorrect in his assessment of 2012 SOP 135.

The training and rehearsal requirements of 2012 SOP 135 clearly articulates an annual training schedule and periodic on-site rehearsal sessions. Dkt. No. 10-3, p.11. The 2012 SOP 135 specifically states: "[t]he schedule shall include a minimum of 10 annual training sessions

for the escort and medical teams"; "after receiving a death warrant, the Escort Team, Medical Team and command staff will train weekly before the scheduled execution date"; "The Escort Team, Medical Team and command staff members must participate in a minimum of four (4) training sessions prior to participating in an actual execution"; Prior to a scheduled execution the Medical Team shall conduct a minimum of two (2) rehearsal sessions during the 48 hours before the execution; and training and rehearsal sessions for the Medical Team shall include the placing of IVs in a minimum of two (2) live volunteers prior to the execution. *Id*.

As stated above, the Medical Team members are the same team members used in the Rhoades' execution, and they were subjected to 10 training and rehearsal sessions prior to the Rhoades' execution and have been involved in the actual execution of Rhoades. *Aff. of Zmuda*, ¶ 32. The requirements contained in 2011 SOP 135 were adopted in 2012 SOP 135. *Id*. In preparation for the upcoming execution, the Medical Team has participated in 10 training sessions which have included 8 live IV sticks. *Aff. of Zmuda*, ¶¶32-33. The Medical Team members will have completed the 10 training sessions in preparation for the Rhoades' execution, the actual execution of Rhoades, and will have also completed the training sessions in preparation for Plaintiff's upcoming execution of the Plaintiff. *Id*. Additionally, all team members exceed the three years of training and experience in their respective professions set forth in 2012 SOP 135. *Id*. at ¶ 37. The training schedule outlined in 2012 SOP 135 is consistent with the *Baze* safeguards. The Plaintiff has misconstrued 2012 SOP 135 which clearly articulates a constitutionally permissible training schedule for the Medical Team.

The District Court stated in *Rhoades*, "SOP 135, the training done to date, and the training planned to occur are substantially similar to the training called for by the Kentucky protocol at issue in *Baze*. *Rhoades*, 2011 WL 5520446, *11. The District Court was persuaded

that "SOP 135 contains sufficient training practices and actual implementation of such practices, consistent with *Baze*." *Id*. The Ninth Circuit affirmed the District Court stating, "we conclude that there was no clear error in the district court's factual conclusions. The Kentucky protocol does not require any more training than what is set forth in SOP 135, and Rhoades offers no evidence that SOP 135 will not be followed." *Rhoades*, 671 F.3d at 862. The 2012 SOP 135 contains the *Baze* safeguards.

c. Meaningful Redundancy

The Plaintiff argues 2012 SOP 135 does not require a backup IV, and backup chemical preparation and readiness or that team members have the relevant training and experience in initiating, maintaining, or delivering chemicals through the IV. Dkt. No. 16-1, p.21. Again the Plaintiff fails to read the plain language of 2012 SOP 135.

The 2012 SOP 135 specifically states "the assigned Medical Team members shall prepare their designated chemical and syringes for two (2) complete sets to be used in the implementation of the death sentence. A third set of syringes shall be available and ready for use as backup." Dkt. No. 10-3, p.37. "After the Medical Team prepares all syringes with the proper chemicals and labels as provided in the applicable chemical chart, the Medical Team leader shall place three (3) complete sets of the prepared and labeled syringes in the color-coded and labeled syringe trays in the order in which the chemicals are to be administered." *Id*. 2012 SOP 135 states "the Medical Team shall consist of volunteers whose training and experience including administering intravenous (IV) drips. The Medical Team shall be responsible for inserting IV catheters, ensuring the line is functioning properly throughout the procedure, mixing the chemicals, preparing the syringes, monitoring the offender (including the level of consciousness), and administering the chemicals as described in appendix A, Execution

Chemicals Preparation and Administration." Dkt. No. 10-3, p.10. The Medical Team shall determine a primary IV catheter and a backup IV catheter in two (2) separate locations in the peripheral veins utilizing appropriate medical procedures. *Id*. at 43. The *Baze* safeguards are therefore present in 2012 SOP 135.

Since the same Medical Team members from Rhoades' execution will be performing in Plaintiff's execution, the Court can be certain those individuals are qualified to prepare the syringes. Additionally, each member of the Medical Team has at least three years of experience and training in their respective professions. *Id*. The redundancy safeguard in *Baze* is present in 2012 SOP 135.

Furthermore, in *Rhoades*, the District Court found that there were similar redundant measures in 2011 SOP 135. *Rhoades*, 2011 WL 5520446 *11. The 2012 SOP 135 contains the exact same measures outlined in 2011 SOP 135. *Aff. of Zmuda*, ¶ 12. The District Court went on to state "SOP 135 ensures that the Medical and Injection Team members—those responsible for establishing the IV lines, mixing the chemicals, preparing the syringes, and injecting the chemicals—have the relevant training and experience in accomplishing these respective tasks. Therefore, like *Baze*, SOP 135 outlines meaningful redundancy safeguards." *Rhoades*, 2011 WL 5520446, *12.

d. Meaningful Consciousness Check

Plaintiff argues that if the three-drug method is used, the consciousness check in 2012 SOP 135 is not adequate. This issue is moot due to the IDOCs notice of intent to use a one-drug protocol. Dkt. No. 18.

