

Oklahoma executes inmate with substitute drug

Substitute pentobarbital is typically used to euthanize animals

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OKLAHOMA CITY — Oklahoma officials executed a convicted murderer Thursday using a drug combination that includes a sedative commonly used to euthanize animals, after a U.S. shortage of a key ingredient forced the state to tinker with the usual formula.

John David Duty was pronounced dead at the Oklahoma State Penitentiary. The 58-year-old, who was sentenced to die for strangling his cellmate nearly a decade ago, is believed to be the first person in the United States whose execution included the use of pentobarbital.

Strapped to a gurney and wearing an eye patch over his right eye, the heavysset Duty apologized to his victim's family.

"I hope one day you'll be able to forgive me, not for my sake, but for your own," Duty said. "Thank you, Lord Jesus. I'm ready to go home."

He also acknowledged three of his attorneys and his brother and sister-in-law, all of whom witnessed the execution from an adjacent room. "You've all been a blessing," he told them.

The lethal drugs began to flow at 6:12 p.m., and Duty's breathing became labored one minute later. At 6:15 p.m., he appeared to stop breathing and the color began to drain from his face.

"There didn't appear to be any issues with the new drug," Oklahoma Department of Corrections spokesman Jerry Massie said afterward.

Duty and two other death-row inmates had challenged the state's decision to use pentobarbital, arguing it could be inhumane because a person could be paralyzed but still aware when a painful third drug is administered to stop the heart. On Tuesday, a federal appeals court upheld a ruling against the other two inmates. Duty did not take part in the appeal.

Several states have been scrambling since Hospira Inc. — the only U.S. manufacturer of the barbiturate normally used in executions — said new batches of sodium thiopental would not be available until at least January. On Thursday, the company said batches could be available "in the first quarter" of next year.

Executions have been delayed in California, Arkansas, Tennessee and Maryland as a result of protocol changes, including the use of new drugs, said Richard Dieter, executive director of the Death Penalty Information Center. In Ohio and Washington, laws were passed to allow for the use of sodium thiopental alone, he said.

But Oklahoma's law calls for the use of a fast-acting barbiturate to be administered first, which gave the state the flexibility to use pentobarbital, Massie said.

"I think Oklahoma is the only state where this issue has come to a head over a new drug," Dieter said. "The other states that haven't been able to do it, it's because the state courts wanted more time to review the overall protocol changes."

Experts testified at a November federal court hearing that no other U.S. state uses pentobarbital during executions. Massie and Dieter both said before Thursday's execution that they believed Duty would be the first U.S. inmate put to death using the drug.

"I have not seen that (pentobarbital) has been used before in this context," Dieter said. But, he noted, "Some states don't say exactly what drugs are used and have kept that out of the public eye."

Dieter also acknowledged that China, which is increasingly favoring lethal injection as a method of execution, may have used the drug before.

Jim Rowan, a capital defense attorney and a board member of the Oklahoma Coalition to Abolish the Death Penalty, said was concerned there was little evidence about the effects of the use of the drug on humans.

"No one who has been put to death has come back and testified about what it felt like," Rowan said.

At the November hearing, an anesthesiologist testified on video that that the 5,000 milligrams of pentobarbital Oklahoma planned to use is enough to cause unconsciousness and even death within minutes, and even a defense expert testified that amount of pentobarbital would be fatal.

Duty pleaded guilty to first-degree murder in the 2001 slaying of 22-year-old Curtis Wise. At the time, Duty was serving three life sentences for rape, robbery and shooting with intent to kill.

According to court records, Duty convinced Wise he could get some cigarettes if Wise pretended to be his hostage so that Duty could be transferred into administrative segregation. Wise agreed to let Duty bind his hands behind his back. Duty then strangled him with a sheet, court records state.

Investigators said Duty penned a letter to Wise's mother immediately after the killing, saying, "Well by the time you get this letter you will already know that your son is dead. I know now because I just killed him an hour ago. Gee you'd think I'd be feeling some remorse but I'm not."

Associated Press writer Rochelle Hines contributed to this report.

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