or any other reply was received by the DEA from Dr. Demetrios or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that: (1) Thirty days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Demetrios is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that Dr. Demetrios is currently registered with DEA in the State of California. On June 3, 1993, he submitted a renewal application for his DEA registration indicating that he wanted to change the address to a location in Cumming, Georgia.

The Acting Deputy Administrator further finds that on December 6, 1993, the Composite State Board of Medical Examiners for the State of Georgia (Georgia Board) ordered the summary suspension of Dr. Demetrios' license to practice medicine in the State of Georgia ''based upon (his) repeated pattern of inappropriate sexual conduct with his patients.'' Subsequently, on October 5, 1994, the Georgia Board accepted the voluntary surrender of Dr. Demetrios' Georgia medical license. Thereafter, on May 30, 1995, the Medical Board of California (California Board) filed an Accusation proposing to revoke Dr. Demetrios' license to practice medicine in the State of California based upon the action of the Georgia Board, as well as Dr. Demetrios' conviction in a Georgia state court on charges of rape, battery, aggravated sexual battery, simple battery, sexual battery, and sexual assault by a practitioner of psychotherapy against a patient. On April 3, 1996, the California Board entered a Default Decision revoking Dr. Demetrios' California medical license effective May 3, 1996. The Acting Deputy Administrator concludes that Dr. Demetrios is not currently authorized to handle controlled substances in the State of California, where he is currently registered with DEA, nor in the State of Georgia, where he is requesting modification of his DEA registration.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D. 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992). Here, it is clear that Dr. Demetrios is neither currently authorized to practice medicine nor to dispense controlled substances in the States of Georgia and California. Therefore, he is not entitled to a DEA registration in either state.

Accordingly, the Acting Deputy 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 DEA Certificate of Registration, BD1248029, previously issued to Abbas Helim Demetrios, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending requests for renewal and/or modification of such registration, be, and they hereby are, denied. This order is effective May 5, 1997.

Dated: March 24, 1997.

James S. Milford,

Acting Deputy Adminstrator.

[FR Doc. 97–8559 Filed 4–3–97; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 95–44]

Hagura Pharmacy; Denial of Application

On May 23, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Hagura Pharmacy (Respondent) of Philadelphia, Pennsylvania, notifying it of an opportunity to show cause as to why DEA should not deny its application for registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated June 22, 1995, the Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on March 19, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called a witness to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On December 6, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to her Opinion and Recommended Ruling and on January 9, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting 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 Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. The Acting Deputy Administrator's 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 Acting Deputy Administrator finds that Respondent pharmacy is located in Philadelphia, Pennsylvania and is owned and operated by Tahir Abdullah, R.Ph., M.D. (hereinafter referred to as Dr. Abdullah). Respondent pharmacy is seeking registration with DEA in order to handle controlled substances.

Dr. Abdullah received his pharmacy training in Pakistan and came to the United States in 1973. From approximately 1977 until 1985, Dr. Abdullah owned another pharmacy, also named Hagura Pharmacy, at another location in Philadelphia, Pennsylvania. In 1979, Dr. Abdullah's brother came to the United States and worked at Hagura Pharmacy as a clerk. Dr. Abdullah was the pharmacist-in-charge at Hagura Pharmacy until approximately 1981 when he began his medical education outside of the United States. Beginning in 1981, Dr. Abdullah's brother and the pharmacist-in-charge handled the daily operations of the pharmacy and Dr. Abdullah's wife paid the bills. In 1983, he returned to the United States after the university he was attending closed. While he was in Philadelphia for the most part from 1983 through 1985, Dr. Abdullah only occasionally went to Hagura Pharmacy and was not involved in the daily operations of the pharmacy.

In 1984, unbeknownst to Dr. Abdullah, his brother attempted to fraudulently assume ownership of Hagura Pharmacy. However in this proceeding, it is undisputed that Dr. Abdullah remained the owner of Hagura Pharmacy. In February 1985, Dr. Abdullah decided to sell Hagura Pharmacy to his brother-in-law and on February 28, 1995, papers were filed with the State Board of Pharmacy for a change of ownership and listing the new name of the pharmacy as Khawaja

Pharmacy. A new DEA Certificate of Registration was issued to Khawaja Pharmacy. However, after only one payment was made by Dr. Abdullah's brother-in-law, Khawaja Pharmacy was closed and the inventory was transferred to another local pharmacy in mid-April 1985. Dr. Abdullah testified at the hearing in this matter that he arranged for the sale of Khawaja Pharmacy. There is some question as to whether Dr. Abdullah's brother-in-law was ever the actual owner of Khawaja Pharmacy, however in light of the findings below, the Acting Deputy Administrator finds it unnecessary to resolve this issue.

