

A DEA registration authorizes a physician to prescribe or dispense controlled substances only within the usual course of his or her professional practice. For a prescription to have been issued within the course of a practitioner's professional practice, it must have been written for a legitimate medical purpose within the context of a valid physician-patient relationship. *See* Mario Avello, M.D., *supra*, 70 FR 11,695; Mark Wade, M.D., 69 FR 7,018 (2004). Legally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription. *See* Floyd A. Santner, M.D., 55 FR 37,581 (1990).

The Deputy Administrator concludes from a review of the record that Dr. Millette did not establish valid physician-patient relationships with the Internet customers to whom he prescribed controlled substances. DEA has previously found that prescriptions issued through Internet Web sites under these circumstances are not considered as having been issued in the usual course of medical practice, in violation of 21 CFR 1306.04 and has revoked DEA registrations of several physicians for participating in Internet prescribing schemes similar to or identical to that of Dr. Millette. *See*, Mario Avello, M.D., *supra*, 70 FR 11,695; Marvin L. Gibbs, Jr., M.D., 69 FR 11,658 (2004); Mark Wade, M.D., *supra*, 69 FR 7,018; Ernesto A. Cantu, M.D., 69 FR 7,014–02 (2004); Rick Joe Nelson, M.D., 66 FR 30,752 (2001).

Similarly, DEA has issued orders to show cause and subsequently revoked DEA registrations of pharmacies which have failed to fulfill their corresponding responsibilities in Internet prescribing operations similar to, or identical to that of Dr. Millette. *See*, EZRX, L.L.C. (EZRX), 69 FR 63,178 (2004); Prescriptiononline.com, 69 FR 5,583 (2004).

In the instant case, Dr. Millette and other practitioners associated with this Internet scheme, authorized prescriptions for controlled substances without the benefit of face-to-face physician-patient contact, physical exam or medical tests. Beyond a couple of rare direct e-mail contacts with customers, there is no information in the investigative file demonstrating that Dr. Millette and other issuing physicians even took time to corroborate responses to the questionnaires submitted by the customers. Here, it is clear the issuance of controlled substance prescriptions to persons whom Dr. Millette had not established a valid physician-patient relationship is a radical departure from the normal

course of professional practice and he knowingly participated in this scheme.

With regard to factor three, Dr. Millette's conviction record under federal or state laws relating to the dispensing of controlled substances, the record does not reflect that he has yet been convicted of a crime related to controlled substances.

Regarding factor five, such other conduct which may threaten the public health or safety, the Deputy Administrator finds this factor particularly relevant.

The Deputy Administrator has previously expressed her deep concern about the increased risk of diversion which accompanies Internet controlled substance transactions. Given the nascent practice of cyber-distribution of controlled drugs to faceless individuals, where interaction between individuals is limited to information on a computer screen or credit card, it is virtually impossible to insure that these highly addictive, and sometimes dangerous products will reach the intended recipient, and if so, whether the person purchasing these products has an actual need for them. The ramifications of obtaining dangerous and highly addictive drugs with the ease of logging on to a computer and the use of a credit card are disturbing and immense, particularly when one considers the growing problem of the abuse of prescription drugs in the United States. *See*, Mario Avello, M.D., *supra*, 70 FR 11,695; EZRX, *supra*, 60 FR at 63,181; Mark Wade, M.D., *supra*, 69 FR 7,018.

The Deputy Administrator has also previously found that in a 2001 report, the National Clearinghouse for Alcohol and Drug Information estimated that 4 million Americans ages 12 and older had acknowledged misusing prescription drugs. That accounts for 2% to 4% of the population—a rate of abuse that has quadrupled since 1980. Prescription drug abuse—typically of painkillers, sedatives and mood-altering drugs—accounts for one-third of all illicit drug use in the United States. *See*, Mario Avello, M.D., *supra*, 70 FR 11,695; EZRX, *supra*, 69 FR at 63,181–82; Mark Wade, M.D., *supra*, 69 FR 7,018.

The Deputy Administrator finds that with respect to Internet transactions involving controlled substances, the horrific untold stories of drug abuse, addiction and treatment are the unintended, but foreseeable consequence of providing highly addictive drugs to the public without oversight. The closed system of distribution, brought about by the enactment of the Controlled Substances Act, is completely compromised when

individuals can easily acquire controlled substances without regard to age or health status. Such lack of oversight describes Dr. Millette's practice of issuing prescriptions for controlled substances to indistinct Internet customers which were then filled by pharmacies participating in the scheme. Such conduct contributes to the abuse of controlled substances by Dr. Millette's customers and is relevant under factor five, further supporting revocation of his DEA Certificates of Registration.

