

WISCONSIN

Columbia County

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1/22/09.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Meetinghouse Community Pharmacy,
Inc.; Affirmance of Suspension Order

On October 31, 2008, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Meetinghouse Community Pharmacy, Inc. (Respondent), of Dorchester, Massachusetts. The Order proposed the revocation of Respondent's DEA Certificate of Registration, BM3972747, which authorized it to dispense controlled substances in schedules II through IV as a retail pharmacy, and the denial of any pending application to renew or modify the registration on the ground that its "continued registration is inconsistent with the public interest." Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Show Cause Order alleged that Respondent was distributing "a large volume of controlled substances pursuant to * * * prescriptions that it knows, or should know, [were] issued by practitioners not acting in the usual course of professional practice or that [were] issued for other than a legitimate medical purpose in violation of 21 CFR 1306.04(a)." *Id.* The Order specifically alleged that Respondent was filling controlled-substance prescriptions issued by physicians who were not licensed in the States where Respondent's customers were located and thus lacked authority to prescribe to them and violated both State and Federal law. *Id.* at 1-2. (citing *United Prescription Servs., Inc.*, 72 FR 50397 (2007)).

Based on the above, I further concluded that Respondent's continued registration during the pendency of this proceeding would "constitute an imminent danger to the public health and safety." *Id.* at 2 (citing 21 U.S.C. 824(d)). I therefore ordered the immediate suspension of Respondent's registration.¹ *Id.* at 2 (citing 21 U.S.C. 824(d)).

¹ I further ordered that the controlled substances in Respondent's possession be either placed under seal or removed for safekeeping. The Order further

On November 1, 2008, the Order was served on Respondent. Since then, neither Respondent's owner, nor anyone else purporting to represent it, has requested a hearing on its behalf. Because more than thirty days have passed since service of the Order, and the Agency has not received a request for a hearing, I conclude that Respondent has waived its right to a hearing. 21 CFR 1301.43(d). I therefore enter this Decision and Final Order based on relevant material contained in the investigative file and make the following findings.

Findings

In 1994, Respondent was first registered with the Agency. Respondent held DEA Certificate of Registration, BM3972747, which authorized it to dispense controlled substances in schedules II through IV as a retail pharmacy at the registered location of 248 Bowdoin St., Dorchester, Massachusetts. Respondent's registration expired, however, on January 31, 2009, and it has not filed a renewal application.

Respondent is owned and managed by Baldwin Ihenacho. Mr. Ihenacho held a Massachusetts pharmacist license, which was suspended on November 1, 2008, and which expired on December 31, 2008. Respondent holds both a Massachusetts Retail Drug Store Permit and a Massachusetts Controlled Substances License, both of which do not expire until December 31, 2009. These licenses were, however, suspended on November 1 and 6, 2008, respectively.

On November 1, 2008, law enforcement authorities executed a search warrant and served the Immediate Suspension Order on Respondent. During the search, the authorities also arrested Mr. Ihenacho. Mr. Ihenacho was taken to a unit of the Boston Police Department. After being given the Miranda warnings, Mr. Ihenacho agreed to an interview.

During the interview, Mr. Ihenacho stated that several years earlier he had received a fax from Jack, an individual in the Dominican Republic who solicited him to fill prescriptions which were being issued through Web sites. Ihenacho called Jack and entered into an oral agreement with him under which he was paid a dispensing fee of \$5.75 for

informed Respondent of its right to request a hearing on the allegations; gave the date, time and place of the hearing; explained the procedure for requesting a hearing or to submit a written statement of position in lieu of a hearing; and explained the consequences if Respondent failed to request a hearing. Show Cause Order at 2-3.

each prescription Respondent filled.² Mr. Ihenacho stated that at one point he was receiving approximately 100 prescriptions a day from Jack and had to tell him that he could not fill that many scripts because it was interfering with his local business. According to Mr. Ihenacho, he received approximately \$100,000 for filling the prescriptions from Jack and was owed an additional \$145,000.

According to Mr. Ihenacho, the customers would either go to a Web site or call the company to order a drug and provide their medical history. The company would then provide the customer's purported medical history to a physician, who would decide whether to issue a prescription. The approved prescriptions would then be entered into a zip file and sent electronically to his pharmacy. Most of the controlled-substance prescriptions were for phentermine and alprazolam, which are schedule IV controlled substances. *See* 21 CFR 1308.14.

