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ESSAY

Beginning with this volume, the TENNESSEE JOURNAL OF LAW AND POLICY will publish one opinion essay with an invitation to readers to submit informed responses on the topic for publication consideration. In this volume, Ted Goodman proposes a prescription drug buy-back program as a partial remedy for the problem of prescription drug abuse in Tennessee. Responses of comparable length should be submitted to:

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**THE NEED FOR PRESCRIPTION DRUG BUY-BACK
PROGRAMS**

*Ted Goodman*¹

I. Executive Summary

The use of prescription medications by those who have not been prescribed the medication is a growing problem in the United States and particularly in Tennessee. A leading cause of this problem is an excess supply of prescription drugs. This essay proposes that governments consider providing financial incentives for patients to “turn in” unneeded medications to the proper authorities. Such a

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program could be funded largely—if not entirely—by private sources, government grants, and savings in healthcare and the criminal justice system.

II. America's Growing Problem Concerning the Abuse of Prescription Drugs

According to the National Institute on Drug Abuse ("NIDA"), "The non-medical use of prescription drugs is a serious and growing public health problem" in the United States.² While the elderly are most at risk for "abuse or misuse," due to the fact that the elderly tend to require more prescription medication than younger members of society,³ this problem is far from confined to senior citizens. In fact, NIDA estimates that approximately 20% of Americans over the age of twelve have consumed prescription medication "for non-medical reasons."⁴

Perhaps most alarming is the usage of prescription medication for non-medical reasons by teenagers. The only illegal street drug abused by teens more frequently than prescription medications is marijuana.⁵ With 2,000 children trying a prescription medication for the first time each day, the problem of teenage prescription abuse is growing.⁶ While the abuse of many illegal street drugs is declining, the abuse of prescription medication is on the rise.⁷ College-age students are also falling prey to this

² Nora D. Volkow, *From the Director*, NAT'L INS'T ON DRUG ABUSE RESEARCH REPORT SERIES, Pub. No. 05-4881 (2005), available at <http://www.nida.nih.gov/pdf/rprescription.pdf>.

³ *Id.*

⁴ *Id.*

⁵ Office of National Drug Control, Advertisement, *When Teens Want to Get High is Your Prescription Available for Pickup?* (citing 2007 National Survey on Drug Use and Health, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (2008)).

⁶ *Id.*

⁷ Richard A. Friedman, *The Changing Face of Teenage Drug Abuse—*

growing trend. NIDA's 2004 *Monitoring the Future Survey* found that in the prior year, 7.4% of American college students had used Vicodin without a prescription.⁸ This number does not take into account the number of students who had consumed other medications without a prescription. Abuse of medications has serious health implications and, along with illegal drugs, the abuse of prescription medication is a leading cause of unintentional poisoning deaths.⁹

Tennessee's problems with drug abuse are particularly acute. According to the former president of the Tennessee Medical Association, Dr. Robert Kirkpatrick, "It's unfortunate, but Tennessee has a serious drug problem."¹⁰ Tennessee's drug problem is so serious that the State ranks second in the United States for the abuse of

The Trend Towards Prescription Drugs, NEW ENG. J. MED. 1448, 1448 (2006).

⁸ Lori Whitten, *Studies Identify Factors Surrounding Rise in Abuse of Prescription Drugs by College Students*, 20 NIDA NOTES (March 2006), available at http://www.nida.nih.gov/NIDA_notes/NNvol20N4/Studies.html. Whitten discusses *The Monitoring the Future Survey*, which has been conducted annually since 1975. It surveys approximately 50,000 students in the eighth, tenth, and twelfth grades. Questions for the survey are answered by students on self-completed, standardized forms. In addition to the students at these approximately 420 schools nationwide, the survey continues to follow a "randomly selected" group of participants after high school every two years via forms mailed to the participants' homes. See *Design of Monitoring the Future, The Monitoring the Future Survey*, available at <http://monitoringthefuture.org/purpose.html>.

