Dated: November 21, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–30929 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 15, 2000, Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 5, 2001.

Dated: November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30940 Filed 12–4–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–10]

Nicholas A. Sychak, d/b/a Medicap Pharmacy; Revocation of Registration

The Deputy Administrator, Drug Enforcement Administration (DEA), issued an Order to Show Cause dated December 14, 1998, to Nicholas A. Sychak d/b/a Medicap Pharmacy (Respondent), seeking to revoke the Replacement's DEA Certificate of Registration, BM2751736, pursuant to 21 U.S.C. 824(a)(4); and to deny any pending application for renewal of such registration pursuant to 21 U.S.C. 823(f) because the registration would be inconsistent with the public interest as defined by 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that: (1) On June 20, 1996, DEA obtained information that Nicholas A. Sychak, R.Ph., the owner and operator of Medicap Pharmacy, ordered large quantities of various Schedule II through IV controlled substances and diverted these drugs to other individuals for no legitimate medical purpose; (2) Also on June 20, 1996, a cooperating individual provided DEA investigators with information that Mr. Sychak was a known source of supply for illegally diverted controlled substances, and that drug dealers and drug dependent individuals traveled to Medicap Pharmacy to purchase large quantities of controlled substances for sums ranging from several hundred to several thousand dollars per transaction; (3) On August 8, 1997, a confidential source, posing as a physician, telephoned Mr. Sychak and placed a fictitious prescription for sixty dosage units of hydrocodone, a Schedule II controlled substance, with no refills. Mr. Sychak was aware the individual calling in the prescription was not a physician, but nevertheless filled the prescription in exchange for cash. Mr. Sychak also authorized two refills for the prescription, even though prescriptions for Schedule II controlled substances may not be refilled; (4) Also on August 8, 1997, the confidential source placed another telephone call to Mr. Sychak, posing as another physician. When the confidential source later arrived at Medicap Pharmacy, Mr. Sychak directed that individual to exhaust the refills under the first physician's name before using a second physician's name to obtain additional prescriptions; (5) On August 22, 1997, a confidential source, acting in an undercover capacity, obtained the remaining unauthorized refill of the August 8, 1997, fraudulent hydrocodone prescription from Mr. Sychak, again in exchange for cash; (6) On September 5, 1997, a confidential source again posed as a physician and telephoned Mr. Sychak for a fictitious prescription for sixty dosage units of hydrocodone. The confidential source was also provided with a blank prescription bearing fictitious physician information. While on Medicap Pharmacy's premises, and within the presence of Mr. Sychak, the confidential source wrote out a prescription for sixty tablets of Percocet, a Schedule II controlled substance. Mr. Sychak admonished the confidential source for filling out the prescription in the pharmacy, but filled the prescription and also provided the confidential source with sixty hydrocodone tablets; (7) The DEA investigation revealed that from June 1995 through October 1997, Mr. Sychak and Medicap Pharmacy illegally dispensed more than 5,700 dosage units of Percocet to one individual. This individual presented forged prescriptions attributed to a physician and used the aliases ''Walter Kaczynski'' and ''Linda Kaczynski.'' DEA subsequently verified that the purported prescribing physician never issued the prescriptions; (8) The DEA investigation further revealed that Mr. Sychak and Medicap Pharmacy unlawfully dispensed a total of 5,255 dosage units of controlled substances to another individual between July 17, 1997, and December 30, 1997, pursuant to prescriptions purportedly issued by two different physicians. DEA subsequently verified that neither of these two physicians authorized the dispensing of these controlled substances; (9) The DEA investigation further revealed that between July 1997 and March 1998, Mr. Sychak and Medicap Pharmacy unlawfully dispensed a total of 7,225 dosage units of various controlled substances, plus 48 ounces of Hydromet syrup, to two individuals who utilized eight aliases on prescriptions attributed to one physician; (10) On April 24, 1998, a confidential source acting in an undercover capacity purchased two prescription vials containing seventy-five dosage units of hydrocodone each and one prescription vial containing seventy-five dosage units of Vicodin, a Schedule III controlled substance, without a prescription, from Mr. Sychak and Medicap Pharmacy in exchange for $277.00 in cash. These prescription vials listed three different aliases previously used by the confidential source. The DEA investigation subsequently revealed that Mr. Sychak created fraudulent records of this transaction by indicating that these drugs were dispensed to three different individuals; (11) On April 24, 1998, an additional confidential source illegally obtained from Mr. Sychak and Medicap Pharmacy two prescription vials containing seventy-five hydrocodone each and another vial containing sixty hydrocodone in exchange for $281.00 in cash. Mr. Sychak listed on the vials three different aliases previously used by the confidential source and created

fraudulent dispensing records of this transaction; (12) On April 24, 1998, DEA agents and investigators executed a search warrant upon Mr. Sychak and Medicap Pharmacy. During the search, Mr. Sychak admitted that he sold controlled substances without prescriptions. Items seized pursuant to the search warrant included $14,906 in cash, eight dosage units of various Schedule III controlled substances that were found in Mr. Sychak's front pants pocket, and a loaded 9mm handgun; (13) In conjunction with the criminal diversion investigation of Medicap Pharmacy, DEA also conducted a financial investigation of Mr. Sychak and the pharmacy. As a result of this investigation, DEA investigators obtained a federal seizure warrant for the business bank account of Medicap Pharmacy, and pursuant to that warrant DEA seized $102,650.90; (14) On September 3, 1998, an undercover informant obtained 1,120 dosage units of Schedule III and IV controlled substances from Mr. Sychak and Medicap Pharmacy without a prescription and in exchange for $2,000.00 cash. On September 22, 1998, the undercover informant again obtained 1,120 dosage units of Schedule III and IV controlled substances from Mr. Sychak and Medicap Pharmacy without a prescription and in exchange for $2,000.00 cash; and (15) On November 5, 1996, Mr. Sychak inquired of DEA regarding the DEA registration and medical license status of a Pennsylvania medical practitioner. Although DEA personnel informed Mr. Sychak that the practitioner was not registered with DEA and did not possess a valid Pennsylvania medical license, Medicap Pharmacy nevertheless proceeded to fill approximately 111 controlled substance prescriptions purportedly issued by the physician between December 1996 and April 1997. The Order to Show Cause further gave notice that Respondent's Certificate of Registration was immediately suspended, and the suspension would remain in effect until a final determination is reached in these proceedings. The Order authorized and directed DEA agents and diversion investigators to place under seal and remove all controlled substances possessed by Respondent pursuant to his DEA Registration and to take into their possession the suspended Certificate of Registration and all unused official DEA order forms.

Respondent, through counsel, timely requested a hearing on the issues raised in the Order to Show Cause. The requested hearing was held in Pittsburgh, Pennsylvania, on July 12 and 13, 1999. At the hearing the Government called witnesses to testify and introduced documentary evidence. After the hearing, the Government submitted Proposed Findings of Fact, Conclusions of Law, and Argument. In a letter dated September 14, 1999, and received September 17, 1999, counsel for Respondent advised that, ''without conceding any of the facts in the government pleadings or those presented at the administrative hearing on July 13 and 14, 1999, Nicholas A. Sychak, will not be filing proposed findings of fact, conclusions of law and argument.'' On February 23, 2000, Judge Mary Ellen Bittner issued her Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's registration be revoked, and any pending applications for renewal be denied. The record was transmitted to the Deputy Administrator for final decision March 27, 2000.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in its entirety the Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion). His adoption is in no manner diminished by any recitation of facts, issues, and conclusions herein, or of any failure to mention a fact or matter of law. The Respondent did not introduce evidence or call witnesses at the hearing, therefore Judge Bittner's Opinion is based on testimony and other evidence offered by the Government.

As a preliminary matter, counsel for Respondent raised two evidentiary issues that must be addressed before the merits of these proceedings can be fully discussed.

