

Introduction

The law, both federal and state, is clear: no person or organization may (1) import or (2) distribute a controlled substance without first registering with both the Georgia Board of Pharmacy and the federal Drug Enforcement Administration (DEA) of the Attorney General. Carlo Anthony Musso, M.D., owner and operator of the Georgia-based limited liability companies CorrectHealth and Rainbow Medical Associates, had no such registrations when he imported sodium thiopental into the United States and distributed it to the departments of corrections in Kentucky and Tennessee. Though he has repeatedly denied selling drugs across state lines ("I don't know where it came from. That is completely in error. We have not participated in that."),¹ it is now demonstrably clear that he did so. As such, Dr. Musso violated a host of state and federal criminal laws including, for example, both the state and federal Controlled Substances Acts.²

On January 21, 2011, Hospira, the only American-based manufacturer of sodium thiopental, announced that it would “exit the sodium thiopental market and no longer attempt to resume production of its product, Pentothal™.”³ As a result, those states that used the drug as the critical anesthetic to carry out a sentence of death by lethal injection scrambled to find

¹ Brett Barrouquere, Kentucky Gets Supply of Key Execution Drug, The San Diego Union-Tribune, Feb. 22, 2011, available at <http://www.signonsandiego.com/news/2011/feb/22/kentucky-gets-supply-of-key-execution-drug>.

² 21 U.S.C. § 822(a)(1) (“Every person who manufactures or distributes any controlled substance . . . shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.”); O.C.G.A. § 16-13-35(a) (“Every person who manufactures, distributes, or dispenses any controlled substances within this state . . . must obtain annually a registration issued by the State Board of Pharmacy in accordance with its rules.”).

³ Hospira, Hospira Statement Regarding Pentothal™ (sodium thiopental) Market Exit, available at <http://www.hospira.com/NewsAndMediaCenter/pressreleases.aspx> (Jan. 21, 2011) (last visited June 16, 2011) (press release).

alternative sources.⁴ The Georgia Department of Corrections secured its supply from a London-based pharmaceutical supplier (Dream Pharma) that operated out of the back of a driving school; ultimately the Drug Enforcement Administration (DEA) seized that supply amid questions about how the drug was imported into the United States.⁵

The Georgia DOC was not the only entity that purchased and imported a supply of sodium thiopental from the company doing business out of the back of the London driving school. So did CorrectHealth, LLC. Not only did Dr. Musso import this drug, he sold his supply to other states desperate to obtain the highly sought-after sodium thiopental. He sold the drug to Kentucky. He sold the drug to Tennessee. Just as the DEA seized the drugs purchased by the Georgia DOC, so did the DEA follow Dr. Musso's unregistered sales of the illegally obtained sodium thiopental and seize the drugs purchased by Kentucky and Tennessee.

Detailed below are the multiple federal and state laws broken by Dr. Musso and his companies, CorrectHealth and Rainbow Medical Associates. Attached is documentary proof that Dr. Musso imported and sold the drugs eventually seized by the DEA.⁶ Therefore, I request that the Board revoke the licenses of Dr. Carlo Musso and all licensed physicians and allied health care providers associated with Dr. Musso's limited liability companies CorrectHealth, LLC and Rainbow Medical Associates, LLC. In the alternative, I request that the Board suspend these

⁴ Erik Eckholm & Katie Zezima, States Face Shortage of Key Lethal Injection Drug, N.Y. Times, Jan. 21, 2011, available at <http://www.nytimes.com/2011/01/22/us/22lethal.html>.

⁵ Ga. Executions Off: DEA Seizes Critical Drug, ABC News, Mar. 16, 2011, available at <http://abcnews.go.com/US/wireStory?id=13145328>.

⁶ All documents cited herein as "Licensure Doc.," "Importation Doc.," "Ky. Doc.," or "Tenn. Doc." are attached to this complaint. "Tenn. Doc. at 27," for instance, refers to a document that relates to Tennessee and is found at page 27 of the attachment.

licenses pending a thorough investigation into Dr. Musso's and his companies' illegal and unprofessional activities, during which a public hearing is held.⁷

Jurisdiction and Authority

"The [Georgia Composite] Medical Board is charged with the responsibility of evaluating when a physician's or other allied health care provider's professional conduct . . . warrants modification, suspension or revocation of the license to practice their profession in the State of Georgia."⁸ The Georgia Medical Practice Act authorizes the Georgia Composite Medical Board to investigate and discipline a licensee, certificate holder, or permit holder for a wide range of causes, infractions, unprofessional or unethical conduct, or unlawful actions.⁹ The Act was

⁷ See O.C.G.A. § 43-34-8(a.1) ("The provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section."); O.C.G.A. § 43-34-9 ("Proceedings before the board wherein a licensee's, certificate holder's, or permit holder's right to practice . . . is terminated [or] suspended . . . shall require . . . an opportunity for hearing; and such proceedings shall be considered contested cases within the meaning of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'").

