

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*\*\*

STATE OF NEVADA; NEVADA  
DEPARTMENT OF CORRECTIONS;  
JAMES DZURENDA, Director of the  
Nevada Department of Corrections, in his  
official capacity; IHSAN AZZAM, Ph.D,  
M.D., Chief Medical Officer of the State of  
Nevada, in his official capacity; and JOHN  
DOE, Attending Physician at Planned  
Execution of Scott Raymond Dozier in his  
official capacity,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK;  
AND THE HONORABLE ELIZABETH  
GONZALEZ, DISTRICT COURT JUDGE,

Respondents,

and

ALVOGEN, INC.; HIKMA  
PHARMACEUTICALS USA INC.,

Real Parties in Interest.

Supreme Court Case No.: 76485

District Court No.: A-18-777312-B

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PETITIONERS' REPLY APPENDIX

VOLUME 2 OF 2

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with or attach itself to a mere chattel.” *John D. Park & Sons Co. v. Hartman*, 153 F. 24, 39 (6th Cir. 1907). Use restrictions on third-party end-users infringe the right of alienation. “The right of alienation is one of the essential incidents of a right of general property in movables, and restraints upon alienation have been generally regarded as obnoxious to public policy, which is best subserved by great freedom of traffic in such things as pass from hand to hand.” *Id.* at 39.

The Supreme Judicial Court of Massachusetts’s decision in *Garst v. Hall & Lyon Co.*, 61 N.E. 219 (Mass. 1901), is an apt illustration. There, the plaintiff manufactured a proprietary medicine called “Phenyo-Caffein,” made from a secret formula. *Id.* “The plaintiff [sold] all Phenyo-Caffein subject to the conditions of a contract in which each purchaser agrees that he will not sell nor allow any one in his employ to sell it for prices less than those specified in the agreement for the different sizes of boxes, and promises to pay the plaintiff an agreed sum as damages if he violates this contract.” *Id.*

The defendant, “with full knowledge of the conditions under which the medicine is sold by the plaintiff,” acquired the medicine in large quantities and intended to resell it in violation of those conditions. *Id.* The defendant did not have a contract or agreement with the plaintiff, nor did the defendant buy the medicine from “the firm of wholesalers who received it from the plaintiff, and who agreed to sell it subject to the above conditions.” *Id.* Rather, the defendant “bought it of a person who bought either from this firm or from a purchaser from this firm.” *Id.* The plaintiff

sued to stop defendant's resale on terms that conflicted with the plaintiff's contract with its intermediary wholesalers. *See id.*

The court held that "[t]he purchaser from a purchaser has an absolute right to dispose of the property. He may consume it, or sell it to another. The plaintiff has contracts from his vendees in regard to the prices at which they will sell if they sell at all. If they sell in violation of their contracts with the plaintiff, he has a remedy against them to recover his damages. This right is founded on the personal contract alone, and it can be enforced only against the contracting party." *Id.* (internal citation omitted). The court rejected the plaintiff's contention that the resale condition attached to, and ran with, the medicine. "To say that this contract is attached to the property, and follows it through successive sales which severally pass title, is a very different proposition. We know of no authority, not of any sound principle, which will justify us in so holding." *Id.* at 219-20.

Setting aside whether the State even possesses Plaintiff's products, and whether Plaintiff had an enforceable contract with the supplier that restricted the sale or use of its products, the State is in the same position as the defendant in *Garst*. Such a contract condition would only bind the supplier, as Plaintiff's distributor. Even if the State purchased Plaintiff's product, it did not purchase the product from Plaintiff and the State had no direct contract or contact with Plaintiff concerning the purchase of lethal substances. Plaintiff's resale condition with its distributor would not create a reversionary property interest that attached to the substance and

followed to successive purchasers. To the extent Plaintiff has any complaint, it is under its alleged contract with the entity it believes breached the contract.

The primary case cited by Plaintiff does not support its position. In *Tempur-Pedic Int'l, Inc. v. Waste To Charity, Inc.*, No. 07 2015, 2007 WL 535041 (W.D. Ark. Feb. 16, 2007), a mattress manufacturer received an ex parte TRO against a charitable organization that was reselling donated mattresses in violation of a contract between them. The TRO extended to apparent third-party agents that co-conspired with the charitable organization in “a scheme to defraud Tempur-Pedic by selling misappropriated mattresses for profit, below retail value and in contravention of the general purpose of Tempur-Pedic’s donation of the goods.” *Id.* at 1. The third parties do not appear to be independent purchasers. The opinion does not mention whether the third parties purchased the mattresses from the charitable organization. But the court noted that within a day of the manufacturer’s investigative inquiry to the charitable organization, the third parties were no longer willing to resell the mattress. *Id.* at \*3. The court implied that the charitable organization warned the third parties that the manufacturer was snooping. *See id.*

Additionally, the court emphasized that it was treating the charitable organization as a *thief* who could not pass good title. The court cited an Arkansas case with the parenthetical explanation that “[t]he general rule - as regards all personal property except money and negotiable paper - is, that a purchaser from a thief acquires no title against the true owner, in the absence of limitations and estoppel.” *Id.* at \*7 (quoting *Eureka Springs Sales Co. v. Ward*, 290 S.W.2d 434, 436 (Ark. 1956)).

By treating the charitable organization as a thief, the manufacturer was not trying to enforce a use restriction or servitude on a good, like Plaintiff is attempting to do here. The mattress manufacturer was simply recovering stolen property. This is an unremarkable proposition. Plaintiff has not, and could not, make a claim that a supplier selling its product to the State is a thief unable to transfer title to the State.

Accordingly, Plaintiff is unlikely to succeed on its replevin claim.

## **2. Federal claims.**

Plaintiff named the State of Nebraska and the Nebraska Department of Correctional Services in this action. Since the State and its agencies are not “persons” subject to suit under 42 U.S.C. § 1983, *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 65 (1989), § 1983 does not create a cause of action against the State of Nebraska and the Nebraska Department of Correctional Services.

While Plaintiff may pursue § 1983 claims for prospective injunctive relief against Director Frakes in his official capacity, Plaintiff is unlikely to succeed on the merits of those claims.

### **a. Due process clause.**

Plaintiff claims a series of due process violations related to its alleged speculative commercial harm will result from public knowledge that its product may have been used in a lethal injection. To state a claim under the Fourteenth Amendment’s Due Process Clause, a plaintiff must allege the deprivation of a protected interest without due process of law. *Demien Construction Co. v. O’Fallon Fire Protection District*, 812 F.3d 654, 658 (8th Cir. 2016); *Barnes v. City of Omaha*,

574 F.3d 1003, 1005-06 (8th Cir. 2009). “Protected interests under the Due Process Clause are those to which a person holds a ‘legitimate claim of entitlement,’ and stem from ‘independent source[s] such as state law.’” *Id.*, (quoting *Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)).

First, Plaintiff fails in its attempt to state a cause of action for violation of due process based upon alleged future damage to its reputation by the use of its products in an execution. Filing 1 at 9, 13; Filing 11 at 29. Plaintiff has failed to sufficiently plead deprivation of a constitutionally protected liberty or property interest. Plaintiff’s Complaint contains only conclusory and speculative statements of injury. Moreover, the United States Supreme Court has made clear that injury to reputation alone is not sufficient to state a § 1983 claim. *Paul v. Davis*, 424 U.S. 693, 712 (1976). While a state may protect against injury to reputation by virtue of its tort law, an interest in reputation “is neither ‘liberty’ nor ‘property’ guaranteed against state deprivation without due process of law.” *Id.*

Plaintiff makes reference to a “stigma plus” line of cases which derive from *Paul v. Davis*. In discussing *Paul v. Davis*, the Eighth Circuit Court of Appeals has explained that the Supreme Court suggested therein that reputational harm coupled with more tangible interests such as employment can together be sufficient to invoke due process protection. *Jones v. McNeese*, 746 F.3d 887, 898 (8th Cir. 2014). However, that line of cases is not applicable here. An essential element of those cases is that the government has publicly and voluntarily disclosed the false and stigmatizing information. *Quinn v. Shirey*, 293 F.3d 315, 320 (6th Cir. 2002). Even assuming that

Plaintiff's products are at issue here, there is no allegation that the State of Nebraska has publicly disclosed that Plaintiff's products have been purchased by the State for use in an execution. Indeed, it is the Plaintiff that has come forward in this litigation to make known that it believes its products will be used. And Plaintiff has alleged the State has not disclosed this information.

In *Parrino v. Price*, 869 F.3d 392 (6th Cir. 2017), a pharmacist who was excluded from participating in federal health care programs after pleading guilty to a misdemeanor crime, failed to state a due process claim, in part, because he failed to allege that a governmental agency publicly disclosed his exclusion. While recognizing the line of stigma plus cases, the Second Circuit Court of Appeals also held a towing company failed to establish any due process violation when it failed to establish that any stigmatizing statements were publicized by the defendant state police officers. *White Plains Towing Corp. v. Patterson*, 991 F.2d 1049 (2d Cir. 1993).

Second, as explained in response to Plaintiff's replevin claim, the Plaintiff does not have any property interest in a product allegedly purchased by a downstream purchaser. This is particularly true when, as described above, the substances were acquired prior to Plaintiff's alleged June 22, 2018, distribution controls. See Filing 9 at 85-86.

Third, to the extent Plaintiff does sustain some injury from the release of information that has so far not been released, an equally serviceable remedy exists that provides process in abundance: the State Tort Claims Act.



**b. Commerce clause.**

Plaintiff claims Director Frakes has violated the dormant Commerce Clause by purchasing a product in interstate commerce. The dormant commerce clause prohibits states from enacting laws that “discriminate against or unduly burden interstate commerce.” *Jones v. Gale*, 470 F.3d 1261, 1267 (8th Cir. 2006). The purchase of a product is not the regulation of commerce and Plaintiff cites no case law to support its position. This claim borders on lacking even a colorable claim to merit.

“To ascertain whether a state activity violates the dormant Commerce Clause, we begin by determining whether the state is ‘regulating’ the market or merely ‘participating’ in it.” *Nat’l Solid Waste Mgmt. Ass’n v. Williams*, 146 F.3d 595, 599 (8th Cir. 1998). Because the power granted to Congress under the Commerce Clause is the power to “*regulate* Commerce ... among the several States,” the correlative restrictions on the states under the Commerce Clause are invoked only when a state engages in regulation. “Therefore, the Supreme Court has drawn a distinction between state ‘regulation of’ a market and state ‘participation in’ a market.” *Chance Mgmt., Inc. v. State of S.D.*, 97 F.3d 1107, 1110 (8th Cir. 1996). “A state acting as a market participant is free from the strictures of the Commerce Clause because ‘there is no indication that the [Commerce] Clause was intended to limit the ability of the [s]tates themselves to operate in the free market.’” *Id.* Plaintiff does not allege the State has engaged in any regulation and, at most, has alleged the State purchased a product acting as a market participant.

Plaintiff is unlikely to succeed on its Commerce Clause claim.

**C. The public interest and balance of harms weigh against the issuance of a preliminary injunction.**

In conducting the “balance of harms” analysis required under *Dataphase*, an illusory harm to the movant will not outweigh any actual harm to the non-movant. *Frank B. Hall & Co. v. Alexander & Alexander, Inc.*, 974 F.2d 1020, 1023 (8th Cir. 1992). To determine what must be weighed, courts have looked at the threat to each of the parties’ rights that would result from granting or denying the injunction. *Baker Elec. Co-op., Inc. v. Chaske*, 28 F.3d 1466, 1473 (8th Cir. 1994). The goal is to assess the harm the movant would suffer absent an injunction, as well as the harm other interested parties and the public would experience if the injunction issued. *Pottgen v. Missouri State High Sch. Activities Ass’n*, 40 F.3d 926, 928 (8th Cir. 1994). On the public interest prong of the *Dataphase* test, the court must consider both what public interests might be injured and what public interests might be served by granting or denying a preliminary injunction. *Scott v. Benson*, 863 F. Supp. 2d 836, 844 (N.D. Iowa 2012). Given the similarity of the analysis on these prongs, they will be addressed together. *See, e.g., Cy Wakeman, Inc. v. Nicole Price Consulting, LLC*, 284 F. Supp. 3d 985, 995 (D. Neb. 2018).

This analysis is straightforward. As a fundamental matter, the State of Nebraska has a legitimate interest in carrying out a sentence of death in a timely and constitutional manner. *See Baze v. Rees*, 553 U.S. 35, 61 (2008). As Director Frakes’ affidavit makes clear, the substances currently in the Department’s possession will expire at the end of this month. Filing 26-1 at 2. The Department does not have an

alternative supply of either these or different substances available to it at this time. Filing 26-1 at 6. Considering this practical reality in conjunction with Nebraska law as to the issuance or stay of an execution warrant, Filing 26-1 at 4, granting Plaintiff the preliminary relief it seeks would effectively freeze the State's ability to fulfill its duty and carry out the lawful execution of Carey Dean Moore for the foreseeable future.

Given the ongoing "guerilla war against the death penalty," Transcript of Oral Argument at 14:20-25, *Glossip v. Gross*, 135 S. Ct. 2726 (2015) (No. 14-7955) (question of Alito, J.), which war is now also being waged by drug companies themselves as exemplified by this lawsuit, that freeze could be permanent. So, not only would a preliminary injunction conflict in the immediate term with the public's interest in having lawful death sentences carried out when constitutionally feasible (*i.e.*, now), it could serve to irreparably and permanently burden that interest.

Plaintiff accounts for none of this in its conclusory public interest and balance of harms arguments. It simply assumes the availability of alternative lethal substances and boldly assumes for itself the mantle of representing the public interest based on its corporate policy preferences for how lawful purchasers of its products choose to use those products.

Plaintiff pits its private pecuniary (and speculative) interests against the concrete and immediate interests of a sovereign State. Carey Dean Moore has been duly sentenced to death for the murders he committed and that sentence is final. The people of Nebraska have chosen by a wide margin to retain capital punishment for

Moore's crimes. Their government is prepared to carry out Moore's sentence and possesses the constitutional, lawfully-acquired means of doing so. Plaintiff, with insufficient evidence, no showing of irreparable harm, and no likelihood of success on the merits of its claims, seeks to upend these interests with its request for a preliminary injunction. The Court should decline Plaintiff's request.

### **CONCLUSION**

The Plaintiff's motion for temporary restraining order and motion for a preliminary injunction should be denied.

Respectfully submitted August 9, 2018.

**STATE OF NEBRASKA; THE NEBRASKA  
DEPARTMENT OF CORRECTIONAL  
SERVICES; and SCOTT FRAKES, in his  
official capacity as Director of the Nebraska  
Department of Correctional Services,  
Defendants.**

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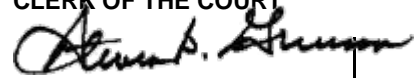
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### **CERTIFICATE OF SERVICE**

I hereby certify that on August 9, 2018, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Nebraska, using the CM/ECF system, causing notice of such filing to be served upon all parties' counsel of record.

By: s/ Ryan S. Post



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

ALVOGEN INC.

Plaintiff

vs.

STATE OF NEVADA, NEVADA  
DEPARTMENT OF CORRECTIONS,  
et al.

Defendants  
. . . . .

CASE NO. A-18-777312-B

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON PLAINTIFF'S MOTION TO ASSOCIATE COUNSEL  
AND SANDOZ INC.'S MOTION TO INTERVENE**

TUESDAY, AUGUST 21, 2018

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

RAPP 000212

APPEARANCES:

FOR THE PLAINTIFF:

TODD L. BICE, ESQ.  
JAMES J. PISANELLI, ESQ.

FOR THE DEFENDANTS:

JORDAN T. SMITH, ESQ.  
ANN M. McDERMOTT, ESQ.

FOR THE INTERVENOR:

JOSH M. REID, ESQ.  
KRISTEN L. MARTINI, ESQ.  
DANIEL F. POLSENBERG, ESQ.

ALSO PRESENT:

J. COLBY WILLIAMS, ESQ.  
For Sandoz Inc.

1 LAS VEGAS, NEVADA, TUESDAY, AUGUST 21, 2018, 9:08 A.M.

2 (Court was called to order)

3 THE COURT: I think that takes me to the Alvogen  
4 case.

5 Dan's not going to put you on a timer because he  
6 said there's no way that you will go over the 10 minutes each.  
7 And we have our new law clerk, who is being introduced to our  
8 troop of regulars.

9 MR. KUTINAC: We are going to use timers, and the  
10 average is 5 minutes.

11 THE COURT: Oh. We're going to practice with the  
12 timers. We're going to only give you 5 minutes today.

13 Good morning. If everybody could identify  
14 themselves for purposes of my record.

15 MR. BICE: Good morning, Your Honor. Todd Bice on  
16 behalf of Alvogen.

17 MR. WILLIAMS: Good morning, Your Honor. Colby  
18 Williams on behalf of the proposed intervenor Sandoz Inc.

19 MR. REID: Josh Reid on behalf of Hikma with Dan  
20 Polsenberg and Kristen Martini.

21 MR. SMITH: Jordan Smith on behalf of defendants.

22 MS. McDERMOTT: Good morning, Your Honor. Ann  
23 McDermott on behalf of the defendants.

24 THE COURT: Good morning. So let's do the easy part  
25 first, which is the motion to associate Faris, Grabowski,



1 Schuler, and Walker.

2 MR. BICE: Yes. This is our motion, Your Honor.

3 THE COURT: You understand, Mr. Bice, that I require  
4 that each attorney who is admitted pro hac vice include in  
5 their order that, "By accepting this admission Counsel agrees  
6 to submit to jurisdiction and appear without subpoena for any  
7 proceedings required by the Court which relate to Counsel's  
8 conduct in the matter, including motions, depositions, and  
9 evidentiary hearings." Since that's always what SCR 42(13)(a)  
10 has said, I just like to make it clear so there's never, ever  
11 any confusion like there was with Mr. Quinn.

12 MR. BICE: I now remember it, since you pointed that  
13 out. So my order doesn't contain that language, so I will  
14 revise that order and get it back.

15 THE COURT: Since you lived through that, I would  
16 have thought you would have remembered.

17 MR. BICE: Well, since the last one I was here on  
18 you did require that, so that's just an oversight on our part,  
19 Your Honor. We'll get you a corrected order.

20 THE COURT: Thank you.

21 MR. BICE: Thank you.

22 THE COURT: Now I'm on the Sandoz motion.

23 MR. WILLIAMS: Good morning, Your Honor. I think I  
24 can make the 5-minute time limit. You've already addressed  
25 one of these motions to intervene. You were about to address

1 our motion to intervene when the Supreme Court entered a stay.  
2 When the court entered the stay, we then moved at the Supreme  
3 Court to be deemed amicus curiae. They granted that. They  
4 did so based largely on the fact that we presented our motion  
5 to intervene that was about to be presented to you. They've  
6 now lifted that stay, Your Honor. We're back in front of you.  
7 We believe that were entitled --

8 THE COURT: They've lifted it twice.

9 MR. WILLIAMS: Right, twice, once with three  
10 justices, and then again with four.

11 So we believe we're entitled to intervene as a right  
12 under NRCP 24(a) and also under permissive intervention, Rule  
13 24(b). Unless you have any questions, Your Honor --

14 THE COURT: I don't.

15 MR. WILLIAMS: Thank you.

16 THE COURT: Mr. Smith, Ms. McDermott.

17 Under a minute, Mr. Williams. That's impressive.

18 MR. WILLIAMS: New record?

19 MR. SMITH: I'll try to be equally brief. Since  
20 Your Honor has addressed these issues before, I will just  
21 point out that Sandoz confirms now that none of the drug  
22 manufacturers had a restrictive agreement or control in place  
23 at the time that the State purchased their respective drugs.  
24 In this case Sandoz alleges that the State purchased their  
25 cisastracurium in December of 2017, and they acknowledge they

1 didn't have a restrictive agreement, whatever effect that may  
2 or may not have, until May of 2018. As I've argued before,  
3 that restrictive agreement doesn't create a property interest,  
4 a personal -- an equitable servitude or some reversionary  
5 right that allows intervention. I understand Your Honor has  
6 addressed that before, and so I'll leave it at that.

7 I will just note one other thing, though. There's a  
8 couple places in Sandoz's brief where they ask to be allowed  
9 to intervene as a right like Hikma was allowed to intervene as  
10 a right. But Your Honor only allowed Hikma to intervene  
11 permissively. So I'll just point that out. Thank you.

12 THE COURT: Thank you.

13 As we permitted Mr. Williams to participate in the  
14 injunctive relief hearing that we had the day after I received  
15 this case, I'm going to grant the request to intervene. The  
16 injunctive relief issues, however, were previously addressed,  
17 unlike there Hikma issues.

18 So on our conference call last week, Mr. Smith, I  
19 asked you if we could discuss Footnote Number 2 in the Supreme  
20 Court's first order lifting the stay, which says, "Indeed, we  
21 note the District Court has offered to accelerate the  
22 preliminary injunction hearing." I am renewing that offer and  
23 asking what I can do to get the rest of this done so you can  
24 have a better factual record at the time the Nevada Supreme  
25 Court hears your argument.

1           MR. SMITH: Yes, Your Honor. And I appreciate that,  
2 and I understand the Supreme Court's pointed that out given  
3 some of the drug expiration date issues that we have. But it  
4 still continues to be the State's position that rushing  
5 discovery for a preliminary injunction hearing to meet those  
6 dates doesn't do the State much good if the State doesn't  
7 prevail at that hearing. So the State wants to conduct the  
8 discovery it deems necessary in order to adequately defend  
9 itself.

10           THE COURT: Okay. I just wanted you to know and us  
11 to all be able to make our record, and then you and Mr. Bice  
12 can fight about it later.

13           MR. SMITH: Understood, Your Honor. Thank you.

14           THE COURT: Anything else?

15           MR. BICE: Well, Your Honor, other than we would  
16 like -- I actually think it would be helpful on everyone's  
17 schedules, in addition I think helpful to the Supreme Court,  
18 to know that we have a hearing date. And I was wondering if I  
19 could ask the Court if we could schedule that hearing date so  
20 that my team and I and there's a small group of us over here,  
21 as the Court knows, we can get all of our schedules  
22 straightened out.

23           So I'd like to renew my request that the Court  
24 schedule it end of September, beginning of October for me  
25 personally and my Leatham team that first week in October

1 works best. But I think it would be helpful if we could just  
2 get something set, because I actually think that that would  
3 also give the Supreme Court the comfort it's looking for that  
4 this matter is moving expeditiously.

5 THE COURT: I'm -- Mr. Bice, I have asked however  
6 many times if the State --

7 MR. BICE: I know.

8 THE COURT: -- would like me to set the hearing, and  
9 they tell me each time that they have discovery that needs to  
10 be accomplished prior to them appearing at a preliminary  
11 injunction hearing.

12 MR. BICE: I understand that, Your Honor. But they  
13 haven't served any discovery as of yet, and so my -- here's my  
14 concern, Your Honor, and sort of objection, is on the one hand  
15 the State tells the Supreme Court that there's such dire  
16 emergency that, you know, nothing should be even allowed to  
17 proceed in the District Court. Then in the District Court  
18 case they're here telling you you need to just put the brakes  
19 on this completely because there's so much discovery that the  
20 State intends to do, although it's done none of it, that you  
21 shouldn't even schedule a hearing.

22 As this Court has observed in other cases, the  
23 quickest way to get a matter resolved is to set a date where  
24 something's going to happen. So if the State doesn't want to  
25 get its discovery done by the deadline that the Court sets by

1 giving us a hearing, that'll be the State's choosing. But if  
2 there --

3 THE COURT: Well, I already set a date. I set  
4 September 10th, because your discovery should be done by  
5 September 10th, and then I can schedule your hearing.

6 MR. BICE: Okay. All right, Your Honor.

7 THE COURT: That's how I handled it, because on the  
8 off chance Mr. Smith changes his mind and realizes he doesn't  
9 really need to do the discovery he keeps telling me he needs  
10 to do, then I could probably set it the next day. Which is  
11 what I've been saying the whole time. I'm ready to go.

12 MR. BICE: Okay.

13 THE COURT: But I intend to try and get you done  
14 prior to the Supreme Court's argument despite what the State  
15 has told me on their discovery request. Because they only get  
16 so much time.

17 MR. BICE: So -- and that's where I come in, Your  
18 Honor, then, back to -- because I do have lawyers from out of  
19 town that I need to make plans with.

20 THE COURT: I'm sorry.

21 MR. BICE: Is the Court -- I know. I know. All I  
22 can do is ask. So is the Court -- I mean, is the Court  
23 contemplating that we would be holding an injunction hearing  
24 that week of September the 10th? Because if it is --

25 THE COURT: I was thinking about it.

1 MR. BICE: Okay. If it is, then I need to make  
2 plans.

3 THE COURT: Because when Mr. Smith tells me, no, I  
4 still haven't done any discovery on September 10th, I'm going  
5 to say, darn, we're just going to start tomorrow.

6 MR. SMITH: Well, Your Honor, a couple points on  
7 that. Your Honor didn't set a discovery cutoff of September  
8 10th. You set a status check, which was later vacated, for  
9 September 10th. So there was no --

10 THE COURT: Well, it wasn't vacated by me.

11 MR. SMITH: Well, understood.

12 THE COURT: So it came back on the calendar when the  
13 Supreme Court realized they didn't really mean to stay the  
14 case. Twice they said they didn't need to stay it.

15 MR. SMITH: I didn't realize Your Honor had reset  
16 that hearing. But --

17 THE COURT: It's on the calendar.

18 MR. SMITH: -- Mr. Bice's point about the State not  
19 serving discovery, it's a little contradictory of me to be  
20 saying, hey, I'm trying to save judicial resources here,  
21 Supreme Court, but let me serve a bunch of discovery. So --

22 THE COURT: Okay. Wait. Let's go to the Supreme  
23 Court's order, the first one. "Allowing discovery and other  
24 matters to proceed below will not itself defeat the ultimate  
25 object of the petition, as this court could still vacate the

1 TRO if a stay is not granted. Moreover, while both  
2 petitioners or real parties in interest point to litigation  
3 expenses, efforts, and delays, none of these concerns amounts  
4 to irreparable harm or serious injury sufficient to warrant a  
5 stay."

6 MR. SMITH: I understand the Supreme Court said  
7 that, Your Honor. The Supreme Court also denied Mr. Bice's  
8 motion to dismiss. He argued, hey, we need a full factual  
9 record here before this court can do anything, and the Supreme  
10 Court denied that motion. So the Supreme Court I agree, I  
11 mean, on one hand it's saying, go forth and conduct discovery,  
12 on what causes of action I'm not entirely sure, but it's  
13 saying, go forth and conduct discovery, but at the same time  
14 it's saying, we don't need a full record, I'm not going to  
15 just summarily dismiss the petition.

16 So, again, the State's going to conduct discovery  
17 now that apparently it has to, but --

18 THE COURT: Well, what do you think I asked you  
19 about when you were here the last time? I said, what  
20 discovery would you like to do, and I made you actually list  
21 it.

22 MR. SMITH: Oh, that's right, Your Honor. And if  
23 there is a cause of action, if one does exist and they can be  
24 in court, then, yes, the State needs discovery. Again, the  
25 point of the writ petition is they do not have causes of



1 action.

2 THE COURT: Okay. So you don't really intend to do  
3 the discovery.

4 MR. SMITH: No, that's not at all what I'm saying.  
5 I'm going to serve discovery, I'm going to take depositions.  
6 My point is they don't have causes of action. But if we're  
7 going to have an evidentiary hearing and we're going to be  
8 discussing irreparable harm, for example, the State is  
9 definitely going to conduct discovery. So, yes, we're going  
10 to serve discovery, we're going to schedule depositions.

11 THE COURT: How long do we need for discovery -- or  
12 not discovery. How long do we need for the preliminary  
13 injunction hearing?

14 MR. SMITH: Knowing this crowd and how long's take,  
15 probably a week.

16 THE COURT: It took Mr. Williams a minute.

17 MR. SMITH: Well, Mr. Williams is the briefest one  
18 of the bunch, myself included there, Your Honor.

19 THE COURT: A week?

20 MR. SMITH: I think a preliminary injunction --

21 THE COURT: Mr. Bice?

22 MR. BICE: Three days. But that may be a week.  
23 Three days.

24 THE COURT: Okay. So plan to be ready to start on  
25 or about September 10th, which is the day I said we were going

1 to talk about scheduling the hearing.

2 MR. SMITH: Your Honor is aware the oral argument's  
3 the 12th?

4 THE COURT: I am.

5 MR. POLSENBERG: It's only half an hour.

6 THE COURT: I'll give you a break to walk across the  
7 street.

8 MR. SMITH: Your Honor, getting discovery out and  
9 setting depositions is --

10 THE COURT: Mr. Smith, it's not like I haven't  
11 talked to you about doing the discovery before.

12 MR. SMITH: And the case was stayed for 12 days,  
13 Your Honor. The case was stayed for 12 days.

14 THE COURT: Okay.

15 MR. POLSENBERG: Who did that?

16 MR. SMITH: Well, the court did that, the Supreme  
17 Court did that, Dan.

18 So, I mean, at least --

19 THE COURT: That would be the peanut gallery.

20 MR. SMITH: I agree. I agree.

21 THE COURT: Okay.

22 MR. SMITH: But my point is the Supreme Court did  
23 enter a stay. That stay lasted 12 days. So if we're going to  
24 be working off the original schedule of the 10th, I think  
25 there should at least be the 12-day extension of that and give

1 the State its full amount of time, Your Honor. That's at  
2 minimum. I think the schedule I was contemplating is quite  
3 longer than Mr. Bice's. We're going to have discovery  
4 disputes along the way once we get the discovery propounded.  
5 I was considering depositions being taken in October, with the  
6 evidentiary hearing starting after that. So I was looking at  
7 November, and I think that is realistic to give the State a  
8 fair chance to defend itself here and conduct the discovery it  
9 needs, Your Honor.

10 THE COURT: Okay. So, since you haven't done  
11 anything and you've sat on your hands the whole time --

12 MR. SMITH: Your Honor, that's not a --

13 THE COURT: -- I'm still going to go forward with  
14 the status check that is scheduled for September 10th. If you  
15 want to go ahead and schedule depositions or other things  
16 prior to September 10th when I can evaluate where in the  
17 jigsaw of my calendar I can fit you for three to four days, we  
18 will talk about that scheduling issue. But I set the  
19 September date with the intention of forcing you to do your  
20 discovery so I can get this thing done.

21 MR. SMITH: I understand, Your Honor. But -- okay.  
22 So I think there's a bit of a disconnect here. On one hand  
23 we're letting parties sit on their hands and move to intervene  
24 a month later, but then you're saying the State, who moved and  
25 obtained a stay from the --

1           THE COURT: Mr. Williams was here for the injunctive  
2 relief hearing, remember?

3           MR. SMITH: Yeah. And then he waited 30 days --

4           THE COURT: I know.

5           MR. SMITH: So if you characterize the State as  
6 sitting on its hands while that side of the aisle doesn't sit  
7 on its hands I think is an unfair characterization, Your  
8 Honor. If we're going to rush to a hearing, I think it's  
9 highly prejudicial to the State.

10          THE COURT: We rush to a hearing in every  
11 preliminary injunction hearing. Technically a TRO without  
12 notice is only good for 14 days. And then, you know.

13          MR. SMITH: I understand that, Your Honor. But you  
14 and I both know -- we always say preliminary injunction  
15 hearings aren't the trial on the merits, so we take this loss  
16 at their attitude. But you realize preliminary injunction  
17 hearings in many cases sound the death knell of the case. So  
18 preliminary injunction hearings are important things, and the  
19 State needs a fair chance to defend itself.

20          THE COURT: Which is why I allow discovery before  
21 preliminary injunction hearings so that we can have an  
22 adequate record before I make a decision on that preliminary  
23 matter, which is usually fairly significant in the life of a  
24 case.

25          MR. SMITH: I understand that. But we also usually

1 determine whether there's a cause of action before we even  
2 start discovery, as well. So I think we are in many ways  
3 putting the cart before the horse here.

4 THE COURT: Okay.

5 MR. BICE: He's free to file a motion to dismiss our  
6 complaint. He's had ample time to do that and to do a lot of  
7 things in light of all these emergency motions at the Supreme  
8 Court, where, again, it's so transparent. The State is  
9 telling the Supreme Court one story about the need for speed,  
10 and telling this Court you need not to do anything and just  
11 delay this.

12 So we want this thing to move forward. We want to  
13 get it resolved. We want to have our preliminary injunction  
14 hearing where we can actually have a fair chance. Mr. Smith  
15 keeps saying he doesn't know what the causes of action are.  
16 They're set out in the complaint. And, by the way, the  
17 discovery will, of course, support that.

18 And I don't think he's right that the stay lasted  
19 twelve days. I think it lasted eight. And I want the record  
20 to be clear on that, because I have a feeling that's going to  
21 be used as an excuse not to comply with discovery responses  
22 that are due.

23 MR. SMITH: Well, I'll correct Mr. Bice. The  
24 initial stay was eight days. The Supreme Court said yesterday  
25 that was improperly lifted. So the first [unintelligible]

1 lack of quorum, that was eight days. That was improper. So  
2 it was twelve as of yesterday.

3 MR. BICE: Actually it did not say that.

4 MR. SMITH: Well --

5 MR. BICE: But, again, Your Honor, it's pretty  
6 obvious --

7 THE COURT: I'm going to let you guys deal with what  
8 you said to the Supreme Court about that first stay lifting  
9 order and not -- I'm staying out of that. I try not to poke  
10 sleeping bears.

11 MR. SMITH: Well, and I'll just address one thing.  
12 Mr. Bice says it's transparent, we're telling the Supreme  
13 Court one thing and telling this Court the other. Well, Mr.  
14 Bice is doing the exact opposite. He's saying, hey, Supreme  
15 Court don't rule I don't have a cause of action, let me go  
16 forward with an evidentiary hearing before you tell me I don't  
17 have one. So the parties are at odds on what they want to  
18 have happen, apparently. But Mr. Bice is just on the other  
19 side of the same coin.

20 THE COURT: And since you worked for Mr. Bice and  
21 Mr. Pisanelli for so long, you know them intimately and how  
22 they operate, so it's going to be a fun time sometime soon.

23 Okay. So do whatever you're going to do. If you  
24 need to set the notices, remember we shortened the time on the  
25 depo notices and the discovery so that we could make sure we

1 got the discovery done quickly so I would be able to set a  
2 preliminary injunction hearing on the September 10th day.

3 MR. REID: Your Honor --

4 THE COURT: Yes.

5 MR. REID: I know it's hard to see me standing  
6 there. I just wanted to confirm with the shortening time it  
7 was 20 days for written discovery, 10 days for depositions.  
8 So there's still --

9 THE COURT: And I asked people to please try and  
10 work with each other's schedule despite that deadline.

11 MR. REID: Yes. And in that spirit I just want to  
12 inform the Court with some of the stays Hikma will be filing  
13 for a TRO, and it might be helpful to set the time for that.

14 THE COURT: Well, you should file that. And when  
15 you submit it I assume it'll have an application for an order  
16 shortening time, and then I will fill it in.

17 MR. REID: Okay. Thank you, Your Honor.

18 THE COURT: And then we'll do whatever we're going  
19 to do.

20 Anything else? So I will see you guys, if not  
21 before, on September 10th. I am hopeful we will find a  
22 convenient date for all of us to do the preliminary injunction  
23 hearing.

24 MR. BICE: So on that date, just so that I can  
25 accurately report back to my colleagues, on September the 10th

1 is when we're going to hopefully pick a date, and it could be  
2 the next day?

3 THE COURT: I don't think it will be on September  
4 10th that we will actually start the hearing, because I do  
5 Business Court settlement conferences typically on Monday, so  
6 I am trying to balance all of my other responsibilities. But  
7 I had hoped to spend the rest of that week dealing with you.

8 MR. BICE: Understood. Thank you, Your Honor.

9 MR. POLSENBERG: Thank you, Your Honor. Have a  
10 wonderful day.

11 THE COURT: Yes. Thank you.

12 THE PROCEEDINGS CONCLUDED AT 9:25 A.M.

13 \* \* \* \* \*

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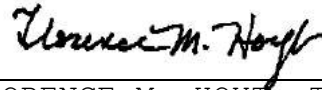
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

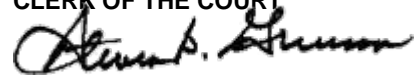
**FLORENCE HOYT**  
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FLORENCE M. HOYT, TRANSCRIBER

8/23/18

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALVOGEN, INC.,

Plaintiff,

v.

STATE OF NEVADA; NEVADA DEPARTMENT

OF CORRECTION; JAMES DZURENDA,

Director of the Nevada Department of Correction, in

his official capacity; IHSAN AZZAM, Ph.D., M.D.,

Chief Medical Officer of the State of Nevada, in his

official capacity; and JOHN DOE, Attending

Physician at Planned Execution of Scott Raymond

Dozier, in his official capacity;

Defendants.

AND ALL RELATED CLAIMS

Case No. A-18-777312-B

Dept. No. XI

**SANDOZ INC.'S COMPLAINT IN  
INTERVENTION**

COMES NOW Intervenor Sandoz Inc. (“Sandoz”), through its counsel and for its Complaint in Intervention alleges and complains against Defendants as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Intervenor Sandoz is a Colorado corporation with its principal place of business located at 100 College Road West, Princeton, New Jersey. Sandoz is an indirect subsidiary of Novartis AG (“Novartis”), which trades on the SIX Swiss Exchange under the ticker symbol NOVN and whose American Depositary Shares are publicly traded on the New York Stock Exchange under the ticker symbol NVS.

2. Upon information and belief, Plaintiff Alvogen, Inc. (“Alvogen”) is a Delaware corporation with its principal place of business located at 10 Bloomfield Avenue, Pine Brook, New Jersey.

3. Upon information and belief, Intervenor Hikma Pharmaceuticals USA Inc. (“Hikma”) is a Delaware corporation with its principal place of business located at 246 Industrial Way West, Eatontown, New Jersey.

4. Defendant State of Nevada (“Nevada”) is the sovereign government of Nevada.

5. Defendant Nevada Department of Corrections (“NDOC”), led by its Director James Dzurenda, is a Nevada state governmental entity, with offices in Nevada, including at 3955 West Russell Road, Las Vegas, Nevada, 89118.

6. Defendant Dr. Ihsan Azzam, Ph.D, M.D. serves as the Nevada State Chief Medical Officer at the Nevada Department of Health and Human Services, Division of Public and Behavioral Health, with Offices in Nevada, including in Las Vegas.

7. Defendant John Doe I is an individual who will serve as the attending physician at the planned execution of inmate Scott Raymond Dozier. To the extent that there are multiple individuals who will serve as attending physicians at the planned execution, they are named herein as John Doe II, John Doe III, *et seq.*

8. Jurisdiction over Defendants is appropriate in this Court as each of them is an entity or agent of the State of Nevada, conducting business in Nevada. Venue in this Court is appropriate, including pursuant to NRS 13.020, as material events giving rise to this action, including the Defendants' illegitimate acquisition of Sandoz's drug Cisatracurium ("Sandoz's Cisatracurium" or "Sandoz Cisatracurium"), occurred in Clark County, Nevada.

## INTRODUCTION

9. Nearly one-hundred years ago, the United States Supreme Court made it very clear that a manufacturer of a product has the right to not sell its products to certain individuals or entities, and that there is a “long recognized right of a trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal.” *See United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919). This right, commonly referred to as the “*Colgate doctrine*,” continues to be recognized and applied by the Court. *See Pacific Bell Tele. Co. v. Linkline Commc’ns, Inc.*, 555 U.S. 438, 448 (2009).

10. Sandoz has repeatedly expressed its position from 2011 to the present against the use of any of its products in lethal injection and has implemented controls to prevent its products from being misused in connection with capital punishment.

11. Upon learning that some states, including the State of Nevada, were considering new medicines to use in their lethal injection protocols, Sandoz exercised its rights and took action to prevent its medicines from being used in a way that is inconsistent with the U.S. Food and Drug Administration’s (“FDA”) approved therapeutic and medical uses for its products and counter to Sandoz’s values as an organization, the interests of its customers, and the financial interests of Sandoz and its shareholders.

12. Sandoz is not the only pharmaceutical company that has taken affirmative action to exercise its rights to not sell their products for use in lethal injection. More than 20 American and European pharmaceutical companies have taken action to prevent their products from being used

1 for lethal injection. *See* Exhibit “1,” Pfizer Blocks the Use of Its Drugs in Executions, THE NEW  
2 YORK TIMES, May 13, 2016; *see also* <http://lethalinjectioninfo.org/industry-statements/>. Similar to  
3 other pharmaceutical companies, Sandoz has an important interest in protecting its business  
4 reputation and meeting its fiduciary duties to its shareholders. Experts have commented, for  
5 example, that a pharmaceutical company’s involvement with lethal injection may open the  
6 company to liability, including the loss of large institutional investors and litigation from their  
7 shareholders. Ex. 1. Sandoz has taken multiple proactive actions to protect its rights and values,  
8 and also to protect its business and investor and prospective investor relations.  
9

10 13. In July 2018, Defendants revealed their plans to utilize a Sandoz product they  
11 illegitimately obtained to execute Scott Raymond Dozier by lethal injection. That product is  
12 Cisatracurium Besylate Injection.

13 14. Upon learning of Defendants’ plans, Sandoz promptly objected to the use of its  
14 Cisatracurium (or any of its products) in Mr. Dozier’s execution or any capital punishment, and  
15 further demanded the immediate return of all Sandoz Cisatracurium that it had purchased, along  
16 with any other Sandoz products that Nevada may have obtained for use in lethal injection  
17 executions. *See* Exhibit “2,” Letter from Sandoz to NDOC, Attorney General Adam Laxalt, and  
18 Governor Brian Sandoval dated July 10, 2018.  
19

20 15. Defendants have not responded to the Sandoz letter or returned the Sandoz  
21 Cisatracurium illegitimately acquired for use as part of their lethal injection protocol for Scott  
22 Raymond Dozier.  
23

24 16. NDOC has acknowledged that they have attempted to maintain the secrecy of and/or  
25 conceal their acquisition and possession of Sandoz’s Cisatracurium because of a concern that  
26 information as to “where a State obtains execution drugs” may be used “to persuade the  
27 manufacturer and others to cease selling that drug for execution purposes.” *American Civil*  
28

1 *Liberties Union of Nev. Found. v. State*, Case No. 18-OC-00163, Order Granting in part Emergency  
2 Pet. Issuing Writ of Mandamus, at 4 (Nev. Dist. Ct. July 6, 2018).

3 17. Defendants' acquisition of Sandoz's Cisatracurium to use in a lethal injection  
4 protocol (over the specific objections of Sandoz) violates Sandoz's rights and the law. If  
5 Defendants are allowed to continue to circumvent the law, and Sandoz's recognized right to use its  
6 own business judgment to determine how its products may be sold and used, and use Sandoz's  
7 product for lethal injection, Defendants' actions will result in immediate and irreparable harm to  
8 Sandoz, damage to Sandoz's hard-earned business reputation, and financial injury to Sandoz and  
9 its shareholders.  
10

### 11 **GENERAL ALLEGATIONS**

#### 12 **I. SANDOZ'S MANUFACTURE AND APPROVED DISTRIBUTION OF** 13 **CISATRACURIUM AND POSITION ON RESTRICTED USE OF ITS PRODUCTS** 14 **FOR CAPITAL PUNISHMENT.**

15 18. Sandoz, a division of Novartis, is a leading generic pharmaceutical company focused  
16 on discovering new ways to improve and extend people's lives. Sandoz contributes to society's  
17 ability to support growing healthcare needs by pioneering novel approaches to help people around  
18 the world access high-quality medicine.

19 19. Among its products in the United States, Sandoz manufactures and distributes  
20 Cisatracurium Besylate Injection (Abbreviated New Drug Application number 200154).

21 20. Upon information and belief, five other manufacturers produce Cisatracurium  
22 Besylate in the United States.

23 21. Sandoz's Cisatracurium is a nondepolarizing skeletal muscle relaxant for  
24 intravenous administration approved by the FDA for inpatients and outpatients as an adjunct to  
25 general anesthesia, to facilitate tracheal intubation, and to provide skeletal muscle relaxation during  
26 surgery or mechanical ventilation in the ICU.  
27  
28

1           22.     To maintain Sandoz’s reputation for producing safe, high-quality products, Sandoz  
2 is committed to going beyond mere compliance with the law and strives to uphold the highest  
3 ethical standards.

4           23.     In an attempt to ensure that its products are used responsibly, Sandoz has placed  
5 controls on the purchase and use of certain of its products that states have publicly identified may  
6 be used in connection with lethal injection. Such controls include internal policies and procedures,  
7 and contracts with its customers to restrict the supply of Sandoz products for the distribution and  
8 use in lethal injection protocols.

9  
10          24.     Sandoz has refused the direct sale of its products to Departments of Correction for  
11 use in capital punishment, and works directly with its distribution partners to add restrictions for  
12 unintended use to its distribution contracts.

13          25.     In early 2011, Sandoz made public statements reaffirming its position and  
14 restrictions on sales of its products to third party distributors, stating “Sandoz and Novartis support  
15 only the authorized use of injectable thiopental, which is primarily indicated for the induction of  
16 anesthesia, and do not support the sale of this or **any product** for use in non-approved treatments.”  
17 *See Exhibit “3,” Novartis Moves to Stop Execution Drug Reaching U.S., REUTERS HEALTH NEWS,*  
18 *February 10, 2011 (emphasis added).*

19  
20          26.     In 2013, Sandoz implemented restrictions on the distribution of Rocuronium  
21 Bromide to prevent its use in capital punishment, including amending agreements with distributors  
22 to prohibit its sale to United States prison hospitals. *See Exhibit “4,” Amendment to Cardinal*  
23 *Health Generic Wholesale Service Agreement dated December 10, 2013.*

24  
25          27.     Consistent with this position, Sandoz did not respond to a request for proposal issued  
26 by the State of Nevada in September 2016 to supply drugs required for lethal injection.

1           28.     In 2017, Sandoz also implemented restrictions on the distribution of Anectine to  
2 prevent its use in capital punishment. *See* Exhibit “5,” Controlled Distribution Program Amendment  
3 to Generic Wholesale Service Agreement.

4           29.     Sandoz’s objection to the use of its products in capital punishment is even noted in  
5 the minutes of the March 29, 2017 Judiciary Committee of the Nevada Assembly, with Sandoz  
6 included among the twenty-one (21) companies that have made statements opposing the misuse of  
7 medications in executions. *See* Exhibit “6,” March 29, 2017 Minutes of Nevada Assembly  
8 Judiciary Committee.

9           30.     In 2017, Sandoz reaffirmed its position in an *amicus curiae* brief, which refers to  
10 direct communications with Departments of Corrections and government officials in death penalty  
11 states, and describes its right to enforce its contractual rights and minimize associated reputational,  
12 fiscal, and legal risks by ensuring that its medicines not be diverted for use in capital punishment.  
13 *See* Exhibit “7,” *Amicus Curiae* Brief in Support of Relator on Behalf of Fresenius Kabi USA, LLC  
14 and Sandoz Inc., *State of Ohio ex rel. Hogan Lovells US LLP and Elizabeth Och v. Ohio Dep’t of*  
15 *Rehab. & Correction*, No. 2016-1776 (S. Ct. Ohio), *available at* [http://lethalinjectioninfo.org/wp-](http://lethalinjectioninfo.org/wp-content/uploads/2018/02/2017_07_10_PRIV-Amicus-Curiae-Brief-in-Ohio-Sandoz-and-Fresenius-Kabi.pdf)  
16 [content/uploads/2018/02/2017\\_07\\_10\\_PRIV-Amicus-Curiae-Brief-in-Ohio-Sandoz-and-](http://lethalinjectioninfo.org/wp-content/uploads/2018/02/2017_07_10_PRIV-Amicus-Curiae-Brief-in-Ohio-Sandoz-and-Fresenius-Kabi.pdf)  
17 [Fresenius-Kabi.pdf](http://lethalinjectioninfo.org/wp-content/uploads/2018/02/2017_07_10_PRIV-Amicus-Curiae-Brief-in-Ohio-Sandoz-and-Fresenius-Kabi.pdf).

18           31.     More recently, after learning that Cisatracurium had been added to at least one  
19 execution protocol, Sandoz began implementing controls to restrict distribution and usage of its  
20 Cisatracurium for capital punishment.

21  
22  
23 **II. DEFENDANTS ADD CISATRACURIUM TO THE STATE’S LETHAL**  
24 **INJECTION PROTOCOL, THE FIRST STATE TO DO SO.**

25           32.     Upon information and belief, NDOC, like other death-penalty states, was well-  
26 aware of certain drug manufacturers’ restrictions on the use of their drugs in executions. According  
27 to the Las Vegas Review-Journal, as reported on October 7, 2016, NDOC sent out 247 requests for  
28



1 proposals on September 2, 2016, to manufacturers for the purchase of the drugs that it intended to  
2 use in lethal injections after the stockpile of at least one of the drugs in its possession expired.  
3 (Nevada's last execution occurred in 2006.) Not one response was received. Because no  
4 pharmaceutical companies bid to supply the drugs for lethal injection, Nevada prison officials were  
5 on the record as stating that "the State will have to explore its options to carry out executions." *See*  
6 *Alvogen Compl. for Emergency Injunctive Relief & Return of Illegally- Obtained Prop.* at Ex. 1.

