

revoke a DEA Certificate of Registration if she finds that the registrant has had his state license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). *Thomas B. Pelkowski, D.D.S.*, 57 FR 28538 (1992). Despite the Board's findings regarding Dr. Cantu's inappropriate handling of controlled substances, and notwithstanding the other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration here is the present status of Dr. Cantu's state authorization to handle controlled substances.

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 he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Joseph Thomas Allevi, M.D.*, 67 FR 35581 (2002); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Cantu's medical license has been suspended, and as a result, he is not licensed to handle controlled substances in Texas where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state. Because Dr. Cantu lacks state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See Samuel Silas Jackson, D.D.S.*, 67 FR 65145 (2002); *Nathaniel Aikens-Afful, M.D.*, 62 FR 16871 (1997); *Sam F. Moore, D.V.M.*, 58 FR 14428 (1993).

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, AC9115660, issued to Ernesto A. Cantu, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective March 15, 2004.

Dated: January 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Donald W. Kreutzer, M.D.; Revocation of Registration

On October 7, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Donald W. Kreutzer, M.D. (Dr. Kreutzer) of Clarksville, Missouri, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AK5325914 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. Kreutzer is not currently authorized to practice medicine or handle controlled substances in Missouri, his state of registration and practice. The order also notified Dr. Kreutzer that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Kreutzer at his address of record at 14713 Pike County Road 245, Clarksville, Missouri 63336. According to the return receipt, the Order was accepted by Dr. Kreutzer on or around October 16, 2003. DEA has not received a request for hearing or any other reply from Dr. Kreutzer or anyone purporting to represent him 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. Kreutzer is deemed to have waived his 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. Kreutzer possesses DEA Certificate of Registration AK5325914, which expires on December 31, 2004. The Acting Deputy Administrator further finds that on or about April 16, 2003, in *State of Illinois v. Donald*

Kreutzer, Case No. 99-CF-57 in the Circuit Court of Gallatin County, State of Illinois, Dr. Kreutzer was convicted of fourteen felony counts of Delivery of a Controlled Substance and one felony count of Public Aid Vendor Fraud.

On July 18, 2003, the Missouri State Board of Registration for the Healing Arts (the Board) conducted a hearing pursuant to a Complaint filed against Dr. Kreutzer, alleging inter alia, that he had been convicted of the above felony counts and that his Missouri medical license was subject to automatic revocation. Dr. Kreutzer appeared at the hearing and on August 8, 2003, the Board issued its Findings of Fact, Conclusions of Law and Disciplinary Order sustaining the accusations and revoking Dr. Kreutzer's license to practice medicine in the State of Missouri for a period of five years.

The investigative file contains no evidence that the Board's Order has been stayed or that Dr. Kreutzer's medical license has been reinstated. Therefore, the Acting Deputy Administrator finds that Dr. Kreutzer is not currently authorized to practice medicine in the State of Missouri. As a result, it is reasonable to infer he 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 he 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. Kreutzer's medical license has been revoked and he is not licensed to handle controlled substances in Missouri, where he is registered with DEA. Therefore, he 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 AK53225914, issued to Donald W. Kreutzer, M.D., 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 March 15, 2004.

Dated: January 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02-24]

Karen A. Kruger, M.D.; Grant of Restricted Registration

On January 4, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Karen A. Kruger, M.D. (Respondent), proposing to deny her application for a DEA Certificate of Registration pursuant to 21 U.S.C. 823(f).

By letter dated April 9, 2002, the Respondent through her legal counsel requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held on December 10, 2002, in Chicago, Illinois. At the hearing, both parties called witnesses to testify, and the Respondent also testified on her behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted written proposed findings of fact, conclusions of law, and argument.

On April 23, 2003, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (Opinion and Recommended Ruling), recommending that Respondent's application for registration be granted subject to certain conditions. Neither party filed exceptions to Judge Bittner's opinion, and on May 28, 2003, Judge Bittner transmitted the record of these proceedings to the then-Acting Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts in full the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge. Her adoption is in no manner diminished by any recitation of facts, issues, or conclusions herein, or of any failure to mention a matter of fact or law.

