

abusing drugs. The Medical Board also found that the Respondent diverted and stockpiled the weight-loss drug Pondimin (Fenfluramine) (a Schedule IV controlled substance) for his personal use by asking the patients to return their supplies of the drug to him. Consistent with its findings and conclusions, the Medical Board ordered the indefinite suspension of the Respondent's North Carolina medical license. In addition, the Medical Board ordered that the Respondent may petition for reinstatement of his medical license "no sooner than April 18, 2003."

There is no evidence before the Deputy Administrator to rebut findings that effective April 18, 2002, the Respondent's license to practice medicine in the State of North Carolina was indefinitely suspended and that he is not eligible to petition for reinstatement of that license until April 18, 2003. Therefore, the Deputy Administrator finds that since the Respondent is not currently authorized to practice medicine in North Carolina, it is reasonable to infer that 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 conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

The parties do not dispute the fact that Respondent is currently without authorization to handle controlled substances in North Carolina. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977). This standard also applies in matters involving the immediate suspension of a DEA Certificate of Registration under 21 U.S.C. 824(d). *Chemical Dependence Associates of Houston*, 58 FR 3705 (July 12, 1993).

Here, it is clear that the Respondent is not licensed to handle controlled substances in North Carolina. Since

Respondent lacks such authority, he is not entitled to a DEA registration in that state. In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition.

Because the Respondent is not entitled to a DEA registration in North Carolina Due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether the Respondent's registration should be revoked based upon the other grounds asserted in the Order to Show Cause and Notice of Immediate Suspension of Registration. See Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997).

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, AT2853706, issued to Joseph H. Talley, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 20, 2002.

Dated: November 20, 2002.

John B. Brown, III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Clark G. Triftshauser, M.D., Revocation of Registration

On May 13, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Clark G. Triftshauser, M.D. (Dr. Triftshauser) of Albion, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BT5294866, under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Triftshauser is not currently authorized to handle controlled substances in New York, the state in which he practices. The OTSC also alleged that Dr. Triftshauser had been convicted of a felony related to controlled substances and had otherwise committed acts that would

render his registration inconsistent with the public interest. The order notified Dr. Triftshauser 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. Triftshauser at his registered location in Albion, New York and to the new York State Groveland Correctional Facility in Sonyea, New York, where Dr. Triftshauser is presently incarcerated. DEA received a signed receipt indicating that the Order to Show Cause was received on Dr. Triftshauser's behalf at the correctional facility on May 20, 2002. DEA has not received a request for hearing or any other reply from Dr. Triftshauser or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Triftshauser is deemed to have waived his hearing right. After considering material from 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 that on October 28, 1987, Dr. Triftshauser was issued DEA Certificate of Registration, AT6847240, in Schedules II through V. In 1987, Dr. Triftshauser's medical license was suspended after it was discovered that he had obtained Dexedrine, a Schedule II controlled substance, for his personal use. On March 21, 1991, Dr. Triftshauser surrendered his New York state medical license after it was discovered that over a thirty-two month period, he had obtained hydrocodone syrup (a Schedule III controlled substance) for his personal use. As a result, on December 14, 1991, Dr. Triftshauser surrendered DEA Certificate of Registration, AT6847240.

On June 30, 1994, Dr. Triftshauser's medical license was restored and he was placed on a five-year period of probation. As part of his probation, he agreed to refrain from the personal use of controlled substances and submit to random urinalysis for detection of any misuse of drugs. These urine screens were to be administered by the Committee for Physicians' Health of the State of New York Medical Society ("CPH").

In May 1995, Dr. Triftshauser submitted a new application for DEA Certificate of Registration. He materially falsified that application by failing to disclose the 1987 suspension of his New York medical license, as well as his

March 1991 surrender of that license. In lieu of further proceedings to deny his application for DEA registration, on April 1, 1997, Dr. Triftshauser entered into a Memorandum of Agreement with DEA, in which he agreed to several terms and conditions. Among the terms agreed upon by the parties was the limiting of Dr. Triftshauser's registration to Schedules IV and V. Accordingly, on April 17, 1997, Dr. Triftshauser was issued DEA Certificate of Registration, BT5294866, as a practitioner, authorized to handle controlled substances in Schedules IV and V. That registration remains valid through November 30, 2002.

