other employees of Direct Wholesale. Prior to opening his business, Mr. Petts sold food and clothing items, and he also operated a courier service. Mr. Petts informed DEA investigators that he has no prior experience with over-the-counter drug products, however, he estimated that the sale of list I chemical products would account for approximately five percent of his total sales. Mr. Petts further disclosed that he plans to sell cold and sinus products to convenience stores.

Mr. Petts was also asked by investigators to submit preliminary information regarding customers and suppliers of goods to Direct Wholesale. Mr. Petts supplied investigators the names of four listed chemical suppliers, as well as a list of thirty-four retail businesses. The customer list was comprised primarily of convenience stores. The customer list submitted by Mr. Petts was later compared to a customer list submitted by NTS, a separate firm that sought DEA registration to distribute listed chemical. The comparison showed that at least thirteen of NTS' customers were also listed as customers for Direct Wholesale. A DEA inspection of a customer list for a second retailer revealed at least nine entities that were also listed as customers of Direct Wholesale.

DEA's investigation further revealed that Direct Wholesale possesses a Florida occupational license for Mr. Petts' residence, and the firm is also registered with the Florida Department of Revenue to collect sales tax. However, according to Mr. Petts, his home is not zoned for business.

Pursuant to 21 U.S.C. 823(h), the Acting Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.* Energy Outlet, 64 FR 14269 (1999). *See also* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Acting Deputy Administrator finds factors two, four and five relevant to Direct Wholesale's pending registration application.

With regard to factor two, compliance with applicable Federal, State, and local law, the Acting Deputy Administrator notes that Florida state and county law requires zoning approval for the operation of a particular business. Mr. Petts informed DEA investigators that Direct Wholesale was not zoned for business. The failure to obtain a proper zoning permit for business purposes has been cited under factor two as a basis for the denial of an application for DEA registration to distribute list I chemicals. *See* Daniel E. Epps, Jr., 67 FR 9987 (2002).

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Acting Deputy Administrator finds this factor relevant to Mr. Petts' lack of experience in the handling of list I chemical products. In prior DEA decisions, the lack of experience in the handling list I chemicals was a factor in a determination to deny a pending application for DEA registration. *See,* Matthew D. Graham, 67 FR 10229 (2002); Xtreme Enterprises, Inc., 67 FR 76195 (2002). Therefore, this factor similarly weighs against the granting of Direct Wholesale's pending application.

With respect to factor five, other factors relevant to and consistent with the public safety, the Acting Deputy Administrator finds this factor relevant to Direct Wholesale's proposal to distribute listed chemical products primarily to convenience stores. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that business establishments such as gas stations and convenience stores constitute sources for the diversion of listed chemical products. *See, e.g.,* Sinbad Distributing, 67 FR 10232, 10233 (2002); K.V.M. Enterprises, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); Xtreme Enterprises, Inc., supra.

Factor five is also relevant to Direct Wholesale's proposal to distribute to potential customers that are apparently purchasing list I chemical products from other suppliers. The Acting Deputy Administrator also finds curious the specific requests for listed chemical products by Direct Wholesale's customers. DEA has previously found similar conduct by potential customers relevant under factor five. *See* Shop It For Profit, 69 FR 1311, 1313 (2004).

As noted above, there is no evidence in the investigative file that Direct Wholesale ever sought to modify its pending application with regard to listed chemical products it seeks to distribute. Among the listed chemical products that the firm seeks to distribute is phenylpropanolamine. In light of this development, the Acting Deputy Administrator also finds factor five relevant to Direct Wholesale'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. Shani Distributors, 68 FR 62324 (2003). Based on the foregoing, the Acting Deputy Administrator concludes that granting the pending application of Direct Wholesale would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Direct Wholesale be, and it hereby is, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–5478 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Rory Patrick Doyle, M.D.; Revocation of Registration

