

registered location in Hialeah, Florida and to the Federal Detention Center in Miami, Florida, where Dr. Guerra was incarcerated. DEA received signed receipts indicating that the Order to Show Cause was received on Dr. Guerra's behalf on March 5, 2002, at the Federal Detention Center and on March 4, 2002, at his registered address. DEA has not received a request for hearing or any other reply from Dr. Guerra 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. Guerra 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 Acting Administrator finds that on March 11, 2001, Dr. Guerra submitted an application for DEA Certificate of Registration as a researcher, seeking authorization to handle controlled substances in Schedule I at a hospital facility in Hialeah, Florida.

On February 10, 2000, Dr. Guerra, along with two other individuals, were charged through a criminal information in the United States District Court, Southern District of Florida with conspiracy to commit mail fraud. Specifically, Dr. Guerra and others were charged with using fraudulent means to obtain approximately \$2.7 million from Medicare in the form of reimbursements from 1990 to January 1997. On April 10, 2001, Dr. Guerra entered a guilty plea to one felony count of mail fraud. As part of his plea, he agreed to pay \$2.7 million in restitution to the United States Department of Health and Human Services. He was sentenced to forty-eight (48) months imprisonment, and ordered to pay additional fines and assessments. He further agreed to a permanent mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a-7(a). Such exclusion is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5).

Moreover, on July 18, 2001, the Florida Department of Health issued an Order of Emergency Suspension of License with respect to Dr. Guerra's medical license. The suspension of his medical license has not been lifted. Therefore, Dr. Guerra is not currently authorized to handle controlled substances in the State of Florida. Therefore, she is not entitled to a DEA

registration in that state. 21 U.S.C. 824(a)(3).

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 Dr. Guerra's application for DEA registration be, and hereby is, denied. The Deputy Administrator further orders that any other pending applications from Dr. Guerra be, and hereby are, denied. This order is effective April 28, 2003.

Dated: March 6, 2003.

John B. Brown III,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00-24]

Robert A. Leslie, M.D., Revocation of Registration

On May 8, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert A. Leslie, M.D. (Respondent), proposing to deny his application for a DEA Certification of Registration pursuant to 21 U.S.C. 823(f) for reason that such registration would be inconsistent with the public interest. Specifically, the Order to Show Cause alleged the following:

(1) On August 17, 1990, Respondent's DEA Certificate of Registration, ALOO33186, was revoked based in part on findings that: (a) On or about October 3, 1986, Respondent was convicted in the Superior Court for the County of Los Angeles, California of eight counts of unlawfully prescribing, administering, furnishing, or dispensing controlled substances; and (b) effective March 23, 1990, the California Board of Medical Quality Assurance suspended Respondent's license to practice medicine for ninety days and placed his medical license on probation for five years.

(2) During February 1992, Respondent submitted a new application for registration. Following a hearing, the then-Administrator of DEA denied Respondent's application, effective March 15, 1995, noting, *inter alia*, that Respondent was either unable or unwilling to discharge the responsibilities inherent in a DEA registration. Respondent's petition for review of this decision was denied by

the United States Court of Appeals for the Ninth Circuit on August 5, 1996.

(3) On or about December 13, 1996, Respondent submitted a new application for a DEA registration. The then-Deputy Administrator concluded that the previous administrative proceeding was *res judicata* for the purposes of the then-current proceeding. Effective June 14, 1999, the Deputy Administrator again denied Respondent's application, concluding that other than the passage of time, the circumstances existing at the time of the prior proceeding had not sufficiently changed to warrant issuance of a DEA registration.

Respondent, acting *pro se*, filed a timely request for a hearing on the issues raised in the Order to Show Cause. Following prehearing procedures, a hearing was held on September 21, 2000, and February 8, 2001, in Los Angeles, California before Administrative Law Judge Mary Ellen Bittner (Judge Bittner). At the hearing, the Government called two witnesses to testify and the Respondent testified on his own behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument.

On August 2, 2001, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision recommending that the Respondent's application be denied. On or around August 17, 2001, the Respondent timely filed exceptions to Judge Bittner's recommended ruling. Thereafter, Judge Bittner transmitted the record of these proceedings to the Administrator of the Drug Enforcement Administration.

On March 4, 2002, the Respondent filed Judge Bittner, a letter (the March 2002 letter) in which he represented, among other things, that a provision under California law allows physician assistants to prescribe certain drugs "with or without preprinted prescriptions from the supervising physician." The Respondent further requested that Judge Bittner transmit the additional document to the Deputy Administrator for consideration. It appears from a review of the record before the Deputy Administrator that matters involving the role of physician assistants and the prescribing of controlled substances were litigated. It is unclear however why the Respondent did not introduce the March 2002 at the hearing or reference its contents in his post-hearing submissions. Therefore, in rendering his decision in this matter, the Deputy Administrator has not considered the Respondent's untimely