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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE**

THE STATE OF OREGON,

 Plaintiff,

 vs.

RICHARD HANS NORLAND,

 Defendant.

Case No. 2005 12434

MOTION IN ARREST OF
JUDGMENT

(Oral Argument Requested – Estimated
Time 15 Minutes)

Comes now defendant, by and through counsel, who moves in arrest of judgment. Defendant had filed a demurrer. Said demurrer was overruled. In addition to the grounds asserted in his demurrer, defendant also now argues that the State Pharmacy Board’s Schedule I is vague and no one can tell from reading it how to distinguish “legal” Gammabutyrolactone from “illegal” Gammabutyrolactone, hence Schedule I is vague and unconstitutional.

Points and Authorities

1

(Motions in Arrest of Judgment)

A motion in arrest of judgment is an applications that no judgment be rendered on a verdict of guilty. ORS 136.500.

2

(Unconstitutional Delegation of Powers)

Oregon Constitution Art I, §21 reads, in part: “nor shall any law be passed, the taking effect

1 of which shall be made to depend upon any authority, *except as provided in this Constitution...*”

2 Oregon Constitution Art III, §1 reads:

3 “The powers of the Government shall be divided into three separate [sic] departments,
4 the Legislative, the Executive, including the administrative, and the Judicial; and no
5 person charged with official duties under one of these departments, shall exercise any of
the functions of another, except as in this Constitution *expressly provided*.” (Emphasis
added.)

6 Oregon Constitution Art IV, §1(1) reads:

7 “The legislative power of the state, except for the initiative and referendum powers
8 reserved to the people, is vested in a Legislative Assembly, consisting of a Senate and a
House of Representatives.”

9 The legislature, by enacting ORS 475.992, has made the possession and delivery of
10 certain substances, illegal. The legislature has not, itself, identified which substances ORS
11 475.992 makes illegal to possess or deliver. Instead, the legislature has attempted to delegate to
12 the State Board of Pharmacy the legislative power to decide which substances are illegal.

13 ORS 475.005(6) defines “controlled substances” to be those **drugs** which have been
14 scheduled pursuant to ORS 475.035.

15 ORS 475.035(2) authorizes the State Board of Pharmacy to add substances to its
16 controlled substances schedules.

17 Defendant respectfully submits that the purported delegation of the power to determine
18 which substances are illegal to possess or deliver is barred by the three constitutional
19 provisions cited above, in particular Oregon Const. Art. III, §1 as highlighted. No provision of
20 the Oregon Constitution *expressly provides* that any executive body has the legislative power
21 to decide which substances are illegal.

22 Defendant acknowledges that in *State v. Kast*, 120 Or App 74, 852 P2d 242 (1993) the
23 court of appeals held that ORS 475.035 was a constitutional delegation of power. Defendant
24 submits the court was wrong. The court of appeals failed to explain exactly what part of the
25 Oregon Constitution expressly provides any executive body with any legislative power.

26 While the Oregon Supreme Court has held that some delegation of legislative authority

1 to the executive department is constitutional (a holding defendant disagrees with insofar as it
2 legitimizes delegations of legislative power that have not been expressly provided for in the
3 Oregon Constitution), the purported delegation to the State Board of Pharmacy has gone too
4 far.

5 In *Foeller v. Housing Authority of Portland*, 198 Or 205, 264, 256 P2d 752 (1952) the
6 court said:

7 “Since the law making power is entrusted by the Constitution (Art IV, §1) to the
8 legislature, it is clear that when an act leaves the legislative halls it must be complete
9 and not contemplate that some other department of our government or an agency will
complete it. In other words, the legislature cannot delegate the power to determine what
the law shall be.”

10 ORS 475.005(6) (defining “controlled substances”) and ORS 475.992 making possession
11 and delivery of controlled substances illegal are incomplete. Until and unless a substance is added
12 to a schedule, ORS 475.992 does not make its possession or delivery illegal. As currently written,
13 ORS 475.005(6) and ORS 475.992 become complete only when the State Board of Pharmacy
14 completes them by specifying which substances are illegal.

