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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

RONALD F. LAMBERT, D.D.S.
DECISION AND ORDER

On November 17, 2011, the Deputy Assistant Administrator issued an Order to Show Cause to Ronald Lambert, D.D.S. (hereinafter, Respondent), of Longmont, Colorado. The Show Cause Order proposed the denial of Respondent's application for a DEA Certificate of Registration as a practitioner, on the ground that Respondent's "registration would be inconsistent with the public interest." Show Cause Order at 1 (citing 21 U.S.C. § 823(f)).

The Show Cause Order alleged that on January 1, 2011, Respondent had applied for a practitioner's registration with authority to dispense controlled substances in schedules III through V. Id. The Order alleged that during an interview by DEA investigators, Respondent admitted to having possessed and used methamphetamine, a schedule II controlled substance, "on numerous occasions," in violation of federal and state law. Id. (citing 21 U.S.C. § 844(a); Colo. Rev. Stat. § 18-18-404(1)(a)). The Order also alleged that, during the interview, Respondent also admitted to working with an outlaw motorcycle gang to improve their process of manufacturing methamphetamine. Id. at 1-2 (citations omitted).

Next, the Show Cause Order alleged that on June 10, 2003, Respondent's dental license was suspended by the Colorado State Board of Dental Examiners (hereinafter, the Board), and that on November 5, 2003, the Board revoked his license. Id. Finally, the Order alleged that on March 13, 2008, Respondent entered into a Stipulation and Final Agency Order with the Board, in which he admitted that he had a history of abusing substances including alcohol, marijuana, methamphetamine, and cocaine, as well as a criminal history that includes a conviction for

burglary and a conviction for manufacturing and possession of a controlled substance. Id. The Order then alleged that the Board had placed Respondent on probation for a period of five years and had prohibited him from having controlled substances in his dental practice. Id.

On November 22, 2011, the Show Cause Order, which also notified Respondent of his right to request a hearing on the allegations, or to submit a written statement of position in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option, was served on Respondent by certified mail addressed to him at his proposed registered location. Id. (citing 21 CFR 1301.43 (a)-(e), id. § 1316.47). Thereafter, on December 15, 2011, Respondent's counsel filed a letter waiving his right to a hearing, but submitting a statement of position as to why his application should not be denied. GX 2.

On August 8, 2012, the Government submitted a Request for Final Agency Action, along with the Investigative Record it had compiled. Having considered the entire record, including Respondent's statement of position, I conclude that the evidence submitted by the Government makes out a prima facie case for denial of Respondent's application. However, the Government concedes that Respondent has accepted responsibility for his misconduct and that he has demonstrated his sobriety for an extensive period. While the Government argues that notwithstanding these concessions, Respondent's application should be denied for various reasons, I conclude that the Government's arguments are not persuasive and will therefore grant Respondent's application and order that he be issued a restricted registration. I make the following factual findings.

FINDINGS OF FACT

Respondent is a dentist licensed by Colorado State Board of Dental Examiners. GX 10. While on November 5, 2003, the Board revoked Respondent's dental license based on his having

engaged in substance abuse and criminal activity, on March 13, 2008, the Board approved a Stipulation and Final Agency Order, pursuant to which it reinstated Respondent's dental license while placing him on probation for five years. Id. Respondent's state license was last renewed on March 1, 2012 and does not expire until February 28, 2014. GX 3.

In the Stipulation and Final Agency Order, Respondent admitted that he "has a history of substance abuse with alcohol, marijuana, methamphetamine and cocaine." GX 10, at 1. He also admitted to having a felony conviction for manufacture and possession of a schedule II controlled substance on November 11, 2003.[1] Id.

Respondent previously held a DEA practitioner's registration, which expired on March 31, 2004. GX 12. On January 11, 2011, Respondent applied for a new registration, seeking authority to dispense controlled substances in schedules III through V. GX 4. On his application, Respondent disclosed that on April 22, 2003, he pled guilty to manufacturing a controlled substance and that he was sentenced to two years in jail and four years of supervised probation, which he had successfully completed. Id. He also disclosed that on November 15, 2002, his dental license had been revoked due "to undefended allegations of substance abuse." Id. Respondent further explained that "after successful rehabilitation from drug addiction and proving this to the Board's satisfaction with documented clean time, I was granted a new license to practice dentistry in March 2008."[2] Id.

