

the record. However, this is not a punitive proceeding. Instead, this proceeding seeks to protect the public from further conduct of the same kind. Can Respondent be trusted to responsibly handle controlled substances in the future? The Administrator concludes that in light of respondent's history of ignoring his duty as a health care professional and his failure to protect against the improper dispensing of potentially dangerous substances, Respondent cannot be trusted to responsibly handle such substances in the future.

Accordingly, the 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), hereby orders that DEA Certificate of Registration AC4559475, previously issued to Denis C. Chan, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective April 6, 1990.

Dated: February 28, 1990.

John C. Lawn,
Administrator.

[FR Doc. 90-5089 Filed 3-6-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-92]

Kissena Pharmacy; Revocation of Registration

On September 1, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kissena Pharmacy, Inc. (Respondent), of Flushing, NY. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AK8695148, and to deny any pending applications for renewal of that registration. The statutory predicate for the proposed action was that Respondent's continued registration was inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4). Respondent, through counsel, filed a request for a hearing on October 5, 1988. Following prehearing procedures, the hearing was held in Washington, DC, on February 3, 1989. After the hearing, both parties filed proposed findings of fact, conclusions of law, and argument. On June 20, 1989, Administrative Law Judge Mary Ellen Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. Thereafter, the entire record was transmitted to the Administrator for final agency action. The Administrator

has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

DEA Investigators initiated an investigation into Respondent pharmacy in September 1985. They found that between April and September 1985, Respondent had filled 2,612 prescriptions written by Dr. Pal Varga. Of these prescriptions, which represented approximately 154,200 dosage units of controlled substances, 87 percent were for Doriden and Empirin with codeine, or some other codeine-containing medication. Doriden is a Schedule III oral hypnotic controlled substance, and Empirin with codeine is a Schedule III oral analgesic controlled substance. These drugs are frequently taken together by drug abusers and the combination is colloquially known as "sets" or "fours and doors."

In the hearing, the Government placed in evidence more than 130 prescriptions written by Dr. Varga for Doriden and codeine preparations. The prescriptions were dated between July 22 and July 25, 1985, and were filling by Respondent pharmacy. Many of these prescriptions were for "sets," as described above. DEA Investigators unsuccessfully attempted to locate individuals named on prescriptions issued by Dr. Varga which were selected at random. Of approximately 200 names and addresses listed on the prescriptions, the Investigators did not find any that corresponded to a real person.

During the course of the investigation, DEA Investigators talked to Bernard Walden and Henry Richman, the two pharmacists who worked at Respondent pharmacy on weekdays. Both pharmacists admitted that various individuals would bring in prescriptions for Doriden and codeine-based products simultaneously, and that customers would present several prescriptions for these substances at the same time. Many prescriptions bore names different than those of the person presenting them.

In November 1985, the State of New York instituted a requirement that triplicate prescriptions be used for Doriden in order to curb abuse of that drug. This new requirement apparently prevented Doriden prescriptions from being brought to Respondent to be filled, since Investigators found no Doriden prescriptions at Respondent's pharmacy after the triplicate prescription requirement went into effect.

In January 1988, DEA Investigators again visited the Respondent's pharmacy and inspected its prescription

file. This investigation revealed numerous fraudulent prescriptions. These included:

a. Seventy-seven (77) prescriptions were ostensibly issued by Marilyn R. Squire, M.D., from November 28, 1987 to January 18, 1988. Of these prescriptions, 76 were for the drug Lotusat, a Schedule IV controlled substance. The prescriptions were photocopied; the handwriting of the doctor's purported signature varied on different prescriptions; some of the prescriptions listed a different address for Dr. Squire than others, and one of those addresses was 50 miles from Respondent. The alleged DEA registration number of Dr. Squire printed on the prescriptions varied from prescription to prescription, and some of these alleged registration numbers were not in the form of a physician's DEA number. Furthermore, none of the various DEA numbers on the prescriptions was that assigned to Dr. Squire. When interviewed by investigators, Dr. Squire denied writing these prescriptions or having any knowledge of the individuals named on them. She further told investigators that she is a psychiatrist employed by the State of New York, was not familiar with Lotusat, and that her prescription pad had been either lost or stolen while she was commuting to work. Dr. Squire also stated that she had never been contacted by Respondent to verify any of the prescriptions.

