

## PHARMACIES BEWARE, WHOLESALERS MAY START CLOSELY SCRUTINIZING YOUR PURCHASING HABITS OF CONTROLLED SUBSTANCES

On February 29, 2012, a federal judge lifted a temporary restraining order that had stopped the Drug Enforcement Agency ("DEA") from enforcing the Immediate Suspension Order ("ISO") it issued to Cardinal Health ("Cardinal"), a drug wholesale distributor, on February 3, 2012. The ISO restricts Cardinal's license to distribute controlled substances from its Lakeland, Florida distribution center. Similarly, two of Cardinal's retail pharmacy customers also received an ISO that restricts their controlled substance dispensing privileges. It appears the ISOs were issued as part of the federal government's initiative to prevent controlled substances from being improperly diverted.

In the ISO issued to Cardinal, the DEA alleged that Cardinal's Lakeland distribution center posed an immediate danger to the public safety because Cardinal failed to maintain effective controls that would protect against illegitimate controlled substance distribution. Additionally, such ISO alleged that Cardinal failed to conduct the appropriate level of due diligence to ensure that the controlled substances it distributed to its retail pharmacies were not subsequently diverted for improper uses. According to the DEA [press release](#), it appears that the DEA first became concerned with Cardinal's Lakeland distribution facility due to the dispensing volume of four of its pharmacy customers. The DEA stated in its press release that two of these pharmacies, which are part of a national retail pharmacy chain, ("National Retail Pharmacies") dispensed more than 20 times the retail pharmacy national average for a certain controlled substance. Interestingly, according to Cardinal's court filings, Cardinal had requested the National Retail Pharmacies to conduct an internal investigation into the controlled substance dispensing practices at such pharmacies, and the National Retail Pharmacies had determined that the controlled substances were appropriately dispensed.

The ISO did not allege that Cardinal had distributed controlled substances to individuals or entities that were not properly licensed by the DEA. Additionally, the ISO does not appear to offer evidence that the four above-referenced pharmacies actually distributed controlled substances in an inappropriate or illegal manner. Therefore, based on publicly available information thus far, it appears the DEA's concerns regarding the alleged controlled substance diversion were based mainly on the volume of controlled substances purchased by these four pharmacies. In its court filings, Cardinal argues that the controlled substance purchase volume of a pharmacy should not, itself, be indicative that a pharmacy is improperly distributing controlled substances. Cardinal argues that volume alone does not take into account the pharmacy's patient population, size, etc., which may offer an explanation as to why its controlled substance distribution is appropriate.

Subsequent to the federal court's ruling referenced above, Cardinal appealed the decision to the United States Courts of Appeals for the District of Columbia Circuit. Hall Render will continue to monitor the Cardinal appeal and will update this article as appropriate. Regardless of the outcome, it is likely that other drug wholesalers/distributors will take notice and begin to more closely scrutinize their customers' purchasing habits of controlled substances.

If you have any questions or would like additional information about this topic, please contact

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