

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****John S. Poulter, D.D.S.; Revocation of Registration**

On October 6, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John S. Poulter, D.D.S., (Dr. Poulter) notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certification of Registration BP7418177, pursuant to 21 U.S.C. 824(a)(2) and (4) and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f). The order alleged in relevant part that Dr. Poulter had been arrested and convicted of several offenses relating to the unlawful possession and use of controlled substances, including one felony county; that he had been subject to disciplinary action by state licensing authorities and that he violated DEA record-keeping requirements. The order also notified Dr. Poulter 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. Poulter at his registered location in North Salt Lake City, Utah. An undated, signed notice of receipt was returned to DEA on October 26, 2004, indicating the Order to Show Cause was received on his behalf. DEA has not received a request for hearing or any other reply from Dr. Poulter or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that: (1) 30 days having passed since the delivery of the Order to Show Cause at Dr. Poulter's registered address, and (2) no request for hearing having been received, concludes that Dr. Poulter is deemed to have waived his hearing right. *See* Samuel S. Jackson, D.D.S., 67 FR 65145 (2002); 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 (e) and 1301.46.

Dr. Poulter is licensed under Utah law as a dentist and currently holds DEA Certificate of Registration BP7418177, as a practitioner, to handle schedule II through IV controlled substances. That registration, last renewed in March 2004, expires on March 31, 2007. He also holds a State of Utah Class IV Anesthesia Permit.

On October 29, 2001, Dr. Poulter was seen by witnesses parked in front of a 7-Eleven store in Woods Cross, Utah, apparently injecting himself in the arm with an unknown substance. Local law enforcement authorities were called and after failing a field sobriety test and lying about taking a non-controlled allergy medication, Dr. Poulter eventually admitted that a vial recovered from his car, labeled "Lidocaine," actually contained Demerol, a schedule II narcotic controlled substance. He also admitted injecting himself with Demerol while seated in his automobile in front of the convenience store.

Dr. Poulter was charged in the Second Judicial District Court of Davis County, Utah, Case No. 011701966, with Unlawful Possession or Use of a Controlled Substance, to wit: Demerol, a felony of the third degree. While that charge was pending trial, Dr. Poulter entered into a Diversion Agreement with the Utah Division of Occupational & Professional Licensing (DOPL). That agreement, which was to run for a period of five years, referred to "several instances" of improper personal use of Fentanyl (a schedule II narcotic controlled substance) and Demerol by Dr. Poulter. Among the agreement's terms, he was to abstain from personal use or possession of mood altering substances, including controlled substances or illicit drugs, and could not write, fill or otherwise order or unlawfully obtain controlled substances or mood altering substances for himself or his family.

On February 11, 2002, Dr. Poulter resolved the pending charge by entering into a Plea in Abeyance Agreement and Order with the prosecution. In exchange for a plea of guilty to the third degree felony of possession of a controlled substance, his plea would be held in abeyance by the court for up to 36 months. Dr. Poulter agreed not to violate any laws and to complete all requirements of a monitoring program for impaired professionals established by the state. Upon successful completion of all provisions of the Plea in Abeyance Agreement and Order, Dr. Poulter's guilty plea would be withdrawn and the charge dismissed. However, if he failed to successfully complete the terms of the agreement, the court would enter his plea of guilty and proceed to sentencing on the felony.

On September 30, 2003, while the terms of the Plea in Abeyance Agreement and Order were in effect, Dr. Poulter was involved in a single car traffic accident in Utah County, Utah. Responding officers and medical personnel found him "incoherent and

very confused" and there were visible needle marks on this left arm and both hands. He was also wearing a fanny pack with a syringe protruding through it into his stomach area. A search of the pack and his car revealed a bloody used syringe and plastic container holding, among other items, quantities of Demerol and Fentanyl.

After injecting himself with drugs, Dr. Poulter had fallen asleep while driving, running his car off the road. He admitted buying Fentanyl over the Internet from a pharmacy in South Carolina and to obtaining the Demerol from a local hospital. A urine sample was taken and toxicology results corroborated the use of Demerol and Fentanyl.

On February 2, 2004, Dr. Poulter was charged in the Fourth Judicial District Court for Utah County, Utah, Case No. 031403926 FS, with two felony counts of possession or use of a controlled substance (Demerol and Fentanyl) and two misdemeanor counts of driving under the influence of alcohol and/or drugs and possession of drug paraphernalia.

Based on the conduct which was the basis for his September 2003 arrest, the Second Judicial District Court then found that Dr. Poulter has violated the terms of his Plea in Abeyance and Order and entered the guilty plea to the initial felony charge. On July 19, 2004, that court sentenced Dr. Poulter to an indeterminate term in state prison, not to exceed five years. However, it suspended that sentence on condition he serve four weekends in jail, perform 100 hours of community service and complete eighteen months of supervised probation.