15 According to the court in *Foeller* and according to the United States Supreme Court in
16 *Schechter Poultry Corp. v. United States*, 295 US 495 (1935), delegation of legislative power
17 must be closely constrained and must give clear, unambiguous instructions on how the delegee is
18 to exercise the legislative power delegated.

19 Defendant submits that ORS 475.035 does not give the State Board of Pharmacy clear,
20 unambiguous instructions on how it is to exercise its legislative function of determining which
21 substances are to be illegal. What guidance the legislature gives, it gives at ORS 475.035(1):

22 “In arriving at any decision on changes in or addition to classification when changes or
23 additions are proposed by the federal Drug Enforcement Administration or by any other
24 reliable source, the State Board of Pharmacy shall review the scientific knowledge
25 available regarding the substance, its pharmacological effects, patterns of use and misuse,
and consider the judgment of individuals with training and experience with the substance.”

26

1 ORS 475.035(1) gives the State Board of Pharmacy no guidance on how to decide which
2 substances should be illegal. At best, ORS 475.035(1) directs the board to read, study, and
3 consider.

4 Rather than give the board no guidance, the legislature must give the State Board of
5 Pharmacy an ascertainable standard on a relevant criterion such as toxicity. For example, the
6 legislature could direct the board to add to its schedules substances that have caused the deaths
7 of 10 or more human beings in the United States in a calendar year.

8 If this trial court deems itself bound by *State v. Kast* and refuses to consider that the
9 legislature has unconstitutionally delegated its legislative authority to the State Board of
10 Pharmacy, defendant asks that the court hold that the State Board of Pharmacy exceeded its
11 authority by adding gamma-hydroxybutyric acid and gamma-butyrolactone to its Schedule I.

12 Pursuant to ORS 475.035(1), quoted above, the State Board of Pharmacy is not supposed
13 to act as a rubber stamp for the United States Department of Justice, Drug Enforcement
14 Administration. The State Board of Pharmacy is supposed to make its own decisions about
15 what substances should and should not be on Oregon’s controlled substance schedules.

16 In *State v. Eells*, 72 Or App 492, 696 P2d 564 (1985) the court of appeals held that the
17 State Board of Pharmacy is to use Oregon, not federal, standards for determining which
18 substances are to be incorporated in Oregon’s controlled substance schedules. “Oregon has its
19 own standards for amendment of the schedule, as set forth in ORS 475.035.” *Id.*, 72 Or App at
20 497.

21 The State Board of Pharmacy exercised no independent thought and engaged in no
22 independent research before adding gamma-hydroxybutyric acid to its Schedule I. Attached
23 hereto and by this reference made a part hereof as Exhibit 1 is the State Board of Pharmacy’s
24 sole explanation for its adding gamma-hydroxybutyric acid to Schedule I. That “explanation”
25 was “Oregon’s rules in Division 080 need to be changed in order to be consistent with the
26 federal Drug Enforcement Administration’ list of controlled substances.”

1 This, the board is not authorized to do. To the contrary, the board abrogated its duty to
2 “review the scientific knowledge available regarding the substance, its pharmacological
3 effects, patterns of use and misuse, and potential consequences of abuse, and consider the
4 judgment of individuals with training and experience with the substance.” ORS 475.035(1).

5 The State Board of Pharmacy exercised no independent thought and engaged in no
6 independent research before adding gamma-butyrolactone to its Schedule I. Attached hereto
7 and by this reference made a part hereof as Exhibit 2 is the State Board of Pharmacy’s sole
8 explanation for its adding gamma-butyrolactone to Schedule I. That “explanation” was “In
9 March 2000, Gamma-hydroxhbuyrate (sic) (GHB) was made a Schedule I substance. Gamma
10 butrolactone (GBL) and 1,4 butanediol (BD) both have the same effects as GHB on those using
11 the substances. The rules, however, do not treat GBL and BD the same as GHB. This
12 temporary rule is needed to that GBL and BD can be treated the same as GHB with regard to
13 law enforcement and the community in general.”

