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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT E. LEE,

Petitioner,

No. CIV S-03-2197 LKK KJM P

vs.

MARK SHEPHERD, Warden,

Respondents.

ORDER

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Counsel for petitioner has asked the court to take judicial notice of the possible side effects of certain drugs or, in the alternative, for the appointment of an expert in anticipation of the evidentiary hearing scheduled for June 22, 2010. Respondent has opposed the request for judicial notice, arguing that this court cannot take judicial notice of disputed facts, that the sources upon which petitioner relies are not of unquestionable accuracy, and that the question of side effects is not capable of accurate determination.

Under the Federal Rules of Evidence, a court may take notice of adjudicative facts not subject to reasonable dispute. Fed.R.Evid. 201(b). Specifically, a court may take judicial notice of material from medical or pharmacological treatises. See Eaker v. Miller, 2008 WL 4280361, at \*2, nn. 2-4 (M.D.N.C. 2008). In some circumstances, the facts plaintiff offers as subjects of judicial notice may not be subject to dispute. In this case, however, he has not shown

1 that the potential side effects from medication may be noticed without regard to dosage,  
2 tolerance, or a host of other factors not addressed in the excerpts he has provided.

3 The court will sign the unopposed request for the appointment of an expert sent to  
4 chambers by the Federal Defender's Office.

5 IT IS THEREFORE ORDERED that petitioner's request for judicial notice  
6 (Docket No. 85) is denied and the proposed order (Docket No. 86) will not be signed.

7 DATED: June 3, 2010.

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10 U.S. MAGISTRATE JUDGE  
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