

## INITIAL STATEMENT OF REASONS:

This proposed regulation sets forth the requirements for administering capital punishment by lethal injection in California, as authorized by Article I, Section 27 of the California Constitution and by Penal Code section 3604.

Except in limited circumstances prescribed by statute, Penal Code sections 1202a and 3600(a) require the California Department of Corrections and Rehabilitation (CDCR) to house male inmates sentenced to a judgment of death at the California State Prison, San Quentin (San Quentin). Women sentenced to death are housed at the Central California Women's Facility pursuant to Penal Code section 3602. Section 3603 requires the judgment of death to be carried out at San Quentin. Since 1993, California law has authorized capital punishment by lethal injection pursuant to Penal Code section 3604.

San Quentin previously developed and revised Operation Procedure (OP) 770, which governed the lethal injection method of execution. The procedure provided for execution by the intravenous injection of three-chemicals sufficient to cause death. The three-chemicals included:

Sodium Thiopental – a barbiturate sedative, to induce unconsciousness.

Pancuronium Bromide – a neuromuscular blocking agent, to induce paralysis, and cause breathing to cease.

Potassium Chloride – to induce cardiac arrest.

On November 21, 2008, the First District Court of Appeal in *Morales v. California Department of Corrections and Rehabilitation*, affirmed the holding of the Marin County Superior Court that OP 770 was invalid because it was not promulgated under the Administrative Procedures Act (APA).

The lethal injection process was also challenged in *Morales v. Tilton*, a federal case filed in the United States District Court, Northern District of California. On February 21, 2006, Michael Angelo Morales, the plaintiff in *Morales v. Tilton*, was scheduled to be executed by lethal injection in California. Morales brought an action pursuant to 42 U.S.C. Section 1983, and he alleged that the lethal injection form of capital punishment, as administered at San Quentin, constituted cruel and unusual punishment in violation of the Eighth Amendment. Morales' execution was stayed pending an evidentiary hearing. In December 2006, Northern District Court Judge Jeremy Fogel issued a Memorandum of Intended Decision. Judge Fogel noted that although the CDCR developed a lethal injection process, there was sufficient evidence that, in practice, the process did not function as intended. Judge Fogel's December 2006 ruling resulted in a moratorium on executions in California, until a new process could be developed.

Judge Fogel's Memorandum stated that the *Morales v. Tilton* case presented a very narrow question: did California's lethal injection process – as administered in practice – create an undue and unnecessary risk of pain sufficient to violate the Eighth Amendment's prohibition of cruel and unusual punishment. The Court identified five deficiencies in California's lethal injection process, stating "Defendants' implementation

of lethal injection is broken, but it can be fixed.” The specific deficiencies identified involved:

1. Screening of execution team members;
2. Training, supervision, and oversight of the execution team;
3. Record keeping;
4. Mixing, preparing, and administering sodium thiopental by the execution team; and,
5. Lighting, overcrowded conditions, and the design of the lethal injection facility.

In light of the Memorandum of Intended Decision, and as directed by the Governor, the CDCR reviewed all aspects of the lethal injection process and its implementation. As an integral part of the review, the CDCR considered alternatives to the existing three-chemical process, including a one-chemical process. Additionally, in developing this proposed regulation, the CDCR was guided by the United States Supreme Court’s decision in *Baze v. Rees* (2008) \_U.S.\_, 128 S.Ct. 1520, which held that the State of Kentucky’s lethal injection process, and the administration of the three-chemicals, did not constitute cruel and unusual punishment under the Eighth Amendment. CDCR also reviewed all available lethal injection processes from other states and the Federal Bureau of Prisons, and reviewed the transcripts and exhibits in the *Morales v. Tilton* case. Based upon the information considered, the CDCR revised the lethal injection process as set forth in this proposed regulation.

Although much of the proposed regulation may fall into the internal management exception of the APA, that information is included in the proposed regulation in order to provide a comprehensive lethal injection process.

The CDCR determined that no alternative to the proposed action would be more effective in carrying out the purpose of this action. The CDCR also determined that no alternative to the proposed action would be as effective and less burdensome to affected private persons.

The CDCR determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the CDCR that would lessen any adverse impact on small business.

The CDCR made an initial determination that the action will not have a significant adverse economic impact on business as this proposed regulatory action is directed at actions to be taken at CDCR. Additionally, there has been no testimony or other evidence provided that would alter the CDCR’s initial determination.

The CDCR determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The CDCR performed an extensive review of the literature pertaining to lethal injections. Pursuant to Government Code section 11346.2, the CDCR, in proposing amendments to these regulations, relied upon the following technical, theoretical, or empirical studies, reports or similar documents:

- \*County of Kern Emergency Medical Services Department; Determination of Death Policies and Procedures, May 23, 2003
- Contra Costa Health Services; Determination of Death in the Prehospital Setting; Policy 19, December 1, 2007
- Marin County ALS First Responder; Policy 8105, July 1, 1993
- Marin County; Determination of Death in Prehospital Setting; Policy 8110, December 1, 1996
- \*Sacramento County; Determination of Death; Policy 2033.06, June 1, 2005
- California's Emergency Medical Services Personnel Programs; EMSA 131, 1999-2007
- Marin County Pre-Hospital IV Access Procedure; Policy 8401, July 1990
- Hopkins Medical Products; Venoscope II; item #548803
- \*Science & Society; Euthanasia machine; Australia, 1995-1996
- \*Welch Allyn Atlas Monitor; Essential features for IV anesthesia monitoring in one compact, lightweight instrument; item 6783-621NO-E1; Directcardiac.com
- Anesthesiology 2006; 104:242-8; Inpatient Reproducibility of the BISxp Monitor; Niedhart DJ; Kaiser HA; Jacobsohn E; Hantler CB; Evers AS; Avidan MS
- \*Anesthesia, 2006; 61; More problems with Luer lock connections
- American Society of Anesthesiologists; Standards for Basic Anesthetic Monitoring; Committee of Origin: Standards and Practice Parameters (Approved by the ASA House of Delegates on October 21, 1986, and last amended on October 25, 2005)
- \*Origin of the Word "Anesthesia" [www.anesthesia-nursing](http://www.anesthesia-nursing), as of February 23, 2009.
- \*Measuring the Performance of Anesthetic Depth Indicators; Clinical Investigation; Anesthesiology. 84 (1); 38-51, January 1996; Smith, Warren D PhD; Dutton, Robert C. MD; Smith, N. Ty MD
- Anesthesia Patient Safety Foundation; Mission Statement: To ensure no patient is harmed by anesthesia; [www.apsf.org](http://www.apsf.org)
- \*Anesthesiology; The Journal of the American Society of Anesthesiologists, Inc. Electroencephalographic Derivatives as a Tool for Predicting the Depth of Sedation and Anesthesia Induced by Sevoflurane. Clinical Investigations; March 1998, 88 (3); 642-650; Katoh, Takasumi; Suzuki, Akira; Ikeda, Kazuyuki
- \*National Anesthesia Services; Inc.; Nurse Anesthetist Placement; [www.nationalanesthesia.com](http://www.nationalanesthesia.com), as of February 23, 2009.
- \*California Nurse Anesthetists at a Glance; [www.canainc.org](http://www.canainc.org), as of February 23, 2009.

