



Testimony

Before the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

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DRUG TESTS

Products to Defraud Drug Use Screening Tests Are Widely Available

Statement of Robert J. Cramer, Managing Director
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Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the ease with which the public can obtain products that are marketed, designed, and sold to defraud urine drug use screening tests such as those administered in the Federal Workplace Drug Testing Program.¹ For purposes of my testimony, I will refer to these products as masking products and will discuss ways in which some businesses peddle them on the Internet. Masking products fall into one of four categories: (1) dilution substances that are added to a urine specimen at the time it is collected or are ingested before an individual submits a urine specimen; (2) cleansing substances that detoxify or cleanse the urine and are ingested prior to the time that an individual submits a urine specimen; (3) adulterants that are used to destroy or alter the chemical make-up of drugs and are added to a urine specimen at the time that it is provided for testing; and (4) synthetic or drug-free urine that is substituted in place of an individual's specimen and provided for testing. My testimony today summarizes our findings.

We began our work by searching the Internet to obtain an overview of the array of products available to mask drug use and located several Web sites that tout products that are used to mask the presence of illegal drugs when a urine drug test is administered. Then one of our agents, posing as a federal employee in a sensitive position who uses marijuana and cocaine and was looking for products that would allow him to pass an impending drug test, placed telephone calls to businesses we identified in our Internet search and purchased drug masking products from them. Through our

¹ Drug tests can be performed on urine, saliva, perspiration, hair, and blood. Currently, the federal government relies solely on urine drug tests, which have a high degree of accuracy, low costs, and relatively unobtrusive method of collection.

Internet search, we also identified and visited a retail store in the Washington, D.C. metropolitan area that sells these products. Additionally, we interviewed officials at the Substance Abuse and Mental Health Services Administration (SAMSHA) of the Department of Health and Human Services (HHS) to obtain information on the operation of the Federal Drug Testing Program and the types of products or methods that are used by individuals to deceive drug tests. Finally, we obtained information from the Department of Justice (DOJ) and the Drug Enforcement Agency (DEA) and about federal laws relating to the sale of masking products and researched state laws on this issue. We conducted our investigation from August 2004 through March 2005 in accordance with quality standards for investigations set forth by the President's Council on Integrity and Efficiency. We are referring the results of our investigation to appropriate law enforcement authorities and thus are not naming the sources from which our purchases were made.

In summary, we found that products to defraud drug tests are easily obtained. They are brazenly marketed on Web sites by vendors who boast of periodically reformulating their products so that they will not be detected in the drug test process. In addition to an array of products designed to dilute, cleanse, or substitute urine specimens submitted to testers by drug users, approximately 400 different products are available to adulterate urine samples. The sheer number of these products, and the ease with which they are marketed and distributed through the Internet, present formidable obstacles to the integrity of the drug testing process.

The sales representatives of the businesses we contacted assured our investigator that the products they sold would enable him to pass an impending drug test despite his

purported use of marijuana and cocaine. While all of the businesses offered products designed to defraud drug tests, the sales representatives recommended different types of masking products based on how frequently our investigator purportedly used drugs, whether he was subjected to drug tests that are announced or conducted randomly, and whether testing administrators closely monitored the collection of urine specimens. When our investigator said that he occasionally used marijuana and cocaine, the representatives recommended he purchase herbal supplements and minerals to be taken orally prior to the drug test. According to the sales representatives, these products act as cleansers or detoxifiers. When our investigator reported that he used marijuana and cocaine on a daily basis and that he was subjected to random drug tests, they recommended that, if he would not be closely monitored when he provided a specimen, he purchase synthetic urine or adulterants that are added to a urine specimen. The prices of the products that the sales representatives recommended ranged from about \$30 to \$79.

