

most significant, the revocation of his Texas state controlled substances registration. While the Respondent has presented some evidence that he is licensed to practice medicine in jurisdictions other than Texas, there is no evidence before the Deputy Administrator that the Respondent applied for, or has been granted reinstatement of his Texas controlled substance license, the state where he holds a DEA registration.

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 Kanwaljit S. Serai, M.D.*, 68 FR 48943 (2003); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that the Respondent's state controlled substance license has been revoked and there is no information before the Deputy Administrator which points to the Department's revocation order having been rescinded. As a result, the Respondent is not licensed to handle controlled substances in Texas, where he is registered with DEA, and therefore, he is not entitled to maintain that registration.

In further support of his continued registration with DEA, Respondent argues that consideration should be given to his state licensure to practice medicine in jurisdictions other than Texas. However, as noted in Judge Bittner's Opinion and Recommended Decision, DEA regulations require a separate registration "for each principal place of business or professional practice * * * where controlled substances are manufactured, distributed, imported, exported, or dispensed by a person." Therefore, the Respondent's assertions regarding his licensure status in jurisdictions outside of Texas are ultimately irrelevant since his DEA Certificate of Registration is for a Texas address, and he is currently not authorized to handle controlled substances in that state. *See, Layfe Robert Anthony, M.D.*, 67 FR 35582 (2002).

Accordingly, the 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, BC1457818, issued to Roland F. Chalifoux, Jr., D.O., be, and it hereby is, revoked. The 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 November 22, 2004.

Dated: October 5, 2004.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02-35]

Imran I. Chaudry, M.D.; Revocation and Denial of Registration

On February 6, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Imran I. Chaudry, M.D. (Respondent) at two separate addresses in Monroe, Louisiana. The Order to Show Cause notified Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC4775233, and deny any pending applications for modification or renewal of that registration, pursuant to 21 U.S.C. 824(a)(4) and 823(f), for reason that Respondent's continued registration was inconsistent with the public interest.

Specifically, the Order to Show Cause alleged that in March of 2001, Respondent, (1) had been abusing the controlled substances cocaine and methamphetamine, an (2) in April of 2001, Respondent offered to purchase, and in fact purchased, approximately 14 grams of methamphetamine, for which he was arrested and charged with Possession of Methamphetamine with Intent to Distribute, and Conspiracy to Distribute Methamphetamine.

By letter dated March 5, 2002, Respondent through his legal counsel requested a hearing on the issues raised by the Order to Show Cause. Following pre-hearing procedures, a hearing was held on December 4, 2002, in Monroe, Louisiana. While both parties called witnesses to testify at the hearing, Respondent elected not to testify in his behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted written proposed findings of fact, conclusions of law, and argument.

On June 13, 2003, Administrative Law Judge Gail A. Randall (Judge Randall) issued her Recommended Rulings, Findings of Fact, Conclusions of Law

and Decision (Opinion and Recommended Ruling) in which she concluded that grounds existed to revoke Respondent's DEA registration, but recommended that Respondent's then-pending applications for renewal and change of registered address be granted, subject to certain conditions. On June 19, 2003, the Government filed exceptions to Judge Randall's Opinion and Recommended Ruling and on July 2, 2003, Respondent filed a response to the Government's exceptions. On August 6, 2003, Judge Randall transmitted the record of these proceedings to the Administrator of DEA.

The 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. As set forth below, the Deputy Administrator adopts in part, the recommended findings of fact and conclusions of law of the Administrative Law Judge. The Deputy Administrator does not adopt the Administrative Law Judge's recommendation that Respondent's applications for renewal of registration and change of registered address be granted.

The record before the Deputy Administrator shows that as of the date of the hearing, Respondent's license to practice medicine in Louisiana was in good standing and that he possessed a then-current Louisiana narcotics license. Respondent practices medicine in the vicinity of Monroe, Louisiana as a cardiologist. In the rural area where Respondent's practice is located, the ratio of physicians to patients is approximately 1 to 2,000 to 2,500. Respondent is the only cardiologist in that community. Evidence was also presented during the hearing that, although twenty-five percent of Louisiana's citizens reside in rural areas of the state, only six percent of Louisiana's practicing primary care physicians practice medicine in rural areas.

