

July 13, 2009

CHPA Comments on Proposed Ordinance to Place OTC Pseudoephedrine on Prescription Status

Members of the Jefferson County Council:

The Consumer Healthcare Products Association (CHPA)'s mission is to protect access to nonprescription medicines with as few barriers for consumers as reasonable. We supported the requirements in the Combat Meth Act that keep pseudoephedrine (PSE) products behind the counter and limit sales to 3.6 grams per day and 9 grams in 30 days. This is approximately the therapeutic dose, and it makes sense to allow consumers to buy PSE products that are approved by the Food and Drug Administration as nonprescription medicines without a prescription, as long as they stay within legal quantity limits.

We share your concerns about clandestine meth labs, however, and we do not want our products being used illegally. We are not satisfied with opposing prescription status for PSE without offering an alternative. We are approaching the state of Missouri to propose industry funding for a statewide electronic tracking system to ensure that illegal PSE sales are not made. We must respectfully oppose your proposed ordinance, and we encourage your consideration of this alternative approach.

Right now there is no good system in place to stop a meth cook from walking into multiple pharmacies to exceed legal PSE sales limits. Placing limits on how much PSE a consumer can buy per month was good policy, but it lacks an effective enforcement mechanism. An electronic sales tracking system works like a credit card transaction: if you have already purchased your daily or monthly limit of PSE, you cannot buy more. It is not a passive compilation of purchase data that can only be used to generate leads to build cases against meth cooks. It is an active system that notifies the pharmacist before an illegal sale is made and instructs the pharmacist not to make the sale.

We have been working in several states to enact laws prohibiting the sale of over-the-counter (OTC) PSE in excess of state and federal quantity limits. This year, legislation enabling the use of a central, real-time database to block "smurfers" from having any ability to buy more PSE than legally allowed was signed into law in Illinois, Iowa, Kansas, and Louisiana. It passed in Missouri in 2008 but has not gone into effect. We are working to pass a similar bill in California.

Because Oklahoma, Arkansas, and Kentucky already have these systems in place, Missouri will soon be surrounded by states that block illegal PSE sales. We are hopeful that by working with the state to implement an electronic tracking system, it could be fully functioning by January 1, 2010. Our member companies are providing support for this program because the sales limits are not being and cannot be enforced without it, and states need to act to control the illegal diversion of PSE for manufacturing meth. Blocking illegal sales with electronic tracking allows the state to keep the tax revenue legal PSE sales generate, it creates no new barriers for legitimate consumers, and it stops criminals from violating sales limits by “smurfing.”

While Missouri is a very small market for PSE, accounting for only about 1.8% of U.S. nonprescription PSE sales, it is important for this product to remain accessible to allergy sufferers in Missouri. While some products have been reformulated with a different decongestant, phenylephrine, the millions of people who still go through all the inconvenience of waiting in line at the pharmacy to buy PSE demonstrate that for them, PSE is their medicine of choice. Phenylephrine cannot be formulated in an extended release formulation, so there is no comparable nonprescription substitute available for the most popular types of PSE allergy products.

Since Oregon began requiring prescriptions for PSE in 2006, no other state has followed suit. While Oregon has seen a significant reduction in meth lab incidents, Oregon is one of 25 states that had less than 25 meth lab incidents in 2008. Their results are the norm, not the exception. Oklahoma had 1,068 meth lab incidents in 2003 when they were at their peak—twice as many as Oregon has ever recorded—and 102 incidents in 2008. This 90% reduction is due in part to their electronic tracking system, which has been in place since 2006. Kentucky has released data about the number of sales its system blocks because they would have been over the legal limit. Less than 2% of PSE sales are blocked in Kentucky. This demonstrates that the vast majority of PSE sales are legitimate.

We do not believe that it is appropriate or effective for policy regarding prescription status of medicines to be made at the local level.

Respectfully submitted by Mandy Hagan, Director, State Government Relations

*CHPA is the trade association representing major U.S. manufacturers of nonprescription medicines.*