

LAWRENCE G. WASDEN
ATTORNEY GENERAL OF IDAHO

MARK A. KUBINSKI, ISB #5275
Lead Deputy Attorney General
Idaho Department of Correction

KRISTA L. HOWARD #5987
Deputy Attorney General
Idaho Department of Correction
1299 North Orchard St., Suite 110
Boise, Idaho 83706
Telephone (208) 658-2097
Facsimile (208) 327-7485
E-mail: khoward@idoc.idaho.gov

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THOMAS CREECH et. al.,)	CASE NO. 12-00173-S-EJL
)	
Plaintiffs,)	DEFENDANTS' MOTION TO STRIKE
)	PLAINTIFF LEAVITT'S EXPERT
vs.)	AFFIDAVIT [DOCKET NO. 30]
)	
BRENT REINKE, et. al.,)	
)	
Defendants.)	
_____)	

COME NOW the Defendants Brent Reinke, Kevin Kempf, Jeff Zmuda, Josh Tewalt and Randy Blades, by and through undersigned counsel, and pursuant to Rule 12(f) of the Federal Rules of Civil Procedures and D. Id. L. Rule 7.1, and hereby file Defendants' Motion to Strike Expert Affidavit [Docket No. 30] filed on June 3, 2012.

This motion is supported with Defendants' Memorandum in Support of Defendants' Motion to Strike Plaintiff Leavitt's Expert Affidavit [Docket No. 30].

DATED this 3rd day of June, 2012.

/s/ Krista L. Howard
Krista L. Howard
Deputy Attorney General
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of June, 2012, I caused to be served a true and correct copy of the foregoing DEFENDANTS' MOTION TO STRIKE PLAINTIFF LEAVITT'S EXPERT AFFIDAVIT [DOCKET NO.30] 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

EXHIBIT

EXHIBIT

COUNTY OF SUFFOLK

STATE OF MASSACHUSETTS

AFFIDAVIT OF DAVID B. WAISEL, M.D.

I, David B. Waisel, swear under penalty of perjury that the following is true:

1. My name is David B. Waisel, MD. I am over the age of 18 and competent to testify to the truth of the matters contained herein.
2. I am a practicing anesthesiologist at Boston Children's Hospital and an Associate Professor of Anesthesia, Harvard Medical School. I have been practicing clinical anesthesiology for approximately 19 years. I am a board certified anesthesiologist.
3. I have been asked by attorney Oliver Loewy to provide an expert medical opinion about the pain caused by pentobarbital extravasation (i.e., leakage or injection of a drug into the extravascular space or tissues instead of into the vein).
4. Pentobarbital and thiopental are alkaline drugs. The pH of pentobarbital commercially available in the United States is approximately 9.5. The pH of thiopental ranges from 10 -11, based on the formulation.
5. Compared to thiopental, pentobarbital is practically never used to induce anesthesia. Therefore, we have more knowledge about the consequences of extravasation of thiopental than of pentobarbital. Because of the similar alkalinity, thiopental is a valid surrogate when assessing complications (e.g., pain) from extravasation. The slight difference in pH between pentobarbital and thiopental is insignificant in regard to causing pain.
6. Extravasation of alkaline drugs causes pain, necrosis and tissue sloughing. Extravasation of thiopental causes the pain, necrosis and tissue sloughing one

would expect from a drug with a pH above 8. Pain can range from very irritating to excruciating, depending partly on the quantity of thiopental that reaches the soft tissue. The extent of pain and injury increases with the volume of drug injected. In my limited experience of this rare event, the injection and subsequent extravasation of a comparatively small volume of thiopental (10 -20 cc) has caused excruciating and unrelenting pain requiring treatment.

7. The extent of pain and injury increases with the volume of drug injected. My understanding is that the Idaho Department of Corrections lethal injection one-drug pentobarbital protocol calls for the injection through an IV or central line of 5 g of pentobarbital. A single cc of commercially available pentobarbital contains 50 mg of pentobarbital in a liquid solution. So, to administer 5 g pentobarbital, one would have to inject 100 cc. Because thiopental is a valid surrogate when assessing complications from extravasation, it is my opinion held to a reasonable degree of medical certainty that extravasation of 5 g pentobarbital would cause excruciating and unrelenting pain requiring treatment.
8. Pentobarbital extravasation will cause this pain whether the extravasation is associated with a peripheral IV or a central line.

Dated this 3rd day of June, 2012.



David B. Waisel, M.D.