On June 29, 2011, two DEA Diversion Investigators interviewed Respondent.[3] GX 13. During the course of the interview, Respondent admitted that in the 1970s he had regularly used

[1] Respondent also admitted to a felony conviction for first degree burglary in 1983.

[2] While the dates Respondent provided on the application for the Board actions were not the actual dates of the various actions, these errors are not material misstatements as they have no capacity to influence the decision in this matter.

[3] It is noted that this affidavit was not executed until more than a year after the interview. GX 13, at 1 & 4.

marijuana; that in April 1983, he had participated, while intoxicated, in a burglary during which his partner had murdered the victim of the burglary; and that in April 2003, police, who had been requested by his ex-wife to perform a welfare check on him at his residence, found methamphetamine. Id. at 1-2. Further, Respondent engaged in a struggle with the police. Id. at 2.

Thereafter, Respondent was taken to a local hospital for a 72-hour mental health hold. GX 8, at 2. Upon his arrival, "Respondent was cursing, screaming and refus[ed] all treatment." Id. After he "bit a security guard," he was "placed in restraints." Id. Respondent admitted that he had used a half-gram of methamphetamine on the day of this incident, and a urine drug screen was positive for meth. Id. at 2-3. The same day, Respondent was transferred to another hospital where he was evaluated; the evaluation determined that he met the criteria for a diagnosis of methamphetamine abuse and depressive disorder. Id. at 3.

The following day, Respondent admitted to methamphetamine use; he also admitted to daily use of marijuana in the preceding six months. Id. Respondent stated that he started using methamphetamine "because of a depressed mood." Id. However, he denied needing treatment for substance abuse. Id.

Upon being discharged from the hospital, family members took Respondent to the Talbot Recovery Center in Atlanta to undergo residential treatment. GX 7, at 6; GX 13, at 2. However, five days after entering treatment, Talbot discharged him alleging that he had brought a vial of methamphetamine with him. GX 13, at 2. Upon his return to Colorado, Respondent learned that he had criminal charges pending against him based on the April 21, 2003 incident. Id.

Respondent admitted to DEA Investigators that on returning to Colorado, he purchased methamphetamine from street dealers. Id. He also admitted to being friends with two

individuals who were associated with the President of the local chapter of the Bandidos, a designated outlaw motorcycle gang. Id. at 3. According to the affidavit, Respondent admitted that he helped the Bandidos manufacture methamphetamine. Id.

As a condition of his bond, Respondent was required to undergo urine drug screening. Id. Respondent tested positive for methamphetamine on various occasions and was charged with seventeen counts of violating the bond conditions. Id.

On November 11, 2003, Respondent met with several members of the Bandidos at a home in Denver. Id. The gang members had unsuccessfully attempted to manufacture a batch of methamphetamine. Id. Respondent took the batch and placed it in his car, with the aim of reversing the chemistry of the batch and making it into methamphetamine. Id.

Respondent drove to an address in Arvada, Colorado, where someone reported to the police that he/she had observed him cursing, screaming at two girls who were walking in a nearby park, and slamming the trunk of his car. GX 5, at 1. Two police officers were dispatched to the scene; upon their arrival they observed Respondent standing near the trunk of his car, which was open. Id. The officers also saw two battery chargers lying in the street next to car. Id.

When the officers asked Respondent what he was doing, he was uncooperative and would not answer their questions. Id. Respondent became agitated, could not provide his vehicle's registration and would not tell the officers his name. Id. When asked if he had any identification, Respondent said no. Id.

The officers observed a bulge in Respondent's left front pants pocket and that Respondent's left hand was in the pocket. Id. When one of the officers asked Respondent to remove his hand from his pocket, he refused. Id. The officer then forcibly removed

Respondent's hand, and subdued him. Id. While conducting a pat-down search, the officers found a small zip-lock bag containing a white powder which they suspected to be a controlled substance; Respondent then complained that the officers had planted drugs on him. Id.

Thereafter, the officers determined that Respondent was the owner of the car and conducted an inventory search, during which they found a variety items used to manufacture methamphetamine. Id. at 2. Specifically, the officers found a box holding 50 books of red-phosphorous matches; a small bottle of iodine tincture; a package of pseudoephedrine; a one liter bottle containing a two-layer liquid, the top layer of which tested positive for amphetamine; and a book of handwritten recipes for manufacturing narcotics. Id. In addition, the officers field tested the substance they had previously found on Respondent and determined that it was methamphetamine. Id.

