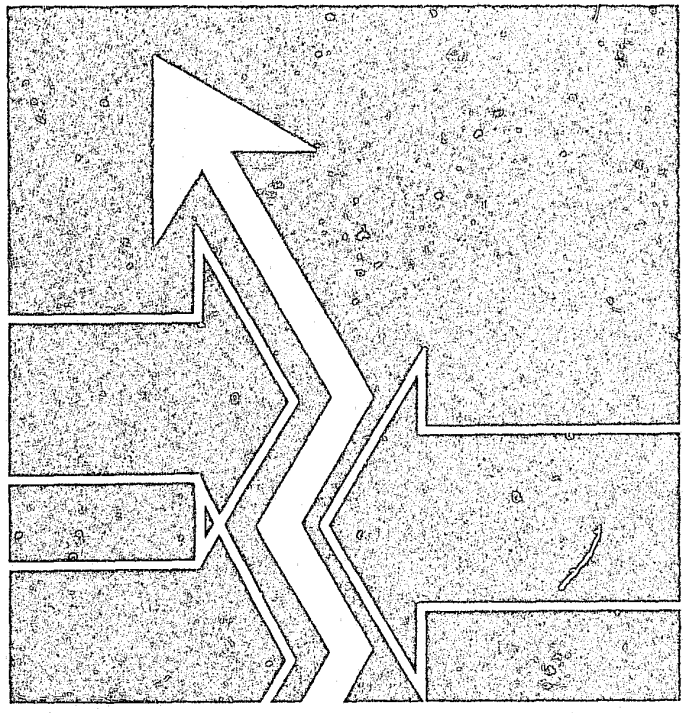
# The Diversion Investigation Unit (DIU) Program

United States Department of Justice
Drug Enforcement Administration

*— a response to the diversion of drugs from legitimate industry.*



# TABLE OF CONTENTS

## I. THE ILLICIT TRAFFIC AND LAW ENFORCEMENT PRIORITIES

The term "illicit drug traffic" is actually a generalization covering a number of types of drugs and their movement to a varied group of abusers. For example, the traffic in heroin from Southeast Asia is distinct from the traffic in cocaine from Latin America. Similarly, the traffic in LSD from clandestine laboratories differs from the traffic in diverted legitimate drugs.

In a broad sense, the illicit drug traffic can be viewed as consisting of three facets:

(a) Traffic originating in foreign countries

(b) Traffic originating in domestic clandestine laboratories

(c) Traffic originating through diversion from legitimate commerce.

Traditionally, Federal, State and local governments have given overwhelming priority to combating the traffic originating in foreign countries (e.g., heroin, cocaine, marihuana). To a lesser extent, efforts have been expended on combating the traffic originating in domestic clandestine laboratories (e.g., LSD). The lowest priority has been given to combating diversion from legitimate commerce (e.g., amphetamines, barbiturates, tranquilizers, etc.).

There is reason for this. In deploying the limited resources of law enforcement, heavy consideration must be given to the relative harm to society caused by these various drugs. If the harm caused by drug A is greater than that caused by drug B (whether due to the extent of abuse or the innate characteristics of the drug), then emphasis should be placed on combating the traffic in drug A. Traditionally, the illicit drugs originating from foreign sources have been viewed by law enforcement and the public as the most harmful.

In recent years, however, we are witnessing a shift in the market towards what has been termed "poly-drug" abuse. Without delving into a statistical or sociological analysis of this trend, suffice it to say that the legally produced drugs used in treating various illnesses in this country are becoming more prevalent in the illicit market. As the demand increases, so follows the supply.

We do not believe this shift in the market is such as to require a dramatic shift of law enforcement priorities and resources. We do believe, however, that a limited shift is necessary. Furthermore, this shift will have to take place primarily at the State and local levels of law enforcement. What follows is a rationale for this statement, plus a proposed method for accomplishing it.

## II. THE DRUG INDUSTRY AND FEDERAL REGULATION

All handlers of controlled drugs must register with DEA on an annual basis. As of this writing there are 565,320 such individuals and organizations registered to legitimately handle controlled drugs in one way or another.

These can be divided into the following categories:

| | |
|---|---|
| Importer/Exporter | 228 |
| Manufacturers | 454 |
| Wholesalers | 1,571 |
| Pharmacies | 54,131 |
| Practitioners | 490,303 |
| Hospital/Teaching Institutions | 12,234 |
| Narcotic Treatment Programs | 920 |
| Miscellaneous | 5,479 |

Registrants below the wholesale level are commonly referred to as the "retail" level of the drug industry. As can be seen, this level comprises the overwhelming bulk of the total number of registrants.

