

COURT PROFESSIONAL

Fact Sheet

“The patch ... is used widely in the criminal justice system because of its perceived advantages over other forms of drug testing.”

U.S. v. Meyer, 483 F.3d 865
(8th Cir. 2007) (O'Connor, J.)

For over three decades, the PharmChek® Drugs of Abuse Sweat Patch has played a critical role in our country's court system. Through its **24/7 continuous wear time**, the PharmChek® Drugs of Abuse Sweat Patch **deters** drug use, makes detecting drug use more **efficient** and **economical** than other forms of drug testing, and provides confidence to justice professionals.

This Court Professional Fact Sheet highlights questions commonly asked by judges, attorneys, supervision officers, and other justice professionals with reference to answers provided by federal and state courts using the **reliable** technology.

PHARMCHEK®
DRUGS OF ABUSE SWEAT PATCH



What is the PharmChek® Drugs of Abuse Sweat Patch?

In Meyer, retired Associate Justice of the United States Supreme Court Sandra Day O'Connor, explained, "The sweat patch, which is marketed by PharmChem, Inc., is composed of an absorbent pad and an outer membrane. After the skin is cleaned with alcohol, the patch is applied to the wearer[], and the absorbent pad collects the wearer's sweat, over a period of a week or more. . . . The [wearer]'s sweat wets the pad, the water in the sweat eventually evaporates through the non-occlusive membrane, and any drugs remain in the absorbent pad. Once the sweat patch is removed from the [wearer], it is returned to PharmChem for analysis."

483 F.3D AT 866 (INTERNAL CITATION OMITTED).

In what areas of the criminal justice system is the PharmChek® Drugs of Abuse Sweat Patch utilized?

Courts across the United States use the PharmChek® sweat patch for pretrial supervision, probation and parole, drug courts, and child protection proceedings.

SEE, E.G., IN RE MADISON T., 970 N.W.2D 122 (NEB. CT. APP. 2022); U.S. V. ALFONSO, 284 F. SUPP. 2D 193 (D. MASS. 2003); U.S. V. ZUBECK, 248 F. SUPP. 2D 895 (W.D. MO. 2002).

The National Association of Drug Court Professionals Best Practice Standards recognize "recent studies have begun to examine other testing methods in Drug Courts, including sweat patches..."

SEE NADCP BEST PRACTICE STANDARDS, VOL. II, 28-29, 31 (2018).

Is the PharmChek® Drugs of Abuse Sweat Patch novel technology?

Courts regularly rely on the Food and Drug Administration's (FDA) clearance of the sweat patch dating to 1990, as an indicator of its reliability.

SEE MEYER, 483 F.3D AT 866; U.S. V. BENTHAM, 414 F. SUPP. 2D 472, 474 (S.D.N.Y. 2006); U.S. V. FENIMORE, NO. 98-00018-04, 2003 WL 23374632 (W.D. MO. AUG. 29, 2003).

The sweat patch is generally accepted in the field of toxicology.

SEE COMMONWEALTH V. HALL, NO. 925 MDA 2018, 2019 WL 1579630 (PA. SUPER. CT. APR. 12, 2019) (CITING FRYE V. U.S., 293 F. 1013 (D.C. CIR. 1923)).



Is the PharmChek® Drugs of Abuse Sweat Patch subject to peer-reviewed academic studies?

In admitting results into evidence, courts regularly cite to the dozens of peer-reviewed academic studies that support its reliability.

SEE MEYER, 483 F.3D AT 869 (“THE PEER-REVIEWED ACADEMIC STUDIES THAT HAVE BEEN CONDUCTED GENERALLY SUPPORT THE DEVICE’S RELIABILITY.”); BENTHAM, 414 F. SUPP. 2D AT 473 (“MOST OF THE STUDIES THUS FAR SUPPORT THE RELIABILITY OF THE SWEATPATCH TEST AS A METHOD FOR DETECTING DRUG USE.”); U.S. V. STUMPF, 54 F. SUPP. 2D 972, 973 (D. NEV. 1999) (THE SWEAT PATCH “HAS BEEN THE SUBJECT OF SEVERAL PEER REVIEW ARTICLES AND THE TECHNIQUE OF TESTING FOR THE PRESENCE OF DRUGS IN THE HUMAN BODY THROUGH EXCRETIONS OF PERSPIRATION HAVE BEEN GENERALLY FOUND TO BE RELIABLE.”)