Respondent was then charged with manufacturing methamphetamine, possession of a schedule II controlled substance, and disorderly conduct. GX 13, at 3-4. Respondent was offered a plea bargain, pursuant to which he pled guilty to the manufacturing charge; the other charges, including those which were brought after the April 2003 incident, were dismissed. Id. at 4. On March 22, 2004, Respondent pled guilty to the charge and was sentenced to two years in prison and four years of probation; Respondent was imprisoned for fifteen months. GX 6, at 8.

In February 2006, Respondent returned to the Talbot Recovery Center, and in May 2006, he successfully completed the Center's in-patient treatment program. Id.; GX 10, at 1. Moreover, as the Board found in the Stipulation and Final Agency Order, at least through the date of the 2008 order, Respondent "ha[d] been actively involved in the Peer Assistance Service Program, 12 step work, the ARC relapse prevention class and regular toxicity screens." GX 10,

at 1-2. The Board also noted that "Respondent had over four years of documented sobriety." Id. at 2.

Pursuant to the Board's Order, Respondent was placed on probation for five years. The terms of his probation included, inter alia, that he: 1) enter a new Dentist Rehabilitation Contract (DRC); 2) maintain full compliance with his treatment program and any other conditions of the DRC; 3) provide random urine screens and that if he failed to appear, such failure would be deemed a positive test and a violation of his probation; 4) notify the Dentist Peer Assistance Program of any drug (and its dosage) prescribed to him; and 5) totally abstain from using "any habit-forming drugs, controlled substances, or prescription substances other than those prescribed for him by a licensed treating physician or dentist," and that he take such drugs "only within the scope of treatment" and only "as prescribed." Id. at 3-4. Finally, "Respondent agree[d] to have no controlled substances in his dental practice throughout his period of probation." Id. at 4.

In his statement of position, Respondent states that he "has been very honest with the DEA and the [State Board] by admitting his past struggles with substance abuse as well as his past felony convictions, one of which was related to the manufacture and possession of a Schedule II controlled substance." GX 2, at 2. However, Respondent denies that he "work[ed] directly with the Banditos to illegally manufacture methamphetamine," stating that "[h]e helped a person illegally manufacture methamphetamine, and . . . later learned that this man was associated with the Banditos." Id.

Respondent acknowledges that he "has a history of substance abuse as well as a Major Depressive Disorder," but states that he "has sought, and continues to seek, treatment for this disease." Id. He further notes that he completed the recovery program at Talbot; that he

currently participates in the Peer Assistance Program in Colorado, the 12-step program, and in a relapse prevention class; and that he provides regular urine drug screens. Id. In addition, Respondent advises that "[h]e is under the care of a psychiatrist, and [that] his major depression is currently stable." Id. Moreover, "he has been sober since February 11, 2004." Id. Respondent states that he "has fully complied with the terms of" the Board's 2008 Order. Id.

Finally, Respondent states that he "is not trying to ignore his past nor make excuses for his conduct." Id. Indeed, he admits that he "has made mistakes in the past" and that "he has suffered the criminal consequences for these transgressions." Id. at 3. However, Respondent argues that he has "embraced his recovery and sobriety" and "has made significant changes in his life and is not a threat to public safety." Id. Respondent thus contends that "the issuance of a . . . registration would not be inconsistent with the public interest," and recognizes that the issuance of a "registration would likely be subject to the terms of a" memorandum of understanding.

DISCUSSION

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner's registration may be denied upon a determination "that the issuance of such registration would be inconsistent with the public interest." 21 U.S.C. § 823(f). In making the public interest determination in the case of a practitioner, Congress directed 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 . . . 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 and safety.

Id.

"[T]hese factors are considered in the disjunctive." Robert A. Leslie, 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether . . . to deny an application. Id. Moreover, I am "not required to make findings as to all of the factors." Hoxie v. DEA, 419 F.3d 477, 482 (6th Cir. 2005) (citing Morall v. DEA, 412 F.3d 165, 173-74 (D.C. Cir. 2005)).

The Government has the burden of proving, by a preponderance of the evidence, that the requirements for denial of an application pursuant to 21 U.S.C. § 823(f) are met. 21 CFR 1301.44(d). However, "once the [G]overnment establishes a prima facie case showing a practitioner has committed acts which render his registration inconsistent with the public interest, the burden shifts to the practitioner to show why [granting his application for] registration would be consistent with the public interest. " MacKay, 664 F.3d at 817 (citing Medicine Shoppe-Jonesborough, 73 FR 364, 387 (2008) (citing cases)).