b. Twenty-five (25) prescriptions for Lotusat were purportedly issued by Maria D. Garcia, M.D., between August 24 and December 30, 1987. When contacted by investigators and shown the prescriptions, Dr. Garcia stated that she did not write the prescriptions, they were not in her handwriting, she was unfamiliar with Lotusat and unfamiliar with any of the patients listed on the prescriptions. She further stated that she had never been contacted by Respondent to verify any of the prescriptions.

c. Twenty-five (25) prescriptions were purportedly issued by Irving J. Blumenthal, M.D. Dr. Blumenthal was contacted by investigators and acknowledged that three of the 25 prescriptions were issued by him, but stated that all the others were forgeries or photocopies. Dr. Blumenthal recognized one patient name on the forged prescriptions, but told the investigators that the patient's address listed on the prescription was incorrect. In addition, several of the prescriptions purportedly written by Dr. Blumenthal listed the address of the Northern Boulevard Medical Group. Dr. Blumenthal said he had never been

associated with that organization. Finally, Dr. Blumenthal stated that he had never been contacted by Respondent to verify any of these prescriptions.

d. Nineteen (19) prescriptions were ostensibly written by James P. McDonald, M.D., between September 1985 and January 1986. The investigators were unable to find any such Dr. McDonald in New York City, and the American Medical Association did not list any physician by that name in New York. The DEA registration number on the prescriptions was fraudulent, and the state medical license number on the prescriptions was that of another physician in New York who did not know of Dr. McDonald. The prescriptions were for Lotunate and Didrex, a Schedule IV stimulant.

e. Twenty-five (25) prescriptions were purportedly issued by Guenther Gnatzy, M.D., between 1984 and 1987. Dr. Gnatzy died in 1980.

f. Three hundred thirteen (313) prescriptions were purportedly issued by Kolin Koley, M.D., from June 1985 to November 1987. Dr. Koley admitted to investigators that he had written the prescriptions and explained that he had been giving drugs on demand to "street people." Dr. Koley subsequently surrendered his DEA registration.

g. Thirty-two (32) prescriptions were purportedly issued by Leo R. Miller, M.D., on forms bearing the name "Sidney Hillman Health Center". This facility is located in Manhattan, and is not near Respondent. Investigators ascertained that Dr. Leo Miller did not work at, nor did he have any connection with, the Sidney Hillman Health Center. The prescriptions were for Doriden, Empirin, and Tussionex. Tussionex is a Schedule III narcotic drug that is known colloquially as "liquid gold" and sells for approximately \$125.00 a pint; it is popular among narcotic addicts. Among the prescriptions found at Respondent and purportedly written by Dr. Miller were two issued to a G. Balke on April 30, 1985; one of these prescriptions was for 40 Doriden and the other for 40 Empirin with codeine. Two days later the same patient filled two more prescriptions, purportedly issued by Dr. Miller, at Respondent: one prescription was for 90 Tussionex tablets and the other for 30 Valium. On May 9, 1985, Respondent filled another prescription, also ostensibly from Dr. Miller, for 90 Tussionex. Finally, on two consecutive days, May 20 and May 21 this patient presented prescriptions purportedly from Dr. Miller for 90 Tussionex, and Respondent filled both prescriptions.

Investigators visited twelve other pharmacies in the vicinity of

Respondent to compare dispensing practices, particularly with respect to Lotunate. Nine of the twelve pharmacies did not stock Lotunate, and the three others had "a few" prescriptions for Lotunate.

