

DEA Certificate of Registration. The Order to Show cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was received by Respondent. Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Judge Bittner ordered the parties to file prehearing statements. After the Government filed its prehearing statement, Respondent requested and obtained an extension of time to file his prehearing statement on or before February 10, 1994. On February 28, 1994, Judge Bittner issued an order terminating the proceedings based upon the fact that Respondent had not filed a prehearing statement nor any other pleading. The order also found that Respondent waived his right to a hearing pursuant to 21 CFR 1301.54(a) and 1301.54(d). Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

In 1986, Respondent prescribed various narcotic and benzodiazepine controlled substances to an individual whom Respondent knew was drug addicted. Respondent also prescribed Tylenol with codeine, a Schedule III controlled substance, and Doriden, then a Schedule III controlled substance and now a Schedule II substance, to this individual. This combination, known by its street name of "fours and dors", is commonly abused by many drug addicts and Respondent was aware of such fact at the time he prescribed these substances to this individual.

In October 1987, this individual acting in an undercover capacity made thirteen undercover visits to Respondent's office. The transcripts of these undercover visits revealed that Respondent was well aware that the combination of Tylenol with codeine and Doriden was used by drug abusers and that he was not prescribing these substances to this individual for any legitimate reason. In addition, from October 1987 to December 1987, Respondent's receptionist gave this individual over 300 dosage units of Valium, a Schedule IV controlled substance, and 144 dosage units of Doriden for no legitimate medical purpose. Although Respondent claimed he was unaware of this activity, he was responsible for this employee's actions and ultimately accountable for the controlled substances that were dispensed from his office.

Respondent ordered about 200,000 dosage units of controlled substances in a nine month period in 1987. These controlled substances were stored at his residence, and then transferred to Respondent's two offices; one of these offices was never a registered location and Respondent let the other office's registration lapse in January 1987.

In February of 1986, Respondent was convicted in the Commonwealth of Pennsylvania of 47 counts of submitting false or fraudulent Medicaid claims. Respondent was sentenced to three years probation and to pay a fine and restitution. The Pennsylvania Bureau of Occupational and Professional Affairs suspended Respondent's medical license in March 1988, but reinstated the license about a month later.

On March 23, 1988, Respondent was notified that his prior DEA registration was immediately suspended and that he should notify DEA of any controlled substance deliveries that he might receive subsequent to that date. In fact Respondent did order over 19,000 dosage units of controlled substances on March 23, 1988, and he received this shipment on March 28, 1988. He never notified DEA of this receipt of controlled substances. The controlled substances were discovered in the garage at the residence of Respondent's attorney pursuant to a search warrant which was served on April 13, 1988. Based upon these events, Respondent's prior DEA registration, AM5075305, was revoked on March 27, 1989. 54 FR 13254 (1989).

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

- (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.

In determining whether a registration would be inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, he has the discretion to give each factor the weight he deems

appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 88-69, 53 FR 5326 (1988).

Regarding factor two, Respondent's experience in dispensing controlled substances is poor based upon his prescribing the combination of Tylenol with codeine and Doriden to an individual, especially when Respondent was aware that this combination was subject to abuse. This factor is also supported by the fact that Respondent's employee dispensed numerous controlled substances to this individual in addition to the controlled substances that he received from Respondent's illegitimate prescriptions.

With respect to factor four, Respondent failed to comply with applicable Federal law by dispensing controlled substances from an unregistered location. 21 U.S.C. 822(e). Respondent also did not maintain records of the controlled substances dispensed from his office by his employee. 21 U.S.C. 827(a). Finally, Respondent received controlled substances after he was notified that his DEA registration was suspended. 21 U.S.C. 843(a)(2). This violation is particularly egregious because Respondent ignored instructions to inform DEA of any controlled substance shipments received after the suspension of his DEA registration. Factor five is applicable based upon Respondent's Medicaid fraud convictions.

No evidence of explanation or mitigating circumstances has been offered by Respondent. 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 Leonard Merkow, M.D., be, and it is hereby denied. This order is effective May 4, 1995.

Dated: April 28, 1995.

Stephen H. Greene,
Deputy Administrator.

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[Docket No. 93-56]

Michael G. Sargent, M.D.; Revocation of Registration

On June 2, 1993, the Deputy Assistant Administrator (then Director), Office of

Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael G. Sargent, M.D. of Katy, Texas (Respondent), proposing to revoke his DEA Certificate of Registration, AS2512374, as a practitioner and deny any pending application for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration as a practitioner would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on January 5 and 6, 1994, in Houston, Texas. On August 25, 1994, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision recommending that Respondent's registration be revoked. Respondent filed exceptions to the opinion on September 19, 1994.

