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8 *Attorneys for Receiver*  
 9 J. Clark Kelso

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 11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 MARCIANO PLATA, et al.,

14 *Plaintiffs,*

15 v.

16 EDMUND G. BROWN, JR., et al.,

17 *Defendants.*

Case No. 01-cv-1351-TEH

**STIPULATION FOR AN AMENDED  
 ORDER AND ~~PROPOSED~~ ORDER  
 WAIVING STATE LAW AS IT  
 PERTAINS TO THE INTRANASAL  
 ADMINISTRATION OF NALOXONE BY  
 LICENSED VOCATIONAL NURSES  
 AND PSYCHIATRIC TECHNICIANS  
 WORKING IN CDCR INSTITUTIONS**

18 1. On March 10, 2017, the Court entered a stipulated order (Doc. No. 2929) waiving  
 19 state law as it pertains to the administration of naloxone<sup>1</sup> to inmate/patients by licensed  
 20 vocational nurses (“LVNs”) working in institutions under the jurisdiction of the California  
 21 Department of Corrections and Rehabilitation (“CDCR”).

22 2. Subsequently, the parties to this stipulation determined that interpretations of  
 23 existing state law, regulations, policies, and procedures may, in the absence of direction by a  
 24 physician or registered nurse, prohibit psychiatric technicians (“PTs”), as well as LVNs, from  
 25 carrying naloxone to the location of a medical emergency, assessing whether a patient requires  
 26 the administration of the drug and then administering naloxone intranasally to the patient.<sup>2</sup>

27 <sup>1</sup> Naloxone, also available under the brands of Narcan®, Evzio®, and other trade names, is an opioid  
 28 antagonist, used to counteract the depression of respiratory function during an opioid overdose.

<sup>2</sup> For example, Business and Professions Code section 2860.5 states that a licensed vocational nurse “...  
 when directed by a physician and surgeon ...” may administer medications via hypodermic needle.

1           3.       Permitting an independent assessment for the administration of naloxone by PTs  
2 as well as LVNs, and administration of the drug by PTs and LVNs in a medical emergency will  
3 maximize the utility of this drug and result in more rapid response to inmates who are  
4 experiencing depression of respiratory function due to an opioid overdose.

5           4.       California Correctional Health Care Services has claimed that failure to do so may  
6 result in an impermissible risk of serious harm to California’s inmates, in violation of their  
7 Eighth Amendment right to be free from cruel and unusual punishment.

8           5.       The purpose of this stipulation is to amend the March 10 order to reflect the  
9 parties’ agreement and mutual request that the court issue an order waiving state law and  
10 regulations that create an actual or perceived bar to LVNs and PTs (a) administering naloxone to  
11 inmate/patients; independently, without physician or registered nurse involvement, assessing the  
12 patient; and alone determining the need for administration of naloxone intranasally to  
13 inmate/patients and (b) authorizing California Correctional Health Care Services to develop  
14 policies and procedures to permit LVNs and PTs to assess the need for administration of  
15 naloxone, carry naloxone to site of an emergency and then administer naloxone intranasally, even  
16 in the absence of a patient specific prescription from a physician or registered nurse.

17           6.       Specifically, the parties agree and by this stipulation request that the court issue an  
18 order waiving the following provisions, only to the extent that they would or may otherwise bar a  
19 licensed vocational nurse and/or a psychiatric technician from carrying or administering naloxone  
20 to an inmate housed in an institution under the jurisdiction of the California Department of  
21 Corrections and Rehabilitation:

- 22                   a.       California Business and Professions Code, Division 2, Chapter 6.5,  
23                   Vocational Nursing;

24  
25 Similarly, Business and Professions Code section 2859 refers to the practice of vocational nursing as the  
26 provision of services “... practiced under the direction of a licensed physician, or registered professional  
27 nurse ...” And Business and Professions Code section 4502 (e.g., subsection (b)) states that in part the  
28 responsibilities of a psychiatric technician can include “... the carrying out of treatments and medications  
as prescribed by a licensed physician and surgeon or a psychiatrist.” These provisions have, in some  
cases, created the perception that LVNs and PTs would need to receive an order from a physician that  
naloxone be administered to the particular patient who is experiencing the medical emergency, and that,  
absent that order, the administration of naloxone by the LVN or PT would be in violation of law.



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/s/ Donald Specter  
DONALD SPECTER, Director  
Prison Law Office  
Attorney for Plaintiffs

Dated: June 8, 2017

/s/ Martin Dodd  
MARTIN H. DODD  
FUTTERMAN DUPREE DODD CROLEY MAIER, LLP  
Attorney for Receiver

Dated: June 8, 2017

Pursuant to Local Rule 5.1. I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this efiled document.

/s/ Martin Dodd  
MARTIN H. DODD

**~~PROPOSED~~ ORDER**

Pursuant to the foregoing stipulation, supported by the Declaration of Receiver J. Clark Kelso, filed herein on March 8, 2017 (Doc. No. 2928-1) and the Supplemental Declaration of Receiver J. Clark Kelso, simultaneously submitted with the stipulation, the Court finds that the constraints currently imposed by state law on the intranasal administration of naloxone by licensed vocational nurses and psychiatric technicians working under the jurisdiction of CDCR are clearly preventing the Receiver from carrying out his duties prescribed in the Order Appointing Receiver, dated February 14, 2006 and that other alternatives are inadequate. Accordingly, the Court hereby waives the following provisions of state law, but only to the extent that they would otherwise bar a licensed vocational nurse or psychiatric technician working under the jurisdiction of CDCR from independently assessing that an inmate/patient is in need of the administration of naloxone and, in the absence of a patient specific prescription, carrying naloxone to the site of a medical emergency and/or administering naloxone intranasally to an inmate/patient housed in an institution under the jurisdiction of the CDCR:

- a) California Business and Professions Code, Division 2, Chapter 6.5, Vocational Nursing;
- b) California Code of Regulations, Title 16, Division 25, Chapter 1, Vocational Nursing;
- c) California Business and Professions Code, Division 2, Chapter 10, Psychiatric

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Technicians;  
d) California Code of Regulations, Title 16, Division 25, Chapter 2, Psychiatric  
Technicians and,  
e) California Civil Code § 1714.22(f) (regarding administration of an opioid  
antagonist (naloxone)).

In addition, California Correctional Health Care Services is hereby authorized to adopt  
amended policies and procedures to effectuate this order, including specifically to permit  
licensed vocational nurses and psychiatric technicians independently, without physician or  
registered nurse involvement, to assess the patient; to carry naloxone to the site of a medical  
emergency and to administer naloxone intranasally to inmate/patients.

The Court finds that the foregoing relief is necessary to correct the violation of California  
inmates' Eighth Amendment rights and that the requested relief is narrowly drawn, extends no  
further than necessary, and is the least intrusive means necessary to correct this violation.

This Order supersedes the order, dated March 10, 2017 (Doc. No. 2929), waiving state  
law.

IT IS SO ORDERED.

Dated: June 12, 2017

  
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THELTON E. HENDERSON  
United States District Judge