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Nevada Senate Committee on Health and Human Services

Senate Bill 203 - Scheduling the methamphetamine precursor pseudoephedrine which must not be dispensed without a prescription.

Dear Chair Senator Allison Copenig, Vice Chair Senator Valerie Wiener, and distinguished members of the committee:

Thank you for the opportunity to speak with you about the important topic of domestic methamphetamine production and what I believe to be the only viable solution to this problem: prescription pseudoephedrine.

My name is Kent Shaw and I come before you today with 24 years of law enforcement experience, 20 years of which has been devoted to drug enforcement. As a local police officer, task force agent, and special agent I have investigated hundreds of methamphetamine cases and seized more than 100 methamphetamine laboratories. While a task force agent and special agent I was assigned to a Clandestine Methamphetamine Laboratory Enforcement Team. I also directed investigations of significant drug trafficking organizations that involved the interstate and international trafficking of methamphetamine and other drugs. I received many hours of specialized training in the methods used to locate, identify, seize, and handle hazardous materials associated with methamphetamine labs. I have also testified as an expert witness in the manufacturing of methamphetamine in both federal and state courts. Additionally, in a training environment, I have actually manufactured methamphetamine. I later served as a drug unit supervisor, a commander of several multi-jurisdictional task forces, and a regional manager overseeing methamphetamine investigations.

My current position is the Assistant Chief of the California Department of Justice, Bureau of Narcotic Enforcement (BNE). Some of my responsibilities include the administration of California's Methamphetamine Strategy (CALMS), the California Clandestine Laboratory Enforcement Program (CLEP), the California Controlled Chemical Substances Program, and California's Prescription Drug Monitoring Program. I am also an advisory board member for the National Methamphetamine and Pharmaceutical Initiative (NMCI), a component of the President's Office of National Drug Control Policy (ONDCP). I also assist the National Drug Intelligence Center (NDIC) with the formation of the National Drug Threat Assessment and I am an executive board member of the Northern California High Intensity Drug Trafficking Area

(HIDTA). Further, I have served on the California Governor's Prevention Advisory Committee studying the methamphetamine problem. I have also testified about methamphetamine before the California legislature and the United States Senate Drug Caucus.

Introduction

The purpose of my testimony is to explain California's methamphetamine problem. More specifically, I want to explain how California and Nevada's meth problem is inextricably linked. By all accounts, including that of the Drug Enforcement Administration (DEA) and the National Drug Intelligence Center (NDIC), California is considered a "source nation" for methamphetamine. It is estimated that 80% of our nation's meth comes from California, either domestically produced or transshipped from Mexico. No state bears a greater brunt of California's meth impact than Nevada.

California remains the epicenter of methamphetamine production and trafficking in the United States. Although California no longer leads the nation in the number of meth labs seized annually, it does still lead in the amount of meth produced. For example, the production capability of California's seized meth labs typically exceeds the production capability of the top four states combined! Those four top states encompass more than 40% of all the meth labs seized nationwide. This is because California remains the home of the Super Labs – those capable of producing 10 or more pounds of meth per manufacturing cycle. These Super Labs require immense amounts of pseudoephedrine to feed the operation, and pseudoephedrine pills purchased over-the-counter are precisely what Mexican Drug Trafficking Organizations (MDTO) are using to make high-grade meth.



Figure 1- 460 pounds of meth "ice" seized in Gilroy, CA, in 2010. It's the largest ice seizure in the U.S.

Super Labs continue to operate in California because the Government of Mexico has banned the importation and use of pseudoephedrine, and because MDTO's have found numerous ways around the federal CMEA. Due to Mexico's ban, and because MDTO's can still get manufacturing chemicals, production of meth in Mexico has shifted to an old method that uses Phenyl-2-Propanone (commonly referred to as P2P or "Prope Dope"). This old method produces a form of meth that is only half as potent as the type of meth produced from PSE. The decreased quality of Mexican meth is another reason for the resurgence in domestic meth production. A recent report published by the National Drug Intelligence Center (NDIC) chronicles this trend

and explains why it's likely to continue.¹ It is also easier for MDTO's to purchase pseudoephedrine in California than to get it in Mexico, resulting in a shift to manufacturing in California.

