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Lawyer seeks to stop Ky. from using execution drug

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FRANKFORT, Ky. (AP) -- Kentucky appears to have violated a judge's order stopping all executions and preventing the state from taking any action to carry out a lethal injection by purchasing a key drug used in the process, an attorney for several death row inmates said Thursday.

Public defender David Barron wants to bar the state from ever using the 18 grams of sodium thiopental the state acquired this month.

Despite a national shortage of sodium thiopental, Kentucky bought enough of the fast-acting narcotic from a Georgia company to carry out three lethal injections. The packaging indicated the drug was made by Sandoz International GmbH, a European generics company, Kentucky Justice and Public Safety Cabinet spokeswoman Jennifer Brislin said. The packaging had an expiration date of May 2014.

In two filings in Franklin Circuit Court, Barron said that by even purchasing the drug, Kentucky violated the injunction handed down in September by Judge Phillip Shepherd. The Kentucky Supreme Court is reviewing a judge's order in one case regarding the state's lethal injection procedures and has halted all executions in the interim.

Barron also alleges that the chemical composition of sodium thiopental produced in Europe doesn't meet the standards for the drug set by the Food and Drug Administration.

State officials have repeatedly defended the lethal injection protocol, saying the U.S. Supreme Court upheld the process in a 2008 decision validating the use of three drugs to carry out an execution. Kentucky Justice and Public Safety Cabinet Secretary J. Michael Brown said the filings lack merit.

"The Department of Corrections has not only the right but the responsibility to procure the required drugs in order to be prepared to carry out its duty if and when the litigation is resolved and a warrant is issued," Brown said.

Kentucky acquired the sodium thiopental two weeks after Gov. Steve Beshear ordered a national and international search for a supply of the drug. Kentucky already has the other two drugs used in an execution, pancuronium bromide and potassium chloride.

There's a shortage of sodium thiopental in the United States after the drug's primary maker, Hospira, Inc., of Lake Forest, Ill., announced it would no longer manufacture the narcotic.

Other states - including Arizona, Arkansas, California, Georgia and Tennessee - bought supplies of the drug from England. Kentucky went through CorrectHealth, a Stockbridge, Ga., company that specializes in providing health-care supplies to prisons.

Georgia used foreign-produced sodium thiopental on two inmates in Georgia and Arizona used it to execute one. Barron said that in all three cases, there remains a question about the effectiveness of the narcotic on the inmate. It appears that Kentucky has not addressed that concern, said Barron, whose clients include Ralph S. Baze, sentenced to death for killing a sheriff and deputy.

"Instead of being concerned about the quality of the sodium thiopental and whether the manufacturer was FDA-approved, Corrections immediately purchased the sodium thiopental," Barron said.

Kentucky has executed three people since the reinstatement of the death penalty in 1976. Beshear had set an execution date in September for 55-year-old Gregory L. Wilson, who was condemned for the 1987 kidnapping, rape and murder of 36-year-old Debbie Pooley in northern Kentucky.

Shepherd stopped the execution and all others because of questions about how prison officials would handle tests for competency, sanity and mental retardation once an execution date is set. The state's high court is reviewing his order.

Kentucky Attorney General Jack Conway still has requests pending with the governor for execution dates for two other prisoners who have been on death row for more than 15 years.

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