

probationary period was over did not justify a negative answer to the question, as it asked whether the applicant "ever" had discipline take against a state license.

The Deputy Administrator also agrees with Judge Bittner's conclusions, made after observing Respondent's demeanor, that "Respondent's explanations for the misstatements and his continued insistence that his answers were correct are disingenuous at best" and that he materially falsified the applications, which establishes grounds for revoking his registrations under 21 U.S.C. 824(a)(1).²

As Judge Bittner notes in her Opinion and Recommended Ruling, the governing statute is discretionary. See Mary Thomson, M.D. 65 FR 75,969 (2000). In exercising discretion in determining the appropriate remedy in any given case, the Deputy Administrator considers all the facts and circumstances of the case. See Martha Hernandez, M.D., *supra*, 62 FR 61,145.

In recommending revocation of Respondent's registrations, Judge Bittner concluded,

False statements on an application for DEA registration withhold from DEA information that is germane to the applicant's fitness to hold that registration. Kuen H. Chen, M.D., 58 FR 65401 (DEA 1993). Further, as discussed above, Respondent insisted that his answers to the questions on his 1998 and 2001 applications for renewal of his DEA registrations were accurate.

They were not. In addition and also discussed above, Respondent's explanations of his answers on these applications were at best disingenuous. Respondent's cavalier attitude toward his responsibility to truthfully answer questions on the application raises serious concerns about whether he is willing to accept the other responsibilities inherent in a DEA registration.

The Deputy Administrator has examined the record and finds the facts and credibility determinations of Judge Bittner to be well supported by the evidence. While the record does not establish that Respondent's continued

registration would be inconsistent with the public interest, he materially falsified four applications for renewal of registration, which constitutes an independent ground for revocation.

The Deputy Administrator shares Judge Bittner's concern regarding Respondent's on-going refusal or inability to acknowledge a registrant's responsibility to provide forthright and complete information to DEA, when required to do so as a matter of law or regulation. This attitude, reflected most recently in his testimony at the hearing under oath, does not auger well for his future compliance with the responsibilities of a registrant.

Accordingly, the 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 the DEA Certificates of Registration BP3420344 and BP4416029, issued to Felix K. Prakasam, M.D., be, and hereby are, revoked. The Deputy Administrator further orders that any pending applications to renew or modify said registrations be denied. This order is effective July 7, 2005.

Dated: May 25, 2005.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05-9]

Roger A. Rodriguez, M.D., Denial of Registration

On October 8, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Roger A. Rodriguez, M.D. (Respondent) of Peoria, Illinois, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 823(f).

As a basis for denial, the Order to Show Cause alleged, in substance, that Respondent: (1) Issued prescriptions and dispensed controlled substances to undercover law enforcement personnel on multiple occasions without an adequate physical examination or bona fide medical reason; (2) failed to maintain required controlled substance records; and (3) surrendered a prior DEA registration on June 19, 2003, and then used another practitioner's DEA

registration number to issue a prescription for controlled substances.

Respondent, through counsel, timely requested a hearing in this matter. On November 22, 2004, the Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued the Government, as well as Respondent, an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition. In its motion the Government asserted that as of December 20, 2004, Respondent was no longer authorized to handle controlled substances in Illinois, his state of applied-for registration. As a result, further proceedings in this matter were not required. Attached to the Government's motion was a copy of the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation (Illinois Board) Order dated December 20, 2004. That Order temporarily suspended Respondent's Illinois medical license and state Controlled Substances Registration, pending further proceedings before the Illinois Board.

On January 4, 2005, Judge Bittner issued a Memorandum to Counsel providing Respondent until January 18, 2005, to respond to the Government's motion. Respondent then filed a motion on January 14, 2005, seeking an extension of time to file his response to the Government's motion. In it, he claimed there was a hearing scheduled before the Illinois Board on January 18, 2005, which could impact the suspension order. Over the Government's objections, Judge Bittner granted Respondent an extension until February 8, 2005, to file his response.

On February 8, 2005, Respondent filed his Response to the Motion for Summary Disposition. In that response he did not contest that his medical and controlled substance licenses were then-suspended, but asserted he was in negotiations with the Illinois Board that might result in an agreed-to four-month suspension of his medical license. Respondent asked Judge Bittner to stay action on the Government's motion until the state disciplinary proceeding was resolved.

On February 16, 2005, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner denied Respondent's request to stay the proceedings and granted the Government's Motion for Summary Disposition, finding Respondent lacked authorization to handle controlled substances in Illinois, the jurisdiction

² Respondent signed the Consent Order with the Louisiana Board on February 2, 2001, however it was not effective until March 20, 2001. Judge Bittner noted that the 2001 DEA applications, which Respondent signed on February 27 and 28, 2001, did not specifically ask whether any disciplinary proceedings were then "pending." Accordingly, she concluded that, "at least arguably, Respondent was not required to disclose the Louisiana action inasmuch as it was not effective until March 20, 2001." While, given the wording of the application's questions, Respondent's omissions in failing to report this action may not have amounted to material misrepresentations under 21 USC 824(a)(1), it demonstrates his willingness to draw exceptionally fine lines in dealing with DEA regulators.

where he was applying for registration. Judge Bittner recommended that Respondent's application for a DEA Certificate of Registration be denied.