Currently, there are a variety of laws related to the sale of drug masking products. Under federal law, if such products are determined to be “drug paraphernalia,” an individual may be prosecuted for selling them pursuant to 21 U.S.C. § 863.² However, we have not found any reported federal cases in which individuals have been prosecuted for such sales. In contrast, some states specifically prohibit the manufacture, marketing, or distribution of drug masking products. For example, New Jersey, Florida, and Kentucky broadly outlaw the sale of any product designed to defraud or falsify a drug screening

² Drug paraphernalia is defined, among other things, as any equipment, product or material...primarily intended or designed for use in ... concealing ... a controlled substance. 21 U.S.C. § 863.

test.³ In some states, such as Louisiana and Texas, it is illegal for an individual to knowingly or intentionally deliver or manufacture substances designed to falsify or alter drug test results.⁴ Additionally, at least nine other states (Arkansas, Illinois, Maryland, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina and Virginia)⁵ have outlawed the sale of urine or adulterants for the purpose of passing drug tests. Of the nine states, only one—South Carolina—has prosecuted at least two individuals for marketing and selling masking products: one who sold urine substitution kits over the Internet⁶ and another who advertised that his store carried products that are used to pass drug tests by cleansing the system.⁷ Also, of the nine states, Illinois and Kentucky have made the offense punishable as a felony; South Carolina and North Carolina have made a second offense punishable as a felony; and it is a misdemeanor offense in the remaining states.

Background

Pursuant to Executive Order 12564, dated September 15, 1986, the federal government established the Federal Workplace Drug Testing Program. It is administered by SAMHSA for the purpose of preventing and deterring the use of illicit drugs in the federal workplace, and to ensure that as the federal government maintains employee productivity. In 2004, SAMHSA revised the Mandatory Guidelines for Federal Workplace

³ N.J. Stat. Ann. § 2 C:36-10 (West 2004); Fla. Stat. Ann. § 817.565 (West 2000); and Ky. Rev. Stat. Ann. § 516.108 (Michie 1999 & Supp. 2004).

⁴ La. Rev. Stat. Ann. § 14:133.3 (West 2004) and Tex. Health and Safety Code Ann. § 481.133 (Vernon 2003).

⁵ Ark. Code Ann. § 5-60-201 (Michie 2003); 720 Ill. Comp. Stat. § 5/17-28 (WESTLAW through 2004 legislation); Md. Code Ann., Crim. Law § 10-111 (2003); Neb. Rev. Stat. § 48-1908 (2002); N.C. Gen. Stat. § 14-401.20 (2003); Okla. Stat. Ann. Tit. 63, § 7002 (2005); 18 Pa. Cons. Stat. Ann. § 7509 (West 2000); S.C. Code Ann. § 16-13-470 (Law. Co-op. 2003); and Va. Code Ann. § 18.2-251.4 (Michie 2004).

⁶ *State v. Curtis*, 591 S.E.2d 600.

⁷ *State v. Rothchild*, 569 S.E.2d 346.

Drug Testing Programs to require that specimen validity tests be conducted on all urine specimens collected.⁸ Noting that there has been a recent increase in the number of chemical adulterants that are marketed on the Internet and in certain magazines, SAMSHA officials stated that validity tests are intended to produce accurate, reliable, and correctly interpreted test results and to decrease or eliminate opportunities to defeat drug tests. According to SAMHSA, approximately 400 different products are available to adulterate urine samples, and companies that market masking substances periodically offer new formulations of their products to avoid detection.

Internet Businesses Tout

Success of Masking Products

To determine how businesses market drug masking products on the Internet, our investigator conducted an Internet search using the words “pass drug test.” He quickly found many Web sites that brazenly tout products and related information that enable users of illegal drugs to pass drug tests. For example, one Web site claimed that “passing a urine drug test has never been easier,” while another boasts that it offers a “variety of detox products [that] will beat the drug test or you’ll get 200% of your purchase price back.” Yet another site advises prospective customers that its product formulas change approximately every 6 to 9 months to stay ahead of new validity tests performed by drug testing laboratories. These Web sites offer a full array of drug masking products.

⁸ Initial validity screening of a urine specimen includes tests for color, odor, creatinine level, specific gravity, and pH level. When these test results do not fall within an acceptable range, more comprehensive testing is undertaken to assess the general validity of the specimen and confirm the presence of adulterants such as oxidants, nitrites, glutaraldehyde, chromate, and surfactant.

