

June 20, 2011

BY FEDERAL EXPRESS AND E-MAIL

George S. Barrett
Chairman and Chief Executive Officer
Cardinal Health
7000 Cardinal Place
Dublin, OH 43017

Re: Sale of Nembutal to The Georgia Department of Corrections to be used in
Lethal Injections

Dear Mr. Barrett:

I write on behalf of Andrew Grant De Young, a Georgia death row prisoner, concerning your company's recent sale of Nembutal to the Georgia Department of Corrections. This sale was not for the purpose of "improving people's lives" as you say on your website, but to kill people, i.e., persons sentenced to death.

Nembutal, known as pentobarbital, is FDA approved for the treatment of seizures and pre-operative sedation. It is not approved as part of a lethal injection procedure. In fact, its manufacturer, Lundbeck, specifically opposes its use in lethal injections. Indeed, Lundbeck states that the "mis-use" of Nembutal for lethal injections is not only improper, but that it cannot assure either its safety or efficacy under such circumstances.¹

Two of Cardinal Health's core values are its commitment to acting in the best interests of the patient and improving patient safety. Cardinal Health tries to live these core values by being a signatory to the AdvaMed Code of Ethics and implementing its own Standards of Business Conduct. The sale of Nembutal for use in executions appears to violate both the letter and spirit of the Code of Ethics and your Standards of Business Conduct.² We urge you to undertake immediate corrective action.

On or around June 2, 2011, the Georgia Diagnostic and Classification Prison, which houses Georgia's death row, ordered thirty packages of Nembutal from your nuclear pharmacy

¹ Attached hereto is *Lundbeck's Position Regarding the Misuse of Pentobarbital in Execution of Prisoners*.

² Moreover, the medical profession has uniformly assailed any participation of execution procedures. For ethical reasons, the American Medical Association (AMA), American College of Surgeons, American College of Physicians and the American College of Pathologists have all opposed the participation of physicians in executions.

in Knoxville, Tennessee. You charged the prison \$909.74 per package, for a total of \$27,292.20.³

Georgia purchased this drug from your company in order to implement a new and untested lethal injection protocol, which identifies Nembutal as the first of three chemicals injected into a prisoner during an execution.⁴ The prison plans to use Nembutal to render the prisoner unconscious before the administration of the second drug, pancuronium bromide, which paralyzes the prisoner, and the third drug, potassium chloride, which arrests his heart and lungs. As Nembutal has only limited medical uses, however, there is a paucity of information about whether it will effectively render the prisoner unconscious as quickly and for as long as the protocol anticipates. This is a critical concern. Were the prisoner to regain consciousness during the administration of the potassium chloride, he would suffer terrible agony, but would be unable to alert observers to his suffering because of the paralysis induced by the pancuronium bromide.

Given its concerns regarding the safety and efficacy of the use of Nembutal in executions, Lundbeck has contacted the governors and departments of corrections of eleven states -- including Georgia -- to inform them that Nembutal's safety for lethal injections has not been established. Lundbeck has also announced plans to use specialist wholesalers and impose "end user clauses" to prevent these states from obtaining Nembutal for executions in the future.⁵

The amount of Nembutal that you have already sold to Georgia, however, will allow it to carry out more than a dozen executions. The first is scheduled for Thursday, June 23, 2011.

Your sale of Nembutal for non-approved use in executions runs contrary to both your core value of providing "[b]etter, safer healthcare delivery . . . [and] improving people's lives" and your Standards of Business Conduct which promise that you "can be trusted to do the right thing,"⁶ and tell colleagues that because "lives often depend on our doing what we say we'll do" the company "take[s] ethics and compliance so seriously."⁷ Indeed, within these standards, you offer the following admonition to your employees:

When making work-related decisions, employees should ask themselves:
Can I take a particular action? Should I take that action?

The "can I" question asks whether it's permissible to take a particular action

³ See attached.

⁴ Georgia's decision to begin using Nembutal in executions stems from the fact that it is presently being investigated by the Drug Enforcement Administration for its potentially illegal importation of lethal injection drugs. Specifically, when faced with a shortage of sodium pentothal, one of the drugs formerly used by the GDC for lethal injection, the GDC began ordering a similar drug, sodium thiopental, over the internet from a foreign distributor—despite the fact that it is not licensed to import controlled substances and did not declare its importation. Bill Rankin and Kristi E. Swartz, *DEA seizes Georgia's supply of lethal injection drug*, ATLANTA JOURNAL-CONSTITUTION, March 16, 2011, available at: <http://www.ajc.com/news/dea-seizes-georgias-supply-873788.html> (last visited May 3, 2011). After the DEA seized the GDC's illegally obtained supply of thiopental, the GDC determined to replace it with Nembutal. Bill Rankin, *Georgia eyes new drug in execution process*, ATLANTA JOURNAL-CONSTITUTION, April 22, 2011, available at: http://www.ajc.com/news/atlanta/georgia-eyes-new-drug-921285.html?cxttype=rss_news_128746 (last visited May 3, 2011).

⁵ Raymond Bonner, *The Lethal-Drug Maker That's Helping End Lethal Injections*, The Atlantic, June 8, 2011; available at: <http://www.theatlantic.com/national/archive/2011/06/the-lethal-drug-maker-thats-helping-end-lethal-injections/240117/>

⁶ Standards of Business Conduct at 2.

⁷ Letter from the CEO, Cardinal Health Standards of Business Conduct at 1.

. . . . The “should I” question goes a step further, asking whether the action is advisable. *It questions how the action will be viewed down the road through the lens of hindsight and seeks to determine the future impact of that decision on Cardinal Health’s reputation with key stakeholders, government regulators and the public.*

Standards of Business Conduct at 5.

Further, you promise to protect the integrity of the global supply chain. In explaining “why it matters,” you state:

We provide products and services that have the potential to save, *or if misused, to harm lives.* It’s essential that at every step of the process our employees handle these products appropriately

Standards of Business Conduct at 30.

You also encourage employees to know their customers “to determine whether they *and their purchases* meet our standards” and ask employees to “report any communication or documentation that requests Cardinal Health not to do business with another party or country (i.e. boycotts).” *Id.*

These stated concerns that products not be misused and that individual purchases “meet your standards” cannot be reconciled in this situation, particularly given that the supplier of the drug has expressly warned that the customer in this case affirmatively intends to misuse this drug in lethal executions. It is clear that Cardinal Health did not, to use your own words, ask itself the “should I” question when it chose to sell Nembutal to execute people.

Accordingly, I urge you to take every step possible to make your actual practices comply with your stated business and ethical codes, including demanding the immediate return of the drugs and refunding the purchase price of \$27,000 to The Georgia Department of Corrections. Given that in the three months ending March 31, 2011, Cardinal Health showed revenue of almost \$27,000,000, refunding 0.1% of that revenue should not cause the company any financial hardship.

Due to the gravity of this situation, please let us know immediately what action, if any, Cardinal Health intends to take to resolve our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Helen Pfeiffer". The signature is written in a cursive, flowing style.

CC: Members of Board of Directors