FOR A COMPLETE LIST OF RESEARCH ARTICLES, PLEASE VISIT WWW.PHARMCHEK.COM/RESOURCES/RESEARCH-ARTICLES.



Have courts determined the PharmChek® Drugs of Abuse Sweat Patch test results are reliable and admissible?

Hundreds of courts have ruled the results are reliable and admissible. In an opinion by retired Associate Justice of the United States Supreme Court Sandra Day O’Connor, the United States Court of Appeals for the Eighth Circuit recognized, “The patch ... is used widely in the criminal justice system because of its perceived advantages over other forms of drug testing, e.g., its non-invasiveness, resistance to intentional adulteration, and ability to detect drug-use over relatively long periods.”

MEYER, 483 F.3D AT 866.

FOR A COMPLETE LIST OF SUCH CASES, PLEASE VISIT WWW.PHARMCHEK.COM/RESOURCES/COURT-CASES.

Can PharmChek® Drugs of Abuse Sweat Patch test results be used for sentencing purposes?

In U.S. v. Gatewood, 370 F.3d 1055, 1061 (10th Cir. 2004), vacated on other grounds, 543 U.S. 1109 (2005), the court held sweat patch results are admissible for sentencing purposes because the PharmChem laboratory report had “sufficient indicia of reliability to support its probable accuracy.” In U.S. v. Gragg, 95 F.3d 1154 (7th Cir. 1996), the court affirmed a sentence based on the showing that PharmChem’s results are “accurate and its techniques thorough and proper.”



Is there a chain of custody process for the PharmChek® Drugs of Abuse Sweat Patch?

Courts have approved of the extensive chain of custody procedures implemented for the PharmChek® Drugs of Abuse Sweat Patch. In U.S. v. Yang, No. 3:14-cr-00069, 2021 WL 4304705 (D. Alaska Sept. 1, 2021), the court considered PharmChem's chain of custody training, information collected, methodology and protocol of specimen collection, specimen security, consent and certification forms, shipping, testing procedures, and results reporting to admit the test results as reliable.

All individuals applying and removing the PharmChek® Drugs of Abuse Sweat Patch must be trained in the chain of custody procedures, which ensure the integrity of the sweat patch from the moment it is placed on a person's body to the time it is tested at the laboratory.

FOR A DETAILED DESCRIPTION OF THE CHAIN OF CUSTODY PROCEDURES, PLEASE VISIT [WWW.PHARMCHEK.COM/ PATCH-EDUCATION](http://WWW.PHARMCHEK.COM/PATCH-EDUCATION).

Does the PharmChek® Drugs of Abuse Sweat Patch have advantages over urine drug tests?

In Alfonso, 284 F. Supp. 2d at 196, the court noted, "The sweat patch presents two main advantages over the urine tests that have traditionally been employed to detect drug use. First, the sweat patch poses fewer intrusions on the offender's privacy and schedule. An offender wearing a sweat patch need not be monitored as he urinates, nor must he face random urine tests that may interfere with his work schedule. Instead, he can simply come into the Probation Office on a scheduled basis for removal of his patch and application of a new one. Second, the sweat patch has the potential to provide a more accurate picture of an offender's drug use. Whereas a urinalysis is essentially a snapshot that provides a picture of drug use over a 72-hour period, the sweat patch is worn continuously. In addition, because of the widespread usage of the urine tests, techniques and products have been developed to 'beat' them through dilution, adulteration and substitution, thus further undermining the accuracy of urine tests." (internal citation omitted).



What drugs are detected by the PharmChek® Drugs of Abuse Sweat Patch?

The expanded panel detects Cocaine, Morphine, Codeine, Amphetamine, Marijuana, Phencyclidine, Hydromorphone, Hydrocodone, Fentanyl, Norfentanyl, Oxycodone, Oxycodone, Benzodiazepines, Methadone, Buprenorphine, and Norbuprenorphine. The standard panel detects Cocaine, Morphine, Codeine, Amphetamine, Marijuana, Phencyclidine, Hydromorphone, and Hydrocodone. There is also a fentanyl add-on available for the standard panel, which detects Fentanyl and Norfentanyl.

Can different forms of drug testing yield different results?

