

# Appendix 19

Affidavit by Dale A. Baich

STATE OF ARIZONA            )  
  )  
COUNTY OF MARICOPA        )        ss:

I, Dale A. Baich, declare under penalty of perjury the following to be true to the best of my knowledge and belief:

1. I am an attorney licensed to practice law in the State of Ohio. I am an assistant federal public defender with the Office of the Federal Public Defender for the District of Arizona.
2. In 2010, I witnessed the execution of Michael Beuke by the State of Ohio and the execution of Jeffrey Landrigan by the State of Arizona. Both executions were by lethal injection.
3. The State of Arizona acknowledged that it used sodium thiopental obtained from the United Kingdom to carry out Mr. Landrigan's execution. (Exhibit 1.) I have reason to believe that the sodium thiopental used in Mr. Landrigan's execution was obtained through Dream Pharma, Ltd., on September 28, 2010. (Exhibit 2.)
4. The execution of Mr. Landrigan commenced on October 26, 2010 shortly after 10:15:30 pm when Mr. Landrigan's final words were "boomer sooner." At 10:16:30 p.m., Mr. Landrigan's chest heaved three times and his eyes closed

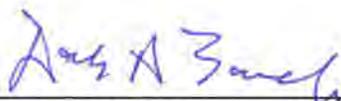
slightly.

5. At 10:17:20 p.m., his eyes were half-way open.
6. At 10:17:55 p.m., Mr. Landrigan's eyes were still open.
7. At 10:18:25 p.m., Mr. Landrigan's eyes were still open.
8. At 10:19:00 p.m., Mr. Landrigan's eyes were still open.
9. At 10:20:00 p.m., Mr. Landrigan's mouth opened. His eyes were still slightly open.
10. At 10:21:03 p.m., color began to leave Mr. Landrigan's face. His eyes were still half to a quarter of the way open.
11. At 10:26 p.m., it was announced that the execution was complete. Mr. Landrigan's eyes were still half to a quarter way open.
12. On May 13, 2010, I witnessed the execution of Michael Beuke by the State of Ohio. Ohio employed a single drug injection of sodium thiopental to carry out the execution. I have reason to believe that the sodium thiopental for this execution was obtained from a manufacturer in the United States. This information is based upon pre- and post- execution disclosures by the State of Ohio during litigation.
13. Mr. Beuke's execution began at 10:44 a.m. when he completed his final statement and his head nodded back.
14. At or about 10:45 a.m., Mr. Beuke's eyes closed and he stopped swallowing.

15. At or about 10:45 a.m., Mr. Beuke's eyes then began to blink slowly and he swallowed.
16. At or about 10:46 a.m., Mr. Beuke's eyes were closed, his fingers curled, he stopped breathing and the color left his face.
17. At or about 10:47 a.m., Mr. Beuke's eyes remained closed and his mouth opened.
18. At or about 10:51 a.m., a person entered the execution chamber and checked Mr. Beuke's heart with a stethoscope.
19. At or about 10:53 am, Mr. Beuke was pronounced dead. His eyes remained closed.

I declare under penalty of perjury that the foregoing is a true and correct statement.

Signed this 25th day of January, 2011.

  
\_\_\_\_\_  
DALE A. BAICH

Sworn to and subscribed to me, a notary public on this 25 day of January, 2011 in Phoenix, Arizona.

  
\_\_\_\_\_  
NOTARY PUBLIC



# EXHIBIT 1

# Judge delays execution set for today

State AG challenging ruling tied to lethal-injection drug

By Michael Kiefer  
THE ARIZONA REPUBLIC

The scheduled execution of convicted killer Jeffrey Landrigan was put on hold Monday by a federal judge, but pending legal actions late in the day made it unclear if the reprieve would keep him from his appointment in an Arizona death chamber at 10 a.m. today.

State Attorney General Terry Goddard promised to appeal the federal restraining order, a harshly worded ruling referring to Arizona as "obstructive."

U.S. District Judge Roslyn O. Silver stopped the execution until further notice around midday Monday so the court and Landrigan's attorneys could



Jeffrey Landrigan

See **LANDRIGAN** Page A6

evaluate the drugs that Arizona has obtained to carry out the execution by lethal injection.

Goddard said he hoped the execution would go forward as planned this morning.

Landrigan has been on death row for 20 years for

the 1989 murder of Chester Dean Dyer in Phoenix. The temporary restraining order has nothing to do with his guilt or innocence but focuses on whether a drug to be used in his execution could constitute cruel-and-unusual punishment, which is banned by the Eighth Amendment.

A nationwide shortage of the barbiturate used in lethal injections has raised questions about where Arizona obtained the drug.

Silver ordered the Arizona Department of Corrections and the state Attorney General's Office to immediately turn over information she had requested Saturday night about the drugs.

The state so far has refused to do so under a statute concealing the identity of executioners and all people with "ancillary" functions needed to carry out an execution.

Silver did not buy that argument. But Goddard intends to stand firm, saying, "We believe — and our client (the Corrections Department) is adamant — that further disclosure is not permitted."

The legal maneuvers promised to continue through the night Monday.

Goddard vowed to appeal Silver's stay all the way to the U.S. Supreme Court to try to overturn the ruling in time to meet today's 10 a.m. execution time in Florence.

If the execution does not take place within 24 hours of that time, the state will have to return to the Arizona Supreme Court for a new death warrant, a process that could take months.

