

Northwest Evaluator

The Pacific Northwest

Drug Recognition Expert Newsletter



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COORDINATOR COMMENTS

Lieutenant Dale A. Rutledge

By the time you receive this edition of the Northwest Evaluator we will be into 2004, the new year. I am happy to report that the Oregon Drug Evaluation Classification (DEC) Program in Oregon is doing very well. Oregon Drug Recognition Experts have done a good job at recording signs of impairment and determining the correct category or categories of drugs causing the impairment. The results of the efforts of the DRE's will be detailed in the 2003 Annual Report. This report is sent to IACP, NHTSA as well as Oregon Law Enforcement Agencies. This report documents the activities of the year as well as providing documentation of the effectiveness of the program.

We are currently auditing the DRE files to make sure we have the most current information on DRE's in the Oregon Program. DRE's in the inactive file will not be listed in the Annual Report.

We also look at the number of evaluations, the accuracy of the evaluations, the most frequently used drugs and the most common combinations. So far this year we are on track to have over 1,300 DRE evaluations. Some of the evaluations were conducted on people who were not arrested for driving but were involved in some other incident where it was important to document if the person was impaired. In checking with LEDS, Oregon DRE's are conducting evaluations on 66% of the persons arrested for Driving Under the Influence-Controlled Substances. The Annual Report will highlight cases from around the state that are out of the ordinary.

Finally, the Annual Report will list the DRE Award Winners who made significant contributions to the Oregon DEC Program. The awards will be presented at the Annual DUII Multi Disciplinary Training Task Force Impaired Driving Conference in Tigard on April 24, 2004.

The DRE Steering Committee will be making the selection of the DRE students for the upcoming DRE School that will start on May 3, 2004. This class will be the 12th DRE School in Oregon. When they are trained, this represents over 275 police officers that have been trained as DRE's. This year we will invite two police officers from Alaska to attend this school as part of an outreach to assist Alaska in becoming a DEC State.

MEDICAL MARIJUANA MAKING HEADLINES IN OREGON

In a story reported by Brent Hunsberger in the Oregonian newspaper on December 18, 2003, the use of medical marijuana in Oregon is again making headlines. Since the passage of the law in 1998 there have been over 6,000 medical marijuana cards issued in Oregon. These cards allow persons who have a prescription from their physician to smoke and grow marijuana. The medical marijuana law, however, does not allow persons with the prescription to drive while impaired. One area of the law that is still in question is whether employers have to allow an employee who has a medical marijuana card to continue to work.

First a ruling by the 9th U.S. Circuit Court of Appeals in December 2003 held that the federal controlled substances act does not trump state laws allowing the medical use of marijuana. The decision by the three-judge panel is the second major victory for the people who support the medical marijuana laws. Earlier this past summer the U.S. Supreme Court decided they would not hear an appeal involving physician licenses. In that case a lower court rejected the Justice Department's claim that the Controlled Substances act empowered the Federal Government to revoke the licenses of physicians who prescribed marijuana. The courts seem to be putting together a record of not allowing the Federal Government to interfere with medical marijuana laws enacted by a state. In Oregon that means that people can obtain prescriptions for medical marijuana.

What has been left undecided is how the medical marijuana laws will impact employers who want to provide a drug free environment. It is important to employers that employees not be impaired while at work, but it is also important to the welfare of the companies that they do not risk government contracts because they cannot provide a drug free workplace. The Oregon Medical Marijuana law passed in 1998 specifically states that employers do not have to accommodate the medical use of marijuana in the workplace.

One case in Portland started when the forklift operator broke an overhead water line at the Freightliner Corporation in January 2003 while operating in dim lighting conditions. The employee later tested positive for marijuana. The employee had a medical marijuana card but was fired anyway. The forklift operator claims that his firing is illegal since he was prescribed the medical

marijuana for pain. In December 2003 an arbitrator ruled that the forklift operator had to be reinstated. Freightliner Corporation has appealed the ruling by the arbitrator. The forklift operator is suing Freightliner under the Americans with Disabilities Act for being fired.