14 Again, the board abrogated its duty to “review the scientific knowledge available
15 regarding the substance, it pharmacological effects, patterns of use and misuse, and potential
16 consequences of abuse, and consider the judgment of individuals with training and experience
17 with the substance.” ORS 475.035(1). The pharmacy boards records show that only evidence
18 considered was a letter from a Portland police officer. *See* said letter, attached hereto, marked
19 as Exhibit 3, and by this reference made a part hereof. This letter was not written by a man who
20 claimed to have experience with gamma-butyrolactone. At most, the letter’s author claimed to
21 have spoken to people with experience with gamma-butyrolactone. The letter’s author does not
22 identify himself as a scientist, does not provide the board with patterns of use and abuse, and
23 does not provide the board with potential consequences of abuse. At best, the letter’s author
24 provides second or third hand anecdotes about substances that may or may not be gamma-
25 butyrolactone.

26

1 Moreover and finally, the pharmacy board has been apprised of the fact that gamma-
2 butyrolactone “is an endogenously produced substance found in mammalian tissues, including
3 the brain (Bessman 1963, Roth 1970). It is believed to be a neurotransmitter and modulator of
4 energy metabolism that shows selective brain distribution and specific binding to neuronal
5 tissue.” Unsigned, unattributed literature received from pharmacy board in response to a
6 November, 2005 Freedom of Information Request, marked as Exhibit 4, and by this reference
7 made a part hereof.

8 “Endogenous” means: “**1 a** : growing from or on the inside <~ tissues>: developing
9 within the cell wall <~ spores> **b** : originating within the body <an ~ disease> : arising from
10 internal structural or functional causes <~ malnutrition> <~ mental deficiency> **c** : constituting
11 or relating to metabolism of the nitrogenous constituents of cells and tissues — compare
12 EXOGENOUS **2** : of, relating to, or resembling an endogen **3** : originating in the individual’s
13 own psychodynamics rather than through external causes — **en•doge•nous•ly adv**”.
14 Webster’s Third New International Dictionary 749.

15 The pharmacy board must have a valid reason, backed by scientific data and theory, for
16 making a naturally occurring substance present in every mammal a controlled substance.
17 Frankly, logic dictates that it is impossible to create a reasonable basis for making a component
18 of every human, dog, cat, rat, and porcupine a controlled substance. The pharmacy board can
19 no more have a legitimate reason to make Gamma-hydroxybutyric acid a controlled substance
20 than it could to make air – or oxygen – a controlled substance.

21 3

22 (Taking Without Compensation)

23 Gamma-hydroxybutyric acid and gamma-butyrolactone were – under any reading of the
24 law - legal substances in Oregon until 2000. Prior to 2000 any Oregonian could lawfully
25 possess, deliver, manufacture, or in any other manner have or deal with gamma-hydroxybutyric
26 acid and gamma-butyrolactone.

1 Oregon Constitution Art I, §18 provides, in part, “Private property shall not be taken for
2 public use, nor the particular services of any man be demanded, without just compensation....”

3 Assuming for the sake of argument that the legislature and the State Board of Pharmacy
4 have decided that the public benefits from gamma-hydroxybutyric acid and gamma-butyrolactone
5 being illegal and they have the power to make these substances illegal, the act of making these
6 substances illegal is a constructive if not literal taking of private property for public use. Neither
7 the legislature nor the State Board of Pharmacy has in any way, fashion, or form compensated
8 any private owners of either substance. This taking is unconstitutional and is therefore illegal.

9 **4**

10 **(Privacy)**

11 Defendant has the right to privacy guaranteed to him and every other resident of the United
12 States. *Roe v. Wade*, 410 US 113 (1973); *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156
13 L.Ed.2d 508 (2003). Defendant has the right to ingest substances into his body as surely as a
14 pregnant woman has the right to hire a medical doctor to kill her unborn baby or a homosexual
15 has the right to engage in anal sex. No rational basis exists for a constitutional right that – on the
16 one hand - protects one’s decision to hire a doctor to insert a scalpel into one’s body to kill an
17 unborn baby and protects one’s decision to allow a man to insert his penis into one’s rectum but –
18 on the other hand – does not protect one’s decision to insert substances of one’s own choosing
19 into one’s own body.

