

Nonetheless, a DEA registration carries with it the responsibility to ensure that controlled substances are only prescribed for a legitimate medical purpose thereby preventing the diversion of these potentially dangerous substances from legitimate channels. Therefore, the Acting Deputy Administrator concludes that some monitoring of Respondent's controlled substance handling practices and some training in the proper handling of controlled substance is necessary to protect the public health and safety.

Thus, the Acting Deputy Administrator concludes that Respondent's DEA registration should be continued subject to the following conditions:

(1) For a period of two years from the effective date of this order, Respondent shall be required to submit to the DEA San Diego Field Division for review every three months, a log of his prescribing, dispensing and administering of controlled substances. This log shall include, at a minimum, the date of the prescribing, dispensing and administering, the name of the patient, and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed.

(2) Within three months of the effective date of this order, Respondent shall provide to the DEA San Diego Field Division evidence of the successful completion of at least 24 hours of training in the proper handling of controlled substances.

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 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AT1241847, issued to Donald P. Tecca, M.D., be continued, and any pending applications be granted, subject to the above conditions. This order is effective April 17, 1997.

James S. Milford,
Acting Deputy Administrator.

Dated: March 4, 1997.

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[Docket No. 96-31]

Anne Lazar Thorn, M.D. Revocation of Registration

On April 15, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Anne Lazar Thorn, M.D. (Respondent), of Lafayette,

Louisiana, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, AT6512152, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that effective October 18, 1993, the Louisiana State Board of Medical Examiners indefinitely suspended her license to practice medicine and as a result, she is not currently authorized to handle controlled substances in the State of Louisiana.

By letter dated April 29, 1996, Respondent, acting pro se, filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On May 3, 1996, Judge Bittner issued an Order for Prehearing Statements. On May 24, 1996, in lieu of filing such a statement, the Government filed a Motion for Summary Disposition and to Stay Proceedings, asserting that "Respondent is without state authorization to handle controlled substances at this time." Attached to the motion was a copy of the Louisiana State Board of Medical Examiners (Board) decision dated October 18, 1993, indefinitely suspending Respondent's license to practice medicine and a copy of a letter from the Board notifying DEA that Respondent's license to practice medicine in the State of Louisiana was suspended.

On June 3, 1996, the Administrative Law Judge received a letter from an attorney indicating that he had been retained to represent Respondent, and on June 21, 1996, counsel for Respondent filed a Memorandum in Opposition to Government's Motion for Summary Disposition and Motion to Stay Proceedings. Respondent did not deny that she is currently without authority to handle controlled substances in the State of Louisiana. However, she argued that 21 U.S.C. 824(a) provides for the Deputy Administrator to use his discretion in determining whether to revoke or suspend a registration because of lack of state authority to handle controlled substances and that a hearing is necessary to determine what action should be taken against Respondent's registration. Respondent further argues that this matter is not yet ripe for determination since Respondent has not "had the opportunity to present her evidence with supporting testimony concerning her current fitness to practice medicine, or the steps which she is taking to seek the reinstatement

of her license to practice medicine in the State of Louisiana."

On July 25, 1996, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent is not currently authorized to handle controlled substances in the State of Louisiana; that she is bound by DEA's interpretation of the Controlled Substances Act that, pursuant to 21 U.S.C. 823(f) and 802(21), a petitioner may not hold a DEA registration without state authority to handle controlled substances; that since no material question of fact is involved, a hearing is not necessary; and that while the statute provides for the revocation or suspension, revocation is appropriate in this case since there is no indication that Respondent's state license will be reinstated any time soon. Accordingly, Judge Bittner granted the Government's Motion for Summary Disposition and recommended that the Respondent's DEA Certificate of Registration be revoked.

On August 8, 1996, Respondent filed with the Administrative Law Judge a Motion for Reconsideration and/or to Alter or Amend Judgment (Motion for Reconsideration). Respondent argued that the Board suspended her license indefinitely, rather than revoking it entirely, and that it would remain suspended until further order of the Board. Respondent asserted that the only evidence before the Administrative Law Judge in rendering her recommended decision was the order of the Board dated October 18, 1993 and that "a great deal has transpired with respect to Respondent's license to practice medicine and the steps she has taken to have her license reinstated." Respondent argued that she should be given an opportunity for a hearing regarding her DEA registration in order to outline the steps she has taken to have her state license reinstated, and that the evidence which would have been presented at a hearing would have aided the Administrative Law Judge in deciding whether to recommend revocation or suspension of Respondent's registration. Respondent contended that "the decision to permanently revoke a physician's registration to distribute drugs is a serious sanction, and is one which should not be rendered without considering all of the evidence in a particular case."