First, on June 9, 1999, counsel for Respondent filed a Motion to Compel Discovery Pursuant to *Brady* v. *Maryland* that requested Judge Bittner to issue ''an order requiring DEA to preserve and to provide defendant, within a time to be specified, any and all actual and potential exculpatory evidence relating to the issues of guilt or punishment currently known to the Government, its agents, and representatives, *or which may become known to them by the exercise, on their part, of due diligence*.'' (Emphasis original). In support of this request, counsel for Respondent cites numerous cases applying *Brady* v. *Maryland*, 373 U.S. 83 (1963) (*Brady*) in various criminal contexts. Counsel for Respondent did not address the issue and cited no authority for the proposition that *Brady* is or should be applicable to civil proceedings, much less an administrative proceeding, as is the case here. On June 24, 1999, the Government filed an Opposition to Respondent's Motion to Compel Discovery Pursuant to *Brady* v. *Maryland*, arguing that the Administrative Procedure Act (APA) confers no independent discovery right; that *Brady* applies only in the criminal context; that DEA regulations govern discovery in these proceedings; and that the DEA regulations provide for adequate discovery. On June 30, 1999, Judge Bittner issued a Ruling and Order, finding *Brady* inapplicable to these proceedings, but further finding that because these proceedings are adversarial, ''on the grounds of fairness, * * * the Government must disclose any exculpatory information in its possession when such information is timely requested by a respondent.'' In response, the Government filed on July 7, 1999, an Emergency Request For Consent to File Appeal to the June 30, 1999, Ruling of the Administrative Law Judge, arguing that neither the APA nor the DEA regulations governing the proceedings provide for the disclosure of exculpatory information, and further that Judge Bittner's Order ''constitutes a significant and unprecedented departure from DEA regulations and practice.'' The Government also argued that Judge Bittner's Order would place a severe burden upon DEA, including the potentialities of placing ongoing investigations and the identities of confidential informants at risk. Subsequently, on July 8, 1999, Judge Bittner issued a Memorandum to Counsel Clarifying Ruling and Order, limiting the scope her previous ruling somewhat by requiring the Government's counsel only ''to review files available to him and on which the Government relied in preparing its prehearing statements for information that would clear or tend to clear Respondent from alleged fault or guilt as to the allegations of Respondent misconduct made in the Government's prehearing statements in this proceeding[.]'' On the same day, Judge Bittner issued a Ruling Denying Request for Consent to File Appeal, denying the Government's request to file an appeal pursuant to the Clarifying Ruling and Order. On July 9, 1999, the Government filed a Response and Objection to Ruling Denying Request For Consent to File Appeal reiterating its objections and requesting that the issue be made

part of the official administrative record and forwarded to the Deputy Administrator for consideration.

The Deputy Administrator agrees with the Government, for the following reasons:

First, these proceedings are governed generally by the APA, and specifically by the procedures set forth at 21 CFR 1316.41–1316.68. See 21 CFR 1316.41. What applicable caselaw there is on the issue finds that the APA confers no independent discovery right; *McClelland* v. *Andrus,* 606 F.2d 1278, 1285 (D.C. Cir. 1979); *National Labor Relations Board* v. *Valley Mold Co., Inc.,* 530 F.2d 693 (6th Cir. 1976) (cert. denied, 429 U.S. 824 (1976)); and that the extent of discovery in administrative proceedings is primarily determined by the agency; *Mister Discount Stockbrokers, Inc.* v. *Securities Exchange Commission,* 768 F.2d 875, 878 (7th Cir. 1985) (finding *Brady* inapplicable to agency administrative proceedings). As the Government correctly points out, neither the APA, nor the relevant DEA regulations, nor prior published DEA precedent, authorize the Government's production of exculpatory information.

Second, the applicable DEA Regulations, *supra,* supply more than sufficient due process, whether Respondent's DEA Registration is viewed as a license conferred based on the public interest alone, or whether it is also viewed as a property or a liberty interest. The pertinent DEA Regulations governing these proceedings authorize a pre-hearing conference and written pre-hearing statements for *inter alia* the simplification of the issues, stipulations, identification of witnesses, and the advance submission of all documentary evidence and affidavits for identification; an administrative hearing, reported verbatim; representation by counsel; allow for the introduction of evidence and documents; provide for witnesses and documents to be subpoenaed; allow for the examination and cross-examination of witnesses; allow for the parties to make written proposed corrections to the transcript of the hearing; allow for the parties to submit proposed findings of fact and conclusions of law; and also allow for the parties to file exceptions to the ALJ's recommended decision, findings of fact and conclusions of law. Furthermore, the pre-hearing conference pursuant to 21 CFR 1316.54 and the prehearing disclosure of witness testimony and documentary evidence pursuant to 21 CFR 1316.57 and 1316.58, set forth in each party's pre-hearing statement, provide more than adequate pre-hearing disclosure of the issues and evidence to be submitted in these proceedings. In its June 24, 1999, memorandum of Opposition, the Government notes that ''[i]n this proceeding, the evidentiary items that the Government intends to offer were outlined in its March 1, 1999, Prehearing Statement and the May 24, 1999, supplement thereto. The Government has provided to the Respondent all evidentiary items that it intends to offer during the upcoming administrative hearing.'' Thus, the Deputy Administrator finds the current DEA regulations provide more than adequate discovery in these proceedings, and there was no need for the Government to take the unprecedented and extraneous step of disclosing potentially exculpatory information.

Third, in her June 30, 1999, Ruling and Order, Judge Bittner stated her belief that the burden said Order placed upon the Government was ''minimal, for the Government need only review its files to determine if such information exists.'' Following the filing of the Government's June 24, 1999, Opposition memorandum, Judge Bittner attempted to narrow the scope of her Order in her July 8, 1999, Clarifying memorandum by limiting the Government's burden to review of those files ''available * * * and on which the Government relied in preparing its prehearing statements for [exculpatory] information * * * as to the allegations of Respondent misconduct made in the Government's prehearing statements in the proceeding[.] '' The Deputy Administrator agrees with the Government that, even in its more limited form, Judge Bittner's Order places a significant burden on the Government. The Order creates a risk of disclosure of sensitive information which could reveal the identity of confidential informants, compromise the effectiveness of investigative techniques, or compromise an ongoing criminal investigation concerning the Respondent on third parties. The Order will also require the Government to address Privacy Act issues with respect to information concerning third parties.

For the above-stated reasons, the Deputy Administrator finds that the Government is not required to disclose potentially exculpatory information to Respondent or counsel for Respondent at any phase of these proceedings.

The second evidentiary issue raised by counsel for Respondent is his assertion of a continuing objection to the Government's use of hearsay evidence at the hearing. It is well established, however, that hearsay is admissible in these proceedings. See Arthur Sklar, R.Ph., d/b/a King Pharmacy, 54 FR 34623, 34627 (DEA 1989). ''Hearsay is both admissible, and may, standing by itself, constitute substantial evidence in support of an administrative decision.'' *Klinestiver* v. *DEA,* 606 F.2d 1128 (D.C. Cir. 1979). Judge Bittner addressed this issue at the hearing and in her Opinion, and she has indicated that she considered the hearsay nature of the evidence when determining the evidentiary weight to give it; and she further indicated that, where she has relied on hearsay evidence, she did so because she found it reliable. *See Ramon P. Johnson* v. *United States,* 628 F.2d 187, 190 (D.C. Cir. 1980). The Deputy Administrator concurs with Judge Bittner's analysis and findings of fact with regard to this issue.

Medicap Pharmacy is located in Murrysville, Pennsylvania. According to one of the Government's witnesses, Karen Ruffner, Nicholas A. Sychak opened the pharmacy in 1989 or 1990. The pharmacy was first registered with DEA on July 2, 1991. On June 20, 1996, a confidential informant advised Diversion Investigator John Conlon of the DEA Pittsburgh Resident Office that Mr. Sychak was selling controlled substances to certain individuals without a valid prescription and for no legitimate medical purpose.

As a result of this information, DEA initiated an investigation of the Respondent, and various Pennsylvania State law enforcement agencies subsequently joined the investigation. Surveillance and intelligence gathering identified Lynette Reffner and Steve and Karen Ruffner as frequent visitors to the pharmacy. Investigators also searched the pharmacy's dumpster and found computer printouts of purported controlled substance dispensings. These printouts listed an individual's name, a prescription number, the drug, the date it was dispensed, and the name of the physician who purportedly authorized the dispensing. Agent Edward Cartwright of the Pennsylvania Bureau of Narcotics Investigations and Drug Control (BNIDC) testified that a review of these printouts disclosed discrepancies, such as prescriptions whose dates were inconsistent with the computer's system of numbering prescriptions in chronological order. According to Agent Cartwright, these printouts indicated that some prescriptions were predated. Investigators subsequently learned from pharmacy employees that Mr. Sychak also ''predated'' prescriptions by substituting an old ribbon in the pharmacy's printer to make it appear

that a label was older than the date the drug was actually dispensed.

