DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on May 7, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs''), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, JetBroadband, Brook, NY, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on January 4, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 2007 (72 FR 6577).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–13213 Filed 6–16–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International-Standards

Notice is hereby given that, on May 16, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between February 2008 and May 2008 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on February 29, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 7, 2008 (73 FR 18812).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–13211 Filed 6–16–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on May 9, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 20 new standards have been initiated and 11 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/27–03–08.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on January 11, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 25, 2008 (73 FR 10065).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–13214 Filed 6–16–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Craig H. Bammer, D.O.; Denial of Application

On October 1, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Craig H. Bammer, D.O. (Respondent), of South Gulfport, Florida. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration, BB1336456, as a practitioner, and the denial of any pending applications to renew or modify the registration, on three grounds. Show Cause Order at 1–2.

More specifically, the Show Cause Order alleged that on both February 28 and April 27, 2007, the Pinellas County, Florida Sheriff's Office had arrested Respondent and charged him with prescribing controlled substances without a legitimate medical purpose, and that his conduct constituted acts inconsistent with the public interest. *Id.* at 1 (citing 21 U.S.C. 824(a)(4)). Next, the Show Cause Order alleged that on June 21, 2007, the Florida Department of Health revoked Respondent's state medical license and that Respondent was therefore without authority to handle controlled substances in the State in which he held his DEA registration. *Id.* (citing 21 U.S.C. 824(a)(3)). Finally, the Show Cause Order alleged that in July 2003, Respondent had materially falsified his renewal application for a DEA registration by failing to disclose that in 1999, he had surrendered his DEA registration and Ohio medical license based on allegations that he was ''impaired by excessive or habitual use of drugs and alcohol.'' *Id.* at 1–2 (citing 21 U.S.C. 824(a)(1)).

On October 15, 2007, the Show Cause Order, which also informed Respondent of his right to a hearing, was served on him at the Pinellas County Jail, where

he was then residing.[1] Since that time, neither Respondent, nor any one purporting to represent him, has requested a hearing. Because more than thirty days have passed since the service of the Show Cause Order and no request for a hearing has been received, I find that Respondent has waived his right to a hearing on the allegations. 21 CFR 1301.43(d). Accordingly, I enter this Final Order without a hearing based on relevant material contained in the investigative file and make the following findings. *Id.* § 1301.43(e).

Findings

Respondent held DEA Certificate of Registration, BB1336456, which expired on July 31, 2006. Respondent did not file a renewal application until August 8, 2006. Because Respondent's renewal application was untimely, I find that Respondent does not have a current registration. *See* 5 U.S.C. 558(c). Respondent does, however, have an application which remains pending before the Agency.

On June 9, 1999, Respondent voluntarily surrendered his Ohio medical license to avoid further formal proceedings based on his failure to comply with a consent agreement with the Ohio Medical Board under which he was required to surrender his DEA registration and could not apply for a new registration absent the state board's approval. According to the records of the Ohio board, Respondent had admitted that he ''suffered impairment due to excessive or habitual use of drugs and alcohol.'' *See* Ohio Medical Board Formal Actions Against Craig Howard Bammer, at 2. Respondent eventually did surrender his DEA registration.

On July 24, 2003, Respondent submitted an application to renew his DEA registration.[2] While on this application Respondent acknowledged that he had been subjected to disciplinary proceedings with respect to both his Ohio and Florida medical licenses, Respondent answered ''no'' to the question of whether he had ''ever surrendered'' his DEA registration. Moreover, according to the Agency's registration records, on his August 2006 application, Respondent again acknowledged the prior actions against his state licenses. The registration record does not, however, establish how Respondent answered the liability question related to his DEA registration.

As for the other allegations, the investigative file establishes that in January 2007, an undercover officer obtained a prescription for Roxicodone, a schedule II controlled substance from Respondent without the latter having performed a physical examination. Moreover, the undercover officer also obtained a prescription for a third person who was not present. The investigative file does not, however, indicate what drug the prescription was for.

The investigative file also indicates that in February 2007, the undercover officer obtained additional prescriptions for Roxicodone in exchange for the officer's agreeing to pay Respondent's electric bill. Shortly thereafter, Respondent was arrested and charged with several counts of trafficking in illegal drugs, a felony offense under Florida law. See Fla. Stat. Ann. 893.135. According to the online records of the Pinellas County Courts, Respondent awaits trial on these charges.