7  
8 33. Other states in which the death penalty is implemented have also attempted to locate  
9 alternative compounds for their lethal injection protocols as a result of drug manufacturers'  
10 opposition to having their medicines used in executions. Upon information and belief, some states  
11 started to experiment with mixtures of drugs that were never intended for this purpose.

12 34. In August 2017, Sandoz became aware that Nevada created a new execution  
13 protocol that included Cisatracurium, which has never been used in an execution. Also in August,  
14 Sandoz learned that the NDOC had not at that point purchased any Sandoz-manufactured drugs,  
15 including Cisatracurium, for use in executions.<sup>1</sup>

16  
17 35. Nonetheless, beginning in November 2017, Sandoz began to add distribution  
18 restrictions for Cisatracurium to its customer agreements covering this product as they came up for  
19 renewal that were designed, in part, to prevent customers from selling Sandoz's Cisatracurium to  
20 state and federal prisons.

21 36. On or about July 7, 2018, Sandoz learned that the NDOC revealed it had purchased  
22 Sandoz's Cisatracurium from Cardinal Health in December 2017, and intended to use it in Mr.  
23 Dozier's execution. Unbeknownst to Sandoz, NDOC had acquired Sandoz's Cisatracurium just as  
24 Sandoz was instituting controls to prevent this from happening.  
25

26  
27  
28 <sup>1</sup> The NDOC had instead purchased Cisatracurium from another manufacturer, Fresenius Kabi, in May 2017.

1           37.     No state has ever carried out a lethal injection using Cisatracurium. This means that  
2 the State's proposed novel misuse of the drug in executions is experimental and without precedent  
3 establishing that it can be administered without causing unconstitutional suffering.

4           38.     On July 10, 2018, Sandoz wrote a letter to the State making clear its position against  
5 misuse of its product for capital punishment:

6           We strongly object to the misuse of any of our medicines for purposes of lethal  
7 injection. Our products are developed, manufactured and distributed to help save  
8 and improve people's lives. Their use in connection with executions, many of which  
9 have gone horribly wrong in recent years, is fundamentally contrary to this purpose.

10           ...

11           We write to communicate in the clearest possible terms that Sandoz objects to the  
12 misuse of Sandoz Cisatracurium or any other Sandoz product in the administration  
13 of capital punishment.

14           *See* Ex. 2.

15           39.     The same day that Sandoz sent its letter, it learned that Alvogen filed the instant  
16 litigation and requested a Temporary Restraining Order in connection with Midazolam. Counsel  
17 for Sandoz attended the July 11, 2018 hearing on Alvogen's TRO application, to make a formal  
18 objection to the use of Cisatracurium for the non-approved use of lethal injection. *See* Hrg. Tr. at  
19 30:14-31:16.

20           40.     This Court heard argument on Alvogen's ex parte application for a TRO on July 11,  
21 2018. This Court issued a Temporary Restraining Order the same day, prohibiting and enjoining  
22 Defendants from using Alvogen's Midazolam in capital punishment until further order of the Court.

23           41.     On July 30, 2018, this Court granted the motion to intervene by Hikma, as  
24 manufacturer of the third drug proposed for use in the lethal injection execution of Scott Raymond  
25 Dozier.

26           **III. DEFENDANTS WRONGFULLY OBTAINED SANDOZ'S CISATRACURIUM FOR  
27 DEFENDANTS' INTENTIONAL AND UNAPPROVED USE IN SCOTT  
28 RAYMOND DOZIER'S EXECUTION.**

          42.     In litigation initiated by the American Civil Liberties Union of Nevada, the court  
ordered NDOC to disclose the lethal injection procedures it planned to implement in Scott Raymond

1 Dozier's execution.. *See American Civil Liberties Union of Nev. Found. v. State*, Case No. 18 OC  
2 00163 1B, Order Granting in part Emergency Pet. Issuing Writ of Mandamus (Nev. Dist. Ct. July  
3 6, 2018). Sandoz obtained copies of those documents, which included a list of the drugs to be  
4 included in the lethal injection protocol along with the invoices related to NDOC's purchase of  
5 those specific drugs. These invoices identified Sandoz's Cisatracurium. *See* Exhibit "8," Nevada  
6 Execution Manual & Invoices for Drugs Purchased.

7  
8 43. The invoice for Sandoz's Cisatracurium was from one of Sandoz's wholesale  
9 distributors, Cardinal Health, and documented an order placed on December 14, 2017 to be billed  
10 and shipped to the Nevada Department of Correction Center Pharmacy, located at the NDOC's  
11 administrative building in Las Vegas—not to the Ely State Prison, which is where Nevada's  
12 executions take place and is located over 200 miles away from its Las Vegas building. *See id.*

13 44. In December 2017, Sandoz had reason to believe Cardinal Health understood that  
14 Sandoz objected to the use of its products in lethal injection protocols. Prior contracts with Cardinal  
15 Health pertaining to other Sandoz products explicitly restricted sales to correctional facilities.  
16 Sandoz and Cardinal Health entered into negotiations regarding a formal amendment to their  
17 Generic Wholesale Service Agreement to memorialize the terms on which Cardinal Health would  
18 restrict such sales. The final agreement was executed in May 2018. *See* Exhibit "9," May 15, 2018  
19 Amendment to Cardinal Health Generic Wholesale Service Agreement.

20  
21 45. NDOC acquired Sandoz's Cisatracurium from Cardinal Health, aware that Sandoz  
22 strongly objected to and prohibited the use of all of its products in executions, as being contrary to  
23 FDA-approved therapeutic and medical uses, and Sandoz's intention of manufacturing products for  
24 the health and well-being of patients in need, and values as a Company. *See* Exhibit "10,"  
25 Cisatracurium Package Insert.

26  
27 46. Despite Sandoz's repeated and steadfast public positions against usage of its drugs  
28 for lethal injection, Defendants circumvented Sandoz's policy by purchasing Sandoz's

1 Cisatracurium through an unsuspecting intermediary and without disclosing to said intermediary  
2 that they planned to use the Cistracurium for an execution. Defendants were thus able to obtain  
3 Sandoz's Cisatracurium in a manner that they would not have been able to accomplish had they  
4 disclosed that they planned to use Sandoz's Cisatracurium for an execution.

5 47. Upon information and belief, NDOC also failed to follow the State's purchasing  
6 procedures when it acquired Sandoz's Cisatracurium. Instead of using the Nevada Purchasing  
7 Division's contract with Minnesota Multi-State Contracting for Pharmacy (MMCAP), which was  
8 mandatory for all state agencies, NDOC purchased Sandoz's Cisatracurium off-contract through  
9 Cardinal Health at the higher list price. *See* NRS 333.435.  
10

11 48. Defendants use of Sandoz's Cisatracurium in the lethal injection protocol for Scott  
12 Raymond Dozier is for a purpose for which it is neither allowed nor intended to be used. While  
13 Sandoz takes no position on the death penalty sentence imposed on Scott Raymond Dozier,  
14 Sandoz's products were manufactured to promote the health and well-being of patients in need—  
15 not in state-facilitated executions.  
16

17 49. Upon confirming that Defendants intended to use Sandoz's Cisatracurium in the  
18 scheduled lethal injection of Scott Raymond Dozier on July 11, 2018, Sandoz sent a letter on July  
19 10, 2018, stating its belief that NDOC is in possession of Sandoz's Cisatracurium, and that it may  
20 be used in the pending execution, additionally stating:

21 To ensure our products are not purchased for this purpose, Sandoz has imposed a  
22 system of strict distribution controls designed to prohibit the sale of its medicines  
23 to correctional facilities or otherwise for the use in connection with lethal injection  
24 executions. These controls align with prevailing industry standards in the  
pharmaceutical sector and reflect our company's strict policy on ensuring the  
appropriate use of our medicines.

25 *See* Ex. 2.  
26  
27  
28

50. Sandoz demanded that NDOC immediately return all of Sandoz’s Cisatracurium, and other products, intended for use in executions, in exchange for a full refund for such use would represent a serious misuse of life-saving medicines. *Id.*

51. Defendants have not responded to Sandoz's letter.

**IV. DEFENDANTS CONTINUED MISUSE OF SANDOZ'S CISATRACURIUM IN EXECUTIONS, INCLUDING THAT OF SCOTT RAYMOND DOZIER, WILL CAUSE SANDOZ TO SUFFER IMMEDIATE AND IRREPARABLE INJURY.**

52. Since NDOC's declaration of its new and untested lethal injection protocol to be used in the execution of Scott Raymond Dozier, including the novel use of Cisatracurium in the execution, NDOC's protocol has been widely criticized.

53. The severe criticism communicated by the American public, medical and legal professionals, and scholars alike, leads to Sandoz as the manufacturer of the first-time use of this drug in this divisive execution. As more fully set forth herein, Defendants' actions have caused, and will continue to cause, unless preliminarily and permanently enjoined, substantial and irreparable injury to Sandoz including, but not limited to, reputational injury arising out of (i) association with the manufacture of drugs used for executions, (ii) the corresponding damage to business and investor and prospective investor relationships, (iii) damage to goodwill, and (iv) other irreparable harm to be proven at trial.

**COUNT I: REPLEVIN**

54. Sandoz incorporates the preceding paragraphs as though fully set forth herein.

55. Upon information and belief, Defendants sought to circumvent Sandoz's controls by issuing purchase orders for Sandoz's Cisatracurium with an unsuspecting distributor, Cardinal Health. Based on those purchase orders, Cardinal Health shipped to Defendants a total of 20 vials of 2mg/ml 10X5ML Cisatracurium. *See* Ex. 8.

56. As set forth above, Defendants knew or should have known that the distributor was not permitted, allowed, or authorized to sell Sandoz's Cisatracurium to NDOC and the other

1 Defendants, let alone for the purpose of an execution. Indeed, Sandoz had made clear in its public  
2 statements and company policies that it does not support the use of any of its drugs for off-label use  
3 in connection with lethal injection.

4 57. On information and belief, NDOC wrongfully took possession of Sandoz's  
5 Cisatracurium by tacitly misrepresenting that it would be used for a legitimate medical purpose.

6 58. In light of its clear and unambiguous communications and restrictions regarding the  
7 sale of its Cisatracurium, Sandoz is the rightful owner of Cisatracurium and has a present and  
8 immediate right of possession to said property.  
9

10 59. Given Sandoz's consistent public statements and policies, recognized and  
11 acknowledged by the Nevada Assembly Judiciary Committee, Defendants were on actual and/or  
12 constructive notice that they could not purchase Sandoz's Cisatracurium directly from Sandoz and  
13 that Sandoz's distributors were not authorized to transfer Sandoz's Cisatracurium to Defendants for  
14 purposes of utilizing it in an execution. Thus, Defendants had actual and/or constructive notice that  
15 they could not in good faith acquire title to Sandoz's Cisatracurium. Hence, Sandoz's  
16 Cisatracurium is neither the property of NDOC nor the State of Nevada.  
17

18 60. Sandoz has a specific interest in Sandoz's Cisatracurium that is in the possession of  
19 the NDOC because the NDOC intends to use Sandoz's property for the administration of capital  
20 punishment, in violation of Sandoz's policies and agreements between Sandoz and its distributors.  
21

22 61. In its July 2018 letter, Sandoz specifically stated that it had imposed a system of  
23 distribution controls to prohibit the sale of its medicines to correctional facilities or otherwise for  
24 use in connection with lethal injection executions and that Defendants should immediately return  
25 the Sandoz Cisatracurium it purchased from Cardinal Health in exchange for a full refund.

26 62. In spite of said demand, Defendants have refused to return the Cisatracurium that  
27 they illicitly and improperly obtained.  
28

1           63.     Sandoz's Cisatracurium is approved by the FDA solely for the following therapeutic  
2     uses: as an adjunct to general anesthesia, to facilitate tracheal intubation, and to provide skeletal  
3     muscle relaxation during surgery or mechanical ventilation in the ICU. *See* Ex. 10.

4           64.     Defendants have announced plans to utilize Sandoz's Cisatracurium for a purpose  
5     for which it is neither indicated nor intended to be used in Defendants' lethal injection protocol.  
6     Defendants' proposed use for Sandoz's Cisatracurium clearly runs counter to the FDA-approved  
7     indications for this product. While Sandoz takes no position on the death penalty itself, Sandoz's  
8     products were developed to save and improve patients' lives and their use in executions is  
9     fundamentally contrary to this purpose.

11          65.     Sandoz has a property right in both its Cisatracurium and its right to deal – or refuse  
12     to deal – with particular prospective customers with respect to said drug. The Supreme Court of  
13     the United States long ago recognized the “right of [a] trader or manufacturer engaged in an entirely  
14     private business freely to exercise his own independent discretion as to parties with whom he will  
15     deal, and, of course, [to] announce in advance the circumstances under which he will refuse to sell.”  
16     *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919). Sandoz has exercised those rights both  
17     generally in its statements to the public and to prison officials and specifically in communications  
18     with Defendants. Thus, as set forth *supra*, Sandoz specifically wrote to the Nevada Department of  
19     Corrections (through the Warden at the prison at which the Execution is to take place) and the  
20     Nevada Attorney General to specifically warn them that they were customers with whom Sandoz  
21     refused to deal – both directly and indirectly – with regard to the acquisition of its Cisatracurium.

22           66.     Defendants' actions are wrongful vis-à-vis Sandoz because, *inter alia*, they are  
23     inconsistent with Sandoz's property rights, they do not constitute the appropriate and therapeutic  
24     use for the Cisatracurium for a legitimate medical purpose, they are contrary to the therapeutic uses  
25     for which the drug can be utilized, and they risk grave harm to Sandoz's reputation and goodwill.  
26  
27  
28

67. Because of Defendants' wrongdoing, Sandoz has suffered and continues to suffer injuries, including, but not limited to reputational injury arising out of (i) association with the manufacture of drugs used for executions, (ii) the corresponding damage to business and Investor relationships, (iii) damage to goodwill, and (iv) other irreparable harm to be proven at trial.

## **COUNT II: CONVERSION**

68. Sandoz incorporates the preceding paragraphs as though fully set forth herein.

69. NDOC has undertaken a distinct act of dominion wrongfully exerted over Sandoz's personal property, Sandoz's Cisatracurium, in denial of, or inconsistent with its title or rights therein, or in derogation, exclusion, or defiance of such title or rights.

70. NDOC has dominion over Sandoz's Cisatracurium because NDOC is currently in possession of Sandoz's Cisatracurium.

71. Given Sandoz's unambiguous position and its public statements regarding its corporate policies, recognized and acknowledged by the Nevada Assembly Judiciary Committee, Defendants were on actual and/or constructive notice that they could not purchase Sandoz's Cisatracurium directly from Sandoz and that Sandoz's distributors were not authorized to transfer Sandoz's Cisatracurium to Defendants for purposes of utilizing it in an execution. Thus, Defendants had actual and/or constructive notice that they could not in good faith acquire title to Sandoz's Cisatracurium.

72. Sandoz has true right or title to Sandoz's Cisatracurium because, *inter alia*, they were sold without authorization, in direct contravention of Sandoz's stated policy of not selling its Cisatracurium, or any of its products, directly to Departments of Correction and other entities, and not allowing its distributors to sell Sandoz's Cisatracurium to customers for use in lethal injections, and in violation of Sandoz's fundamental property right to refuse to sell to Defendants (either directly or indirectly), and because Defendants illicitly obtained possession of said product.



1           73.     NDOC's dominion is wrongfully exerted because NDOC knew or should have  
2 known of Sandoz's policy of not selling any of its products to Departments of Correction for use in  
3 carrying out lethal injections.

4           74.     Defendants thereafter sought to circumvent Sandoz's policy by purchasing Sandoz's  
5 Cisatracurium through an unsuspecting intermediary and without disclosing to said intermediary  
6 the fact that they sought to obtain Sandoz's Cisatracurium for purposes of a non-therapeutic use  
7 (*i.e.*, an execution). Defendants were thus able to obtain Sandoz's Cisatracurium in a manner that  
8 they would not have been able to accomplish had they disclosed the contents of said letter and/or  
9 their intended non-therapeutic use of Sandoz's Cisatracurium to the intermediary.  
10

11           75.     Defendants received additional actual or constructive notice of Sandoz's policies  
12 when Sandoz notified Defendants directly through Sandoz's July 2018 Letter, that none of Sandoz's  
13 products could be used for lethal objection, and that it had controls in place to prevent Departments  
14 of Correction from using Sandoz products for capital punishment or sales to customers. Defendants  
15 were aware that their possession of Sandoz's Cisatracurium was unlawful. In its July 2018 Letter,  
16 Sandoz specifically demanded that Defendants immediately return to Sandoz its Cisatracurium  
17 intended for use in executions, and any other products which have been obtained for that purpose  
18 in exchange for a full refund.  
19

20           76.     In spite of said demand, Defendants have refused to return Sandoz's Cisatracurium  
21 that they improperly obtained.  
22

23           77.     Defendants have announced plans to utilize Sandoz's Cisatracurium for a purpose  
24 for which it is neither indicated nor intended to be used in Defendants' lethal injection protocol.  
25 Defendants' proposed use of Sandoz's Cisatracurium clearly runs counter to the FDA-approved  
26 indications for this product. While Sandoz takes no position on the death penalty itself, Sandoz's  
27 products were developed to save and improve patients' lives and their use in executions is  
28 fundamentally contrary to this purpose.

1           78.     Sandoz has a property right in both its Cisatracurium and its right to deal – or refuse  
2 to deal – with particular prospective customers with respect to said drug. The Supreme Court of  
3 the United States long ago recognized the “right of [a] trader or manufacturer engaged in an entirely  
4 private business freely to exercise his own independent discretion as to parties with whom he will  
5 deal, and, of course, [to] announce in advance the circumstances under which he will refuse sell.”  
6 *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919). Sandoz had exercised those rights both  
7 generally in its statements to the public and to prison officials and specifically in communications  
8 with Defendants. Thus, as set forth *supra*, Sandoz specifically wrote to NDOC and the Attorney  
9 General to specifically warn them that they were customers with whom Sandoz refused to deal –  
10 both directly and indirectly – with regard to the acquisition of Sandoz’s Cisatracurium.  
11

12           79.     Defendants’ actions are wrongful vis-à-vis Sandoz because, *inter alia*, they are  
13 inconsistent with Sandoz’s property rights insofar as Defendants obtained Sandoz’s products by  
14 defrauding Sandoz’s distributor, they do not constitute the appropriate and therapeutic use for the  
15 Cisatracurium, they are contrary to the therapeutic uses for which the drug can be utilized, and they  
16 risk grave harm to Sandoz’s reputation and goodwill.  
17

18           80.     Because of Defendants’ wrongdoing, Sandoz has suffered and continues to suffer  
19 injuries, including, but not limited to reputational injury arising out of (i) association with the  
20 manufacture of drugs used for executions, (ii) the corresponding damage to business and investor  
21 relationships, (iii) damage to goodwill, and (iv) other irreparable harm to be proven at trial.  
22

### 23                           **COUNT III: FALSE PRETENSES**

24           81.     Sandoz incorporates the preceding paragraphs as though fully set forth herein.

25           82.     As set forth above, Defendants knew or should have known that the distributor was  
26 not permitted, allowed, or authorized to sell Sandoz’s Cisatracurium to NDOC and the remaining  
27 Defendants, let alone for the purpose of an execution. Indeed, Sandoz had made clear in its public  
28

1 statements and company policies that it does not support the use of any of its drugs for off-label use  
2 in connection with lethal injection.

3 83. Despite this awareness, Defendants intentionally defrauded Sandoz's distributor by,  
4 on information and belief, concealing the fact that Defendants intended to use Sandoz's  
5 Cisatracurium for purposes of an execution. In failing to disclose their intent to use Sandoz's  
6 Cisatracurium for purposes of an execution and proceeding to order the Cisatracurium, Defendants  
7 omitted relevant information and implicitly made the false representation that they had legitimate  
8 therapeutic rationale to purchase Sandoz's Cisatracurium.  
9

10 84. Sandoz's distributor justifiably relied on the false pretense(s) because they had no  
11 reason to suspect that Defendants were not authorized to purchase Cisatracurium or that the  
12 Cisatracurium would not be used for a legitimate medical purpose.

13 85. Defendants were thus able to illicitly and through subterfuge obtain Sandoz's  
14 Cisatracurium by defrauding the intermediary, and in doing so, causing grave reputational harm to  
15 Sandoz.  
16

17 86. Defendants have announced plans to utilize Sandoz's Cisatracurium for a purpose  
18 for which it is neither indicated nor intended to be used in Defendants' lethal injection protocol.  
19 Defendants' proposed use for Sandoz's Cisatracurium clearly runs counter to the FDA-approved  
20 indications for this product. While Sandoz takes no position on the death penalty itself, Sandoz's  
21 products were developed to save and improve patients' lives and their use in executions is  
22 fundamentally contrary to this purpose.  
23

24 87. Defendants' actions are wrongful vis-à-vis Sandoz because, inter alia, they are  
25 inconsistent with Sandoz's property rights insofar as Defendants obtained Sandoz's products by  
26 defrauding Sandoz's distributor, they do not constitute the appropriate and therapeutic use for the  
27 Cisatracurium, they are contrary to the therapeutic uses for which the drug can be utilized, and they  
28 risk grave harm to Sandoz's reputation and goodwill.

88. Because of Defendants' wrongdoing, Sandoz has suffered and continues to suffer injuries, including, but not limited to reputational injury arising out of (i) association with the manufacture of drugs used for executions, (ii) the corresponding damage to business and investor relationships, (iii) damage to goodwill, and (iv) other irreparable harm to be proven at trial.

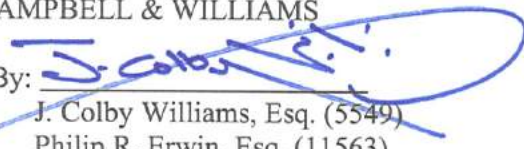
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

1. For a preliminary and permanent injunction precluding the use of any Sandoz drug, including Sandoz's Cisatracurium, in carrying out any capital punishment and further ordering NDOC to return immediately all Cisatracurium to Sandoz, as well as requiring an impoundment of all Cisatracurium possessed by Defendants pending a hearing on its status;
2. For declaratory relief as requested herein;
3. For an award of attorneys' fees and costs of suit as allowed by law; and
4. For such other and further relief as this Court deems appropriate under the circumstances,

DATED this 21<sup>st</sup> day of August, 2018

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Campbell & Williams, and that on this 21st day of August, 2018, I caused to be served via the Court's e-filing/e-service system and by U.S. Mail a true and correct copy of the above and foregoing **Sandoz, Inc.'s Complaint in Intervention** to the following:

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# EXHIBIT 1

## **The New York Times**

# ***Pfizer Blocks the Use of Its Drugs in Executions***

By Erik Eckholm

May 13, 2016

The pharmaceutical giant Pfizer announced on Friday that it had imposed sweeping controls on the distribution of its products to ensure that none are used in lethal injections, a step that closes off the last remaining open-market source of drugs used in executions.

More than 20 American and European drug companies have already adopted such restrictions, citing either moral or business reasons. Nonetheless, the decision from one of the world's leading pharmaceutical manufacturers is seen as a milestone.

"With Pfizer's announcement, all F.D.A.-approved manufacturers of any potential execution drug have now blocked their sale for this purpose," said Maya Foa, who tracks drug companies for Reprieve, a London-based human rights advocacy group. "Executing states must now go underground if they want to get hold of medicines for use in lethal injection."

The obstacles to lethal injection have grown in the last five years as manufacturers, seeking to avoid association with executions, have barred the sale of their products to corrections agencies. Experiments with new drugs, a series of botched executions and covert efforts to obtain lethal chemicals have mired many states in court challenges.

The mounting difficulty in obtaining lethal drugs has already caused states to furtively scramble for supplies.

Some states have used straw buyers or tried to import drugs from abroad that are not approved by the Food and Drug Administration, only to see them seized by federal agents. Some have covertly bought supplies from loosely regulated compounding pharmacies while others, including Arizona, Oklahoma and Ohio, have delayed executions for months or longer because of drug shortages or legal issues tied to injection procedures.

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A few states have adopted the electric chair, firing squad or gas chamber as an alternative if lethal drugs are not available. Since Utah chooses to have a death penalty, “we have to have a means of carrying it out,” said State Representative Paul Ray as he argued last year for authorization of the firing squad.

Lawyers for condemned inmates have challenged the efforts of corrections officials to conceal how the drugs are obtained, saying this makes it impossible to know if they meet quality standards or might cause undue suffering.

“States are shrouding in secrecy aspects of what should be the most transparent government activity,” said Ty Alper, associate director of the death penalty clinic at the University of California, Berkeley, School of Law.

Before Missouri put a prisoner to death on Wednesday, for example, it refused to say in court whether the lethal barbiturate it used, pentobarbital, was produced by a compounding pharmacy or a licensed manufacturer. Akorn, the only approved company making that drug, has tried to prevent its use in executions.

Pfizer’s decision follows its acquisition last year of Hospira, a company that has made seven drugs used in executions including barbiturates, sedatives and agents that can cause paralysis or heart failure. Hospira had long tried to prevent diversion of its products to state prisons but had not succeeded; its products were used in a prolonged, apparently agonizing execution in Ohio in 2014, and are stockpiled by Arkansas, according to documents obtained by reporters.

Because these drugs are also distributed for normal medical use, there is no way to determine what share of the agents used in recent executions were produced by Hospira, or more recently, Pfizer.

Campaigns against the death penalty, and Europe’s strong prohibitions on the export of execution drugs, have raised the stakes for pharmaceutical companies. But many, including Pfizer, say medical principles and business concerns have guided their policies.



"Pfizer makes its products to enhance and save the lives of the patients we serve," the company said in Friday's statement, and "strongly objects to the use of its products as lethal injections for capital punishment."

Pfizer said it would restrict the sale to selected wholesalers of seven products that could be used in executions. The distributors must certify that they will not resell the drugs to corrections departments and will be closely monitored.

David B. Muhlhausen, an expert on criminal justice at the Heritage Foundation, accused Pfizer and other drug companies of "caving in to special interest groups." He said that while the companies have a right to choose how their products are used, their efforts to curb sales for executions "are not actually in the public interest" because research shows, he believes, that the death penalty has a deterrent effect on crime.

Pressure on the drug companies has not only come from human rights groups. Trustees of the New York State pension fund, which is a major shareholder in Pfizer and many other producers, have used the threat of shareholder resolutions to push two other companies to impose controls and praised Pfizer for its new policy.

"A company in the business of healing people is putting its reputation at risk when it supplies drugs for executions," Thomas P. DiNapoli, the state comptroller, said in an email. "The company is also risking association with botched executions, which opens it to legal and financial damage."

Less than a decade ago, lethal injection was generally portrayed as a simple, humane way to put condemned prisoners to death. Virtually all executions used the same three-drug combination: sodium thiopental, a barbiturate, to render the inmate unconscious, followed by a paralytic and a heart-stopping drug.

In 2009, technical production problems, not the efforts of death-penalty opponents, forced the only federally approved factory that made sodium thiopental to close. That, plus more stringent export controls in Europe, set off a cascade of events that have bedeviled state corrections agencies ever since.

Many states have experimented with new drug combinations, sometimes with disastrous results, such as the prolonged execution of Joseph R. Wood III in Arizona in 2014, using the sedative midazolam. The state's executions are delayed as court challenges continue.

Under a new glaring spotlight, deficiencies in execution procedures and medical management have also been exposed. After winning a Supreme Court case last year for the right to execute Richard E. Glossip and others using midazolam, Oklahoma had to impose a stay only hours before Mr. Glossip's scheduled execution in September. Officials discovered they had obtained the wrong drug, and imposed a moratorium as a grand jury conducts an investigation.

A majority of the 32 states with the death penalty have imposed secrecy around their drug sources, saying that suppliers would face severe reprisals or even violence from death penalty opponents. In a court hearing this week, a Texas official argued that disclosing the identity of its pentobarbital source "creates a substantial threat of physical harm."

But others, noting the evidence that states are making covert drug purchases, see a different motive. "The secrecy is not designed to protect the manufacturers, it is designed to keep the manufacturers in the dark about misuse of their products," said Robert Dunham, executive director of the Death Penalty Information Center, a research group in Washington.

Georgia, Missouri and Texas have obtained pentobarbital from compounding pharmacies, which operate without normal F.D.A. oversight and are intended to help patients meet needs for otherwise unavailable medications.

But other states say they have been unable to find such suppliers.

Texas, too, is apparently hedging its bets. Last fall, shipments of sodium thiopental, ordered by Texas and Arizona from an unapproved source in India, were seized in airports by federal officials.

For a host of legal and political reasons as well as the scarcity of injection drugs, the number of executions has declined, to just 28 in 2015, compared with a recent peak of 98 in 1999, according to the Death Penalty Information Center.

A version of this article appears in print on May 13, 2016, on Page A1 of the New York edition with the headline: Pfizer Prohibits Use of Its Drugs for Executions

# EXHIBIT 2

July 10, 2018

**URGENT**  
**VIA EMAIL & UPS**

Governor Brian Sandoval  
State Capitol Building  
101 N. Carson Street  
Carson City, NV 89701  
Fax: 775-684-5670  
C/O Chief of Staff, Mike Wilden; Special Assistant to the Governor, Christina Davis, (Email: cmdavis@gov.nv.gov)

Attorney General Adam Laxalt  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701  
Communications Director: Monica Moazez  
Office of the Attorney General  
Grant Sawyer Building  
555 E. Washington Avenue, Suite 3900  
Las Vegas, NV 89010

Director James Dzurenda  
Nevada Department of Corrections  
3955 W. Russell Road  
Las Vegas, NV 89118-2316  
C/O Cynthia Keller, Assistant (Email: ckeller@doc.nv.gov)

Dear Governor Sandoval, Attorney General Laxalt, and Director Dzurenda:

It has been brought to our attention that in December of 2017, the State of Nevada Department of Corrections (NDOC) acquired quantities of the drug Cisatracurium from Cardinal Health, with the intention of using this product in a lethal injection execution scheduled for July 11, 2018.

RAPP 000259

Sandoz Inc. is an FDA-approved manufacturer of Cisatracurium for the US market. Sandoz, a division of Novartis, is a global leader in generic, biosimilar and other value added medicines which we develop, manufacture and distribute with the intention of saving and improving people's lives. We strongly object to the misuse of any of our medicines for purposes of lethal injection. Our products are developed, manufactured and distributed to help save and improve people's lives. Their use in connection with executions, many of which have gone horribly wrong in recent years, is fundamentally contrary to this purpose.

To ensure our products are not purchased for this purpose, Sandoz has imposed a system of strict distribution controls designed to prohibit the sale of its medicines to correctional facilities or otherwise for use in connection with lethal injection executions. These controls align with prevailing industry standards in the pharmaceutical sector and reflect our company's strict policy on ensuring the appropriate use of our medicines.

We write to communicate in the clearest possible terms that Sandoz objects to the misuse of Sandoz Cisatracurium or any other Sandoz product in the administration of capital punishment. We request the NDOC immediately return the Sandoz Cisatracurium that it purchased from Cardinal Health along with any other Sandoz products that Nevada may have obtained for use in lethal injection executions in exchange for a full refund.

Given the gravity and urgency of this matter, we respectfully request a reply to this letter no later than the close of business on July 11, 2018. We specifically do not waive and hereby reserve all of our rights to take necessary legal action to ensure the proper use of our medicines.

We look forward to receiving your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michelle T. Quinn", is written over a horizontal line.

Michelle T. Quinn  
Vice President, General Counsel, North America  
Sandoz Inc.

Cc: Carol Lynch  
President, Sandoz US, Head, North America  
Kate Kulesher Jarecke  
Director State Government Affairs

# EXHIBIT 3



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HEALTH NEWS

FEBRUARY 10, 2011 / 1:27 PM / 7 YEARS AGO

# Novartis moves to stop execution drug reaching U.S.

Katie Reid

3 MIN READ



ZURICH (Reuters) - Novartis and its Sandoz unit, maker of a generic version of an anesthetic used in lethal injections in the United States, have taken steps to try to stop the drug ending up in the United States.



People walk past the logo of Swiss drugmaker Novartis at the company's plant in Basel January 28, 2009.

REUTERS/Arnd Wiegmann

RAPP 000262



“Sandoz has also advised all of its subsidiaries with locally approved marketing authorizations for sodium thiopental to not sell the product to distributors or third parties that may be selling it into the U.S.,” Novartis and Sandoz said in a statement.

Last month, U.S. specialty medicines maker Hospira Inc said it was halting its production of sodium thiopental as it did not want it to be used in executions.

Hospira said it was planning to shift production to its plant in Liscate, Italy, but the Italian parliament will only allow the drug to be made there if Hospira can guarantee that it will not be used in capital punishment.

Italy is a member of the European Union, which has banned the death penalty and criticized the United States for allowing it.

“Sandoz and Novartis support only the authorized use of injectable thiopental, which is primarily indicated for the induction of anesthesia, and do not support the sale of this or any product for use in non-approved treatments,” Novartis and Sandoz said in a statement.

Sandoz makes injectable thiopental under contract for a third party located in the UK, which sells it directly to Archimedes Pharma.

The British group is responsible for the product’s marketing and commercial supply under its respective UK marketing authorization, Novartis and Sandoz said in the statement.

Novartis and Sandoz also said Sandoz does not market the drug in the United States or ship or sell directly to any third party selling this product into the United States.

Archimedes has never exported the product directly into the United States, Deborah Saw, a spokeswoman for the group said.

It sells the drug to a distributor, which then sells it to hospital pharmacies, primarily in Britain’s National Health Service, and also to other wholesalers. Archimedes does not have information on specific end-purchasers or users of its products, she said.

Sandoz and Novartis also said Sandoz was not aware of, and not able to monitor or control, the supply chain beyond its own direct customers, as it was not responsible or involved in the marketing and commercial activities of third parties.

Last November, activists sued the British government to stop the export of the drug used in capital punishment in the United States, but Business Secretary Vince Cable said he would not issue a ban because the drug can be used for legitimate purposes.

**RAPP 000263**

Sodium thiopental, a sedative legally required for U.S. lethal injections, is in short supply in the United States, and at least one U.S. state has already turned to Britain to fill the gap.

Our Standards: [\*The Thomson Reuters Trust Principles.\*](#)



HEALTH NEWS AUGUST 2, 2018 / 7:36 AM / UPDATED 8 HOURS AGO

## EU sees one in 5,000 cancer risk from tainted China heart drug

Reuters Staff

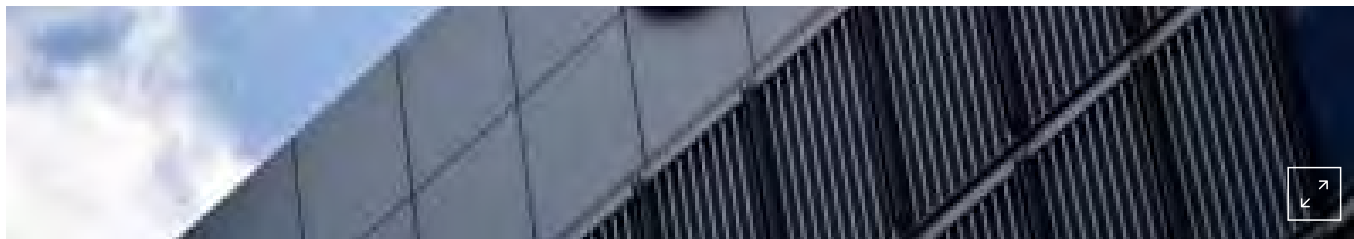
1 MIN READ



LONDON (Reuters) - The European Medicines Agency estimates there could be one extra case of cancer for every 5,000 patients taking a common blood pressure and heart drug manufactured in bulk by a Chinese company that has been found to contain an impurity.



RAPP 000264



FILE PHOTO: The headquarters of the European Medicines Agency (EMA), is seen in London, Britain, April 25, 2017. REUTERS/Hannah McKay/File Photo

The alarm over valsartan was first raised in July, prompting a global recall of affected pills. The EMA believes the problem likely dates back to changes in manufacturing processes at Zhejiang Huahai Pharmaceutical in 2012.

In an update on its investigation issued on Thursday, the European drugs watchdog said its one-in-5,000 risk assessment was based on patients taking the highest valsartan dose every day for seven years.

NDMA, or N-nitrosodimethylamine, is classified as a probable human carcinogen. Based on results from laboratory tests, it may cause cancer with long-term use.

Reporting by Ben Hirschler; Editing by Susan Fenton

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HEALTH NEWS AUGUST 2, 2018 / 8:22 AM / UPDATED 7 HOURS AGO

## Celtaxsys cystic fibrosis drug reduces key symptom in mid-stage study

RAPP 000265

Tamara Mathias

2 MIN READ



(Reuters) - Privately held CeltaSys Inc said on Thursday a mid-stage trial testing its experimental cystic fibrosis treatment was successful in reducing a key symptom of the genetic lung disease, but did not improve lung function.

There are few treatment options for the 70,000 cystic fibrosis patients worldwide, who rarely live beyond 40 and possess a defective gene that leads to the build-up of thick mucus which clogs the lungs and other organs, often triggering inflammation.

The company is considering private financing, a public offering and possible financial support from the Cystic Fibrosis Foundation ahead of a late-stage study set for the second half of 2019, Chief Executive Officer Greg Duncan told Reuters.

The drug, acebilustat, reduced pulmonary exacerbations, or an acute worsening of symptoms, by 34 percent in patients with a mild form of the disease, which represent an estimated three-quarters of the total affected population, CeltaSys said.

However, after 48 weeks, patients on the anti-inflammation treatment did not show a difference in lung function versus those on placebo.

A regulatory approval is contingent on proving the treatment's effectiveness in either reducing pulmonary exacerbations or improving lung function and the next trial is likely to focus on the former, the Atlanta-based biotech company said.

The Cystic Fibrosis Foundation contributed \$8 million to CeltaSys' mid-stage study, which tested two doses of the once-a-day oral medicine in 200 patients.

Currently, Vertex Pharmaceuticals Inc is considered the leader in developing treatments for cystic fibrosis and has three approved drugs on the market.

Reporting by Tamara Mathias in Bengaluru; Editing by Bernard Orr

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RAPP 000266

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# EXHIBIT 4



## AMENDMENT TO CARDINAL HEALTH GENERIC WHOLESALE SERVICE

### AGREEMENT

This amendment ("Amendment") to the July 1, 2006, Cardinal Health Generic Wholesale Service Agreement ("GWSA"), and any other existing amendments and addenda thereto (collectively, the "Agreement") is entered into and made effective on December 10, 2013 ("Effective Date"), by and between Cardinal Health (as defined below in the signature block), 7000 Cardinal Place, Dublin, OH 43017 ("Customer" or "Cardinal"), and Sandoz Inc., 506 Carnegie Center, Suite 400, Princeton, NJ 08540 ("SI") on behalf of itself and Eon Labs, Inc., and Fougera Pharmaceuticals Inc.

**WHEREAS**, SI offers the product Rocuronium Bromide for sale to Customer;

**WHEREAS**, SI desires to amend this GWSA to require certain restrictions, as set forth below, on the sale and distribution of the product Rocuronium Bromide;

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, the parties agree to be legally bound as follows:

1. Customer acknowledges and agrees that as of the Effective Date, Customer shall not offer for sale or distribute Rocuronium Bromide, listed in Table A below, to the United State prison hospitals, which includes all state and federal prisons.

**Table A**


NDC	Product	Size	U/M
781322092	ROCURONIUM BR IJ 100MG/10ML 10	10	VL
781322095	ROCURONIUM BR IJ 50MG/5ML 10X5	10	VL

1. **Counterparts:** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument
2. **Entire Agreement; Amendment:** This Amendment incorporates all terms, conditions, rights and obligations set forth in the Agreement. Capitalized terms used herein and not otherwise defined shall have the meaning assigned to them in the Agreement and, except as modified hereby, all terms and conditions of the Agreement shall remain in full force and effect. For the sake of clarity, in the event of a conflict between a term contained in this Amendment and a term contained in the Agreement, the term contained in this Amendment shall prevail.

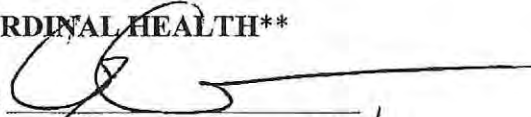


IN WITNESS WHEREOF the parties have caused this Amendment, its Exhibits, Attachments and Schedules, to be executed by their duly authorized officers or representatives.

**SANDOZ INC**

By:   
Name: Dave Picard  
Title: VP, US Generics Operating Unit  
Date: 12/20/2013

**CARDINAL HEALTH\*\***

By:   
Name: CENG COWAN  
Title: SVP, Sales & Mktg  
Date: 12/19/13

\*Please sign and return two original copies of this Amendment to Sandoz Inc., Attention: Contract and Pricing Department, 506 Carnegie Center, Suite 400, and Princeton, NJ 08540. Upon countersignature, a fully executed copy will be returned.

\*\*The term "Cardinal Health" or "Cardinal" will include the following affiliated operating companies: Cardinal Health 113, Inc.; Cardinal Health 110, Inc.; Cardinal Health 100, Inc.; Cardinal Health 104, LP.; Cardinal Health 107, Inc.; Cardinal Health 3, Inc.; and any other subsidiary of Cardinal Health, Inc., an Ohio corporation ("CHI"), as may be designated by CHI.



# EXHIBIT 5

**CONTROLLED DISTRIBUTION PROGRAM  
AMENDMENT TO  
GENERIC WHOLESale SERVICE AGREEMENT**

This Controlled Distribution Program Amendment ("Amendment") to the Generic Wholesale Service Agreement by and between Sandoz Inc. ("Supplier") and Cardinal Health\* ("Cardinal Health") dated July 1, 2006 as amended (referenced internally by Supplier as Contract #22745 for convenience only) (the "Agreement") is made effective as of August 28, 2017 ("Amendment Effective Date"). Supplier and Cardinal Health may be hereinafter referred to collectively as the "Parties" and individually as a "Party".

**RECITALS**

WHEREAS, Cardinal and Supplier are Parties to the Agreement;

WHEREAS, the Parties desire to amend the Agreement as provided in this Amendment;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree to be legally bound as follows:

1. The Amendment to the Agreement by and between Supplier and Cardinal Health with the Effective Date of December 10, 2013 related to the sale and distribution of Rocuronium Bromide is hereby deleted from the Agreement in its entirety.

2. The Amendment to the Agreement by and between Supplier and Cardinal Health with the Effective Date of March 1, 2014 related to the sale and distribution of Rocuronium Bromide is hereby deleted from the Agreement in its entirety.

3. The following paragraph is hereby added to the end of Section 1 of the Agreement, creating a new Section 1.a. as follows:

"1.a. Controlled Distribution Products. Cardinal Health acknowledges and agrees that as of the Amendment Effective Date, Cardinal Health shall not sell, offer to sell or distribute the Rocuronium Bromide or Anectine Products listed in Exhibit 1, attached hereto ("**Controlled Distribution Products**") to: 1) any United States prison hospital, which shall include all State and Federal Prisons in the U.S. (and its commonwealths, territories, possessions, and military bases) (collectively "**U.S. Prison Hospital**"), 2) to any of its customers, affiliates or any other third party that is acquiring Rocuronium Bromide or Anectine Products for use for further distribution in any U.S. Prison Hospital or 3) to any retailer, wholesaler or distributor, in each case unless such customer is an Eligible Customer approved in advance in writing by Sandoz as set forth herein. Cardinal Health shall only be permitted to sell, offer to sell or distribute Rocuronium Bromide or Anectine Products to Eligible Customers (defined below)."

4. The following paragraph is hereby added to the end of Section 1 of the Agreement, creating a new Section 1.b. as follows:

"1.b.i. Eligible Customers. For purposes of this Agreement, Eligible Customers means customers of Cardinal Health that Supplier has determined in its sole discretion are eligible to purchase Controlled Distribution Products pursuant to the terms of this Agreement ("**Eligible Customers**"). The initial Eligible Customer list shall be added to this Agreement as Exhibit 3. The Eligible Customer list may be amended from time to time pursuant to Section 1.b.ii. below.

1.b.ii. Amendments to Eligible Customer List. In the event Cardinal Health receives a request from one of its customers for inclusion on the Eligible Customer list, Cardinal Health will communicate this request to Supplier via email. Supplier shall within 10 days confirm, via email, whether the customer will be approved

**EXECUTION VERSION**

for inclusion as an Eligible Customer and will update the Eligible Customer list to reflect such change. Supplier may, at its sole discretion, remove an Eligible Customer from the Eligible Customer list at any time by notifying Cardinal Health via email."

5. The following paragraph is hereby added to the end of Section 1 of the Agreement, creating a new Section 1.c. as follows:

"Cardinal Health agrees to provide Controlled Distribution Program Services as described in Exhibit 2, Controlled Distribution Program Schedule attached hereto in exchange for the Controlled Distribution Program Service Fees described in Exhibit 2."

6. Supplier shall make the Controlled Distribution Products listed in Exhibit 1 attached hereto available for purchase by Cardinal Health in accordance with the terms of this Agreement.

7. **No Other Changes.** Except as specifically set forth in this Amendment, the Agreement will continue in full force and effect without change.

8. **Interpretation.** To the extent there are any inconsistencies between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment will control. Capitalized terms not otherwise defined herein shall have the same meaning given those terms in the Agreement, it being the intent of the Parties that the Agreement and this Amendment will be applied and construed as a single instrument. The Agreement, as modified by this Amendment, constitutes the entire agreement between Supplier and Cardinal regarding the subject matter of this Amendment and supersedes all prior or contemporaneous writings and understandings between the Parties regarding the same.

9. **Authorized Signatories.** All signatories to this Amendment represent that they are authorized by their respective companies to execute and deliver this Amendment on behalf of their respective companies, and to bind such companies to the terms herein.

Sandoz Inc.

By: Robert Spina

Print Name: [Signature]

Title: VP Pricing & Contracts

Address of Supplier:  
100 College Road West  
Princeton, New Jersey 08540

Cardinal Health\*

By: [Signature]

Print Name: Melissa Laber

Title: SVP, Global Sourcing

Address of Cardinal Health:  
Attention: SVP – Generic Sourcing  
7000 Cardinal Health Place  
Dublin, Ohio 43017

\*The term "Cardinal" or "Cardinal Health" means Cardinal Health 3, LLC; Cardinal Health 104 LP; Cardinal Health 107, Inc.; Cardinal Health 110, LLC; Cardinal Health 112, LLC; Cardinal Health 411, Inc.; Cardinal Health PR 120, Inc.; Parned Pharmaceuticals, Inc.; Kinray, Inc. Dik Drug Company, LLC and any other affiliate of Cardinal Health, Inc., an Ohio corporation ("CHI"), as may be designated by CHI.

**EXHIBIT 1****Controlled Distribution Products**

<b>NDC</b>	<b>Product</b>	<b>Size</b>	<b>U/M</b>
781322092	ROCURONIUM BR IJ 100MG/10ML 10	10	VL
781322095	ROCURONIUM BR IJ 50MG/5ML 10X5	10	VL
781341185	ANECTINE (Succinylcholine) 200MG/10ML 10LIVI US	10	VL

EXHIBIT 2

CONTROLLED DISTRIBUTION PROGRAM SCHEDULE

**1. Services.** In consideration for the Service Fees described in this Controlled Distribution Program Schedule, Cardinal Health will provide the following services (collectively, the "**Controlled Distribution Program Services**"):

- a) on a weekly basis submit to Supplier a list of its customers including customer class of trade designation as determined by Cardinal Health, DEA, address, and full customer name that Cardinal Health requests to add to the Eligible Customer list
- b) order blocking/ restriction of sales to Ineligible Customers
- c) customer facing communication outlining customer eligibility
- d) monthly auditing of Eligible Customers and Ineligible Customers
- e) restrict sales of Controlled Distribution Products to all U.S. Prison Hospitals, any retailer, wholesaler or distributor.

**2. Supplier Obligations.** In order to ensure that Cardinal Health is performing the Controlled Distribution Program Services as agreed by the Parties, Supplier agrees to:

- a) on a weekly basis, review list of customers that Cardinal Health has identified as eligible to purchase Controlled Distribution Products and determine in its sole discretion which of such customers shall be deemed Eligible Customers
- b) provide customer facing communication outlining Controlled Distribution Product distribution process to Sandoz contracted customers serviced through Cardinal Health
- c) communicate Controlled Distribution Product additions and/or deletions
- d) provide Supplier contact information to address customer specific classification inquiries
- e) provide timely response to inquiries regarding Eligibility

**3. Products subject to the Controlled Distribution Program Services.** Cardinal Health will perform the Controlled Distribution Program Services with respect to the following Controlled Distribution Products:

- a) ROCURONIUM BR IJ 100MG/10ML 10
- b) ROCURONIUM BR IJ 50MG/5ML 10X5
- c) ANECTINE (Succinylcholine) 200MG/10ML 10LIVI US

**4. Service Fees.** In consideration for the Controlled Distribution Program Services, Supplier will pay Cardinal Health a service fee as follows (the "**Controlled Distribution Program Service Fees**"):

- a) Controlled Distribution Program Service Fee  
Cardinal Health will be entitled to a Controlled Distribution Program Service Fee of 1.5% on the Net Sales of Controlled Distribution Products under this Agreement. The Controlled Distribution Program Service Fee will not exceed \$100,000 during any calendar year.