Henry Richman is the supervising pharmacist at Respondent. He is 89 years old and graduated from a two-year program at the Brooklyn College of Pharmacy in 1924. This course was Mr. Richman's only formal pharmacy training. He became a registered pharmacist in 1925 or 1926. Mr. Richman works at Respondent pharmacy on Tuesdays, Wednesdays and Thursdays, eight hours each day. Bernard Walden, the other pharmacist, is more than 70 years old and works at Respondent on Mondays and Fridays. A third pharmacist works on weekends and evenings. Mr. Richman is the supervising pharmacist and is responsible for the proper filling of all prescriptions at the pharmacy, even on those days he does not work.

Mr. Richman admitted that he does not ask customers about their need for a particular drug, nor does he ask doctors why they are prescribing a particular drug. He felt that it was not his responsibility to ascertain whether a prescription was issued for a legitimate medical purpose, because "all the prescriptions that we get that the doctor write we assume are for legitimate medical purposes."

Mr. Richman's testimony displayed confusion and a lack of knowledge about important properties of various controlled substances he dispensed. For example, Mr. Richman incorrectly stated that Doriden was a narcotic and admitted that he did not know what controlled substance it contained. Mr. Richman also stated that he did not know how Doriden reacts with Empirin with codeine, or that these are highly abused in combination. He opined that a pharmacist was not supposed to know those things. In addition, Mr. Richman did not know the controlled substances in either Lotunate or Placidyl. He stated that amphetamines make one "sleepy and drowsy," and then asked, "Isn't amphetamine a group of drugs?" Mr. Richman stated that he did not know whether barbiturates and amphetamines act similarly.

A registration may be revoked pursuant to 21 U.S.C. 823(f) and 824(a)(4) if such registration is not in the public interest. In determining what is in the public interest, the registrant's experience in dispensing or conducting research with respect to controlled substances may be considered as well as compliance with applicable state, Federal, or local laws relating to

controlled substances. Moreover, any other conduct which may threaten the public health and safety may also be considered. In the instant case, the evidence conclusively establishes that in 1985, Respondent filled thousands of prescriptions, issued by one physician for dangerous combinations of controlled substances. No attempt was made to verify that the prescriptions were issued for a legitimate medical purpose, even though the circumstances under which the prescriptions were presented were extremely suspicious. The evidence further establishes that in 1987 and 1988, Respondent filled controlled substance prescriptions which were photocopies, listed obviously nonexistent DEA numbers, or on which the purported signature of the physician obviously differed from that of other prescriptions issued by the same physician.

Respondent filled numerous controlled substance prescriptions without any attempt to verify them with the issuing physician, and many of those prescriptions were forged. Respondent filled prescriptions for highly abused controlled substances under circumstances which should have caused a responsible pharmacist to question whether the prescriptions were valid.

The Administrator concurs with the opinion of the administrative law judge and adopts her findings of fact and conclusions of law in their entirety. The Administrator further concurs in the administrative law judge's assessment that Respondent's dispensing practices have demonstrated a total disregard for its responsibilities as a DEA registrant, and that Respondent has utterly failed to prove that it will act more responsibly in the future. It is hard to imagine a more egregious example of gross neglect and abandonment of professional responsibility than the one presented here. It is, therefore, the Administrator's conclusion that Respondent's continued registration is not in the public interest.

Accordingly, having concluded that there is a lawful basis for the revocation of Respondent's registration and for the denial of any pending applications for the renewal of that registration, the 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), hereby orders that the DEA Certificate of Registration, AK8695148, previously issued to Kissena Pharmacy, be, and it hereby is, revoked, and any pending applications are hereby denied.

This order is effective April 6, 1990.