- \*Kaiser Permanente School of Anesthesia; California State University, Fullerton; [www.kpsan.org](http://www.kpsan.org), as of January 22, 2007.
- \*When Things go Wrong; Responding to Adverse Events; A Consensus Statement of the Harvard Hospitals; March 2006
- \*Anatomy Warehouse; Circulation; Shoulder and Elbow; Hand and Wrist; [www.anatomywarehouse.com](http://www.anatomywarehouse.com), as of March 27, 2007.
- \*Anesthesia Patient Safety Foundation Newsletter; Vol. 10, No. 2 Summer 1995
- \*The Pharmacokinetics and Pharmacodynamics of Thiopental as used in Lethal Injection; Mark Dershwitz, MD, PhD & Thomas K. Henthorn, MD Fordham URB. L.J. Volume XXXV , July 3, 2008
- \*Thiopental in Lethal Injection; by Susi Vassallo, MD Fordham URB. L.J. Volume XXXV , Jun 18, 2008
- \*Pentothal; Clinical Pharmacology; [www.rxlist.com](http://www.rxlist.com), as of February 23, 2009.
- \*Pentothal; Description; [www.rxlist.com](http://www.rxlist.com), as of February 23, 2009.
- \*Pentothal; Side Effects & Drug Interactions; [www.rxlist.com](http://www.rxlist.com), as of February 23, 2009.
- \*Pentothal; Warnings & Precautions; [www.rxlist.com](http://www.rxlist.com), as of February 23, 2009.
- \*Pentothal; Overdosage & Contraindications; [www.rxlist.com](http://www.rxlist.com), as of February 23, 2009.
- \*A Manual Slide Rule for Target-Controlled Infusion of Propofol: Development and Evaluation; by Jorgen Bruhn, MD; Thomas W. Bouillon, MD, Heiko Ropcke, MD; and Andreas Hoefft, MD, PhD; Department of Anesthesiology and Intensive Care Medicine, University of Bonn, Germany; Department of Anesthesia LUMC, Leiden, The Netherlands; and Inselspital, University of Bern, Switzerland; (2002 by the International Anesthesia Research Society 0003-2999/02
- \*Anesthesia & Analgesia; Letter to the Editor; Extravasation Injury Caused by Propofol; Mahajan, Rajesh MD; Gupta, Rahul MD and Sharma, Anju MD; Department of Anesthesia, ASCOMS, Jammu, India; [www.anesthesia-analgesia.org](http://www.anesthesia-analgesia.org) (2006)
- \*I.V. Therapy Practice Certificate Program; [www.infusionknowledge.com](http://www.infusionknowledge.com), , as of February 23, 2009.
- \*Peripheral Intravenous Access; [www.intermed.cmed.ottawa.ca](http://www.intermed.cmed.ottawa.ca), as of February 23, 2009.
- \*Emergency Nursing World!; I.V. Starts... --improving your odds!; Trimble, Tom RN CEN ; [www.enw.org/IVStarts](http://www.enw.org/IVStarts), as of February 23, 2009.
- \*AABB Technical Manual; Administration of Blood Components; Chapter 22; Venous Access; 523-526
- \*IV-Therapy.Net ; [www.iv-therapy.net](http://www.iv-therapy.net), as of December 28, 2007.

- \*Nursing; Intravenous therapy handbook; [www.findarticles.com](http://www.findarticles.com), as of December 28, 2007.
- Lynn Hadaway Associates, Inc.; Infusion Therapy Performance Consulting; Catheter size and Blood transfusion; [www.hadawayassociates.blogspot.com](http://www.hadawayassociates.blogspot.com), as of February 23, 2009.
- Lynn Hadaway Associates, Inc.; Armboards for IV Sites in Joints!!; [www.hadawayassociates.blogspot.com](http://www.hadawayassociates.blogspot.com), as of February 23, 2009.
- Infusion Nurses Society – INCC Certification. [www.ins.org](http://www.ins.org), as of December 28, 2007.
- Lynn Hadaway Associates, Inc.; Beware of IV or PICC “certifications”!!; [www.hadawayassociates.blogspot.com](http://www.hadawayassociates.blogspot.com), as of February 23, 2009.
- \*JEMS October 2005; No More Stab-in-the-Dark IV Sticks!; Jeffrey Lindsey, PhD, EMT-P
- \*The Multimedia Procedure Manual; Peripheral Intravenous Access; Introduction; [www.emprocedures.com](http://www.emprocedures.com), as of February 23, 2009.
- \*The Multimedia Procedure Manual; Peripheral Intravenous Access; Indications and Contraindications ; [www.emprocedures.com](http://www.emprocedures.com), as of February 23, 2009.
- \*The Multimedia Procedure Manual; Peripheral Intravenous Access; Equipment ; [www.emprocedures.com](http://www.emprocedures.com), as of February 23, 2009.
- \*The Multimedia Procedure Manual; Peripheral Intravenous Access; Anatomy. [www.emprocedures.com](http://www.emprocedures.com), as of February 23, 2009.
- \*The Multimedia Procedure Manual; Peripheral Intravenous Access; Preparation; [www.emprocedures.com](http://www.emprocedures.com), as of February 23, 2009.
- \*The Multimedia Procedure Manual; Peripheral Intravenous Access; Procedure; [www.emprocedures.com](http://www.emprocedures.com), as of February 23, 2009.
- \*The Multimedia Procedure Manual; Peripheral Intravenous Access; Complications; [www.emprocedures.com](http://www.emprocedures.com), as of February 23, 2009.
- \*The Multimedia Procedure Manual; Peripheral Intravenous Access; Safety Considerations; [www.emprocedures.com](http://www.emprocedures.com), as of February 23, 2009.
- \*Aspect Medical Systems; BIS Monitoring; [www.aspectmedical.com](http://www.aspectmedical.com), as of December 19, 2006.
- \*Central Venous Line Placement; Subclavian Venipuncture Infraclavicular Approach; [www.apps.med.buffalo.edu](http://www.apps.med.buffalo.edu), as of February 23, 2009.
- \*The New England Journal of Medicine; 348 (12): 1123-1133; Current Concepts; Preventing Complication of Central Venous Catheterization; McGee, David C. MD and Gould, Michael K. MD, March 20,2003; [www.nejm.org](http://www.nejm.org)