⁸ What Are the Duties and Responsibilities of the Georgia Medical Board?, Georgia Composite Medical Board (last visited June 15, 2011), <http://medicalboard.georgia.gov/portal/site/GCMB/menuitem.e429305ad2099d1d6eff626ed03036a0/?vgnextoid=7ef71ec599906210VgnVCM10000bf01020aRCRD&vgnnextchannel=efd11ec599906210VgnVCM10000bf01020aRCRD>.

⁹ O.C.G.A. § 43-34-8 ("(a) The board shall have authority . . . to discipline a person regulated under this chapter . . . upon a finding by the board that the licensee, certificate holder, or permit holder . . . has: . . . (2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a profession licensed, certified, or permitted under this chapter or in any document connected therewith, or practiced fraud or deceit . . . ; (7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimum standards of acceptable and prevailing medical practice . . . ; (10) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates the practice of medicine, when the licensee or applicant knows or should know that such action is violative of such law, rule, or regulation; . . . (11) Committed any act or omission which is indicative of bad moral character or

“enacted in the public welfare and shall be liberally construed.” O.C.G.A. § 43-34-8(i). Of particular application to this complaint,

The Georgia Composite Medical Board is authorized to take disciplinary action for violations of laws and rules and regulations which relate to or in part regulate the practice of medicine. These laws, rules and regulations include, but are not limited to, the following:

- (1) The Georgia Medical Practice Act (O.C.G.A. T. 43, Ch. 34);
- (2) The Georgia Controlled Substances Act (O.C.G.A. T. 16, Ch. 13, Art. 2);
- ...
- (4) The Federal Controlled Substances Act (21 U.S.C. Ch. 13);
- ...
- (6) The Rules of the Georgia Composite Medical Board, Ch. 360, Rules and Regulations of the State of Georgia;
- (7) The Rules of the Georgia State Board of Pharmacy, Ch. 480, Rules and Regulations of the State of Georgia, in particular those relating to the prescribing and dispensing of drugs

Georgia Composite Medical Board Rule 360-3-.03. Dr. Musso, CorrectHealth, LLC, Rainbow Medical Associates, LLC, and their associated licensed professionals committed gross violations of each of these federal and state statutes and rules – violations both civil and criminal. The Board has jurisdiction and the authority to suspend and revoke their licenses. See O.C.G.A. § 43-1-24 (“Any person licensed by a professional licensing board and who practices a “profession,” . . . whether such person is practicing or rendering services as a proprietorship, partnership,

untrustworthiness; . . . (17) Entered into conduct which discredits the profession; . . . (21) Failed to comply with federal laws and standards relating to the practice of medicine or other health care profession regulated under this chapter, the regulations of drugs, . . . or other related laws; . . . (b) (1) When the board finds that any person . . . should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions: . . . (D) Suspend any license, certificate, or permit for a definite or indefinite period; . . . (F) Revoke any license, certificate, or permit; . . . (d) The executive director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as he or she, or the board, or any district attorney may deem necessary or advisable in the enforcement of this chapter.”); Georgia Composite Medical Board Rule 360-3-.01 (“The Georgia Composite Medical Board (‘Board’) is authorized to deny, revoke, [or] suspend . . . the license of a physician . . . for all the grounds set forth in O.C.G.A. § 43-34-8 and to deny, revoke [or] suspend . . . the license of a physician pursuant to O.C.G.A. § 43-34-8.”).

professional corporation, professional association, other corporation, limited liability company, or any other business entity, shall remain subject to regulation by that professional licensing board . . .”).

People and Organizations

Carlo Musso, MD is an active registered physician in the state of Georgia. His license number is 33871. He is the founder, Organizer, Managing Member, and President of CorrectHealth, LLC. Dr. Musso is also the founder and Organizer of Rainbow Medical Associates, LLC, which has its principal office at the same address as CorrectHealth’s principal office.

