DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 10, 2003, a proposed Consent Decree in *United States* v. *Ralph L. Lowe,* et al., Civil Action No. H–91–830 was lodged with United States District Court for the Southern District of Texas.

In this action the United States sought all costs incurred by the United States for responding to releases or threatened releases of hazardous substances at the Dixie Oil Processors, Inc. Superfund Site near Friendswood in Harris County, Texas. The Consent Decree resolves the United States claim against Pharmacia Corporation (formerly known as Monsanto Company), the Dow Chemical Company, Merichem Company, Lyondell Chemical Company (as successor to ARCO Chemical Company), and Rohn and Haas Company for past response costs that have been incurred and for future response costs that will be incurred by the United States at the Site. These Defendants have agreed to pay $873,949.80.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Ralph L. Lowe,* et al., D.J. Ref. 90–11–2–0323.

The Consent Decree may be examined at the Office of the United States Attorney, 910 Travis Street, Suite 1500, Houston, Texas and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S.Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31153 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Clean Air Act

Notice is hereby given that on December 1, 2003, a proposed Consent Judgment in *United States* v. *The New York City Transit Authority,* Civil Action No. CV–97–7521, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment will resolve the United States' claims under section 113 of the Clean Air Act, 42 U.S.C. 7413, on behalf of the U.S. Environmental Protection Agency against defendant New York City Transit Authority (''TA'') in connection with the TA's renovation of six subway stations in Brooklyn and Queens, New York. According to the complaint, asbestos-containing material was improperly removed during the renovation of six subway stations in Brooklyn and Queens, New York. The Consent Judgment requires the TA to pay $300,000 in civil penalties and enjoins the TA from committing violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 CFR part 61, subpart M.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The New York City Transit Authority,* Civil Action No. CV–97–7521, D.J. Ref. 90–5–2–1–2135.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepoint Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region, II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Judgment may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Judgment, please so note and enclose a check in the amount of $3.00 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31151 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Larry E. Davenport, M.D.: Denial of Application for DEA Registration

I. Background

On September 21, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause (OTSC) to Larry E. Davenport, M.D., (Respondent), proposing to deny his application for a DEA Certificate of Registration. The basis for the Order to Show Cause was that Respondent's registration would be inconsistent with the public interest as that term is used 21 U.S.C. 823(f). More specifically, the OTSC alleged that the Tennessee Department of Health found that in 1998 and 1999, Respondent obtained Schedule II and III controlled substances for the personal use of Respondent and his wife. Respondent obtained the drugs by telephoning in prescriptions using the DEA registration numbers of several different physicians. Sometimes he had his employees do the calling. The OTSC also alleged that Respondent removed controlled substances from the clinic where he was employed, including Emerol, a Schedule II controlled substance.

By letter dated December 10, 2001, Respondent,through his legal counsel, requested a hearing on the issues raised in the OTSC. The matter was placed on the docket of Administrative Law Judge Gail A. Randall. (The ALJ).

The following prehearing procedures, testimony was presented before the ALJ on June 5 and 6, 2002, in Knoxville, Tennessee. The Government presented testimony from three witnesses and had admitted into evidence several exhibits.

Respondent testified on his behalf and also had several exhibits admitted into evidence. After the hearing, both parties submitted Proposed Findings of Fact, conclusions of Law and Argument.

On August 6, 2003, the ALJ certified and transmitted the record to the Acting Deputy Administrator of DEA. The record included, among other thing, the Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, the findings of act and conclusions of law proposed by all parties, all of the exhibits and affidavits, and the tr4anscript of the hearing sessions.

II. Final Order

The Acting Deputy Administrator does not adopt the Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. The Acting Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1301.46, based upon the following findings of fact and conclusions of law.

The Government adduced substantial evidence at the hearing that in 1998 and 1999, Respondent was diverting Demerol, a Schedule II controlled substance, for his own use. At the hearing, Pam Runyon-Dean (Ms. Runyon-Dean) testified on behalf of the Government. Ms. Runyon-Dean was a medical assistant at Respondent's clinic, the MediCenter, in Pigeon Forge, Tennessee form May 1995 until January 1999. After completing training to become a medical assistant, she did her externship at the MediCenter.

