

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Diode Laser Welding Consortium

Notice is hereby given that, on November 1, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), parties to a joint venture collectively referred to as the "Diode Laser Welding Consortium" filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: SDL, Inc., San Jose, CA; Teledyne Brown Engineering, Huntsville, AL; and Utilase Systems, Detroit, MI. The objective of the joint venture is the development of a fiber-coupled direct diode laser system for the cutting and welding of steel and aluminum parts in the automotive industry.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95-30635 Filed 12-15-95; 8:45 am]
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Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on October 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), HDP User Group International, Inc., an Arizona non-profit corporation, filed notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amkor Electronics, Chandler, AZ; MCC, Austin, TX; Motorola, Schaumburg, IL; and Texas Instruments, Villeneuve, FRANCE have become members of HDP User Group International, Inc. Combitech, Jonkoping, SWEDEN; Digital Equipment Corporation, Maynard, MA; and ESEC, Phoenix, AZ are no longer members.

No other changes have been in either the membership or the planned activity of the joint venture.

On September 14, 1994, the HDP User Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(a) of the Act of March 23, 1995 (60 FR 15306-07). The last notification was filed on February 27, 1995. A notice was published in the Federal Register on May 11, 1995 (60 FR 25251).

Constance K. Robinson,
Director of Operations, Antitrust Division.
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Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute

Correction

In notice document 95-15787 appearing on page 33432 in the issue of Wednesday, June 28, 1995, in the first column, in the third paragraph, in the eleventh (11th) line, "65 FR 15307" should read "60 FR 15307".

Constance K. Robinson,
Director of Operations, Antitrust Division.
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Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wilfred Baker Engineering, Inc. Petroleum/Chemical Processing Joint Agreement

Notice is hereby given that, on June 22, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Wilfred Baker Engineering, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hoechst Celanese Chemical Group, Dallas, TX has joined the joint venture. No other changes have been made in either the membership or planned activities of the venture.

On March 14, 1995, Wilfred Baker Engineering, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal

Register pursuant to Section 6(b) of the Act on May 11, 1995 (60 FR 25252).

Constance K. Robinson,
Director of Operations Antitrust Division.
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Notice Pursuant to the National Cooperative Research and Production Act of 1993—X Consortium, Inc.

Notice is hereby given that, on September 1, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), X Consortium, Inc. (the "Corporation") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new member of the Corporation is: Georgia Institute of Technology, Atlanta, GA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on November 10, 1993 (58 FR 59737). The last notification was filed with the Department on June 6, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 29, 1995 (60 FR 33849).

Constance K. Robinson,
Director of Operations, Antitrust Division.
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Drug Enforcement Administration

[Docket No. 94-32]

Richard M. Koenig, M.D., Revocation of Registration

On March 2, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard M. Koenig, M.D., (Respondent) of Riverhead, New York, notifying him of an opportunity to

show cause as to why DEA should not revoke his DEA Certificate of Registration, AK6455237, under 21 U.S.C. 823(a), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that the Respondent had been excluded from participation in a program pursuant to 42 U.S.C. 1320a-7(a), as evidenced by, but not limited to the following:

(a) Between March 1986 and January 1990, (the Respondent) submitted false or fraudulent medical services claims to the New York State Medical Assistance Program, commonly known as Medicaid, and as a result of such submissions (he) obtained approximately \$150,000.00 in funds to which (he) was not entitled.

(b) On or about April 19, 1991, (the Respondent) was convicted in the County of Rockland, State of New York, of twenty counts of offering a false instrument for filing, in violation of New York Penal Code, Section 175.35. On or about June 28, 1991, (the Respondent) was sentenced to five years probation with the conditions that, *inter alia*, (he) serve six months in jail and pay a \$25,000.00 fine.

(c) Effective on or about March 5, 1992, the Office of the Inspector General, United States Department of Health and Human Services, excluded (the Respondent) from participating in the Medicare program and any State health care program for a period of five years.