The Corrections Depart-

ment on Monday asked witnesses to the execution to show up as if it was going forward this morning, and Landrigan's attorneys were told they could visit him before dawn, again assuming the execution would take place.

At legal issue is the origin of one of the drugs used in the lethal-injection procedure, sodium thiopental, a barbiturate that renders the condemned person unconscious so that he or she cannot feel suffocation or pain induced by the second and third drugs administered.

The national shortage of thiopental first became apparent in May when Ohio had to scramble to find enough to carry out an execution there. Executions in other states have been postponed because of its unavailability.

Since the scheduling of Landrigan's execution in late September, his attorneys have questioned where the state would obtain the drug. The state obtained the drug Sept. 30 but has refused to say how or where, referring to the state law protecting the information.

Still, information has leaked out.

Last week, during an Arizona Supreme Court hearing, Assistant Attorney General Kent Cattani told justices that the drug did not come from the only source approved by the U.S. Food and Drug Administration, a pharmaceutical firm near Chicago.

Landrigan's attorneys deduced that it came from overseas and consequently might not meet the quality-control standards assured by FDA approval.



If the drug were substandard, the attorneys argue, it could cause the condemned pain or suffering, or fail to alleviate pain and suffering caused by the other lethal drugs.

Cattani later told the court the drug had a 2014 expiration date, the same as a supply obtained by California on the same day Arizona obtained the drug.

Goddard confirmed to *The Arizona Republic* on Monday that the drug was imported from Great Britain.

In September, when the Arizona Supreme Court scheduled Landrigan's execution, the justices ordered the state to inform them by Oct. 1 if it had obtained the drugs.

Landrigan's lawyers have persistently demanded since then to know where the drugs came from. Cattani has repeatedly refused to say.

Last week, the state Supreme Court refused to compel the Corrections Department to reveal its sources.

Landrigan's attorneys then took it to federal court in Phoenix. On Saturday, Silver asked the state to voluntarily reveal information about its thiopental.

Cattani, however, would allow the judge access to that information only if it were kept under seal. Sil-

ver refused, instead issuing Monday's order to halt the execution and taking Cattani to task.

"The court is perplexed by defendant's behavior in this case," she wrote. "Based on this court's experience, defendant's actions are highly unusual."

She went on to say that she had never seen an instance in which a party in a case claimed to have evidence that he would not share to prove that claims against him were false.

Silver wrote that the state has "now created a situation where a seemingly simple claim that could have been resolved well in advance of the execution must be resolved in five days — and now only eighteen hours due to further protractations created only by (the state) — without the benefit of (Landrigan) having the opportunity to present fact-based arguments," Silver wrote.

The state clemency board also recommended on Friday that Gov. Jan Brewer issue Landrigan a reprieve, but Brewer refused.

**“** *The court is perplexed by defendant's (the state's) behavior in this case. Based on this court's experience, defendant's actions are highly unusual.* ”

**Judge Roslyn O. Silver**  
*U.S. District Court*

## EXHIBIT 2

**Dream Pharma Ltd.**176 Horn Lane, Acton, London, W3 6PJ  
[REDACTED]**Invoice Details**

Number: 2679INV

Date: 28-09-2010

**Address:**Arizona State Prison Complex - Florence  
Attention: Carson McWilliams, Warden  
1305 Butte Avenue  
Post Office Box 629  
Florence, Arizona  
85232  
Tel: 602-364-3791**Delivery Address:**Arizona State Prison Complex - Florence  
Attention: Carson McWilliams, Warden  
1305 Butte Avenue  
Post Office Box 629  
Florence, Arizona  
85232  
602-364-3791

VAT no:

Purchase Order:

Currency: GBP - Pounds sterling

Heading: PHARMACEUTICALS NOT.RESTRICTED

**Order Details**

Name/Description	Quantity	Price	Total
Thiopental Injection , powder for reconstitution, thiopental sodium, 500- mg vial packs of 25's Batch No: AW6022 EXP: 05/14	6	196.75	1180.5
POTASSIUM CHLORIDE 1.5GM 10ML INJ. PACKS OF 10 Batch No: 002067 EXP: 01/13	18	15.55	279.9
Pancuronium Injection, pancuronium bromide 2 mg/mL, 2-mL amp packs of 10's Batch No: 949064 EXP: 11/11	45	58.73	2642.85
Special delivery charges	1	150	150

**Statement Details**

Goods Total: 4253.25	Subtotal: 4528.25
Discount (%): 0	VAT (World Zero): 0.00
Delivery: 275	Previous Balance: 0
Insurance: 0	Total: 4528.25 GBP - Pounds sterling
	Payment Method: Prepayment Thank You

**Shipping Details**

Packing: ONE BOX	Gross Weight (Kg): 25 Net Weight (Kg): 21.25
Tariff: 30049099	Carrier: FEDEX
Declarations: We certify that this invoice is true and correct.	[REDACTED] for Dream Pharma Ltd. <b>DREAM PHARMA LTD</b> 176 Horn Lane Acton, London W3 6PJ

Damage, shortage or leakage must be notified in writing to ourselves within 8 days. Non-Delivery within 14 days. Goods remain the property of Dream Pharma Ltd. Until full payment has been received. Subject to our standard conditions of sale. E&OE

Company Registration Number: 4637884 VAT No. GB805-5541-41  
[REDACTED]