and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Michael J. Pine, D.D.S. on June 5, 1995, be, and it hereby is, denied. This order is effective June 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15748 Filed 6–21–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–15]

Saihb S. Halil, M.D.; Revocation of Registration; Denial of Request for Modification

On November 6, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Snow Cause to Saihb S. Halil, M.D. (Respondent) of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AH1993749, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that his California medical license was revoked effective May 3, 1995, and he is therefore not currently authorized to handle controlled substances in that state. Following subsequent communication between Respondent and DEA, Respondent submitted a letter to DEA dated January 29, 1998, requesting that his DEA Certificate of Registration be modified to reflect a Puerto Rico address. On February 20, 1998, DEA issued an Amended Order to Show Cause to Respondent proposing to revoke his DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1) and (a)(3), and to deny his request to modify his registration and to deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) for reason that his continued registration would be inconsistent with the public interest.

By letter dated March 2, 1998, Respondent timely filed a request for a hearing, and following prehearing procedures, a hearing was held in San Francisco, California on July 1, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called a witness to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument. On November 19, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA registration be revoked and that his request for modification and any pending applications for renewal be denied. Neither party filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on January 6, 1999, Judge Randall transmitted the record of these proceedings to the 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 findings of fact and conclusions of law of the Administrative Law Judge, and adopts Judge Randall's recommended ruling with one exception. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent was issued DEA Certificate of Registration AH1993749 on March 18, 1983.

Effective July 10, 1995, the Medical Board of California (Board) revoked Respondent's license to practice medicine based upon his patient care in 1987 and 1988. The Board concluded that Respondent's license should be revoked (1) ''For gross negligence in his treatment of [3 named patients];'' (2) ''for repeated acts of negligence in his treatment of [3 named patients];'' (3) ''for acts and omissions which constitute incompetence in his treatment of [2 named patients];'' (4) ''for dishonest and corrupt acts in his dealings with [1 named patient];'' and (5) ''for sexual misconduct with [1 named patient].'' Further the Board adopted the state administrative Law judge's finding that Respondent had been ''untruthful in his depositions in 1990, and he [had been] untruthful at trial in 1994.''

In October 1995, Respondent submitted a renewal application for his DEA Certificate of Registration listing a California address. On this application, Respondent listed the license number for his revoked California medical license in response to the question regarding the status of his state licensure. Further, Respondent answered ''No'' in response to the question on the application (hereinafter referred to as the liability question'') which asks in relevant part: ''Has the applicant ever * * * had a State professional license or controlled substance registration revoked, suspended denied, restricted or placed on probation, or is any such action pending against the applicant?'' At the hearing in this matter, Respondent testified that he had not personally completed this renewal application nor had he signed it.

On November 6, 1996, DEA issued the first Order to Show Cause to Respondent. By letter dated November 22, 1996, Respondent informed DEA that he currently was practicing medicine in Puerto Rico, and requested information concerning what other action he should take in response to the Order to Show Cause. DEA did not reply to Respondent's letter until December 30, 1997. DEA informed Respondent that he needed to request a modification of his DEA registration to reflect his Puerto Rico address. By letter dated January 29, 1998, Respondent requested modification of his DEA Certificate of Registration to reflect a Puerto Rico address.

At the hearing in this matter, Respondent admitted that he lacked in-depth knowledge of the applicable DEA regulations. He further testified that although he has pursued extensive medical training while in Puerto Rico, the training did not include classes concerning the handling of controlled substances.

The Government contends that Respondent's DEA Certificate of Registration must be revoked since he is no longer authorized to practice medicine or handle controlled substances in California, and state authorization is a necessary prerequisite to DEA registration. Further the Government contends that Respondent's request for modification of his DEA registration to reflect a Puerto Rico address should be denied based upon Respondent's material falsification of his October 1995 renewal application.

Respondent asserts that his request for modification of his DEA Certificate of Registration should be granted because he did not materially falsify his renewal application; the Government failed to prove that modification of his registration would be inconsistent with the public interest; and the Government is estopped from taking adverse action based upon its failure to process his application in a timely manner. Respondent further asserts that if his request for modification is granted to reflect a Puerto Rico address, then the Government no longer has a basis for revoking his DEA registration.

