

As a threshold matter, it should be noted that the factors specified in section 823(f) are to be considered in the disjunctive: The Acting Deputy Administrator may properly rely on any one or a combination of the factors, and give each factor the weight she deems appropriate, in determining whether a registration should be revoked or denied. *Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989)

The Acting Deputy Administrator finds that in 1998, VI Pharmacy, through and by Mr. Rushdi Salem, R.Ph, submitted an Application for DEA Registration as a retail pharmacy. Instead of the required evidence of State/jurisdiction licensure for the pharmacy, Mr. Rushdi submitted a copy of his personal Virgin Islands Pharmacist License, No. 125. Despite this, VI was issued and currently possesses DEA Certificate of Registration BV5900421 which, after its 2001 renewal, currently expires on May 31, 2004.

On April 18, 2001, Mr. Salem submitted a renewal application for VI's DEA Certificate of Registration, which he signed and certified as being true and correct. In response to question 3 of the application, asking if the applicant was authorized to distribute, dispense or otherwise handle controlled substances in the Virgin Islands, he checked the block "Yes" and represented that VI held Virgin Island registration number 11387. However the Virgin Island Board of Pharmacy indicates VI has never held any Board of Pharmacy license to operate as a pharmacy in its jurisdiction.

Pursuant to 21 U.S.C. 824(a)(1), falsification of a DEA application constitutes independent grounds to revoke a registration. Past cases have established that the appropriate test for determining whether an applicant materially falsified an application is whether the applicant "knew or should have known" that the submitted application was false. See *Barry H. Brooks, M.D.*, 66 FR 18305, 18307 (2001); *Terrance E. Murphy, M.D.*, 61 FR 2841, 2844 (1996); *Bobby Watts, M.D.*, 58 FR 46995 (1993).

Prior DEA cases have also held that "[s]ince [it] must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated." See *Terrance E. Murphy, M.D.*, *supra*, 61 FR at 2845 (quoting *Bobby Watts, M.D.*, *supra*, 58 FR at 46995.). Further, in prior DEA cases the Deputy Administrator has held that the totality of the circumstances is to be considered in determining whether a registration should be

revoked because of a registrant's material falsification of an application. See *Barry H. Brooks, M.D.*, *supra*, 66 FR at 18308; *Martha Hernandez, M.D.*, 62 FR 61145, 61147-48.

After considering the totality of the circumstances, the Acting Deputy Administrator finds that VI, through its owner Mr. Rushdi, provided false information in its April 18, 2001, Application for DEA Registration and this misrepresentation constitutes a material falsification of an application warranting revocation of VI's certificate.

The Acting Deputy Administrator further finds that in December 2000, an undercover U.S. Federal agent posing as a patient contacted VI Pharmacy by phone requesting narcotics without a prescription. He was told to fax an order and credit card number. The agent later faxed a request for approximately 200 dosage units of Schedule II and III narcotic controlled substances. VI Pharmacy, by return fax, quoted a per-pill price for some, but not all of the drugs. In a subsequent phone call, Mr. Salem told the agent to come to VI in person to purchase the drugs. Later that month, without a prescription, the agent purchased 100 tablets of Vicodin, a controlled substance, from Mr. Salem. In February 2001, using the mail, the agent then bought another 100 tablets of Vicodin and on two occasions in May 2001, the agent visited the pharmacy and purchased a total of 1,100 tablets of Vicodin. Finally, in June 2001, the agent purchased 1,500 tablets of Vicodin from Mr. Salem's brother, an employee of VI. All of these purchases were made without a prescription.

On January 20, 2003, in *United States v. Rushdi Z. Salem*, United States District Court for the Virgin Islands, Criminal Case No. 2001-235, Mr. Salem pled guilty to 21 U.S.C. 841(a)(1), knowingly and intentionally distributing a controlled substance. It is well settled that a pharmacy operates under the control of owners, stockholders, pharmacists, or other employees, and if any such person is convicted of a felony offense related to controlled substances, grounds exist to revoke the pharmacy's registration under 21 USC 824(a)(2). See *Rick's Pharmacy, Inc.*, 62 FR 42595, 42597 (1997); *Maxicare Pharmacy*, 61 FR 27368 (1996); *Big-T Pharmacy, Inc.*, 47 FR 51830 (1982). The Acting Deputy Administrator finds that grounds exist to revoke VI's registration under 21 USC 824(a)(2) based on the controlled substance related felony conviction of Mr. Rushdi.

Finally, with regard to the public interest factors of 21 U.S.C. 823(f), the Acting Deputy Administrator considers

the above facts as relevant and adverse to the registrant under factors two, three, four and five of section 823(f). She concludes that VI Pharmacy's continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Accordingly, the Acting 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 BV5900421, issued to VI Pharmacy, be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 8, 2004.

Dated: January 7, 2004.

Michele M. Leonhart,
Acting Deputy Administrator.

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 23, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or e-mail: mills.ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Veterans' Employment and Training Service.

Type of Review: Extension of a currently approved collection.

Title: Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veteran's Preference.

OMB Number: 1293-0002.

Affected Public: Individuals or households.

Type of Response: Recordkeeping; reporting.

Frequency: On occasion.

Number of Respondents: 1,500.

Annual Responses: 1,500.

Total Burden: 375.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: The Form VETS/USERRA/VP-1010 is used to file complaints with the Department of Labor's Veterans' Employment and Training Service under either the Uniformed Services Employment and Reemployment Rights Act or laws and regulations related to veteran's preference in the Federal employment.

Ira L. Mills,

Departmental Clearance Officer.

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 29, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13,

44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or e-mail: mills.ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

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- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: Manufacture's Certification of Modifications Made to Construction Aerial Lifts (29 CFR 1926.453).

OMB Number: 1218-0216.

Affected Public: Business or other for-profit; Federal government; State, local or tribal government.

Type of Response: Recordkeeping.

Frequency: On occasion.

Number of Respondents: 300.

Annual Responses: 300.

Total Burden: 15.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: Employers who modify an aerial lift for uses other than those provided by the manufacturers must obtain a certificate from the manufacturer or equivalent entity certifying that the modification is in

conformance with applicable American National Standards Institute (ANSI) standards and this standard, and the equipment is as safe as it was prior to the modification. The manufacturer's certification demonstrates to interested parties that the manufacturer or an equally qualified entity assessed a modified aerial lift and found that it: Was safe for use by, or near employees; and would provide employees with a level of protection at least equivalent to the protection by the lift prior to modification.

Ira L. Mills,

Departmental Clearance Officer.

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 29, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or e-mail: mills.ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and