

classes of controlled substances listed above.

Dated: October 21, 1996.

Gene R. Haislip,

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

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[Docket No. 95-11]

Stanley Dubin, D.D.S.; Revocation of Registration

On September 29, 1994, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stanley Dubin, D.D.S. (Respondent) of Philadelphia, Pennsylvania, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AD5534842, and deny any pending applications for renewal of such registration as a practitioner, under 21 U.S.C. §§ 823(f) and 824(a)(5).

By letter dated January 8, 1995, the Respondent, acting *pro se*, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on December 12, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, counsel for DEA presented the testimony of witnesses and introduced documentary evidence, and Respondent testified on his own behalf. After the hearing, both parties submitted briefs in support of their positions. On March 15, 1996, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that Respondent's DEA Certificate of Registration be revoked until such time as he may be reinstated under 42 U.S.C. § 1320a-7(a).

Neither party filed exceptions to Judge Tenney's decision, and on April 17, 1996, the record of these proceedings was transmitted to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. § 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Findings of Fact, and Conclusions of Law, and Recommended Ruling of the Administrative Law Judge. 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 Acting Deputy Administrator finds that Respondent graduated from Temple University dental school in 1964. In 1996, he bought an existing dental practice that included a large number of Medical Assistance patients. Effective January 26, 1977, Respondent was permanently terminated by the State Office of Medical Programs, Bureau of Medical Assistance, from participation in the Pennsylvania Medical Assistance Program, based upon his fraudulent billing of the Medical Assistance Program and the quality of treatment rendered to his patients. Respondent was notified of this action by a letter dated December 27, 1976, which also indicated that he was "prohibited from organizing, arranging, rendering, or ordering any service for Medical Assistance recipients for which [he] may receive payments in the form of administrative expenses, shared fees or rebates through any group practice, clinic, medical center or other facility."

In January 1977, Respondent appealed his termination from the Medical Assistance Program. On September 10, 1979, Respondent's case was dismissed based upon his failure to pursue the appeal, and his termination was affirmed.

In late 1983, the Medicare Fraud Control Unit of the Pennsylvania Office of Attorney General (Fraud Control Unit) received information that Respondent was billing the Medical Assistance Program for dental work performed on Medical Assistance patients. Subsequently, an undercover agent posing as a Medical Assistance recipient received dentures from Respondent, for which Respondent billed the Medical Assistance Program. The Fraud Control Unit also interviewed dentists who were employed by Respondent, as well as other office personnel. It was discovered that Respondent did all of the hiring for his dental practice and that any dentist employed by Respondent had to be enrolled in the Medical Assistance Program. At the time of the investigation, Respondent employed three dentists, and had a fifty-fifty fee sharing arrangement with two of the dentists. For work done by the third dentist, Respondent received fifty-five percent of the fees paid by the Medical Assistance Program, and when Respondent treated the Medical Assistance recipients himself, he received the full reimbursement amount.

During the course of the investigation, the investigators learned that the

patients needing denture work were treated by Respondent, and the other patients were treated by his employee dentists. A review of dental records from 1981 through 1985 revealed that many of the Medical Assistance invoices for denture work were submitted for payment with the forged signature and provider identification number of one of the dentists employed by Respondent. The employee dentists stated that they had not authorized their signature on work they had not performed. In addition, records were reviewed from the dental laboratory that filled denture prescriptions from Respondent's practice. Several of the prescriptions had the signature of one of the employee dentists, who indicated that the signatures were not his. The Fraud Control Unit determined that between 1981 and 1985, Respondent had received at a minimum approximately \$162,000 from the Medical Assistance Program through the provider numbers of the dentists he employed.

On December 4, 1987, Respondent was indicted by the Fifth Statewide Investigating Grand Jury for the Commonwealth of Pennsylvania for Medical fraud, criminal conspiracy, forgery, and tampering with or fabricating physical evidence. On May 20, 1991, Respondent pled guilty to one count of Medicaid fraud, and was sentenced to two years probation, fined \$10,000 and ordered to pay costs of \$2,500 and restitution to the Department of Public Welfare in the amount of \$87,500.

As a result of his conviction, Respondent entered into a Consent Agreement with the State Board of Dentistry whereby his license to practice dentistry was suspended for one year, with the suspension stayed in favor of a three month suspension and a nine month probationary period. In addition, Respondent was required to pay a \$1,000 fine.

By letter dated April 8, 1992, Respondent was notified by the United States Department of Health and Human Services of his mandatory ten year exclusion from the Medicare program pursuant to 42 U.S.C. § 1320-7(a).