It is possible for someone to test positive on one form of drug testing and negative on another form of testing. Courts recognize that certain doses of a drug might not be detected in urine or hair, for example, but detected in sweat. In *Fenimore*, the court explained, “the Court finds that Defendant’s negative hair test, even if reliable, does not conflict with the positive sweat patch. For example, controlled dosing studies have demonstrated that low doses of a drug may be insufficient to be detected in hair.”

2003 WL 23374632, AT *3; SEE ALSO U.S. V. WILSON, NO. 91-CR-124, 1995 WL 324541 (N.D. ILL. MAY 26, 1995).

Every form of drug testing, whether for blood, urine, hair, saliva, or sweat, establishes a laboratory cut-off level to measure the presence of drugs of abuse. Laboratory cut-off levels establish confidence if the result is positive for a certain drug. A positive result on one form of testing and a negative result on another form of testing does not mean one is a false positive or the other is a false negative.

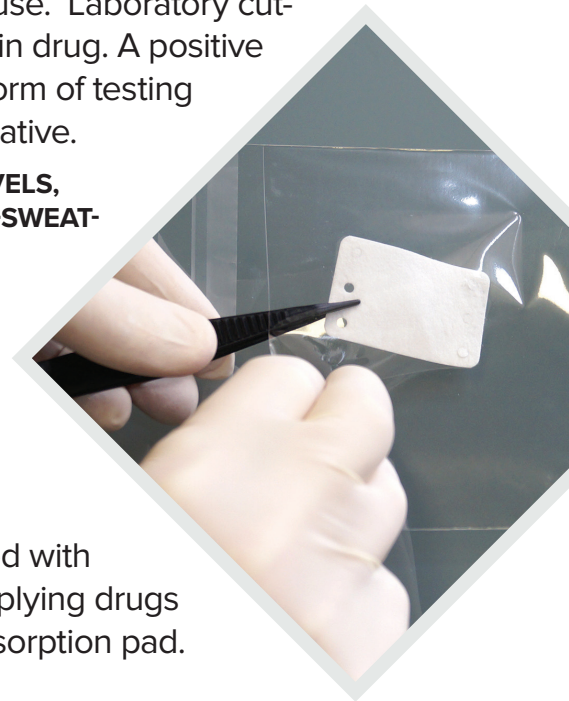
FOR MORE INFORMATION ON THE TESTING METHODS AND CUTOFF LEVELS, PLEASE VISIT [WWW.PHARMCHEK.COM/ RESOURCES/UNDERSTANDING-SWEAT-PATCH-RESULTS](http://WWW.PHARMCHEK.COM/RESOURCES/UNDERSTANDING-SWEAT-PATCH-RESULTS)

Will passive or inadvertent exposure to a drug cause a positive test result on the PharmChek® Drugs of Abuse Sweat Patch?

The absorption pad within the patch is protected from the environment by a layer of film composed of polyurethane coated with adhesive. Studies involving this concern were conducted by applying drugs to the exterior of the patch and collecting and analyzing the absorption pad. No metabolites were found in these experiments.

Courts have rejected arguments that a positive test resulted from environmental exposure or contamination to drugs. Among the rejected arguments include secondhand inhalation of smoke; contact with clothing or bed sheets; contact with currency; contact with drug users while dancing, clubbing, and beach partying; and intimate contact with a drug user.

U.S. V. CORONA, NO. 097-31(3) (MJD/AJB), 2007 WL 4531475 (D. MINN. DEC. 19, 2007); BENTHAM, 414 F. SUPP. 2D AT 472; FENIMORE, 2003 WL 23374632, AT *3; ZUBECK, 248 F. SUPP. 2D AT 895.



References

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U.S. v. Gragg, 95 F.3d 1154 (7th Cir. 1996)

U.S. v. McCormick, 54 F.3d 214 (5th Cir. 1995)

U.S. v. Meyer, 483 F.3d 865 (8th Cir. 2007) (O'Connor, J., Ret., sitting by designation)

U.S. v. Stumpf, 54 F. Supp. 2d 972 (D. Nev. 1999)

U.S. v. Wilson, No. 91-CR-124, 1995 WL 324541 (N.D. Ill. May 26, 1995)

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U.S. v. Zubeck, 248 F. Supp. 2d 895 (W.D. Mo. 2002)

National Association of Drug Court Professionals, Best Practice Standards, vol. II, at 28-29, 31 (2018)

For a complete list of court cases, please visit

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www.pharmchek.com/resources/research-articles

