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Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Re: CTU2008-0314-01

June 25, 2008

I, Michael St. Martin, submit the following response to The California Department of Mental Health's submission to the petition I filed on the Coalinga State Hospital (CSH) Administrative Directive 818.

#### **ISSUE**

On March 14, 2008, the Office of Administrative Law received a petition by me, Michael St. Martin, alleging that the Department of Mental Health (DMH) has issued, used, enforced, or attempted to enforce underground regulations. The alleged underground regulation is CSH Administrative Directive 818.

#### **PROPOSED DETERMINATION**

CSH Administrative Directive 818 is a regulation subject to the Administrative Procedures Act (APA).

#### **BACKGROUND**

Coalinga State Hospital was completed in 2005 at a cost of \$388 Million. It was designed to house the rapidly growing population of civilly detained sex-offenders who had completed their prison sentences but remained incarcerated as *Sexually Violent Predators*. Current resident population stands at approximately 750. State officials claim that the hospital provides treatment and does not constitute punishment.

Ms. Lee stated in her response:

“Every state hospital is unique and as a result the administrative directives provide guidance for the unique situations that may occur at each location.”

**Welfare & Institution Code**  
**§ 4000 “Department”**

“There is in the Health and Welfare Agency a State Department of Mental Health.”

**Welfare & Institution Code**  
**§ 4001 “Definitions”**

- (a) “Department” means State Department of Mental Health;
- (b) “Director” means the Director of Mental Health;
- (c) “State Hospital” means any hospital specified in section 4100

**Welfare & Institution Code**  
**§ 5400 “Director; Administrative duties; Rules and Regulations”**

**Welfare & Institution Code**  
**§ 5750 “Promulgation of Rules and Regulations”**

**§ 5750 (c) (2)** “The department shall continue during the period to involve the conference in the development of all regulations which affect local Mental Health programs, prior to the promulgation of those regulations pursuant to the Administrative Procedures Act.

In preparation for opening the facility several hospital police officers were hired, including many former Department of Corrections (CDCR) officers. They were given instruction to inspect the facility and remove all contraband prior to the hospital being occupied by patients. Guided by the experience and training they had received in CDCR they removed items they deemed to be a “threat to the safety and security of the institution,” items they knew would never pass muster under prison regulations. They were then informed by administrative staff to return the items they had taken; they were integral to the structure of the buildings and were not contraband (e.g., metal wire in the rubber stripping in all the doors, Plexiglas window display cases, items that could easily be made into weapons stock, etc.)

Among the tasks placed on the initial officers was to write all of the Administrative Directives (ADs) for the institution. They informed hospital administrators that they had no experience writing directives, neither did they know what to write. They were told to “wing it.” The officers contacted other state hospitals and requested copies of their ADs. It was from this pool that the Coalinga State Hospital Administrative Directives were assembled: the cut-and-paste method. It is *ad hoc*: hardly the careful, unique, and specific method claimed by Ms. Lee.

**ADMINISTRATIVE DIRECTIVE 818 EXCEEDS ITS  
PROVISIONS FOR “SAFETY AND SECURITY”**

Ms. Lee states in her submission:

“Contraband items do not need to be denied for good cause. The contraband items are items that are illegal, such as illegal drugs. Also, weapons that inflict bodily harm are prevented and many metal combs cannot be brought to the secured areas, where the potential for safety and security is higher. The individual cannot possess items that may be a threat to the safety and

security such as letter openers, and items that may hide certain possessions, resulting in clear bottles.”

This typical DMH *one-size-fits-all* practice and policy has led to some fairly absurd items being declared contraband. Items that do not meet the threshold of “safety and security” therefore must meet the “good cause” criteria. The following partial list shows the ambiguity of items the hospital has declared to be dangerous (please see original petition for submission of AD 818).

Chewing gum	Fountain Pens	Balloons
Excess clothing	Gym bags	Fanny packs
Herbal teas	Make-up	Mirrors
Mirrored sunglasses	Rubber bands	Styrofoam
Telephone directories	Thermal cups	Battery chargers
Musical greeting cards	Spices	Loose shoelaces
Reinforced envelopes	Cardboard	Satellite radios
Dental floss	Ink	Chalk
Pastels	Safety scissors	Gloves
Glue	Paints	Calligraphy pens
Pencils	Beading needles	Denture cleaner
Dice	Musical instruments	Shoe polish
Tape of any kind	Fingernail clippers	Metal pronged fasteners
Collectable trading cards	Correction fluid	Adhesive mailing labels
Bottles of any size or material	Metal foil	CD or DVD jewel cases
Sunglasses worn indoors	Desktop computers of any type	Eating/cooking utensils
Telephone calling cards	Toothbrushes exceeding 4”	Plastic bags not provided
Maps of Fresno County	Maps of Kings County	Maps of Monterey Co.
Literature of area landmarks	Local city/County newspapers	Local magazines
Paper clips	Loose staples	Pens exceeding 3.5”
Any “new technology” devices	Handkerchiefs not plain white	Electronic gear or parts

The Legislature did not take, deny, or abridge our rights to Due Process or Equal Protection Under the Law. Additionally, our right to be held in the least restrictive manner has been established under law. No Administrative Directive on its own can deny these rights, since ADs are written by an agency within the Executive branch of the government. AD 818 is regulatory in nature, and is therefore subject to the APA.

**PC § 3041 (a).** administration agency may not vary or enlarge the terms of legislation, i.e., its rules and regulations must come within the scope of the authority conferred upon it in order for the rule or regulation to be valid. (Gov. C. § 11342.1, *Credit Ins Gen Agents Assn. v. Payne* (1976) 16 Cal. 3d 651, 656-657))

Administrative regulation that alter or amend a statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike

