

Lack of lethal-injection drug means Florida must develop new execution procedure

By Anthony Colarossi, Orlando Sentinel

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Executions of Florida death-row inmates could be on hold for months in the wake of a decision last week by an Illinois drug company to stop producing an anesthetic used in lethal injections here.

Though no new executions are scheduled, the halt in production of the drug effectively means that the state will have to come up with a new procedure to kill inmates. And any new drug "cocktail" developed likely will result in legal challenges down the line.

The drug in question is sodium thiopental, one of three used by Florida and many other states in the lethal-injection sequence. It is an anesthetic administered prior to a muscle relaxant and a third drug that stops the heart.

Currently, 35 states plus the federal government use lethal injection as the primary method of execution, according to the Washington-based Death Penalty Information Center. Most use the same three-drug method.

On Friday, Lake Forest, Ill.-based Hospira Inc. announced in a statement that it "will exit the sodium thiopental market and no longer attempt to resume production of its product, Pentothal."

That company was the sole American producer of the drug.

"We do use that drug in our lethal-injection process," state Department of Corrections spokeswoman Gretl Plessinger said. "We are exploring other options. At this point, we're looking at making changes to the procedure. If we change one drug, we might have to change another drug."

She also anticipates a legal challenge with the change because the old sequence of drugs had the approval of the courts.

Florida's most-recent execution occurred nearly one year ago, on Feb. 16, when inmate Martin Grossman was put to death by lethal injection after more than 24 years on death row for a 1984 Pinellas County murder.

Since then, a halt in production of the drug has delayed executions in other states, according to a New York Times report.

It's not clear, however, whether the shortage influenced decisions not to carry out death sentences here. In Florida, death-row inmates must elect whether their execution comes by lethal injection

or electrocution soon after their first appeal is denied.

Every current Florida death-row inmate at that stage has elected the lethal-injection option, Plessinger said.

Some of the drug was on hand "as of a couple of weeks ago," Plessinger said, but she added: "I know there is a shelf life on the drug."

Florida has the nation's second-largest death-row-inmate population, according to the Death Penalty Information Center. As of Tuesday, the count was 392 inmates.

As the lethal-injection-drug issue plays out, the state Department of Corrections awaits its new secretary, Edwin Buss, set to take the job in mid- to late February, to offer guidance when he arrives, Plessinger said.

Sodium thiopental has a shelf life of about two years. With the last batch made in 2009, the remaining supplies of the drug are set to expire this year.

The dilemma stems from Hospira's production of the drug at an Italian plant. Italian authorities insisted that the drug not be used in executions in the United States. Though Hospira has never condoned the use of the drug in capital punishment, it could not assure the Italians that third-party suppliers would never sell the drug to state departments of corrections for use in executions.

"Italy's intent is that we control the product all the way to the ultimate end user to prevent use in capital punishment," the company said in its statement Friday.

After those discussions, internal talks and communications with its wholesalers, who distribute the product to customers, Hospira determined: "We could not prevent the drug from being diverted to departments of corrections for use in capital punishment procedures."

On Tuesday, Hospira spokesman Daniel Rosenberg said, "We regret that issues outside our control forced our decision to exit the market. We made the product fully to improve lives. We regret we cannot supply our medical customers."

The lack of the drug's availability leaves many death-penalty states, including Florida, scrambling for a new process, according to Richard Dieter, the Death Penalty Information Center's executive director.

"In each state, I think we're talking some months of delay," Dieter said. "It is a political question ultimately. There's always a way to kill a human being. The question is how gruesome it's going to be."

Texas Department of Criminal Justice spokeswoman Michelle Lyons said Tuesday that her state has enough sodium thiopental to get through two executions scheduled for February, but the supply expires in March. After that, she said, Texas will be exploring other alternatives just as

Florida is.

The U.S. Supreme Court has not ruled executions must be entirely painless, but the states have established procedures aimed at methods of execution that are as "humane as reasonably possible," Dieter said.

A potential replacement for sodium thiopental may be pentobarbital, a drug used in Oklahoma's lethal-injection process. That drug also is widely used in euthanizing animals.

The other drugs used in the three-step procedure in Florida and many other states are pancuronium bromide, which relaxes muscles, and potassium chloride, which stops the heart.

If pentobarbital becomes the replacement drug, it's possible that drug's makers may come under similar international pressure as Hospira. Dieter said it seemed apparent last week that Hospira signaled it was content with getting out of this particular market because of the way the drug was being used.

"They would much rather have an image of health and good-quality drugs that make you feel better," he said.