B. Cut Down

Plaintiff argues the 2012 SOP 135 contains a "cut down" procedure to establish a

central line in the event that the Medical Team is not able to place two peripheral lines in the Plaintiff. Dkt. 16-1, p.24. The 2012 SOP 135 does not provide for a "cut down" procedure. *Aff. of Zmuda*, ¶ 36.

C. Subjectively Blameless

Plaintiff argues that the Defendants are subjectively blameless because the risk of severe pain is increased due to the inexplicable delays in crafting a protocol which does not violate the Eighth and Fourteenth Amendments. Dkt. 16-1, p.26. The IDOC has had a three-drug lethal injection policy in effect since at least 1994. See Dkt. No. 10-2, p.5. In November 2011, the Idaho District Court held that the 2011 SOP 135 substantially complied with the *Baze* standards, which was subsequently affirmed by the Ninth Circuit Court of Appeals. The Plaintiff has been incarcerated for many years and it was not until April 24, 2012 that he decided to challenge the execution protocol. The Plaintiff was on notice in 2011 that SOP 135 was ruled to be substantially similar to the Kentucky protocol. Plaintiff is represented by the same counsel who represented Rhoades in *Rhoades v. Reinke*, 2011 WL 5520446 (D.Idaho 2011). In fact, it is Plaintiff that is subjectively blameless for waiting till the last minute to file this action. The Plaintiff could have at anytime during his incarceration challenged the execution procedures but waited until April 24, 2012, less than two months prior to his execution to file suit.

D. Plaintiff Is Not Likely To Suffer Irreparable Harm

The Plaintiff argues he will suffer irreparable harm absent a stay of execution. Dkt. No. 16-1, p.27. Plaintiff is not likely to suffer irreparable harm in the absence of preliminary relief, because no constitutional right is threatened or impaired by the exercise of the 2012 SOP 135. The *Baze* standards are incorporated into the execution protocol and the IDOC has committed to

using a one-drug protocol and committed to not deviating from the established one-drug protocol.

E. The Balance of Equity Does Not Tip in Plaintiff's Favor

The Plaintiff argues that the balance of equity tips in his favor because the Defendants have unclean hands for failing to bring the IDOC execution protocol in compliance with the *Baze* standards. The balance of equity does not tip in the Plaintiff's favor. The IDOC has had a three-drug lethal injection policy in effect since at least 1994. See Dkt. No. 10-2, p.5. In November 2011, the Idaho District Court held that the 2011 SOP 135 substantially complied with the *Baze* standards, which decision was affirmed by the Ninth Circuit Court of Appeals. The Plaintiff has been incarcerated for many years and it was not until April 24, 2012 that he decided to challenge the execution protocol. The Plaintiff was on notice in 2011 that SOP 135 was ruled to be substantially similar to the Kentucky protocol. Plaintiff is represented by the same counsel who represented Rhoades in *Rhoades v. Reinke*, 2011 WL 5520446 (D.Idaho 2011) and is therefore on notice that the 2011 SOP 135 was compliant and no changes were required.

F. An Injunction Is Not In The Public's Interest

Plaintiff argues that a stay or injunction is in the public interest because there is a "strong interest in the government not killing a citizen when the State's delay caused insufficient time for the court to resolve this matter in a deliberate fashion." Dkt. 16-1, p.28. The Defendants contend an injunction is not in the public's interest. The IDOC approved a 2011 SOP 135 in October 2011 which was found to not create a substantial risk of harm in November 2011. In January 2012, the IDOC modified and approved the 2012 SOP 135 which contains all of the same safeguards as the 2011 SOP 135 plus additional safeguards and added a one-drug protocol for lethal injection. The IDOC has filed IDOC Notice of Intent to Use One-drug

Protocol in the Execution of Richard Leavitt on June 12, 2012. Dkt. No. 18. Additionally, as the Court in *Rhoades* stated, "the citizens of the State of Idaho and the families of the individual victims in this case have a compelling interest in seeing that Idaho's lawful judgments . . . enforced. *Rhoades*, 2011 WL 5520446, *22. Much has been said about the uncertainties, expense and impact that the length of time of death-penalty cases placed upon the families and communities. *Id*. "Continued delay compounds those uncertainties, expenses, and impacts, and therefore is not in the public interest." *Id*. "The same is true for this case. The victims of the Plaintiff's crime have an interest in seeing the judgment against the Plaintiff enforced for his conviction of first degree murder.

II. PLAINTIFF SEEKS AN INJUNCTION OR STAY OF EXECUTION, RELIEF THAT IS NOT AVAILABLE UNDER THE PLRA

The Plaintiff seeks a preliminary injunction or stay of execution barring the IDOC from executing him on June 12, 2012, and continuing until resolution of this lawsuit. The Plaintiff's request should be denied because he seeks relief that is not available under the PLRA, and relief that is not narrowly drawn and extends further than necessary to correct any alleged violation of a federal right.