The working legislation of DEA is the Controlled Substances Act of 1971. A study of this Act will show that DEA has been given considerable authority to monitor the commerce of

controlled drugs at the manufacturing and wholesaling levels. Its authority at the retail level is markedly less.

The rationale of Congress in limiting Federal authority at this level was threefold: (1) to conduct the same degree of scrutiny at this level as at the other levels would require a very large increase in Federal resources; (2) the responsibility for monitoring this level has traditionally been held by the States; and (3) the business sphere of the manufacturers and wholesalers is of an interstate nature, while the business sphere of the retail handlers is of intrastate nature.

Due to resource and legal restraints then, there is a marked difference between the strong Federal presence at the upper levels of the drug industry and the inherently weaker Federal presence at the retail level.

## III. THE DRUG INDUSTRY AND STATE REGULATION

There is little commonality in the nature and extent of regulation of health professionals by State governments. The most prevalent mode is to assign this responsibility to various regulatory boards (i.e., Board of Pharmacy, Board of Medicine, etc.). These boards are generally responsible

for the full regulation of professional practice within the State; which encompasses a broad range of issues, only one of which is the prevention of diversion.

For example, a Board of Pharmacy may be responsible for monitoring continuing education requirements, coordinating reciprocity of licensure with other States, monitoring the professional ethics of pharmacists in the State, assuring that the pharmacies are properly equipped and staffed, as well as a number of other issues which, although vital to the practice of pharmacy, have little to do with combating the criminal diversion of drugs by pharmacists. Its staff, if there is one at all, may consist of one or two investigators for the entire State. This staff may even consist of practicing pharmacists who work for the board on a part-time basis. This bleak picture of the Boards of Pharmacy becomes good by comparison with the boards of other professions. These other boards are so poorly equipped that in many States they rely upon the Board of Pharmacy's staff to conduct investigations for them. The pattern among all these boards is that they are not oriented, equipped, staffed, trained, or in some instances even empowered, to properly combat diversion by the health professionals they are charged with regulating. These shortcomings are not

due to deliberacy by the boards. In our experience, they are fully aware of their deficiencies, but are unable to alleviate their situation. The causes for this are complex, but essentially come down to a lack of public awareness of this facet of the illicit drug problem.

The State law enforcement agencies (State Police, State Bureau of Investigation, etc.) do not pursue the diversion of drugs by health professionals in any real sense either. The same can be said for local police departments within the State. This is primarily due to the traditional assignment of this responsibility to the regulatory boards. Other contributing factors include a lack of resources, and a lack of training and orientation in this area.

State and local prosecutors as a general rule have no experience in prosecuting criminal cases against health professionals. There is even some reluctance on their part to accept such cases due to their oddity, sensitivity, or complex nature.

In sum, there is little Federal, State, or municipal effort expended on curtailing diversion of drugs from the retail level.

## IV. THE NATURE OF DIVERSION AND METHODS NEEDED TO SUPPRESS IT

There are about 15 billion dosage units of controlled drugs manufactured in the United States each year. Based upon subjective and statistical indicators, the most conservative estimates on the extent of diversion of these drugs range between 100,000,000 and 150,000,000 dosage units per year. Some estimates greatly exceed this range.

Based upon case surveys and conservative projection, about 90 percent of this diversion is occurring at the retail level. This would be expected, since there is relatively little energy being expended to stop it.

Diversion at the retail level can occur in a number of ways; the most predominant of which are criminal diversion by a health professional (or an employee thereof), forged prescriptions, and theft. Among these, the most predominant is criminal diversion.

Eliminating criminal diversion at this level requires the availability of a broad range of techniques, authorities, and mechanisms. These include the following:

- A thorough ability to conduct enforcement/ regulatory operations within the drug industry, down through the practice of pharmacy and medicine. This should be sufficient to

identify and act upon regulatory and criminal violations by a health professional.

- A thorough capability in law enforcement techniques, including surveillance, undercover techniques, rules of evidence, arrest and search procedures, court testimony, etc.
- A full set of available sanctions ranging from administrative through regulatory to criminal prosecution, depending upon the nature of the violations and the situation.
- The ability to use sanctions available at both the Federal and State levels.
- Resources and support to conduct such operations on a scale sufficient to have an impact on the problem.