Having considered all of the factors, I conclude that the Government's evidence with respect to factors three, four, and five establishes its prima facie burden of showing that issuance of registration to Respondent would be inconsistent with the public interest.[4] However, as

[4] With respect to factor one - the recommendation of the state licensing board - it should be noted that the Board has not made a recommendation in this matter. Moreover, while Respondent now apparently has authority under Colorado law to engage in some controlled substance activities (such as prescribing), and thus meets a prerequisite for obtaining a new practitioner's registration, see 21 U.S.C. §§ 802(21) and 823(f), the Agency has long held that possession of state authority is not dispositive of the public interest inquiry. George Mathew, 75 FR 66138, 66145 (2010), pet. for rev. denied, Mathew v. DEA, No. 10-73480, slip op. at 5 (9th Cir., Mar. 16, 2012); see also Patrick W. Stodola, 74 FR 20727, 20730 n.16 (2009); Robert A. Leslie, 68 FR 15227,15230 (2003). As the Agency has long held, "[T]he Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest." Mortimer Levin, 57FR 8680, 8681 (1992). Thus, this factor neither weighs in favor of granting, or

explained below, in its Request for Final Agency Action, the Government essentially concedes that Respondent has rebutted its prima facie case. Having considered the Government's various arguments as to why Respondent's application should nonetheless be denied, I conclude that his application should be granted.

Factors Three, Four and Five – Respondent's Record of Convictions for Offenses Related to the Manufacture or Distribution of Controlled Substances, His Compliance with Applicable Laws Related to Controlled Substances, and Such Other Conduct Which May Threaten Public Health and Safety

It is undisputed that in March 2004, Respondent pled guilty to, and was convicted of, the state law offense of manufacturing methamphetamine, a schedule II controlled substance. GX 6, at 3 (citing Colo. Rev. Stat. § 18-18-405(1)(a)(2)(a)(I)(A)). Respondent's conviction of this offense, which arose out of the November 2003 incident, supports an adverse finding under factor three, and by itself, satisfies the Government's prima facie burden of demonstrating that Respondent's registration would be inconsistent with the public interest.[5] See 21 U.S.C. § 823(f).

Buttressing the Government's case is the undisputed evidence that Respondent possessed and abused controlled substances including methamphetamine, cocaine and marijuana. For example, the evidence shows that, at the time of the April 2003 incident which led to his arrest and hospitalization, Respondent possessed and used a half-gram of methamphetamine; indeed, Respondent admitted to using methamphetamine and tested positive for the drug. He also admitted to purchasing methamphetamine after being discharged by Talbot and, while on bond,

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denying, his application. Paul Weir Battershell, 76 FR 44359, 44366 (2009) (citing Edmund Chein, 74 FR 6580, 6590 (2007), pet. for rev. denied, Chein v. DEA, 533 F.3d 828 (D.C. Cir. 2008)).

It is further noted that there is no evidence regarding factor two, Respondent's experience in dispensing controlled substances.

[5] While Respondent was not charged under federal law, his conviction for the state law offense supports a finding under factor four that he violated federal law as well. See 21 U.S.C. § 841(a)(1).

tested positive on multiple occasions for methamphetamine. Thus, Respondent clearly violated federal law. 21 U.S.C. § 844(a).

Moreover, during the April 2003 hospitalization, Respondent admitted that he had used marijuana on a daily basis for the past six months. And finally, in the 2008 Board Order, he admitted to abusing cocaine. Thus, Respondent clearly possessed controlled substances in violation of federal law; his failure to comply with federal laws related to controlled substances likewise supports an adverse finding under factor four.

So too, DEA has long held that a practitioner's self-abuse of controlled substances constitutes "[s]uch other conduct which may threaten the public health and safety." See Tony T. Bui, 75 FR 49979, 49989 (2010); id. at 49988 (quoting David E. Trawick, 53 FR 5326, 5327 (1988) (factor five "encompasses 'wrongful acts relating to controlled substances committed by a registrant outside of his professional practice but which relate to controlled substances")). Moreover, by itself, a practitioner's self-abuse of a controlled substance provides an adequate ground to deny an application even where there is no evidence that the registrant abused his prescription-writing authority, Trawick, 53 FR at 5326, or committed acts involving unlawful distribution to others. See Bui, 75 FR at 49989 (citing Kenneth Wayne Green, Jr., 59 FR 51453 (1994); Allan L. Gant, 59 FR 10826 (1994); William H. Carranza, 51 FR 2771 (1986)). Thus, this factor also supports the Government's contention that Respondent's registration would be inconsistent with the public interest and supports denial of his application.[6] 21 U.S.C. § 823(f).