- \*Quality Improvement Guidelines for Central Venous Access; Lewis, Curtis A. MD, et al; Society of Interventional Radiology Standards of Practice Committee; J Vasc Interv Radiol 2003; 14:S231-235
- Medcentric; Medical Writing and Training; Analysis of tip malposition and correction in peripherally inserted central catheters placed at bedside by a dedicated nursing team.; December 1, 2007; [www.medcentric.blogspot.com](http://www.medcentric.blogspot.com)
- \*University of Pennsylvania Law Review; Debate; BAZE-D and CONFUSED: What's the Deal With Lethal Injection; Nathan, Alison J. & Berman, Douglas A.; www.law.berkeley.edu/clinics, (2008)
- \*Fordham University School of Law; May 2007; 76 (1): 49-128; The Lethal Injection Quandary; How Medicine has Dismantled the Death Penalty; Denno, Deborah W.; [www.ssrn.com/abstract=983741](http://www.ssrn.com/abstract=983741)
- \*Lethal Injection for Execution: Chemical Asphyxiation? PLoS Medicine; Zimmers, Teresa A., et al; April 24, 2007; [www.plosmedicine.org](http://www.plosmedicine.org)
- \*Administration and Compounding of Euthanasic Agents; Royal Dutch Society for the Advancement of Pharmacy; The Hague; 1994
- \*Chemical & Engineering News; Phenobarbital; [www.pubs.acs.org](http://www.pubs.acs.org), as of February 23, 2009.
- \*WebMD; Heart Disease Health Center; Electrocardiogram; [www.webmd.com/heart](http://www.webmd.com/heart), as of February 23, 2009.
- \*Human Rights Watch; So Long as They Die; Lethal Injections in the United States; April 2006; Vol. 18 No. 1(G); [www.hrw.org](http://www.hrw.org)
- \*Report to the Governor; Lethal Injection as a Constitutional Method of Enforcing a Sentence of Death; December 2008; Nebraska Attorney General Jon Bruning; Vol. II of II.
- \*Royal Commission on Capital Punishment 1949-1954; by Maxwell; Jones; Cameron, Elizabeth, D.C.; Fox-Andrews; Macdonald; Slater; Mann; Montgomery; Hancock, Florence M. Radzinowicz; [www.bopcris.ac.uk](http://www.bopcris.ac.uk)
- The Medicalization of Execution; Lethal Injection the United States; Heath, Mark (2007)
- Symposium; The Lethal Injection Debate: Law and Science; Denno, Deborah w.; FORDHAM URB.L.J., July 11, 2008
- Mayo Clinic; May Clinic Proceedings; Physician Involvement in Capital Punishment: Simplifying a Complex Calculus; September 2007; [www.mayoclinicproceedings.com](http://www.mayoclinicproceedings.com)
- PLoS Medicine; Ethical Implications of Modifying Lethal Injection Protocols; Koniaris, Leonidas G.; Goodman, Kenneth W.; Sugarman, JKeremy; OZomaro, Uzoezi; Sheldon, Jonathan; Zimmers, Teresa A.; June 10, 2008; [www.plosmedicine.org](http://www.plosmedicine.org)

- Mayo Clinic; Mayo Clinic Proceedings; Physicians Participation in Capital Punishment; Waisel, David MD; [www.mayoclinicproceedings.com](http://www.mayoclinicproceedings.com), September 2007.
- Should Physicians Participate in Capital Punishment? Mayo Clinic Proceedings; Arth L. Caplan, PhD; [www.mayoclinicproceedings.com](http://www.mayoclinicproceedings.com), September 2007.
- Practice Advisory or Intraoperative Awareness and Brain Function Monitoring; A Report by the American Society of Anesthesiologists Task Force on Intraoperative Awareness; Jeffrey L. Apfelbaum MD Chair; Exhibit 60; *Morales v. Tilton*; Case No. 06-219; Case No. 06-926
- Standards for Basic Anesthetic Monitoring; Exhibit 61; *Morales v. Tilton*; Case No. 06-219; Case No. 06-926
- Pharmacologic Paralysis and Withdrawal of Mechanical Ventilation at the End of Life; Exhibit 63; *Morales v. Tilton*; Case No. 06-219; Case No. 06-926
- Recommendations for end of life care in the intensive care unit; Exhibit 64; *Morales v. Tilton*; Case No. 06-219; Case No. 06-926
- Physicians' Attitudes About Involvement in Lethal Injection for Capital Punishment; Exhibit 65; *Morales v. Tilton*; Case No. 06-219; Case No. 06-926
- Physicians' Willingness To Participate in the Process of Lethal Injection for Capital Punishment; Exhibit 66; *Morales v. Tilton*; Case No. 06-219; Case No. 06-926
- Colorado Department of Corrections: Capital Punishment/Execution by Lethal Injection <https://exdoc.state.co.us/userfiles/regulations/pd>
- State of Connecticut, Department of Corrections: Administration of Capital Punishment
- Florida Department of Corrections: The Governor's Commission on Administration of Lethal Injection: Protocols, Procedures, Checklists and documentation
- Georgia Department of Corrections: Lethal Injection Procedure
- Indiana Department of Corrections: Mission Statement\*
- North Carolina Department of Correction: Execution Method [www.doc.state.nc.us/DOP/Deathpenalty/method.htm](http://www.doc.state.nc.us/DOP/Deathpenalty/method.htm)
- [www.ap.org/southdakota/Execution%20of%20an%20Inmate.htm](http://www.ap.org/southdakota/Execution%20of%20an%20Inmate.htm) pages 1-6
- Department of Corrections Public Affairs Capital Punishment in Oregon: [www.oregon.gov/DOC/PUBAFF/cap\\_punishment/capital](http://www.oregon.gov/DOC/PUBAFF/cap_punishment/capital)
- State of Ohio, Department of Rehabilitation and correction: Execution
- Tennessee Department of Corrections: Execution Procedures for Lethal Injection
- State of Washington Department of Corrections: Capital Punishment

- State of Delaware, Department of Correction, Chapter 2-Statutory and Legal Authorization-Execution Procedure. [Doc.delaware.gov/pdfs/policies/procedure2-7redact\\_3.pdf](http://Doc.delaware.gov/pdfs/policies/procedure2-7redact_3.pdf)
- Idaho Department of correction, Standard Operating Procedures 135.02.01.001-Execution Procedures. [www.doc.idaho.gov/policy/int1350201001.pdf](http://www.doc.idaho.gov/policy/int1350201001.pdf)
- Kentucky State Penitentiary-The Execution. [www.kypost.com/medial/news/b/b/b/bbb39a4f.4016.4315.973e.Ob863b2a47dz/BAZE v Rees JA-Vol IV redacted version filed with SCOTUS.pdf](http://www.kypost.com/medial/news/b/b/b/bbb39a4f.4016.4315.973e.Ob863b2a47dz/BAZE_v_Rees_JA-Vol_IV_redacted_version_filed_with_SCOTUS.pdf)
- Arizona Department of Corrections-Department Order Manual, Order 710, Execution Procedure. [www.azcorretion.gov/policies/700/710.htm](http://www.azcorretion.gov/policies/700/710.htm)
- U.S. Army Corrections System: Procedure for Military Executions.
- State of Montana-Department of Corrections, Policy directive doc3-6-1.pdf, Executions. [www.cor.mt.gov/resources/POL/3-6-1.pdf](http://www.cor.mt.gov/resources/POL/3-6-1.pdf)

\*These items are copyrighted material, protected under Federal Copyright Laws (Title 17, United States Code, Sections 501 and 506). No portion of this work may be reproduced or distributed without permission from the copyright owner. Any party interested in obtaining any portion of this copyrighted material must do so independently and in accordance with all Federal Copyright Laws.