No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision and on March 22, 2005, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent previously held DEA Certificate of Registration BR4105032, which he surrendered on June 19, 2003, while a Federal Search Warrant was being executed upon his medical office. Three weeks later, Respondent filed the application for DEA registration which is the subject of these proceedings.

The Deputy Administrator further finds that, effective December 20, 2004, Respondent's license to practice medicine in Illinois and his Illinois Controlled Substances Registration were temporarily suspended, pending further proceedings, after the Illinois Board found "the public interest, safety, and welfare imperatively require emergency action to prevent the continued practice of the Respondent, in that Respondent's actions constitute an immediate danger to the public." The Illinois Board's action was based primarily on the facts alleged in DEA's Order to Show Cause, coupled with Respondent's violation of an Agreement of Care, Counseling and Treatment, which he had entered into with state authorities.

The Deputy Administrator therefore finds Respondent is currently not licensed to practice medicine in Illinois and lacks 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* Stephen J. Graham, M.D., 69 FR 11,661 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Denial or revocation is also appropriate when a state license has been suspended, but with the possibility of future

reinstatement. *See* Paramabalothe Edwin, M.D., 69 FR 58,540 (2004); Alton E. Ingram, Jr., M.D., 69 FR 22,562 (2004); Anne Lazar Thorn, M.D., 62 FR 847 (1997).

Here, it is clear Respondent is not currently licensed to handle controlled substances in Illinois, the jurisdiction in which he has applied for a DEA registration. Therefore, he is not entitled to registration in that state.

Accordingly, the 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 the application for a DEA Certificate of Registration submitted by Roger A. Rodriguez, M.D., be, and it hereby is, denied. This order is effective July 7, 2005.

Dated: May 25, 2005.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert A. Smith, M.D., Revocation of Registration

This order serves as a correction of the final order previously issued in this matter and published on May 10, 2005. On September 29, 2004, the Deputy Administrator, Drug Enforcement Administration (DEA), issued an Order to Show Cause/Immediate Suspension of Registration to Robert A. Smith, M.D. (Dr. Smith) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AS6932669 under 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of that registration under 21 U.S.C. 823(f). Dr. Smith was further notified that his registration was being immediately suspended under 21 U.S.C. 824(d) as an imminent danger to the public health and safety.

The Order to Show Cause alleged in relevant part, that Dr. Smith diverted controlled substances for a substantial time by knowingly issuing fraudulent prescriptions to individuals, without a bona fide doctor-patient relationship or legitimate medical purpose. The Order to Show Cause also notified Dr. Smith that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

On October 20, 2004, a DEA investigator personally served the Order to Show Cause/Immediate Suspension

of Registration on Dr. Smith's attorney at Respondent's medical office in Philadelphia, Pennsylvania. Since that date, DEA has not received a request for a hearing or any other reply from Dr. Smith or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since personal delivery of the Order to Show Cause/Immediate Suspension of Registration to the registrant and (2) no request for hearing having been received, concludes that Dr. Smith is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12,579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Smith is registered with DEA as a practitioner under Certificate of Registration AS6932669 with a registered location at 1420 Locust Street, Suite 200, Philadelphia, Pennsylvania. In May 2003, DEA began investigating Dr. Smith as a result of complaints from area pharmacies that were encountering large numbers of young, seemingly healthy individuals, filling prescriptions issued by Dr. Smith for OxyContin and Percocet, both schedule II controlled substances. These individuals paid cash for their prescriptions and appeared to be traveling long distances to have them prescribed and filled.

On June 27, 2003, Independence Blue Cross (IBC) insurance investigators interviewed IBC beneficiary "H.B." regarding prescriptions for OxyContin, Percocet and Methadone which had been issued by Dr. Smith under her name and insurance data. H.B. had never seen or heard of Dr. Smith and had no medical conditions warranting the prescriptions. It was also established that H.B.'s son's father, "M.P.," was a heroin addict and that M.P.'s sister, "L.P.," who also had a history of narcotic's abuse, worked for Dr. Smith as his office assistant.

On July 9, 2003, NBC investigators interviewed "C.P.," who was L.P.'s sister. IBC's records reflected that on May 10, 2003, Dr. Smith issued prescriptions for Percocet and Alprazolam (Xanax), a schedule IV controlled substance, using C.P.'s name and policy, which were then paid for by insurance company. Investigators determined C.P. had never met or been examined by Dr. Smith, that she did not receive the prescriptions written in her name and had no medical conditions warranting them.