Unnecessary Epidemic

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Handout and Website

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Thirty-four years of federal failures to control the diversion of pseudo/ephedrine to meth labs
1976

- Food and Drug Administration (FDA)
  - Ephedrine (E) and pseudoephedrine (PSE) approved for sale as decongestants in over-the-counter (OTC) cold and allergy medicines
  - **Mistake**: Moving E and PSE to OTC
    - The tragedy begins . . .
A meth lab:

Start with pseudo/ephedrine
Remove the hydroxyl group
Add back hydrogen

(+) Methamphetamine (C\textsubscript{10}H\textsubscript{15}N)

1986

- Anti-Drug Abuse Act (ADAA) (PL 99-570)
  - Started as the Drug Enforcement Act (Sen Dole)
    - Part 6 - Chemical Diversion and Trafficking Act
      - Proposed strong controls on E and PSE at wholesale and retail levels
    - But industry objected
    - Strong controls got removed
  - Replaced with requirement that the AG study the situation and report back to Congress
- **Failure**: A failure to act
1988

- Chemical Diversion and Trafficking Act (CDTA) (Title VI, Sub A, of Anti-Drug Abuse Act) (PL 100-690)
  - AG reported back to Congress in 1987
    - Recommended strong control of E and PSE as proposed in 1986, but with a big difference urged on the Administration by pharma
      - Exempting any E or PSE contained in a pharmaceutical product (the infamous and tragic “31 word exception”)
      - **Loophole**: E and PSE pharma products exempt from strong domestic controls

Also in 1988 . . .

- 1988 Convention
  - Strong **international** controls on E & PSE
  - But pharma also successfully secured an exemption for E and PSE contained in pharmaceutical products
  - **Loophole**: E and PSE pharma products exempt from strong international controls
1993

- Domestic Chemical Diversion Control Act (DCDCA) (PL 103-200)
  - By 1993 something had to give . . .
  - Pharma sacrificed E to strong controls
  - **Loophole**: PSE exempt
    - Meth makers simply switched from E to PSE

1996

- Comprehensive Methamphetamine Control Act (MCA) (PL 104-237)
  - Context
    - DEA had adopted strong rules to control PSE
    - Rules set to go into effect on October 7, 1996
  - MCA signed into law four days before that date
    - Section 210 of the MCA specifically declared the DEA rules
      - “null and void and of no force or effect”
1996

• Comprehensive Methamphetamine Control Act (MCA) (PL 104-237)
  – MCA instead provided a 24 gram reporting threshold
    • But products in blister packs exempt
      – Premise: Cookers, addicts, and smurfers won’t spend time popping pills out of foil covered blister packs
      – **Loophole:** “Blister pack” exemption

2000

• Methamphetamine Anti-Proliferation Act (MAPA) (Title 36 of the Children’s Health Act) (PL 106-310)
  – Reduced the MCA reporting threshold from 24 to 9 grams
  – **Loophole:** Retained “blister pack” exemption
2006

- Combat Methamphetamine Epidemic Act (CMEA) (Title VI of PATRIOT Act reauthorization) (PL 109-170)
  - Placed all PSE products behind the counter
  - Requires ID and logging for each sale
  - Daily and monthly purchase limits, etc
  - **Loophole**: Smurfers evade through
    - Group smurfing (Midwest and South)
    - Super smurfing feeding super labs (West)
    - False ID smurfing (everywhere)

2008

- Methamphetamine Production Prevention Act (MPPA) (PL 110-415)
  - Tightened up CMEA logbook requirements
  - **Loophole**: Smurfers continue to evade:
    - Group smurfing
    - Super smurfing
    - False ID smurfing
Current Proposals

• Combat Methamphetamine Enhancement Act
  – Tighten up wholesale PSE controls
  – Doesn’t address the problem (smurfing)
• Nationwide E-tracking (MethCheck / NPLEx)
  – Can prevent illegal retail PSE sales . . .
  – But can’t stop smurfing
• **Loophole**: Smurfers will continue to evade:
  • Group smurfing
  • Super smurfing
  • False ID smurfing

Where the smurfing is happening . . .
The “Super” Smurfing States

- California
- Arizona
- Nevada
- Washington
- Utah

A compounding factor . . .

- Mexico has banned PSE entirely
- This is a really good thing
- Why?
  - DTOs forced to use Phenyl Acetic Acid (PAA)
  - The immediate precursor to Phenylacetone aka Phenyl-2-Propanone (P2P)
  - P2P makes \( dl \)-meth (weaker than \( d \)-meth)
- Means DTO meth potency is down
  - Don’t confuse potency with purity
DTO meth potency down

This is a good thing

• But this means more pressure to cook meth here in the United States
  – User labs
  – Super labs
• All of this is fueled by
  – Smurfing, smurfing, smurfing
Part 2: Meth Epidemic Solutions

Unnecessary Epidemic

Smurfing solutions

Getting rid of smurfing . . .

Options:

1. Electronic database monitoring
   - Expensive (more arrests and incarceration)
   - Burdensome
   - Reactive
   - Limited impact . . . still have smurfing!

2. Prescription only
   - Oregon . . . since 2006 . . .
Smurfing by example . . .

State Sen. Ginny Burdick of Portland (left), Rep. Wayne Krieger of Gold Beach (center) and Sen. Roger Beyer of Molalla (right) joined with Rep. Greg Macpherson (not in picture) of Lake Oswego to show how easy it is for meth cooks to obtain enough cold medicine to manufacture the illicit drug.
There were only a few “no” votes

- HB 2485 – 9 out of 90
- SB 907 – 1 out of 90

Did the sky fall?

The parade of horribles . . .

PARADE ITEMS:
- Public outcry
- Inconvenience
- Medicaid costs
- Impact on poor
- Forced out of OR
- Won’t work
Oregon Results . . .

• Smurfing eliminated!

. . . and meth labs nearly eradicated
And the sky didn’t fall . . .

The parade of horribles never came true

PARADE ITEMS:
- Public outcry
- Inconvenience
- Medicaid costs
- Impact on poor
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- Won’t work

NMPI Advisory Board

- “Law Enforcement does not want to arrest more smurfers or find more methamphetamine labs. Law Enforcement wants to eliminate smurfing and prevent methamphetamine labs.”

  – NMPI position paper (October 2009)
Put another way . . .

“You are either for meth labs, or you are against meth labs.”

- Marshall Fisher, Director
Mississippi Bureau of Narcotics

In 1976 . . .

• We let a Genie out of the bottle
  – *We moved PSE from Rx to OTC*
• Ever since – band aids
• Growing meth epidemic and meth labs . . .
  – Destroying lives, families, neighborhoods
  – Poisoning our environment and drug endangered children
• Enough is enough!
• Time to put the Genie back in the bottle
Keep in mind . . .

- We are only talking about 15 products (plus generics of those 15)
We need a real solution

• Put the Genie back in the bottle:
  – No more band-aids
  – No more compromises
• Return PSE to prescription drug:
  – As it was before the tragic FDA action in 1976
• We no longer have to guess what works
  – And what doesn’t work
• After nearly 4 years of actual experience in OR:
  – Smurfing has been eliminated
  – Concerns about doctor shopping smurfing have not materialized
  – Little to no public outcry