

Below is a line-by-line response to recently published information by the Consumer Healthcare Products Association (CHPA), who represent the manufacturers of pseudoephedrine (PSE) products. Information in regular text is from CHPA. Information in **blue text** are responses from Rob Bovett, primary author of the legislation that returned PSE to a prescription drug in Oregon.

The original CHPA document can be found at [http://www.chpa-info.org/pressroom/2010PK\\_PSEetracking.aspx](http://www.chpa-info.org/pressroom/2010PK_PSEetracking.aspx)

### Pseudoephedrine - Myths & Facts

*Under current federal law, the amount of allergy and cold medicines containing pseudoephedrine (PSE) an individual can buy is limited to prevent these medicines from being purchased in large quantities and diverted to manufacture the illicit drug, methamphetamine.*

***Federal law is being evaded through “smurfing” – many persons buying small lawful amounts of PSE, and then selling that PSE, usually at a substantial profit, to those who manufacture meth. A virtual black market for PSE.***

*Some states are considering more restrictive legislation to make PSE available by prescription only.*

***Oregon did so, effective July 1, 2006, and has completely eliminated smurfing as a result.***

*CHPA supports a more cost effective solution, electronic tracking, that is the most effective solution to reduce methamphetamine without punishing law-abiding consumers.*

***Electronic tracking is no solution at all. Smurfing evades electronic tracking.***

Myth	Fact
<p>Most sales of PSE-containing medicines are for making meth.  <b>This is no myth. When confronted with estimates by the California Bureau of Narcotics Enforcement with estimates of 50% diversion, the industry declined to deny or refute such estimates.</b></p>	<p>Assertions about a high rate of diversion are anecdotal. Actual research from states with tracking capabilities indicate a very small percentage rate of declined sales.  <b>That is because <u>smurfing is not declined by electronic tracking.</u></b>                      PSE sales in states where there is a known meth lab problem correlate closely with that state’s population just as they do in states without a meth lab problem.  <b>Even in states with few meth labs, such as Arizona or Nevada, there is massive amounts of smurfing fueling super labs in Central California.</b></p>
<p>An “Rx only” law won’t make it more difficult for law-abiding people to get their medicines.  <b>This is a red herring. An “Rx only” law will make it more difficult to obtain PSE products. That is precisely the point.</b></p>	<p>An Rx-only law would require consumers to take time away from home, work, or school to get a prescription for their decongestant.  <b>Store shelves are currently lined with alternative products. Most consumers have already made the switch to those alternatives. Others simply call their physician, who in turn can call in a prescription for PSE.</b>                      Additionally, there will be significantly higher costs to consumers and the healthcare system at large with a prescription mandate for these medicines.  <b>That has not proven to be the case in Oregon, after nearly four years of actual experience.</b>                      In many cases it will take them more time to get there medicine, which will delay treatment.  <b>PSE does not cure anything.</b>                      Many consumers live in medically underserved areas where access to a doctor is limited.  <b>PSE does not cure anything.</b></p>

<p>Tracking sales of OTC medicines electronically won't work  <b>That is correct. Electronic tracking does not stop smurfing.</b></p>	<p>E-tracking has been proven to work in Kentucky and has been adopted by 9 other states.  <b>It does not work to stop smurfing, and meth lab incidents are skyrocketing in Kentucky. According to Kentucky authorities, e-tracking is now responsible for identifying only 10 percent of Kentucky meth lab incidents. That is why the Kentucky Narcotics Officers Association now supports returning PSE to a prescription drug, as it was prior to 1976.</b>  E-tracking is supported by the National Sheriffs Association because e-tracking systems are an effective way to block illegal PSE sales and help police catch meth cooks.  <b>But it doesn't stop smurfing, which is the source of the problem.</b>  Importantly, these systems can be linked together to ensure a multi-state solution that prevents meth cooks from simply crossing state borders to evade the law.  <b>Multi-state e-tracking is no solution at all. Smurfing is rampant in states with e-tracking. In fact, e-tracking conveniently lets smurfers know when they can lawfully purchase more PSE to divert to meth labs. Electronic tracking facilitates and enhances PSE smurfing and the PSE black market.</b></p>
<p>Tracking sales of OTC medicines electronically will infringe on legitimate consumers' privacy  <b>There is always risks associated with developing a large centralized database with protected health information that can get into the wrong hands. But e-tracking should not be rejected merely for this reason. It should be rejected because it fails to stop smurfing.</b></p>	<p>Current federal law already requires that this information be collected. E-tracking automates the data so it is available real-time and can block illegal sales.  <b>But illegal sales are not the problem. Legal sales diverted through smurfing is the problem.</b>  Federal law prohibits purchase information from being accessed, used or shared for any purpose other than to ensure compliance, and the information may only be accessed by law enforcement.  <b>The risk is posed by an unnecessary additional database full of protected health information.</b></p>
<p>It's not important to keep PSE-containing medicines on the market because there are plenty of alternatives.  <b>Moving PSE to prescription only does not remove PSE from the market. It returns PSE to its status prior to 1976. That being said, some countries have simply chosen to ban PSE entirely. It does not cure anything.</b></p>	<p>PSE is clinically shown to reduce congestion due to allergy and colds, and millions of consumers choose PSE over other decongestants. For some people, it is the only oral decongestant that works and is the only decongestant available for 12-hour and 24-hour relief.  <b>But the costs associated with keeping PSE over-the-counter are devastating to public safety, our environment, and to drug endangered children. We must tell the pharmaceutical that enough is enough. No more blood money from PSE smurfing diverted to make meth. We must return PSE to a prescription drug, end smurfing, and end the meth epidemic that has destroyed too many lives and families.</b></p>

