

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Di Martino 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. Di Martino currently possesses DEA Certifying of Registration AD6909951, issued to him in Massachusetts. By Order of the Commonwealth of Massachusetts Board of Registration in Medicine (Board), dated October 11, 2000, Dr. Di Martino's medical license was summarily suspended, upon the finding that "based upon the information set forth in the Motion for Summary Suspension* * * the health, safety, and welfare of the public necessitates said suspension." The investigative file contains no evidence that the Summary Suspension of Dr. Di Martino's medical license has been lifted.

Therefore, the Deputy Administrator concludes that Dr. Di Martino is not currently licensed or authorized to handle controlled substances in Massachusetts.

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. Di Martino is not authorized to practice medicine in Massachusetts, and therefore, the Deputy Administrator infers that Dr. Di Martino is also not authorized to handle controlled substances in Massachusetts, 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 AD6909951, previously issued to Corrado Di Martino, 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

James E. Eaves, M.D.; Revocation of Registration

On January 4, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to James E. Eaves, M.D., notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AE4563967, pursuant to 21 U.S.C. 824(a)(1) and (a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), on the grounds that Dr. Eaves was not authorized by the State of Iowa to practice medicine, and his continued registration was inconsistent with the public interest. The Order also notified Dr. Eaves 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. Eaves at his DEA registered premises in Clarinda, Iowa. A postal delivery receipt was signed January 15, 2002, by Dr. Eaves, indicating the OTSC was received. To date, no response has been received from Dr. Eaves nor anyone purporting to represent him.

Therefore, the Deputy Administrator, finding that (1) 30 days having passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Eaves 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. Eaves currently possesses DEA Certificate of Registration AE4563967, issued to him in Iowa. Pursuant to a Settlement Agreement in May 1999, Dr. Eaves was prohibited by the Iowa Board of Medical Examiners (Board) from the practice of medicine in

Iowa, without the specific permission of the Board. The DEA investigative file reveals Dr. Eaves does not currently maintain an active medical license in Iowa, and is therefore foreclosed from the practice of medicine in the state in which he holds his DEA registration.

In January 2001, however, Dr. Eaves stated to DEA investigators that he intended to retain his DEA Certificate of Registration solely for the purposes of self-prescribing controlled substances. This practice is not permitted by Iowa State law.

The investigative file further reveals that in October 1988, the Board placed Dr. Eaves' medical license on three years' probation, based in part on findings that Dr. Eaves authorized excessive amounts of controlled substances to be dispensed when such drug therapy was not warranted. In May 1991, the Board again placed Dr. Eaves' medical license on probation, this time for five years, and further restricted his controlled substance privileges, based in part on findings that Dr. Eaves continued to authorize excessive amounts of controlled substances to be dispensed when such drug therapy was not warranted. In December 1994, the Board extended this probation period for an additional 32 months, based on findings that Dr. Eaves had violated his previous probation.

In addition, in June 1998, the Board issued a new Compliant and Statement of Charges Against James Edgar Eaves, M.D., Respondent, based in part on findings that Dr. Eaves authorized the dispensing of excessive amounts of controlled substances when such drug therapy was not warranted. This is the action that led to the previously mentioned May 1999 Settlement Agreement.

Pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration if he determines that granting the registration would be *inter alia* inconsistent with the public interest, as determined by section 823. In determining the public interest, 823(f) requires that the following factors shall be considered:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(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