**5. Definitions.**

- a) "**Ineligible Customers**" means those customers that not eligible to purchase Controlled Distribution Products.
- b) "**Net Sales**" means the total number of net units of Controlled Distribution Product sold by Cardinal Health multiplied by the Supplier contract cost (or WAC if sold other than pursuant to a contract cost) at the time of each sale. The total number of net units will include all units sold by Cardinal Health less units returned from Cardinal Health customers (including recalls), customary sales

**EXECUTION VERSION**

discounts, product specific rebates and credits actually allowed by Supplier (excluding third party returns). The "time of each sale" means the date on which the Controlled Distribution Product is shipped from Cardinal Health to the customer. Net Sales shall be determined utilizing Supplier's chargeback and tracking systems. Payment of the Controlled Distribution Program Service Fee shall be 45 days after the end of the applicable calendar quarter.

**EXECUTION VERSION**

**EXHIBIT 3**  
**ELIGIBLE CUSTOMERS**  
**(See Attached)**

**EXHIBIT 3  
ELIGIBLE CUSTOMERS**

IDN Name	DEA #	Restricted Use Signature Date	Wholesaler	Address	City	ST	Est. Val. \$ (annual)
B/C Health - Aham Memorial Hospital	AA3761222	7/17/2017	Cardinal	One Memorial Drive	St. Louis	MO	15,325
CH Allied Services, dba Boone Hospital Center	B81599871	7/17/2017	Cardinal	2609 East Broadway	Columbia	MO	
Christian Hospital Northwest - Northwest	AC0588872	7/17/2017	Cardinal	11135 Dunn Road	Louis	MO	
Barnes-Jewish Hospital	B84745785	7/17/2017	Cardinal	216 S. Kingshighway	Louis	MO	
Parkland Health Center - Bonita Terre	BP3541554	7/17/2017	Cardinal	7245 Raider Road	Bonita Terre	MO	
Barnes-Jewish St. Peters Hospital, Inc.	BS4747664	7/17/2017	Cardinal	19 Hospital Drive	Peters	MO	
Parkland Health Center - Farmington	BF1426996	7/17/2017	Cardinal	1181 West Liberty	Farmington	MO	
Missouri Baptist Hospital of Sullivan, dba Missouri Baptist	BM1186053	7/17/2017	Cardinal	751 Sappington Bridge Road P.O. Box 190	Sullivan	MO	
Barnes-Jewish West County Hospital	BB2062305	7/17/2017	Cardinal	12834 Olive Blvd	Louis	MO	
Parkland Health - Weber Road	FP5286023	7/17/2017	Cardinal	1212 Weber Road	Farmington	MO	
Missouri Baptist Medical Center	AM3965982	7/17/2017	Cardinal	3015 N. Ballas Road	Louis	MO	
St. Louis Children's Hospital	AS3835871	7/17/2017	Cardinal	One Children's Place	Louis	MO	
Progress West HealthCare Center, dba Progress West Hos	FP0063818	7/17/2017	Cardinal	Two Progress Point	O'Fallon	MO	
Protestant Memorial Medical Center, Inc, dba		7/17/2017	Cardinal	4500 Memorial Drive	Belleville	IL	
Memorial East		7/17/2017	Cardinal	1404 Cross Street	Shiloh	IL	
Childrens Hospital LA	R00276495	7/10/2017	Cardinal	5550 Sunset Blvd	Los Angeles	CA	1925
Connecticut Children's Medical Center	AN1580489	7/23/2017	Cardinal	282 Washington Street	Hartford	CT	450
Excelsi Health		7/23/2017	Cardinal		Greensburg	PA	5950
SUNY Upstate Medical University	AS0552489	7/23/2017	Cardinal	750 East Adams Street	Syracuse	NY	3475
The Mount Sinai Medical Center	AM0707805	7/23/2017	Cardinal	1 GUSTAVE L. LEVY PL BOX 1211	New York	NY	39875
UCHealth - Medical Center of the Rockies	AM0091392	7/23/2017	Cardinal	2500 Rocky Mountain Ave	Loveland	CO	11100
UCHealth - Poudre Valley Hospital	BP4078603	7/23/2017	Cardinal	1024 S. May Ave	Fort Collins	CO	
UCHealth - Longs Peak Hospital	FL6873954	7/23/2017	Cardinal	1750 E. Ken Pratt Blvd	Longmont	CO	
Upstate University Hospital at Community General	FU2899319	7/23/2017	Cardinal	4900 Broad Road	Syracuse	NY	
The Mount Sinai Hospital	BT5431487	7/23/2017	Cardinal	25-10 36th Ave	Long Island City	NY	
Beth Israel Medical Center, dba Mount Sinai Beth Israel	AR1976296	7/23/2017	Cardinal	First Avenue at 16th Street	New York	NY	
Beth Israel Medical Center, dba Beth Israel West	FB2095360	7/24/2017	Cardinal	325 West 35th Street	New York	NY	
Boulder Foothills Community Hospital	BB8389555	7/24/2017	Cardinal	4767 Arapahoe Ave	Boulder	CO	2700
Indiana University Health - West Hospital	BC0874655	7/24/2017	Cardinal	1113 Ronald Reagan Pkwy	Avon	IN	16829
Indiana University Health - Bedford Hospital	AE2715444	7/24/2017	Cardinal	2900 18th Street	Bedford	IN	
Indiana University Health - Bloomington Hospital	AE2687284	7/24/2017	Cardinal	601 W. 2nd Street	Bloomington	IN	
Indiana University Health - Oncology Bloomington	FL5682352	7/24/2017	Cardinal	1000 West 1st Street	Bloomington	IN	
Indiana University Health - North Hospital	BC9421443	7/24/2017	Cardinal	11700 N. Meddian Street	Carmel	IN	
Indiana University Health - Central Indiana Cancer Center	BE1303990	7/24/2017	Cardinal	11725 North Illinois Street	Carmel	IN	
Indiana University Health - Sanger Hospital	FL2888135	7/24/2017	Cardinal	18200 E. 136th Street, Suite 1000	Fishers	IN	
Indiana University Health - Central Indiana Cancer Center	AL5663320	7/24/2017	Cardinal	10212 Lantern Drive	Fishers	IN	
Indiana University Health - Blackford Hospital	B07808580	7/24/2017	Cardinal	410 Pilgrim Blvd	Hartford City	IN	
Indiana University Health - University Medical Center	BC5175561	7/24/2017	Cardinal	550 University Blvd	Indianapolis	IN	
Indiana University Health - Methodist Hospital	BC5175535	7/24/2017	Cardinal	1701 N. Senate Blvd	Indianapolis	IN	
Indiana University Health - Riley Children's Hospital	BC5175511	7/24/2017	Cardinal	705 Riley Hospital Drive	Indianapolis	IN	
Rehabilitation Hospital of Indiana	BR3014090	7/24/2017	Cardinal	4141 Shota Drive	Indianapolis	IN	
Indiana University Health - Arnett Cancer Center	FC3808721	7/24/2017	Cardinal	420 North 26th Street	Lafayette	IN	
Indiana University Health - Arnett	FC1113619	7/24/2017	Cardinal	5165 McCarty Lane	Lafayette	IN	
Indiana University Health - Morgan Hospital	FE116682	7/24/2017	Cardinal	2209 John R. Woodson Drive	Madisonville	IN	
Indiana University Health - White Memorial Hospital	FE2576461	7/24/2017	Cardinal	720 S. 6th Street	Monticello	IN	
Indiana University Health - Ball Memorial Hospital	AE2645464	7/24/2017	Cardinal	2401 W. University Ave	Muncie	IN	
Indiana University Health - Ball Memorial Hospital at Forest Ridge N	FE1438571	7/24/2017	Cardinal	3200 Forest Ridge Parkway	New Castle	IN	
Indiana University Health - Tipton Hospital	FE1196511	7/24/2017	Cardinal	1000 S. Main Street	Tipton	IN	
Indiana University Health - Ball CC at Jay County Hospital	FE1438987	7/24/2017	Cardinal	500 West Volant Street	Portland	IN	
Indiana University Health - Arnett Health Horizon Oncology	FC306707	7/24/2017	Cardinal	1345 Unity Place	Lafayette	IN	
Indiana University Health - Paoli	BB6659001	7/24/2017	Cardinal	642 W. Hospital Road	Paoli	IN	
Indiana University Health - Indiana Cancer Center East	BA3876438	7/24/2017	Cardinal	6845 Rama Drive	Indianapolis	IN	
Northwell Health - Forest Hills Hospital	AH0772548	7/24/2017	Cardinal	102-01 68th Road	Forest Hills	NY	68275
Franklin Hospital	AF5712509	7/24/2017	Cardinal	900 Franklin Ave	Valley Stream	NY	
Glenn Cove Hospital	AC0783767	7/24/2017	Cardinal	101 St. Andrew's Lane	Glenn Cove	NY	
Philade Hospital/UMC	AL546584	7/24/2017	Cardinal	75-79 263rd St	Glenn Oaks	NY	
Huntington Hospital Association	AH0768296	7/24/2017	Cardinal	270 Park Avenue	Huntington	NY	
Lenox Hill Hospital	AL4684604	7/24/2017	Cardinal	100 East 77th St	New York	NY	
Lenox Hill Hospital	FL1071276	7/24/2017	Cardinal	210 East 64th St	New York	NY	
Lenox Hill Hospital Center for Comp Care	FM4611352	7/24/2017	Cardinal	80 Seventh Avenue	New York	NY	
LI Jewish/Schneider	FS4063183	7/24/2017	Cardinal	269-01 78th Ave	New Hyde Park	NY	
LI Jewish Medical Center	AL4849622	7/24/2017	Cardinal	270-05 75th Ave	New Hyde Park	NY	
Northern Westchester	AN1797692	7/24/2017	Cardinal	400 East Main St	Mount Kisco	NY	
NSU Hospital at Manhasset	AN0769917	7/24/2017	Cardinal	300 Community Drive	Manhasset	NY	
NSU Hospital at Plainville	BA4655723	7/24/2017	Cardinal	888 Old Country Road	Plainville	NY	
NSU Hospital at Syosset	BN5710543	7/24/2017	Cardinal	221 Jericho Turnpike	Syosset	NY	
Peconic Bay	BC9945570	7/24/2017	Cardinal	1300 Roanoke Ave	Riverhead	NY	
Phelps Memorial	AP1866423	7/24/2017	Cardinal	701 North Broadway, Rt 9 at Rt 117	Sleepy Hollow	NY	
South Oaks	BW6497487	7/24/2017	Cardinal	400 Sunrise Highway	Amityville	NY	
Southside Hospital RTD-42	AS0779441	7/24/2017	Cardinal	301 E. Main Street	Bayshore	NY	
Staten Island University Hospital North	AT8612966	7/24/2017	Cardinal	475 Seaview Ave	Staten Island	NY	
Staten Island University Hospital South	AR1858692	7/24/2017	Cardinal	375 Seguire Ave	Staten Island	NY	
Stamford Hospital	AS283278	7/24/2017	Cardinal	190 WEST BROAD STREET	Stamford	NY	1425
Strong Memorial Hospital	AU4158033	7/24/2017	Cardinal	601 Elmwood Avenue	Rochester	NY	23075
Highland Hospital	AH3279432	7/24/2017	Cardinal	1000 South Avenue	Rochester	NY	
Thompson Health	AP4442183	7/24/2017	Cardinal	550 Parish Street	Canandaigua	NY	
Wyoming County Community Health System	AW8614126	7/24/2017	Cardinal	400 North Main Street	Warsaw	NY	
Yampa Valley Medical Center	AR0844969	7/24/2017	Cardinal	1024 CENTRAL PARK DRIVE	Steamboat Springs	CO	350
Beth Israel Medical Center, Phillips AMB Care Center	BB4708915	7/25/2017	Cardinal	10 Union Square East	New York	NY	
Novos Hospital		7/25/2017	Cardinal		Danville	NY	200
RWJ Barnabas Health - St. Barnabas Medical Center	AS2991778	7/25/2017	Cardinal	95 Old Short Hills Road	West Orange	NJ	32050
Community Medical Center	AC1544659	7/25/2017	Cardinal	99 Highway 37 West	Toons River	NJ	
Monmouth Medical Center South Campus	AP3480249	7/25/2017	Cardinal	600 River Avenue	Lakewood	NJ	
Monmouth Medical Center	AC0693319	7/25/2017	Cardinal	300 Second Ave	Long Branch	NJ	
Clara Mass Medical Center	AC0663319	7/25/2017	Cardinal	1 Clara Mass Drive	Belleville	NJ	
Newark Beth Israel Medical Center	AN1534292	7/25/2017	Cardinal	201 Lyons Ave at Osborne Terrace	Newark	NJ	
Jersey City Medical Center	AM4384115	7/25/2017	Cardinal	355 Grand Street	Jersey City	NJ	
Robert Wood Johnson University Hospital	BR0611759	7/25/2017	Cardinal	One Robert Wood Johnson Place	New Brunswick	NJ	
Robert Wood Johnson University Hospital Hamilton	AH4698241	7/25/2017	Cardinal	One Hamilton Health Place	Hamilton	NJ	
Robert Wood Johnson Somerset Medical Center	FH4522922	7/25/2017	Cardinal	110 Red Hill Ave	Somerville	NJ	
Robert Wood Johnson Rahway Hospital	AR3479438	7/25/2017	Cardinal	865 Stone Street	Rahway	NJ	



**EXHIBIT 3  
ELIGIBLE CUSTOMERS**

Children's Specialty Hospital	PC056737	7/25/2017	Cardinal	300 Somerset Street	New Brunswick	NJ	
Barnabas Health Behavioral Health Center	BS935507	7/25/2017	Cardinal	1881 State Highway 40	Trenton River	NJ	
Quillen Pharmacy Services	BL0510110	7/25/2017	Cardinal	603 Montross Ave	South Plainfield	NJ	
St. Lukes Cornwall		7/25/2017	Cardinal		Buffalo	NY	1775
Summa MacBorton Hospital	FB0573815	7/25/2017	Cardinal	115 Fifth Street NE	Spartanburg	OH	1523
Summa Akron City Hospital	FA2195027	7/25/2017	Cardinal	525 East Market Street	Akron	OH	
Beth Israel Medical Center, DBA Mount Sinai Brooklyn	AK0774792	7/26/2017	Cardinal	3201 Kines Highway	Brooklyn	NY	
Alice Hyde Medical Center	AH3920260	7/26/2017	Cardinal	115 Park Street	Malone	NY	200
Good Samaritan Hospital	BH4514041	7/26/2017	Cardinal	616 S. WITMER ST	Los Angeles	CA	1625
Hayhoe UCLA Medical Center		7/26/2017	Cardinal		Torrance	CA	2800
Los Angeles County Medical Center		7/26/2017	Cardinal	1100 N Mission Road	Los Angeles	CA	2525
Matheson Hospital	AM0287908	7/26/2017	Cardinal	300 HUNTINGTON DRIVE	Andale	CA	1850
Olive View UCLA Medical Center		7/26/2017	Cardinal		Sylmar	CA	3850
Rancho Los Amigos Rehab Center		7/26/2017	Cardinal		Dwainy	CA	175
NY Eye & Ear Infirmary, DBA NYE of Mount Sinai	AY1859088	7/27/2017	Cardinal	310 E. 34th Street	New York	NY	
Finger Lakes Health - Geneva General	AG0552617	7/27/2017	Cardinal	105 North Street	Geneva	NY	1175
Finger Lakes Health - Soldiers and Sailors Memorial Hospital	AS0514009	7/27/2017	Cardinal	418 North Main Street	Penn Yan	NY	
Harrington Healthcare	AH4631285	7/27/2017	Cardinal	100 South Street	Southbridge	MA	200
Kettering Health Network - Kettering Memorial Hospital	AC2822890	7/27/2017	Cardinal	3535 Southern Blvd.	Kettering	OH	10275
Sycamore Hospital	AS2899824	7/27/2017	Cardinal	4000 Mansburg-Centerville Rd.	Miamisburg	OH	
Granger-Hawthorn Hospital	AG2810578	7/27/2017	Cardinal	408 W. Grand Ave.	Dayton	OH	
Southview Hospital & Family Health Center	AS2141187	7/27/2017	Cardinal	1997 Williamsburg-Centerville Rd.	Miamisburg	OH	
Greiner Memorial Hospital	AG2818966	7/27/2017	Cardinal	1142 North Monroe Drive	Knox	OH	
Port Hamilton Hospital	AF2802583	7/27/2017	Cardinal	630 Eaton Avenue	Hamilton	OH	
Soin Medical Center	ES2905290	7/27/2017	Cardinal	3535 Pentagon Blvd.	Beavercreek	OH	
Marshall Medical Center	AM2105701	7/27/2017	Cardinal	1100 Marshall Way	Pleasanton	CA	1125
St. Luke's Roosevelt Hospital Center, DBA Mount Sinai West	AS9148277	7/28/2017	Cardinal	1000 Tenth Avenue	New York	NY	
Boca Raton Regional Medical Center	AB0210788	7/28/2017	Cardinal	800 Meadows Road	Boca Raton	FL	7225
Norton Hospital	AN3011791	7/28/2017	Cardinal	200 E. Chestnut St.	Louisville	KY	31800
Norton Children's Hospital	FN0079021	7/28/2017	Cardinal	283 E. Chestnut St.	Louisville	KY	
Norton Audubon Hospital	BA5981884	7/28/2017	Cardinal	1 Audubon Plaza Dr.	Louisville	KY	
Norton Brownsville Hospital	FN1392721	7/28/2017	Cardinal	4950 Norton Healthcare Blvd	Louisville	KY	
Norton St. Matthew's Hospital	BA5985076	7/28/2017	Cardinal	4003 Glendwage Lane	Louisville	KY	
Ochsner Clinic Foundation/Ochsner Medical Center	AO3999424	7/28/2017	Cardinal	1514 Jefferson Hwy	New Orleans	LA	27775
Ochsner Baptist	FO4101111	7/28/2017	Cardinal	2700 Napoleon Ave	New Orleans	LA	
Ochsner Women's	FO0047337	7/28/2017	Cardinal	180 W. Esplanade Ave	Kenner	LA	
Ochsner Baton Rouge	BS925645	7/28/2017	Cardinal	17000 Medical Center Drive	Baton Rouge	LA	
Ochsner North Shore	FO2071544	7/28/2017	Cardinal	100 Medical Center Dr.	Shreveport	LA	
Ochsner West Bank	FO1811818	7/28/2017	Cardinal	2500 Belle Chasse Hwy	Gretna	LA	
Ochsner St. Anne	BO9805455	7/28/2017	Cardinal	4608 Highway 1	Gretna	LA	
Leonard J. Chabert Medical Center	FS4148961	7/28/2017	Cardinal	1976 Industrial Blvd	Houma	LA	
St Charles Parish Hospital	AT9408639	7/28/2017	Cardinal	1057 Paul Millaud Rd	Luling	LA	
Monroe Medical Center	AJ5196369	7/28/2017	Cardinal	149 Drydenway Blvd	Bay St Louis	MS	
Pin Creek Medical	BP9115543	7/28/2017	Cardinal	9032 Harry Hines Blvd	Dallas	TX	2125
Rice Memorial Hospital	AR3634765	7/28/2017	Cardinal	301 Becker Ave SW	Wittmer	MD	500
Redwood Area Hospital	AR3622866	7/28/2017	Cardinal	100 Fallwood Rd	Redwood Falls	MN	
Granville Falls Municipal Hospital	AG3605046	7/28/2017	Cardinal	345 10th Ave	Granville Falls	MT	
Swift County Benson Hospital	AS3617264	7/28/2017	Cardinal	1815 Wisconsin Ave	Benson	MN	
Sarnoga Hospital	AS3515814	7/28/2017	Cardinal	211 Church Street	Saratoga Springs	NY	150
St. Lukes Hospital of Duluth	AS3642368	7/28/2017	Cardinal	915 E 1st Street	Duluth	MN	775
Lake View Hospital	AC3605045	7/28/2017	Cardinal	325 11th Ave.	Two Harbors	MN	
St. Luke's Roosevelt Hospital Center, DBA Mount Sinai St.	AT9120469	7/29/2017	Cardinal	1133 Amsterdam Avenue	New York	NY	
Arnot Ogden Medical Center	AA0551419	7/29/2017	Cardinal	400 Roe Ave	Elmira	NY	1250
Tra Davenport Memorial Hospital	AT0488552	7/29/2017	Cardinal	7731 State Route 54	Bath	NY	
St. Joseph's Hospital	AB0552580	7/29/2017	Cardinal	555 Saint Joseph Boulevard	Elmira	NY	
Marquette Medical Center	AS3607875	7/31/2017	Cardinal	2601 E ROOSEVELT ST	Phoenix	AZ	1250
Northern Arizona Healthcare - Flagstaff Medical Center West	BF2068804	7/31/2017	Cardinal	1215 N Beaver St	Flagstaff	AZ	47
Verde Valley Medical Center	AM2176209	7/31/2017	Cardinal	268 S Candy Lane	Cottonwood	AZ	
Beaufort Memorial	AB1481330	8/1/2017	Cardinal	355 Ribault Rd	Beaufort	SC	
Hagner Hospital - St. Augustine	AF0192175	8/1/2017	Cardinal	400 Health Park Boulevard	Augustine	FL	
McLeod Health Charaw	BC5258888	8/1/2017	Cardinal	711 Chesterfield Hwy	Charaw	SC	
McLeod Health Charleston	AC0334922	8/1/2017	Cardinal	20 E Hospital St., PO Box 550	Manning	SC	
McLeod Health Darlington	AW0334564	8/1/2017	Cardinal	701 Cashell Ferry Rd	Darlington	SC	
McLeod Dillon	BM5700554	8/1/2017	Cardinal	381 East Jackson St	Dillon	SC	
McLeod Leno	FM3021134	8/1/2017	Cardinal	3655 Mitchell St	Leno	SC	
McLeod Regional Medical Center	AM4726822	8/1/2017	Cardinal	555 East Cheves St	Florence	SC	
McLeod Seacoast	FM3021172	8/1/2017	Cardinal	4000 Highway 9 East	Little River	SC	
Midlands Georgetown Hospital System	A90999033	8/1/2017	Cardinal	606 Black River Road	Georgetown	SC	
Midlands Waccamaw Community Hospital	BW7998583	8/1/2017	Cardinal	4070 Hwy 27 Bypass South	Myrtle Inlet	SC	
ThedaCare Regional Medical Center-Nappan	AT3928794	8/1/2017	Cardinal	120 2nd St.	Reedsville	WI	2850
ThedaCare Regional Medical Center-Wild Rose	AW4173720	8/1/2017	Cardinal	601 Grove Ave.	Wild Rose	WI	
ThedaCare Medical Center-New London	AC3938636	8/1/2017	Cardinal	1405 Mill St.	New London	WI	
ThedaCare Medical Center-Shawano	AS3571543	8/1/2017	Cardinal	100 County Road B	Shawano	WI	
ThedaCare Medical Center-Wausau	AT4051922	8/1/2017	Cardinal	800 Riverside Dr.	Wausau	WI	
ThedaCare Regional Medical Center-Appleton	AA3910470	8/1/2017	Cardinal	1818 N. Meade St.	Appleton	WI	
ThedaCare Medical Center-Berlin	AB4674435	8/1/2017	Cardinal	225 Memorial Dr.	Berlin	WI	
Buchanan County Health Center		8/2/2017	Cardinal		Independence	IA	100
Dekalb Health	AD2706743	8/2/2017	Cardinal	1316 EAST SEVENTH STREET	Auburn	IN	575
Floyd County Memorial Hospital		8/2/2017	Cardinal		Charles City	IA	124
Jonas Memorial Hospital	BJ3424281	8/2/2017	Cardinal	191 N MAIN ST	Wellsboro	NY	500
Kingsbrook Jewish Medical Center	AK349406	8/2/2017	Cardinal	385 Shenectady Ave	Brooklyn	NY	1023
Madara Falls Medical Center	AN0564066	8/2/2017	Cardinal	821 10 Street	Madara Falls	NY	925
St. Vincent Medical Center	BS7751755	8/2/2017	Cardinal	2121 W Third Street	Los Angeles	CA	2725
Tri City Medical Center	AT1053925	8/2/2017	Cardinal	4002 Vista Way	Channahon	CA	325
Auburn Community Hospital	JA0533182	8/2/2017	Cardinal	17 Locking Street	Auburn	NY	175
Greater Hudson Valley Health System - Orange Regional Medical Center	BA0957146	8/3/2017	Cardinal	707 East Main Street	Middletown	NY	6850
Greater Hudson Valley Health System - Catskill Regional Medical Center	AC3514408	8/3/2017	Cardinal	88 Harris Roadville Road	Harris	NY	

**EXHIBIT 3  
ELIGIBLE CUSTOMERS**

Health Alliance Inc	AK3455688	8/3/2017	Cardinal	396 Broadway	Kingston	NY	275
Mary Avenue Campus of HealthAlliance Hospital	AS1115713	8/3/2017	Cardinal	305 Mary's Avenue	Kingston	NY	
Iowa City Ambulatory Surgical Center		8/3/2017	Cardinal		Iowa City	IA	480
Kingman Regional Medical Center	AK1435469	8/3/2017	Cardinal	3253 Skidmore Hill Rd	Kingman	AZ	1800
Lagún Community Hospitals	FL5966370	8/3/2017	Cardinal	1475 W. 49th Street	Hialeah	FL	1175
Maricopa County Community Hospital	AM2080347	8/3/2017	Cardinal	600 W Main St	Coldwater	OH	100
Orlando Hospital	SD4346542	8/3/2017	Cardinal	321 Genesee Street	Orlando	NY	950
The Toledo Hospital, DBA ProMedica Toledo Hospital	AT2867434	8/3/2017	Cardinal	2243 N Cove Blvd	Toledo	OH	3000
Flower Hospital DBA ProMedica Flower Hospital	AF6411211	8/3/2017	Cardinal	5200 Hammon Road	Sylvania	OH	
Bay Park Community Hospital DBA ProMedica Bay Park Ho	BB7955483	8/3/2017	Cardinal	2401 Bay Park Dr	Oregon	OH	
Defiance Hospital Inc, DBA ProMedica Defiance Regional H	AD2659052	8/3/2017	Cardinal	1200 Ralston Ave	Defiance	OH	
Emma L. Bickel Medical Center, DBA ProMedica Bickel Hosp	BE1454672	8/3/2017	Cardinal	818 Riverside Ave	Adrian	MI	
Herrick Memorial Hospital Inc, DBA ProMedica Herrick Hospital		8/3/2017	Cardinal	900 E. Putnamville St.	Trenton	MI	
Postoria Hospital Association DBA ProMedica Postoria Cor	BF5336721	8/3/2017	Cardinal	301 Van Buren St	Postoria	OH	
ProMedica Willwood Orthopaedic and Spine Hospital	FP3700844	8/3/2017	Cardinal	2901 N Reynolds Rd	Toledo	OH	
Memorial Hospital DBA ProMedica Memorial Hospital	AM2872605	8/3/2017	Cardinal	715 S. York Ave	Freemont	OH	
Mercy Memorial Hospital Corp DBA ProMedica Monroe R	AM2295130	8/3/2017	Cardinal	718 Monroe St	Monroe	MI	
Saint Joseph's CareLiaison Hospital	BGS270691	8/3/2017	Cardinal	5352 Reynolds Street	Savannah	GA	3750
St Joseph's Hospital	BGS270699	8/3/2017	Cardinal	11705 Mercy Blvd	Savannah	GA	
Select Specialty Hospital	BGS415060	8/3/2017	Cardinal	5352 Reynolds Street	Savannah	GA	
Conifer Prescription Ctr Corp	FC1794317	8/3/2017	Cardinal	6354 Reynolds Street	Savannah	GA	
Sioux Valley Memorial Hospital	AS1050231	8/3/2017	Cardinal	350 SIOUX VALLEY DRIVE	Cherokee	IA	150
Onwego Hospital	AO3476327	8/4/2017	Cardinal	110 West Sixth Street	Onwego	NY	225
Tideland Health - Georgetown County Memorial Hospital	AG0339039	8/4/2017	Cardinal	606 Black River Road	Georgetown	SC	2350
Tideland Health - Waccamaw Community Hospital	BW7998593	8/4/2017	Cardinal	4070 Highway 27 Bypass	Myrtle Beach	SC	
Adventist Health Tehachap Valley	BT4801039	8/7/2017	Cardinal	315 West E Street	Tehachap	CA	17950
Glendale Adventist Medical Center	AG0044917	8/7/2017	Cardinal	1589 WILSON TER	GLENDALE	CA	
White Memorial Medical Center	BW1408093	8/7/2017	Cardinal	1720 E CESAR E CHAVEZ AVE	LOS ANGELES	CA	
Castle Medical Center	AC1080869	8/7/2017	Cardinal	840 ULUKAHIA ST	KAILUA	HI	
Sioux Valley Hospital & Health Svcs	AS0074738	8/7/2017	Cardinal	2975 SYCAMORE DR	SIMI VALLEY	CA	
San Joaquin Community Hospital	AS5341587	8/7/2017	Cardinal	2625 CHESTER AVE	BAKERSFIELD	CA	
St Helena Hospital	AS1822752	8/7/2017	Cardinal	10 WOODLAND RD	SAINT HELENA	CA	
Panther River Hospital	BS3984526	8/7/2017	Cardinal	3974 PENTY RD	PARADISE	CA	
Adventist Medical Center	AP2398426	8/7/2017	Cardinal	19322 SE Market Street	Portland	OR	
Adventist Medical Center	AI1339363	8/7/2017	Cardinal	116 Mall Drive	Hanford	CA	
Ukiah Valley Medical Center	AJ0873319	8/7/2017	Cardinal	275 HOSPITAL DR	UKIAH	CA	
Lodi Memorial Hospital	AL2031209	8/7/2017	Cardinal	975 S FAIRMONT AVE	LODI	CA	
Sonoma Regional Medical Center	AS1380687	8/7/2017	Cardinal	1800 GREENLEY RD	SOMMERS	CA	
Tillamook Regional Medical Center	AT1629344	8/7/2017	Cardinal	1800 3RD ST	TILLAMOOK	OR	
Adventist Medical Center - Selma	FA2929399	8/7/2017	Cardinal	1141 ROSE AVE	SELMA	CA	
Adventist Medical Center	FA2922383	8/7/2017	Cardinal	372 W Cypress Ave	Reedley	CA	
Frank R Howard Memorial Hospital Pharma	FT5615503	8/7/2017	Cardinal	1 MARICELA DR	WILLYS	CA	
St Helena Hospital Cherokee	AS0228416	8/7/2017	Cardinal	15630 15TH AVE	CLEARLAKE	CA	
Reelin Hospital	AS9540766	8/7/2017	Cardinal	746 S Webster Ave	Green Bay	WI	10125
Bellevue Health Oconto Hospital and Clinic	FD8830080	8/7/2017	Cardinal	820 Arboret Ave	Oconto	WI	
Bryn Hospital		8/7/2017	Cardinal		Buffalo	NY	850
Hospital for Special Surgery		8/7/2017	Cardinal		New York	NY	150
Loughlin Memorial Hospital	AL0404119	8/7/2017	Cardinal	1420 Tusculum Boulevard	Greenville	TN	540
Wiley Greedy Medical Center		8/7/2017	Cardinal		Ames	IA	150
Ohio State University Wexner Medical Center	7K0AAAL00	8/7/2017	Cardinal	410 W 10th Ave, RM 327	Columbus	OH	2575
Ohio State University Hospital James	7K0AAALFC	8/7/2017	Cardinal	410 W 10th Ave, RM 327	Columbus	OH	
Ohio State University Stefanie Spielman	HJH070873	8/7/2017	Cardinal	1145 OLENTANGY RIVER RD RM 4200	Columbus	OH	
University Hospital East IP Pham	430910FF0	8/7/2017	Cardinal	181 Taylor Avenue	Columbus	OH	
University Hospital East JCNSS	430910FF3	8/7/2017	Cardinal	181 Taylor Avenue, RM 1491	Columbus	OH	
University Hospital East	430910FF4	8/7/2017	Cardinal	181 Taylor Avenue, RM 1491	Columbus	OH	
Ohio State University Medical Center	JGVRP400	8/7/2017	Cardinal	2050 Kenny Road, RM 3103	Columbus	OH	
OSUMC Jameson Creek Sports Med	CGVKRFR2	8/7/2017	Cardinal	2835 Fred Taylor Drive, RM 1051	Columbus	OH	
James Cancer Hospital Pharms SVCS	BAKRNK11	8/7/2017	Cardinal	300 W. 10th Ave, RM 253	Columbus	OH	
Ohio State University Medical Center	BAKRNK12	8/7/2017	Cardinal	300 W. 10th Ave	Columbus	OH	
Ohio State University Medical Center	COVYKHM00	8/7/2017	Cardinal	3551 Ridge Mill Drive	Hilland	OH	
Ohio State University Medical Center	396FT8Y2	8/7/2017	Cardinal	460 W 10th Ave, BMD120	Columbus	OH	
Ohio State University Medical Center	396FT8Y1	8/7/2017	Cardinal	460 W 10th Ave, BMD120	Columbus	OH	
Ohio State University	BSM8BY0R	8/7/2017	Cardinal	915 Olentangy River Road	Columbus	OH	
OSU James Cancer Hospital Outpatient	396FT8Y3	8/7/2017	Cardinal	950 W 10th Ave, Room 1032	Columbus	OH	
OSU Cancer Int Est Infusion	BS4WY6H7	8/7/2017	Cardinal	543 Taylor Ave, Suite 812B	Columbus	OH	
Ohio State University Outpatient Pharmacy	JDTAP20F1	8/7/2017	Cardinal	609 Ackerman Road, Suite C-101A	Columbus	OH	
Rome Memorial Hospital	AR4248880	8/7/2017	Cardinal	1569 North James Street	Rome	NY	25
San Antonio Hospital	AS0278134	8/7/2017	Cardinal	999 San Bernardino Road	Upland	CA	2875
Wilson Memorial Hospital	AW2869393	8/7/2017	Cardinal	915 W. Michigan St	Wadsworth	OH	750
Columbia Memorial Hospital	AC1473101	8/8/2017	Cardinal	71 Prospect Ave	Hudson	NY	1375
Flushing Hospital Medical Center	AF749578	8/8/2017	Cardinal	4500 Parsons Boulevard	Flushing	NY	850
Hancock Regional Hospital	AH2660927	8/8/2017	Cardinal	301 N STATE STREET	Greenfield	IN	2300
Riverside Hospital	AN0613025	8/8/2017	Cardinal	500 J Child Morris Blvd	Newport News	VA	1633
Riverside Doctors Hospital of Williamsburg	FR1819347	8/8/2017	Cardinal	2500 Commonwealth Ave	Williamsburg	VA	
Riverside Tappanannock Hospital	BR1822184	8/8/2017	Cardinal	618 Hospital Road	Tappanannock	VA	
Riverside Walter Reed Hospital	AW7631028	8/8/2017	Cardinal	7519 Hospital Drive, Room 12	Gloucester	VA	
Riverside Hospital Inc	FR4202141	8/8/2017	Cardinal	500 J Child Morris Blvd	Newport News	VA	
Riverside Doctors Hospital of Williamsburg	FR4202141	8/8/2017	Cardinal	500 J Child Morris Blvd	Newport News	VA	
Riverside Shore Memorial Hospital	AN2352936	8/8/2017	Cardinal	3507 Hospital Ave	Nassauvador	VA	
Riverside Behavioral Health Center	AP1409993	8/8/2017	Cardinal	2244 Executive Drive	Hampden	VA	
Rush Memorial Hospital	AR2647386	8/8/2017	Cardinal	3306 N Main	Rushville	IN	175
Sanford, Broadway (FKA MeritCare Hospital)	AS3752584	8/8/2017	Cardinal	801 BROADWAY NORTH	Fargo	ND	20350
Sacred Heart Medical Center	AB8622720	8/8/2017	Cardinal	1300 Anne St SW	Bethel	ME	
Sanford Blumark Medical Center	AP3795272	8/8/2017	Cardinal	300 North 7th Street	Blumark	ND	
Sanford Medical Center Fargo	FS6823406	8/8/2017	Cardinal	5225 23rd Ave	South Fargo	ND	
Sanford USD Medical Center	AS108893	8/8/2017	Cardinal	1205 West 38th Street	Sioux Falls	SD	
Sanford Worthington Medical Center	AW3654096	8/8/2017	Cardinal	1018 6th Ave	Worthington	MIN	

**EXHIBIT 3  
ELIGIBLE CUSTOMERS**

Community Memorial Hospital	AC4869642	8/8/2017	Cardinal	8th & Jackson	Burke	SD	
Douglas County Memorial Hospital	AD4069666	8/8/2017	Cardinal	789 8th Street	Armen	SD	
Jamestown Regional Medical Center	AJ8789584	8/8/2017	Cardinal	2422 20th St SW	Jamestown	ND	
Kittson Memorial Healthcare Center	AK3610801	8/8/2017	Cardinal	1630 S Birch Ave	Hallack	MN	
Mahnomen Health Center	AM3459123	8/8/2017	Cardinal	424 W. Jefferson Ave.	Mahnomen	MN	
Nekeetzie County Healthcare Systems	AN43791490	8/8/2017	Cardinal	516 North Main Street	Watford City	ND	
Norway County Memorial Hospital	AN3619125	8/8/2017	Cardinal	2642 Ridger Ave	Slayton	MN	
Northwood Deaconess Health Center	AN3790311	8/8/2017	Cardinal	4-N. Park Street, PO Box 190	Northwood	ND	
Orange City Area Health System	AO4011263	8/8/2017	Cardinal	1600 Lincoln Circle SE	Orange City	IA	
Ortonville Area Health Services	AO3642154	8/8/2017	Cardinal	450 Eastview Ave	Ortonville	MN	
Parham Health (FKA Parham Memorial Hospital and Home)	AM3647609	8/8/2017	Cardinal	3000 Cooney St West	Parham	MN	
Platteau Memorial Hospital & Health Services	AP4075239	8/8/2017	Cardinal	335 N. Washington St.	Viborg	SD	
Riverview Health	AK4487086	8/8/2017	Cardinal	829 S Minnesota St	Crookston	MN	
Sanford Aberdeen Medical Center	FS2940383	8/8/2017	Cardinal	1805 3rd Ave SE	Aberdeen	SD	
Sanford Bagley Medical Center (FKA Clearwater Health Ser	FS4547688	8/8/2017	Cardinal	293 4th St NW	Bagley	MN	
Sanford Canby Medical Center	BS0591176	8/8/2017	Cardinal	112 St. Olaf Ave. South	Canby	MN	
Sanford Canton-Arwood Medical Center	FS1204077	8/8/2017	Cardinal	440 N. Hawatha Dr.	Canton	SD	
Sanford Chamberlain Medical Center	AM1569297	8/8/2017	Cardinal	300 South Byron Blvd.	Chamberlain	SD	
Sanford Clear Lake Medical Center	BD1209445	8/8/2017	Cardinal	705 3rd Ave. South	Clear Lake	SD	
Sanford Hillsboro Medical Center (FKA Hillsboro Medical C	FS3692545	8/8/2017	Cardinal	12 Third Street SE	Hillsboro	ND	
Sanford Jackson Medical Center	AS8838496	8/8/2017	Cardinal	1430 N Highway	Jackson	MN	
Sanford Luverne Medical Center	AC3620166	8/8/2017	Cardinal	1609 North 10th	Luverne	MN	
Sanford Mayville Medical (FKA MeritCare Mayville Union H	HA12791250	8/8/2017	Cardinal	42 5th Ave SE	Mayville	ND	
Sanford Rock Rapids Medical Center	AM4012289	8/8/2017	Cardinal	301 S Greene Street	Rock Rapids	IA	
Sanford Sheldon Medical Center	BS0902581	8/8/2017	Cardinal	518 N 7th Ave	Sheldon	IA	
Sanford Health Thief River Falls Southeast Campus	FW0611976	8/8/2017	Cardinal	1720 Hwy 39 South	Thief River Falls	MN	
Sanford Health Thief River Falls Downtown Campus	FW0661577	8/8/2017	Cardinal	120 Labree Ave. South	Thief River Falls	MN	
Sanford Thief River Falls Medical Center	FS0872562	8/8/2017	Cardinal	3001 Sanford Pkwy	Thief River Falls	MN	
Sanford Tracy Medical Center	AT3625374	8/8/2017	Cardinal	245 4th Street East	Tracy	MN	
Sanford Vermillion Medical Center	BS0885085	8/8/2017	Cardinal	1305 West 18th St	Steele Falls	SD	
Sanford Webster Medical Center	AL2578842	8/8/2017	Cardinal	1401 West 5th Street	Webster	SD	
Sanford Westbrook Medical Center	AD1640661	8/8/2017	Cardinal	920 Ball Avenue	Westbrook	MN	
Sanford Wheaton Medical Center (FKA Wheaton Commu	FS2658409	8/8/2017	Cardinal	401 12th St. N	Wheaton	MN	
Sidney Health Center	AC1238206	8/8/2017	Cardinal	216 14th Avenue SW	Sidney	MT	
West Holt Memorial Hospital	AW5311234N	8/8/2017	Cardinal	406 W. Hardy Street	Alderson	ND	
Windom Area Hospital	AW46825826	8/8/2017	Cardinal	2150 Hospital Drive	Windom	MN	
Winner Regional Healthcare Center	AB4054628	8/8/2017	Cardinal	745 East 8th Street	Winner	SD	
Sanford Fargo Medical Center Warehouse (FKA MeritCare	AS3795264	8/8/2017	Cardinal	503 4th Street	Fargo	ND	
Sanford Health Detroit Lakes Clinic - Same Day Surgery Ce	SL8802826	8/8/2017	Cardinal	1245 Washington Ave	Detroit Lakes	MN	
Sanford South University Surgical Center	SM7670373	8/8/2017	Cardinal	1720 University Drive	South Fargo	ND	
Sanford North (FKA MeritCare Health System)	AS2785284	8/8/2017	Cardinal	720 4th Street N	Fargo	ND	
Sanford Orthopedic Surgery Center (FKA Institute for Spec	BC7080431	8/8/2017	Cardinal	2301 25th Street S, Suite H	Fargo	ND	
Sanford Same Day Surgery Center (FKA MeritCare Same D	BS181843	8/8/2017	Cardinal	321 8th Ave N	Fargo	ND	
Community Hospital	BC9451989	8/8/2017	Cardinal	1251 G Road	Grand Junction	CO	425
University of California San Diego Health System	AG3211444	8/8/2017	Cardinal	200 West Arbor Drive	San Diego	CA	9675
University of California San Diego La Jolla		8/8/2017	Cardinal	3500 La Jolla Village	La Jolla	CA	
Stoebis Medical Center	BT3649350	8/8/2017	Cardinal	8800 Campus Point Drive	La Jolla	CA	
Wylie Plains Hospital	AW1876789	8/8/2017	Cardinal	41 E. Post Road	Wylie Plains	AR	4425
Florida Health Sciences Center-Tampa General	WP5891882	8/10/2017	Cardinal	1 Tampa General Circle	Tampa	FL	25035
Florida Health Sciences Center - Brandon Healthplex	FB469988	8/10/2017	Cardinal	10740 Palm River Road	Brandon	FL	
Rush Medical Center	BP4926107	8/10/2017	Cardinal	1725 W. Harrison St, Suite 418	Chicago	IL	50
Wellpoint Health System - Houston Valley Medical Center	BH4946010	8/10/2017	Cardinal	130 W. Main St	Kingsport	TN	3025
Bristol Regional Medical Center	BW4365599	8/10/2017	Cardinal	17 Medical Park Blvd	Bristol	TN	
Lanesboro Park Hospital	BL5208853	8/10/2017	Cardinal	1980 Holton Ave E	Big Stone Gap	VA	
Mountain View Regional Medical Center	FW0403630	8/10/2017	Cardinal	310 1st Street NE	Norton	VA	
Hawkins County Memorial Hospital	HW6813807	8/10/2017	Cardinal	481 Locust St	Rogersville	TN	
Hancock County Hospital	HW9158557	8/10/2017	Cardinal	1518 Main Street	Greenville	TN	
Pushmataha Hospital	AC3352983	8/11/2017	Cardinal	510 E Main Street	Antlers	OK	25
Sharp Memorial Hospital	AS0888856	8/11/2017	Cardinal	7901 Frost Street	San Diego	CA	8811
Sharp Grossmont Hospital	BS2537352	8/11/2017	Cardinal	5555 Grossmont Center Drive	La Mesa	CA	
Sharp Chula Vista Medical Center	BS4005016	8/11/2017	Cardinal	751 Medical Center Drive	Chula Vista	CA	
Sharp Mesa Vista Hospital	BS620102	8/11/2017	Cardinal	7850 Vista Hill Ave	San Diego	CA	
Sharp May Birth Hospital for Women and Newborns	BS8896722	8/11/2017	Cardinal	3008 Health Center Drive	San Diego	CA	
Sharp Coronado Hospital and Healthcare Center	AC0272233	8/11/2017	Cardinal	250 Prospect Place	Coronado	CA	
Sharp Centralized Pharmacy Services	BS4657350	8/11/2017	Cardinal	3558 Ruffin Road, Suite 101	San Diego	CA	
Goshen Hospital	AG8931968	8/14/2017	Cardinal	200 High Park Ave	Goshen	IN	1425
PeaceHealth Southwest Medical Center	BS4803741	8/14/2017	Cardinal	426 NE MOTHER JOSEPH PL	Vancouver	WA	4300
Atlantic Health System - Morristown Medical Center	AM1548478	8/14/2017	Cardinal	100 Madison Avenue	Morristown	NJ	15025
Atlantic Health System - Overlook Medical Center	AO2622167	8/14/2017	Cardinal	99 Beaverkill Avenue	Summit	NJ	4825
Atlantic Health System - Newton Memorial Hospital	EN1797554	8/14/2017	Cardinal	175 High Street	Newton	NJ	800
Atlantic Health System - Chatham Memorial Hospital	AC1844898	8/14/2017	Cardinal	97 West Parkway	Thompson Plains	NJ	1650
Atlantic Health System - Hackensack Medical Center	AN5403287	8/14/2017	Cardinal	651 Willow Grove Street	Hackensack	NJ	275
Bronx-Lebanon Hospital Center		8/15/2017	Cardinal	1690 Grand Concourse	Bronx	NY	225
Rutland Regional Medical Center	AR1124985	8/15/2017	Cardinal	169 Allen St.	Rutland	VT	1325
St. Clare Regional Medical Center	AS3003934	8/15/2017	Cardinal	222 Medical Circle	Morristown	NY	1950
NYCHHC/Baltimore	AB8492215	8/15/2017	Cardinal	462 Park Avenue	New York	NY	10000
NYCHHC/Coney Island	AC186557	8/15/2017	Cardinal	2601 Ocean Parkway	Brooklyn	NY	4325
NYCHHC/Kings County	AK148854	8/15/2017	Cardinal	451 Clarkson Avenue	Brooklyn	NY	3925
NYCHHC/Raritan	AN590152	8/15/2017	Cardinal	509 Lenox Avenue	New York	NY	5325
NYCHHC/North Central Bronx	AN7166906	8/15/2017	Cardinal	1424 Knisvick Avenue	Bronx	NY	425
NYCHHC/Bronx	AL4978841	8/15/2017	Cardinal	224 East 149th St	Bronx	NY	2900
NYCHHC/Bronx	AA598655	8/15/2017	Cardinal	1480 Pelham Parkway South	Bronx	NY	1675
NYCHHC/Queens	AV3502465	8/15/2017	Cardinal	82-88 164th Street	Jamaica	NY	1750
NYCHHC/Elmhurst	AC3594978	8/15/2017	Cardinal	79-01 Broadway	Elmhurst	NY	3525
NYCHHC/Metropolitan	AC3394618	8/15/2017	Cardinal	1901 First Avenue	New York	NY	2925
NYCHHC/Woodhull	AW9275880	8/15/2017	Cardinal	760 Broadway	Brooklyn	NY	2300
Foxden Saint Lukes Health Care	BF680559	8/16/2017	Cardinal	1656 Champion Ave	Utica	NY	85

