

Dated: January 28, 1997.
James S. Milford,
Acting Deputy Administrator.
[FR Doc. 97-3050 Filed 2-6-97; 8:45 am]
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Durg Enforcement Administration

David William Nyman, D.O.; Denial of Application

On April 16, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David William Nyman, D.O., Colorado Springs, Colorado, notifying him of an opportunity to show cause as to why DEA should not deny his application, dated January 20, 1995, for a DEA Certificate of Registration pursuant to 21 U.S.C. 823(f), as being inconsistent with the public interest. The order also notified Dr. Nyman 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. Nyman by certified mail, and a signed return receipt dated April 27, 1996, was received by the DEA. However, no request for a hearing or any other reply was received from Dr. Nyman or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Nyman 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 CFR 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that on March 23, 1994, the Colorado State Board of Medical Examiners (Board) issued an order summarily suspending Dr. Nyman's license to practice medicine. This action was based upon the Board's findings that Dr. Nyman first came to the attention of the Colorado Physician Health Program (CPHP) in July 1986 after he collapsed and an emergency toxicology report revealed Darvon and codeine. He subsequently received treatment with CPHP for opiate abuse. Dr. Nyman relapsed into substance abuse and was hospitalized for treatment from January 5 to 23, 1994. After his discharge, he participated in an intensive outpatient treatment program. However, on February 22,

1994, CPHP was advised that Dr. Nyman had relapsed into substance abuse again. It was discovered that he was abusing the synthetic narcotic Buprenex. Dr. Nyman underwent a five-day inpatient detoxification program and then resumed intensive outpatient treatment. On March 16, 1994, CPHP learned that Dr. Nyman had repeatedly called a pharmacy during the week of March 7, 1994, in an attempt to obtain a personal order for Valium and Buprenex.

The Acting Deputy Administrator finds that as a result of the summary suspension of his license to practice medicine, Dr. Nyman surrendered his previous DEA Certificate of Registration, AN3166635.

Subsequently, on November 9, 1995, the Board approved a Stipulation and Final Agency Order (Order) wherein, the suspension of Dr. Nyman's medical license was lifted. However, pursuant to the Order, his license shall remain suspended indefinitely until he provides evidence indicating that he has been accepted into a residency program and that his participation in the residency program would be subject to terms set forth in the Order.

The Acting Deputy Administrator finds that there is no evidence in the record that Dr. Nyman has provided the Board with evidence of his acceptance into such a residency program, and therefore concludes that Dr. Nyman's medical license remains suspended. Dr. Nyman has not presented any evidence to the contrary. Thus, the Acting Deputy Administrator concludes that Dr. Nyman is not currently licensed to practice medicine in the State of Colorado and consequently he is not currently authorized to handle controlled substances in the state.

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) and 823(f). This prerequisite has been consistently upheld. See Earl G. Rozeboom, M.D., 61 FR 60,730 (1996); Charles L. Novosad, Jr., M.D., 60 FR 47,182 (1995); Dominick A. Ricci, M.D., 58 FR 51,104 (1993). Here, Dr. Nyman is not currently licensed to practice medicine, and therefore not authorized to handle controlled substances, in the State of Colorado. Hence, Dr. Nyman is not entitled to a DEA registration. Because, Dr. Nyman is not entitled to a DEA registration due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is

unnecessary to address whether Dr. Nyman's registration would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by David William Nyman, D.O., be, and it hereby is, denied. This order is effective March 10, 1997.

Dated: January 30, 1997.
James S. Milford,
Acting Deputy Administrator.
[FR Doc. 97-3052 Filed 2-6-97; 8:45 am]
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Drug Enforcement Administration

[DEA Number 155N]

Reports of Certain Distributions by Postal Service or Private or Commercial Carriers to Nonregulated Persons

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice; guidance.

SUMMARY: This notice provides temporary guidance to persons who distribute ephedrine, pseudoephedrine, and phenylpropanolamine, including drug products containing those chemicals, to nonregulated persons by either the Postal Service or private or commercial carriers. The comprehensive Methamphetamine Control Act of 1996 requires that, as of October 3, 1996, any person who engages in the above distributions must make a monthly report of each such transaction to the Attorney General in such a manner as the Attorney General shall establish by regulation. This notice provides temporary guidance that will allow affected persons to comply with the new reporting requirements pending promulgation of the appropriate regulations.

FOR FURTHER INFORMATION CONTACT: William Wolf, Jr., Chief, Chemical Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307-7204.

SUPPLEMENTARY INFORMATION: On October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) was signed into law. Section 402 of the MCA requires that "(A) Each regulated person who engages in a transaction with a nonregulated person which—(i) involves ephedrine, pseudoephedrine, or