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OKLAHOMA CLAIMS EXECUTION DOCTOR HAS NO DUTY TO AVOID INCOMPETENCE OR CRUELTY,
JUST TO “HELP ENSURE THE INMATE DIES.”

WASHINGTON DC (September 10, 2015): On September 8, the State of Oklahoma filed a brief in the federal Court of Appeals in Denver stating that it does not matter whether a doctor performed competently in supervising an execution by legal injection because, “no reasonable doctor, performing medical services, would place intravenous lines for the purpose of injecting 240 milliequivalents of potassium chloride into a patient.” Paradoxically, Oklahoma made that statement in defense of its state law which *requires* the participation of a physician in lethal injection execution, but then mandates that the identity of the doctor be kept secret. Oklahoma argued that the doctor owes no duty to the condemned man to avoid incompetent or gratuitously cruel medical practice, but rather “the doctor is supposed to help ensure that the inmate dies.” Oklahoma’s brief was filed in response to a brief filed by Doctors for the Ethical Practice of Medicine, which urged the Tenth Circuit Court of Appeals not to impose a blanket rule of confidentiality shielding the names of doctors who assist with executions.

The case was filed by the family of Clayton Lockett, alleging that his April, 2014, execution was so badly botched as to constitute not only cruel and unusual punishment, but also torture and medical malpractice. During Mr. Lockett’s execution, the doctor in charge failed to properly insert and monitor the IV intended to deliver the lethal cocktail of drugs, resulting in a gruesome spectacle in which Mr. Lockett appeared to be suffering excruciating pain for about 45 minutes; the State of Oklahoma ran out of lethal drugs and Mr. Lockett finally died of a heart attack.

The State of Oklahoma obtained an order sealing the court record in the case and requiring that the doctor involved in the execution be referred to only as “Dr. Doe.” That order has been challenged on appeal and a group of doctors who support the ethical practice of medicine have filed a “friend of the court” brief. The doctors’ brief stressed that the medical profession has an ethical obligation to monitor medical practice in order to identify incompetent doctors and that obligation depends on the ability of doctors to report incidents of malpractice. Shielding any doctor’s identity from disclosure threatens that system, particularly when, as in the Lockett execution, the doctor’s malpractice was committed in front of multiple witnesses.

Dr. Doe’s actual identity has been widely reported on the internet. He is not regularly employed by the Department of Corrections, but rather is a doctor who practices emergency medicine in Oklahoma. According to the doctors, his identity is thus an issue of public safety.

“Placing and monitoring IVs is presumably something that ‘Dr. Doe’ needs to be competent to do, and to the extent he is not, the profession needs to be aware of it so that patients can be protected,” said

Katherine Toomey, a lawyer for the doctors. According to the State of Oklahoma's brief, the supervision of an execution is not the practice of medicine and there is no requirement that a doctor perform competently. The State argues the medical profession should have no interest in whether a doctor imposes needless suffering at an execution. That argument, according to Ms. Toomey, "ignores the fact that Dr. Doe presumably treats other patients, who do have an interest in his competence. It also begs the question as to why the State of Oklahoma requires a doctor to participate in the execution at all, if it is not to assure that the execution is performed in accordance with medical standards. Finally, it is a matter of human decency to take measures to prevent unnecessary suffering of any human being. Oklahoma's suggestion that it has no obligation to do so is unconscionable."

The case is Estate of Clayton Lockett v. Governor Mary Fallin, et al., Civil Appeal No. 15-6134, currently pending in the Tenth Circuit Court of Appeals in Denver, Colorado.

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