

**GOVERNOR'S COMMISSION ON  
ADMINISTRATION OF LETHAL INJECTION**

**MEETING DATE:** February 28, 2007

**MEETING PLACE:** Conference Call

**MEETING TIME:** 4:30 p.m.

**MINUTES**

Present:

Bill Jennings, Chairman  
Rodney Doss  
Harry Singletary  
Dr. Peter Springer  
Dr. David Varlotta  
Harley Lappin  
Dr. Steve Morris  
Carolyn Snurkowski  
Representative Dennis Ross  
Senator Victor Crist  
Judge Stan Morris

Absent:

The meeting began at 4:40 p.m.

1. Bill Jennings took roll call. All members were present except for Dr. Steve Morris, who joined the call a few minutes late.
2. Mr. Jennings asked if all the commission members had received the final report he e-mailed approximately 40 minutes ago. Most members advised they had. Mr. Jennings advised that he wanted to review those sections that were highlighted first and then the Commission could go through the remainder of the report.
3. Findings and Recommendations - Page 6 - Paragraph 7 - Mr. Jennings read the highlighted section: "There was inadequate communication between the execution team members and the warden who was no informed of the problem and the changes implemented." This change was made at the recommendation of Harry Singletary. Mr. Jennings asked if there were any objections to this section and hearing none advised it would be made part of the report.
4. Recommendations - Page 7 - Mr. Jennings stated that on page 13 Appendix A was the Physicians' Statement. Some of the Commission members advised they did not have this on their draft. Dr. Varlotta does not have this document in front of him but recommended that the doctors be accredited with letters and not the word "Dr." Victor Crist agreed this should be done for accuracy. Dr. Springer was in agreement.

Recommendations - Page 7 - Paragraph (a) - Mr. Jennings read the highlighted section: "Related to the implementation of lethal injections carried out by officers and agents of the

State of Florida.” He asked if there were any objections to this section and hearing none advised it would be made part of the report.

5. Page 9 - Paragraph (g) - Mr. Jennings read the highlighted change: “A written record of the debriefing should be produced.” He explained that originally it had been one sentence and he broke it up into two sentences. Mr. Jennings asked if there were any objections to this section and hearing none advised it would be made part of the report.
6. Page 9 - 4. Establishing Intravenous (IV) Access - Paragraph (d) - Mr. Jennings advised he changed the word to “event(s).” He asked if there were any objections to this section and hearing none advised it would be made part of the report.
7. Harry Singletary requested a discussion on paragraph (e) on page 9 before moving on. It reads “In accessing the inmate’s level of consciousness, the following should be considered.” However, what’s listed is about the integrity of the IV. Harley Lappin advised he thought the wrong medical testimony had been inserted. He agreed with Mr. Singletary that 1 - 6 are an assessment of IV access when paragraph (e) is to establish level of consciousness. It looks like the wrong steps are listed under paragraph (e). Rodney Doss stated he felt strongly that each step needed to be validated. He also stated that under number 3 “Give small does of medicine to determine if there is any effect” should read saline and not medicine. Ms. Snurkowski advised these words were verbatim from the transcript. Judge Morris stated it was clear that number 4 was establishing the access and those six steps are directly out of the testimony about checking that so he doesn’t see any harm in putting in accessing the IV or maintenance of the IV access the following should be considered. Harry Singletary proposed developing and implement procedures for the IV, the following should be considered. Harley Lappin recommended that this not be included in the report given the fact that other procedures might accomplish it just as well. He sees it as a responsibility of our medical practitioners and for us to prescribe a certain protocol for them would be inappropriate. Mr. Jennings took a vote to determine if 4(e) should read “Develop and implement procedures to ensure the integrity of the IV, the following should be considered.” This language is from Mr. Singletary’s recommendation. Mr. Jennings explained that a yes vote means to keep it in.

