



NMPI Advisory Board Position Paper

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USE OF RETAIL SALES PRECURSOR TRACKING DATABASES VERSUS "PRESCRIPTION ONLY" AS AN EFFECTIVE MEANS TO PREVENT METHAMPHETAMINE LABS

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NMPI Advisory Board Mission Statement:

The National Methamphetamine and Pharmaceuticals Initiative (NMPI) Advisory Board, composed of federal, state and local law enforcement and prosecutorial agency representatives from throughout the nation, provides oversight and expertise, ensuring a cohesive strategy of federal, state, and local concerns to further the NMPI mission of reducing and eliminating the occurrence of methamphetamine/chemicals/pharmaceutical drug crimes in the United States.

NATIONAL SITUATION:

The NMPI was founded on the premise that the availability of methamphetamine is directly related to the availability of the essential precursors to manufacture the drug. Those precursors being utilized by illicit methamphetamine lab operators in the United States are pseudoephedrine (PSE) and ephedrine (EPH).

History has shown that methamphetamine manufacturing can be affected immediately if the source of the precursor is found and eliminated. Methamphetamine cannot be made without a chemical precursor. PSE or EPH are currently essential in the modern manufacturing process.

Law enforcement across the United States is faced with evidence that the single precursor source for domestic methamphetamine labs is cold and allergy medicine containing PSE or EPH sold at retail stores and pharmacies. This is true for the large "super labs" (operated by major criminal organizations) producing at least 10 lbs. of methamphetamine per cooking cycle or the smaller "user labs" producing less than 2 ounces of methamphetamine per cook.

Law enforcement also recognizes from evidence found at meth lab sites, investigations, and intelligence, that although restricted, cold and allergy medicine is being illegally obtained through the technique known as "smurfing." This is the practice of purchasing the legal allowable amount of products containing PSE or EPH at one retail outlet but following up with successive purchases at other stores that in total exceed the daily or monthly legal limit. This can be done by one individual or a group of individuals operating together in one city, multiple cities, multiple counties, or multiple states depending on the sophistication of smurfing in any particular region. Significant amounts of the precursors can be obtained this way.

The NMPI Advisory Board believes that the level of "smurfing sophistication" in any area depends on two distinct factors: (1) The size of labs operating in the region which dictates the demand for the precursor, and/or (2) whether organized drug trafficking organizations are operating smurfing "cells" in the area to collect large amounts of the precursor for use in super labs in the same state or out of state.

Of particular concern to law enforcement (and a detriment to their investigations) is the fact that smurfers are increasingly not utilizing their own identification, but using multiple fake identification documents. All of this is done to circumvent the federal Combat Methamphetamine Epidemic Act (or similar state or local laws) which require identification and the signing of purchase logbooks for the purpose of monitoring limits and for law enforcement scrutiny.

The NMPI Advisory Board believes that sufficient evidence now exists to support the conclusion that smurfing is at epidemic proportions across the country with states in various stages of "smurfing sophistication." In some states, such as California and Arizona, smurfing is well organized and has progressed into its own black market industry. Smurfers run in groups along daily routes and sell their acquired cold medicine at the end of the day to a "collector" or "cell head" overseeing multiple groups. The venture is extremely profitable with boxes of cold and allergy medicine being purchased at about \$7.00 a piece and sold for as much as \$80 each. Some states do not have large methamphetamine lab seizure numbers (such as Arizona), yet large smurfing organizations exist and the methamphetamine precursor is being shipped out of state to California and Georgia by Mexican Drug Trafficking Organizations (DTOs) operating methamphetamine super labs.

USE OF TRACKING DATABASES:

Tracking retail sales of products containing PSE or EPH with databases populated with information gathered in manual or electronic log books has been conducted in some states across the country for at least the last two years. States such as Oklahoma, Arkansas, Kentucky, Tennessee, Arizona, California and others are using databases as an investigative tool to thwart smurfing. There are two crucial effectiveness factors to the use of tracking databases: (1) The information gathered by the database must be timely and accurate and (2) the database must be able to "block sales" of purchases over the legal amounts to be effective against the diversion of precursors into illegal activity.