Respondent testified at the hearing before Judge Tenney that he never received the December 27, 1976 letter notifying him of his permanent termination from the state Medical Assistance Program. Like Judge Tenney, the Acting Deputy Administrator does not credit this testimony, since there is evidence that Respondent appealed this termination. Respondent denied filing the appeal of the termination and stated that he does not know who filed the

appeal on his behalf. However, the Acting Deputy Administrator does not credit this testimony either, in light of evidence in the record that Respondent was represented by three successive attorneys in his appeal before it was dismissed for failure to pursue.

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. § 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) 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 manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a-7(a) of Title 42.

It is undisputed that subsection (5) of 21 U.S.C. § 824(a) provides the sole basis for the revocation of Respondent's DEA Certificate of Registration. Pursuant to 42 U.S.C. § 1320a-7(a), Respondent has been excluded from the Medicare program for a ten year period effective April 28, 1992, and from the Pennsylvania Medical Assistance Program permanently. Respondent contends that even though there is a lawful basis, revocation would be unduly harsh, since there are no allegations that he has misused controlled substances. Furthermore, Respondent argues that he has been practicing dentistry for five years since his Medicaid fraud conviction and is in good standing in the community in which he practices.

The Acting Deputy Administrator finds that the Drug Enforcement Administration has previously held that misconduct which does not involve controlled substances may constitute grounds, under 21 U.S.C. § 824(a)(5), for the revocation of a DEA Certificate of Registration. See *Gilbert L. Franklin, D.D.S.*, 57 Fed. Reg. 3441 (1992); *George D. Osafo, M.D.*, 58 Fed. Reg. 37,508 (1993); *Nelson Ramirez-Gonzalez, M.D.*, 58 Fed. Reg. 52,787 (1993).

The Acting Deputy Administrator concludes that revocation is an appropriate sanction in this case. In

1977, Respondent was permanently terminated from participation in the Medical Assistance Program for the Commonwealth of Pennsylvania based upon fraudulent billing and inadequate quality of care. Despite this termination, Respondent continued to treat Medical Assistance recipients at his dental practice using on the Medical Assistance claims, the names and provider numbers of his employee dentists without their permission. In addition, in direct violation of the termination letter, Respondent received a percentage of the reimbursement fees paid to his employee dentists by the Medical Assistance Program. The Acting Deputy Administrator concurs with Judge Tenney that, "these actions cast substantial doubt on Respondent's integrity * * *."

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. §§ 823 and 824, and 28 C.F.R. §§ 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD5534842, issued to Stanley Dubin, D.D.S., be, and it hereby is, revoked until such time as he may be reinstated under 42 U.S.C. § 1320a-7(a), and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective January 28, 1997.

Dated: November 19, 1996.

James S. Milford,

Acting Deputy Administrator.

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Demetris A. Green, M.D.; Revocation of Registration

On February 20, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Demetris A. Green, M.D., of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BG3952339, under 21 U.S.C. 824(a)(3) and 824(a)(4), and deny any pending applications for 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 Texas and his continued registration would be inconsistent with the public interest. The order also notified Dr. Green that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA mailed the show cause order to Dr. Green at two addresses in Houston, Texas. Subsequently, the DEA received a signed receipt showing that one of the orders was received on February 24, 1996. No request for a hearing or any other reply was received by the DEA from Dr. Green or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) thirty 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. Green is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that, by order dated November 3, 1994, the Texas State Board of Medical Examiners (TSBME) suspended Dr. Green's license to practice medicine based upon his "intemperate use of alcohol or drugs, that in the opinion of the board, could endanger the lives of patients." The TSBME further found that on October 7, 1994, Dr. Green was involuntarily admitted to a treatment program for symptoms related to cocaine addiction. The TSBME ordered that Dr. Green surrender his DEA Certificate of Registration, as well as his state controlled substance license.

Based upon the TSBME order, the Texas Department of Public Safety (DPS) canceled Dr. Green's Texas controlled substance registration on December 1, 1994. Subsequent to the TSBME and DPS actions, in March 1995, Dr. Green issued controlled substance prescriptions. Consequently, on December 9, 1995, Dr. Green entered into an Agreed Order with the TSBME whereby the suspension of his medical license was continued for a minimum of two years, and he was again ordered to surrender his DEA Certificate of Registration. Efforts by DEA to obtain Dr. Green's surrender of his DEA registration have been unsuccessful. In light of the actions by the TSBME and the DPS, the Acting Deputy Administrator concludes that Dr. Green is not currently authorized to handle controlled substances in the State of Texas.

The DEA does not have 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. 21 U.S.C. 802(21), 823(f), and 824(a)(3).