For more information, visit  
<http://www.oregondec.org/>  
April 30, 2010

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## **OTC Industry Calls on Congress to Toughen Combat Meth Act**

Summary of CHPA Testimony—Linda Suydam, President

April 13, 2010

### *Electronic PSE Sales Tracking is the Best Solution*

- Today, the manufacturers of over-the-counter medicines containing pseudoephedrine (PSE) are calling on Congress to improve the Combat Methamphetamine Epidemic Act by requiring a unified, national electronic tracking system to block illegal sales of PSE-containing medicines.

**Electronic tracking is no solution at all. The problem (domestic meth production) is fueled by the smurfing of pseudoephedrine (PSE) - many persons buying small lawful amounts of PSE, and then selling that PSE, usually at a substantial profit, to those who manufacture meth. A virtual black market for PSE. In the Midwest, that PSE is diverted to thousands of small user meth labs. In the West, it is diverted to super labs in Central California. Electronic tracking does not prevent any of that smurfing. In fact, electronic tracking conveniently lets smurfers know when they can lawfully purchase more PSE to divert to meth labs. E-tracking facilitates and enhances PSE smurfing and the PSE black market.**

- Ten states already have adopted this solution – passing legislation that requires retailers to use a state-wide electronic tracking system for pseudoephedrine sales.

### **A tragic distraction from a proven solution to the problem.**

- PSE manufacturers are funding the National Precursor Log Exchange, or NPLEx, a robust electronic tracking system for retailers and law enforcement. Through cutting edge technology, NPLEx is the only multi-state system for controlling drug dispensing and offers robust functionality that is simply not available in the prescription drug arena. Key features of NPLEx include:
  - Effective enforcement of PSE sales limits through real-time blocking of illegal sales.
  - Seamless connectivity from all stores in every NPLEx state, working across state lines.
  - Unified logging of purchase records already required by law.
  - Identification of meth cooks for law enforcement.
  - Secure data storage legally accessible only by law enforcement.
  - Faster sales transactions for retailers and consumers.
  - No new burdens on legitimate consumers.
  - No access charges for retailers, pharmacists, or law enforcement.

**Electronic tracking is merely the latest effort of the pharmaceutical industry in a tragic 34 year saga to delay and prevent the implementation of effective solutions to end smurfing and the meth epidemic. It's all about the money. Blood money.**

## Maintaining Access to OTC PSE is Important for Consumers

For many consumers, PSE is the ingredient that works best for them.

PSE is the only oral decongestant available 12-hour and 24-hour sustained-release formulations.

Despite current sales restrictions PSE remains the oral decongestant of choice for 15 million Americans per year.

PSE is a key ingredient in leading cold and allergy medicines like Sudafed, Claritin-D, Zyrtec-D, and a number of other brands and store label medicines.

**But the costs associated with keeping PSE over-the-counter are devastating to public safety, our environment, and to drug endangered children. We must tell the pharmaceutical that enough is enough. No more blood money from PSE smurfing diverted to make meth. We must return PSE to a prescription drug, end smurfing, and end the meth epidemic that has destroyed too many lives and families.**

### *Oregon's Meth Lab Decline is Not Unique*

The fact is that the meth lab problem has dramatically abated in many States in the West – with Oregon being the only state to impose a prescription mandate. (Percentage declines since peak: Arizona, 97%; California; 93%; Idaho, 94%; Nevada, 97%; Oregon, 98%; Utah, 99%; Washington; 97%).

