signature, 21 CFR 1306.05(a), the CSA does not authorize a practitioner to delegate her authority to prescribe a controlled substance to another employee. Respondent clearly delegated her authority to prescribe controlled substances to Mastridge, who lacked authority to prescribe a controlled substance. This constitutes a serious violation of the Act. *See United States* v. *Singh*, 390 F.3d 168, 184–87 (2d Cir. 2004) (affirming criminal conviction of physician for aiding and abetting illegal distribution of controlled substances where physician gave pre-signed blank prescription pads to nurses, who although not authorized to prescribe, wrote patients prescriptions for controlled substances).[9]

Factor Three—Respondent's Conviction Record

It is undisputed that Respondent has never been convicted of violating any federal or State law relating to the manufacture, distribution, or dispensing of controlled substances. While this factor is not dispositive, it does support a finding that Respondent's continued registration would not be inconsistent with the public interest.

Factor Four—Respondent's Compliance With Applicable Federal, State, or Local Controlled Substances Laws

As explained above under factor two, Respondent violated 21 U.S.C. 829(b), and 21 CFR 1306.04, when she prescribed controlled substances without a legitimate medical purpose to the undercover operatives. While I agree with the ALJ that Respondent's pre-signing of prescriptions violated 21 CFR 1306.05(a), I further find that Respondent violated Federal law by giving the prescription forms to Mr. Mastridge and delegating to him the authority to prescribe controlled substances when he was not registered to do so under Federal law and could not lawfully prescribe them under State law. See 21 CFR 1306.03(a). This factor thus supports a finding that Respondent's continued registration would be inconsistent with the public interest.

Factor Five—Other Conduct Which May Threaten Public Health and Safety

As I recently held, DEA precedents establish that ''an applicant's acceptance of responsibility for [her] prior misconduct is a highly relevant consideration under this factor.'' *Kennedy*, 71 FR35709; *see also Barry H. Brooks*, 66 FR 18305, 18309 (2001); *Prince George Daniels*, D.D.S., 60 FR 62884, 62887 (1995); *Carmel Ben-Eliezer, M.D.*, 58 FR 65400, 65401 (1993). Here, the ALJ found that Respondent had refused to accept responsibility for her misconduct in prescribing controlled substances to the three undercover visitors when there was no legitimate medical purpose for doing so. *See* ALJ Dec. at 43.

I recognize that Respondent admitted that she should not have given pre-signed prescription forms to Mr. Mastridge, that she should have performed a physical exam on the patients, and that she should not have created false records. Respondent, however, persisted in maintaining that she had validly prescribed controlled substances to the undercover operatives. For example, when cross-examined about whether she had knowingly and intentionally distributed a controlled substance to Detective Keys, Respondent insisted that she had not. When asked whether she had committed this offense she testified: ''No, it says here, did knowingly. No, it's not true. Patients come to us in chronic pain. I assume they have pain.'' Tr. 652. Respondent further testified that:

> Intentionally I did not dispense medication, I did not distribute outside of the usual course of medical practice. In the context of the clinical pain management, I knew the medication [was] not to transfer, not to sell the drug to the street or anything. My intention here is believe the patient, give them the benefit of chronic pain, and evaluate them, and do what is appropriate for them.

Id.

I am deeply troubled by Respondent's testimony and her evident misapprehension of a registrant's obligations under the CSA. Contrary to Respondent's understanding, a practitioner violates the Act by prescribing a controlled substance without a legitimate medical purpose. It is no less a violation that the ''patient'' will personally use the drug rather than sell it on the street.

I recognize the substantial measures undertaken by Respondent to reform her practice. But in the case of a practitioner, the most important control against diversion is the individual registrant herself. When the individual registrant's conduct is the source of the problem, and that registrant refuses to acknowledge her responsibilities under the law, all of the aforementioned reforms will still not adequately protect public health and safety.

Therefore, I conclude that factor five supports a finding that Respondent's continued registration would threaten public health and safety and indeed, that this factor is dispositive in determining that her continued registration is inconsistent with the public interest.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(4), as well as 28 CFR 0.100(b) and 0.104, I hereby order that DEA Certificate of Registration, No. AK2006648, issued to Respondent Jayam Krishna-Iyer, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective October 2, 2006.

Dated: August 22, 2006.

Michele M. Leonhart,

Deputy Administrator.

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[9] Respondent asserts that her conduct in pre-signing prescriptions ''was not willful or knowing, but was done in good faith and only after advising the nurse first of the parameters of the prescription.'' Resp. Br. 62. Respondent did not, however, testify that she met with Mastridge and discussed what controlled substances Mastridge was to prescribe for Massey on the April 22nd visit. Respondent's testimony contains only vague generalities on the subject of Mastridge's prescribing. *See* Tr. 469–72.

As for Respondent's contention that she believed in good faith that it was legal to do so, there are numerous DEA final orders sanctioning registrants for engaging in this practice. *See, e.g., Walter S. Gresham, M.D.*, 57 FR 44213, 44214 (1992); *Maimoona Hakim Husain, M.D.*, 54 FR 16173, 16174 (1989); *William T. McPhail, M.D.*, 53 FR 47275, 47276 (1988); *Richard T. Robinson, M.D.*, 53 FR 15153, 15154 (1988); *James Beale, M.D.*, 53 FR 15149, 15150 (1988). I therefore reject Respondent's contention.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Nashville Wholesale Company, Inc.; Denial of Application

On July 12, 2005, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to Nashville Wholesale Company, Inc., (Respondent) of Nashville and Memphis, Tennessee. The Show Cause Order proposed to deny Respondent's pending application for registration as a non-retail distributor of List I chemicals on the ground that Respondent's registration would be inconsistent with the public interest. *See* 21 U.S.C. 823(h); Show Cause Order at 1.

