

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 21, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher R. Reeves, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Explosives License/Permit (FEL) Renewal Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.14/5400.15, Part III. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government,

State, Local, or Tribal Government. The form is used for the renewal of a explosive license or permit. The renewal application is used by ATF to determine that the applicant remains eligible to retain the license or permit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,500 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 825 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: June 15, 2006.

Lynn Bryant,

*Department Deputy Clearance Officer,
Department of Justice.*

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mark C. Evans, D.D.S.; Revocation of Registration

Procedural History

On June 24, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mark C. Evans, D.D.S. (Respondent). The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BE3323932, under 21 U.S.C. 824(a)(3), and to deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As grounds for the action, the Show Cause Order alleged that the Dental Board of California had revoked Dr. Evans's state dental license, and as a result, he was without state authorization to handle controlled substances in that state. The Show Cause Order notified Dr. Evans that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

On July 2, 2004, the Show Cause Order was sent by certified mail to Dr. Evans at his registered location in Palm Desert, California. On that same date, a second copy of the Show Cause Order was sent by certified mail to Dr. Evans

at a second location in La Quinta, California. Both copies were subsequently returned to DEA unclaimed. DEA subsequently attempted to send the Show Cause Order to Dr. Evans at two additional locations in Palm Desert, as well as a location in Vancouver, Washington. On each occasion, the orders were returned unclaimed. As of this date, DEA has not received a request for a hearing, or any other reply from Dr. Evans or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) thirty days have passed since the attempted delivery of the Show Cause Order to the registrant's addresses of record, as well as to several additional addresses, and (2) that no request for a hearing has been received, concludes that Dr. Evans has 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 this final order without a hearing pursuant to 21 CFR 1301.43(d) and (e), and § 1301.46.

Discussion

The Deputy Administrator finds that Dr. Evans 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, DEA was notified by the Dental Board of California (the Dental Board) that Dr. Evans's state dental license was revoked effective December 18, 2002. This information is corroborated by a Default Decision and Order of the Dental Board, which is included in the investigative file. There is no evidence before the Deputy Administrator that Dr. Evans's California dental license has been reinstated or that the Dental Board's revocation order has been vacated. Therefore, the Deputy Administrator finds that because Dr. Evans is currently not authorized to practice dentistry in California, he is not authorized to handle controlled substances in that state.

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 practices dentistry. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently applied. See James Marvin Goodrich, M.D., 70 FR 24619 (2005); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Evans's dental license has been revoked and the revocation order has not been vacated. Consequently, Dr. Evans is not licensed to handle controlled substances in California, the jurisdiction in which he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Order

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, BE3323932, issued to Mark C. Evans, D.D.S, 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 they hereby are, denied. This order is effective July 21, 2006.

Dated: June 12, 2006.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02-47]

John H. Kennedy, M.D.; Denial of Application; Introduction and Procedural History

On May 31, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John H. Kennedy, M.D. (Respondent). The Show Cause Order proposed to deny Respondent's pending application for a registration as a practitioner on the grounds that Respondent had been convicted of a drug-related felony, *see* 21 U.S.C. 823(f)(3) & 824(a)(2), and had committed other acts such as to render his registration inconsistent with the public interest. *See id.* § 824(a)(4).

The Show Cause Order specifically alleged that on September 14, 1999, Respondent was indicted in the United States District Court for the Eastern District of Tennessee on five counts alleging the unlawful distribution of a controlled substance, *see id.* § 841(a)(1),¹ and one count alleging the unlawful possession of marijuana. *See*

id. § 844. The Order alleged that on March 6, 2000, Respondent pled guilty to one count of the unlawful distribution of diazepam, in violation of 21 U.S.C. 841(b)(1)(D), and one count of possession of marijuana, in violation of 21 U.S.C. 844. The Order further alleged that on June 19, 2000, the District Court accepted Respondent's guilty pleas and sentenced him to twelve months of home detention and five years of probation. The terms of the probation prohibited Respondent from employment as a physician and from dispensing prescription drugs without the permission of his probation officer.

While the Federal criminal case was ongoing, Respondent was also the subject of state administrative proceedings. On May 9, 2000, Respondent entered into a consent order with the Tennessee Board of Medical Examiners (Board) which revoked his state medical license. The Board found that Respondent had committed unprofessional, dishonorable and unethical conduct. The Board also found that Respondent had dispensed, prescribed or otherwise distributed controlled substances in violation of state or Federal law. On June 15, 2000, Respondent also voluntarily surrendered his DEA Registration, No. AK7140736.

Thereafter, Respondent reapplied for his state medical license. On July 31, 2001, the Board approved his application.

On August 16, 2001, Respondent applied for a new DEA practitioner's registration to handle controlled substances in Schedules II through V. Following an investigation, DEA denied the application and issued the Show Cause Order.

Respondent requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing in Chattanooga, Tennessee on April 1 and 2, 2003. At the hearing, both the Government and Respondent called witnesses and introduced documentary evidence. Both parties filed post-hearing briefs. Respondent also filed a letter forwarding the Tennessee Board of Medical Examiners' Order of Compliance, which restored his state license to unencumbered status.

On April 13, 2005, the ALJ submitted her decision. The ALJ concluded that the Government had shown by a preponderance of the evidence that granting Respondent's application for registration would be inconsistent with the public interest. *See* ALJ at 18. The ALJ thus recommended that Respondent's application be denied. *See id.* Neither party filed exceptions.

Having considered the record as a whole, I hereby issue this decision and final order adopting the ALJ's findings of fact and conclusions of law except as expressly noted herein. For the reasons set forth below, I concur with the ALJ's conclusion that granting Respondent's application for a registration would be inconsistent with the public interest. I therefore adopt the ALJ's recommendation that Respondent's pending application be denied.

Findings of Fact

Respondent graduated from the University of Tennessee in 1963. Before entering the University of Louisville School of Medicine, Respondent served in the U.S. Navy and also was a sales representative for the Upjohn Company for a period of seven years.

In 1975, Respondent graduated from medical school and served a one-year internship at Erlanger Hospital in Chattanooga, Tennessee. Following his internship, Respondent entered into a family practice, sharing office space with another physician for a period of seven years. In 1983, Respondent moved his practice to North Park Hospital in Chattanooga and maintained that practice as of the date of the hearing.

Sometime in 1997, the Hamilton County Sheriff's Office received information from an informant implicating a Ms. Beth Harvey in the unlawful sale of Valium (Diazepam), a Schedule IV controlled substance. Mr. Jeffrey Parton, a detective with the Hamilton County Narcotics Division, conducted several interviews of Ms. Harvey. Ms. Harvey told Detective Parton that she had become a patient of Respondent based on the advice of friends who had told her that he was a good doctor to see to obtain diet drugs. Ms. Harvey also told Detective Parton that Respondent would provide her with pain medication without conducting a physical exam and that she could buy hydrocodone samples from him. Tr. 32-33.

Sometime between October 28 and November 10, 1997, the Narcotics Division executed a search warrant at Harvey's residence. During the search, the police found a 1000-count bottle of Valium. Most of the pills were missing. Harvey returned to her residence during the search and was questioned by the police about the Valium's source. Harvey told the police that she had obtained the drugs from Respondent on October 28th, and that she was to sell it on the street and return a portion of the profits to him.

Thereafter, Harvey agreed to cooperate with the police in their investigation of Respondent. Between

¹ Three of the counts alleged the unlawful distribution of dihydrocodeine; two of the counts alleged the unlawful distribution of diazepam.