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Lethal injection drug overcomes court challenges

by Judy Gross



This undated photograph shows a close-up of the lethal injection table where executions are carried out at San Quentin State Prison in California. (CNS photo/courtesy of California Department of Corrections)

TALLAHASSEE, FLA. -- How are prisoners on Florida's death row and unwanted dogs and cats in a city pound alike? They are put to death using the same medication. Last month, the Florida Supreme Court ruled pentobarbital -- a barbiturate used most regularly to euthanize unwanted animals -- can be part of the lethal cocktail used to execute inmates.

Manuel Valle, 61 years old and a 33-year resident of Florida's death row, is next in line to be put to death using pentobarbital.

Anti-death-penalty activists had hoped to stop Valle's execution because they claim the use of pentobarbital is "cruel and unusual punishment" when used in lethal injections. They say that pentobarbital is unsafe and unreliable and that using the drug as the first part of a three-drug combination would risk needless pain and suffering for the condemned.

Valle was convicted of killing a Miami police officer in 1978. Florida's new attorney general, Pam

Bondi, is determined to see his sentence carried out. Valle's death warrant was the first signed by Florida Gov. Rick Scott when he took office in January.

Valle has had several stays of execution since August. His latest execution date is set for Sept. 28.

Typically, lethal injections use a cocktail of drugs: sodium thiopental, a barbiturate that puts the prisoner to sleep, followed by the muscle relaxant pancuronium bromide, and potassium chloride, which stops the heart.

But when Hospira Inc., the sole manufacturer of sodium thiopental, ran short of the drug in 2010 and then stopped making it in 2011, states were forced to find an alternative.

Pentobarbital is "the drug of the moment," said Richard Dieter, executive director of the Death Penalty Information Center.

In December, Oklahoma became the first state to propose using the drug, the first state challenged in court and the first state to win the court case. Similar challenges against pentobarbital have been made and overturned in Alabama, Arizona, Mississippi, Ohio, Texas, South Carolina and Georgia. Pentobarbital now has been used in 22 executions.

Florida could raise that count to 23.

Executions in Ohio are on hold while a federal district court decides if that state can use only a single drug, pentobarbital, to execute prisoners, instead of a three-drug mixture.

The Georgia Supreme Court allowed that state to execute Roy Blankenship June 23 using pentobarbital, but eyewitnesses said Blankenship, though strapped down, jerked his head throughout the procedure and muttered after the pentobarbital was injected.

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As a result of the controversy, a judge in Georgia has ordered that executions be videotaped because, he ruled, "we need an objective recording to eliminate any dispute as to what transpires" during a lethal injection.

Pentobarbital is made by a Danish company, Lundbeck, to treat severe epilepsy. Arguments against its use as a death penalty drug may be moot by the end of the year, according to Dieter. He said the Danish manufacturer is writing clauses into its wholesale contracts to prevent the use of pentobarbital for human executions. Reportedly, there is also a looming shortage of the drug, and none may be available by the end of the year.

Thirty-four U.S. states have the death penalty. According to the Death Penalty Information Center, California has the largest death row population with 721 prisoners, followed by Florida with 398, Texas 321, Pennsylvania 219, and Alabama 206. California and Pennsylvania have not had an execution in more than five years.

The top five states with the most executions since 1976 are Texas with 473, Virginia 109, Oklahoma 96, Florida 69, and Missouri 68.

Florida has exonerated more wrongly convicted death row prisoners than any other state, with a total of

23 death row prisoners proven innocent since the death penalty was reinstated in 1976, according to the Death Penalty Information Center.

Citing a 2000 study, the center says that "enforcing the death penalty costs Florida \$51 million a year above what it would cost to punish all first-degree murderers with life in prison without parole."

Florida death penalty opponents are hoping that Scott's new chief of staff, Steve MacNamara, will help influence the budget-minded governor and end executions. MacNamara was instrumental in securing funding for the state Innocence Commission, a court-ordered body mandated to study the causes of wrongful convictions and make recommendations to prevent such convictions.

[Judy Gross is a freelance writer based in Tallahassee, Fla.]

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