As to Respondent's estoppel argument, the Deputy Administrator agrees with Judge Randall that ''[t]he chronology of agency action in this case

is troubling * * *''. Respondent submitted a timely reply to the initial Order to Show Cause requesting further guidance; however the Government did not respond for 13 months.

But, DEA has previously held that:

> [P]rinciples of equitable estoppel cannot be applied to deprive the public of the protection of a statute because of the mistaken action, or lack of action, on the part of public officials * * *. Generally, a governmental unit is not estopped when functioning in a governmental capacity.

James Dell Potter, M.D., 49 FR 9970 (1994) (alteration and omission in original).

The Deputy Administrator agrees with Judge Randall's conclusion that ''[a]lthough worthy of consideration and concern, such lack of timeliness does not overcome the public interest in this case. Equitable estoppel does not operate under these circumstances to preclude the DEA from protecting the public health and safety.'' Therefore, the Deputy Administrator must determine whether Respondent's registration should be revoked and his request for modification denied in light of the facts of this case and the relevant law.

Initially, the Deputy Administrator notes that DEA does not have the statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to handle controlled substances by the state in which he or she practices. See 802(21), 823(f), and 824(a)(3). DEA has consistently held that a practitioner may not maintain a DEA registration when the practitioner lacks authority to handle controlled substances in the state in which he or she practices. See, e.g., Charles Milton Waller, D.D.S., 62 FR 34,310 (1997); Suzanne Kirkwood King, M.D., 62 FR 33,680 (1997); *Anne Lazar Thorn, M.D.*, 62 FR 12,847 (1997).

The Deputy Administrator finds that it is undisputed that Respondent is not currently authorized to practice medicine in the State of California, where he is registered with DEA. Therefore, it is reasonable to infer that he is also not authorized to handle controlled substances in that state. As a result, Respondent is not entitled to maintain a DEA registration in that state.

However, Respondent has sought to modify his DEA registration to an address in Puerto Rico where he is authorized to handle controlled substances. Pursuant to 21 CFR 1301.51, requests for modification ''shall be handled in the same manner as an application for registration.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the 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 and 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 he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

The Deputy Administrator agrees with Judge Randall that factors one and five are relevant in this case in determining the public interest. As to factor one, it is undisputed that Respondent's California medical license was revoked in July 1995. However, Respondent is currently licensed to practice medicine and handle controlled substances in the Commonwealth of Puerto Rico.

The Government argues that Respondent's material falsification of his DEA renewal application should be considered under factor five in determining whether Respondent's continued registration is inconsistent with the public interest. Answers to liability questions are considered material, because DEA relies upon such answers to determine whether an investigation is needed prior to granting the application. See Ezzat E. Majd Pour, M.D., 55 FR 47,547 (1990). DEA has consistently held that the test for determining whether an applicant has materially falsified an application for registration is whether the applicant knew or should have known that the information he provided on the application was false. See Herbert J. Robinson, M.D., 59 FR 6304 (1994); Bobby Watts, M.D. 58 FR 46,995 (1993).

Respondent's California medical license was revoked in July 1995, yet he indicated in his October 1995 renewal application that no action had been taken against his state license. Respondent knew or should have known, at the time that his renewal application was submitted, that his answer to the liability question was false.

As Judge Randall noted, ''[a]though the Respondent testified that he had not personally completed the renewal application, such an assertion does not relieve him of the responsibility of assuring the truthfulness of information submitted to the DEA on his behalf.'' The Deputy Administrator agrees with Judge Randall that the Government has presented a prima facie case of material falsification.

The Deputy Administrator also agrees with Judge Randall that Respondent's admission of a lack of in-depth knowledge of controlled substance regulations is relevant under factor five. Registrants must be familiar with the regulations relating to controlled substances to ensure that controlled substances are properly handled and not diverted for illicit purposes.

