Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Lone Star Industries, Inc.,* Civil Action No. 1:96CV33SNL, was lodged on March 14, 1996, with the United States District Court for the Eastern District of Missouri.

In its complaint, which was filed along with the Consent Decree, the United States alleges that defendant Lone Star Industries Inc. (''Lone Star'') failed to comply with Section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. §§ 7413. In particular, the United States contends that Lone Star violated the New Source Performance Standards (''NSPS'') for Nonmetallic Mineral Processing Plants, 40 C.F.R. Part 60, Subpart 000, promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411, in that the defendant failed to comply with certain reporting and testing requirements at its nonmetallic mineral processing plant located in Cape Girardeau, Missouri.

Under the Consent Decree, Lone Star will pay a civil penalty in the amount of $40,000 to the United States. In addition, Lone Star will implement a Supplemental Environmental Project (''SEP'') at its Cape Girardeau plant designed to control fugitive dust emissions by paving certain roads within the plant at an estimated cost of $150,000 by no later than December 31, 1996.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Lone Star Industries, Inc.,* DOJ Ref. No. 90–5–2–1–1938.

The proposed Consent Decree may be examined at the office of the United States Attorney, U.S. Courthouse, 1114 Market Street, St. Louis, Missouri 63101–2075; the Region 7 Office of the Environmental Protection Agency, 726 Minnesota, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–6933 Filed 3–21–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–42]

William P. Jerome, M.D.; Grant of Restricted Registration

On March 29, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William P. Jerome, M.D., (Respondent) of Davenport, Iowa, 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), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged in substance that the Respondent (1) between December 1988 and February 1990, prescribed and dispensed controlled substances to individuals in exchange for money, cocaine and/or sexual favors; (2) allowed an individual to grow marijuana on his property; (3) falsified the names of individuals on prescriptions that he issued for controlled substances; (4) on February 7 and 8, 1990, dispensed 316 dosage units of controlled substances to an undercover officer for no legitimate medical reason; (5) on February 22, 1990, was indicted in the U.S. District Court for the Southern District of Iowa on nine felony counts related to the unlawful distribution and prescription of controlled substances; (6) pled guilty on April 26, 1990, to one count of conspiracy to distribute controlled substances, and as a condition of the plea agreement, voluntarily surrendered his DEA registration, was sentenced to twelve months imprisonment with a five year term of supervised release probation, and fined $15,000.00; and (7) on November 29, 1990, as a result of the criminal conviction, the Iowa Board of Medical Examiners (Medical Board) revoked his medical license, which was subsequently reinstated on October 13, 1992, subject to certain terms and conditions.

On April 21, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Des Moines, Iowa, on February 8 and 9, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On August 22, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's application be granted with specified restrictions. Neither party filed exceptions to her decision, and on September 25, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy 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 Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that in November of 1989, a DEA diversion investigator (Investigator) received information from a special agent of the Iowa Division of Narcotics Enforcement (Special Agent) that the Respondent gave prescription drugs and prescriptions written under fictitious names to a Ms. M. in exchange for sexual favors. On January 16, 1990, the Investigator interviewed Ms. M., and she stated that she had received controlled substance samples and prescriptions from the Respondent in exchange for sexual favors, that the Respondent had written prescriptions for her, using about twenty names other than her own, and that she had taken the prescriptions to a number of different pharmacies to be filled. The Investigator testified before Judge Bittner, stating that Ms. M. also had provided the name of another individual (Mr. S.) who had received prescriptions from the Respondent for controlled substances intended for her use, and that this individual had filled the prescriptions and had given the substances to her in exchange for sexual favors, all with the Respondent's knowledge. Further, Ms. M. provided the name of an individual (Mr. D.) who had supplied cocaine to the Respondent. Ms. M. also told the Investigator that the respondent had provided her with cocaine, and that she had witnessed him use cocaine.

Ms. M. testified before a grand jury the same day that the Investigator

interviewed her, and the grand jury testimony basically corroborated the information she had provided to the Investigator. Ms. M. also testified that she was a drug addict and had used cocaine and narcotic pain medication.