Since PSE/EPH products are sold by a multitude of vendors, all these stores must also be electronically connected in order to be timely and accurate and in order to block sales over the daily and monthly limits. This is crucial in regards to the information gathering end; however on the receiving end, law enforcement must have the resources to investigate the leads generated by the databases in order to even have a chance of identifying smurfers and/or find methamphetamine labs.

The NMPI Advisory Board recognizes that methamphetamine lab incident numbers are now on the rise in the U.S., including in states that have been utilizing tracking databases. The NMPI Advisory Board attributes this to "smurfer sophistication" and the ability to adapt and thwart the use of these databases as an effective law enforcement tool. While it is recognized that the use of tracking and blocking was initially effective, today smurfers have taken away the two database effectiveness factors.

(1) The information gathered, while it may be timely, is no longer always accurate. Smurfers are increasingly utilizing fake identification and "corrupting" databases to the point where prosecutors want eyewitness accounts and investigation (read law enforcement surveillance) of violations before filing charges or authorizing arrests and/or search warrants. (2) Along with the accuracy factor, the use of fake IDs, as well as a multitude of smurfers working together, severely hampers a systems ability to block over the limit sales as smurfers distribute purchases so as not to initiate the "block." In addition, because of the lucrative profits of smurfing, there have been many cases of employee collusion/corruption to thwart blocked sales and/or aid in the use of fake identification documents.

Additional factor affecting database efficiency: Indications are that a significant amount of the rise in current lab incident numbers can be attributed to the now frequent use of the "one pot" method to manufacture methamphetamine by smurfers that are cooking themselves. These are small under two ounce cooks (which make up the majority of methamphetamine labs in the United States) and are conducted in a small cooking vessel (such as a bottle). This is a very quick (although dangerous) production method. The NMPI Advisory Board believes that the proliferation of these small pot or bottle cooks is directly attributable to anti-blocking efforts. This method does not require purchasing precursor containing products in amounts over the legal purchase limit which would trigger a blocked sale. For instance, the purchase of one box of cold or allergy medicine containing PSE would not by itself initiate a block. It can be argued that this technique could only be used once or twice per buyer in a 30 day time frame; however the use of multiple identification documents is still an option along with the sheer number of smurfers that are available to make purchases (which would avoid a blocked sale).

More important in regards to preventing methamphetamine labs, it should be noted that because of the portability and ease of the one pot/bottle method, law enforcement has virtually little chance of stopping the manufacturing of meth before it happens. Many used bottles (where methamphetamine has been cooked) are being found strewn along the side of the road where they have been thrown out a vehicle window after a quick cook following the purchase of the precursor containing product.

PRESCRIPTION ONLY OPTION:

In 2005 the State of Oregon passed legislation restricting the sale of products containing PSE and EPH to only those individuals who were able to present a valid prescription. The legislation went into effect on July 1, 2006. This effectively limited the amount of vendors who were able to sell these products to pharmacies only, where sales are conducted under the watchful eye of a registered pharmacist. Making PSE and EPH "Prescription Only" eliminated smurfing in Oregon as well as their entire methamphetamine lab problem. More importantly, methamphetamine labs have not returned to Oregon while in the rest of the country methamphetamine lab incidents are on the rise. There have been no adverse effects in Oregon because of this action. Shelves are still lined with cold and allergy medicine containing reformulated products for consumers (without PSE or EPH).

The Industry's Consumer Health Products Association (CHPA) claims PSE or EPH products should not be moved to "Prescription Only."

During the legislative process to enact the Oregon law, CHPA listed reasons against "Prescription Only." None of the below claims came true in Oregon.

1. Public outcry

There have been hardly any complaints, and no public outcry. More than three years have passed since the prescription law went into effect, and there has been no push back or effort to undo or weaken the Oregon legislation.