A. Requirements Of 18 U.S.C. § 3626(1)(A)

The PLRA limits prospective relief in prison cases. As codified at 18 U.S.C. § 3626(1)(A), the PLRA provides as to prospective relief that:

> Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

The PLRA has been interpreted "to mean just what it says – before granting prospective injunctive relief, the trial court must make the findings mandated by the PLRA." *Oluwa v. Gomez*, 133 F.3d 1237, 1239 (9th Cir. 1998). Any order for prospective relief must be based upon specific findings by the Court that satisfy PLRA limitations. These findings must be more than a conclusory statement couched in the statutory language; instead, a court must enter findings that are as specific to the case as circumstances permit. *Johnson v. Breeden*, 280 F.3d 1308, 1326 (11th Cir. 2002).

These requirements are consistent with other well-established limits on a court's authority to enter prospective relief to remedy constitutional violations. *Imprisoned Citizen's Union v. Ridge*, 169 F.3d 178, 188 (3rd Cir. 1999). In constitutional cases, "the nature of the violation determines the scope of the remedy." *Id*. (*citing Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16, 91 S. Ct. 1267 (1971)). Thus, "the remedy imposed must be tailored to the injury-in-fact that the plaintiff has established." *Id*. (citing *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 248, 1112 S. Ct. 630 (1991)).

An injunction employs the "least intrusive means necessary" when it "'heel[s] close to the identified violation,' and is not overly 'intrusive and unworkable'…[and] would [not] require for its enforcement the continuous supervision by the federal court over the conduct of [state officers]." *Armstrong v. Davis*, 275 F.3d 849, 972 (9th Cir. 2001)(*quoting Gilmore v. California*, 220 F.3d 987, 1005 (9th Cir. 2000) and *O'Shea v. Littleton*, 414 U.S. 488, 500-01, 94 S. Ct. 669, 38 L.Ed. 2d 674 (1974)). A court imposing such relief must respect the interests of state and local authorities in managing their own affairs, consistent with the Constitution. *Gilmore*, 220 F.3d at 1005 (*citing Milliken v. Bradley*, 433 U.S. 267, 281, 97 S. Ct. 2749 (1977)). Further, the

injunction "must directly address and relate to the constitutional violation itself." *Gilmore* at 1005.

> Because of this inherent limitation upon *federal judicial authority, federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation*, or if they are imposed upon governmental units that were neither involved in nor affected by the constitutional violation…

Id. (*citing Milliken*, 433 U.S. at 281-82, 97 S. Ct. 2749)(emphasis original).

Thus, if the Court is to enter an injunction in this case, the injunction should address the identified violation, not be overly intrusive, be workable, not require continuous supervision by the Court, and respect the interests of state authorities in managing their own affairs and give substantial weight to any adverse impact on the criminal justice system.

B. Argument and Analysis

Based on the motion for injunction or stay of execution, the relief that is sought by Plaintiff is an injunction or a stay of the scheduled execution of the Plaintiff pending resolution of his § 1983 action. An injunction preventing the execution or a stay of execution should be denied because the prospective relief that is narrowly drawn and extends no further than necessary to correct the violation of an alleged Federal right would be limited to directing that 2012 SOP 135 be corrected to conform to the *Baze* standards. Going beyond that and granting an injunction prohibiting the Plaintiff's execution or granting a stay of execution would be overly intrusive and would not be narrowly drawn and would go further than necessary to remedy the alleged constitutional violation.

CONCLUSION

Based on the foregoing reasons, the Defendants respectfully request that the Court enter an order denying the Plaintiff's request for a preliminary injunction or stay of execution.

DATED this 30th day of May, 2012.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ Krista L. Howard_
KRISTA L. HOWARD
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of May, 2012, I caused to be served a true and correct copy of the foregoing DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF LEAVITT'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION OR STAY OF EXECUTION [DOCKET NO. 16] with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

THOMAS CREECH et. al.,	)	**CASE NO. 12-00173-S-EJL**
	)	Redacted
Plaintiffs,	)	**AFFIDAVIT OF JEFF ZMUDA IN**
	)	**SUPPORT OF DEFENDANTS'**
vs.	)	**RESPONSE AND OBJECTION TO**
	)	**PLAINTIFF LEAVITT'S EMERGENCY**
BRENT REINKE, et. al.,	)	**MOTION FOR PRELIMINARY**
	)	**INJUNCTION OR STAY OF**
Defendants.	)	**EXECUTION [DOCKET NO. 16]**
	)	

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

COMES NOW Jeff Zmuda, being duly sworn upon his oath, deposes and says:

1. I am over the age of eighteen (18) years and competent to testify on the matters herein. I make this affidavit based upon my own personal knowledge.

2. I am an employee of the Idaho Department of Correction ("IDOC"). I am the Deputy Chief of the Bureau of Prisons. I have been employed with the IDOC for approximately 24 years.

3. In my position as the Deputy Chief of the Bureau of Prisons, I work in conjunction with the Idaho Maximum Security Institution (IMSI) to manage, plan, prepare, coordinate and implement the IDOC execution procedures.