As the Order to Show Cause indicates, there are numerous separate incidents upon which this proceeding is based. Therefore, the different incidents are herein organized by the nine subsequent numbered sections which group the relevant facts, though not necessarily in chronological order, since the timeframes of many of the events described herein overlap.

1. Michael Ray's 1997 Undercover Purchases from Medicap Pharmacy

Agent Cartwright had arrested Michael Ray several years prior to the investigation of Respondent. Mr. Ray was again arrested in the spring of 1997, and the arresting agent asked Agent Cartwright for information about Mr. Ray. Consequently, Agent Cartwright spoke to Mr. Ray, who said that for the previous two years Mr. Sychak had filled forged controlled substance prescriptions for him and that these prescriptions listed ''Ed Olson'' as the patient. At some point, Mr. Ray agreed to act as an undercover informant; Agent Cartwright testified that Mr. Ray was not offered anything in return for his cooperation except that Agent Cartwright appeared at Mr. Ray's sentencing hearing and advised the court of Mr. Ray's cooperation.

On August 8, 1997, Mr. Ray telephoned Mr. Sychak, pretending to be a Dr. Wigle, a name he had picked out of a telephone directory, and asked for sixty hydrocodone 7.5 mg. extra strength, with no refills, for ''Ed Olson.'' That same day, Mr. Ray went to Medicap Pharmacy wearing a recording device, and carrying funds Agent Cartwright had provided him. Mr. Ray paid $37.50 and received the sixty hydrocodone he had requested. The memorialization of the oral prescriptions lists one refill.

On August 15, 1997, Mr. Ray again called the pharmacy, pretending to be a Dr. Beck, to authorize a prescription for hydrocodone for Ed Olson. ''Dr. Beck'' was a fictitious physician invented by DEA for whom Mr. Ray provided fictitious telephone and DEA registration numbers. Mr. Ray called the pharmacy again to ask if the prescription was ready, and spoke with Mr. Sychak's wife. Mr. Ray said that he knew he had refills from Dr. Wigle's prescription, and Ms. Sychak said something to the effect that there should not be any problem and that she would give him a refill of what was on the computer screen. Mr. Ray then visited the pharmacy and paid $37.50 for a ''refill'' of the Dr. Wigle prescription. Mr. Sychak refused to fill the purported prescription from Dr. Beck, telling Mr. Ray that he first wanted to use the refills from Dr. Wigle and that the information about Dr. Beck, including his physician license number and his DEA number, were not yet in the pharmacy's computer system.

On August 22, 1997, Mr. Ray returned to Medicap Pharmacy and paid $37.50 for a second refill of sixty hydrocodone from the Dr. Wigle prescription. Mr. Ray also had with him a blank prescription form listing the information for Dr. Beck so that Mr. Sychak could enter the information into the pharmacy computer. Agent Cartwright testified that Mr. Ray gave the form to Mr. Sychak, who said it would be helpful and put the form in his pocket.

On August 29, 1997, Mr. Ray was sent into the pharmacy with a recording device. Prior to this visit, a prescription for hydrocodone purportedly authorized by Dr. Beck had been called in to the pharmacy. During that visit, Mr. Ray also tried to obtain other controlled substances using the blank Dr. Beck form, but Mr. Sychak refused to provide him any drugs, saying that DEA investigators sometimes inspected the pharmacy and might realize that the handwriting on Dr. Beck's prescription form was the same as that on other pharmacy records. Mr. Sychak returned the blank form to Mr. Ray. Mr. Ray took the blank form with him when he left the pharmacy and, in the presence of Agent Cartwright, filled it out for sixty Percocet. Mr. Ray then took the form back into the pharmacy, paid $39.83 in cash, and received sixty Percocet.

Mr. Ray made another undercover visit to the pharmacy on September 5, 1997. Mr. Ray asked for the hydrocodone purportedly authorized by Dr. Beck for Ed Olson, and presented a written prescription for Percocet in some other patient name. Agent Cartwright testified that investigators had intentionally made this Percocet prescription facially invalid by showing the patient as someone other than the person who presented it. Ray paid $37.50 for sixty hydrocodone 7.5 mg. with APAP, but Mr. Sychak refused to fill the Percocet prescription. Mr. Ray then took from his pocket a blank prescription form purporting to be that of Dr. Beck and filled in the requisite information in Mr. Sychak's presence. Mr. Sychak said something to the effect that most of his customers did not fill out their own prescriptions in front of him, but nonetheless filled the prescription, providing Mr. Ray sixty Roxicet in exchange for $47.95. On September 12, 1997, Mr. Ray again visited Respondent and obtained hydrocodone pursuant to the purported authorization of Dr. Beck, paying $37.50 for the drug.

As noted above, investigators obtained records of purported dispensings from Respondent's trash dumpster. Among these was the pharmacy's receipt for the Roxicet provided to Mr. Ray on September 5.

2. The Delivery of Controlled Substances to Walter, Linda, and James Kaczynski

Pennsylvania state law requires pharmacists to submit to BNIDC monthly a form known as a ''BDC–6'' listing information about all dispensings of Schedule II controlled substances. In early 1998 Investigator Conlon reviewed BDC–6 forms Respondent had submitted for the period April 1995 through October 1997. Respondent listed a large number of Percocet and Roxicet prescriptions purportedly issued by a Dr. Mark Fennema to a Walter Kaczynski, a Linda Kaczynski, and a James Kaczynski. Although the BDC–6 reports indicated that Dr. Fennema was an emergency room physician at a hospital in south Pittsburgh, when investigators subpoenaed the hospital for the Kaczynskis' medical records, the hospital responded that it had not treated any patients with any of those names.

In about March 1998 Investigator Conlon telephoned Dr. Fennema, who was at that time in upstate New York. Dr. Fennema told Investigator Conlon that he generally saw patients only in the emergency room and that he would have no reason to continually prescribe medications to the same patient. After reviewing a faxed copy of the list of prescriptions, Dr. Fennema told Investigator Conlon that he had not issued them.

3. The Deliveries to Lynette Reffner and Michael Riley

Investigator Conlon testified that Medicap Pharmacy records showed that it had dispensed controlled substances to a Lynette Reffner pursuant to prescriptions purportedly issued by a Dr. Richard Kucera between July 17, 1997, and December 23, 1997, and pursuant to prescriptions purportedly issued by a Dr. David Blinn between July 17, and December 30, 1997. The prescriptions that Dr. Blinn purportedly issued totaled 1,620 dosage units of Vicodin, 715 dosage units of hydrocodone, 164 dosage units of Hydroment syrup, and 60 dosage units of phenobarbital. The prescriptions that Dr. Kucera purportedly issued aggregated to 1,390 dosage units of alprazolam, 1,240 dosage units of Ap-Oxazepam, 130 dosage units of

diazepam, and 100 dosage units of Darvocet.

On March 25, 1998, Investigator Conlon and Agent Cartwright interviewed Dr. Kucera, who said that he had treated Lynette Reffner but had not authorized any of the prescriptions at issue. Investigator Conlon, DEA Diversion Investigator Kurt Dittmer of DEA's Pittsburgh office, and Agent Cartwright interviewed Dr. Blinn on March 30, 1998, and showed him the list of prescriptions. Dr. Blinn advised the investigators that he had not authorized any of them.

On April 29, 1998, Investigators Conlon and Dittmer, Agent Cartwright, and Sergeant Stan King of the Murrysville Police Department interviewed Ms. Reffner and her paramour, Michael Riley. Subsequently, on June 17, 1999, Ms. Reffner executed a declaration in evidence as a Government exhibit. In the declaration, Ms. Reffner said she originally had valid prescriptions for controlled analgesics filled at Medicap Pharmacy, but in 1992 or shortly thereafter Mr. Sychak began giving her refills for these medications that were not authorized by her physician. Ms. Reffner further stated that by about 1994 she had arranged with Mr. Sychak to purchase drugs from him upon presenting lists of the controlled substances she wanted. Investigators found some of these lists during the searches of Medicap Pharmacy's trash dumpster.