### **This is misleading in two significant ways:**

**1. It relies upon 2009 data from the El Paso Intelligence Center (EPIC). Timely reporting to EPIC varies from state to state. Some states still have not completed their 2009 reporting to EPIC. Take Washington and Oregon, for example. Oregon has reported 10 total meth lab incidents to EPIC for 2009. That number is up-to-date and correct. However, Washington is still completing its reporting. It's actual number for 2009 was not 39, as used and misrepresented by CHPA in this data. The actual Washington number for 2009 was 186, representing an increase from the prior year. The industry has been made aware of this, yet they continue to use this incomplete data and make these misrepresentations.**

**2. More important, it completely misses the point. Massive pseudoephedrine (PSE) smurfing in the Midwest is feeding thousands of small user meth labs. Massive super smurfing in the West is feeding super labs in Central California. For example, Arizona and Nevada have very few meth labs. But super smurfing in those states helps fuel super labs in Central California, which produce tons of meth. Those states are therefore still a major part of the problem. Oregon is not. Oregon eliminated smurfing by returning PSE to a prescription drug, as it was prior to 1976.**

For more information, visit  
<http://www.oregondec.org/>  
April 30, 2010

Rob Bovett's response to Consumer Healthcare Products Association (CHPA) ad and flyer in Kentucky. Each statement in the CHPA ad and flyer is shown in red font. My response is in blue font.

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74 percent of Kentuckians agree that requiring prescriptions for common cold and allergy medications is an unnecessary burden for law-abiding citizens.

Similar to the CHPA poll results from other states. But they fail to provide the poll questions. Because the questions are misleading. As my father used to say: "Garbage in, garbage out."

Kentucky already has a state-wide electronic tracking system in place to enforce sales limits on pseudoephedrine - a key ingredient in many nonprescription cold and allergy medicines that can be used in the production of methamphetamine.

A nice tool. But purely reactive, and does not solve the problem.

Since its implementation in July 2008, this system has helped pharmacists stop the illegal sale of PSE and law enforcement track down meth cooks and their labs.

Old news. Smurfing now completely evades those controls.

The system blocks about 5,000 sales each month (or about 4.4 percent of the total). Without NPLEx, in 2009 alone, more than 100,000 grams of PSE would have been sold illegally.

Yes, but a lot more is now evading NPLEx due to smurfing, which is fueling Kentucky's tragic resurgence of meth labs.

A number of Kentucky law enforcement agencies report that e-tracking leads to the majority of their meth lab busts.

Not any more. Due to smurfing, that percentage is now down to 10 percent.

A prescription requirement for these cold and allergy medicines is bad public policy that will hurt ordinary citizens.

With almost four years of actual experience in Oregon, that is simply not the case. Oregon has eliminated smurfing, nearly eradicated meth labs, driven drug arrests down by 30% (all due to meth), and experienced our nation's largest drop in crime rates. There has been no public outcry to undo the prescription requirement.

Increased Healthcare Costs: Restricting access to PSE cold and allergy medicines will increase the costs of an already overstretched healthcare system. Under a prescription-only mandate, if only half of those Kentuckians who currently rely on these medicines were forced to go to the doctor for a prescription, the cost to the healthcare system in doctor visits alone would be over \$20 million.

With almost four years of actual experience in Oregon, that is simply not the case. Most Oregonians simply purchase OTC products, which line the shelves in Oregon. The total impact on the state medicaid system has been less than \$8,000 per year.

Reduced Tax Revenues: In Kentucky, over-the-counter (OTC) medications are subject to state sales tax while prescription medications are not. Restricting access to PSE products will decrease Kentucky's state sales tax revenues by well over half of a million dollars in the first year alone.

Blood money. By comparison, what is the actual cost to Kentucky taxpayers and citizens for responding to meth labs? Millions of dollars each year in law enforcement services, cleanup, incarceration, and more. That doesn't even take into account the tragedy bestowed on Kentucky's drug endangered children.

Decreased Access to Healthcare: Kentucky is already experiencing deep shortages in primary care physicians and nurses. Adopting a prescription-only policy for cold and allergy medicines containing PSE will flood Kentucky's primary care physicians with an estimated 17,000 additional physician office visits annually.