Mr. Ihenacho stated that he did not fill Internet prescriptions for customers who lived in Massachusetts. Mr. Ihenacho asserted that there were some States he did not ship to, and that an employee with the Massachusetts Board of Pharmacy had told him that some States prohibited the shipments.

When asked if he was concerned about the prescriptions being issued by doctors to patients who lived in different States, Mr. Ihenacho answered that he was concerned, but maintained that he had asked the doctors about the prescriptions and they were convincing. According to Mr. Ihenacho, when he would call a doctor, the doctor would tell him that he had been talking to the patient for years so he filled the prescriptions.

Mr. Ihenacho further stated that he had visited Jack at his office in the Dominican Republic, and had been introduced to Jack's cousin. The cousin told Mr. Ihenacho that he wanted to start his own Internet pharmacy business; Mr. Ihenacho started filling prescriptions for the cousin as well. According to Mr. Ihenacho, the cousin had paid him approximately \$100,000 for a one-year period and owed him another \$40,000. Mr. Ihenacho also told investigators that he had filled prescriptions for the owners of several other Internet schemes, two of whom paid him a fee of \$10,000 a week. Moreover, at the time of his arrest, Mr. Ihenacho stated that he was currently filling approximately 150 Internet prescriptions per day; he also claimed

² The Web site operator also reimbursed Respondent for the cost of the drugs.

that the majority of his business was for non-controlled drugs.

Investigators determined that Respondent was shipping 4,000 to 5,000 prescriptions a month to customers located in approximately 46 States. The Investigators also obtained several e-mails which Mr. Ihenacho had sent to Jack. In an e-mail sent on September 29, 2006, Mr. Ihenacho wrote:

Now, my concerns. I want to do business with you and I want to do it the right way. As a pharmacist trained here in the USA, I know that the Federal USA law concerning the prescribing of controlled substances by any doctor requires that the doctor be licensed and registered in any state where that doctor wants to practice. My observation so far is that it is only one doctor who is writing for everything for every patient, no matter which state the patient is located [in]. Could it be that this doctor is registered in all USA states? Please clarify this to me and if so, I would like to see such a blanket registration and license of the doctor.

The following week, Mr. Ihenacho reiterated his concern. In an October 5, 2006 e-mail to Jack, Mr. Ihenacho:

You did not send me any information as to which states that we cannot ship to. Please furnish me with this information ASAP so that we can be more careful here. If I ship to any state that I am not supposed to, it might cost me my license. * * * Also, I really need to speak with the Doctor directly. * * * I must have to speak with him so that I can make sure that every thing is alright with his prescribing abilities in the states that he is prescribing. This is very important.

Five months later, the issue apparently had still not been resolved. In a March 8, 2007 e-mail, Mr. Ihenacho wrote:

Again, you have not addressed all of the issue[s] that I raised in my letter to you. * * * Do you understand how much trouble that I will be in if and when the DEA comes to me? I don't think that you understand, making money is good but I believe that it must be made in a good and honest manner with great respect to the law. I do have an issue with the doctors who are writing for your clients. Yesterday, you said something about hiring some nurses to get involved in screening patients and that you will have qualified doctors to work with them to make sure that anyone who calls in for any diet pill or a sedative hypnotic such as Diazepam, clonazepam, lorazepam, etc[.] does indeed need them. If you can establish a good relationship between the patient and the doctor through hiring nurses who actually go to these patient[']s homes to see them, then I believe that is legal because the nurse will report to the doctor wh[at] he or she feels about the patient[']s request for the medication. * * * I do not feel very comfortable at all feeling [sic] medications where I know that there is really no doctor/patient[] interaction. I have tried to get at least one patient profile, but so far, I have not ben [sic] able to get one. I need to have a

documented history of the patients and doctors conversations that warrants them to receive these medications through pharmacies such as mine.