**EXHIBIT 3  
FLIABLE CUSTOMERS**

Saint Elizabeth Medical Center	A50599202	8/16/2017	Cardinal	2209 Genesee St	Utica	NY	50
Florian Saint Lukes Health-Care	B6602561	8/16/2017	Cardinal	2675 Sunset Ave	Utica	NY	28
Four Winds of Saratoga	BF1351054	8/16/2017	Cardinal	30 Crescent Ave	Stratton Springs	NY	460
Northwestern Regional Medical Center	AN9416010	8/16/2017	Cardinal	503 Keyser Ave	Wachtovia	LA	2810
CHRISTUS Lake Area Medical Center		8/16/2017	Cardinal	4200 Nelson road	lake charlie	LA	50
St. James Mercy Hospital	A50564978	8/16/2017	Cardinal	421 Comsted St.	Hotell	NY	950
Anna Logans Hospital	A41835913	8/16/2017	Cardinal	25 Highland Ave	Newburyport	MA	1825
Renown Regional Medical Center	B60215637	8/16/2017	Cardinal	1159 1401 St.	Reno	NV	6575
Renown South Meadows Medical Center	BW6160484	8/16/2017	Cardinal	10111 Boyle R Blvd	Reno	NV	1650
YAVAPI REGIONAL MEDICAL CENTER	AY1654486	8/16/2017	Cardinal	1009 WILLOW CREEK RD	Prescott	AZ	450
YAVAPI REGIONAL CTR EAST	BY9557808	8/16/2017	Cardinal	7700 E FLORENTINE RD	Prescott	AZ	250
Jefferson Regional Medical Center	A18219664	8/16/2017	Cardinal	1600 W. 40th Ave	Pine Bluff	AR	2226
Hickory Memorial Hospital	A12828448	8/17/2017	Cardinal	1820 West Main St.	Newark	OH	500
Carson Tahoe Regional Medical Center	B4579513	8/17/2017	Cardinal	1600 Medical Parkway	Carson City	NV	2300
PROVIDENCE HEALTH & SERVICES	BP4217217	8/18/2017	Cardinal	3725 PROV. PT DR SE	ISSAQUAH	WA	73275
PROVIDENCE HEALTH & SERVICES	FP41807087	8/18/2017	Cardinal	103 NW 12TH AVE SUITE 307	BATTLE GROUND	WA	
PROVIDENCE HEALTH & SERVICES	FP0322075	8/18/2017	Cardinal	12600 BOTHELL EVERETT HWY #140	EVERETT	WA	
SWEDISH MEDICAL CENTER	FS1666549	8/18/2017	Cardinal	751 N BLAKELY DR	ISSAQUAH	WA	
SWEDISH MEDICAL CENTER	FS1756351	8/18/2017	Cardinal	500 17TH AVE	SEATTLE	WA	
SWEDISH MEDICAL	FS1769943	8/18/2017	Cardinal	37604 SE FURN ST STE 202	SNOQUALMIE	WA	
SWEDISH MEDICAL	FS1800992	8/18/2017	Cardinal	21600 HWY 99 BC BLDG STE 290	EDMONDS	WA	
SWEDISH MED CTR CHERRY HILL	FS1799931	8/18/2017	Cardinal	6007 24TH ST SW STE B	MOUNTLAKE TERRACE	WA	
SWEDISH MEDICAL	FS1799955	8/18/2017	Cardinal	570 BOWEN AVE N	SEATTLE	WA	
PROVIDENCE HEALTH & SERVICES	FW18118234	8/18/2017	Cardinal	955 SE BASLINE ST	HILLSBORO	OR	
PROVIDENCE HEALTH & SERVICES	FP4915205	8/18/2017	Cardinal	9335 SW BARNES RD EAST PAV 213	PORTLAND	OR	
PROVIDENCE HEALTH & SERVICES	FP3110260	8/18/2017	Cardinal	18510 NW CORNELL RD SUITE 102	HILLSBORO	OR	
PROVIDENCE HEALTH & SERVICES	FP5289334	8/18/2017	Cardinal	50355A US-93	POLSON	MT	
PROVIDENCE HEALTH & SERVICES	AV6661436	8/18/2017	Cardinal	911 MEALS AVE PO BOX 650	VALDEZ	AK	
YAKIMA VALLEY MEMORIAL HOSPITAL	AY1002055	8/18/2017	Cardinal	2813 TETON DR	YAKIMA	WA	
PROVIDENCE HEALTH & SERVICES	BPS338391	8/18/2017	Cardinal	1915 E REZANOZ DR (BOX)	KODIAK	AK	
PROVIDENCE HEALTH & SERVICES	AY1447538	8/18/2017	Cardinal	1501 BAY AVE	OCEAN PARK	WA	
PROVIDENCE HEALTH & SERVICES	BP2857575	8/18/2017	Cardinal	914 S SCHEUBER RD	CENTRALIA	WA	
PROVIDENCE HEALTH & SERVICES	BMA254524	8/18/2017	Cardinal	3300 PROVIDENCE DR SUITE #101	ANCHORAGE	AK	
PROVIDENCE HEALTH & SERVICES	BH1205836	8/18/2017	Cardinal	26357 MCBRYAN PARKWAY	SANTA CLARITA	CA	
PROVIDENCE HEALTH & SERVICES	BH1606045	8/18/2017	Cardinal	982 E COLUMBIA AVE	COVILLE	WA	
SWEDISH MEDICAL CENTER	FS1854482	8/18/2017	Cardinal	1231 MADISON ST STE 444	SEATTLE	WA	
PROVIDENCE HEALTH & SERVICES	FW0542022	8/18/2017	Cardinal	2840 S GRAND BLVD	SPOKANE	WA	
PROVIDENCE HEALTH & SERVICES	BH715661	8/18/2017	Cardinal	130 ENTERPRISE DRIVE	PITTSBURGH	PA	
PROVIDENCE HEALTH	FW179677	8/18/2017	Cardinal	4112 HARBOUR POINTE BLVD SW	NUKLETO	WA	
PROVIDENCE HEALTH & SERVICES	FW045725	8/18/2017	Cardinal	7350 W. DESCHUTES AVE	KENNEWICK	WA	
SWEDISH MEDICAL	FS1799804	8/18/2017	Cardinal	4580 KLANAGNE DRIVE SE STE 400	ISSAQUAH	WA	
PACMED CTR BEACON HILL CLIN	FP1860556	8/18/2017	Cardinal	1301 MADISON ST SUITE 400	SEATTLE	WA	
PROVIDENCE HEALTH & SERVICES	FP1203559	8/18/2017	Cardinal	502 N ORANGE ST	MISSOULA	MT	
PROVIDENCE HEALTH & SERVICES	FP1787538	8/18/2017	Cardinal	381 SOUTH BUENA VISTA ST #110	BURBANK	CA	
SWEDISH MEDICAL	FS1799854	8/18/2017	Cardinal	5530 TALLMAN AVE NW STE 301	SEATTLE	WA	
SWEDISH MEDICAL	FS1799820	8/18/2017	Cardinal	18100 NE UNION HILL RD STE 200	REDMOND	WA	
SWEDISH MEDICAL	FS1799866	8/18/2017	Cardinal	22707 SE 29TH ST	SEASIDE	WA	
PROVIDENCE HEALTH & SERVICES	FP5509347	8/18/2017	Cardinal	2703 NONTARIO ST, STE 120&130	BURBANK	CA	
SWEDISH MED CTR CHERRY HILL	FS1799880	8/18/2017	Cardinal	1600 EAST JEFFERSON ST STE 510	SEATTLE	WA	
PROVIDENCE HEALTH & SERVICES	BP4414584	8/18/2017	Cardinal	920 COMPASSION CIRCLE	ANCHORAGE	AK	
PROVIDENCE HEALTH & SERVICES	BP6000399	8/18/2017	Cardinal	3393 S 320TH PL STE 1000	TUKWILA	WA	
PROVIDENCE HEALTH & SERVICES	BS2581002	8/18/2017	Cardinal	6410 NE HALSEY STE 400	PORTLAND	OR	
PROVIDENCE HEALTH & SERVICES	BS2492425	8/18/2017	Cardinal	8 13TH AVENUE EAST	POLSON	MT	
PROVIDENCE HEALTH & SERVICES	BS1126908	8/18/2017	Cardinal	16357 MCBRYAN PARKWAY	SANTA CLARITA	CA	
PROVIDENCE HEALTH & SERVICES	BS1193592	8/18/2017	Cardinal	11233 N. SEPULVEDA BLVD.	MISSION HILLS	CA	
YAKIMA VALLEY MEMORIAL HOSPITAL	BH1957596	8/18/2017	Cardinal	806 N 38TH AVE	YAKIMA	WA	
PROVIDENCE HEALTH & SERVICES	BS1622188	8/18/2017	Cardinal	3333 S 120TH PL STE 100A	TUKWILA	WA	
PROVIDENCE HEALTH & SERVICES	BP6566199	8/18/2017	Cardinal	3393 ENSIGN ROAD NE	OLYMPIA	WA	
PROVIDENCE HEALTH & SERVICES	BS1292252	8/18/2017	Cardinal	1009 PROVIDENCE DR SUITE 110	NEWBERG	OR	
PROVIDENCE HEALTH & SERVICES	BS4145480	8/18/2017	Cardinal	5 211 COWLEY ST	SPOKANE	WA	
PROVIDENCE HEALTH & SERVICES	BO9413952	8/18/2017	Cardinal	5330 NE GUSMAN ST, SUITE 200	PORTLAND	OR	
PROVIDENCE HEALTH & SERVICES	BS1789952	8/18/2017	Cardinal	6410 NE HALSEY STE 400	PORTLAND	OR	
PROVIDENCE HEALTH & SERVICES	FW0598003	8/18/2017	Cardinal	125 SOUTH COLUMBIA RIVER HWY	SAINT HELENS	OR	
PROVIDENCE HEALTH & SERVICES	BS6989935	8/18/2017	Cardinal	6-13TH AVE E PO BOX 1010	POLSON	MT	
SWEDISH MEDICAL CENTER	FS1799818	8/18/2017	Cardinal	945 HILDEBRAND LANE NE	BAINBRIDGE ISLAND	WA	
PROVIDENCE HEALTH & SERVICES	AS6899806	8/18/2017	Cardinal	401 W POPLAR ST PO BOX 1477	WALLA WALLA	WA	
OLYMPIC MEMORIAL HOSPITAL	AO1606075	8/18/2017	Cardinal	939 CAROLINE ST	PORT ANGELES	WA	
PROVIDENCE HEALTH & SERVICES	AS1297723	8/18/2017	Cardinal	505 WEST BROADWAY BOX 4387	MISSOULA	MT	
PROVIDENCE HEALTH & SERVICES	AP1806281	8/18/2017	Cardinal	916 PACIFIC AVE/EAC CAMPUS	EVERETT	WA	
PROVIDENCE HEALTH & SERVICES	AP1601536	8/18/2017	Cardinal	1111 CRATER LAKE AVE	MEDFORD	OR	
PROVIDENCE HEALTH & SERVICES	BO1004555	8/18/2017	Cardinal	21211 MADRONA AVE, STE 100-A	TORRANCE	CA	
PROVIDENCE HEALTH & SERVICES	AP1672935	8/18/2017	Cardinal	4895 NE OCEAN ST	PORTLAND	OR	
PROVIDENCE HEALTH & SERVICES	AK7069087	8/18/2017	Cardinal	23808 MCBRYAN PARKWAY	VALENCIA	CA	
PROVIDENCE HEALTH & SERVICES	AS0891338	8/18/2017	Cardinal	101 W EIGHTH AVE PO BOX 2555	SPOKANE	WA	
PROVIDENCE HEALTH & SERVICES	BH1881631	8/18/2017	Cardinal	11335 N. SEPULVEDA BLVD.	MISSION HILLS	CA	
PROVIDENCE HEALTH & SERVICES	BO5974022	8/18/2017	Cardinal	11335 N. SEPULVEDA BLVD.	MISSION HILLS	CA	
PROVIDENCE HEALTH & SERVICES	PO1120690	8/18/2017	Cardinal	61460 HARGERTY CIRCLE SOUTH	CANTON	MI	
PROVIDENCE HEALTH & SERVICES	BP6348875	8/18/2017	Cardinal	810 12TH STREET	HOOD RIVER	OR	
SWEDISH MEDICAL CENTER	BS4358535	8/18/2017	Cardinal	1221 MADISON ST 3RD FLOOR	SEATTLE	WA	
SWEDISH MEDICAL CENTER	FS1799825	8/18/2017	Cardinal	22522 HIGHWAY 99	EDMONDS	WA	
PROVIDENCE HEALTH & SERVICES	AP1180082	8/18/2017	Cardinal	3200 PROVIDENCE DR	ANCHORAGE	AK	
PROVIDENCE HEALTH & SERVICES	FC6681107	8/18/2017	Cardinal	10390 JOHN W ELLIOTT DR	FRISCO	TX	
PROVIDENCE HEALTH & SERVICES	FP1077884	8/18/2017	Cardinal	18311 CLARK STREET	TARZANA	CA	
SWEDISH MEDICAL	FS0800405	8/18/2017	Cardinal	8400 CALI AVE SW STE 200/300	SEATTLE	WA	
SWEDISH MED CTR CHERRY HILL	FS1799676	8/18/2017	Cardinal	21911 76TH AVE WEST STE 110	EDMONDS	WA	
PROVIDENCE HEALTH & SERVICES	BP1699795	8/18/2017	Cardinal	5050 NE HOYT ST SUITE 315	PORTLAND	OR	
PROVIDENCE HEALTH	BA1898282	8/18/2017	Cardinal	13800 BOTHELL EVERETT STE 160	EVERETT	WA	

**EXHIBIT 3  
ELIGIBLE CUSTOMERS**

PROVIDENCE HEALTH & SERVICES	PP295824	8/18/2017	Cardinal	1500 DIVISION STREET	OREGON CITY	OR
PROVIDENCE HEALTH & SERVICES	060949135	8/18/2017	Cardinal	1100 GOETHALS DR FLR 1 STE B	RICHLAND	WA
PROVIDENCE HEALTH & SERVICES	AA3620669	8/18/2017	Cardinal	1001 PROVIDENCE DRIVE	NEWBERG	OR
PROVIDENCE HEALTH & SERVICES	FW1705279	8/18/2017	Cardinal	500 E 5TH AVE STE 202	SPOKANE	WA
PROVIDENCE HEALTH & SERVICES	AC4602521	8/18/2017	Cardinal	10 KRUGER RD BOX 768	FLAINS	MT
PROVIDENCE HEALTH & SERVICES	BL9662265	8/18/2017	Cardinal	1300 W 7TH STREET	SAN PEDRO	CA
PROVIDENCE HEALTH & SERVICES	BC6792320	8/18/2017	Cardinal	11823 N SEPULVEDA BLVD	MISSION HILLS	CA
PROVIDENCE HEALTH & SERVICES	FW0693850	8/18/2017	Cardinal	11983 HAWTHORNE BLVD	HAWTHORNE	CA
PROVIDENCE HEALTH & SERVICES	AB8052257	8/18/2017	Cardinal	1321 NE 99TH AVE SUITE 100	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	BP0601333	8/18/2017	Cardinal	10150 SE 32ND AVE	MILWAUKIE	OR
PROVIDENCE HEALTH	AF3260546	8/18/2017	Cardinal	1890 BICKFORD AVE STE 211	SNOHOMISH	WA
PROVIDENCE HEALTH & SERVICES	AK1005089	8/18/2017	Cardinal	888 SWIFT BLVD	RICHLAND	WA
PROVIDENCE HEALTH & SERVICES	FW1144552	8/18/2017	Cardinal	6215 SE TUALATIN VALLEY HWY	HILLSBORO	OR
PROVIDENCE HEALTH & SERVICES	BP9949396	8/18/2017	Cardinal	1321 COLBY AVE	EVERETT	WA
PROVIDENCE HEALTH & SERVICES	BP3199005	8/18/2017	Cardinal	2837 PALMER ST SUITE B	MISSOULA	MT
PROVIDENCE HEALTH & SERVICES	FW0542008	8/18/2017	Cardinal	2702 N ARGONNE RD	MILLWOOD	WA
PROVIDENCE HEALTH & SERVICES	AS1016000	8/18/2017	Cardinal	413 1314 ROAD NE	OLYMPIA	WA
PROVIDENCE HEALTH & SERVICES	AP1431511	8/18/2017	Cardinal	5050 NE HOYT ST STE 142	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	FP9153258	8/18/2017	Cardinal	1921 COLBY AVE C-WING 1ST FL	EVERETT	WA
PROVIDENCE HEALTH & SERVICES	AN9585650	8/18/2017	Cardinal	8155 SW BARNES RD	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	AC9793418	8/18/2017	Cardinal	401 WEST PENNSYLVANIA	ANACONDA	MT
SWEDISH MEDICAL	FSS789791	8/18/2017	Cardinal	731 NE BLAKELY DR 5TH FLOOR	ISSAQUAH	WA
PROVIDENCE HEALTH & SERVICES	AL8258952	8/18/2017	Cardinal	6TH & ADAMS STS	MORTON	WA
PROVIDENCE HEALTH & SERVICES	AL0276122	8/18/2017	Cardinal	DUMMIE ACCOUNT ONLY	TORRANCE	CA
PROVIDENCE HEALTH & SERVICES	AF0949465	8/18/2017	Cardinal	5639 NORTH LUGGERWOOD ST	SPOKANE	WA
SWEDISH MEDICAL	FSS799777	8/18/2017	Cardinal	7210 ROOSEVELT WAY NE	SEATTLE	WA
PROVIDENCE HEALTH & SERVICES	BS9712727	8/18/2017	Cardinal	1598 EAST MICANDREWS SUITE 400	MEDFORD	OR
PROVIDENCE HEALTH & SERVICES	BI0716587	8/18/2017	Cardinal	10536 JOHN W ELLIOTT DR STEIN	FRESNO	TX
PROVIDENCE HEALTH & SERVICES	BG465212	8/18/2017	Cardinal	18540 NW LANDAW RD STE 102	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	BI1739137	8/18/2017	Cardinal	870 S FRONT ST	CENTRAL POINT	OR
SWEDISH MED CTR CHERRY HILL	FSS799708	8/18/2017	Cardinal	800 5TH AVE STE P100	SEATTLE	WA
PROVIDENCE HEALTH & SERVICES	AW1632859	8/18/2017	Cardinal	1500 DIVISION STREET	OREGON CITY	OR
PROVIDENCE HEALTH	BC5834670	8/18/2017	Cardinal	13200 BOTHELL-EVERETT STE 180	EVERETT	WA
PROVIDENCE HEALTH & SERVICES	BP2840388	8/18/2017	Cardinal	11398 N SEPULVEDA BLVD	MISSION HILLS	CA
PROVIDENCE HEALTH & SERVICES	AS1096086	8/18/2017	Cardinal	725 S WAHMANA ROAD	SEASIDE	OR
PROVIDENCE HEALTH & SERVICES	AP1001851	8/18/2017	Cardinal	101 BOLSTAD ST	LONG BEACH	WA
PROVIDENCE HEALTH & SERVICES	AP1002334	8/18/2017	Cardinal	101 1ST AVE S PO BOX 8	ILWACO	WA
SWEDISH MEDICAL CENTER	F80763407	8/18/2017	Cardinal	9800 TALLMAN AVE NW	SEATTLE	WA
SWEDISH MEDICAL CENTER	F80767420	8/18/2017	Cardinal	747 BROADWAY AVE	SEATTLE	WA
SWEDISH MEDICAL CENTER	FS2212394	8/18/2017	Cardinal	21801 76TH AVE W	EDMUNDS	WA
PROVIDENCE HEALTH & SERVICES	FW1745479	8/18/2017	Cardinal	1200 W FAIRMVIEW ST	COLEAK	WA
SWEDISH MEDICAL CENTER	FS2211237	8/18/2017	Cardinal	7320 216TH SW SUITE 100	EDMUNDS	WA
PROVIDENCE HEALTH & SERVICES	FP0904867	8/18/2017	Cardinal	520 N PROSPECT AVE STE 103	REDONDO BEACH	CA
PACMED CTR BEACON HILL CLN	FP6604860	8/18/2017	Cardinal	1905 24TH ST SE STE 301	BOTHELL	WA
SWEDISH MEDICAL CENTER	FS2358580	8/18/2017	Cardinal	18100 NE UNION HILL ROAD	REDMOND	WA
SWEDISH MEDICAL CENTER	FS2665102	8/18/2017	Cardinal	751 NE BLAKELY DR	ISSAQUAH	WA
PROVIDENCE HEALTH & SERVICES	FP6831936	8/18/2017	Cardinal	413 1314 ROAD NE	OLYMPIA	WA
PROVIDENCE HEALTH & SERVICES	FW9710131	8/18/2017	Cardinal	37850 LOWERBOONES FERRY RD	LAKE OSWEGO	OR
PROVIDENCE HEALTH & SERVICES	FW7596194	8/18/2017	Cardinal	9750 WOODMAN AVE	ARLITA	CA
SWEDISH MEDICAL CENTER	FW4722307	8/18/2017	Cardinal	7707 SE 27TH ST	MARICER ISLAND	WA
SWEDISH MEDICAL CENTER	FW5515496	8/18/2017	Cardinal	12405 NE 85TH ST	KIRKLAND	WA
PROVIDENCE HEALTH & SERVICES	FW7226514	8/18/2017	Cardinal	12335 NE GLISAN STREET	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	FW7142766	8/18/2017	Cardinal	14609 SW MURRAY SCHOOLS DR 281	BEAVERTON	OR
PROVIDENCE HEALTH & SERVICES	FW7198698	8/18/2017	Cardinal	7240 SW BEAVERTON HILLSDALE HWY	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	BT1088560	8/18/2017	Cardinal	201 EAST PARK	ANACONDA	MT
PROVIDENCE HEALTH & SERVICES	FS463767	8/18/2017	Cardinal	6848 NE HALSEY ST STE A	PORTLAND	OR
SWEDISH MEDICAL CENTER	FW7805267	8/18/2017	Cardinal	6600 E LAKE SAMMAMISH PKWY SE	ISSAQUAH	WA
PROVIDENCE HEALTH & SERVICES	FW6602756	8/18/2017	Cardinal	2105 E WELLESLEY AVE	SPOKANE	WA
PROVIDENCE HEALTH & SERVICES	FW6602758	8/18/2017	Cardinal	21 E EMPIRE AVE	SPOKANE	WA
PROVIDENCE HEALTH & SERVICES	FW7860693	8/18/2017	Cardinal	7030 NE CORNELL RD	HILLSBORO	OR
PROVIDENCE HEALTH & SERVICES	FW9768554	8/18/2017	Cardinal	7905 N DIVISION ST	SPOKANE	WA
SWEDISH MEDICAL CENTER	FW7874691	8/18/2017	Cardinal	16824 HIGHWAY 99	LYNNWOOD	WA
PROVIDENCE HEALTH & SERVICES	FW8050889	8/18/2017	Cardinal	1840 PORTLAND RD	NEWBERG	OR
PROVIDENCE HEALTH & SERVICES	FW8830805	8/18/2017	Cardinal	19975 SW TUALATIN VALLEY HWY	ALOHA	OR
PROVIDENCE HEALTH & SERVICES	BT7258290	8/18/2017	Cardinal	417 SW 11TH AVE SUITE 200	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	FW6628808	8/18/2017	Cardinal	21065 SW PACIFIC HWY	SHERWOOD	OR
PROVIDENCE HEALTH & SERVICES	FW4755027	8/18/2017	Cardinal	1708 W NORTHWEST BLVD	SPOKANE	WA
PROVIDENCE HEALTH & SERVICES	BT6022193	8/18/2017	Cardinal	500 WEST BROADWAY	MISSOULA	MT
PROVIDENCE HEALTH & SERVICES	FW5234454	8/18/2017	Cardinal	1960 NE BURNSIDE RD	GRESHAM	OR
PROVIDENCE HEALTH & SERVICES	FW5234553	8/18/2017	Cardinal	3 NE 32ND AVENUE	PORTLAND	OR
SWEDISH MEDICAL CENTER	FW5221894	8/18/2017	Cardinal	9400 15TH AVENUE NW	SEATTLE	WA
SWEDISH MEDICAL CENTER	FW5551266	8/18/2017	Cardinal	20725 HIGHWAY 99	LYNNWOOD	WA
SWEDISH MEDICAL CENTER	FW5716761	8/18/2017	Cardinal	24855 AMBAUM BLVD SW	BURKH	WA
PROVIDENCE HEALTH & SERVICES	FW5597298	8/18/2017	Cardinal	22999 S WESTERN AVE	TORRANCE	CA
PROVIDENCE HEALTH & SERVICES	FW5993349	8/18/2017	Cardinal	2103 W BURNSIDE	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	FW4702145	8/18/2017	Cardinal	11315 N HWY 395	SPOKANE	WA
PROVIDENCE HEALTH & SERVICES	FW4758047	8/18/2017	Cardinal	4418 NW BETHANY BLVD	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	FW8758061	8/18/2017	Cardinal	13470 NW CORNELL RD	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	BT7211509	8/18/2017	Cardinal	9205 SW BARNES ROAD TMT2890	PORTLAND	OR
PROVIDENCE HEALTH & SERVICES	FW6941149	8/18/2017	Cardinal	17010 CHATSWORTH STREET	GRANADA HILLS	CA
PROVIDENCE HEALTH & SERVICES	FW5950595	8/18/2017	Cardinal	515 ADAMT WOOD ST	THE DALLES	OR
SWEDISH MEDICAL CENTER	FW5560072	8/18/2017	Cardinal	275 BANNER AVE S	RENTON	WA
PROVIDENCE HEALTH & SERVICES	FW3602744	8/18/2017	Cardinal	12312 E SPRAGUE AVE	SPOKANE VALLEY	WA
PROVIDENCE HEALTH & SERVICES	FW6792755	8/18/2017	Cardinal	12839 SW PACIFIC HWY	TIGARD	OR
PROVIDENCE HEALTH & SERVICES	FW7688035	8/18/2017	Cardinal	14519 DEVONSHIRE ST	NORTHBRIDGE	CA
PROVIDENCE HEALTH & SERVICES	FW6883500	8/18/2017	Cardinal	14510 E SPRAGUE	SPOKANE VALLEY	WA
PROVIDENCE HEALTH & SERVICES	FW9565170	8/18/2017	Cardinal	115 N 20TH AVE	CORNEILUS	OR

**EXHIBIT J  
ELIGIBLE CUSTOMERS**

PROVIDENCE HEALTH & SERVICES	AP1370816	8/18/2017	Cardinal	75031 RINALDO ST AC00P000300	MISSION HILLS	CA	
SWEDISH MEDICAL CENTER	FW3121938	8/18/2017	Cardinal	1409 21TH AVE	SEATTLE	WA	
PROVIDENCE HEALTH & SERVICES	AS1427815	8/18/2017	Cardinal	1321 NE 99TH AVE SUITE 200	PORTLAND	OR	
PROVIDENCE HEALTH & SERVICES	BL0250085	8/18/2017	Cardinal	13950 RINALDO STREET	PORTER RANCH	CA	
PROVIDENCE HEALTH & SERVICES	AS1608314	8/18/2017	Cardinal	9283 SW BARNES RD	PORTLAND	OR	
PROVIDENCE HEALTH & SERVICES	AS2187406	8/18/2017	Cardinal	500 E WEBSTER AVE BOX 197	CHEWELAH	WA	
PROVIDENCE HEALTH & SERVICES	EP4122852	8/18/2017	Cardinal	19200 N KELSEY ST	MONROE	WA	
PROVIDENCE HEALTH	BL1966350	8/18/2017	Cardinal	2802 154TH ST SW BLS BL	LYNNWOOD	WA	
PROVIDENCE HEALTH & SERVICES	AS2771858	8/18/2017	Cardinal	110 CENTER ST	MOLAILA	OR	
PROVIDENCE HEALTH & SERVICES	FP3239142	8/18/2017	Cardinal	10807 E MONTGOMERY DR SUITE 8	SPOKANE VALLEY	WA	
PROVIDENCE HEALTH & SERVICES	FP4317764	8/18/2017	Cardinal	301 W POPLAR ST	WALLA WALLA	WA	
PROVIDENCE HEALTH & SERVICES	AS5862622	4/29/65	Cardinal	501 S BUENA VISTA AS21PF029625	SURBANK	CA	
OLYMPIC MEMORIAL HOSPITAL	FO0137631	4/29/65	Cardinal	854 NORTH 5TH AVE	BRULIN	WA	
SWEDISH MEDICAL CENTER	FS5990852	4/29/65	Cardinal	1200 112TH AVE NE B100	BELLEVUE	WA	
PROVIDENCE HEALTH & SERVICES	FP4317776	4/29/65	Cardinal	380 CHASE AVENUE	WALLA WALLA	WA	
PROVIDENCE HEALTH & SERVICES	BA5576966	4/29/65	Cardinal	4101 TORRANCE BLVD	TORRANCE	CA	
Covenant Children's Hospital	BM5170130	4/29/65	Cardinal	4015 22nd Pl	Lubbock	TX	
Covenant Hospital - Levelland	BM1598608	4/29/65	Cardinal	1900 College Ave	Levelland	TX	
Covenant Hospital - Plainview	BM3528900	4/29/65	Cardinal	2601 Dimmock Rd	Plainview	TX	
Covenant Medical Center	BC6300569	4/29/65	Cardinal	3615 19th St	Lubbock	TX	
Covenant Medical Center - Lakeland	BC6300545	4/29/65	Cardinal	4000 24th St	Lubbock	TX	
Covenant Specialty Hospital	FO0137880	4/29/65	Cardinal	3815 20th St	Lubbock	TX	
Joe Arington Cancer Center	BM5010300	4/29/65	Cardinal	4101 22nd Pl	Lubbock	TX	
Mission Hospital	BM4323882	4/29/65	Cardinal	27700 Medical Center Rd	Mission Viejo	CA	
Mission Hospital, Laguna Beach	FM1791639	4/29/65	Cardinal	31872 Coast Hwy	Laguna Beach	CA	
Petaluma Valley Hospital	BS5195939	4/29/65	Cardinal	400 N McDowell Blvd	Petaluma	CA	
Queens of the Valley Medical Center	AT0206088	4/29/65	Cardinal	1000 Transca St	Napa	CA	
Redwood Memorial Hospital	BR4474642	4/29/65	Cardinal	2300 Renner Dr	Portage	CA	
Santa Rosa Memorial Hospital	AS2138570	4/29/65	Cardinal	1165 Montgomery Dr	Santa Rosa	CA	
St. Hill Wellness Center Newport Center		4/29/65	Cardinal	600 Newport Center Dr Ste 150	Newport Beach	CA	
SMHDM Apple Valley Cardiology		4/29/65	Cardinal	18031 US Hwy 1	Apple Valley	CA	
SMHDM Apple Valley Spine		4/29/65	Cardinal	18031 US Highway 18 Ste B	Apple Valley	CA	
St. Joseph Health St. Mary High Desert Group -		4/29/65	Cardinal	12550 Mesquite Rd Ste 100	Victorville	CA	
St. Joseph Health St. Mary High Desert Group -		4/29/65	Cardinal	12550 Mesquite Rd Ste 100	Victorville	CA	
St. Joseph Heritage Healthcare		4/29/65	Cardinal	2501 E Chapman Ave Ste 307	Orange	CA	
St. Joseph Heritage Healthcare		4/29/65	Cardinal	505 S Main St	Orange	CA	
St. Joseph Hospital General Campus		4/29/65	Cardinal	2208 Elmwood	Eureka	CA	
St. Joseph Hospital, Eureka	AS1321481	4/29/65	Cardinal	2700 D Collier St	Eureka	CA	
St. Joseph Hospital, Orange	AS1451070	4/29/65	Cardinal	1100 West Stewart Dr	Orange	CA	
St. Jude Medical Center	AS0306628	4/29/65	Cardinal	301 E Valencia Mesa Dr	Fullerton	CA	
St. Mary Medical Center	AS1049558	4/29/65	Cardinal	28300 Hwy 38	Apple Valley	CA	
Covenant Home Infection / Covenant Health Sys	BC6300571	4/29/65	Cardinal	4002 22nd Pl	Lubbock	TX	
Humboldt Home Infection Program	BA7630525	4/29/65	Cardinal	2412 Harrison Ave	Eureka	CA	
Santa Rosa Memorial Hospital -	FS4421935	4/29/65	Cardinal	3555 Round Barn Cir # 400	Santa Rosa	CA	
St. Joseph Health System Home Care Serv		4/29/65	Cardinal	1845 W Orangewood Ave Ste 100	Orange	CA	
Day Kimball Hospital	AD2632049	4/29/65	Cardinal	320 Pomfret St	Putnam	CT	1100
Presence Resurrection Medical Center	AR6890139	4/29/65	Cardinal	7435 W. Talcott Venue	Chicago	IL	1675
Presence Holy Family	BR7665447	4/29/65	Cardinal	100 N River Road	Des Plaines	IL	128
Presence St. Francis Hospital	AS3085972	4/29/65	Cardinal	858 Ridge Avenue	Evanston	IL	150
Presence St. Joseph Hospital	BS7424346	4/29/65	Cardinal	2800 N. Lake Shore Dr	Chicago	IL	100
Presence St. Mary & Elizabeth	AM3876414	4/29/65	Cardinal	2233 W. Division	Chicago	IL	1450
Presence St. Mary DBA St. Elizabeth	BS8618287	4/29/65	Cardinal	1491 N. Claremont	Chicago	IL	620
Presence St. Joseph Medical Center	BP5708538	4/29/65	Cardinal	77 N. Apple St	Elgin	IL	450
Presence Mercy Medical Center	BP6602264	4/29/65	Cardinal	1325 N. Highland Avenue	Aurora	IL	1050
Presence St. Joseph Medical Center	BP9700390	4/29/65	Cardinal	333 N. Madison	Joliet	IL	2900
Presence St. Mary's Hospital	BP6692288	4/29/65	Cardinal	600 W. Court St	Kenosha	IL	200
Presence Covenant Medical Center	BP6692276	4/29/65	Cardinal	1400 W. Park St	Urbana	IL	125
Presence United Samaritans Medical Center	BP6692240	4/29/65	Cardinal	612 N. Logan Ave	Danville	IL	100
University of Vermont Medical Center	BF4238900	4/29/65	Cardinal	111 Colchester Avenue	Burlington	VT	4050
Central Vermont Medical Center, Inc	AQ1121286	4/29/65	Cardinal	180 Fisher Road	Berlin	VT	875
Champlain Valley Physicians Hospital	FR4426747	4/29/65	Cardinal	75 Beekman Street	Plattsburgh	NY	3900
Alice Hyde Medical Center	AH3620269	4/29/65	Cardinal	133 Park Street	Malone	NY	725
Potter Medical Center	AP1128057	4/29/65	Cardinal	115 Porter Dr.	Middlebury	VT	0
Elizabethtown Community Hospital	AE1115864	4/29/65	Cardinal	75 Park St.	Elizabethtown	NY	60
Champlain Valley Physicians Hospital	AQ1115868	4/29/65	Cardinal	75 Beekman Street	Plattsburgh	NY	3900
Brookdale Hospital Medical Center	AB0787603	4/29/65	Cardinal	One Brookdale Plaza	Brooklyn	NY	2125
NY Presbyterian Cornell	AN1865243	4/29/65	Cardinal	525 East 68th St. NY, NY 10021	New York	NY	1050
NY Presbyterian Columbia	AT1859644	4/29/65	Cardinal	627 W 185th St. NY, NY 10032	New York	NY	1975
NY Presbyterian Allen	BA1455894	4/29/65	Cardinal	627 W 185th St. NY, NY 10032	New York	NY	180
NY Presbyterian Lower Manhattan	FN4215768	4/29/65	Cardinal	625 East 68th St. NY, NY 10021	New York	NY	425
NY Presbyterian of Queens	BT3671131	4/29/65	Cardinal	65-45 Main St. NY, NY 11355	New York	NY	3800
NY Presbyterian Lawrence Hospital	AL1856896	4/29/65	Cardinal	55 Palmer Avenue, Bronxville, NY 10708	Bronxville	NY	2975
NY Presbyterian Methodist	AM3433240	4/29/65	Cardinal	508 8th St. Brooklyn, NY 11215	Brooklyn	NY	2350
NY Presbyterian Hudson Valley Hospital Center	AP1865483	4/29/65	Cardinal	1980 Crepond Road, Cortland Manor, NY	Cortland Manor	NY	1525
NY Presbyterian Allen Hospital	BA1455864	4/29/65	Cardinal	5141 Broadway, NY, NY 10034	New York	NY	850
NY Presbyterian Lower Manhattan	FN4215768	4/29/65	Cardinal	170 William Street, NY, NY 10038	New York	NY	425
Mercy Hospital - Fairfield	AM6090932	4/29/65	Cardinal	300 Mack Road	Fairfield	OH	6325
The Jewish Hospital	FT1958482	4/29/65	Cardinal	4777 E Galbraith Rd	Cincinnati	OH	4125
Mercy Health - West Hospital	FM3506670	4/29/65	Cardinal	3300 Mercy Health Biv	Cincinnati	OH	4000
Mercy Hospital - Anderson	AQ2634144	4/29/65	Cardinal	1500 State Rd	Cincinnati	OH	2400
St. Elizabeth Health Center	AS2638834	4/29/65	Cardinal	1044 Belmont Ave	Youngstown	OH	2075
Mercy Regional Medical Center	BC5476484	4/29/65	Cardinal	3700 Kolbe Road	Lorain	OH	1225
Mercy Hospital - Clermont	AC6888844	4/29/65	Cardinal	3000 Hospital Dr	Salvia	OH	850
St. Joseph Health Center	BS4791047	4/29/65	Cardinal	967 Eastland Ave	Warren	OH	875
St. Elizabeth Boardman HQ	BS7065192	4/29/65	Cardinal	8401 Market St	Boardman	OH	500
Mercy Allen Hospital	AA2878588	4/29/65	Cardinal	200 West Lorain	Chester	OH	180
Marcom & Wallace Memorial	AE8007211	4/29/65	Cardinal	60 Mercy Ct	Javina	NY	25

**EXHIBIT 3  
ELIGIBLE CUSTOMERS**

St Rita's Medical Center	AS7471852	42868	Cardinal	730 W Market	Lima	OH	3860
Mercy St Vincent Med Center	AS2881145	42868	Cardinal	2213 Cherry St	Toledo	OH	2323
Springfield Regional Med Center	AT2827838	42968	Cardinal	100 Medical Center Dr	Springfield	OH	1824
Mercy Health - Tiffin	FM4602901	42866	Cardinal	45 St Lawrence Dr	Tiffin	OH	700
Mercy St Anne	BR5682778	42968	Cardinal	3404 W Sylvania Ave	Toledo	OH	576
Mercy St Charles	AS2888911	42868	Cardinal	2800 Navarre Ave	Oregon	OH	426
Mercy Hospital - Defiance	BM7415195	42968	Cardinal	1404 E 2nd St	Defiance	OH	225
Mercy Memorial Hospital	AS2881147	42968	Cardinal	904 Seoto St	Urbana	OH	128
Institute For Orthopaedic	BW8011523	42868	Cardinal	801 Medical Dr	Lima	OH	
Mercy Emergency Services	FM4228171	42968	Cardinal	12621 Edsel Junction	Perryburg	OH	
Hutchinson Health Hospital	FH0730754	42968	Cardinal	1095 Highway 15 S.	Hutchinson	MN	760
Beth Israel Deaconess Hospital/Milton	AM1926881	42968	Cardinal	199 Reedsdale Road	Milton	MA	1000
Capitol Medical Center	BG5392673	42868	Cardinal	3800 Capitol Mall Dr SW	Olympia	WA	28
St. Clara Hospital	AS1885868	42870	Cardinal	1000 Bower Hill Road	Pittsburgh	PA	5776
Community Health Center of Branch County	BC0406086	42870	Cardinal	274 E. Chicago Street	Coldwater	MI	800
Adventist Health System	AF0202147	42870	Cardinal	900 Hope Way	Allamonte Springs	FL	14230
Florida Hospital	AF0202147	42870	Cardinal	601 E. Rollins St	Orlando	FL	
Florida Hospital Altamonte	AF5412765	42870	Cardinal	601 E. Altamonte Dr.	Altamonte Springs	FL	
Florida Hospital Apopka	AF8710772	42870	Cardinal	201 N. Park Ave	Apopka	FL	
Florida Hospital Celebration Health	BA5671107	42870	Cardinal	400 Celebration Plaza	Celebration	FL	
Florida Hospital East Orlando	BA2617622	42870	Cardinal	7727 Lake Underhill Rd.	Orlando	FL	
Florida Hospital Kissimmee	BA3648760	42870	Cardinal	2450 N. Grange Blossom Tr	Kissimmee	FL	
Winter Park Memorial Hospital	BA8894283	42870	Cardinal	200 N. Lakemont Ave.	Winter Park	FL	
Florida Hospital Central Fl Pharmacy	FA4413693	42870	Cardinal	901 E. Rollins St	Orlando	FL	
Florida Hospital Wesleyman	BS3573204	42870	Cardinal	1000 Waleman Way	Tavares	FL	
Florida Hospital Deland	BA4210564	42870	Cardinal	701 West Plymouth Ave	Deland	FL	
Florida Hospital Fish Memorial	BS5647029	42870	Cardinal	1855 Saxon Blvd.	Orange City	FL	
Florida Hospital Flagler	BM1982285	42870	Cardinal	80 Memorial Medical Parkway	Palm Coast	FL	
Florida Hospital Memorial Medical Center	AC1187473	42870	Cardinal	304 Memorial Medical Pky.	Daytona Beach	FL	
PHMMC Coarseside	BM6836138	42870	Cardinal	284 S. Astoria Ave.	Ormond Beach	FL	
Florida Hospital New Smyrna Beach	FS6801958	42870	Cardinal	401 Palmetto Ave.	New Smyrna Beach	FL	
Florida Hospital Heartland Medical Center, Sebring	BA5558892	42870	Cardinal	4280 Sug 'N' Lake Blvd.	Sebring	FL	
Florida Hospital Heartland Medical Ctr Lake Placid	AW1418549	42870	Cardinal	1216 US Highway 27, N.	Lake Placid	FL	
Florida Hospital Weaucha	BW3551937	42870	Cardinal	533 W. Carlton St.	Weaucha	FL	
Florida Hospital Tampa	AU0202169	42870	Cardinal	3100 E. Fletcher Ave.	Tampa	FL	
Florida Hospital Dunthorwood	BU8878781	42870	Cardinal	1175 Dale Mabry Hwy.	Tampa	FL	
PH North Pinellas	AT0186887	42870	Cardinal	1395 S. Pinellas Ave.	Tarpon Springs	FL	
Florida Hospital Wesley Chapel	FP3285235	42870	Cardinal	2506 Bruce B. Downs Boulevard	Wesley Chapel	FL	
Florida Hospital Centertown LTC	FUI178684	42870	Cardinal	8441 Health Center Dr	Land O Lakes	FL	
Florida Hospital Zephyrhills	AE1220838	42870	Cardinal	7030 Galt Blvd.	Zephyrhills	FL	
Shawnee Mission Medical Center	AS4418081	42870	Cardinal	9100 West 74th St.	Shawnee Mission	KS	
Chippewa Valley Hospital	AC9804112	42870	Cardinal	PO Box 224	Durand	WI	
Gordon Hospital	AG9023778	42870	Cardinal	PO Box 12958	Chilhowe	GA	
Manchester Memorial Hospital	AM4541681	42870	Cardinal	210 Maple Langdon Dr.	Manchester	KY	
Park Ridge Health	AM3198708	42870	Cardinal	100 Hospital Drive	Hendersonville	NC	
Murray Medical	FM5281474	42870	Cardinal	707 Old Cotten Elway Rd	Chesworth	GA	
Takoma Regional Hospital	ATO404886	42870	Cardinal	401 Takoma Ave.	Greenville	TN	
Central Texas Medical Center	AH3214311	42870	Cardinal	1301 Wonder World Dr.	San Marcos	TX	
Metrolplex Hospital	AM7484287	42870	Cardinal	2201 S. Clear Creek Rd.	Killeen	TX	
Rollins-Brook Community Hospital	BR2985440	42870	Cardinal	608 N. Key Ave.	Lampasas	TX	
Texas Health Huguley Hospital Fort Worth South	FH3341334	42870	Cardinal	PO Box 6397	Ft Worth	TX	
Washington Adventist Hospital	AW2544307	42870	Cardinal	7800 Carroll Ave	Takoma Park	MD	
Shady Grove Hospital	AS8878889	42870	Cardinal	8501 Medical Center Dr.	Rockville	MD	
Bolton Health System	AB3281444	42870	Cardinal	1889 W. Hart Rd.	Bolton	VA	178
University of Colorado Hospital	BIB615001	42871	Cardinal	12505 E 46th Ave. 80045	Aurora	CO	11300
Bolton Health System	AB3281444	42871	Cardinal	1889 W. Hart Rd.	Bolton	VA	178
Sanford Worthington Medical Center	AW3654086	42871	Cardinal	1018 9th Ave.	Worthington	MN	175
Sanford Bemidji Medical Center	AB3522710	42871	Cardinal	1330 Anne St. NW	Bemidji	MN	1128
Sanford Kittson Memorial Healthcare Center	AK3629801	42871	Cardinal	1010 S. Birch Ave.	Hallock	MN	25
Sanford Mahanomen Health Center	FM3499123	42871	Cardinal	414 W. Jefferson Ave.	Mahanomen	MN	
Sanford Murray County Memorial Hospital	AM3619129	42871	Cardinal	2042 Juniper Ave.	Stacyton	MN	25
Sanford Otterdale Area Health Services	AO8642154	42871	Cardinal	480 Eastfold Ave.	Otterdale	MN	75
Sanford Perham Health	AM3647806	42871	Cardinal	1000 Conny St. W	Perham	MN	50
Sanford Riverview Health	AK4467068	42871	Cardinal	323 S. Minnesota St.	Crookston	MN	300
Sanford Bagley Medical Center	FS4247884	42871	Cardinal	203 4th St. N/W	Bagley	MN	75
Sanford Canby Medical Center	BS0959176	42871	Cardinal	112 St. Olaf South	Canby	MN	100
Sanford Jackson Medical Center	AL3638496	42871	Cardinal	1430 N. Highway	Jackson	MN	400
Sanford Luverne Medical Center	AC3628188	42871	Cardinal	1680 North Knies	Luverne	MN	75
Sanford Thief River Falls Southeast Campus	FM0611676	42871	Cardinal	1720 Hwy 59 South	Thief River Falls	MN	
Sanford Thief River Falls Downtown Campus	FM0611677	42871	Cardinal	120 Lankie Ave. South	Thief River Falls	MN	
Sanford Thief River Falls Medical Center	FS4972952	42871	Cardinal	3001 Sanford Pkwy.	Thief River Falls	MN	526
Sanford Tracy Medical Center	AT3526374	42871	Cardinal	249 Fifth St. East	Tracy	MN	
Sanford Westbrook Medical Center	AD3640061	42871	Cardinal	620 Bell Ave.	Westbrook	MN	
Sanford Wheaton Medical Center	FS2858408	42871	Cardinal	401 12th St.	Wheaton	MN	25
Sanford Wisdom Area Hospital	AW5826826	42871	Cardinal	2180 Hospital Dr.	Wisdom	MN	50
Sanford Health Detroit Lakes	BL4802836	42871	Cardinal	1245 Washington Ave.	Detroit Lakes	MN	135
Shirleyfaw Memorial	ASD461084	42871	Cardinal	301 E. 18th St.	Armistead	AL	1350
UCSF Medical Center at Parnassus Heights	BU7018825	42871	Cardinal	505 Parnassus Ave	San Francisco	CA	150
UCSF Beniof Children's Hospital - Oakland	AC2023480	42871	Cardinal	747 52nd St	Oakland	CA	1300
Langley Porter Psychiatric Hospital	AV3315404	42871	Cardinal	401 Parnassus Ave	San Francisco	CA	50
UCSF Medical Center at Mount Zion	BU7018814	42871	Cardinal	1800 Divisadero St	San Francisco	CA	50
UCSF Beniof Children's Hospital - Parnassus	BU7018828	42871	Cardinal	505 Parnassus Ave	San Francisco	CA	150
UCSF Medical Center at Mission Bay	FU2144727	42871	Cardinal	1825 4th St	San Francisco	CA	7100
Albany Medical Center	AA1115548	42871	Cardinal	43 New Scotland Avenue	Albany	NY	9100
SSM Healthcare Corporation		42871	Cardinal	12812 Olive Blvd. Suite 500	St. Louis	MO	30300
Deen Medical Center		42871	Cardinal	1808 W Bellvue Hwy	Madison	WI	
Deen St Marys Surgery & Care Center	AH1895385	42871	Cardinal	700 S Park St	Madison	WI	

