

Gazaly Trading, *supra*, 69 FR 22561; Shani Distributors, *supra*, 68 FR 62326.

Finally, it is noted that Respondent seeks to distribute phenylpropanolamine. Accordingly, the Deputy Administrator finds factor five relevant to H & R's request to distribute 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, J & S Distributors, *supra*, 69 FR 62089; Gazaly Trading, *supra*, 69 FR 22561; William E. "Bill" Smith d/b/a B & B Wholesale, *supra*, 69 FR 22559; Shani Distributors, *supra*, 68 FR 62324.

Based on the foregoing, the Deputy Administrator concludes that granting Respondent's pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and CFR 0.100(b) and 0.104, hereby orders that the pending application for a DEA Certificate of Registration, previously submitted by H & R Corporation, be, and it hereby is, denied. This order is effective June 26, 2006.

Dated: May 5, 2006.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Sidney S. Loxley, M.D.; Revocation of Registration

On January 25, 2005, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Sidney S. Loxley, M.D. (Dr. Loxley) of Chesapeake, Virginia. Dr. Loxley was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AL6366428, as a practitioner, and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f) and 824(a)(4) on the basis that his continued registration would be inconsistent with the public interest. Dr. Loxley was further notified that pursuant to 21 U.S.C. 824(d), his DEA registration was

being immediately suspended as an imminent danger to the public health and safety.

The Order to Show Cause and Immediate Suspension of Registration alleged that Dr. Loxley had been the subject of two prior disciplinary proceedings before the Virginia Board of Medicine (Virginia Board). In June 1993, his medical license had been suspended for 16 months as a result of his abusing the patient-doctor relationship by engaging in a sexual relationship with a minor and for a related misdemeanor conviction of contributing to the delinquency of a minor. His state license was reinstated in October 1994 but in a subsequent disciplinary proceeding occurring in October 2003, it was placed on probation for a period of not less than three years. At that time the Virginia Board found, along with several controlled substance recordkeeping violations reflecting gross incompetence, that Dr. Loxley had improperly prescribed controlled substances to his wife, who was not his patient and was chemically dependent. As a condition of his probation, Dr. Loxley was directed to complete a Board approved course in the proper prescribing of controlled substances.

The Order to Show Cause and Immediate Suspension of Registration alleged, in sum, that Dr. Loxley had been issuing prescriptions for large amounts of controlled substances to individuals without the physical examinations, testing or evaluations which are consistent with a legitimate doctor-patient relationship. These prescriptions were not issued for legitimate medical purposes or in the usual course of professional treatment, thus violating 21 CFR 1306.04 and 21 U.S.C. 841(a). It was further alleged that between September 2003 and May 2004, on ten separate occasions Dr. Loxley issued prescriptions under these circumstances to a DEA Special Agent and a confidential source who had been posing undercover as patients. Profiles obtained from area pharmacies covering the period between August and December 2004 indicated he was continuously prescribing large quantities of controlled narcotic substances, primarily oxycodone and hydrocodone, in 120 tablet quantities to patients without apparent legitimate medical reasons and supplier records shows that Dr. Loxley was the largest orderer of Demerol (meperidine), among all orthopedic surgeons in the Virginia Tidewater area.

Finally, it was alleged that four patients of Dr. Loxley had died while under his care as a result of possible excessive prescribing, that he prescribed

controlled substances while under the influence of alcohol and had recently been convicted of driving while intoxicated in state court.

According to the investigative file, the Order to Show Cause and Immediate Suspension of Registration was personally served on Dr. Loxley by a DEA Diversion Investigator on January 27, 2005. More than thirty days have passed since service of the Order to Show Cause and Immediate Suspension of Registration and DEA has not received a request for hearing or any other reply from Dr. Loxley or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause and Immediate Suspension of Registration to Dr. Loxley, and (2) not request for hearing having been received, concludes that Dr. Loxley is deemed to have waived his hearing right. See David W. Linder, 67 FR 12579 (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 the Dr. Loxley is currently registered with DEA as a practitioner under DEA Certificate of Registration AL 6366424. According to information in the investigative file, on January 20, 2005, and indictment was unsealed by order of the United States District court, Eastern District of Virginia (Norfolk), charging Dr. Loxley with 91 felony counts relating to the unlawful distribution and dispensing of controlled substances without a legitimate medical purpose under 21 U.S.C. 841(a)(1) and (b)(1)(C). The indictment includes four counts alleging that a death had resulted from Dr. Loxley's unlawful distribution and dispensing. On the date the indictment was unsealed, Dr. Loxley was arrested and he remains in custody pending trial in the matter of *USA v. Sidney Loxley* (Case No. 2:04-cr-00236-WDK-JEB-ALL).