On July 31, 2002, the then-Deputy Administrator of the Drug Enforcement Administration (DEA) issued a Notice of Immediate Suspension of Registration

and Order to Show Cause to Rory Patrick Doyle, M.D. (Dr. Doyle) of St. Petersburg, Florida. Dr. Doyle was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BD0504200, as a practitioner, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f) and 824(a) for reason that his continued registration would be inconsistent with the public interest. The order further notified Dr. Doyle that his DEA registration was immediately suspended as an imminent danger to the public health and safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause and Notice of Immediate Suspension alleged in relevant part, the following:

1. On May 13, 2002, the State of Florida, Department of Health (Department of Health) issued an Order of Emergency Suspension of Dr. Doyle's State medical license. The order was based on the following:

a. On July 20, 2000, the St. Petersburg Police Department arrested Dr. Doyle for committing lewd and lascivious acts on two minor females in 1994, 1995 and 2000. On July 25, 2000, Dr. Doyle was released from custody after posting $100,000 bail.

b. On August 11, 2000, the Assistant State Attorney in Florida filed an Information against Dr. Doyle in the Circuit Court of the Sixth Judicial Circuit for Pinellas County, Florida. In the Information, Dr. Doyle was charged with one count of first degree felony, lewd or lascivious molestation of a child less than twelve years of age, and two counts of second degree felony, handling and fondling of a child under the age of sixteen years of age.

c. Dr. Doyle's trial was scheduled for August 14, 2001, in the Circuit Court of the Sixth Judicial Circuit. Dr. Doyle failed to appear for the trial.

d. On November 6, 2001, the court issued a Writ of Capias for Dr. Doyle's arrest. Federal and state efforts to arrest him have been unsuccessful.

e. The Department of Health independently reviewed the allegations set forth in the Information. On May 6, 2002, two (2) Department of Health attorney's interviewed CP, a former patient, who verified the pertinent allegations set forth in the Information. CP further volunteered that Dr. Doyle molested her on at least four (4) occasions between 1994 and 1995. CP was between the ages of 13 and 14 at the time Dr. Doyle committed these acts. In 1994 and 1995, Dr. Doyle examined CP and issued prescriptions to her.

f. The Department of Health found that through Dr. Doyle's activities, he engaged in sexual misconduct with a patient. Accordingly, the Department of Health immediately suspended Dr. Doyle's state medical license, effective May 13, 2002.

2. On May 22, 2002, DEA investigators visited Dr. Doyle's registered location at in St. Petersburg, Florida, to request that he voluntarily surrender his DEA registration. Neither the receptionist nor Dr. Doyle's former medical colleague could identify his whereabouts.

According to the investigative file, the Notice of Suspension, Order to Show Cause was believed to have been left at Dr. Doyle's registered address on August 6, 2002, but because there was no written record of such, the order was redelivered to Dr. Doyle's registered address on January 21, 2003. More than thirty days have passed since the Notice of Suspension, Order to Show Cause was served upon Dr. Doyle. DEA has not received a request for hearing or any other reply from Dr. Doyle or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Notice of Suspension, Order to Show Cause to Dr. Doyle, and (2) no request for hearing having been received, concludes that Dr. Doyle 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 Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Doyle is currently registered with DEA as a practitioner under DEA Registration, BD0504200, in Schedules II through V. That registration expires on June 30, 2004. A review of the investigative file reveals that on May 13, 2002, the Department of Health issued an Order of Emergency Suspension of License (Order of Suspension) summarily suspending Dr. Doyle's medical license in that state. In its Order of Suspension, the Department of Health found in relevant part that in 1994, 1995, and in 2000, Dr. Doyle committed improper acts with two minor females.

As recited in the Notice of Suspension, Order to Show Cause, Dr. Doyle's conduct resulted in his being charged with one count of first degree felony, lewd and lascivious molestation of a child less than twelve years of age in violation section 800.04(5), Florida Statutes, and two counts of second degree felony, handling and fondling of a child under the age of sixteen years in violation of section 800.04(1), Florida Statutes. These matters were corroborated by subsequent interviews by the Department of Health with the alleged victim. In addition, Dr. Doyle failed to appear for his August 14, 2001 criminal trial in the matter.