**EXHIBIT 3  
ELIGIBLE CUSTOMERS**

St. Mary's Deo Joint Venture Surgery Center, Davis	FH2484287	42971	Cardinal	1025 Regent St.	Madison	WI	
SSM Health Cardinal Glennon Children's Hospital	BC5180257	42971	Cardinal	1465 S Grand Blvd	Saint Louis	MO	
SSM Health DePaul Hospital - St. Louis	BD4407070	42971	Cardinal	12803 de Paul Dr	Bridgeton	MO	
SSM Health Good Samaritan Hospital - Mt. Vernon	BG4793168	42971	Cardinal	1 Good Samaritan Way	Mount Vernon	IL	
SSM Health Saint Louis University Hospital	FSS514927	42971	Cardinal	2635 Vista Ave	Saint Louis	MO	
SSM Health St. Mary's Hospital - Aurora	AA3988721	42971	Cardinal	520 E Monroe St	Mexico	MO	
SSM Health St. Clare Hospital - Fenton	FS1293391	42971	Cardinal	1015 Baylee Ave	Fenton	MO	
SSM Health St. Joseph Hospital - Lake St. Louis	BS3514987	42971	Cardinal	100 Medical Plz	Lake Saint Louis	MO	
SSM Health St. Joseph Hospital - St. Charles	BS3644447	42971	Cardinal	300 1st Capitol Dr	Saint Charles	MO	
SSM Health St. Joseph Hospital - Wentzville	FS0689065	42971	Cardinal	500 Medical Dr	Wentzville	MO	
SSM Health St. Mary's Hospital - Centralia	AS3758880	42971	Cardinal	400 N Pleasant Ave	Centralia	IL	
SSM Health St. Mary's Hospital - Jefferson City	BS3653505	42971	Cardinal	100 Saint Marys Plz	Jefferson City	MO	
SSM Health St. Mary's Hospital - St. Louis	BS3515829	42971	Cardinal	8420 Clayton Rd	Saint Louis	MO	
St. Joseph Health Center		42971	Cardinal	300 1st Capitol Dr	Saint Charles	MO	
SSM St. Anthony Hospital	AS2144791	42971	Cardinal	1000 N Lee Ave	Oklahoma City	OK	
SSM Bone and Joint Hospital at St. Anthony	FB1199885	42971	Cardinal	1111 N Dewey Ave	Oklahoma City	OK	
SSM St. Anthony Shawnee Hospital	FS3382900	42971	Cardinal	1102 W Main Arthur St	Shawnee	OK	
St. Anthony Behavioral Medicine at St. Michael's Hospital	BS3108824	42971	Cardinal	2129 SW 59th St	Oklahoma City	OK	
SSM St. Clare Hospital and Health Services	BS3630090	42971	Cardinal	707 14th St	Baraboo	WI	
SSM St. Francis Hospital	AS3954322	42971	Cardinal	2015 S Main St	Maryville	MO	
SSM St. Mary's Hospital	BS3610679	42971	Cardinal	700 S Park St	Madison	WI	
SSM St. Mary's Janesville	FS2868945	42971	Cardinal	3400 E Racine St	Janesville	WI	
St. Anthony Healthplex Mustang	FS3840575	42971	Cardinal	281 S Stark Rd	Mustang	OK	
Clay County Hospital	AC3561672	42971	Cardinal	541 Spacey-Bunk Dr	Hora	IL	
Hennipon Memorial Hospital District	AH5762118	42971	Cardinal	611 S Marshall Ave	Mc Leansboro	IL	
North Cypress Emergency Room - Fairdale	FN5412654	42971	Cardinal	15105 Mason Rd Ste E	Cypress	TX	
Ozarka Medical Center Employee	BO8063819	42971	Cardinal	18 Hwy Cir	West Plains	MO	
Ozarka Medical Center Pharmacy Ozarka Medical Center		42971	Cardinal	1100 N Kentucky Ave	West Plains	MO	
Beaver County Memorial Hospital	AB6784091	42971	Cardinal	212 E 8th St	Beaver	OK	
Bethwell Regional Health Center	AJ3949316	42971	Cardinal	601 E 14th St	Sedalia	MO	
Columbus Community Hospital, Inc.	AC3974917	42971	Cardinal	1515 Park Ave	Columbus	WI	
Craig General Hospital	AC8001467	42971	Cardinal	735 N Foreman St	Vinita	OK	
Stoughton Hospital	AS4068562	42971	Cardinal	900 Ridge St	Stoughton	WI	
Doctors Hospital at Renaissance	BD8479239	42971	Cardinal	5501 S McColl Rd	Edinburg	TX	
Edgerton Hospital and Health Services, Inc.	AN9929504	42971	Cardinal	11101 N Sherman Rd	Edgerton	WI	
Epic Medical Center	FE2960206	42971	Cardinal	1 Hospital Dr	Eufaula	OK	
Fairview Regional Medical Center	BF0803006	42971	Cardinal	623 E State Rd	Fairview	OK	
Fulton County Hospital	AF3216757	42971	Cardinal	679 N Main St	Salon	AR	
Hennipal Regional Healthcare System, Inc.	BH6056835	42971	Cardinal	8000 Hospital Dr	Hennipal	MO	
Harper County Community Hospital	AH3553137	42971	Cardinal	1003 Hwy 84 N	Buffalo	OK	
Madison Medical Center	AM8831602	42971	Cardinal	811 W Main St	Fredericktown	MO	
Monroe Clinic Hospital	AS3919670	42971	Cardinal	515 22nd Ave	Monroe	WI	
Newman Memorial Hospital	AN2166092	42971	Cardinal	906 S Main St	Shalluck	OK	
North Cypress Medical Center	FN6094803	42971	Cardinal	21214 Northwest Fwy	Cypress	TX	
North Texas Medical Center	AG2246292	42971	Cardinal	1900 Hospital Blvd	Georgetown	TX	
Okeene Municipal Hospital	AR3353284	42971	Cardinal	207 E F St	Okeene	OK	
Ozarka Medical Center	AW3776551	42971	Cardinal	1100 N Kentucky Ave	West Plains	MO	
Pauls Valley General Hospital	AP2160771	42971	Cardinal	100 Valley Dr	Pauls Valley	OK	
Phelps County Regional Medical Center	AP9713314	42971	Cardinal	1000 W 10th St	Rola	MO	
Pike County Memorial Hospital	AP8972858	42971	Cardinal	2305 Georgia St	Louisiana	MO	
Pineknobville Community Hospital	AP3848275	42971	Cardinal	101 N Walnut St	Pineknobville	IL	
Purcell Municipal Hospital	AP2175138	42971	Cardinal	1800 N Green Ave	Purcell	OK	
Pushmataha Hospital Clinic	AC3352983	42971	Cardinal	510 E Main St	Ankers	OK	
Roger Mills Memorial Hospital	AR2157318	42971	Cardinal	501 S L L Mades Ave	Clayborne	OK	
Upland Hills Health	AM5888734	42971	Cardinal	900 Compassion Way	Dodgenville	WI	
Share Medical Center-Alva Hospital Authority	AS2173780	42971	Cardinal	800 Share Dr	Alva	OK	
Southwest Health Center	BS9114315	42971	Cardinal	1400 Eastside Rd	Plattville	WI	
St. Louis Regional Psychiatric Stabilization Center	FS2675413	42971	Cardinal	5355 Delmar Blvd	Saint Louis	MO	
The Children's Center Inc. dba The Children's Center	FT4087487	42971	Cardinal	6800 NW 99th Expy	Bethany	OK	
Washington County Hospital	AW3841501	42971	Cardinal	703 S Grand St	Nashville	IL	
Weatherford Regional Hospital Weatherford Hospital	BW0160988	42971	Cardinal	3701 E Main St	Weatherford	OK	
Monroe Clinic Hospital	AS3919870	42971	Cardinal	515 W 22nd St	Monroe	WI	800
Centra Virginia Baptist Hospital	AV2488768	42971	Cardinal	3300 Rivermont Ave	Lynchburg	VA	2625
Lynchburg General Hospital	BL0835328	42971	Cardinal	1801 Tate Springs Rd	Lynchburg	VA	500
Bedford Memorial Hospital	AB0835904	42971	Cardinal	1813 Oakwood St	Bedford	VA	425
Centre Southside Hospital	AS2499198	42971	Cardinal	800 Oak St	Farmville	VA	575
Centra Outpatient Pharmacy	FC3186031	42971	Cardinal	8300 Rivermont Ave	Lynchburg	VA	100
Cullman Regional	ACD459013	42971	Cardinal	1812 AL Hwy 187	Cullman	AL	1650
Decatur County Memorial Hospital	AD2849818	42971	Cardinal	720 N Lincoln St	Greensburg	OH	175



# EXHIBIT 6

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Ninth Session  
March 29, 2017**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:06 a.m. on Wednesday, March 29, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/79th2017](http://www.leg.state.nv.us/App/NELIS/REL/79th2017).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Steve Yeager, Chairman  
Assemblyman James Ohrenschall, Vice Chairman  
Assemblyman Elliot T. Anderson  
Assemblywoman Lesley E. Cohen  
Assemblyman Ozzie Fumo  
Assemblyman Ira Hansen  
Assemblywoman Sandra Jauregui  
Assemblywoman Lisa Krasner  
Assemblywoman Brittney Miller  
Assemblyman Keith Pickard  
Assemblyman Tyrone Thompson  
Assemblywoman Jill Tolles  
Assemblyman Justin Watkins  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator Tick Segerblom, Senate District No. 3  
Assemblywoman Dina Neal, Assembly District No. 7

**STAFF MEMBERS PRESENT:**

Diane C. Thornton, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Erin McHam, Committee Secretary  
Melissa Loomis, Committee Assistant

**OTHERS PRESENT:**

Cynthia Portaro, Private Citizen, Las Vegas, Nevada  
Drew Johnson, Senior Fellow, Taxpayers Protection Alliance  
Scott L. Coffee, Attorney, Clark County Public Defender's Office; and representing  
Nevada Attorneys for Criminal Justice  
Michael Pescetta, Private Citizen, Las Vegas, Nevada  
Charles "Chuck" Durante, Pastor and Chair, Life Peace and Justice Commission of  
the Diocese of Reno; and representing Nevada Catholic Conference  
Maizie Pusich, Chief Deputy Public Defender, Washoe County Public Defender's  
Office  
Nancy E. Hart, President, Nevada Coalition Against the Death Penalty  
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada  
Lynn Chapman, State Vice President, Nevada Eagle Forum  
Christopher J. Hicks, District Attorney, Washoe County District Attorney's Office;  
and representing Nevada District Attorneys Association  
Steven B. Wolfson, District Attorney, Clark County District Attorney's Office  
Christopher J. Lalli, Assistant District Attorney, Clark County District Attorney's  
Office  
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association  
of Nevada  
Terri Bryson, Chapter Co-Leader, Desert of Hope Chapter, National Organization of  
Parents of Murdered Children, Inc.  
Shalonda Hughes, Private Citizen, Las Vegas, Nevada  
Tereza Trejbalova, Private Citizen, Las Vegas, Nevada  
Kenneth Cherry, Sr., Private Citizen, Oakland, California  
Jennifer Otremba, Private Citizen, Las Vegas, Nevada  
Lisa Postorino, Private Citizen, Las Vegas, Nevada  
Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General  
Tehran Boldon, Private Citizen, Las Vegas, Nevada  
Escenthio Marigny, Jr., Student and Climate Justice Organizer, Progressive  
Leadership Alliance of Nevada  
Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada  
Donald G.T. Gallimore, Second Vice President, Reno/Sparks Branch, National  
Association for the Advancement of Colored People  
Sarah Collins, representing Nevada Psychological Association  
Tamika Shauntee, representing Las Vegas Branch, National Association for the  
Advancement of Colored People

**Chairman Yeager:**

[Roll was called and Committee protocol was explained.] We will now formally open the hearing on Assembly Bill 237. Before we get started, I want to give everyone a roadmap on how we are going to move through this meeting today. We have the bill's sponsors at the table. After they are done speaking, I have a list of people who are going to testify in support as part of the presentation. That list contains an additional eight or nine people. We have spoken about making sure the testimony remains brief. At that time, I will take questions from the Committee for the presenters. If you have a question that is directed toward a specific presenter, that would be helpful. If your question is general, I would ask the presenters to designate one person to answer that question. We simply do not have time for everyone to answer every question. I want to make sure we have a complete hearing. I know we could go on for several hours, but we only have about 2.5 hours. After the presenters, I will take supporting testimony, opposition testimony, and neutral if there is anyone.

**Assembly Bill 237: Abolishes capital punishment. (BDR 15-544)**

**Assemblyman James Ohrenschall, Assembly District No. 12:**

It is not difficult to understand why we, as a state, have in the past turned to the death penalty as a punishment for the gravest of crimes. Emotionally, the response to the deep injustice of murder can be difficult to separate from the realities of state-sanctioned execution. In the case of the death penalty in Nevada, the reality is complicated and nuanced, but the truth remains—the death penalty is a costly, intrinsically unfair, and ineffective deterrent. Nevada has executed just a dozen inmates since the ban on the death penalty was lifted in 1976 by the Supreme Court of the United States, despite the fact that the state typically houses 80 inmates on death row. Moreover, 11 of those 12 executions were what are called "volunteers." They were inmates who decided to waive any further appeals and be put to death rather than live out their days in prison. The fate of Nevada's current 80-some death row inmates remains, at best, in question. A person sentenced to death in Nevada is more likely to die of natural causes than to be executed, and more than three-quarters of Nevada's death row inmates have been there for more than a decade, while more than half have been on death row for more than two decades. Despite these facts, Clark County, our state's most populous county, has one of the highest per capita rates of pending death penalty cases in the country—more pending cases than San Diego, Los Angeles, and San Francisco combined.

It is not difficult to see that the number of inmates on death row will only increase in coming years, as Nevada is now unable to acquire the lethal chemical cocktail required to perform executions in this state. In fact, just last September the state issued 247 requests for proposals to supply these drugs required for lethal injection and received no bids from any pharmaceutical companies. In fact, the pharmaceutical company Pfizer stated its intent to refrain from providing the drugs going forward, releasing a statement saying that "Pfizer's mission is to apply science and our global resources to improve health and well-being at every stage of life. We strive to set the standard for quality, safety, and value in the discovery, development, and manufacturing of medicines. Pfizer makes its products to enhance and save the lives of the patients we serve. Consistent with these values, Pfizer strongly objects to the use of its products as lethal injections for capital punishment."

The statement ([Exhibit C](#)) outlines Pfizer's methods for restricting access to the drugs required for lethal injection, effectively ensuring that wholesalers, distributors, and direct purchasers would be allowed to access the drugs only "under the condition that they will not resell these products to correctional institutions for use in lethal injections," and that "Government purchasing entities must certify that products they purchase or otherwise acquire are used only for medically prescribed patient care and not for any penal purposes."

Beyond the logistics of the state's lack of access to the lethal chemicals used for capital punishment, the reality of the astronomical cost for the state must be considered. In 2014, the Nevada Legislature conducted an audit that documented the high financial costs of continuing to offer capital punishment as a penalty in Nevada. According to this audit, the decision to seek the death penalty adds, on average, about \$500,000 to the cost of a case, as opposed to a similar case being prosecuted as life without the possibility of parole. That cost is incurred every time the death penalty is sought, even though fewer than 20 percent of these cases result in a sentence of death. A 2012 University of Nevada, Las Vegas (UNLV) study estimated that the 80 capital cases prosecuted in Clark County would cost \$15 million more than if they had been prosecuted without seeking the death penalty.

Chairman Yeager and members of the Committee, I am intimately aware of the fear that many Nevadans have in response to removing the death penalty as a potential deterrent to would-be criminals. In separating emotion from the facts, we must consider the thoughtful research that, time and again, has failed to show any connection between deterrence of violent crime and the death penalty. In 2012, the National Academy of Sciences, after reviewing 30 years of research, found that there was no proof that the death penalty acted as a deterrent, stating that, "research to date on the effect of capital punishment on homicide is not informative on whether capital punishment decreases, increases, or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations requiring judgments about the effect of the death penalty on homicide. Consequently, claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate should not influence policy judgments about capital punishment." That is from the United States Department of Justice study through its research branch, the National Institute of Justice.

The death penalty's unfairness is also well documented. When Harvard Law School's Fair Punishment Project analyzed the country's 16 counties that imposed the most death sentences from 2007 to 2015, the analysis found that Clark County exhibited the highest levels of prosecutorial misconduct. The Nevada Supreme Court echoed these findings, noting misconduct in 47 percent of Clark County death penalty cases reviewed on appeal since 2006. During the same period, the Project also found that 71 percent of victims in cases that resulted in a death sentence were white, while only 33 percent of murder victims in Las Vegas, the most populous county in our state, were white. In fact, based on exonerations, innocent African Americans are roughly seven times more likely to be

wrongfully convicted of murder than innocent Caucasians. Examinations of reviews of the relationship between race and the death penalty conducted in every major death penalty state found that 96 percent of those reviews showed a pattern of either race-of-victim or race-of-defendant discrimination, or both.

While the emotions often tied to the death sentence are undeniable, the facts remain unavoidable. Beyond the logistical problem of the state's inability to acquire the chemicals required to carry out a death sentence, it is an inescapable truth that the death penalty is unfair, ineffective, and extremely costly to our taxpayers. It is time that the Nevada Legislature recognizes these truths and ends capital punishment in Nevada. Chairman Yeager, with your permission I would like to turn it over to Senator Segerblom. I then have Cynthia Portaro, the mother of Michael Portaro who was murdered in Clark County in 2011. Cynthia would like to testify in support of the bill, as will Drew Johnson from the Taxpayers Protection Alliance.

**Senator Tick Segerblom, Senate District No. 3:**

I will be brief since Assemblyman Ohrenschall said it all. The reality is that it is important to reconsider this issue every few years because it is a moral issue and an expense issue. From a moral ground, I do not see how we can justify capital punishment. If killing is something that our society condemns, how can we as a society turn around and kill people? As long as we are killing people, others will be killing people. Looking at the financial aspect, it has cost us a fortune and it is ineffective. We had to spend \$800,000 to build a death chamber, but we cannot buy the drugs to use the death chamber. It is half a million dollars more every time it is sought. There is no good reason for it other than the psychological factor of wanting to be able to kill somebody. If you realize that you cannot kill anybody at the end of the day, why waste that money, why waste those resources, and why stigmatize our society by saying that as a society we are entitled to kill people. Thank you for raising this issue. I am somebody who believed we would never have legalized marijuana in my lifetime and we did, so hope springs eternal.

**Cynthia Portaro, Private Citizen, Las Vegas, Nevada:**

This is an emotional topic for me. I am not just here based on emotions; I am very educated in this process. I am also engaged in this bill. I am fully aware of the financial aspects of this, but I am more aware of the devastation that we victims of crime live with day in and day out. Tomorrow marks the six-year anniversary of my son being brutally shot and killed for just a car theft. The guy wanted his car. My son was sitting in a parking lot of a restaurant in Las Vegas right across the street from a very popular hospital. He had his door open. My son's killer's name is Brandon J. Hill. You will hear me use his name. He was convicted of the crime. He was sitting on a bench in front of the restaurant waiting for somebody's car that he could hijack. My son was out selling tickets for a concert in which he was performing. He was a songwriter and performed on stage. He met two women in the parking lot of this restaurant to exchange tickets for money. He had called his partner 15 to 20 minutes prior to that and told him that he would be back to the place they were going to practice by 11 or 11:15 a.m. At that time, he got out of the car, exchanged the tickets and

money, got back in his car, and left his door open. Brandon came up, walked for 11 seconds, and shot my son. It is funny, but I cannot remember if it was four times in the head or six times in the head. I did sit through the trial. I heard the details of the crime that Brandon committed.

Michael was a good kid. He was always good to the underdog. He never accepted bullying in school and he protected kids. His best friend in high school was a quadriplegic whom he cared for on a regular basis. He was a teenager. He did his share of mischievous stuff, but he had a heart of gold. If Brandon had walked up to my son and said, "Hey, I want your car," my son would have given him the keys and said, "Here you go, bro."

My 16-year-old daughter was extremely close to my son. I raised five children in Las Vegas and they all went to the same high school—Faith Lutheran Middle School and High School. I raised my kids to be kind to others. If they would come to me with a situation, I would ask them, "How would that affect so-and-so? Think of their feelings. Think of how that is going to relate to them." That may not be important to this bill, but it is important when you have a family that, in the blink of an eye, is devastated. My daughter took it the hardest. As a mother, you want to protect your children. When you do not have that choice, when that choice is taken from you, you are devastated. We finally got my daughter, as angry as she was, into a good counsellor and in a good place. I took her and some friends up to our mountain condo in Brian Head, Utah. She was killed on an ATV five months later. She rolled it. She was a good driver, but there was some conflict with a car that was coming toward her. She tried to veer off of the road. I was the first one on the scene. After losing my son, we had to deal with Chrissy's death. Both I and my husband, who followed most of the postponements, wanted the death penalty. My family wanted revenge. We were angry.

The stress of having to go through what you go through as a family without your two kids is great. My other three kids were not the same for a long time. It takes a long time. What the state offers us victims of crime is a mere \$1,000 toward counselling per family member. You tell me, after six years, how \$1,000 is going to cover the heartache that a parent, sibling, family member, or friend feels at the loss of somebody so wonderful. Sitting through postponement after postponement for over four years, finally we came to trial. In the meantime, my husband was diagnosed in October 2012 with a tumor in his sinus cavity. He passed away Thanksgiving Day, 2014. In six years, half of my family has disappeared. Now, as a mother, I am faced with sitting through the trial of my son. Going into that trial, listening to what I listened to, and hearing what I heard not only broke me to pieces, but I was angry and upset.

My son's killer, Brandon, is black. My son is white, with blue eyes and dark brown hair. In the meantime, Trayvon Martin was killed. Everybody knows about that trial because it made national news and President Obama made a big stink about it. It angered me even more to think that a black kid killed a white kid; what is the difference? Blood is blood; red is red. We are all called to be human beings. Why make such a big deal out of that and not about my son? As I started to think about my faith, I started to think we are called to forgive. We are called to be different if you are a faithful person. During the trial, after the closing

arguments, I sat and thought, What if a mother who is devastated by what happened to her son forgave a black kid for killing him. What would that do to society? Would that not show peace and forgiveness? Maybe he has something that he needs to do for the rest of his life. I went to the prosecution and said, "I want to talk about this death penalty thing. I do not want it." They were not happy. He said, "No, we cannot do that. We need to have this. We need life in prison." That is basically what he was telling me was if we got the death penalty he would for sure be in prison for life. I said, "No, I do not want that on my head. I want to be able to sleep at night knowing that a life was saved, not taken." Too many lives are taken because of poor decisions that people make, and I wanted it to end right there. That was my decision—to say, I do not want the death penalty because it does absolutely nothing. I sat before a panel of attorneys at UNLV, and one of the attorneys said, "We want restitution for the family." I got up and said, "Restitution? Is killing somebody going to bring my son back? No, it is not. Nothing is going to bring my son back, but maybe this kid can make a difference in the world." I chose to say no to the death penalty. It does not do anything for me. Some of these murder victims lose their breadwinners. Their kids are losing their father or mother to crime. Where is restitution? Why can we not use some of that money to help these families get back on their feet? I deal with an organization of homeless teens, Project 150, and there are kids who lose their parents and are living on the street. We help take care of them. Why is our state not using some of these funds to take care of these families? That is where I became educated.

When my daughter died, her volleyball teammate had a dream. The only thing in the dream was that my daughter said to her, "Colossians 3:15." I do not know what your faith is; I only know what mine is. This is not about me telling you how to think. When you read this, the scripture is "Let the peace of Christ rule in your hearts, since as members of one body you are called to peace. And be thankful. Let the message of Christ dwell in you richly as you teach and admonish one another, [forgiving one another] with all wisdom." That scripture has carried me through today. I thank you for allowing me to speak from my heart and from my knowledge. We need to make a change in what is happening in our country with the anger that people have; for killing people for no reason; for the horrific crimes that have taken place that I have personally helped parents deal with. It is something that needs to stop.

**Chairman Yeager:**

Please accept our deepest condolences for your losses, and thank you for being here and sharing with the Committee.

**Drew Johnson, Senior Fellow, Taxpayers Protection Alliance:**

Chairman Yeager, you are my Assemblyman. I live in Summerlin South, Las Vegas. As much as I appreciate you and the other Democrats having me here to speak, I am not here to talk to you. I am here to talk to the Republicans, my fellow conservatives. I am a senior scholar at the Taxpayers Protection Alliance, a group committed to ensuring that government remains small and responsible and that tax dollars are well-spent and used responsibly. I am also the national director of a group called Protect Internet Freedom. I have columns in the *Daily Caller*, *Newsmax*, and *The Hill*. I founded one of America's most successful free



market think tanks and ran it for about ten years. I also worked at the American Enterprise Institute and the National Taxpayers Union. I say all of that to say I am one of you. I am a conservative, and I have committed my entire life to promoting conservative, free-market, limited government values. For years, I supported the death penalty because I thought it was the "conservative" thing to do. I now understand that capital punishment is against all the values I hold dear as a conservative. I believe the death penalty is the single least-conservative thing that we do as a society.

The most important principle for Republicans and conservatives is the idea that government should be limited in size and scope. Most of the Republicans sitting here today ran on the promise that you would reduce the expense and the expanse of government here in Nevada. When you think about it, we do not trust government to hand out driver's licenses. In this state, we do a terrible job at those sorts of basic things with the weight and mounds of bureaucracy. For some reason we trust the government to kill its own citizens. Not surprisingly, a bloated, inefficient, ineffective state government makes mistakes. Nearly 160 Americans have been released from death row due to wrongful convictions. Others have not been so lucky.

More than 4 percent of the people put to death since America reinstituted the death penalty in the mid-1970s were innocent, according to the *Proceedings of the National Academy of Sciences*, a scientific journal. Even if we lived in a dream world where we were sure we never put an innocent person to death, it still gives government power it should not have: to be able to kill its own citizens. Speakers after me will talk about compassion. Certainly, the preceding speaker spoke about compassion. I want to talk about a different kind of compassion—compassion for taxpayers. Let us be honest—Nevada does not have a death penalty. In almost 40 years, we have put one person to death against his will. As Assemblyman Ohrenschall said before I came up, 11 other people chose to be executed because they would have rather died than spend the rest of their lives in jail. That speaks to the fact that life without parole, functionally death in prison, is in many cases a worse punishment than the death penalty. The state really does not have a death penalty now because there is no way to get the lethal injection drugs. It will probably be years, if ever, before we are able to get the drugs again. The state, for all intents and purposes, does not have a death penalty, but it does have a death penalty prosecution racket that adds half a million dollars to the cost of every death penalty case. The defendant is not even sentenced to death in more than 80 percent of those cases. We are paying half a million dollars a case when usually they are not sentenced to death. Even if they are sentenced to death, they are never actually put to death.

Credible studies indicate that the total price tag to sentence a murderer to death by execution generally runs about ten times higher than sentencing the same person to death in prison when you factor in other costs such as appeals and the additional expense of housing somebody on death row. This particularly affects Clark County, which is literally, per capita, the death penalty capital of the United States. In Clark County, taxpayers including me pay tens of millions of dollars to sentence criminals to death by execution, when they end up dying in prison, just like the inmates who are sentenced to life in prison. As a professional

budgetary economist, I find it irresponsible that the Legislature has not already repealed the death penalty. As a Clark County taxpayer, I am sick and tired of being ripped off, having my money spent for absolutely nothing except a silly dog-and-pony show that allows district attorneys and other officials to say they are being tough on crime, when by prosecuting somebody for the death penalty they get the same outcome as if they had prosecuted them for death in prison. Death in prison is what life without parole is here in Nevada. Since 1995, Nevada has had the strongest life-without-parole laws in America. If you are sentenced to life without parole in Nevada, you spend your life in jail. You never set foot outside of the penitentiary. It is the same as being sentenced to death.

Besides being ridiculously expensive, the death penalty fails at the only thing it is supposed to do, which is deter crime. No credible study shows that the death penalty actually deters crime. Studies have shown that states without the death penalty actually have lower crime rates than states with the death penalty. There is an inverse relationship to having the death penalty in your state. The death penalty does not always provide closure to victims' families. There is no peace or closure. It often prolongs their agony because of the appeals process and the fact that they are never actually put to death. In fact, several families of victims killed in the Boston Marathon bombing objected to death penalty prosecution after speaking with other murder victims' families, who warned about the numerous appeals and often emotionally painful legal process associated with the death penalty.

The Nevada Legislature is unique because every other state that is seriously considering repealing the death penalty actually has Republicans sponsoring or cosponsoring the death penalty bill. This includes GOP lawmakers in Missouri, South Dakota, Wyoming, Nebraska, Utah, Kansas, Kentucky, Montana, Georgia, and New Hampshire. It seems like in many ways you are behind the trend when it comes to supporting death penalty repeal. I encourage you to consider not only cosponsoring this bill, but also voting for its passage, both in this Committee and on the floor. Ultimately, there is nothing that violates conservative, Republican, limited-government principles more than the death penalty. Let us be honest: this year you guys are not going to win many battles. This is one opportunity where you can be involved in passing something that actually does uphold our conservative principles. By abolishing the death penalty, you will save taxpayers money, eliminate the possibility of killing an innocent person, get rid of a completely useless government program, and strip the government of a power it should not have. What could be more conservative than that?

**Chairman Yeager:**

Members, we are going to hold questions until we finish with the other presenters. Next, we will call up Mr. Coffee and Mr. Pescetta.

**Scott L. Coffee, Attorney, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice:**

I have been on the front lines of this for the better part of 20 years. Nevada reinstated the death penalty in 1977 after a Supreme Court decision in 1976. I have been around for half of that time. As a result of that, I have by necessity dug into numbers related to the death penalty. The numbers are staggering, even if you philosophically are in favor of the death

penalty. I understand that all of us may not have the grace of Ms. Portaro and be able to accept what happened as graciously as she did. Some people may feel it necessary to push for the death penalty. Nevada's death penalty is broken; it is broken beyond repair.

Since January 1, 2005, there have been 175 death penalty notices filed in Clark County. If you look at the legislative cost audit, you are talking about a cost of \$70 million to put those cases through the system, above and beyond what it would have cost to take those cases to trial as life-without-parole cases. It is a huge amount of money. Even if you believe that the death penalty is some kind of moral imperative necessary for the worst of the worst in the right case, whether you are likely to have the death penalty sought in your case in Nevada has more to do with where the crime occurs than what you have done. How can I say that? I can say that because since 2005, Washoe County has sought capital punishment in only 4 cases compared to the 175 in Clark County. We are filing at 40 times the rate in Clark County that they do in Washoe County, even though the number of murders is about 7 times as much. There were about 200 murders in Washoe County during that period; there were about 1,500 in Clark County. The numbers are extremely out of proportion.

Why is it so expensive? Common sense would tell us that if we execute someone, it should be cheaper. We do not have to pay for "three hots and a cot" for that person. I have heard that pitch before. The ugly secret of this is that we do not execute anybody. Nevada juries have handed back a death sentence 186 times. In 186 times, we have had 12 executions. It is less than 10 percent, and most of those people volunteered. It is a less than 1 percent chance of executing a non-volunteer over a 40-year history. It is getting worse because of the unavailability of drugs about which we have talked. We simply do not have the means of going forward.

There is an argument to be made that sometimes they are simply the worst of the worst and we need a designation. The truth is that Nevada's death penalty at this point is little more than a label—a designer label that has no real purpose—we foot the bill for it time and again. I say that because of the lack of executions. I say that because of the reality. The lack of closure that Mr. Johnson just spoke about is certainly true. There is an argument to be made that there is no price that can be put on justice, and I understand that. Justice is not something we get with Nevada's death penalty.

What the bill does is convert Nevada's death penalty to death by incarceration. You will die because of your conviction. You will never see the light of day. That is what the death penalty in effect is right now—death by incarceration. If you take away the label, the costs go away.

Why is it so expensive? Death is different. The United States Supreme Court said so in 1972 when they struck the death penalty. They said so in 1976 when they brought it back. Our Supreme Court said so 20 years ago when they adopted something called "Nevada Supreme Court Rule 250," which qualifies what I have to do in a capital case to prepare that case. In a normal murder case, my investigation looks at an hour, or perhaps a day, in someone's life. In a capital case, I have to look at their entire life history. That is

expensive. It is eight times more expensive in a pre-trial phase, according to the cost audit, for the defense of a capital case compared to a noncapital case, regardless of whether the death penalty is imposed, regardless of whether the case is negotiated. By the way, 60 percent of those 175 that have filed since 2005 will end up in a negotiation before they go to trial. When they go to trial, only about 1 in 3 is going to result in a death penalty. Then we get to the futility of that when there are no executions.

It is broken. It is getting worse. We have tried to tinker with it and fix it for every session since I have been up here—this is probably my fifth or sixth, and Mr. Thomas Pitaro has done more than that—and the solutions just have not worked. There is no good way to do this. If we replace the death penalty with death by incarceration, which is what the death penalty is, all of these things that control my behavior go away—Supreme Court Rule 250 and Administrative Order ADKT-411. I do indigent defense. I defend people who have no money, and of these 175 death penalty cases, the taxpayers have footed the bill for approximately 170 of them. Almost nobody can afford the money to put on a capital defense; it is just not there. When that piece of paper is filed things trigger. For example, under Supreme Court Rule 250, two attorneys have to be appointed as opposed to one. The hourly rate goes from \$100 an hour to \$125 an hour. Those costs just continue to generate. If we were getting a bang for our buck it might make sense, but I can think of no bigger waste of Nevada's tax dollars than fighting to put the label of death penalty on the case and spending the money for it when there is no means of doing it and there is no chance that it is going to be carried out. For that reason, we are in support of Assemblyman Ohrenschall's bill.

**Michael Pescetta, Private Citizen, Las Vegas, Nevada:**

I am a lawyer and practice almost exclusively in death penalty work and review in state and federal court. I am here representing myself and not my employer, the Federal Public Defender, District of Nevada. I am not expressing the views of that office. We have supplied you with some statistics ([Exhibit D](#)), which are fairly dry. It begins with a sheet titled "The Death Penalty in Nevada Since 1977." We have compiled these statistics over the years as part of our litigation efforts. Since 1977 when the death penalty was reinstituted here, there have been 186 death sentences imposed and a total number of 160 individuals who were sentenced to death. The total number of reversals, the third line on this sheet, is 88, which is 46.7 percent of those imposed death sentences. The number of individuals who have been removed for legal action, followed by either a new penalty hearing or a negotiation, is 50, which is a little over 30 percent of those cases. Putting aside any of the other contentious issues about the death penalty itself, if this were a government program that was just being offered to this body as a good idea, some members of this Committee would say, "This system has an error rate of 46 percent and a failure rate of over 30 percent. Does that make sense? Is that a system that is worth having, is that a system that is worth continuing to fund, and does it do what it is supposed to do?" I think not.

The fundamental problem is that when the United States Supreme Court in 1972 declared that all death penalty statutes then in existence were unconstitutional, part of their reasoning was that it gave jurors and prosecutors too much power over the entire range of murder cases. Typically at that time, most state systems gave the issues to a jury, a jury decided whether the person was guilty of first-degree murder, and then decided the sentence without any guidance at all. In a memorable phrase, it was said that being sentenced to death was arbitrary in the sense that being struck by lightning was arbitrary. In 1976, the Supreme Court allowed the death penalty to be reinstituted if states had guiding standards for how and to whom it was imposed. In 1977 Nevada adopted a death penalty statute, which depends on what are called "aggravating factors"—statutory circumstances where those factors are going to narrow the number of individuals who are exposed to the death penalty or eligible to be sentenced to death and so reduce the arbitrariness of the system. Beginning in 1977 with the initial death penalty statute, that list of aggravating factors is now 15 with some subparts. It is more difficult to find a first-degree murder that would not be death-eligible than it is to find one that would be.

This list of aggravating factors has done nothing but expand over the years, and it captures the great majority of first-degree murder cases. For example, if you look at the Federal Bureau of Investigation (FBI) statistics on murder in the United States, other than being killed by someone whom you know or someone in your family, the next highest percentage of death of circumstances of first-degree murder is felony murder. That is a murder that happens in the course of committing another felony. Of course, we have a felony murder aggravating factor in Nevada, as do many states. What we are saying is that the narrowing function that the United States Supreme Court was looking for by bringing the death penalty back under these narrower circumstances includes something that captures almost all of the first-degree murder cases. Our experience has shown that it is just too hard—we are human beings and as such all fallible; certainly lawyers, certainly judges, and legislators as well—to create a system that is going to fairly and reliably determine who should live and who should die. Our experience, like all states that have the death penalty, shows that we cannot do it. We can narrow the scope of the arbitrariness somewhat if those aggravating factors are policed, but once it gets to the jury, they have virtually unlimited discretion to say yes or no once death penalty eligibility is established for these aggravating factors. If you looked at the nearly 1,000 people in prison in Nevada for homicide and the 82 who are on death row for first-degree murder, I think you would be hard-put to tell the difference, except in rare cases, between the cases in which the death sentence was imposed and those in which a death sentence was not imposed.

That is really the key to much of my practical objection to the death penalty. People have, in general, a very inaccurate view of what we are doing. We are always told, and I am sure some of the prosecutors who will testify against this bill will emphasize, about the terrible brutality of cases that make the death penalty the only possible sentence. You cannot get the death penalty in Nevada unless you have committed a first-degree murder. There are no nice first-degree murders. Every first-degree murder leaves a brutal scene with horrible autopsy photographs and grieving relatives. Let me make clear that nobody can discount the kind of damage that victims and their family members experience. However, for the approximately

90 percent of people who are in prison for first-degree murder, all of those characteristics are true in those cases too. We have some cases that are very egregious in which a death sentence is imposed, and we have some where it is not. We have some cases that are not, in the universe of first-degree murders, particularly egregious, yet they result in a death sentence. This is where the use of discretion by prosecutors is key. I do think that prosecutors in the main sincerely try to reserve death sentences for the worst of the worst, but they cannot control what jury verdicts are. It is very controversial what the "worst of the worst" means.

Most people would agree that a murder in which two people are killed is worse than a murder in which one person is killed. Most of the people on death row in Nevada have killed one person, but there are people who have killed two or more people who are not on death row and sentenced to life without the possibility of parole. A case arose on the night of the Rodney King verdict where two men decided that under the cover of the confusion it would be a good time for them to deal with a person they thought was a police informant. They went to the suspected informant's house. There were four people in the house, and they killed all four people. There was a child who was not killed. Those two individuals went to trial and were convicted of four first-degree murders. The first one was not sentenced to death by the jury; he was sentenced to life without the possibility of parole. He has four first-degree murder convictions and he is not on death row. The second man went to trial, was convicted of four first-degree murders, and sentenced to death. The distinction between them is illusive in terms of their culpability. It turned out that that conviction and those sentences were reversed by the Nevada Supreme Court and sent back for a retrial. Because of a plea negotiation, that individual was sentenced to four counts of life without the possibility of parole. Take one of the relatively famous cases among lawyers in Clark County: two men go over to see a drug dealer with the intent of robbing him. They end up robbing him, killing him, and killing his wife after raping her. They are tried together and both convicted of two counts of first-degree murder. Each one of them had 12 or 13 aggravating factors relating to those convictions, and the jury sentenced both of them to life without the possibility of parole. Those seem like egregious cases. They did not end up in death.

Take the other end of the spectrum: someone currently on death row. He and another man went to get some drugs from their drug dealer who was a street dealer. The individual on death row was the driver. The passenger had a gun. They get the drugs from the dealer and drive away without paying. The drug dealer gave chase and the passenger leaned out of the window, shot, and killed the drug dealer. The passenger, who actually killed the victim, pled guilty and was given life without parole. He also agreed to testify, but ultimately he did not. The driver, who did not have a gun—and there was never any evidence that anyone had conspired or agreed ahead of time to kill this drug dealer—had an unfortunately substandard lawyer, and he was sentenced to death. In one transaction, we have the actual killer who gets life without, we have the person who did not plan or commit the killing on death row, and the district attorney's office is continuing to litigate that case to keep him on death row. This would strike most people as counterintuitive. The fact is that there is no mechanism in our statute to address that.

Every prosecutor and every district attorney in every county can decide whom he or she wants to charge with the death penalty. The extent of the aggravating circumstances is so broad it is usually possible to find an aggravating circumstance to allege against a defendant who has committed first-degree murder. There we have what we have now, on a slightly smaller scale: a situation in which being sentenced to death is arbitrary in the same way being struck by lightning is arbitrary. It does not diminish or disrespect the suffering that is undergone by victims and their families to say we are not good enough to figure out, in a constitutional way or in a fair and reliable way, that this person should be on death row and this person should not be under those circumstances.

On the deterrence point, there is a lot of statistical evidence that has been put before you. I would ask you to look at the Death Penalty Information Center material ([Exhibit E](#)) that is attached to this statistical information. Think of it this way: New York and Texas could hardly be more different. Texas [page 3, ([Exhibit E](#))] has executed over 540 people since the death penalty came back in 1977; that is over a third of all the executions in the country since then. New York has not executed anybody; they had a death penalty very briefly, and it was found unconstitutional. Their homicide rate today is identical. Look at two states that are closer in their characteristics—North and South Dakota. South Dakota has the death penalty and North Dakota does not. North Dakota's homicide rate is 2.8. South Dakota's homicide rate is 3.7. It is 1.1 higher in the state with the death penalty. Finally, on the cost issue, the study that was done by the Legislative Counsel Bureau (LCB) looked only at the costs through the trial and appeal. That does not count postconviction habeas and it does not count federal review in which the Office of the Attorney General conducts the litigation. Litigating these cases is always a moving target because the laws change. There is a case that the United States Supreme Court decided last year that a certain element of death eligibility, outweighing [*Hurst v. Florida*, 577 U.S. \_\_ (2016)] which we have in our state, has to be found beyond a reasonable doubt. No jury in any Nevada case has ever been instructed that they had to find that outweighing element beyond a reasonable doubt. We are going to be functionally litigating that forever—in every one of those 82 cases that are still pending. It takes a long time and it takes a lot of money, but when you get down to it, just in September of last year, the Nevada Supreme Court sent a case back down 23 years after the offense for a hearing on actual innocence. It was hearing not based on DNA, but based on medical evidence that existed at the time of the offense that showed that the child who died actually died of medical conditions, not from being beaten to death as was alleged by her mother's boyfriend. It took 23 years for us to figure that out. It is too hard. That is the basis I submit for supporting this bill. To achieve a fair and just system for choosing who lives and who dies is not something that is within our competence.

**Chairman Yeager:**

I would let the Committee members know the exhibits that Mr. Pescetta referenced are on the Nevada Electronic Legislative Information System (NELIS). They are very good exhibits in terms of describing the history of the death penalty in the state and looking at it as a country

as a whole. Assemblywoman Dina Neal has just arrived, so we will take her testimony next. I would also invite Father Durante and Ms. Pusich to the table. I think we are doing okay on time, but feel free to truncate your remarks. We do have a number of folks who want to speak in opposition and I want to make sure they have an equal amount of time.

**Assemblywoman Dina Neal, Assembly District No. 7:**

This issue was near and dear to my family. My dad focused on this issue, and I have at least six boxes on the death penalty in my garage. I am here today as the Regional Chair for the National Black Caucus of State Legislators. I oversee nine states in the region. We put a resolution together about a year ago in support of abolishing the death penalty ([Exhibit F](#)). I know you have heard a lot of statistics and I see you have 19 exhibits, so I will simply say I appreciate Assemblyman Ohrenschall for bringing the bill and we support the abolishment of the death penalty.

**Charles "Chuck" Durante, Pastor and Chair, Life Peace and Justice Commission of the Diocese of Reno; and representing Nevada Catholic Conference:**

I am a native Nevadan, a member of the State Bar Association, and a concerned citizen who has worked on this area of capital punishment for over 20 years. I can remember working with Senator Joe Neal when this type of bill was presented many years ago. As a student of criminal justice, there has always been something in my gut that tells me the death penalty is wrong, but as I have ministered to victims and inmates alike, it has convinced me even more. The horrific violence of murder is never excusable nor should it be diminished. When I have stood outside the then-Nevada State Prison, the site of our past executions, on the nights of several of these terrible events, I have stood with signs for the victims of murder as well as for an end to another killing through capital punishment.

I have witnessed the heartbreak, the tears, and the anger in conversations with family members of murder victims, and I have seen the rancor, anxiety, and hatred that surfaces every time an execution is scheduled or carried out. Some seem almost to take pleasure in an execution as an opportunity for vengeance or self-righteousness. Others wrestle with having participated in such a death, whether as a guard or an administrator or even a reporter. I find it especially poignant that executions have taken place at night: first at midnight and, I think, the last one at 9 p.m. It is as though the state takes this action in cover of darkness.

It is rare that a family member really finds closure with an execution. It is never able to compensate for the seemingly endless number of times the murder is relived in the media and in the lives of family and witnesses throughout the intense investigation and trial of a capital case and each time there is an appeal or a vacated execution date. A much swifter conclusion that does not require the state to participate in a killing is life in prison without the possibility of parole. That closes the book on the legal process much sooner and allows family members to continue grief counseling and other work toward healing without the threat of being brought back into the court or interviewed by yet another reporter.



It always has been the goal of the criminal justice system to preserve the safety of the people and to weigh evidence and render sentences in an objective manner, based on principles and the rule of law. Yet when a case is certified as a capital case, emotions run much higher, and I have seen some of that integral objectivity displaced. The stakes are high in this type of case that falsely presumes perfection. The alternative to that presumption is settling for the possibility of the killing of another innocent person, this time in your name and mine.

As you know and will hear, many of our sister states in the union and democratic countries around the globe have abolished the use of the death penalty as barbaric, ineffective, and wasteful of government resources. As such, it is a bad public policy that violates the basic principle of respect for human life itself. In light of horrible acts of violence, we can become discouraged and desperate to take a stand. We want to be tough on crime, so we lower ourselves to killing someone to punish and to demonstrate that killing is wrong. So long as we can protect society in another way, and we can, it diminishes all of us when we resort to violence. We do not rape a rapist or beat up someone who has beaten up another because it would be inhuman of us. Yet we will justify killing, the taking of life itself. Many religious leaders across many faith traditions, including Pope Francis and numerous popes before him, have spoken strongly against the death penalty. Pope John Paul II put it well when he was in Missouri in 1999. He called for an unconditionally pro-life stance on the death penalty, saying, "A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil." Modern society has better means of protecting itself. I urge you to move for that means today by ending the use of capital punishment in Nevada.

**Chairman Yeager:**

I would invite the final presenters, Ms. Hart and Ms. Welborn, to the table.

**Maizie Pusich, Chief Deputy Public Defender, Washoe County Public Defender's Office:**

I have defended capital cases in Washoe County for the past 26 years. The risk of executing an innocent person is too high to maintain the death penalty as a possible punishment in Nevada. I had the extraordinary privilege to represent a woman named Cathy Woods. Cathy was convicted of the 1976 murder of a beautiful young woman named Michelle Mitchell. Cathy was seriously mentally ill and falsely confessed to that crime. It may seem hard to believe that people falsely confess to murder, but hers is not the only case where that has occurred. In many of the cases that have been resolved as DNA exoneration cases nationally, there was a confession from the accused. Cathy was arrested, tried, and convicted twice. Her first case was overturned on appeal. She spent over 30 years in the Nevada State Prison and yet, she was one of the lucky ones. She lived to see her conviction overturned and be released from custody and returned to the loving arms of her family. She was not saved because we had the good sense to realize that she was innocent while she was going before those 24 honest and hardworking jurors. She was saved by luck and science. The lucky part was that the crime occurred in 1976 and we did not have a death penalty then, so she did not have to face that. She is one of the people whose case had sufficient notoriety that if it had been available, I do not think she would have lived to be exonerated. The Washoe County

District Attorney and his Chief Deputy, who are both here today, dismissed the charges against Cathy about a year and a half ago because they realized that the actual killer had been found through subsequent police work. You might think the system worked—it did not. Science and luck saved Cathy. All 24 of those honest, hardworking jurors who found her guilty in two separate trials were wrong. While Cathy served her 30-plus years in prison, the actual killer committed new crimes—kidnapping, rape, escape, and three other murders. Cathy was one of the lucky ones because she lived to see freedom.

Nevada has put two innocents on death row. Roberto Miranda was convicted and sentenced to die in 1982. His defense was assigned to a novice. Although Mr. Miranda named six witnesses who could establish his innocence, the young attorney contacted none of them. Mr. Miranda spent 14 years on Nevada's death row before a different attorney showed a court that his defense at trial had been wholly unprepared. The case against Mr. Miranda was dismissed, and he later sued Clark County, the Public Defender's Office, and the detectives who had investigated, and ultimately received a multimillion-dollar settlement for their errors.

Ronnie Milligan was also tried for murder, convicted, and sentenced to die. Mr. Milligan's conviction was the result of opportunistic codefendants. In 1980, he was honorably discharged from the United States Navy. He drove cross-country with a group of acquaintances. By all accounts, he spent most of that trip drunk. In southern Nevada, the group robbed and killed an elderly woman. Mr. Milligan was once again drunk and remembered nothing. The other three men quickly decided to blame him. With no memory of the killing, he was a sitting duck. The state's star witness, a man named Ramon Houston, faced no charges. Two others in the group were convicted of lower offenses, served their time, and were paroled. Mr. Milligan was sentenced to death because the crime occurred in the course of a robbery. The ability to use robbery to support the death sentence was changed by later court rulings and the sentencing was returned to Humboldt County District Court Judge Richard Wagner. Judge Wagner was a tough, conservative judge. Before being elected judge, he served 16 years as a county prosecutor in rural Nevada. He learned during the new sentencing hearing that the state's star witness, Mr. Houston, actually wrote a letter to a friend during the first trial in which he said Mr. Milligan had not even been present at the killing. Mr. Houston had been found with the victim's purse and had her blood on his clothes—Milligan had none of her belongings or any of her blood on his clothing. During the resentencing, Judge Wagner announced that he had "grave reservations" that Mr. Milligan was guilty at all. He ordered him paroled. After over 30 years on Nevada's death row, Ronnie Milligan was granted parole in 2011.

Woods, Miranda, and Milligan collectively spent over 70 years in prison for crimes they did not commit. Yet, they are among the lucky ones. They lived to see their freedom. Whom have we missed and whom will we miss? We should always think about whom we are sentencing to die and whom we are executing. You have heard that the death penalty reflects all the worst of society's prejudices, but it is worse than merely targeting minorities, the mentally ill, the poor, and the poorly educated. It frequently includes people we ought to be nurturing and caring for.

