

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 30, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04-2322 Filed 2-4-04; 8:45 am]

BILLING CODE 4410-FY-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03-36]

Annette Antonsson, M.D., Denial of Application

On June 4, 2003, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Annette Antonsson, M.D. (Respondent) of San Francisco, California, notifying her of an opportunity to show cause as to why DEA should not deny her application for a DEA certificate of registration as a practitioner pursuant to 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of Respondent's expired DEA registration BA2457097. As a basis for revocation, the Order to Show Cause alleged that Respondent voluntarily surrendered her State license to practice medicine to the Medical Board of California effective May 24, 1999, and that, accordingly, she is not authorized to handle controlled substances in California, the State in which she applied to be registered.

On July 5, 2003, Respondent, acting *pro se*, timely requested a hearing in this matter. In her request for a hearing, Respondent admitted she had surrendered her license and was "currently not licensed in California." On July 24, 2003, the Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued the Government, as well as Respondent, an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed Government's request for Stay of Proceedings and Motion for Summary Disposition. The Government argued that the Respondent is without authorization to handle controlled substances in the State of California, and as a result, further proceedings in the matter were not required. Attached

to the Government's motion was a copy of the Medical Board of California's Decision and Order, dated June 28, 1999, adopting the Stipulation for Surrender of License which Respondent agreed to and signed on May 24, 1999.

On July 31, 2003, Judge Bittner issued a Memorandum to Counsel providing Respondent until August 31, 2003, to respond to the Government's motion. Respondent did not file any response.

On September 23, 2003, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in California, the jurisdiction in which she was applying to be registered. Judge Bittner also recommended that the Respondent's application for a DEA certificate of registration be denied. No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision and on November 13, 2003, the record of these proceedings was transmitted to the Office of the Acting DEA Deputy 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 Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that Respondent was previously issued DEA certificate of registration BA 2457097, which expired in June 2002. Subsequently, Respondent filed an application for renewal on October 31, 2002, which was appropriately treated by DEA as a request for a new registration. The Acting Deputy Administrator further finds that, effective May 24, 1999, Respondent voluntarily surrendered her State license to practice medicine to the California Medical Board and has also admitted that she is currently not licensed to practice in California. Therefore, the Acting Deputy Administrator finds Respondent is currently not licensed to practice medicine in California and as a result, it is reasonable to infer 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 Karen Joe Smiley, M.D.*, 68 FR 48944 (2003); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Respondent is not currently licensed to handle controlled substances in California, the jurisdiction in which she has applied for registration. 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 the application for a DEA certificate of registration submitted by Annette Antonsson, M.D., be, and it hereby is, denied. This order is effective March 8, 2004.

Dated: January 7, 2004.

Michele M. Leonhart

Acting Deputy Administrator.

[FR Doc. 04-2341 Filed 2-4-04; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Thomas G. Easter II, M.D.; Denial of Registration

On August 29, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Thomas G. Easter II, M.D. (Dr. Easter) notifying him of an opportunity to show cause as to why DEA should not deny his pending application for a DEA Certificate of Registration pursuant to 21 U.S.C. 823(f). The order alleged in relevant part that: Dr. Easter had been convicted in Texas State court of eight felony counts of Possession of Controlled Substances by Fraud; that the court terms of his probation prohibited him from prescribing controlled substances and he was thus not authorized to handle controlled substances in the State in which he practices; and that his registration was inconsistent with the public interest based on Dr. Easter's material false statements in his DEA Application for Registration and a false statement on his application for renewal of State registration under the Texas Controlled Substances Act. The order also notified Dr. Easter 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. Easter at his registered location in El Paso, Texas. On September 18, 2002, DEA received an undated signed receipt indicating the Order to Show Cause was received on his behalf. DEA has not received a request for hearing or any other reply from Dr. Easter or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator of DEA, finding that: (1) 30 days having passed since the delivery of the Order to Show Cause at Dr. Easter's registered address, and (2) no requests for hearing having been received, concludes that Dr. Easter 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 in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

Pursuant to 21 U.S.C. 824(a)(1), the Acting Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such a certificate upon a finding that the registrant has materially falsified any DEA application for registration. Pursuant to 21 U.S.C. 824(a)(2), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such a certificate upon a finding that the registrant has been convicted of a felony related to controlled substances under State or Federal law.

In addition, the Acting Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such certificate if she determines that the issuance of such registration would be inconsistent with the public interest, as determined pursuant to 21 U.S.C. 823(a)(4) and 823(f). Section 823(f) requires 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.