Notwithstanding the concerns he expressed in these e-mails, Respondent proceeded to dispense controlled-substance prescriptions which were written by doctors who were located in different States than where the "patients" resided. For example, the investigative file indicates that Respondent dispensed numerous prescriptions issued by Dr. Onochie Aghaegbuna, a physician who was licensed in Virginia,³ to patients in other States where he was not licensed. These include prescriptions for phendimetrazine, a schedule III stimulant, which were written for residents of Honolulu, Hawaii, and Sewell, New Jersey, as well as residents of Pasadena and Placerville, California. Respondent also dispensed prescriptions for alprazolam issued by Dr. Aghaegbuna to residents of Woodbridge, New Jersey, and Fort Worth, Texas, and prescriptions for phentermine 37.5 mg. to residents of Myrtle Beach, South Carolina, and West Babylon, New York.

As part of the various Internet prescribing schemes, Respondent also filled the prescriptions issued by other physicians. For example, Dr. Lynnea N. Burr of San Antonio, Texas, issued a prescription for phendimetrazine to a resident of Glencoe, Illinois; a prescription for diazepam 10 mg., to a resident of St. Louis Park, Minnesota; a prescription for phentermine 37.5 mg., to residents of St. Louis, Missouri; Portsmouth, New Hampshire, South Park, Pennsylvania; Bernice, Oklahoma; and Dearborn, Michigan; and prescriptions for alprazolam 2 mg., to residents of Shelton, Connecticut and Morrisville, Pennsylvania.

Discussion

Section 304(a) of the Controlled Substance Act (CSA) provides that "[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21

³ On March 31, 2008, Dr. Aghaegbuna entered into a consent order with the Virginia Board of Medicine under which the Board found that he had prescribed without establishing valid-doctor relationships and Dr. Aghaegbuna surrendered his State license.

U.S.C. 824(a).⁴ In determining the public interest, the CSA directs that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * 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.

Id. 823(f).

"[T]hese factors are * * * considered in the disjunctive." *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I "may rely on any one or a combination of factors, and may give each factor the weight [I] deem appropriate in determining whether a registration" is consistent with the public interest and whether a registrant has committed acts which warranted the suspension of his/her registration. *Id.* Moreover, I am "not required to make findings as to all of the factors." *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall v. DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

As explained below, the investigative file amply demonstrates that Respondent's experience in dispensing controlled substances and compliance record is characterized by its repeated filling of unlawful prescriptions under both Federal and State laws. Moreover, I further note that the State of Massachusetts has suspended Respondent's pharmacy license and controlled substances registration.⁵

⁴ Section 304(d) further provides that "[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety." 21 U.S.C. 824(d).

⁵ While Respondent's DEA registration expired on January 31, 2009, and there is no evidence that Respondent has filed a renewal application, I conclude that this case is not moot. This case began with an immediate suspension. Respondent has not surrendered its state licenses, and there is no evidence that Respondent has gone out of business. *See William Lockridge*, 77791, 77797 (2006) (noting case is not moot where order creates collateral consequences or where conduct is capable of repetition yet evading review); *RX Direct Pharmacy, Inc.*, 72 FR 54070 (2007). Furthermore, in executing the Suspension Order, Respondent's controlled substances were seized. Under 21 U.S.C. 824(f), "upon a revocation order becoming final," any controlled substances which were seized "shall be forfeited to the United States," and "[a]ll right, title, and interest in [the] controlled substances * * * shall vest in the United States." As I have previously recognized, a litigant cannot defeat the effect of this provision by simply allowing its registration to expire. Moreover, it is unclear

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Laws

Under DEA's regulation, a prescription for a controlled substance is unlawful unless it has been "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a). The regulation further provides that while "[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, * * * a corresponding responsibility rests with the pharmacist who fills the prescription." *Id.* (emphasis added). Continuing, the regulation states that "the person knowingly filling such a purported prescription, as well as the person issuing it, [is] subject to the penalties provided for violations of the provisions of law relating to controlled substances." *Id.*

DEA has long interpreted this provision "as prohibiting a pharmacist from filling a prescription for a controlled substance when he either 'knows or has reason to know that the prescription was not written for a legitimate medical purpose.'" *Medicine Shoppe-Jonesborough*, 73 FR 363, 381 (2008) (quoting *Medic-Aid Pharmacy*, 55 FR 30043, 30044 (1990)), *aff'd* *Medicine Shoppe-Jonesborough v. DEA*, 2008 WL 4899525 (6th Cir. 2008); see also *Frank's Corner Pharmacy*, 60 FR 17574, 17576 (1995); Ralph J. Bertolino, 55 FR 4729, 4730 (1990); *United States v. Seelig*, 622 F.2d 207, 213 (6th Cir. 1980). This Agency has further held that "[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription." Bertolino, 55 FR at 4730 (citations omitted).⁶

