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Broker denies Nebraska's \$26,700 refund request over undelivered death penalty drug

LINCOLN — No death penalty drugs, no refund, but hopefully, no hard feelings.

That was the gist of a recent letter from Indian drug broker Chris Harris in response to Nebraska's demand for a refund of \$26,700 it paid for a lethal substance that was never delivered. The Nebraska Department of Correctional Services released the letters Friday.

Prison Director Scott Frakes wrote in a Jan. 6 letter that Harris broke the terms of his agreement to ship 1,000 vials of sodium thiopental to Nebraska for use in executions. Gov. Pete Ricketts authorized the purchase last year during the heat of a legislative debate on repealing capital punishment.

"Please provide full reimbursement immediately in hopes that this matter may be resolved amicably and without the necessity of further proceedings," Frakes wrote.

Harris, whose previous dealings with the state came under suspicion, replied Jan. 28 by deflecting the blame on his customer. Nebraska officials couldn't get the drug imported because of a ban on sodium thiopental by the U.S. Food and Drug Administration.

"I'm sorry to state that refund of the payment is not possible as there has been no fault of my company," Harris wrote.

Then, in a stroke that was either incredibly tone deaf or bold, Harris concluded with: "Hope this issue does not spoil the relationship between our organizations and we are able to do business in the future."

Instead, officials with the Corrections Department are now exploring legal options to recoup the funds, said Andrew Nystrom, communications director for the department.

The state sought a refund of only the money it spent for sodium thiopental, an anesthetic banned for importation by the FDA. The exchange of letters did not address an additional \$27,700 the state paid Harris for pancuronium bromide, the second of three drugs in Nebraska's lethal injection protocol.

The governor said late last year that his administration had halted efforts to obtain lethal substances until after a referendum vote on the death penalty takes place in November. The Nebraska Legislature repealed capital punishment during the last legislative session, but supporters of the death penalty obtained sufficient signatures to put the question on the general election ballot.

The state had obtained death penalty drugs from Harris in the past, but Nebraska's efforts to import the drug this time were thwarted by the FDA. Federal officials said they would not allow importation of sodium thiopental because it is no longer approved for general use in this country.

Nebraska's U.S. Attorney Deborah Gilg also has said it would be illegal for the state to import sodium thiopental, the first of three drugs prison officials would administer in an execution.

Nebraska currently has 10 men on death row, but without a means to carry out a death sentence, no executions are scheduled.

Ricketts also has said that his administration has been reviewing the procedures used by other states that have lethal injection.

Harris has twice sold sodium thiopental to Nebraska in the past.

Federal authorities destroyed the first batch delivered by Harris in 2010 after learning that the Corrections Department lacked the proper importer's license. The second supply expired after legal challenges emerged in response to claims by the drug's Swiss manufacturer, which said Harris obtained the drug under false pretenses.

The manufacturer, which opposed executions, said Harris told them he was trying to develop a market for the anesthetic in Africa.

The documents released by Corrections on Friday show the state was successful last year in obtaining a fresh supply of potassium chloride, the third drug administered in the death sequence. The department purchased the drug through a firm called Cardinal Health in Kansas City, Missouri.

In sequence, the drugs in Nebraska's lethal protocol are intended to first knock the inmate unconscious, then stop the ability to breathe and finally to stop the heart.

The state has never used lethal injection. The last execution in 1997 was carried out with the electric chair, but the Nebraska Supreme Court has since banned electrocution as cruel and unusual punishment.