

phenylpropanolamine only. When asked about specific products he would handle, Mr. Maqsood mentioned combo-ephedrine products. DEA personnel informed Mr. Maqsood of differences between phenylpropanolamine and ephedrine, and further advised Mr. Maqsood that ephedrine was a Schedule IV controlled substance under Oklahoma law, thus requiring state licensure. Mr. Maqsood is not authorized under Oklahoma law to handle ephedrine, nor was the listed chemical included on Shani's application for DEA registration. Mr. Maqsood advised DEA that he would have his attorney review the proposed MOA, and requested a list of products that contained phenylpropanolamine. DEA subsequently provided the information. Mr. Maqsood never responded to DEA with respect to the proposed MOA.

On June 18, 2002, the DEA Oklahoma City District Office was contacted by the Oklahoma City Police Department (OCPD)—Methamphetamine (Investigations) Group regarding suspicious items observed at Shani. The officer informed DEA that while inside Shani, he observed 30–35 cases of "Heet;" brand gas line additive (a flammable solution with a chemical composition that includes methyl alcohol), approximately 8–10 cases of lithium batteries, lye and unspecified quantities of pseudoephedrine.

In response to this information, DEA investigators attempted to verify the observations of the OCPD officer by conducting a follow-up inspection of Shani. Upon their arrival, DEA investigators discovered that Shani had moved from the location and relocated to an address at 912 N. Pennsylvania in Oklahoma City. DEA had not received a request from Shani to modify its pending application for DEA Certificate of Registration, and DEA investigators have not performed an inspection of Shani's new business location.

On July 3, 2002, DEA investigators conducted verifications of Shani's customers. A review of the investigative file reveals that Shani's proposed customer base is comprised primarily of small convenience stores and/or food marts that sell gasoline. Shani provided to DEA a list of approximately 34 proposed customers located in or around the Oklahoma City area. DEA's investigation revealed that on February 27, 2001, the owners of two of the listed business establishments were convicted by a federal jury in the Western District of Oklahoma on charges related to the unlawful distribution of listed chemicals. Specifically, the two were convicted of conspiracy and unlawful

distribution of pseudoephedrine knowing or having reasonable cause to believe that the product would be used to manufacture methamphetamine, in violation of 21 U.S.C. 841(d)(2) and 846. Both were sentenced to terms of imprisonment exceeding 60 months.

DEA investigators conducted interviews and or inspections of nine business establishments listed by Shani as proposed customers. Of the nine establishments inspected, two revealed that they never heard of Shani; three indicated that they did not intend on purchasing listed chemical products from Shani; one firm disclosed that it had stopped selling pseudoephedrine for over a year; and one informed DEA investigators that it already had a listed chemical supplier. The two remaining business establishments were closed and boarded up.

On July 12, 2002, the DEA Oklahoma City District Office received a letter from the General Counsel for the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (the Bureau) regarding Shani's DEA registration application. The General Counsel argued that approval of Shani's application would be contrary to the public interest of the citizens of Oklahoma based in part upon " * * * an exponential growth in the number of clandestine methamphetamine laboratories seized" in that state. The letter further outlined the Bureau's alarm over the events of June 18, 2002, when the Oklahoma City Police Department observed large quantities of "Heet" gas line additive and batteries on the premises of Shani. The General Counsel found that these products "are widely used along with pseudoephedrine to manufacture methamphetamine, and * * * the combination of these three basic substances in one location is very consistent with involvement in such criminal activity." The General Counsel concluded that the Bureau was "aware of no legitimate reason why a chemical dealer would handle only or even primarily Heet, batteries and pseudoephedrine, unless he or she was catering specifically to those engaged in criminal drug manufacturing."

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

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

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or 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, e.g., Energy Outlet*, 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

The Administrator finds factors one, four and five relevant to Shani's pending application for registration.

With respect to factor one, maintenance of effective controls against the diversion of listed chemicals, DEA's pre-registration inspection documented adequate security measures taken by Shani with respect to the company's proposed storage of listed chemicals at its 532-B North Pennsylvania location. However, DEA's follow-up inspection of Shani revealed that the company has since abandoned that location and moved its operation to a second location. There is no evidence in the investigative file that Shani has requested modification of its pending application for registration to reflect a different business address, or that DEA has conducted a second pre-registration inspection of Shani to determine the adequacy of any security measures the company currently has in place.

With respect to factor four, the applicant's past experience in the distribution of chemicals, DEA's investigation revealed that the owner of Shani has no previous experience related to distributing or otherwise handling listed chemicals. The investigative file further revealed that Shani has no procedures in place to identify "suspicious" activity regarding a regulated transaction, in order to report such activity to DEA as required by 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1), and Mr. Maqsood has no experience with suspicious orders related to listed chemicals. This factor weighs against the granting of Shani's pending application. *See, Matthew D.*