

The Lethal Injection in Nebraska – A Flawed and Failed Experiment

Nebraska's attempts to purchase drugs for use in executions have been riddled with problems, wasting time and taxpayer dollars. Governor Ricketts claims he has found a solution, but the state's recent efforts to secure drugs likely will cost the state hundreds of thousands more dollars and lead to years of contentious litigation and political controversy. It's time to end this costly and ineffective experiment.

A Short History of Nebraska's Lethal Injection Drug Purchases

In early 2010, the Nebraska Department of Correctional Services (NDCS) promulgated a new lethal injection protocol calling for administration of three drugs: sodium thiopental, pancuronium bromide and potassium chloride.

Shortly after publishing the protocol, however, the NDCS realized that it wouldn't be able to obtain domestic supplies of sodium thiopental, the first drug in the formula.

Through online research, the NDCS came into contact with Chris Harris. Harris had no experience in the pharmaceutical industry, but he nonetheless offered to sell sodium thiopental to a number of departments of corrections across the United States. Nebraska was one of only two States to work with Harris and purchase drugs from him. As outlined below, both of Nebraska's prior dealings with Harris have failed to secure a supply of execution drugs the state can use.

Purchase No. 1 – Sodium Thiopental from Kayem Pharma

NDCS' first purchase of sodium thiopental from Harris was made in early November 2010. NDCS paid \$2,056.00 to Harris, who was at the time affiliated with Kayem Pharma (pictured below).



Harris had no previous experience in pharmaceuticals and apparently no understanding of the rules governing exports of controlled substances, but he nevertheless promised the NDCS he would send high quality products swiftly and efficiently. These promises proved illusory.

The sodium thiopental Harris eventually shipped to NDCS was not FDA-approved and did not come from a facility registered with the FDA. Two months after NDCS ordered the drugs from Harris, the shipment reached a port of entry to the U.S., where it was initially held by the FDA.

In late January 2011, the FDA released the shipment to NDCS, but it quickly became apparent that the drugs had been imported improperly, because NDCS did not have the necessary import license. In May 2011, the DEA sent a Letter of Admonition to the NDCS, advising that the sodium thiopental they had purchased must be transferred to the DEA and for destruction. On November 7, 2011, the NDCS transferred the thiopental to the DEA.

Purchase No. 2 – Sodium Thiopental from Naari

Despite the difficulties with the first purchase, in May 2011, the NDCS once again turned to Harris to purchase drugs for use in executions.

Harris was no longer affiliated with Kayem and had no ready supplier of thiopental. He wrote in an email to Steve Urosevich, then-Director of the NDCS: “There are a few companies who export thiopental but no one is willing to export to US Jails. . . I am the only one willing to do it but need to get my customs clearing license as even the customs agents wont work on a package of thiopental being sent to US Jails.”

Nevertheless, Harris said he would be able to procure sodium thiopental. He charged the NDCS \$5,411 for the 500 vials of sodium thiopental he promised to export.

It took four months for Harris to procure the drugs and send them to the NDCS. Once again, Harris sold NDCS an illegal thiopental product that was neither FDA-approved, nor from a properly registered facility.

Litigation ensued in the Nebraska state courts over issues related to the unlawful import of the unapproved sodium thiopental.

Meanwhile, Prithi Kochhar, the CEO of Naari Pharma, the company that manufactured the thiopental Harris sold to NDCS, learned that the company’s product had been sold to a U.S. department of corrections to be used in executions. Kochhar expressed outrage and distress about the deal and filed a lawsuit in Nebraska to try to reclaim Naari’s drugs. In a letter to the Honorable Michael Heavican, Chief Justice of the Supreme Court of Nebraska, Kochhar explained that Harris had tricked his company by saying that the thiopental would be sold for medical use in the developing world, and that “Mr. Harris misappropriated our drugs and diverted them from their intended purpose and use.” Kochhar asked that his product “be returned immediately to its rightful owners, that is, that it be returned to us at Naari.”

In 2013, the second shipment of thiopental expired. That same year, the United States District Court for the District of Columbia ruled (and the Court of Appeals later affirmed) that imports of unapproved or misbranded drugs and drugs that were not from FDA-registered facilities were unlawful. As such, even if the thiopental from Naari hadn’t expired, the NDCS would not have been able to use them.

Purchase No. 3 – Sodium Thiopental from Unknown Source

Last week, Governor Ricketts claimed that he had “solved” Nebraska’s lethal injection drug problems. In a joint statement with Attorney General Peterson, Ricketts

said the state had purchased 1000 units each of sodium thiopental and pancuronium bromide from Harris Pharma, Chris Harris' business, at a cost of \$54,400.00.

It appears that Governor Ricketts and Attorney General Peterson are unaware that in the state's prior two dealings with Harris, the process of obtaining the drugs was protracted and ultimately fruitless.

Sodium thiopental is a relatively inexpensive anaesthetic. The *International Drug Price Indicator Guide 2009* lists the price of sodium thiopental as ranging between \$1.05 and \$3.38, with a median price of \$2.20 per unit.¹ The NDCS paid \$26,700 for 1000 units of sodium thiopental, i.e. \$26.70 per unit.

The *International Drug Price Indicator Guide 2009* gives the average price of pancuronium bromide as between \$0.44 and \$1.03, with a median cost of \$0.46 per unit.² NDCS paid \$27,700 for 1000 units of pancuronium bromide, i.e. \$27.70 per unit.

In other words, Harris charged the state of Nebraska an enormous sum of money for drugs that should cost far less.

Furthermore, given NDCS' past experience with Harris, it is likely that the drugs in this shipment won't meet FDA standards and either will not be permitted to enter the country or will be disallowed for use in executions. Moreover, it is certain that the state will be caught up in additional litigation challenging the drugs and their purchase.

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http://erc.msh.org/dmpguide/resultsdetail.cfm?language=English&code=TPT1A&s_year=2013&year=2013&str=1%20g&desc=Thiopental%20Sodium&pack=new&frm=VIAL&rte=INJ&class_code2=01%2E1%2E&supplement=&class_name=%2801%2E1%2E%29General%20anaesthetics%20and%20oxyg en%3Cbr%3E (last visited 5/22/15).

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http://erc.msh.org/dmpguide/resultsdetail.cfm?language=English&code=PANC50A&s_year=2013&year=2013&str=2%20mg%2Fml&desc=Pancuronium%20Bromide&pack=new&frm=AMPOULE&rte=INJ&class_code2=20%2E&supplement=&class_name=%2820%2E%29Muscle%20relaxants%20%28p eripherally%20acting%29%20and%20cholinesterase%20inhibitors%3Cbr%3E (last visited 5/22/15).