

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances;
Notice of Registration

By Notice dated April 26, 1999, and published in the **Federal Register** on May 7, 1999, (64 FR 24679), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The firm intends to import the listed controlled substances to produce codeine phosphate, codeine sulfate, morphine sulfate, oxycodone and hydrocodone.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Noramco of Delaware, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco of Delaware, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 1, 1999.

John H. King,

*Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.*

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99-18]

Vincent G. Rhoden, D.P.M.; Revocation
of Registration

On January 21, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Vincent G. Rhoden, D.P.M. (Respondent) of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BR5050860 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration 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.

By letter dated March 1, 1999, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On March 8, 1999, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on March 29, 1999, alleging that Respondent is currently registered with DEA to handle controlled substances in the State of California, however he is currently without state authority to handle controlled substances in that state. On April 19, 1999, Respondent filed his response to the Government's motion requesting that the proceedings be stayed for "at least 180 days so that [he] may explore all available judicial remed[ies] for a questionable decision that was rendered against [him]". In addition, Respondent stated that there have been no complaints regarding his use of his DEA Certificate of Registration and that he intends to return to the practice of medicine. However, Respondent did not deny that he was not currently authorized to handle controlled substances in California.

On April 22, 1999, Judge Bittner issued her Opinion and Recommended Ruling, finding that Respondent lacks authorization to handle controlled substances in the State of California; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on May 24, 1999, Judge Bittner 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 Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Board of Pediatric Medicine, Department of Consumer Affairs, State of California, revoked Respondent's license to practice podiatric medicine effective January 14, 1998. Respondent does not deny that his medical license has been revoked. As a result, the Deputy Administrator concludes that Respondent is not currently authorized 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 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Here it is clear that Respondent 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.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is not currently authorized to handle controlled substances in California. Therefore, it is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial proceeding involving evidence and cross-examination of witnesses is not required. See *Jesus R. Juarez, M.D.*, 62 FR 14945 (1997). The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. See *Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd; sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); see also *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

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 BR5050860, previously issued to Vincent G. Rhoden, D.P.M., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99-4]

Robert W. Shultice, M.D.; Revocation of Registration

On October 16, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert W. Shultice, M.D. (Respondent) of Cedar Rapids, Iowa. The Order to Show Cause notified Dr. Shultice of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS0126272 pursuant to 21 U.S.C. 824(a)(1) and (a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that his continued registration would be inconsistent with the public interest.

By letter dated November 12, 1998, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 24, 1998, Judge Bittner issued an Order for prehearing Statements. The Government filed its prehearing statement on December 15, 1998, and on January 4, 1999, Respondent filed a Motion of Continuance. In his motion, Respondent indicated that he had voluntarily surrendered his license to practice medicine with the Iowa Board of Medical Examiners (Medical Board), and asked for an indefinite continuance of the proceedings. Respondent attached to his motion a copy of a Statement of Charges, Settlement Agreement and Final Order which was approved by the medical Board of December 17, 1998, in which Respondent agreed to voluntarily surrender his medical license no later than December 11, 1998. On January 4,

1999, Judge Bittner denied Respondent's motion.

Thereafter, the Government filed a Motion for Summary Disposition on January 21, 1999, alleging that Respondent was no longer authorized to handle controlled substances in Iowa, where he is registered with DEA. The Government attached to its motion a copy of a letter dated January 14, 1999, from the Iowa Board of Pharmacy (Pharmacy Board) to Respondent informing him that based on the surrender of his medical license, the Pharmacy Board revoked his Iowa controlled substance registration. On February 5, 1999, Respondent filed his Response to the Government's Motion for Summary Disposition, indicating that he did not object to the Government's motion.

On February 8, 1999, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in Iowa; granting the Government's Motion for Summary Disposition, and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on April 6, 1999, Judge Bittner 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 Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent voluntarily surrendered his license to practice medicine in December 1998, and on January 14, 1999, the Pharmacy Board revoked his Iowa controlled substance registration. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Iowa, where he is registered with DEA.

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 Respondent is not licensed to handle controlled substances

in the State of Iowa. Since Respondent lacks this authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in the State of Iowa. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Philip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); see also *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); *United States v. Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

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 BS0126272, previously issued to Robert W. Shultice, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99-17]

Clarence J. Sketch, D.D.S.; Denial of Application

On February 2, 1999, the Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration (DEA) issued an Order to Show Cause to Clarence Sketch, D.D.S. (Respondent) of Costa Mesa, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest. In a letter to DEA dated February 25, 1999, Respondent admitted that he abused his previous DEA Certificate of Registration,