In 1985, DEA initiated an investigation of the controlled substance handling practices of Hagura Pharmacy and Khawaja Pharmacy. This investigation was initiated after DEA had received a number of reports from Hagura Pharmacy's suppliers that the pharmacy was purchasing an excessive amount of Schedule II controlled substances. On May 23, 1985, DEA investigators attempted to serve an administrative inspection warrant at then-Khawaja Pharmacy. After discovering that the pharmacy was closed, the investigators contacted Dr. Abdullah at the suggestion of the State Board of Pharmacy. Dr. Abdullah and the pharmacist-in-charge of Hagura Pharmacy and Khawaja Pharmacy met with the investigators at a building where the controlled substance records of the pharmacies were maintained. Dr. Abdullah signed, as the owner of the pharmacy, a receipt for the records turned over to the investigators.

The investigators then conducted an accountability audit of Schedule II controlled substances using the records supplied by Dr. Abdullah, as well as information provided by Hagura Pharmacy's suppliers and the inventory conducted by the pharmacist-in-charge of Khawaja Pharmacy upon its closure. The audit covered the period January 3, 1984 through April 17, 1985, and revealed a shortage of 2,359 dosage units of Ritalin 20 mg. and overages of the other audited substances.

In conducting the audit, the investigators noted that at least 85% of the approximately 2,400 Schedule II prescriptions filled during the audit period were issued by one of three doctors, all of whose offices were located at least ten miles from Hagura Pharmacy. The investigators interviewed those doctors and showed them copies of the prescriptions. Each of the doctors stated that the names on the prescriptions were not patients of the doctor, that it was not the doctor's signature on the prescriptions, and that no one from either Hagura Pharmacy or Khawaja Pharmacy had ever telephoned the doctor attempting to verify the prescriptions. The investigators then telephonically contacted the other doctors whose prescriptions were found in the pharmacies' records to verify their legitimacy. The investigators determined that fraudulent prescriptions found in the records of the pharmacies accounted for 89% of the approximately 174,000 dosage units of the audited Schedule II substances dispensed during the audit period, and approximately 90% of the fraudulent prescriptions were filled when the pharmacy was operating under the name Hagura Pharmacy. For purposes of the audit, the investigators included the fraudulent prescriptions in the total amount of controlled substances dispensed during the audit period. However, if those prescriptions were excluded, the results of the audit would be significantly different, with the shortage being larger and the overages turning into shortages.

Dr. Abdullah graduated from medical school in 1987, however as of the date of the hearing he was not licensed to practice medicine in the United States. Dr. Abdullah testified that if Respondent pharmacy is issued a DEA Certificate of Registration, he will be the managing pharmacist, and if he becomes licensed to practice medicine in the United States, he will close Respondent pharmacy and surrender its DEA registration.

The Government contends that Respondent's registration would be inconsistent with the public interest based upon the fact that Hagura Pharmacy, while owned by Dr. Abdullah, did not keep accurate controlled substance dispensing records as evidenced by the results of the accountability audit and the significant number of fraudulent prescriptions that were filled by the pharmacy. The Government also contends that Respondent's registration would not be in the public interest because Dr. Abdullah blames others for the problems of Hagura Pharmacy, even though he was the owner.

Respondent contends that although he was the owner, he was not involved in the daily operations of Hagura Pharmacy from 1981 through 1985, and therefore, was not involved in any alleged wrongdoing. Respondent further argues that any alleged wrongdoing occurred prior to 1985 and therefore, DEA's proposed denial of its application for registration is barred by the doctrine of laches and/or principles of equity.

Pursuant to 21 U.S.C. 823(f), the Deputy 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 and 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 be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, there is no evidence in the record that any state licensing authority has taken any action against Dr. Abdullah or any of his pharmacies. As Judge Bittner noted ''that although state licensure is a prerequisite for a DEA registration, it is not the only factor to be considered.''

As to factor two, the Acting Deputy Administrator finds that while DEA registers pharmacies, a pharmacy can only act through its officers and agents. As Judge Bittner stated in her opinion, ''[i]t is well settled that the Deputy Administrator may revoke, suspend, or deny a registration to a pharmacy 'based on the controlled substance handling practices of the pharmacy's owner, majority shareholder, officer, managing pharmacist or other key employee.' '' Cumberland Prescription Center, Inc., 52 FR 37,224 (1987). Therefore, in determining Respondent's experience in dispensing controlled substances, the Acting Deputy Administrator considers the experience of Respondent's owner/pharmacist, Dr. Abdullah.

It is undisputed that Dr. Abdullah was the owner of Hagura Pharmacy from 1977 until at least the end of February 1985. The DEA audit of Hagura Pharmacy/Khawaja Pharmacy, covering the period January 3, 1984 through April 17, 1985, revealed that more than 2,400 fraudulent prescriptions were filed by the pharmacy. Further investigation revealed that three doctors' names appeared as the

prescribing physicians on approximately 85% of these prescriptions and these doctors indicated that the prescriptions were forged and that no one from Hagura Pharmacy had ever contacted them to verify the legitimacy of the prescriptions. Of the forged prescriptions, 90% were filled prior to February 28, 1985, while the pharmacy was operating as Hagura Pharmacy with Dr. Abdullah as the owner. Dr. Abdullah contends that he should not be held accountable for the forged prescriptions that were filled at Hagura Pharmacy since he was not actively involved in the operation of the pharmacy at that time.

