

that Callahan's failed to provide information with respect to its list I chemical suppliers and customers. Similarly, with respect to factor five, other factors relevant to and consistent with the public safety, Callahan's failure to provide information necessary to the processing of its application for DEA registration supports the denial of its pending application. In addition, DEA investigators were unable to perform an on-site inspection of Callahan's to determine whether or not the company could adequately handle listed chemicals and the company provided incomplete information necessary to the processing of its DEA application. See, CHM Wholesale Co., 67 FR 9985 (2002).

In light of the above, and the absence of evidence to the contrary, the Acting Administrator is left with the conclusion that Callahan's cannot be entrusted with the responsibilities of a DEA registration. As a result, the Acting Administrator further concludes that it would be inconsistent with the public interest to grant the application of Callahan's Foods.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Callahan's Foods be, and it hereby is denied. This order is effective August 25, 2003.

Dated: July 3, 2003.

William B. Simpkins,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

G & O Pharmacy of Paducah, Incorporated; Denial of Application

On April 19, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to G & O Pharmacy¹ (G & O) notifying the applicant of an opportunity to show cause as to why DEA should not deny its pending application for DEA Certificate of Registration as a retail-pharmacy practitioner pursuant to 21 U.S.C. 823(f). As a basis for the denial, the Order to Show Cause alleged that G &

O's registration would be inconsistent with the public interest. The Order to Show Cause also notified G & O that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to G & O at its proposed registered location in Paducah, Kentucky, and was received on April 26, 2002. DEA has not received a request for hearing or any other reply from G & O or anyone purporting to represent the pharmacy in this matter.

Therefore, the Acting Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no request for hearing having been received, concludes that G & O is deemed to have waived its hearing right. See David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Administrator finds that G & O previously possessed DEA Certificate of Registration AG2999691. On July 23, 1992, an Order to Show Cause was issued proposing to revoke that Certificate of Registration. The Order to Show Cause alleged in substance that (1) in July 1990, an individual had overdosed on Demerol received from the owner-manager pharmacist of G & O Pharmacy, Randall Lockhart, without the benefit of a prescription; (2) accountability audits conducted of G & O Pharmacy by DEA investigators in 1990 revealed shortages of Schedules II and III controlled substances; (3) G & O Pharmacy had filled at least 217 call-in prescriptions not authorized by the physicians whose names appeared on the pharmacy's records; and (4) at least one individual, on multiple occasions, had received controlled substances from Mr. Lockhart without seeing the physician listed on the call-in prescription.

Following prehearing procedures, a hearing was held in Louisville, Kentucky, on March 10 and 11, 1993. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. Subsequently, on December 16, 1993, counsel for the Government filed a motion to reopen the proceedings, alleging that Mr. Lockhart transferred ownership of G & O to AML Corporation (AML). The motion also alleged that AML had applied for and received DEA Certificate of Registration BA3838553 to operate G & O and that DEA had not been notified

pursuant to 21 CFR 1301.62 and 1307.14(b) (both sections presently designated as section 1301.52). The motion further alleged that G & O Pharmacy had ceased doing business under its previous ownership or that Mr. Lockhart had transferred ownership to another entity. When G & O failed to respond to the Government's motion, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an order reopening the proceedings in Docket No. 92-78.

On March 11, 1994, an Order to Show Cause was issued to AML d/b/a G & O Pharmacy (containing the same allegations as those raised in the July 23, 1992, Order to Show Cause) alleging that its continued registration was inconsistent with the public interest. The Order to Show Cause further alleged that Mr. Lockhart had improperly transferred ownership of G & O without notifying DEA as required. Following the consolidation of the two cases, a hearing was conducted on November 17, 1994.

After finding that the continuance of a registration would be inconsistent with the public interest, the then-Deputy Administrator of DEA revoked DEA Certificate of Registration BA3838553 previously issued to AML Corporation d/b/a G & O Pharmacy. See, AML Corporation d/b/a G & O Pharmacy, and G & O Pharmacy, 61 FR 8973 (March 6, 1996). The Acting Administrator finds that the findings of fact and conclusions of law, which led to the revocation of AML/G & O's DEA Certificate of Registration, are set forth in great detail in the referenced final order. They will not be repeated in this final order, but are incorporated herein and will be referred to as necessary in rendering a decision in this matter.

G & O has a documented history of non-compliance with DEA laws and regulations. From 1989 to 1991 while registered under DEA registration number AG2999691, the pharmacy dispensed 24 vials of Demerol, a Schedule II controlled substance, to a dentist without a valid prescription. It was later determined that these drugs were dispensed for the dentist's personal use. Accountability audits conducted by DEA investigators of G & O's controlled substances revealed significant shortages of various Schedules II, III, and IV controlled substances and the pharmacy filled numerous prescriptions for controlled substances that were not authorized by physicians whose names appeared on the prescriptions. In addition, Mr. Lockhart improperly transferred ownership of G & O to AML without

¹ On the July 18, 2001 application for DEA registration, Mr. Lockhart listed the business address of the pharmacy as "G & O Pharmacy of Paducah Inc."