

UNITED STATES OF AMERICA
BEFORE THE FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

In the Matter of :)	
LAHAYE CENTER FOR ADVANCED)	ADMINISTRATIVE
EYE CARE OF LAFAYETTE,)	COMPLAINT FOR CIVIL
D/B/A LAHAYE TOTAL EYE CARE,)	MONEY PENALTIES
A corporation, and)	
LEON C. LAHAYE,)	FDA Docket No. 02H-0443
An individual.)	Date: June 25, 2003
)	
)	
)	

ORDER

On June 16, 2003, Respondents LaHaye Center for Advanced Eye Care of Lafayette ("LaHaye Center") and Leon C. LaHaye ("Dr. LaHaye") (collectively "Respondents"), filed a Motion for Leave to Amend Their Answer. In their Motion, Respondents sought to amend 12c and 12d of their February 18, 2003 Answer to Administrative Complaint for Civil Money Penalties. They also sought to amend their answer to include a fifth affirmative defense alleging this proceeding violates their constitutional due-process rights.

On June 23, 2003, Complainant, the Center for Devices and Radiological Health, submitted a reply in Opposition to Respondents' Proposed Fifth Affirmative Defense. Respondents' request to amend 12c and 12d of their Answer is unopposed.

Having considered the arguments in support and in opposition thereto, **it is ORDERED** that the motion be **GRANTED IN PART AND DENIED IN PART**. Accordingly,

Respondents' Motion for Leave to Amend Their Answer is **GRANTED** in so far as Respondents may amend their answer to add their proposed Paragraphs 12c and 12d.

Additionally,

Respondents' request to add their Fifth Affirmative Defense is **DENIED** because it is a futile defense that would not survive a motion to dismiss and because this administrative proceeding is not the proper forum for its consideration. And,

It is further ORDERED that Respondents shall submit their amended answer on or before July 7, 2003.

DATED this 25th day of June, 2003.

/s/ Daniel J. Davidson
Daniel J. Davidson
Administrative Law Judge