Ms. Reffner stated that every Tuesday she and Mr. Riley purchased sixty Vicodin ES, sixty Xanax, fifty Darvocet, fifty Soma, and eight ounces of Hydromet syrup, and every Friday they bought the same quantities of Xanax, Soma, and Hydromet syrup, along with eighty Vicodin ES and sixty Darvocet. Ms. Reffner stated that Mr. Sychak had told her and Mr. Riley that Soma in combination with the other drugs would ''intensify the high,'' and that they should take a half-tablet of Soma at mealtimes. Ms. Reffner stated that the Soma was listed on Mr. Riley's patient record at the pharmacy, but that Mr. Sychak said he recorded the other drugs as dispensed to her, because she had been severely injured some years earlier and her medical history ''would cover it.'' Ms. Reffner also stated that at some point Mr. Sychak directed Mr. Riley to come to the pharmacy only on Tuesdays and Fridays, when Mr. Sychak and his wife were present, because Mr. Sychak did not want his relief pharmacist to know about this arrangement. Ms. Reffner stated that Mr. Riley and Mr. Sychak also socialized together, and that Mr. Riley worked on Mr. Sychak's cars and Mr. Sychak gave him ''care packages'' of controlled substances, including Lorcet and Vicodin.

Ms. Reffner further stated that in late 1995 she entered a methadone treatment program and that Mr. and Ms. Sychak agreed to provide her a phenobarbital to lessen potential withdrawal symptoms. Ms. Reffner said that both she and Mr. Riley wanted to get help for their addiction and that the Sychaks said they would decrease the quantity of controlled substances they supplied, but in fact the quantity increased. Ms. Reffner also stated that on numerous occasions when she presented a legitimate prescription for a non-controlled substance, Mr. Sychak told her she would not have to pay for the medication, and that he would charge it to some other customer's insurance. Finally, Ms. Reffner stated that Mr. Sychak filled some drugs to her Medical Assistance card and that she paid cash for the rest, that Mr. Sychak always extended her and Mr. Riley credit when they did not have enough money to pay for the drugs they purchased, and that Mr. Sychak maintained a record of how much they owed in a pink notebook.

Investigator Conlon testified that as of the hearing date Ms. Reffner and Mr. Riley were the targets of an ongoing investigation, and he anticipated that they would be charged with state narcotics violations. Investigator Conlon further testified that Mr. Riley and Ms. Reffner agreed to cooperate in the investigation and that investigators told them that their cooperation would be made known to the proper authorities at the time of sentencing.

4. The Deliveries to Karen and Steven Ruffner

The previously mentioned trash dumpster searches disclosed receipts purportedly showing Dr. Ralph Capone as the authorizing physician for numerous controlled substance prescriptions for patients named Daniel Frieben, Amy McKluskey, Phyllis Ruffner, Charles Ruffner, Steve Ruffner, Grace Ruffner, Ruth Snow, and Deborah McCracken. In November 1997, Agent Cartwright interviewed Dr. Capone and asked him about these individuals. Dr. Capone told Agent Cartwright that although Mr. Frieben had been his patient, Dr. Capone had not treated him since about 1993, and that Karen Ruffner was his patient during the period at issue but that he did not authorize any of the prescriptions shown to him.

Karen Ruffner testified as a Government witness. Ms. Ruffner's mother was Sandra Frieben, who died in 1992. For some period of time prior to her death Ms. Frieben worked as a medical assistant to Dr. Capone. Ms. Ruffner testified that Ms. Frieben suffered from a number of painful conditions for which she took, Soma, Talwin, and Vicodin ES and that she abused controlled substances from the end of 1989 until her death. Ms. Frieben obtained drugs by calling prescriptions to pharmacies for herself, saying that the prescriptions were authorized by Dr. Capone, and by writing fake prescriptions for herself on prescription pads she took from Dr. Capone's office. Ms. Ruffner testified that she saw Ms. Frieben write some of these prescriptions, that Ms. Frieben made some of the telephone calls from Ms. Ruffner's home, and that Ms. Frieben asked Ms. Ruffner to take fake prescriptions to the pharmacy for her. Ms. Ruffner testified that she suggested to her mother that she seek treatment for drug abuse, but her mother refused to do so because she did not want her husband to learn about her problem.

Ms. Ruffner testified that although initially her mother used different pharmacies, eventually she obtained drugs only from Medicap Pharmacy. At some point, Ms. Frieben began stealing boxes of drug samples from Dr. Capone's office and taking them to Mr. Sychak, who gave her medication or discounts on medication in exchange. Ms. Ruffner accompanied her mother on these visits to the pharmacy, and testified that after she had done so three or four times, Ms. Frieben asked her to take the samples to Mr. Sychak and bring back her medication. Ms. Ruffner testified that her mother called Medicap Pharmacy both from Dr. Capone's office and from Ms. Ruffner's home to authorize prescriptions for herself for Vicodin, Talwin, or Soma, and sent Ms. Ruffner to the pharmacy to pick up the drugs and to pay for them in cash. Ms. Ruffner further testified that her mother instructed her to deal only with Mr. Sychak.

Ms. Ruffner testified that her mother also asked her to call the pharmacy and would write down exactly what Ms. Ruffner was to say. Ms. Ruffner spoke only to Mr. Sychak, and testified that in these calls she told Mr. Sychak that she was ''Beth'' from Dr. Capone's office (as far as she knew, a made-up name) and that she was ''calling for Sandra Frieben, for Vicodin number 50.'' Ms. Ruffner also testified that the price of the controlled substances increased over time so that her mother paid cash in addition to providing Mr. Sychak the drug samples. Ms. Frieben eventually paid about $89 for 60 Talwin, about $68 for 50 Vicodin, and $34 for generic hydrocodone.

Ms. Ruffner further testified that her own health had been ''fairly poor'' all her life, that she had suffered from chronic pain since she was twelve years old, and that various physicians had prescribed her controlled substances including Vicodin, Vicodin ES, and Soma. Ms. Ruffner started sharing her mother's medications in 1989, when she was nineteen years old, but testified that she never took her mother's drugs without the latter's knowledge.

Ms. Ruffner testified that from 1992 until 1994 she received legitimate prescriptions for Valium and Vicodin, and that she filled all these prescriptions at Medicap Pharmacy. Ms. Ruffner further testified that frequently the vial she received from the pharmacy indicated more authorized refills than the prescription did, but she never asked Mr. Sychak why refills were added. In 1994 Ms. Ruffner's physician stopped prescribing her Vicodin, but Ms. Ruffner continued to receive drugs from Mr. Sychak because he gave her more refills than were authorized by the written prescription. As an example, Ms. Ruffner testified that if a written prescription for 80 Vicodin ES showed one refill, the vial might show four refills. Ms. Ruffner admitted, however, that she did not know whether Mr. Sychak obtained the physician's oral authorization for additional refills.

Ms. Ruffner further testified that at some point ''the refills just stopped,'' and Mr. Sychak told her to call and ask for a prescription for a named person because ''I have to be able to say that I received a phone call from somebody.'' Consequently, according to Ms. Ruffner, she called the pharmacy pretending to be ''Beth'' from Dr. Capone's office, told Mr. Sychak she was authorizing a prescription for Vicodin ES, and gave the patient's name variously as Amy McKluskey, Dan Frieben, Tina Pavolik, Ruth Snow, Debbie McCracken, or Charles, Steve, Phyllis, or Grace Ruffner. All of these names were those of individuals who were either friends or family members of Ms. Ruffner or of her husband, Steven Ruffner. According to Ms. Ruffner, between 1994 and 1998 she made ''hundreds'' of such telephone calls to the pharmacy.

Ms. Ruffner testified that sometimes Mr. Sychak would fill ''prescriptions'' without requiring her to telephone him, but other times he would tell her to call him so that he could say there had been a telephone call. According to Ms. Ruffner, she usually handed Mr. Sychak a piece of paper with a list of names and the controlled substance to be attributed to each name, and sometimes she handed the list to one of the women who worked at the pharmacy. (Agent Cartwright testified that he found such lists during the searches of Medicap's trash dumpster.)

