

Northwest Evaluator

The Pacific Northwest
Drug Recognition Expert Newsletter



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COORDINATOR COMMENTS

by Sergeant Timothy Plummer

The May 2008 DRE School went smoothly due in large part to Senior Trooper Mike Iwai from the Salem Area Command of the Oregon State Police. Senior Trooper Iwai served as the Course Manager for this school and received numerous compliments from the students. The time, expertise and paperwork required of a course manager demands a lot of work and dedication. Senior Trooper Iwai handled this like the professional he is. The class was made up of 25 students representing state, county and city law enforcement agencies in Oregon.

As a result of the hard work by students and the instructor cadre the overall class average for the DRE Pre-School was 93%, which included three perfect scores of 100%.

All twenty-five students passed the DRE School final test. Three students scored 99% on the final test. Combining the Pre-school final, five quizzes and the DRE School final test, the overall class average was 94.2%. The student with the highest individual course average was 99%.

Certification Training for the School was held in Portland, Oregon, in June 2008. Senior Trooper Mike Iwai also coordinated this effort. In 8 days 154 drug evaluations were conducted, 4 were terminated (volunteer did not want to continue), 10 were rule outs with a confirmation rate of 87.9%. In addition to the student evaluations there were many DREs who were able to complete evaluations for re-certification.

Because of the dedication and hard work of the men and women of the Oregon Drug Evaluation and Classification Program, Oregon continues to train officers in the field of drug impairment detection, apprehension and prosecution.

Recognition and appreciation needs to be given to Mr. Dennis Farley and the Oregon Military Academy for allowing the DRE School to be held at their facility. In addition the folks at the Oregon Department of Transportation Region I Headquarters in Portland, Oregon, need to be recognized for their contribution to Certification Training. They allow us to use their facility to conduct certification evaluations on volunteers. I know that this has an impact on their operation and gratefully acknowledge the contribution to traffic safety they make.

To all those who helped make this effort a success. To the professional guest instructors such as Dr. Mark Pedemonte, Dr. Karl Citek, Deputy District Attorney Jody Vaughan, Lynn Howard right through to the dedicated DRE/DRE instructors, thank you for a job well done.

DRUG CONTAINER



A DRE in the Salem area

arrested a person for Reckless and found a container on him with Adderall tablets in it (Schedule 2). It is reported the container is being sold at local convenient stores. The container looks very real and could easily be overlooked during a vehicle search.

DUII REPORT

By Deena Ryerson

Oregon Impaired Driving Resource Prosecutor

The Right to Counsel

It should be straightforward - a defendant asks to speak to an attorney before taking a breath test and the police officer gives the defendant a place to make a phone call in privacy. Unfortunately, this is an area that has been riddled with problems and is a growing problem for DUII prosecution. If the law is not followed, the state is forced to proceed without crucial evidence, the result of the breath test or the defendant's refusal.

Although this area has always had its issues, things became more complicated last year with *State v. Matviyenko*, 212 Or App 125 (2007). In that case, the defendant invoked his right to counsel upon his arrest for DUII and was told he could make a phone call when they got to the police station. At the station, the defendant was given a phone and a phone book and was told he could make any phone calls at that time. The defendant chose to call his wife and so the officer stayed in the room. After the phone call to his wife, the defendant indicated that he was ready to take the breath test. At no time did he ask to speak to an attorney. The court held that the officer violated the defendant's right to private counsel because, as a result of the officer's presence in the room while the defendant was talking to his wife, the defendant reasonably could have believed that he would not be allowed a private conversation with his attorney if he decided to place an additional call. Relying on *State v. Durbin*, 335 Or 183 (2003), the court said that an arrested person need not specifically

request privacy and also that a person need only ask once to speak to an attorney. Additionally, the court held that if a police officer wants to remain in the room until an arrestee reaches an attorney, the officer must tell the person before the call is made that the officer will leave the room as soon as the attorney is contacted.

Some of the confusion for officers stems from the fact that, for purposes of an administrative hearing under the implied consent provisions, an arrested driver has the right to communicate with anyone, including an attorney, before taking a breath test. *Moore v. MVD*, 293 Or 715 (1982). The arrestee must be given a reasonable opportunity to communicate "unless or until it would interfere with the effective administration of the [breath] test." *Moore*, 293 Or at 723. An officer's failure to provide the arrested person a reasonable opportunity to communicate under implied consent is a violation of the Due Process Clause of the Fourteenth Amendment and the result is that no license suspension may be imposed. However, in the context of the implied consent administrative process, the arrestee does not enjoy a constitutional right to a private consultation, and an officer may stay in the room while the phone call is placed.

In criminal proceedings, a person's right to a reasonable opportunity to speak to counsel in private stems from the Oregon Constitution, Article I, Section 11, *State v. Spencer*, 305 Or 59 (1988). If an arrested person shows that the police interfered with the person's right to speak to counsel privately, the state bears the burden of showing that the interference was reasonable.

There are several factors to consider in determining what constitutes a "reasonable opportunity" to communicate with counsel (this also applies to communication with "others" for the purpose of administrative hearings). Factors include: the amount of time given; whether a phone book and a working phone were provided; the amount of time between the arrest and the request to communicate; and the dissipation of alcohol. Because of the dissipation of alcohol, if a significant amount of time has elapsed between the arrest and the arrestee's request to place a call, the officer may not be required to allow the arrestee as much time to contact and consult an attorney. When this issue arises, you need to create a clear record as to why, if any, restrictions were placed on the person's opportunity to communicate with counsel. For example, if the officer cuts short the arrestee's attempt to communicate because the officer believed that the person was only trying to waste time, prepare the officer to articulate for the court the reasons for this belief.

There is a pressing need to acquaint officers with the new requirements under Matviyenko (and also to simply refresh officers' understanding of the law in this area). Officers should be encouraged to use procedures that are adequate under both Article I, Section 11, (for criminal law purposes) and the Fourteenth Amendment Due Process Clause (for implied consent purposes.) With regard to the issue of privacy, officers must ensure that the phone is not being recorded. If an officer decides to dial the number for the arrested person or wait in the room until the person reaches an attorney, the officer must tell the person before the call is placed that they will be given privacy. If the person asks to talk to an attorney, but calls someone other than an attorney, the officer should ask the person if they also would like to call an attorney. To avoid confusion, a preferable option is for the officer to leave the room no matter who the person wants to call. Some agencies are requiring their officers to read a prepared statement whenever a person requests to speak to an attorney. The statement informs the arrested person that the person will be given privacy to speak to an attorney. This prepared statement is good practice and you might want to suggest it to the agencies in your jurisdiction as a means of avoiding the suppression of breath tests and breath-test refusals.

MILLIONS OF YOUNG ABUSING COUGH MEDICINE

About 3.1 million people between the ages of 12-25 have used cough and cold medicine to get high, the government reported Wednesday.

The number of young people who abused over-the-counter cold medicines is comparable to use of LSD and much greater than that for methamphetamine among the age group, according to the federal Substance Abuse and Mental Health Services Administration.

The agency's 2006 survey on drug abuse and health found that more than 5 percent of teenagers and young adults had misused cough and cold medicines and indicated that these people also had experimented frequently with illicit drugs.

Nearly 82 percent also had used marijuana. Slightly less than half also used inhalants or hallucinogens, such as LSD or Ecstasy, the agency said.

The cough suppressant DXM is found in more than 140 cough and cold medications available without a prescription. When taken in large amounts, DXM can cause disorientation, blurred vision, slurred speech and vomiting.

"While increasing attention has been paid to the public health risk of prescription drug abuse, we also need to be aware of the growing dangers of misuse of over-the-counter cough and cold medications, especially among young people," said Terry Cline, the agency's administrator.

Information obtained from SAMHSA News Release 1/10/2008

CANADIAN-MADE, METH-LACED ECSTASY BEING DUMPED INTO U.S. ILLEGAL DRUG MARKETS

(Washington, DC) - The White House Office of National Drug Control Policy (ONDCP) is warning public health and safety leaders across the country about a dangerous new drug threat coming from Canada. Ecstasy laced with methamphetamine (meth) has been entering the United States illegal drug markets, particularly in northern border states. Intelligence reports indicate that once smuggled into the U.S., the meth-laced Ecstasy is then being distributed throughout the country.

The dangerous poly-drug combination of methamphetamine and Ecstasy can have severe health consequences, especially as both drugs have toxic effects on the brain. They both can interfere with the body's ability to regulate temperature, leading to sharp increases in body temperature (hyperthermia), which can result in liver, kidney, and cardiovascular system failure and death. The potential for a life-threatening or fatal overdose is also increased when meth-laced Ecstasy is combined with alcohol. Recent laboratory research suggests that Ecstasy and meth combinations may produce greater adverse neurochemical and behavioral effects than either drug alone.

John Walters, the Nation's "Drug Czar," said, "This 'Extreme Ecstasy' is a disturbing development in what has been one of the most significant international achievements against the illicit drug trade. Historic progress against Ecstasy availability and use is in jeopardy of being rolled back by Canadian criminal organizations. Desperate to develop their client base, they are dangerously altering a product for which demand by youth and young adults had plummeted, and are exploiting vulnerabilities along our shared border. This is alarming for the youth of both Canada and the United States."

Ecstasy use in the United States rose in the late 1990s with the rise of the 'Rave' culture, however due to the well-coordinated national and international response - Ecstasy use in the U.S. diminished in the early 2000s. However, past-month Ecstasy use has been increasing over the last two years among young adults aged 18-25.

These increases coincide with increased trafficking of Ecstasy from Canada.

The Royal Canadian Mounted Police (RCMP) estimates that the current combined production capacity of Canadian Ecstasy laboratories exceeds 2 million tablets per week. Federal, State, and local law enforcement agencies along the U.S. - Canada border report large increases in the flow of Ecstasy from Canada into the United States. In 2003, 568,220 dosage units of Ecstasy were seized federally in the ten Northern border states; in 2006, 5,485,619 dosage units were seized.

Alarming, more than 55 percent of the Ecstasy samples seized in the United States last year contained methamphetamine. Cutting their product with less-expensive methamphetamine boosts profits for Canadian Ecstasy producers, likely increases the addictive potential of their product, and effectively gives a dangerous "face lift" to a designer drug that had fallen out of fashion with young American drug users.

Federal law enforcement officers are working with the RCMP to put greater pressure on Canadian Ecstasy producers through increased intelligence sharing and coordinated enforcement operations, and RCMP officials are focusing their efforts on the importation of precursor chemicals used in drug production. In the meantime, Director Walters is urging State and local public health officials to reinvigorate their prevention efforts, to enhance educational outreach to youth, parents, school systems, emergency departments, medical examiners, poison control centers, and law enforcement agencies regarding the hazards of Ecstasy and methamphetamine, to shore up treatment systems to look for and address the unique and well known challenges of meth addiction.

Information obtained from Executive Office of the President
Office of National Drug Control Policy
Press Release - January 3, 2008

"21 FOR 21": EXTREME DRINKING BY COLLEGE STUDENTS TO CELEBRATE TURNING 21

Four out of five college students (83%) drank to celebrate their 21st birthday, according to a longitudinal survey of students at a large midwestern university. Of these birthday drinkers, one-third of men (34%) and nearly one-fourth (24%) of women drank 21 or more drinks. Anecdotal reports of the practice of "21 for 21" – drinking 21 drinks to celebrate your 21st birthday – have been reported in the media, as well as the "power hour," where the 21 drinks are consumed in the time between midnight of

turning 21 and the closing of the bar. Both practices are dangerous, as drinking alcohol in excess can be poisonous and potentially fatal—it is estimated that approximately 1,400 people die each year from accidental alcohol poisoning. The authors conclude that "the solution to the problem of extreme 21st birthday drinking likely lies in a multistrategy approach," including those shown to be effective with general risky drinking, social norms marketing, alternative birthday celebrations, and public education about caring for seriously intoxicated people.

Information obtained from Cesar Fax
June 16, 2008, Vol. 17, Issue 24

IT'S NOT JUST ATHLETES POPPING PILLS TO GET AHEAD

Need to stay up all night to finish that presentation? Want to be able to focus your attention like a laser beam on those tax forms? Got the jitters about a big speech?

There's a pill for that.

More and more people are reaching for prescription drugs, despite the potential side effects, to get an edge on the competition. In a society bent on getting ahead and determined to cram more activities into schedules that are already bursting at the seams, the caution of experts and ethicists about the wisdom of relying on these drugs is often ignored.

It's no longer only college students popping stimulants like Ritalin and Adderall to push through exams. Adults in the corporate world, stressed-out parents trying to juggle overly demanding schedules and musicians preparing for auditions are all looking to pills to improve their performance. And the pills deliver.

"They are performance enhancers," said Michael Manos, section head of pediatric behavioral medicine at the Cleveland Clinic. "The truth of the matter is that these medicines would help any of us."

Drugs like Adderall and Ritalin, stimulants that have helped millions of people with attention-deficit disorders, have been available for decades. One of the oldest of the class of drugs known as beta blockers, Inderal, is commonly prescribed as a cure for stage fright and to calm nerves before big presentations.