On October 13, 1994, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator. After a careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that, in July 1991, DEA investigators in Houston, Texas, received an anonymous complaint that Respondent was prescribing controlled substances to individuals without a legitimate medical purpose. As a result, DEA investigators conducted prescription surveys of pharmacies located near Respondent's office. These surveys established that Respondent was prescribing Tylenol #3 with codeine, a Schedule III controlled substance, in conjunction with Valium, a Schedule IV controlled substance.

Judge Bittner further found that, on five separate occasions from August 16, 1991 through April 16, 1992, Respondent prescribed combinations of Tylenol #3 with codeine and Valium to two undercover agents without a legitimate medical purpose and not in the usual course of professional medical practice. Respondent failed to conduct and record an appropriate patient history and failed to conduct a physical examination of either agent prior to prescribing this combination of controlled substances.

The administrative law judge considered testimony from the Government's expert medical witness who concluded that Respondent was not acting within the normal course of his professional practice when these prescriptions were issued. Conversely, Respondent's expert medical witness concluded that Respondent issued the prescription at issue for a legitimate medical need and in the normal course of professional practice, and, at worse may have exercised poor judgment with respect to prescribing Tylenol with codeine.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The [registrant's] experience in dispensing or conducting research with respect to controlled substances.
- (3) The [registrant'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."

The Deputy Administrator may properly rely on any one or a combination of these factors, and give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *Henry J. Schwartz, Jr., M.D.* 54 FR 16422 (1989). In the present case, the administrative law judge found that factors two, four and five were relevant in determining whether Respondent's registration should be revoked.

Judge Bittner found that Respondent's prescribing of controlled substances to the undercover agents was not for a legitimate medical purpose. Further, Respondent did not conduct comprehensive physical examinations of the two agents and failed to maintain proper records regarding his prescribing of controlled substances.

The administrative law judge concluded that the record does not support Respondent's contentions that the controlled substances he prescribed were warranted by, and appropriate for, the medical ailments that the investigators presented to him. She further found that the record

demonstrates Respondent neither conducted anything resembling comprehensive physical examinations nor asked probing questions of the agents as to their symptoms, the possible causes of these symptoms, or alternative treatments for their complaints. *See James H. Brown, M.D.*, 59 FR 37778 (1994). Respondent additionally was remiss in his responsibilities as a DEA registrant by failing to keep appropriate patient files on the agents.

Judge Bittner additionally found that a negative inference is warranted where, as in the present case, Respondent did not testify. *See Raymond A. Carlson, M.D.*, 53 FR 7425 (1988). The administrative law judge concluded that Respondent has not discharged his responsibilities as a DEA registrant in the past and there is no indication that he is more likely to do so in the future. Judge Bittner recommended that Respondent's DEA Certificate of Registration be revoked and any pending applications for registration as a practitioner be denied.

Respondent took exception to Judge Bittner's opinion and recommendation arguing that there was not sufficient, reliable, probative, and substantial evidence to support such recommendation of revocation. Respondent further contended that Judge Bittner, in finding that 21 U.S.C. 823(f) (2), (4) and (5) were relevant, failed to discuss Respondent's threat to the public interest under these factors. Respondent additionally argued that the record, as a whole, does not support a conclusion that his behavior was egregious, that Judge Bittner failed to address the requirements of 21 CFR 1306.04 concerning valid prescriptions, that Respondent did not have inadequate recordkeeping practices, and that a negative inference was not warranted from Respondent's decision not to testify. Respondent further objected to the characterization that he did not perform any diagnostic tests, and to the administrative law judge's description of the agents' visit to Respondent's office on March 23, 1992. Respondent also took exception to the use of the testimony given by the Government's expert medical witness.

The Deputy Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. The Deputy Administrator concurs with the administrative law judge's finding that the Government had met its burden of proof with respect to establishing the factors set forth under 21 U.S.C. 823(f) (2), (4) and (5). The Deputy Administrator finds that Respondent prescribed controlled

substances to the undercover agents without legitimate medical purpose and not in the usual course of professional medical practice. Further, Respondent's recordkeeping practices, medical examinations and patient history procedures were extremely deficient. Finally, the Deputy Administrator concurs with the administrative law judge's finding that a negative inference was warranted from Respondent's decision not to testify.

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, AS2512374, previously issued to Michael G. Sargent, M.D., be, and it hereby is, revoked, and any pending applications for such registration be, and hereby are, denied. This order is effective June 5, 1995.

Dated: April 28, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-10927 Filed 5-3-95; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Reports; Availability, etc.: Climate Change; Second Assessment by Climate Change Intergovernmental Panel

AGENCY: National Science Foundation.