Ms. Runyon-Dean testified about her observations of the Respondent's diversion of Demerol. As the result of a complaint, the Tennessee Health Related Board (HRB) initiated an investigation of Respondent. Marianne Cheaves, an HRB investigator, met with Ms. Runyon-Dean and another employee of the MediCenter, and suggested that Ms. Runyon-Dean maintain notes of events occuring there. Since Ms. Runyon-Dean already utilized a daily planner, she used it to write her notes, which she then transferred on to lined notebook pages. The notes were later faxed to Investigator Cheaves. Entries were written on the date when incidents occurred.

Ms. Runyon-Dean testified that Demerol and other controlled substances at the MediCenter were stored in a safe in a closet. The dispensing of controlled substances was recorded on a drug log, usually by a medical assistant. There were no other procedure to keep track of controlled substances at the MediCenter.

On September 22, 1998, and again on September 29, 1998, Ms. Runyon-Dean recorded in her log Respondent's requests for tuberculin syringes, which he claimed were necessary to give his daughter allergy shots at home. On October 6, 1998, Ms. Runyon-Dean observed that Respondent's speech ''became more slurred, his eyes were glassy and droopy, he was real groggy and sleepy.'' Ms. Runyon-Dean also wrote that Respondent went to the Pigeon Forge Drugstore and picked up a bottle of Demerol, and later spent ''a lot of time in the restroom.'' On the same day, Ms. Runyon-Dean, who was solely responsible for keeping the employees' restroom clean, noticed several Kleenex tissues in the employee's restroom trash can that had small spots of blood on them.

On the same day, Ms. Runyon-Dean recorded in her log a conversation with another employee, Sherry Linsey. After Ms. Lindsey learned that Ms. Runyon-Dean provided syringes to Respondent, she stated that Respondent's daughter did not receive allergy injections. Ms. Runyon-Dean never witnessed Respondent's daughter receive an allergy shot at the MediCenter and the medical record at the MediCenter for Respondent's daughter did not corroborate any recommendations for allergy shots. At the hearing, Respondent testified that his daughter suffers from allergies and that Ms. Lindsey should not have made the above statements because she doesn't know his daughter's condition. However, Respondents presented no documentary evidence of his daughter's condition.

On October 9, 1998, Ms. Runyon-Dean reported in her log that she went into the employee's restroom after Respondent came out and found blood spots on the commode seat. She had to wipe the spots before she could use the commode. When she threw away her paper towel, Ms. Runyon-Dean saw a wrapper in the trash can from one of the MediCenter's 3cc syringes. It was the only thing she saw in the trash can. Ms. Runyon-Dean testified that the trash can was empty prior to Respondent's use of the restroom that day because she had cleaned the facility that morning. Ms. Runyon-Dean did not notice blood spots prior to Respondent going into the restroom. She also thought it odd to find a 3cc syringe in the employee's restroom because there was no medication in the room and the room was not used to give injections.

On October 11, 1998, Ms. Runyon-Dean again observed that Respondent spent a lot of time in the restroom, and again noticed throughout the day blood spots on Kleenex in the trash can along with blood spots on the commode and sink in the employees' restroom. At the end of the day, she saw Respondent emerge from the employee's restroom and drop a bloody Kleenex into a trash can next to the drug closet.

Respondent testified that the bloody tissues could have been from anybody, including staff or patients. However, Ms. Runyon-Dean testified that aside from these occasions, she never saw blood on the lid of the commode of the employees' restroom and on the occasions where she saw blood, she knew no one had used the restroom other than Respondent. Ms. Runyon-Dean further testified that initially, she would clean the employees' restroom once or twice a day; however, after the change in Respondent's behavior, she would sometimes have to clean the restroom five or six times per day as other employees alerted her that there was blood in the restroom that needed to be cleaned up.

On October 13, 1998, Ms. Runyon-Dean also noted in her log a meeting between Sheri Linsey and Respondent about Demerol that was missing from the drug safe. Respondent told the staff that if the drug was missing, then the drug would no longer be kept in the office. This account was corroborated by Respondent's testimony. Ms. Runyon-Dean noted that the staff agreed with the Respondent's decision to keep the drug out of the office. Ms. Runyon-Dean further noted, however, that the reason the drug was missing was that Ms. Lindsey (unbeknownst to Respondent) had taken the drug out of the safe the previous Friday afternoon and hid it in the front office to keep it from Respondent. Ms. Runyon-Dean testified that Ms. Lindsey told her that she hid the bottle of Demerol from Respondent because she felt that he was taking it for personal use. Ms. Runyon-Dean also noted that after a few days, a bottle of Demerol was back in the drug safe.

