

The Pharmacist's Duty to Police Smurfing of Pseudoephedrine: How Far is Too Far?

By Erin Albert, MBA, PharmD, JD Candidate
Indiana University School of Law – Indianapolis

Dr. Albert is currently a law student at I.U. School of Law – Indianapolis, and an Assistant Professor of Pharmacy Practice and Director of the Ribordy Center for Community Practice at Butler University College of Pharmacy and Health Sciences in Indianapolis. Erin wishes to thank Professor Steven Miller for his assistance in finding court documents relative to the Oklahoma case referenced in this article.

Methamphetamine (meth) is behind only alcohol and marijuana as the drug most frequently abused in the Midwest.¹ Furthermore, Indiana State Police discovered 1,092 meth labs in 2008, which was a 31 percent increase from 2007.² In 2008 the number of meth lab busts in Indiana was the second highest since 1995, when police began tracking them, and most have occurred in the northeastern section of the state.³ As of the first quarter of 2009, the U.S. Drug Enforcement Administration reports that Indiana had 130 meth lab busts, lagging behind only Missouri (462 busts), Mississippi (146 busts), Michigan (136 busts), and Kentucky (131 busts).⁴

Although the majority of methamphetamine used in the U.S. is manufactured in super labs in Mexico, the remainder is produced relatively inexpensively and easily by individuals at home.⁵ One of the critical ingredients for manufacturing meth is a common cold remedy: the decongestant pseudoephedrine. Pseudoephedrine was cheaply and readily available at any corner drug store prior to July 1, 2005, when the Indiana State Legislature signed the “Meth-Watch” Statute.⁶ The goal of the statute was to quash easy access to methamphetamine precursors, including pseudoephedrine, ephedrine, and phenylpropanolamine. Indiana Code Section 35-48-4-14.7 addresses the “[s]ale and storage of drugs containing ephedrine or pseudoephedrine; application; convenience packages; age requirements identification; record keeping; suspicious orders and unusual thefts.”⁷ The sale of pseudoephedrine does not currently require a prescription within the state of Indiana. However, the aforementioned statute requires that a person selling a drug containing ephedrine, pseudoephedrine, or both may not sell the drug

to a minor, and may not sell drugs containing more than three grams of ephedrine or pseudoephedrine, or both, in a single transaction.⁸ Additionally, the statute requires the purchaser to produce government-issued identification and complete a signature log (paper or electronic) with relevant information, and the pharmacist or clerk selling the product must also to record his or her identification in the log.⁹ The law also requires retention of the log for two years and includes several other parameters for storing and selling the drugs.¹⁰ However, it is important to note that in Indiana, no law currently exists to prohibit a pharmacist or clerk from selling the drugs to people who are related to each other, know each other, or arrive or depart in the same vehicle.

Whether individuals purchasing pseudoephedrine are accompanied by other people is important because one of the techniques meth producers use to obtain meth precursors is to drive from pharmacy to pharmacy with others, each purchasing the maximum allotted amounts of pseudoephedrine in order to pool their resources. This practice of gathering small quantities and pooling resources is known by law officers as “smurfing.”¹¹ Although under Indiana law it is not illegal to sell pseudoephedrine to two or more parties arriving in the same car, some pharmacists are leery of selling meth precursors to people who know each other because of the potential for smurfing.

The method for selling pseudoephedrine is important, as demonstrated by the recent felony indictment of Haskell Lee Evans, Jr., an Oklahoma pharmacist and former Oklahoma board of health member. The indictment hinged on Evans’ inappropriately selling pseudoephedrine - he allegedly recklessly sold it to undercover federal agents who arrived in the same vehicle.¹² He did not exceed the quantity permitted by Oklahoma state law for sales of the drug or sell it without checking their identification.¹³ Although the pharmacy Evans worked in

was the top pharmacy for pseudoephedrine sales in the state of Oklahoma and marked the drug up more than 600 percent above the standard retail price, this case (currently pending with a preliminary hearing rescheduled to December 9, 2009¹⁴) could set a precedent for all pharmacists to adopt guidelines beyond the written law for selling pseudoephedrine, and monitor vehicles and arrivals of patients at a pharmacy.

While the indictment against Evans does include other violations (e.g., willful failure to report information to the Oklahoma Bureau of Narcotics), many pharmacists are concerned about the charges related to pseudoephedrine sales. Dr. Polly Robinson of Oklahoma has set up a Facebook group¹⁵ to support Evans, and is suggesting that pharmacists write the State of Oklahoma Attorney General to ensure that pharmacists do not become the police of pseudoephedrine.^{16, 17}

Although local pharmacists await the outcome of the pending Evans case, the Oklahoma pseudoephedrine sales law differs from that in Indiana. One difference in the laws of these two states is that pseudoephedrine is considered a Schedule V medication in Oklahoma, while it is not a scheduled drug in Indiana. However, moving forward, pharmacists believe that monitoring pseudoephedrine sales by watching in which vehicles patients arrive would cross the line of a pharmacist's duty. This may very well be the point at which pharmacists cannot realistically police the sale of pseudoephedrine, and it tests the limits of the pharmacists' duty. Development of the Oklahoma case against Evans could have greater ramifications for all pharmacists selling pseudoephedrine in the future, and many pharmacists are keeping a watchful eye not only on Oklahoma, but also in other states, including Indiana.

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4. Meth Lab Homes, *M is for Meth Lab: Missouri ranks #1 for meth lab busts*. Source on statistics, US DEA, Missouri State Highway Patrol. Located online at: <http://methlabhomes.com/2009/06/m-is-for-meth-lab-missouri-ranks-1-for-meth-lab-busts/> and last accessed 9/7/09, and written 6/4/09.
5. Andrew Goetz, *One Stop, No Stop, Two Stop, Terry Stop: Reasonable Suspicion and Pseudoephedrine Purchases by Suspected Methamphetamine Manufacturers*. 105 Mich. L. Rev. 1573.
6. Ind. Code. § 5-2-6-17 through Ind. Code § 5-2-6-20.
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