Smurfing has become such a big business that some drug traffickers have become pseudoephedrine pill brokers. Even large amounts of people who typically don't engage in criminal activity are lured into the smurfing business because of the profit earning potential and the innocuous perception associated with buying cold medication. Unlike other parts of the country where many smurfers use the pills they buy to make meth themselves, many of the large sophisticated smurfing rings in California and Nevada buy the pills because they have substantial profit-earning potential on the black market. A \$6 dollar box of pseudoephedrine pills in California is typically worth \$30 on the black market. In Missouri, that same box of pills is worth \$50 and in some parts of Kentucky it's worth \$70. A typical smurfing cell in California and Nevada will employ approximately 30 smurfers to purchase pills from at least 20 stores each day. Collectively, those 30 smurfers are able of amassing enough pseudoephedrine in a single day to make four pounds of methamphetamine. One smurfer can purchase enough pills in one day to realize a profit ranging from \$500-\$750 for a single day's work. Some people, including the homeless, are lured into the smurfing business for less than \$100 a day, something to eat, or a bottle of liquor.

No one denies that smurfing is a legitimate concern, but much debate centers on how pervasive the smurfing problem is. The pharmaceutical industry wants everyone to believe that smurfers only represent a very small percentage of total pseudoephedrine sales, but they refuse to share PSE sale claiming it is proprietary information. Law enforcement believes, and I think logic supports, the smurfing problem is substantial.

The picture in Figure 2 depicts a five gallon paint bucket that is filled with PSE pills. This massive amount of PSE pills would take a few hundred families several years to fill such a bucket if they lawfully purchased PSE and used the medication according to its recommended dosage. An organized group of smurfers, however, can fill the bucket in a week or two. This clearly demonstrates the enormous PSE purchasing power of smurfers. Coupled with the enormity of the smurfing problem, logic dictates smurfers represent a significant portion of the PSE retail market. It is for this reason, and those previously stated, why law enforcement believes conservatively more than half of the PSE sold in California is being diverted to make meth. As a result, the manufacturers and retailers of pseudoephedrine products are profiting upwards of half a billion dollars a year from the meth business.



Figure 2 - 5 gallon bucket filled with PSE pills found at CA meth lab

¹ <http://www.justice.gov/ndic/pubs38/38661/38661p.pdf>

The Nevada Connection

California law enforcement has diminishing resources to investigate smurfers and a growing percentage of our investigations are involving California and Nevada interstate trafficking of PSE and meth. Nevada shares California's largest border and interstate highways. Nevada doesn't receive all of California's exported meth, but it is the conduit through which much of the meth travels eastward.

BNE has several current investigations involving drug trafficking organizations operating in both California and Nevada. One particular group employs a sophisticated network of PSE smurfers operating in Las Vegas and various regions in California. The PSE is eventually moved to meth Super Lab sites in California's Central Valley. One of the ring leaders, who is a Las Vegas resident, has a previous conviction for PSE smurfing and was associated with a large multi-pound heroin seizure.

On May 24, 2010, BNE agents followed a suspect as part of a comprehensive investigation of a Mexican Drug Trafficking Organization. Agents followed the suspect from Southern California to Las Vegas, Nevada. BNE agents arranged for the Las Vegas Metro Police Department to stop the vehicle and detain the driver. A subsequent search of the vehicle revealed 59 pounds of methamphetamine. The driver was also transporting six children.



Figure 3 - 59 pounds of CA meth seized in Las Vegas

On November 15, 2010, three Hispanic males were arrested in California's Stanislaus County transporting 11,000 PSE pills. The men also possessed three CA driver's license displaying one of the suspect's picture, but each license displayed a different name. Also in their possession were 25 telephone numbers for the "702" area code in Las Vegas. Subsequent investigation revealed these men were part of a drug trafficking organization smurfing PSE in Phoenix, AZ, and Las Vegas, NV, and smuggling the PSE to California's Central Valley.

Another ongoing investigation involves a DTO making meth in California. The organization is part of the La Familia Cartel in Mexico and operates a sophisticated PSE smurfing ring. In 2009, Maricopa County officials in Arizona arrested members of this organization transporting several pounds of PSE pills from Nevada to Arizona. Investigators believe much of the PSE is smurfed in Reno and Las Vegas and then transported to Phoenix where the pills are amassed with PSE smurfed in Arizona. The PSE pills are then transported to CA and converted into meth. The meth is then sold to other DTO's operating in the West and elsewhere in the nation.

Ochoa Arizona Smurfing Organization

The Campos Organization is a Mexican Drug Trafficking Organization centered in Arizona. After a long-term investigation involving Arizona and California law enforcement, key members of the Organization were arrested and indicted in January of 2010. The investigation proved the organization employed 150 smurfers on a daily basis in Arizona. The organization supplied four separate Super Labs operating in California's Central Valley with 20,000 to 35,000 pills weekly for each lab.

The investigators determined the Campos Organization was supply approximately 400,000 pills each month. Compared to the meth lab seizure numbers of some other states, Arizona and Nevada doesn't appear to have a large meth lab problem, but these states obviously have a huge pseudoephedrine smurfing problem. There are plenty of other organizations just like the Campos Organization exploiting our abundant supply of pseudoephedrine pills.



Figure 4- large garbage bags filled with PSE blister packs located at a Central Valley Super Lab



Figure 5 - Large pile of PSE blister packs found at CA meth lab

CVS – Non Prosecution Agreement

In August of 2007, CVS implemented the MethCheck system to minimize efforts associated with federal and state regulations related to sales of PSE. The MethCheck system also alleviated CVS from maintaining paper logbooks. When implementing MethCheck, CVS had two options: 1) block only single-transaction PSE sales that exceeded 3.6 grams; or 2) block PSE sales over 3.6 grams to the same customer in a single day at any store **and** block PSE sales over 9 grams to the same customer in a 30-day period at any store. CVS chose to block only single-transaction PSE sales that exceeded 3.6 grams in states only governed by the CMEA² regulations, thus allowing smurfers to make multiple purchases each day from different stores and multiple purchases from the same store on different days. According to the U.S. Attorney's Office, CVS knowingly failed to comply with the law and CVS was aware this choice would allow repeated purchases in violation of the 3.6 gram daily limit.

CVS opened the PSE smurfing floodgates and the following example best demonstrates the scope of the problem. A single smurfer made 2,951 PSE purchases from 101 CVS stores between September 20, 2007, and April 17, 2008.

- 514 purchases exceeded the 3.6 gram daily limit
- On February, 18, 2008, the smurfer made 10 separate purchases in 53 minutes from the same employee
- The smurfer made at least 127 purchases from the same employee between February 7, 2008, and April 12, 2008.

The following was derived from CVS internal documents, emails, and interviews:

- March 2008: Director of Loss Prevention complained:
“It is crazy that we allow multiple purchases to the same individual as long as it is in separate transactions. We may be doing this legally in some states, but it is only a matter of time until this becomes an issue for us.” (CVS internal e-mail)
- “. . . if you try to buy more than your daily limit of PSE, the register does not stop you. We reviewed the training material and it states that the register should stop the sale.”
“I bubbled this up before and was told to go with the program in place, your thoughts?”
“It appears that even our employees have now figured this out. How long before the State of California does too?” (CVS internal e-mails)

CVS Supervisors told employees:

- “. . . not to worry about the amounts to be sold. . . [and] to sell as much and [to] whoever . . .”

² The Combat Methamphetamine Epidemic Act became federal law in April 2006 and limited PSE sales to an individual of 3.6 grams in a single day and 9 grams in a 30 day time period.

