The Respondent had an early release fro the detention center, he performed 400 hours of community service at the Huey P. Long Medical Center, and he paid his fine. On November 19, 1990, the Respondent's probation was terminated early upon the recommendation of his probation officer. Further, the Respondent voluntarily quit drinking alcohol about ten years ago, a fact corroborated by his co-workers, one of which testified before Judge Tenney that he believed that the Respondent had ''quit drinking completely.''

Although the consent decree at the Dental Board indicated that the Respondent's certificate to prescribe controlled substances was ''revoked'' permanently, the Respondent's license to prescribe controlled substances was reissued by the State Department of Health and Hospitals. Further, testimony was received from a representative of the Dental Board, that the Board had not received any complaints concerning the Respondent, and that he as ''in good standing.'' Finally, the record contains a document demonstrating that the Dental Board ''strongly recommended the return of [the Respondent's] DEA registration.''

Currently, the Respondent is employed at the Huey P. Long Medical Center (Center), and he is performing his dental specialty at the Center's satellite clinic on England Air Force Base. The Center's director submitted an affidavit dated June 19, 1995, writing that he had known the Respondent for nearly 30 years, was aware of his problems which surfaced in the mid-1980's, and that it was his opinion that the Respondent was ''a skilled, competent, [and] knowledgeable oral surgeon with a good moral character.'' He also wrote that the Respondent operated at the clinic daily and saw approximately 2,500 patients annually.

Another dentist working at the Center testified before Judge Tenney, stating that the Respondent was a highly competent oral and maxillo-facial surgeon, and he recommended that the Respondent's DEA Certificate of Registration be reinstated. This colleague also opined that the Respondent had a strong relationship with his wife, children, and grandchildren.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for registration as a practitioner, if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be 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 Deputy 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. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, all five factors are relevant in determining whether the Respondent's registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board, * * *'' the consent decree of record between the Respondent and the Dental Board is relevant, indicating the State licensing board's response to the Respondent's misconduct. However, also relevant is the Dental Board's contribution of the Respondent's license to practice dentistry, for it was never revoked, and the reinstatement of the Respondent's State license to prescribe controlled substances. Finally, the Dental Board, in correspondence to the Respondent, recommended that his DEA registration application be granted.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' and factor five, ''[s]uch other conduct which may threaten the public health or safety,'' there is no dispute that in the mid-1980's, the Respondent had engaged in the unlawful prescribing of controlled substances for no legitimate medical purpose. Further, as to factor three, the Respondent's ''conviction record under Federal or State laws relating to the * * * distribution, or dispensing of controlled substances,'' there is no dispute that the Respondent, pursuant to the entry of a guilty plea, was convicted of the unlawful dispensing of 1,263 dosage units of controlled substances. Thus, the Deputy Administrator agrees with Judge Tenney's conclusion that the Government has made a prima facie case for denying the Respondent's application.

However, the Respondent presented considerable evidence of rehabilitation. The Respondent had engaged in his prior misconduct while under the influence of alcohol. Now, however, the record supports a finding that the Respondent, for approximately ten years, voluntarily has quit drinking alcohol. Judge Tenney also found that the Respondent had demonstrated, and other witnesses had corroborated, that he had experienced a significant life change since he stopped drinking alcohol. His relationship with his wife has improved; he has close relationships with his children and grandchildren; and he was active in his church. Professionally, he is in good standing with the Dental Board, and the Director of the Center where he is employed supports his application.

In light of the above, the Deputy Administrator agrees with Judge Tenney's conclusion that the Respondent ''has accepted responsibility for his actions and has suffered the consequences. In balance, it is evident that [the Respondent] has turned his life around and will not repeat the mistakes of the past.'' Although in no way condoning the Respondent's past misconduct, the Deputy Administrator finds that now the public's interest is best served by issuing a DEA Certificate of Registration to the Respondent.

Accordingly, the Deputy 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 of R. Bruce Phillips, D.D.S., for a DEA Certificate of Registration, be, and it hereby is, approved. This order is effective March 15, 1996.

Dated: March 7, 1996.

