

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Internal Revenue Service, Department offices and employees, and other Federal, state, local, and foreign law enforcement and non-law enforcement agencies, private persons, witnesses and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d)(1), (d)(2), (d)(3), and (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. [FR Doc. 98-4206 Filed 2-19-98; 8:45 am]

BILLING CODE 4410-01-P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. 96-8]

Samuel Arnold, D.D.S.; Reprimand and Continuation of Registration

On November 1, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Samuel Arnold, D.D.S. (Respondent) of Fairborn, Ohio, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BA4089620, pursuant to 21 U.S.C. 824(a)(1), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent materially falsified his July 7, 1994 application for registration with DEA.

By letter dated November 24, 1995, Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Dayton, Ohio on October 22, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and the Government introduced documentary evidence. After the hearing, Government counsel submitted

proposed findings of fact, conclusions of law and argument. Respondent did not submit any posthearing filing. On November 25, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's registration not be revoked, but that Respondent be issued a reprimand. Neither party filed exceptions to Judge Bittner's Opinion and Recommended Ruling, and on January 9, 1998, the record was transmitted to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 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 Opinion 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 the Ohio State Dental Board (Board) issued a Notice of Opportunity for Hearing to Respondent on June 20, 1991, alleging that Respondent had charged the Ohio Department of Human Services for services to 29 nursing home patients that he did not actually perform in violation of state law. As a result, Respondent and the Board entered into a Consent Agreement that was fully executed on November 21, 1991, in which Respondent admitted the allegations in the Notice of Opportunity for Hearing, his license to practice dentistry was suspended for one year effective January 1, 1992, with 60 days stayed, and he was placed on probation for two years effective January 1, 1992. Respondent was permitted to resume the practice of dentistry on November 1, 1992.

Upon learning of his state suspension, DEA contacted Respondent on January 10, 1992, and requested that he voluntarily surrender his DEA registration. Respondent agreed to surrender his registration, but did not in fact do so. Instead, Respondent's previous registration was ultimately retired, since he did not submit an application for renewal of the registration.

On July 7, 1994, Respondent executed an application for a new DEA Certificate of Registration. One question on the application, hereinafter referred to as "the liability question," asks, "Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law,

or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" Respondent answered "no" to this question. Respondent's application was approved by the registration unit in the DEA Detroit Field Division, and Respondent was issued the DEA Certificate of Registration that is the subject of these proceedings.

A DEA investigator testified at the hearing before Judge Bittner that had Respondent answered "yes" to the liability question his application would have been referred to the local DEA office in Columbus, Ohio for investigation. The investigator further testified on cross-examination however, that had Respondent answered "yes" to the liability question, his application would "more than likely" have been granted. The investigator further testified that there was nothing that would lead him to believe Respondent intentionally tried to circumvent DEA procedures to acquire a DEA registration, and that there had never been any charges or allegations relating to Respondent's handling of controlled substances.

Two individuals testified on behalf of Respondent, his office manager and the dental technician who owns and operates the dental laboratory that is located in Respondent's office. Both testified that they overheard a conversation between Respondent and an unidentified DEA employee which was conducted using a speaker telephone so they were able to hear both parties to the conversation. The office manager testified that the conversation occurred sometime "in July" and that Respondent asked how he should respond to the liability question in light of the Ohio Board's action. The office manager could not specifically identify who Respondent talked to, but testified that the DEA employee told Respondent that because his Ohio dental license was no longer suspended, he should answer the liability question in the negative. The dental technician was also unable to specifically identify the DEA employee, but testified that the DEA employee instructed Respondent to answer the liability questions in the negative after ascertaining that Respondent's suspension was unrelated to his handling of controlled substances. Both testified that Respondent is very cautious in his prescribing of controlled substances.

Pursuant to 21 U.S.C. 824(a)(1), "A registration pursuant to section 823 of

this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registration—(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter.” DEA has previously held that in finding that there has been a material falsification for purposes of 21 U.S.C. 824(a)(1), it must be determined that the applicant knew or should have known that the response given to the liability question was false. See, *Martha Hernandez, M.D.*, 62 FR 61,145 (1997); *Bobby Watts, M.D.*, 58 FR 4699 (1993); *Herbert J. Robinson, M.D.*, 59 FR 6304 (1994).

