

DEA for retirement, "and that no action has been taken, nor is any action contemplated . . . for reason that Respondent's registration record currently has an administrative code "O" placed on it, which forecloses all administrative action pending the outcome of a show cause proceeding. Accordingly, DEA has not accepted this tender."

The Deputy Administrator agrees with the Government that the chronology of this case is similar to that of *Park and King Pharmacy*. Respondent was sold after the Order to Show Cause was issued. Therefore, according to the decision in *Park and King Pharmacy*, Respondent's registration should not be considered terminated and should be capable of revocation. However, the Deputy Administrator is troubled by the decision in *Park and King Pharmacy*. The Deputy Administrator can find nothing in the statute or regulations nor any other notice to the public that a registration does not terminate upon the sale of a pharmacy if an Order to Show Cause has been issued. Pursuant to 21 CFR 1301.16, permission is needed to amend or withdraw an application once an Order to Show Cause has been issued, but there is no similar provision regarding a registration. Therefore, no permission is needed to terminate a registration. In fact, 21 CFR 1301.52(a) specifically states that, "the registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice." (emphasis added)

The Deputy Administrator recognizes the then-Administrator's concerns in *Park and King Pharmacy* that to permit termination after an Order to Show Cause has been issued allows a registrant to avoid the consequences of a revocation. However, pursuant to 21 CFR 1301.52(a) a registration automatically terminates when a pharmacy ceases legal existence or discontinues business or professional practice. The Deputy Administrator can find no authority to support the prevention of a termination, and therefore finds no authority to support the then-Administrator's conclusion in *Park and King Pharmacy* that a registration does not terminate upon the sale of a pharmacy if an Order to Show Cause has been issued.

In fact in *AML Corporation, d/b/a G & O Pharmacy, and G & O Pharmacy*, 61 Fed. Reg. 8973 (1996), decided subsequent to *Park and King Pharmacy*, the then-Deputy Administrator concluded that a pharmacy's registration terminated upon the sale of the pharmacy even though the sale

occurred in the midst of administrative proceedings regarding the registration.<sup>4</sup> The then-Deputy Administrator noted "that pursuant to 21 CFR 1301.62, the transfer of ownership of G & O Pharmacy to AML effectively terminated all authority granted under DEA Certificate of Registration, AG2999691, previously issued to G & O Pharmacy."

Accordingly, the Deputy Administrator concludes that DEA Certificate of Registration BC5009421, previously issued to Cadiz Thrif/T Drug, Inc. terminated as of May 24, 1998, when it discontinued business upon its sale to Hospital Street Pharmacy, Inc. Therefore there is no viable DEA Certificate of Registration capable of revocation as proposed in the June 3, 1997 Order to Show Cause. This order is effective immediately.

Dated: March 15, 1999.

**Donnie R. Marshall,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Michael W. Dietz, D.D.S., Revocation of Registration**

On September 23, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Michael W. Dietz, D.D.S. (Respondent) of Cookeville, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AD6561307 pursuant to 21 U.S.C. 824(a) (3) and (4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that:

"1. [Dr. Dietz'] continued registration is inconsistent with the public interest, as that term is issued in 21 U.S.C. § 823(f) and § 824(a)(4), as evidenced by, but not limited to, the following:

(a) On or about April 19, 1997, [Dr. Dietz] sold cocaine, a Schedule II controlled substance, to another person, and such sale was for no legitimate medical purpose and not in the usual course of [his] professional practice.

(b) On or about April 26, 1997, [Dr. Dietz] again sold cocaine to the same person, and such sale was for no legitimate medical purpose and not in the usual course of [his] professional practice.

(c) On or about May 7, 1997, [Dr. Dietz] and this same person used cocaine, and such use was for no legitimate medical practice and not in the usual course of [his] professional practice.

(d) On or about May 9, 1997, [Dr. Dietz] agreed to sell and attempted to deliver cocaine to this same person, and such sale and attempted deliver were for no legitimate medical purpose and not in the usual course of [his] professional practice.

2. On May 19, 1997, [Dr. Dietz] was indicted in the State of Tennessee, Putnam County, for two felony counts of unlawfully and knowingly selling cocaine, two felony counts of unlawfully and knowingly delivering cocaine, two felony counts of unlawfully and knowingly possessing cocaine with the intent to sell or deliver cocaine, two felony counts of unlawfully and knowingly conspiring to sell cocaine and one felony count of unlawfully and knowingly conspiring to possess cocaine with the intent to sell or deliver such cocaine. These criminal charges were based upon the allegations enumerated above.

3. Based upon the above events, the State of Tennessee, Department of Health, Tennessee Board of Dentistry, revoked [Dr. Dietz'] dental license, effective May 19, 1997. As a result, [Dr. Dietz is] no longer authorized by State law to handle controlled substances in the state in which [he is] registered with DEA. 21 U.S.C. § 824(a)(3).

By letter dated October 15, 1998, Respondent waived his opportunity for a hearing and submitted a written statement regarding his position on the issues raised in the Order to Show Cause. Therefore, the Deputy Administrator finds that Respondent has waived his opportunity for a hearing and hereby enters his final order in this matter based upon the investigative file and Respondent's written statement pursuant to 21 CFR 1301.43 (c) and (e) and 1301.46.