Dr. Musso’s staff includes:

- Stacy Blackman, Esquire, General Counsel. Ms. Blackman is the registered agent for Rainbow Medical Associates¹⁰ as well as all of CorrectHealth’s forty-three separate LLC entities;¹¹ and
- Alan Adams, Sales Representative of CorrectHealth¹² and Rainbow Medical Associates.¹³

¹⁰ See State of Georgia 2011 Limited Liability Company Annual Registration (2011), available at <http://corp.sos.state.ga.us/imaging/18404112.pdf> (last visited June 16, 2011); Articles of Organization of Rainbow Medical Associates, LLC (2003), available at <http://corp.sos.state.ga.us/imaging/12041073.pdf> (last visited June 16, 2011).

¹¹ See Our People, CorrectHealth (last visited June 16, 2011), <http://www.correcthealth.org/about-us/our-people>; Articles of Organization of CorrectHealth, LLC (2003), available at <http://corp.sos.state.ga.us/imaging/11548004.pdf> (last visited June 16, 2011); State of Georgia 2011 Limited Liability Company Annual Registration (2011), available at <http://corp.sos.state.ga.us/imaging/18401597.pdf> (last visited June 16, 2011).

¹² Ky. Doc. at 18 (attachment to memorandum from Ladonna Thompson, Comm’r, Ky. Dept’t of Corr., to J. Michael Brown, Sec’y, Justice & Pub. Safety Cabinet (Feb. 18, 2011)).

¹³ Ky. Doc. at 19 (attachment to memorandum from Ladonna Thompson, Comm’r, Ky. Dept’t of Corr., to J. Michael Brown, Sec’y, Justice & Pub. Safety Cabinet (Feb. 18, 2011)).

Facts

Dr. Carlo Musso, CorrectHealth, and Rainbow Medical Associates (Rainbow Medical) are not registered importers or distributors of sodium thiopental, a schedule III nonnarcotic controlled substance, with either the Georgia Board of Pharmacy or the Drug Enforcement Administration of the Attorney General (DEA).¹⁴ Nevertheless, in violation of Georgia and

¹⁴ See Licensure Doc. at 2 (letter from Sonya Williams, Senior Staff Attorney, Legal Services, Ga. Office of Sec’y of State, to William R. Montross, Jr., Attorney, S. Ctr. for Human Rights (Mar. 7, 2011) (“CorrectHealth [and] Rainbow Medical Associates . . . are not our licensees. . . . Carlo Musso is not one of our licensees; there are no application records pertaining to him.)). Because Dr. Musso, CorrectHealth, and Rainbow Medical do not have state licenses, they cannot have federal DEA licenses – the DEA will not issue a federal license until an applicant has received a state license. See Bureau of Narcotics & Dangerous Drugs, Missouri Department of Health & Senior Services, Controlled Substance Guidelines for Emergency Medical Services 3 (2011), available at health.mo.gov/safety/bnnd/doc/EMSControlledSubstanceGuidelines.doc (“The Missouri state registration must be obtained first and then the federal DEA registration. . . . [T]he agency may apply for and obtain a Missouri Controlled Substances Registration and then a federal DEA registration. . . . When the state board issues your license, you may contact the Bureau with your new license number so that the application can be processed.”); Business Licensing Database: Drug Manufacturing, State of Colorado, Office of Economic Development and International Trade (last visited June 19, 2011), <http://www.colorado.gov/oed/industry-license/249IndDetail.html> (“All individuals and firms that handle controlled substances must be registered by the DEA. . . . Must have state license first.”); Frequently Asked Questions, Oregon.gov, Board of Pharmacy (last visited June 19, 2011), <http://www.oregon.gov/Pharmacy/FrequentlyAskedQuestions.shtml> (“The DEA will not release the DEA license until the Oregon Board of Pharmacy has issued the Oregon controlled substance license.”). Additionally, in response to a Freedom of Information Act letter requesting, in part, communications between the DEA and any official, employee, or agent of CorrectHealth, Rainbow Medical, or Dr. Carlo Musso, a representative of the DEA wrote: “To the extent that your multi-item request seeks records [regarding CorrectHealth and Rainbow Medical], a search by the DEA Atlanta Field Office identified one hundred thirty seven (137) pages of records. As a result, all pages are withheld under Exemption (b)(7)(A) and other exemptions as indicated in the checked blocks below.” Licensure Docs. at 4-5 (letter from Katherine L. Myrick, Chief, Freedom of Information/Privacy Act Unit, FOI/Records Mgmt Section, U.S. Dep’t of Justice, Drug Enforcement Admin. (June 9, 2011)). Exemption (b)(7)(A) states: “Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings” Another checked exemption states: “Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.” Had CorrectHealth or Rainbow Medical been properly licensed with the DEA, they would not be part of an ongoing DEA criminal investigation.

federal law, they acquired the drugs from abroad, brought them into the United States, and sold them to government agencies in Kentucky and Tennessee.