<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Rodney Doss	Harley Lappin	Dr. Springer
Harry Singletary	Carolyn Snurkowski	Dr. Varlotta
Judge Morris	Rep. Ross	Dr. Morris
Bill Jennings	Senator Crist	

The motion failed. Harley Lappin cautioned about being too specific. He advised we should convey the expectation that unconsciousness be achieved before the administration of the drugs and it be left to DOC to ascertain the level of unconsciousness. Judge Morris stated it was inconsistent that we can’t tell them how they might access the integrity of an IV but we are going to tell them how to access the level of unconsciousness. Senator Crist agreed and said we should be giving them general advice on what we see should be done and not necessarily telling them how they have to do it. Judge Morris stated that we omit 4(e) and go to number 5 and we add in subsection (a) that directs the Warden to determine the level of unconsciousness. Mr. Jennings asked if anyone wanted to include what is now listed as 4(e). This will be stricken. Mr. Lappin stated in section 4, it needs to be clear that they have ensured that they have good access to a vein. If that’s not clearly articulated in 4, then it

needs to be added without being so specific. Mr. Lappin advised that we need to ensure that in section 5, that unconsciousness is accomplished before the administration of the second two drugs. He stressed that if in either of those two places we haven't done that well enough, we have to go back and rewrite in a manner that expresses what is expected to be accomplished. Rodney Doss stated he believed we did that in section 5. He advised he was comfortable with deleting 4(e) in its entirety. Judge Morris stated that he thought an e should be included that generically says that the protocol should include the constant monitoring of the integrity of the IV. No other paragraph in that section does that. Harley Lappin stated he agreed with Judge Morris. He suggested moving part of 5(a) to section 4. Mr. Lappin stated he would draft a paragraph (e) that articulates that they must ensure throughout this process successful IV access. Harry Singletary advised a simple statement that says develop and implement procedures to ensure successful IV throughout the entire process in number 4, then you give them the flexibility they need but it also says that they must do it throughout the whole process. Carolyn read the new paragraph (e): "Develop and implement procedures to ensure the integrity of a successful IV throughout the entire execution process." Mr. Jennings asked if there were any objections to this change and hearing none advised it would be made part of the report.

8. Administration of Lethal Substances - Page 10 - Paragraph (a) - Mr. Jennings advised the 5(a) not highlighted was the original paragraph. It was suggested to substitute the second paragraph (a) for the first (a). Harley Lappin stated we don't want the second two drugs administered until after the sodium penethol has been administered and unconsciousness has been achieved. Senator Crist stated the highlighted paragraph (a) is a much better paragraph and is more specific and to the point. Mr. Jennings asked if there were any objections to substituting the new paragraph (a) for the original paragraph (a) and hearing none advised it would be made part of the report.
9. Development and Implementation of Training Procedures for Person Involved in the Lethal Injection Process - Page 11 - Section C(2) - Mr. Jennings read the highlighted section: "Develop and implement procedures which review foreseeable lethal injection contingencies and formulate responses to the contingencies which are rehearsed in the periodic training." He asked if there were any objections to this section and hearing none advised it would be made part of the report.
10. Miscellaneous Recommendations Related to the Florida Lethal Injection Process - Page 11 - Section D(2) - Mr. Jennings advised the wording was changed to "any additional necessary." This gives more flexibility to the Department. Mr. Jennings asked if there were any objections to this change and hearing none advised it would be made part of the report.
11. Miscellaneous Recommendations Related to the Florida Lethal Injection Process - Page 11 & 12 - Section D(3) - Mr. Jennings explained that there are two proposed substitutions for paragraph 3 at the top of page 12. Harley Lappin advised that any of these proposed changes read that the Commission questions whether an execution can be accomplished successfully with this drug combination. He recommends the following: "It is the Commissioners' opinion that an agency following the procedures explained in our recommendation can carry out an execution utilizing the three prescribed substances in the Florida procedures within the existing parameters of the Constitution. However, we suggest the Governor have the Florida Department of Corrections explore other more recently developed lethal substances, especially the pancuronium bromide, that may make the procedure less burdensome in general." Bill Jennings reminded the Commission that the discussion on Saturday was that

we do paragraph 3 as a suggestion so that it wasn't viewed by the Governor or the Department as a recommendation. Judge Morris stated that we have not studied any other executions in Florida and we have no data so we don't know if you can successfully administer this. He explained he doesn't feel he can reach that conclusion. Judge Morris is concerned that the Commission cannot reach a conclusion about whether or not this inmate was in any pain and we don't want to see that reoccur. Carolyn Snurkowski advised that though she doesn't believe these comments are appropriate because it's outside the scope of the Commission, she believes it accomplishes what's been asked by including all three drugs. Senator Crist stated he agreed and disagreed. He agreed it is outside the scope of what the Commission is being asked to do. It is not our place to reinvent the execution process. The report states clearly that the second drug should not be administered until the inmate is determined to be unconscious. The Commission can recommend that they periodically review the chemicals being used in comparison to more contemporary or modern chemicals that are available, that's reasonable. However, stating we want to change the process of the three different types of chemicals being used and for what purpose, that's outside the scope of what the Commission was requested to do. Harley Lappin read his recommendation again for number 4: "It is the Commissioners' opinion that an agency following the procedures explained in our recommendation can carry out an execution utilizing the three prescribed substances in the Florida procedures within the existing parameters of the Constitution. However, we suggest the Governor have the Florida Department of Corrections explore other more recently developed lethal substances, especially the pancuronium bromide, that may make the procedure less burdensome in general." He will work on the wording and forward to Bill Jennings. The issue will be postponed until Mr. Lappin can complete this section.

