

# US states turn to unregulated compounding facilities to make drugs for lethal injections

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In the face of numerous manufacturers' refusal to produce drugs used in executions, many US states have begun relying on chemicals formulated in unregulated compounding facilities.

"They're engaging basically in acts of desperation," stated Deborah Denno, a law professor at Fordham University, adding, "The states are under enormous pressure to continue with the death penalty."

Denno added that the compounding facilities, which nominally fall under the regulatory authority of state governments, have been able to skirt oversight by presenting themselves as minor hubs rather than major drug production facilities. "They act like large-scale pharmaceutical companies while hiding behind small-scale pharmacy licenses," she stated.

Traditionally, states have relied on a three-drug combination in lethal injection procedures, preferring the mixture of potassium chloride, pancuronium bromide and pentobarbital. However, as pharmaceutical companies have increasingly attempted to distance themselves from the barbaric procedure, states still carrying out the death penalty have faced increasing difficulty in obtaining reliable drugs for executions.

Hospira, an Illinois-based drug manufacturer which until 2011 had provided states with a lethal mixture composed of chemicals produced by an Italian firm, was responsible for the two-part mixture administered to Ohio inmate Dennis McGuire last Thursday. The drugs involved in that execution, midazolam and hydromorphone, had previously been utilized only in putting down animals.

McGuire suffered for 25 minutes before finally succumbing to the drug cocktail. Last Friday, his family announced it was suing the state of Ohio, charging it with responsibility for torturing Dennis McGuire and violating the US Constitution's ban on

"cruel and unusual punishment."

According to the Death Penalty Information Center (DPIC), six states have turned to unregulated compounding facilities in recent years. Ohio has announced its intention to do the same. DPIC Director Richard Dieter said that after the fiasco involving Hospira, Ohio was all but certain to utilize compounding facilities for its lethal chemical supply.

The danger of these unregulated facilities was demonstrated in 2012 when a meningitis outbreak was traced to unsafe conditions at a compounding facility in Massachusetts. That outbreak killed 64 people and infected several hundred others, many of whom had only sought relief from neck pains or other mild conditions. (See: "The meningitis outbreak and health care for profit.")

Even in instances where a barbiturate such as pentobarbital was used, there have been signs that the prisoner suffered distress. A three-drug combination involving pentobarbital was used on Michael Lee Wilson in Oklahoma two weeks ago. Wilson was quoted as saying, "I feel my whole body burning" as the combination was administered. Missouri, which is set to execute inmate Herbert Smulls on January 29, has been asked by the inmate's attorneys to delay the state killing on the grounds that the drugs, distributed by an unlicensed Oklahoma-based compounding plant, are believed to be "expired [and] unsafe." Smulls would be the third prisoner executed in the state in as many months, and the second to die from the administration of an untested drug combination produced at such a facility.

To shield themselves from political fallout, states have taken to enforcing secrecy laws protecting the identity of the firms that produce their lethal chemicals.

“Once that compounding pharmacy’s identity is revealed, how will the Department of Corrections ever get another compounding pharmacy to sell to us?” said Missouri Assistant Attorney General Sabrina Graham in a statement to National Public Radio last summer.

Tony Rothert of the American Civil Liberties Union, which has launched a lawsuit in Missouri to obtain the identity of the drug manufacturer, said, “The state has gone to great lengths to hide what it is doing... So it’s not surprising that there’s something there that the state was trying to cover up.” He added, “When you violate Missouri law to carry out Missouri law, that seems contradictory.”

The dangers of untested mixtures on prisoners are many. In Missouri alone, the state’s Board of Pharmacy has found 20 percent of all the drugs produced at compounding plants to be substandard. According to Meagan McCracken of the Death Penalty Clinic at University of California, Berkeley, “If the first drug does not, in fact, deeply anesthetize the prisoner... then he or she could be conscious and aware of being both paralyzed and able to experience pain and the experience of cardiac arrest.”

This danger is increased in the case of the drug midazolam, which has increasingly been turned to in medical practices as a safe alternative to barbiturates, making its application in lethal injections dubious. Joel Zivot, an assistant professor of anesthesiology at Emory University in Florida, criticized his home state in an article in *USA Today* last month, saying, “How Florida granted itself expertise in the use of midazolam, now repurposed as a chemical used to kill, is known only to Florida.”



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