Dr. Millette also continued prescribing to Internet customers after issuance of policy statements designed to assist licensed practitioners and pharmacists in the proper prescribing and dispensing of dangerous controlled drugs. Apparently motivated purely by financial gain, Dr. Millette has demonstrated a cavalier disregard for controlled substance laws and regulations and a disturbing indifference to the health and safety of individuals purchasing dangerous drugs through the Internet. Such lack of character and flaunting of the responsibilities inherent with a DEA registration show, in no uncertain terms, that Dr. Millette's continued registration would be inconsistent with the public interest.

Accordingly, the 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(b) and 0.104, hereby orders that DEA Certificates of Registration BM2349012 and BM8086236, issued to Michael J. Millette, M.D., be, and hereby are, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registrations be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Thomas J. Mulhearn, III, M.D.; **Revocation of Registration**

On August 20, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Thomas J. Mulhearn, III, M.D. (Dr. Mulhearn) of Monroe,

Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BM7570636 under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Mulhearn is not currently authorized to practice medicine or handle controlled substances in Louisiana, his state of registration and practice. The Order to Show Cause also notified Dr. Mulhearn that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Mulhearn at his registered address at 1207 Royal Avenue, Monroe, Louisiana 71201. However, that letter was unclaimed. It was then forwarded by the United States Postal Service to 91 Sidney Street, Apt. 315, Cambridge, Massachusetts 02139-4286, an address Dr. Mulhearn apparently provided postal authorities as a forwarding address. However, the forwarded letter was also unclaimed and postal authorities returned it to DEA. Additional efforts by DEA investigators to locate Dr. Mulhearn's whereabouts have also been unsuccessful. DEA has not received a request for hearing or any other reply from Dr. Mulhearn or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that: (1) Thirty days having passed since the attempted deliveries of the Order to Show Cause to the registrant's address of record and his forwarding address; (2) reasonable and good faith efforts to locate him have been unsuccessful; and (3) no request for hearing having been received, concludes that Dr. Mulhearn is deemed to have waived his hearing right. See James E. Thomas, M.D., 70 FR 3,564 (2005); Steven A. Barnes, M.D., 69 FR 51,474 (2004); David W. Linder, 67 FR 12,579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds Dr. Mulhearn currently possesses DEA Certificate of Registration BM7570636, as a practitioner, authorized to handle Schedule V controlled substances. The Deputy Administrator further finds that on November 29, 2003, the Louisiana State Board of Medical Examiners (Louisiana Board) issued an Order revoking Dr. Mulhearn's license to practice medicine in Louisiana. The

revocation was based upon the Board's findings that Dr. Mulhearn committed professional misconduct due to personal substance abuse, failed to adhere to the conditions of a previous suspension and treatment program and was "unable to practice medicine with reasonable skill and safety to patients because of mental illness or deficiency, and/or excessive use or abuse of drugs, including alcohol."

The investigative file contains no evidence the Louisiana Board's Order has been stayed, modified or terminated or that Dr. Mulhearn's medical license has been reinstated. Therefore, the Deputy Administrator finds Dr. Mulhearn is not currently authorized to practice medicine in the State of Louisiana. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

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 business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Stephen J. Graham, M.D., 69 FR 11,661 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear Dr. Mulhearn's medical license has been revoked and he is not currently licensed to handle controlled substances in Louisiana, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the 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(b) and 0.104, hereby orders that DEA Certificate of Registration BM7570636, issued to Thomas J. Mulhearn, III, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Net Wholesale; Revocation of Registration

On September 16, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Net Wholesale (Net) proposing to revoke its DEA Certificate of Registration 002918NOY as a distributor of List I chemicals pursuant to 21 U.S.C. 824(a)(4), on the ground that Net's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h). The order also notified Net that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Net at its registered location at 3415 9th Avenue, Huntsville, Alabama 35805. That correspondence was returned to DEA as "Unclaimed," indicating the addressee had twice failed to respond to postal service notices to pick up the letter. On November 4, 2004, the Order to Show Cause was re-mailed to Net at its registered address by regular first class mail. That correspondence has not been returned to DEA and is presumed to have been received. DEA has not received a request for a hearing or any other reply from Net or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Net has waived its hearing right. See *Aqui Enterprises*, 67 FR 12,576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance.

Phenylpropanolamine, also a List I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms