

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

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.

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