Importation of Sodium Thiopental from England

Disregarding clear and stringent laws requiring registration with the federal government before bringing controlled substances into the country, CorrectHealth and Rainbow Medical imported sodium thiopental from an unvetted London-based corporation, Dream Pharma Ltd. Dream Pharma shipped the drugs to Alan Adams, the Sales Representative of CorrectHealth and Rainbow Medical.¹⁵

Distribution of Sodium Thiopental to Kentucky

On February 3, 2011, the Secretary of Kentucky's Justice and Public Safety Cabinet sent a memo to Ladonna Thompson, the Commissioner of Kentucky's Department of Corrections (KDOC), requesting that the KDOC "conduct an exhaustive and comprehensive search for any and all sources of sodium thiopental " for use in executions.¹⁶ Accordingly, Ms. Thompson contacted Brian Owens, the Commissioner of the Georgia Department of Corrections (GDOC), who told Ms. Thompson about "a distributor in Georgia" (CorrectHealth).¹⁷ Mr. Owens asked Rob Jones, General Counsel for the GDOC, to pass along CorrectHealth's contact information to the Kentucky Justice Cabinet attorney, and on February 10, Mr. Jones obliged by providing

¹⁵ See Importation Doc. at 13 (Treasury Dep't customs form (June 28, 2010)).

¹⁶ Ky. Doc. at 14 (memorandum from Ladonna Thompson, Comm'r, Ky. Dep't of Corr., to J. Michael Brown, Sec'y, Justice & Pub. Safety Cabinet (Feb. 3, 2011)).

¹⁷ See Ky. Doc. at 17 (attachment to memorandum from Ladonna Thompson, Comm'r, Ky. Dept't of Corr., to J. Michael Brown, Sec'y, Justice & Pub. Safety Cabinet (Feb. 18, 2011)).

information for Alan Adams, the Sales Representative of CorrectHealth and Rainbow Pharmaceuticals (i.e. Rainbow Medical Associates).¹⁸

Later the same day, Kim McKinney, a Kentucky State Penitentiary Purchasing Officer, contacted Mr. Adams; Mr. Adams reported that CorrectHealth had the drug available. Mr. Adams purported not to know where the drug was originally obtained, whether the drug had come from a licensed manufacturer overseas, or whether the drug was FDA approved – he stated that CorrectHealth did not ask for that information at the time of purchase.¹⁹ This, of course, was untrue – CorrectHealth imported the drugs from the London-based Dream Pharma and the drugs were shipped to Mr. Adams himself, as explained above. The company charged approximately \$90 per gram for sodium thiopental.²⁰

The KDOC placed an order with Rainbow Pharmaceuticals / CorrectHealth for eighteen grams of sodium thiopental, enough for three executions.²¹ On February 11, Mr. Adams emailed Ms. McKinney at the KDOC to let her know that her package – tracking number 796753139170 – had been shipped via FedEx.²² On February 14, Ms. McKinney received the

¹⁸ Ky. Docs. at 17, 19 (attachment to memorandum from Ladonna Thompson, Comm’r, Ky. Dept’t of Corr., to J. Michael Brown, Sec’y, Justice & Pub. Safety Cabinet (Feb. 18, 2011)).

¹⁹ Ky. Doc. at 18 (attachment to memorandum from Ladonna Thompson, Comm’r, Ky. Dept’t of Corr., to J. Michael Brown, Sec’y, Justice & Pub. Safety Cabinet (Feb. 18, 2011)).

²⁰ Ky. Doc. at 18 (attachment to memorandum from Ladonna Thompson, Comm’r, Ky. Dept’t of Corr., to J. Michael Brown, Sec’y, Justice & Pub. Safety Cabinet (Feb. 18, 2011)).

²¹ Ky. Doc. at 16 (memorandum from Ladonna Thompson, Comm’r, Ky. Dept’t of Corr., to J. Michael Brown, Sec’y, Justice & Pub. Safety Cabinet (Feb. 18, 2011)); Ky. Doc. at 20 (Kentucky State Penitentiary purchase request (Feb. 10, 2011)).

²² Ky. Doc. at 21 (e-mail from Alan Adams, Sales Representative of CorrectHealth and Rainbow Med. Associates, to Kim McKinney, Ky. State Penitentiary Purchasing Officer).

drugs – eighteen grams of sodium thiopental (FedEx tracking number 796753139170) – addressed from CorrectHealth.²³

Distribution of Sodium Thiopental to Tennessee

Much like its illegal distribution of sodium thiopental to Kentucky, Rainbow Medical unlawfully sold the drug to the Tennessee Department of Correction (TDOC).