Ms. Ruffner testified that she paid cash for the drugs and that in 1994 she paid about $89 for sixty Vicodin, but that almost every month Mr. Sychak increased the price, telling her that the manufacturer had increased its price. Ms. Ruffner also testified that she initially obtained drugs from Respondent once per month and shared them with her husband, and beginning in about 1996 she and her husband began selling Lorcet and Vicodin in quantities of ten to fifty dosage units. According to Ms. Ruffner, she and her husband used the proceeds of their drug sales to purchase more drugs from Mr. Sychak for their own use and to sell. Eventually, according to Ms. Ruffner, she was paying Mr. Sychak a thousand dollars once or twice per week for drugs; she and her husband would take ''what we needed, and we would sell the rest.'' Ms. Ruffner also testified that when she was in the pharmacy and other people were present in addition to Mr. Sychak, she signaled to him that she wanted Vicodin, Lorcet, or Lortab by referring to Vicodin as ''whites,'' and Lorcet or Lortab as ''blues.''

In early 1998 local police arrested Ms. Ruffner's husband for possession of controlled substances. Ms. Ruffner testified that when she told Mr. Sychak about the arrest he expressed concern about whether any vials from Medicap Pharmacy would be found in Mr. Ruffner's car. Ms. Ruffner further testified that a few days after the arrest she and her husband asked Mr. Sychak for a prescription vial with a legitimate-looking label on it so Mr. Ruffner could say that he had drugs legally. Mr. Sychak complied with Ms. Ruffner's request, and provided him with a legitimate-appearing prescription vial. At some point Mr. Sychak also warned Mr. Ruffner to be sure that he did not leave pill bottles in his car and to destroy the bottles when he had gotten rid of the contents.

On April 24, 1998, Investigator Conlon and three other law enforcement officers visited Ms. Ruffner at her father's home, where she was staying. Investigator Conlon asked Ms. Ruffner to go to the local police station, and she agreed to do so. At the Murrysville police station, Ms. Ruffner agreed to cooperate in the investigation and Agent Cartwright asked her to make a controlled buy from Respondent that same day. Investigators fitted Ms. Ruffner with a recording device and gave her $400 to make the purchase. They also asked her to follow the procedure she normally used to obtain drugs, and consequently she prepared a note with the words, ''Karen's Vicodin (brand),'' ''Daniel's Vicodin (generic),'' ''Tina's Lorcet (generic),'' and ''Amy's Lorcet (generic).'' Next to the reference to ''brand,'' Ms. Ruffner drew an arrow to the comment, ''I only have $400. However you can help me out. Thanks.'' Ms. Ruffner went to Medicap Pharmacy and gave the list to Mr. Sychak, who filled vials with the drugs listed. The total cost of the drugs was $415; Ms. Ruffner asked Mr. Sychak if she could take the drugs and return with the additional $15, but Mr. Sychak refused. Consequently, Mr. Sychak retained the Vicodin, and Ms. Ruffner left the store with the other drugs and gave them to Agent Cartwright. Agent Cartwright testified that although the cash register receipts for Ms. Ruffner's undercover purchase showed a small amount, such as $3 or $6, she actually was spending about $300 to $365. Agent Cartwright further testified that Mr. Ruffner also paid substantially more for the controlled substances he was purchasing from Respondent than the amount reflected on the cash register receipt.

As of the hearing date, Ms. Ruffner had not been charged with any criminal conduct. She testified, however, that Agent Cartwright had told her that she would be charged but had not told her what the charges would be. Investigator Conlon testified that both Mr. and Ms. Ruffner agreed to cooperate in the investigation and that the only statements investigators made to them were that their cooperation would be made known to the proper authorities at the time of sentencing.

Counsel for Respondent contended at the hearing that Ms. Ruffner, the only informant to testify in this proceeding, is not credible. In her Opinion, Judge Bittner recognizes that Ms. Ruffner is not a totally disinterested participant in this proceeding in light of her own status as a target of an investigation. Nonetheless, Judge Bittner found that Ms. Ruffner appeared candid and forthright, and on the basis of her demeanor Judge Bittner found her to be believable. In addition, Judge Bittner found, and the Deputy Administrator agrees, that much of Ms. Ruffner's testimony was consistent with documentary and other evidence and, as noted above, Respondent adduced no evidence and thus Ms. Ruffner's testimony is uncontradicted. See Singers-Andreini Pharmacy, 63 Fed. Reg. 4668, 4672 (DEA 1998).

5. The April 24, 1998, Search

On April 23, 1998, a United States Magistrate Judge issued a search warrant

for the premises of Medicap Pharmacy. The warrant was executed on April 24, 1998. As part of the search, investigators received a ''dump'' of Mr. Sychak's computer, and found that ''Walter Kaczynski'' was an alias used by a Larry Stepinski.

The search disclosed substantial amounts of cash, specifically, $11,394 in Mr. Sychak's briefcase, $2,306 in daily deposit envelopes, $706 in a cash register, and $150 from a shelf in a work area. Investigators also retrieved a ledger listing various persons, including targets of investigations, and a running balance of what they owed the pharmacy. In addition, investigators recovered $520 and a small quantity of loose controlled substance tablets from Mr. Sychak's pants pockets. This cash was the State funds that Agent Cartwright had supplied to Karen and Steve Ruffner earlier in the day and that they had used to make an undercover purchase of controlled substances at the pharmacy. Investigator Dittmer testified that the currency was photocopied before it was provided to the Ruffners and that the serial numbers on the photocopies matched those on the bills found in Mr. Sychak's pockets.

Investigator Dittmer also testified that he asked Mr. Sychak if he had any rifles or handguns on the premises and that Mr. Sychak said he did not have any weapons. The search disclosed a loaded 9mm semiautomatic handgun in a plastic grocery bag, however, that also contained cash. The weapon was registered to Mr. Sychak.

During the search, investigators also conducted an inventory of several products containing hydrocodone. Respondent had on hand 18,000 dosage units of Vicodin, 13,000 dosage units of Lorcet, 1,500 dosage units of Didrex, 5,200 dosage units of Darvocet, 3,000 dosage units of Soma, and 10,500 dosage units of alprazolam. Although Soma is not controlled under federal law, Investigator Dittmer testified that he included it in his inventory because it is sometimes used to boost the ''high'' provided by hydrocodone.

Investigator Dittmer and Agent Cartwright interviewed Mr. Sychak during the search and asked him if he ever dispensed a drug without a legitimate prescription. Mr. Sychak responded affirmatively and said that he sold drugs to people who were nagging him, naming Karen and Steven Ruffner. The investigators also asked Mr. Sychak about the ''Dr. Beck prescriptions,'' and Mr. Sychak said that he had spoken personally with Dr. Beck about those prescriptions. When informed that Dr. Beck was fictitious, Mr. Sychak did not respond.

6. The Interviews of Respondent's Employees

During the April 24, 1998, search investigators interviewed Sylvia Macerelli, a pharmacy technician/clerk employed at Medicap Pharmacy. Ms. Macerelli later provided a declaration, in evidence as a Government exhibit. Ms. Macerelli stated that she, pharmacy technician/clerk Amy Meyers, and relief pharmacist Fred Werl believed that Mr. Sychak was committing fraud and distributing drugs illegally. More specifically, Ms. Macerelli said that Mr. Sychak was the only pharmacy employee who waited on the Ruffners and Ms. Reffner. Ms. Macerelli stated that the Ruffners never presented prescriptions, but gave Mr. Sychak lists of controlled substances on scraps of paper, and that they usually received Vicodin and Lorcet. Ms. Macerelli stated that Ms. Reffner similarly presented lists of controlled substances she wished to purchase, that she received drugs in her own name and Mr. Riley's, and that she received Vicodin, Darvocet, Xanax, and hydrocodone products. Ms. Macerelli further stated that Mr. Sychak allowed Ms. Reffner to run a tab, and as of the date of the search she owed approximately $1,000.

Ms. Macerelli also said that Mr. Sychak frequently directed her and Ms. Meyers to add unauthorized refills to prescriptions, telling them that he had checked with the prescribing physician for authorization, but that she never observed Mr. Sychak telephone a physician for such authorization until a few weeks before the search. Ms. Macerelli further stated that she and Ms. Meyers recognized Ms. Ruffner's voice on the telephone when she telephoned the pharmacy and pretended to be calling from a doctor's office. Ms. Macerelli further stated that in the summer of 1997 an assistant in a doctor's office across the street from the pharmacy complained to Mr. Sychak that medicines that she never received were fraudulently billed to her insurance company. According to Ms. Macerelli, she and Ms. Myers would note that although they indicated on the log sheet the last customer of the day to receive drugs billed to insurance plans, the next day there would be additional entries added to the log.

