



NMPI

"A National HIDTA Initiative"

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 LAB INCIDENTS

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This document represents the NMPI Advisory Board position and not necessarily the official position of the member's agencies.

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 primary precursor source for domestic methamphetamine labs is cold and allergy medicine containing PSE sold at retail stores and pharmacies. This is true for the large "super labs" (operated by drug trafficking organizations- DTOs) 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 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 meth precursor 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.
- (2) DTOs that 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 identification. 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 Drug Trafficking Organizations (DTOs) operating methamphetamine super labs.

USE OF TRACKING DATABASES

Tracking retail sales of products containing PSE 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 three 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.
- (2) The database must be able to "block sales" of purchases over the legal amounts to be effective against the diversion of precursors for illegal activity.

Since PSE products are sold by a multitude of vendors, ideally 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 have the opportunity of identifying smurfers, finding methamphetamine labs, or preventing methamphetamine lab incidents.

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 prefer eyewitness accounts and investigation (read law enforcement surveillance) of violations before filing charges or authorizing arrests and/or search warrants. This results in costly man power consuming investigations.

(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 meth lab incident numbers can be attributed to the now frequent use of the **"one pot method"** to manufacture methamphetamine by smurfers that are users and cooking themselves. These are under two ounce cooks and are conducted in a small cooking vessel (such as a bottle). This is a very quick (although dangerous) effective 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 identifications 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 of a vehicle window after a quick cook following the purchase of the precursor containing product. This also creates environmental/contamination issues, as well as dangerous exposure issues to the public.

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 "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).

During the legislative process to enact the Oregon law, the following reasons were cited against prescription only. However, none of the below claims came true in **Oregon**:

1. Public outcry

There have been hardly any complaints, and no public outcry. More than four 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

The claim was made that consumers would 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

The claim was made that increasing work loads dispensing pseudoephedrine by prescription would 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

The claim was made that demands on the healthcare system would dramatically increase as a result of patients going to doctors, particularly emergency rooms, to get pseudoephedrine. This never happened.

5. Medicaid costs

The claim was made that Medicaid costs would skyrocket as the result of Medicaid patients getting prescriptions for pseudoephedrine. The actual statewide Oregon impact has been less than \$8,000 per year. This dollar figure (along with loss of sales tax revenue) does not compare to the savings in meth lab incident clean-up costs, investigative costs, social service costs, incarceration costs, etc.

6. Impact on the poor

The claim was made that there would be an impact on the poor because they could not afford to see a physician. For all of the reasons discussed in items 1 through 5 above, this did not occur 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 not been any negative impact. By way of example, the Director of Northwest Human Services, which operate free clinics and homeless shelters in Salem, Oregon, checked with clinic and shelter managers. The response: "We haven't heard a peep from either the patients or the providers since the change in access to pseudoephedrine. There are so many good alternatives that it isn't an issue."

7. Cost of pseudoephedrine

The claim was made that pseudoephedrine prices would increase dramatically. The opposite occurred in Oregon. Pseudoephedrine actually became less expensive due to pharmacies selling generic brands.

Note: Recently, cities and counties in methamphetamine lab plagued **Missouri** have already passed, or are considering passing, ordinances moving products that contain PSE to prescription only. Those cities and counties (22 as of this update) that have enacted ordinances have had dramatic drops in smurfing activity similar to Oregon. In **California**, where meth super labs and organized large scale smurfing exists, there is currently a bill pending in favor of prescription only. Other states with pending bills or moving towards prescription only are Indiana, Kentucky, Nevada, Missouri, and Tennessee.

In February 2010, the State of **Mississippi** passed Prescription Only legislation which became effective July 1, 2010. After six months (January 2011) Mississippi reported an approximate 70% reduction in meth lab incidents with none of the above cited opposition claims occurring. In addition, Mississippi had a 63% drop in meth arrests and the number of related drug endangered children removals fell by 76%.

During prescription only efforts in California, Mississippi, and Missouri, the following additional claims were cited by opponents:

8. PSE move will add to the pharmaceuticals problem

The claim was made that moving PSE to prescription only would add to the already epidemic pharmaceuticals diversion problem. This never happened in Oregon. There has not been one case of prescription PSE diversion in four years of control. This also has not happened in Mississippi. Prescription fraud is dominated by drug users while PSE has to be extracted and made into a usable drug involving many other chemicals in a dangerous process.

9. Allergy clinics

The claim was made that moving PSE to prescription only would cause the rise of “allergy clinics” similar to pain clinics which have been a source of diversion problems. This is simply mere speculation.