As a threshold matter, it should be noted that the factors specified in section 823(f) are to be considered in the disjunctive: The Acting Deputy Administrator may properly rely on any one or a combination of the factors, and give each factor the weight she deems appropriate, in determining whether a registration should be revoked or denied. *Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989)

The Acting Deputy Administrator's review of the investigative file reveals that on April 23, 2001, in *State of Texas v. Thomas Easter*, Cause No. 99D00731 in the 243rd District Court of El Paso County, Texas, Dr. Easter pled guilty to an eight count indictment alleging violations of Texas Penal Code § 481.129, Possession of Controlled Substance by Fraud, a Third Degree Felony. On May 24, 2001, the court deferred adjudication of guilt and placed Dr. Easter on 10 years Community Supervision, with Terms and Conditions.

Among these Terms and Conditions was the prohibition that, without further order of the court, Dr. Easter was not to prescribe any medications, although he was permitted to make recommendations to a supervising physician. On February 22, 2002, the court modified the Terms and Conditions to generally allow Dr. Easter to prescribe medications, if done under the supervision of another physician. However, the court's order specifically prohibited him from prescribing "scheduled narcotics."

Pursuant to an August 22, 1998, Agreed Order of the Texas State Board of Medical Examiners, Dr. Easter's license to practice medicine in Texas was restricted for a period of five years. That restricted license allowed him to prescribe, administer or dispense dangerous and controlled drugs with addictive potential, if he complied with certain enumerated conditions set forth in the Agreed Order. On June 6, 2003, the Texas State Board of Medical Examiners denied a request by Dr. Easter to terminate that Agreed Order.

DEA does not have statutory authority under the Controlled Substances Act to issue a registration if the applicant 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). The Acting Deputy Administrator and her predecessors have consistently so held. See *Douglas L. Geiger, M.D.*, 67 FR 64418 (2002); *Theodore T. Ambadgis, M.D.*, 58 FR 5759 (1993); *Ishan A. Karaagac, M.D.*, 51 FR 34695 (1986).

While Dr. Easter may hold a Texas medical license allowing him to

prescribe, administer and dispense scheduled drugs, as of the date of this final order, there is no evidence that the Order of the District Court dated February 14, 2002, has been modified, revoked or otherwise terminated. The State court's order thus remains in full effect, prohibiting Dr. Easter from prescribing scheduled narcotic substances in Texas as a condition of his criminal probation.

Considering the foregoing, the Acting Deputy Administrator concludes, pursuant to 21 U.S.C. 823(f), that by virtue of that order, Dr. Easter currently lacks authority under the laws of the State of his applied-for registration and practice, to dispense controlled narcotic substances and his application should be denied on that, as well as the following grounds. See *John P. Daniels, M.D.*, 51 FR 34694 (1986) (State criminal court's probation order prohibiting defendant from possessing or prescribing dangerous drugs used as a basis for denying DEA application based on lack of State authorization).

The Acting Deputy Administrator further finds that Dr. Easter has been convicted of eight State felonies relating to the distribution or dispensing of controlled substances and that denial of his application for registration is independently appropriate under 21 U.S.C. 823(f) and 824(a)(2).

Dr. Easter also materially falsified his DEA Application for Registration (Control No. C07851408K). On February 23, 2002, he signed and certified the information in that application as being true and correct. Among the misrepresentations in the application, Dr. Easter affirmatively responded to Question 4(a), which asked if he was "currently authorized to prescribe" controlled substances "under the laws of the State or jurisdiction in which you are operating or propose to operate." However, pursuant to the District Court's Order of February 22, 2002, Dr. Easter was at the time he signed that application, and still is, prohibited from prescribing controlled narcotic substances in Texas, the State of intended registration and practice.

Additionally, Dr. Easter replied in the negative to Question 4(c) of the application, which asked if he had "ever been convicted of a crime in connection with controlled substances under State or Federal law?" While entry of judgment in his criminal case was deferred, Respondent pled guilty to eight counts of Possession of Controlled Substance by Fraud, a Third Degree Felony under Texas law. DEA has consistently held that a deferred adjudication of guilt following a guilty plea, is a conviction within the meaning

of the Controlled Substances Act. *See Vincent J. Scolero, D.O.*, 67 FR 42060, 42065 (2002); *Edson W. Redard, M.D.*, 65 FR 30616, 30618 (2000); *Yu-To Hsu, M.D.*, 62 FR 12840, 12842 (1997).

The Application for Registration form includes a block for applicants to explain any "yes" answers to questions in section 4 of the form. Dr. Easter left that block empty. The Acting Deputy Administrator finds that Dr. Easter should have revealed in his application that he had pled guilty to the drug related felony counts and that checking the block "no" to Question 4(c), coupled with omission of any mention of his criminal history in the application, was a material falsification.

Dr. Easter also answered "no" to Question 4(e) which asked in relevant part, whether he "ever had a state professional license revoked, suspended, denied, *restricted*, or placed on probation?" (Emphasis added). However, a review of the record shows Dr. Easter's Texas medical license was restricted at the time of his DEA application pursuant to the Texas State Board of Medical Examiners' Agreed Order of August 22, 1998.