⁹ L. Paulozzi & J. Annett, *Unintentional Poisoning Deaths—United States, 1999–2004*, MORBIDITY & MORTALITY WEEKLY REPORT, Feb. 9, 2007, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5605a1.htm> (last visited Dec. 7, 2009).

¹⁰ Cindy Sanders, *Targeting Tennessee's Drug Utilization Rates: New Program Focuses on Schedule II Narcotics*, EAST TENNESSEE MEDICAL NEWS (July 2007), available at <http://easttennessee.medicalnewsinc.com/news.php?viewStory=1045>.

prescription drugs.¹¹ In fact, research by the Tennessee Medical Association predicts that the abuse of prescription drugs in Tennessee will surpass the use of illegal drugs in the near future.¹² Tennessee's status as the second-most medicated state in the nation¹³ likely provides excess medications, thus contributing to Tennessee's drug problem.¹⁴

The large supply of prescription medication in Tennessee's medicine cabinets and streets should not be confused with a high quality of health in the State. Quite to the contrary, a 2008 study by the United Health Foundation concluded that, with more than 30% of its population suffering from obesity,¹⁵ Tennessee ranks forty-seventh in the United States in the health of its citizens.¹⁶

III. Source of the Medications

A contributing factor to America's growing abuse of prescription medication is the overabundance of these medications in America's medicine cabinets and subsequently her streets.¹⁷ Many teen prescription drug

¹¹ Toby Sells, *Foundation Seeks to Curtail Prescription Drug Abuse by Tennesseans, 'Duped' Doctors* *Memphis Business Journal*, QUARTERLY DOSE OF GOOD SENSE, FROM THE TENNESSEE PRESCRIPTION SAFETY PROGRAM (2009), http://www.tnrxsafety.org/index.php?option=com_content&view=article&id=56:foundation-seeks-to-curtail-perscription-drug-abuse-by-Tennesseans-duped-doctors-memphis-business-journal&catid=19:psp-media&itemid=38 (last visited Dec. 7, 2009).

¹² Sanders, *supra* note 10.

¹³ *Id.*

¹⁴ See NIDA, *Topics in Brief: Prescription Drug Abuse* (March 2008), available at <http://www.drugabuse.gov/pdf/tib/prescription.pdf>.

¹⁵ UNITED HEALTH FOUNDATION, *AMERICA'S HEALTH RANKINGS 25* (2008), available at <http://www.americashealthrankings.org/2008/pdfs/2008.pdf>. The United States population has an overall obesity rate of 26.3%. *Id.* at 15.

¹⁶ *Id.* at 7.

¹⁷ NIDA, *Topics in Brief*, *supra* note 14.

abusers admit that they get the drugs from their parents, friends, or relatives who have excess medication.¹⁸ In many cases, teens find prescription medication easier to obtain than illegal street drugs.¹⁹ One study found that as many as 70% of teen prescription painkiller abusers obtained the medications from a friend or relative.²⁰

The Office of National Drug Control Policy suggests that parents can prevent such abuse by “properly dispos[ing] of old or unneeded medicines.”²¹ The difficulty in proper disposal—and the lengths to which abusers will go to obtain such medications—is illustrated by the Office of National Drug Control Policy’s suggestion that persons disposing of unneeded medications should “properly conceal and dispose of them by putting them in a bag or container, and mixing them with something unappealing, like kitty litter or coffee grounds.”²² A prescription drug buy-back program would ensure that drugs are disposed of in a responsible manner.

Disposal using a method sufficient to prevent salvaging of the medication is important. One national survey found that 56.5% of those twelve and over who had abused prescription drugs in the past year obtained the drugs from a known person without paying for them; what percentage of these transactions were gifts or thefts is unclear.²³ However, since 10% of *teens* (not just teen drug abusers, but 10% of *all* teens) admit to stealing drugs from a friend or relative, it is safe to assume that most of those

¹⁸ Friedman, *supra* note 7, at 1448, 1450.

¹⁹ Friedman, *supra* note 7, at 1449.

²⁰ Office of National Drug Control, *supra* note 5.

²¹ *Id.*

²² The Anti-Drug.com, Rx Danger Zones: The Search Starts at Home, http://www.theantidrug.com/drug_info/transcript-house-tour.html (last visited Dec. 7, 2009).

²³ NIDA, PRESCRIPTION AND OVER-THE-COUNTER MEDICATIONS, INFOFACTS 8 (2009), available at <http://www.nida.nih.gov/infofacts/PainMed.html>.

56.5% of drug abusers did not obtain the medications with the consent of the intended recipient of the medications.²⁴ Only 4.1% of those persons had obtained the medication “from a drug dealer or other stranger,” and only 0.5% of abusers had obtained the drugs from the Internet.²⁵ Because such a small percentage of drug abusers obtain their medications from “drug dealers,” a drug buy-back program, which provides an incentive for patients to “turn in” their unneeded medications, should significantly curtail the supply of medications available for abuse.

IV. Governments Should Introduce Programs to Purchase Unneeded Prescription Drug Medication from Patients

While the problem of prescription drug abuse is distressing, the fact that such small percentages of users obtain their medications from drug dealers and the Internet is encouraging. The numbers indicate that the vast majority of the abusers’ supply could be cut off by providing incentives for patients to turn in unneeded medications to designated depositories. The numbers suggest that the vast majority of abusers obtain their supplies not through the direct efforts of drug dealers, but rather through the carelessness of the patients. Because such a small percentage of prescription drug abusers obtain their medications from drug dealers,²⁶ a sufficient incentive could likely be provided at significantly below the street value of the drugs. While it is unlikely that many “drug dealers” would participate in such a program, nevertheless,

²⁴ The Anti-Drug.com, Where Teens Find Prescription Drugs, http://www.theantidrug.com/drug_information/otc-prescription-drug-abuse/prescription-drug-dangers/where-teens-find-prescription-drugs.aspx (citing Substance Abuse & Mental Health Servs. Admin. Nat’l Survey on Drug Use & Health) (last visited Dec. 7, 2009).

²⁵ NIDA, INFOFACTS, *supra* note 23, at 8.

²⁶ *Id.*

“buy-back” programs would likely find their greatest success if they were offered on a no-questions-asked basis. The financial incentives could be provided in many forms, preferably gift cards that could be exchanged for needed items such as groceries and clothing.

Not only would such a program benefit the human population by reducing the supply of drugs available for abuse, but also such a program would benefit the environment by ensuring that the drugs are disposed of in an environmentally responsible manner. In years past, many people were advised to simply flush unwanted drugs into the sewer system. While some drugs, including Oxycodone, may be safely flushed into the sewer system,²⁷ the flushing of other drugs can adversely affect the environment, aquatic life, and our own water supplies.²⁸ In addition, the flushing of antibiotics could foster the development of resistant bacteria, thereby decreasing the effectiveness of these medications.²⁹ Thus, a prescription drug buy-back program could benefit society by preventing these medications from falling into the hands of abusers, and it would benefit the environment by ensuring that the medications are disposed of in an environmentally responsible manner.

While the author is not aware of any existing prescription drug buy-back programs or any pending legislation proposing such a program, there are many programs that collect unwanted medications without offering incentives for participation. These programs have found encouraging success. In an initiative unrelated to

²⁷ Office of Nat’l Drug Control Policy, Proper Disposal of Prescription Drugs (Feb. 2007), <http://www.tnrxsafety.org/media/PDF/disposal.pdf> (last visited Dec. 7, 2009).

²⁸ N.Y. Dep’t of Env’tl. Conservation, Proper Disposal of Household Prescriptions and Over-the-Counter Drugs, <http://www.dec.ny.gov/chemical/45083.html> (last visited Sept. 17, 2009).