Dated: February 28, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-5090 Filed 3-6-90; 8:45 am]

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[Docket No. 89-58]

Mortimer B. Levin, D.O.; Denial of Application

On July 24, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mortimer B. Levin, D.O., of Detroit, Michigan, proposing to deny Dr. Levin's application dated November 18, 1988. The Order to Show Cause alleged, as reason for such denial, that in 1985, Dr. Levin had been convicted of violating 21 U.S.C. 843(a)(2), a felony relating to controlled substances, and, in 1980, he was convicted of violating 42 U.S.C. 1395NN, a felony relating to Medicare.

Dr. Levin initially requested a hearing by letter dated August 7, 1989. On October 6, 1989, however, Dr. Levin waived his opportunity for a hearing on his application and moved for consideration of the merits based upon his written submissions. Attached to his motion, Dr. Levin submitted a statement in support of his application for DEA registration, several affidavits and letters from colleagues, certain documents filed with the Michigan Department of Licensing and Regulation, and portions of the transcript of a hearing before the Michigan Department of Licensing and Regulation Board of Osteopathic Medicine and Surgery.

On October 11, 1989, Administrative Law Judge Francis L. Young ordered that all proceedings before him be terminated and that all information be transmitted to the Administrator for his consideration pursuant to 21 CFR 1301.54(e). Thereafter, Dr. Levin's statement, along with the Government's investigative file, was forwarded to the Administrator.

Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based upon the following findings of fact and conclusions of law. In November 1983, a pharmacist working in Detroit contacted the Detroit Office of the Federal Bureau of Investigation (FBI) concerning some questionable prescriptions for controlled substances which had been presented to him in the course of his practice. The pharmacist provided the FBI with three prescriptions, all for Quaalude, purportedly signed by Dr. Mortimer B. Levin, of the Mount Elliott Medical

Center. Two of the prescriptions were verified by calling Dr. Levin at his residence. When Dr. Levin refused to verify the third questionable Quaalude prescription, the pharmacist contacted the FBI.

The FBI interviewed two of the three patients listed on the questionable prescriptions and learned that they had not been examined by Dr. Levin, but had been provided the prescriptions by two other individuals, Carlson and Charach. Carlson was interviewed and admitted to buying, selling and using prescription controlled substances.

During the summer of 1983, Carlson contacted Walter Brockington, D.O., of the Mount Elliott Medical Center, in an attempt to find a doctor who would sell him prescriptions for controlled substances. Dr. Brockington indicated that he was not interested in doing so, but referred Carlson to Dr. Levin. Carlson and Charach purchased prescriptions from Dr. Levin from August 1983 until February 1984, when Carlson began to cooperate with the FBI. From August 1983 through December 1983, Carlson met with Dr. Levin three to four times a week to obtain prescriptions. The number of prescriptions obtained on each occasion ranged from one to eight, with three or four being a typical number. Dr. Levin wrote illegitimate prescriptions for Desoxyn, Preludin, Quaalude, Dilaudid, and Ritalin, but usually wrote for Dilaudid or Quaalude.

On November 23, 1983, FBI Special Agent James Triano warned Dr. Levin of the need for security regarding prescription pads and prescribing controlled substances only for legitimate medical purposes. Dr. Levin informed Agent Triano that he would keep the telephone number of the FBI and would contact them if any patients attempted to obtain fraudulent prescriptions.

In February 1984, Carlson agreed to assist the FBI in the investigation of Dr. Levin. On February 9, 1984, Carlson approached Dr. Levin and purchased three prescriptions, each for 100 Dilaudid, using \$400 that had been provided to him by the FBI. FBI Agents monitored the transaction by means of a radio transmitter. On that same date, an Agent posing as a pharmacist contacted Dr. Levin who verified the prescriptions as legitimate.

On February 21, 1984, Dr. Levin engaged Carlson in a telephone conversation during which Dr. Levin discussed a proposal to set up a sham clinic or a "script mill" which he hoped would produce \$10,000 to \$15,000 a month. The telephone conversation was recorded. Carlson was to rent a building, lease telephone lines, obtain a person to

actually verify the prescriptions, and bring customers to the clinic. Dr. Levin would sign the prescriptions, using the name of another doctor and a false DEA number. Dr. Levin planned to either leave the name of the patient blank or to fill in whatever patient name was requested.