With almost four years of actual experience in Oregon, that is simply not the case. But don't take my word for it - here is what Oregon's leading physician and pharmacist associations have said:

\* <http://www.oregondec.org/CSPSC/008a-ACEP.pdf>

\* <http://www.oregondec.org/OMA.pdf>

\* <http://www.oregondec.org/US/OSPA.pdf>

The Truth About Lab Numbers: The Kentucky State Police count every "shake and bake" bottle found as a "lab". This means that a two-liter bottle used to make meth constitutes a lab under current KSP reporting guidelines.

Because they are meth labs. They catch fire, explode, poison the environment, and poison drug endangered children.

The truth is that the numbers are also up because MethCheck has become an invaluable tool for law enforcement. Narcotics officers across the Commonwealth use the e-log system to develop leads, setup informants, and take down anyone from the small-time tweaker, to the multi-national methamphetamine ring.

Not any more. Due to smurfing, the percentage of Kentucky meth labs identified by MethCheck is now down to 10 percent of the total. Smurfing has largely nullified the positive impact of MethCheck.

Under a prescription mandate, purchases could no longer be blocked at the point-of-sale and monitoring would be limited due to HIPAA privacy laws.

They won't need to be blocked. The patient will have a prescription.

The criminals would once again become "ghosts".

After almost four years of actual experience in Oregon, there has not been a single case of prescription smurfing. Oregon's remaining handful of meth labs each year are traced to smurfing in neighboring states.

Rx-only would be a step back in the fight against meth.

Returning pseudoephedrine to prescription only, as it was prior to 1976, is not only a step forward, it is a proven and effective solution to end smurfing. In 1976, we let a Genie out of a bottle. We moved pseudoephedrine from a prescription drug to over-the-counter. Ever since, we've been putting band-aids on the situation, while meth labs blow up and catch fire, lives and families are destroyed, neighborhoods devastated, our environment poisoned and, most tragically, drug endangered children suffer, or worse. Enough is enough. We must tell the pharmaceutical industry no more band-aids, and put the Genie back in the bottle.

**STOP METH. NOT MEDS.**

**STOP PHARMA. STOP METH LABS.**

For more information, see [www.oregondec.org](http://www.oregondec.org)



## Lincoln County District Attorney

225 West Olive Street, Room 100, Newport, Oregon 97365  
541-265-4145, FAX 541-265-3461, www.co.lincoln.or.us/da/

**Rob Bovett**  
District Attorney

**Marcia Buckley**  
Chief Deputy

### MEMORANDUM

TO: California State Assembly  
Committee on Public Safety

FROM: Rob Bovett, Chair, Oregon Meth Task Force

DATE: June 30, 2009

SUBJECT: CHPA advertisement and petition opposing SB 484

As you may already be aware, following passage of Senate Bill 484 in the Senate, the Consumer Healthcare Products Association (CHPA), the lobbying organization that represents the pharmaceutical manufacturers, began an extensive advertising campaign in California against the bill.

An example of the ads that ran on the internet is shown to the right (pulled from CNN). Another example is on the reverse of this memo, from the header of the Sacramento Bee's story regarding SB 484.

The ads are active and animated, and call on the viewer to click on the button and add the viewer's name to a letter to the California legislature in opposition of the legislation.

However, there are two problems with the ad, which I will characterize as misleading at best (in an effort to remain polite, I will avoid outright using the "L" word):

(1) Medicaid costs wont be "run up." *See* the attached letter from the Oregon Department of Human Services; and

(2) **Senate Bill 484 applies only to allergy medicines that contain pseudo/ephedrine as an ingredient. It does not apply to ALL allergy medicines as falsely stated in the ad. What is most troubling about this false statement is that CHPA represents the manufacturers of those allergy medicines. They know better.**



**SACRAMENTO DUMB IDEA #723: Run up Medicaid costs by making ALL allergy medicines **Rx** only.**

Paid for by the Consumer Healthcare Products Association

**STOP THEM, AGAIN.**



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Tuesday, June 16, 2009

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## California may require prescriptions for allergy pills amid meth lab concerns

By Marissa Lang  
[mlang@sacbee.com](mailto:mlang@sacbee.com)

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Published: Tuesday, Jun. 16, 2009 - 12:00 am | Page 1A  
Last Modified: Tuesday, Jun. 16, 2009 - 8:02 am

You've been getting your Sudafed. Zyrtec-D and

### MORE INFORMATION

#### ▲ California legislation to battle meth

What would Senate Bill 484 do? In an attempt to reduce the number of methamphetamine labs in California, the legislation would make pseudoephedrine-based and ephedrine-based drugs available only to patients who first obtain a doctor's prescription.