4. I have reviewed the Complaint (Dkt. No. 1) filed by offender Richard Leavitt in Case No. 12-173-S-EJL.

5. I am also familiar with the case *Rhoades v. Reinke*, 2011 WL 5520446 (D. Idaho 2011), and testified on behalf of the IDOC during the evidentiary hearing for Rhoades' request for a preliminary injunction or stay of execution. Attached as Exhibit A is the Redacted Affidavit of Jeff Zmuda in Support of Defendants' Response and Objection to Plaintiff's Emergency Motion for Preliminary Injunction of Stay of Execution [Dkt. No. 17]. See *Rhoades v. Reinke, et. al*, CV 11-445-REB District Court of Idaho, Dkt. No. 50.

6. Rhoades was executed on November 18, 2011. Prior to the Rhoades execution, the last execution in Idaho was in 1994. As the Deputy Chief of the Bureau of Prisons I was involved in the execution of Paul Ezra Rhoades in November 2011. It was my job to coordinate the planning, preparation, management and training with respect to the Rhoades execution.

7. In my position as the Deputy Chief of the Bureau of Prisons I was tasked with overseeing the execution process and developing and implementing the IDOC Standard Operating Procedures (SOP) regarding execution procedures. I am also tasked with all the duties related to my position as outlined in the Standard Operating Procedure 135.02.01.001 Standard Operating Procedures.

8. As the Deputy Chief of the Bureau of Prisons, because I was tasked with the development and implementation of IDOC SOP Execution Procedures 135.02.01.001 (version 2.9) (hereinafter "2011 SOP 135") that was approved on October 14, 2011 I am familiar with the SOP. In developing 2011 SOP 135, the IDOC looked to other states' policies as a guide in the development of 2011 SOP 135. Countless hours were spent in the development of 2011 SOP 135 to ensure that it complies with the Eighth Amendment and the procedural safeguards established in *Baze v. Rees* and *Dickens v. Brewer*.

9. That after reviewing Arizona's Execution Protocol adopted on May 12, 2011, it was determined that the IDOC would model its Execution Procedures SOP after Arizona's Execution Protocol. In developing Appendix A of 2011 SOP 135, it was modeled after the Arizona Execution Protocol. I am aware that Arizona made changes to its execution protocol in January 2012. The IDOC did not attempt to mirror any of the changes that Arizona made in January 2012.

10. The IDOC followed the 2011 SOP 135 in implementing the three-drug lethal injection protocol used to execute Rhoades. There were no deviations from the 2011 SOP 135 and no problems relating to the implementation of 2011 SOP 135 arose during the actual execution that required any deviation from the 2011 SOP 135.

11. Following the Rhoades' execution, I was tasked with making modifications to 2011 SOP 135. In so doing, Standard Operating Procedure 135.02.01.001 Execution Procedures (version 3.6) (hereinafter "2012 SOP 135") was approved on January 6, 2012.

12. In modifying the 2012 SOP 135 none of the *Baze* "safeguards" that were established in the 2011 SOP 135 were deleted, in fact, all of the *Baze* "safeguards" present in the 2011 SOP 135 were incorporated into the 2012 SOP 135. In fact, additional safeguards were

added to the SOP to ensure that there was no risk of severe harm to an offender being executed. Specifically, the IDOC added a one-drug lethal injection protocol, an Administrative team was created to oversee and implement the execution protocol, and the SOP specifically states that Medical Team members must have three (3) years of medical experience.

13. The most significant change to 2012 SOP 135 was the addition of a one-drug lethal injection protocol. 2012 SOP 135 now has two protocols for a three-drug lethal injection and two protocols for a one-drug lethal injection protocol. Which protocol is to be used for a particular execution is based on the availability of drugs outlined in the SOP.

14. In 2012 SOP 135 rather than having a seperate Medical Team and Injection Team, the SOP was modified so that the Medical Team would encompass all the duties of both the Medical and Injection teams set forth in 2011 SOP 135. Also, an Administrative Team was developed to manage, oversee, plan, coordinate, direct and implement the execution process. 2011 SOP 135 did not contain an Administrative Team per se, however, the persons that make up the Administrative Team are persons that were involved in the preparation, management and implementation of the execution process of the execution of Rhoades.

15. Another significant change to 2012 SOP 135 is that instead of requiring Medical Team members to have one (1) year of relevant training and experience in their discipline identified in 2011 SOP 135, 2012 SOP 135 increased the requirement and now requires that the Medical Team members have at least three (3) years of medical experiences as one of the identified disciplines. 2012 SOP 135 contains all of the same criteria and selection requirements contained in 2011 SOP 135 in selecting the Medical Team members.

16. The 2011 SOP 135 provided for utilizing a central line catheter in the offender's femoral vein in the thigh if an alternate means for establishing an IV. The 2012 SOP 135

provides that the Medical Team may utilize a central line catheter, if a line can be reasonably placed, by a Medical Team member with at least one year of regular and current professional experience conducting a central line catheter procedure. The approved modification is that the IDOC is not required to only place the central line in the femoral vein.

17. In an effort to make the offender more comfortable during the insertion of the IV catheter, the IDOC approved, that at the discretion of the Medical Team leader, a localized anesthetic may be used to numb the venous access site.