There is essentially no existing entity at the Federal, State or local level with these capabilities.

## V. THE DIU PROGRAM -- INTRODUCTION

To summarize the foregoing, the diversion of drugs from legitimate industry has been a lesser area of public and governmental concern. Due to shifting trends with the drug traffic, however, this facet of the drug problem is becoming more important. Law enforcement and regulatory agencies at all levels must begin making some adjustments to it.

The adjustment that a growing number of states have found to be efficient, digestible, and meaningful is the Diversion Investigation Unit Program.

Under this program, DEA serves as a catalyst to bring funding, manpower, expertise, and scattered jurisdiction together into a unified effort. These units are manned and run by State authorities. They are trained by DEA; and a DEA Agent is assigned on a full-time basis to supply continuing expertise and support.

The DIUs are designed to draw on the experience of a varied group of investigators; including those from State regulatory boards, State law enforcement agencies and DEA. These investigators, when assigned to the DIU, are released from other duties in their respective agencies to enable them to concentrate solely on diversion cases.

To ensure that no single agency has complete control over the unit, a Policy Board is established. Each concerned agency has one voting member on the Policy Board. The Policy Board provides overall direction and support for the unit.

Training is an integral part of the DIU concept. The investigators assigned to the units receive a specialized training course, normally of one-week duration, in the procedures involved in developing criminal cases against violative registrants.

In order to obtain the necessary prosecutive follow-up, special seminars are held by DEA for district attorneys and county prosecutors to school them in the fine points of prosecuting diversion cases. Judges are also invited to attend these seminars.

The DIU was conceived as a "seed" program. Its objective was to launch the participating State off to a sound start by means of direct Federal funding and support, and ultimately to have a State-sustained, permanent, DIU-type program. The program was initiated on a pilot basis in Texas and Michigan in September 1972 and shortly thereafter in Alabama (December 1972). All three pilot States have endorsed the program and are still operating them under State funding.

Upon success of these pilot programs, plans were made to implement DIUs in seven additional States. These were: California, Illinois, Massachusetts, New Jersey, Pennsylvania, North Carolina, and Florida. All but Florida are still in operation. Since that time, new DIUs have begun in the District of Columbia, Georgia, Hawaii, Maine, Nevada, New Hampshire, and Washington. Negotiations are currently underway in a number of additional States for DIUs in the near future.

The DIU Program has demonstrated how a concerted effort of highly trained personnel can curtail the diversion of drugs on a State-wide level. The project brings together those independent State agencies that have a role in regulatory drug enforcement into a single, cohesive unit. Each agency contributes specialized skills to the benefit of the other participants in the unit. State police assigned to the units have become expert in the area of regulatory investigations. Likewise, regulatory inspectors have become expert in the techniques of criminal investigation. In effect, a cross-fertilization of experience, training, and knowledge has taken place.

The DIU is an excellent example of what can be accomplished when concerned State agencies unite in a cooperative effort with Federal agencies to suppress the illicit diversion of controlled substances.

## VI. THE DIU PROGRAM -- DESCRIPTION

The following information is based upon DEA's experience in this program as it has been applied in seventeen States. No two States are exactly alike insofar as organization, resources, workload, and a number of other features. For this reason, what follows should be considered a guideline

to State officials in formulating a plan for a DIU tailored to their situation.

A. PROGRAM MISSION AND OBJECTIVES

The mission of a DIU Program is to curtail diversion of legitimate drugs from the retail level of the drug industry within a given State. Further, it is to make Federal/State worksharing possible through the creation of a regulatory/enforcement unit having the combined expertise and authority of the multiple agencies involved; and to staff and equip that unit with the resources necessary to accomplish its task. The objectives of a DIU Program are:

1. To create a broad base of expertise within State (and local) agencies in diversion investigation techniques.
2. To create a broad base of expertise among State and local prosecutors and courts in the handling of retail diversion cases.
3. To assist State regulatory boards in their proper regulation of the various professions involved.
4. To eliminate jurisdictional overlaps and voids among the multiple agencies involved with the diversion problem.