In the case at hand, Freightliner Corporation did not claim that the forklift operator was impaired, just that he tested positive for marijuana. The forklift operator obtained his medical marijuana card in 2002 and says that he smokes one or two "joints" each night while preparing for bed. He claims that when he wakes in the morning he suffers from no "morning after effects". The arbitrator ruled that even though the forklift operator was operating the forklift in a "dangerous manner" he saw no evidence that the marijuana impaired the operator of the forklift. The arbitrator went on to state that Freightliner could not dictate what the employee did on his own time as long as the marijuana use did not impair the employee's performance at work.

In another incident, civil rights officials reached a similar conclusion from Cottage Grove in a discrimination complaint filed with the Department of Labor and Industries. In that case Emerald Steele Fabricators fired an employee who failed to disclose his marijuana use. The employee did not disclose to Emerald Steele that he was using medical marijuana until they asked for a mandatory drug test in conjunction with a 60-day performance review. The employee was fired 12 days later and argued that if he should not be fired, if he could prove that he could do his job and not endanger other employees. The president of Emerald Steele disagreed and said that he believes that marijuana users are unfit for the workplace. This case is still pending.

Employers argue that the Oregon Medical Marijuana Act allows them to fire employees who use marijuana. A Portland lawyer who represents the Freightliner forklift operator disagrees and states that he believes the state disabilities act provides protection where the Medical Marijuana Act does not. The Bureau of Labor and Industries agrees to some extent saying that employers might have to make reasonable accommodations for medical marijuana cardholders who have qualified disabilities. The state disabilities act also bars employers from taking disciplinary action with a qualified disabled worker who fails a drug test. The Bureau of Labor and Industries admits however that the protections do not extend to medical marijuana users who can not perform

essential job functions, who pose a safety hazard, who disrupt the workplace or who are visibly "under the influence".

A case in front of the Oregon Court of Appeals could clarify the state disabilities act. In that case a mill worker from Columbia Forest Products in Klamath Falls was fired for violating the company anti-drug policy. In that case the mill worker had failed a drug test on two occasions prior to obtaining a medical marijuana card. Columbia Forest Products put the mill worker on a yearlong drug treatment program and after he tested positive again they fired him. The mill worker sued claiming that he was protected under the state disabilities act and that his employer was required to make a reasonable accommodation. When the case went to court in Multnomah County the judge ruled that the employer did not have to make a reasonable accommodation to an employee who showed up with marijuana "in one's system". The Court of Appeals case is due anytime.

Employers also are arguing that there is a potential loss of federal revenue because the Federal Drug Free Workplace Act requires companies with federal contracts to have policies that prohibit the use of illegal drugs. Freightliner for example has a \$300 million dollar contract with the Pentagon to build trucks. Complying with the Medical Marijuana Act could put that contract in jeopardy.

Employers are within their rights to insist that employees be unimpaired by drugs-prescribed or not- in the workplace. Studies conducted at Stanford University in 1985 showed that pilots who had consumed marijuana had difficulty with tasks for up to 24 hours after smoking the marijuana. A second study at Stanford University in 1990 showed that 7 of 9 airline pilots exhibited some degree of impairment after 24 hours but only one pilot reported any awareness of the drug effects. Based on these studies it would seem that someone who uses marijuana is not in a very good position to argue that they are unaffected by the drug the "morning after".

What is missing from the discussion in the courts, however, is that under the medical marijuana act the person with the prescription gets to decide how much marijuana is going to be consumed and when they will consume it. Also missing from the discussion is how competent are the persons conducting the evaluations of employees at being able to determine if the employee is in fact impaired.

GHB SOAKED TAMPONS

A recent overdose in Tampa appeared to be GHB. The subject had been admitted to the emergency room for treatment. The medical staff was surprised when the subject didn't just snap out of it when they expected. A short while later, his friend stopped by the hospital to check on him. When the hospital staff commented that he hadn't come around yet, his friend asked, "Did you pull the string?"

It seems the latest kick is anal insertion of GHB soaked tampons. These have been showing up in various parts of the country on an increasingly more common basis. The tampons are purchased pre-soaked with GHB. One tampon is one dose. They are inserted rectally, but can also be sucked like a lollipop, or broken in half and (like Vick's inhalers) stuck in each nostril and inhaled.

