

notifying DEA as required by the agency's regulations.

The Acting Administrator also finds that effective March 17, 1999, Mr. Lockhart and the Kentucky Board of Pharmacy (Board) entered into an Agreed Order with respect to Mr. Lockhart's license to practice pharmacy in that state. Among the factual findings agreed upon by the parties was that in September 1997, Mr. Lockhart made a false or fraudulent statement or misrepresentation of a material fact to the Board in securing renewal of his pharmacist license. As a result, Mr. Lockhart was ordered to pay a fine of \$1,000 and obtain ten hours of continuing education.

The parties entered into a second Agree Order on September 13, 2000, when it was determined that Mr. Lockhart failed to submit evidence of continuing education hours as required by the order of March 17, 1999. as a result, Mr. Lockhart was fined \$500, and ordered to obtain an additional 6.5 hours of continuing education within six months of the entry of the Agreed Order.

Pursuant to 21 U.S.C. 823(f), the Acting Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

- (1) The recommendation of the appropriate state licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable state, federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Acting Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

Regarding factor one, recommendation of appropriate state licensing board or professional disciplinary authority, in 1997 and again in 2000, Mr. Lockhart's license to practice pharmacy was subject to review and sanction by the Kentucky Board of

Pharmacy. These actions were based upon Mr. Lockhart's misrepresentations on a renewal application regarding his continuing education, and his failure to obtain continuing education as required by the Board.

Factors two and four, experience in dispensing controlled substances and compliance with applicable controlled substance laws are relevant in determining whether G & O's registration would be inconsistent with the public interest. The then-Deputy Administrator previously found that Mr. Lockhart's improperly dispensed Schedule II controlled resulting in the transfer of 24 dosage units of Demerol to a dentist for his personal use. 61 FR at 8976. Further, accountability audits conducted by DEA investigators revealed shortages of over 40,000 dosage units of various Schedules II through IV controlled substances with no evidence adduced by G & O to explain the shortages. In addition, DEA's previous investigation of G & O revealed that the pharmacy unlawfully dispensed controlled substances in which approximately 198 prescriptions retrieved from the pharmacy were not authorized by the physicians whose names appeared on the pharmacy records. Such conduct is grounds for denying G & O's pending application for DEA registration.

In addition, Mr. Lockhart and G & O demonstrated non-compliance with DEA regulations when Mr. Lockhart transferred ownership of G & O to AML. Pursuant to 21 CFR 1307.14(b) (since redesignated as 21 CFR 1301.52), Mr. Lockhart was required to provide the Special Agent in Charge in his area specific information at least 14 days in advance of the date of the proposed transfer of his ownership in G & O. The record before the Acting Administrator reveals that Mr. Lockhart failed to inform DEA of the transfer.

As to factor five, the Acting Administrator finds relevant a finding in the previous proceeding that the transfer of ownership from G & O to AML was not a bona fide transaction, but as Judge Bittner described, "a stratagem to obtain a new DEA registration." 61 FR at 8976. The apparent ruse designed to secure a DEA Certificate of Registration demonstrates a disturbing willingness on the part of Mr. Lockhart to engage in dishonest conduct, and further weighs in favor of denying G & O's pending application. Similarly, factor five is relevant to Mr. Lockhart's use of false information on the application for renewal of his pharmacist license. It is well settled that a registration of pharmacy may be revoked or application denied based on

the wrongdoing of its owner or officers, Crosstown Drugs, 54 FR 28521 (1989). See also, Alexander Drug Company, Inc., 66 FR 18299 (2001).

It is clear that G & O's past experience in handling controlled substances is dismal at best. The pharmacy, through its owner Randall Lockhart improperly dispensed controlled substances, including instances where the pharmacy failed to obtain physician authorization and G & O also failed to account for shortages of large quantities of controlled substances. Mr. Lockhart further engaged in the deceptive transfer of his ownership interest in G & O to another entity for the purpose of securing a DEA registration.

The Acting Administrator acknowledges that most of these events took place more than ten years ago. However, in light of G & O's failure to request a hearing in this matter, and the absence of evidence to rebut the above allegations, the Acting Administrator is left with the conclusion that the applicant has not corrected the deficiencies which led to the revocation of its previous Certificate of Registration. This conclusion is further supported by evidence that Mr. Lockhart has continued to engage in dishonest conduct by providing false information on a state professional application, resulting in fines and further conditions being placed on his pharmacist license. In view of the foregoing, the Acting Administrator concludes that G & O cannot be entrusted to handle controlled substances, and the granting of its application would not be in the public interest.

Accordingly, the Acting 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 the application for DEA Certificate of Registration submitted by G & O Pharmacy of Paducah, Incorporated 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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