- “. . . they are not the police, and that it is [the employees’] responsibility to provide customers with merchandise.”
- “If the system allows the sale, you sell.”

PSE sales in Los Angeles were “staggering,” and sales in LA County stores began to noticeably increase in September 2007. Between January and October 2008, CVS PSE sales in LA County increased 158% over sales for the same period in 2007. Between January and October 2008, CVS generic PSE product sales increased 617% over sales for the same period in 2007.

In early 2008, BNE and DEA arrested 55 smurfers frequenting CVS stores. Soon the investigation focused on CVS. In response to the criminal investigation, CVS implemented the “lookback³” feature in California on October 29, 2008. In the first hours of the new system, CVS blocked 168 illegal purchases in California. Over the next 20 days, CVS blocked an additional 9,400 purchases of pseudoephedrine. An examination of the pseudoephedrine sales data before and after the implementation of the lookback feature of 11 random CVS stores in the greater Los Angeles area (Long Beach, Rosemead, Alhambra, El Monte, Van Nuys) produced startling results. In the month prior to the lookback feature, those 11 stores collectively sold 19,426 grams of pseudoephedrine. In the ensuing month after the lookback, those stores only sold 2,364 grams. That was an 88% reduction preventing the sale of 16,985 grams of pseudoephedrine that would have been enough to make approximately 4 pounds of meth. During that same time period, CVS enjoyed a dramatic increase in pseudoephedrine sales in Las Vegas, where many of the customers presented California identifications. On November 11, 2008, CVS implemented the lookback feature in Nevada. Accordingly, Las Vegas CVS stores immediately saw an 84% reduction in PSE sales.

On October 13, 2010, CVS signed a Non-Prosecution Agreement that resulted in CVS paying \$75,000,000 in civil penalties and an additional \$2,600,000 in profit forfeiture. The settlement agreement stated in part:

“The flawed implementation of MethCheck made CVS/pharmacy stores vulnerable to criminals who intended to purchase large amounts of PSE. Criminals in California and Nevada and some other Non-Lookback States quickly learned that excessive amounts of PSE could be purchased at CVS/pharmacy by making multiple purchases on a single day. Those multiple sales often far exceeded the daily limit of 3.6 grams. By allowing these multiple purchases and sales, CVS/pharmacy distributed PSE to individuals who used it to manufacture methamphetamine.”

“CVS/pharmacy went forward with the project as initially planned, that is, without any Lookback feature in states that did not impose monthly PSE limits on retailers. CVS/pharmacy did so even though the senior manager and one other member of the MethCheck implementation group knew that, in states without the Lookback feature

³ Lookback (also known as Block Sale) is a feature that can track and review a customer’s aggregate purchases for comparison with purchasing limits in order to prevent excessive purchases.

turned on, MethCheck as implemented would not prevent aggregate purchases that exceeded the 3.6 gram daily limit imposed by the CMEA. As a result, beginning in late 2007 and continuing until late 2008, CVS/pharmacy's PSE sales increased significantly in California and Nevada."

"Despite communications from store employees, store managers, loss prevention managers, and suppliers of PSE noting this increase and, in some instances, questioning whether the excessive purchases were intended for use in manufacturing methamphetamine, CVS/pharmacy failed to promptly investigate and adequately address the illegal and increased sales of PSE in California and Nevada caused by the flawed implementation of the MethCheck system."

"CVS/pharmacy acknowledges that from September 2007 to November 2008, it sold excessive amounts of PSE in California and Nevada in violation of federal law. CVS/pharmacy also acknowledges that some of those sales were to criminals who purchased PSE for use in manufacturing methamphetamine."

The scope of the CVS violations cannot be understated. At least 306 CVS stores in five states engaged in violations of the 3.6 gram daily limit. At least 500 employees participated in the civil violations. At least 87 CVS stores in California and Nevada engaged in civil unlawful distribution to meth traffickers. Additionally, the violations involved many levels of CVS management and supervision spanning from Senior Vice President to store clerks. CVS placed profits before public safety and clearly demonstrated it is incapable of regulating itself.

