

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]

**BILLING CODE 4410-09-M**

## 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 AF6071752, 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 AF6071752, 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.

Dated: March 3, 2004.

**William J. Walker,**

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

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Marvin L. Gibbs, Jr., M.D.; Revocation of Registration**

On July 28, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Marvin L. Gibbs, Jr., M.D. (Dr. Gibbs) of Tempe, Arizona, notifying him of an opportunity to show cause as to why DEA should not revoke his Certificate of Registration No. AG7790644 under 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of his practitioner registration. As a basis for revocation, the Order to Show Cause alleged Dr. Gibbs' continued registration was inconsistent with the public interest. The Order alleged that from October 2000 through December 2001, Dr. Gibbs was affiliated with companies selling controlled substances and other drugs over the internet. During that period he issued thousands of controlled substance prescriptions, including refills, which were not issued in the normal course of professional practice, in violation of 21 CFR 1306.04 and 21 U.S.C. 841(a).

The Order alleged that without conducting physical examinations, Dr. Gibbs issued prescriptions to individuals requesting controlled substance prescriptions over internet web sites with which he had no prior doctor-patient relationship. Dr. Gibbs would review questionnaires completed on-line by the customer and then have a brief, pre-scheduled telephone conversation with the requestor. He did not consult with the customer's primary physician and failed to maintain any patient records of his own. The bulk of the controlled substance prescriptions issued by Dr. Gibbs in this manner were alleged to have been for hydrocodone 7.5 mg., a Schedule III controlled substance. It was further alleged Dr. Gibbs filed a prescription for Vicodin in the above manner which was requested by a DEA investigator using a fictitious name and medical complaint.

The order notified Dr. Gibbs that (1) he could file a written request for a hearing, (2) file a written waiver of

hearing, together with a statement regarding his position on the matters of fact and law involved, or (3) if he failed to file a request for a hearing within 30 days, that his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Gibbs' registered location at 2078 E. Southern Avenue, Suite D101, Tempe, Arizona 85282-7521. According to the return receipt, the Order to Show Cause was accepted on Dr. Gibbs' behalf on or around August 8, 2003. On September 4, 2003, Dr. Gibbs filed a response with Administrative Law Judge Gail A. Randall which was ambiguous as to which option he was electing. After Judge Randall afforded him an opportunity to file a clear election, by his letter dated October 9, 2003, Dr. Gibbs selected option two, waiving his right to a hearing and asking that his October 1, 2003, written submission be considered.

On October 30, 2003, consistent with that election, Judge Randall terminated the case and returned the file to the Government's counsel for further administrative processing. On November 26, 2003, the Chief Counsel forwarded the file to the Acting Deputy Administrator for final agency action in accordance with 21 CFR 1301.43(e) and 1301.46.

Other than as set forth above, DEA has not received a request for a hearing from Dr. Gibbs or anyone representing him in this matter. Therefore, the Acting Deputy Administrator, finding that Dr. Gibbs has waived his hearing right and requested that the agency make its decision based on the investigative file and his written submission, now enters her final order without a hearing pursuant to 21 CFR 1301.43(c) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Gibbs is registered with DEA as a practitioner under Certificate AG7790644 for Schedule II through V controlled substances, with a registered location of Alliance Healthcare Services, 2078 E. Southern Avenue, Tempe, Arizona. He was previously registered with DEA under Certificate BG729030, which was retired on September 30, 1991. He is currently licensed with the Arizona Medical Board of Medical Examiners (Board) under License Number 13736, which was issued on November 26, 1982, and expires on December 21, 2004. He is currently engaged in a solo medical practice and his only specialty is obstetrics and gynecology.

In February 2001, Dr. Gibbs was identified as an integral participant in Myprivatedoc, an Internet business

which had contracted with him to prescribe narcotics and other controlled substances to requesters after reviewing on-line questionnaires filled out by the customers and a brief telephone call. The prescriptions were then filled by Genrich Pharmacy of Phoenix, Arizona and sent to the customer's address by mail or delivery service.

A joint investigation conducted by DEA and the Board showed that in May or June 2000, Dr. Gibbs had been approached by two men about prescribing medicine over the Internet. They were owners of an auto parts business in Mesa, Arizona. At the time, Dr. Gibbs had recently lost his privileges at Mesa Lutheran Hospital, the facility where ninety percent of his patient volume was generated. Another physician, who recommended that Dr. Gibbs become involved in the Internet prescribing business, knew he needed help in generating income at the time.

Dr. Gibbs agreed to participate in Myprivatedoc's scheme and would be paid \$20 for each consultation. Visitors to the Web site would initially fill out a questionnaire regarding their medical history and complaint. Dr. Gibbs then reviewed the forms over the Internet and received a schedule of when customers would be calling him for a consultation. Initially he evaluated 10 to 15 individuals per day, spending approximately five to ten minutes with each customer. By December 2000, his consultations had increased to approximately 30 per day.

Dr. Gibbs made no effort to validate information provided to him via the Internet and while Myprivatedoc requested that customers verify their identities with picture identifications, Dr. Gibbs made no independent verification of the caller's identity. Dr. Gibbs, who had not taken any courses or continuing medical education in chronic pain management or identification of drug seeking behavior, did not perform physical examinations on customers, request or obtain medical records from their treating physicians or maintain any medical records on the individuals he prescribed to over the Internet. The majority of prescriptions prescribed were for thirty day supplies of controlled substance medications, with a maximum of two refills. Dr. Gibbs stated he did not believe he was establishing a doctor-patient relationship with the individuals requesting prescriptions.

Around February 2001, after receiving approximately \$52,000 in consultation fees, Dr. Gibbs terminated his relationship with Myprivatedoc. In April 2001, he associated with Medsworldwide, another internet