10. Mexico

The claim was been made that moving PSE to prescription only would be a wasted effort because meth would continue to be supplied by DTOs bringing in meth from Mexico. The NMPI Advisory Board believes that prescription only is not about stopping meth use but rather about eliminating smurfing and thus domestic meth production. Prescription only would free up our valuable law enforcement resources to work on the DTO’s who along with meth bring in other drugs (such as marijuana, cocaine, and heroin) and affect public safety in many other ways.

NATIONAL ORGANIZATIONS IN FAVOR OF PRESCRIPTION ONLY

National Narcotics Officers Association Coalition (NNOAC)
National HIDTA Directors Association
National Alliance for State Drug Enforcement Agencies (NASDEA)
International Association of Chiefs of Police (IACP)

STATE AND LOCAL ORGANIZATIONS IN FAVOR OF PRESCRIPTION ONLY

(CA)
California Attorney General’s Office DOJ
California Bureau of Narcotic Enforcement
California Narcotic Officers Association (CNOA)
California Meth and Pharmaceuticals Initiative
(CO)
Colorado Medical Society
Colorado Drug Investigators Association
Colorado Association of Chiefs of Police
County Sheriffs of Colorado
Colorado Municipal League
Colorado State Meth Task Force
Colorado Chapter of the American Academy of Pediatrics
Advocates for Recover
Colorado State FOP Lodge
Association of Colorado State Patrol Professionals

(IN)

Indiana Prosecuting Attorney's Council

Warsaw County Council

Indiana's Association of Public Health Physicians and Local Health Departments Organization, Inc.

Terre Haute Chamber of Commerce

Indiana Drug Enforcement Association

(KY)

Appalachia HIDTA Drug Task Forces

Barren-Edmonson County Drug Task Force

Bowling Green Police Department

Bowling Green-Warren County Drug Task Force

Central Kentucky Area Drug Task Force

Greater Louisville Medical Society Public Safety Committee

Jeffersontown Police Department

Kentucky Academy of Family Physicians

Kentucky Association Chiefs of Police

Kentucky Association of Counties

Kentucky Commonwealth Attorney Association

Kentucky Education Association

Kentucky Jailer's Association

Kentucky Medical Association

Kentucky Narcotics Officers' Association

Kentucky State Police

Lake Cumberland Area Drug Task Force

Lexington-Bluegrass Association of Realtors

Louisville Fire Department

Louisville Metro Board of Health

Louisville Metro E.M.S.

Louisville Metro Health Department

Louisville Metro Police

Operation UNITE

Owensboro Police Department

Shively Police Department

South Central Kentucky Drug Task Force

Warren County Sheriff's Office

(MO)

Missouri Narcotics Officers Association

Missouri Prosecutors Association

Missouri Sheriff's Association

Missouri Peace Officers Association

Missouri Police Chiefs Association

Missouri State Troopers Association

(MS)

Mississippi Bureau of Narcotics

Mississippi Prosecutors Association

Mississippi State Medical Association

Mississippi Sheriff's Association

Louisville Police Department

Mississippi Central State Trooper's Coalition

Mississippi Association of Chiefs of Police

State of Mississippi - Division of Medicaid
(NV)

Nevada District Attorney's Association
Carson City District Attorney's Office
Douglas County District Attorney's Office
Lyon County District Attorney's Office
Nevada Sheriff's and Chief's Association
Carson City Sheriff's Office
Lyon County Sheriff's Office
Carson City Dept. of Alternative Sentencing
Carson City Board of Supervisors
Lyon County Commission
Nevada Medical Association
Nevada Pharmacy Board

(OR)

Oregon State Sheriffs Association
Oregon District Attorneys Association
Oregon Association of Chiefs of Police
Oregon Narcotics Enforcement Association
Oregon Medical Association
Oregon State Pharmacy Association
Oregon Chapter: American College of Emergency Physicians
Oregon Alliance for Drug Endangered Children
Oregon Meth Task Force

(TN)

Tennessee Sheriff's Association
Tennessee Chief's Association
Tennessee District Attorney's Association
Tennessee Narcotic Officer's Association
Tennessee Public Safety Coalition

(Other)

Southeast Meth and Pharmaceuticals Initiative
Southwest Meth and Pharmaceuticals Initiative

IN CONCLUSION

The NMPI Advisory Board recognizes that:

- Law Enforcement agencies do not have the resources to chase smurfers after they have obtained the precursor. There are too many leads to follow.
- Law Enforcement wants to free up resources to focus more on DTOs.
- Law Enforcement does not want to arrest more smurfers or find more methamphetamine labs. Law Enforcement wants to eliminate smurfing and prevent methamphetamine lab incidents.

The NMPI Advisory Board supports "Prescription Only" over the use of tracking databases as the only effective means to eliminate "smurfing" and prevent illicit methamphetamine lab incidents 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, 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.

Questions or requests for additional information can be directed to:

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