

CAMPBELL

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March 8, 2003

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington D.C. 20002-8002
Attention: Public Affairs

Re: Proposed amendments to §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses) that provide increased penalties for offenses involving oxycodone.

Gentlemen:

I would like to address three issues concerning your proposed amendments to the sentencing guidelines referenced above to provide increased penalties for offenses involving oxycodone: first, the addition of the new paragraph defining "Oxycodone (actual);" second, the addition of the term "oxycodone" to Application Note 9; third, the amendment to the Drug Equivalency Tables; and fourth, the retroactive application of the proposed amendments.

First, however, before addressing these substantive issues, I would like to note that the proposed amendments appear to fall within the legislative mandate to the Sentencing Commission as granted in 28 U.S.C. §994(a)(1), and thus are appropriately within the authority of the Sentencing Commission.

The insertion of the new paragraph defining "Oxycodone (actual)" as the "weight of the controlled substance itself, contained in the pill or capsule" such that the sentences for offenses involving oxycodone will be calculated based on the weight of the actual narcotic rather than the weight of the entire pill, including non-narcotic substances, is clearly a step toward fairness in sentencing for oxycodone offenses. Due to the significant differences in the amount, by weight,

of narcotic contained in the various branded prescription painkillers containing oxycodone, persons convicted of offenses involving this narcotic and sentenced under the existing guidelines have been subject to inequities in sentencing, as such sentences were based on total weight of the pills or capsules instead of the weight of the actual narcotic. Accordingly, an individual convicted of trafficking in Oxycontin could receive a five-year sentence for an offense involving more than nine times the amount of oxycodone as an individual receiving the same sentence for trafficking in Percocet. Such guidelines as exist currently clearly discriminate in favor of traffickers in Oxycontin. The insertion into the sentencing guidelines of the definition of "Oxycodone (actual)" will cure these inequities and more fairly base oxycodone-related sentences on the amount of actual narcotic involved in the offense.

However, I feel it important to point out that by basing some equivalencies on actual narcotic weight (Oxycodone, Amphetamine, Methamphetamine, and PCP) and others on weight of the narcotic mixture, the Commission may run afoul of the prohibition in the Administrative Procedure Act on arbitrary and capricious actions. Under §706(2)(A) of the Administrative Procedure Act, a court reviewing an agency action shall hold unlawful and set aside any arbitrary and capricious agency action, findings, or conclusions. While, as indicated above, I believe it is certainly appropriate to determine sentencing levels based on the actual amount of oxycodone involved, it does seem arbitrary to treat certain narcotic offenses in this manner while offenses involving other narcotics, including those such as morphine which has an almost identical medical equivalency gram for gram compared to oxycodone (See Exhibit A), are evaluated using the weight of the narcotic mixture. I would suggest further amendments to the Drug Equivalency tables such that all narcotic equivalencies are based on actual narcotic weight rather than mixture weight.

In addition to the insertion of the term "oxycodone" into Application Note 9, for purposes of consistency, the term "oxycodone (actual)" should also be added to Note B of the Drug Quantity Table after "Methamphetamine (actual)". The term oxycodone should not, however, be added after "metamphetamine" in the second sentence. This portion of the note currently indicates that for those narcotics which have guidelines based upon both narcotic mixture and actual narcotic weight, in the case of an offense involving a mixture containing the narcotic, the greater of the offense levels determined by the weight of the mixture and the weight of the actual narcotic should be used. This inclusion would negate the intended impact of the proposed amendments for offenses involving Percocet branded oxycodone, but for the striking of the phrase "1 gm of Oxycodone = 500 gm of marihuana" in the Drug Equivalency Tables.

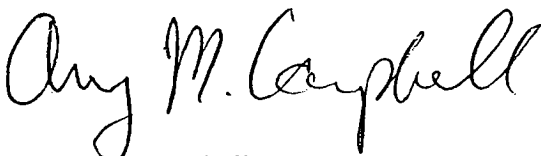
The third issue I would like to address concerns the striking of "1 gram Oxycodone=500 grams marihuana" and the insertion in its place of "1 gram Oxycodone (actual)=6700 grams marihuana." As discussed above, I readily agree that the appropriate measure of the narcotic oxycodone (and indeed, all narcotics) for sentencing purposes should be the actual weight of the narcotic itself, and not the weight of the pill or capsule containing the narcotic; and further, that leaving in the original equivalency would subject oxycodone offenses to the "greater of" standard in Note B discussed above, which in turn would negate the intended effect on Percocet offenses. However, the proposed equivalency of one gram Oxycodone (actual) to 6700 grams (6.7 kilograms) marihuana seems rather arbitrary. The proposed new equivalency appears to be based on the translation of the current equivalency using the actual oxycodon percentage by weight in 10-milligram dosages of Oxycontin branded oxycodone tablets. While this new equivalency clearly serves the stated purpose of substantially reducing penalties for trafficking in Percocet, the notice of proposed amendments provides no indication of the criteria considered in

establishing this proposed equivalency. A review of such criteria would be helpful in assessing the appropriateness of the proposed equivalency, particularly since other opiate equivalencies are based upon mixture weights rather than actual weights.