Terry Dennis was one of the convicted that Nevada executed. Terry was 17 when he lied about his age to join the Vietnam War to escape years of being a victim of incest. He served and then returned to the United States an alcoholic and pot smoker. After his service, he was brought back to New York. As he traveled back to Washington State, he ended up stopped in South Dakota where he was charged with possession of marijuana and ordered to serve a year in prison. He still went home and married his high school sweetheart, and they started a family together. He realized that one of his neighbors was molesting another child, and instead of turning to the authorities, he tried to take matters into his own hands. He suffered another felony conviction and served his time. He lost his relationship and his family. He came to Reno. He was an alcoholic although he was no longer using drugs—a year in the prison in South Dakota was enough. He started hearing voices that told him he should hurt someone. He went to the U.S. Department of Veterans Affairs (VA) where he qualified for services and he asked for help. Years before we had a scandal about scheduling at the VA, he was told to come back in a month. By the time he came back for his appointment, his victim was dead. He had killed a woman who he had befriended in a local bar. He called the police and told them he had done it. He pled guilty against the advice of his attorney—me—and he then went to a capital sentencing hearing where a three-judge panel found that he was someone who should be sentenced to die. He became suicidal when he was young, and he stayed suicidal to the end. Terry was one of our volunteers. He was on a mission to complete suicide for most of his adult life, but when he got to Nevada, it worked. We did not offer him the VA support that he had earned. We did not thank him for his service defending us in an unpopular war. The only time that society actually responded to what Terry wanted was in August 2004, when we killed him in the Nevada execution chamber.

Sometimes the death penalty is promoted as a sign of respect or compassion to the surviving family of murder victims. I disagree that it shows respect or compassion. My cousin Michael was murdered when he was 28 years old. Executing his killer will not bring him back; it will not bring my family peace. I understand some of the suffering that family survivors go through, but perpetuating the killing will not alleviate any of it.

Several years ago, I was asked to attend an execution. I did not want to be there, but I had a client who had no local family and did not want to be alone. I am grateful that that execution did not go forward while I was there. When I got inside, after I went through security and they decided I was allowed to be there and that I would be safe, one of the things that surprised me was the prison was offering people coffee and cookies. I am sure they were just trying to be polite. I think they were trying to make us comfortable, but I do not ever want to be comfortable with the death penalty and I do not want any of you to be comfortable with the death penalty.

**Nancy E. Hart, President, Nevada Coalition Against the Death Penalty:**

The Nevada Coalition Against the Death Penalty is a broad-based group of individuals and organizations opposed to capital punishment in our state. We are composed of many different people who support ending our use of the death penalty. There are people of faith who believe that it is wrong for humans to take another life, that taking life is for God to decide. Others are philosophically opposed to the death penalty based on respect for

fundamental human rights, the *Constitution*, or the belief that government does not have the authority to kill its own citizens. We have others who support ending the death penalty because of growing awareness about one or more very troubling issues: that it is racially discriminatory, arbitrary and unfair, extremely costly, runs the risk of executing an innocent person, does not provide true healing for the victim's loved ones, and does not make society safer from violent crime.

Around the country and in Nevada, there is growing support for ending the death penalty. When people learn what is involved in trying to maintain a death penalty system, they understand how broken it is. Here in Nevada, it is tremendously expensive and ineffective, as you have heard. We cannot even carry it out because we lack the drugs to do so. Almost 40 percent of our death row is African American, whereas only 9 percent of the state's population is African American. As you have heard, Clark County has more pending death penalty cases than San Diego, Los Angeles, and San Francisco combined. The needs of victims' family members are largely overlooked.

There have been various efforts to fix our death penalty. In the 15 years since the Coalition was formed, the Legislature has ended executions for people with intellectual disabilities; it ended the death penalty for people who were juveniles at the time of their crime; it ended the use of discriminatory three-judge panels for sentencing; and it authorized a cost audit of the state's death penalty to determine how much we are spending to maintain it. These were important measures that required a lot of advocacy, but they did not fix the many problems. The list of aggravating factors in our statute is still overbroad and unclear. Racial bias remains intractable, and overzealous prosecutors in Clark County continue to file cases at a staggering rate. The bottom line is that Nevada's death penalty is too broken to fix.

There are three recent examples of the breadth of support for ending the death penalty. Virtually all mainstream religious organizations have adopted positions in opposition to the death penalty many years ago, but in October 2015, the National Association of Evangelicals, a stalwart supporter of capital punishment for over 40 years, modified their position to no longer explicitly support the death penalty. This remarkable change was because of growing concerns over the human error in criminal justice, documented wrongful convictions, and a desire among many of their congregations to promote healing instead of retribution.

Just last month, on February 23, 2017, the American Nurses Association took an official position opposing the death penalty for the first time in its organization's history. The organization has objected to nurses participating in the death of prisoners since 1983, but the revised position statement now opposes all capital punishment, not just nurses' involvement.

Just two weeks ago, on March 16, 2017, the head prosecutor for Orlando, Florida, State Attorney Aramis Ayala, announced that she would not be seeking the death penalty in any cases going forward. She said that the death penalty had failed as a deterrent and it did nothing to protect law enforcement officers. She also cited the length of time between sentencing and execution, which often exceeds a decade, and the costs of capital cases. "I am

prohibited from making the severity of sentences the index of my effectiveness," she said in her announcement. "Punishment is most effective when it happens consistently and swiftly. Neither describe the death penalty in this state." Seeking life sentences, she added, would guarantee that "violent offenders will never be released. They will never continue to drain resources from this state with decades of appeals, and we can offer families of the victims more closure and more certainty."

It is very unusual for a prosecutor, especially one from a large metropolitan jurisdiction, to publically state a position against the death penalty. The truth is, Ayala's decision is not unusual. Many district attorneys around the country do not seek death. Of the nation's 2,300 prosecutors, only 27 (barely 1 percent) sentenced a person to death last year. These examples illustrate that professionals and organizations from unexpected sources are increasingly ending their support for the death penalty.

The death penalty in the United States is in decline. There has been a steady and dramatic decline since 1996 in the imposition of new death sentences—from a high of 315 new sentences in 1996 down to only 30 last year, which was a reduction from the previous year. There has been a similar decline in the rate of executions nationwide with only five states carrying out executions last year, 2016, the lowest in over 20 years. Fewer states even have or use the death penalty. In the past decade, eight states have repealed their death penalty laws. Thirty-one states and the federal government still have the death penalty, but 4 of those 31 have governor-imposed moratoria in place. About half of the states in this country have the death penalty and half do not, but that still does not tell the whole story. Contrary to the assumption that the death penalty is widely used in the United States, only a few jurisdictions employ capital punishment extensively. Just 2 percent of the counties in the United States have been responsible for the majority of cases leading to execution since 1976. One of those counties is Clark County. These downward trends in the use of the death penalty reflect communities' growing awareness about the high costs and minimal effectiveness of the death penalty, and serious doubts about aspects such as racial bias and victims' family members' healing.

Going back to the wide support for ending the death penalty, I would like to read from a letter by Jackie Crawford, a former director of the Department of Corrections (NDOC). Ms. Crawford now lives in Utah and was unable to be here today, but she wrote the following:

This letter is to provide my personal views and experiences concerning the death penalty in Nevada as a career correctional practitioner. I retired from Nevada as corrections director in 2006 after six years in that position and four as warden at Lovelock and of the camps. In my career, I have more than 40 years' experience at all levels with state and local facilities and with court administration and parole/probation agencies in midwest and western states. During those time frames, I served two governors: state of Nevada Governor Kenny Guinn and state of Arizona Governor Bruce Babbitt.

My focus was on safer communities and institutions that emphasized programs, preventions, and rehabilitation of the offender. For many years, I supported the death penalty with the belief that it brought closure to the victims, addressed the severity of the crime, made for a safer work environment for corrections and law enforcement staff, and served as a deterrent to others who might have their criminal behavior tempered knowing the serious consequences of their actions. As a deterrent, I do not believe it has had the impact we all had hoped. Our country has experienced many cultural changes, and what once worked does not seem to have the same impact. Emotionally charged offenses are not deterred much by known consequences.

My experience concerning the death penalty is from a correctional operations view. The death sentence requires some stressful periods for staff who practice and carry out the processes of conducting executions. There is stress during the period with considerable attention focused on the institution and stress on staff that requires some decompression and counselling afterward. My primary concern was the impact on staff. We held debriefings and the department offered counselling for staff members who felt the need to discuss their feelings and emotions about the execution. This was provided on a personal and confidential basis for staff.

Victims are not well served when there is considerable uncertainty about the sentence of death being carried out. Recent history has no inmates executed except for those who wish to stop the appeals process and proceed with execution. Victims in these cases have had emotional times since the inmate can make the decision to have the execution carried out only to back out on the day of the scheduled execution.

There were two instances in the six years while I was director where we prepared to carry out the sentence. In one, the sentence of death by lethal injection was carried out as scheduled. In the second case, the inmate requested it be carried out and then changed his mind on the day of the execution. The victim's family in attendance were shocked, devastated, and felt exploited by the inmate. Over the years, I have observed the pain that victims and their families experienced when they had hoped to find closure. I realize those victims did not find closure when the person was sentenced and especially those who hoped for the offender to be executed. Some, but not many, experienced a little closure; but after losing a loved one, we have to heal ourselves through the love and support of others and through our faith.

Elimination of the death sentence would certainly remove a distasteful task from the already difficult job of managing an inmate population and would leave no doubt about taking the life of an innocent person. But there may also be positive and negative outcomes for communities, law enforcement,

prosecutors, and sentencing judges as a result of change. All would agree there are those who are a serious risk to society and should never see the outside of a secure correctional facility. If this bill is passes, I am certain that the current laws will assure that the alternative sentence of life without parole has as much certainty as the designation indicates.

[Also submitted by Nancy Hart was a document titled "Death Row Since 1997 Chronological" ([Exhibit G](#)).]

**Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:**

I would like to thank Assemblyman Ohrenschall and Senator Segerblom for bringing this legislation forward. The United States is the only western democracy today that does not view capital punishment as a profound human rights violation and a frightening abuse of government power. Since our founding nearly 100 years ago, the American Civil Liberties Union (ACLU) has made the abolishment of the death penalty a cornerstone of our work. The death penalty denies equal protection of the laws, is cruel and unusual punishment, and removes guarantees of due process of law. The death penalty is so inconsistent with the underlying values of our democratic system—the pursuit of life, liberty, and happiness—that the imposition of the death penalty for any crime is a denial of civil liberties.

Decisions about who lives and who dies are largely dependent upon the financial means of the accused, the skill of their attorneys, their race, and where the crime took place. People of color are far more likely to be executed than white people, especially if the victim of the crime is a white individual. From 1976 to 2015, 1,392 executions occurred in the United States and 995 of them took place in the South. A mere 2 percent of this nation's counties have produced both the majority of all executions imposed since 1976 and of prisoners awaiting execution on death row. The greater likelihood of its imposition upon the poor is demonstrated, among other things, from the obvious fact that the financially able accused of a crime may employ the Cadillac of legal counsel and compensate them fully for the extensive efforts necessary to pursue remedies available to those under penalty of death. The poor, although they too have the right to counsel, cannot afford the same degree of legal defense. Thus, in the case of the death penalty, the punishment does not fit the crime. It is, in fact, a constitutionally prohibited denial of equal protection of the law because it results, regardless of the written provisions of statutes permitting it, in imposition of the death penalty almost exclusively upon society's most disadvantaged members.

Death imposed by the force of the state is the ultimate form of cruel and unusual punishment and thus prohibited by the Eighth Amendment. In an amicus brief filed in *Furman v. Georgia* 408 U.S. 238 (1972)—the case that outlawed the death penalty temporarily—our legal director, Sanford Jay Rosen, wrote, "The death penalty, clearly suspect under the Eighth Amendment, is unnecessary in a society with adequate alternative means of fulfilling the legitimate objectives of the penal law. It is therefore unconstitutional. The death penalty and the necessarily associated experience of death row shocks and devastates the consciences of civilized men. It is therefore unconstitutional." We hold the same position today.

General public abhorrence of the death penalty is revealed by the prohibition and narrow limitation of capital punishment in statutes; the frequent reversal of guilty verdicts for technical errors; a shrinking, geographically isolated number of states permitting it; fewer juries imposing new death sentences; and fewer states carrying out executions previously ordered. The numbers have constitutional significance. The United States Supreme Court has held that uncommon sentencing practices can become so rarely imposed that they are barred by the Eighth Amendment's ban on cruel and unusual punishment. We believe Nevada is so positioned.

The death penalty is an archaic form of punishment and unnecessary in our justice system. We encourage you to support A.B. 237.

**Chairman Yeager:**

Members, I am going to take some questions. I have questions from a few members so far. If you have a question for a particular presenter, that would be helpful. If not, we will ask that one presenter be designated to answer the question.

**Assemblywoman Jauregui:**

My question is for Mr. Coffee regarding some of the statistics he gave. You said there was a cost of an extra \$500,000. Is this per capital punishment case or for those 186 offenders who were sentenced to death?

**Scott Coffee:**

Every time a death penalty notice is filed, there are additional costs that come into play. For a case where the death penalty is not sought but a murderer is placed on the row for life without parole, or "death by incarceration," the cost of the case is estimated at \$775,000. When the death penalty is sought but not imposed (imposed means by the jury on the front end), the lifetime cost is \$1.2 million. Those 175 cases where it was sought have an additional cost of \$400,000 or more. When the death penalty is handed down but not imposed, the cost goes up another \$100,000 before we get to postconviction costs. You have a cost differential of somewhere around a half million dollars every time a notice of intent to seek death is filed. They are only coming down with a sentence of death in about 15 percent of the cases.

**Assemblywoman Jauregui:**

Those 186 cases you talked about cost \$500,000 more. In addition to those, the other cases sought the death penalty but did not necessarily impose it?

**Scott Coffee:**

The 186 cases were where a sentence of death was handed down by a jury. In that situation, a person is more likely to die of natural causes or suicide than they are to be executed, even if they volunteer. We have had 16 people who died of suicide or natural causes and only 12 who were executed. Eleven of those were volunteers, so you are ten times more likely to die of natural causes than you are to be involuntarily executed. The 175 are death notices filed in Clark County since January 2005. That is about a quarter of our recent history in



terms of the death penalty. You can multiply that number by whatever it might be, and you can figure we have sought the death penalty 600 to 700 times. That is a reasonable estimate. The costs are imposed every time you file the notice of intent to seek the death penalty because somebody has to investigate it and it is almost always on the county dollar.

**Assemblywoman Jauregui:**

I did the math for the 186 cases that were sentenced and that is \$93 million. I find it hard to believe that we spend \$93 million dollars on sentencing people to death and we spend \$1,000 each on victims for counselling.

**Scott Coffee:**

That might be a place to divert some of that money.

**Assemblyman Wheeler:**

Thank you for allowing me to make a statement to Mr. Johnson. I take great exception at your coming in here and telling the members of this Committee what it means to be a conservative. I have a high Nevada Policy Research Institute (NPRI) rating, one of the highest in the building, and a high American Conservative Union (ACU) rating—one of the highest in the building, as do other people on this panel. If you want to tell me what it means to be a conservative, come to my office; do not come in here and put it on the record. Get your own chops—I have made mine. It takes more than pinching pennies to be a conservative; there is also a social side of that. Thank you, sir, for listening to me.

I have a question for Assemblyman Ohrenschall. Thank you for answering our questions. We have seen a lot of studies that say there is no deterrent value. I looked it up and came up with five or six studies that say exactly the opposite: one from the University of Colorado, Denver says that for every death sentence that is commuted, five more homicides happen. There is another one at 18 murders, another at 3, another at 5, and another at 14. I wondered if you would concede that there are studies on both sides of the issue that show opposite results.

**Assemblyman Ohrenschall:**

I have not seen those studies, and I do not know how old they are. The studies that I, as well as others presenting, have cited have not shown a deterrent effect in jurisdictions that have capital punishment as opposed to jurisdictions that do not. I am happy to look at any studies you would like to send me. Anecdotally, last year in Clark County we had the highest homicide rate in the history of Clark County, and we have capital punishment on the books. We just spent \$800,000 on a new execution chamber at Ely State Prison. That is not a study, but anecdotally I do not see the deterrent effect working in my county. Mr. Coffee might also have more information on that.

**Scott Coffee:**

There are some studies that show a deterrent effect, but most of those studies are decades old. In the '70s, when the death penalty was brought back pursuant to *Gregg v. Georgia* [428 U.S. 153 (1976)], there were some claims that every capital sentence saved 6 to 8 lives.

That has not proven to be the case. Recent studies have refuted that; our 40-year history since then has refuted that. There was a survey of criminologists—these are not defense attorneys defending capital defendants, but criminologists who work within universities—where about 88 percent concluded that there was no deterrent effect to the death penalty. There is a minority opinion of about 10 percent that there might be deterrent, but to get 88 percent of people to agree on anything is a neat trick.

**Assemblyman Wheeler:**

I would be happy to send you this article from the *Washington Post*, which quotes from 2001, 2003, 2006, and 2009. That was not decades ago.

**Chairman Yeager:**

Assemblyman Wheeler, I would invite you to share that study with the rest of the Committee as well. We would likely find it useful.

**Assemblyman Wheeler:**

It is a news article from the *Washington Post* that quotes these studies—a very "conservative" paper.

**Assemblyman Fumo:**

Ms. Portaro, I want to tell you that I was in the courthouse when you forgave your son's killer and sat in muted anguish as you spoke the words, "I have been sentenced to a lifetime of grief." You personified the phrase, "To err is human, to forgive divine." My question to you is that you said the district attorney's office was not happy when you went to them and asked them to remove the death penalty. Did you feel pressure in any way to seek vengeance rather than justice? Did you feel pressure from the district attorney to keep pursuing the death penalty rather than life without parole?

**Cynthia Portaro:**

Fortunately, my prosecuting attorney is a lifelong friend. Our boys grew up together. I know him very well, and he knew me. For him to even have the case was a godsend. He had a personal relationship with my son. When I went to him, he was not happy about it. He said this was not good. My husband's family was not happy with me. That decision that was made was not just mine alone. I went to my children and I told them, "This is what I am thinking; this is what I am feeling." My children agreed with me and said, "Mom, we do not want this." As far as pressure, no, he did not pressure me. I know the process now, and I was able to help make that decision. For me, that brought closure to my family, not vengeance.

**Assemblyman Fumo:**

Mr. Coffee, I would like to get deeper into the cost. You said it goes from one attorney at \$100 per hour to two attorneys at \$125 per hour so we are looking at \$250 per hour. Can you tell the Committee about the other things involved, not just the investigator, but also the social worker, the neuropsychologist, the psychological tests, and so on?

**Scott Coffee:**

Death penalty work is the only area that requires a certification for Nevada lawyers. It is governed by Supreme Court Rule 250. There is a panel or group of people that have to be involved in the preparation of a death penalty case. It goes from having one attorney at \$100 an hour. Attorney hours are vastly different. It is 400 hours on average to resolve a noncapital case. It takes 1,800 attorney hours on average to resolve a capital case, according to a UNLV cost study conducted by Terance Miethe. Because death is different, because we do not get do-overs in a death case if we make a mistake, there is a heightened level of due process. We talked about life history, but it is literally childhood: I am interviewing fathers, mothers, grandfathers about alcoholism and all kinds of things. The decision whether to impose the death penalty is different than any other decision a jury makes. Every other decision is governed by law and they are given a set of instructions. For the death penalty, it is a moral decision. Each individual juror gets to make a moral determination of whether that person deserves the death penalty. Because of that, what might resonate with a juror might be different in every case. For example, somebody might not like the fact that he was cut from a high school baseball team. I do not know what is going to resonate with a jury. I have to investigate everything—whether it is abuse, alcoholism, or a death in the family. Those numbers go up substantially.

There are certain procedures that are unique to death penalty cases that are not present in any other cases. In a case called *Atkins v. Virginia* [536 U.S. 304 (2002)], the Supreme Court said that you cannot execute the intellectually disabled. That is only an issue in a capital case. The states tried to shut that down and narrow that to some extent, but it has not worked. The Supreme Court issued a decision yesterday in a case called *Moore v. Texas* [581 U.S. \_\_ (2017)] that said the states have to abide by prevailing psychological norms in determining intellectual disability. I have to investigate that any time a person has a poor school record or any time there is a history of poor testing. The determination for intellectual disability includes looking into how they were acting before they were 18 years old—something called "adaptive behavior." Did the onset happen before 18? I have to go back and investigate that. I have to pay a psychologist or psychiatrist to investigate that. That is happening in 40 to 50 percent of the cases coming into our office; we are looking into *Atkins* claims. We are presenting *Atkins* claims in about a third of the cases that come through our office. Generally, the state has to employ an expert. That will run into \$10,000, \$50,000, or \$100,000 by the time we have done all the testing.

You have to look into things like fetal alcohol syndrome. There was a case in the Ninth Circuit Court of Appeals where the attorney did not investigate poisoning of groundwater where the person had grown up and the Ninth Circuit reversed for ineffective assistance of counsel because the counsel did not look into whether there was poisoning from pesticides in the groundwater. The point being: I have to look at everything and if I do not, the case is reversed. It is not as if you can say, "We just will not fund the defense. Let us have a free day of this and put everybody up for it." You cannot do it because if you do, the

cases come back. If you look at the older cases, the reversal rate is much higher than what Mr. Pescetta talked about because not much was done on capital cases 40 years ago. It got better 30 years ago; it was better 20 years ago, and we are getting better now. I expect it will be better in the future, but those costs continue to escalate.

**Assemblyman Watkins:**

You said the question for a jury as to whether to sentence someone to death is a moral one. What happens in jury selection when somebody says he is morally opposed to the death penalty?

**Scott Coffee:**

That is part of the unfairness of this whole system. If you are morally opposed to the death penalty, you are removed from the jury venire; you cannot sit on a death penalty jury. What that means is 20 to 30 percent of our panels are flat-out removed because they say they have an objection to the death penalty, so you do not get a cross section. Studies have shown that capital juries are more likely to convict on a case, overall, because of this preselection. The fact is that people who are in favor of the death penalty or consider the death penalty are also more likely to convict. There is a strategic reason from a prosecutor's prospective. I do not think they do these things strategically; I think they have good hearts in the vast majority of cases. There is a strategic reason to "death-qualify" a jury because it increases your likelihood of conviction and you eliminate a good cross section of the population, including devout Catholics and many people of color. It just removes those from the pool.

**Assemblyman Pickard:**

I find it interesting to see the level of hyperbole in the room today. It brings into stark contrast the schizophrenic approach to how we view life, killing, and the roles of punishment, morality, judgment, forgiveness, and justice, particularly religion and faith in the law, or faith that should be removed entirely from government. I will add to what Assemblyman Wheeler suggested: I reject out of hand some of the premises stated thus far. For instance, the idea that killing more than one person is worse than killing only one—it is killing. I reject the notion that the legislators seated here are irresponsible, whether they be sitting here now or in the past, because the death penalty remains. I reject the idea that the judicial system has a 50-percent failure rate. It sounds to me like the appeals worked; the system works. Not in every case. Are there convictions of innocent people? Yes. I applaud the Innocence Project and others who find those, but they would not make the paper if it were a common occurrence. I think the judicial system, particularly the public defenders and the prosecutors, do a phenomenal job with what they have. It is an imperfect science, but they try as much as they can to use science. I do not disparage them for doing their jobs.

The elephant in the room is the idea that the death penalty goes beyond the idea of deterrence. There is also the idea of a penalty—it is called a "death penalty." We have historically reserved it for the worst and most heinous crimes. Because this is a fundamental social question, I am wondering why are we not putting this to the voters to decide?

**Chairman Yeager:**

Although that is not the question in front of us today, you may speak to that if you would like. The question for this Committee is the policy of A.B. 237.

**Assemblyman Ohrenschall:**

Many people have beliefs of faith and moral beliefs about capital punishment. The arguments that I am particularly interested in and I hope the Committee will look at are the proven lack of deterrent affect toward violent crime and the incredible financial burden to our taxpayers without the expected outcomes, where death penalty cases that are sought are, in effect, life without the possibility of parole or "death by incarceration," as one of the witnesses said. Lastly, I would ask the Committee to remember the impossibility of actually implementing an execution. On NELIS there are letters ([Exhibit C](#)) posted from the different pharmaceutical companies as to their lack of willingness to provide these chemicals to any state department of corrections. As to how laws are made, our state provides that we can enact legislation either directly through the voters by initiative referendums, but our federal *Constitution* guarantees our constituents a republican form of government, and that is why we are here: to represent our constituents and make these decisions.

**Assemblyman Hansen:**

I would be willing to support the bill if you add one amendment to it: that you put this on the ballot as a referendum. I did a little homework. In a very liberal state like California, in 2012, they had the issue on the ballot and the people of California overwhelmingly supported keeping the death penalty. In 2014, in Nebraska, the legislature passed an abolition of the death penalty and then it was placed on the ballot. The result was 66 percent of voters were in favor of keeping the death penalty. In spite of the hyperbole, I think people actually do support the death penalty. I would want to have that offered as an amendment. I deeply resent the idea that people who have been victims of murders and therefore want justice are filled with hate and vengeance. It is shocking that some would use that terminology. I do not believe that people who have gone through that should be labeled as horrible, guilty people who have an evil motive. I think what they are trying to do is get justice. Anybody who reads the Fifth Amendment can see it clearly says, "nor be deprived of life, liberty, or property without due process of law." Being deprived of life is capital punishment. We have a due process of law. The argument that this is somehow unconstitutional makes no sense if you actually believe in following the original intent. The real reason we have lost, to some extent, the deterrent value of the death penalty is because liberal, activist judges have used the system for so long now and created so many layers of appeals that it does lose its value. It takes decades for an execution to actually occur. I looked up the Charles Lindbergh case and other cases like that. Within a year after conviction and appeals, the executions occurred. If you look at the numbers in the United States, the death penalty did have a deterrent effect. It did not lose its deterrent effect until we decided to drag it out on appeal for decades. I do not understand why it is so humane if a 21-year-old commits a murder and you keep him in a cage for 70 years. How is that more humane? Why should we say that is the right thing to do, rather than what has been justice for time immemorial in Western societies?

**Chairman Yeager:**

As this Committee knows, we cannot speak as a legislature on the constitutionality of the death penalty or how it is applied or enacted. We will leave that to our co-equal judicial branch. Assemblyman Hansen, I took the testimony a little differently. I thought the testimony was that leaving someone in prison for life was less humane; that it is more of a punishment than executing him. I could be wrong, but that is how I took the testimony.

**Assemblywoman Krasner:**

You say that the implementation of the death penalty is a moral judgment. Is it not also a moral judgment when a criminal brutally murders a victim?

**Scott Coffee:**

I wish it were that simple. The fact of the matter is that I have represented these people for 20 years, and I have yet to meet someone who makes a moral, weighted decision. We assume that these people are acting as rational people, that they make a weighted decision, and that if the death penalty is on the books, then they are not going to commit this crime. That is not how it works. Most of the people who are charged with this are high, they have mental illness, or they have extreme anger problems to the extent that they are out of control. A few planned killers make a moral judgment. Nobody is going to say that it is right. It is wrong and they should be punished. They should be punished by death by incarceration as opposed to the death penalty. The death penalty has failed in Nevada for 40 years. We have tried to fix it for 40 years. We have executed one nonvolunteer out of 186 sentences. With that kind of inefficiency, I do not know how we continue to support it.

**Assemblywoman Krasner:**

You talk about money and budgets. Are the public defender's offices going to slash their budgets if this bill passes, and is there any evidence of drastic budget cuts in the jurisdictions that have abolished the death penalty?

**Scott Coffee:**

I do not know. The budgeting is done by the county. I am not the public defender; I simply work in a unit at the public defender's office. If we were not handling these capital cases, I would assume the money could be assigned elsewhere. That is my assumption, but that would be up to a different body, not me.

**Assemblywoman Krasner:**

Without slashing budgets, where is the real savings?

**Scott Coffee:**

I did not say that. The money could be allotted to victims' families for counselling or to putting more law enforcement officers on the street; that would certainly be in play if this were cut. Should our budget go down? Yes—our budget should go down if the death penalty is off the books. However, I do not make those decisions.

**Chairman Yeager:**

We are going to move on to opposition testimony at this point. We have a number of people signed in, so I would ask everyone, to the extent possible, to keep your comments as brief as possible so that everyone has a chance to say something on the record.

**Lynn Chapman, State Vice President, Nevada Eagle Forum:**

I am also representing my family and myself today. If you look in the Bible to Genesis 9, God gave Noah the first governmental ordinance. He said that if a man willingly takes another man's life, he must give his own in his stead. Murder is always a hate crime. It is based on greed, anger, and jealousy. It is always based on hatred. I heard the word "unfair" and I thought, Yeah, it is unfair that I will never get to see my brother again; I will never get to talk to him. He got to see and know one of his grandchildren, but he did not get to meet the other four grandchildren. My brother was killed by somebody who hated him. It was overwhelming to our family. He was on the way to work one morning. This man hated my brother because this man had done a lot of ugly things to other people. They worked at a logging mill. My brother worked at his job for 40 years as a senior scaler, figuring out board feet in the logs that came into the yard. A log loader is a huge machine that goes up to the logging trucks and takes the logs off of the trucks and brings them into a pile in the yard. This man had the log loader in the employee parking lot, which is against the law. He waited for my brother to come to work. My brother was less than 50 feet away from his parking spot and that man backed the log loader over my brother. That is a horrible way to go.

It does not seem fair at all for my family to have to go through that. There does not seem to be any responsibility or accountability. People always have an excuse for why they do things. I feel like putting them into a cage is almost like time-out. It is terrible what people do to each other.

Thank you, Assemblyman Hansen, for saying what you did. Thank you, Assemblyman Wheeler, for saying what you did. Heck no, I sure do not support this bill. I have forgiven the man that did this to my brother. Luckily, my sister-in-law was smart. They were trying to sweep this whole thing under the rug because it was a small town and a big employer. She did win a wrongful death suit of \$1 million. At least somebody got something, but it does not bring back my brother. I am not in favor of doing away with the death penalty; I do not think that is the right way to go. Speaking from the point of view of a victim's family, please hear us. It is an insult.

**Chairman Yeager:**

Thank you, Ms. Chapman. We are very sorry for your loss. Thank you for being here to share with us this morning.

**Christopher J. Hicks, District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:**

I speak on behalf of the 15 district attorneys who are not here today. I offer a northern Nevada perspective of A.B. 237. When I am done, I will defer to District Attorney Wolfson to give you the Clark County perspective. I sit here in strong opposition to the bill.

The United States Supreme Court has ruled that the death penalty is constitutional; it is not cruel and unusual punishment. The Nevada Supreme Court has ruled the same. The statutory scheme that this very Legislature has adopted and enacted that allows for prosecutorial pursuit of the death penalty currently restricts it to the very worst crimes so that it cannot be used arbitrarily. Just last session, this very Legislature appropriated \$860,000 to create a modern facility where lethal injection could be administered. Polls show that a strong majority of Nevada citizens, my constituents and yours, strongly support the death penalty.

The death penalty is not misused by prosecutors in the state of Nevada. Throughout all of our counties, the decision to seek the death penalty is made sparingly and judiciously. It is reserved for the very worst of the worst. In Washoe County in the last 20 years, my office has prosecuted over 300 murders. In that same time frame, we have sought the death penalty only five times, or 1.7 percent of the time. Those five cases, two of which you will hear about in a moment, present facts that are so horrific, so unthinkable, that they are difficult to hear or even believe.

Much has been referenced of the audit that was done in 2014. The ultimate conclusion it reached is that it costs three times more for a death penalty versus a non-death penalty case. I question the legitimacy of these numbers and I will tell you why. The very first page of the audit offers a forewarning that says, "Much of the information was based on unverifiable estimates provided by various entities." These are not hard numbers; these are estimates. I can represent to you that in the last two death penalty cases that were prosecuted in Washoe County in the last ten years, my office handled those prosecutions. The Washoe County Public Defender's Office handled the defense. In both of those cases our budgets were no greater and no less because of that case. We did not go to the county commissioner and ask for more money; they were simply absorbed by our budgets. Had the cases been life without, it would be the same cost, the same effect. To the appeal process: my office has an appellate division and so does the Washoe County Public Defender's Office. They, too, handle that at no additional cost. What this audit did was it took the time to look at the number of appearances that my office made at different death penalty cases and then added that up to come up with some numbers. The reality is it was just my budget; it is not additional costs.

For the sake of argument, let us accept what the study says, that it is three times more expensive to try a death penalty case than a life-without case. What that means is that in Washoe County, less than 2 percent of the time we spend three times as much money. That is less than 2 percent of the time. In light of the severity of those cases and the depravity exhibited by the accused, such a cost is minimal at best. Simply put, true justice sometimes costs a little more.

You cannot place a price on a victim's life or the justice that they deserve. Victims and their family members cannot be overlooked in debating this bill. In the last ten years, my office has sought and received from the jury the death penalty two times. Those defendants were James Biela and Tamir Hamilton. I am going to offer a brief synopsis of the facts of those



two crimes that will fail to truly encapsulate the horror of these two cases and the horrific impacts they had on the victims' families and our community. Yet, they are so important to consider today because A.B. 237 will not only eliminate our ability to seek the death penalty in these astonishing types of cases in the future, but it will also commute the sentences from those two cases and all others in this state to life in prison, allowing them a life of room, board, health care, and social interaction—simple luxuries that none of these victims ever had. Moreover, it will commute the sentences of verdicts that were given by a jury from our community and relied upon by the victims' family members.

Mr. Biela had three female victims. All were college-age students attacked near the University of Nevada, Reno. He violently raped his first victim on the concrete floor of a parking garage at gunpoint. Using his training in jiu-jitsu, he choked out and kidnapped his second victim, sexually assaulting her numerous times in his truck. Lastly, he abducted 19-year-old Brianna Denison from her friend's house. He raped her and choked her to death with a pair of underwear. He then left her naked, lifeless body discarded like a piece of trash in an empty lot covered by a Christmas tree that someone had disposed of in that lot.

Tamir Hamilton had two victims. Two weeks before his brutal murder of Holly Quick, he randomly attacked and repeatedly raped a 20-year-old who had stopped by her brother's apartment to do some laundry. Hamilton fled when the brother tried to get through the locked apartment door. His second victim, Holly Quick, was only 16. In September 2006, she returned to her mom's residence after attending a local high school football game. She said goodnight to her mom and went to her room to go to bed. The next morning when her mom went into her room to rouse her, thinking that she had overslept, she found Holly. The lower half of her body was naked and hung oddly off of the bed. Her throat was slit so severely that she was nearly decapitated. There was blood everywhere. She had been raped. She had been tortured. She had 40 separate stab injuries to her neck, jaw, and shoulders. Her mom found her.

Family members of both of those victims are here today in opposition of A.B. 237. I would like to recognize them. Lauren Denison, Brianna's aunt, is here on behalf of Brianna Denison's family. Her mother, Bridgette, and her brother would like to have been here as well, but they had a preplanned trip together celebrating what would have been Brianna Denison's twenty-ninth birthday. Holly Quick's father, Thomas Quick, is also present today. Her mother, Patricia Doss, is also here on behalf of Holly's family. The impact of these horrific crimes on these wonderful families is immeasurable. We have a duty to empathize with them. We have a duty to try and understand just how hard it is. We have a duty to support them. These considerations are supremely relevant when proposing a bill that will eliminate the death penalty, and more importantly to them, would commute the very death sentences that were delivered to these monsters to life in prison. They do not wish to provide testimony today; coming here is hard enough for them. I wish to share some small portions of the victim impact statements they made to the very juries who gave the death penalty to their loved ones' murderers. Portions I will share with you

reflect the impact the crimes had on them. I can represent that the remainder of the impact statements, which I will not read today, deeply reflected the character and the magnificent qualities of Brianna and Holly. The first comes from Brianna's aunt, Lauren Denison. These are the statements made to the juries presiding over those murders.

The reality is that no matter how much we write or how long I could stand up here and speak to you, we would never be able to convey to you the beautiful soul that Brianna was. All of our family members wrote beautiful statements, but I would be up here for days if I read them all. We realize you did not know her or have the opportunity to love her, but we did and we will forever be grateful. The pain and devastation to our family is beyond measure. I just want to thank you guys for finally bringing Brianna some justice. Thanks.

The next came from Robert Zunino, who is Brianna's grandfather.

Most of you have children or close loved ones. I hope you and everyone in this room never has to go through the experience—the horror, the pain, the sorrow—that my family is going through and has gone through these past two years. Also, hopefully the decision that all of you make today or tomorrow will bring justice and peace to my little Brianna.

This is from Brianna's mother, Bridgette Denison.

James Biela, I am here before you today as a person who has suffered more tragedy than any mother should ever live with. How you have single-handedly impacted me, my only son, my parents, my brother, and the many others that have been there for me can never be put to words. It is not something that words were ever meant to describe. It sickens me to think that my poor baby girl was alone with you for the last minutes of her life. I will never know what it feels like to see my daughter complete her life's journey.

The next statement I would like to read is the victim impact statement from Tamir Hamilton's case. This was given by Tom Quick, Holly Quick's father.

When I walked into the police station and gave my name at the front desk, I saw a sad look on the officer's face. On the ride up the elevator, the detective told me that Holly, my daughter, had been murdered. In that moment nothing felt real anymore, like this was all a dream. I no longer felt my legs moving as we went to the questioning room. From the questioning room to the waiting room I cried so much that all I can remember is a pile of tissue and sad faces looking at me. The shock was turning into learning to breathe again. I find myself saying, "Why didn't he just kill her? Why did he have to stab her so many times? Why did he have to rape her?" Then I stop myself and think, What a terrible thing to say about my own daughter. To survive day by day is a fight to temporarily forget about Holly, so that

I can be around people and not think, Where is my Holly, and start crying again. I want to be able to remember her whenever I want to, not the pictures we have seen here that are stuck in my head, but her smiles. That has been taken away forever. Holly was a big part of me. Now I am a broken man that is looking for the day that I can be with her again in heaven with no one to tear us apart. I do not know what to do now.

Lastly, I want to share with you a portion of the statement made by her mother, Patricia Doss.

I used to tell Holly when she was small, "Don't say can't, say can," and she would say, "I will try." Now I find myself saying, "I can't." I cannot put into words how this horrible act has impacted my life and so, like her, I say, "I will try." I had so many dreams for her and now I am afraid to dream. I am afraid to sleep. I was asleep while my daughter was too afraid, too terrified to scream out, too terrified to scream for help. I was right there and I did not get a chance to protect my daughter and now I do not get a chance to watch her grow up. I always gave her a kiss goodnight. Where is my kiss now? When she was a baby, I would put a kiss in the palm of her hand before she went to bed and before she went to school. Now I am forced to kiss a stone memorial that is at her grave.

I will tell you after Ms. Doss' victim impact statement, the 911 call she made was played for the jury. I can tell you that is the most chilling and heartbreaking 911 call you will ever hear and never forget.

As President of the Nevada District Attorneys Association and the elected District Attorney for Washoe County, I strongly oppose this bill. It does not take into account the will of the people of Nevada, and it argues for placing a price on justice for victims. In the face of the support of the death penalty in Nevada, the judicious manner in which it is sought and the investments we have made to administer it, what we should be doing here today is taking steps to fix our death penalty system, not simply throwing our hands in the air and walking away. The victims deserve better than that.

**Chairman Yeager:**

We have to take the bills as presented. I do not think there is anything wrong with the Committee examining the policy behind this bill, but I think your points are well taken and I appreciate your being here.

**Steven B. Wolfson, District Attorney, Clark County District Attorney's Office:**

In the interest of time, I had a lot to say, but I do not think I am going to be able to get through it all, so I am going to move fast. Mr. Lalli will offer some statistical information. There are six or seven people who have flown into town who are victims' family members. It would be terrible if we did not give them an opportunity.

**Chairman Yeager:**

We can do that. We do have the reality of a limited amount of time. I can tell the Committee that we have about 45 minutes from this point to get through all the testimony. If you could keep your comments as brief as possible, and we will call folks up afterward. We will have to put some time limits on that, but it is important for everyone to be able to come to the table and at least get their name on the record in either support or opposition.

**Steve Wolfson:**

I am the Clark County District Attorney (DA), and on behalf of the Clark County District Attorney's Office, we oppose this bill, and I would like to tell you why. It is worth noting that in Clark County the decision to file the notice of intent to seek the death penalty is my decision and mine alone. We have a committee of respected attorneys who meet to determine whether to file this notice. These are earnest, serious, solemn meetings, but at the end of the day, the decision is mine. Before taking office over five years ago, I was a criminal defense attorney for 25 years. During those 25 years, I represented a number of persons charged with murder, including capital murder. I am not a career prosecutor. A lot of people talk about career prosecutors having a narrow vision or narrow view of things. I was a criminal defense lawyer longer than I have been a prosecutor.

Before taking office over five years ago, my predecessor filed the notice of intent to seek the death penalty in an average of 20 cases per year. When I took office, I pledged to reduce that amount because I thought it was the right thing to do. I have done that. In my five years, we have filed the notice of intent in less than 50 percent of the cases of my predecessor. I am not criticizing my predecessor—we are all different and view things differently. In my opinion, a change needed to come to Clark County. That is why we have filed 50 percent fewer death penalty notices in the last five years. Why? I am going to use the phrase that so many people seem to throw around so casually—"the worst of the worst." It applies, but it has meaning too. There is another phrase that I have heard in this industry—"garden variety," the typical type of murder case. I do not like that because, as somebody has already pointed out, no murder is pretty and no murder is just. But there are different kinds of murders and different kinds of people who commit murders. It is not just the event of the crime itself that we base our decision on. It is a variety of factors—a person's background, a person's criminal history, whatever mitigation is presented to us prosecutors—recognizing that we only have a short period under Nevada law to file the notice. We have 30 days after a case reaches the trial court. That is a very short period. We are trying to do something about that. I am on a Supreme Court commission that is looking at changing some of the rules to make it better so that the decision whether to file can be delayed to give the defense lawyers more time to present us with mitigation. That is something that is being discussed by the stakeholders.

The citizens of this state strongly favor the death penalty. A recent poll conducted by the Mellman Group said almost 70 percent of Nevadans favor the death penalty. There are a lot of polls. There are a lot of studies. There are a lot of writings. You can find somebody with a differing opinion and a different poll on almost any subject matter. In Nevada, a recent poll by a recognized pollster found that almost 70 percent of Nevadans support the death penalty.

I work for those people. As an elected official, I have an obligation to ensure that their voice will be heard. If I was presented with polls that showed only 30 percent of Nevadans support the death penalty, I might do something as the Clark County District Attorney because I do have the power to say no. When almost 70 percent of Nevadans still support the death penalty, I have an obligation to seek the death penalty in appropriate cases.

It is not appropriate in most cases, but it is necessary to give the jury the option. District attorneys do not find the death penalty once somebody is convicted of first-degree murder; juries do. We have an excellent defense bar in Clark County. Mr. Coffee, you are one of the finest lawyers in Clark County. He does a great job of representing his client. He has a number of colleagues that do the same thing. At the end of the day, a jury determines whether to impose the death penalty. Usually we seek the death penalty in killings involving children, police officers in the line of duty, where extreme torture or mutilation is involved, or where there are multiple decedents. The criminal justice system relies upon graduated punishment. If the appropriate punishment for a particular murder is life without parole, how do you punish a person who commits multiple murders? How do you punish a person who has committed a murder in another state, is serving life without parole, and because of timing is able to commit another murder? Do we give him another life-without-parole sentence? Our system is based on graduated punishment.

In Clark County, the death penalty is used appropriately. When I am done with my remarks, Mr. Lalli is going to talk about the statistics. So much discussion has occurred today that if we abolish the death penalty, money will be saved. I ask each of you to look closely at that statement. I do not believe we will save money if we abolish the death penalty. If the death penalty is eliminated, the focus will simply shift to life without the possibility of parole. Life without the possibility of parole will become the new death penalty.

Defense attorneys and judges will say a potential sentence of life without the possibility of parole creates a more significant defense obligation than in any other case because now that is the worst. Defense lawyers are going to have to spend the same money, fight the same fight, to avoid the ultimate punishment. We will hear things like, "It is the duty of defense counsel to lead the team in conducting an exhaustive investigation into the life history of the client." We hear that in death penalty cases. We are going to hear the same thing in non-death cases, and we have already heard those same things. We have affidavits from defense lawyers representing noncapital murder clients. "It is the duty of the defense counsel to lead the team in conducting an exhaustive investigation into the life history of the client." It is not going to change. Now life without parole, if you abolish the death penalty, will be the most extreme penalty. "It is incumbent upon the defense to interview all relevant persons and obtain all relevant records and documents that enable the defense to develop and implement an effective defense strategy." We have already heard that in noncapital cases, and I guarantee you we will hear it if you abolish the death penalty and the same costs will exist.

They said we could not obtain lethal drugs. I do not believe that is accurate. The law provides, in *Nevada Revised Statutes* 176.355, that "The Director of the Department of Corrections shall . . . Select the drug or combination of drugs to be used for the execution after consulting with the Chief Medical Officer." I have met the Director of Corrections, Mr. James Dzurenda. I have met personally with the Director and had two conversations with him. He tells me that, should he receive an order of execution, he believes he will be able to find the drug or combination of drugs to carry out an execution. When you hear that the drug is not available, I do not think that is accurate. I would invite you to ask Director Dzurenda yourself.

I have sat here for two hours, and it has been a pleasure. This is a pleasure to come here and speak. Some of you are my friends and I respect all of you, but I heard something that was so insulting. Somebody accused my office and me of a "dog-and-pony show" put on by the DA's office in death penalty cases. I am sorry sir, but that is insulting. I have excellent prosecutors that seek justice for victims. To call it a "dog-and-pony show" is insulting.

Each of us is entitled to our moral opinions on whether we as a society should take another human's life. There are two things going on here. There is the moral angle and the legal angle. We are each entitled to our own moral opinions. I may agree or disagree with some of you, and that is our right. I respect people who disagree with me. Legally, it should remain an option. Most Nevadans want a jury to have the death penalty as an option, and removing it will not save money. As my esteemed colleague Mr. Hicks said, should saving money be the reason to abolish the death penalty? I say no. As Mr. Hicks said, How about reforming a process, both before and after a trial, where a plea of guilty would reduce costs without eliminating a form of justice. In my travels and discussions, most people who complain about the death penalty complain about the fact that it is taking so long and we are not accomplishing it. It is not because we do not return a verdict of death; we are just not getting it done. It takes 10, 15, 20, or 30 years. How about looking at that process? That is what people are complaining about. They are not complaining about the death penalty; they are complaining we are not doing it. How about looking at the process? How about looking at the state appellate process and the federal appellate process? Somebody quoted the Lindbergh Trials, where somebody was executed a year after. I am not suggesting a year. In Clark County, I am part of a panel put together by the Supreme Court justices. Mr. Coffee is on my subcommittee. We are looking at reforms, at getting cases to resolution quicker. That is what people want. They do not want to abolish the death penalty. They want justice quicker, balancing the due process rights of the defendant.

**Chairman Yeager:**

After Mr. Lalli speaks, I am going to take some questions from the Committee for the prosecutors. I do not think we will have many questions, but there are a few, and then we will take additional testimony.

**Christopher J. Lalli, Assistant District Attorney, Clark County District Attorney's Office:**

I have been employed at the Clark County Office of the District Attorney for 23 years. I am currently in administration, but for a good part of my career, I was a homicide prosecutor on our Major Violators Unit. This is a very challenging issue for many people, but it is important, particularly for those in the Legislature, to be mindful of actual and true data. For that reason, I want to touch upon a couple of points. One is the recent audit regarding death penalty costs. I would agree with District Attorney Hicks that we ought to use caution in approaching some of the conclusions of that study. I looked at how they determined that prosecution costs in death penalty cases were higher than in non-death penalty cases. Here is what they say, "The in-court costs of prosecuting a death penalty case was higher than for non-death penalty cases. The differences in costs are attributable primarily to the added hearings in the court record for death penalty cases during pretrial." That is on page 22 of the study. They continue, "The cost of prosecuting a death penalty trial is nearly twice the cost of a non-death penalty case. Since the costs were based on actual court time, costs are primarily driven by the length of the trial." That is at page 25 of the study. There are no additional costs realized by the county, who employs all of us prosecutors and defenders in the majority of these cases, by the extension of time of a trial. Those costs simply are not real. Prosecution salaries do not increase based upon the length of time in a courtroom. Staffing levels have not increased based upon more or fewer death filings. The case must be tried irrespective of whether a death notice is filed in the case. The costs of prosecution that are allegedly more in death penalty cases is not accurate. The same could be said for court costs.

I want to give you another example of how that study estimates costs. They assess the cost for pretrial detention of a death penalty defendant. They say it takes longer for death penalty cases so they should look at the costs associated with housing that defendant in local jails pretrial. They assess that figure alone at \$157,000. Non-death penalty defendants are detained pretrial as well. It is not a cost unique to a death penalty case. Whether a murderer is detained in a jail pretrial or in prison postconviction, society still bears the cost of incarcerating that individual. The cost is no greater in a death penalty case. Respectfully to that study, these costs are invented.