On February 22, 1984, FBI Special Agent Sharon Green and Carlson met with Dr. Levin to discuss the clinic proposal. Special Agent Green was presented as an individual who would assist in the operation of the sham clinic by posing as a receptionist and verifying the prescriptions. However, the defendant expressed his concern that Special Agent Green was in fact an FBI Agent, since he had heard that the FBI was looking for Carlson.

On February 29, 1984, Special Agent Green and Carlson again met with Dr. Levin. From Dr. Levin, Special Agent Green purchased two prescriptions for 30 Desoxyn and one prescription for 100 Dilaudid for \$300. There was no medical examination, and the patient's name was left blank so that it could be filled in later. On March 9, 1984, Special Agent Green and Carlson again met with Dr. Levin and purchased five prescriptions for 100 Dilaudid for \$600. When Special Agent Green told Dr. Levin that she might have a buyer for a whole pad of prescriptions, he responded "the more the merrier." On March 16, 1984, Special Agent Green met with Dr. Levin and again purchased five prescriptions for 100 Dilaudid for \$600. On this occasion, Dr. Levin, who had provided Special Agent Green with prescriptions for hundreds of Dilaudid 4 mg. tablets, a very potent narcotic, also gave her a bottle of prenatal vitamins. Special Agent Green was approximately seven months pregnant at that time.

The FBI later learned that from January 1984 through April 1984, Dr. Levin was dealing directly with Charach and was selling additional prescriptions for controlled substances without regard to medical need. Charach was severely addicted to the controlled substances and had a "\$400 a day habit." Dr. Levin had also discussed his proposal to set up a sham clinic or a "script mill" with Charach. However, Charach was only interested in obtaining enough drugs to sell in order to supply his own habit. Through subsequent interviews with Dr. Levin and his retained counsel, it was learned that Dr. Levin's income from wages in his medical practice declined from \$100,760 in 1979 to \$61,600 in 1984. Due to poor investments, his taxable income was substantially less. Additionally, it was learned that Dr. Levin had been defrauded out of

approximately \$200,000. As a result, he was indebted to the National Bank of Detroit and was required to make payments of \$10,000 a month. It was evidently in an attempt to obtain this payment that Dr. Levin proposed the prescription mill operation.

On June 20, 1985, a ten-count indictment was handed up, charging Dr. Levin with conspiracy to distribute controlled substances, distribution of controlled substances and utilization of the DEA registration number of another person. After extended negotiations, Dr. Levin appeared before the court on June 25, 1985, was arraigned, and pled guilty to a one-count superseding information which charged the utilization of a DEA registration number belonging to another person, in violation of title 21, United States Code, section 843(a)(2).

In his statement to the Administrator, Dr. Levin provided additional financial information. Dr. Levin states that in 1975 he was defrauded out of \$310,000 and that in 1982, he took a \$162,000 lump sum distribution from his pension plan. This ultimately generated a \$71,000 tax liability. These circumstances, Dr. Levin asserts made him vulnerable.

In seeking to establish his rehabilitation, Dr. Levin has submitted affidavits and hearing transcripts attesting to his good character and competence. The transcript was testimony recorded before the Board of Osteopathic Medicine and Surgery of the Michigan Department of Licensing and Regulation. Most of the affidavits were intended for that state proceeding. On April 7, 1988, the Michigan Department of Licensing and Regulation reinstated Dr. Levin's license to practice Osteopathic Medicine and Surgery.

In granting or denying an application for Certificate or Registration the Administrator must consider the following factors: 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; and 5. Such other conduct which may threaten the public health and safety.