On August 19, 1998, DEA issued Certificate of Registration BC4775233 to Respondent and that certificate expired on August 31, 2001. Nevertheless, by application dated September 4, 2001, Respondent attempted to renew the registration and modify it to reflect a new address. A Government witness testified that because Respondent submitted a renewal application, he was authorized to prescribe controlled substances within the course of legitimate medical practice on a day-to-day basis until conclusion of these proceedings. However, since he was no

longer practicing at his registered address, he could not administer, store or dispense controlled substances at the unregistered location.

Around March 2001, law enforcement officers from Ouachita Parish in Louisiana received information from a source that Respondent was abusing cocaine and methamphetamine, both Schedule II controlled substances. In response, on April 24, 2001, local law enforcement personnel used a cooperating individual to engage Respondent in a controlled sale of fourteen grams of methamphetamine for \$850.00. Prior to their meeting, Respondent and the cooperating individual had a series of monitored phone calls during which Respondent indicated the methamphetamine was not just for personal use, but would be shared with another physician. He requested the methamphetamine be packaged in three separate containers; two containing two grams each and a third with ten grams.

As officers watched, Respondent, who was alone, met the cooperating individual in a parking lot. While seated in adjoining vehicles, Respondent received the drugs, packaged as requested, through the open window of his car. Respondent was then immediately arrested for possession of methamphetamine with intent to distribute and conspiracy to distribute methamphetamine.

During a videotaped post-arrest interview (admitted into evidence as a Government exhibit in this proceeding), Respondent admitted purchasing and using methamphetamine three or four times during the preceding six months. He told officers the methamphetamine he was buying when arrested was for himself and another physician. He admitted obtaining methamphetamine for that same colleague on one prior occasion. Respondent claimed he was not addicted to illegal substances and that he never used drugs at any time while working.

No charges were filed against Respondent's colleague and Respondent was ultimately charged in state court with possession of methamphetamine. As of the date of the hearing before Judge Randall, a motion to suppress Respondent's post-arrest statement was then pending and no trial date had yet been set. There is no evidence in the record that Respondent was ever subsequently tried or convicted of any charges related to this incident.

After his arrest, Respondent entered the Palmetto Addiction Recovery Center ("Palmetto Center") in Rayville, Louisiana. The Palmetto Center is approved for evaluation and treatment

of substance abuse patients by the Louisiana State Board of Medical Examiners (Board). Respondent was evaluated for chemical abuse or dependency at the request of the Board.

Following the Palmetto Center evaluation, Respondent was referred to the Physician's Health Program ("PHP"). The PHP is a professional group that monitors physicians with a prior history of substance abuse. It has had a Memorandum of Understanding with the Board since 1984 and has been accepted by the Board for monitoring the evaluation and treatment of impaired physicians since August 2001. Respondent entered into a monitoring contract with PHP from October 2001 through October 2002 for the purposes of determining whether or not he had developed a chemical dependency.

During this contract period, Respondent was required to abstain from consuming any mood altering substances unless prescribed by a physician, after consultation with PHP. Respondent was randomly drug tested twice a month for the presence of over thirty-five different drugs, including methamphetamine and completed each of his random drug screenings in a timely manner without missing a test. The results were all negative.

PHP also required that Respondent work with a psychiatrist on a regular basis, as well as with a licensed clinical social worker and work-site monitor. The work-site monitor saw Respondent on a daily basis and reported to PHP on Respondent's overall progress in the program, including his interaction with patients, staff and "timeliness in responding to calls, timeliness in doing charts" and his overall professionalism. The record in this proceeding shows Respondent never missed a session with these clinicians.