There was a lot of discussion about deterrence, and Assemblyman Wheeler, you are correct; there are studies going both ways. I have many of them that I can provide to the Committee. I did want to talk about statistics. We have provided the Committee with a document ([Exhibit H](#)) titled "Death Penalty Statistics." I want to talk briefly about those as they pertain specifically to our state, to Clark County, and to Nevada's death row. Slide 2 indicates the number of death row inmates separated by race. This is information we did not create but was provided to us by the Department of Corrections (NDOC). I heard a number of speakers in support of this bill suggest that prosecutors target minorities when seeking the death penalty. The facts simply do not bear that out as being accurate. The final slide [slide 4, ([Exhibit H](#))] of this group of charts is entitled "Race of Clark County Death Verdict Defendants 2002-Present." It lists the various percentages as well as the raw numbers of cases in which we have received a death verdict from juries. It is important to consider these

statistics in light of the number of individuals who are actually committing murders in our state and in the country. To do that, I received information from the FBI, the Uniform Crime Report (UCR), numbers that the criminal justice system in every state relies upon heavily. I took the statistics from 2015, which I would suggest is a snapshot similar to other years. In 2015, of the murders that occurred in the United States—there were over 15,000—36.7 percent were committed by African Americans. If you look at the death verdicts in Clark County that involved African-American defendants, that number is 33 percent. We are underrepresenting African Americans in the number of death verdicts returned in Clark County. When you look at the national number of homicides committed by Hispanic individuals, that number is 12.7 percent. These are the FBI numbers. In Clark County, of our verdicts wherein we received a death verdict dating back to 2002, 10 percent of those individuals were Hispanic. Again, that is lower than the statistics showing who has committed murders in our country. Perhaps the most startling figure pertains to white males. The FBI reports that in 2015, of the more than 15,000 murders that occurred in the United States, 30.2 percent of those murders were committed by white males. In Clark County, 52 percent of those individuals wherein a death verdict was received were white males. The suggestion, borne out by the raw numbers, that prosecutors are "targeting minorities" is simply not true.

**Chairman Yeager:**

Mr. Lalli, I do not think that was the testimony—that prosecutors are targeting minorities. I think the testimony was that they were disproportionately impacted. I want to make sure that is clear because I do not believe anyone said that in his or her testimony.

**Christopher Lalli:**

With due respect, I wrote it down when I heard it. A speaker did say that, and there was testimony that it is disproportionally given in the cases of minority members. In both of those cases, that assertion is not correct. The other thing we heard was that the death penalty does not undergo a sufficient narrowing under the laws of the state of Nevada. I want to provide you with the raw statistics that we know. There is a pie chart [slide 3, ([Exhibit H](#))] titled "Clark County Death Verdicts 2002-2015." With respect to the number of murders in Clark County, the source was provided by the Clark County Office of the Coroner/Medical Examiner. They have statistics completed through 2015, so I do not have information that is more current. We look at it in terms of the death verdicts returned in Clark County during that time. From 2002 until 2015, there were 2,288 homicides committed in Clark County. During that period, there were 18 death verdicts returned. That is less than 1 percent. It is a fraction of the percentage of the homicides in Clark County. Based on the raw statistics, I would submit there is an absolute narrowing of those who receive the death penalty in Clark County.

One other thing I wanted to mention was cost. I want to address A.B. 237 itself. One of the arguments we hear often from the proponents of the legislation are the cost savings. There may be some; what that is I could not tell you. As I indicated before, I would use extreme caution in approaching that issue. However, just looking at the bill, I would submit that the cost of prosecuting homicide cases could increase. We can look at the number of defense



attorneys that are required to argue a death penalty case in Nevada today; NRS 175.151 provides that in death cases, the court must allow both defense counsel to argue the case to the jury. That is existing law. What this bill would do is amend that statute to require courts to allow both defense counsel to argue the case to a jury in non-death cases. By implication, this bill would require two attorneys to be appointed in every case. I would submit that is going to be an enormous cost to the counties, particularly the rural counties. The bill addresses the number of defense attorneys required to argue a case on appeal. In death penalty cases, the court must allow both defense counsel to argue the case on appeal [NRS 177.235]. Assembly Bill 237 would require the same in non-death penalty cases.

As Mr. Wolfson suggested, life without parole cases that are routinely handled in our justice system will become the new death penalty. I submit that costs of handling those cases would actually increase from their current levels.

**Assemblyman Watkins:**

I would ask that Mr. Hicks come back up. I want to preface my question by saying this: we elect you to protect us, and you do a wonderful job. I know it is a difficult job where you cannot unsee what you have seen; you cannot unhear what you have heard. I was also elected to ask questions. Some of these questions are going to be difficult, but it is not meant to disrespect your position or the job that you do. I am thankful that you are in the position that you are and doing what you do to keep us all safe.

Regarding the audit that is being quoted, did either or both of your offices have the opportunity to participate in that audit by providing data or input?

**Christopher Lalli:**

Both of our offices did participate in the study. There is a suggestion to that in the study itself. If you look at page 22 it says that "Although the Clark County and Washoe District Attorneys' Offices did not provide estimated or actual hours on our selected cases," with respect to the time required. We did participate in that audit. We did not and could not provide the type of information that the auditor was looking for. We do not ask our attorneys to keep track of their hourly rates as you would in a private firm where those bills are being passed on. There is no scientific way to estimate the hours spent on particular cases. Moreover, we would still have a responsibility to prosecute the cases that we were questioned about irrespective of whether they were death cases. We did provide information as part of the study. I do not think the study captures the challenges that truly exist.

**Assemblyman Watkins:**

Was there any information that was in possession of either of your offices that the auditor requested that you did not provide?

**Christopher Lalli:**

It is my understanding that we provided all of the information that we had to the auditor as best we could.

**Christopher Hicks:**

I was elected in 2015, so I was not the sitting DA when this occurred. Nevertheless, as far as I understand, we encountered the same hurdles that Mr. Lalli just explained. We gave them any data to which we had access.

**Assemblyman Watkins:**

Mr. Wolfson, you indicated that the better approach here may be to address the appeals process and the length of time it takes to get through the appeals process before a death sentence could be carried out. It is my understanding that much of our compliance with the law on the appeal process stems from the United States Supreme Court holdings. This body could not have any impact on that. Is there a line in the sand of where we can have an impact as the legislative body for this state versus holdings that came down from the United States Supreme Court that we have no impact over?

**Steve Wolfson:**

A great deal of the costs that are being talked about are pre-adjudication. Some of these cases take many years to get to trial. In Clark County, we have 330 pending murder cases and 58 capital cases. Of those 330 murder cases, 50 of them are more than 5 years old; 80 of them are more than 3 years old. The point is that so much of the cost is up front. The lawyers have to do their preparation. I think that reforms could be made pre-adjudication to help cut the costs way down but not deprive a defendant of his due process rights.

**Assemblyman Watkins:**

Would those reforms need to come at the federal level because they are dictated by the United States Supreme Court? Is it something that this body could actually address?

**Steve Wolfson:**

I am pleased to say that there are four subgroups under the Nevada Supreme Court's Commission on Statewide Rules of Criminal Procedure. One of them is called the Life/Death Committee, and we are spearheading an effort to address these issues on murder cases. On our own, through the Eighth Judicial District Court, we are taking significant steps. I am pleased that we believe we can enact some new rules to get not just death penalty cases but murder cases to resolution. Most of these cases settle without a trial. Why take five or seven years?

**Assemblyman Watkins:**

According to the data provided in the exhibits we have, the reality is that 13 of the counties in this state effectively have no death penalty. There are no death row inmates and, as far as I can tell, there is nobody even being charged with a crime that pushes them toward the death penalty. We do not have that number. Can you, as the representative for the DA's association for the state, provide the numbers of people who have committed crimes in these rural counties that are death penalty-eligible and whether they are being tried for the purposes of the death penalty?

My last question would be to both of you as well. We have heard some evidence on an unrelated bill about the inadequacy of our jury pools across a cross section of the population of the state of Nevada along either ethnic lines, racial lines, or socioeconomic lines. I wonder if you could address that and whether you believe that inadequacy—or maybe you do not think it is inadequate—has an impact on the likelihood of one person being sentenced to death over another.

**Christopher Hicks:**

I can only speak to that anecdotally. I have done many jury trials in Washoe County, including death penalty litigation. It has been my experience that the jury pool is reflective of our community. I do not believe that those types of issues exist, at least not that I have seen, and I have not read any studies on that issue.

**Steve Wolfson:**

I am aware of a bill or two that attempts to address this. I do not believe there are inadequacies at all. We have a system in place where hundreds of potential jurors are summoned into courts. Especially on death penalty cases, it is the norm to use questionnaires. There is a whole process. Sometimes it takes days or weeks to select a jury. There are literally hundreds of people who do represent a cross section of our community. I do not believe there are inadequacies.

**Assemblywoman Cohen:**

Can you please speak to the services in place for the families of victims? Mr. Hicks, in your role as President of the Nevada District Attorneys Association, if you have information for any of the counties that are not represented here, please provide that as well.

**Christopher Hicks:**

In regard to victim services?

**Assemblywoman Cohen:**

Yes.

**Christopher Hicks:**

Statutorily we can provide a certain amount of money regarding victim services. I have one of our victim advocates from our DA's office in Washoe County here today. She could probably better lay out victim services. I would be happy to have her meet with you afterward if that would be better. We provide victim advocacy from the get-go in all of our cases because we want, first and foremost, to take care of our victims. Excuse me for trying to talk so fast; we have a lot of victims who want to speak today.

**Chairman Yeager:**

That is fine; I do want to make sure we get to other testimony.

**Assemblywoman Miller:**

I have a question for Mr. Wolfson and Mr. Lalli. Mr. Wolfson, you mentioned that in a poll, 70 percent of Nevadans favored the death penalty. I would like to know about the poll. You mentioned that it was conducted by a popular pollster. My question is who was the pollster, how many people were polled, what are the demographics of those people—specifically ensuring that they were actually Nevadans—how and what were the questions, and were the facts about the death penalty presented with those questions?

**Steve Wolfson:**

I actually said "almost 70 percent." In any event, it is approaching 70 percent. This poll was done by the Mellman Group, which my research showed me was a well-respected, well-recognized, often-used polling group. That polling took place between January 12 and January 15, 2017. I have a variety of the statistics broken down. In the interest of time, I did not go through all of those. For example, 66 percent of the voters polled support keeping the death penalty in Nevada; 59 percent said they strongly supported the death penalty. The demographics are divided between Republicans, Independents, Democrats, young and old; and I could go on.

**Assemblywoman Miller:**

When you say, "almost 70 percent," is that almost 70 percent of 200 people or 2 million people? You are saying "almost 70 percent of Nevadans." I need to hear the number of people who were polled and the demographics of those people.

**Chairman Yeager:**

In the interest of time, perhaps you could provide the Committee with the information about the poll.

**Assemblywoman Miller:**

Mr. Lalli, I am looking at the pie charts that were provided. Going back to your concern about the impression that the counties were targeting black defendants: it says, regarding the race of Clark County death verdict defendants, 2002 to present [slide 4, ([Exhibit H](#))], 33 percent were black, with the actual number being seven. However, when I look at the race of current Nevada death row inmates [slide 2], that number for black people increases to 37 percent and increases from 7 black defendants to 30 black defendants. The integrity of numbers is when we are looking at them holistically and quantifiably. At 37 percent we could say that is less than whites, but our Clark County community is around 12 percent black.

**Christopher Lalli:**

I think your statistical information is correct, but I think it is an error in reasoning to say we are going to compare the people on death row with the population in the state, because not everybody in this state commits murder. We look at the number of murders and the racial makeup of the offenders of those crimes when we talk about statistics. I hope nobody is

getting hung up on the word "targeting," but whether the result is we are putting more minority members on death row than proportionately those who actually commit murders, without any doubt at all, the answer is no, we are not. In fact, we are disproportionately putting white males on death row in Clark County.

**Assemblywoman Miller:**

How many of the death row offenses, or chargeable offenses, are committed by white men or black men as opposed to how many are resulting in those death row convictions?

**Christopher Lalli:**

All of the individuals on death row have committed offenses that are punishable by the death penalty. In an answer to your question, that would be 100 percent of them. What we have done is just put all death row inmates in the state into the chart of the race of current Nevada death row inmates [slide 2]. What we have done in Clark County is to look at the trend. What we are doing in the last 5 years, the last 10 years, is more significant than what we did 20 years ago. If you look at the modern trend, I would submit that, based upon the raw numbers, there is not an instance of focusing on racial minority members.

**Assemblywoman Miller:**

I know we have so much to cover, but I am interested in those raw numbers. It is not an impression of the raw numbers, I am just interested in the raw numbers—crimes versus convictions.

**Christopher Lalli:**

Maybe I am misunderstanding your question, but the raw numbers of individuals in addition to the percentages are actually included on the diagram [slide 4, ([Exhibit H](#))]. Those numbers consist of 11 white individuals, 7 black individuals, 2 Hispanics and 1 Asian. Those are the raw numbers composing the information on this chart.

**Assemblywoman Tolles:**

Mr. Wolfson, in regard to the commission that is addressing these issues, when do you anticipate that the report with those recommendations for reforming the process would be made available?

**Steve Wolfson:**

The commission has been meeting for almost two years. The subcommittees of the commission have been providing reports to the full commission. The subcommittee that is relevant to our discussion is taking action. We have had meetings with the chief justices, the Supreme Court justices, and the judges from the Eighth Judicial District Court to implement some of the things we are talking about. As far as the final and full report, the commission is an ongoing body, so I cannot tell you when a final report will be provided. Unless I am told I cannot, I would be glad to provide you with our subcommittee's report. I am proud of it actually, since I am the chairman of the subcommittee.

**Assemblywoman Tolles:**

I notice on NELIS that there is a lot of information that has been brought forward that has been posted. I think it would be beneficial to this body as well as the public if I could request a follow-up on that commission report, the audits that were referenced, the poll that was referenced, and some of those studies that were referenced in regard to the deterrent factor. Finally, I would like to take a moment of personal privilege to say thank you, particularly to DA Hicks for speaking on behalf of the victims, for recognizing that the criminals had no objection to imposing the death penalty on their victims. I would like to personally thank your office for prosecuting the man who murdered my family member ten years ago. Forgiveness does not mean the absence of consequences.

**Assemblyman Pickard:**

My question is for DA Wolfson, given your extensive experience on both sides of this equation. I am wondering about the unintended—or maybe intended—consequences of this bill. In your view, if life without parole is crueler than death, do you believe that this could lead to more defense actions that will then call into question the constitutionality of life without parole under the Eighth Amendment?

**Steve Wolfson:**

I do not know. So much focus has been on the death penalty, the finality of the death penalty, and whether it is cruel and unusual punishment. I do not think there has been as much focus on the lesser penalty of life without parole. I do not know that death is worse than life without. Juries make decisions based on what should happen to an individual based upon a variety of factors. I cannot predict what the future may have.

**Assemblyman Thompson:**

I want to talk about prevention. Since we are talking about data so much today, share with us what, if anything, your offices are doing to be proactive around prevention and making those data-driven decisions and strategies in your office. There are a lot of hurting families here today and many who are not here today. What are your offices doing for prevention? The reason I say that is because there is data out there that says that 60 percent of the defendants suffer from mental impairment, 44 percent have intellectual disabilities, nearly 1 in 5 are under the age of 21, racial bias is in the application of the death penalty, so on and so forth. How can your offices see this time and again and not address it prevention-wise?

**Steve Wolfson:**

I have been the DA for five years. When I took over, I started participating in the Sheriff's Multi-Cultural Advisory Council. I think it started with Sheriff Gillespie and now carried forward with Sheriff Lombardo. We meet once a month. There are 40 or 50 people representing all cultures in that room to talk about what is happening in Clark County. When we had some problems with civil discourse in other communities—Baltimore and the like—Las Vegas was very concerned about what was going to happen in our community. We started meeting ahead of time to talk about what we can do to prevent civil discord. Sheriff Lombardo gets all the credit. We went into the community, met with community representatives, and heard what they had to say. That is one thing that my office participates

in on a regular basis. I have regular meetings with law enforcement to discuss what we can do to combat violent crime. That is what is now on a lot of people's minds: violent crime. We had 158 homicides in Clark County last year—I do not know if it was the record, but it was very close. Violent crime is up. I do not know what to do about it, but I meet with my colleagues, I meet with the sheriff, and I meet with other representatives to discuss getting out into the community. These are social issues, and I cannot answer that question in two minutes.

**Assemblyman Thompson:**

With all due respect, I hear that you are hearing it and you are talking about it. What are programs that your office, not the sheriff, is doing to combat this? You have profiles of the behaviors of the types of people who are coming in. What is your office doing, not hearing, about it? We all heard today and we hear it all the time: what are we doing, we have to do something about it, we do not want families to be hurting like my colleague and others have shared and will share.

**Steve Wolfson:**

I have specialty teams in my office. Clark County is a big community. We are the thirteenth largest county in the country. Unlike 20 years ago when we did not have specialized prosecutors, we do now. I have a gang team consisting of four lawyers who target gang violence. I have a gun team with five lawyers who target gun crime. That is what people are most worried about. I am seeking a third grand jury in Clark County so that we can effectively and efficiently prosecute dangerous people. That is one thing I am doing and I am working very hard at it because I think it will have an impact and effect to protect the citizens of Clark County.

**Chairman Yeager:**

Not to cut you off, but we really have to move on. I will ask you and any other members of the Committee to take those questions offline. For members of the public, here is what we are going to do: we do not have much time and many of you have come here to provide your testimony. The voters do not always make it easy on us here in the Legislature. We have 120 days to get through all of our business. I would first like to invite anyone who would like to give testimony to present it in writing. I do want you to come to the table and at least state your name on the record, your affiliation, and your position on this bill. We do not have time for additional testimony beyond that. Again, I would invite you to submit your written testimony to the Committee. I can assure you that we will read those. Let us start in Carson City, in opposition.

**Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:**

We are in opposition to A.B. 237. Three of the 83 people on death row are people who I had an input in putting there. I am a retired homicide detective from Reno. There is a lot more to this story that I would be more than happy to share.

**Terri Bryson, Chapter Co-Leader, Desert of Hope Chapter, National Organization of Parents of Murdered Children, Inc.**

[Additional testimony submitted ([Exhibit I](#)).] I am against this bill. I am a mother of a daughter who was murdered. Her name is Cherish Noelle. She was 22; twenty-three years and two weeks into her death. I am also the chapter co-leader of Parents of Murdered Children in Las Vegas, Nevada. Being against this bill is something that I have always felt throughout my life, but now that it has affected me, I want to be able to share that this affects more than just the statistics and the numbers that we are talking about today. There is another side to what we are dealing with here today—that is the victims and the families that are affected—we are convicted for life. We have to live with the ramifications of somebody else's choices against our children. That entire branch of my family tree has been eradicated. I do not have an option. I do not have the privilege of her living out the rest of her life as some of these people who are sitting on death row. I had to pull my surviving daughter off of her dead sister's body. I had to hear the wails of her father still echoing in my mind. I have had to pick my husband off the ground more than once. I, as a chapter leader, hear tales every day. I get the first calls about people who have been affected by this violence. My worst call is saying I need you to talk to a mother who lost her 3-year-old child. If they are calling me it is not an accident; it is not due to illness. I need to have our voices heard. I am coming to you to raise our voice and let you know that there is another side to the statistics. There is something more than the monetary loss and gain. Please hear our cries from the valley of grief. Listen to what we have to say too.

**Chairman Yeager:**

Thank you for your testimony, ma'am. Feel free to submit your additional testimony in writing if you would like to as well. You can give those to our committee secretary.

**Shalonda Hughes, Private Citizen, Las Vegas, Nevada:**

I made Kenneth Allen Hardwick a homemade caramel apple pie and kissed him goodbye and I never saw him again until I had to identify his body. He was a son, a brother, an uncle, and a father of four. He was my best friend; he was my fiancé, soon to be my husband. He was going to be the father of my children. I was 30 years old and he was the love of my life. One night, two men did not care what was going on in anyone's world but their own: no regard for kin, his family, friends, loved ones, not me, not you, not anyone. The fact of my case is they took his life for what they thought was money. They followed him. He had a traveling humidor. They killed him over cigars. He lost his life because these criminals were lazy and greedy and it was easy for them. All they got out of it was cigars. This premeditated murder occurred December 5, 2006. It took almost six months before their arrest. I showed up for court every single day. Two preliminary hearings, 24 calendar calls within 32 months, and it finally went to trial March 2010. Our lives were turned upside down. I lived in fear, complete paranoia, wondering if we would ever receive justice. We finally did in April 2010. The criminals convicted of first-degree murder were sentenced to death for the heinous crime they committed. We felt relief 40 months later. We have survived long enough to see another day that our government has enforced rules to protect our lives. Without these rules, our world would be in a chaotic state of nature. Rules and regulations are very important to keeping order within our society.



Yes, the death penalty is the most severe form of punishment sentenced to a person who has been condemned by the law. It is important to me and Ken's family, and all of the innocent victims. It could be you. It is important that we provide retribution to the people who have been victimized in the most atrocious manner. We cannot survive in a society that fails to punish criminals in a way thought to be proportionate to the severity of their crime. If the result of doing something is too extreme, we hope that people will change their behavior. The death penalty provides a justified method of deterrence. It could prevent you from ever having to experience my pain. The death penalty helps us think twice about carrying out intentions of belligerent behavior, and it deters people from committing repulsive acts of crime. The death penalty serves as a reminder that there are severe consequences to our actions.

In conclusion, I want to say that after listening to what everyone was saying on both sides, certainly we need to examine the process and figure out how we fix it. I understand cost is an issue, but I am offended that those people put a value on Ken's life. I am offended. I am not angry; I do not hate; I just want justice. I strongly oppose this bill.

**Tereza Trejbalova, Private Citizen, Las Vegas, Nevada:**

I am a student of criminal justice and my research area is the death penalty.

**Chairman Yeager:**

May I ask if you are in opposition or support?

**Tereza Trejbalova:**

In support.

**Chairman Yeager:**

Can I ask you to hold off for just a moment? We are still taking opposition testimony.

**Kenneth Cherry, Sr., Private Citizen, Oakland, California:**

My son was murdered February 21, 2013, on the Las Vegas Strip. He lost his life, and two other people lost their lives too. The way that the murders happened was the two other people burned up in a car. The guy who did it, the animal who did it, escaped and went to Los Angeles. I am sure many of you are familiar with it. Some of the things I have discovered that he said: he was not tripping off the fact that he killed, he murdered, these people—he was trying to get away. The death penalty is definitely needed for people like that. He is not crazy; he is just evil. An example I thought of while I was coming up here is that if we could prosecute the devil and convict him and then he would be sentenced to death, we would kill him. That is one of his protégés.

**Chairman Yeager:**

I understand your point, but in the interest of time, I need you to keep your comments to this bill.

**Kenneth Cherry, Sr.:**

I am finished. That is all I want to say. I am opposed to the bill—I came all the way from Oakland, California. I drove all night.

**Jennifer Otremba, Private Citizen, Las Vegas, Nevada:**

[Read from prepared testimony ([Exhibit J](#)).] This is my daughter Alyssa. This picture was taken 48 hours before she was brutally murdered. She was 15 years old and a sophomore in high school. On September 2, 2011, she was walking home from borrowing a textbook from a friend. It was 6:38 when she texted me saying she was walking home and her phone was going to die, but she would be home within a half hour. Exactly 30 minutes later I texted her and there was no response. I called her and there was no answer. I searched for her. I called the police and they were looking for her. It was 24 hours later when her body was found about 300 feet behind our home in the vacant lot. As the details unfolded, I learned that Alyssa was within feet of the pedestrian gate at the end of our street when she was attacked by 19-year-old Javier Righetti. He left his home with a knife because he was bored. He spotted her walking. He proceeded to follow her for a couple of blocks before he attacked her. He drug her into the lot. He sexually assaulted her. He raped her. He tortured her, stabbing her more than 80 times in the head, neck, and body. He carved an "LV" into her thigh because it made him feel "gangster." When you think it cannot get any worse, he came back hours later, he poured gasoline on her, and he burned her body. The coroner had to use dental records to identify her mutilated body. During the autopsy, they found the tip of the knife in her skull. Her remains were too much for us to see; we were told not to see them. There are no words that could adequately describe what this has done to my family. It has been five and a half years. It has been a nightmare. In the midst of all of this we have continued to seek justice. Eight days ago, the man who killed her was sentenced to death. Eight days ago, we finally received justice for her life. It was less than 24 hours later that I got a phone call that there was a bill that was wanting to abolish this. Nothing will bring her back, but there are some people who commit such heinous crimes that they deserve to live on death row and not know when their last days will be coming. I will submit the rest of my testimony.

**Chairman Yeager:**

Thank you for being here. Please do submit the rest of your testimony.

**Lisa Postorino, Private Citizen, Las Vegas, Nevada:**

[Additional testimony submitted ([Exhibit K](#)).] I am here on behalf of my niece, Alexis Postorino, who was murdered in 2010 by Norman Belcher. Belcher had killed someone prior, just gotten out of prison, and four months later, he killed my niece. I could go on about Alexis, but she was a great kid and very positive. I want you all to understand that if you put somebody in prison for life without parole, it is just another way of life for them; they learn to adapt to that lifestyle. They still have a life, they still go on, and they still interact with others. It is not a punishment. Where is the punishment? A heinous crime is a heinous crime; that is why we had to wait six years to go to trial. That is why we patiently waited through the appeal process. We did everything, and then he gets life without parole? He was just sentenced three months ago, after six years. I waited six years, and he is going to

get a different lifestyle? He cannot see women. What else is the consequence if we just put him without parole? There is no consequence. There has to be punishment. One Assemblywoman said there has to be consequences for actions. I am a Christian; I am not angry, and I forgive everyone, but there has to be punishment for crime or we are going to have more crime.

**Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General:**

Our office is in strong opposition to this bill, and I will submit written testimony ([Exhibit L](#)).

**Tehran Boldon, Private Citizen, Las Vegas, Nevada:**

I am opposed to this bill. Steve Wolfson and the Las Vegas DA's Office are the finest in the country. The only dog-and-pony show is the one that brings this bill up when my family wants justice.

**Chairman Yeager:**

Sir, I need you to be respectful to the legislative process. We have not taken any action on this bill; we are simply taking testimony. If you want to make comments on the bill and your position, that is appropriate. We will not stand personal insults to the Committee; we are simply doing the business we were elected to do.

**Tehran Boldon:**

It does not matter what race the person is who took my brother's life. The jury spoke. They sentenced Ammar Harris, the most worst of the worst of the worst. That is who he is. It is a deterrent. If a police officer is murdered, ambushed by a convict in Henderson, are you going to put a price on that for the family, the taxpayers? There are 82 people on death row. I will pay for one of those and you can take those off the books if price is your concern. What price do you have to put on my brother's life? How dare you try to take away the justice that is granted by the Supreme Court and take my family and these families through this burden. A waste in taxpayer's money is trying to save someone who is the lowest of the low, who has no respect or remorse. I think it is a slap in the face of my family and everybody who has someone on death row. You cannot put a price on the lives lost, my mother's life shortened. My life will be shortened because of this. I cannot function well because of this. But you have the ACLU and all these organizations that spend millions of dollars . . .

**Chairman Yeager:**

Sir, I need you to be respectful to the process. I take it you are opposed to the bill. I think we have noted that. If you would like to submit additional testimony for the Committee to consider, I would invite you to do that in writing to our committee secretary.

**Tehran Boldon:**

One more thing I would like to say. I know that when the death penalty is on the table, not too many people who face it want the death penalty. It is a deterrent. It is definitely

a deterrent if someone knows they kill a cop and they will face the death penalty. It is only effective if you use it. It has been 40 years. If you do not use it, how can you qualify whether it is effective or not if nobody has been killed or executed? How can you say it is not a deterrent? Do you get that point?

**Chairman Yeager:**

I do sir, but this is not the time for witnesses to ask questions. It is time to provide testimony, so I do thank you for your comments and would again invite you to present any additional testimony to the committee secretary.

[Additional testimony in opposition to Assembly Bill 237 was submitted ([Exhibit M](#)).]

For now, we are going to come back up to Carson City. I know there were a few others in support. I want to reopen it for support. We are just looking for name, organization, and that you support the bill.

**Tereza Trejbalova:**

I want to quickly address the deterrence, and I have submitted testimony ([Exhibit N](#)) that shows that for the three last states that have abolished the death penalty, Maryland, Connecticut, and Illinois, the murder rates went down since they abolished the death penalty while Nevada is still going up.

**Escenthio Marigny, Jr., Student and Climate Justice Organizer, Progressive Leadership Alliance of Nevada:**

We are in support of this bill. This is an extremely hard topic. My heart goes out to all of the families who have been impacted by murder personally. As an organization, Progressive Leadership Alliance of Nevada (PLAN) is in support of this bill. It is a major racial and social justice issue and something that we need to take a lot of time to look at.

**Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada:**

We strongly support this bill. We agree with PLAN—it is a social justice issue and we would like to see this bill passed. [Additional testimony submitted ([Exhibit O](#)).]

**Donald G.T. Gallimore, Second Vice President, Reno/Sparks Branch, National Association for the Advancement of Colored People:**

We in the tristate National Association for the Advancement of Colored People (NAACP) do support this bill. There are a lot of people who are affected by it. I know I am—I have a death row relative. I know how that can affect a family. The forgiveness part of it is a key. If you can forgive, life in prison means that they will not be coming out.

**Sarah Collins, representing Nevada Psychological Association:**

We are in support.

**Tamika Shauntee, representing Las Vegas Branch, National Association for the Advancement of Colored People:**

We would like to show our support for A.B. 237. Most of the testimony in support of this bill is in line with the NAACP's stance on the death penalty. Blacks and African Americans are disproportionately sentenced to death at a higher rate.

[All items submitted but not discussed will become part of the record: ([Exhibit P](#)), ([Exhibit Q](#)), and ([Exhibit R](#)).]

**Chairman Yeager:**

Is there anyone who would like to testify in the neutral position? [There was no one.] I suspected we did not, and those suspicions are confirmed. Assemblyman Ohrenschall, I would invite you to the table at this time to make any concluding remarks. Please remember that we are in a time crunch.

**Assemblyman Ohrenschall:**

This is a very difficult issue for us all. I appreciate the Committee's time hearing us out. If I could bring justice to the victim's families who were here today, I would. The reality is, notwithstanding what DA Wolfson said, I am not optimistic that we are going to get that chemical cocktail anytime soon. If you look at the statements given by the drug companies ([Exhibit C](#)), that further leads me to not be optimistic. Regarding the cost study that was performed by the legislative audit, if anything, due to the minimal participation from some of the prosecutorial offices in the state, the cost of prosecuting a death penalty case versus a life without parole case is underrepresented, not overrepresented. Those are real savings. Those savings could be spent on crime prevention or enforcement, trying to prevent other violent crimes in our state.

The poll that was cited by District Attorney Wolfson was on *The Nevada Independent* website. While I am not familiar with who they called or what percentage were cell phones versus landlines or ages of the people polled, I am aware that that is a political election pollster. This is a policy issue. If we were going to look at polls, I would hope that we look at peer-reviewed studies that actually look at who they call. As I understand it, when polls are conducted where the cost of the death penalty and the lack of availability of the chemicals are factored into the question versus just a straight up or down poll, the results are closer to 50 percent for and against. As in my answer to Assemblyman Pickard's question, we are a representative democracy—a republican form of government—we do not govern by poll. Our constituents sent us here to look at the common sense issues and to make these decisions.

Regarding the argument that life without the possibility of parole would become the new death penalty or become as costly: There was a question to DA Wolfson as to whether there would be Eighth Amendment challenges. Eighteen jurisdictions in our country have life without the possibility of parole now as their maximum penalty. I am not aware of any challenges going through the federal court saying that this is cruel and unusual punishment.

As to any unintended consequences of the bill: there was a point made by Mr. Lalli as to requiring two attorneys in certain life without the possibility of parole cases. That is inadvertent, and I would accept any friendly amendment to remedy that if the Committee is willing to consider processing this measure.

**Assemblyman Hansen:**

I would object that those two would be given another opportunity to come to the table. If we are short on time, I do not think it is fair to have them come back for a second shot.

**Nancy E. Hart:**

I would like to say something on behalf of Ms. Portaro if I may. She would like to clarify that she believes that the perpetrator of her son's killing did receive serious consequences for the murder.

**Chairman Yeager:**

I am going to close the hearing on Assembly Bill 237. I want to thank everyone in the audience for your patience. Please do submit any comments in writing that you were unable to submit here today. At this time, I will open the meeting for public comment. [There was none.]

The meeting is adjourned [at 11:46 a.m.].

RESPECTFULLY SUBMITTED:

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Erin McHam  
Committee Secretary

APPROVED BY:

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Assemblyman Steve Yeager, Chairman

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a document dated March 2017 titled "Company Statements Opposing the Misuse of Medicines in Executions," presented by Assemblyman James Ohrenschall, Assembly District 12, in support of Assembly Bill 237.

[Exhibit D](#) is a document titled "The Death Penalty in Nevada Since 1977," dated March 21, 2017, submitted by Nancy E. Hart, President, Nevada Coalition Against the Death Penalty, and presented by Michael Pescetta, private citizen, Las Vegas, in support of Assembly Bill 237.

[Exhibit E](#) is a document dated March 20, 2017, titled "Death Penalty Information Center: Facts About the Death Penalty," submitted by Nancy E. Hart, President, Nevada Coalition Against the Death Penalty and presented by Michael Pescetta, private citizen, Las Vegas, in support of Assembly Bill 237.

[Exhibit F](#) is a copy of a resolution supporting repeal of the death penalty adopted by the National Black Caucus of State Legislators, presented by Assemblywoman Dina Neal, Assembly District 7, in support of Assembly Bill 237.

[Exhibit G](#) is a document titled "Death Row Since 1977 Chronological," dated March 21, 2017, submitted by Nancy E. Hart, President, Nevada Coalition Against the Death Penalty, in support of Assembly Bill 237.

[Exhibit H](#) is a copy of a PowerPoint presentation titled "Death Penalty Statistics," presented by Christopher J. Lalli, Assistant District Attorney, Clark County District Attorney's Office, in opposition to Assembly Bill 237.

[Exhibit I](#) is written testimony authored and submitted by Terri Bryson, Chapter Co-Leader, Desert of Hope Chapter, National Organization of Parents of Murdered Children, Inc., dated March 29, 2017, in opposition to Assembly Bill 237.

[Exhibit J](#) is written testimony in opposition to Assembly Bill 237 presented by Jennifer Otremba, private citizen, Las Vegas.

[Exhibit K](#) is written testimony submitted by Lisa Postorino, private citizen, Las Vegas, dated March 29, 2017, in opposition to Assembly Bill 237.

[Exhibit L](#) is a letter dated March 31, 2017, to Chairman Yeager and members of the Assembly Committee on Judiciary expressing opposition to Assembly Bill 237, submitted by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General.

[Exhibit M](#) is a collection of letters submitted in opposition to Assembly Bill 237 consisting of the following:

1. A document titled "Arguments Against A.B. 237, Ending Capital Punishment," submitted by Janine Hansen, State President, Nevada Families for Freedom, and representing Nevada Eagle Forum.
2. A letter to Chairman Yeager and members of the Assembly Committee on Judiciary, dated March 29, 2017, from Doug Nulle, private citizen, Las Vegas.

[Exhibit N](#) is material in support of Assembly Bill 237, submitted by Tereza Trejbalova, private citizen, Las Vegas, consisting of the following:

1. A letter dated March 28, 2017, to Chairman Yeager and the Assembly Committee on Judiciary authored by Tereza Trejbalova, private citizen, Las Vegas, expressing support for Assembly Bill 237.
2. A document titled "Murder and Non-negligent Manslaughter Rates Comparisons."
3. A document titled "Cost Comparisons of Capital versus Non-Capital Cases."

[Exhibit O](#) is written testimony authored and submitted by Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada, in support of Assembly Bill 237.

[Exhibit P](#) is a copy of a resolution adopted by the National Hispanic Caucus of State Legislators in support of Assembly Bill 237.

[Exhibit Q](#) is a collection of letters in support of Assembly Bill 237 consisting of the following:

1. A letter to Chairman Yeager and members the Assembly Committee on Judiciary dated March 6, 2017, from Chris Giunchigliani, Vice Chair, Clark County Board of County Commissioners.
2. A letter to Chairman Yeager dated March 17, 2017, from Zuzana Trojanova.
3. A letter to Chairman Yeager dated March 27, 2017, from Breanna Boppre, doctoral student in criminology and criminal justice.
4. A letter to Chairman Yeager dated March 27, 2017, from Bridget Kelly.
5. A letter to Chairman Yeager dated March 28, 2017, from Emily J. Salisbury, Ph.D., Associate Professor, University of Nevada, Las Vegas, and Editor, Criminal Justice and Behavior.
6. A letter to Chairman Yeager, dated March 27, 2017, from Miliaikeala S. J. Heen.
7. A letter to Assemblyman Ohrenschall, dated March 28, 2017, from Lisa Rea, President, Restorative Justice International.
8. A copy of an email dated March 28, 2017, from The Reverend Jeffrey Paul, St. Peter's Episcopal Church, to the Assembly Committee on Judiciary.
9. A letter to Chairman Yeager dated March 28, 2017, from Desiree Strohmeier.
10. A copy of an email dated March 29, 2017, from Reverend Sandy Johnson, Boulder City United Methodist Church, to Chairman Yeager and members of the Assembly Committee on Judiciary.



[Exhibit R](#) is material provided by Randolph M. Fiedler, Nevada Attorneys for Criminal Justice, in support of Assembly Bill 237 consisting of the following:

1. A letter dated March 27, 2017, from Randolph M. Fiedler, Nevada Attorneys for Criminal Justice, to the Assembly Committee on Judiciary expressing support for Assembly Bill 237.
2. National Research Council, *Deterrence and the Death Penalty* (2012), Committee on Deterrence and the Death Penalty, Daniel S. Nagin and John V. Pepper, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, D.C.: The National Academies Press.
3. Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199 (2013).
4. Marilyn Peterson Armour and Mark S. Umbreit, *Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison*, 96 Marq. L. Rev. 1 (Fall 2012).
5. Richard C. Dieter, Death Penalty Information Center, *Battle Scars: Military Veterans and the Death Penalty*, Day (2015).
6. Justin D. Levinson, Robert J. Smith, and Danielle M. Young, *Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury Eligible Citizens in Six Death Penalty States*, 89 N.Y.U. L. Rev. 513 (May 2014).

## COMPANY STATEMENTS OPPOSING THE MISUSE OF MEDICINES IN EXECUTIONS

March 2017

This document provides a selection of company statements opposing the misuse of medicines in lethal injection executions. The document contains statements from the following 21 firms:

1. Abbott
2. Akorn
3. BD
4. Fresenius Kabi
5. Ganpati Exim
6. Gland Pharma
7. Hikma
8. Hospira
9. Kayem
10. Lundbeck
11. McKesson
12. Mylan
13. Naari
14. Par
15. Pfizer
16. Roche
17. Sagent
18. Sandoz
19. Shrenik Pharma
20. Sun
21. Teva



**December 2001:** *"Abbott does not support the use of Pentothal in capital punishment. In fact, [we] communicated with departments of corrections in the United States to request that this product not be used in capital punishment procedures."*



**March 2015:** *"The use of midazolam and/or hydromorphone for lethal injection is clearly contradictory to the FDA approved indications for both products and – as controlled substances – the procurement or use of these products for executions may be in violation of the Controlled Substances Act. Additionally, such use is contrary to Akorn's commitment to promote the health and wellness of human patients."*

*"Akorn strongly objects to the use of its products in capital punishment. To align with industry standards and to prevent midazolam and hydromorphone from being used for purposes outside FDA approved indications, Akorn will not accept direct orders from departments of correction for any product and we plan to implement additional distribution controls on midazolam and hydromorphone products in the near future.*

*"To reduce the possibility that Akorn midazolam and hydromorphone vials reach correctional facilities for use outside their labeled indications, these distributors will not sell these products directly to departments of correction or secondary distributors and distributors will use their best efforts in other distribution channels to keep the products out of prison systems".*



**September 2015:** *"BD Rx has specifically elected to focus on acute care settings for the use of our products. All of our distributor partners had previously received formal notification on behalf of BD Rx that our products are not intended for use in US prisons including state and federal penitentiaries. BD Rx is committed to ensuring the proper use of our products, to improving injectable drug delivery and helping to manage medication error risk for patients, hospitals, nurses and pharmacists".*



**August 2012:** *"Fresenius Kabi objects to the use of its products in any manner that is not in full accordance with the approved indications. [...] To prevent Propofol from being used for purposes other than its approved indications, Fresenius Kabi does not accept orders for Propofol from any departments of correction in the U.S., nor will we do so, and we have voluntarily instituted tighter distribution controls on all forms of our product."*



**2012:** *"We at Ganpati Exim are committed to providing access to medicines for the purposes of improving the lives of patients around the world. We are deeply opposed to the use of medicines in killing prisoners and wish to have no part in facilitating capital punishment in the USA or elsewhere. We never indulge in this type of medicines which takes HUMAN LIFE and will never in Future also."*



**GLAND PHARMA LIMITED**

**October 2015:** *"Gland makes its products to enhance and save the lives of patients worldwide. Drugs such as Rocuronium bromide are relied upon by doctors and patients as a muscle relaxant during surgery. Gland does not support the use of any of its products for the purpose of capital punishment"*



**October 2016:** *"Hikma aims to improve lives by providing patients with access to high quality, affordable medicines. Our medicines are used thousands of times a day around the world to treat illness and save lives. We strongly object to the use of any of our products in capital punishment as it is inconsistent with our values and mission of improving lives and contrary to the intended label use for the products."*

*"In order to safeguard Phenobarbital Sodium, Midazolam Hydrochloride and Hydromorphone Hydrochloride injection products from being used in lethal injection protocols, we have instituted several controls, including specific provisions in our template agreements and additional written assurances from certain purchasers that products will be used for medicinal, patient care not penal purposes."*

*"We vigorously monitor the distribution of these products and support industry serialization efforts that will help enhance these controls while continuing to promote our values and mission."*



**March 2013:** *"Hospira makes its products to enhance and save the lives of the patients we serve, and, therefore, we have always publicly objected to the use of any of our products in capital punishment. [...] Hospira has implemented a restricted distribution system under which Hospira and its distributors have ceased the direct sale to U.S. prison hospitals of products, specifically pancuronium bromide, potassium chloride and propofol, that we believe are part of some states' lethal injection protocols."*



**April 2011:** *"In view of the sensitivity involved with sale of our Thiopental Sodium to various Jails/Prisons in USA and as alleged to be used for the purpose of Lethal Injection, we voluntary declare*

*that we as an Indian Pharma Dealer who cherish the Ethos of Hinduism ( A believer even in non-livings as the seat of God) refrain ourselves in selling this drug where the purpose is purely for Lethal Injection and its consequent misuse”*



**August 2011:** “[Lundbeck] is opposed to the use of its products for the purpose of capital punishment. Use of our products to end lives contradicts everything we’re in business to do – provide therapies that help improve people’s lives. Lundbeck adamantly opposes the distressing misuse of our product in capital punishment. Since learning about the misuse we have vetted a broad range of remedies – many suggested during ongoing dialogue with external experts, government officials, and human rights advocates. After much consideration, we have determined that a restricted distribution system is the most meaningful means through which we can restrict the misuse of Nembutal [pentobarbital].”



**October 2016:** “McKesson has entered into contractual arrangements with some manufacturers and suppliers that restrict the sale of medicines to prison systems and others for lethal injections. McKesson continually monitors developments regarding the use of medicines for lethal injections, and is committed to helping manufacturers and suppliers implement policies in this area”.



**October 2015:** “It is important to note that rocuronium bromide is not approved for, labeled for, or marketed for use in lethal injections. Mylan does not distribute this product to prisons, nor does the company condone its product being distributed by any third party for use outside of the approved labeling or applicable standards of care.

“Recently Mylan received information indicating that a department of corrections in the U.S. purchased Mylan’s rocuronium bromide product from a wholesaler for possible use outside of the labeling or applicable standard of care. Mylan takes very seriously the possibility its product may have been diverted for a use that is inconsistent with its approved labeling or applicable standards of care.

“As such, Mylan conducted its own investigation into the matter and took direct action by sending several letters to the department of corrections seeking prompt assurances that it has not purchased any Mylan product for use outside the bounds of its approved therapeutic purpose, approved labeling and applicable standards of care. When Mylan received no response to its inquiries and therefore was unable to ensure appropriate use of its product, Mylan took further action by demanding the return of the Mylan product.

*“Mylan is taking steps to prevent similar future issues. Specifically, Mylan is contractually restricting its distributors from distributing Mylan products, including rocuronium bromide, for use in lethal injection or for any other use outside of the approved labeling or applicable standards of care”.*



**November 2011:** *[Letter from Naari CEO to Chief Justice Heavican of the Nebraska Supreme Court]: “I am shocked and appalled by this news [of the use of Naari-produced drugs in executions by lethal injection]. Naari did not supply these medicines directly to the Nebraska Department of Correctional Services and is deeply opposed to the use of the medicines in executions.”*



**May 2014:** *“Brevital [methohexital sodium] is a medically important anesthetic that physicians and hospital pharmacies have relied upon for more than 50 years. The state of Indiana’s proposed use of Brevital is inconsistent with its medical indications as outlined in its U.S. Food and Drug Administration reviewed and approved product labeling. Brevital is intended to be used as an anesthetic in life-sustaining procedures.*

*“As a pharmaceutical company, Par’s mission is to help improve the quality of life. The state of Indiana’s proposed use is contrary to our mission. Par is working with its distribution partners to establish distribution controls on Brevital to preclude wholesalers from accepting orders from departments of correction.”*



**May 2016:** *“Pfizer makes its products to enhance and save the lives of the patients we serve. Consistent with these values, Pfizer strongly objects to the use of its products as lethal injections for capital punishment.*

*“Pfizer’s obligation is to ensure the availability of our products to patients who rely on them for medically necessary purposes. At the same time, we are enforcing a distribution restriction for specific products that have been part of, or considered by some states for their lethal injection protocols. These products include pancuronium bromide, potassium chloride, propofol, midazolam, hydromorphone, rocuronium bromide and vecuronium bromide.*

*“Pfizer’s distribution restriction limits the sale of these seven products to a select group of wholesalers, distributors, and direct purchasers under the condition that they will not resell these products to correctional institutions for use in lethal injections. Government purchasing entities must certify that products they purchase or otherwise acquire are used only for medically prescribed patient care and not for any penal purposes. Pfizer further requires that these Government purchasers certify that the*

product is for “own use” and will not resell or otherwise provide the restricted products to any other party”.



**January 2015:** “Roche is aware of the use of the benzodiazepine midazolam as part of a drug combination for executions under the death penalty in the U.S. Roche did not supply midazolam for death penalty use and would not knowingly provide any of our medicines for this purpose. We support a worldwide ban on the death penalty.”



**March 2014:** “In order to help ensure that patients have access to our products for use in accordance with the products’ labels but to ensure our products are not used in capital punishment, Sagent is implementing appropriate distribution controls and other measures. In particular, Sagent will not accept orders from correctional facilities and prison systems for products believed to be part of certain states’ lethal injection protocols. Also, each of Sagent’s distributors and wholesalers will be asked to make commitments not to sell or distribute any such products to these facilities.”



**February 2011:** “Sandoz and Novartis support only the authorized use of injectable thiopental, which is primarily indicated for the induction of anesthesia, and do not support the sale of this or any product for use in non-approved treatments. [...]Sandoz has also advised all of its subsidiaries with locally approved marketing authorizations for sodium thiopental to not sell the product to distributors or third parties that may be selling it into the U.S.”



(Shrenik Pharma)

**2012:** “We are aware of the use of Thiopental Sodium in killing of prisoners in USA and have often wondered why the US-Govt. does not simply out-law the practice altogether.”



**September 2015:** *"We currently require our customers to certify that they will prohibit the use and sale of such products to other customers and members that may administer lethal injections or which may sell to facilities that administer lethal injections"*



**March 2013:** *"[Teva is] limiting the sale and distribution of [propofol] to customers who agree to use best efforts not to sell or distribute to correctional facilities"*



# EXHIBIT 7

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO, <i>ex rel.</i> HOGAN LOVELLS US	:	
LLP and ELIZABETH A. OCH	:	
1601 Wewatta Street, Ste. 900	:	Case No. 2016-1776
Denver, CO 80202,	:	
	:	ORIGINAL ACTION
Relators,	:	IN MANDAMUS
	:	
v.	:	
	:	
OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION	:	
777 W. Broad Street	:	
Columbus, OH 43222,	:	
	:	
Respondent.	:	

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***AMICI CURIAE* BRIEF IN SUPPORT OF RELATOR  
ON BEHALF OF FRESenius KABI USA, LLC AND SANDOZ INC.**

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RAPP 000352

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## **STATEMENT OF INTEREST OF AMICI CURIAE**

Fresenius Kabi USA, LLC and Sandoz Inc. (the Manufacturers), for their *amicus* brief, state:

The Manufacturers submit this *amicus curiae* brief in support of the disclosure of records in response to Relators' public-records request. Fresenius Kabi USA, LLC is a US-based subsidiary of Fresenius Kabi AG based in Germany and part of the Fresenius group of companies. Fresenius Kabi USA<sup>1</sup> is focused on providing drugs for the care of critically and chronically ill patients. It takes its stated mission – “Caring for Life” – very seriously, and, to that end Fresenius Kabi has sought to ensure that its medicines will not be used for lethal injection executions (though it takes no position on capital punishment). Fresenius Kabi manufactures, markets and distributes codes of each of Potassium Chloride, Rocuronium Bromide and Midazolam in the United States.

Sandoz Inc. is a Colorado corporation with corporate offices located at 100 College Road West, Princeton, New Jersey. One drug in its portfolio is Rocuronium Bromide, which is currently marketed in the United States but subject to a restricted distribution system as Sandoz does not support the use of any of its drugs for off-label use in connection with lethal injection.