On October 12, 2010, the TDOC requested sixty 500-milligram vials of sodium thiopental from Rainbow Medical; Rainbow Medical agreed to sell the drug to the TDOC.²⁴ After further correspondence between the parties, Rainbow Medical e-mailed the TDOC on October 21 to request a copy of the TDOC’s DEA license “so that [a Rainbow Medical representative] could be completely covered during the transport” and stated that after receiving the license, Rainbow Medical would be able to deliver the drugs in person.²⁵ When Rainbow Medical received the TDOC’s promise to fax a copy of its license (“You da man! Thanks.”),²⁶ the deal was final.

On October 22, Rainbow Medical sent the TDOC an invoice for fifty kits of 500-milligram dosages of sodium thiopental at \$31.02 per kit. The TDOC’s total order came to \$1,551.00.²⁷ The same day, the TDOC entered a requisition (i.e. purchase order request) for fifty 500-milligram units of sodium thiopental into the state’s internal finance database. The state

²³ See Ky. Doc. at 16 (memorandum from Ladonna Thompson, Comm’r, Ky. Dept’t of Corr., to J. Michael Brown, Sec’y, Justice & Pub. Safety Cabinet (Feb. 18, 2011)); Ky. Doc. at 22 (FedEx shipping label (Feb. 11, 2011)).

²⁴ See Tenn. Doc. at 23 (e-mail from CorrectHealth to TDOC (Oct. 12, 2010, 3:27pm) stating that CorrectHealth remembered that the TDOC had requested twenty 500-milligram vials of sodium thiopental); Tenn. Doc. at 24 (email from TDOC to CorrectHealth (Oct. 12, 2010, 4:29pm) responding that it in fact required sixty boxes of the drug).

²⁵ Tenn. Doc. at 25 (e-mail from Rainbow to TDOC (Oct. 21, 2010, 8:40am)).

²⁶ Tenn. Doc. at 26 (e-mail from Rainbow to TDOC (Oct. 21, 2010, 9:51am)).

²⁷ See Tenn. Doc. at 27 (Rainbow Medical Associates invoice (sent Oct. 22, 2010)).

approved the full amount of the requisition - \$1551.²⁸ On October 25, the TDOC created a final purchase order that reflected that it ordered fifty 500-milligram units of sodium thiopental from Rainbow Medical Associates LLC. The drug cost \$1,551 at \$31.02 per unit.²⁹

A representative from the TDOC and a representative from Rainbow Medical agreed to meet on October 26 at 3:00 to make the transfer of the drugs.³⁰ The transfer was successful. On that date, the TDOC's lethal injection logs reflected that sixty 500-milligram vials of sodium thiopental were received.³¹

The next day, October 27, the Rainbow Medical representative sent an e-mail to the TDOC representatives following up on their visit and soliciting more business for CorrectHealth: "I enjoyed our discussion about the potential need for skilled nursing care for some of your inmates. CorrectHealth and I would be very happy to discuss this in more detail at your convenience. Take care and thanks again for meeting with me yesterday."³² The state of Tennessee paid its outstanding bill (from October 15, 2010) of \$1551 to Rainbow Medical for fifty 500-milligram units of sodium thiopental on January 13, 2011.³³

²⁸ Tenn. Doc. at 28 (requisition form (Oct. 22, 2010)).

²⁹ Tenn. Docs. at 29-33 (purchase orders (Oct. 25, 2010)).

³⁰ Tenn. Doc. at 34 (e-mail from TDOC to Rainbow (Oct. 25, 2010)).

³¹ Tenn. Doc. at 35 (TDOC Lethal Injection Chemical Bin Card (Oct. 26, 2010)); Tenn. Docs. at 36-37 (two TDOC ledgers of lethal injection drugs showing entries on Oct. 26, 2010).

³² Tenn. Doc. at 39 (e-mail from Rainbow to TDOC (Oct. 27, 2010)).

³³ Tenn. Doc. at 40 (voucher entry form (Jan. 1, 2011)); Tenn. Doc. at 41 (e-mail from Larry Perry, F&A Accounts, to Jessica Johnson, Investigator, Fed. Defender Services of E. Tenn., Inc. (Feb. 24, 2011)).