PHP's medical director testified for Respondent as an expert in addiction medicine. He testified to receiving reports every two months from the monitor and that reports on Respondent's overall interaction with staff and patients were found, among other things, to be "exemplary." The director also received very favorable progress notes from the psychiatrist and the clinical social worker and neither reported any evidence of clinical disorders in Respondent. Specifically, there were no reports of any indications of substance abuse or addictive behavior from their professionals monitoring Respondent's conduct.

Respondent attended continuing medical education courses as part of his contract with PHP. Specifically, he completed a review course sponsored by the American Society of Addiction

Medicine. In addition to successfully completing his one-year monitoring contract, Respondent completed his exit interview with PHP personnel and voluntarily remained in communication with PHP.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(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 she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

As to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, the Deputy Administrator finds that the Louisiana State Board of Medical Examiners has not made a recommendation in this matter. However, it has not taken adverse action against Respondent's medical or narcotic licenses and he is fully licensed as a physician in Louisiana with controlled substance handling privileges in that state, despite the Board's awareness of the then-pending criminal proceedings. While this may weigh in favor of continuing his registration with DEA, "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 (2000).

With regard to factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, the record contains no

evidence that Respondent unlawfully dispensed controlled substances during the course of his professional practice. However, on April 24, 2001, Respondent unlawfully purchased fourteen grams of methamphetamine from a cooperating individual for \$850.00. He also admitted that he had unlawfully used methamphetamine three or four times in the preceding six months.

Of particular concern to the Deputy Administrator is Respondent's admission that he previously distributed methamphetamine to a fellow local physician and the evidence showing a portion of the methamphetamine he was buying when arrested was intended for distribution to that same medical colleague. Respondent's purchase, use and distribution of methamphetamine violated Louisiana and federal law and factors two and four weigh in favor of a finding that his continued registration with DEA would be inconsistent with the public interest.

Factor three, the applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances, is not relevant for consideration, as there is no evidence Respondent was ever convicted of any crime related to controlled substances.

With respect to factor five, other conduct that may threaten the public health and safety, Respondent's unlawful purchase and use of methamphetamine on prior occasions and his distribution of the controlled substance to another physician are also relevant under factor five and weigh in favor of a finding that continued registration would be inconsistent with the public interest.

As noted above, Respondent did not testify at the hearing. The Deputy Administrator may draw a negative inference from Respondent's failure to testify during the administrative hearing. *See David A. Hoxie, M.D.*, 60 FR 51477 (2004); *Alexander Drug Company, Inc.*, 66 FR 18299 (2001); *Alan L. Ager, D.P.M.*, 63 FR 54732 (1998); *Raymond A. Carlson, M.D.*, 53 FR 7424 (1988); *Antonio C. Camacho, M.D.*, 51 FR 11654 (1986). The negative inference drawn from Respondent's failure to testify is that he was unwilling to be forthright and completely honest with the Administrative Law Judge and the Drug Enforcement Administration. *See Antonio C. Camacho, M.D., supra.*

The Deputy Administrator agrees with the Government and Judge Randall that Respondent's choice in not testifying left the record silent as to possible remorse following his unlawful purchase and use of controlled

substances. The Deputy Administrator also shares Judge Randall's concern about the lack of reassurances on the part of Respondent that he will not again engage in unlawful conduct with respect to controlled substances.

The Deputy Administrator agrees with Judge Randall that the Government met its prima facie burden for revoking Respondent's DEA Certificate of Registration and deny his pending requests for renewal and modification. Specifically, the Deputy Administrator agrees with Judge Randall that, "Although not linked with his medical practices per se, the Respondent unlawfully handled methamphetamine by purchasing it for his personal use and the use of others without appropriate medical justification. Such total disregard for the law governing controlled substances can not be tolerated in a physician who has been entrusted to use his professional discretion in treating patients with these same substances."

However, as Judge Randall notes in her Opinion and Recommended Ruling, the governing statute is discretionary. *See Mary Thomson, M.D.*, 65 FR 75969 (2000). In exercising her discretion in determining the appropriate remedy in any given case, the Deputy Administrator should consider all the facts and circumstances of the case. *See Martha Hernandez, M.D.*, 62 FR 61145 (1997).