## **Article 7.5. Execution of Death Penalty.**

**Title to Article 7.5 is changed** to Administration of Death Penalty for clarity.

### **Section 3349. Method of Execution.**

**Section 3349 is amended** to reflect revisions that have been made to several CDCR forms or new forms that were added that pertain to lethal injection. Specifically, CDCR Forms 1801, 1801-A, and 1801-B were revised and the other forms were added. The forms were updated or added to provide a better format for staff. Further, “Department of Corrections” was revised to accurately reflect the agency’s name, the “Department of Corrections and Rehabilitation.” The acronym “CDC” was changed to “CDCR.” Finally, the dates on the forms were changed to reflect the date of review.

#### **Section 3349.1.1. Definitions.**

**Section 3349.1.1 is adopted** to provide the definition of numerous terms that are applicable only to Title 15, Chapter 4, Article 7.5. The definitions define applicable terms that are used throughout Article 7.5.

#### **Section 3349.1.2. Selection, Recruitment and Annual Review of Lethal Injection Team Members.**

**Subsection 3349.1.2(a) is adopted** to establish the process for identifying, recruiting and selecting the Lethal Injection Team members. Based upon the CDCR’s past experience, the CDCR determined that a minimum of 20 team members, including the Team Leader, is necessary to carry out the Lethal Injection Team’s responsibilities. The team members will be employees of San Quentin, unless there are an insufficient number of candidates at San Quentin. In that case, candidates from other locations will

be identified and recruited. San Quentin staff members are the primary choice because Penal Code §section 3603 mandates that the judgment of death shall be “executed within the walls of the California State Prison at San Quentin,” and the Lethal Injection Facility is located at San Quentin. Moreover, San Quentin staff are knowledgeable of San Quentin, and staff training is conducted at San Quentin. By primarily utilizing San Quentin staff, the CDCR ensures the most cost effective use of CDCR resources.

A panel of individuals, chaired by the Warden, will review all candidates’ qualifications, interview candidates and select the team members. The Warden is the chair of the panel because the Warden is responsible for the activities and staff at San Quentin.

**Subsection 3349.1.2(a)(4)(B) is adopted** to establish that the Warden may contract with medical personnel to serve on the Lethal Injection Team, and to serve as the physician attending the execution.

**Subsection 3349.1.2(b) is adopted** to establish the process used to screen and interview potential team members. The process includes reviewing the candidates’ performance evaluations, personnel, supervisory and training files, and personal and professional backgrounds to ensure that only candidates with the best combination of professional experience, personal characteristics and background will be selected for the tasks associated with an execution.

**Subsection 3349.1.2(c) is adopted** to establish that the selection panel must maintain a list of at least 10 pre-qualified employees who meet the criteria for membership on the Lethal Injection Team. The Warden is responsible for notifying the Director, DAI, should a vacancy on the team occur. Based upon the CDCR’s past experience, the CDCR determined that a minimum of 10 pre-qualified team members is necessary to ensure that an adequate number of potential candidates for the Lethal Injection Team is available.

**Subsection 3349.1.2(d) is adopted** to establish that, in the event there is a vacancy on the team, the selection panel must complete the screening process for all potential new team members, even if a candidate was previously screened.

**Subsection 3349.1.2(e) is adopted** to identify the general selection criteria that the CDCR determined are necessary to fulfill the responsibilities of a Lethal Injection Team member. These criteria ensure that the Lethal Injection Team is appropriately staffed, so that the lethal injection process is properly carried out, and security is not compromised.

**Subsection 3349.1.2(f) is adopted** to delineate the rank and the specific selection criteria for the Team Leader, the Assistant Team Leader and the four Lethal Injection Sub-Teams, including the Security Sub-Team, Intravenous Sub-Team, Infusion Sub-Team, and Record Keeping Sub-Team. These criteria ensure that the Lethal Injection Team members are qualified and able to fulfill their specific responsibilities on the team, so that the team is appropriately staffed. Certain rank levels are specified to ensure that personnel with the requisite leadership skills, professionalism, experience, and performance history are selected

**Subsection 3349.1.2(g) is adopted** to establish that the Warden will annually review each team member to ensure that the selection criteria for team membership are

maintained. The review is performed on an annual basis because it ensures that only qualified members remain on the team, and it maximizes valuable personnel resources and avoids excessive and unnecessary review.

### **Section 3349.1.3. Lethal Injection Team Duties.**

**Subsection 3349.1.3(a) is adopted** to establish the general responsibilities of the Lethal Injection Team members. This is done to ensure that each member is aware of his or her general responsibilities on the Lethal Injection Team, and is aware of the responsibilities of other team members. **Subsection 3349.1.3(b) is adopted** to establish that the Team Administrator is responsible to ensure that each team member is appropriately trained and ready to perform his or her specific responsibilities on the team. The Team Administrator has a rank of “Associate Warden.” This rank is commensurate with the responsibility and duty of ensuring team preparation and readiness.

**Subsection 3349.1.3(c) is adopted** to establish the specific responsibilities of the four sub-teams, and to establish that the Team Leader is responsible for assigning team members to their respective sub-teams. The specific tasks of each of the sub-teams are clearly identified so that team members understand their responsibilities.

### **Section 3349.1.4. Lethal Injection Team Training.**

**Subsection 3349.1.4 is adopted** to establish the training regimen for Lethal Injection Team members. In preparing the training, the CDCR incorporated the training regimens of other states and the Federal Bureau of Prisons. The CDCR also considered the *Morales v. Tilton* case. The CDCR training will ensure that all members of the Lethal Injection Team are trained in their respective roles and are familiar with the entire lethal injection process.

**Subsection 3349.1.4(a) is adopted** to clarify that the Team Administrator is responsible for ensuring that each team member is provided relevant quality training.

**Subsections 3349.1.4(b) through 3349.1.4(c) are adopted** to establish that members of each of the four sub-teams must participate in specific training pertinent to their assigned duties. These subsections also establish the scope of the training, including the scope of each sub-team’s training.

**Subsection 3349.1.4(d) is adopted** to establish the frequency of the Lethal Injection Team training. The CDCR determined that it is necessary that the Lethal Injection Team members train regularly, as specified, to ensure that they are proficient in carrying out their responsibilities.