On April 11, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Arlington, Virginia, on October 4, 1994, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On February 2, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's DEA registration be revoked and that any pending applications be denied. Neither party filed exceptions to her decision, and on March 6, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and the filings of the parties, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no

manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is a Board-certified psychiatrist in private practice in Riverhead, New York, and is also a part-time consultant for North Fork Counseling, a mental health clinic in Mattituck, New York. On June 28, 1991, the Respondent was sentenced in a New York state court to six months imprisonment, fines totalling \$25,000, and probation for five years as a result of a jury verdict of guilty to 20 counts of offering a false instrument for filing. Specifically, the Respondent was convicted of filing, with the intent to defraud the State of New York, written instruments containing false statements and false information that he had provided services to certain Medicaid recipients, and that he had not been paid for such services, when in fact he was paid a salary to render such services. On January 24, 1994, the Respondent was discharged from probation.

On February 13, 1992, the Director of the U.S. Department of Health and Human Services Health Care Administrative Sanctions Office of Investigations advised the Respondent that, pursuant to 42 U.S.C. 1320a-7(a), he was mandatorily excluded from Medicare and state health care programs because of his conviction for a criminal offense related to the delivery of an item or service under the Medicaid Program. The letter also advised the Respondent that the exclusion would be in effect for five years. The Respondent did not appeal this revocation.

Pursuant to a Notice of Hearing and Statement of Charges dated December 9, 1992, a hearing was held before a Hearing Committee of the New York State Board For Professional Medical Conduct (Medical Board) on January 20, 1993. By order dated February 5, 1993, the Medical Board found that the Respondent had knowingly submitted invoices to Medicaid representing that he had provided certain services that, in fact, he had not rendered as represented on the invoice. The Medical Board suspended the Respondent's medical license for four months and ordered him to perform one hundred hours of community service.

At the hearing before Judge Bittner, the Respondent testified that the conviction he received concerning "false instruments" or Medicaid billings, resulted from "errors in judgment on (his) part," based upon his performing a service on one day and billing for that service as if it had been

performed on another day. He also stated that "I can't tell you how much I regret them," but that "(i)t was an error in thinking. It was a reflection that people would understand and it's not a system that understands and that was at the worst, pathological naivete on my part." He further testified that he needed a DEA registration in order to prescribe benzodiazapines as tranquilizers, and Dexedrine and Cylert for attention deficit disorder. Benzodiazepines and Cylert (trade name for pemoline) are Schedule IV controlled substances, and Dexedrine (trade name for dextroamphetamine), is a Schedule II controlled substance. The Respondent further testified that without a DEA registration, he would feel obliged to leave North Fork because of his inability to render appropriate treatment.

Karen Malcolmsen, Ph.D., the Clinical Director of Family Service League, North Fork Counseling (North Fork), testified that North Fork is the only licensed mental health clinic within a forty-mile radius and is located in a very rural community. Further, North Fork provides counseling and psychiatric services primarily to the poor and working poor in the local community, many of whom are migrant farm workers who cannot afford to pay substantial sums for mental health care.

Dr. Malcolmsen testified that she had known the Respondent for six years, for he had performed his community service at North Fork, plus an additional hundred hours of service, and she had supervised him, worked with him on the treatment team, and referred clients to him when they needed medication or if therapists sought a second opinion. Dr. Malcolmsen stated that the Respondent is still a consulting psychiatrist for North Fork, that he is paid a "very small salary" by the clinic based on his working seven hours per week, when in fact he actually provided ten to thirteen hours per week of services to the clinic. Dr. Malcolmsen opined that the Respondent's work was excellent, that clients always reported positively about him, and that she found him very caring and honest. Dr. Malcolmsen also testified that the Respondent had told her about the charges against him before the indictment was handed down, that he had told her that he had never intentionally done anything illegal but had made some errors, and that several times in meetings with her he had expressed remorse for his actions and had taken responsibility for them. Finally, Dr. Malcolmsen testified that the Respondent had never abused his authority to handle controlled

substances. She explained that if the Respondent's DEA registration were revoked or suspended, the clinic would not be able to function in emergency situations because the Respondent would be unable to prescribe the appropriate controlled medications needed by the patients. However, since the Respondent's exclusion from Medicare or Medicaid, North Forks has the services of another psychiatrist who works three hours a week and sees the Medicare patients.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that 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 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 or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or a pending application for registration denied. See Henry J. Schwarz, Jr., M.D. Docket No. 88-42, 54 FR 16,422 (1989). In addition, 21 U.S.C. 824(a)(5) specifies that a DEA registration may be revoked or suspended if the registrant "has been excluded * * * from participation in a program pursuant to (42 U.S.C. 1320a-7(a))." Here, the record demonstrates that the Respondent has been so excluded. Although the Respondent attempted to contest elements of this exclusion in these proceedings, the Deputy Administrator agrees with Judge Bittner's findings that:

