

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97-20]

Alan R. Schankman, M.D.; Grant of Registration

On June 3, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Alan R. Schankman, M.D., (Respondent) of California, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

1. Between June 1988 and August 1989, you submitted numerous claims in excess of \$56,000 to Medicare, by billing for services that were not rendered, and as a result, you obtained fees to which you were not entitled.

2. As a result of your billing practices, on January 28, 1991, in the Superior Court of the State of California for the County of Los Angeles, you were charged by information with 32 felony counts of grand theft, and four felony counts of attempted grand theft. Following a jury trial, on December 17, 1991, you were convicted on all 36 counts, and subsequently sentenced to 16 months imprisonment, a fine of \$330,000, a penalty assessment of \$264,000, and ordered to pay restitution of \$56,000 to the United States government. On April 7, 1994, the Court of Appeals of the State of California, Second Appellate District, affirmed your criminal conviction.

3. As a result of your conviction, on May 8, 1992, you were notified by the Department of Health and Human Services of your ten-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a-7(a).

4. On September 20, 1993, the Medical Board (Board) of California brought an accusation against your license to practice medicine in that State. Following your entering into a stipulation with the Board, on June 28, 1995, the Board ordered, *inter alia*, the revocation of your medical license, however, the revocation was stayed, and your medical license was suspended for one year followed by probation for a period of five years.

By letter dated July 1, 1997, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed by Administrative Law Judge Gail Randall. On July 10, 1997, Judge Randall issued an Order for Prehearing Statements, which cautioned "that failure to file timely a prehearing statement as directed above may be considered a waiver of hearing and an implied withdrawal of a request for hearing." In

an Order dated August 26, 1997, Judge Randall advised the parties that she had not yet received a prehearing statement from Respondent. Respondent was given until September 19, 1997, to file his prehearing statement and was again warned that "[i]f Respondent fails to file a prehearing statement by this date, I will consider his inaction a waiver of his right to a hearing and a withdrawal of his request for hearing." On September 22, 1997, Judge Randall terminated the proceedings before her, since Respondent failed to file a prehearing statement, and was therefore deemed to have waived his right to a hearing.

The Acting Deputy Administrator finds that Respondent has waived his right to a hearing and therefore now enters his final order without a hearing and based upon the investigative file pursuant to 21 CFR 1301.43(e) and 1301.46.

The Acting Deputy Administrator finds that the Department of Health and Human Services conducted an investigation of Respondent that revealed that Respondent billed Medicare and Medi-Cal for services not rendered. As a result, on December 17, 1991, Respondent was convicted in the Superior Court of the State of California for the County of Los Angeles of 32 felony counts of grand theft and 4 felony counts of attempted grand theft. Respondent was sentenced to 16 months imprisonment on each count to run concurrently, fined \$330,000 and a \$264,000 penalty assessment, and ordered to make restitution to the United States in the amount of \$56,000.

By letter dated May 8, 1992, the Department of Health and Human Services (DHHS) notified Respondent that pursuant to 42 U.S.C. 1320a-7(b) he was being excluded for 10 years from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs.

In a Decision effective September 21, 1995, the Medical Board of California revoked the Physician's and Surgeon's Certificate of Respondent, but stayed the revocation and placed him on probation for five years. As part of the probation, Respondent was suspended from the practice of medicine for one year beginning on December 14, 1994.

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

(1) The recommendation of the appropriation 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 Deputy Administrator may rely on any one or a 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. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

In addition, it is well-settled that the Deputy Administrator may deny an application for registration if a basis exists for revocation of a registration under 21 U.S.C. 824(a). It would be a useless act to grant a registration and then immediately initiate proceedings to revoke the registration. See Dinorah Drug Store, Inc., 61 FR 15,972 (1996); Kuen H. Chen, M.D., 58 FR 65,401 (1993). A registration may be revoked by the Deputy Administrator pursuant to 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 competent 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 first considers whether there is a basis pursuant to 21 U.S.C. 824(a) for the denial of Respondent's application for registration. There is no evidence in the investigative file to support a finding that Respondent has materially falsified an application for registration, that he has been convicted of a controlled

substance related offense, or that he is not currently authorized to handle controlled substances in the state in which he practices.

The Order to Show Cause filed in this matter seems to suggest that there is a basis for denial of Respondent's application pursuant to 21 U.S.C. 824(a)(5), which provides for revocation of a registration if a registrant has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a-7(a) of Title 42. Specifically, the Order to Show Cause alleges that, "[a]s a result of your conviction, on May 8, 1992, you were notified by the Department of Health and Human Services of your ten-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a-7(a)." However, a careful review of the May 8, 1992 letter from DHHS to Respondent indicates that he was not mandatorily excluded pursuant to 42 U.S.C. 1320a-7(a). Instead, Respondent's exclusion from the Medicare program was pursuant to 42 U.S.C. 1320a-7(b). Therefore, there is no basis for the denial of Respondent's application pursuant to 21 U.S.C. 824(a)(5).

Next, the Acting Deputy Administrator considers whether Respondent's registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4). Only factors one and five are relevant, since there is no evidence in the investigative file regarding Respondent's experience in dispensing controlled substances, his conviction record, if any, relating to controlled substances or his compliance with controlled substance laws.

As to factor one, Respondent is currently authorized to practice medicine, and therefore handle controlled substances in California, but is on probation for approximately two more years. Regarding factor five, Respondent's conduct in 1988 and 1989 causes concern as to his future conduct if entrusted with a DEA registration. However, the Acting Deputy Administrator concludes that it would not be in the public interest to deny Respondent's application for registration. Respondent's misconduct occurred in 1988 and 1989. His exclusion by DHHS from the Medicare program was permissive and not mandatory, and the State of California allowed him to continue practicing medicine.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b)

and 0.104, hereby orders that the application for registration submitted by Alan R. Schankman, M.D., be, and it hereby is granted. This order is effective upon issuance of the DEA Certificate of Registration, but not later than September 24, 1998.

Dated: August 14, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Notice of Immigration Pilot Program.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 26, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form number. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by the Service to determine participants in the Pilot Immigration program provided for by section 610 of the Appropriations Act. The Service will select regional center(s) that are responsible for promoting economic growth in a geographical area.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 19, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

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