**Subsection 3349.1.4(e) is adopted** to establish the requirements for documenting the Lethal Injection Team training. The Team Leader is responsible for maintaining a lethal injection process training file to document that appropriate training was conducted. For security reasons, the in-service training sign-in sheets used for other CDCR training shall not be completed, nor will the names of the team members be included in the training file.

### **Section 3349.2.1. Execution Site Operation.**

**Subsection 3349.2.1(a) is adopted** to establish the level of security required for the Lethal Injection Facility, and that entry into the Lethal Injection Facility requires the express approval of the Warden or acting Warden.

**Subsection 3349.2.1(b) is adopted** to clarify that the Infusion Control Room, located within the Lethal Injection Facility, shall be large enough to accommodate a mixing area, the Infusion Sub-Team, designated members of the Intravenous Sub-Team and the Security Sub-Team.

**Subsection 3349.2.1(c) is adopted** to establish the security and the operational procedures relative to the safe and the refrigerator that are located in the Infusion Control Room. The Lethal Injection Chemicals are stored in the secured refrigerator and safe. Only the Warden, Team Administrator, and Team Leader, know the safe's combination, and have access to the refrigerator keys. These procedures ensure that the Lethal Injection Chemicals are appropriately stored, and ensure security and accountability for storing the chemicals.

**Subsection 3349.2.1(d) is adopted** to establish the procedures for, and appropriate record keeping associated with, accessing the Lethal Injection Facility. These procedures ensure the security of the Lethal Injection Facility, and ensure accountability for access to the Lethal Injection Facility.

**Subsection 3349.2.1(e) is adopted** to establish the procedures governing Lethal Injection Facility security inspections. Regular inspections, as specified, ensure that the Lethal Injection Facility is available and operational. Additionally, these procedures ensure that any necessary repairs to the Lethal Injection Facility are documented and provided, as needed.

### **Section 3349.2.2. Lethal Injection Record Keeping and Documentation.**

**Section 3349.2.2 is adopted** to establish the reporting, record-keeping and review standards necessary to create a complete, timely and accurate Master Execution File. This section also identifies the individuals responsible for documenting events, reviewing reports, and maintaining records. The Litigation Coordinator shall be responsible for the security of all documents generated throughout all phases of the lethal injection process. Associate Wardens and the Team Administrator are responsible for reviewing documents, and ensuring that the documents are submitted to the Litigation Coordinator for inclusion in the Master Execution File. The Condemned Unit Correctional Counselor II shall collect and log all documents received from the inmate and shall record them on the Correctional Counselor's Pre-Execution Log. The documents will also be sent to the Litigation Coordinator for inclusion in the Master Execution File. In addition, the Litigation Coordinator shall log and maintain a copy of all documents and notices between San Quentin, CDCR Headquarters, or any other agency or organization pertaining to the inmate's scheduled execution. The Team Leader is responsible to ensure that the Master Execution File includes documentation of: the Lethal Injection Team's training; inspections of the Lethal Injection Facility; activities regarding the lethal injection process; and the inmate's activities once the inmate is re-housed in the Lethal Injection Facility Holding Area. Furthermore, the

Team Leader shall assign a member of the Record Keeping Sub-Team to the Team Administrator, Team Leader, and each Sub-Team to ensure that all activities are documented without distracting team members from their duties. Following an execution, the Team Leader shall complete the post-execution report, CDCR Form 2182 (01/09), San Quentin State Prison Execution Report – Part A. Each team member shall complete a CDCR Form 2183 (01/09), San Quentin State Prison Execution Report – Part B. The Team Leader shall collect and assemble all documents necessary to complete the Execution Report, including any appropriate supplemental reports. The Team Administrator shall process all records of the execution. Additionally, the Team Administrator will meet with the Record Keeping Sub-Team to evaluate and critique all records submitted for inclusion in the Master Execution File. The Public Information Officer shall ensure that copies of any press releases regarding the Lethal Injection process are provided to the Litigation Coordinator. This section also identifies various documents that shall be maintained in the Master Execution File including, but not limited to, notifications to inmate and involved agencies; medical review records; inmate visiting records; the inmate's completed attachments from CDCR Form 2172; pre-execution and other logs; equipment and controlled substance accountability reports; execution records; post-execution logs and records; and legal documents. These provisions ensure that all aspects of the Lethal Injection process are documented and retained in the Master Execution File. Moreover, individual responsibilities are identified to clarify what each team member is responsible to document, in order to preserve their observations and actions. Finally, multiple levels of review ensures that all appropriate documentation is collected and preserved in the Master Execution File. This documentation process will ensure that an accurate record of the lethal injection process is maintained. This documentation process will also assist the CDCER in training staff on the lethal injection process.

### **Section 3349.2.3. Witnesses, Observers, Media, and Information Releases.**

**Section 3349.2.3 is adopted** to establish the procedures and standards that govern identification, selection, processing, and accommodation of witnesses, observers and non-witness media, throughout the execution process. This section implements Penal Code §section 3605 and specifies which witnesses are permitted to view an execution. The section also identifies the Warden's role and responsibility to ensure that individuals appropriate to witness an execution are invited to be present, so that members of the general public, news media, State government, the victim's family, and the inmate's family, friends, and spiritual advisors are represented at an execution. Additionally, this section establishes the procedures governing notification and selection of media witnesses. The section also establishes general standards and procedures applicable to all witnesses, such as witness confidentiality, security, screening, identification requirements, and clothing requirements, among other things. Moreover, the section identifies the process of escorting witnesses prior to, and following, an execution. These provisions clarify various stages of the lethal injection process, and inform witnesses of the institution's expectations and procedures during an execution.

In addition, this section establishes that the San Quentin Public Information Officer, as specified, is responsible for selecting, accommodating, and coordinating the non-witness news media. The section also identifies the number of non-witness news media

and the process that must be followed to be present on institution grounds during the period leading up to and during an execution. These processes ensure that the media is accommodated and has access to information during an execution. The section also specifies what rules apply to interviews of condemned inmates so that media will know the expectations of San Quentin. One press conference will be held approximately one hour after the execution to ensure equal media access to information. The section also identifies that the San Quentin Public Information Officer and CDCR, Assistant Secretary, Office of Public and Employee Communications will be responsible for all press releases before, during and after an execution. In addition, the section states that the names of the Lethal Injection Team members will not be released due to safety concerns, nor will the team members be available for interviews or photographs. This is consistent with the April 3, 2006 Protective Order in *Morales v. Woodford*, which states that “Defendants clearly have legitimate ‘concerns about the safety of prison personnel’ who conduct executions. *California First Amend. Coalition v. Woodford*, 299 F 3d 868, 880 (9<sup>th</sup> Cir. 2002)”.

#### **Section 3349.2.4. Communication.**

**Section 3349.2.4 is adopted** to ensure that communication is established with the California Supreme Court, the Governor’s Office and the Attorney General’s Office prior to the execution so that any stay of execution from a court, or act of clemency from the Governor, may be received and conveyed to the Lethal Injection Team.