20 The right to ingest substances must include the right to possess those same substances prior
21 to ingesting them.

22 **5**

23 **(Natural Law)**

24 The Oregon Supreme Court has recently reaffirmed the importance of natural law. The court
25 in *State v. Ciancanelli* discussed the nature and roll of natural law when Oregon’s constitution
26 was created. Moreover, the court cited with approval two Indiana cases of immediate concern

1 here.

2 In *Beebe v. State of Indiana*, 6 Ind 501, 63 Am Dec 391 (1855) and *Herman v. State*, 8 Ind
3 545 (1855) the Indiana Supreme Court and one its judges held that the Indiana legislature could
4 not prohibit the manufacture and sale of intoxicating liquors as the people of Indiana had the
5 natural right to possess and consume alcohol.

6 1855 predates the Oregon Constitution. Oregon’s constitution was derived from Indiana’s
7 constitution. The drafters of Oregon’s constitution are deemed to have considered and accepted
8 the rulings of the Indiana Supreme Court that predated Oregon’s constitution.

9 Since the Indiana legislature was powerless to make alcohol illegal, so was and is the
10 Oregon legislature. No legitimate grounds exist to distinguish alcohol from gamma-
11 hydroxybutyric acid and gamma-butyrolactone¹. Hence, the Oregon legislature is powerless to
12 make gamma-hydroxybutyric acid and gamma-butyrolactone illegal.

13 **6**

14 **(Gamma-butyrolactone Prohibition is Vague)**

15 Exhibit 5 hereto is the current and final version of Schedule I. One cannot tell from reading
16 Schedule I which gamma-butyrolactone is prohibited and which gamma-butyrolactone is not
17 prohibited. The terms, “legitimate” and “industrial products” are inherently and inescapably
18 vague.

19 A motion in arrest of judgment is proper to challenge a statute as unconstitutionally vague.
20 *State v. McKenzie*, 307 Or 554, 560-561, 771 P2d 264 (1989); ORS 135.630(4).

21 Article I §§ 20 & 21 of the Oregon Constitution prohibit vague penal statutes. *State v.*
22 *Chakerian*, 325 Or 370, 382, 938 P2d 756 (1997). The Fourteenth Amendment to the United
23 States Constitution also forbids vague penal statutes. *Maynard v. Cartwright*, 486 US 356, 361

24

25 As noted above, gamma-hydroxybutyric acid – unlike alcohol – is endogenous. From a
26 logical, if not legal perspective, gamma-hydroxybutyric acid is less susceptible to legislative
regulation than is alcohol.

1 (1988).

2

3

Conclusion

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The State Board of Pharmacy does not have the lawful authority to make gamma-hydroxybutyric acid and gamma-butyrolactone illegal. The legislature’s unconstitutional attempt to grant its legislative authority to the State Board of Pharmacy was not lawful. The board has not acted independently and it did not make a reasoned, rational, or scientific decision when it added gamma-hydroxybutyric acid and gamma-butyrolactone to its Schedule I.

9

10

The state cannot make possession of gamma-hydroxybutyric acid and gamma-butyrolactone illegal without compensating private owners of those substances.

11

12

13

Individuals have the right to possess and use gamma-hydroxybutyric acid and gamma-butyrolactone. The right is derived both from the federal constitutional right to privacy and from the natural right to possess and use naturally occurring substances.

14

15

Schedule I is vague as no one can tell from reading it which gamma-butyrolactone is prohibited and which is “legitimate.”

16

No judgment of conviction can or should be entered against defendant.

17

DATED: December 7, 2005.

18

19

20

James E. Leuenberger OSB 89154
Attorney for defendant

21

Certificate of Delivery

22

23

I mailed a true copy of this document to David Vills, Lane County District Attorney's Office, 125 E 8th Ave Rm 400, Eugene, OR 97401.