The Investigator testified that, at the end of January and the beginning of February of 1990, she, another DEA diversion investigator, and an investigator from the Iowa Board of Pharmacy Examiners, had conducted a survey of approximately 15 to 20 area pharmacies to obtain prescriptions issued by the Respondent. The prescription survey showed that (1) between March 11 and September 28, 1989, Ms. M. had received 16 prescriptions totaling 450 dosage units of drugs containing propoxyphene, a Schedule IV controlled substance, which she had filled at nine different pharmacies; (2) between November 1, 1988, and April 14, 1989, the Respondent had issued Mr. S. 15 prescriptions totaling 500 dosage units of drugs containing propoxyphene, which Mr. S. had filled at three different pharmacies; (3) on December 3, 1988, and May 19, 1989, the Respondent had issued prescriptions to Mr. D. for 30 Ativan, a brand name for a drug containing lorazepam, a Schedule IV controlled substance, and for 30 Percocet, a brand name for a drug containing oxycodone, a Schedule II controlled substance; and (4) on February 15, 1989, the Respondent had issued a prescription for 20 Darvocet-N, a brand name for a drug containing propoxyphene, to Ms. M.'s husband, in the name of ''Mike Barnes.'' However, the Investigator also testified that these prescriptions probably constituted no more than five percent of the Respondent's total number of prescriptions reviewed. The survey also showed that Ms. M. had received numerous prescriptions for controlled substances in false names between March of 1989 and September of 1989.

In February of 1990, the Special Agent arranged a controlled substance buy from the Respondent, and the Respondent, seeking cocaine, provided the Special Agent, among other substances, 60 Xanax .5 mg. tablets, 30 Xanax 1 mg. tablets, and 39 Vicodin tablets. Vicodin is a brand name product containing hydrocodone and is listed in Schedule III, and Xanax is a brand name drug containing the Schedule IV substance alprazolam. The Special Agent gave the Respondent $300.00 in cash and promised to bring cocaine the next day. The Special Agent also testified before Judge Bittner that during this transaction the Respondent was intoxicated.

The next evening the Special Agent again met with the Respondent, and prior to the meeting he had agreed to provide the Respondent with cocaine in return for double the quantity of pharmaceutical controlled substances he had received the previous night. According to the Special Agent's testimony, the Respondent appeared completely sober, and he tried to return the $300.00 received from the Special Agent the previous night, but the Special Agent told him to keep the money. The Special Agent asked the Respondent if he could obtain Percodan or Dilantin, but the Respondent had refused, stating that acquiring Schedule II drugs would be too difficult to make the effort worthwhile. Dilantin is not a controlled substance, but Percodan contains oxycodone, a Schedule II controlled substance. Ultimately, the Respondent gave the Special Agent three envelopes, each containing 25 Vicodin, and he again asked for the cocaine. However, he was then arrested.

After his arrest, the Investigator interviewed the Respondent, who stated that he thought controlled substance samples were his to use as he pleased and that he was not required to keep any records of them. The Respondent also told the Investigator that he had given away drugs, but that he had not sold them. He also admitted that on two occasions he had traded controlled substance samples for cocaine. With the Respondent's consent, the Investigator searched his office, where she found patient records for Ms. M. and Mr. S., but not for Mr. D.

Subsequently, in February of 1990, the Investigator interviewed Mr. D., who stated that the Respondent had obtained cocaine from him once or twice a month, that the Respondent sometimes had provided him with unused syringes, and that he had grown marijuana on the Respondent's property. Further, Mr. D. testified before the grand jury on February 20, 1990, stating that for approximately two years beginning in October of 1987, he had provided at least one and three-quarters grams of cocaine per week to the Respondent, and that the Respondent never had written him prescriptions for controlled substances. Rather, the Respondent had traded controlled substances such as Xanax, Valium Librium, Vicodin, or Lortab, for the cocaine. Mr. D. also testified that he had grown marijuana on the Respondent's property with his knowledge and consent.

