

**ADVICE TO
THE EXPERT ADVISORY COMMITTEE ON DRUGS
ON:**

**THE PRESUMPTION FOR SUPPLY OF PSEUDOEPHEDRINE AND
EPHEDRINE**

October 2009

PREPARED BY THE MINISTRY OF HEALTH

Purpose

The Secretariat has prepared an advice paper for consideration by the EACD on a presumption for supply levels for pseudoephedrine and ephedrine.

Background

Summary of Previous Discussion

On 17 June 2009 the EACD agreed to recommend to the Associate Minister of Health that pseudoephedrine should be reclassified as a Schedule 2, Part 2 (Class B2) drug. The EACD also agreed that a similar classification should be made for ephedrine, as it is chemically interchangeable with pseudoephedrine and can also be used as a precursor for the production of methamphetamine. The EACD is meeting on 8 October 2009 to determine whether a presumption for supply level of pseudoephedrine and ephedrine is required and at what level.

The following paper is intended to assist the EACD in determining appropriate presumption for supply levels of pseudoephedrine and ephedrine. The information provided is based on the assumption that the recommendations of the EACD are put forward by Government for approval by Parliament, and it is agreed that both pseudoephedrine and ephedrine be made Class B2 controlled drugs. A presumption for supply level can be set for these substances by the Order in Council and affirmative resolution process at the same time an amendment to the classification is brought into effect.

Presumption for supply

Section 6(6) of the Misuse of Drugs Act 1975 (MoDA) provides for a rebuttable presumption that when a person is found with a certain amount of a controlled drug, he or she possesses the drug for the purpose of dealing (by sale or supply). The onus is on the person found with the drug to prove that he or she was not supplying the drug and that the drug was intended for personal use. This presumption is referred to as "the presumption for/of supply".

Schedule 5 of the MoDA provides that the presumption for supply is set at a default amount of 56 grams for all controlled drugs, except those that have a specific presumption for supply listed in the schedule. A copy of Schedule 5 is appended to this paper. Controlled drugs with a specific presumption for supply level listed in Schedule 5 include heroin, cocaine, methamphetamine, MDMA and cannabis.

EACD requirements

The assessment of the amount of a substance above which it is presumed to be for supply is part of the evaluation required by the EACD and is a matter on which the Committee is required to report on pursuant to s5AA(2)(b)(ii) of the MoDA. The Committee is guided by a number of factors in making the required assessment, including:

- Informed knowledge of the quantities of a substance typically held by suppliers of that substance
- Comparative assessments of established presumption for supply levels of similar substances
- An assessment of the amount of a substance required to produce an effect, the number of doses a person would typically use over a period of time and the shelf life of the substance

Other presumption for supply considerations

By class

There are 17 substances currently listed in schedule B2, where only one has a presumption for supply set at other than the default amount, N-ethyl MDA (2-ethylamino-1-(3,4-methylenedioxyphenyl)propane). N-ethyl MDA (2-ethylamino-1-(3,4-methylenedioxyphenyl)propane) is a Class B2 drug listed in Schedule 5. It has a presumption for supply level of “5 grams or 100 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug”.

By potency

Norpseudoephedrine was considered by the EACD as when recommending a B2 classification for pseudoephedrine. Norpseudoephedrine does not have a specific presumption for supply (Schedule 5) and therefore the recommended presumption for supply would be the ‘default’ option of 56 grams.

By type

Other amphetamine-type (stimulant) substances specifically listed in Schedule 5 generally have presumption for supply levels of “5 grams or 100 flakes, tablets, capsules or other drug forms each containing some quantity of the drug”. These include methamphetamine, amphetamine, MDMA and MDA.

Presumption for supply of amphetamine

Presumption for supply levels were set for MDMA and amphetamine in June 2005. The presumption level for amphetamine was based on the fact that, for legal therapeutic use, the doses recommended for amphetamine use are only in the region of 5 to 10 milligrams (mg). Taking the upper level, 5 grams of pure amphetamine was thus the equivalent of approximately 500 doses (or tablets). In the case of recreational use, intelligence indicated that amphetamine users commonly consume more than one tablet per session, sometimes up to five or more tablets over a 48-hour period. It followed that possession of 100 or more amphetamine tablets, capsules or other drug forms would (as a rebuttable presumption) be far in excess of ranges for personal use.

A presumption for supply of 5 grams or more for amphetamine, or 100 flakes, tablets, capsules or other drug forms, was considered consistent with the presumption for supply already set for the chemically related phenethylamines

MDMA and MDEA, and the parent compound MDA [2-amino-1-(3,4-methylenedioxyphenyl) propane] under Schedule 5 of the MoDA.

Further, it aligned the presumption for supply of amphetamine with the levels agreed to by Ministers in 2002 for the related (Class A) substance methamphetamine. The presumption level for methamphetamine was set at “5 grams, whether or not contained in a substance, preparation or mixture”. A ‘point’ of methamphetamine, the standard amount sold on the illegal market, is generally 100mg. This would usually consist of 2 to 3 doses for a user, therefore 5 grams represents approximately 100 doses.

Discussion

The maximum period of supply on prescriptions containing pseudoephedrine is one month. Assuming, the maximum dosage of 240mg per a 24 hour period (2 – 8 tablets of pseudoephedrine content) is adhered to, this equates to 7.2grams for the month. This can be compared to the morphine limit of 5 grams which would comfortably cover 100 milligrams per day for 30 days, which equates to three grams for one month. It should be noted that there are occasions where some patients would consume more than three grams over a month, however, this situation would only occur in situations where a patient’s treatment is closely monitored.

Packets of cold and flu remedies containing pseudoephedrine can have up to 1.44 grams of the active ingredient, but the more common types have much less than this. Even at the higher level a presumption of supply of 10 grams would allow around 7 boxes of pseudoephedrine tablets.

A controlled drug script and register would be required and potentially, the requirement for storage in a locked cabinet. It should be noted that Regulation 28(4)(e) which exempts ‘partially exempted drugs’ from this storage requirement. The definition of ‘partially exempted drug’ captures pseudoephedrine SR preparations up to 240 milligram per day.

Options

- 1) Set the presumption for supply level for pseudoephedrine and ephedrine at 5 grams. Methamphetamine and amphetamine both contain a presumption for supply level of 5 grams, if pseudoephedrine and ephedrine were also set at presumption for supply of 5 grams, it would mean that the presumption for supply amount for the precursor is equivalent to the presumption for supply of the drugs pseudoephedrine and ephedrine are manufactured into, indicating that a low presumption for supply level is not appropriate.
- 2) Set the presumption for supply level for pseudoephedrine and ephedrine at 10 grams.
- 3) Leave the presumption for supply at the default value of 56 grams.

Penalties for Class B controlled drug offences

Dealing

Any person convicted of the importation, manufacture, sale or supply of a Class B controlled drug is liable to a term of imprisonment for up to 14 years.

Any person convicted of conspiracy to commit an offence is liable to a term of imprisonment for up to 10 years.