There is quite a discrepancy between the facts surrounding Dr. Levin's criminal acts and conviction, and the affidavits in support of Dr. Levin's good character filed with the Osteopathic Board. While reinstatement by the Board if probative, it is not dispositive

of the issue. The DEA maintains a separate oversight responsibility with respect to the handling of controlled substances and has a statutory obligation to make its independent determination as to whether the granting of such privileges would be in the public interest.

Dr. Levin's quest for money would have placed Special Agent Green and her unborn child in serious physical danger had she taken the Schedule II narcotic prescriptions that Dr. Levin issued to her while she was pregnant. The discussions between Dr. Levin, Carlson and Special Agent Green on setting up an operation to distribute illicit prescriptions is all the more reprehensible in that it sought to institutionalize the unlawful behavior. Far from being isolated instances of aberrant behavior, the Administrator finds that Dr. Levin's scheme was carefully planned and thought out.

Dr. Levin suggests that Carlson is somewhat to blame for his unlawful acts in that Carlson preyed upon Dr. Levin's dire financial circumstances. Allying himself with such an unsavory character as Carlson does no credit to Dr. Levin. While the Administrator sympathizes with Dr. Levin's severe financial straits, they do not justify Dr. Levin's illicit sale of prescriptions or his proposal to establish a corrupt organization to sell many more.

Dr. Levin states that he is now employed in a general osteopathic practice in Detroit with two other physicians. The two other physicians must concur with Dr. Levin's diagnosis and prescribe for his patients wherever a controlled substance is required. This procedure, although burdensome to Dr. Levin and his partners, also serves to protect the public. Since other physicians are available to prescribe for Dr. Levin's patients, the process provides a much-needed extra layer of protection for both Dr. Levin's patients and the public at large.

In view of Dr. Levin's past experience in handling controlled substances, his blatant disregard of Federal and state laws relating to such substances, his criminal conviction record and his lack of concern with the health and safety of those who would ultimately abuse the drugs he prescribed, the Administrator concludes that the registration of Mortimer B. Levin, D.O. would be inconsistent with the public interest. Accordingly, having concluded that there is a lawful basis for the denial of Dr. Levin's application, the 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), hereby

orders that the application for registration executed by Dr. Levin on November 18, 1988, be, and it hereby is, denied.

This order is effective March 7, 1990.

Dated: March 1, 1990.

John C. Lawn,
Administrator.

[FR Doc. 90-5165 Filed 3-6-90; 8:45 am]

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[Docket No. 88-40]

Lou's Pharmacy, Inc.; Revocation of Registration

This proceeding before the Drug Enforcement Administration (DEA) was initiated on January 13, 1988, by issuance of an Order to Show Cause proposing to revoke DEA Certificate of Registration AL3041706, previously issued to Lou's Pharmacy, Inc. of Philadelphia, Pennsylvania. The Order to Show Cause alleged that the continued registration of Lou's Pharmacy (Respondent) would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

Respondent requested a hearing and, following prehearing procedures, a hearing was held in Washington, D.C. on February 7, 1989. On May 31, 1989, Administrative Law Judge Francis L. Young issued his opinion and recommended findings of fact and conclusions of law. Exceptions were filed by Respondent and answered by the Government. On July 21, 1989, Judge Young forwarded the record of these proceedings to the Administrator. The record included, *inter alia*, the administrative law judge's opinion, the hearing transcript, all of the exhibits which had been placed in the record and all of the post-hearing exceptions. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

Lou's Pharmacy, Inc. is a retail pharmacy located in Philadelphia, Pennsylvania and is owned and operated by Louis Brickman. Through routine monitoring of drug purchases nationwide, DEA found that during 1985, Lou's Pharmacy had purchased 8,000 dosage units of Dilaudid, ranking 25th in the State of Pennsylvania as a purchaser of that drug. By checking with local distributors, Investigators found that Lou's Pharmacy had purchased 400,000 dosage units of Doriden and a like amount of Empirin with codeine for a