Investigators interviewed Amy Meyers on May 7, 1998. On May 25, 1999, Ms. Meyers executed a declaration, in evidence as a Government exhibit, in which she corroborated many of Ms. Macerelli's statements. Ms. Myers corroborated the information that the Ruffners, Ms. Reffner, and Mr. Riley, obtained controlled substances from Medicap Pharmacy after presenting handwritten notes listing drug names, numbers of dosage units, and the names of persons for whom the drugs were purportedly prescribed, and stated that Walter Kaczynski, Craig Smilack, Linda Nader, Grace Seigworth, Scott Hoyle, Gary Harpis, Tom Farrah, Steve Cuccaro, and Camille Maggio-Palmiere also received controlled substances in a similar fashion. Ms. Meyers stated that all these individuals either paid cash, ran a tab, or used a Medical Assistance card. Ms. Meyers also stated that she checked her own personal prescription profile at the pharmacy in the spring of 1998 and discovered numerous prescriptions listed as billed to her insurance carrier that were allegedly issued to her by various physicians she had never seen for drugs she had never received. Ms. Myers stated that when she confronted Mr. Sychak about these prescriptions he said, ''How do you think I pay for your health insurance?''

On June 8, 1998, investigators interviewed Mr. Fred Werl. Mr. Werl said that he had discovered that the prescriptions issued to the Kaczynskis were forgeries when he called the hospital to verify a prescription and was told that Dr. Fennema was no longer associated with the hospital. Mr. Werl also told the investigators that he told Mr. Sychak about these fraudulent prescriptions and Mr. Sychak said he would take care of the matter, but that Mr. Sychak in fact continued to fill these prescriptions. Mr. Werl said that ''Walter Kaczynski'' came to the pharmacy and gave Mr. Sychak gifts, but that he did not know whether these were in exchange for drugs. Mr. Werl told investigators that at some point he was present when a commercial auditing firm confronted Mr. Sychak and told him that some of the pharmacy documents and records were fraudulent. Mr. Werl also told investigators about the insurance log, and noted that one day he counted 65 entries added after closing hours.

7. The Controlled Buys by Arthur Glaser

On July 27, 1998, Detective Michael Garlecki of the Allegheny County Police Department Narcotics Unit advised Investigator Dittmer that an Arthur Glaser was in custody and that a search of Mr. Glaser's home had revealed some loose pills of controlled substances. Detective Garlecki further advised Investigator Dittmer that Mr. Glaser said that he had obtained these drugs from Medicap Pharmacy. Consequently, Investigator Dittmer interviewed Mr. Glaser, who said that on either July 17

or July 20, 1998, he had purchased four bottles of Lorcet, one bottle of Vicodin, one bottle of Xanax, 200 Valium, and some ''speed'' from Mr. Sychak without a prescription. Mr. Glaser said that he obtained controlled substances in his own name and in the names of his brother and sister, Joseph Glaser and Nanette Glaser, respectively.

Mr. Glaser further stated that he could make undercover purchases from Mr. Sychak under the direction of law enforcement personnel. On September 2, 1998, Mr. Glaser made a recorded telephone call to Mr. Sychak and said he would go to the pharmacy the next day to pick up refills on his inhaler medication and what Investigator Dittmer described as ''other stuff.''

On September 3, 1998, Mr. Glaser, fitted with a recording device and a transmitter and provided with $2,000 in DEA funds, went to the pharmacy. Mr. Glaser obtained from Mr. Sychak 120 Vicodin ES, 500 alprazolam, and 500 Lorcet, in exchange for the $2,000 in cash. While Mr. Glaser was in the pharmacy, Mr. Sychak asked Ms. Sychak, ''What's you intuition?'' and she said, ''I don't know. I think it's okay. Art, you're not being—everything's okay with you, right?'' to which Mr. Glaser replied, ''No, my line is good. My lines are clear. I'm okay.''According to Investigator Dittmer, Mr. Glaser understood Ms. Sychak to ask if his telephone was being tapped.

When Mr. Glaser left the pharmacy, Mr. Sychak followed him out and told Mr. Glaser to telephone the pharmacy when he got home and ask whether it was open on Sundays. Mr. Glaser agreed to do so, and explained to investigators that he routinely called the pharmacy after he arrived home and used a code phrase to let Mr. Sychak know that he had not been stopped by law enforcement personnel who would find the controlled substances.

Mr. Glaser returned to Medicap Pharmacy on September 22, 1998, pursuant to an arrangement he made with Mr. Sychak the day before by telephone. Mr. Glaser was fitted with a recording device and a transmitter and provided with $2,000 in Government funds. Mr. Glaser gave Mr. Sychak the $2,000 and some sports trading cards for Mr. Sychak's son and received in exchange 120 Vicodin ES tablets, 500 alprazolam tablets, and 500 Lorcet tablets. Investigator Dittmer testified that at some point during the visit, Mr. Sychak told Mr. Glaser to ''put the word out on the street that Amy is doing—is selling all these controlled substances.''

On February 16, 1999, Mr. Glaser executed a declaration in evidence as a Government exhibit. In his declaration Mr. Glaser described his arrangement with law enforcement authorities and the undercover visits discussed above. He also stated, among other things, that he and Mr. Sychak had agreed that Mr. Glaser would purchase Lorcet in 500-tablet quantities in the original manufacturer's bottles for $1,500 per bottle. Mr. Glaser further stated that he sold the pills for $4 each to individuals who would then sell them for $8 each on the street, and that he also paid Mr. Sychak $5,000 in cash at unstated intervals in exchange for a shopping bag of Schedule III controlled substances. Mr. Glaser stated that as of sometime in 1993 he routinely paid Mr. Sychak $12,000 to $15,000 per transaction and that sometimes Mr. Sychak kept the pharmacy open late so that Mr. Glaser could make these purchases.

8. The December 16, 1998, Search

As a result of the undercover purchases, investigators obtained a second search warrant for Medicap Pharmacy and executed it on December 16, 1998. Investigators Conlon and Dittmer and ten to fifteen other law enforcement officers conducted the search and seized, among other things, the pharmacy computer's hard drive. That same day, the Deputy Administrator issued the Order to Show Cause and Immediate Suspension of Registration that gave rise to the instant proceeding.

9. The Interview of Larry Stepinski

Also on December 16, 1998, Investigators Conlon and Dittmer and Sergeant Stan King of the Murrysville Police Department interviewed Mr. Stepinski and videotaped the interview. During the interview, Mr. Stepinski said that about four years earlier a Robert Mrvos had written fake prescriptions for Percocet and Didrex, gave them to Mr. Stepinski, and told him to take them to Medicap Pharmacy to be filled. Mr. Stepinski said that he told Mr. Mrvos that the prescriptions were for diametrically opposed drugs, but Mr. Mrvos assured him that Mr. Sychak would fill both. Mr Stepinski further said that Mr. Sychak filled both prescriptions.

Mr. Stepinski stated that Mr. Mrvos sent various drug addicts to Medicap Pharmacy with fake prescriptions; these individuals had the prescriptions filled and then turned the drugs over to Mr. Mrvos in exchange for money. According to Mr. Stepinski, however, at some point Mr. Mrvos was arrested, and Mr. Stepinski obtained the blank prescription forms that Mr. Mrvos had used. Mr. Stepinski stated that he wrote the prescriptions for various fictitious people with the last name Kaczynski, his late uncle's name, because he thought such a name would be believable inasmuch as it was hard to spell. Mr. Stepinski also stated that Mr. Sychak filled prescriptions for him for two people with fictitious last names other than Kaczynski; according to Mr. Stepinski, he told Mr. Sychak ''they were my neighbors and could you fill these for me?'' Mr. Stepinski believed, Mr. Sychak knew that these names were fictitious.

Mr. Stepinski further stated that he forged prescriptions for Didrex and Percocet using blanks from three different physicians, and that from time to time Mr. Sychak told him, ''you're going to have to find a new doctor,'' which Mr. Stepinski interpreted as an instruction to use a different physican's prescription blank. Mr. Stepinski further said that Mr. Sychak told him not to present his ''prescriptions'' to Mr. Werl, because Mr. Werl would call the physician to verify them.