In *United Prescription Services, Inc.*, I further held that "[a] physician who engages in the unauthorized practice of medicine is not a 'practitioner acting in the usual course of * * * professional practice.'" 21 CFR 1306.04(a). This rule derives from the text of the CSA, which

defines the "[t]he term 'practitioner' [to] mean[] a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance." 21 U.S.C. 802(21). See also 21 U.S.C. 823(f) ("The Attorney General shall register practitioners * * * to dispense * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices."). As the Supreme Court has explained: "In the case of a physician [the CSA] contemplates that *he is authorized by the State to practice medicine* and to dispense drugs in connection with his professional practice." *United States v. Moore*, 423 U.S. 122, 140–41 (1975) (emphasis added). A controlled-substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is therefore unlawful under the CSA. *Cf.* 21 CFR 1306.03(a)(1) ("A prescription for a controlled substance may be issued only by an individual practitioner who is * * * [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession[.]").

As found above, Respondent's owner knew that the Internet prescriptions he filled were unlawful. Indeed, as Mr. Ihenacho wrote in an e-mail to the owner of one of the schemes: "As a pharmacist trained here in the USA, I know that the Federal USA law concerning the prescribing of controlled substances by any doctor requires that the doctor be licensed and registered in any state where that doctor wants to practice. * * * My observation * * * is that it is only one doctor who is writing for everything for every patient, no matter [where] the patient is located." Moreover, in a further e-mail, Mr. Ihenacho wrote that he needed to speak with the doctor who was prescribing in Jack's scheme so he could "make sure that every thing is alright with his prescribing abilities in the state that he is prescribing."

Mr. Ihenacho was thus well aware of the legal requirements for a valid prescription. In any event, state prohibitions against the unlicensed practice of medicine are a common feature of the regulation of medical practice, and those who practice the profession of pharmacy are obligated to know these rules.⁷ See, e.g., Cal. Bus. &

Prof. Code 2052 (prohibiting unlicensed practice of medicine); Cal. Health & Safety Code § 11352(a) (prohibiting furnishing a controlled substance "unless upon the written prescription of a physician * * * licensed to practice in this state"); Haw. Rev. Stat. 453–1 (defining practice of medicine); *id.* 453–2 (requiring license to practice); 225 Ill. Comp. Stat. Ann. 60/3 (licensure requirement); *id.* 60/3.5 (prohibiting unlicensed practice); *id.* 60/49 (listing acts constituting holding oneself out to the public as a physician); *id.* 60/49.5 (requiring persons engaged in telemedicine to hold Illinois license); Mich. Comp. Laws 333.17001 (defining practice of medicine), *id.* 17011(1) (requiring license to practice); *id.* 333.7303 (requiring controlled substance registration to dispense); N.H. Rev. Stat. Ann. 329:1 (defining practice of medicine); *id.* 329:24 (unlicensed practice); Tex. Occ. Code 155.001; see also *id.* 151.056(a) ("A person who is physically located in another jurisdiction but who, through the use of any medium, including an electronic medium, performs an act that is part of a patient care service initiated in this state, * * * and that would affect the diagnosis or treatment of the patient, is considered to be engaged in the practice of medicine in this state and is subject to appropriate regulations by the board."); 22 Tex. Admin. Code 174.4(c) ("Physicians who treat and prescribe through the Internet are practicing medicine and must possess appropriate licensure in all jurisdictions where patients reside."); Tex. Health & Safety Code 481.061(a) (requiring state registration to dispense controlled substance); *id.* 481.063(d) (requiring as a condition for registration that "a

prohibition of which ignorance can reasonably be claimed, and certainly not by persons * * * who are licensed health care providers. Nor can such persons reasonably claim ignorance of the fact that authorization of a prescription pharmaceutical constitutes the practice of medicine." *Hageseth v. Superior Court*, 59 Cal. Rptr. 3d 385, 403 (Ct. App. 2007).

