

Dated: December 18, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Monica Lynn Smedley, D.P.M.; Revocation of Registration

On May 5, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Monica Lynn Smedley, D.P.M. (Dr. Smedley) of Nashville, Tennessee and North Braddock, Pennsylvania, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BS4332045 under 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Smedley is not currently authorized to practice podiatry or handle controlled substances in Tennessee, her state of registration and practice and that her continued registration would not be in the public interest. The order also notified Dr. Smedley that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Smedley at her registered location at 319 Westfield Drive, Nashville, Tennessee. An Order was also sent to 551 Lobinger Avenue, North Braddock, Pennsylvania. According to the return receipts, the Order sent to the registered location was undeliverable. However, on or around May 30, 2003, the Order sent to her Pennsylvania address was accepted on Dr. Smedley's behalf.

DEA has not received a request for hearing or any other reply from Dr. Smedley or anyone purporting to represent her in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Smedley is deemed to have waived her hearing right. *See Samuel S. Jackson, D.D.S.*, 67 FR 65145 (2002); *David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file, the Acting Deputy Administrator now enters her final

order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Smedley possesses DEA Certificate of Registration BS4332045, which expires on February 29, 2004. The Acting Deputy Administrator further finds that the State of Tennessee Department of Health filed charges against Dr. Smedley with the Tennessee Board of Registration of Podiatry (the Board) alleging, *inter alia*, that between February 1, 2002 and March 6, 2002, she prescribed controlled substances, primarily Codeine and Butalbital, after her podiatry license had expired for failure to renew. It was further charged that from January 31, 2002 until April 9, 2002, on an almost daily basis Dr. Smedley wrote prescriptions for and picked up Tylenol #4, a controlled substance, from various pharmacies in the Nashville area. These prescriptions were written in her mother's name. During the same period Dr. Smedley wrote prescriptions for Tylenol #4 to herself and attempted to pick up the prescribed controlled substances. The prescriptions were not dispensed, prescribed or otherwise distributed in the course of Dr. Smedley's professional practice.

On November 14, 2002, the Board issued an Agreed Order which found the above allegations true, suspended Dr. Smedley's podiatry license for a period of six months and placed her on one year's probation, which would commence upon expiration of the six month suspension. As a condition for reinstatement of her license, Dr. Smedley was required by the Agreed Order to undergo a substance abuse evaluation and demonstrate to the Board that she was in compliance with any of the evaluation's recommendations.

The investigative file contains no evidence that the Board's Agreed Order has been stayed or that Dr. Smedley's podiatry license has been reinstated. Therefore, the Acting Deputy Administrator finds that Dr. Smedley is not currently authorized to practice podiatry in the State of Tennessee. As a result, it is reasonable to infer that she is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci,*

M.D., 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Smedley's podiatry license was suspended, that it has not been reinstated and she is not licensed to handle controlled substances in the State of Tennessee, where she is registered with DEA. Therefore, she is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BS4332045, issued to Monica Lynn Smedley, D.P.M., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective February 9, 2004.

Dated: December 18, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR-1218-0048(2004)]

Standard on Occupational Noise Exposure (Noise) (29 CFR 1910.95); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the Information collection requirements contained in the Occupational Noise Exposure standard. (29 CFR 1910.95).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by March 8, 2004.

Facsimile and electronic transmission: Your comments must be received by March 8, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the