[6] I place no weight, however, on the evidence regarding Respondent's thirty-year old conviction, both because the Government did not establish the conviction's nexus to Respondent's activities as a practitioner, and because the event is too remote in time.

SANCTION

This Agency has repeatedly held that a proceeding under section 303 "'is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused controlled substances or their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be entrusted with the responsibility carried by such a registration.'" Samuel S. Jackson, 72 FR 23848, 23853 (2007) (quoting Leo R. Miller, 53 FR 21931, 21932 (1988)). Therefore, where, as here, "the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must '"present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration."'" Medicine Shoppe-Jonesborough, 73 FR 364, 387 (2008) (quoting Jackson, 72 FR at 23853 (2007) (quoting Leo R. Miller, 53 FR 21931, 21932 (1988))), aff'd, Medicine Shoppe-Jonesborough v. DEA, 300 F. App'x 409 (6th Cir. 2008). "Moreover, because 'past performance is the best predictor of future performance,' ALRA Labs, Inc. v. DEA, 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct." Medicine Shoppe, 73 FR at 387; accord Jackson, 72 FR at 23853; John H. Kennedy, 71 FR 35705, 35709 (2006); Prince George Daniels, 60 FR 62884, 62887 (1995). See also Hoxie v. DEA, 419 F.3d at 483 ("admitting fault" is "properly consider[ed]" by DEA to be an "important factor[]" in the public interest determination).

With respect to the first prerequisite for rebutting the Government's prima facie case, the Government itself acknowledges that Respondent "has accepted responsibility for his actions and other than clarifying his involvement with the Bandidos, he has not attempted to minimize or

justify his conduct." Req. for Final Agency Action, at 16-17. And with respect to the second prerequisite, the Government concedes that "[s]ince reinstatement of his dental license, it is of some significance that Respondent's professional practice has continued without blemish and that he has avoided illicit drugs for what appears to be eight years." Id. at 16.

Notwithstanding its concessions that Respondent has provided sufficient evidence as to both prongs necessary to rebut the Government's prima facie case, the Government argues that he cannot be entrusted with a registration. Id. at 17. First, it argues that Respondent's misconduct goes beyond simple possession and abuse, and that he "willingly participated in the production of methamphetamine for illegitimate purposes" and did so "for an outlaw motorcycle gang." Id. at 13. Noting the circumstances of his November 2003 arrest, the Government contends that "Respondent sought to 'reverse' the chemistry of the failed batch and turn it into methamphetamine" and "[h]ad it been sold or distributed, the [drug] would have had an enormous potential for injury to [the] community." Id. Second, the Government argues that Respondent has a "long-standing history" of substance abuse, which could have placed his patients at risk, and that even if his "addiction did not adversely affect his dental practice, it would come to mean that Respondent was able to hide his addiction for all those years." Id. at 14-16. The Government thus argues that "[w]hile his recovery is commendable and indicates potential for future registration, Respondent's historically reckless abandonment of his responsibility as a registrant and 'willingness to risk serious criminal and professional sanctions do not augur well' [sic] as consistent with the public interest." Id. at 17 (quoting Imran I. Chaudry, 69 FR 62081, 62084 (2004)). Accordingly, the Government seeks the denial of Respondent's application. Id. (citing Mark Binette, 64 FR 42977, 42980 (1999)).

It cannot be disputed that Respondent committed serious misconduct in possessing and abusing various controlled substances; his participation in the manufacturing of methamphetamine is especially egregious. Yet the record demonstrates that he was addicted to methamphetamine and started using methamphetamine because of his depression. Nor can it be disputed that at the time he committed the offense of manufacturing methamphetamine, he was in the throes of his addiction.

In Chaudry, I rejected an ALJ's recommendation that I grant a restricted registration to a physician who had purchased, abused and distributed methamphetamine. 69 FR at 62084. Therein, I specifically explained that Dr. Chaudry's "illicit purchase and use of methamphetamine [were] particularly serious acts of misconduct." Id. Yet I further observed that the evidence showed that the "[r]espondent was not chemically dependent," and explained that this suggested "that it was neither addiction nor dependency that motivated his 'street' purchases of methamphetamine," but rather, the physician's "unhindered judgment to illegally obtain and use" the drug. Id.