On October 19, 1998, Ms. Runyon-Dean noted in her log that Respondent called her in the morning, and his speech was slurred and he would lose his train of thought in the middle of a sentence. Respondent came into the MediCenter later that day, and Ms. Runyon-Dean again noted that Respondent's speech was slurred. Ms. Runyon-Dean also noted that as the day progressed, Respondent became more and more sleepy, groggy and glassy eyed, and his speech became more slurred, to a point where his words were very drawn out.

During his testimony, Respondent disagreed and attributed his demeanor to the lack of sleep. Respondent also testified that he doubted his speech was slurred.

On that same date, Ms. Edna Kimble, a patient of the MediCenter, told Ms. Runyon-Dean that she observed Respondent take a syringe into the employees' restroom, and later return with a bloody Band-Aid on his right arm, holding a bloody Kleenex on it. When Ms. Kimble asked the Respondent why he was bleeding, he informed her that Terry Sutton, an employee of the MediCenter, had drawn Respondent's blood to measure his cholesterol. Ms. Runyon-Dean testified that when she asked Mr. Sutton that day if he had drawn any blood, or tried to draw blood from the Respondent that day, Mr. Sutton stated that he had been too busy and had not drawn Respondent's or anyone else's blood on that day. Later that day, Ms. Runyon-Dean emptied the trash can in the employees' restroom and found several bloodied Kleenex along with two empty packages of generic Halcion. Ms. Runyon-Dean also saw a Band Aid on Respondent's arm.

During his testimony, the Respondent again attributed the blood on his arm to the ''one time'' that his employee, Terry Sutton, attempted to draw Respondent's blood. Respondent claimed that Mr. Sutton got a ''flashback'' (''pierced the vein''). Respondent failed to explain, however, why Mr. Sutton denied drawing Respondent's blood, and did not continue the blood drawing procedure at another location on the vein or on another vein after he had gotten the flashback. When Ms. Runyon-Dean asked Mr. Sutton whether he had drawn blood that day from Respondent, Mr. Sutton did not mention to Ms. Runyon-Dean that there had been any ''flashback'' in an attempt to draw blood from Respondent.

Ms. Runyon-Dean further testified that anytime MediCenter staff drew blood from someone, requisitions for the lab are filled out. On October 19, 1998, there were no requisitions for lab worked filled out on the Respondent. At the hearing, Respondent contested Ms. Runyon-Dean's account, stating that she never asked Terry Sutton about drawing blood, and that in any event ''* * * it's none of her business when I draw blood and when I don't draw blood.''

In her log entry for October 20, 1998, Ms. Runyon-Dean noted her observations of Respondent entering the MediClinic that morning and proceeding straight to the drug closet. She then realized that he had gone into the drug safe where the Demerol and other controlled substances were kept, because she heard the bottles jingling. She then observed Respondent go into the employees' restroom. Ms. Runyon-Dean immediately asked Julie Bowman, an office employee, to check the drug safe. Upon inspection, the Demerol was missing. Ms. Runyon-Dean testified that she, along with Ms. Bowman and another office employee, noted that the Demerol was present in the safe prior to Respondent going into the safe. About 20 minutes later, after Respondent had emerged from the restroom, the MediCenter staff noticed that the bottle of Demerol had been returned to the drug safe. Ms. Runyon-Dean testified that periodically during that day, the bottle of Demerol was missing and those times corresponded to Respondent's visits to the employees' restroom. By the end of the day, the bottle of Demerol had disappeared and was never returned to the safe.

In addition to testifying that blood spots on his shirt were attributed to a ''flashback'' brought about as a result of blood being drawn by an employee, Respondent further testified that blood would also ''spray back'' on him from lancing wounds and the like. Respondent also testified that blood found in the employees' restroom was form employees going there to wash off blood if it got splattered.

Ms. Runyon-Dean noted in her log that on October 20, 1998, Respondent's shirt sleeves were rolled up to the elbows, and there were blood spots on his ''left arm sleeve.'' She further testified during the hearing that Respondent had blood stains on his t-shirt underneath his scrubs. On one occasion, Respondent was observed with a syringe sticking out of the top of his left back pocket. On that same date, MediCenter staff witnessed Ms. Runyon-Dean empty the trash in the employees' restroom. The contents of the trash revealed several wads of wet paper towels with blood on them along with two ''very bloody'' Band Aids.