Therefore, Respondent requested that the Administrative Law Judge reconsider her decision to deny Respondent the opportunity for a hearing, or in the alternative, that the Administrative Law Judge alter her recommendation from revocation to

suspension of Respondent's registration. On August 14, 1996, Judge Bittner issued a Ruling denying Respondent's Motion for Reconsideration as lacking in merit. Neither party filed exceptions to her Opinion and Recommended Decision, and on August 26, 1996, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 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.

DEA has consistently interpreted the Controlled Substances Act to preclude a practitioner from holding a DEA registration if the practitioner is without authority to handle controlled substances in the state in which he/she practices. See 21 U.S.C. 823(f) (authorizing the Attorney General to register a practitioner to dispense controlled substances only if the applicant is authorized to dispense controlled substances under the laws of the state in which he or she practices); and 21 U.S.C. 802(21) (defining a practitioner as one authorized by the United States or the state in which he or she practices to handle controlled substances in the course of professional practice or research). This prerequisite has been consistently upheld. See Rita M. Coleman, M.D., 61 FR 35,816 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Roy E. Hardman, M.D., 57 FR 49,195 (1992); and Bobby Watts, M.D., 53 FR 11,919 (1988).

The Acting Deputy Administrator finds that the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is whether the Respondent is currently authorized to handle controlled substances in the state. In the instant case, it is undisputed that Respondent is not currently authorized to handle controlled substances in the State of Louisiana. Therefore, as Judge Bittner notes, Respondent "is not currently entitled to a DEA registration."

The Acting Deputy Administrator concludes that Judge Bittner properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in Louisiana. 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 Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd sub nom.* Kirk versus Mullen, 749 F.2d 279 (6th Cir. 1984); Alfred Tennyson Smurthwaite, M.D., 43 FR 11,873 (1978); see also NLRB versus International Association of Bridge, Structural and Ornamental Ironworks, AFL-CIO, 549 F.2d 634 (9th Cir. 1977); United States versus Consolidated Mines & Smelting Co., 44 F.2d 432 (9th Cir. 1971).

In her Motion for Reconsideration, Respondent argued that the permanent revocation of a registration is a serious sanction and "should not be rendered without considering all of the evidence in a particular case." The Acting Deputy Administrator notes that the revocation of Respondent's registration is not permanent. Respondent may reapply for a new DEA registration when her state privileges to handle controlled substances are reinstated. Further, the Acting Deputy Administrator recognizes that he has the discretionary authority to either revoke or suspend a DEA registration. However, given the indefinite nature of the suspension of Respondent's state license to practice medicine, the Acting Deputy Administrator agrees with Judge Bittner that revocation is appropriate in this case.

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 C.F.R. 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AT6512152, issued to Anne Lazar Thorn, M.D., be, and it hereby is, revoked, and that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective April 17, 1997.

Dated: March 4, 1997.
James S. Milford,
Acting Deputy Administrator.
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Office of Justice Programs

[OJP(BJA)-1116]

RIN 1121-ZA62

State Criminal Alien Assistance Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Notice of proposed guidelines.

SUMMARY: This notice is to request comment on the proposed guideline on

the application process for States and political subdivisions to obtain reimbursement for the incarceration of undocumented criminal aliens under the State Criminal Alien Assistance Program.

DATES: Comments on this proposed guideline must be received on or before April 22, 1997.

Final guidelines and application information will be published and issued within 30 days of the end of this comment period and applicants will be given at least 30 working days to make that application.

ADDRESSES: Comments may be mailed to: Office of Justice Programs, Office of the General Counsel, 633 Indiana Avenue, NW, Room 1245, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Linda James McKay, SCAAP Coordinator, State and Local Assistance Division, Bureau of Justice Assistance, or the Department of Justice Response Center, 1-800-421-6770 or 202-307-1480.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided: The State Criminal Alien Assistance Program (SCAAP) provides reimbursement for certain criminal aliens who are incarcerated in State and local correctional facilities. The program is administered by the Bureau of Justice Assistance (BJA), which is part of the Office of Justice Programs (OJP) in the Department of Justice. The program is authorized and governed by the provisions of the Immigration and Nationality Act of 1990, as amended, 8 U.S.C. 1251(i), originally enacted as part of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322) at section 20301.

This section provides the authority, at the option of the Attorney General whenever an appropriation is made, to either reimburse States and localities for costs incurred in incarcerating qualifying criminal aliens or take such aliens into Federal custody. For Fiscal Year 1997 (FY 1997), the Attorney General has delegated the authority to implement the program to BJA. BJA is a criminal justice grant making and administrative agency within the Department of Justice and, thus, has no ability to take custody. Therefore, SCAAP will continue to be administered only as a reimbursement program. For FY 1997, \$500,000,000, less administrative costs, is available for reimbursement payments under SCAAP.

For FY 1997, records related to all foreign-born inmates with one felony or two misdemeanor convictions who are or have been incarcerated within a State