

(5) Such other conduct which may threaten the public health or 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 an application for registration should be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989).

In this case, all five factors are relevant. As to factor one, the Respondent has a current California license to practice medicine, and there are no current actions pending before the State medical board. Regarding factors two, "experience in dispensing * * * controlled substances," and four, "compliance with applicable State, Federal, or local laws," 21 U.S.C. 827(a)(3) and 21 CFR 1304.21 and 1304.24 require a registrant who dispenses a controlled substance to maintain a current, complete, and accurate record of every such dispensing of the substance. Also sections 1304.11 to 1304.13, and 1305.06 of the Code of Federal Regulations establish requirements for inventory procedures and for completing DEA Form 222. Yet, the record contains evidence that the Respondent failed to conduct required inventories, was unable to account for about 3,000 dosage units of acetaminophen with codeine, incurred other shortages and overages of controlled substances relegated to his care, and failed to completely and accurately fill out the DEA Form 222. Additionally, both the Respondent and his wife personally used acetaminophen with codeine out of the office supply without recording their personal usage. Such disregard of recordkeeping requirements exemplify the basis for concern about potential diversion of controlled substances resulting from such improper accountability; concerns properly addressed under factors two and four.

Also, 21 CFR 1301.23 requires a separate registration for each location in which controlled substances are to be dispensed, and 21 CFR 1301.71 establish security requirements. Yet the Respondent stored controlled substances at his Crown Boulevard location and at his home, despite the lack of a valid DEA registration for either of those locations. Such actions demonstrate a disregard for these regulatory requirements. Further, the lax security procedures resulting in patients and drug company representatives having access to drug storage areas

further demonstrate a disregard for security regulations.

Finally, concerning factor five, the Respondent was convicted in State court of one count of involuntary manslaughter arising out of a patient's drug-overdose death in September 1987. The conviction was affirmed upon appeal. The Deputy Administrator assigns substantial weight to the pattern of behavior exhibited by the Respondent in his prescribing practices to this patient. The threat to the public health and safety of such practices directly impacts upon the public interest.

Although the Deputy Administrator has taken into account the length of time the Respondent has practiced medicine, the lack of prior convictions or adverse State board action, and the testimony of the Respondent's witnesses concerning his contribution to his community and their opinion of his professional care, he also notes the lack of any evidence which provides assurances that the Respondent's future practice will include closer monitoring of patient symptoms and treatment, as well as compliance with Federal and State laws and regulations concerning the dispensing and storage of controlled substances. Such lack of mitigating evidence, coupled with the severity of the circumstances surrounding the involuntary manslaughter death of Mr. Barker, result in a conclusion that the granting of the Respondent's application for a DEA Certificate of Registration at this time would be inconsistent with the "public interest" under 21 U.S.C. 823(f). Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application for a DEA Certificate of Registration. If the Respondent reapplies and submits evidence showing corrective actions taken to bring his practice into conformance with DEA regulations, his application may receive more favorable consideration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 21 CFR 0.100(b) and 0.104, hereby orders that the Respondent's Application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective December 8, 1995.

Dated: November 2, 1995.
Stephen H. Greene,
Deputy Administrator.
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DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission Open Meeting

SUMMARY: Pursuant to section 10(a) of FACA, this is to announce that the open teleconference meeting of the Glass Ceiling Commission which was to have taken place on Thursday, November 9, 1995 has been rescheduled to Thursday, November 14, 1995.

The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

The purpose of this open meeting is to conduct a full Commission vote on the Recommendations Report that will be submitted to the President and Select Committees of Congress.

TIME AND PLACE: The meeting will be held from 2:00 to 3:00 p.m. (EST) in Room C2313 at the Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis at (202) 219-7342 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT:

Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-2313, Washington, DC 20210, (202) 219-7342.

Signed at Washington, DC, this 3rd day of November, 1995.

René A. Redwood,
Executive Director.
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