Opponents include:

California Public Defenders Association, Consumer Healthcare Products Association and the Association





# Oregon

Theodore R. Kulongoski, Governor

## Department of Human Services

Addictions and Mental Health Division

500 Summer Street NE E86

Salem, OR 97301-1118

Voice 503-945-5763

Fax 503-378-8467

June 15, 2009

2009 JUN 17 PM 1:53

ENTERED \_\_\_\_\_

Rob Bovett  
225 West Olive St., Ste 110  
Newport, OR 97365

Dear Mr. Bovett:

In July of 2006, Oregon law required an individual possess a valid prescription to purchase pseudoephedrine at a pharmacy. Since then, methamphetamine labs have almost been eliminated in Oregon. In 2006 there were 63 documented clandestine methamphetamine labs reported in Oregon. Two years later the number of labs decreased to 18.

Per your request, we contacted our state Medicaid program to determine the financial impact of requiring a valid prescription for the purchase of pseudoephedrine. There has been a very small impact to Oregon's Medicaid program. Requiring a prescription for the purchase of pseudoephedrine has resulted in an annual increase of \$7,780 to the state's Medicaid program based on the cost of the medication.

The increase in the cost of prescriptions to the state's Medicaid program is far outweighed by the decrease in costs associated with public safety, emergency room visits, and social services.

Sincerely,

Richard L. Harris  
Interim Assistant Director

TH/pt

If you need this letter in alternate format, please call 503-945-5763 (Voice) or 800-375-2863 (TTY)

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225 West Olive Street, Room 100, Newport, Oregon 97365  
541-265-4145, FAX 541-265-3461, [www.co.lincoln.or.us/da/](http://www.co.lincoln.or.us/da/)

**Rob Bovett**  
District Attorney

**Marcia Buckley**  
Chief Deputy

### MEMORANDUM

TO: Kent Shaw, California BNE

FROM: Rob Bovett, ONEA

DATE: June 8, 2009

SUBJECT: PSE Prices – Oregon and California

This memo is to document our conversation the other day regarding yet another of the items in the false parade of horrors presented by the industry in opposition to California Senate Bill 484, which would move pseudoephedrine products to prescription-only. As you know, this issue was again raised last week by California State Senator Samuel Aanestad (R- Grass Valley) during the Senate floor debate on SB 484. During that debate, Senator Aanestad repeatedly showed the Senate his own nasal decongestant spray, which he pulled from his pocket, and asserted that its cost would go from \$4 to \$40 or more if SB 484 is passed.<sup>1</sup>

At my request, back in October of 2008, our Pharmacy Board staff surveyed some pharmacists in Oregon to answer the question regarding pseudoephedrine product prices in Oregon before and after the switch to prescription-only (I made that request due to the industry raising that same red herring in yet another state). Here is the result:

For Sudafed® (30mg, #60), which typically sold for around \$5.99 per box in Oregon before moving to prescription-only, after moving pseudoephedrine to prescription-only, here were the prices at some of our most frequented pharmacies in Oregon: Bi-Mart, \$5.99; Costco, \$7.11; Fred Meyer, \$9.99; Safeway, \$12.49; Walgreens, \$11.99; and Wal-Mart, \$6.46.

That being said, what I find equally fascinating is a comparison of California and Oregon pseudoephedrine product pricing. As you noted, comparing prices between California (OTC) and Oregon (prescription-only) reveals that pseudoephedrine products appear to be less expensive in Oregon. For example, Oregon pharmacies are selling 100 tablet bottles of pseudoephedrine for the same price as a 48 tablet box of pseudoephedrine in California (52% more product for the same price). Go figure.

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<sup>1</sup> As an ironic aside, pseudoephedrine was not approved by the FDA in 1976 for use in OTC nasal decongestant sprays. 41 Fed Reg 38,312 (1976), codified at 21 CFR Part 341. That remains so today. 21 CFR § 341.20(b)(2008). Therefore, it appears that the product actually flashed repeatedly by Senator Aanestad to prove his point in opposition to SB 484 (likely a phenylephrine or oxymetazoline product) was actually proving the very point that had just made by Senator Rod Wright in support of SB 484. So it goes.