Judge Randall concluded a lesser sanction than total revocation of respondent's DEA Certificate of Registration was warranted, based primarily on Respondent's efforts since 2001 to demonstrate continued avoidance of substance abuse and, secondarily, on his community's need for a cardiology specialist, coupled with the absence of any evidence that Respondent mishandled controlled substances in the course of his medical practice. Judge Randall recommended that the Deputy Administrator grant Respondent's application to renew his DEA Certificate of Registration and modify it to the requested new address, with the conditions that he continue participating in the PHP program for the duration of his registration period and that the results of continuing random drug tests be provided the local DEA office.

The Deputy Administrator acknowledges Respondent's positive efforts to tackle his problems. He entered himself into the Palmetto Addiction Recovery Center and was subsequently referred to PHP, where he completed an intensive one-year monitoring program for impaired physicians. It appears Respondent was

compliant with all phases of the program, including submission to random urine screens designed to detect the presence of illicit drugs and alcohol. Respondent was deemed to not have a chemical dependency.

The initial findings of the Palmetto Center and Respondent's compliance with the physician monitoring program were corroborated at the hearing by the PHP medical director's testimony on Respondent's behalf. There is no evidence of any misuse of controlled substances by Respondent since his April 2001 arrest, nor is there evidence of any disciplinary action being brought against Respondent by the Louisiana State Medical Board with respect to his handling of controlled substances. However, it is also recognized that these rehabilitative steps were taken while Respondent was under the threat of state prosecution and would have been motivated, at least in part, by the impact they might have on then-pending criminal proceedings, as well as his ability to remain licensed to practice medicine.

As noted above, the Government filed exceptions to Judge Randall's Opinion and Recommended Ruling and Respondent filed a response in opposition to the Government's exceptions.

The Government took exception to Judge Randall's finding that Respondent was the only cardiologist in Rayville, Louisiana; that Judge Randall made ancillary findings regarding physician populations generally in Louisiana; and, that Judge Randall neglected to note that one of the maps in a Respondent's exhibit showed that nearly every parish in Louisiana was classified as "medically underserved."

There was no evidence presented in this matter that anyone other than Respondent was a licensed cardiologist practicing in Rayville, a town of approximately 4,000 people, which was the parish seat. While there was evidence that six physicians, including Respondent, practiced in the area, there was no evidence that any of them, other than Respondent, were trained, licensed or otherwise possessed credentials to practice cardiology.

The Deputy Administrator is also not persuaded by the Government's argument regarding the physician population in Louisiana, or its argument regarding the appropriate weight to be accorded evidence of maps purportedly demonstrating medically underserved parishes in Louisiana.

The Deputy Administrator finds that, regardless of any demographic showing as to what proportion of Louisiana's population is medically underserved;

such information does not detract from the fact that Respondent provides needed medical services to such an area. However, as will be discussed below, while this provides some support for maintaining registration, under the facts of this case, it also has a negative implication for continued registration.

The Government also took exception to Judge Randall's finding regarding the veracity of the random drug tests administered Respondent, especially as they relate to the detection of methamphetamine. The Government argued in part, that "[f]rom the factual findings, it would be possible that Respondent could have taken methamphetamine many times in the month, and yet evaded detection." The Government further argues that the 24 to 36 hour metabolism rate for methamphetamine, in effect, creates an adequate window for a person to avoid detection when administered a drug test.

The Deputy Administrator is reluctant to apply the Government's arguments to these facts. While it is acknowledged it is "possible" Respondent could have taken methamphetamine and avoided detection, to accept the premise that he continued abusing would require assumptions about his conduct that are not supported by the record.