Rectal inserts are available pre-lubricated, or unlubricated, and are available in glow in the dark colors. Prices for the tampons vary, but can cost as much as \$25.

So, next time you find tampons in some guy's pocket, Think twice. He may not be carrying it because his girlfriend needs it and doesn't have a purse with her.

Information obtained from the DRE List serve (DRUG-RECOGNITION-L@listserv.tamu.edu)

'THE DRE' MOVES TO THE WEB

The national DRE newsletter, THE DRE, published by the City of Phoenix Prosecutor's Office has moved to the web. THE DRE is published for law enforcement, prosecutors, and forensic experts featuring articles about current drugs and the latest trends. All future issues of THE DRE will only be published at www.phoenix.gov/agency/phxpros/dre.html. Four editions of the newsletter will be published each year.

Recent Analysis Shows that One in Six High School Seniors Admitted Driving While High

Drug Czar, Secretary of Transportation, and Safe Driving Leaders Launch New Campaign to Urge Teens to 'Steer Clear of Pot'

(Washington, D.C.) – Approximately one in six high school seniors in the United States admitted driving under the influence of marijuana, according to a recent analysis of Monitoring the Future data, and 41 percent of teens surveyed by SADD/Liberty Mutual said they were not concerned about driving after using drugs. Today the nation's Drug Czar and Secretary of Transportation were joined by Students Against Destructive Decisions (SADD), driving safety leaders to steer teens clear of pot as they prepare to take on the responsibility of driving. Television advertisements to raise public awareness of the problem of drugged driving will run during the months of September and October.

"Today's teens have gotten the wrong message about marijuana," said John P. Walters, Director of National Drug Control Policy. "Marijuana is harmful and can lead to risky decisions, such as driving while high or riding with drivers who are impaired. We want to encourage parents of new drivers to use this milestone in their teen's life to discuss the dangers of marijuana and being responsible behind the wheel."

"The Bush Administration is committed to the safety of all Americans," said Secretary Normal Y. Mineta. "Teens already have the highest crash risk of any age group, making traffic crashes the leading cause of death for young people age 15 – 20. Combining drug use with teens' inexperience on the road and risk-taking behavior is a recipe for disaster."

The "Drugged Driving" short report released today from the national Survey on Drug Use and health shows that, in 2002, between 10 and 18 percent of young drivers age 17 to 21 reported driving under the influence of an illicit drug during the past year. Driving-age teens (age 16 – 19) are also four times more likely to use marijuana than younger adolescents (age 12 – 15).

Estimates based on Monitoring the Future and Census Bureau data also show that of the nearly 4 million high school seniors in the United States, approximately one in six (600,000) drive under the influence of marijuana, a number nearly equivalent

to those who drive under the influence of alcohol (640,000). Additionally, an estimated 38,000 of these students reported in 2001 that they crashed while driving under the influence of marijuana and 46,000 reported that they crashed while driving under the influence of alcohol.

Marijuana affects concentration, perception, coordination, and reaction time, many of the skills required for safe driving and other tasks. These effects can last up to 24 hours after smoking marijuana. Marijuana use can also make it difficult to judge distances and react to signals and sounds on the road.

Teens are high-risk drivers and have the highest crash risk of any age group. Nearly one in five 16-year-old drivers is involved in a collision in his or her first year of driving, making motor vehicle crashes the leading cause of death for young people age 15 to 20.

Information obtained from National Youth Anti-Drug Media Campaign.

WHO ABUSES THESE DRUGS

Ritalin and Adderall abusers tend to be middle and upper-middle class high school and college students. Some use the drugs as party drugs, seeking a high. Other abusers—typically college students—take these drugs to stay awake and remain focused while trying to study. A 2002 national survey found that 3%-5% of students in grades 8, 10, and 12 reported using Ritalin without medical supervision at least once in the past year (NIDA, 2003). And a 2001 University of Michigan study found that 3% of undergraduates had used Ritalin in the past year without a prescription (Teter et al. 2003).