Stephen H. Greene,

*Deputy Administrator.*

[FR Doc. 96–6221 Filed 3–14–96; 8:45 am]

**BILLING CODE 4410–09–M**

---

**[Docket No. 94–55]**

## Service Pharmacy, Inc.; Continued Registration

On June 14, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Service Pharmacy, Inc., (Respondent) of Marion, North Carolina, notifying it of an opportunity to show cause as to why DEA should

not revoke its DEA Certificate of Registration, AS3172157, and deny any pending applications for renewal, under 21 U.S.C. 823(f) and 824(a)(4), as being inconsistent with the public interest.

On July 8, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Asheville, North Carolina, on April 18 through April 19, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On July 31, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Deputy Administrator take no action against the Respondent's registration. Neither party filed exceptions to his decision, and on September 1, 1995, Judge Tenney transmitted his opinion and the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the investigation of the Respondent was initiated in February of 1990 after an investigator (Investigator) from the North Carolina Board of Pharmacy (Pharmacy Board) received information from the attorney for the Estate of James Toney that the Respondent had billed the Estate for prescriptions that the deceased's family did not believe to be properly authorized by the deceased's physicians. The Investigator interviewed Mrs. Toney, the deceased's wife, who related that her husband had had a friendship with John Lowder and Bill Jordan, the original owners of the Respondent pharmacy. James Segars had purchased Bill Jordan's half ownership interest in the pharmacy in 1984. Mrs. Toney also related an incident when she had confronted her husband about whether he used Halcion, and Mr. Toney had started that he did take Halcion, and that ''the pharmacists were taking care of him.'' Halcion is a brand name for a product containing triazolam, a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c).

The Investigator also jointly interviewed Mr. Toney's adult son and daughter, who corroborated the information received from Mrs. Toney. The son lived adjacent to Mr. Toney's home, believed that he had ''a good feel'' for his father's affairs, and did not believe that his father had been to any physicians recently. Also according to family members, Mr. Toney had been very depressed prior to his death. In addition, the Investigator received from the family prescription vials, receipts, and canceled checks, indicating that the Respondent was the source of the medication dispensed to Mr. Toney.

Next, the Investigator apprised Mr. Segars of the information he had received concerning Mr. Toney, and Mr. Segars denied any wrongdoing. The Investigator then obtained various records and data from the pharmacy, with the help of one of its employees, and using the data, compiled a computer printout of prescriptions filled by the Respondent for Mr. Toney from January 1986 until January 1990.

The Investigator then visited the offices of five physicians, Dr. Van Blaricom, Dr. Croft, Dr. Hart, Dr. Larry Boyles, and Dr. Wayne Boyles, who purportedly had issued prescriptions to Mr. Toney during the time frame in question. He obtained an affidavit from Dr. Van Blaricom, indicating that he had not authorized Mr. Toney's prescriptions for Tylenol No. 3 on October 30, 1988, nor Valium, 5 mg., on October 30, 1988, or on May 24, 1989. The parties stipulated to the fact that Tylenol No. 3 is a Schedule III controlled substance pursuant to 21 CFR 1308.13(e), and Valium is a brand name for a product containing diazepam, a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c).

The Investigator also received an affidavit from Dr. Croft, stating that the doctor had reviewed his record for Mr. Toney ''back to 1983'', and from then until the date that he executed the affidavit, April 26, 1990, ''neither he nor any member of his staff prescribed or otherwise authorized the Halcion .25 mg. or Amitriptyline 50 mg.'' to Mr. Toney. The Respondent pharmacy, however, had filled prescriptions for 120 units of Halcion (.25 mg.), and 900 units of Amitriptyline (50 mg.) between 1986 and 1990, that were purportedly authorized by Dr. Croft for Mr. Toney.

The Investigator also obtained an affidavit from Dr. Hart. He denied authorizing prescriptions for 270 units of Tylenol No. 3 to Mr. Toney, which were filled by the Respondents between November 1, 1987, and June 13, 1988.

After interviewing Dr. Larry Boyles, the Investigator obtained an affidavit regarding his treatment of Mr. Toney. Dr. Larry Boyles denied treating or prescribing any controlled substances for Mr. Toney since July 21, 1986. The Investigator also interviewed and obtained an affidavit from Dr. Wayne Boyles, who denied ever treating Mr. Toney or authorizing any prescriptions for him. The Respondent pharmacy had dispensed from December of 1986 to January of 1990, 840 units of Halcion (.25 mg.) to Mr. Toney without authorization from either of these two physicians.

On April 6, 1990, the Investigator separately interviewed three of the Respondent's pharmacy technicians. He testified that each technician had ''characterized the pharmacist or pharmacy staff at the Respondent pharmacy as being highly ethical. They estimated that the pharmacy filled in excess of 300 prescriptions a day[,] and each denied any knowledge of any illegal activity occurring at the store.''

On April 9, 1990, the Investigator interviewed and obtained written statements from Mr. Lowder, Mr. Seagars, and Mr. Jordan, all pharmacists associated with the Respondent pharmacy. It was undisputed that Mr. Toney was suffering from several debilitating medical conditions. Both Mr. Lowder's and Mr. Jordan's statements characterized Mr. Toney as a trusted friend with legitimate medical problems. Also, Mr. Jordan acknowledged that he had filled a ''call-in type prescription without checking with the physician'' based simply on the representation that the physician wanted Mr. Toney to continue using a particular medication. According to Mr. Lowder's statement, he also had filled prescriptions for Mr. Toney without physician authorization and based solely on Mr. Toney's representations.

According to Mr. Segars' statement, he also had filled call-in type prescriptions for Mr. Toney without checking with the physicians. He wrote that, based on Mr. Jordan's and Mr. Lowder's trust in Mr. Toney, he had relied on Mr. Toney's representation that the physician wanted him to continue using the requested medication. Mr. Segars admitted that ''where his name appears on the [prescription] profile [attached to his written statement] as the dispensing pharmacist, he is responsible for that dispening[,] and where his name appears as the original dispensing pharmacist[,] he is responsible for creating that prescription without

authorization of a physician and dispensing that product to Mr. Toney at the normal fee for that product.''

On May 9, 1990, the Investigator conducted a drug accountability audit at the Respondent pharmacy. Mr. Lowder did not contest the audit. Employees of the Respondent assisted in conducting the audit, which covered the seven products received by Mr. Toney. Based on his audit, the Investigator prepared a computation chart. The pharmacy had either an overage or a shortage of each product, with the discrepancies ranging from a 0.99 percent shortage for Valium (5 mg.) to a 39.9 percent overage for Halcion (.125 mg.). The Investigator testified that the discrepancies were significant enough to cause him concern.

The Investigator also testified that he had noticed, among other problems, that there were ''numerous occasions where prescriptions had been refilled beyond their authorized or lawful limits. There had been numerous occasions of quantities of products dispensed in excess of what had been authorized on the original prescription.''

Next the Investigator profiled and reviewed patient information for eight customers of the pharmacy, for whom he had noted some irregularities. Based on his review, the Investigator testified that he had ascertained that there had been unauthorized dispensing to six of the eight customers. For example, the Investigator's review revealed that the Respondent had dispensed approximately 816 units of Valium (5 mg.) and 1620 units of Ativan (1 mg.) to a patient without a physician's authorization. The parties have stipulated that Ativan is a brand name for a product containing lorazepam, a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c).

On July 2, 1990, the Investigator conducted second interviews with Mr. Segars and Mr. Lowder, to discuss the patients other than Mr. Toney. In response to the ''excessive refills and excessive quantities.'' Mr. Segars and Mr. Lowder asserted that ''they had checked with the physicians before dispensing either the additional prescription or the additional amount on a prescription.'' Other accountability problems were attributed to a deficient computer system.

On August 7, 1990, the Investigator again interviewed pharmacy technicians, who testified that out of the approximately 300 prescriptions filled per day by the Respondent pharmacy, the technicians had witnessed Pharmacists Segars and Lowder fill unauthorized prescriptions two to three times a week. The technicians also stated that the pharmacy had received samples from two physicians, and that these samples had been punched out of the manufacturer's packaging and combined with the pharmacy's inventory. On August 29, 1990, Pharmacists Segars and Lowder admitted the conduct concerning the samples, for they admitted that the pharmacy had received samples from two physicians, and that non-outdated samples were combined with the store's common stock and eventually sold to customers.

On May 17, 1991, the Pharmacy Board issued a written notice of an administrative hearing to determine whether or not Pharmacists Jordan, Lowder, and Segars, and the Respondent pharmacy, had violated North Carolina law, and if so, what action to take. The Investigator had compiled all of the information obtained during his investigation into a chronological report, and he had submitted it to the Pharmacy Board.