The record before the Acting Deputy Administrator shows that the Respondent received her medical degree

from the Medical College of Wisconsin and is board certified in internal medicine and anesthesiology and board eligible in critical care medicine. The Respondent testified during the DEA hearing that she practiced as an anesthesiologist from 1986 until September 1999, and that during that period, there were no medical malpractice actions brought against her, nor did she lose staff privileges at any hospital.

The Respondent testified that in the early 1980s, she began taking diethylpropion, prescribing the drug to herself. Diethylpropion, a Schedule IV controlled substance, is used primarily for weight loss. Specifically, the Respondent testified that she called prescriptions into pharmacies under fictitious names, went to the pharmacies pretending to be the persons in whose names she had issued the prescriptions, and paid cash for and picked up the prescriptions. The Respondent further testified that while the recommended dosage for Tenuate (a brand name product containing diethylpropion) is one 75 mg. tablet daily, she developed a tolerance to the drug and eventually increased her use of the drug to as many as fifty tablets per day. The Respondent testified that she initially took Tenuate for weight control, but then began using it also for its properties as a stimulant.

The Government presented the testimony of a medical investigator and controlled substances inspector for the Illinois Department of Professional Regulation (IDPR). The inspector testified that an investigation of the Respondent was initiated in December 1999 as a result of information received from DEA regarding a pharmacist's concern over the Respondent's apparent prescribing of diethylpropion to three individuals at the same address.

In response to the above information, the IDPR inspector and a DEA diversion investigator interviewed the Respondent at her residence in Chicago on December 14, 1999. When informed of allegations that she had improperly prescribed controlled substances, the Respondent replied that as an anesthesiologist she rarely had occasion to prescribe, but she had prescribed Tenuate to six to ten friends. When asked by the IDPR inspector to identify these persons, the Respondent admitted that she had not prescribed to friends for about the last year, and instead, had issued prescriptions in fictitious names and then picked up the medications from the dispensing pharmacies herself.

During the interview, the Respondent also admitted during the interview that she telephoned bogus prescriptions to many chain and independent

pharmacies in Chicago and its suburbs, using approximately forty different names, and that she took as many as 40 to 60 tablets per day for purposes of weight loss and to maintain alertness. The Respondent further admitted that she was probably psychologically addicted to diethylpropion, but willing to accept treatment for her addiction. The Respondent was then provided contact information for a physician involved with Illinois' Physician Assistance Program.

As part of its investigation of Respondent, DEA obtained from the Walgreens Company a printout of prescriptions that the Respondent called into various Walgreens pharmacies in the Chicago area. That printout, along with additional evidence presented at the hearing, revealed that between September 19, 1998 and September 4, 1999, Chicago-area Walgreens pharmacies filled more than 170 prescriptions that Respondent authorized for diethylpropion 75 mg. These unlawfully issued prescriptions resulted in the aggregate dispensing of approximately 5,500 dosage units of the controlled substance. The Respondent testified during the hearing that she also acquired diethylpropion from other area pharmacies.

On August 2, 2000, Respondent, represented by counsel, appeared at an Informal Conference with representatives of the IDPR. Following the conference, Respondent and the IDPR entered into a Consent Order, which the Director of the IDPR approved on March 22, 2001. The Consent Order specified, in substance, that Respondent's Illinois Controlled Substance License would be placed on probation for six months; she would comply with the terms of an aftercare agreement into which she entered on August 31, 2000, with the Illinois Professionals Health Program; Respondent would abstain from the use of alcohol and/or mood altering or psychoactive drugs except as prescribed by her primary care or treating physician; Respondent would attend Alcoholics Anonymous and/or Narcotics Anonymous meetings and Caduceus meetings at least twice per week; Respondent would undergo monitored random urine screens at least once per month within twenty-four hours of a request by the Illinois Professionals Health Program; and Respondent would continue therapy with her psychiatrist. The Consent Order further required various reports and provided that violation of any of its terms by the Respondent would constitute grounds for the IDPR to file