The Deputy Administrator finds that in an Order effective May 27, 1998, the State of Tennessee, Department of Health, Board of Dentistry (Board) revoked indefinitely Respondent's license to practice dentistry.<sup>1</sup> In his letter dated October 15, 1998, Respondent stated that "as a result of the actions taken by the Tennessee Board of Dentistry, I do not require a DEA Certificate of Registration at this time. I respectfully request a suspension of my Registration until re-licensure occurs. Respondent further stated that he "fully expect[s] re-instatement of my dental license during the spring [Board] meeting of 1999."

The Deputy Administrator finds that based upon the record before him, Respondent is not currently licensed to

<sup>4</sup>In that case, the Government also sought to revoke the new pharmacy's DEA registration and the proceedings were consolidated.

<sup>1</sup>The Deputy Administrator can find no Board order revoking Respondent's dental license effective May 19, 1997, as alleged in the Order to Show Cause.

practice dentistry in the State of Tennessee and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the 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 his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

While Respondent indicates that he expects reinstatement of his Tennessee dental license in the near future, this is merely speculation at this point in time and there is nothing in the record from the Board to indicate that Respondent's license will in fact be reinstated. The Deputy Administrator finds that it is clear that Respondent is not currently authorized to handle controlled substances in the State of Tennessee. As a result, Respondent is not entitled to a DEA registration in that state.

Since Respondent's DEA registration cannot be maintained in Tennessee based upon his lack of state authorization to handle controlled substances, the Deputy Administrator finds that it is unnecessary to determine whether Respondent's continued registration would be inconsistent with the public interest as alleged in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD6561307, previously issued to Michael Wayne Dietz, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective May 3, 1999.

Dated: March 15, 1999.

**Donnie R. Marshall,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 98-30]

#### William Franklin Prior, Jr., M.D. Denial of Application

On April 7, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to William Franklin Prior, Jr., M.D. (Respondent) of South Carolina and New Mexico. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BP5105890<sup>1</sup> issued to him in New Mexico and deny any pending applications for renewal of that registration, pursuant to 21 U.S.C. 823(f), 824(a)(1) and (a)(4), for reason that he materially falsified an application for registration and his continued registration would be inconsistent with the public interest. The Order to Show Cause also proposed to deny Respondent's pending application, executed on September 21, 1994, for registration as a practitioner with DEA in South Carolina, Pursuant to 21 U.S.C. 823(f) for reason that Respondent's registration would be inconsistent with the public interest.

By letter dated May 19, 1998, Respondent filed a request for a hearing regarding his New Mexico DEA Certificate of Registration and stating that "[t]he application for renewal in South Carolina has now been withdrawn. \* \* \*" The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On May 26, 1998, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, on June 16, 1998, the Government filed a Motion to Terminate the Proceedings, Motion for Summary Disposition and Motion to Stay Proceedings. In its filing, the Government contended that pursuant to a criminal plea agreement entered into on April 14, 1998, Respondent agreed to surrender his New Mexico DEA Certificate of Registration and to withdraw any pending applications for registration with DEA. The Government argued that as a result, there is nothing to revoke or deny and therefore these proceedings should be terminated. In addition, the Government contended that Respondent's application for a DEA registration in South Carolina should be

denied because he is not authorized to handle controlled substances in that state. In his response to the Government's motions, Respondent requested that his "credentials be returned," and asked Government counsel to help him "ask the ALJ to allow my placing of credentials with Judge Simons to be temporary."

On August 14, 1998, Judge Bittner issued her Opinion and Recommended Decision, terminating the proceedings regarding Respondent's New Mexico DEA Certificate of Registration; denying the Motion to Terminate the proceedings regarding Respondent's application for a DEA Certificate of Registration in South Carolina; finding that Respondent lacked authorization to handle controlled substances in the State of South Carolina; granting the Government's Motion for Summary Disposition regarding Respondent's application for a DEA registration in South Carolina; and recommending that Respondent's application be denied. Neither party filed exceptions to her opinion, and on September 14, 1998, Judge Bittner transmitted the record of these proceedings to the Acting 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 Decision of the Administrative Law Judge.

The Deputy Administrator finds that pursuant to a plea agreement entered into by Respondent on April 14, 1998, in the United States District Court for the District of South Carolina, Respondent agreed "to surrender any DEA registration number, especially number BP5105590. \* \* \*" According to the affidavit of a DEA investigator dated June 12, 1998, Respondent surrendered his DEA Certificate of Registration to the judge who presided over the criminal proceedings against him, and on June 8, 1998, the investigator retrieved Respondent's Certificate of Registration from the judge's office.

Judge Bittner found that in light of the above and the fact that Respondent does not deny that he surrendered his New Mexico DEA registration, "the issue of whether or not to revoke it is moot." Accordingly, Judge Bittner terminated the proceedings with respect to DEA Certificate of Registration BP5105590. The Deputy Administrator agrees with Judge Bittner's conclusion regarding Respondent's DEA Certificate of

<sup>1</sup> While the Order to Show Cause listed BP5105890 as Respondent's DEA registration number in New Mexico, evidence in the record shows that Respondent's New Mexico DEA Certificate of Registration is BP5105590.