

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

The Deputy Administrator finds factors two, four, and five relevant to the instant case.

Regarding factor two, the applicant's experience in dispensing controlled substances, the investigative file reveals that, on at least three separate occasions, the Iowa Board of Medical Examiners took action against Dr. Eaves' medical license for *inter alia* his authorization of excessive amounts of controlled substances to be dispensed for lack of a legitimate medical reason. The Board's actions culminated in an outright prohibition of Dr. Eaves' practicing medicine in Iowa without the express permission of the Board. The Deputy Administrator finds Dr. Eaves' documented, actionable willingness to authorize the dispensing of excessive amounts of controlled substances creates a grave risk of diversion, and furthermore is in violation of 21 CFR 1306.04, in that in prescribing excessive amounts of controlled substances, as documented by the Board, Dr. Eaves was not issuing prescriptions for a legitimate medical purpose, nor was he acting in the usual course of professional practice.

Regarding factor four, compliance with applicable State, Federal, and local laws relating to controlled substances, the DEA investigation revealed that the Iowa Board of Medical Examiners has, on at least three separate occasions, taken action against Dr. Eaves' medical license, based upon his failure to properly handle controlled substances, as set forth above. Dr. Eaves is currently prohibited from practicing medicine in the state in which he holds his DEA registration without the Board's specific permission.

Regarding factor five, such other conduct which may threaten the public health and safety, two separate letters were sent to Dr. Eaves by DEA, requesting that he voluntarily surrender his DEA Certificate of Registration due to the above-described circumstances. Dr. Eaves refused, stating that he wished to maintain his DEA registration in order to self-prescribe. Dr. Eaves failed to respond to a subsequent letter from DEA informing him that self-prescribing is a violation of section 653 of the Iowa

Administrative Code, Chapter 12, Sub Rule 12.4(19)(a), pursuant to which a physician licenses in Iowa is prohibited from self-prescribing or self-dispensing controlled substances. The Deputy Administrator finds Dr. Eaves' lack of familiarity with applicable state law concerning controlled substances, his apparent willingness to ignore that law even when brought to his attention, together with his demonstrated past record of lack of competence in handling controlled substances, creates an unacceptable risk to the public health and safety.

The investigative file contains a letter dated March 17, 2000, to DEA from counsel for Dr. Eaves. The letter contests several of the allegations set forth in the Board's Statement of Charges Against James Edgar Eaves, M.D., Respondent, dated June 4, 1998. As a matter of discretion, the Deputy Administrator has considered the contentions raised in the letter, and rejects them. The Deputy Administrator notes that Dr. Eaves had the opportunity to contest the charges against him before the Board, but chose instead to enter into the May 1999 Settlement Agreement. That Agreement provided that Dr. Eaves consent to be cited for the violations set forth in the Board's Statement of Charges, and further provided that Dr. Eaves waived all rights to a contested hearing concerning the allegations in the Statement of Charges and further waived any objections to the Settlement Agreement. The Deputy Administrator thus finds Dr. Eaves has conceded the allegations contained in the Board's Statement of Charges, and he will not be permitted to raise objections for the first time here through his counsel's anomalous submission.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration, number AE4563967, previously issued to James E. Eaves, M.D., be, and it hereby is, revoked; and furthermore, any applications for renewal and/or modification of said Certificate be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown, III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David H. Mills, D.V.M.; Revocation of Registration

On July 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to David H. Mills, D.V.M., (Respondent) notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration BM4863812, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal or modification of this registration, pursuant to 21 U.S.C. 823(f), for the reasons that Respondent's state medical license has been suspended, and Respondent is not currently authorized to practice veterinary medicine or to handle controlled substances in Wisconsin, the state in which he is registered.

By letter dated August 10, 2001, Respondent requested a hearing in this matter. On September 14, 2001, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition (Government's Motion). By Order dated September 20, 2001, Administration Law Judge Gail A. Randall (Judge Randall) granted Respondent until October 4, 2001 to respond to the Government's Motion. Subsequently, by Order dated November 28, 2001, Respondent was granted until December 5, 2001, to respond to the Government's Motion. The Order was sent certified mail, return receipt requested. Yet while Judge Randall's office received a signed and dated receipt indicating this Order was received December 3, 2001, Respondent failed to file a response to the Government's Motion.