On July 16, 1991, a hearing was held, the parties proposed that the Pharmacy Board enter a consent order, and the Board agreed. In the Consent Order, the Pharmacy Board found that (1) from March 1986 through January 1990, Pharmacists Lowder and Segars and ''dispensed Schedules III and IV controlled substances to James Toney without a physician's authorization;'' (2) that Pharmacist Jordan had dispensed Tylenol No. 3 to Mr. Toney, also without physician's authorization, on two occasions; (3) that unauthorized prescriptions had been filled for the same specific patient identified by the Investigator, and that excessive refills had been dispensed to that patient; (4) that Pharmacists Lowder and Segars had dispensed Schedules III and IV controlled substances to five patients in excess of the number of refills shown on the prescription; (5) that the pharmacy's computer system was lacking; (6) that samples had been combined with the normal pharmacy stock; and (7) that a drug accountability audit had revealed shortages of controlled substances. Based on its findings, the Pharmacy Board concluded that the pharmacists and the Respondent pharmacy had violated both Federal and State law. Therefore, the Pharmacy Board ordered revocation of Mr. Lowder's and Mr. Segars' licenses, but stayed that revocation for a period of ten years and imposed the following conditions on each of their licenses: (1) An active suspension of their licenses for 120 days each; (2) successful completion of the Board's jurisprudence exam; (3) successful completion of the University of Kentucky College of Pharmacy's course on prescribing and use of controlled substances, or the equivalent thereof; and (4) no violations of any laws governing the practice of pharmacy or the distribution of drugs, nor of any regulations or rules of the Pharmacy Board, during the ten-year stay period. Pharmacist Jordan's license was placed on probation for five years.

In addition, the license of the Respondent pharmacy was actively suspended for seven days, and revocation thereof was stayed for ten years. The following conditions were imposed on the pharmacy by the Consent Order: (1) During the seven-day active suspension, the pharmacy was ordered to display signs provided by the Pharmacy Board, notifying the public of the suspension; (2) the pharmacy was ordered to give 30 days' advance notice to its customers before the suspension went into effect; and (3) the pharmacy was ordered not to violate any laws governing the practice of pharmacy or the distribution of drugs, or any regulations or rules of the Board, during the ten-year stay period.

Both the United States Department of Justice and the North Carolina State authorities declined to prosecute the pharmacists. Although the Investigator informed the DEA of the Pharmacy Board's findings and provided a copy of his report and the consent order in August of 1991, the DEA conducted no independent investigation of the pharmacy. In February of 1993, a DEA Diversion Investigator visited the Respondent's location and asked Mr. Lowder to voluntarily surrender the DEA registration, but upon advice of counsel, Mr. Lowder refused. Before Judge Tenney, the DEA Investigator testified that the sole basis for the revocation of the Respondent's registration was the state investigator's investigation and the resulting consent order of July 1991.

At the hearing before Judge Tenney, Mr. Segars admitted that he had violated the law prior to 1991, that information was handled poorly at the pharmacy, and that the pharmacists did not confirm medication prescriptions as required by law. He also testified that he, the other pharmacists, and the pharmacy have carried out all of the terms and conditions of the consent order. Both Mr. Segars and Mr. Lowder had attended and completed a five-day course at the University of Kentucky in compliance with the order. Judge Tenney noted in his opinion:

> Mr. Segars volunteered that the course at the University of Kentucky, which focused on doctors with abuse problems, ''was not as beneficial'' as he had hoped it would be * * *. This candid statement, among others,

leads me to conclude that Mr. Segars was honest and forthright in his testimony. In addition, Mr. Segars' positive attitude regarding present and future compliance, and his conduct since 1990, are deemed representative of the Respondent pharmacy. Pharmacist [Lowder] is too sick to work now, and Pharmacist Jordan has retired and only works occasionally.

Also, according to the testimony of the Investigator, a relief pharmacist had ''characterized the computer system at the store [as of September 1990] as being confusing.'' However, Mr. Segars testified that immediately after the consent order was executed, a new computer system was acquired for the pharmacy to ensure better record-keeping. Further, Mr. Segars attended seminars on how to use this computer equipment. The pharmacy's software has been updated to make internal reports easier, and Mr. Segars now knows how to utilize the software features.