12. Bill Jennings asked the Commission members if they had any suggested changes to anything before the Findings and Recommendations. Judge Morris asked Mr. Jennings if it would be more appropriate to list those who testified. Everyone agreed. Carolyn Snurkowski advised that there were typographical errors and how did the Commission want to handle those. The Commission then went through the report, page by page, and corrected typographical mistakes.

Dr. Morris stated that the doctors should be listed as M.D.'s.

Harley Lappin recommended adding "and lack of subpoena power" to the last sentence on page 3.

Dr. Morris wanted this sentence added before the last sentence of the first paragraph on page 4: "This issue also limited the medical members of the Commission from offering advice, recommendations or suggestions during this process." Mr. Jennings asked if there were any objections to this change and hearing none advised it would be made part of the report.

Dr. Jay Chapman should be referenced in the last paragraph on page 4. This will be researched.

Harley Lappin suggested we start the Findings and Recommendation section with what we did conclude instead of what we didn't conclude. Judge Morris agreed with Mr. Lappin, however isn't the unresolved conflict that we could not reach a conclusion whether he was in pain or not because there was conflict in the testimony between the various observations of people. Mr. Lappin agreed with Judge Morris. Mr. Doss stated this was already listed under Findings, number 6. Judge Morris is satisfied if it's already listed. Harry Singletary asked

what “with a degree of certainty” mean. He recommended the wording be deleted. Judge Morris and Dr. Springer agree with Mr. Singletary. Mr. Jennings asked if there were any objections to this change and hearing none advised it would be made part of the report. Carolyn Snurkowski asked if we needed to reverse the order as Mr. Lappin had suggested. Mr. Singletary stated he agreed with that. Bill Jennings stated he would reverse the order.

Judge Morris recommended that on page 7 under Findings, paragraph 1, that we strike the second sentence. He would replace with “This was reflected in the testimony of all witnesses or participants in the Angel Diaz execution who also witnessed prior executions by lethal injection.” Harley Lappin suggested we state how long this execution took. Judge Morris agreed with Mr. Lappin that we should put it took 34 minutes. Bill Jennings stated he would add it in.

Dr. Varlotta stated that William F. Matthews, P.A. should be added to paragraph 2 under Findings.

Rodney Doss advised that “the Primary Executioner and the Medically Qualified member of the Execution Team” should be stricken and substituted with Dr. Hamilton. Judge Morris suggested adding Agent Westveer as well. Mr. Jennings asked if there were any objections to striking “the Primary Executioner and the Medically Qualified member of the Execution Team” and adding Dr. Hamilton and Agent Westveer. Hearing none advised it would be made part of the report.

Dr. Varlotta stated that the word medication should never appear in the document. It should be replaced with either chemical or drug.

Harley Lappin read his wording for Section D, Paragraph 3: “It is the Commission’s opinion that an agency following the procedures framed in our recommendations can carry out an execution utilizing the three prescribed substances identified in the Florida Department of Corrections protocol within the existing parameters of the Constitution. However, the Commission suggests the Governor have the Florida Department of Corrections, on an ongoing basis, explore more recently developed chemicals for use in a lethal injection execution with specific consideration and evaluation of the need of a paralytic drug like Pancuronium bromide in an effort to make the execution procedure less burdensome in general.” Bill Jennings recommended taking out “less burdensome” and inserting “less problematic.” Harley Lappin will e-mail this to Mr. Jennings. Mr. Jennings asked if there were any objections to these changes and hearing none advised it would be made part of the report.

Carolyn Snurkowski will send Mr. Jennings a letter stating beyond the scope. He advised this will be Appendix B.

Harley Lappin stated he preferred not being recognized in writing in Mr. Jennings' Closing Comments. Carolyn Snurkowski agreed. Bill Jennings will consider that.

Mr. Jennings thanked everyone for their participation on the Commission.

The meeting adjourned at 7:10 p.m.