The Show Cause Order specifically alleged that Respondent, through its owner Nael Abodabba, submitted an application to distribute pseudoephedrine, a List I chemical

which is commonly diverted to the illicit manufacture of methamphetamine, a Schedule II controlled substance. Show Cause Order at 2. The Show Cause Order alleged that Mr. Abodabba had previously owned the Memphis Wholesale Company, which engaged in the distribution of List I chemicals under a DEA grandfather exemption. *See id.* The Show Cause Order further alleged that Mr. Abodabba had sold his interest in Memphis Wholesale to Mr. Mohammed Issa, who proceeded to distribute List I chemicals without obtaining a new DEA registration. *See id.* The Show Cause Order further alleged that Mr. Abodabba failed to notify DEA of the change in corporate ownership and that this resulted in Memphis Wholesale ''conducting continuing distribution activities without authorization.'' *Id.*

The Show Cause Order further alleged that while Mr. Abodabba told DEA Diversion Investigators that he only intended to sell ''traditional'' pseudoephedrine products, several of his proposed suppliers sold only ''non-traditional pseudoephedrine and ephedrine products.'' *Id.* at 2–3. The Show Cause Order also alleged that several of Mr. Abodabba's proposed customers had been found to be selling excessive amounts of ephedrine products and that other proposed customers had been receiving List I chemical products from distributors who had either surrendered a registration or were the subject of a show cause proceeding. *See id.* at 3. Finally, the Show Cause Order alleged that ''[i]t appears that Mr. Abodabba is attempting to 'churn' his distribution activities in order to evade scrutiny, and if registered, would likely supply retailers who already have an excessive source of supply.'' *Id.* at 4. The Show Cause Order also notified Respondent of its right to a hearing.

The Show Cause Order was served on Respondent by certified mail, return receipt requested at its proposed registered location; on July 26, 2005, DEA received the signed return receipt card. Since that time, neither Respondent, nor anyone purporting to represent it, has responded. Because (1) more than thirty days have passed since Respondent's receipt of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived its right to a hearing. *See* 21 CFR 1309.53(c). I therefore enter this final order without a hearing.

Findings

I take official notice of the records of the Tennessee Secretary of State. According to those records, on June 25, 2004, the Tennessee Secretary of State filed a notice of determination that grounds existed for dissolving Respondent. Thereafter, on September 17, 2004, the Secretary filed a certificate of dissolution thereby administratively dissolving Respondent. Under Tennessee law, ''[a] corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs * * * and notify claimants.'' Tenn. Code Ann. § 48–24–202 (West. 2006) (citations omitted). Respondent is thus prohibited from engaging in business operations involving the distribution of products.

Under DEA regulations, a registration terminates ''if and when'' a registrant ''discontinues business.'' 21 CFR 1309.62(a). While there is no provision addressing the status of a pending application when the applicant discontinues business, it would make no sense to grant an application to register an entity which cannot engage in business. Therefore, because Respondent is no longer authorized to engage in business other than for the purpose of winding up its affairs, it is not entitled to registration and it is unnecessary to consider whether Respondent's registration would be inconsistent with the public interest. *See* 21 U.S.C. 823(h).

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) and 0.104, I hereby order that the previously submitted application of Nashville Wholesale Company, Inc., for a DEA Certificate of Registration as a distributor of List I chemicals be, and it hereby is denied. This order is effective October 2, 2006.

Dated: August 22, 2006.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–4]

Tri-County Bait Distributors; Denial of Application

Introduction and Procedural History

On August 11, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Tri-County Bait Distributors (Respondent) of Dorchester, South Carolina. The Show Cause Order proposed to deny Respondent's application for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrine on the ground that its registration would be inconsistent with the public interest as that term is defined in 21 U.S.C. 823(h).

The Show Cause Order specifically alleged that Respondent was seeking to distribute products containing ephedrine and pseudoephedrine, which are precursor chemicals that are used in the production of methamphetamine, a schedule II controlled substance. Show Cause Order at 1. The Show Cause Order alleged that Respondent was proposing to sell these products exclusively to convenience stores and combination bait shops/convenience stores, and that these establishments are part of the non-traditional or gray market for these products. *Id.* at 4. The Show Cause Order further alleged that Respondent's owner, Mr. Terry L. Carroll, had stated that ''he had no prior experience in the sale or marketing of OTC medications,'' and that the distribution of List I chemicals would be ''approximately 20 percent of his business.'' *Id.* at 2. The Show Cause Order also alleged that ''many smaller or non-traditional stores * * * purchase inordinate amounts of these products and become conduits for the diversion of listed chemical[s] into illicit drug manufacturing.'' *Id.* at 2–3. Finally, the Show Cause Order alleged that Respondent's proposed ''product mix and sales of combination ephedrine products are inconsistent with the known legitimate market and known end-user demand for products of this type'' and that the registration of Respondent ''would likely lead to increased diversion of List I chemicals.'' *Id.* at 4.

Respondent requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing in Charleston, South Carolina, on October 5, 2004. Both the Government and Respondent submitted post-hearing briefs.

On July 6, 2005, the ALJ issued her decision. The ALJ concluded that the Government had proved by a preponderance of the evidence that Respondent's registration would be inconsistent with the public interest. *See* ALJ at 15–17. The ALJ thus recommended that Respondent's application be denied. *Id.* at 17. Neither party filed exceptions.