

Mr. Bertel Haarder  
Ministry of Interior and Health  
Slotsholmsgade 10-12  
1216 Copenhagen K

*By Hand to Bertel Haarder*

April 5, 2011

Dear Minister Haarder,

I write on behalf of Cleve Foster and Humberto Leal, two prisoners currently incarcerated in the Texas Department of Criminal Justice (TDCJ) awaiting execution. Cleve Foster will be the first prisoner in Texas to be executed with pentobarbital, a drug manufactured by Danish pharmaceutical company, Lundbeck, and is **scheduled to die at 6pm tonight**. Humberto Leal is scheduled to be executed by lethal injection on July 7, 2011.

It is therefore with great urgency that I draw your attention to some disturbing facts that have emerged in relation to the new execution procedure that will be used on Mr. Foster and Mr. Leal, and implore you to help prevent their undue suffering and death.

I attach a new report that reveals some deeply troubling facts about the way pentobarbital has been incorporated into the lethal injection protocol in Texas – most notably, the dangerous lack of clinical regulation of the procedure by the state.

In summary, it has emerged that:

- Texas has failed to enact any legislation to ensure that the new use of Lundbeck pentobarbital is effective and humane. The lethal injection protocol is left to the sole discretion of the director of the Correctional Institutions Division of the TDCJ<sup>1</sup> – Rick Thaler, a prison official with no medical training. Acting on his discretion alone, Thaler hastily pushed through the amendment to the execution protocol, failing to obtain any meaningful clinical assessment of the possible effects of this new combination of drugs on the prisoner. In fact, prominent anesthesiologists agree that the combination of pentobarbital with pancuronium bromide and potassium chloride puts the prisoner at extreme risk of ‘serious undue pain and suffering’.<sup>2</sup>

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<sup>1</sup> Tex. Code Crim. Proc. Ann. art. 43.14 (West 2009)

<sup>2</sup> Expert Report of David B. Waisel, MD

- Texas has failed to enact any legislation to ensure that the individuals responsible for extinguishing human life with Lundbeck pentobarbital are properly trained and qualified. The Texas Code of Criminal Procedure states only, ‘the director of the Texas Department of Criminal Justice shall designate an executioner’.<sup>3</sup> This means that prisoners will be put to death with Lundbeck pentobarbital not under the supervision of doctors and anesthesiologists—or even licensed veterinarians—but at the hands of a prison lethal injection team.
- The method by which Texas executes human beings with Lundbeck pentobarbital will therefore be riskier, less transparent, and have less oversight than the euthanasia of cats, dogs, birds, and lizards. Texas has enacted detailed regulations to ensure that animals suffer no pain when they are euthanized with pentobarbital. Animal euthanasia laws regulate acceptable methods of intravenous euthanasia down to the correct dosage per kilogram of an animal’s body weight, and provide strict certification requirements for euthanasia technicians. They also expressly forbid the ‘combination of pentobarbital with a neuromuscular blocking agent’,<sup>4</sup> the very combination that the TCDJ has deemed suitable for the execution of human beings. Cleve Foster’s execution today, in stark and shocking contrast to the euthanasia of animals, will be conducted in a regulatory vacuum without any of the safeguards afforded even to fish, amphibians and reptiles.<sup>5</sup>

In advance of Cleve’s scheduled death tonight, I urge you to call on the Texas legislature to enact measures that provide at least the same protections to human beings condemned to die as they do for sick or unwanted animals. Cleve’s death is scheduled for 6pm Texas time, or 1am Copenhagen time. Your intervention could still halt his execution. This matter is therefore of the utmost urgency, and I would appreciate an immediate response.

Yours sincerely,



Sandra Babcock  
 Clinical Professor  
 Northwestern University School of Law

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<sup>3</sup> Tex. Code Crim. Proc. Ann art. 43.18 (West 2009)

<sup>4</sup> American Veterinary Medical Association, *Guidelines on Euthanasia (Formerly Report of the AVMA Panel on Euthanasia*, 1 (June 2007)

<sup>5</sup> *idem*