

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator concludes, for the purposes of this application, that Payne Sales and TNT are effectively identical entities. The Administrator finds the DEA investigation reveals that the businesses share the same space, address, and telephone number; that there appears no evidence that the businesses are physically separated in any way; that TNT employees have equal and complete access to all of Payne Sales space and products; that the same TNT representatives who pleaded guilty to felony violations set forth in the August 1998 indictment are present within the shared Payne Sales/TNT space; Peggy Joe Payne maintains personal relationships with her convicted ex-husband Fred Thornell and the two other convicted representatives of TNT; she also relies on her ex-husband Fred Thornell regarding the business operation of Payne Sales; the only sign on the exterior of the building indicates "TNT Marketing Wholesale Novelities;" their products are co-mingled; their customer lists overlap; when the telephone number is dialed; the telephone is answered "TNT Marketing Payne Sales;" and there is no county business certification on file in the county records for Payne Sales as required by local law as there is for TNT. Therefore, the Administrator considers the past conduct of TNT to be relevant to Payne Sales' present application. As previously noted, listed chemicals were sold by TNT, despite DEA warnings, under circumstances that TNT knew or had reasonable cause to believe that the listed chemicals would be used to unlawfully manufacture a controlled substance. Evidence from the case file shows TNT attempted to conceal seven shipments totaling 2,760 cases of listed chemicals from DEA scrutiny by labeling the product shipped as "OTC (over the counter) vitamins." In addition, TNT failed to create proper invoice records for these shipments, in violation of 21 CFR 1310.06, and further failed to make any report to DEA of these regulated transactions, in violation of 21 CFR 1310.05(a). TNT pleaded guilty to a felony violation of 21 U.S.C. 841(d)(2) and 846, while Fred Thornell and another representative pleaded guilty to felony violations of 21 U.S.C. 830(b)(1)(A) and 842(a)(10) and another representative pleaded guilty to a felony violation of 21 U.S.C. 843(a)(7). TNT was required to pay \$100,000 in fines, and the three convicted TNT representatives were placed on two

years' probation. TNT and its convicted representatives were forbidden to apply for DEA registration, or to engage in the distribution of controlled substances or listed chemicals, for a period of ten years. Furthermore, Peggy Joe Payne stated to a DEA investigator that she conducted most of her business from her home; therefore, she would not be on the premises, leaving TNT's convicted representatives free reign over the shared business premises. As previously noted, there is no evidence in the DEA investigative file of effective controls against diversion.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Payne Sales. The applicant has failed to demonstrate that it has effective controls against the diversion of listed chemicals. Additionally, the evidence indicates that for the purposes of this application that Payne Sales and TNT are virtually indistinguishable, that Peggy Joe Payne continues to rely on her convicted ex-husband Fred Thornell to operate Payne Sales, and that the demonstrated record of felony violations of TNT and its representatives regarding the distribution of listed chemicals present a grave risk of future diversion.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Payne Sales be denied. This order is effective April 19, 2001.

Dated: March 8, 2001.

Donnie R. Marshall,
Administrator.

[FR Doc. 01-6908 Filed 3-19-01; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Frank R. Pennington, M.D.; Denial of Application

On February 2, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Frank R. Pennington, M.D., notifying him of an opportunity to show cause as to why the DEA should not deny his pending application, dated September 10, 1996, for a DEA Certificate of Registration as a practitioner, pursuant to 21 U.S.C. 824(a)(3), for the reason that he is not currently authorized to handle

controlled substances in the State of Tennessee. The order also notified Dr. Pennington that, should no request for hearing be filed within 30 days, his right to a hearing would be considered waived.

The DEA mailed the show cause order to Dr. Pennington by certified mail to two separate addresses, and received postal return receipts from each. No request for a hearing or any other response was received by DEA from Dr. Pennington or anyone purporting to represent him in this matter, however. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Dr. Pennington is deemed to have waived his right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46(1999).

The Administrator finds that on December 14, 1994, Dr. Pennington surrendered his previous DEA Certificate of Registration, Number AP7244445, following his felony conviction by the United States District Court for the Western District of Tennessee of obtaining controlled dangerous substances by fraud or deceit on October 27, 1994. Dr. Pennington's previously revoked medical license was reinstated by the Tennessee Board of Medical Examiners on November 20, 1996, pursuant to an application by Dr. Pennington dated September 10, 1996. On October 21, 1999, in the United States District Court for the Western District of Tennessee, Dr. Pennington pleaded guilty to a felony count of unlawful possession with intent to distribute a Schedule II controlled substance. By order dated November 9, 1999, the Tennessee Board of Medical Examiners revoked Dr. Pennington's license to practice medicine in the State of Tennessee. There is no evidence in the investigative file that Dr. Pennington's medical license has been reinstated since that time. Therefore, the Administrator finds that Dr. Pennington is not currently authorized to practice medicine in the State of Tennessee and as a result, it is reasonable to infer that he also is not authorized to handle controlled substances in that State.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to 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. See 21 U.S.C. 802(21), 823(f), and

824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See *Romeo J. Perez*, M.D., 62 FR 16, 193 (DEA 1997); *Demetris A. Green*, M.D., 61 FR 60,728 (DEA 1996); *Dominick A. Ricci*, M.D., 58 FR 51,104 (DEA 1993). Here it is clear that Dr. Pennington is not currently authorized to handle controlled substances in the State of Tennessee. As a result, he is not entitled to a DEA registration in that State.

Accordingly, the 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 application for a DEA Certificate of Registration submitted by Frank R. Pennington, M.D. be denied. This order is effective April 19, 2001.

Dated: March 8, 2001.

Donnie R. Marshall,
Administrator.

[FR Doc. 01-6909 Filed 3-19-01; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Challenge to the Employment-Based Healthcare System Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, April 10, 2001, of the Advisory Council on Employee Welfare and Pension Benefits Plans Working Group assigned to study the challenge to the employment-based healthcare system.

The session will take place in Room N-5437 A-D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon., is for working group members to organize their study efforts for the year and by beginning to take testimony on the future of employment-based health care. Rising health care costs and increased regulation have caused some employers to question whether or not they want to continue to participate in this voluntary system.

Working Group chair is Carl Camden, executive vice president of field operations, sales and marketing for Kelly Services, Inc., Troy, Mich. Vice chair is Ronnie Susan Thierman, senior

consultant, William M. Mercer, Inc., San Francisco, Calif.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 1, 2001, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 1.

Signed at Washington, DC this 13th day of March 2001.

Alan D. Lebowitz,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01-6782 Filed 3-19-01; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Planning for Retirement Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Monday, April 9, 2001, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study planning for retirement.

The session will take place in Room N-5437 A-C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., is for working group members to decide what course their study will take during 2001 and to begin taking testimony on the issue to include

considerations retirees should address for their "golden years"—sources of retirement income (Social Security, personal savings, pay outs (lump sum or annuities) from employer-sponsored defined benefit and/or defined contribution plans) as well as what healthcare costs they can anticipate. With a substantial percentage of the American workforce rapidly approaching the traditional retirement window, the question is whether they are appropriately prepared for this transition. The working group will explore what employees need to do to best prepare for this transition.

Named as chair of the working group is Thomas M. McMahon, senior vice president of finance and administration at the Pacific Maritime Association in San Francisco, Calif. and the vice chair is Norman Stein, law professor at the University of Alabama at Tuscaloosa. Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 1, 2001, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 1.

Signed at Washington, DC this 13th day of March 2001.

Alan D. Lebowitz,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

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