

August 20, 2015

Ms. Deborah R. Gilg  
U.S. Attorney for Nebraska  
1620 Dodge St. #1400  
Omaha NE 68102

Dear Ms. Gilg:

We write to request an investigation into the State of Nebraska's ongoing efforts to obtain lethal injection drugs from a foreign source.

Over the last few months, ACLU has issued open records requests to determine the status of state efforts to obtain sodium thiopental and pancuronium bromide. Our requests and the records produced in response are attached.

You will note that these documents establish several important facts:

- State officials are aware of court rulings that have permanently enjoined the entry of foreign-manufactured sodium thiopental into the US.
- State officials are aware of federal statutes prohibiting importation of unapproved new drugs into the US.
- State officials have had direct contact with DEA officials informing them the products they seek to import cannot be brought into the US.
- Harris Pharma, the seller of the drugs is the same company that provided illegal sodium thiopental to Nebraska in 2011.

The materials enclosed demonstrate a protracted effort of months to obtain illegal drugs despite clear and unequivocal notice that their conduct was prohibited by federal law. Nebraska has received official notice on multiple occasions, including:

- 5-28-15 FDA letter (with copy of federal court decision from 2012) stating "Please note that there is no FDA approved application for sodium thiopental, and it is illegal to import an unapproved new drug into the United States."
- 6-18-15 DEA email stating "I have to deny the declaration since the product is not FDA approved. I will be notifying CBP [Customs and Border Protection] to not allow the shipment into the U.S."
- 6-19-15 DEA email stating "...If product is shipped CBP has been alerted to detain and not seize the product."

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- 6-22-15 DEA phone conference with DEA Regulatory Section Chief denying import declaration application by Nebraska.
- 7-13-15 DEA letter stating "The DEA notified the Customs Border and Protection and the FDA of the potential illegal importation of sodium thiopental."

Despite this clear and unequivocal notice, you will also see that the attached documents reveal that state officials are still actively pursuing efforts to obtain sodium thiopental from Harris Pharma. Most recently, on July 31, 2015, the state sent customs forms to Harris Pharma in India. It appears that despite all warnings from federal agencies, the state of Nebraska is continuing to move forward with their plan to have illegal drugs sent into the US.

Given the state's concrete and active efforts to violate federal law, we request your office initiate an investigation. We fear a repeat of what occurred in 2012 when illegally obtained drugs did enter the state from India and ultimately had to be seized. Rather than wait for the drugs to enter the country, we urge preventative measures to ensure the state complies with federal law and stops all efforts to flout clear FDA provisions.

Thank you for your attention to this matter.



Amy A. Miller  
Legal Director