On October 2, 1998, Respondent was not in the MediCenter and the Demerol was missing from the drug safe. Respondent called later and told Ms. Lindsey that he had taken the Demerol and emptied it out because he did not want to keep it in the office anymore. He then told Ms. Lindsey that he had changed his mind and asked her to get a new bottle of Demerol from the pharmacy.

HRB Inspector Cheaves also testified about the MediCenter's handling of Demerol. She first performed an audit of the Demerol purchased by the clinic for a period of approximately one year. It showed that the clinic had received 14,000 milligrams of Demerol during the period. She then calculated how much Demerol had been dispensed to the clinic's patients during that time. The audit showed that 10,100 milligrams were not accounted for.

Thus, there is substantial evidence to conclude that Respondent abused Demerol in 1998 and 1999, and at the hearing, Respondent provided very little evidence to rebut this conclusion. The large amount of Demerol unaccounted for in Ms. Cheave's audit, Respondent's seemingly drugged behavior on certain days, his frequent forays into the employees' restroom, leaving behind syringes, bloody band aids, tissues and blood on the commode, the disappearance and reappearance of the Demerol bottle in the drug safe corresponding to Respondent's visits to the restroom, Respondent's untruths about having his blood drawn and the prescription for Demerol syrup (*see infra*) together constitute ample evidence that Respondent diverted a substantial amount of Demerol for his own use.

The Government also adduced plentiful evidence that from 1995 until 1998, Respondent was calling in prescriptions, or having his employees call in prescriptions, for Respondent and his family, using the names of other doctors at the MediCenter. The Government produced a copy of an Agreed Order entered into by Respondent and the Tennessee Department of Health (the Department) in January 2001. In the Agreed Order, Respondent agreed that he had issued 41 prescriptions for controlled substances for his wife and himself under the names of other physicians. The Agreed Order was signed by Respondent on January 21, 2001. The controlled substances included Halcion, Ambien, Hydrocodone and Lorcet. The Department suspended Respondent's medical license for three months and levied a fine, followed by a two-year period of probation.

The evidence presented by the Government at the hearing confirmed Respondent's misconduct. Ms. Runyon-Dean testified that she had heard Respondent call in prescriptions for himself and his family members, requesting that the prescriptions be issued under the names of other doctors at the MediCenter. Two pharmacists told the HRB investigator that Respondent had called in prescriptions for himself and his wife and had asked that the prescriptions be issued in another physician's name. The pharmacists knew that Respondent was on the phone because they recognized his voice. Ms. Runyon-Dean testified that when some of the physicians at the

MediCenter found out that their names had been used on prescriptions that they had not issued, became upset about it.

From October 13, 1998, through the middle of the year 2000, HRB investigators conducted interviews of past and present employees of the MediCenter, including nine physicians. The physicians interviewed were shown pharmacy printouts and original prescriptions for controlled substances purportedly issued in their names for Respondent and his wife. The physicians were asked to review and verify the prescriptions in question. All but two of the physicians confirmed that they had not authorized the prescriptions attributed to them. One physician was unsure whether he had authorized the prescriptions. One of the physicians told the investigator that when he later confronted Respondent about the prescriptions issued in his name (to which Respondent admitted), the Respondent replied ''that's what partners do.''

One physician, Dr. Underwood, confirmed that he had approved a prescription for Respondent's wife. The doctor explained that he issued a prescription for Lorcet, a Schedule III controlled substance, to Respondent's wife, because Respondent had told him that his wife was experiencing painful periods. The physician admitted, however, that he had never seen Respondent's wife.

In a later interview, Dr. Underwood further explained that on or about February 5, 1999, he received a telephone call from the Respondent and was advised that the Respondent had called in another prescription for his wife, apparently using Dr. Underwood's name and DEA registration number. In a February 17, 1999, written statement, Dr. Underwood stated: ''Without my knowledge or permission, neither express or implied, [Respondent] apparently, called in a prescription of a pain medicine, as well as, anaprox ds and a sedative for insomnia using my name and DEA number * * * [h]e did not tell me the date that he called in the prescription, nor the pharmacy that he called.''

At the hearing, Respondent denied that he had ever called in a prescription using another doctor's name without first obtaining the physician's permission. He contended that he, or one of his employees, had asked the doctors to call in the prescriptions for him, and that this was run of the mill practice at the clinic. Respondent claimed that the doctors must have forgotten to annotate the patient charts, and were now lying to protect themselves.