The Government attached to its Motion a copy of the Final Decision and Order of the State of Wisconsin (Order), Veterinary Examining Board (Board), dated February 1, 2001, revoking Respondent's license to practice veterinary medicine. The Government also attached to its Motion a declaration of the custodian of records for the Board, verifying that, as of February 1, 2001, Respondent's veterinary license had been revoked.

On January 8, 2002, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Recommended Ruling), wherein she granted the Government's Motion and recommended that Respondent's DEA registration be revoked. The record

of these proceedings was subsequently transmitted to the Deputy Administrator for final decision February 12, 2002.

The 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 Deputy Administrator adopts in full the Recommended Ruling of the Administrative Law Judge.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.*, 65 FR 50,570 (2000); *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented undisputed evidence demonstrating that the Respondent is not authorized to practice veterinary medicine in the State of Wisconsin, the location of his business as stated on his DEA Certificate of Registration. The Deputy Administrator concurs with Judge Randall's finding that, as Respondent is not authorized to practice veterinary medicine in Wisconsin, it is reasonable to infer that Respondent likewise is not authorized to handle controlled substances in Wisconsin. *James D. Okun*, 62 FR 16,871 (1997). Without state authority to handle controlled substances, the Respondent is not eligible to possess a DEA registration for a place of business in Wisconsin.

The Deputy Administrator also concurs with Judge Randall's finding that it is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Michael G. Dolin, M.D.*, 65 FR 5,661 (2000); *Jesus R. Juarez, M.D.*, 62 FR 14,945 (1997); *see also Philip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

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 BM4863812, issued to David H. Mills, D.V.M., be, and it

hereby is, revoked; and that any pending applications for the renewal or modification of said Certificate be, and hereby are, denied.

This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

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surrendered his medical license and acknowledged that he would no longer be permitted to practice as a physician and a surgeon in California. The investigative file contains no evidence that Dr. Leiske's medical license has been reinstated.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. *See 21 U.S.C. 823(f), and 824(a)(3).* This prerequisite has been consistently upheld in prior DEA cases. *See Graham Travers Schuler, M.D.*, 65 FR 50,570 (2000); *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

In the instant case, the Deputy Administrator finds the Government has presented evidence demonstrating that Dr. Leiske is not authorized to practice medicine in California, and therefore, the Deputy Administrator infers that Dr. Leiske is also not authorized to handle controlled substances in California, the State in which he holds his DEA Certificate of Registration.

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 DEA Certificate of Registration AL6303046, previously issued to Willard W. Leiske, M.D., be, and it hereby is revoked. The Deputy Administrator hereby further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective June 19, 2002.

Dated: May 6, 2002.

John B. Brown III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Frank W. Nedock, D.D.S.; Revocation of Registration

On or about April 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Frank W. Nedock, D.D.S., at his DEA registered premises in Bloomfield Township, Michigan, notifying him of an opportunity to show cause as to why the

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Willard W. Leiske, M.D., Revocation of Registration

On December 21, 2001, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Willard W. Leiske, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AL6303046, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Leiske was not authorized by the State of California to handle controlled substances. The order also notified Dr. Leiske that should no request for hearing be filed within 30 days, his right to a hearing would be deemed waived.

The OTSC was sent to Dr. Leiske at his DEA registered premises in Big Bear Lake, California. The OTSC was returned, marked "Returned To Sender." To date, no communications have been received from Dr. Leiske nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since a legally sufficient attempt to serve the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Leiske is deemed to have waived his right to a hearing. Following a complete review of 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 as follows. Dr. Leiske currently possesses DEA Certificate of Registration AL6303046, issued to him in California. By Decision and Order dated May 19, 2000, the Medical Board of California, Division of Medical Quality (Board) adopted as its Decision a Stipulation for Surrender of License signed by Dr. Leiske April 25, 2000, whereby he