

After reviewing this evidence, the Deputy Administrator has determined that he need not make a finding as to the viability of this ownership transaction. Even assuming, *arguendo*, that the transfer was a bona fide transaction, revocation of AML's registration is still appropriate. For, previously it has been found that revocation of the DEA registration remained appropriate despite a transfer of ownership, where there has been no change in the control exerted by the prior pharmacist who had engaged in misconduct related to the dispensing of controlled substances. Specifically, "[t]he close connection between the former and current owners leads the Administrator to believe that the transfer has not, and will not, alter the way business is conducted at the pharmacy." *Absecon Pharmacy*, Docket No. 88-76, 55 FR 9029 (1990). Here, the new owner, Mrs. Lockhart, is not a registered pharmacist, is the wife of the former owner, and continues to employ Mr. Lockhart as the "Pharmacist in Charge." Mr. Lockhart continues to hold unrestricted authorization to order and dispense controlled substances. Further, AML did not provide any evidence to demonstrate that any precautions had been taken to provide assurances that controlled substances would not be improperly dispensed in the future by Mr. Lockhart. The Deputy Administrator finds that the risk of diversion by Mr. Lockhart remains, even though G & O Pharmacy is currently under the ownership of AML. Since Mr. Lockhart remains the primary pharmacist of the Respondent, his past misconduct continues to justify the revocation of the Respondent's DEA Certificate of Registration.

The Respondent AML raised several exceptions to Judge Bittner's opinion. First, AML asserted that it was denied procedural due process through the consolidation of the two cases, for AML argued that:

Due process requires that any denial, revocation, or suspension of AML's registration be based upon the acts and omissions . . . of AML, not a predecessor in interest to its business. Further, fundamental due process requires that AML have notice and an opportunity to confront witnesses and contest the grounds upon which the government seeks to revoke its DEA certificate of registration.

However, the Deputy Administrator notes that the Order to Show Cause issued to AML Corporation on March 11, 1994, specifically set out the allegations of Mr. Lockhart's acts of misconduct, mirroring the notice given to G & O Pharmacy in July of 1992. By letter dated April 5, 1994, AML's counsel entered his appearance,

requested a hearing, and responded to the allegations in the show cause order paragraph by paragraph. Thus, AML had notice of the acts which might constitute the basis for revoking AML's registration.

Further, by order dated June 1, 1994, Judge Bittner ordered G & O's counsel to provide AML's counsel copies of documents from the March 1993 hearing, and she ordered the Government to provide AML's counsel exhibits and a copy of the transcript from that hearing. Judge Bittner, concurrent with the June 1994 order, provided AML's counsel with copies of the Administrative Law Judge's exhibits and the record to date in the G & O case. Also, AML received a hearing, witnesses appeared, and documentary evidence was received. AML thus received notice and had an opportunity to confront witnesses and "contest the grounds upon which the government seeks to revoke its DEA Certificate of registration".

The only reference in the record which even arguably could be viewed as restricting AML's access to witnesses, was the following from the hearing transcript of AML's proceedings:

[Judge Bittner]: My understanding is that we agreed this morning, prior to the commencement of the hearing, that we weren't going back into the prior case.

Mr. SHANNON: [AML's counsel] Yes, Judge. And I was just getting ready to say I can probably obviate any of the objections. All I want the record to reflect is that [the Investigator] conducted the investigation of Oehlschlaeger, Inc., [.] AML Corporation was not audited. They were not in existence.

The Deputy Administrator certainly is not conceding that AML was denied an opportunity to confront and cross-examine witnesses from the preceding hearing. However, even assuming *arguendo*, that AML's access to witnesses was somehow restricted, on the record AML's counsel seems to have affirmatively waived his right to "go back into the prior case," at the hearing before Judge Bittner. Thus, given the complete record of AML's notice, opportunity and access to evidence, and AML's own actions before Judge Bittner, the Deputy Administrator finds that AML's procedural due process rights were not violated by the manner in which these proceedings were conducted.

Further, AML objected to the fact that Judge Bittner did not consider all factors listed in 21 U.S.C. 823(f). As has been previously noted, the Deputy Administrator may review those factors in the disjunctive, and he need not make a finding as to each factor. However, as requested by AML, the

Deputy Administrator notes that the record contains no evidence to indicate that AML has been convicted of any federal or state law violations. The remainder of AML's exceptions have been previously addressed.

