

Additionally, the Deputy Administrator finds it significant that without a DEA registration, Respondent is unable to effectively contribute to the medical care of the Sapulpa community. There are only 14 active physicians employed by the sole hospital responsible for the care and treatment of approximately 58,000 people. Because Respondent cannot independently handle controlled substances and is unable to participate in managed care programs, the other physicians at the hospital must handle more than their share of the patients.

The Deputy Administrator concludes that based upon a review of the record, denial of Respondent's application is not warranted. However, the Deputy Administrator concurs with Judge Randall's conclusion that although, "the Respondent should be allowed the opportunity to demonstrate that he can now handle the responsibilities of a DEA registrant, * * * the public interest would best be served by monitoring the Respondent's handling of controlled substances during the first registration period." Imposing conditions upon Respondent's registration, "will allow the Respondent to demonstrate that he can responsibly handle controlled substances in his medical practice, yet simultaneously protect the public by providing a mechanism for rapid detection of any improper activity related to controlled substances." Steven M. Gardner, M.D., 51 FR 12576 (1986).

Therefore, the Deputy Administrator agrees with Judge Randall's recommendation that Respondent's application for registration be granted, pursuant to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

(1) On a quarterly basis, Respondent shall provide the DEA Oklahoma City Resident Office with a log of his handling of controlled substances outside of the Bartlett Hospital setting. This log should include at a minimum the date the controlled substance was prescribed, administered, or dispensed; the patient's complaint; the name, dosage, and quantity of the controlled substance prescribed, administered, or dispensed; and the date that the medication was last prescribed, administered, or dispensed to that patient, as well as the amount last provided to that patient. If no controlled substance are prescribed, administered, or dispensed during a given quarter, Respondent shall indicate that fact in writing, in lieu of submission of the log.

(2) Respondent shall notify the DEA Oklahoma City Resident Office of any

action taken by any state upon his medical license or upon his authorization to handle controlled substance in any state. Such notification shall occur within 30 days of any state action.

(3) Respondent shall notify the DEA Oklahoma City Resident Office within 30 days of any change in his employment.

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 registration submitted by Roger Lee Kinney, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lawson and Associates; Denial of Application

On November 5, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lawson and Associates, of Nashville, Tennessee, notifying it of an opportunity to show cause as to why DEA should not deny its application for a DEA Certificate of Registration as a researcher pursuant to 21 U.S.C. 823(f), for reason that is not currently authorized to handle controlled substances in the State of Tennessee. The order also notified Lawson and Associates that should no request for a hearing be filed within 30 days of receipt of the Order to Show Cause, its hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on November 23, 1998. No request for a hearing or any other reply was received by the DEA from Lawson and Associates or anyone purporting to represent it in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Lawson and

Associates is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that DEA registers dog handlers as researchers pursuant to 21 U.S.C. 823(f). The Deputy Administrator further finds that there is a letter in the investigative file dated June 9, 1997, from the Tennessee Board of Pharmacy which indicates that Lawson and Associates was issued a license as a dog handler on November 15, 1995, but that the license expired on November 30, 1996, and has not been renewed. Lawson and Associates did not present any evidence to indicate that it was currently licensed in Tennessee as a dog handler.

The Deputy Administrator concludes that Lawson and Associates is not currently licensed as a dog handler in the State of Tennessee and therefore, it is reasonable to infer that it is not currently authorized to handle controlled substances in that state. 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 states authority to handle controlled substances in the state in which it conducts its business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Lawson and Associates is not currently authorized to handle controlled substances in the State of Tennessee. As a result, it is not entitled to a DEA registration in that state.

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 registration submitted by Lawson and Associates, be, and it hereby is, denied. This order is effective August 6, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

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