In November 1998, Dr. Triftshauser underwent a random urine screen. The screen came back positive for Librium (chlordiazepoxide), a Schedule IV controlled substance. As a result of your positive drug screen, Dr. Triftshauser was referred by CPH for evaluation of further drug treatment and increased urine monitoring.

Following Dr. Triftshauser's second stint of drug evaluation and treatment, he was referred to a Medina, New York, physician, who agreed to employ him in his practice and act as his program monitor. In or around 2001, an investigation by the New York State Department of Health, State Board of Professional Medical Conduct, (the Board) revealed that between September 2000 and February 2001, Dr. Triftshauser falsified seven prescriptions for Lortab, a Schedule III controlled substance, and later presented them to be filled at several pharmacies. Specifically, Dr. Triftshauser falsely represented that the above prescriptions were issued to him by his employing physician.

On February 21, 2001, Dr. Triftshauser was arrested in Genesee County, New York, and charged with criminal possession of a forged instrument (prescription). Following his pre-trial release from prison, he was arrested on March 29, 2001, by the Medina New York Police Department and charged with forgery of a controlled substance. He was subsequently indicted on two counts of criminal possession of a forged instrument, two counts of criminal possession of a controlled substance, and two counts of falsifying business records. On February 8, 2002, in the Orleans County District Court State of New York, Dr. Triftshauser entered a guilty plea to one count of criminal possession of a forged instrument. He was sentenced to imprisonment of between two and seven years and assessed a fine of \$5,000. Therefore, he has been convicted of a

felony related to controlled substances. 21 U.S.C. 824(a)(2).

On July 20, 2001, the Board issued a Final Order revoking Dr. Triftshauser's license to practice medicine. His medical license has not been reinstated. Therefore, he is not currently authorized to handle controlled substances in the State of New York. 21 U.S.C. 824(a)(3).

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 *Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Triftshauser is not licensed to handle controlled substances in the State of New York, where he is registered with DEA. Therefore, he is not entitled a DEA registration in that state. Moreover, Dr. Triftshauser has been convicted of a felony relating to controlled substances and has otherwise committed such acts as would render his registration inconsistent with the public interest.

Accordingly, the Deputy Administration 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 BT5294866, issued to Clark G. Triftshauser, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 30, 2002.

Dated: November 12, 2002.

John B. Brown, III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Johnnie Melvin Turner, M.D.; **Revocation of Registration**

On June 18, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Johnnie Melvin Turner, M.D. (Dr. Turner) of Chicago Illinois, notifying him of an opportunity to show cause as to why DEA should

not revoke his DEA Certificate of Registration, BT5794866 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Turner is subject to a ten year exclusion from participation in Medicare. The order also notified Dr. Turner 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. Turner at his work address in Chicago, Illinois. The letter was returned unclaimed. A second Order to Show Cause was sent on October 17, 2001, by certified mail, to another address where Dr. Turner was purportedly working. Again, the letter was again returned unclaimed, and DEA has been unable to determine Dr. Turner's current whereabouts. DEA has not received a request for hearing or any other reply from Dr. Turner or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Turner is deemed to have waived his hearing right. After considering material from 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 that Dr. Turner currently possesses DEA Certificate of Registration BT5794866. That registration expired on November 2000, but the Deputy Administrator hereby extends the registration for purposes of this revocation proceeding. 21 CFR 1301.37(i). The Deputy Administrator further finds that from January 6, 1992 to April 1994, Dr. Turner, along with two other individuals, submitted numerous fraudulent claims in excess of \$100,000 to the Illinois Medicare-Part B Program, by billing for services that were not rendered, and as a result, Dr. Turner obtained fees that he was not entitled to.

As a result of Dr. Turner's fraudulent activity, in September 1998, he was indicted in the United States District Court, Northern District of Illinois (Eastern Division) on eleven felony counts related to his improper billing practices. On October 20, 1998, he entered a guilty plea to one felony count of mail fraud. On May 11, 1999, he was sentenced five years probation and ordered to pay restitution of \$106,132 to the United States Department of Health and Human Services.