On February 25, 2005, the Virginia Board notified Dr. Loxley that an informal conference had been scheduled to address allegations of multiple violations of state laws and regulations governing the practice of medicine and surgery and an allegation that he was unfit for the performance of his professional obligations and duties and unable to practice medicine with reasonable skill and safety. In response, Dr. Loxley advised the Virginia Board that he was currently unable to address

the allegations because of the pending criminal charges and was willing to surrender his license, pending resolution of that matter.

On May 20, 2005, after the investigative file was received by the Deputy Administrator, Dr. Loxley entered into a Consent Agreement with the Virginia Board in which he agreed to surrender his state medical license, pending the outcome of the criminal case. In the event he is acquitted of all charges, his license will be reinstated. However, if he is convicted of any misdemeanor or felony counts, it is to remain surrendered until further order of the Virginia Board. Upon entry of the Consent Agreement, Dr. Loxley's medical license was recorded as being surrendered and no longer current.

There is no evidence before the Deputy Administrator that the Consent Agreement has been modified, lifted or stayed or that Dr. Loxley's Virginia medical license has been reinstated or renewed.

Pursuant to 21 U.S.C. 824(a)(3), the Deputy Administrator may revoke a DEA Certificate of Registration if she finds the registrant has had state license revoked and is no longer authorized to dispense controlled substances in the jurisdiction of registration. Alternatively, revocation is authorized if the registrant has committed such acts as would render his registration contrary to the public interest, as determined by factors listed in 21 U.S.C. 823(f). See Thomas B. Pelkowski, D.D.S., 57 FR 28538 (1992).

Despite Dr. Loxley's egregious and unlawful activities and the public interest factors that are implemented by such unprofessional and criminal conduct, his lack of state authorization to handle controlled substances is dispositive of this matter.

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 Rory Patrick Doyle, M.D., 69 FR 11655 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear Dr. Loxley surrendered his medical license and it is reasonable to infer that he is currently not authorized to handle controlled substances in Virginia and is therefore not entitled to a DEA registration in that state. As a result of the finding that Dr. Loxley lacks any state authorization to handle controlled substances, the

Deputy Administrator concludes it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause and Immediate Suspension of Registration. See Gilbert C. Aragon, Jr., D.O., 69 FR 58536 (2004); Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

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, AL6366428, issued to Sidney S. Loxley, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 26, 2006.

Dated: July 6, 2005.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Worth S. Wilkinson, M.D.; Revocation of Registration

On March 1, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Worth S. Wilkinson, M.D. (Dr. Wilkinson) of Shreveport, Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certification of Registration BW2217974 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. Wilkinson 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. Wilkinson 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. Wilkinson at his registered address at 729 Wichita Street, Shreveport, Louisiana 71101 and to his residence at 700 Delaware, Shreveport,

Louisiana 71101. According to the return receipt the Order to Show Cause sent to his home was received by Dr. Wilkinson on March 9, 2005. DEA has not received a request for hearing or any other reply from Dr. Wilkinson or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that thirty days having passed since the delivery of the Order to Show Cause to the registrant and no request for hearing having been received, concludes that Dr. Wilkinson is deemed to have waived his hearing right. See Thomas J. Mulhearn, III, M.D., 70 FR 24625 (2005); James E. Thomas, M.D., 70 FR 3564 (2005); Steven A. Barnes, M.D., 69 FR 51474 (2004); David W. Linder, 67 FR 12579 (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. Wilkinson currently possesses DEA Certificate of Registration BW2217974, as a practitioner authorized to handle controlled substances in Schedules IV-V. The Deputy Administrator further finds that on October 29, 2004, the Louisiana State Board of Medical Examiners (Louisiana Board) issued an Opinion and Ruling suspending Dr. Wilkinson's license to practice medicine in Louisiana.

That suspension was based upon the Louisiana Board's conclusion that Dr. Wilkinson was in need of further testing and evaluation for alcohol abuse and his apparent physical and mental inability to practice medicine with reasonable skill and safety to his patients.

The investigative file contains no evidence that the Louisiana Board's Opinion and Ruling has been stayed, modified or terminated or that Dr. Wilkinson's medical license has been reinstated. Therefore, the Deputy Administrator finds Dr. Wilkinson 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 11661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts,