

Karen C. Grant.

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Michael W. Dietz, D.D.S.; Denial of Application

On July 24, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Michael Wayne Dietz, D.D.S., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not deny his application dated June 21, 1999, for registration as a practitioner, pursuant to 21 U.S.C. 823(f), on the grounds that such registration would be inconsistent with the public interest. The order also notified Respondent that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

By letter dated August 21, 2000, the Respondent, acting *pro se*, requested a hearing in this matter. On September 7, 2000, Administrative Law Judge Gail A. Randall issued an Order for Prehearing Statements, and also mailed a letter to Respondent informing him of his right to representation in these proceedings, attaching a copy of 21 CFR 1316.50 (2000) to her letter.

On September 11, 2000, Judge Randall timely received the Government's Prehearing Statement. By letter dated September 21, 2000, the Respondent requested an extension of three months from his October 19, 2000, filing date to retain counsel and to address documents mentioned in the Government's Prehearing Statement. Judge Randall stayed these proceedings in an Order, issued October 2, 2000, and allowed the Government an opportunity to respond to the Respondent's request.

On October 3, 2000, Judge Randall received the Government's Objection to Request for Extension. On October 6, 2000, Judge Randall issued an Order that extended Respondent's filing date and directed the Respondent to file a prehearing statement on or before November 9, 2000. The Order included a warning that no further extensions in this matter would be granted absent extraordinary circumstances. There is no evidence in the investigative file that Respondent responded in any fashion to Judge Randall's October 6, 2000, Order.

The Administrator of the Drug Enforcement Administration, having

completely reviewed the investigative file in this matter, hereby issues his final order without a hearing, pursuant to 21 CFR 1301.43(d) and 1301.46 (2001).

When a party fails to file a prehearing statement, that failure is deemed a waiver of that party's right to a hearing. See Bill Loyd Drug, 64 FR 1823 (1999). Upon a finding of a waiver by the Administrative Law Judge, the record is transmitted to the Deputy Administrator's office for entry of a final order based upon the investigative file. See *id.* See also 21 CFR 1301.43(e) (2001).

In the instant matter, the Respondent received the Order for Prehearing Statements, as evidenced by his request for an extension of time. Moreover, the Respondent had ample time to respond, especially considering that an extension of more than one month was granted by Judge Randall. To date, Respondent has offered no submissions or explanations for his failure to continue his action. The Administrator concurs with Judge Randall's conclusion that the Respondent has waived his right to a hearing, and that this matter is now properly before the Administrator for the entry of his final order without a hearing, pursuant to the authority cited above.

The Administrator finds as follows. By Order dated May 15, 1999, and published at 64 FR 15805, the then-Deputy Administrator revoked Dr. Dietz's DEA Certificate of Registration, based on his lack of state authorization to practice dentistry. The investigative file reveals that Respondent's license to practice dentistry was revoked by Order of the Tennessee Board of Dentistry (Board) dated May 27, 1998, based upon unprofessional conduct, personal misuse of controlled substances, and dispensing, prescribing, or otherwise distributing controlled substances not in the course of professional practice. Respondent was also assessed civil penalties in the amount of \$4,000, and was required to contract with and maintain the advocacy of the Concerned Dentists Committee, and to seek treatment and rehabilitation for his drug addiction. By Order dated May 13, 1999, the Board reinstated Respondent's license to practice dentistry. Conditions of this reinstatement were that Respondent maintain the contract with the Concerned Dentists Committee, and be on probation for five years. Respondent applied for a new DEA Certificate of Registration by application dated June 21, 1999.

The Board was subsequently notified on January 14, 2000, by the Concerned Dentists Committee that Respondent

had tested positive for cocaine, and had refused treatment. A hearing before the Board was scheduled to determine what action should be taken with regard to Respondent's state dentistry license. Respondent subsequently entered treatment, which postponed the hearing and resulted in his license to practice dentistry being suspended indefinitely.

Thereafter, in a Notice of Charges and Memorandum of Assessment of Civil Penalty (Notice) dated March 20, 2000, the Board proposed a penalty of \$1,000 for Respondent's violation of his probation, and set the matter for hearing on May 11, 2000. The Notice also informed Respondent that the issues to be considered would include "whether the proposed civil penalty shall be affirmed or whether a different type and amount of civil penalty is justified and assessable and/or whether the Respondent's license shall be revoked, suspended or otherwise disciplined."

Pursuant to 21 U.S.C. 823(f), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires the following factors be considered in determining the public interest:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16422 (DEA 1989).

The Administrator has reviewed the five factors, and finds that factors (2), (3), (4), and (5) are most relevant to the instant matter.

Specifically, the Administrator finds with regard to factor two that Respondent was convicted of two felony violations of unlawfully distributing a controlled substance, and further that his state dentistry license was revoked

based *inter alia* on his personal misuse of controlled substances; and therefore concludes that Respondent clearly mishandled controlled substances in the past, and failed to comply with laws relating to controlled substances. See Robert A. Leslie, 64 FR 25908 (1999). Respondent apparently continues to mishandle controlled substances, as evidenced by the January 14, 2000, report of the Concerned Dentists Committee to the Board regarding Respondent's testing positive for cocaine use, in violation of his probation.

With regard to factor three, the investigative file reveals Respondent was convicted on or about January 6, 1999, in the Criminal/Circuit Court of Putnam County, Tennessee, of two felony violations of unlawfully distributing the Schedule II controlled substance cocaine. Respondent was sentenced to five years imprisonment, with all but ninety days suspended.

With regard to factor four, the Administrator finds that the investigative file reveals Respondent tested positive for the use of cocaine, as set forth in the January 14, 2000, report from the Concerned Dentists Committee to the Board, in violation of his probation. The Administrator therefore finds that Respondent continues to violate State and federal laws relating to controlled substances.

With regard to factor five, the Administrator finds that the investigative file reveals substantial evidence that Respondent is a self-abuser, in that he ingests controlled substances for no legitimate medical reason. This is evidenced not only by the January 14, 2000, report set forth in factor four above, but also by evidence that Respondent's license to practice dentistry was revoked by the Board by Order dated May 27, 1998, for *inter alia* personal misuse of controlled substances. This pattern of self-abuse does not bode well for the health and safety of Respondent's patients, nor for Respondent's future compliance with State and Federal laws and regulations relating to controlled substances.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant Respondent's application.

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 Michael Wayne Dietz, D.D.S., be, and it hereby

is, denied. This order is effective November 19, 2001.

Dated: October 10, 2001.

**Asa Hutchinson,**  
Administrator.

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **William Echandy-Ochoa, M.D.; Revocation of Registration**

The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC), dated June 26, 2000, by certified mail to William Echandy-Ochoa, M.D., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BE4263206, pursuant to 21 U.S.C. 824(a)(2) and (3), and deny any pending applications for renewal or modification of this registration, pursuant to 21 U.S.C. 823(f). The OTSC stated that Respondent's license to practice medicine in the jurisdiction in which Respondent practices, Puerto Rico, was revoked, and that Respondent had been convicted, in Puerto Rico, of a felony related to the distribution of controlled substances. By letter dated July 19, 2000, Respondent, through counsel, requested a hearing in this matter.

On August 9, 2000, Administrative Law Judge Gail A. Randall issued an Order for Prehearing Statements. On August 10, 2000, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition. On August 14, 2000, Judge Randall issued an Order allowing Respondent until August 29, 2000, to respond to the Government's motion, and stayed the proceeding pending the resolution of the Government's motion. Following some procedural confusion, the Respondent on October 10, 2000, filed a Motion to Withdraw Allegations to the Honorable Administration, admitting that his license to practice medicine in Puerto Rico was revoked, and requesting that summary disposition be entered in favor of the Government. Judge Randall rendered her Opinion and Recommended Ruling on October 16, 2000, recommending that Respondent's DEA registration be revoked, and any pending renewal applications be denied. On November 21, 2000, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator.

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

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 or she practices. See 21 U.S.C. 823(f) and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Saihb S. Halil, M.D., 64 FR 33319 (1999) (noting the rule in a matter involving a registration for Puerto Rico); Diodo Leduc, d/b/a Farmacia Leduc, 51 FR 12751 (1986) and cases cited therein; see also Graham Travers Schuler, M.D., 65 50570 (2000); 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).

In the instant case, the Administrator finds the Respondent affirmatively concedes that, currently, he is not authorized to handle controlled substances in Puerto Rico, and there is no evidence in the record that Respondent maintained a medical practice anywhere else. Furthermore, Respondent affirmatively requests that the Government's Motion for Summary Disposition be granted. Thus, there is no genuine issue of material fact; in fact, there is no dispute at all.

The Administrator concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Michael G. Dolin, M.D., 65 FR 5661 (2000); Jesus R. Juarez, M.D., 62 FR 14945 (1997); see also Philip E. Kirk, M.D., 48 FR 32887 (1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

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 DEA Certificate of Registration BE4263206, issued to William Echandy-Ochoa, M.D., be, and it hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be denied. This order is effective November 19, 2001.