G & O Pharmacy also filed exceptions to Judge Bittner's opinion. Specifically, G & O objected to Judge Bittner's placing reliance upon the results of the DEA audit. The reliability of the audit results has been addressed by the Deputy Administrator, and needs no further comment here. Second, the Respondent G & O asserts that Judge Bittner erred in admitting hearsay evidence during the administrative hearing. However, since the Respondent's hearing was conducted in accordance with applicable statutes and regulations, the Deputy Administrator declines to adopt the Respondent's exceptions based upon his challenged evidentiary rulings. See, e.g., *Klinestiver v. Drug Enforcement Administration*, 606 F.2d 1128, 1129-30 (D.C. Cir. 1979); *Gary E. Stanford, M.D.*, No. 91-30, 58 Fed. Reg. 14,430 (1993). As to the probative value, reliability, and "fairness of its use," the Deputy Administrator finds that Judge Bittner addressed these issues in her opinion, that he concurs with her findings, and that no further comment is required.

Therefore, after review of the entire record, the Deputy Administrator finds that the public interest is best served by revoking AML's Certificate of Registration. The Deputy Administrator notes that pursuant to 21 CFR 1301.62, the transfer of ownership of G & O Pharmacy to AML effectively terminated all authority granted under DEA Certificate of Registration AG2999691, previously issued to G & O Pharmacy. See 21 CFR 1301.62 and 1301.63. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BA3838553, previously issued to AML Corporation, is revoked and any pending applications denied at this time. This order is effective April 5, 1996.

Dated: February 29, 1996.

Stephen H. Greene,

Deputy Administrator.

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National Institute of Justice

[OJP (NIJ) No. 1072]

RIN 1121-ZA28

**National Institute of Justice
Solicitation for Boot Camp Research
and Evaluation for Fiscal Year 1996**

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation for Boot Camp Research and Evaluation for Fiscal Year 1996.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

DATES: The deadline for receipt of proposals is close of business on April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Voncile Gowdy at (202) 307-2951, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201-03, as amended, 42 U.S.C. §§ 3721-23 (1988).

Background

The National Institute of Justice seeks to support evaluations of the impact of selected boot camps funded by the Office of Justice Programs under the 1994 Crime Act. NIJ is soliciting proposals that will provide a knowledge base for understanding all aspects of boot camps. A multisite evaluation, as well as a number of local-level evaluations and planning assessments, will be conducted on boot camp programs funded by the OJP Corrections Program Office. Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420 to obtain a copy of "Boot Camp Research and Evaluation for Fiscal Year 1996" (refer to document no. SL000139). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. For World Wide Web access, connect to the NCJRS Justice Information Center at <http://ncjrs.aspensys.com:81/ncjrshome.html>. Those without Internet access can dial the NCJRS Bulletin Board via modem:

dial 301-738-8895. Set modem at 9600 baud, 8-N-1.

Jeremy Travis,

Director, National Institute of Justice.

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DEPARTMENT OF LABOR**Office of the Secretary****Submission for OMB Emergency Review; Comment Request**

March 1, 1996.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). OMB approval has been requested by March 7, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ([202] 219-5095).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Pension and Welfare Benefits Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ([202] 395-7316).

The Office of Management and Budget is particularly interested in comments which:

- * evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- * evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- * enhance the quality, utility, and clarity of the information to be collected; and
- * minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Pension and Welfare Benefits Administration.

Title: Notice of Conditional Compliance Program.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 1,722.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 1,722.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Description: The Department of Labor (the Department) is proposing to adopt the Pension Payback Program which is designed to benefit workers by encouraging employers to restore delinquent participant contributions plus earnings to pension plans. This program is targeted at persons who failed to transfer participant contributions to pension plans defined under section 3(2) of the Employee Retirement Income Security Act of 1974 (the Act), including section 401(k) plans, within the timeframes mandated by the Department's regulations, and thus violated title of the Act.

The conditional compliance program is available to certain persons who voluntarily restore delinquent participant contributions to pension plans. Those who comply with the terms of the program will avoid potential ERISA civil actions initiated by the Department, the assessment of civil penalties under section 502(l) of the Act and Federal criminal prosecutions arising from their failure to timely remit such contributions and non-disclosure of the non-remittance. As part of this compliance program, notice to the Department is required as well as the provision of certain information to affected participants.

On a temporary basis, pending promulgation by the Department of the final class exemption setting forth the conditions for retroactive relief, the Department will not pursue enforcement against persons who comply with the conditions of the Program with respect to any prohibited transaction liability which may have arisen as a result of a delay in forwarding participant contributions. The Internal Revenue Service has advised the Department that it will not seek to impose the Internal Revenue Code section 4975(a) and (b) sanctions with respect to any prohibited transaction that is covered by the proposed class exemption, notwithstanding any subsequent changes to the proposed exemption when it is finalized, provided that all requirements specified in the proposed class exemption have been met.