Here, it is undisputed that Respondent's Ohio dental license had been suspended and placed on probation, yet Respondent answered “no” to the question asking whether he had “ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation.” It is also undisputed that Respondent knew that his Ohio dental license had previously been suspended. Therefore, the Acting Deputy Administrator concurs with Judge Bittner's conclusion “that Respondent materially falsified his application, and that therefore there are grounds to revoke Respondent's DEA registration.”

The question then becomes whether revocation is the appropriate sanction in light of the facts and circumstances of this case. Respondent argues that although he was aware that his Ohio dental license had been suspended, he did not understand the liability question. However, DEA has previously held that such an explanation does not relieve the applicant of the “responsibility to carefully read the question and to honestly answer all parts of the question.” *Martha Hernandez, M.D.*, 62 FR 61,145, 61,147 (1997).

Nevertheless, in exercising his discretion in determining the appropriate remedy in this case, the Acting Deputy Administrator finds it significant that Respondent presented the testimony of two individuals who overheard Respondent telephoning someone before executing the application. The Acting Deputy Administrator concurs with Judge Bittner's finding “that the telephone call indicates that Respondent attempted to comply with the applicable laws and regulations related to maintaining a DEA registration.” While this telephone call does not relieve Respondent of the responsibility for falsifying his application, it does indicate an effort on

his part to answer the question correctly.

Also, in considering the appropriate remedy in this matter, the Acting Deputy Administrator has considered that the suspension of Respondent's Ohio dental license did not relate to his handling of controlled substances. While DEA has revoked registrations in the past based upon the material falsification of an application that was not related to the mishandling of controlled substances, the Acting Deputy Administrator has previously concluded that he must consider all of the facts and circumstances of a particular case. See *Id.* at 61,148. Here, Respondent apparently attempted to get guidance on the appropriate response to the liability question, the office manager and dental technician both testified that Respondent was very cautious in his prescribing of controlled substances, and Judge Bittner was favorably impressed with “the manner in which (Respondent) conducted himself at the hearing.” Therefore, the Acting Deputy Administrator agrees with Judge Bittner's conclusion that revocation would be too severe a sanction given the facts and circumstances of this case.

However, the Acting Deputy Administrator is troubled by Respondent's failure to correctly answer the liability question on the application. DEA relies on the truthfulness of the responses to the questions on the application. Therefore, the Acting Deputy Administrator finds that it is appropriate to reprimand Respondent for his failure to accurately respond to the liability question on his application for a DEA Certificate of Registration.

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 CFR 0.100(b) and 0.104, hereby reprimands Samuel Arnold, D.D.S., for failing to properly complete his DEA registration application. The Acting Deputy Administrator further orders that DEA Certificate of Registration BA4089620, issued to Samuel Arnold, D.D.S., be continued, and any pending applications be granted. This order is effective February 20, 1998.

Dated: February 12, 1998.
[FR Doc. 98-4359 Filed 2-19-98; 8:45 am]
BILLING CODE 4410-09-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 5-98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Wednesday, February 25, 1998, 9:30 a.m. to 5:00 p.m.; Friday, February 27, 1998, 9:30 a.m. to 5:00 p.m.; Monday, March 2, 1998, 9:30 a.m. to 5:00 p.m.; Wednesday, March 4, 1998, 9:30 a.m. to 5:00 p.m.; Friday, March 6, 1998, 9:30 a.m. to 5:00 p.m.

SUBJECT MATTER: (1) Oral Hearings and Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany; (2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

STATUS: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616-6988.

Dated at Washington, DC February 17, 1998.

Delissa A. Ridgway,

Chair.

[FR Doc. 98-4469 Filed 2-18-98; 12:14 pm]

BILLING CODE 4410-01-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1895-97]

Direct Mail Program for the New Orleans District Office and the Louisville and Memphis Suboffices; Form N-400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces that the Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to include the New Orleans District Office and the Louisville and Memphis Suboffices on