Pursuant to 21 U.S.C. 824(a)(1), falsification of a DEA application constitutes independent grounds to revoke a registration. Past cases have established that the appropriate test for determining whether an applicant materially falsified an application is whether the applicant "knew or should have known" that the submitted application was false. *See Barry H. Brooks, M.D.*, 66 FR 18305, 18307 (2001); *Terrance E. Murphy, M.D.*, 61 FR 2841, 2844 (1996); *Bobby Watts, M.D.*, 58 FR 46995 (1993). The Acting Deputy Administrator finds that Dr. Easter knew or should have known that his answers to the above liability questions were false.

False answers to liability questions are always considered material, as DEA relies on the answers to those questions in determining whether it is necessary to conduct an investigation prior to granting an application. *See Barry H. Brooks, M.D.*, *supra*, 66 FR at 18308; *Theodore Neujahr, D.V.M.*, 64 FR 72362, 72364 (1999). Prior DEA cases have held that "[s]ince [it] must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated." *See Terrance E. Murphy, M.D.*, *supra*, 61 FR at 2845 (quoting *Bobby Watts, M.D.*, *supra*, 58 FR at 46995).

In prior DEA cases the Deputy Administrator has held that the totality of the circumstances is to be considered in determining whether a registration

should be revoked because of a registrant's material falsification of an application. *See Barry H. Brooks, M.D.*, *supra*, 66 FR at 18308; *Martha Hernandez, M.D.*, 62 FR 611435, 61147-48. In this case, the Acting Deputy Administrator finds that Dr. Easter provided false information in responding to the liability questions on his application and after considering the totality of the circumstances, finds that these misrepresentations constitute a material falsification warranting denial of registration under 21 U.S.C. 824(a)(1).

With regard to the public interest factors of 21 U.S.C. 823(f), as to factor one, recommendations of the State licensing board/disciplinary authority, it is noted that, except to the extent that Dr. Easter cannot treat himself or his family and must prescribe and administrator controlled drugs only when medically indicated and upon adequate examination, the Texas Medical Board has not currently restricted his ability to handle or prescribe controlled substances. Therefore, except for the order of the District Court, the Texas Medical Board would permit him to handle controlled substances in that State. However, "inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration * * * this factor is not dispositive." *See Edson W. Redard, M.D.*, 65 FR 30616, 30619.

It is noted the record reflects that on August 18, 1999, Dr. Easter surrendered his Colorado medical license and that his New Mexico medical license was revoked in September 2002, based on the Texas convictions and his failure to report those convictions to New Mexico licensing authorities in a timely manner. The Hearing Office in the New Mexico proceedings specifically noted that, despite his criminal convictions, Dr. Easter still saw nothing wrong in what he had done, asserted his acts were justified and showed no contrition or remorse. The Hearing Officer found Dr. Easter was not rehabilitated and, "if given the opportunity to do so, Respondent would write fraudulent prescriptions again if he believes he is justified." This conclusion is considered by the Acting Deputy Administrator as adverse to Dr. Easter under factor one and, as discussed below, factor five, as well.

Regarding factors two, three, four and five, the actions resulting in his conviction of the eight drug related felony counts discussed earlier, are relevant and adverse to Dr. Easter. With regard to factor five, such other conduct which may threaten the public health and safety, in Dr. Easter's Application for Renewal of his Texas Controlled

Substances Registration Certificate which he signed on March 29, 2002, he advised the Texas Department of Public Safety that, "initially I was ordered by the Court not to write prescriptions; however, on Valentine's Day 2002 Judge Bonnie Rangel reinstated my ability to write prescriptions." However, as the court's order modifying the terms and conditions of Dr. Easter's community supervision provides, while it generally authorized him to write prescriptions, the court specifically prohibited him from writing prescriptions for "scheduled narcotics." Dr. Easter's omission of this critical fact from his State renewal application was a material misrepresentation, further indicating that his DEA registration would be inconsistent with the public interest.

While recognizing the conduct forming the basis for Dr. Easter's convictions occurred in 1997 and 1998, the Acting Deputy Administrator is particularly troubled by the attitude he has displayed as recently as July 2002. After his hearing before the New Mexico Medical Board, the hearing officer concluded Dr. Easter's "lack of contrition or remorse and [his] apparent belief that he can write fraudulent prescriptions in violation of the law if he believes he is justified to do so under certain circumstances shows [Dr. Easter] is not rehabilitated."

Coupled with the series of omissions and misrepresentations in his DEA and Texas applications, it appears Dr. Easter still fails to appreciate the seriousness of his professional and personal misconduct and has a continuing penchant for not being candid when dealing with State and Federal licensing authorities.

In light of the foregoing, the Acting Deputy Administrator finds that Dr. Easter's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

According, 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 the pending application for DEA Certificate of Registration, submitted by Thomas G. Easter II, M.D., be, and it hereby is, denied. This order is effective March 8, 2004.

Dated: January 7, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04-2338 Filed 2-4-04; 8:45 am]

BILLING CODE 4410-09-M