Moreover, on May 25, 2007, the Florida Department of Health issued an emergency order suspending Respondent's medical license. Thereafter, on June 21, 2007, the Florida Department of Health revoked Respondent's medical license.

Discussion

Under section 304(a) of the Controlled Substances Act (CSA), a registration ''may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has materially falsified any application filed pursuant to or required by this subchapter.'' 21 U.S.C. 824(a)(1). The Attorney General may also suspend or revoke a registration ''upon a finding that the registrant * * * has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances.'' *Id.* § 824(a)(3). Under agency precedent, the various grounds for revocation or suspension of an existing registration which Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny a registration under section 303. *See The Lawsons, Inc.*, 72 FR 74334, 74338 (2007); *Kuen H. Chen*, 58 FR 65401, 65402 (1993).

In this matter, the Order to Show Cause alleged three separate grounds for this proceeding. I conclude that it is unnecessary to address the allegations related to Respondent's prescribing of controlled substances without a legitimate medical purpose. Instead, I find that because Respondent materially falsified his 2003 application for a DEA registration and lacks authority under state law to prescribe a controlled substance, he is not entitled to hold a DEA registration. Accordingly, his application will be denied.

The Material Falsification Allegation

Respondent materially falsified his 2003 application for a DEA registration when he failed to disclose that he had previously surrendered his DEA registration. As this Agency has repeatedly held, '' '[t]he provision of truthful information on applications is absolutely essential to effectuating [the] statutory purpose' of determining whether the granting of an application is consistent with the public interest.'' *The Lawsons*, 72 FR at 74338 (quoting *Peter H. Ahles*, 71 FR 50097, 50098 (2006)). *See also Hoxie* v. *DEA*, 419 F.3d 477, 483 (6th Cir. 2005) (''Candor * * * is considered by the DEA to be an important factor when assessing whether a * * * registration is consistent with the public interest.'').

A false statement is material if it ''has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed.'' *Kungys* v. *United States*, 485 U.S. 759, 770 (1988) (int. quotation and other citations omitted). Moreover, while the evidence must be ''clear, unequivocal, and convincing,'' the ''ultimate finding of materiality turns on an interpretation of the substantive law.'' *Id.* at 772 (int. quotations and other citation omitted).

This Agency has previously held that ''[a]n applicant's answers to the various liability questions are material because [it] 'relies upon such answers to determine whether an investigation is needed prior to granting the application.' '' *The Lawsons*, 72 FR at 74338 (quoting *Martha Hernandez*, 62 FR 61145, 61146 (1997)). Notably, in determining whether the granting of an application is in the public interest, the Agency is required to consider ''[t]he applicant's experience in dispensing * * * controlled substances,'' his ''[c]ompliance with applicable State, Federal or local laws relating to controlled substances,'' and ''other conduct which may threaten public health and safety.'' 21 U.S.C. 823(f). And in making determinations with respect to these factors, DEA has repeatedly considered an applicant's or an existing registrant's history of abusing controlled substances. *See, e.g., Patrick K. Riggs,* 72 FR 71959 (2007); *Alan H. Olefsky*, 72 FR 42127 (2007); *Alan H. Olefsky*, 57 FR 928 (1992).

[1] A courtesy copy of the Show Cause Order was also sent to Respondent's counsel.

[2] By this date, Respondent had already regained a DEA registration, as a renewal application stated that ''your crrent registration expires on 07–31–2003.'' Renewal Application for Registration (Dtd. July 7, 2003).

I thus conclude that Respondent's failure to disclose the earlier surrender of his DEA registration was a material misrepresentation because it ''ha[d] a natural tendency to influence the * * * decision'' of the Agency as to whether to grant his application for a new registration.[3] Under DEA precedent, this act ''provides an independent and adequate ground for denying'' Respondent's application. *The Lawsons*, 72 FR at 74338; *Cf. Bobby Watts*, 58 FR 46997 (1993).

The Lack of State Authority Allegation

As found above, on May 25, 2007, the Florida Department of Health issued an order which imposed an emergency suspension of Respondent's state medical license. Shortly thereafter, on June 21, 2007, the Florida Department of Health issued a further order which revoked Respondent's state medical license.