On February 22, 1990, an indictment against the Respondent was filed in the United States District Court for the Southern District of Iowa, and on April 26, 1990, the Respondent entered into a plea agreement, specifying that he would plead guilty to one count of conspiracy to distribute controlled substances in violation of 21 U.S.C. 846, and that he would surrender his DEA registration. In exchange, the government agreed to dismiss the other counts, to include six counts of unlawful distribution of controlled substances, and one count of unlawful prescribing. On July 31, 1990, the court accepted the Respondent's guilty plea and sentenced him to twelve months incarceration to be followed by five years supervised probation, to include a program of testing and treatment for drug and alcohol abuse, and a fine of $15,000.00.

On September 13, 1990, the Medical Board filed a complaint, seeking action against the Respondent's medical license based on his felony conviction ''for a crime related to his profession.'' On December 31, 1990, the Medical Board issued an Order revoking the Respondent's license to practice medicine.

Testifying before Judge Bittner, the Respondent denied ever trading prescriptions for sexual favors, and stated that he had terminated his client and prostitute relationship with Ms. M. after she had discovered that he was a physician. The Respondent also asserted that he had issued some prescriptions to Ms. M. in an attempt to help her, and that other call-in prescriptions were written in different names, but that he had assumed he had patients with those names, or that when he was covering for other physicians, that they had patients with those names. He testified that ''[s]ome of those prescriptions I wrote under duress, with the threats of extortion, under the circumstances of my addiction.'' However, the Respondent also testified that he had falsified prescriptions for Ms. M. ''[o]n one or two occasions * * * at her request.'' He also stated that Ms. M. had continued to demand drugs from him, that she had called him at night, and that she had demanded money and had threatened to expose him to his family and the medical community. The Respondent testified that in May or June of 1989, he told Ms. M. that he would no longer see or speak with her.

The Respondent also testified about the undercover operation, stating, ''I was a desperate man trying to score my fix, and I was desperately trying to negotiate a deal. And at the time I would have done whatever it took to get it.'' The Respondent also stated that he did not use marijuana, that he had nothing to do with the marijuana grown on his property, that when he found out about it, he ''repeatedly asked that it be

removed,'' and that ultimately it was removed.

A United States Probation Officer (Officer) testified that, following the Respondent's incarceration, he was placed on supervised release on August 5, 1991, for a term of five years. The Officer testified that she had been the Respondent's probation officer since December of 1991, and she was responsible for monitoring his compliance with the terms of his supervised release. She stated that the Respondent had accomplished everything she asked of him, had arrived promptly for meetings with her, and submitted required monthly reports in a timely manner, and ''has done his best to comply with all the conditions.'' The Officer also testified that the Respondent was eligible for early parole and that, conditioned upon the Respondent's paying his fine, she planned to recommend early termination to the court.

On March 9, 1992, the Respondent petitioned the Medical Board for reinstatement of his Iowa medical license. On August 19, 1992, the Medical Board held a hearing on that petition, and on October 13, 1992, the Medical Board issued an Order adopting the recommendation of a panel and reinstating the Respondent's license, subject to a five-year probation. The terms of probation included, among other things, that the Respondent (1) abstain from the use of alcohol and illicit drugs, (2) obtain psychiatric counseling and attend meetings of Alcoholics Anonymous or a similar organization twice weekly, (3) submit quarterly reports of his controlled substance prescriptions to the Medical Board, and (4) associate with at least one other physician in his practice. A Medical Board Investigator testified that he was responsible for monitoring the Respondent on behalf of the Medical Board, and that to the best of his knowledge, the Respondent was in complete compliance with the terms of his probation.

By letter dated November 19, 1992, the Respondent's eligibility to participate in Medicare was reinstated. On February 22, 1993, the Respondent applied for a DEA Certificate of Registration as a practitioner, disclosing information about his prior conviction and subsequent surrender of his prior DEA registration. Also, by letter dated September 22, 1993, the Iowa Board of Pharmacy Examiners notified counsel for the Respondent that the Respondent's application for a state controlled substance registration was approved.

The Program Manager of the Start InPatient Program for the Center for Alcohol and Drug Services (Center) in Davenport, testified that the Respondent had been evaluated at the Center in July of 1991, and that a treatment program had been established for him. The Program Manager testified that the Respondent had undergone urinalysis examinations at frequencies ranging from once to six times per month between August of 1991 and June of 1993, and that none of the tests were positive. Beginning again in September of 1994, through January of 1995, the Respondent was tested from one to three times per month, with no adverse test results. The Program Manager also stated that, had the Respondent been using cocaine, these urinalysis tests would have detected it.

