

a DEA Certificate of Registration; that he had previously been convicted of a felony relating to controlled substances; and that he submitted false medicaid claims.

The Order to Show Cause was served on Respondent by registered mail. On July 14, 1994, Respondent, through counsel, submitted a written statement waiving a hearing, admitting all allegations except those pertaining to the false medicaid claims and the material falsification of his DEA application. The Deputy Administrator has considered this statement along with the investigative file. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file and the written statement submitted by Respondent. 21 CFR 1301.57.

The Deputy Administrator finds that effective September 18, 1991, Respondent's medical license was revoked, pursuant to an Administrative Consent Agreement, by the State of South Carolina, Department of Health and Environmental Services (DHES). As a result of the DHES's action, Respondent is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the State of South Carolina.

The Deputy Administrator concludes that 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 authority to handle controlled substances in the State in which he/she practices. See 21 U.S.C. 832(f). The Deputy Administrator and his predecessors have consistently so held. See *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein.

Since Respondent lacks State authorization to handle controlled substances, it is not necessary for the Deputy Administrator to decide the other issues alleged in the Order to Show Cause.

Respondent does not contest that he is not currently authorized to handle controlled substances in South Carolina. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

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 application for a

DEA Certificate of Registration, submitted by Robert E. Sylvester, D.O., be, and it is hereby denied. This order is effective March 13, 1995.

Dated: March 7, 1995.

**Stephen H. Greene,**

*Deputy Administrator.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95-20; Exemption Application No. D-09690, et al.]

#### Grant of Individual Exemptions; Iron Workers Pension Trust of Colorado, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue

exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

#### Iron Workers Pension Trust of Colorado (The Pension Plan); and Colorado Iron Workers (Erection) Statewide Joint Apprenticeship and Trust Fund (the Apprenticeship Plan; together, the Plans) Located in Denver, Colorado

[Prohibited Transaction Exemption 95-20; Exemption Application Nos. D-09690 and L-09691]

#### Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the loan (the Loan) of \$141,601.36 by the Pension Plan to the Apprenticeship Plan, under the terms described in the notice of proposed exemption, provided the following conditions are satisfied:

(a) The Loan represents less than 25% of the assets of the Pension Plan; (b) the terms of the Loan are not less favorable to either Plan than those obtainable in arm's-length transactions with unrelated parties; (c) the trustees of each Plan approved the Loan as being appropriate for, and in the best interest of each Plan; (d) no trustee of either Plan made such determination on behalf of the other Plan; and (e) the property securing the Loan has been appraised by a qualified, independent appraiser as having a fair market value in excess of 150% of the principal amount of the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 4, 1995 at 60 FR 488.

**EFFECTIVE DATE:** This exemption is effective August 11, 1992.

**WRITTEN COMMENTS:** The Department received two written comments with respect to the proposed exemption. One comment sought further information

about the proposed exemption, which the Department provided to the commentator by telephone. The other comment did not address any issues relevant to the proposed exemption. After consideration of the entire record, the Department has determined to grant the exemption as proposed.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**Wadco, Inc. Profit Sharing Plan and Trust (the Plan) Located in Spring, Texas**

[Prohibited Transaction Exemption 95-21; Application No. D-09820]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain shares of stock (the Stock) by the Plan to Peter Aswad, a disqualified person with respect to the Plan.<sup>1</sup>

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Plan receives a sales price equal to the fair market value of the Stock as determined by an independent, qualified appraiser; (5) the trustees of the Plan determine that the Sale is appropriate for the Plan and is in the best interests of the Plan and their participants and beneficiaries; and (6) within ninety days of the grant of this exemption, Wadco files Forms 5330 with the Internal Revenue Service and pays all applicable excise taxes due with respect to past prohibited transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1995 at 60 FR 3661.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Parr of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

<sup>1</sup> Since Peter Aswad and his wife, Judith Aswad, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

**Treasure Valley Transplants, Inc. Money Purchase Pension Plan (the Plan) Located in Boise, Idaho**

[Prohibited Transaction Exemption 95-22; Application No. D-09874]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale (the Sale) of certain real property (the Property) by the Plan to Dr. George Holzer, D.V.M. (Dr. Holzer), a disqualified person with respect to the Plan;<sup>2</sup> provided that the following conditions are satisfied:

(1) The Sale is a one-time transaction for cash;

(2) The Plan does not incur any expenses in connection with the proposed transaction; and

(3) The consideration paid for the Property is no less than the fair market value of the Property as determined by an independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995 at 60 FR 5728.

**FOR FURTHER INFORMATION CONTACT:** Virginia J. Miller of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

**Terry Segal, P.C. Retirement Plans Located in Boston, MA**

[Prohibited Transaction Exemption 95-23; Exemption Application No. D-09891]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed purchase by Terry and Harriet Segal of an interest (the Interest) in a limited partnership from Mr. Segal's individually-directed account (the Account) in the Terry Segal, P.C. Pension Plan (the Pension Plan), provided: (1) The purchase is a one-time transaction for cash; (2) the Pension Plan Account is not required to pay any fees or commissions in connection therewith; (3) the Interest is appraised by a qualified, independent appraiser; and (4) the Pension Plan Account

<sup>2</sup> Since Dr. Holzer is the sole shareholder of the Employer, and the only participant in the Plan, there is no jurisdiction under Title I of the Act, pursuant to 29 CFR 2510.3-3(c)(1). There is, however, jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

receives an amount which reflects the fair market value of the Interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995 at 60 FR 5729.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC., this 8th day of March, 1995.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

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