



Equal Justice Initiative

122 Commerce Street
Montgomery, Alabama 36104

April 22, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing on behalf of Jason Oric Williams and other condemned inmates on Alabama's death row. Mr. Williams is scheduled to be executed on May 19, 2011, and another execution is set for June 16, 2011. As explained in more detail below, it recently came to our attention that the Alabama Department of Corrections appears to have violated the federal Controlled Substances Act by obtaining sodium thiopental from the State of Tennessee, whose supply has been seized by the Drug Enforcement Administration due to concerns that it was illegally obtained from overseas.

Alabama, like most states that administer lethal injection as a form of execution, has to date employed a three drug cocktail with the lethal dose being a specified amount of sodium thiopental. This protocol was used as recently as March 31, 2011, during the execution of William Glen Boyd. As your office is aware, last year, many states experienced a shortage of the drug after Hospira Inc., the sole U.S. supplier of sodium thiopental, experienced problems with its raw material providers. Many states desperately sought to acquire unexpired doses.

Mindful of this shortage, prior to the scheduled execution date of November 4, 2010, counsel for Phillip Hallford, an Alabama death row inmate, sent a letter to the Alabama Department of Corrections inquiring as to the source and expiration date of its supply of sodium thiopental. Mr. Hallford's attorneys were informed by counsel for the Alabama Department of Corrections that it was in possession of a supply of sodium thiopental from

Hospira, Inc., which was not due to expire until three weeks ago, on April 1, 2011.¹

In January 2011, a time that Hospira, Inc. previously indicated it would have renewed supplies of sodium thiopental, the company issued a release, explaining that it was discontinuing its production of sodium thiopental. Because overseas importation of sodium thiopental is highly restricted under federal law and there were no domestic suppliers of the drug, on January 25, 2011, thirteen states, including Alabama, sent a letter to your office requesting assistance with the procurement of sodium thiopental, explaining that their supplies were low and would soon be exhausted.² Having been informed that the federal government was experiencing the same problem as the states, several state Departments of Corrections sought to obtain the drug in violation of federal law by either importing it directly from foreign countries or purchasing it from United States pharmacies who had done so.

Federal law imposes a comprehensive set of restrictions on the importation of non-narcotic controlled substances, such as sodium thiopental. In particular, these regulations prohibit persons or entities from importing such substances unless the individual or the entity is registered with the DEA as an importer and provides a declaration pertaining to any such importation. See 21 U.S.C. § 954(2) (“A controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General.”); 21 U.S.C. § 822 (a)-(b) (it is unlawful to “possess, manufacture, distribute, or dispense” controlled substances absent a properly issued registration by the DEA); 21 C.F.R. § 1312.11(b) (“[n]o person shall import or cause to be imported any non-narcotic controlled substance listed in Schedule III . . . unless and until such person is properly registered under the Act (or exempt from registration) and has filed an import declaration to do so with the Administrator.”). The goal of these regulations is to ensure the integrity of imported substances and safeguard against the use of adulterated or counterfeit ones.

Concerned with the illegal importation of sodium thiopental, the Drug Enforcement Administration recently seized several states’ supplies. Among them was Tennessee.³

¹ Appendix A, Letter from Kim Thomas to Andrew Kantra (with attached copy of vial bearing April 1, 2011, expiration date).

² Appendix B, Letter from Thirteen States to Attorney General Eric Holder (dated January 25, 2011).

³ Appendix C, Public Record obtained from Tennessee Department of Corrections (U.S. Department of Justice, DEA Receipt detailing the seizure of 44 vials of thiopental

Undersigned counsel just recently received documentation from the State of Tennessee which indicated that Alabama's most recent, and only known to be unexpired, batch of sodium thiopental was obtained from Tennessee's Department of Corrections on March 15, 2011.⁴ Because it was not until March 22, 2011, that the DEA seized Tennessee's supply of sodium thiopental, Alabama's supply seemingly derives from the same batch. The unlawful acquisition of such unregulated narcotics increases the likelihood that they are adulterated, counterfeit, or otherwise ineffective.