#### **Section 3349.3. Chronology of Events Prior to Execution.**

**Section 3349.3 is adopted** to establish the events that occur upon receipt of an execution order. Additionally, this section identifies the responsibilities of specific staff, including the Warden, Chief Deputy Warden, Associate Warden, Specialized Housing Division, Team Leader, Condemned Unit Correctional Counselor II, Litigation Coordinator, Warden’s Administrative Assistant, Public information Officer, and Visiting Lieutenant, upon receipt of an execution order.

#### **Section 3349.3.1. Responsibilities and Tasks Approximately 45 Days Prior to a Scheduled Execution.**

**Section 3349.3.1 is adopted** to establish the events that occur approximately 45 days prior to a scheduled execution. This section identifies the responsibilities of specific staff, including the Warden, Associate Warden, Specialized Housing Division, Public Information Officer, the Alienists identified pursuant to Penal Code §section 3700.5, Chaplain, and the Condemned Row Correctional Counselor II, approximately 45 days prior to an execution. Additionally, this section implements Penal Code section 3700.5. The section provides that the Warden shall coordinate with the Attorney General’s Office of Victims’ Services to confirm the availability of the victim(s)’s family members, and the selection of 12 official witness and alternates, so that appropriate individuals are provided the opportunity to attend the execution. Furthermore, the Public Information Officer shall coordinate with the CDCR Assistant Secretary, Office of Public and Employee Communications, to distribute the announcement to the media of the scheduled execution, so that the media is provided appropriate notice. This notice shall provide media representatives with instructions on how to request attendance at the execution as a witness. The notice ensures that a broad range of media has an

opportunity to request attendance at an execution. Moreover, in selecting media witnesses, the Public Information Officer and Assistant Secretary will consider the broadest cross-section of media and the greatest circulation of viewers so as to provide the public with access to this information.

Also during this time, the Warden initiates the process for the 20-day pre-execution report mandated by Penal Code §section 3700.5. The Associate Warden, Specialized Housing Division shall move the inmate to a designated location, as specified. The Associate Warden, Specialized Housing Division, also ensures that hourly checks are implemented and that logs are prepared by staff to record observations. Staff shall also be directed to document the inmate's behavior during each shift on a CDC Form 128-B, General Chrono, to ensure that the inmate's behavior is monitored and documented. Any unusual behavior noted shall be brought to the attention of the Warden to ensure that the appropriate personnel are notified in the event that the inmate's sanity becomes a concern. The Associate Warden shall visit the unit daily to ensure that procedures are being followed, and the Associate Warden shall document his or her presence by signing the unit log book. The Alienists shall interview and examine the inmate, evaluate their findings and record them on their written reports for inclusion in the Warden's CDCR Form 2173 (01/09), 20-Day Pre-Execution Report. Information pertinent to the inmate's sanity shall be made available to all Alienists for evaluation and inclusion in their reports, so that a sanity review is based upon all available information. In addition, the Chaplain shall interview the inmate to assess the inmate's spiritual and emotional condition. The Chaplain shall also determine the inmate's religious preferences and needs, next of kin, funeral or other requests, and attitudes or thoughts on death and dying. Any observations regarding the inmate's emotional stability shall be included in a written report to be submitted to the Warden for inclusion in the Warden's 20-Day Report to ensure that the Warden's report is comprehensive. The Condemned Row Correctional Counselor II shall evaluate the observations of the inmate's counselor and custody staff, and shall research the case history to assess the inmate's past and present conduct. The Condemned Row Correctional Counselor II will record his or her conclusions in a written report and submit it to the Warden for inclusion in the 20-Day Report to ensure that the Warden's report is comprehensive. The Condemned Row Correctional Counselor II shall continue to have close daily contact with the inmate to monitor his status. In addition, the Condemned Row Correctional Counselor II shall collect all completed pages of the CDCR Form 2172 (01/09), Thirty Day Notification – San Quentin State Prison, which was provided to the inmate by the Warden.

### **Section 3349.3.2. Responsibilities and Tasks Approximately 30 Days Prior to a Scheduled Execution.**

**Section 3349.3.2 is adopted** to establish the events that occur approximately 30 days prior to a scheduled execution. This section identifies the responsibilities of specific staff, including the Warden and Team Administrator, approximately 30 days prior to a scheduled execution. In addition, this section implements Penal Code sections 3700.5 and 3701. During this period, a sanity review request may be made. Attorneys may submit to the Warden any current information that pertains to the inmate's sanity. In addition, the Warden shall review all psychiatric information known to San Quentin's

psychiatric staff. These provisions ensure that the sanity review is based on all available information. The Warden shall notify the inmate's attorney in writing of the results of the requested sanity review. The Warden shall also deliver the 20-Day Report to the Director, DAI. Should the Warden, with the assistance of psychiatric staff, find a substantial showing of insanity, the Warden shall notify the District Attorney pursuant to Penal Code §section 3701. As specified, the inmate's mental status will be continually monitored during this time, and the Warden will be provided with information regarding the inmate's behavior and psychiatric condition on a daily basis. Should the inmate display unusual behavior, the Warden will be immediately notified. Additionally, the Warden must report any behavioral changes to the Secretary of CDCR via the Director, DAI. The Secretary of CDCR shall notify the Governor's Legal Affairs Secretary in writing of all referrals to the District Attorney's Office pursuant to Penal Code §section 3701.

Also during this period, the Team Administrator and the Team Leader will coordinate weekly security inspections to ensure that the Lethal Injection Facility is secure, maintained, and fully stocked with supplies. Furthermore, they shall schedule and conduct training of the Lethal Injection Team to ensure that the team is fully functional and ready.

### **Section 3349.3.3. Approximately 10 Days Prior to a Scheduled Execution.**

**Section 3349.3.3 is adopted** to establish the events that occur approximately 10 days prior to a scheduled execution. This section identifies the responsibilities of specific staff, including the Warden, Chief Deputy Warden, Team Administrator, Public Information Officer, the Alienists identified pursuant to California Penal Code section 3700.5, Chaplain, and the Condemned Row Correctional Counselor II, approximately 10 days prior to an execution. During this time, the Alienists shall interview and evaluate the inmate, compare their evaluations with their previous findings, and submit a report to the Warden, so that the Warden has updated information regarding the inmate's mental status. Additionally, the Chaplain shall provide the Warden with his observations regarding the inmate's emotional state, and the Condemned Row Correctional Counselor II shall report to the Warden any change in the inmate's conduct or behavior. These provisions ensure that the Warden has current information regarding the inmate's mental status. The Warden must prepare and send a final 7-Day Report to the Director, DAI, noting any change in the inmate's mental condition since the 20-Day Report. The 7-Day Report is also sent to the Secretary of the CDCR and to the Governor's Legal Affairs Secretary. This report updates the 20-Day Report with more recent information. Additionally, should there be a change in the inmate's mental condition, an intermediate report may be submitted by the Warden to provide the new information.