The Government also presented the testimony of DEA Diversion Investigator (D/I) Rhonda Phillips. Investigator Phillips has been a Diversion Investigator with the DEA Nashville Office for fourteen years. She testified that Respondent came to the attention of DEA in 1999, when the HRB requested assistance in its investigation of Respondent. In the course of its investigation, DEA received a copy of a report prepared by the Federal Bureau of Investigation (FBI). The initial target of the FBI investigation was a chiropractor, however, Dr. Underwood was interviewed as part of that investigation. Dr. Underwood stated in the report that Respondent posed as him in calling in a Vicodin prescription for Respondent's wife around January 1999. According to Dr. Underwood, Respondent apparently became concerned about being caught, and told Dr. Underwood, in effect, that ''We have to do something.'' Respondent then requested that Dr. Underwood postdate a patient chart for his wife to make it appear that the earlier prescription was medically necessary. Dr. Underwood refused to take such action. At the hearing, Respondent denied asking Dr. Underwood to cover up the prescription, claiming that Dr. Underwood was lying in order to protect himself.

There was also evidence that Respondent issued prescriptions in his own name for his own use. On March 22, 2001, DEA personnel interviewed Clark M. Kent, former registered pharmacist for Drugs For Less #2121 in Halls, Tennessee. Mr. Kent stated that Respondent would come into the pharmacy and write hydrocodone prescriptions in the names of other individuals and take the controlled substances with him. Mr. Kent further recalled a conversation where Respondent asked Mr. Kent if he would fill a call-in prescription that was issued under Dr. O'Shaughnessy's name. Mr. Kent stated that he declined Respondent's request because it violated federal and state regulations. Mr. Kent also informed investigators that Respondent called in a prescription for Demerol syrup for the latter's son. Mr. Kent found the prescription unusual since that type of medication was not ordinary for a young individual. During the hearing, Respondent denied that he had called in a prescription for Demerol syrup for his son.

The Government also presented evidence concerning Respondent's issuance of controlled substance prescriptions after his DEA registration expired in July 1998. In the Agreed Order, Respondent agreed that he had issued prescriptions for controlled substances after the expiration of his DEA registration.

At the hearing, Respondent admitted that he had issued prescriptions for controlled substances after his DEA registration had expired, blaming it on his own negligence. He claimed that he wrote the prescriptions not realizing that his registration had expired. The Government presented evidence, however, that Respondent continued to issue several prescriptions for controlled substances after he learned of the expiration of his registration. The evidence showed that Respondent learned about the expiration of his registration in late 1998. Respondent testified that he stopped writing prescriptions after he learned of the expiration of his DEA registration and instructed his staff not to refill or call in any prescriptions using his name. Nevertheless, Investigator Cheaves obtained a prescription profile from the Medicine Shoppe in Knoxville, Tennessee showing that on January 7, 1999, after Respondent learned that his DEA registration had expired, a prescription for Valium was filled for patient Hugh Ray Wilson under Respondent's expired DEA registration number, and two prescriptions for Ambien for Mr. Wilson were refilled under that registration number on January 26 and April 7, 1999.

On January 23, 1999, a prescription was filed for Clorazepate Dipotassium (a Schedule IV controlled substance); on February 10, 1999, a prescription was filled for Guaituss DAC Syrup (a Schedule V controlled substance); on May 26, 2000,[1] a prescription was filled for Lomitil liquid (diphenoxylate hydrochloride and atropine sulfate (a Schedule V controlled substance). With respect to the Lomitil prescription, Respondent admitted calling it in, but added that he didn't know the drug was a controlled substance. Respondent later added that someone from his staff may have called in the prescription.

Based upon the above, the Acting Deputy Administrator finds that Respondent diverted substantial amounts of Demerol for his own use; failed to comply with DEA regulations to account for controlled substances at his place of business; called in or caused to be called in controlled substance prescriptions for himself and his wife using other physicians' names; and negligently issued prescriptions for

[1] This prescription was also authorized following Respondent's submission of his January 3, 2000 application for DEA registration.

controlled substances after his DEA registration had expired.

