

Dated: February 28, 1990.

John C. Lawn,

Administrator.

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BILLING CODE 4410-09-M

[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

period beginning March 1, 1986, to March 31, 1987. Doriden and codeine compounds are known in combination as "hits and lodes" and "fours and doors" on the street. They are highly abused in the Philadelphia area. Based on the large purchases of these controlled substances, the Investigators began an audit and investigation of Lou's Pharmacy on May 20, 1987. The audit covered the period beginning March 13, 1985, through May 20, 1987. The audit revealed, among other things, that the pharmacy could not account for over 500,000 dosage units of Doriden and a like amount of Empirin with codeine. The pharmacy was short over 43,000 dosage units of Valium 5 milligram tablets and was short over 300,000 dosage units of Valium 10 milligram tablets. In fact, there were large shortages of nearly all of the controlled substances audited.

An examination of pharmacy records revealed that Respondent failed to maintain official DEA order forms as required by law and that widespread irregularities pervaded the prescription files. The Schedule II prescriptions were all written in what appeared to be only two or three different styles of penmanship, although they purportedly had been written by more than two or three prescribing physicians. One very unusual and consistent style of penmanship appeared on prescriptions purportedly written by twelve different doctors. Doctors also purportedly called prescriptions into the pharmacy for filling. When this was done, the pharmacist reduced the telephonic order to a written prescription. These call-in prescriptions at Lou's Pharmacy were written in black, felt tip marker and bore a very similar style of penmanship to other prescriptions, also written in black, felt tip marker, which were not call-ins. Quantities were altered by erasure on other prescriptions to the point where, in one instance, a hole appeared on a prescription. On other prescriptions written in pencil, patient's names were changed and there appeared blatant misspellings of the drugs. Directions for taking the specified drugs on some of the prescriptions were not consonant with the recognized purposes of the drugs. Tuinal, a barbiturate used for sleep, for example, was directed to be ingested three times daily. The same directions were indicated on prescriptions for Doriden, another strong medication used to induce sleep. Many Ritalin prescriptions bore the words "for throat". Ritalin, a stimulant, is used primarily for the treatment of hyperkinetic children. Seven or eight of the doctors

purportedly responsible for the majority of the controlled substance prescriptions at Lou's Pharmacy did not write the prescriptions bearing their names or signatures as prescribing physicians. There were approximately 1,300 prescriptions listing a Doctor Tarun K. Ray as the authorizing physician. Dr. Ray did not write these prescriptions. The penmanship on the call-in prescriptions was the same as that on the prescriptions purportedly written by Dr. Ray. No doctor contacted by the DEA was ever called by Mr. Brickman for verification. The Respondent pharmacy also failed to take a biennial inventory as required by 21 CFR 1304.13.

As the administrative law judge noted in his decision, this case calls for very little discussion. 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f)(4) allow the revocation of a Certificate of Registration for non-compliance with Federal, state or local laws and section 823(a)(5) makes conduct which may threaten the public health and safety an additional ground. The vast unexplained shortages of highly abused drugs indicate that Respondent engaged in large-scale diversion of controlled substances into the illicit market. The prescriptions were blatant forgeries. This pharmacy more nearly resembled an illegal trafficking operation than a legitimate pharmacy responsibly handling controlled substances. The Administrator agrees with the judge's assessment. The case against this pharmacy is overwhelming. The Administrator adopts the findings of facts and conclusions of law recommended by the administrative law judge, and further concludes that Respondent is unfit to hold a DEA registration.

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 renewal, 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 AL3041703, previously issued to Lou's Pharmacy, Inc., be and it hereby is revoked. Any pending applications for renewal of such registration are hereby revoked. This order shall be effective April 8, 1990.

Dated: February 28, 1990.

John C. Lawn,
Administrator.

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Raymond H. Wexler, M.D.; Revocation of Registration

This proceeding before the Drug Enforcement Administration (DEA), was initiated on June 16, 1989, by issuance of an Order to Show Cause proposing to revoke DEA Certificate of Registration AW9137779, previously issued to Raymond H. Wexler, M.D., of Atlanta, Georgia. The Order to Show Cause alleged that, by order of the Georgia State Board of Medical Examiners, Dr. Wexler is no longer authorized to handle controlled substances in the State of Georgia. The Order to Show Cause was sent by registered mail and was received on June 29, 1989.

Title 21 of the Code of Federal Regulations, Section 1301.54(a), requires that a request for a hearing be filed within 30 days of the date of the receipt of the Order to Show Cause. Section 1301.54(d) provides that failure to timely file a request for a hearing acts as a waiver of the hearing. It has been more than 30 days since the receipt of the order and Dr. Wexler has not filed a request for a hearing. He is therefore deemed to have waived his opportunity for a hearing before an administrative law judge. Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based on the information contained in the investigative file.

On June 28, 1988, the Georgia Board of Medical Examiners issued to Dr. Wexler an Order of Summary Suspension of privileges for the prescribing of controlled substances. The order stated that the Board had received reliable information and evidence indicating that Dr. Wexler may be diverting the controlled substance Demerol for his own use. Dr. Wexler was writing prescriptions for injections of Demerol in the names of other individuals and filling them, or attempting to have them filled, at various pharmacies.

The Board further determined that Dr. Wexler's ability to prescribe, administer, dispense, order or possess controlled substances would be a detriment to himself and the public health, safety and welfare. The Board found that Dr. Wexler was unable to practice medicine with reasonable skill and safety and, thereupon suspended his ability to prescribe, administer, dispense, order or possess controlled substances.

21 U.S.C. 824(a)(4) specifically states that a registration may be suspended or revoked upon finding that the registrant "has had this state license or registration suspended, revoked, or denied, by competent state authority