DEA Certificate of Registration. The Order to Show cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was received by Respondent. Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Judge Bittner ordered the parties to file prehearing statements. After the Government filed its prehearing statement, Respondent requested and obtained an extension of time to file his prehearing statement on or before February 10, 1994. On February 28, 1994, Judge Bittner issued an order terminating the proceedings based upon the fact that Respondent had not filed a prehearing statement nor any other pleading. The order also found that Respondent waived his right to a hearing pursuant to 21 CFR 1301.54(a) and 1301.54(d). Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

In 1986, Respondent prescribed various narcotic and benzodiazepine controlled substances to an individual whom Respondent knew was drug addicted. Respondent also prescribed Tylenol with codeine, a Schedule III controlled substance, and Doriden, then a Schedule III controlled substance and now a Schedule II substance, to this individual. This combination, known by its street name of "fours and dors", is commonly abused by many drug addicts and Respondent was aware of such fact at the time he prescribed these

substances to this individual.

In October 1987, this individual acting in an undercover capacity made thirteen undercover visits to Respondent's office. The transcripts of these undercover visits revealed that Respondent was well aware that the combination of Tylenol with codeine and Doriden was used by drug abusers and that he was not prescribing these substances to this individual for any legitimate reason. In addition, from October 1987 to December 1987, Respondent's receptionist gave this individual over 300 dosage units of Valium, a Schedule IV controlled substance, and 144 dosage units of Doriden for no legitimate medical purpose. Although Respondent claimed he was unaware of this activity, he was responsible for this employee's actions and ultimately accountable for the controlled substances that were dispensed from his office.

Respondent ordered about 200,000 dosage units of controlled substances in a nine month period in 1987. These controlled substances were stored at his residence, and then transferred to Respondent's two offices; one of these offices was never a registered location and Respondent let the other office's registration lapse in January 1987.

In February of 1986, Respondent was convicted in the Commonwealth of Pennsylvania of 47 counts of submitting false or fraudulent Medicaid claims. Respondent was sentenced to three years probation and to pay a fine and restitution. The Pennsylvania Bureau of Occupational and Professional Affairs suspended Respondent's medical license in March 1988, but reinstated the license about a month later.

On March 23, 1988, Respondent was notified that his prior DEA registration was immediately suspended and that he should notify DEA of any controlled substance deliveries that he might receive subsequent to that date. In fact Respondent did order over 19,000 dosage units of controlled substances on March 23, 1988, and he received this shipment on March 28, 1988. He never notified DEA of this receipt of controlled substances. The controlled substances were discovered in the garage at the residence of Respondent's attorney pursuant to a search warrant which was served on April 13, 1988. Based upon these events, Respondent's prior DEA registration, AM5075305, was revoked on March 27, 1989. 54 FR 13254 (1989).

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(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.

In determining whether a registration would be inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, he has the discretion to give each factor the weight he deems

appropriate, depending upon the facts and circumstances of each case. See David E. Trawick, D.D.S., Docket No. 88-69, 53 FR 5326 (1988)

Regarding factor two, Respondent's experience in dispensing controlled substances is poor based upon his prescribing the combination of Tylenol with codeine and Doriden to an individual, especially when Respondent was aware that this combination was subject to abuse. This factor is also supported by the fact that Respondent's employee dispensed numerous controlled substances to this individual in addition to the controlled substances that he received from Respondent's illegitimate prescriptions.

With respect to factor four, Respondent failed to comply with applicable Federal law by dispensing controlled substances from an unregistered location. 21 U.S.C. 822(e). Respondent also did not maintain records of the controlled substances dispensed from his office by his employee. 21 U.S.C. 827(a). Finally, Respondent received controlled substances after he was notified that his DEA registration was suspended. 21 U.S.C. 843(a)(2). This violation is particularly egregious because Respondent ignored instructions to inform DEA of any controlled substance shipments received after the suspension of his DEA registration. Factor five is applicable based upon Respondent's Medicaid fraud convictions.

No evidence of explanation or mitigating circumstances has been offered by Respondent. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

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 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration, submitted by Leonard Merkow, M.D., be, and it is hereby denied. This order is effective May 4, 1995.

Dated: April 28, 1995.

Stephen H. Greene,

Deputy Administrator.

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[Docket No. 93-56]

Michael G. Sargent, M.D.; Revocation of Registration

On June 2, 1993, the Deputy Assistant Administrator (then Director), Office of