

Editorial: Greed, legalized corruption and the death penalty



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It has been (another) strange week for capital punishment in the state of Missouri.

- On Monday, Gov. Jay Nixon said he wouldn't bow to threats that the European Union would reduce shipments of the anesthetic drug propofol to hospitals in the United States unless Missouri returned 20 vials of propofol that it acquired by accident.
- On Wednesday, Mr. Nixon changed his mind and ordered the Department of Corrections to return the propofol — manufactured by Fresenius Kabi of

Germany — to the distributor that accidentally sold it to the DOC.

- The corrections department hastened to add that it still had enough domestically produced propofol to carry out the scheduled execution of convicted murderer Allen Nicklasson on Oct. 23.
- Thus Missouri has enough propofol to kill someone while hospitals around the state (and the country) are scrambling — for reasons that will be discussed shortly — to find enough to keep people alive.
- A Fresenius Kabi spokesman said that while the firm was glad to have its propofol back, executing someone with propofol, regardless of where it was made, could still trigger EU sanctions. That would make the propofol shortage for hospitals even worse.
- Then Hospira Inc., of Lake Forest, Ill., which manufactured Missouri's remaining propofol (it took a very slow response to an ACLU Sunshine Law request to discover this) said it wanted its propofol back, too. The sale had been unauthorized, a Hospira statement said.
- On a ridiculous note, state Sen. Kurt Schaefer, R-Columbia, who is planning to run for state attorney general in 2016, decided to out-gas chamber Chris Koster, the current attorney general. Mr. Koster, frustrated at legal challenges to lethal injection, said last month that the state might have to resort to the gas chamber. Me too, Mr. Schaefer wrote in Thursday's Post-Dispatch.
- Meanwhile, on Wednesday the states of Texas and Arizona managed to execute men with injections of pentobarbital, a barbiturate commonly used to put down animals. Arizona used a supply it had acquired from a Danish manufacturer that no longer sells it to prisons. Texas used a special dose made by a compounding pharmacy. The pharmacist was outraged, not because his drugs were used to kill someone, but because it was supposed to be a secret. He has demanded that the state return its remaining doses. Texas has refused.

Propofol, Missouri's drug of choice, has never been used in lethal injections before. Because it is effective, safe and has few side effects, it is the anesthetic of choice in 85 percent to 90 percent of surgical procedures. Only 11 percent of it is made in the United States; the Missouri Society of

Anesthesiologists worries that European sanctions would make an already severe shortage even worse.

The reason for the current shortage has nothing to do with capital punishment. It has to do with hospital purchasing practices. More than 30 years ago, hospitals banded together to form group purchasing organizations, the idea being to buy everything they need — from surgical gloves to hypodermic needles to cancer drugs — in volume and keep prices down.

It was a good idea that went terribly wrong, driven by greed and facilitated by big campaign contributions to key members of Congress. In 1987, Congress allowed the GPOs an exemption from anti-kickback laws. The purchasing organizations can accept “fees” from vendors in return for buying their products.

Certain suppliers are given exclusive contracts in return for undisclosed administrative and marketing fees. Like campaign contributions, these are legalized bribes. The fees are so high and the margins on products are so small that many vendors can't afford to stay in business. The Healthcare Supply Chain Association, the lobbying group for the GPOs, says it's not their fault. The Government Accountability Office is now investigating.

Right now, according to the group Physicians Against Drug Shortages, there are more than 300 drugs in short supply. They are mostly injectable generic drugs not sold in pharmacies, but purchased wholesale by GPOs. They include not only propofol, but drugs for treating many kinds of cancer, antibiotics, nutrients for malnourished infants, even sterile saline solution.

The case of Missouri prison system's remaining “domestic” supply of propofol is illustrative. The Hospira Inc. facility that made it is in Clayton, N.C., the only remaining U.S.-owned propofol plant in the the United States. The competition couldn't meet the price or pay the fees demanded by the GPOs.

The Clayton plant had to close in 2010 and again in 2012 when the Food and Drug Administration found problems, including flecks of stainless steel in the drugs and “substandard manufacturing practices.”

The closure caused propofol shortages, but European suppliers could take up some of the slack. If Missouri uses propofol for lethal injection, that backup could disappear.

Clearly there's no reason in a free-market economy that doctors and surgical patients should be reliant on a single manufacturer. If there was money to be made in producing a drug, lots of companies would produce it.

But the GPOs, under the guise of keeping prices down, short-circuited the free market, driving prices up and supplies down for propofol and 300 other crucial drugs.

“The GPO system is a pay-to-play scheme,” said Phillip Zweig, executive director of Physicians Against Drug Shortages. “Hospital suppliers, including generic drug makers, have to pay the toll to the troll for exclusive access for their products at 5,000 GPO-member hospitals. Even if they get contracts, they wind up having to cut costs — maintenance, quality control, plant and equipment upgrades and so on — to the bone to pay exorbitant fees to the GPOs, and then the FDA comes in to close them down. That's why there are only one or two suppliers for many of these drugs. It's like we're living in a Third World country.”

Except for this: Most Third World countries, like most of the first- and second-world countries, are civilized enough to have abolished the death penalty.