

registration in situations involving poor record keeping practices, even where no personal use or criminal convictions involving controlled substances were determined. *RX Returns, Inc.*, 61 FR 37081 (1996).²

2. Factor Five—Conduct Which May Threaten the Public Health and Safety

The Respondent testified at the hearing concerning the reasons for her very poor record-keeping. She had no assistance to help with record-keeping and during the period at issue, she was going through extremely stressful circumstances. She developed a condition involving her pituitary gland that lowered her voice, caused her to grow a beard and lose hair. She thought that she might have to have brain surgery. At the same time, her son had a seizure and was diagnosed with a disease related to sickle cell anemia. Several friends died, included one suicide. She was very depressed during this period, and as a result, her recordkeeping suffered.

These circumstances may very well partly excuse some of the Respondent's record-keeping failures. The Deputy Administrator is particularly disturbed, however, by the numerous occasions that the Respondent provided false information to DEA investigators and repeatedly frustrated their attempts to conduct their investigation. At the hearing, the Respondent claimed that she had never meant to mislead the investigators and denied making false statements. The Deputy Administrator finds, however, that the Respondent has no credibility, because it is absolutely clear that she lied to the investigators on numerous occasions.

The Respondent lied about possessing controlled substances at her house. She lied about having a safe in her house in which to store controlled substances. She lied about treating patients from her home. She lied about the true identity of a friend for whom she had written prescriptions for controlled substances. She misled the investigators about the existence of patient records. She continually maintained that she had controlled substance records at her office, when in truth she did not. She later admitted that she had tried to create the records from memory. The Respondent's refusal to cooperate with DEA investigators led DEA to request the issuance of an administrative inspection warrant of her South Marion

² While the Deputy Administrator in *RX Returns* found revocation appropriate, the revocation was stayed and a one year period of probation was imposed. [Id. at 37,090]

Way location and subsequently, the Steele Street location.

Moreover, the Respondent agreed to assist DEA investigators in their inspection of the Steele Street location, without telling them that she had been evicted from that location. The Respondent's failure to cooperate with the investigators in their efforts to inspect the former registered location necessitated the execution of a search warrant. The Respondent also made false statements regarding the transfer of drugs. Despite her denials the investigators discovered that the Respondent had transferred Schedule IV controlled substances to Quality Care Pharmaceuticals.

The circumstances surrounding the Respondent's treatment of patients from her home is also troubling. As noted above, the Respondent was unable to account for between 7,000 and 11,000 dosage units of controlled substances. While the Respondent asserted that the controlled substances were legitimately dispensed to patients, she had no records to support her assertion. The Respondent's attempts at creating controlled substance records could not reconcile the shortages. Even the Respondent's own patient records did not bear out her assertions that she continued to dispense drugs to patients throughout 1998, as many of the records showed entries which ended in 1997 and early 1998.

The Deputy Administrator does not necessarily find that these controlled substances were diverted. Nevertheless, the lack of proper documentation to account for the shortage of large quantities of drugs; the Respondent's admission to the use of phentermine; her demonstrated lack of candor; empty drug vials around her home of which she was unable to account for their origins or disposition, all suggest possible drug use on the Respondent's part, or by someone close to her.

III. Conclusion

The preponderance of evidence demonstrates that the Respondent's continued registration would be contrary to the public interest. If the Respondent's only failures involved record-keeping, the Deputy Administrator might find it appropriate to impose a lesser sanction than revocation of the Respondent's DEA registration. The Respondent's false and misleading statements, however, cannot be excused. DEA cannot maintain the integrity of its regulatory system if its registrants, when asked to provide information required by law, provide false information. Accordingly, the Deputy Administrator, pursuant to the

authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100 and 0.104, hereby orders that the Respondent's DEA Registration be, and it hereby is, revoked, and that any requests for renewal or modification be, and hereby are, denied. This order is effective November 5, 2004.

Dated: September 28, 2004.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael J. Schwartz, MD.; Revocation of Registration

On January 5, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael J. Schwartz, M.D. (Dr. Schwartz) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BS5860590, pursuant to 21 U.S.C. 824(a)(3). Specifically, the Order to Show Cause alleged that Dr. Schwartz was without State license to handle controlled substances in the State of Louisiana. The Order to Show Cause also notified Dr. Schwartz that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Schwartz at his registered location in Kenner, Louisiana, with a second copy sent to Dr. Schwartz' legal counsel in New Orleans. The order sent to Dr. Schwartz' address of record was subsequently returned to DEA by the United States Postal Service with a stamped notation: "attempted, not known." According to the return receipt of the second order sent to the registrant's attorney, it was accepted on Dr. Schwartz' behalf on or around January 15, 2004. DEA has not received a request for hearing or any other reply from Dr. Schwartz or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause to the registrant's address of record, as well as to a second address, and (2) no request for hearing having been received, concludes that Dr. Schwartz is deemed to have waived his hearing right. *See David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the

Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (3) and 1301.46.

The Deputy Administrator finds that Dr. Schwartz is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V. According to information in the investigative file, on August 4, 2003, DEA received information from the Louisiana State Board of Medical Licensure (Board) that effective July 30, 2003, Dr. Schwartz was "no longer authorized to engage in the practice of medicine in any form in the State of Louisiana." An accompanying document in the file reveals that the Board summarily suspended Dr. Schwartz' State Medical license. The underlying basis for the board's suspension order was not specified.

Also on August 4, 2003, DEA received information that in response to the aforementioned suspension order of the Board, the Louisiana State Department of Health and Hospitals (LSDHH) summarily suspended Dr. Schwartz' State Controlled Dangerous Substance License. According to a copy of a letter dated August 6, 2003 from LSDHH to Dr. Schwartz (obtained by a DEA investigator), Dr. Schwartz was prohibited from reapplying for reinstatement of his stated controlled substance registration "*" until the [Board] notifies [LSDHH] in writing that [Dr. Schwartz'] controlled substance privileges have been reinstated."

There is no evidence before the Deputy Administrator to rebut findings that Dr. Schwartz' Louisiana medical license, as well as his State controlled substance license, have been suspended, or that the suspensions have been lifted. Therefore, the Deputy Administrator finds that Dr. Schwartz is currently not authorized to handle controlled substances in Louisiana.

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 business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Richard J. Clement, M.D., 68 FR 12103 (2003); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Schwartz' State controlled substance license has been suspended and there is no information before the Deputy Administrator which points to the suspension having been lifted. As a

result, Dr. Schwartz is not licensed to handle controlled substances in Louisiana, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BS5860590, issued to Michael J. Schwartz, MD., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and it hereby is, denied. This order is effective November 5, 2004.

Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

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applicants when being fingerprinted; and

(3) Discussion of the notice advising of the approved methods for positive identification.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Todd C. Commodore at (304) 625-2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m., on November 3-4, 2004.

ADDRESSES: The meeting will take place at the Hyatt Regency Denver, 1750 Welton Street, Denver, Colorado, telephone (303) 295-1234.

FOR FURTHER INFORMATION CONTACT:

Inquiries may be addressed to Mr. Todd C. Commodore, FBI Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0148, telephone (304) 625-2803, facsimile (304) 625-5388.

Dated: September 23, 2004.

Monte C. Strait,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Compact Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 21 States are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-State system to exchange such records.

The United States Attorney General appointed 15 persons from Federal and State agencies to serve on the Compact Council. The Compact Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include:

(1) Noncriminal Justice Outsourcing Rule;

(2) Establishing minimum standards for identification verification of

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations: Prohibited Transaction Class Exemption T88-1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an