As the manufacturers of the medicines listed in Ohio's execution protocol, *amici curiae* have an interest in knowing information relating to the drugs that ODRC has purchased for use in executions.

The Manufacturers are among over two dozen U.S. and international pharmaceutical companies which have instituted supply chain controls to prevent the sale of their medicines for

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<sup>1</sup> Fresenius Kabi USA, LLC was known until August 2012 as APP Pharmaceuticals, LLC, when its name was changed. Certain of its drugs still carry labeling and packaging referring to APP Pharmaceuticals. For simplicity, we refer to Fresenius Kabi throughout this brief even where labeling may reflect the name APP.

use in capital punishment, and in doing so, help ensure the availability of these drugs for patient care. *Pfizer Blocks the Use of Its Drugs in Executions*, N.Y. TIMES, May 13, 2016, at A1, available at <https://www.nytimes.com/2016/05/14/us/pfizer-execution-drugs-lethal-injection.html>. The Manufacturers have made their position clear in public, have notified state authorities and departments of correction, and have instituted distribution controls to ensure that the drugs are only used to save and sustain lives of patients for whom they are needed.

The Manufacturers have significant commercial and other interests in ensuring the proper implementation of the controls. The use of the medicines in lethal injections carries with it serious reputational, fiscal, and legal risks for the manufacturers of these medicines. See, for example, the lawsuit brought by the family of Dennis McGuire, executed in Ohio in 2014, against pharmaceutical manufacturer Hospira, which attracted national and international coverage. *Family Sues in Protracted Ohio Execution*, N.Y. T, Jan 25, 2014 at A2, available at <https://www.nytimes.com/2014/01/26/us/family-sues-in-protracted-ohio-execution.html?mcubz=0>.

The Manufacturers have a keen and important interest in knowing whether any department of corrections have obtained their drugs despite and in contravention of their distribution controls and contracts. The Manufacturers have not requested to have records pertaining to them classified as confidential under R.C. 2949.221. To the contrary, the Manufacturers have publicly stated their opposition to the use of their medicines in executions. They have communicated directly with Departments of Corrections and Government officials in executing states affirming their intention to enforce their contractual rights and minimize associated reputational, fiscal, and legal risks by ensuring that their medicines not be diverted for use in capital punishment. As an example, Fresenius Kabi has written to Ohio's Governor

Kasich in September, 2013 and, together with two members of the Ohio Senate, on December, 2014, and, indeed, in December 2014, provided written testimony on HB 663, which was amended and became R.C. 2949.221, in regard to provisions that would have voided any agreements between manufactures and their distributors which seek to ensure that department of corrections cannot purchase drugs for their use in execution.

Any refusal by the state to disclose the manufacturers of its lethal injection drugs directly undermines the Manufacturers' interests, impeding their ability to preserve the integrity of their contracts. Recognizing the Manufacturers' interests, R.C. 2949.221 only extends confidentiality to companies that have affirmatively requested this right. Because the Manufacturers have not requested confidentiality, any records in ODRC's possession pertaining to the Manufacturers do not fall within this exemption and should thus be disclosed. To the extent that these records indicate a violation of manufacturer contracts, release of this information would allow the manufacturers to enforce their contractual rights and take appropriate steps to prevent future diversion of their medicines.

### **STATEMENT OF THE CASE AND FACTS**

The Amici defer to and adopt the Relators' Statement of the Case and Facts.

### **ARGUMENT**

### **PROPOSITIONS OF LAW**

#### **Proposition of Law No. I**

Mandamus is the appropriate remedy to compel compliance with R.C. 149.43.

Proposition of Law No. II

A public body may not invoke an exception under R.C. 149.43 without providing evidence that the exception applies.

Proposition of Law No. III

The Court should award Relators their reasonable attorneys' fees under R.C. 149.43(C)(2).

The Amici defer to and adopt the Propositions of Law of Relators.

**SUMMARY**

For the reasons set forth above, *Amici Curiae* respectfully request that the Court enter judgment on Relators' Petition and issue a writ of mandamus compelling ODRC to comply with its obligations under R.C. 149.43.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing *Amici Curiae* Brief in Support of Relator on Behalf of Fresenius Kabi USA, LLC and Sandoz Inc. was filed on the 10<sup>th</sup> day of July, 2017 and a copy served via First Class Mail, postage prepaid on the following:

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# EXHIBIT 8

**NEVADA DEPARTMENT OF CORRECTIONS**  
**EXECUTION MANUAL**  
**EM 103**  
**ACQUISITION AND PREPARATION OF DRUGS FOR LETHAL**  
**INJECTION**

**Effective Date:** 06/11/2018

**CONFIDENTIAL IN UN-REDACTED FORMAT: NO**

**AUTHORITY AND RESPONSIBILITY**

The Director and designated Deputy Director will ensure that this manual is accurately revised and published upon order of the Governor prior to a scheduled execution.

**103.01 LETHAL INJECTION PROTOCOL**

- A. Lethal drugs are to be used in the execution. Although the combination of drugs and doses listed below are lethal for most individuals, individual differences do exist. It shall be the responsibility of the Director to consult with the Chief Medical Officer in order to ensure that the selected lethal drug or combination of drugs and their dosages to be used in the execution are sufficient to cause death. The Director shall then select the drug, combination of drugs and dosages to be used for the execution. This information will not be withheld from the inmate or the public.
1. The NDOC Public Information Officer (PIO) will prepare and produce a statement on behalf of the Nevada Department of Corrections.
- B. The Director will provide the condemned inmate with written notice of the drug or combination of drugs that will be used for the execution after a final decision has been made and no less than seven (7) calendar days prior to the first day of the week (i.e. Monday), as designated by the district court, that the judgment of death is to be executed.
1. If at any time after written notice of the drug or combination of drugs to be used for the execution has been provided to the condemned inmate, the Director determines that it is necessary to change the Lethal Injection Protocol identified and provided in CEM 110.02, a written notice of the Director's determination, which identifies the necessary changes to the Lethal Injection Protocol and an explanation as to the basis for such changes, will be immediately provided to both the condemned inmate and the condemned inmate's counsel of record.
- C. The drug amounts specified below are designed for the execution of persons weighing 500 pounds or less. The drug amounts will be reviewed and revised, as necessary, for a condemned inmate exceeding 500 pounds.

## **103.02 ACQUIRING LETHAL DRUGS AND EQUIPMENT**

- A. After the Director makes the final decision as to the drug or combination of drugs that will be used for the scheduled execution, the designated Deputy Director/designated Warden will be responsible for:
1. Confirming that the equipment and materials necessary to properly conduct the execution is on site, immediately available for use and functioning properly.
  2. Ensuring all medical equipment, including a backup cardiac monitor is on site, immediately available for use and functioning properly.
  3. Ensuring that the drugs identified are acquired, arrive at Ely State Prison (ESP) no later than the day of execution and are properly stored. The drugs shall be stored in a secured locked area that is temperature regulated and monitored to ensure compliance with manufacturer specifications, under the direct control of the designated Warden.

## **103.03 PREPARATION OF LETHAL DRUGS**

- A. At the appropriate time, approximately two hours prior to the scheduled execution, the designated Warden shall transfer custody of the drugs to two members of the Security Team who have been selected by the designated Deputy Director as the Drug Administrators. The Drug Administrators will be two individuals who, based upon their years of experience and proven performance within the corrections industry, are uniquely trusted to perform the sensitive and critical tasks of properly preparing the lethal drugs for the execution, and then injecting the lethal drugs into the condemned inmate per these instructions when so ordered.
- B. The quantity of the lethal drugs may not be changed without prior approval of the Director.
- C. It is the responsibility of the Drug Administrators to prepare the lethal drugs. An Attending Physician or other properly trained and qualified medical professional will observe the Drug Administrators as they prepare the lethal drugs.
1. Both Drug Administrators shall complete detailed written reports describing the preparation and labeling of the lethal drugs.
    - a. The Drug Administrators shall be responsible for preparing and labeling the assigned syringes in a distinctive manner identifying the specific lethal drug contained in each syringe by (1) lethal drug name, (2) lethal drug amount and (3) assigned number. This information shall be preprinted on a label, with one label affixed to each syringe to ensure a label remains visible.
    - b. The syringes for each lethal drug by name will then be placed in an individual tray marked for all the syringes of that lethal drug. The labels for each tray and each syringe it contains will be colored to match: red in color for Midazolam, white in color for Fentanyl and blue in color for Cis-atracurium.
    - c. The drugs and their doses are to be prepared and labeled as follows:

i. Tray-1: Midazolam (labels to be red in color)

		<u>DRUG</u>	<u>CONCENTRATION</u>	<u>SYRINGE</u>	<u>TOTAL</u>
1.	#1-1	Midazolam	5mg/cc	10ml	50mg
2.	#1-2	Midazolam	5mg/cc	10ml	50mg
3.	#1-3	Midazolam	5mg/cc	10ml	50mg
4.	#1-4	Midazolam	5mg/cc	10ml	50mg
5.	#1-5	Midazolam	5mg/cc	10ml	50mg
6.	#1-6	Midazolam	5mg/cc	10ml	50mg
7.	#1-7	Midazolam	5mg/cc	10ml	50mg
8.	#1-8	Midazolam	5mg/cc	10ml	50mg
9.	#1-9	Midazolam	5mg/cc	10ml	50mg
10.	#1-10	Midazolam	5mg/cc	10ml	50mg

11. In the unlikely event that it is deemed necessary (see protocol in EM 110), additional syringes of Midazolam may be ordered by the Director, and then prepared and injected by the Drug Administrators. If ordered, additional syringes will be similarly labeled and numbered next in sequence, for example the next syringe would be numbered #1-11, then #1-12 and so on.

ii. Tray-2: Fentanyl (labels to be white in color)

		<u>DRUG</u>	<u>CONCENTRATION</u>	<u>SYRINGE</u>	<u>TOTAL</u>
1.	#2-1	Fentanyl	50mcg/cc	10ml	500mcg
2.	#2-2	Fentanyl	50mcg/cc	10ml	500mcg
3.	#2-3	Fentanyl	50mcg/cc	10ml	500mcg
4.	#2-4	Fentanyl	50mcg/cc	10ml	500mcg
5.	#2-5	Fentanyl	50mcg/cc	10ml	500mcg
6.	#2-6	Fentanyl	50mcg/cc	10ml	500mcg
7.	#2-7	Fentanyl	50mcg/cc	10ml	500mcg

- |     |   |          |          |      |        |
|-----|---|----------|----------|------|--------|
| 8.  | #2-8  | Fentanyl | 50mcg/cc | 10ml | 500mcg |
| 9.  | #2-9  | Fentanyl | 50mcg/cc | 10ml | 500mcg |
| 10. | #2-10   | Fentanyl | 50mcg/cc | 10ml | 500mcg |
| 11. | #2-11   | Fentanyl | 50mcg/cc | 10ml | 500mcg |
| 12. | #2-12   | Fentanyl | 50mcg/cc | 10ml | 500mcg |
| 13. | #2-13   | Fentanyl | 50mcg/cc | 10ml | 500mcg |
| 14. | #2-14   | Fentanyl | 50mcg/cc | 10ml | 500mcg |
| 15. | #2-15   | Fentanyl | 50mcg/cc | 10ml | 500mcg |
| 16. | In the unlikely event that it is deemed necessary (see protocol in EM 110), additional syringes of Fentanyl may be ordered by the Director, and then prepared and injected by the Drug Administrators. If ordered, additional syringes will be similarly labeled and numbered next in sequence, for example the next syringe would be numbered #2-16, then #2-17 and so on. |          |          |      |        |

iii. Tray-3: Cis-atracurium (labels to be blue in color)

- |     |   | <u>DRUG</u>    | <u>CONCENTRATION</u> | <u>SYRINGE</u> | <u>TOTAL</u> |
|-----|---|----------------|----------------------|----------------|--------------|
| 1.  | #3-1  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 2.  | #3-2  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 3.  | #3-3  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 4.  | #3-4  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 5.  | #3-5  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 6.  | #3-6  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 7.  | #3-7  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 8.  | #3-8  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 9.  | #3-9  | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 10. | #3-10   | Cis-atracurium | 2mg/1ml              | 10ml           | 20mg         |
| 11. | In the unlikely event that it is deemed necessary (see protocol in EM 110), additional syringes of Cis-atracurium may be ordered by the Director, and then prepared and injected by the Drug Administrators. If ordered, additional syringes will be similarly labeled and numbered next in |                |                      |                |              |

sequence, for example the next syringe would be numbered #3-11, then #3-12 and so on.

2. One Drug Administrator will prepare and label the lethal drug syringes. The second Drug Administrator will observe, verify the preparation, dosage and labeling of each syringe. The second Drug Administrator will then place the syringes in their correct trays for use.
3. The Drug Administrators shall prepare the designated lethal drugs and syringes so that the correct number of syringes are prepared and placed in each correctly labeled tray.
  - a. To prepare each syringe for use, the Drug Administrator will draw the appropriate amount of supplied drug solution into each syringe so that the specified dose of each drug is made ready in each syringe.
    - i. Midazolam will be used at a concentration of 5 milligrams per milliliter. For this drug, the specified doses to be prepared are 50 milligrams in 10 milliliter syringes. In order to achieve those doses, the Drug Administrator will draw ten (10) milliliters of the supplied solution into each 10 milliliter syringe labeled to contain Midazolam.
    - ii. Fentanyl will be used at a concentration of 50 micrograms per milliliter. For this drug, the specified doses to be prepared are 500 micrograms in each 10 milliliter syringe. In order to achieve those doses, the Drug Administrator will draw ten (10) milliliters of the supplied solution into each 10 milliliter syringe labeled to contain Fentanyl.
    - iii. Cis-atracurium will be used at a concentration of 2 milligrams per milliliter. For this drug, the specified doses to be prepared are 20 milligrams in each 10 milliliter syringe. In order to achieve those doses, the Drug Administrator will draw ten (10) milliliters of the supplied solution into each 10 milliliter syringe labeled to contain Cis-atracurium.

**NO ATTACHMENTS: SEE CEM 112 FOR ALL EXECUTION RELATED FORMS**

0:1  
121/140  
NEVADA DEPT OF CORRECTIONS  
3955 W. RUSSELL RD-CASA GRANDE  
CENTRAL PHARMACY  
LAS VEGAS, NV 89118-0000



DEA REGISTRATION NUMBER	THIS REGISTRATION EXPIRES	FEE PAID
AS2995922	10-31-2019	FEE EXEMPT
SCHEDULES	BUSINESS ACTIVITY	ISSUE DATE
2,2N, 3,3N,4,5,	HOSPITAL/CLINIC	09-20-2016
NEVADA DEPT OF CORRECTIONS 3955 W. RUSSELL RD-CASA GRANDE CENTRAL PHARMACY LAS VEGAS, NV 89118-0000		

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE  
UNITED STATES DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION  
WASHINGTON D.C. 20537

Sections 304 and 1008 (21 USC 824 and 958) of the Controlled Substances Act of 1970, as amended, provide that the Attorney General may revoke or suspend a registration to manufacture, distribute, dispense, import or export a controlled substance.

THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY, AND IT IS NOT VALID AFTER THE EXPIRATION DATE.

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE  
UNITED STATES DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION  
WASHINGTON D.C. 20537

DEA REGISTRATION NUMBER	THIS REGISTRATION EXPIRES	FEE PAID
AS2995922	10-31-2019	FEE EXEMPT
SCHEDULES	BUSINESS ACTIVITY	ISSUE DATE
2,2N, 3,3N,4,5,	HOSPITAL/CLINIC	09-20-2016
NEVADA DEPT OF CORRECTIONS 3955 W. RUSSELL RD-CASA GRANDE CENTRAL PHARMACY LAS VEGAS, NV 89118-0000		



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RAPP 000366  
NDOC0006



S (623) 478-8500

CARDINAL HEALTH  
600 N 83RD AVE  
TOLLESON, AZ 85353

PAGE 1 OF 1 ROUTE/STOP 307 / 010

CUST. NO.	DATE	ORIGINAL INVOICE
153264	4/02/18	3667966
REG. NO.	CUST. DEB. NO.	ORDER NO.
CA00001	AS2995922	5753613
CONF. NO.	CONF. NO.	CUSTOMER P.O. NUMBER
3/30/18	06853	18XC00010

### CardinalHealth

DEA RW-0263056 FEDID 68-0158739

S NV DEPT OF CORRECTION CTR PHCY H NV DEPT OF CORRECTION CTR PHCY  
L CENTRAL PHCY I CENTRAL PHCY  
T 3955 W RUSSELL RD-CASA GRANDE P 3955 W RUSSELL RD-CASA GRANDE  
O LAS VEGAS, NV 89118 T LAS VEGAS, NV 89118  
FORM 222: 18XC00010

ITEM NUMBER	NDC/UPC	QTY	DESCRIPTION	SIZE	RETAIL PRICE	UNIT PRICE	EXTENSION
5095179	17478-G030-05	1	CITIFENTANYL CIT50MCG/ML 10X5ML C2	10AM 2		23.24	2324CT
see message(s): 121							
PRODUCT ALLOCATION							
PIECES SHIPPED							
TOTAL PIECES SHIPPED							
----- S U M M A R Y -----							
Total RX						23.24	
NET AMOUNT						23.24	
SUBTOT 2324							

INVOICE SHIP DATE: 4/01/2018

For SDS Visit: <http://www.mycardinalsdpd.com>

PLEASE REMIT YOUR PAYMENTS TO FOLLOWING ADDRESS:  
CARDINAL HEALTH LLC, LLC  
C/O BANK OF AMERICA  
PO BOX 56412  
LOS ANGELES, CA 90074-6412

#### Messages

121 This product is required by the FDA to be dispensed with a medication guide. To obtain a medication guide for this product, please visit <http://www.fda.gov/Drugs/DrugSafety/ucm085729.htm>

FOR DELIVERY 4/02/18  
DJE DATE 5/02/18



307 / 010

Use Chemical Designations  
S: Ephedrine  
P: Phenylephrine  
L: Other List Chemical

Omnia Codes:  
C Dropship  
2 DC Out  
3 Mfr Out  
7 Drug Recall  
8 New Item Stock Unavail.  
9 Recalled Item  
S Regulatory Review

Note Codes:  
T Taxable  
CO Contact Item Override  
SP Special Pricing  
CT Contact  
SM Special Nat  
OV Price Override  
CS Source Contract

Customer is a final dispenser purchasing for own use and will not redistribute prescription pharmaceuticals into the secondary market.

The prices shown on this invoice are net of discounts provided at the time of purchase. Some of the products listed on this invoice may be subject to additional discounts or rebates. Please refer to your contract for any specific additional discounts or rebates that may apply to these purchases. You may have an obligation pursuant to 42 USC § 1320a-7b to report discounts and rebates to Medicare, Medicaid or other governmental health care programs. Effective January 1, 2015, DSCSA Transaction Data for qualified prescription drugs can be accessed via your usual ordering platform, such as Order Express or Med eCommerce, or at [cardinalhealth.com/trace](http://cardinalhealth.com/trace).

RAPP 000367  
NDOC0007

NDC 17478-030-05

100 mg/mL

\*Each mL contains:  
Fentanyl base 50 mcg/mL

FOR INTRAVENOUS ADMINISTRATION

0.5

Rx only



10 x 5 mL Single Dose Vials  
Sterile, Nonpyrogenic

Clotracurum Besylate Injection

Rx only

TAMPER  
EVIDENT  
TAPE

TAMPER  
EVIDENT  
TAPE

10 x 5 mL Single Dose Vials  
Sterile, Nonpyrogenic

Clotracurum Besylate Injection

Rx only

TAMPER  
EVIDENT  
TAPE

TAMPER  
EVIDENT  
TAPE

PAGE 1 OF 1 ROUTE/STOP 307 / 010

DEA RW-0263056 FED ID 68-0158739

SHIP TO NV DEPT OF CORRECTION CTR PHCY  
CENTRAL PHCY  
3955 W RUSSELL RD-CASA GRANDE  
LAS VEGAS, NV 89118

§ H NV DEPT OF CORRECTION CTR PHCY

1 CENTRAL PHCY  
P 3955 W RUSSELL RD-CASA GRANDE

7 LAS VEGAS, NV 89118

**List Chemical Designations**  
**E** - Ephedrine  
**P** - Phenylpropanolamine  
**S** - Pseudoephedrine  
**L** - Other List Chemical

0	Omni Codes.	7	Drug Recall
1	C Drugship	8	New Item-stock unavailable.
2	DC Out	9	Requisition Item
3	MS Out	S	Regulatory Review
4	Net stocked		
5	Mfr Disc		
6	DC Disc		

Nete Codes:	CT	Contact
T	Tranable	Sh
CO	Contact Item	OV
SP	Special Pricing	CS
		Source Contract
		Price Override
		Special Net

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RAPP 000371  
NDOC0011

CARDINAL HEALTH  
600 N 83RD AVE  
TOLLESON, AZ 85353

**CardinalHealth**

DEA RW-0263056 FEDID 68-0158739

CUST. NO.	DATE	ORIGINAL INVOICE
163264	5/10/18	3762358
REG. NO.	CUST. DEANO.	ORDERNO.
CA00001AS2995922	5858116	
ORDER DATE	CONF. NO.	
5/09/18	03654	

B NV DEPT OF CORRECTION CTR PHCY  
L CENTRAL PHCY  
L 3955 W RUSSELL RD-CASA GRANDE  
T LAS VEGAS, NV 89118  
O

ITEM NUMBER	NDC/UPC	QTY ORDERED	QTY SHIPPED	DESCRIPTION	SIZE	FORM	RETAIL PRICE	UNIT PRICE	EXTENSION	NOTE CODE
4259263	00054-0176-13	1	1	EA BUPRENORPHINE 2MG 30 SL	C3	3CTB3R		20.92	2092CT	
	TOTE# 1			see message(s): 121						
5392014	47781-0589-91	3	3	CT MIDAZOLAM 5MG/ML 10X10ML	C4	10MD 4		17.18	5154CT	
	TOTE# 1									
		4		PIECES SHIPPED					7246	
		4		TOTAL PIECES SHIPPED						
				----- S U M M A R Y -----						
				Total RX			72.46			
				NET AMOUNT			72.46			

INVOICE SHIP DATE: 5/09/2018

For SDS Visit: <http://www.mycardinalsdpd.com>

PLEASE REMIT YOUR PAYMENTS TO FOLLOWING ADDRESS:

CARDINAL HEALTH LLC, LLC  
C/O BANK OF AMERICA  
PO BOX 56412  
LOS ANGELES, CA 90074-6412

**Messages**

121 This product is required by the FDA to be dispensed with a medication guide. To obtain a medication guide for this product, please visit <http://www.fda.gov/Drugs/DrugSafety/ucm085729.htm>



307 / 010  
DUE DATE  
6/09/18

Now Codes:	CT Contract	7 Drug Recall	8 Not stocked	9 Regulatory Review
T Taxable	SN Special Net	8 New Item Stock Unavail	4 Not stocked	9 Regulatory Review
CO Contract Item Override	OV Price Override	9 Restricted Item	5 Mfr Disc	6 DC Dec
SP Special Pricing	CS Source Contract		3 Mfr Out	

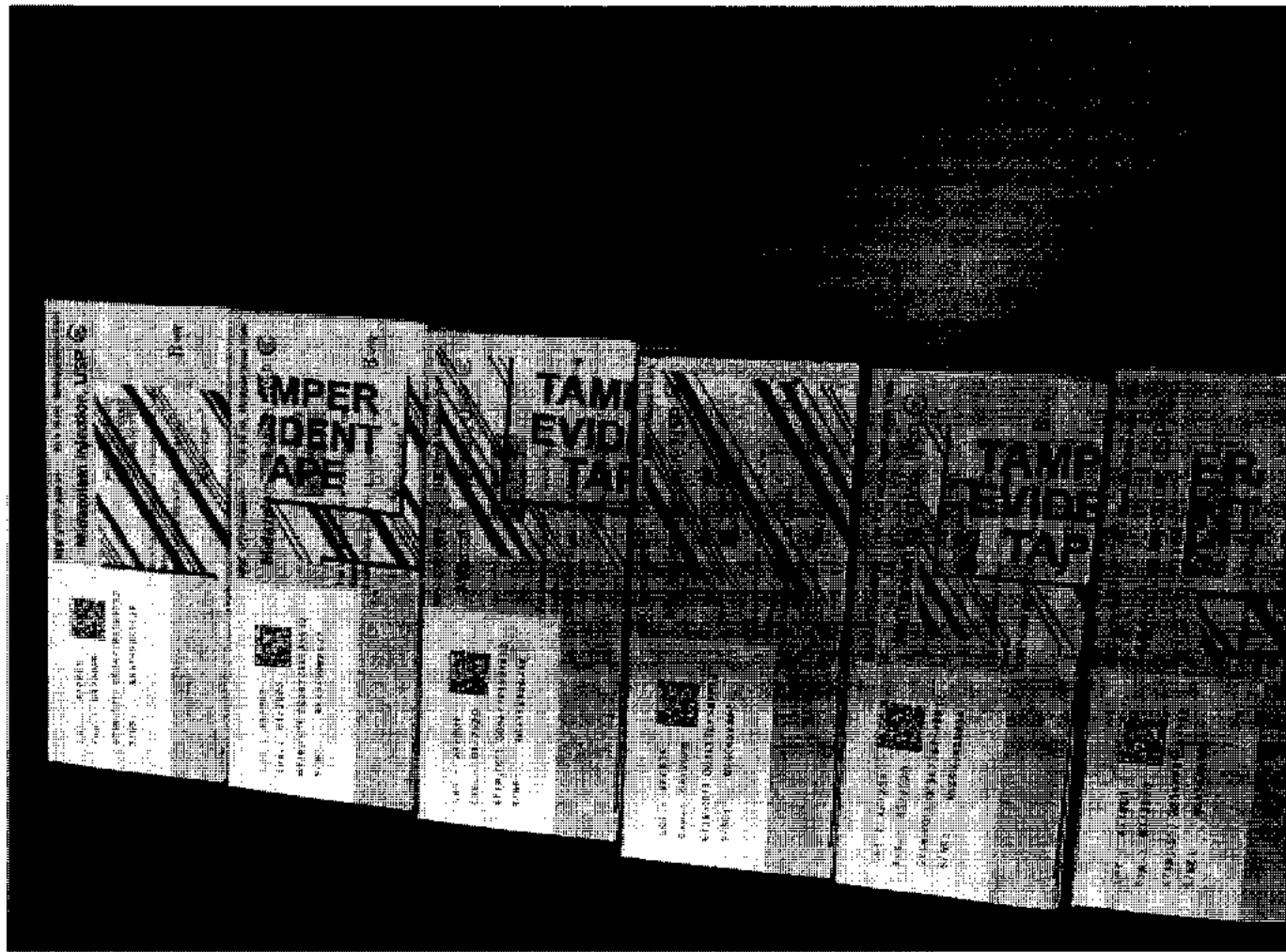
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PHASE I  
PNI



**RAPP 000373**  
**NDOC0013**





S (623) 478-8500

CARDINAL HEALTH  
600 N 83RD AVE  
TOLLESON, AZ 85353

PAGE 1 OF 1 ROUTE/STOP 307 / 010

CUST. NO.	DATE	ORIGINAL INVOICE
163264	5/03/18	3745130
REG. NO.	CUST. DEANO.	ORDER NO.
CA000001	AS2995922	5839173
CONF. NO.	CONF. NO.	
	5/02/18	03152

CardinalHealth

DEA RW-0263056 FEDID 68-0158739

S NV DEPT OF CORRECTION CTR PHCY  
L CENTRAL PHCY  
L 3955 W RUSSELL RD-CASA GRANDE  
T LAS VEGAS, NV 89118

S NV DEPT OF CORRECTION CTR PHCY  
L CENTRAL PHCY  
P 3955 W RUSSELL RD-CASA GRANDE  
T LAS VEGAS, NV 89118

ITEM NUMBER	NDC/UPC	QTY	UNIT	DESCRIPTION	SIZE	RETAIL PRICE	UNIT PRICE	EXTENSION
3000908	00074-4380-10	1	CT	NIMBEX 2MG/ML 10X10ML	10MC		258.95	25895CT
	TOTE# 14							
		1		PIECES SHIPPED				
		1		TOTAL PIECES SHIPPED				
				----- S U M M A R Y -----				
				Total RX		258.95		
				NET AMOUNT		258.95		
							SUBTOT	25895

INVOICE SHIP DATE: 5/02/2018

For SDS Visit: <http://www.mycardinalsdpd.com>

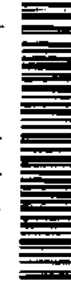
PLEASE REMIT YOUR PAYMENTS TO FOLLOWING ADDRESS:

CARDINAL HEALTH LLC, LLC  
C/O BANK OF AMERICA  
PO BOX 56412  
LOS ANGELES, CA 90074-6412

Note Codes:	CT Contract
T Taxable	SM Special Net
CO Contract Item Override	CV Price Override
SP Special Pricing	CS Source Contract

Unit Codes:	4 Not Stocked
C Dropship	5 Mfr Disp
2 DC Out	6 DC Disp
3 Mfr Out	7 Regulatory Review

Unit Chemical Designations:
5 - Ephedrine
6 - Hydrocodone
7 - Propoxyphene
8 - Other CAC Chemical



307 / 010

6/02/18  
DUE DATE

Customer is a final dispenser purchasing for own use and will not redistribute prescription pharmaceuticals into the secondary market.

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RAPP 000375  
NDOC0015





S (623) 478-8500

CARDINAL HEALTH  
600 N 83RD AVE  
TOLLESON, AZ 85353

PAGE 1 OF 1 ROUTE/STOP 307 / 010

DV

CardinalHealth

DEA RW-0263056 FED ID 68-0158739

S NV DEPT OF CORRECTION CTR PHCY  
L CENTRAL PHCY  
P 3955 W RUSSELL RD-CASA GRANDE  
T LAS VEGAS, NV 89118  
O

CUST. NO.	DATE	ORIGINAL INVOICE
163264	4/02/18	3667975
REGNO.	CUST. DEB NO.	ORDER NO.
CA00001AS2995922	5753628	
ORDER DATE	CONE. NO.	
3/30/18	06864	

ITEM NUMBER	NDC/UPC	QTY	QTY	QTY	DESCRIPTION	SIZE	RETAIL PRICE	UNIT PRICE	EXTENSION
3011335	00074-4378-05	1	1	1	CT NIMBEX 2MG/ML 10X5ML	10SD		148.23	14823CT
	TOTE# 9								
					PIECES SHIPPED				
					TOTAL PIECES SHIPPED				
					----- S U M M A R Y -----				
					Total RX		148.23		
					NET AMOUNT		148.23		

INVOICE SHIP DATE: 4/01/2018

For SDS Visit: <http://www.mycardinalsdpd.com>

PLEASE REMIT YOUR PAYMENTS TO FOLLOWING ADDRESS:

CARDINAL HEALTH LLC, LLC  
C/O BANK OF AMERICA  
PO BOX 56412  
LOS ANGELES, CA 90074-6412

Note Codes:  
T Taxable  
CO Contract Item Override  
SP Special Pricing

Onst Codes:  
C/Dropship  
2 DC Out  
3 Mkt Dis

List Chemical Designations:  
S - Schedule  
P - Phenyltoliparilamine  
L - Other List Chemical

5/02/18  
DUE DATE

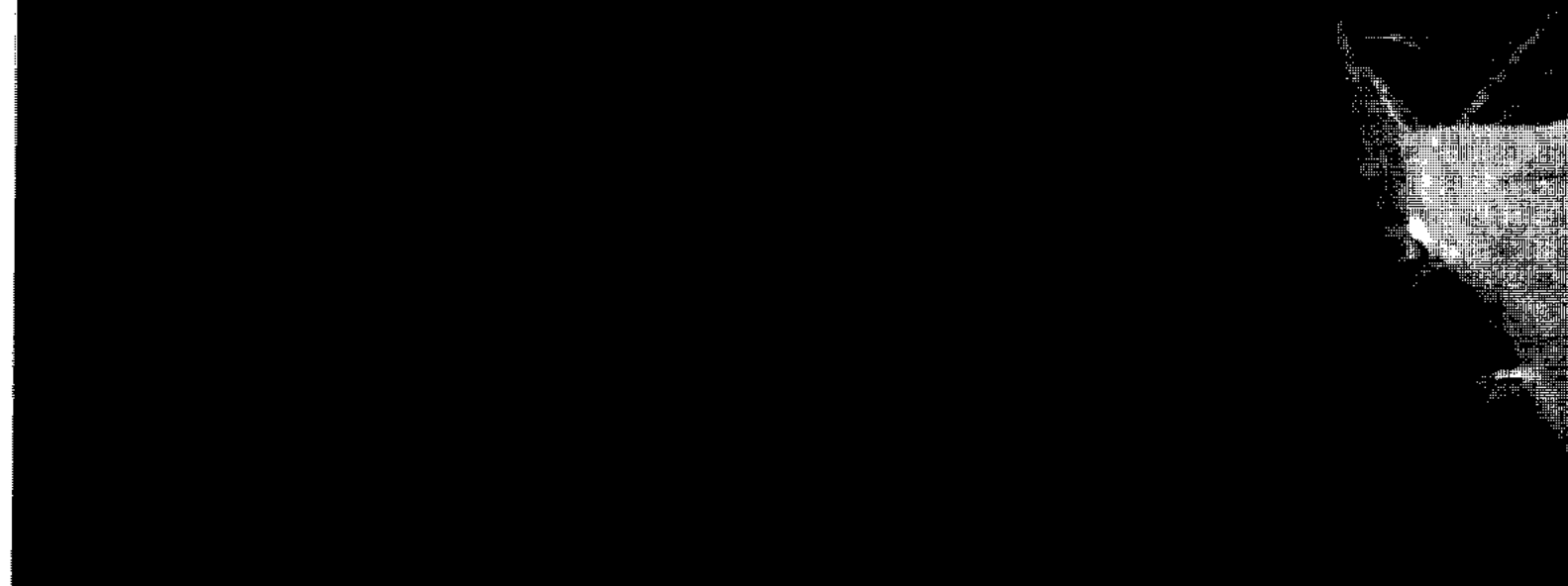


14823

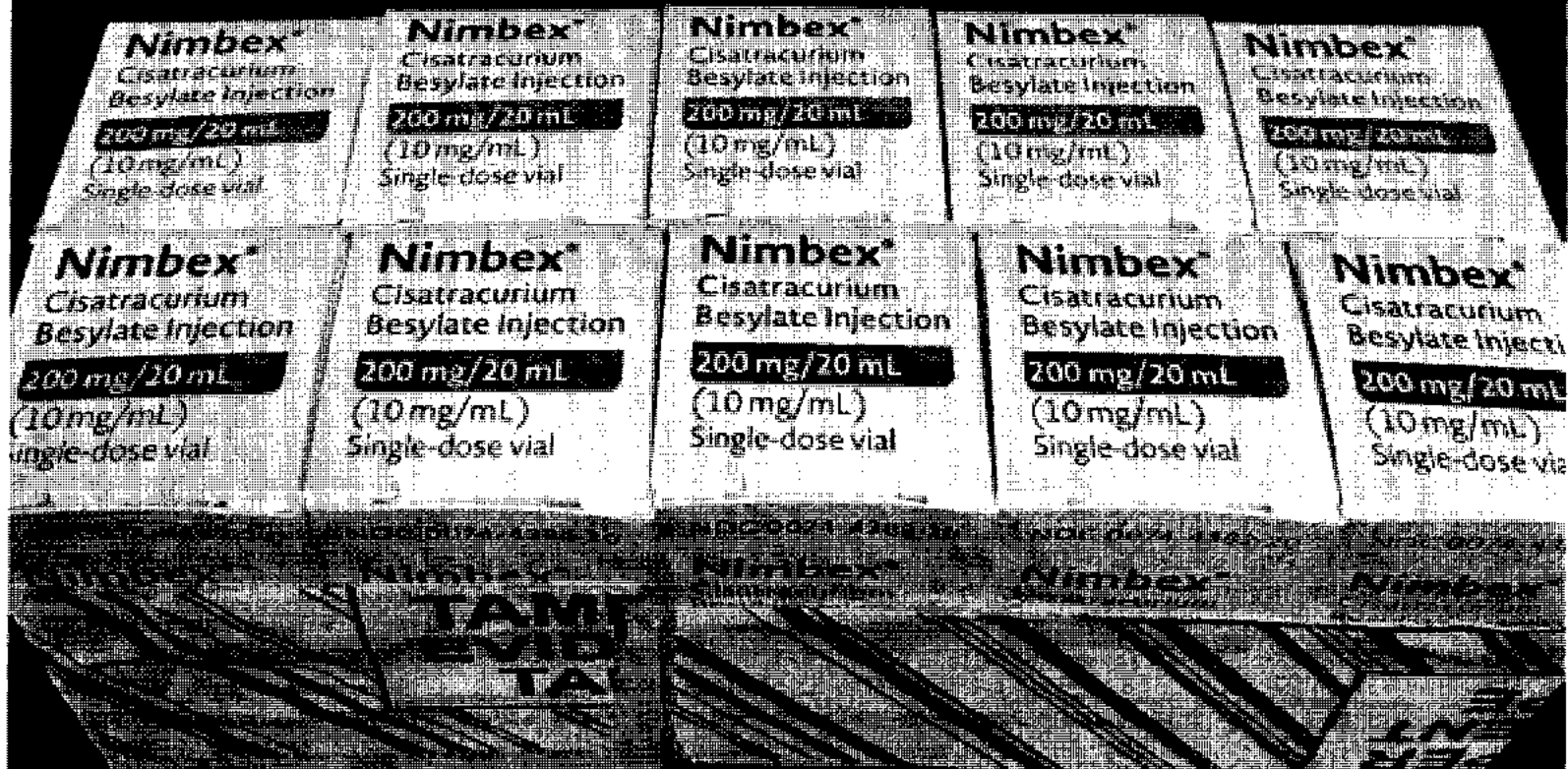
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RAPP 000378  
NDOC0018







**RAPP 000381**  
**NDOC0021**

# EXHIBIT 9



**AMENDMENT TO  
GENERIC WHOLESALE SERVICE AGREEMENT**

This Amendment ("**Amendment**") to the Generic Wholesale Service Agreement by and between Sandoz Inc. ("**Supplier**") and Cardinal Health\* ("**Cardinal Health**") dated July 1, 2006 as amended (referenced internally by Supplier as Contract #22745 for convenience only) (the "**Agreement**") is made effective as of MAY 15, 2018 ("**Amendment Effective Date**"). Supplier and Cardinal Health may be hereinafter referred to collectively as the "**Parties**" and individually as a "**Party**".

**RECITALS**

WHEREAS, Cardinal and Supplier are Parties to the Agreement;

WHEREAS, the Parties entered into the Controlled Distribution Program Amendment dated August 28, 2017;

WHEREAS, the Parties desire to amend the definition of Controlled Distribution Products to add Cisatracurium;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree to be legally bound as follows:

1. Section 1.a. of the Agreement is hereby amended and restated to add Cisatracurium to the definition of Controlled Distribution Products as follows:

"1.a. **Controlled Distribution Products.** Cardinal Health acknowledges and agrees that as of the Amendment Effective Date, Cardinal Health shall not sell, offer to sell or distribute the Rocuronium Bromide, Anectine or Cisatracurium Products listed in Exhibit 1, attached hereto ("**Controlled Distribution Products**") to: 1) any United States prison hospital, which shall include all State and Federal Prisons in the U.S. (and its commonwealths, territories, possessions, and military bases) (collectively "**U.S. Prison Hospital**"), 2) to any of its customers, affiliates or any other third party that is acquiring Rocuronium Bromide, Anectine or Cisatracurium Products for use for further distribution in any U.S. Prison Hospital or 3) to any retailer, wholesaler or distributor, in each case unless such customer is an Eligible Customer approved in advance in writing by Sandoz as set forth herein. Cardinal Health shall only be permitted to sell, offer to sell or distribute Rocuronium Bromide, Anectine or Cisatracurium Products to Eligible Customers (defined below)."

2. Exhibit 1 Controlled Distribution Products is hereby amended by adding the following Cisatracurium Products:

NDC	Product	Size	U/M
781903995	CISATRACURIUM IJ 10MG/ML 10X20	10	VL
781315395	CISATRACURIUM IJ 10MG/ML 10X20	10	VL
781315295	CISATRACURIUM IJ 2MG/ML 10X10M	10	VL
781903895	CISATRACURIUM IJ 2MG/ML 10X10M	10	VL
781903795	CISATRACURIUM IJ 2MG/ML 10X5ML	10	VL
781315095	CISATRACURIUM IJ 2MG/ML 10X5ML	10	VL

3. Exhibit 2 Controlled Distribution Program Schedule, Section 3 Products subject to the Controlled Distribution Program Services is hereby amended to add the following Cisatracurium Products:

CISATRACURIUM IJ 10MG/ML 10X20  
 CISATRACURIUM IJ 10MG/ML 10X20  
 CISATRACURIUM IJ 2MG/ML 10X10M  
 CISATRACURIUM IJ 2MG/ML 10X10M  
 CISATRACURIUM IJ 2MG/ML 10X5ML  
 CISATRACURIUM IJ 2MG/ML 10X5ML

4. **No Other Changes.** Except as specifically set forth in this Amendment, the Agreement will continue in full force and effect without change.

5. **Interpretation.** To the extent there are any inconsistencies between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment will control. Capitalized terms not otherwise defined herein shall have the same meaning given those terms in the Agreement, it being the intent of the Parties that the Agreement and this Amendment will be applied and construed as a single instrument. The Agreement, as modified by this Amendment, constitutes the entire agreement between Supplier and Cardinal regarding the subject matter of this Amendment and supersedes all prior or contemporaneous writings and understandings between the Parties regarding the same.

6. **Authorized Signatories.** All signatories to this Amendment represent that they are authorized by their respective companies to execute and deliver this Amendment on behalf of their respective companies, and to bind such companies to the terms herein.

Sandoz Inc.

By: Darren Atkins

Print Name: Darren Atkins

Title: VP, Pricing & Contracts

Address of Supplier:

100 College Road West  
 Princeton, New Jersey 08540

Cardinal Health

By: Craig Cowman

Print Name: CRAIG COWMAN

Title: VP Global Sourcing

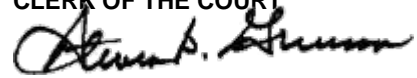
Address of Cardinal Health:

Attention: SVP - Generic Sourcing  
 7000 Cardinal Health Place  
 Dublin, Ohio 43017

\*The term "Cardinal" or "Cardinal Health" means Cardinal Health 3, LLC; Cardinal Health 104 LP; Cardinal Health 107, LLC; Cardinal Health 110, LLC; Cardinal Health 112, LLC; Cardinal Health PR 120, Inc.; The Harvard Drug Group, L.L.C.; and any other affiliate of Cardinal Health, Inc., an Ohio corporation ("CHI"), as may be designated by CHI.

# EXHIBIT 10





J. Colby Williams, Esq. (5549)

jcw@cwlawlv.com

Philip R. Erwin, Esq. (11563)

pre@cwlawlv.com

CAMPBELL & WILLIAMS

700 South Seventh Street

Las Vegas, NV 89101

Telephone: 702.382.5222

Noël B. Ix, Esq. (*pro hac vice to be submitted*)

ixn@pepperlaw.com

PEPPER HAMILTON LLP

301 Carnegie Center, Suite 400

Princeton, NJ 08540

Telephone: 609.452.0808

Andrew Kantra, Esq. (*pro hac vice to be submitted*)

kantraa@pepperlaw.com

PEPPER HAMILTON LLP

3000 Two Logan Square

Eighteenth and Arch Streets

Philadelphia, PA 19103

Telephone: 215.981.4000

*Attorneys for Intervenor*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALVOGEN, INC.,

Plaintiff,

v.

STATE OF NEVADA; NEVADA DEPARTMENT  
OF CORRECTION; JAMES DZURENDA,  
Director of the Nevada Department of Correction, in  
his official capacity; IHSAN AZZAM, Ph.D., M.D.,  
Chief Medical Officer of the State of Nevada, in his  
official capacity; and JOHN DOE, Attending  
Physician at Planned Execution of Scott Raymond  
Dozier, in his official capacity;

Defendants.

AND ALL RELATED CLAIMS

Case No. A-18-777312-B

Dept. No. XI

**NOTICE OF ENTRY OF ORDER  
GRANTING SANDOZ INC.'S  
MOTION TO INTERVENE**

1 Please take notice that on the 22<sup>nd</sup> day of August, 2018, an Order Granting Sandoz Inc.'s  
2 Motion to Intervene, was duly entered in the above entitled matter, a true and correct copy of  
3 which is attached hereto.

4 DATED this 23rd day of August, 2018.

5 Respectfully submitted,

6 CAMPBELL & WILLIAMS

7  
8 By /s/ J. Colby Williams

9 J. Colby Williams, Esq. (5549)

10 jcw@cwlawlv.com

11 Philip R. Erwin, Esq. (11563)

12 pre@cwlawlv.com

13 CAMPBELL & WILLIAMS

14 700 South Seventh Street

15 Las Vegas, NV 89101

16 Telephone: 702.382.5222

17  
18 Noël B. Ix, Esq. (*pro hac vice to be submitted*)

19 ixn@pepperlaw.com

20 PEPPER HAMILTON LLP

21 301 Carnegie Center, Suite 400

22 Princeton, NJ 08540

23 Telephone: 609.452.0808

24  
25 Andrew Kantra, Esq. (*pro hac vice to be submitted*)

26 kantraa@pepperlaw.com

27 PEPPER HAMILTON LLP

28 3000 Two Logan Square

Eighteenth and Arch Streets

Philadelphia, PA 19103

Telephone: 215.981.4000

*Attorneys for Intervenor*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of Campbell & Williams and that I did, on the 23rd day of August, 2018, submit for service upon the following attorneys in this action a copy of the foregoing **Notice of Entry of Order Granting Sandoz Inc.'s Motion to Intervene** by the Court's ECF System through Wiznet:

James J. Pisanelli, Esq.  
Todd L. Bice, Esq.  
Debra L. Spinelli, Esq.  
PISANELLI BICE, PLLC  
400 South 7th Street, Suite 300  
Las Vegas, NV 89101  
[JJP@pisanellibice.com](mailto:JJP@pisanellibice.com)  
[TLB@pisanellibice.com](mailto:TLB@pisanellibice.com)  
[DLS@pisanellibice.com](mailto:DLS@pisanellibice.com)  
*Attorneys for Plaintiff*

Jordan T. Smith, Esq.  
Assistant Solicitor General  
555 East Washington Avenue, #3900  
Las Vegas, NV 89101  
[JSmith@ag.nv.gov](mailto:JSmith@ag.nv.gov)  
*Attorney for Defendant Nevada State of  
Department of Corrections and State of  
Nevada*

Kenneth G. Schuler, Esq.  
Michael Faris, Esq.  
Alex Grabowski, Esq.  
LATHAM & WATKINS LLP  
330 North Wabash Ave., Suite 2800  
Chicago, IL 60611  
[kenneth.schuler@lw.com](mailto:kenneth.schuler@lw.com)  
[michael.faris@lw.com](mailto:michael.faris@lw.com)  
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*Attorneys for Plaintiff*

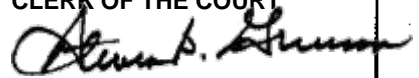
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# EXHIBIT A





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23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 ALVOGEN, INC.,

26 Plaintiff,

27 v.

28 STATE OF NEVADA; NEVADA DEPARTMENT  
OF CORRECTION; JAMES DZURENDA,  
Director of the Nevada Department of Correction, in  
his official capacity; IHSAN AZZAM, Ph.D., M.D.,  
Chief Medical Officer of the State of Nevada, in his  
official capacity; and JOHN DOE, Attending  
Physician at Planned Execution of Scott Raymond  
Dozier, in his official capacity;

Defendants.

Case No. A-18-777312-B  
Dept. No. XI

**ORDER GRANTING SANDOZ  
INC.'S MOTION TO INTERVENE**

Date of Hearing: August 21, 2018  
Time of Hearing: 9:00 a.m.

AND ALL RELATED CLAIMS

This matter came on for hearing on Sandoz Inc.'s Motion to Intervene on August 21, 2018. J. Colby Williams, Esq. of the law firm Campbell & Williams appeared on behalf of Sandoz Inc. ("Sandoz"); Jordan T. Smith of the Attorney General's office appeared on behalf of Defendants; Todd L. Bice appeared on behalf of Alvogen, Inc.; and Josh M. Reid and Kristen L. Martini, Esq., appeared on behalf of Hikma Pharmaceuticals USA, Inc.

Having considered the papers filed by the parties and argument of counsel, and good cause appearing therefore:

THE COURT HEREBY FINDS THAT Sandoz has met the burden for permissive intervention in this matter pursuant to NRCP 24(b) as its claims and the main action have common questions of law and fact, and its intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

THEREFORE, IT IS HEREBY ORDERED THAT Sandoz's Motion to Intervene is GRANTED.

DATED this 22 day of August, 2018.

  
DISTRICT COURT JUDGE

Submitted by:

CAMPBELL & WILLIAMS

By 

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PETITIONERS' REPLY APPENDIX** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on August 27, 2018.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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