2. Inconvenience to consumers

Consumers will be terribly inconvenienced by having to go to a doctor to get a prescription for pseudoephedrine. The actual experience in Oregon has been that most consumers just purchase over-the-counter alternatives. Those few that still want pseudoephedrine call their physician and get a prescription.

3. Increased work load on pharmacists

Increasing work loads dispensing pseudoephedrine by prescription will occur. This did not happen as most consumers simply purchase over-the-counter alternatives. Oregon pharmacists have stated that they actually prefer the simplicity and ease of the Oregon law returning pseudoephedrine to prescription only status.

4. Increased work load on doctors and emergency rooms

Demands on the healthcare system will dramatically increase as a result of patients going to doctors, particularly emergency rooms, to get pseudoephedrine. This never happened.

5. Medicaid costs

Medicaid costs will skyrocket as the result of Medicaid patients getting prescriptions for pseudoephedrine. The actual statewide Oregon impact has been less than \$8,000 per year.

6. Impact on the poor

There will be an impact on the poor because they cannot afford to see a physician. For all of the reasons discussed in items 1 through 5 above, this did not happen in Oregon. The Oregon Criminal Justice Commission has made special inquiries on this issue. Contact with the directors of key service providers confirmed there has been no negative impact. By way of example, the Director of Northwest Human Services, which runs free clinics and homeless shelters in Salem, Oregon, checked with his clinic and shelter managers. The response: "We haven't heard a peep from either the patients or the providers since the change to pseudoephedrine. There are so many good alternatives that it isn't an issue."

7. Cost of pseudoephedrine

Pseudoephedrine prices will increase dramatically. The opposite occurred in Oregon. Pseudoephedrine is actually less expensive in Oregon due to pharmacies selling generic brands.

Note: Recently, cities in methamphetamine lab plagued Missouri have passed or are considering moving PSE/EPH products to prescription only. California, where super labs and very sophisticated large scale smurfing exists, currently has a bill pending in favor of prescription only.

MAJOR ORGANIZATIONS IN FAVOR OF PRESCRIPTION ONLY:

National Narcotics Officers Association Coalition (NNOAC)
National HIDTA Directors Association
California Attorney General's Office DOJ
California Bureau of Narcotic Enforcement
California Narcotic Officers Association (CNOA)
Kentucky Officers Association
Kentucky State Police
Oregon State Sheriffs Association
Oregon District Attorneys Association
Oregon Association of Chiefs of Police
Oregon Narcotics Enforcement Association
California Meth and Pharmaceuticals Initiative
Southeast Meth and Pharmaceuticals Initiative
Southwest Meth and Pharmaceuticals Initiative

NMPI POSITION:

Based on all of the above:

The NMPI Advisory Board supports "Prescription Only" over the use of tracking databases as the only effective means to prevent illicit methamphetamine labs in the United States ***

- "Prescription Only" is the only proven tool that keeps legitimate consumer access while preventing methamphetamine labs.
- "Prescription Only" addresses "smurfer sophistication" at all levels in all states.
- "Prescription Only" addresses precursor demand no matter what size methamphetamine labs are being supplied, in the same state or another state.

- “Prescription Only” of PSE/EPH, as with any new controlled product, can easily be regulated by new or existing state prescription monitoring programs.
- “Prescription Only” saves taxpayers millions of dollars in investigative costs, lab cleanup costs, incarceration costs, court costs, social services costs, etc.
- “Prescription Only” was the rule for PSE/EPH prior to 1976.

*** The position of the NMPI Advisory Board reflects the personal views of the Board members, and does not purport to represent the official position of the agencies by which they are employed.

The NMPI Advisory Board recognizes that:

- Law Enforcement agencies do not have the resources to chase smurfers after they have received the precursor. There are too many leads to follow.
- **Law Enforcement does not want to arrest more smurfers or find more methamphetamine labs. Law Enforcement wants to eliminate smurfing and prevent methamphetamine labs.**

Questions or requests for additional information can be directed to:

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