The fourth issue I would like to address is the retroactive application of the proposed amended guidelines. Previously, any offense involving less than 10 grams of oxycodone (mixture) was subject to the level 12 sentencing floor, and under the proposed amendments would continue to be subject to such floor for offenses involving less than 10 grams Oxycodone (actual). Thus, individuals receiving sentences for such offenses would not be able to avail themselves of §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range). However, any offense previously involving more than 10 grams of Oxycodone (mixture) would result in a lower sentence under the proposed amendments, and thus the proposed amendments should be made retroactive to previously sentenced defendants.

I appreciate your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Amy M. Campbell". The signature is written in black ink and is positioned above the printed name.

Amy M. Campbell

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Palliative Care Fact Sheet

No. 2 November 2002

A Monthly Service to General Practitioners in the Hunter Region

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Palliative Care is the care and study of Patients with active, progressive, far advanced disease, where the prognosis is limited and where quality of life issues are the central concern. The care also involves families / carers. The patient's GP is a key member of the Palliative Care team.

Pain & Symptom Management - Opioid Conversion Table

This conversion chart has been compiled from a number of sources but the most heavily relied on source is the Therapeutic Guidelines series on Analgesics and Palliative Care editions. Other important resources for opioid conversions are the Australian Medicines Handbook 2001 Edition, and the excellent website called Palliative Drugs <http://www.palliativedrugs.com.au>

CONVERSION EXAMPLES:

1. CONVERT from Oral MORPHINE to S/C MORPHINE	RATIO
Oral Morphine 30mg 4 th hrly = S/C Morphine 10mg 4 th hrly	3 : 1

2. CONVERT from Oral MORPHINE to ORAL OXYCODONE (ENDONE)	RATIO
Oral Morphine 30mg 4 th hrly = Oral Oxycodone (Endone) 30mg 4 th hrly	1 : 1

3. CONVERT from Oral MORPHINE to ORAL HYDROMORPHONE	RATIO
Oral Morphine 30mg 4 th hrly = Oral Hydromorphone 4mg 4 th hrly	7.5 : 1

4. CONVERT from Oral MORPHINE to S/C HYDROMORPHONE	RATIO
Oral Morphine 30mg 4 th hrly = S/C Hydromorphone 1.5mg 4 th hrly	20 : 1

5. CONVERT from Oral MORPHINE to Oral METHADONE (SEEK ADVICE)

1 <u>If the morphine dose is less than 300mg/day:</u> Oral Morphine 30mg 4 th hrly (180 mg/day) = Oral Methadone 10mg bd (20 mg/day)
2 <u>If the morphine is greater than 300mg/day:</u> Start at 30mg/d and titrate according to response, it may take over a week to get to steady-state concentrations. It is strongly recommended to liaise with Pain or Palliative Care staff. Due to incomplete cross tolerance and its long half-life ~10 : 1 inpatient admission is recommended for this conversion to ensure close observation of the patient.

6. CONVERT from Oral CR MORPHINE to Oral CR OXYCODONE	RATIO
CR Morphine 30mg bd (MS Contin 30mg bd or Kapanol or MSMono (60mg ONCE daily)) = CR Oxycodone (Oxycontin) 20mg bd	1.5 : 1

Exhibit A
 1987

Opioid Conversion Table (contd)

7. CONVERT from ORAL CR MORPHINE to CR OXYCODONE		RATIO
Oral CR Morphine 60mg/d (MS Contin 30 mg bd or Kapanol or MSMono (60 mg ONCE daily)	= CR Oxycodone (Oxycontin) 20mg bd	1.5 : 1
8. CONVERT from CR MORPHINE to S/C MORPHINE		RATIO
Oral Morphine 30mg bd (60 mg/d)	= Morphine 20mg CSCI / 24hrs	3 : 1
9. CONVERT from S/C MORPHINE to S/C FENTANYL		RATIO
Morphine 10mg	= Fentanyl 150i grms	70 : 1
10. CONVERT from S/C MORPHINE to S/C SUFENTANIL		RATIO
Morphine 300mg/24hrs CSCI	= Sufentanil 450i grms CSCI / 24hrs	700 : 1
11. CONVERT from CSCI MORPHINE to INTRATHECAL MORPHINE		RATIO
Morphine 100mg CSCI / 24hrs	= Morphine 1mg IT daily	100 : 1
12. CONVERT from S/C MORPHINE to EPIDURAL MORPHINE		RATIO
Morphine 100mg CSCI / 24hrs	= Morphine 10mg E / 24 hrs	10:1
13. CONVERT from S/C MORPHINE to Intraventricular MORPHINE		RATIO
Morphine 100mg CSCI / 24hrs	= Morphine Intraventricular 0.1mg / d	1000 : 1
14. CONVERT from S/C FENTANYL to Transdermal FENTANYL		RATIO
Fentanyl 600i grms / 24 hrs via a continuous s/c infusion	= Transdermal Fentanyl 25i gm/hr	1 : 1
15. CONVERT from S/C FENTANYL to Sublingual FENTANYL		RATIO
Fentanyl 50i grms	= Fentanyl 50i grms	1 : 1
16. CONVERT from S/C FENTANYL to S/C SUFENTANIL		RATIO
Fentanyl 100µgrm	= Sufentanil 10µgrm	10:1

ABBREVIATIONS

CR = Controlled Release
 S/C = Subcutaneous
 IT = Intrathecal
 CSCI = Continuous subcutaneous Infusion
 S/L = Sublingual
 E = Epidural

• The conversions contained in this Fact Sheet are average equivalents because of pharmacokinetic variation from patient to patient. If in any doubt contact Palliative Care. Editor