18. That it is absolutely paramount the identities of the Medical and Escort Teams members' remain confidential for their own safety and security, as well as the IDOC's ability to carry out its statutory obligations.

19. It is my responsibility in conjunction with the IMSI warden to identify qualified team members for the Escort and Medical team for an execution. I am responsible for designating the Medical Team leader and an alternate Medical Team leader. The Medical Team leader shall have direct oversight over the Medical Team and reports to and takes direction from a designated Administrative Team member. The selection of the current Medical Team leader was done by myself in conjunction with the Administrative Team according to the process set forth in the 2012 SOP 135. The Medical Team leader then assisted in the selection process of the Medical Team members in conjunction with the Administrative Team.

20. In selecting candidates for the Medical Team for the upcoming execution of Richard Leavitt on June 12, 2012, I used the same criteria set forth in 2011 SOP 135 that is contained in 2012 SOP 135 to identify potential Medical Team members in addition to the updated changes. Specifically, candidates were required to have at least three (3) years of medical experience as an emergency medical technician, licensed practical nurse, military

corpsman, paramedic, phlebotomist, physician assistant, physician, registered nurse or other medically trained personnel including those trained in the United States Military. This is consistent with the safeguards set forth in *Baze*.

21. The Medical Team members selected for the June 12, 2012, execution are the exact same Medical Team and Injection Team members the IDOC used in the execution in November 2011. The Medical Team members selected will serve in the same exact roles as they performed in the November 2011 execution. The only difference will be that there is only a Medical Team rather than having a medical and injection team.

22. The Medical Team leader was selected by the Administrative Team using the process and criteria outlined in the 2012 SOP 135, which is also the same process that was used in the 2011 SOP 135 selection of the Medical Team leader. We reviewed professional qualifications, training, experience, professional licenses and certifications, criminal history background and conducted a personal interview in selecting the Medical Team leader.

23. I re-established the process for selecting the Medical Team for the June 12, 2012 execution that was used for the November 2011 execution. I reviewed professional qualifications, training, experience, professional licenses and certifications, criminal history background and conducted a personal interview with each of the candidates in selecting the Medical Team. I was assisted in the process of selecting the Medical Team members with the assistance of the Medical Team leader and the Administrative Team as established by the 2012 SOP 135 selection process.

24. That all the members of the Medical Team have professional qualifications, training and experience exceeding the required three (3) years of professional training and experience set forth in 2012 SOP 135. All Medical Team members were selected based on the

criteria and requirements set forth in 2012 SOP 135. The Medical Team member with the least amount of experience has approximately 15 years experience in his/her professional field. Attached as Exhibit B is a true and correct copy of a spreadsheet constructed to illustrate each position of the Medical Team and relevant qualifications and certifications[1]. This spreadsheet describes each Medical Team members' position, license/certification, IV therapy/venipuncture trained, venous access currency, CPR certification, pharmoco dynamic currency, prior execution experience and a comments section. In addition, each team member's years of experience is set forth below.

25. As of May 25, 2012, pursuant to 2012 SOP 135, all Medical Team members licensure, certification and background check was again completed in compliance with the requisites of 2012 SOP 135. See, Dkt. No. 10-3, p11.

26. The Medical Team leader, Personnel M-1 holds a nursing degree and is a registered nurse with approximately [redacted] years experience as a registered nurse. The Medical Team leader Personnel M-1, is an experienced [redacted] and [redacted]. Additionally this team member has experience working in an emergency room and an intensive care unit. This individual has certification in CPR and has been an Advanced Cardiac Life Support (ACLS) [redacted] provider. The Medical Team leader, Personnel M-1 has more administrative and clinical experience than any other team member.

27. Personnel M-4 has approximately [redacted] plus years as a [redacted] and is currently an [redacted] This individual is an ACLS certified

[1] The Spreadsheet and this affidavit have redacted the information that was redacted in *Rhoades v. Reinke* with respect to the Medical Team members because they are the exact team members. The redactions were done in order to maintain the anonymity, safety and security of the team members. Counsel for Plaintiffs is the same counsel that represented Rhoades and has seen the unredacted portions of my affidavit with respect to these team members.

provider. This team member is tasked with pushing the IV drugs through the IV tubing under direct supervision of the Medical Team leader.

28. Personnel M-3 and M-2, with IV access are [redacted]. Personnel M-3 has approximately 15 plus years experience as an EMT Paramedic and is [redacted] and is ACLS certified. Personnel M-2 has [redacted] plus years experience as an [redacted] and is ACLS certified. Personnel M-2 is the backup Medical Team leader and also has a position on the Medical Team as IV Access. Personnel M-3 will be responsible for inserting a central line if this alternate site is necessary.

29. Personnel M-5, is a [redacted] with experience as a [redacted]. This individual has over [redacted] years of medical and clinical experience. This team member is tasked with pushing the IV drugs through the IV tubing under direct supervision of the Medical Team leader.

30. That all members of the Medical Team are certified in CPR, have venous access currency, which means they have current professional practice in insertion of IVs on a regular basis. Additionally, all team members have experience in Pharmco Dynamic Currency, which means the team members understand medical orders, can read and understand medical labels, draw medications and deliver medications through either an injection or IV.