Additionally, our investigator found some Web sites that provide an interactive format for prospective customers to find out which products best meet their individual needs. For example, one Web site provides a question and answer format for prospective customers and then recommends certain products based on the responses. Among these questions were:

- How many times per week do you smoke or take other substances?
- Are you watched when providing the sample?
- Will you have at least an hour to prepare?
- Are you taking a Department of Transportation regulated test?

After a purchaser clicks on the most appropriate responses to these questions, the site presents pictures and descriptions of recommended products that are available for purchase. This Web site offers a “one-price-fits-all” approach and charges \$32 for each of its products. It also provides a store locator that helps prospective customers find out whether retail stores in their local area carry these products.

To further investigate how these businesses market drug masking products, our investigator placed telephone calls to some of them. Posing as a federal employee looking for ways to hide his purported cocaine and marijuana use in an impending drug test, our agent asked the sales representatives for each of these vendors for information on products that would enable him to pass a drug test. While each vendor offered a number of products, most of the sales representatives tailored the particular type of masking product they recommended to information they elicited from the investigator about his purported drug use. They asked, for example, how often he used drugs and

when he had most recently used them. They also asked about testing procedures, such as whether tests are conducted randomly or are announced in advance, and whether individuals providing urine samples are closely monitored.

When our agent described himself as a casual cocaine and marijuana user who undergoes announced drug tests, sales representatives recommended that he purchase cleansing products that are ingested orally prior to the test. According to the vendors, these substances detoxify or cleanse the urine if taken before a test is conducted. For example, one of the sales representatives said to our investigator, “if you can stay clean for at least two days, we have a detox drink that you would drink on the day of the test. It will keep you clean for five hours.” For \$35,⁹ our investigator purchased the “detox drink.” After telling another sales representative that he had used cocaine during the past week and had a drug test scheduled the following week, the representative told him “... the good news is we have a detox program. ... It’s a four day program, and basically if you do that, you’ll be OK for the test.” For \$79, our investigator purchased the “detox program,” which came with a urine test kit that a buyer can use at home to conduct a pre-test before submitting a specimen for a drug test.

When our investigator told the sales representatives that he uses cocaine and marijuana on a daily basis and undergoes random drug testing, they recommended that he purchase either synthetic urine or adulterant products. Recommending a synthetic urine product, a representative told our investigator, “you won’t have to be as careful with our product. But you can still get away with it and people do get away with it.” Our investigator

⁹ For purposes of our testimony, we are providing the actual price of the product, which does not include shipping and handling costs.

purchased the product for \$32. Another representative told our investigator that his company sells synthetic urine and that it is “better suited for random situations because the urine is premixed in the bag, sealed off, and irradiated so that it won’t go bad.” Our investigator paid \$49.95 for this product.

At the suggestion of two other sales representatives, our investigator placed orders for two adulterants. For \$29.95, he purchased one adulterant that is designed for people who use drugs daily and are subject to random drug testing. This product consists of two small vials containing liquids that are added directly to the urine specimen before it is submitted for drug testing. Additionally, he spent \$32 for another adulterant that is designed to be used at the drug test location. This product is a bag that contains two chemicals: one chemical is supposed to destroy the drug toxins and another purports to destroy traces of the first chemical. According to the product instructions, a urine specimen should be poured into the bag, mixed with the chemicals, and then poured into the specimen cup.

Using the store locator function on one of the Web sites, we identified a store in the Washington, D.C. area that sells drug masking products. Posing as someone needing information on products that would ensure passing an impending drug test, we visited the store and observed a variety of masking products displayed for sale. The owner of the store told us that he has sold masking products for the past 11 years, and that on some days he sells up to 4 detox products. Additionally, he told us that he has repeat customers. For one of his customers, he special orders certain products. While the store also carries synthetic urine, the owner advised us that the detox drinks are more popular and sell better.