However, when asked what had caused the problems that were not attributable to the pharmacy's prior computer system, Mr. Segars also testified:

''We—I believed too many things, I accepted too many people's word and I'm not sure that they were actually misleading me or lying to me trying to get unauthorized medicines, but until I placed the call and got it on a patient's record that I did call and did get a refill authorized, then it is an illegal prescription. I was negligent in not following up on things as I should have.''

Mr. Segars also related an instance when he had received a doctor's request for a controlled substance, and unsure of the propriety of the request, he had called the Pharmacy Board for assistance. He testified that he now calls the Pharmacy Board whenever he is in doubt about dispensing a particular medication in a particular situation. Mr. Segars also testified that he had physically rearranged the interior of the pharmacy to ensure greater supervision therein, and to insure that no ''mistakes'' would be made at the Respondent pharmacy.

The investigator testified that he had no information of wrongdoing by the Respondent pharmacy since the entry of the consent order in 1991. Also, the Investigator's supervisor, by affidavit, wrote that the pharmacy and its pharmacists appear to be in full compliance with the consent order, and that his office has received no new reports of any violations of the laws governing the practice of pharmacy or the distribution of drugs by any of the individual pharmacists ''or the Pharmacy itself.'' Also, to renew their pharmacist licenses each year, Mr. Segars, Mr. Lowder, and Mr. Jordan must complete 10 hours annually of continuing education.

Numerous witnesses from Marion, North Carolina, and its surrounding areas, testified before Judge Tenney on behalf of the Respondent and its pharmacists. The witnesses, including a Sheriff's Detective, the President of the McDowell Technical Community College, a Pastor, and a customer, testified to the good character of the pharmacists and to the excellent reputation of the Respondent pharmacy. As noted by Judge Tenney, ''[s]ome of the witnesses emphasized the importance of the pharmacy's free-delivery policy and the fact that it sells products on store credit. The pharmacists' familiarity with customers' allergies and their concerns over drug interactions were also identified as important safeguards provided by the pharmacy. [The] Pastor [ ] testified about the pharmacy's role in providing medicine to indigents in affiliation with the First United Methodist Church.'' Also, several of the Respondent's character witnesses expressed the opinion that the pharmacists are the type of people who learn from their mistakes and correct their ways. Even the Investigator testified that the pharmacists exhibited a receptiveness to changing their ways.

The Respondent also submitted twenty additional affidavits by medical doctors who serve or served the community, and the affiants attested to the good reputation of the pharmacy and its pharmacists. The pharmacy's free-delivery policy was cited as providing a valuable service to the community's elderly and shut-ins.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke or suspend a DEA Certificate of Registration if he determines that the continued registration would be inconsistent with the ''public interest.'' Section 823(f) requires that the following factors be considered in determining the ''public interest:''

(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 Deputy 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. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, all five factors are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board, * * *'' the Pharmacy Board, through the consent order, reviewed the thorough investigation report of the Investigator, and determined, despite the documented violations, that the pharmacy and the pharmacists should continue in operation, after a short suspension period and with stringent rehabilitative requirements. The Investigator's supervisor affirmed that the pharmacy and the pharmacists have complied with the consent order, and that his office has received no new reports of any violations of the laws governing the practice of pharmacy or the distribution of drugs. Despite the Investigator's statement of his opinion, that the Respondent's continued registration would be inconsistent with the public's interest, Judge Tenney noted:

In light of the incongruous nature of [the] Investigator ['s] [ ] personal opinion and the actions and mandate of the North Carolina Board of Pharmacy, together with a perceived lack of conviction with which [the] Investigator [ ] stated his opinion. Little weight is assigned to his opinion that continued registration of the pharmacy is inconsistent with the public interest.

Thus, although no formal recommendation has been made by the North Carolina Board of Pharmacy, the fact that the Board has permitted the Respondent to continue dispensing controlled substances to the public amounts to an assessment by the Board that the pharmacy no longer ''present[s] a danger to the public health, safety and welfare.'' This fact weighs in favor of the Respondent.

The Deputy Administrator agrees with Judge Tenney's findings regarding this factor.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' the Respondent's pharmacists knowingly dispensed a significant quantity of controlled substances without physician authorization during the timeframe of 1983 to 1990. The pharmacists also refilled prescriptions beyond their authorized or lawful limits, and

dispensed excess quantities. Further, sample products were illegally combined with the pharmacy's common stock for sale to the public, and inaccurate records were maintained, as evidenced by the overages and shortages revealed by the Investigator's May 1990 audit.