31. The Medical Team and command staff, have been engaged in annual trainings since February 2012 pursuant to 2012 SOP 135. Once the death warrant was served on Richard Leavitt, training has been conducted weekly. As of the date of this Affidavit the Medical Team has engaged in 10 trainings in 2012. The Medical Team has been training using the one-drug protocol as outlined in 2012 SOP 135 since the death warrant was served on Richard Leavitt.

32. In addition to the trainings conducted since February 2012, all Medical Team members were involved in approximately 10 training and rehearsal sessions prior to the execution in November 2011 and the actual execution in November 2011. These trainings were for a three-drug protocol, which encompasses the same steps as for a one-drug protocol with the exception only one drug is used and there is no need for a consciousness check involved between the administrations of drugs as outlined for a three-drug protocol. Prior to June 12, 2012, the Medical Team members will have been involved in the required number of training sessions for both the 2011 SOP 135 and 2012 SOP 135 trainings and one actual execution.

33. All Medical Team members are familiar with 2012 SOP 135, the execution process and skill sets needed to complete the execution. All Medical team members were placed into their respective roles for the execution procedure based on their professional experience, training and practice. As required pursuant to 2012 SOP 135 all Medical Team members will participate in a minimum of four training sessions prior to the actual execution. Medical Team members responsible for IV insertion will have practiced IV insertion on volunteers and a condemned offender. In 2012, to date there have been eight training sessions involving live sticks. The training schedule outlined in 2012 SOP 135 is consistent with the *Baze* safeguards.

34. 2012 SOP 135 contains the redundancy safeguard set forth in *Baze*. 2012 SOP 135 requires that three (3) complete sets of chemicals be prepared prior to the execution. *Dkt. No.* 10-3, p.37. The preparation of chemicals will be done by the Medical Team. All Medical Team members selected for the preparation of chemicals have at least three (3) years of professional training and practical experience necessary to prepare the chemicals.

35. The Medical Team will take measures to ensure that there is no leakage in the tubing of the IV.

36. 2012 SOP 135 does not provide for a "cut down" procedure requiring an incision. A central line may be utilized by a Medical Team member with at least one year of regular and current professional experience conducting this procedure. Dkt. No. 10-3, pp.43-44. Personnel M-3 will be the team member responsible for inserting the central line, if necessary. This team member has completed this procedure on live volunteers during scheduled trainings in preparation for the 2011 and 2012 executions.

37. There will be no substantial risk of pain to offender Leavitt during the execution procedure. The Medical Team is made up of team members with professional qualifications, training and practice of inserting and maintaining IVs with more than three (3) years of professional experience.

38. Further your affiant sayeth naught.

DATED this 30 day of May, 2012.

JEFF ZMUDA

SUBSCRIBED AND SWORN To before me this 30 day of May, 2012.

ANDREA L. BLADES NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Boise, ID
Commission Expires: 03/04/2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of May, 2012, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF JEFF ZMUDA IN SUPPORT OF DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF LEAVITT'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION OR STAY OF EXECUTION [DOCKET NO. 16] with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Oliver W. Loewy, oliver_loewy@fd.org

Teresa Hampton, Teresa_Hampton@fd.org

/s/ Krista L. Howard
KRISTA L. HOWARD

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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

PAUL EZRA RHOADES, Plaintiff; vs. BRENT REINKE, in his official capacity as Director, Idaho Department of Correction; RANDY BLADES, in his official capacity as Warden, Idaho Maximum Security Institution; DOES 1-50, UNKNOWN EXECUTIONERS, in their official Capacities as Employees and/or Agents of Idaho Department of Correction. Defendants.	CASE NO. 11-445-REB Redacted AFFIDAVIT OF JEFF ZMUDA IN SUPPORT OF DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION OR STAY OF EXECUTION [DKT. NO. 17]

EXHIBIT A

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

COMES NOW Jeff Zmuda, being duly sworn upon his oath, deposes and says:

1. I am over the age of eighteen (18) years and competent to testify on the matters herein. I make this affidavit based upon my own personal knowledge.

2. I am an employee of the Idaho Department of Correction ("IDOC"). I am the Deputy Chief of the Bureau of Prisons. I have been employed with the IDOC for approximately 24 years.

3. In my position as the Deputy Chief of the Bureau of Prisons, I work in conjunction with the Idaho Maximum Security Institution (IMSI) to plan, prepare and implement the IDOC execution procedures.

4. I have reviewed the Complaint and Amended Complaint (Dkt. Nos. 1 & 19) filed by offender Paul Rhoades in Case No. 11-445-REB.

5. In my position as the Deputy Chief of the Bureau of Prisons I was tasked with overseeing the execution process and developing and implementing the IDOC Standard Operating Procedures (SOP) regarding execution procedures. I am also tasked with all the duties related to my position as outlined in the Execution Procedures Standard Operating Procedure.