Dr. Musso's Denials of Distribution and DEA Seizure

Shortly after Kentucky received its shipment of sodium thiopental from CorrectHealth, a spokesperson publicly announced that the state was ready to proceed with executions as soon as their courts would allow. The spokesperson stated that Kentucky bought the drugs from CorrectHealth. But the Associated Press reported:

Dr. Carlo Musso, who runs the company and has helped Georgia with executions, denied selling the drug to Kentucky.

"I don't know where it came from. That is completely in error. We have not participated in that," he told AP.

Musso said his company has never had any sodium thiopental and never sold any.

"We're not the middle man. We've been asked to do that, and I've said, quite frankly, 'No, we're not going to do that.' We'll send them off to other suppliers, and other departments of corrections," Musso said.

Musso said he had received a handful of phone calls about the drug shortage.

"We're saying, 'Guys, I can't help you.' We just send people in different directions," he said.

Shipping and purchase documents obtained from the state showed Kentucky bought the drug from CorrectHealth. Musso did not immediately return a second call from The Associated Press.³⁴

Less than a month later, on March 15, 2011, the DEA seized Georgia's supply of sodium thiopental amid questions about how the drug was imported into the United States.³⁵

³⁴ Brett Barrouquere, Kentucky Gets Supply of Key Execution Drug, The San Diego Union-Tribune, Feb. 22, 2011, available at <http://www.signonsandiego.com/news/2011/feb/22/kentucky-gets-supply-of-key-execution-drug>.

³⁵ Ga. Executions off: DEA Seizes Critical Drug, ABC News, Mar. 16, 2011, available at <http://abcnews.go.com/US/wireStory?id=13145328>.

Afterward, the DEA moved on to seize Kentucky's and Tennessee's supplies of the drug as well, effectively tracing Dr. Musso's trail of illegal sales.³⁶

Even in the face of sharpening government scrutiny and escalating public concern regarding the legality of his practices – even though he had left behind a wealth of documentation to the contrary – Dr. Musso stubbornly continued to deny that he or his companies had participated in the sale of sodium thiopental to Kentucky.³⁷

Dr. Musso, CorrectHealth, Rainbow Medical Associates, and Their Employees and Associates Violated Numerous State and Federal Laws Pertaining To the Distribution and Importation of Sodium Thiopental

Under both Georgia and federal law, sodium thiopental is classified as a nonnarcotic schedule III controlled substance.³⁸ In their illicit dealings with Kentucky and Tennessee, Dr. Musso and his associates at CorrectHealth and Rainbow Medical acted as “distributors”³⁹ and importers of sodium thiopental.

³⁶ Nathan Koppel, Two States Turn Over Execution Drug to U.S., Wall St. J., Apr. 2, 2011, available at <http://online.wsj.com/article/SB10001424052748703806304576236931802889492.html>.

³⁷ Brett Barrouquere, Georgia Doctor Denies Selling Ky. Execution Drug, Ventura County Star, Feb. 22, 2011, available at <http://www.vcstar.com/news/2011/feb/22/georgia-doctor-denies-selling-ky-execution-drug/?partner=RSS>.

³⁸ See 21 U.S.C. § 812 (enumerating findings required to place a drug in a particular schedule and listing drugs within schedules); O.C.G.A. § 16-13-24 (enumerating findings required to place a drug in a particular schedule); O.C.G.A. § 16-13-27 (listing schedule III controlled substances); see also FDA, Thiopental Sodium, available at <http://dailymed.nlm.nih.gov/dailymed/archives/fdaDrugInfo.cfm?archiveid=48745> (last visited June 14, 2011) (drug label for sodium thiopental produced by Hospira, Inc.); DEA, Controlled Substances – Alphabetical Order, DEA Office of Diversion Control (Jan. 18, 2011), http://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf.

³⁹ “The term ‘distribute’ means to deliver (other than by administering or dispensing) a controlled substance The term ‘distributor’ means a person who so delivers a controlled substance” 21 U.S.C. § 802(11). “‘Distribute’ means to deliver a controlled substance, other than by administering or dispensing it.” O.C.G.A. § 16-13-21(11). “The terms ‘deliver’ or ‘delivery’ mean the actual, constructive, or attempted transfer of a controlled substance” 21 U.S.C. § 802(8). “‘Deliver’ or ‘delivery’ means

Dr. Musso's Unregistered Distribution of Sodium Thiopental Was Felonious Under Both State and Federal Law

The law, both federal and state, is clear: no person or organization may distribute a controlled substance without first registering with both the Georgia Board of Pharmacy and the federal Drug Enforcement Administration (DEA) of the Attorney General. The Federal Controlled Substances Act provides that “[e]very person who manufactures or distributes any controlled substance . . . shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.” 21 U.S.C. § 822(a)(1). The Georgia Controlled Substances Act states that “[e]very person who manufactures, distributes, or dispenses any controlled substances within this state . . . must obtain annually a registration issued by the State Board of Pharmacy in accordance with its rules.” O.C.G.A. § 16-13-35(a). Licensed physicians are exempted from this registration requirement only to the extent that they are legally permitted to “use, mix, prepare, dispense, prescribe, and administer drugs in connection with medical treatment.” O.C.G.A. § 16-13-35(g)(2).

