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

resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine.

As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant and its abuse is a persistent and growing problem in the United States. See e.g., Direct Wholesale, 69 FR 11,654 (2004); Branex, Inc., 69 FR 8,682 (2004); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9,997 (2002); Denver Wholesale, 67 FR 99,986 (2002).

The Deputy Administrator's review of the investigative file reveals that on May 6, 1998, Net was initially granted DEA registration to distribute ephedrine, pseudoephedrine and phyenylpropanolamine List I chemical products. The company's registered location was 3415 9th Avenue, Huntsville, Alabama 35805 and its registration was last renewed on October 29, 2002. On October 17, 2003, prior to expiration of the current registration, the company's owner, Mr. Valiollah Geholamkhas, submitted an application for renewal. On October 20, 2003, he filed an application for modification of Net's registered location to 7000 North Parkway, Huntsville, Alabama 35810.

At the time of initial DEA registration, Net held a permit issued by the Alabama Board of Pharmacy (Alabama Board) as a distributor of List I chemicals. Despite a state requirement to maintain the permit, Net did not apply for renewal and its permit lapsed on December 31, 2001. Nevertheless, the company continued to operate and distribute List I chemicals within Alabama for approximately two more years.

On Net's current application for renewal of DEA registration, by checking ''N/A'' and failing to list a state license/permit number in response to Question 1(a), Mr. Geholamkhas represented that Alabama did not require a state license to distribute listed chemicals. This was a material falsification of an application in violation of 21 U.S.C. 843(a)(4)(A).

On January 22, 2004, when DEA Diversion Investigators conducted an inspection of Net's proposed new location at 7000 North Parkway, they discovered the company was already conducting business there, without notifying DEA and obtaining approval for the new and separate location, as required by 21 CFR 1309.23. A record review revealed that over a seven month period, during which Net lacked an Alabama permit and DEA authorization to conduct business at its new location, Net purchased over 45 million milligrams of combination ephedrine tablets. In subsequent correspondence with the Alabama Board, Mr. Geholamkhas admitted the company had distributed List I chemicals from its new location, without DEA approval.

In May 2004, the Alabama Board, issued its Order finding Net had sold and delivered List I chemical products during a period when it did not hold a current Alabama distributor permit. The Alabama Board imposed a $1000.00 fine and granted Net's application for a new state permit, but placed it on probationary status for three years.

Pursuant to 21 U.S.C. 824(a)(4) and 823(h), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration if she determines that granting the registration would be inconsistent with the public interest. 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 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.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are considered in the disjunctive; the Deputy Administrator may on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, e.g., Energy Outlet, 64 FR 14,269 (1999); Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Deputy Administrator finds factors two and five relevant to Net's continued registration and its aplication for renewal.

As to factor two, compliance with Federal, State and local law, the record shows that for a two year period, Net distributed List I chemicals without a state permit that is required to engage in that activity. Further, for a period of at least seven months the company also violated Federal law and regulations by distributing List I chemicals from an unregistered location.

With regard to factor five, other factors relevant to and consistent with the public health and safety, the Deputy Adminstrator finds that in his application for renewal, Mr. Geholamkhas intentionally misrepresented the status of his authority to distribute List I chemicals under State law, when he falsely indicated that no state license or registration was required for his company to distribute those products in Alabama. This lack of candor, taken together with the registrant's disregard of law and regulations discussed above, makes questionable Net and its owner's commitment to the statutory and regulatory requirements designed to protect the public from diversion of listed chemicals. *See e.g.*, Seaside Pharmaceutical Co., 67 FR 35,459 (2001).

Finally, the Deputy Administrator also finds factor five relevant to the company's request to continue distributing phenylpropanolamine and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. *See e.g.*, John E. McRae d/b/a J & H Wholesale, 69 FR 51,480 (2004); Direct Wholesale, 69 FR 11,654 (2004); ANM Wholesale, 69 FR 11,652 (2004); Shani Distributors, 68 FR 62,324 (2003).

Accordingly, the Deputy Administration 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 002918NOY, previously issued to Net Wholesale, be, and it hereby is, revoked. The Deputy Administrator further orders that the pending applications for renewal and modification of the aforementioned registration be, and they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–9282 Filed 5–9–05; 8:45 am]

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