Information obtained from CESAR FAX
Center for Substance Abuse Research
December 1, 2003/Vol.12, Issue 48

Narcotics Digest Weekly

Volume 2, Number 47

Wyoming: Officials from the Wyoming Highway Patrol (WHP) report that on October 28, 2003, an officer seized 290 pounds of chocolate-covered, suspected high-grade marijuana that was being transported by an Oregon woman traveling from Eugene, Oregon, to Knoxville, Tennessee. According to WHP officials, an officer stopped the woman for speeding as she was driving on Interstate 80 near Cheyenne. The officer became suspicious when the woman provided conflicting information regarding her final destination. The officer asked for permission to search the vehicle, but the woman denied the request. Consequently, the officer detained the vehicle for suspected drug trafficking and requested assistance from the Laramie County Sheriff's Office drug-detection canine unit. The drug-detecting canine alerted to the presence of an illicit drug in the trunk area of the vehicle. Troopers searched the trunk and discovered 290 pounds of chocolate-covered marijuana contained in 11 sealed plastic bags surrounded by dry ice. The 26-year-old female driver was arrested and charged with possession of a controlled substance with intent to distribute.

NDIC Comment: Over the past year, there have been several instances of illicit drug concealment in chocolate. Each of these incidents have been linked to Oregon-based drug traffickers. In December 2002 the Kansas Highway Patrol seized 1,500 pieces of chocolate-covered marijuana that were being transported in a private vehicle from Eugene, Oregon, to markets on the East Coast. In addition, Oregon-based traffickers also transport and distribute chocolate-coated psilocybin mushrooms. From September 2002 to April 2003, law enforcement authorities with the Portland Police Bureau, Drug Enforcement Administrations (DEA), and Portland Airport Interagency Narcotic Team (PAINT) seized more than 250 pounds of chocolate-coated psilocybin mushrooms in nine separate incidents. In each of the incidents, the psilocybin mushrooms were being shipped from Oregon to markets throughout the United States via package delivery services.

National Drug Intelligence Center Drug Prices in Oregon

	12/16/2003
Crack Cocaine	15/20 per 1/10 G
Meth	100/G Portland – 40/G Eugene
Cannabis	300/oz BC (200-250 Domestic)
Heroin	80-120/G
MDMA	20-40 Tablet

LEGAL UPDATE December 2003

Robinson v. DMV, 191 or App _ (11/26/03)(Douglas)
<http://www.publications.ojd.state.or.us/A119760.htm>
Schiveley, J. pro tempore

The state appeals a judgment of the circuit court setting aside a final order of the Driver and Motor Vehicle Division (DMV) that suspended petitioner's driving privileges for refusing to submit a urine sample. The state argues that the trial court erred in ruling that petitioner did not refuse the officer's request for a urine sample. Petitioner consumed approximately 72 ounces of water from the time of the officer's request for the sample until the officer's final request over two hours later.

Held: When petitioner told the officer that she could not provide a sample and would not even try, that constituted a refusal to take the urine test. Reversed; DMV order suspending driving privileges reinstated.

State v. Kappel, 190 or App __ (11/13/03)(Yamhill)
<http://www.publications.ojd.state.or.us/A118678.htm>
Deits, C. J.

In this criminal appeal, the state challenges the trial court's order suppressing evidence obtained after defendant was arrested for driving while under the influence of intoxicants (DUII), ORS 813.010. The trial court granted defendant's motion on the grounds that, although the arresting officer had probable cause to believe that defendant was intoxicated, he lacked probable cause to believe that defendant had driven while in that condition.

Held: The officer who arrested defendant had probable cause to believe that defendant had committed the crime of DUII. In determining whether probable cause exists, the court considers the totality of the circumstances presented to the officer and reasonable inferences to be drawn from those circumstances. Here, there was evidence supporting the officer's belief that defendant had driven the car (anonymous caller saw car drive into ditch, description of car and driver – driver not there when officer arrives, but they discover him in the car when they check later) as well as evidence that he had done so while under the influence of alcohol. Consequently, the trial court erred in granting defendant's motion to suppress. Reversed and remanded.

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