The Georgia State Board of Pharmacy has even enacted five and a half single-spaced pages of special and particularly stringent, detailed, and straightforward requirements for licensing wholesale distributors of controlled substances, making its commitment to licensing

the actual, constructive, or attempted transfer from one person to another of a controlled substance” O.C.G.A. § 16-13-21(7). “The term ‘administer’ refers to the direct application of a controlled substance to the body of a patient or research subject” 21 U.S.C. § 802(2). “‘Administer’ means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or by any other means, to the body of a patient or research subject” O.C.G.A. § 16-13-21(1). “The term ‘dispense’ means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner” 21 U.S.C. § 802(10). “‘Dispense’ means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner or the delivery of a controlled substance by a practitioner, acting in the normal course of his professional practice” O.C.G.A. § 16-13-21(9).

requirements for such persons and entities even clearer, if that was possible.⁴⁰ Dr. Musso, CorrectHealth, Rainbow Medical, and their employees and associates qualify as wholesale distributors.⁴¹

To distribute a schedule III controlled substance in violation of these simple rules is a serious felony under both state and federal law and carries the potential for substantial prison time and massive fines. Under the Federal Controlled Substances Act, any person who fails to register with the DEA and “knowingly or intentionally” distributes or possesses with the intent to distribute a schedule III controlled substance faces a prison sentence of up to ten years and “if death . . . results from the use of such substance” the distributor faces up to fifteen years in prison, a fine up to \$500,000 if the distributor is an individual or \$2,500,000 if the distributor is

⁴⁰ See Georgia State Board of Pharmacy Rule 480-7-.03 (“(1) Every drug wholesale distributor, wherever located, who engages in drug wholesale distribution into, out of, or within the State of Georgia must be licensed by the Georgia State Board of Pharmacy in accordance with the laws and regulations of this State before engaging in wholesale distribution of prescription drugs. (2) Minimum Required Information for Licensure: The Board requires the following from each wholesale drug distributor as part of the initial licensing procedure (a) The name, full business address, and telephone number of the licensee; (b) All trade or business names used by the licensee; (c) Address, telephone numbers, and the names of contact persons for the facility used by the licensee for the storage, handling, and distribution of prescription drugs; (d) The type of ownership or operations (i.e., partnership, corporation, or sole proprietorship); and (e) The name(s) of the owner and/or operator of the licensee (h) Responsible persons. Wholesale drug distributors shall establish and maintain lists of officer, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications. (10) Compliance with Federal, State, and local laws. Wholesale drug distributors shall operate in compliance with applicable Federal, State, and local laws and regulations. . . . (b) Wholesale drug distributors that deal in controlled substances shall register with the appropriate State controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable State, Local, and DEA regulations.”).

⁴¹ See Georgia State Board of Pharmacy Rule 480-7-.02 (“(c) Brokerage means a firm engaged in buying, selling, or distributing prescription drugs. . . . (g) Wholesale distribution means distribution, or brokerage, of prescription drugs to persons other than a consumer or patient h) Wholesale distributor means anyone engaged in wholesale distribution or brokerage of prescription drugs, including but not limited to, . . . own-label distributors, private-label distributors, jobbers, brokers, warehouses, including . . . distributors’ warehouses, chain drug warehouses, and whole drug warehouses, independent wholesale drug traders, brokerage firms . . .”).

“other than an individual,” e.g. a limited liability company, or both. 21 U.S.C. § 841.

Additionally, if a person is sentenced to a prison term and has had no such prior convictions, that person faces “a term of supervised release of at least 2 years in addition to such term of imprisonment.” 21 U.S.C. § 841. Under the Georgia Controlled Substances Act, any person who fails to register with the State Board of Pharmacy and delivers, distributes, sells, or possesses with the intent to distribute a schedule III controlled substance is guilty of a felony, and upon conviction, will face a prison term of one to ten years. O.C.G.A. § 16-13-30. As explained above, neither Dr. Musso nor his companies CorrectHealth and Rainbow Medical registered as distributors of controlled substances with either the DEA or the Georgia, in obvious violation of federal and state law.

