GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah

CONTROLLED SUBSTANCES ADVISORY COMMITTEE

P.O. Box 146741
160 East 300 South
Salt Lake City, Utah 84114-6741
(801) 530-6628 Telephone
(801) 530-6511 Fax

September 29, 2011

Health and Human Services Interim Committee
Office of Legislative Research and General Counsel
W210 State Capitol Complex
Salt Lake City, UT 84114

Dear Members of the Health and Human Services Interim Committee:

Utah Code Title 58, Chapter 38a creates the Controlled Susbtances Advisory Committee ("Committee") as a consultative and advisory body to the Legislature regarding: (a) the movement of a controlled substance from one schedule to another; (b) the removal of a controlled substance from any schedule; and (c) the designation of a substance as a controlled substance and the placement of the substance in a designated schedule.

The Committee is required to submit to the Health and Human Services Interim Committee a written report that: (a) lists any substances recommended by the Committee for scheduling, rescheduling, or deletion from the schedules by the Legislature; and (b) states the reasons for the recommendation.

During the 2011 General Legislative Session, the Legislature passed H.B. 23 that added substances found in "spice" and "bath salt" products to the list of "listed controlled substances" found in the Utah Controlled Substances Act, Utah Code 58-37-4.2. Since the enactment of H.B. 23, the Utah Bureau of Forensic Services reports that the following "analogs" of banned substances have shown up in tests administered at state crime labs: AM-2201, RCS-4, JWH-210, and JWH-203. Utah Code 58-37-5.5 enables prosecution of unlawful possession of these "analogs" if the chemical structure is substantially similar to that of a controlled substance; however, most local prosecutors do not prosecute unlawful possession of analogs because doing so would likely require expert testimony to prove that the two substances are substantially similar. Local jurisdictions are hesitant to proceed with analog cases due to the extra preparation time required and expert witness testimony needed to prove this charge when they are already overburdened and understaffed. Therefore, to protect the public from the risk of further abuse of these substances, the Committee recommends that the Legislature consider adding AM-2201, RCS-4, JWH-210, and JWH-203 to the list of "listed controlled substances" found in the Utah Controlled Substances Act, Utah Code 58-37-4.2.

September 29, 2011

If the Legislature bans these four substances during the 2012 Legislative Session, the Committee anticipates that manufacturers of spice and bath salt products will immediately begin to create new versions of the product that contain analogs of banned substances. Because the new versions of the products contain only analogs, the public is free to possess and abuse the new versions until the Legislature has a chance to ban the analog at the next general legislative session. Having identified this problem, the Committee recommends that the Legislature consider options of how to enable law enforcement to be more nimble in responding new versions of harmful products created by manufacturers. One option would be for the Legislature to grant the Controlled Substances Advisory Committee the authority to approve temporary placement of substances on the controlled substance list until the next general legislative session when the Legislature would consider whether to make the placement permanent. There are pros and cons to this proposal and the Committee believes that it warrants Legislature's consideration.

The Committee also recommends two minor amendments to the Utah Controlled Substances Act. First, the term, "dimethoxyphenethylamine" is misspelled when used in Utah Code 58-37-4 (2)(a)(iii)(C). Second, state crime labs are unable to detect the difference between two analogs, 4-Fluoromethcathinone and 3-Fluoromethcathinone, listed in Utah Code 58-37-4.2 (16) and (17). The Committee recommends the two be combined into one reference that reads "Fluoromethcathinone."

Thank you for your consideration of these important items. The Committee looks forward to contiuing to act as an consultative and advisory body to the Legislature.

Sincerely,

The Controlled Substances Advisory Committee

David Sundwall, MD, Committee Chair
Todd C. Grey, MD
Major Jeff Carr
Kristen Ries, MD
David Young, R.Ph.
Alexander Larsen, DDS
Scott Reed
Glen R. Hanson, MD
Elizabeth Howell, MD
Darin Vercillo, MD
Jeffrey V. Wright, ND

Richard J. Oborn, Committee Administrator
Utah Department of Commerce
Division of Occupational and Professional Licensing
(801) 530-6767 / roborn@utah.gov
roborn@utah.gov