6. As the Deputy Chief of the Bureau of Prisons for the IDOC I was intricately involved in the development of IDOC SOP Execution Procedures 135.02.01.001 (hereinafter "SOP 135") that was approved on October 14, 2011. In developing SOP 135, the IDOC looked to other states' policies as a guide in the development of SOP 135. Countless hours were spent in the development of SOP 135 to

ensure that it complies with the Eighth Amendment and the procedural safeguards established in *Baze v. Rees* and *Dickens v. Brewer*.

7. That after reviewing Arizona's Execution Protocol it was determined that the IDOC would model its Execution Procedures SOP after Arizona's Execution Protocol. In developing Appendix A of SOP 135, the IDOC modeled it after the Arizona Execution Protocol in this section of the IDOC SOP 135.

8. That it is absolutely paramount that the identity of the Specialty Team members remains confidential for their own safety and security, as well as the IDOC's ability to carry out its statutory obligations.

9. It is my responsibility in conjunction with the IMSI warden to identify qualified team members for the specialty teams for an execution. I am responsible for designating the Medical Team leader and an alternate Medical Team leader. The Medical Team leader reports to and takes direction from the IMSI warden.

10. In selecting persons for the Medical Team, even though SOP 135 does not specifically identify professional qualifications, I used the same criteria set forth in SOP 135 for selecting Injection Team members to identify Medical Team members. Specifically, candidates were required to have at least one year of medical experience as an emergency medical technician, licensed practical nurse or registered nurse, military corpsman, paramedic, phlebotomist, physician assistant, physician or other medically trained personnel including those trained in the United States Military. This is consistent with the safeguards set forth in *Baze*.

11. For selection of the Medical Team candidates I reviewed professional qualifications, training, experience, professional licenses and certifications, criminal

history and conducted a personal interview with each of the candidates in selecting the Medical Team.

12. In selecting persons for the Injection Team, the criteria set forth in SOP 135 is that the team member must have at least one year of medical experience as a certified medical assistant, phlebotomist, emergency medical technician, paramedic, or military medical corpsman. I also reviewed the Injection Team members' professional qualifications, training, experience, professional license(s) and certification(s), criminal history and conducted a personal interview. In addition, I verified that the Injection Team members had professional licensure or certification, *See SOP 135, Dkt. No*: 7-4, p.9. These qualifications are consistent with the safeguards set forth in *Baze*.

13. That all the members of the Medical Team and Injection Teams have professional qualifications and experience exceeding one year of professional training and experience. The team member with the least amount of experience has 15 years experience in his/her professional field. Attached as Exhibit A is a true and correct copy of a spreadsheet I constructed to illustrate each position of the Medical and Injection team and the training, professional licenses and certifications; and profession of each team member. In addition, each team member's years of experience is set forth below.

14. The Medical Team leader, Personnel 1a of Exhibit A, is a registered nurse with approximately [redacted] years experience as a registered nurse. The Medical Team leader Personnel 1a, has experience working in an emergency room and an intensive care unit. This individual has certification in CPR and has been an Advanced Cardiac Life Support (ACLS) [redacted] provider. The Medical Team leader, Personnel 1a has more administrative and clinical experience than any other team member.

execution unit. Between October 20, 2011 and the scheduled execution, there will be a total of 10 training sessions, which includes two full rehearsals as provided for in SOP 135 for the Escort Team, Injection Team and Medical Team. *See Dkt. No.* 7-4, p.10. All members of the Specialty teams are familiar with SOP 135, the execution process and skill sets needed to complete the execution. All team members were placed into their respective roles for the execution procedure based on their professional experience, training and practice. All team members will have participated in a minimum of four training sessions prior to the actual execution. Medical Team members will have practiced IV insertion on volunteers. The training schedule outlined in SOP 135 is consistent with the *Baze* safeguards. Additionally, all team members exceed the one year of training and experience in their respective professions.

20. At all times during the execution, the offender's level of consciousness will be continually monitored by the Medical Team through a closed-circuit video feed. *Dkt. No.* 7-4, pp. 9, 39-41. Additionally, another team member will continually monitor the EKG machine during the execution. *Dkt. No.* 7-4, pp. 9, 39.

21. The execution procedure contains provisions for the consciousness checks of the offender once the drugs have been administered. Once the sodium pentothal or pentobarbital has been administered the Medical Team leader will enter the execution chamber and confirm the offender is unconscious by direct examination. *Dkt. No.* 7-4, p.40. The Execution Team leader will physically assess the offender for signs of consciousness through verbal stimulus, solicit an auditory response, touch the offender's eyelashes, pinch the offender and conduct a sternal rub. The Medical Team leader will confirm the IV line remains affixed and is functioning properly. *Id.* The Medical Team

leader is competent in conducting levels of consciousness checks. These consciousness checks are consistent with the safeguards set forth in *Baze*.

22. No further chemical shall be administered until the Medical Team leader has assessed and confirmed the offender is unconscious and has advised the warden and three minutes have elapsed since commencing the administration of sodium pentothal or pentobarbital. *Dkt. No. 7-4*, p.40.