Although the lookback feature of MethCheck appeared to be a potential solution. Smurfing immediately adapted to this feature and they continue to circumvent the system, particularly by using false identifications. The majority of the suspicious transaction contained in MethCheck is useless data because of the false identifications. We call these people "Ghost Smurfers" because the database sends law enforcement on costly wild goose chases trying to find people who don't really exist.

Another vulnerability of the electronic tracking systems involves retail employees' collusion with smurfers. MethCheck's electronic tracking system has an employee override feature that permits the employee to complete any sale. Police have arrested store employees who conspired with smurfers. One of the most egregious cases involved a California CVS manager who was scanning a product code and used multiple identifications to complete a virtual sale – he possessed 36 different identifications in this case. At the end of the day, the manager

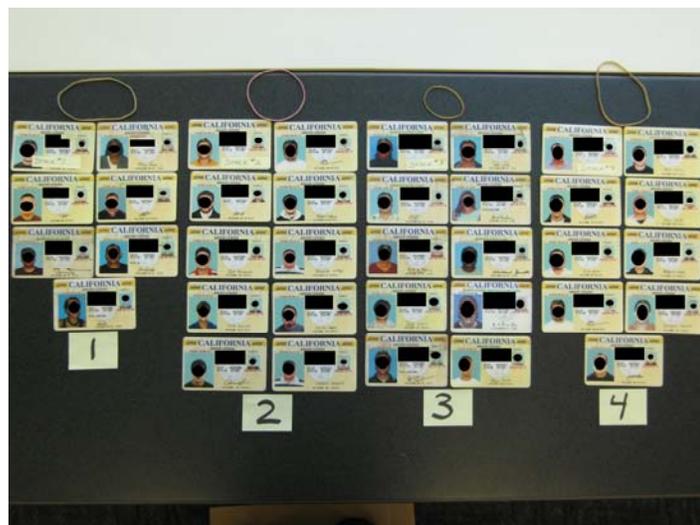


Figure 6 – 36 different ID's possessed by CVS employee

would put the amount of money corresponding to the amount of pseudoephedrine he scanned into the till and then he would carry the boxes of pills out the back door. On the day of his arrest, police discovered the manager purchased \$2,958 worth of pseudoephedrine pills that would have earned him approximately ten times that amount on the black market. Nothing in the electronic tracking system prevented this operation, nor would it have alerted police to the existence of impropriety. Law enforcement solved this significant diversion problem with good old fashioned police work: surveillance, not an electronic database.

Drug Endangered Children

I would be remiss if I didn't mention those who are most vulnerable to the ravages of meth labs – the children. Each year hundreds of children are removed from meth lab homes and the consequences are devastating. Earlier this year a meth lab fire in Atlanta George killed three children. We in California also had three young lives perish in a meth lab fire. But there is hope. Oregon used to remove 30 to 40 children from meth labs each year, but has only removed two in the five years since passing its prescription PSE law. In addition, since passing its PSE prescription law, Mississippi has experienced an 80% reduction in drug endangered children.

Conclusion

California law enforcement is united in its belief that scheduling PSE and returning it to its prescription status is the best solution to address California's domestic production of methamphetamine. When California enacts this legislation, it is evident that Nevada's meth problem will worsen exponentially. Not only will PSE smurfing increase, but so will the incidences of meth labs since labs are typically located close to the most abundant sources of PSE. I would also expect Nevada and Arizona to become the new homes for meth Super Labs - a distinction we in California will gladly relinquish, but I pray it's not at the expense of Nevada's citizens, especially its children.

Sincerely,

KENT SHAW
Assistant Chief

For KAMALA D. HARRIS
Attorney General



Figure 7 – Three brothers killed in a Riverside, CA meth lab fire.