The primary aim of a "random" drug test is to create a level of unpredictability as to when the test will be administered. The unpredictable nature of such a test theoretically creates a disincentive for the continued use of drugs on the part of the individual being monitored. Against this backdrop, it is important to point out there is no evidence in the record raising any question as to the efficacy of the PHP drug testing program. Without such evidence, and in light of evidence of Respondent's negative drug tests, the Deputy Administrator concludes that the random nature of the PHP-administered tests served as an effective deterrent to Respondent's further drug use.

The Government also argued it would be unreasonable to reach the conclusion testified to by the PHP medical director that "a single use of illegal drugs or even three illegal uses in a one-year period" does not constitute evidence of chemical abuse. This argument is not particularly compelling.

The Deputy Administrator agrees with Respondent that the term "abuse," as being used by the witness, was referring to the diagnosis of chemical abuse under the DSM-4, which requires certain criteria which, in the witness's opinion, were not present in Respondent's case. While the Deputy

Administrator agrees with the Government that a single or multiple uses of illegal drugs can be deemed "abuse" in non-diagnostic terminology, Judge Randall's findings on this point were primarily credibility findings as to the expert's assessment of Respondent's lack of chemical dependency.

The Deputy Administrator considers Respondent's illicit purchase and use of methamphetamine particularly serious acts of misconduct. As the record demonstrates, Respondent was not chemically dependent. This infers that it was neither addiction nor dependency that motivated his "street" purchases of methamphetamine. Instead, he exercised unhindered judgment to illegally obtain and use what he as a physician, well knew to be an insidiously dangerous controlled substance and did so, according to his post-arrest interview, to enhance his sex life. This motivation to violate the law and risk his reputation and livelihood evidences a particularly cavalier and irresponsible attitude toward his responsibilities as a DEA registrant.

There is no evidence in the record that Respondent used illicit drugs while actually engaged in the practice of medicine. However, as a cardiologist, it is inferred that it was possible that he might be subject to being called on unexpectedly to treat patients experiencing serious heart problems on an emergent basis. If this had occurred while Respondent was under the influence of methamphetamine, his patients would either have been placed at risk by Respondent's impairment or, if he declined to treat them because of his drug use, they would not have been able to be seen immediately by another cardiology specialist, as Respondent was the only one in the rural area. These potential risks should have been apparent to Respondent when he elected to use methamphetamine and raise significant questions as to his judgment and ability to use sound professional discretion in treating patients with controlled substances.

Of particular concern to the Deputy Administrator is the finding that Respondent admitted previously purchasing methamphetamine and illicitly distributing it to another individual. This criminal conduct is made even more egregious because the recipient was a fellow physician. The evidence also shows that a portion of the methamphetamine Respondent was purchasing when arrested was destined for distribution to that medical colleague. Thus, in an area already undeserved by medical professionals, Respondent not only placed himself at risk, but, by distributing

methamphetamine to another physician, added to the threat posed to his rural community by potentially impaired physicians.

Since his arrest, Respondent's professional practice has continued without blemish and he has avoided illicit drugs. These are commendable and indicate potential for future registration. On the other hand, Respondent's calculated abandonment of his responsibilities and willingness to risk serious criminal and professional sanctions do not auger well for continued registration being in the public interest. As observed by the Seventh Circuit Court of Appeal, "[a]n agency rationally may conclude that past performance is the best projector of future performance." *ALRA Laboratories, Inc. v. DEA*, 54 F.3d 450, 451 (7th Cir. 1995).

Based on the foregoing, at this time, the Deputy Administrator does not have sufficient confidence that Respondent can successfully fulfill the responsibilities of a registrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), and 0.104, hereby orders that DEA Certificate of Registration BC4775233, previously issued to Imran I. Chaudry, M.D., be and it hereby is revoked. His pending application for renewal of that registration and his request to modify said registration to reflect a new requested address, are hereby denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Juan Pillot-Costas, M.D. Revocation of Registration

On February 20, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Juan Pillot-Costas, M.D. (Respondent) of Ponce, Puerto Rico, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BP3441475, as a practitioner, under 21 U.S.C. 824(a)(5) and deny any pending applications for renewal or modification of that