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority to dispense a controlled substance under the laws of the State in which a physician practices medicine is an essential condition for holding a DEA registration.

Because Respondent's Florida medical license has been revoked, he is without authority under state law to handle controlled substance and does not meet an essential prerequisite under the CSA for obtaining a new DEA registration. *See Richard Carino, M.D.*, 72 FR 71955, 71956 (2007) (citing cases); 21 U.S.C. 823(f). Accordingly, his application will be denied for this reason as well.

[3] While Respondent indicated on 2003 application that both his Florida and Ohio licenses had been subjected to discipline, he further stated that the basis of the discipline was his ''abuse of a non-controlled substance (Stadol nasal spray).'' Stadol nasal spray contains butorphanol tartrate, and is a schedule IV controlled substance. *See* 21 CFR 1308.14(f). Respondent's statement was thus an additional misrepresentation.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I hereby order that the application of Craig H. Bammer, D.O., for the renewal of his registration be, and it hereby is, denied. This order is effective July 17, 2008.

Dated: June 6, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–13609 Filed 6–16–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–52]

Benjamin Levine, M.D.; Dismissal of Proceeding

On August 7, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Benjamin Levine, M.D. (Respondent), of East Brunswick, New Jersey. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BL3612480, as a practitioner, and the denial of any pending applications to renew or modify his registration, on three separate grounds. Show Cause Order at 1. More specifically, the Show Cause Order alleged that: (1) Respondent had materially falsified his renewal application for his current registration; (2) Respondent lacked authority to handle controlled substances under the laws of the State in which he practiced medicine and held his DEA registration; and (3) Respondent had committed acts inconsistent with the public interest. *Id.* at 1–3.

Respondent requested a hearing on the allegations and the case was assigned to Administrative Law Judge (ALJ) Gail A. Randall. Shortly thereafter, the Government moved for summary disposition on the ground that the New Jersey State Board of Medical Examiners had suspended Respondent's state medical license. Motion for Summary Judgment at 1–2.

Respondent requested additional time to respond to the Government's motion. In his motion, Respondent did not deny that his state license had been suspended. Instead, Respondent noted that he was appealing the State board's order. Resp. Br. in Support of Motion for Additional Time at 3–4. Respondent also cited a litany of legal proceedings that he was litigating including a criminal case, a tort action, a motion for post-conviction relief of a 1996 conviction, a suit for libel and slander, another suit ''related to the Medical Board and * * * malpractice insurance lawyers,'' and a bankruptcy proceeding. *Id.* at 3–4.

The ALJ, however, denied Respondent's motion (as well as his Renewed Request for an extension of time). Applying agency precedent, she also rejected Respondent's argument that the Agency should not revoke his registration because his state license was only temporarily suspended. ALJ Dec. at 6 (citing *Alton E. Ingram, Jr.,* 69 FR 22562, 22563 (2004)). Because ''Respondent lack[ed] authority to practice medicine and handle controlled substances in New Jersey,'' the ALJ held that ''DEA lack[ed] authority to continue * * * Respondent's DEA registration.'' ALJ Dec. at 7. The ALJ thus granted the Government's motion for summary disposition and recommended that I revoke Respondent's registration. The ALJ then forwarded the record to me for final agency action.

Having considered the record as a whole (including Respondent's exceptions), I conclude that this case is now moot. It is undisputed that Respondent's registration expired on March 31, 2008. *See* Order to Show Cause at 1; *see also* Respondent's Counter-Statement of Material Facts at 1. Moreover, according to the registration records of this Agency, Respondent has not filed a renewal application.[1] I therefore find that Respondent is not currently registered with this Agency.

Under DEA precedent, '' 'if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.' '' *David L. Wood,* 72 FR 54936, 54937 (2007) (quoting *Ronald J. Riegel*, 63 FR 67132, 67133 (1998)). Moreover, while I have recognized a limited exception to this rule in cases which commence with the issuance of an immediate suspension order because of the collateral consequences which may attach with the issuance of such a suspension, *see William R. Lockridge*,

[1] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' § 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute these facts by filing a properly supported motion for reconsideration within fifteen days of service of this order, which shall begin on the date this order is mailed.