

LETHAL INJECTION PODCAST

Hello and welcome to the Death Penalty Information Center's podcast, exploring issues related to capital punishment. I am Mana Aliabadi, along with Anne Holsinger, from DPIC. In this edition, we will be discussing recent developments regarding lethal injection. Over the last few years, shortages of lethal injection drugs have forced states to change their execution procedures and seek new drugs and new sources of those drugs.

When did the shortage of lethal injection drugs begin?

The crisis began in 2010, when Hospira, the only U.S. producer of sodium thiopental, the anesthetic that had been used in lethal injections, ran short of a crucial raw ingredient, resulting in a nationwide shortage of thiopental. This led some states to seek alternatives. Oklahoma, for example, switched to a new drug, pentobarbital, becoming the first state to use an anesthetic other than sodium thiopental in a lethal injection.

Then, in 2011, Hospira announced it would no longer produce sodium thiopental, citing objections to the use of this product in executions from the Italian plant where the drug was manufactured.

How did states respond to Hospira's announcement?

Initially, many states obtained sodium thiopental from sources overseas. However, in 2011, the U.S. Drug Enforcement Administration seized the foreign-sourced drugs because they lacked Food and Drug Administration approval.

At that point, sodium thiopental was no longer a viable option for use in executions, and most states followed the lead of Oklahoma and Ohio by switching to pentobarbital. By April 2011, every lethal injection was being carried out using pentobarbital, either alone or as the first of three drugs.

Have states had any problems obtaining pentobarbital?

Yes. In January 2011, Lundbeck, Inc., which produces pentobarbital in Denmark under the brand name Nembutal, sent a letter to the Ohio Department of Rehabilitation and Correction, saying, "we urge you to discontinue the use of Nembutal in the execution of prisoners in your state because it contradicts everything we are in business to do – provide therapies that improve people's lives." In July of that year, Lundbeck implemented distribution restrictions to prevent the use of pentobarbital in executions.

As states exhausted their supplies of pentobarbital and were unable to obtain it from Lundbeck, they either used new drugs or turned to compounding pharmacies.

What are compounding pharmacies?

Compounding pharmacies prepare drugs from basic ingredients. Traditionally, compounding is used to meet the specific needs of an individual patient in response to a doctor's prescription. For example, a drug might be altered to remove an inactive ingredient for a patient with an allergy. Concerns about the safety of products from compounding pharmacies grew when a meningitis outbreak in 2012 was linked to such a pharmacy in Massachusetts. Under a new law

passed in 2013, large-scale compounding pharmacies can register as “outsourcing facilities,” which will be regulated by the FDA, but smaller operations will still operate under state regulation.

In an Oklahoma execution involving compounded pentobarbital, the inmate, Michael Wilson, said “I feel my whole body burning,” as the drug was injected.

Have any states switched to other drugs because of the restrictions on pentobarbital?

Yes. In October 2013, Florida introduced a new drug, midazolam, as the first of three drugs in its lethal injection protocol. Midazolam is a sedative, not an anesthetic, and witnesses to the first use of the drug reported that the inmate remained conscious longer than usual.

In Ohio, in 2014, midazolam was used in the execution of Dennis McGuire, and witnesses reported that he snorted, gasped, and struggled during the execution, which took longer than usual for death to occur. Ohio Governor John Kasich stayed the next execution to allow the Department of Corrections time to review the lethal injection procedure. Six other states have proposed using midazolam.

Are inmates given information about the drugs that will be used in their executions?

Several states have taken action to hide the source of their lethal injection drugs because pharmacies do not want to be publicly identified as participating in executions. In Missouri, for example, the secrecy law that protects the identity of the executioner was used to avoid revealing where they had obtained pentobarbital. Inmates in Missouri, Louisiana, Georgia, and other states have filed lawsuits challenging the secrecy surrounding the source of execution drugs, stating that improperly prepared or contaminated drugs might cause severe pain during the execution. A federal judge, dissenting in a Missouri case, criticized the secrecy surrounding the lethal injection protocol, saying, “from the absolute dearth of information Missouri has disclosed to this court, the ‘pharmacy’ on which Missouri relies could be nothing more than a high school chemistry class.”

Courts in Oklahoma, Louisiana, Texas, and Mississippi have ruled that inmates must be given information about the source of their drugs, though these rulings are being appealed and some have failed to stop executions.

Are any executions on hold because of challenges to lethal injection?

Yes. Appeals related to lethal injection changes have halted executions for years in Arkansas, California, Kentucky, and North Carolina. In other states such as Georgia, Oklahoma, and Ohio, challenges have at least caused short delays.

What does this mean for the future of the death penalty?

Some state lawmakers have proposed moving back to older forms of execution, such as electrocution or the gas chamber because of the difficulty in obtaining lethal injection drugs. However, it seems unlikely the drug shortages will lead to a repeal of the death penalty. These decisions tend to focus on larger, systemic problems, such as innocence and unfairness. States will likely continue to seek alternative drugs and new sources in order to carry out executions.

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