However, the Respondent's conduct since 1991 is also relevant under factor two. Specifically, after entry of the Consent Order in 1991, steps were taken to insure better record-keeping, to include the purchase, installation, and use of a new computer system. Also, the pharmacists took remedial training in handling controlled substances. The Investigator testified that he had no information of any wrongdoing by the pharmacy or its pharmacists since the entry of the Consent Order in 1991. He also testified that the pharmacists were receptive to changing their ways.

As to factor three, ''the applicant's conviction record under Federal or State laws * * *'', it is uncontradicted that neither the Respondent nor any of the pharmacists has been convicted under Federal or State laws relating to the dispensing of controlled substances.

As to factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' the Deputy Administrator concurs with Judge Tenney's finding that ''[m]ost of the conduct discussed under factor (2) is indicative of noncompliance with State and Federal laws relating to controlled substances. For instance, by dispensing Schedule III and IV controlled substances without physician authorization, the Respondent pharmacy violated 21 CFR 1306.21(a) (requiring practitioner authorization either via written, facsimile, or oral prescription).'' Further, the Respondent's acts of combining and selling samples as common stock violate the Federal Prescription Drug Marketing Act. See 21 U.S.C. 301, 331(t) and 353(c)(1). In the Consent Order, the Pharmacy Board also concluded that the Respondent's actions violated Federal and State law.

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' Judge Tenney noted that the Government contended that ''[w]here, as in this case, a pharmacist abdicates [his responsibility to use common sense and professional judgment], either intent[ional]ly or negligently, it jeopardizes the public health and welfare * * *.'' However, Judge Tenney concluded, and the Deputy Administrator concurs, that ''[a]pparently the Government is reiterating the same conduct under factor (5) that has been discussed at length under factors (2) and (4). As this does not constitute 'other conduct,' the discussion under factors (2) and (4) shall suffice. Factor (5) is not deemed significant in assessing the public interest in this case.''

In viewing these factors as a whole, the Deputy Administrator finds that the Government has established a prima facie case that continued registration of the Respondent by the DEA is inconsistent with the public interest. However, also relevant is the Respondent's evidence of rehabilitation. First, at the hearing before Judge Tenney and before the Pharmacy Board, the pharmacists took responsibility for their misconduct. They have also acted in compliance with the consent order, and actually have exceeded those requirements by installing a new computer system and taking classes to more competently operate the system to improve their defective record-keeping. Further, Mr. Segars testified that when he now has doubts about dispensing a medication, he calls the Pharmacy Board for guidance. He also acknowledged that ''until [he] placed the call [to the physician] and got it on a patient's record that [he] did call and did get a refill authorized, then it is an illegal prescription.''

Further, there is no evidence of wrongdoing after 1991 by the pharmacy or its pharmacists. In fact, the Investigator testified that the pharmacists were receptive to changing their ways, and the Respondent's character witnesses testified that the pharmacists are individuals who learn from their mistakes and do not repeat them. Judge Tenney concluded that ''[a]ll of the foregoing rehabilitation evidence leads to the conclusion that notwithstanding the illegal conduct prior to 1991, the Respondent can now be trusted with a DEA Certificate of Registration. It follows that continued registration by the DEA is not inconsistent with the public interest under 21 U.S.C. 823 and 824.''

Judge Tenney also noted that there ''was never any evidence that the pharmacy [had] filled unauthorized prescriptions to facilitate the illegal resale of drugs by customers, nor any evidence that the pharmacy's motivation was monetary gain. For instance, Mr. Toney, the principal recipient of unauthorized prescriptions, had numerous medical ailments, and the medications at issue were legitimately prescribed on occasion. Although this does not diminish the seriousness of the pharmacists' behavior, it does evidence a humanitarian motive rather than greed or hedonism.'' Further, the Respondent presented evidence of its community service, to include free delivery and credit policies which benefit the public by assisting the elderly and the poor.