Also during this time, the Warden shall review the inmate's requested witnesses and spiritual advisor(s) to ensure that they meet the witness and visitor criteria. The Chief Deputy Warden directs the Crisis Response Team Commander to notify area managers if any employees are being re-assigned due to the scheduled execution. Such notice ensures that San Quentin's operational needs are maintained, including institutional safety and security. The Team Administrator shall continue to ensure that the Lethal Injection Team members are prepared, and that the Lethal Injection Facility is

operational and fully supplied. Further, as specified, the Public Information Officer notifies all media representatives of their selection as witnesses and non-witness media.

#### **Section 3349.3.4. Five Days Prior to a Scheduled Execution.**

**Section 3349.3.4 is adopted** to establish the events that occur five days prior to a scheduled execution. This section identifies the responsibilities of specific staff, including the Warden, Team Administrator, Visiting Lieutenant, and Condemned Row Correctional Counselor II, five days prior to a scheduled execution. This section also includes procedures governing visitation around the time of an execution, and procedures that relate to religious accommodations. During this time, the Warden shall order the inmate moved to designated security housing, so that the inmate can be continuously monitored for unusual or inappropriate behavior. In the event the inmate displays such behavior, the Warden must be notified. The Warden will evaluate any reported changes and convey those findings to the Secretary of the CDCR via the Director, DAI. The Team Administrator shall confirm that the inmate is moved to the designated security housing area and place the inmate under 24-hour a day observation. In addition, the Team Administrator shall conduct daily inspections of the Lethal Injection Facility with the Team Leader to ensure that it is operational and fully supplied. The Team Administrator will also direct that all personal property, except legal material, be removed from the inmate's cell and secured outside the cell to ensure inmate and staff safety. Furthermore, the Visiting Lieutenant shall ensure that the inmate continues to receive visitors in accordance with institutional regulations, so that the inmate's needs and security are maintained. For institutional security purposes, visiting is closed the day preceding and the day of a scheduled execution. A notice will be posted informing visitors that visiting will be closed so that visitors may schedule their visits accordingly. Also during this time, the Condemned Row Correctional Counselor II shall ensure that the inmate has 24-hour access to a telephone to contact his or her attorney. All calls will be logged in the pre-execution activity log. The Condemned Row Correctional Counselor II will also interview the inmate to learn any special requests for disposition of inmate property and maintain a signed inventory receipt of all property packaged by the inmate for mailing the first weekday following an execution. Further, the Condemned Row Correctional counselor II will begin daily briefings to the Warden, Chief Deputy Warden, Associate Warden, Specialized Housing Division, and the Facility Captain as to the inmate's needs, requests, and behavior to ensure that they have current information about the inmate.

#### **Section 3349.3.5. Four Days Prior to a Scheduled Execution.**

**Section 3349.3.5 is adopted** to establish the events that occur four days prior to a scheduled execution. This section identifies the responsibilities of specific staff, including the Warden, Team Administrator, and Business Manager II, four days prior to a scheduled execution. During this time, the Warden shall notify nearby residents, businesses, and others of any anticipated gathering or demonstration at the East Gate so that they are appropriately informed. In addition, the Warden will ensure that staff are informed of the East Gate closure the day prior to, and day of, the scheduled execution. Staff will be directed to use the West Gate. The Team Administrator shall direct the Team leader to conduct a final equipment check to ensure the Lethal Injection Facility is ready. This shall be conducted no less than 24-hours, and no more than 96-

hours, preceding the scheduled execution to ensure that everything is properly prepared and ready the day of execution.

### **Section 3349.3.6. Three Days Prior to a Scheduled Execution.**

**Section 3349.3.6 is adopted** to establish the events that occur three days prior to a scheduled execution. This section identifies the responsibilities of specific staff during this time, including the Team Administrator, Team Leader, Correctional Captain, Central Services Division, and Public Information Officer. During this time, the Team Administrator shall assume direct supervision of all lethal Injection Team tasks; coordinate Team assignments with the Team Leader; ensure Lethal Injection Team members are available; and confirm that all members are trained and capable of performing their specific duties. In addition, the Team Administrator will ensure that alternate team members are assigned and that each alternate is thoroughly trained and capable of performing his or her assigned task in the event an alternate is necessary. The Team Administrator will also begin conducting daily inspections of the Lethal Injection Facility to ensure a constant state of readiness. The Team Leader shall activate all members of the Lethal Injection Team and schedule daily training sessions for the three days immediately preceding the scheduled execution. Furthermore, for the purpose of protecting staff and inmates, the Team Leader will ensure the security of the Lethal Injection Facility, and ensure that any item that will come into contact with the inmate is properly searched. Also during this time, the Public Information Officer shall activate the media center and address the needs of media representatives that may be operating out of the media center. Regular updates will be provided to ensure that the media is informed of ongoing events. However, no information will be released unless authorized by the Public Information Officer. Additionally, in conjunction with the Assistant Secretary, Office of Public and Employee Communications, a biographical and general information sheet on the inmate will be prepared for distribution to the media. These provisions ensure that the media gathered at San Quentin has access to accurate information in an equitable manner.

### **Section 3349.3.7. Two Days Prior to a Scheduled Execution.**

**Section 3349.3.7 is adopted** to establish the standard designating when the Emergency Operation Center will be activated, and the personnel authorized to activate it.

### **Sections 3349.4.1. Twenty-Four Hours Prior to a Scheduled Execution through 3349.4.3. Approximately Three Hours Prior to a Scheduled Execution.**

**Sections 3349.4.1 through 3349.4.3 are adopted** to establish the events that occur during the period 24 hours prior to a scheduled execution and extending to three hours prior to a scheduled execution. These sections identify the responsibilities of specific staff during this period, including the Warden, Chief Deputy Warden, Team Administrator, Team Leader, Lethal Injection Security Sub-Team, and the Lethal Injection Infusion Sub-Team. Additionally, these sections establish standards and procedures governing the acquisition, secure storage, transfer of custody, and preparation of the lethal injection chemicals. During this period, the Warden shall confirm that all Lethal Injection Team members are prepared and ready to perform their assigned duties. The Chief Deputy Warden shall activate the Emergency Operations

