

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
TWELFTH DIVISION**

**MCKESSON MEDICAL-SURGICAL INC.**

**PLAINTIFF**

**V.** Case No. \_\_\_\_\_

**STATE OF ARKANSAS; ARKANSAS  
DEPARTMENT OF CORRECTION;  
ASA HUTCHINSON, Governor of the State  
of Arkansas, in his official capacity; and  
WENDY KELLEY, Director,  
Arkansas Department of Correction, in  
her official capacity.**

**DEFENDANTS**

**PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER OR  
PRELIMINARY INJUNCTION**

Plaintiff McKesson Medical-Surgical Inc. (“McKesson”), for its motion for temporary restraining order or preliminary injunction against Defendants State of Arkansas (“Arkansas”), the Arkansas Department of Correction (“ADC”), Governor Asa B. Hutchinson (“Hutchinson”), and ADC Director Wendy Kelley (“Kelley”) (collectively, “Defendants”), states:

1. McKesson filed a Complaint in this case on April 18, 2017, containing a request for injunctive relief and return of its property.
2. McKesson has offices in Richmond, Virginia, and distributes life-enhancing and life-saving medical and pharmaceutical products to customers throughout the United States, including in Arkansas and to ADC.
3. To make its purchases, ADC provided McKesson proof of a medical license issued to ADC’s medical director. Over the course of the parties’ relationship, ADC continuously relied on the medical director’s license to purchase medical products. ADC’s

purchases included medical supplies like surgical gloves, syringes, stethoscopes, and similar products. ADC also purchased prescription pharmaceuticals, including lidocaine and aplisol. All of the foregoing products are standard items found in well-supplied medical facilities.

4. On or about July 11, 2016, ADC leveraged its medical director's license to purchase vecuronium bromide ("Vecuronium") over the phone from McKesson. In so doing, ADC implicitly represented that the order was placed at the request of a physician and that the products would be used for a legitimate medical purpose.

5. ADC never disclosed its intended purpose for these products, even though it knew full well that the manufacturer does not permit sales of Vecuronium to correctional facilities for this purpose.

6. The Arkansas statute specifically prohibits any physician from "caus[ing] or assist[ing] in causing the . . . euthanasia . . . of any individual," and forbids "administer[ing] dangerous or controlled drugs to a person other than legitimate medical purposes." Ark. Code Ann. § 17-95-704(e)(3), (4)(A) (2017). By relying on its on-file medical license, ADC implicitly represented that its physician was ordering and intending to use drugs in compliance with the laws of Arkansas.

7. With the manufacturer's assistance, McKesson discovered ADC's purchase on July 20, 2016, and on July 21, 2016, McKesson requested a return of the products from ADC. An ADC representative assured McKesson that the Vecuronium would be returned. Despite ADC's agreement to return the products and despite McKesson's refund of the monies used to purchase the Vecuronium, ADC has refused to return the products and thus retains both the Vecuronium and the refunded monies. ADC has stated its intent to use the Vecuronium to execute inmates within days of this filing.

8. McKesson's business reputation is severely and irreparably threatened by ADC's conduct. In the past few days, numerous manufacturers have filed amicus briefs and otherwise objected loudly to the use of these medical products in the upcoming executions. McKesson's relationships with both its customers and its manufacturer partners may be injured if ADC is not forced to return the illegally acquired Vecuronium.

9. McKesson brings this action for injunctive relief and the return of its property.

10. McKesson now seeks a temporary restraining order and preliminary injunction pursuant to Arkansas Rule of Civil Procedure 65.

11. A temporary restraining order or preliminary injunction is appropriate because ADC acted in bad faith when acquiring the Vecuronium, because ADC accepted the refund of the money used to purchase and agreed to return the Vecuronium and then reneged on its agreement, and because ADC intends to use the Vecuronium in the coming days to put ADC inmates to death in violation of McKesson's supplier agreement. McKesson's business reputation and business relationships will be irreparably harmed if ADC's plan to use Vecuronium in the planned executions proceeds. McKesson's property cannot be returned. Such harms cannot be remedied at a later date; once the executions are carried out, McKesson will suffer business and reputational harms that cannot be unwound.

12. To the extent that the Defendants have any interest at stake, that interest can be remedied through other means at a future date.

13. The Court should issue a temporary restraining order or preliminary injunction so the dispute over ADC's conduct can be resolved by the Court before irreparable harm is done to McKesson.

14. McKesson has made reasonable efforts to notify Defendants of the relief sought in this motion. McKesson emailed the complaint and this motion to Defendants' counsel immediately upon filing them. McKesson attempted to reach Defendants' counsel by phone to provide notice of these filings.

15. This motion is made without notice pursuant to Rule 65(b)(1) because the exhibits attached hereto and incorporated within clearly show that immediate and irreparable injury, loss, and damage will result to McKesson before Defendants can be heard in opposition. As explained in the complaint, the ADC's administration of capital punishment using McKesson's property is imminent. A Rule 65(b)(1) certification from counsel is attached hereto.

16. A brief in support is being filed with this motion and is hereby incorporated herein.

17. Pursuant to Rule 10(c) of the Arkansas Rules of Civil Procedure, Plaintiff's Verified Complaint (with exhibits) is hereby incorporated within.

WHEREFORE, McKesson Medical-Surgical Inc. respectfully requests that its Motion for Temporary Restraining Order or Preliminary Injunction be granted, and for all other just and proper relief.

Dated: April 18, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically on April 18, 2017, causing it to be served by email on counsel listed below:

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