ACTION: Notice of the availability of draft report and request for comment.

SUMMARY: Working Group I of the Intergovernmental Panel on Climate Change (IPCC) has prepared a draft Second Assessment on Climate Change. The IPCC Secretariat requires comments on this report from national governments so that the Secretariat can meet its obligations to member governments of the IPCC. The U.S. Government is expected to receive its copy of the draft assessment for formal government comment on May 8, 1995. The U.S. Subcommittee on Global Change Research (SGCR) is responsible for coordinating the preparation of the comments of the United States Government. Through this notice, the SGCR is announcing the availability of the draft Second Assessment upon its receipts from IPCC and is requesting comments on the draft report by June 2, 1995 from experts and interested groups and individuals. These comments will be reviewed, combined, and incorporated as appropriate, in the process of preparing the set of official U.S. comments to the IPCC.

DATES: Written comments (hard copy and if possible on a 3.5-inch diskette in either Microsoft Word or Word Perfect format) on the draft Second Assessment should be received on or before June 2, 1995. The SGCR cannot extend this deadline because the member countries of the IPCC have established a strict timetable for the review process.

ADDRESSES: Comments should be submitted either by mail to: IPCC WG I Comments, Office of the U.S. Global Change Research Program, 300 D Street, SW., Suite 840, Washington, DC 20024, or by E-mail in ASCII format on Internet to: "wg1@usgcrp.gov". A list of chapters making up the draft Second Assessment is included with this notice. Review is sought by those individuals and groups having specific expertise or interest in the various aspects of the assessment. Copies of individual chapters making up the draft Second Assessment can be obtained by: (1) Telephone request to Mr. Earley Green at (202) 651-8240; (2) sending E-mail to "office@usgcrp.gov"; (3) faxing a request to (202) 554-6715; or (4) sending a letter to the USGCRP Office directed to Mr. Earley Green at the address shown above.

FOR FURTHER INFORMATION CONTACT: Dr. Michael C. MacCracken, Office of the U.S. Global Change Research Program, at 202-651-8250.

SUPPLEMENTARY INFORMATION:

I. Background

The Intergovernmental Panel on Climate Change (IPCC) was jointly established in 1988 by the United Nations Environment Programme and the World Meteorological Organization to conduct periodic assessments of the state of knowledge concerning global climate change. The IPCC has formed working groups to study various aspects of climate change. Working Group I addresses the state of the science concerning what is happening and is projected to happen to the climate; Working Group II addresses the state of the science concerning (i) vulnerability to and impacts of climate change and (ii) adaptation and mitigation strategies; and Working Group III addresses the state of science and understanding concerning economics and cross-cutting issues associated with climate change. Each Working Group is charged with issuing periodic assessments. The first Scientific Assessment of Climate Change, for example, was prepared in 1990. Working Group I provided a supplementary report in 1992 and a report on radiative forcing of climate change in 1994.

Periodic assessment reports such as these provide a comprehensive statement of the state of knowledge concerning topics such as scientific information, environmental impacts, response strategies, and other issues concerning climate change.

II. Public Input Process

The member countries of the IPCC have established a timetable that includes a brief period for comments from governments so that the IPCC Secretariat can meet its obligations for a timely completion of the IPCC Second Assessment. The Subcommittee on Global Change Research is responsible for coordinating preparation of the U.S. Government response, and through this notice is seeking the views of experts and interested groups and individuals to help in the formulation of its response. Comments that are provided will be reviewed, integrated, and used, as appropriate, in the preparation of the official U.S. comments. An information sheet providing specific requests for formatting submissions will be provided with each mailing of a chapter. In this review process, the emphasis should be on providing detailed recommendations on specific chapters for which the reviewer has established expertise or interest. To be most useful, comments should be specific in suggesting wording changes to the text of a particular paragraph or chapter and, where appropriate, offer supporting information and peer-reviewed references supporting the proposed changes. Comments on the overall tone and scientific validity of the chapter and comments expressing agreement and disagreement with specific major points in the Executive Summary of the chapters are also solicited. Reviewers should request for review those specific chapters of the draft IPCC Working Group I Second Assessment for which they have expertise or special interest. The materials available for review include 11 chapters and a Summary for Policymakers. In addition to a specific chapter, a copy of the draft Summary for Policymakers will be provided for each reviewer in order to provide an opportunity for the reviewer to consider the consistency of the chapter and the selection and representation of its major points in the draft Summary for Policymakers.

Chapter 1 The Climate System—An Overview

Chapter 2 Update of 1994 WG I report

2.1 CO₂ and the carbon cycle

2.2 Other trace gases and atmospheric chemistry

2.3 Aerosols

2.4 Radiative forcing