Given Mr. Williams' imminent execution date, we request that your office and the Drug Enforcement Administration investigate this matter expeditiously and thoroughly. As occurred in Tennessee, we ask that all necessary steps be taken to prevent the State from utilizing or possessing what appear to be unlawfully obtained drugs.

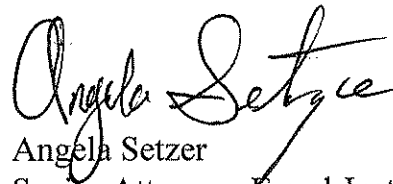
We appreciate your time and attention to this matter. If you or a member of your staff have any questions or are otherwise in need of assistance in handling this matter, please do not hesitate to contact our office.

Sincerely,



Bryan Stevenson

Executive Director, Equal Justice Initiative



Angela Setzer

Senior Attorney, Equal Justice Initiative

injection).

⁴ Appendix C, Public Record obtained from Tennessee Department of Corrections (invoice detailing that 8 grams of thiopental injection were received by the Alabama Department of Corrections on March 15, 2011).

cc: Michele Leonhart
Administrator
Drug Enforcement Administration

Jimmy S. Fox III
Special Agent in Charge, New Orleans Division
Drug Enforcement Administration

Rodney Benson
Special Agent in Charge, Atlanta Division
Drug Enforcement Administration

APPENDIX A

BOB RILEY
GOVERNOR

State of Alabama

Department of Corrections

Alabama Criminal Justice Center
301 South Ripley Street
P. O. Box 301501
Montgomery, AL 36130-1501
(334) 353-3883RICHARD F. ALLEN
COMMISSIONER

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

October 26, 2010

Andrew E. Kantra, Esq.
300 Two Logan Square
Philadelphia, PA 19103-2799

Re: Philip D. Hallford Z-474

Dear Mr. Kantra,

I have reviewed your October 24, 2010, letter regarding your client, death row inmate Phillip Hallford. Please be advised that this Department has a sufficient supply of unexpired sodium thiopental available to perform the execution scheduled for November 4, 2010. This supply is from an FDA approved manufacturer- Hospira, Inc.- and bears the expiration date of 1APR2011. As an officer of the Court, I represent to you that the enclosed copy is of the packaging for the sodium thiopental which will be used for Hallford's execution. If you should require any further information, please let me know as soon as possible so that we may provide this information to Judge Steele, the United States District Judge who has previously handled Hallford's challenges.

Sincerely,

Kim T. Thomas
General Counsel

cc: J. Clayton Crenshaw

One/NDC 0409-6435-01

PENTOTHAL®* 1g
and Sterile Water
for Inj., USP 50 mL



***THIOPENTAL SODIUM FOR
INJECTION, USP**

Rx only

WARNING: MAY BE HABIT FORMING.

Combination Package

**Contains no bacteriostat. Use reconstituted Pentothal
within 24 hours.**

HOSPIRA, INC., LAKE FOREST, IL 60045 USA



**LOT [REDACTED]
EXP. APR2011**

APPENDIX B

A Communication From The Chief Legal Officers Of The Following States
Alabama * Colorado * Delaware * Florida * Idaho * Mississippi * Missouri * Nevada * Oregon
* Tennessee * Utah * Washington * Wyoming

January 25, 2011

Attorney General Eric Holder
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Holder:

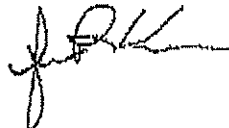
The majority of jurisdictions in the United States that include the death penalty as an authorized punishment in certain cases, including the Federal Government, provide for lethal injection as the prescribed method of execution. In a majority of those capital-crime jurisdictions, again including the Federal Government, it is the only prescribed method of execution. We, the Attorneys General of the States listed below, seek your assistance in resolving an issue concerning the procurement of one of the prescribed medications used in lethal injection protocols.

The protocol used by most of the jurisdictions employing lethal injection includes the drug sodium thiopental, an ultra-short-acting barbiturate. Sodium thiopental is in very short supply worldwide and, for various reasons, essentially unavailable on the open market. For those jurisdictions that have the drug available, their supplies are very small - measured in a handful of doses. The result is that many jurisdictions shortly will be unable to perform executions in cases where appeals have been exhausted and Governors have signed death warrants.