On August 4, 2004, pursuant to a plea agreement, the Fourth Judicial District Court reduced the felony counts pending in that court to misdemeanors and sentenced him to 180 days in jail. However, the court suspended 136 days of that sentence and gave Dr. Poulter credit for 40 days spent in a rehabilitation clinic and one day of actual incarceration, essentially sentencing him to three days in jail, along with a year's probation.

On December 30, 2003, Dr. Poulter met with DOPL investigators to discuss his controlled substance record keeping practices. He admitted to multiple violations, including: Failure to maintain complete and accurate records of controlled substances received and dispensed, in violation of 21 U.S.C. 827(a)(3) and 21 CFR 1304.04 and 1304.21; failure to take initial and biennial inventories of controlled

substances, as required by 21 U.S.C. 827(a)(1) and 21 CFR 1304.11; and failure to preserve DEA order forms, as required by 21 CFR 1305.13.

Pursuant to an April 20, 2004, Stipulation and Order with DOPL, Dr. Poulter's state license to handle controlled substances and his dental license were revoked. However, the revocation orders were stayed as to both licenses and he was placed on probation for a term of five years. He was again ordered to abstain from personal use of controlled substances and his Anesthesia Permit was restricted to certain enumerated drugs.

Pursuant to 21 U.S.C. 824(a)(2), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such a certificate upon a finding that the registrant has been convicted of a felony related to controlled substances under state or Federal law. The Deputy Administrator finds Dr. Poulter has been convicted of a state felony relating to controlled substances and that revocation of his registration is appropriate under 21 U.S.C. 824(a)(2).

Additionally, the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such certificate if she determines that the issuance of such registration would be inconsistent with the public interest, as determined pursuant to 21 U.S.C. 823(a)(4) and 823(f). Section 823(f) requires the following factors 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 law 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 or safety.

As a threshold matter, it should be noted that the factors specified in section 823(f) are to be considered in the disjunctive: The Deputy Administrator may properly rely on any one or a combination of the factors, and give each factor the weight she deems appropriate, in determining whether a registration should be revoked or denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

With regard to the public interest factors of 21 U.S.C. 823(f), as to factor one, recommendation of the state licensing board/disciplinary authority,

it is noted that the Utah DOPL took disciplinary action against Dr. Poulter. However, it allowed his state dental license and Anesthesia Permit to continue in a probationary status, with certain enumerated conditions. Accordingly, to the extent that Utah has allowed Dr. Poulter to continue practicing dentistry and handle some controlled substances, that weighs in favor of continued registration with DEA. However, "inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration * * * this factor is not dispositive." See Edson W. Redard, M.D., 65 FR 30616, 30619.

Regarding factors two, three, four and five, the conduct and actions discussed earlier which resulted in his felony and misdemeanor convictions are all relevant and adverse to Dr. Poulter. While the controlled substances were apparently being diverted for personal use and not for others, the record reflects that simple opportunities and leniency were extended Dr. Poulter by the state criminal justice system and Utah's licensing authorities. He had an excellent chance to address his substance abuse problems with minimal personal and professional impact. Nevertheless, despite crystal clear notice of the consequences of violating the Plea in Abeyance Agreement and the benefits of a rehabilitative and monitoring program for impaired professionals, Dr. Poulter threw away the opportunities afforded him.

Instead of getting his personal and professional life back on track, he chose to resume abusing controlled substances and while doing so, endangered the public by operating a motor vehicle while under the influence of drugs. Through his inability to refrain from criminal and self-abusive behavior, Dr. Poulter has demonstrated poor judgment, questionable character and an inability to comply with the responsibilities of a DEA registrant.

In light of the foregoing, the Deputy Administrator finds that Dr. Poulter's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

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 BP7418177, previously issued to John S. Poulter, D.D.C., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and

they hereby are, denied. This order is effective June 9, 2005.

Dated: May 2, 2005.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert A. Smith, M.D.; Revocation of Registration

On September 29, 2004, the Deputy Administrator, Drug Enforcement Administration (DEA), issued an Order to Show Cause/Immediate Suspension of Registration to Robert A. Smith, M.D. (Dr. Smith) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AS2502284 under 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of that registration under 21 U.S.C. 823(f). Dr. Smith was further notified that his registration was being immediately suspended under 21 U.S.C. 824(d) as an imminent danger to the public health and safety.

The Order to Show Cause alleged in relevant part, that Dr. Smith diverted controlled substances for a substantial time by knowingly issuing fraudulent prescriptions to individuals, without a bona fide doctor-patient relationship or legitimate medical purpose. The Order to Show Cause also notified Dr. Smith that should not request for a hearing be filed within 30 days, his hearing right would be deemed waived.

On October 20, 2004, a DEA investigator personally served the Order to Show Cause/Immediate Suspension of Registration on Dr. Smith's attorney at Respondent's medical office in Philadelphia, Pennsylvania. Since that date, DEA has not received a request for a hearing or any other reply from Dr. Smith or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since personal delivery of the Order to Show Cause/Immediate Suspension of Registration to the registrant and (2) no request for hearing having been received, concludes that Dr. Smith 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 (e) and 1301.46.