Like Judge Bittner, the Acting Deputy Administrator rejects Dr. Abdullah's contention. As the owner, he was ultimately responsible for what occurred at his pharmacy regardless of whether he was involved in its daily operation or not. It was Dr. Abdullah's responsibility to ensure that adequate safeguards were in place to prevent the diversion of controlled substances. However, with Dr. Abdullah as the owner, Hagura Pharmacy dispensed thousands of dosage units of highly abused Schedule II controlled substances pursuant to fraudulent prescriptions. The Acting Deputy Administrator is troubled by Dr. Abdullah's continued assertions that he should not be held accountable for the improper dispensing that occurred at Hagura Pharmacy. Dr. Abdullah's failure to accept responsibility, does not bode well for Respondent's future handling of controlled substances.

Regarding factors three and four, there is no evidence that Respondent or Dr. Abdullah had ever been convicted under state or Federal laws relating to controlled substances. However, there is evidence that Hagura Pharmacy, while owned by Dr. Abdullah, failed to comply with Federal laws relating to controlled substances. Hagura Pharmacy failed to maintain complete and accurate records of controlled substances in violation of 21 U.S.C. 827 and 21 CFR 1304.21, as evidenced by the accountability audit results. In addition, Hagura Pharmacy dispensed controlled substances without a valid prescription in violation of 21 U.S.C. 829 and 21 CFR 1306.04. Dr. Abdullah again argues that he should not be held accountable for Hagura Pharmacy's failure to comply with Federal laws since he was not an active participant in the operation of the pharmacy. However, for the reasons discussed in conjunction with factor two, the Acting Deputy Administrator rejects this argument.

As to factor five, Judge Bittner found relevant ''* * * Dr. Abdullah's lack of candor regarding the ownership of the pharmacy. * * *'' Dr. Abdullah maintained that he was not the owner of Khawaja Pharmacy and therefore should not be held accountable for the actions of that pharmacy. Judge Bittner found this argument ''at best disingenuous'' in light of the fact that Dr. Abdullah arranged for the transfer of the inventory to another pharmacy upon Khawaja Pharmacy's closure, an that his brother-in-law had only made one payment to Dr. Abdullah at the time the pharmacy closed. But like Judge Bittner, the Acting Deputy Administrator finds it unnecessary to assess the impact of this finding on the outcome of this proceeding, since 90% of the fraudulent prescriptions were filed by Hagura Pharmacy while, without dispute, it was owned by Dr. Abdullah.

Respondent asserts that the alleged wrongdoing occurred more than ten years ago and therefore the doctrine of laches or other principles of equity should preclude the denial of Respondent's application for registration. DEA has consistently held that while passage of time since the wrongdoing is not, by itself, dispositive, it is a consideration in assessing whether Respondent's registration would be inconsistent with the public interest. See Norman Alpert, M.D., 58 FR 67,420 (1993). In Alpert, the then-Acting Administrator found significant, ''Respondent's recognition of the serious abuse of his privileges as a DEA registrant, and his sincere regret for his actions.'' Here however, Dr. Abdullah maintains that he has done nothing wrong and that he should not be held accountable for the actions of Hagura Pharmacy, even though he was its owner.

Judge Bittner concluded that ''[i]t is clear from Dr. Abdullah's suggestion that he should not be held accountable for the wrongdoing of his pharmacy during his absence that he does not appreciate or accept the responsibilities that accompany owning a DEA registrant. In addition, there is no persuasive evidence in the record to indicate that Dr. Abdullah would be a more conscientious owner the second time around.'' The Acting Deputy Administrator agrees. Dr. Abdullah has exhibited a complete disregard for the tremendous responsibilities that accompany the issuance of a DEA registration. Therefore, the Acting Deputy Administrator concludes that it would be inconsistent with the public interest to grant Respondent pharmacy a DEA registration.

Accordingly, the Acting Deputy 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 registration as a retail pharmacy submitted by Hagura Pharmacy, be, and it hereby is, denied. This order is effective May 5, 1997.

Dated: March 27, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–8558 Filed 4–3–97; 8:45 am]

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Romeo J. Perez, M.D.; Revocation of Registration

On July 31, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Romeo J. Perez, M.D., of St. Louis, Missouri, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AP1596014, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of Missouri. The order also notified Dr. Perez that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received on August 2, 1996. No request for a hearing or any other reply was received by the DEA from Dr. Perez or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that: (1) Thirty days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Perez is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that, by order effective August 24, 1994, the State Board of Healing Arts, State of Missouri (Board) revoked Dr. Perez' license to practice medicine. The Board further ordered that Dr. Perez shall not apply for reinstatement of his license for at least two years and one day from the effective date. The Acting Deputy Administrator finds that there is