Laws Regarding the Sale of Drug Masking Products Vary

Under federal law, it may be illegal to sell drug masking products if the products are determined to be “drug paraphernalia.” Specifically, under federal law, it is unlawful for any person to sell drug paraphernalia, which is defined as any equipment, product, or material... primarily intended or designed for use in ... concealing ... a controlled substance.¹⁰ The following factors may be taken into consideration in determining whether an item constitutes drug paraphernalia, including the instructions provided with the item concerning its use; descriptive materials accompanying the item which explain or depict its use; national or local advertising concerning its use; the manner in which the item is displayed for sale; and the existence and scope of legitimate uses of the item.¹¹ However, officials from DOJ and DEA advised us that there have not been any federal cases in which an individual has been prosecuted for selling drug masking products under this statute and our independent research of federal case law databases did not find any.

In contrast, some states have statutes that specifically prohibit the manufacture or distribution of drug masking products. For example, a New Jersey statute specifically prohibits individuals from manufacturing, selling, or giving “... any instrument, tool, device, or substance adapted, designed or commonly used to defraud the administration of a drug test.”¹² Under the New Jersey statute, a person may be prosecuted if he or she submits a substance that purports to be from a person other than its actual source or

¹⁰ 21 U.S.C. § 863.

¹¹ 21 U.S.C. § 863(e).

otherwise engages in conduct intended to produce a false or misleading outcome of a drug test.¹³ Similarly, in Florida and Kentucky, it is illegal to manufacture, market, or distribute products intended to defraud any lawfully administered urine test designed to detect the presence of controlled substances.¹⁴ In some states, such as Louisiana and Texas, it is illegal for an individual to knowingly or intentionally deliver or manufacture substances designed to falsify or alter drug test results.¹⁵

In some other states, laws relating to drug masking practices are narrower. For example, in Nebraska it is illegal to provide bodily fluids for the purpose of altering the results of tests to determine the presence of drugs. In some states, such as Pennsylvania and Virginia, it is illegal to sell drug-free urine, but there is no specific prohibition on the sale of adulterants. In contrast, in some states such as South Carolina, Arkansas, North Carolina, Oklahoma, Illinois, and Maryland, it is illegal to sell urine or adulterants. However, of these states, only Illinois and Oklahoma prohibit the sale of synthetic urine.

In our research of reported cases we found two cases in South Carolina in which individuals have been prosecuted for the sale of masking products. In one case that was decided in August 2002, the South Carolina Supreme Court upheld a conviction for violation of a statute that prohibits the possession of adulterants intended to defraud a drug test. In that case, the vendor placed an advertisement in a magazine for a novelty store he owned which read: “Taking a drug test? Want to cleanse your system? We carry Read-Clean, Carbo-Clean Plus, Quick Tabs, One Hour, Zydol, One Hour Klear, Body

¹² N.J. Stat. Ann § 2 C:36-10(b).

¹³ N.J. Stat. Ann § 2 C:36-10 (a).

¹⁴ Fla. Stat. Ann. § 817.565 and Ky. Rev. Stat. Ann. § 516.108.

¹⁵ La. Rev. Stat. Ann. §14:133.3 and Tex. Health and Safety Code Ann. § 481.133.

Flush.” An undercover agent purchased an adulterant Zydol after the store clerk assured him that the product would allow him to pass a drug test for marijuana. In upholding the conviction, the Court relied on, among other things, the advertisement the defendant placed rather than a determination whether the product effectively masks drug use.¹⁶ Additionally, the South Carolina Supreme Court upheld the conviction of another vendor who sold urine substitution kits on the Internet.¹⁷ Included on the defendant’s Web site were claims that, “Our Complete Urine Test Substitution Kits allow anyone, regardless of substance intake, to pass any urinalysis within minutes.”

Mr. Chairman, this concludes my statement. We will be pleased to respond to any questions that you or the other members of the Subcommittee may have.

Contacts

For further information regarding this testimony, please contact Robert J. Cramer at (202) 512-7445 or Paul Desaulniers at (202) 512-7435.

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¹⁶ State v. Rothchild, 569 S.E.2d 346.

¹⁷ State v. Curtis, 591 S.E.2d 600.

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