

Dated: March 25, 1997.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96-42]

Bruce A. Ames, M.D.; Revocation of Registration

On July 22, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Bruce A. Ames, M.D. (Respondent), of Redding, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AA5878422, and deny any pending applications for registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of California.

On August 19, 1996, Respondent filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On August 21, 1996, Judge Bittner issued an Order for Prehearing Statements. On August 26, 1996, the Government filed a Motion for Summary Disposition, alleging that effective May 12, 1995, the Medical Board of California (Board) placed Respondent's license to practice medicine in the State of California on probation for five years, prohibited him from handling controlled substances, and ordered him to surrender his DEA Certificate of Registration. In his response to the Government's motion, Respondent asserted various defenses. However, Respondent did not deny that the Board prohibited him from handling controlled substances.

On October 28, 1996, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in the State of California; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on December 3, 1996, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety,

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 Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that effective May 12, 1995, the Board revoked Respondent's license to practice medicine in the State of California, but stayed the revocation and placed Respondent's license on probation for five years subject to various terms and conditions. One of these terms is that "Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined in the California Uniform Controlled Substances Act." In addition, "Respondent is prohibited from practicing medicine until [he] provides documentary proof * * * that [his] DEA permit has been surrendered to the Drug Enforcement Administration for cancellation * * *." Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of California.

The DEA does not have the 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. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104 (1993); *James H. Nickens, M.D.*, 57 Fed. Reg. 59,847 (1992); *Roy E. Hardman, M.D.*, 57 Fed. Reg. 49,195 (1992). In the instant case, the record indicates that Respondent is not currently authorized to handle controlled substances in the State of California. As Judge Bittner notes, "[i]t is equally clear that because Respondent lacks this state authority, Respondent is not currently entitled to a DEA registration."

Judge Bittner also properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in California. 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 *Phillip E. Kirk, M.D.*, 48 Fed. Reg. 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); *United States v. Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AA5878422, previously issued to Bruce A. Ames, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 28, 1997.

Dated: March 14, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97-7883 Filed 3-27-97; 8:45 am]

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Importer of Controlled Substances; Notice of Registration

By Notice dated August 21, 1996, and published in the **Federal Register** on September 3, 1996, (61 FR 46488), Calbiochem-Novabiochem Corporation, 10394 Pacific Center Court, Attn: Receiving Inspector, San Diego, California 92121-4340, made application to the Drug Enforcement Administration (DEA) to renew its registration to import small quantities of the listed controlled substances to make reagents for distribution to the biomedical research community as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|------------------------------------|----------|
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| Amphetamine (1100) | II |
| Phencyclidine (7471) | II |
| Phenylacetone (8501) | II |
| Cocaine (9041) | II |

No request for a hearing was filed concerning Calbiochem-Novabiochem Corporation's 1996 application for renewal of its registration. However, by Notice dated July 5, 1995, Calbiochem-Novabiochem Corporation made application to the Drug Enforcement Administration (DEA) to renew its registration as an importer of the basic classes of controlled substances listed above. Notice of this application was published in the **Federal Register** on July 13, 1995 (60 FR 36165). A registered manufacturer filed a request for a hearing with respect to amphetamine for the 1995 application.