24

25

26

James E. Leuenberger

Since the January Board meeting the D.E.A. has made three significant additions to the federal list of controlled substances. Gamma-hydroxybutyric acid (GHB) is now a Schedule I controlled substance, gamma-hydroxybutyrate in an FDA approved legend drug is a Schedule III controlled substance, and modafinil is now a Schedule IV controlled substance. Therefore we suggest that the Board schedule a rules hearing to make these additions to the Oregon schedule of controlled substances.

Statutory Authority: OR 689.205

Statutes Implemented: OR 475.035

Need for Rules:

Oregon's rules in Division 080 need to be changed in order to be consistent with the federal Drug Enforcement Administration's list of controlled substances.

Fiscal and Economic Impact:

No fiscal or economic impact.

Proposed language:

OAR 855-080-0021(6)

(6) **Others Substances.** Unless specifically excepted or unless listed in another schedule, any quantity or derivative of gamma-hydroxybutyric acid, including any salt, compound, isomer, ester or ether of gamma-hydroxybutyric acid is a schedule I controlled substance.

A drug containing gamma-hydroxybutyrate that has been approved by the Food and Drug Administration as a legend drug is a schedule III controlled substance.

OAR 855-080-0023(6)

(6) **Other Substances.** A drug containing gamma-hydroxybutyrate that has been approved by the Food and Drug Administration as a legend drug is a schedule III controlled substance.

OAR 855-080-0024(4)(g)

(g) Modafinil

RULE SUMMARY

Schedule gamma-hydroxybutyric acid as a Schedule I controlled substance.

Schedule an FDA approved gamma-hydroxybutyrate drug as a Schedule III controlled substance.

Schedule modafinil as a Schedule IV controlled substance.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon State Board of Pharmacy
Agency and Division

In the Matter of amending rules)	Statutory Authority,
)	Statutes Implemented,
OAR 855-080-0021 and)	Statement Of Need,
OAR 855-080-0015)	Principal Documents Relied Upon.
)	

Statutory Authority: ORS 689.145, 689.205, 475.035

Other Authority:

Statutes Implemented: ORS 475.035 and ORS 475.940

Need for Temporary Rule(s): In March 2000, Gamma-hydroxybutyrate (GHB) was made a Schedule I substance. Gamma butyrolactone (GBL) and 1,4 butanediol (BD) both have the same effects as GHB on those using the substances. The rules, however, do not treat GBL and BD the same as GHB. This temporary rule is needed so that GBL and BD can be treated the same as GHB with regard to law enforcement and the community in general.

Documents Relied Upon:

ORS Chapter 475
ORS Chapter 689
OAR Chapter 855
21 CFR 1300 to end
February 25, 2002 letter from Portland Police Bureau to the Board of Pharmacy

Justification of Temporary Rule(s):

BGL and BD are reported to be readily available in the nightclubs and rave dance parties. Immediate adoption of this rule will allow law enforcement the opportunity to treat BGL and BD the same as GHB. Without the immediate adoption of this temporary rule, users and unsuspecting victims in our society would be put at great risk.



Authorized Signer and Date



CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

VERA KATZ, MAYOR
Mark A. Kroeker, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

February 25, 2002

Mr. Gary A. Schnabel, R-Ph.Rn
Executive Director, Board of Pharmacy
800 NE Oregon, Ste. #9
Portland, Oregon 97232

Dear Mr. Schnabel:

Officer Pat Walsh informed me that he had a meeting with you February 21, 2002. This is the letter you requested be written regarding a problem law enforcement and our community is currently facing.

In March 2000 Gamma-hydroxybutyrate (GHB) was made a schedule 1 controlled substance. Although this was a step in the right direction, the law did not take into account many other substances that mimic GHB and have the same effects on the victims.

In particular, those substances that are similar to GHB are: gamma butyrolactone (GBL) and 1, 4 butanediol (BD). For the past year, law enforcement has encountered instances where these alternate substances have been used rather than GHB. The effects are the same and the result or intended result is the same for those employing these substances. However, the law treats these substances differently than GHB. This causes confusion and a lack of direction for law enforcement.

As you know, many body builders who claim GHB enhances growth hormone production in the body and causes the user to have deep rapid eye movement (REM) sleep have abused GHB for some time. When the FDA banned GHB in 1990, proponents of GHB quickly devised new substances GBL and BD to circumvent the ban.

