



U.S. Department of Justice
Drug Enforcement Administration

www.dea.gov

Springfield, Virginia 22152

SEP 30 2009

IN THE MATTER OF

Walgreens #06094
3005 Midway Drive
San Diego, California 92110

ORDER TO SHOW CAUSE

PURSUANT to Sections 303 and 304 of the Controlled Substances Act, Title 21, United States Code, Sections 823 and 824,

NOTICE is hereby given to afford Walgreens #06094 ("Walgreens") an opportunity to show cause before the Drug Enforcement Administration ("DEA"), at DEA Headquarters located at 600 Army Navy Drive, Arlington, Virginia, or a location designated by the Administrative Law Judge, on January 5, 2009 (if Walgreens requests such a hearing), as to why DEA should not revoke Walgreens' DEA Certificate of Registration, BW8002759, pursuant to 21 U.S.C. § 824(a)(4), and deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. § 823(f), because Walgreens' continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f). The basis for this Order to Show Cause is set forth in the following non-exhaustive summary of facts.

1. Walgreens is registered with DEA as a chain pharmacy under DEA registration number BW8002759 at 3005 Midway Drive, San Diego, California 92110. Walgreens' current DEA registration expires by its terms on May 31, 2010.
2. Since at least January 2007, Walgreens distributed controlled substances to individuals located in California based on purported prescriptions issued by physicians who were not licensed to practice medicine in California. Walgreens distributed controlled substances based on these purported prescriptions even though the issuance of these prescriptions clearly violated California law. See Cal. Bus. & Prof. Code § 2052 (establishing the penalties for any person practicing medicine without having the appropriate certificate); see also *United Prescription Services Inc.*, 72 FR 50397, 50407-08 (2007) ("A controlled substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is therefore unlawful under the [Controlled Substances Act]."); *Bob's Pharmacy and Diabetic Supplies*, 74 FR 19599 (2009); *Patrick W. Stodola, M.D.*, 74 FR

PLAINTIFFS TRIAL
EXHIBIT
P-20642_00001

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Pharmacy and Diabetic Supplies, 74 FR 19599 (2009); *Patrick W. Stodola, M.D.*, 74 FR 20727 (2009); *Ladapo O. Shyngle, M.D.*, 74 FR 6056 (2009); *United States v. Moore*, 423 U.S. 122, 138-39 (1975).

3. Moreover, during this same time period, Walgreens distributed controlled substances to individuals located in California based on purported prescriptions issued by physicians for other than a legitimate medical purpose and/or outside the usual course of professional practice in contravention of 21 C.F.R. § 1306.04(a). Specifically, these physicians failed to establish a valid physician-patient relationship as required by California laws. See Cal. Bus. & Prof. Code § 2242.1(a) (prohibiting dispensing of controlled substances on the Internet for delivery to California residents "without an appropriate prior examination and medical indication").

4. Controlled Substance Utilization Review and Evaluation System ("CURES") data reveals that Walgreens also dispensed controlled substances to individuals that Walgreens knew or should have known were diverting the controlled substances. In addition to identifying several instances where Walgreens dispensed controlled substances based on prescriptions written by out-of-state doctors who are not licensed to practice medicine in California, Walgreens dispensed controlled substances to customer K.D. who within a seven-month period presented purported prescriptions for hydrocodone issued by four Florida physicians, indicating that K.D. was engaged in what is commonly called "doctor-shopping," i.e., seeking prescriptions from multiple doctors for other than legitimate medical purposes. CURES data, which is available for Walgreens' use to identify and prevent potential diversion of controlled substances, also reveals that K.D. obtained prescriptions for controlled substances, dispensed by other San Diego area pharmacies, from at least eight other physicians during the same seven-month time period that Walgreens dispensed prescriptions to K.D. By dispensing such prescriptions, Walgreens failed to fulfill its corresponding responsibility for the proper dispensing of controlled substances. See 21 C.F.R. § 1306.04(a)

THE following procedures are available to Walgreens in this matter:


1. Within 30 days after the date of receipt of this Order to Show Cause, Walgreens may file with the DEA a written request for a hearing in the form set forth in 21 C.F.R. § 1316.47. See 21 C.F.R. § 1301.43(a). If Walgreens fails to file such a request, the hearing shall be cancelled in accordance with paragraph 3, below.
2. Within 30 days after the date of receipt of this Order to Show, Walgreens may file with the DEA a waiver of hearing together with a written statement regarding its respective positions on the matters of fact and law involved. See 21 C.F.R. § 1301.43(c).
3. Should Walgreens decline to file a request for a hearing or, should Walgreens request a hearing and then fail to appear at the designated hearing, Walgreens shall be deemed to have waived the right to a hearing and the DEA may cancel such hearing, and the Deputy Administrator may enter her final order in this matter without a hearing based upon the evidence presented to her. See 21 C.F.R. §§ 1301.43(d) and 1301.43(e).

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Correspondence concerning this matter, including requests referenced in paragraphs 1 and 2 above, should be addressed to the Hearing Clerk, Office of Administrative Law Judges, Drug Enforcement Administration Headquarters, 8701 Morrisette Drive, Springfield, VA 22152. Matters are deemed filed upon receipt by the Hearing Clerk. See 21 C.F.R. § 1316.45.



Joseph T. Rannazzisi
Deputy Assistant Administrator
Office of Diversion Control

cc: Hearing Clerk, Office of Administrative Law Judges
Larry P. Cote, Counsel for the Government

REQUEST FOR HEARING

Any person desiring a hearing with respect to an Order to Show Cause must, within thirty (30) days from receipt of the Order to Show Cause, file a request for a hearing in the following format:

[DATE]

Hearing Clerk
Office of the Administrative Law Judges
Drug Enforcement Administration
Washington, D.C. 20537

Dear Madam:

The undersigned, [Name of person], hereby requests a hearing in the matter of [Identification of the proceeding].

- (A) [State with particularity the interest of the person in the proceeding.]
- (B) [State with particularity the objections or issues, if any concerning which the person desires to be heard.]
- (C) [State briefly the position of the person with regard to the particular objections or issues.]
- (D) [Name (either registrant, applicant, or attorney), address (including street address, city, state and zip code), and telephone number (including area code) of person to whom all subsequent notices or mailings in this proceeding should be sent.]

Respectfully yours,

[Signature of registrant,
applicant, or attorney]

Note: Pursuant to 21 CFR 1316.47(b), the Administrative Law Judge, upon request and showing of good cause, may grant a reasonable extension of time allowing for response to an Order to Show Cause.