A newer drug like Provigil, which was approved by the FDA in 1998 to treat the sleep disorder narcolepsy, is commonly prescribed outside of its intended purpose to promote alertness.

And these drugs are only our first stabs at mental performance enhancers. Most weren't even designed with

(Continued from Page 4 – It's not just Athletes Popping Pills)

that purpose in mind. A new generation of lifestyle drugs - drugs that give us the choice of when to sleep and how much, improve memory and offer emotional control, all without the messy side effects of current drugs - may be just around the corner.

Paul Phillips, 35, has credited Adderall and Provigil with helping him earn more than \$2.3 million as a poker player. Phillips started using Adderall after he had attention deficit hyperactivity disorder diagnosed five years ago and later obtained a prescription for Provigil to further improve his focus.

There are plenty of these drugs around. Prescription-drug spending has been one of the fastest-growing components of national health care spending in the past 10 years, according to a report published in May by the Kaiser Family Foundation. From 1994 to 2005, the number of prescriptions purchased increased by 71 percent, while population increased by only 9 percent.

Total sales for Adderall XR and Concerta, the most widely prescribed medications for ADHD, topped out at more than \$1 billion last year, according to company records.

The explosion of stimulant use and abuse among high school and college students is old news on campus, where the drugs are often referred to by nicknames like "Diet Coke." Students who abuse the little blue Adderall pills by crushing and snorting them are known as "blue noses."

A 2005 report by the Partnership for a Drug-Free America ranked diverted prescription medicines - those sold or given away by teens who legally obtained them from a doctor - at the middle of the teen drug-use continuum, between marijuana and cough medicine. Nearly 30 percent of teens reported having friends who abused prescription stimulants.

Are adults also turning to stimulants to get through the workday? Manos of the Cleveland Clinic suspects so.

"What occurs on college campuses is likely to occur in the adult working world," Manos said. He has seen parents in his practice misusing their children's prescription stimulants, he said.

Another drug increasingly used as a performance enhancer is modafinil, marketed as Provigil by Cephalon, a Pennsylvania-based biopharmaceutical company.

Provigil promotes alertness like other stimulants but seems to have fewer cardiac side effects, said Dr. Reena Mehra, clinical director of the adult sleep laboratory at University Hospitals of Cleveland. Mehra said she prescribes the drug primarily for patients who are sleepy during the day because of sleep apnea.

The Air Force began studying the drug in 2004 as an alternative to the stimulant dextroamphetamine, which had

the typical side effects including jitteriness, withdrawal symptoms and headache. Initial testing in sleep-deprived fighter pilots found that flight performance deteriorated less when taking Provigil.

Several studies of cognitive function in normal people taking Provigil have found improvements in some tasks while taking the drug.

"I think it would be very easy to indiscriminately prescribe this medication," Mehra said, adding that people who are sleep-deprived should be getting more sleep, not popping a pill.

"Even if you take these alerting agents, maybe they will allow you to stay awake, but your cognitive performance is not going to be enhanced by these medications," she said.

Modafinil was even added to the World Anti-Doping Agency's list of prohibited drugs in 2004 to discourage its use among athletes. It is not clear if it improves athletic performance.

Classical musicians have for years turned to beta blockers like Inderal, which were first developed to treat heart arrhythmias, as a way to calm the nerves before auditions and performances.

These drugs block adrenaline receptors, which helps to control the heart-pounding, jittery, nauseated feelings that result from excess adrenaline.

A 2005 study at Ohio State University found healthy people who took a low dose of Inderal before a stressful situation like public speaking were better able to perform cognitive tasks afterward.

Information obtained from Newhouse News Service - 1/1/2008

DRINKING DRIVERS INVOLVED IN FATAL CRASHES MORE LIKELY TO HAVE PRIOR DWI CONVICTION

Drinking drivers involved in fatal crashes are more likely than sober drivers to have a previous conviction for driving while impaired (DWI), according to recently released data from the NHTSA. In 2006, drivers with a measurable blood alcohol concentration (BAC) at the time of the fatal crash were four to eight times more likely to have had a DWI conviction within 3 years of the crash than drivers who had not been drinking. For example of the 12,491 drivers who had a BAC of .08 or higher at the time of the fatal crash, 8% had a prior DWI conviction, compared to 1% of drivers with a BAC of .00. These findings suggest that increased interventions after the first DWI conviction, such as assessment and treatment for substance use problems and administrative sanctions, may help reduce the number of alcohol-involved fatal crashes.

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