

Cerritos, CA; Information Resource Engineering, Inc., Baltimore, MD; Intel Corporation, Hillsboro, OR; International Business Machines, Inc., Somers, NY; Motorola, Scottsdale, AZ; NCR, West Columbia, SC; Novell Inc., Provo, UT; Sourcefile, Atlanta, GA; Sun Microsystems, Inc., Mountain View, CA; Trusted Information Systems, Inc., McLean, VA.

KRA was formed for the following purposes: (a) Stimulate global electronic commerce by encouraging the harmonization of market driven solutions available globally for secure communication using strong encryption; (b) serve as a focal point for industry efforts to develop commercially acceptable solutions for recovery of encrypted information; (c) determine interoperability concerns and potential architectural solutions among key recovery technologies and non-key recovery technologies; (d) support the development of a global infrastructure that supports recovery of encrypted information and (e) promote the implementation, deployment and use of interoperable key recovery technologies in the market. In furtherance of the foregoing purposes, KRA may undertake research, development, analysis, testing, study, and experimentation concerning or relating to key recovery technologies, and it may engage in the collection, exchange and analysis of research information concerning key recovery technologies.

Additional parties may become members of KRA. KRA will file supplemental written notifications disclosing all new members.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Michigan Materials and Processing Institute

Notice is hereby given that, on December 16, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Michigan Materials and Processing Institute ("MMPI"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the

Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following companies were recently accepted as Class A Shareholders in MMPI, Lambda Technologies, Inc., Morrisville, NC and Vehicle Recycling Partnership, Southfield, MI. Applied Sciences, Inc., Cedarville, OH and Cybernet Systems Corporation, Ann Arbor, MI are no longer Class A Shareholders in MMPI.

No other changes have been made in the membership or planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notifications disclosing all changes in shareholders.

On August 7, 1990, MMPI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 FR 36710.

The last notification was filed with the Department on April 15, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 22, 1997, 62 FR 28066.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 98-2]

#### Teodoro A. Ando, M.D.; Revocation of Registration

On May 23, 1997, the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Teodoro A. Ando, M.D., (Respondent) of Montoursville, Pennsylvania. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AA8218249, and deny any pending applications for renewal of his registration pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania.

Subsequently, Respondent filed a request for a hearing. While this request was not timely filed, the Government indicated that it did not object to the untimeliness of Respondent's request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October

23, 1997, Judge Bittner issued an Order for Prehearing Statements. On November 13, 1997, the Government filed a Motion for Summary Disposition and Request for Extension of Time to File Prehearing Statement, alleging that Respondent is without state authority to handle controlled substances in the Commonwealth of Pennsylvania. By order dated November 20, 1997, Judge Bittner provided Respondent with an opportunity to file a response to the Government's motion. No response was received from Respondent.

On December 19, 1997, Judge Bittner issued her Opinion and Recommended Decision finding that Respondent lacked authorization to handle controlled substances in the Commonwealth of Pennsylvania; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on January 22, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting 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 Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that by affidavit dated October 27, 1997, the custodian of records for the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine stated that Respondent's license was revoked on March 11, 1996, and remained revoked as of the date of the affidavit. Respondent did not offer any evidence to the contrary, and therefore the Acting Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the Commonwealth of Pennsylvania. The Acting Deputy Administrator further finds it reasonable to infer that Respondent is also not authorized to handle controlled substances in the Commonwealth of Pennsylvania, where he is currently registered with DEA to handle controlled substances.

The 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 his business. 21

U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Here it is clear that Respondent is not authorized to practice medicine or handle controlled substances in the Commonwealth of Pennsylvania. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent is unauthorized to handle controlled substances in Pennsylvania. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983); *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); *United States v. Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting 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 DEA Certificate of Registration AA8218249, previously issued to Teodoro A. Ando, 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 March 30, 1998.

Dated: February 20, 1998.

**Peter F. Gruden,**

*Acting Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Eric Jones, M.D.; Revocation of Registration; Denial of Request To Modify Registration**

On September 18, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Eric E. Jones, M.D., (Respondent) of Atlanta, Georgia, notifying him of an opportunity to show

cause as to why DEA should not revoke his DEA Certificate of Registration BJ2942440, deny any pending applications for modification of his registration to change his address to Georgia, and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) and 824(a)(1) and (a)(3). The Order to Show Cause alleged that Respondent materially falsified his application for renewal of his DEA Certificate of Registration and that he was not currently authorized to handle controlled substances in the State of Georgia.

By letter dated December 15, 1997, Respondent waived his right to a hearing, but submitted a written statement regarding this matter pursuant to 21 CFR 1301.43(c). In addition, the Director of Morehouse School of Medicine's Family Medicine Residency Program submitted a letter in support of Respondent. The Acting Deputy Administrator hereby enters his final order in this matter based upon the investigative file and Respondent's written statement pursuant to 21 CFR 1301.43(e) and 1301.46.

The Acting Deputy Administrator finds that by final order dated June 28, 1994, the Maryland Board of Physician Quality Assurance (Maryland Board) suspended Respondent's license to practice medicine for three years, but stayed the suspension and placed Respondent on probation for a period of three years subject to various terms and conditions. One reason for the Board's action was Respondent's failure to disclose on his renewal application for his Maryland medical license that his clinical privileges and employment at a local hospital had been terminated for disciplinary reasons.

On March 6, 1995, Respondent executed an application for a new DEA Certificate of Registration. The application was preprinted with an address for Respondent in Los Angeles, California. Respondent had crossed out that address and handwritten in an address in Washington, D.C. The Acting Deputy Administrator considers this a request by Respondent to modify his address on his registration to Washington, D.C.

One question on the application, hereinafter referred to as "the liability question," asks, "Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked,

suspended, denied, restricted or placed on probation?" Respondent answered "no" to this question.

On February 4, 1997, Respondent submitted a request to further modify his registration by changing his address to a location in Atlanta, Georgia. Respondent noted on this request that, "I do not hold a Georgia License." A letter from the Georgia Composite State Board of Medical Examiners dated August 11, 1997, states that "Eric E. Jones is not now nor has he ever been licensed as a physician in the State of Georgia."

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by component State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a-7(a) of Title 42.

The Acting Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the State of Georgia, where he wants to modify his DEA registration. Respondent, in his written statement, concedes that he does not possess a Georgia medical license. The Acting Deputy Administrator further finds that since Respondent is not currently authorized to practice medicine in the State of Georgia, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the 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