Mr. Stepinski said that he went to the pharmacy every two weeks with two prescriptions, apparently one for Walter Kaczynski and one for Linda Kaczynski, and that he obtained Percocet every two weeks and Didrex once per month. Mr. Stepinski said that about a year after he started taking the Kaczynski prescriptions to the pharmacy he explained to Mr. Sychak that many people, himself among them, were using fictitious names on prescriptions filled at the pharmacy. Mr. Stepinski further said that as a result of this warning, Mr. Sychak stopped providing drugs to the people Mr. Stepinski identified, but not to Mr. Stepinski himself.

Mr. Stepinski said that at one point he used five different fictitious names on the false prescriptions, but that Mr. Sychak told him to cut back to two names. Mr. Stepinski further stated that after the investigation and arrest of a pharmacist at another pharmacy, Mr. Sychak took him outside the pharmacy building and told him that Percocet was ''too hot,'' and suggested he obtain Lorcet instead. Mr. Stepinski said that he told Mr. Sychak he could not switch because he did not know what instructions to write on a Lorcet prescription, and Mr. Sychak went back into the building, returned with Mr. Stepinski's receipt, and wrote the instructions for use for Lorcet on the back. Mr. Stepinski said that after that conversation he wrote ''prescriptions'' for Lorcet instead of Percocet. Apparently, these were standard preprinted forms on which Mr. Mrvos forged the physician's signature. Mr. Stepinski said that he spent about $280 per month for Percocet and about the

same amount for Didrex, and that he always paid cash for the drugs.

Counsel for Respondent objected to the introduction into evidence of the videotape of Mr. Stepinski's interview, asserting that Mr. Stepinski was not subject to cross examination, and that Mr. Stepinski may have had reason to cast Mr. Sychak in an unfavorable light. Judge Bittner found, however, and the Deputy Administrator agrees, there is other credible evidence from the hospital where Dr. Fennema had worked and also Investigator Conlon's report of his conversation with Dr. Fennema, that the Kaczynskis were fictitious. In these circumstances, the inference is warranted, which Judge Bittner made, and with which the Deputy Administrator concurs, that none of the deliveries to them were authorized. Judge Bittner also noted that Respondent adduced no evidence that Mr. Sychak made any attempt to verify any of the purported prescriptions to them.

The Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such a certificate ''if he determines that the issuance of such registration would be inconsistent with the public interest'' as determined pursuant to 21 U.S.C. 824(a)(4) an 823(f). Section 823(f) requires 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, or conducting research with respect to 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.

As a threshold matter, the factors specified in section 823(f) are to be considered in the disjunctive: the Deputy Administrator may properly rely on any one or a combination of those factors, and give each factor the weight he deems appropriate, in determining whether a registration should be revoked or an application for registration denied. Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (DEA) 1989).

The Controlled Substances Act further prohibits dispensing a Schedule II controlled substance without the written prescription of a practitioner, with certain exceptions not pertinent here. 21 U.S.C. 829(a) (1996).

The Act also prohibits dispensing a Schedule III or IV controlled substance ''without a written or oral prescription in conformity with [the Federal Food, Drug and Cosmetic Act,'' 21 U.S.C. 829(b) (1996).

Furthermore, the relevant regulations governing prescriptions and implementing the Controlled Substances Act, 21 CFR 1306.03 through 1306.06 (1999) provide, in relevant part, that: (1) Prescriptions for controlled substances may be issued only by an individual practitioner who is authorized to prescribe these medications by the jurisdiction in which he is licensed to practice his profession and is registered by DEA or exempt from such registrations; (2) a prescription for a controlled substance must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice; (3) although a prescribing practitioner is responsible for the proper prescribing and dispensing of controlled substances, ''a corresponding responsibility rests with the pharmacist who fills the prescription,'' (4) prescriptions for controlled substances must be rated as of and signed on the day issued and must bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, and directions for use, as well as the name, address, and DEA registration number of the practitioner; and (5) prescriptions for controlled substances may be filled only by a pharmacist acting in the usual course of his professional practice.

The Government argues, in substance, that Mr. Sychak filled fictitious and fraudulent prescriptions, delivered controlled substances without a prescription, provided controlled substances in exchange for stolen drug samples, added unauthorized refills to prescriptions, encouraged drug abusers to place fraudulent telephone calls purportedly authorizing dispensings, falsified insurance records, and made misrepresentations to investigators. The Government further argues that even if Mr. Sychak and Medicap Pharmacy could be considered the victims on occasion of stratagems by drug-seeking individuals who presented fraudulent prescriptions or posed as physicians, the pharmacy abrogated its obligation to ensure that it filled only lawful prescriptions.

As noted above, Respondent did not file proposed findings of fact, conclusions of law or argument in this proceeding. In his closing argument at the hearing, counsel for Respondent asserted, in substance, that much of Ms. Ruffner's testimony was hearsay and she had reason to fabricate her testimony; the Government did not offer into evidence the tape recordings of the undercover visits; Respondent was not afforded the opportunity to cross-examine Mr. Stepinski or the other informants; and the Government did not conduct a full audit of the pharmacy. In sum, Respondent argues that the Government has not met its burden of proof in this proceeding.

With regard to factor one of the public interest analysis pursuant to 21 U.S.C. 824(a)(4) and 823(f), the recommendation of the State licensing board, it is undisputed that at the time of the hearing Respondent was authorized by the Commonwealth of Pennsylvania to handle controlled substances. Inasmuch as State licensing is a necessary but not sufficient condition for DEA registration, however, Judge Bittner found, and the Deputy Administrator concurs, that this factor is not determinative.

With regard to factor two, Respondent's experience in handling controlled substances, Judge Bittner made the following factual findings, with which the Deputy Administrator concurs. The stated quantities of illicitly dispensed controlled substances are based upon the evidence of the record as a whole. The Deputy Administrator recognizes that Respondent's computer logs may not have been entirely accurate. Testimony and other evidence, however, such as the fraudulent prescriptions themselves, paint a fairly complete picture of the magnitude of illicit activity encouraged and abetted by Respondent. It is highly doubtful, moreover, that Respondent would have overstated in his computer logs the quantities of controlled substances he was illegally dispensing.

a. The Deliveries to Mr. Ray

On August 8, 1997, Mr. Sychak delivered sixty hydrocodone 7.5 mg to Mr. Ray pursuant to the fictitious oral authorization of Dr. Wigle. Although that ''authorization'' specified no refills, Respondent's memorialization of it lists one refill. Mr. Sychak in fact treated that ''authorization'' as if it provided for two refills, delivering hydrocodone to Mr. Ray on August 15, and August 22, 1997. On August 29, 1997, Mr. Sychak refused to provide drugs based on the blank prescription from the fictitious Dr. Beck, but based that refusal on his concern that DEA investigators might notice that the handwriting on the filled-out prescription was the same as that on other pharmacy records. When Mr. Ray returned to the pharmacy shortly thereafter with the same form filled out

for sixty Percocet, however, Mr. Sychak honored it.

On September 5, 1997, Mr. Sychak delivered Percocet to Mr. Ray after he filled out the ''prescription'' in Mr. Sychak's presence, and also provided Mr. Ray with sixty hydrocodone pursuant to another fictitious authorization from Dr. Beck. A week later, Mr. Sychak again provided hydrocodone to Mr. Ray pursuant to a fictitious authorization from Dr. Beck.

b. The Deliveries to Mr. Stepinski

The record establishes that between January 2, 1997, and April 14, 1998, Mr. Sychak delivered 2,870 Percocet, 60 Roxicet, 4,310 Didrex 50 mg., and 360 Lorcet 10/650 to Mr. Stepinski using the names of various Kacyznskis as aliases. The record also establishes that these deliveries were made pursuant to fictitious ''prescriptions'' and that Mr. Sychak was aware that these were not bona fide dispensings.

c. The Deliveries to Lynette Reffner and Michael Riley

Between July 17, 1997, and December 30, 1997, Respondent delivered to Ms. Reffner a total of 1,620 dosage units of Vicodin; 715 dosage units of hydrocodone; 164 dosage units of Hydromet syrup; 60 dosage units of phenobarbital; 1,390 dosage units of alprazolam; 1,240 dosage unit of Ap-Oxazepam; 130 dosage units of diazepam; and 100 dosage units of Darvocet. From 1994 until 1998 Ms. Reffner and Mr. Riley regularly purchased Vicodin ES, Xanax, Darvocet, Soma, and Hydromet syrup from Mr. Sychak without a prescription or any other form of physician authorization.