In addition, under Georgia law, it is illegal to knowingly or intentionally use any “communication facility” in committing or facilitating the commission of a felony under the Controlled Substances Act. “Communication facilities” are any public or private instrumentalities of communication, including mail, telephones, and computers. Every single separate use of a communication facility is a separate offense. O.C.G.A. § 16-13-32.3.

Therefore, each time that Dr. Musso or his associates at CorrectHealth or Rainbow Medical used the mail to send a shipment, purchase order, or invoice, used a telephone to negotiate a contract or confirm an arrangement, or used a computer to send an email or log into a payment system, they were guilty of a separate felony. Those who violate this law are punished by a fine up to \$30,000 or by imprisonment for between one and four years, or both. O.C.G.A. § 16-13-32.3.

Dr. Musso's Unregistered Importation of Sodium Thiopental Was Felonious Under
Federal Law

Federal law regarding the importation of controlled substances is likewise absolutely clear: you must register with the DEA first. 21 U.S.C. § 952(b) ("It shall be unlawful . . . to import into the United States from any place outside thereof, any nonnarcotic controlled substance in schedule III, IV, or V, unless such nonnarcotic controlled substance . . . is imported pursuant to such notification, or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such import permit, notification, or declaration, as the Attorney General may by regulation prescribe . . ."); 21 U.S.C.A. § 954(2) ("A controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General."); 21 U.S.C. § 957 ("No person may . . . import into the United States from any place outside thereof, any controlled substance . . . unless there is in effect with respect to such person a registration issued by the Attorney General . . ."); 21 C.F.R. § 1312(b) ("No person shall import or cause to be imported an non-narcotic controlled substance listed in Schedule III . . . unless and until such person is properly registered under the Act (or exempt from registration) and has filed an import declaration to do so with the Administrator.").

Like the illegal distribution of drugs, the unregistered importation of schedule III controlled substances carries heavy penalties. If a person is prosecuted and a trier of fact finds that the violation was committed knowingly or intentionally, the person will be sentenced to up to one year in prison or a fine of up to \$25,000, or both. 21 U.S.C.A. § 961(2). If a person is not prosecuted for the violation, he will be subject to a civil penalty of up to \$25,000. 21 U.S.C.A. § 961(1).

Dr. Musso Is Personally Liable for His Transgressions; All Licensed Professionals Associated with
His Companies Are Liable as Well

Dr. Musso is personally liable. No matter whether the crimes were committed in his own name or the names of his companies, Dr. Musso was a party – the central, controlling, determinative party – to the crimes, and he cannot hide his transgressions behind a veil of company protection. Likewise, each of Dr. Musso’s employees and associates, including those licensed by this Board, who intentionally participated in the commission of Dr. Musso’s illegal importation and distribution of sodium thiopental are liable as if they had committed the crimes directly and alone. O.C.G.A. § 16-2-20 (“(a) Every person concerned in the commission of a crime is a party thereto and may be charged with and convicted of commission of the crime. (b) A person is concerned in the commission of a crime only if he: (1) Directly commits the crime; . . . (3) Intentionally aids or abets in the commission of the crime; or (4) Intentionally advises, encourages, hires, counsels, or procures another to commit the crime.”); O.C.G.A. § 16-2-21 (“Any party to a crime who did not directly commit the crime may be indicted, tried, convicted, and punished for commission of the crime upon proof that the crime was committed and that he was a party thereto, although the person claimed to have directly committed the crime has not been prosecuted or convicted, has been convicted of a different crime or degree of crime, or is not amenable to justice or has been acquitted.”); 18 U.S.C. § 2(b) (“Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.”). Therefore, their licenses should be revoked.

Conclusion

This complaint is not about Dr. Musso's role at state-sponsored executions. That is a question of ethics. This is a complaint about the law. That the drug at issue in this case was used in executions by lethal injection is incidental. The law makes no distinction whether a drug is to be used to save lives or end lives. It is only concerned whether the person or entity importing and distributing the drug is properly licensed and authorized. Dr. Musso was neither. This Board possesses both the jurisdiction and authority to act. Dr. Musso violated both state and federal laws. This Board should revoke Dr. Musso's license to practice medicine; at the very least, it should suspend his license pending investigation into these matters.

Respectfully submitted,

Jessica Oats
Southern Center for Human Rights
83 Poplar St., NW
Atlanta, GA 30303
Tel: (404) 688-1202
Fax: (404) 688-9440

Date: June 20, 2011