The investigative file contains no evidence that the Department of Health order suspending Dr. Doyle's medical license has been lifted, nor is there evidence before the Acting Deputy Administrator that Dr. Doyle's medical license has been reinstated. Therefore, the Acting Deputy Administrator finds that Dr. Doyle is not currently authorized to practice medicine in the State of Florida, and as a result, it is reasonable to infer that 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 James F. Graves, M.D.,* 67 FR 70968 (2002); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988). The agency has also maintained this standard in matters involving the immediate suspension of a DEA Certificate of Registration under 21 U.S.C. 824(d). *Chemical Dependence Associates of Houston,* 58 FR 37505 (July 12, 1993).

Here, it is clear that Dr. Doyle's medical license is currently suspended and therefore, he is not currently licensed to handle controlled substances in Florida, the State where he maintains a DEA controlled substance registration. Therefore, Dr. Doyle is not entitled to a DEA registration in that State. Because Dr. Doyle is not entitled to a DEA registration in Florida due to his lack of State authorization to handle controlled substances, the acting Deputy Administrator concludes that it is unnecessary to address whether his registration should be revoked based upon the other grounds asserted in the Notice of Suspension, Order to Show Cause. *See Fereida Walker-Graham, M.D.,* 68 FR 24761 (2003); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

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, BD0504200, issued to Rory Patrick Doyle, M.D. be, and it hereby is, revoked. The Acting 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 April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–5483 Filed 3–10–04; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John A. Frenz, M.D.; Revocation of Registration

On June 4, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John A. Frenz, M.D. (Dr. Frenz) of Brandon, Mississippi, notifying him of an opportunity to show cause as to why DEA should not revoke his Certificate of Registration No. AF6071752 under 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged Dr. Frenz voluntarily surrendered his medical license to the Mississippi State Board of Medical Licensure and is not currently authorized to practice medicine or handle controlled substances in Mississippi, his state of registration and practice. The order also notified Dr. Frenz 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. Frenz at his address of record at 346 Crossgates Boulevard, Brandon, Mississippi 39047. According to the return receipt, on or around June 17, 2003, the Order was accepted on Dr. Frenz's behalf. The return receipt also indicated that Dr. Frenz's new address was 600 Bay Park Drive, Brandon, Mississippi 39047. DEA has not received a request for a hearing or any other reply from Dr. Frenz or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Frenz is deemed to have waived his hearing right. See Samuel S. Jackson, D.D.S., 67 FR 65145 (2002); David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Frenz possesses DEA Certificate of Registration AF60771752, which expired on September 30, 2002. The Acting Deputy Administrator further finds that the Mississippi State Board of Medical Licensure (the Board) finds a Summons against Dr. Frenz alleging inter alia, that he was guilty of dishonorable or unethical conduct likely to deceive, defraud or harm the public and that he had voluntarily surrendered his hospital staff privileges while an investigation or disciplinary proceeding was being conducted against him. These counts arose from complaints filed by two of Dr. Frenz's patients alleging he engaged in sexual misconduct with them in his office and at the Rankin Medical Center of Brandon, Mississippi.

On February 13, 2002, Dr. Frenz waived his rights to a due process hearing and voluntarily and unconditionally executed a Voluntary Surrender of his Mississippi State Medical License No. 10906, to the Board. This Voluntary Surrender was accepted and approved by the Board on February 21, 2002.

The investigative file contains no evidence that the Voluntary Surrender of Dr. Frenz's medical license was stayed or that his license has been reinstated. Therefore, the Acting Deputy Administrator finds that Dr. Frenz is not currently authorized to practice medicine in the State of Mississippi. 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 Muttaiya Darmarajeh, M.D., 66 FR 52936 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear Dr. Frenz surrendered his medical license and is not licensed to handle controlled substances in Mississippi, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

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 AF60771752, issued to John A. Frenz, M.D., 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 April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhard,

Acting Deputy Administrator.

[FR Doc. 04–5482 Filed 3–10–04; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 7, 2003, and published in the **Federal Register** on October 29, 2003, (68 FR 61699), Gateway Specialty Chemical, Co., 4170 Industrial Drive, St. Peters, Missouri 63376, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the controlled substance for its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Gateway Specialty Chemical Co. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Gateway Specialty Chemical Co. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.