By contrast, the evidence here shows that Respondent was addicted to methamphetamine throughout the period in which he committed the various acts of misconduct involving that drug, a substance which this Agency has recognized is a highly addictive controlled substance.[7] See Sunny Wholesale, Inc., 73 FR 57655, 57657 (2008). While this does not excuse Respondent's criminal acts, here, in contrast to the case of Dr. Chaudry, who did not testify at his hearing and thus "left the record silent as to possible remorse," 69 FR at 62083, the Government concedes

[7] While the Government argues that Respondent "actively endeavored to improve the Bandidos' process to manufacture methamphetamine," Req. for Final Agency Action at 13, it does not appear to take issue with Respondent's assertion that he did not learn until after the fact that the person he helped to manufacture methamphetamine was a member of the gang. GX 2, at 2; Req. for Final Agency Action, at 17.

that Respondent "has accepted responsibility for his actions." Req. for Final Agency Action, at 16.

As for the Government's contention that Respondent has a long-standing history of substance abuse, which could have placed his patients at risk, the argument is refuted by its acknowledgment that Respondent "has avoided illicit drugs for what appears to be eight years" and that his "professional practice has continued without blemish." Id. Indeed, the evidence establishes that, at the time of this review, Respondent had nearly completed the five year probation imposed by the State Board without incident and had been sober for nearly nine years. The Government's contention that this merely "indicates potential for future registration," id. at 17, begs the question of how many years of sobriety must Respondent demonstrate to be granted a registration. And as for the suggestion that even if Respondent did not harm any of his patients, his application should nonetheless be denied because of his putative ability to hide his addiction from others, it is significant that the State subjected him to random urine drug screening for a period of five years and there is no evidence that Respondent yielded a positive test result or that it is possible to beat such a test.[8]

Accordingly, I will grant Respondent's application for a new registration. However, Respondent's registration shall be subject to the following conditions:

[8] The Government also asserts that "[w]hile the Administrator has granted applications to recovering addicts, such self-abuse often arose pursuant to" being prescribed controlled substances to treat a legitimate medical condition. Req. for Final Agency Action, at 16. While this may be, the Agency has never held that the only category of practitioners, who are entitled to regain their registrations, are those whose substance abuse problem arose out of being prescribed controlled substances for the treatment of a legitimate medical condition.

Indeed, in Binette, which the Government cites in supports of its contention that Respondent's application should be denied, see id. at 17, the Agency granted a restricted registration to a physician who had both used methamphetamine and had engaged in the unlawful distribution of the drug. See Binette, 64 FR at 42978-79. Like the Respondent here, Dr. Binette expressed remorse for his actions and demonstrated a substantial period of rehabilitation and sobriety. See id. at 42980. Significantly, Respondent has been sober for nearly twice as long as Dr. Binette was at the time that the Agency granted his application. See id. at 42979, 42981.

1. Respondent shall only be authorized to prescribe controlled substances in schedules III through V and may not administer or dispense directly any controlled substances to his patients. Respondent may not store any controlled substance at his registered location except for a controlled substance which has been prescribed to him by another practitioner, who is authorized to prescribe controlled substances, for the purpose of treating a legitimate medical condition. Respondent shall not accept any samples of controlled substances from any representative of a manufacturer, distributor or pharmacy.
2. Respondent shall maintain a log of all controlled substance prescriptions he issues, which shall list in chronological order, the date of the prescription, the patient name, the drug name and strength, dosage, and quantity. Respondent shall submit a copy of the log to the nearest DEA Field Office no later than ten (10) days following the last day of each quarter (March 31, June 30, September 30, and December 31).
3. Respondent shall consent to unannounced inspections of his registered location and agrees to waive his right to require that DEA personnel obtain an Administrative Inspection Warrant prior to conducting any inspection.
4. In the event Respondent's probation is continued by the State Board past its ending date, Respondent shall notify the DEA Field Office within five days of the Board's order and provide a copy of the order to the DEA Field Office.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 823(f) and 28 CFR 0.100(b), I order that the application of Ronald F. Lambert, D.D.S., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, granted subject to the conditions set forth above. This Order is effective immediately.

Dated: September 23, 2013

Michele M. Leonhart
Administrator

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