The Acting Deputy Administrator will now consider the factors used by DEA to determine the public interest. Under 21 U.S.C. 823(f), the Attorney General shall register a practitioner to handle controlled substances unless the Attorney General determines that the registration of the applicant is inconsistent with public interest.[2] In determining the public interest, the Acting Deputy Administrator shall consider:

1. Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

2. Compliance by the applicant with applicable Federal, State, and local laws;

3. Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or the chemicals controlled under Federal or State law;

4. Any past experience of the applicant in the manufacture and distribution of chemicals, and

5. Such other factors as are relevant to and consistent with the public health and safety.

Consideration of the first factor weights heavily against Respondent. Respondent could not account for a large amount of Demerol that had been purchased by the MediCenter. Respondent never audited his supplies of controlled substances and at the hearing testified that he was not even aware of the existence of the Code of Federal Regulations.

With regard to the second factor, there was substantial evidence that Respondent failed to comply with Federal, State and local law. His diversion of Demerol for his own use violated 21 U.S.C. 841(a). His failure to conduct audits of the controlled substances in his place of business violated 21 U.S.C. 827. Respondent's issuance of prescriptions to himself and his wife under other doctors' names violated 21 U.S.C. 841(a) and 21 CFR 1306.04 and 1306.05.

As for the third factor, there is no evidence that Respondent had any prior convictions related to controlled substances. The fourth factor is not relevant to these proceedings.

With regard to the fifth factor, many considerations weigh heavily against providing Respondent with a DEA Certificate of Registration. Respondent's misconduct is extremely alarming. The diversion of Demerol for his own use and his long-term issuance of prescriptions for controlled substances in other physicians' names are particularly disturbing. Moreover, even in the face of overwhelming evidence of his misconduct, Respondent has failed to admit to any intentional misconduct whatsoever. Respondent's appalling misconduct and his continued denials about his misuse of controlled substances show that he has failed to recognize the gravity of his actions and that it would not be in the public interest to permit him to handle controlled substances. Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100 and 0.104, hereby finds that the performance of the evidence establishes that the registration of Respondent as a practitioner would be inconsistent with the public interest.

Therefore the Acting Deputy Administrator hereby orders that Respondent's application for a DEA Certificate of Registration and any requests for renewal or modification submitted by Respondent be, and hereby are, denied.

Dated: November 26, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–31218 Filed 12–17–03; 8:45 am]

BILLING CODE 4410–09–M

[2] This function has been redelegated to the Acting Deputy Administrator of DEA.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00–22]

OTC Distribution Company; Revocation of Registration

On May 9, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to OTC Distribution Company (''OTC'') as to why the OTC's DEA Certificate of Registration as a distributor of List I chemical products should not be revoked as being inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The Order to Show Cause alleged that: (1) OTC (Respondent) had failed to comply with the terms and conditions agreed to in a Memorandum of Agreement (MOA) with the DEA, including the requirements: To abide by all laws relative to listed chemicals, to report all sales and purchases to DEA monthly, to prepare quarterly inventories, to contact the DEA field office regarding questions about potential customers and to institute effective control and procedures against diversion; (2) multiple bottles of OTC pseudoephedrine were seized from an illicit manufacturing lab in Oregon; (3) OTC failed to report an uncommon method of payment as required by 21 CFR 1310.05(a); (4) OTC shipped listed chemicals to an unregistered location in violation of the MOA; (5) an audit of OTC's purchase orders and sales invoices revealed a failure to comply with the regulatory requirements of 21 CFR 1310.06(a); (6) the audit also revealed that OTC was unable to account for approximately 415,000 bottles of pseudoephedrine as a result of a failure to maintain complete and accurate records; and (7) the monthly sales spreadsheets OTC provided to the DEA underreported the company's actual total pseudoephedrine sales by more than 200,000 bottles.

By letter dated June 6, 2000, Respondent, by counsel, filed a request for a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Gail A. Randall. On July 17, 2000, the Administrator of the DEA issued an Order of Immediate Suspension of Registration based on the fact that: (1) After the Order to Show Cause was issued, a second audit of OTC's inventory and records revealed a shortage of over 10,000 bottles of pseudoephedrine; and (2) subsequent to the issuance of the Order to Show Cause, the DEA sent four warning letters to the Respondent, alleging that OTC's pseudoephedrine products had been found at various sites related to the illegal manufacturing of methamphetamine.

Following prehearing procedures, a hearing was held in Arlington, Virginia on September 5–6, 2000, and in Dallas, Texas on November 15–17 and December 5–7, 2000, and on May 8, 2001. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law and Argument. On August 8, 2002, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion and Recommended Ruling), recommending that Respondent's DEA registration be revoked. Both parties filed exceptions to the Opinion and Recommended Ruling and on September 27, 2002, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.