In *Hageseth*, the California Court of Appeal upheld the State's jurisdiction to criminally prosecute an out-of-state physician, who prescribed a drug to a California resident over the Internet, for the unauthorized practice of medicine. Moreover, the Medical Board of California has issued numerous Citation Orders to out-of-state physicians for Internet prescribing to state residents. See, e.g., *Citation Order Harry Hoff* (June 17, 2003); *Citation Order Carlos Gustavo Levy* (Nov. 30, 2001). It has also issued press releases announcing its position on the issuance of prescriptions by physicians who do not hold a California license. See Medical Board of California, *Record Fines Issued by Medical Board to Physicians in Internet Prescribing Cases* (News Release Feb. 10, 2003) (available at http://www.mbc.ca.gov/NR_2003_02-10_internetdrugs.htm).

whether Respondent has been indicted, and if so, whether forfeiture of the controlled substances has been sought in that proceeding. I thus conclude that this case remains a live controversy.

⁶ The Supreme Court has recently explained that "the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Gonzales v. Oregon*, 546 U.S. 243, 274 (2006) (citing *United States v. Moore*, 423 U.S. 122, 135 (1975)).

⁷ Even if there was no direct evidence of Mr. Ihenacho's knowledge, I would still hold that he had reason to know the prescriptions were illegal. As the California Court of Appeal has noted: the "prescription of the unlicensed practice of medicine is neither an obscure nor an unusual state

practitioner [be] licensed under the laws of this State”).

As I have previously explained, an entity which voluntarily engages in commerce by shipping controlled substances to persons located in other States is properly charged with knowledge of the laws regarding both the practice of medicine and pharmacy in those States. *United*, 72 FR at 50408. In short, given that Dr. Aghaebuna was licensed to practice medicine in Virginia, and yet was prescribing to persons who did not reside in that State and who frequently lived hundreds of—and in many instances more than a thousand—miles away,⁸ Respondent had ample reason to know that the prescriptions were unlawful under both the CSA and the laws of numerous States. *See id.* at 50409.⁹

As the forgoing demonstrates, Respondent knowingly violated Federal law in dispensing thousands of prescriptions which lacked a

legitimated purpose and were issued by practitioners acting outside of the usual course of professional practice. 21 CFR 1306.04(a). Respondent’s experience in dispensing controlled substances is thus characterized by its repeated and flagrant violations of both the CSA and State laws; the scope of its illegal dispensings clearly establish that its continued registration was “inconsistent with the public interest,” and posed “an imminent danger to the public health or safety” which warranted the immediate suspension of its registration.¹⁰ 21 U.S.C. 824(a) & (d).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100(b) & 0.104, I affirm my order which immediately suspended the now-expired DEA Certificate of Registration, BM3972747, issued to Meetinghouse Community Pharmacy, Inc. This order is effective immediately.

Dated: February 26, 2009.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 26, 2008, and published in the **Federal Register** on December 5, 2008, (73 FR 74194), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylamine (1503)	I
Gamma hydroxybutyric acid (2010)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine(7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxymphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Benzylpiperazine (7493)	I
Etorphine (except HCl) (9056)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Dextromoramide (9613)	I
Dipipanone (9622)	I
Trimeperidine (9646)	I

⁸In particular, I rely on the prescriptions Dr. Aghaebuna issued to residents of California, Hawaii, and Texas. In preparing this Order, I have visited the Web sites of the medical licensing authorities of these States and verified that Dr. Aghaebuna was not licensed by them.

I have also visited the Web sites of the respective State authorities of Illinois, Michigan, and New Hampshire, and determined that Dr. Burr was not licensed in these States. Respondent nonetheless

dispensed prescriptions issued by Dr. Burr for residents of these States in violation of state and Federal laws.

⁹Respondent also had ample reason to know that prescriptions were unlawful because he knew that the prescribers were not physically examining the patients. As Mr. Ithenacho wrote in a March 8, 2007 e-mail, “I do not feel very comfortable at all feeling [sic] medications where I know that there is really no doctor/patient interaction.” Indeed, under

numerous State medical practice standards, with only limited exceptions, a physician must take a medical history and physically examine a patient in order to properly diagnose the patient and recommend treatment options including prescribing a drug. *See, e.g.,* N.J. Admin. Code 13:35–7.1A(a); S.C. Code Regs. 81–28.

¹⁰To make clear, I would have revoked Respondent’s registration had it not expired prior to the issuance of this Order.