In talking to emergency room personnel, it is apparent that the abuse of GBL and BD are as detrimental as the abuse of GHB. The fact that there are overdoses where individuals are taking GBL or BD leads one to wonder why these substances are not treated with the same rules and laws as GHB.

Recently Portland experienced seven overdoses in one night at local nightclubs. Following is an account of what took place during one incident that night. At one particular nightclub an individual collapsed, began vomiting and lost consciousness. Prior to the paramedics arriving, another individual went down. As the paramedics tended to these victims another person went

TO: GARY A. SCHNABEL**February 25, 2002****Page 2**

down right in front of the paramedics. As to be expected, pandemonium ensued. In the mass exodus from the club another victim was found slouched in a chair unconscious. These victims were unconscious and not breathing. Life saving measures such as CPR and intubation were used to save these individuals. Once at the hospital these patients were put on life support until the drug wore off.

During follow-up investigation, many of the party goers told Officers Walsh and Baldwin that GBL/BD is readily available in the nightclubs and rave dance parties. They indicate that a variety of individuals from teenagers to adults are using the drug.

One particular use of GHB has been criminalized, and that is the use of GHB for the purpose of assault. This law referred to as the "date rape" law has gained much notoriety yet little is known as to the extent these substances are being used for date rape. The reason GHB and its analogs GBL and BD are used in rapes is the amnesia associated with the overdose. Overdose victims do not recall the events of the previous night when they have overdosed on these substances. In the one week that Officers Walsh and Baldwin have been investigating these overdoses they have uncovered four women who have claimed to have been date raped in the last year after being slipped GHB or a similar substance. Two of these women did not report the rape, and told the officers they know other women that have had similar incidents that have gone unreported.

The fact that women are reporting rapes is of concern but they are not the only victims. Officers Walsh and Baldwin have been informed that men are being victimized as well. These rapes go mostly unreported, as men are less likely to admit being sodomized and/or victimized in this respect. During this investigation there have been men who have alluded to this phenomenon occurring in the Portland area with the primary substance used being GBL or BD.

It would seem that these overdose incidents and the reports of date rape would be bad enough, but there is yet another area where GHB and its analogs GBL and BD are wreaking havoc. This area is the rave dance scene. Thousands of our community's young people (14 to 20 years olds) are participating in these underground dance parties. When officers talked to informants that go to these parties as well as those who have been arrested for supplying drugs at these parties, it is apparent that GHB is a big part of the scene.

Although the illegal drug Ecstasy controls the spotlight of the rave scene, make no mistake; GHB, GBL and BD are present and vying for the spotlight. These individuals have told Officers Walsh and Baldwin that "G" is a widely used drug at these parties. When asked about the difference between GHB and GBL/BD, the users make no distinction. In fact, these individuals know that GHB is illegal and tell law enforcement that the primary substances at these parties are GBL and BD. They are well aware that the consumption of GBL and BD has the same affect to GHB. They are also aware that the ability for law enforcement to enforce the laws related to these substances is difficult.

TO: GARY A. SCHNABEL

February 25, 2002

Page 3

Of import to know is that a large portion of the young people that go to these raves and nightclubs specifically are there in search of the "ultimate high". They are actively using various drugs in this search. There are those who mix ecstacy, ketamine (animal tranquilizer), and GHB (or the GBL BD analogs). The slang term for this use is "the EKG crew". Any one of these drugs could kill the user, but the combination is chilling.

So you can see that GHB is not the only culprit in our community. These other substances GBL and BD are as detrimental as GHB. In the cases Officers Walsh and Baldwin have investigated, GBL and BD are the only substances they have observed seized.

As it stands now, the possession of GBL and BD is a misdemeanor and the possession of GHB is a felony. This discrepancy does not make sense and is creating a loophole for abuse to continue at great risk to our young people and community as a whole. Would it make sense to make powder cocaine a felony and rock cocaine a misdemeanor?