The Program Manager also testified that he had been in both individual and group counseling sessions with the Respondent from 1991 until 1993, and that the Respondent had expressed remorse about the effects of his chemical abuse on his family, other physicians in the area, and about the loss of his medical practice. The Program Manager also stated that he believed that:

> [A]t this point in time * * * Mr. Jerome has successfully completed the process that's been required in terms of treatment for rehabilitation for his chemical dependency. I think that he has worked under some supervision of numerous qualified other physicians who have maintained contact with him on a regular basis. My understanding is that he has contact in terms of support units with other physicians who are recovering in Iowa, * * *. I think that Mr. Jerome has gained enough skills during treatment and recovery to be able to seek help if he has urges, * * *. Those are specifically what he's been trained to react to in different fashion than he has in the past.

A psychiatrist (Psychiatrist), testified that he had known the Respondent since 1980, and that in November of 1989, the Respondent became his patient. He testified that, as of the date of the hearing before Judge Bittner, he saw the Respondent monthly, that the Respondent had shown remorse for his actions, and that he has had to deal with the consequences of his misconduct. The Psychiatrist testified that the Respondent had become more mature and better able to see how his behavior affected others.

The Psychiatrist further testified that there was a shortage of internists in Davenport, and that the Respondent's lack of a DEA registration hampered his ability to treat his patients. He also stated that the Respondent was a competent physician, and that he would not hesitate to refer a patient to the Respondent for treatment.

The Respondent testified before Judge Bittner concerning his personal rehabilitation, stating that, while he was in prison, he thought about the people he had hurt, including his patients, his friends, his family, and himself. Also while he was incarcerated, the Respondent enrolled in a chemical dependency program and ''learned through treatment that about all I can do is try to make my amends to the people that I have hurt, to do the best job I can to move forward, and to make sure it doesn't happen again.'' The Respondent stated that he felt tremendous regret for his past actions, and that as of the hearing, he felt that he was a ''more caring, []calm[er], a little more rational individual who doesn't use drugs or alcohol.''

The Respondent testified that after he was transferred to a halfway house, he continued outpatient treatment, with individual counseling sessions once or twice per week, that he also attended Narcotics Anonymous and Alcoholics Anonymous meetings twice per week, and that in June of 1991, he was transferred to a work release program in Davenport, where he resumed seeing a psychiatrist he had seen there prior to his arrest. According to the Respondent, he has learned how to prevent relapse, has continued to regularly attend twelve-step meetings, and has developed some insight into his own behavior. The Respondent also testified that he did not want to put either himself or his family ''through this again.''

The Director of the Iowa Department of Public Health (Director) testified that studies have indicated that the Iowa Medical Board is the second strictest in the United States in terms of penalties imposed on physicians who have been disciplined. He also testified that he was familiar with the disciplinary proceedings involving the Respondent, and that to the best of his knowledge, the Respondent had satisfied the conditions imposed upon him. The Director also testified that he believed that reinstatement of the Respondent's DEA registration would be in the public interest, for the Medical Board had also considered the best interest of the public, as well as the Respondent's professional credentials and compliance with the requirements it imposed, in deciding to restore his license to practice medicine.

The Respondent also offered into evidence letters from various physicians, one of whom was a patient of his, attesting to the Respondent's expertise, compassion, and concern for

his patients. The Respondent also submitted letters from physicians to United States Senator Charles E. Grassley, seeking his support for the Respondent's application, and letters to the Medical Board from various patients, colleagues, and friends, all supporting reinstatement of the Respondent's medical license. Also, the Respondent submitted letters written to the Administrator of DEA from Governor Branstad of Iowa, and from United States Representative James A. Leach of Iowa.