Judge Randall concluded that Respondent's registration should be revoked based upon his lack of state authorization to handle controlled substances, and that his request for modification of his registration should be denied based upon his material falsification of his renewal application and his admitted lack of knowledge of controlled substance regulations. But Judge Randall further stated that:

> given the extraordinary lapse of time since the Respondent's unacceptable medical practices in 1987 and 1988, should the Respondent (1) Apply for a new registration with a truthful application, disclosing his complete license history, and (2) submit evidence of recent training in the handling of controlled substances, then I would recommend that the Deputy Administrator consider granting such an application.

The Deputy Administrator agrees that Respondent's request for modification of his DEA registration to reflect a Puerto Rico address should be denied as inconsistent with the public interest. Respondent was responsible for the material falsification of his renewal application. In addition, his admitted lack of knowledge concerning the proper handling of controlled substances is troubling to the Deputy Administrator. As a result, the Deputy Administrator is not convinced that Respondent can be trusted to responsibly handle controlled substances.

The Deputy Administrator further concludes that since Respondent's request for modification is denied, Respondent is left with his DEA registration in California. Respondent cannot maintain his DEA registration in California based upon his lack of authorization to handle controlled

substances in that state. As a result, his DEA Certificate of Registration must be revoked.

Therefore, the Deputy Administrator agrees with Judge Randall that Respondent's registration must be revoked and his request for modification denied. But, the Deputy Administrator declines to indicate under what circumstances DEA would consider granting any future applications. Any such applications will be considered in light of the facts and circumstances that exist at that time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH1993749, issued to Saihb S. Halil, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that Dr. Halil's request to modify his registration, and any pending applications for renewal of his registration, be, and they hereby are, denied. This order is effective July 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15750 Filed 6–21–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ahmed A. Shohayeb, M.D.; Denial of Applications

On January 28, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ahmed A. Shohayeb, M.D. of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS4243591 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration and two pending applications, executed on August 20, 1996, and September 11, 1996, for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Shohayeb that should no request for a hearing be filed within 30 days, his hearing right should be deemed waived.

The Order to Show Cause was sent to Dr. Shohayeb by registered mail to his DEA registered address and to the addresses listed on his two applications for registration, but were returned to DEA unclaimed. A DEA investigator attempted to contact Dr. Shohayeb by telephone, but all telephone numbers listed for Dr. Shohayeb were disconnected. On February 27, 1998, the investigator went to the address listed on Dr. Shohayeb's driver's license and confirmed that Dr. Shohayeb lived at that address, however he was unable to talk to Dr. Shohayeb at that time. The investigator left a copy of the Order to Show Cause under the door.

No request for a hearing or any other reply was received by the DEA from Dr. Shohayeb or anyone purporting to represent him in this matter. Therefore, the 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. Shohayeb is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that there are indications in the file that Dr. Shohayeb's DEA Certificate of Registration BS4243591, expired on February 28, 1998, and that no renewal applications have been filed for this registration. Therefore the Deputy Administrator concludes that as of February 28, 1998, this registration was no longer valid, and as a result, there is noting to revoke. *See Ronald J. Reigel, D.V.M.*, 63 FR 67,132 (1998). However, there are two pending applications for registration that must be addressed.

The Deputy Administrator finds that effective May 23, 1997, the Medical Board of California (Board) revoked Respondent's license to practice medicine. The Board found that Dr. Shohayeb engaged in sexual misconduct with a patient; he engaged in acts of gross negligence; he advertised his practice of medicine using a name which was not his own or one which was approved by the Board; and he engaged in unprofessional conduct.

The Deputy Administrator finds that Dr. Shohayeb is not currently licensed to practice medicine in the State of California 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. *See* 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 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Shohayeb is not currently authorized to handle controlled substances in the State of California. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the applications, executed on August 20, 1996 and September 11, 1996 by Ahmed A. Shohayeb, M.D., for registration as a practitioner, be, and they hereby are, denied. This order is effective June 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15749 Filed 6–21–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for employment authorization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 28, 1999 at 64 FR 4471, allowing for an emergency OMB review and approval and a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 22, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the