²⁹ *Id.*

this proposal, a drug collection program in Murfreesboro, Tennessee on September 9, 2009, collected fifty-seven pounds of prescription and over-the-counter pills over the course of just four hours.³⁰ A similar, unrelated program in Kalamazoo, Michigan in June 2008 collected 580 pounds of pills in four hours.³¹ The medications in both programs were incinerated, thus preventing them from adversely affecting the water supplies.³² Although the collection and destruction of the pills in Kalamazoo were funded by a grant from the Environmental Protection Agency, participants did not receive any financial incentive to turn in their pills.³³ The success of these programs suggests that a program offering even minimal financial incentive would enjoy even greater success.

V. Potential Sources of Funding

Funding for a prescription drug buy-back program could come from many sources. One potential source would be private businesses that sell prescription medications. The socially responsible image that participation in such a program would convey would make participation appealing. Participation would be particularly enticing if coupled with the media attention that such a program would attract. Participating businesses could rightly claim that not only do they distribute medications to people who need them, but they also take steps to ensure that those medications do not fall into the wrong hands. As

³⁰ Mark Bell, *Drive Collects Thousands of Unwanted Pills*, RUTHERFORD A.M., Sept. 10, 2009, available at <http://pqasb.pqarchiver.com/dnj/access>.

³¹ John Liberty, *County Collects 580 Pounds of Unwanted Pills*, KALAMAZOO GAZETTE, June 21, 2008, available at http://blog.mlive.com/kzgazette/2008/06/county_collects_580_pounds_of.html.

³² Bell, *supra* note 30; Liberty, *supra* note 31.

³³ Liberty, *supra* note 31.

well as enhancing their corporate images, companies may also increase their store traffic as program participants redeem their gift cards.

In addition to corporate funding, certain charities, action committees, and the federal government would likely be willing to participate in such a program. As Nora D. Volkow, M.D., the Director of NIDA, has stated, “accessibility is likely a contributing factor” to America’s growing prescription drug abuse problem.³⁴ Because it is known that such large percentages of these drugs are available through carelessness,³⁵ such organizations should be eager to experiment with methods that hold the potential to curtail this supply. By at least one measure, Tennessee has the second highest *per capita* number of prescriptions in the United States,³⁶ so the state is the ideal place to experiment with reducing the excess supply of medications.

Society already expends staggering resources on the problem of prescription drug abuse. In 2001, the abuse of prescription opioids cost the United States an estimated \$1.8 billion in its criminal justice systems and \$2.8 billion of its healthcare resources.³⁷ Therefore, as well as receiving direct funding, the savings could defray the total costs to society of such a program in the criminal justice system and health care costs. Because the program would curtail the supply of and access to these medications, it would decrease the potential for health complications

³⁴ Nora D. Volkow, Prescription Drugs, Abuse and Addiction—From the Director, <http://www.nida.nih.gov/ResearchReports/Prescription/prescription.html> (last visited Dec. 7, 2009).

³⁵ See NIDA, INFOFACTS, *supra* note 23, at 8.

³⁶ Sells, *supra* note 11.

³⁷ BLUECROSS BLUESHIELD OF TENN., INSIDE TENNESSEE’S MEDICINE CABINET: HOW MUCH IS ENOUGH? 15 (2007), *available at* www.bcbst.com/about/news/reports-issues/2007/06-1937 (citing Analysis Group, Costs of Prescription Opioid Analgesic Abuse In the United States In 2001: A Societal Perspective, <http://www.thci.org/opioid/documents/birnbaum.pdf>).

caused by prescription drug abuse, which prove costly to our health care system.³⁸ Furthermore, the decreased supply of medications would also reduce the opportunity to commit related crimes, such as theft of medication. This diminished opportunity for drug crime would also decrease the number of companion crimes, such as Driving Under the Influence.³⁹ Because a prescription drug buy-back program would decrease the overall number of crimes committed and the supply of drugs available for abuse, the program would recover some, if not all, of its costs in savings realized in the criminal justice and health care systems.

³⁸ *See Id.*

³⁹ *See* Tenn. Code Ann. § 55-10-401 (“Driving under the influence of intoxicant, *drug or drug producing stimulant* prohibited”) (emphasis added).