If these substances are causing the same intoxication, overdoses and amnesia affects that GHB does, it makes sense that they too be added to the schedule I controlled substances schedule.

I am aware of the process it takes to add substances to the schedules, but I ask that you deem GBL and BD an emergency and add them immediately. These substances are deadly and are causing great risk to the users and unsuspected victims in our society.

Thank you for your consideration in this matter.

Sincerely,



LARRY KOCHEVER
A/Captain
Drugs and Vice Division

LDK/PAW/II

As of late there have been numerous discussions here on the issue of GHB and it's precursor chemicals GBL, 1,4- butanediol and tetrahydrofuran. The following is intended to be a brief overview of the situation and is not intended as a definitive work on this issue.

GHB Mechanism of Action

GHB is an endogenously produced substance found in mammalian tissues, including the brain (Bessman 1963, Roth 1970). It is believed to be a neurotransmitter and modulator of energy metabolism that shows selective brain distribution and specific binding to neuronal tissue. Several authors attribute part of its actions to effects on GABA receptors and to effects on brain opioid systems, where it appears to stimulate the release of endogenous opioids or act more directly on opioid receptors (Mamelak 1989). Some of the biochemical and pharmacological properties of GHB can be blocked or attenuated by the opioid antagonist, naloxone. Unlike most neurotransmitters, GHB is able to cross the blood-brain barrier following systemic administration, resulting in CNS-mediated effects including sedation, sleep, EEG alterations and anesthesia.

GHB is being developed as a potential treatment in narcolepsy because it appears to "consolidate sleep" increasing slow wave sleep and promoting REM sleep resulting in the consolidation of fragmented sleep (Mamelak 1986). Orphan Medical, Inc., (who is also the developer and marketer of Antizol® (fomepizole) for injection) is studying GHB under an FDA approved IND. Clinical trial sites exist across the US and Canada. Interested parties can contact Orphan Medical at 1-888-8ORPHAN for more information about the trial or specific sites.

855-080-0021

Schedule I

Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this rule:

(1) Opiates. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) Acetyl-Alpha-Methylfentanyl

(b) Acetylmethadol

(c) Allylprodine

(d) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadylacetate, or LAAM)

(e) Alphameprodine

(f) Alphamethadol

(g) Alpha-methylfentanyl

(h) Alpha-methylthiofentanyl

(i) Benzethidine

(j) Benzlfentanyl

(k) Betacetylmethadol

(l) Beta-hydroxyfentanyl

(m) Beta-hydroxy-3-methylfentanyl

(n) Betameprodine

(o) Betamethadol

(p) Betaprodine

(q) Clonitazene

- (r) Dextromoramide
- (s) Diampromide
- (t) Diethylthiambutene
- (u) Difenoxin
- (v) Dimenoxadol
- (w) Dimepheptanol
- (x) Dimethylthiambutene
- (y) Dioxaphetyl butyrate
- (z) Dipipanone
- (aa) Ethylmethylthiambutene
- (bb) Etonitazene
- (cc) Etoxeridine
- (dd) Furethidine
- (ee) Hydroxypethidine
- (ff) Ketobemidone
- (gg) Levomoramide
- (hh) Levophenacymorphan
- (ii) 3-methylfentanyl
- (jj) 3-methylthiofentanyl
- (kk) Morpheridine
- (ll) MPPP (1-methyl-4 phenyl-4 propionoxipiperidine)
- (mm) Noracymethadol
- (nn) Norlevorphanol

- (oo) Normethadone
- (pp) Norpipanone
- (qq) Para-fluorofentanyl
- (rr) PEPAP (1-(2 phenethyl)-4-phenyl-4-acetoxypiperidine)
- (ss) Phenadoxone
- (tt) Phenampromide
- (uu) Phenomorphan
- (vv) Phenoperidine
- (ww) Piritramide
- (xx) Proheptazine
- (yy) Properidine
- (zz) Propiram
- (aaa) Racemoramide
- (bbb) Thenylfentanyl
- (ccc) Thiofentanyl
- (ddd) Tilidine
- (eee) Trimeperidine.