23. If the offender is conscious after the administration of sodium pentothal or pentobarbital, the Medical Team shall assess the situation to determine why the offender is conscious. *Id.* This information will be relayed to the warden and the warden will determine how to proceed or, if necessary, to start the procedure over at a later time or stand down. *Id.* If deemed appropriate the warden may instruct the Injection Team to administer an additional 5 grams of sodium pentothal or pentobarbital followed by a heparin/saline flush from the Backup Sets. *Id.* at. 41. Only after three minutes have elapsed since commencing the chemicals from the Backup set, and only after the Medical Team leader has again physically confirmed the offender is unconscious, will the warden instruct the Injection Team leader to proceed. *Id.*

24. SOP 135 contains the redundancy safeguard set forth in *Baze*. SOP 135 requires that three (3) complete sets of chemicals be prepared prior to the execution. *Dkt. No.* 7-4, p.35. The preparation of chemicals will be done by the Medical Team. SOP 135 does not state that the Medical Team members have at least one year of professional training and practical experience, however, all Medical Team members selected for the preparation of chemicals have at least one year of professional training and practical experience necessary to prepare the chemicals.

25. The Medical Team will take measures to ensure that there is no leakage in the tubing of the IV.

26. SOP 135 does not provide for a "cut down" procedure requiring an incision. A central line may be inserted in the femoral vein through the use of an ultrasound and sticking a needle into the vein. *See Dkt. No.* 7-4, p.40. The Medical Team member must have one year of regular and current professional experience conducting this procedure. *Id.* Personnel 1c will be the team member responsible for inserting the central line, if necessary. [redacted]

27. SOP 135 contains a contingency procedure in the event that the offender is conscious or any part of the execution procedure is not going according to SOP 135. *See Dkt. No.* 7-4, p.42. If any Medical or Injection Team members determine that any part of the execution process is not going according to procedure, they shall notify the Medical Team leader who shall immediately notify the warden. *Id.* The warden and director may consult with persons deemed appropriate and determine to go forward, start the procedure over at a later time or stand down. *Id.*

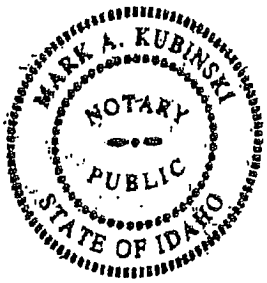
28. There is no substantial risk of pain to offender Rhoades during the execution procedure. The Medical Team and the Injection Team are made up of members with professional qualifications, training and practice of inserting and maintaining IVs with more than one year of professional experience.

29. Further your affiant sayeth naught.

DATED this 3rd day of November, 2011.

JEFF ZMUDA

SUBSCRIBED AND SWORN To before me this 3rd day of November, 2011.



Notary Public for Idaho
Residing at Boise
Commission Expires: 10/30/2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4 day of November, 2011, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF JEFF ZMUDA IN SUPPORT OF DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION OR STAY OF EXECUTION [DKT. NO. 17] with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Oliver W. Loewy, oliver_loewy@fd.org

Teresa Hampton, Teresa_Hampton@fd.org

Krista L. Howard

KRISTA L. HOWARD

Personnel	Medical Team Position	License/ Certification	IV Therapy/ Venipuncture Trained	Venous Access Currency	CPR	Pharmco Dynamic Currency	Comments
1a	Team Leader	RN	Yes	Dated	Yes	Yes	Med Adm experienced
2c	IV Access	[redacted] medical provider	Yes	Yes	Yes, ACLS	Yes	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
1b	Injection Team Leader: injector	[redacted] medical provider [redacted]	Yes	Yes	Yes, ACLS	Yes	Works in Medical Clinic
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
1c	IV Access	[redacted] medical provider	Yes, Central Line	Yes	Yes, ACLS	Yes	[redacted]
2c	IV Access	[redacted] medical provider	Yes	Yes	Yes, ACLS	Yes	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
1d	Injector	[redacted] medical provider	Yes [redacted]	Yes	Yes	Yes	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

EXHIBIT A

Personnel	Medical Team Position	License/ Certification	IV Therapy/ Venipuncture Trained	Venous Access Currency	CPR	Pharmco Dynamic Currency	Prior Execution Experience	Comments
M-1	Team Leader Level of Consciousness Supervises Process Performance Conducts Pre/Post Trn Chemical Admin Sup. EKG Interpretation	Nursing Degree	Yes	Current within last 12 months	Certified	Medication Admin is current	Yes Last 12 months	[redacted] Criminal Background cleared Interviewed
M-2	Asst. Team Leader IV Insertion Chemical Inj. Oversight EKG Interpretation	[redacted]	Yes	Current Routine	Advanced ACLS	Routine	Yes Last 12 months	[redacted] Criminal Background cleared Interviewed
M-3	IV Insertion Central Line Insertion Cardiac Monitor Int. EKG Interpretation	[redacted]	Yes	Current Routine	Advanced ACLS	Routine	Yes Last 12 months	Criminal Background cleared Interviewed
M-4	Prepares IV Lines Prepares Syringes Injector	[redacted]	Yes	Current within last 12 months	Advanced ACLS	Routine	Yes Last 12 months	Criminal Background cleared Interviewed
M-5	Prepares IV Lines Prepares syringes Injector	[redacted]	Yes	Current within last 12 months	Certified	Routine	Yes Last 12 months	Criminal Background cleared Interviewed

Administration Team - May 2012

EXHIBIT B