The letter advising Respondent of his exclusion from Medicare and state health programs specified that his exclusion was mandated by 1320a-7(a), and Respondent did not appeal that ruling. He is therefore precluded from attacking that finding collaterally in this proceeding. In light of the above, I conclude that Respondent was excluded from programs pursuant to 1320a-7(a) and that the exclusion constitutes

grounds to revoke Respondent's DEA registration pursuant to 42 U.S.C. 824(a)(5).

Next, as to the public interest issue, factors one and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. Specifically, as to factor one, "(t)he recommendation of the appropriate state licensing board," the Medical Board, after conducting a hearing and reviewing the evidence submitted, found that the Respondent had knowingly submitted false invoices for payment by the State. Accordingly, the Medical Board sanctioned the Respondent by suspending his medical license and ordering him to perform community service.

Further, as to factor five, "(s)uch other conduct which may threaten the public health or safety," the Respondent's conduct of submitting false invoices placed into question his trustworthiness and credibility. Also, Judge Bittner found that the Respondent's testimony before her lacked credibility: "I note at the outset that I did not find Respondent to be a credible witness. He seemed more interested in tailoring his testimony to his defenses than in accurately portraying relevant events." Such lack of credibility in 1994 causes concern as to the Respondent's future conduct if entrusted with protecting the public interest in administering controlled substances. The Respondent argued that since his conviction did not involve controlled substances, the Government had not shown that his continued registration would be inconsistent with the public interest. However, the Deputy Administrator agrees with Judge Bittner who wrote "(i)t is well established that misconduct involving controlled substances is not a *sine qua non* for revocation of a DEA registration * * *." See also Gilbert L. Franklin, D.D.S., 57 FR 3441 (1992).

Yet the Respondent has submitted evidence concerning his rehabilitation. Specifically, Dr. Malcolmsen testified extensively about the Respondent's excellent, honest and caring work, often voluntarily provided to the patients at North Fork, and about the Respondent's statements of remorse for his actions. Dr. Malcolmsen also testified that she believed the Respondent had taken responsibility for his past misconduct, and that she had never observed the Respondent abuse his authority to handle controlled substances. She further explained that if the Respondent's DEA registration was revoked, the clinic would suffer a loss of services because the Respondent would be unable to prescribe controlled

substances needed by many of North Fork's patients.

The Respondent also testified about his remorse for his misconduct and his need for his DEA Certificate of Registration. However, Judge Bittner, directly observing the Respondent's testimony, noted that "(a)lthough counsel for Respondent asserts that Respondent has expressed remorse for his conduct, * * * Respondent's only testimony to that effect in this proceeding was his comment that 'I'm extremely remorseful about it and I've said that.' However, the thrust of his testimony in this proceeding appeared to be that having to go through 'another trial' was unfair and tiring. In these circumstances, I conclude that his purported expressions of remorse are less than reliable."

Given Judge Bittner's doubts as to the Respondent's credibility and sincerity, and the egregious nature of his conduct in intentionally filing false documents with the State, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's DEA Certificate of Registration and denying and pending registration application at the present time. See *Sokoloff v. Saxbe*, 501 F.2d 571, 576 (2 Cir. 1974) (stating that "permanent revocation" of a DEA Certificate of Registration may be "unduly harsh"). Like Judge Bittner, after reviewing the record in total, the Deputy Administrator questions whether the Respondent is currently willing or able to meet the responsibilities inherent in a DEA 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 DEA Certificate of Registration AK6455237, issued to Richard M. Koenig, M.D., be, and it hereby is, revoked, and any pending application submitted by the Respondent is denied. This order is effective January 18, 1996.

Dated: December 11, 1995.
Stephen H. Green,
Deputy Administrator.
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