(2) Opium derivatives: Unless specifically excepted or unless listed in another schedule, any quantity of the following of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Acetorphine
- (b) Acetyldihydrocodeine
- (c) Benzylmorphine

- (d) Codeine methylbromide
- (e) Codeine-N-Oxide
- (f) Cyprenorphine
- (g) Desomorphine
- (h) Dihydromorphine
- (i) Drotebanol
- (j) Etorphine (except hydrochloride salt)
- (k) Heroin
- (l) Hydromorphenol
- (m) Methyldesorphine
- (n) Methyldihydromorphine
- (o) Morphine methylbromide
- (p) Morphine methylsulfonate
- (q) Morphine-N-Oxide
- (r) Myrophine
- (s) Nicocodeine
- (t) Nicomorphine
- (u) Normorphine
- (v) Pholcodine
- (w) Thebacon.

(3) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this section only, the term "isomer" includes the optical position and geometric isomers):

- (a) Alpha-ethyltryptamine
- (b) 4-bromo-2,5-dimethoxy-amphetamine
- (c) 4-bromo-2,5-dimethoxyphenethylamine
- (d) 2,5 dimethoxyamphetamine
- (e) 2,5 dimethoxy-4-ethylamphetamine
- (f) 4-methoxyamphetamine
- (g) 5-methoxy-3,4-methylenedioxy-amphetamine
- (h) 4-methyl-2,5-dimethoxy-amphetamine
- (i) 3,4-methylenedioxy amphetamine
- (j) 3,4-methylenedioxy methamphetamine (MDMA)
- (k) 3,4-methylenedioxy-N-ethylamphetamine (MDA, MDE, MDED)
- (l) N-hydroxy- 3,4-methylenedioxyamphetamine (N-hydroxy MDA)
- (m) 3,4,5-trimethoxy amphetamine
- (n) Bufotenine
- (o) Diethyltryptamine
- (p) Dimethyltryptamine
- (q) Ibogaine
- (r) Lysergic acid diethylamide
- (s) Marihuana
- (t) Mescaline
- (u) Parahexyl
- (v) Peyote - Meaning all parts of the plant presently classified botanically as *lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds and extracts.

- (w) N-ethyl-3-piperidyl benzilate
- (x) N-methyl-3-piperidyl benzilate
- (y) Psilocybin
- (z) Psilocyn
- (aa) Tetrahydrocannabinols
- (bb) Ethylamine analog of phencyclidine
- (cc) Pyrrolidine analog of phencyclidine
- (dd) Thiophene analog of phencyclidine.
- (ee) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine
- (ff) N-Benzylpiperazine (BZP)
- (gg) 1-(3-trifluoromethylphenyl) piperazine (TFMPP)

(4) Depressants. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Mecloqualone
- (b) Methaqualone.

(5) Stimulants. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including its salts, isomers, and salts of isomers:

- (a) Aminorex
- (b) Cathinone
- (c) Fenethylamine
- (d) Methcathinone
- (e) (+) cis-4-methylaminorex
- (f) N-ethylamphetamine.

(g) N-N Dimethylamphetamine

(6) Other Substances. Unless specifically excepted or unless listed in another schedule, any quantity of the following substances, its analog or derivative, including any salt, compound, isomer, ester or ether:

(a) gamma-hydroxybutyric acid (Except that a drug containing gamma-hydroxybutyrate that has been approved by the Food and Drug Administration as a legend drug is a Schedule III controlled substance.)

(b) gamma-butyrolactone, or

(c) 1,4-butanediol

(7) Exceptions. The following are exceptions to subsection (6) of this rule:

(a) 1, 4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of its sale to a legitimate manufacturer of industrial products and the person is in compliance with the Drug Enforcement Administration requirements for List I Chemicals.

(b) 1,4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of the legitimate manufacture of industrial products.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035, ORS 475.940

Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 2-2002(Temp), f. & cert. ef. 2-4-02 thru 7-31-02; BP 3-2002(Temp), f. & cert. ef. 3-1-02 thru 8-23-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 5-2002, f. & cert. ef. 11-14-02; BP 1-2003, f. & cert. ef. 1-14-03