As Judge Tenney rightly noted, ''[a]lthough these services are commendable, they would not prohibit revocation or suspension of the Respondent's Certificate of Registration if a threat still existed that the Respondent would fill unauthorized prescriptions or otherwise violate the law.'' However, the Deputy Administrator agrees with Judge Tenney's conclusions, that ''notwithstanding [that] the Respondent's past conduct would justify outright revocation in the absence of credible rehabilitation evidence, such evidence is present in this case. Pharmacist Segars' understanding of the Respondent's illicit behavior, his remorse for that past conduct, the rehabilitative steps taken, and the Respondent's 'apparent commitment to a more responsible future lead to the conclusion that revocation would not be appropriate.' '' Steven W. Patwell, M.D., 59 FR 26814 (1994).

Further, safeguards already exist to monitor the Respondent's future conduct, for the Respondent, Mr. Segars, and Mr. Lowder remain on probation by the North Carolina Board of Pharmacy. The Deputy Administrator agrees with Judge Tenney's observation that, ''in light of the thoroughness with which the Board conducted its investigation and the Board's mandate to protect the 'public health, safety and welfare,' the Board reasonably can be expected to lift the stay of revocation in the highly unlikely event that the Respondent's past violations recur. Under such circumstances, the pharmacy would lack State authority to handle controlled substances, and the DEA would not have the authority to maintain the pharmacy's registration under the Controlled Substance Act.''

Again, the Deputy Administrator emphasizes that the conclusion to continue the Respondent's registration in no way endorses the past misconduct of the Respondent. Rather, in determining whether continuing the Respondent's registration would be inconsistent with the public's interest, the Deputy Administrator has determined that, (1) given the commitment of the Respondent's pharmacists to future compliance, (2) the evidence of consistent compliance since 1991, and (3) the other rehabilitative actions taken, the public's interest is best served in this case by

continuing the Respondent's registration.

Therefore, the Deputy Administrator finds that the public interest is best served by continuing the DEA Certificate of Registration, AS3172157, issued to Service Pharmacy, Inc. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the Respondent's DEA Certificate of Registration be, and it hereby is, continued. This order is effective March 15, 1996.

Dated: March 4, 1996.

Stephen H. Greene,

*Deputy Administrator.*

[FR Doc. 96–6220 Filed 3–14–96; 8:45 am]

**BILLING CODE 4410–09–M**

## Importer of Controlled Substances; Notice of Registration

By Notice dated December 22, 1995, and published in the Federal Register on January 22, 1996, (61 FR 1604), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of etonitazene (9624), a basic class of controlled substances listed Schedule I.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Sigma Chemical Company to import etonitazene is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 6, 1996.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 96–6225 Filed 3–14–96; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their date of notice in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

*Volume I*

Connecticut
- CT95–1 (Feb. 10, 1995) (CT96–1)
- CT95–2 (Feb. 10, 1995) (CT96–2)
- CT95–3 (Feb. 10, 1995) (CT96–3)
- CT95–4 (Feb. 10, 1995) (CT96–4)
- CT95–5 (Feb. 10, 1995) (CT96–5)
- CT95–6 (Feb. 10, 1995) (CT96–6)
- CT95–7 (Feb. 10, 1995) (CT96–7)
- CT95–8 (Feb. 10, 1995) (CT96–8)
- CT95–9 (Feb. 10, 1995) (CT96–9)
- CT95–10 (Feb. 10, 1995) (CT96–10)
- CT95–11 (Feb. 10, 1995) (CT96–11)
- CT95–12 (Feb. 10, 1995) (CT96–12)

Massachusetts
- MA95–1 (Feb. 10, 1995) (MA96–1)
- MA95–2 (Feb. 10, 1995) (MA96–2)
- MA95–3 (Feb. 10, 1995) (MA96–3)
- MA95–4 (Feb. 10, 1995) (MA96–4)
- MA95–5 (Feb. 10, 1995) (MA96–5)
- MA95–6 (Feb. 10, 1995) (MA96–6)
- MA95–7 (Feb. 10, 1995) (MA96–7)
- MA95–8 (Feb. 10, 1995) (MA96–8)
- MA95–9 (Feb. 10, 1995) (MA96–9)
- MA95–10 (Feb. 10, 1995) (MA96–10)
- MA95–11 (Feb. 10, 1995) (MA96–11)
- MA95–12 (Feb. 10, 1995) (MA96–12)
- MA95–13 (Feb. 10, 1995) (MA96–13)
- MA95–14 (Feb. 10, 1995) (MA96–14)
- MA95–15 (Feb. 10, 1995) (MA96–15)