It is undisputed that the United States Department of Health and Human Services has designated Scott County, Iowa, which includes Davenport, as an area with a shortage of primary care physicians willing and able to treat Medicaid patients. The Respondent testified that as of the date of the hearing, he was practicing in a clinic in the inner city of Davenport, and that his patients were older, sicker, had less access to medical care, and were more likely to be on Medicaid than those he treated prior to the revocation of his medical license. The Respondent stated that he believed that granting his application for a DEA registration would be in the public interest, because he felt that the lack of authority to handle controlled substances severely handicapped his ability to treat his patients. Without such a registration, he had had great difficulty obtaining either hospital staff privileges or professional liability insurance, and he was ineligible to participate in several managed care plans, In addition, the Respondent testified that he had been offered a position as assistant director for the Center of Alcohol and Drug Services, but that the offer was contingent on having a DEA registration.

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 registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(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 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 a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

In this case, all five factors are relevant in determining whether the Respondent's registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board * * *'', as a result of the Respondent's misconduct resulting in a felony conviction, the Medical Board revoked his medical license on December 31, 1990. Although his license was reinstated on October 13, 1992, it was subject to five-year's probation with significant conditions to be met.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' uncontroverted evidence was presented that, on two occasions in February of 1990, the Respondent distributed controlled substances to the Special Agent without a legitimate medical purpose. The record also contains evidence that the Respondent misused samples of controlled substances by trading them for cocaine or by improperly giving them away.

As to factor three, the Respondent's ''conviction record under Federal * * * laws relating to the * * * distribution, or dispensing of controlled substances,'' and factor four, the Respondent's [c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' uncontroverted evidence demonstrated that the Respondent was convicted in Federal court of conspiracy to distribute controlled substances in violation of 21 U.S.C. 846. Further, the Respondent admitted he engaged in the unlawful possession and use of cocaine prior to his conviction.

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator agrees with Judge Bittner's observations regarding the Respondent's testimony concerning his writing of prescriptions under duress or as a result of threats of extortion linked with his drug addiction, referencing his prior relationship with Ms. M. Specifically, Judge Bittner wrote: ''I also note, however, that I find disturbing Respondent's contention that he issued prescriptions in false names either by mistake or under duress. A physician obviously should not issue a controlled substance prescription to a patient he is not sure is under his treatment and care.'' Such prescribing practices are not consistent with the responsibilities inherent in receiving a DEA Certificate of Registration. Therefore, the Deputy Administrator agrees with Judge Bittner, that the Respondent's past misconduct ''constitutes sufficient grounds to deny his application for DEA registration.''

However, the Respondent has also submitted extensive evidence of his rehabilitation. Specifically, the Respondent has demonstrated that his ability to participate in Medicare was reinstated on November 19, 1992, and his application for a state controlled substances registration was approved on September 22, 1993. Further, as Judge Bittner noted, the record established that at the time the Respondent engaged in the misconduct at issue, he was actively addicted to alcohol and cocaine. Yet, the record also demonstrates that he has actively participated in, and successfully completed, a rehabilitation program for his chemical dependency. Although he has submitted to urinalysis testing periodically since 1991, all results have been negative.

As Judge Bittner noted, ''as of the date of the hearing[,] Respondent had maintained his sobriety for nearly five years.''

Also, the Respondent submitted extensive favorable evidence from colleagues and patients, attesting to his professional expertise, as well as to the community's need for his specialty as a primary care physician. Finally, the Respondent testified as to his remorse for his past misconduct and his determination that he will not engage in such conduct in the future. Although none of his remedial activities justifies the grievous nature of his past misconduct, the Deputy Administrator agrees with Judge Bittner's conclusion that, ''on balance I conclude that the Government has not established by a preponderance of the credible evidence that [the] Respondent's registration would be inconsistent with the public interest.'' However, also on balance, the Deputy Administrator agrees that a registration subject to the following conditions would best serve the public's interest:

(1) The Respondent's controlled substance handling authority shall be limited to writing of prescriptions only, and he shall not dispense, possess, or store any controlled substance, except that the Respondent may administer controlled substances in a hospital, and may possess controlled substances which are medically necessary for his own use and which he has obtained

pursuant to a written prescription from another licensed practitioner (unless the substance is legitimately obtainable without a prescription); and

(2) the Respondent shall submit, every calendar quarter, a log of all controlled substance prescriptions he has written during the previous quarter to the Special Agent in Charge of the nearest DEA office, or his designee. These restrictions will run for a period of three years from the effective date of the Respondent's registration.