d. The Deliveries to the Ruffners

The record establishes that Mr. Sychak provided controlled substances to Ms. Ruffner's mother in exchange for physician samples of other drugs, delivered drugs to Ms. Ruffner and to her mother pursuant to purported telephone authorizations he knew to be fictitious, provided Ms. Ruffner more refills than the written legitimate prescriptions authorized, and sold controlled substances to Ms. Ruffner on the basis of lists she gave him containing names of persons and drugs, without any physician authorization. Mr. Sychak also provided Mr. Ruffner a fraudulent prescription vial at the latter's request. Respondent unlawfully delivered controlled substances to the Ruffners for several years. Between July 1996 and April 1998, Respondent delivered to the Ruffners 18,031 Vicodin ES 7.5; 9,165 hydrocodone with APAP 7.5; 8,425 hydrocodone 10 with APAP 650; 2,990 Lorcet 10/650; 2,640 diazepam 10 mg.; 330 Fioricet with codeine No. 3; 90 Lomotil and Lonox; 4,080 milliliters of Hydromet syrup, and 390 Prelu-2 105 mg. There is no indication that any of these deliveries were pursuant to legitimate prescriptions or other physician authorizations. Karen Ruffner additionally received 60 dosage units of Vicodin ES in March and April of 1993 pursuant to a purported prescription issued by Dr. Dzialowski. Finally, during Ms. Ruffner's undercover visit on April 24, 1998, Mr. Sychak sold her generic hydrocodone, without a prescription and upon her giving him a list of people and drug names.

e. The Deliveries to Mr. Glaser

Mr. Glaser stated in his February 1999 declaration that he had purchased Lorcet and other Schedule III controlled substances from Mr. Sychak since 1993, and that he paid $3.00 per pill for Lorcet. The record establishes that between November 1993, and March 1997 Respondent delivered to Mr. Glaser a total of 12,030 dosage units of alprazolam 2 mg.; 360 dosage units of diazepam 10 mg.; 13,980 dosage units of Lorcet; 420 dosage units of Vicodin ES 7.5; 60 hydrocodone 7.5 with APAP; 12,080 milliliters of Tussionex Pennkinetic suspension; 60 phentermine 37.5 mg.; and 240 Xanax 2 mg. It is also noteworthy that Respondent delivered to Mr. Glaser 300 Vicodin in a six-week period in 1994, and 240 Xanax in a three-week period in 1995. Furthermore, as described above, in the course of the two undercover visits in September 1998, less than five months after execution of the April 24 search warrant, Mr. Sychak sold Mr. Glaser 1,000 alprazolam; 140 Vicodin; 1,000 Lorcet; and 60 generic hydrocodone, for a total of $4,000.

Judge Bittner found, and the Deputy Administrator concurs, that the record establishes that over a period of about six years Mr. Sychak sold tens of thousands of dosage units of controlled substances without a physician's authorization. The record further establishes that Mr. Sychak knew or should have known that he was delivering these medications to persons who were drug abusers themselves and/or who were providing the controlled substances to others who were. Judge Bittner found, and the Deputy Administrator concurs, that this factor weighs in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.

With regard to factor three, Respondent's conviction record relating to controlled substances, there is no evidence that either Medicap Pharmacy or Mr. Sychak has been convicted of violating any laws relating to controlled substances at the time of the hearing.

With regard to factor four, Respondent's compliance with applicable laws relating to controlled substances, the record establishes that Mr. Sychak delivered tens of thousands of dosage units of controlled substances without complying with the statutory and regulatory provisions discussed above. Judge Bittner therefore found, and the Deputy Administrator concurs, that this factor weighs in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.

Finally, with regard to the fifth factor, other conduct that may threaten the public health and safety, Judge Bittner found, and the Deputy Administrator concurs, that Mr. Sychak (1) acquiesced to Mr. Ruffner's request to provide a fraudulent prescription vial; (2) provided Percocet to Mr. Ray pursuant to a fictitious prescription that Mr. Ray filled out in front of him; (3) offered to bill Ms. Reffner's phenobarbital to another patient's medical insurance; (4) exchanged controlled substances for stolen physician samples of other drugs; (5) continued to fill false prescriptions after Mr. Werl warned him that they were fraudulent; (6) misrepresented to investigators that he had contacted Dr. Beck to verify a prescription; and (7) billed insurance carriers for drugs the policyholders did not receive. Judge Bittner therefore found, and the Deputy Administrator concurs, that this factor weighs in favors of a finding that Respondent's continued registration would be inconsistent with the public interest.

Judge Bittner found, and the Deputy Administrator concurs, that it is abundantly clear that Mr. Sychak has egregiously abused his privilege to handle controlled substances. It appears from the record that Mr. Sychak was purposefully attempting to engender addiction through his unauthorized dispensing of refills, apparently hoping to profit from the illicit market for controlled substances he thereby created. There is no exculpatory evidence to explain why Mr. Sychak acted as he did, that he regrets his actions, or that he will not repeat them in the future. In these circumstances the conclusion is appropriate that Respondent's continued registration with DEA would be inconsistent with the public interest. See Singers-Andreini Pharmacy, Inc., 53 FR 4668, 4672 (DEA 1998); Gerald M. Bluestone, R.Ph., d/b/a Bluestone Drug Store, 56 FR

16114, 16116 (DEA 1991); Arthur Sklar, R.Ph., d/b/a King Pharmacy, 54 FR 34623 (DEA 1989).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration BM2751736, issued to Medicap Pharmacy, be, and hereby is, revoked, and any pending applications for renewal of such registration be denied. This order is effective January 4, 2001.

Dated: November 21, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–30930 Filed 12–4–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 8, 2000, and published in the **Federal Register** on August 23, 2000, (65 FR 51331), Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Thebaine (9333)	II

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

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 Radian International LLC to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Radian International LLC on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, 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 CFR 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 classes of controlled substances listed above is granted.

Dated: November 20, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30934 Filed 12–4–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–7]

In the Matter of Mary Thomson, M.D.; Continuation of Registration With Restrictions

The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause dated October 30, 1998, to Mary Thomson, M.D. (Respondent), seeking to revoke the Respondent's DEA Certificate of Registration, BT3320203, pursuant to 21 U.S.C. 824(a)(2) and (4); and deny any pending application for renewal of such registration pursuant to 21 U.S.C. 823(f) because her registration would be inconsistent with the public interest as defined by 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that Respondent (1) became opiate dependent on Demerol, a Schedule II Controlled Substance, and received in-patient treatment for chemical dependency; (2) tested positive for opiates and benzodiazepines in October of 1995 and had her hospital privileges suspended; (3) obtained controlled substances by fraud or misrepresentation by issuing prescriptions for controlled substances in names of persons for whom such controlled substances were not intended and administered the controlled substances to herself for no legitimate medical purpose and not in the usual course of her professional practice; (4) pled guilty to one felony count of obtaining controlled substances by fraud and received three years of probation, community service, and a fine; and (5) admitted to using controlled substances without a legitimate medical purpose and diverting controlled substances to her own use. Respondent requested to hearing in a letter filed November 30, 1998. The requested hearing was held in Dallas, Texas, on April 6–8, 1999. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law, and Argument. On January 4, 2000, Judge Randall issued her Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's registration be continued, subject to three restrictions. The Government thereafter filed Exceptions to Judge Randall's Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision; and Respondent filed Responses to the Government's Exceptions, The record was transmitted to the Deputy Administrator for final decision February 16, 2000.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge, but includes additional restrictions on Respondent's continued registration. His adoption is in no manner diminished by any recitation of facts, issues, and conclusions herein, or of any failure to mention a fact or matter of law. The Deputy Administrator finds the following facts especially relevant to his decision.

Respondent was a practicing pharmacist from 1980 until 1987. Respondent has practiced medicine since 1994, when she completed her medical education. During the course of her medical education, Respondent earned several performance awards, including ''Resident Physician of the Month,'' ''Resident of the Year,'' and ''Outstanding Third Year Resident.'' Respondent was employed by St. Mary's Hospital from 1994 until she resigned by letter received May 6, 1996. Respondent is currently employed as the sole full time physician for Special Health Resources of East Texas (SHRET). SHRET is a non-profit public organization funded at least in part by government grants. Respondent works in three clinics serving a large part of East Texas and also provides treatment for HIV patients at the Well Spring Recovery Center, a center for patients with HIV and substance abuse problems. Most of the patients who avail themselves of SHRET's services