Therefore, we solicit your assistance in either identifying an appropriate source for sodium thiopental or making supplies held by the Federal Government available to the States. We also request an opportunity to discuss this important matter with you.

We look forward to hearing from you.

Sincerely,



John Kroger
Oregon Attorney General



Luther Strange
Alabama Attorney General

John Suthers
Colorado Attorney General

Pam Bondi
Florida Attorney General

Jim Hood
Mississippi Attorney General

Catherine Cortez Masto
Nevada Attorney General

Mark Shurtleff
Utah Attorney General

Bruce Salzburg
Wyoming Attorney General

Joseph Biden II
Delaware Attorney General

Lawrence Wasden
Idaho Attorney General

Chris Koster
Missouri Attorney General

Robert Cooper
Tennessee Attorney General

Rob McKenna
Washington Attorney General

APPENDIX C

2/2/11 Chemical Inventory
 * 100 VIALS of PANCURONIUM BROMIDE
 50 - 10 ml BOTTLES 50 - 2 ml BOTTLES
 * POTASSIUM CHLORIDE - 150 BOTTLES
 20 ml BOTTLES =
 * 20 BOXES of Pentalin
 60 BOTTLES of Thiopental Injection

3/1/11 Chemical Inventory
 PANCURONIUM 50 VIALS 4 mg / 2 ml
 PANCURONIUM 50 VIALS 10 ml
 POTASSIUM CHLORIDE - 75 BOTTLES
 Pentalin 20 BOXES Removed - Expired. 3/1/11
 Thiopental INJECTION 75 BOTTLES /

CORRECTION = 60 BOTTLES
 of THIOPENTAL INJECT.

3 BOXES & boxes of 25 1 Box of 60 = 60 total

3/9/11 Chemical Inventory
 PANCURONIUM 50 VIALS 4 mg / 2 ml
 PANCURONIUM 50 VIALS 10 ml
 POTASSIUM CHLORIDE 75 BOTTLES
 Thiopental INJECTION 60 BOTTLES

3/15/11

16 BOTTLES OF THIOPENTAL INJECTION

TO COLLECTIONS

ALABAMA DEPT. OF

(OIL HAND)

PANICULUM 50 VIALS 4ml 2ml

PANICULUM 50 VIALS 10ml

Potassium Chloride 75 Bottles

THIOPENTAL INJECTION 44 Bottles m hand



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37243-0471
TELEPHONE (615) 350-3100 | FAX (615) 350-3400

Received by:

Alabama Department of Correction

8 grams Thiopental Injection

Signed:

Date: 3/15/11

W. H. Wood

U.S. DEPARTMENT OF JUSTICE - DRUG ENFORCEMENT ADMINISTRATION
RECEIPT FOR CASH OR OTHER ITEMS

TO: (Name, Title, Address (including ZIP CODE), if applicable)
 DAVID MILLS
 WARDEN
 TN DEPT. OF CORRECTIONS
 7575 CORKRILL BLVD

FILE NO. _____ G-DEP IDENTIFIER _____
 FILE TITLE _____
 DATE 3-22-11

DIVISION/DISTRICT OFFICE
 NASHVILLE, TN 37209

I hereby acknowledge receipt of the following (described cash or other item(s))
 which was given into my custody by the above named individual.

