



F. Michael Ball

CEO, Hospira Inc.
275 North Field Drive,
Lake Forest, Illinois 60045
By email: pam.collins@hospira.com
By fax: 001 224 212 3312

3rd October, 2011

URGENT: Hospira's pancuronium bromide in executions

Dear Mr. Ball,

I write as a matter of urgency. As you are no doubt aware, 33 states in the USA currently use pancuronium bromide in the lethal injection cocktail to execute prisoners. Until recently, there were two FDA-approved suppliers of pancuronium bromide in the USA: *Hospira* and *Teva*. I have recently been in dialogue with *Teva* and have been assured by the company that not only have they ceased manufacture of this product, but that they have no plans to recommence manufacturing it in the future. This means that *Hospira* is now the sole US manufacturer of the drug, and the sole provider of the vital lethal injection ingredient to execution chambers across the USA.

I understand that *Hospira* is committed to *Advancing Wellness*. This is a laudable aim for which I commend you. I can only imagine how distressing it must be for a company with such noble ambitions to be informed that instead of being used to cure people, their drugs are being used to kill them, that instead of improving lives, they are helping to end them.

Regrettably, this is reality of the situation in which you find yourselves, and I, together with my colleagues at *Reprive*, would like to help you change this. As you may know, we recently worked very closely with Danish manufacturer, *Lundbeck*, who found themselves in a similar situation. Like you, the company was informed that US states were using one of their drugs in executions; like you, they were adamantly opposed to capital punishment, and made their objections to this use of their products known.

But one must do more than just object to the use of their drugs in executions, and this is what *Lundbeck* did: they took active steps to end the practice altogether. Working with *Reprive*, the company devised a new distribution system which restricts sales of pentobarbital to legitimate medical users only, preventing executioners or prison officials from procuring the product. As of July 1st 2011, the date of the distribution change completion, state departments of corrections across the USA are no longer permitted to buy *Lundbeck's* pentobarbital for executions.

Reprive, PO Box 52742 London UK, EC4P 4WS	T +44 (0)20 7353 4640 F +44 (0) 7353 4641	info@reprive.org.uk www.reprive.org.uk
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This is an extremely important development for a number of reasons. First (and for the company, certainly foremost), the change in position has greatly improved the public perception, and indeed the finances, of the company. As you may know, *Lundbeck* suffered greatly from the negative publicity they received when it was revealed that their drugs were being used to kill people in the USA. Articles appeared in papers all over Europe and the US criticising the company for not doing more to prevent the practice, notably in leading medical journal, *The Lancet*, which published an open letter with a petition signed by over 100 neurologists from around the world condemning the company. Boycotts were organised and online anti-Lundbeck campaigns sprung up at an alarming rate. Lundbeck's 'Credibility Rating', according to the Annual Report by a leading financial paper, the *Berlingske*, fell by a full 23 points as a result of the controversy. And in May 2011, Danish pension fund, *Unipension*, publically divested from the company, citing 'ethical concerns' as their primary motivation.

Since the distribution change, *Lundbeck's* fortunes have changed radically. They have received accolades from across the board; from, among others, medical communities, European governments, CSR leaders, NGOs, stakeholders, ethical investor consultancies and the general public. Just recently I was informed that the very doctors who signed *The Lancet* petition have grouped together and are now buying shares in Lundbeck in support of the company.

But there are other, wider implications which need to be considered in light of *Lundbeck's* important action. What the company has shown is that pharmaceutical manufacturers can *choose* whether or not their drugs are used in executions. The myth that manufacturers have no control over the distribution of their products has categorically been dispelled. Manufacturers have been controlling drug distribution for years – in particular, for high-dollar products, high-tech products and REMs. Now we see that manufacturers can use exactly the same mechanisms to control the distribution of execution drugs. This is a wonderful development, and one which will be of as great a service to you as it was to *Lundbeck*.

I understand of course that pancuronium bromide is a medically useful drug used in pre-operative anaesthesia in certain hospitals in the USA. Not all hospitals continue to use the drug, some doctors having moved on to other muscle relaxants such as vecuronium bromide, but I have no doubt that many doctors remain faithful to it and regard it as an important part of their medical practice. No one – least of all myself – would wish to see pancuronium bromide withdrawn from the market and unavailable to the doctors who need it; but I can think of no doctor nor ethical pharmaceutical manufacturer who would object to a system which ensures that pancuronium bromide is delivered directly to the medical professionals who need it and is withheld from those prison officials who wish to use it for executions.

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We are fortunate in this case, as we were in the *Lundbeck* case, that pancuronium bromide, like pentobarbital, is used in such limited, circumscribed situations. This makes our job – to design a new distribution system for the drug – much easier. My colleagues at *Reprive* have excellent contacts in the specialty pharmacy world, and would be more than happy to discuss your options with you (according to these contacts, designing a restricted distribution system for pancuronium bromide would be quite straightforward).

The alternative to taking action are very grave. Unlike pentobarbital, which was used by just a handful of states, pancuronium bromide is used in lethal injections in all but one of the executing states of the USA. This means that almost every prisoner who is executed in the USA will be killed using *Hospira's* drugs. Furthermore, pancuronium bromide is widely recognised to be the most dangerous and potentially torturous element of the lethal injection procedure, as indeed the United States Supreme Court has itself acknowledged:

It is uncontested that, failing a proper dose of sodium thiopental that would render the prisoner unconscious, there is a substantial, constitutionally unacceptable risk of suffocation from the administration of pancuronium bromide and pain from the injection of potassium chloride.

Baze v. Rees, 553 U.S. 35, 53 (2008).

I am sure that *Hospira*, as an ethical pharmaceutical company whose key value is 'integrity', has no desire to be associated with – much less facilitate – executions in the USA. Nevertheless, this is the situation, and if no action is taken, it will only get worse. Fortunately, there are simple steps that can be taken to change all this. I would be more than happy to discuss these with you. This is a matter of the utmost urgency; delays are, quite literally fatal. Please contact me either by email (at cstaffordsmith@gmail.com) or phone (0044 7940 347125) at the latest by close of play on Monday, 10th October.

Yours sincerely,



Clive A. Stafford Smith, OBE
Direct line: 07940 347125
cstaffordsmith@gmail.com

Reprive, PO Box
52742
London UK, EC4P 4WS

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