5. To collect intelligence on the nature and scope of diversion within the State.

The day-to-day operations of a DIU are directed at the criminal diversion of drugs from the retail level. It may become involved in drug theft or fraud investigations, but only those involving large scale organized rings. Normally, such investigations should be left to local police. Furthermore, a DIU should avoid becoming involved in investigations of clandestine laboratories or international traffickers. If investigative leads are uncovered on such matters, they should be referred to another law enforcement unit. Possible exceptions to this may be found in precursor monitoring for clandestine laboratory investigations, but only where no other law enforcement unit has the capability to assume this responsibility. If precursor monitoring must be handled by a DIU, a mechanism should be established to assure that the usually lengthy surveillances, etc., are performed by personnel outside the DIU. To do otherwise would result in too great a deviation from the DIU's primary mission.

Diversion investigations commonly begin in the "street." The drugs to be sought in undercover approaches, informant

debriefings, etc., should be limited to those manufactured commercially for legitimate medical purposes. If, in the course of undercover encounters, other drugs (e.g., heroin, LSD, etc.) are offered and it would be importune to refuse, then they may be included in the investigation.

The foregoing is designed towards one end -- to keep the DIU oriented toward its highly specialized mission.

B. DIU CONCEPT IN THE STATE MILIEU

States vary in their organizational arrangements for drug enforcement. Most have an arrangement in which the regulatory boards have the responsibility for suppressing diversion, and a law enforcement organization has the responsibility for suppressing other types of illicit drug trafficking. Many variations of this concept exist, however, it is the most common organizational approach to drug law enforcement among the States.

Another approach to drug law enforcement found in a few States is the single agency concept. One agency has essentially full responsibility for the entire drug enforcement/regulatory problem.

The DIU Program is applicable to both. In the former case, it serves to bring law enforcement resources and techniques to bear on a situation that is essentially a law enforcement problem. In the latter, it serves to add emphasis and resources to an existing entity to enhance its performance in a usually neglected field of law enforcement.

Although all agencies are represented on the Policy Board, there must be one "lead" agency. This agency will contribute the bulk of the manpower, and the Project Director will usually be chosen from within its ranks. This agency must be the leading law enforcement agency in the State, or in a State using the single agency concept above, it must be that agency. An exception to this, which would not apply in every State, is to have the lead agency be the State Attorney General's Office.

C. DIU INTERFACE WITH PARENT AGENCIES

The roles to be played by the DIU and its parent agencies must be clearly defined at the outset.

1. A DIU is meant to supplement the efforts of existing agencies, or to fill a void. It

must not be placed in a role in which it competes with a parent agency. In a State having the single agency concept, that agency covers a full range of drug investigations. A DIU would be established as a distinct entity within that agency, and it would be assigned all diversion investigations for that agency. In a State having a multi-agency concept, specific guidelines must be drawn to prevent overlaps and voids.

2. A DIU/parent agency relationship must be synergistic. The parent agencies are expected to supply the DIU with all appropriate investigative leads coming to their attention, and vice versa.

   The DIU should supply such information as is appropriate to the regulatory boards to facilitate their regulation of the professions. The regulatory boards, on the other hand, should be prepared to handle this information in a timely and effective manner.

   The regulatory boards, by relieving themselves of responsibility for the investigation of

diversion, are free to devote full attention to those areas of professional regulation which they alone can handle.

D. GUIDANCE AND SUPERVISION OF THE DIU

Day-to-day supervision of the DIU's operations are handled by the Project Director (or a designated supervisor). The Project Director reports to the Policy Board.

The Policy Board is composed of one representative from each of the concerned agencies. Not all of the "concerned" agencies need have a direct commitment of resources to the DIU, and this should not be the criteria for membership on the Policy Board. For example, a medical board may not have any resources to donate to the DIU, but should still be represented because the DIU will impact on its activities. It is further suggested that the State planning agency, the Governor's Office, and perhaps the Attorney General's Office be represented.

The Policy Board should convene at least quarterly to review the progress and activities of the DIU, and to provide policy adjustments as necessary.

## E. EVALUATION OF THE DIU

As the recipient of Federal financial assistance, the DIU Project must adhere to all Federal administrative accounting requirements as such. Furthermore, semi-annual on-site evaluations of the project are conducted by DEA. Findings of these evaluations are presented to the Policy Board.

Based upon all its findings during the "seed" period, the Policy Board will make a final evaluation of the project. If the Policy Board deems it advisable, it will recommend to the appropriate State authorities that the project be continued.

## F. DIU FUNDING

See the DEA Financial Assistance Guide.

END