AMOUNT or QUANTITY	DESCRIPTION OF ITEM(S)	PURPOSE (if Applicable)
1x25	THIOPENTAL IN BP 500MG	SEIZURE
1x19	THIOPENTAL IN BP 500MG	"
1	INVOICE TO ALABAMA DEPT OF CORRECT. WS Dtd 3/15/11	"

RECEIVED BY (Signature)
Harry W. Lockhart
 WITNESSED BY (Signature)
Justin Wood

NAME AND TITLE (Print or Type)
 HARRY W. LOCKHART
 DIRECTOR
 NAME AND TITLE (Print or Type)
 Justin Wood, DE

NAME OF DRUG OR PREPARATION	Number of Containers	CONTENTS (Number of grams, tablets, ounces or other units per container)	Controlled Substance Content, (Each Unit)	FOR DEA USE ONLY		
				DISPOSITION	QUANTITY	
					GMS.	MGS.
Registrants will fill in Columns 1, 2, 3, and 4 ONLY.	2	3	4	5	6	7
17						
18						
19						
20						
21						
22						
23						
24						

The controlled substances surrendered in accordance with Title 21 of the Code of Federal Regulations, Section 1307.21, have been received in 2 packages purporting to contain the drugs listed on this inventory and have been: ** (1) Forwarded tape-sealed without opening; (2) Destroyed as indicated and the remainder forwarded tape-sealed after verifying contents; (3) Forwarded tape-sealed after verifying contents.

DATE _____ DESTROYED BY: _____

** Strike out lines not applicable.

WITNESSED BY: _____

INSTRUCTIONS

- DO NOT SEND DRUGS TO ANY DRUG ENFORCEMENT ADMINISTRATION (DEA) OFFICE WITHOUT PRIOR WRITTEN APPROVAL.** Drugs are to be destroyed by: (1) shipment to a reverse distributor registered by DEA (may not require the use of this form); (2) the registrant, according to state and local laws, rules and regulations; or (3) the specific instructions of your area Drug Enforcement Administration Office.
- List the name of the drug in column 1, the number of containers in column 2, the size of each container in column 3, and in column 4 the controlled substance content of each unit described in column 3; e.g., morphine sulfate tabs., 3 pkgs., 100 tabs., 1/4 gr. (16 mg.) or morphine sulfate tabs., 1 pkg., 83 tabs., 1/2 gr. (32mg.), etc.
- All packages included on a single line should be identical in name, content and controlled substance strength.

PRIVACY ACT INFORMATION


AUTHORITY: Section 307 of the Controlled Substances Act of 1970 (PL 91-513).
PURPOSE: To document the surrender of controlled substances for disposal.
ROUTINE USES: This form is required by Federal Regulations for the surrender of Controlled Substances. Disclosures of information from this system are made to the following categories of users for the purposes stated.
 A. Other Federal law enforcement and regulatory agencies for law enforcement and regulatory purposes.
 B. State and local law enforcement and regulatory agencies for law enforcement and regulatory purposes.
EFFECT: Failure to document the surrender of unwanted Controlled Substances may result in prosecution for violation of the Controlled Substances Act.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a Collection of Information unless it displays a valid OMB control number. The valid OMB control number for this Collection of Information is 1117-0007. The time required to complete this information collection is estimated to average 30 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

The following schedule is an inventory of controlled substances which is hereby surrendered to you for proper disposition, per your approval.

FROM: (Include Name, Street, City, State and ZIP Code in space provided below.)

Tennessee Department of Corrections
 7575 Cockrill Bend Boulevard
 Nashville, TN 37209-1057


 Signature of applicant or authorized agent
WARDEN

 Registrant's DEA Number

 Registrant's Telephone Number

NOTE: REGISTERED MAIL (Return Receipt Requested) IS REQUIRED FOR SHIPMENTS OF DRUGS VIA U. S. POSTAL SERVICE.

NAME OF DRUG OR PREPARATION	Number of Containers	CONTENTS (Number of grams, tablets, ounces or other units per container)	Controlled Substance Content, (Each Unit)	FOR DEA USE ONLY		
				DISPOSITION	QUANTITY	
					GMS.	MGS.
Registrants will fill in Columns 1, 2, 3, and 4 ONLY.	2	3	4	5	6	7
1 Thiopental 6 Inj. BP 500mg	1	2.5				
2 Thiopental Inj. BP 500mg	1	19				
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37209-1048
TELEPHONE (615) 350-3100 * FAX (615) 350-3400

RECEIVED FROM RIVERBEND MAXIMUM SECURITY INSTITUTION
44 VIALS THIOPENTHAL

Signed: Young W. Lockhart Date: 3/22/2011