Center in preparation of the scheduled execution. The Team Administrator shall accompany the Team Leader to obtain the lethal injection chemicals from a licensed pharmaceutical facility or distributor, and fill out the proper documentation to ensure chain of custody. They will verify the chemicals and their amounts to ensure there is a sufficient quantity. The Team Administrator and the Team Leader will place the chemicals in the Lethal Injection Facility safe or refrigerator, as appropriate, to ensure That the chemicals are stored and secured properly. The Team Administrator will conduct a final inspection of the Lethal Injection Facility to ensure its operational readiness. In conjunction with the Team Leader, the Team Administrator will brief the Security Sub-Team on their specific duties; assess each Lethal Injection Team member to ensure their readiness; and if necessary, excuse any team member who may be unable to complete his or her assigned duties. These provisions ensure that on the day of the scheduled execution, the Lethal Injection Facility is prepared, and the Lethal Injection Team members are ready to perform their assigned duties. The Team Leader will brief the inmate on procedures and Staff responsibilities. In addition, the Team Leader will supervise the movement of the inmate to the Lethal Injection Facility holding cell, and will ensure that a security watch log is regularly maintained. The inmate's activities will be documented in the log every 15 minutes. The Team Leader will also attend to any requests made by the inmate. In addition, the Security Sub-Team shall ensure that specified security measures are maintained to protect the safety of institution staff and the inmate. Also during this period, the Team Administrator and the Team leader shall remove the Lethal Injection Chemicals from the Lethal Injection Facility safe and refrigerator, and they will transfer custody of the chemicals to two members of the Infusion Sub-Team. A minimum of two staff members shall verify the Lethal Injection Chemicals at the time of the transfer, and will document the transfer on CDCR Form 2176 (01/09), Lethal Injection Chain of Custody – San Quentin State Prison. These provisions ensure accountability for the Lethal Injection Chemicals. The Infusion Sub-Team shall prepare the Lethal Injection Chemicals as specified to ensure that they are ready for use during the scheduled execution, and the preparation of the Lethal Injection Chemicals will be observed and documented by a Record Keeping Sub-Team member.

#### **Section 3349.4.4. During The Day of a Scheduled Execution.**

**Section 3349.4.4 is adopted** to establish the events that occur during the day of a scheduled execution. This section identifies the responsibilities of specific staff, including the Warden, Chief Deputy Warden, Team Administrator, Litigation Coordinator, Warden's Administrative Assistant, and Public Information Officer, during the day of a scheduled execution. The Warden shall confirm that all witnesses are accommodated. Additionally, with the Team Administrator, the Warden will meet with the inmate in the Lethal Injection Facility Holding Area and advise the inmate that a written last statement can be prepared and read after the execution. The inmate shall also be informed that a sedative is available. The Warden shall instruct the Lethal Injection Team to prepare the inmate. The Warden shall also ensure that a dedicated phone line is established with the Governor's Office, the Office of the Attorney General, and the California Supreme Court, is that constant contact with those entities is maintained in the event that a stay of execution is issued or a reprieve or clemency is granted. The Litigation coordinator is responsible for staffing the Lethal Injection Facility

telephones. Furthermore, the Chief Deputy Warden shall place the institution on lockdown to ensure institutional security and public safety. The Chief Deputy Warden will also assume command of the Emergency Operations Center. The Team Administrator shall take a position in the Infusion Control Room and provide direct supervision for the infusion of the Lethal Injection Chemicals during the execution, to ensure that they are properly administered. The Warden's Administrative Assistant shall escort all witnesses except those invited by the inmate to the assigned positions and remain in the Lethal Injection Facility witness area to assist the Public Information Officer. The Warden's Administrative Assistant shall assign a correctional officer to escort witnesses invited by the inmate and/or the inmate's attorney to their designated witness area. The assigned correctional officer shall remain with these witnesses. The Public Information Officer shall escort the identified media witnesses to their designated viewing room, inform them that no equipment is allowed in the Lethal Injection Facility, and provide pencils and notepads.

#### **Section 3349.4.5. Administration of the Lethal Injection Chemicals.**

**Section 3349.4.5 is adopted** to establish the events that occur from the time the inmate is prepared for execution until the time death is declared by a physician. This section identifies the responsibilities of specific staff during this period, including the Warden, Team Leader, Security Sub-Team, Intravenous Sub-Team, and Infusion Sub-Team. Moreover, this section identifies the actions taken to monitor and ensure proper administration of the Lethal Injection Chemicals, to ensure patency of the intravenous lines, to monitor and ensure the inmate's unconsciousness, and to monitor the inmate's vital signs. This section also identifies back-up measures, in the event they are necessary. These provisions ensure that the Lethal Injection Chemicals are properly administered, the inmate is unconscious after the administration of Sodium Thiopental, and the inmate remains unconscious throughout the administration of Pancuronium Bromide and Potassium Chloride.

The Team Leader shall direct the Security Sub-Team to prepare the inmate for execution by conducting an unclothed body search. The Team Leader shall also place the inmate in restraints, remove the inmate from the Lethal Injection Facility Holding Area, and observe the Intravenous Sub-Team place the electronic monitoring sensors on the inmate. The Security Sub-Team shall escort the inmate to the execution room and secure the inmate to the gurney. In the event that the inmate refuses to comply with orders or becomes combative, the Team Leader shall inform the Warden and Team Administrator. The Team Administrator will speak with the inmate in an attempt to gain the inmate's cooperation. If the inmate continues to refuse to comply with orders, an emergency cell extraction will be authorized to enable the execution to proceed. After the inmate is secured to the gurney, the Team Leader shall ensure that the inmate is properly secured and verify that the restraints do not interfere with the inmate's circulation. The Team Leader will excuse the Security Sub-Team, will supervise the insertion of the catheters by the Intravenous Sub-Team, and will then report to the Infusion Control Room to monitor the execution. The Intravenous Sub-team shall check for circulation, insert the catheters, inform an Intravenous Sub-Team member to initiate the intravenous drip, and designate primary and back-up intravenous lines. Once the lines have been successfully established, the Intravenous Sub-Team

will inform the Warden. One Intravenous Sub-Team member shall remain with the inmate to assess the inmate's consciousness throughout the procedure. This team member will ensure that the inmate is rendered unconscious by the Sodium Thiopental, and the inmate remains unconscious throughout the administration of Pancuronium Bromide and Potassium Chloride, until the inmate is declared dead. The Warden shall take a position in the execution room in close proximity to the inmate; confirm with both the State Supreme Court and the Attorney General's Office that there is no matter pending that precludes proceeding; confirm with the Governor's Office that there is no matter pending that precludes proceeding; and read a statement detailing the execution sentence. The Warden will then provide the inmate with the opportunity to make a brief final statement. The Warden shall direct the Infusion Sub-Team to proceed with the execution and administer the Lethal Injection Chemicals, as specified, until the inmate is determined and declared dead by a physician. These provisions ensure that the inmate is provided with an execution consistent with the Eighth Amendment.

**Section 3349.4.6. Post Execution Procedure.**

**Section 3349.4.6 is adopted** to establish the events that occur following an execution. This section identifies the responsibilities of specific staff, including the Warden, Public Information Officer, Team Leader, Security Sub-Team, and Intravenous Sub-Team, following an execution. Additionally, this section requires a debriefing with the Lethal Injection Team and a critique of the execution. Such a critique establishes staff accountability and provides an opportunity to ensure the process operates as intended.