Therefore, the Deputy Administrator finds that the public interest is best served by granting the Respondent's application with the above conditions. The Respondent submitted extensive evidence demonstrating the need for the DEA Certificate of Registration in his current practice, as well as evidence of the community's need for a physician of his speciality with full prescribing capabilities. Given these needs, the Deputy Administrator has determined that the public interest will be better served in making this final order effective upon publication, rather than thirty days from the date of publication.

Accordingly, the Deputy 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 William P. Jerome, M.D., be, and it hereby is, granted, subject to the above conditions. This order is effective upon publication in the Federal Register.

Dated: March 18, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–6979 Filed 3–21–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–43]

Ekambaram Parameswaran, M.D.; Denial of Application

On March 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ekambaram Parameswaran, M.D. (Respondent) of Inez, Kentucky, 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. 825(f), as being inconsistent with the public interest.

The Respondent filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Paul A. Tenney. After numerous delays at the request of the Respondent, the hearing was scheduled to commence on September 26, 1995. However, prior to that date, the Government filed a Motion for Summary Disposition, noting that the Respondent's license to practice medicine had been revoked by the Kentucky State Board of Medical Licensure (Medical Board) by final order dated July 20, 1995, a copy of which was attached to the motion. The Respondent was afforded an opportunity to respond to the Government's motion, on or before August 16, 1995, but no response was filed. On August 29, 1995, Judge Tenney issued his Conclusions of Law and Recommended Ruling, in which he found that the Respondent lacked authorization to handle controlled substance in Kentucky, granted the Government's Motion for Summary Disposition, and recommended that the Respondent's application of a DEA Certificate of Registration be denied. Neither party filed exceptions to his decision, and on September 28, 1995, Judge Tenney transmitted the record of these proceedings and his opinion to the Deputy Administrator.

The Deputy 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 Deputy Administrator adopts, in full, the decision of the Administrative Law Judge.

Specifically, the Deputy Administrator finds that by final order dated July 20, 1995, the Medical Board revoked the Respondent's license to practice medicine. From this fact, Judge Tenney inferred that since the Respondent was not authorized to practice medicine, he also was not authorized to handle controlled substances. The Deputy Administrator agrees with Judge Tenney's inference, and he also notes that the Respondent has not filed an exception to this portion of his decision.

The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 832(f), and 824(a)(3). The prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D. 57 FR 49,195 (1992); Myong S. Yi, M.D., 54 FR 30,618 (1989); Bobby Watts, M.D., 53 FR 11,919 (1988). Therefore, because the Respondent lacks state authority to handle controlled substances, he currently is not entitled to a DEA registration.

Judge Tenney also properly granted the Government's motion for summary disposition. Here, the parties did not dispute that the Respondent was unauthorized to handle controlled substances in Kentucky, the state in which he proposed to conduct his practice. Therefore, it is well-settled that when no question of fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Dominick A. Ricci, M.D., 58 FR at 51,104 (finding it well settled that where there is no question of material fact involved, a plenary, adversarial administrative hearing was not required); see also Phillip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom Kirk V. Mullen, 749 F.2d 297 (6th Cir. 1984); *Alfred Tennyson Smurthwaite, M.D.*, 43 FR 11,873 (1978); NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy 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 Respondent's application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective April 22, 1996.

Dated: March 18, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–6978 Filed 3–21–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Compensation for Federal Employees Excepted Employee Program; Unemployment Insurance Program Letters Implementing the Unemployment Compensation for Federal Employees Excepted Employee Program

On January 6, 1996, Public Law 104–92 was enacted. Section 312 of Title III of the Act created the Unemployment Compensation for Federal Employees Excepted Employee Program (UCFE–EEP) effective January 2, 1996. Under the UCFE–EEP, Federal employees excepted from furlough and who are not being paid due to a lapse in appropriations shall be deemed to be totally separated from Federal service and eligible for unemployment