

(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 an application for registration denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, in 1990, the Board revoked the Respondent's medical license, stayed the revocation, but suspended his license for 90 days and then placed it on probation for five years. There is no evidence before the Deputy Administrator demonstrating that Respondent's medical license is currently restricted in any form. Nevertheless, state license is a necessary, but not a sufficient condition for registration, and therefore, this factor is not dispositive. *See e.g.*, Wesley G. Harline, M.D., 65 FR 5665 (2000); James C. Lajevic, D.M.D., 64 FR 55962 (1999).

Factors two and four, Respondent's experience is dispensing controlled substances and compliance with applicable controlled substance laws are relevant in determining whether Respondent's continued registration would be inconsistent with the public interest. Respondent improperly prescribed, administered, or otherwise dispensed controlled substances in 1985 and 1986. Although the Respondent has maintained that he has done nothing wrong, a jury convicted him of eight misdemeanor counts as a result of this conduct, and the judgment was affirmed on appeal.

In the most recent proceeding, the Respondent, by his own admission, signed blank prescriptions and made them available to physician assistants. While there was no evidence presented that Respondent issued or signed any of the three controlled substance prescriptions, his pre-signing prescription forms made it possible for "prescriptions" to be issued in violation of 21 U.S.C. 829, 841, and 843.

Therefore, the Deputy Administrator finds that factors two and four weigh in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.

With respect to factor five, the Deputy Administrator concurs with Judge Bittner that the Respondent continues to argue that his convictions were improper, continues to blame others for his misconduct, and refuses to accept responsibility for his actions. In addition, the Respondent made a practice of making pre-signed prescriptions available to physician assistants at the Robert, M.D. Clinic, who were then free to issue those prescriptions with no supervision from Respondent. The Deputy Administrator further concurs with Judge Bittner that Respondent knew or should have known that he would be liable for those prescriptions, but nonetheless appears to think that posting signs in the clinic and advising physician assistants not to issue prescriptions for controlled substances absolve him from liability.

After reviewing the record, Judge Bittner found that based on the Respondent's refusal to take responsibility for past misconduct and his irresponsible pre-signing of prescription pads, he continues to be unwilling or unable to accept the obligations that the Controlled Substances Act and its implementing regulations impose upon DEA registrants. Judge Bittner therefore concluded that a preponderance of the credible evidence in the record established that Respondent's continued registration would be inconsistent with the public interest, and recommended that his application be denied. In light of the subsequent issuance of a Certificate of Registration to the Respondent, the Deputy Administrator must now determine whether or not that registration should be continued.

The Respondent filed exceptions to Judge Bittner's recommended ruling. With respect to findings that he provided blank prescriptions bearing his signature in violation of 21 U.S.C. 829, 841, and 843, the Respondent argued that was simply complying with California law which, according to the Respondent, allows for the establishment of a prescription protocol between physician and physician assistant. With respect to pre-signed prescriptions, Respondent further argued that the protocol he established with his physician assistant did not allow for the prescribing of controlled substances; the physician assistant must account for all prescriptions before receiving more prescription blanks; the Respondent did not put his DEA number on blank prescriptions given to physician assistants; and that such a policy would be violative of the equal protection clause of the United States constitution. The Respondent further

argued that "physician assistants are allowed to prescribe Schedule III and IV drugs whether or not the supervising physician has a narcotic registration."

The Deputy Administrator finds that the Respondent's exceptions with respect to pre-signed prescriptions lack merit. First, the Respondent's assertion that he did not place his DEA registration number on blank prescriptions is of no moment. As noted above, testimony was offered at the hearing that the Respondent not only left pre-signed prescriptions with the staff of the Robert M.D. Clinic, but also authorized the use of his previous DEA number by a physician assistant. The unlawful practice of pre-signing prescriptions has been a contributing factor in DEA determinations that a registration is inconsistent with the public interest. *See e.g.*, Christopher E. Castle, M.D., 67 FR 71196-97 (2002); James C. Womack, M.D., 67 FR 35137 (2002); Edward L.C. Broomes, M.D., 61 FR 3946-47 (1996); Jude R. Hayes, M.D., 59 FR 41785 (1994); Veera Sripinyo, M.D. 56 FR 64809 (1991).

Second, the establishment of a prescription protocol with a physician assistant does not absolve the Respondent from liability that arises out of improperly issued prescriptions for controlled substances. The Respondent's conduct in this regard created a situation that allowed unauthorized persons to issue prescriptions without supervision. The Deputy Administrator finds that the Respondent's counter argument regarding his compliance with the terms of a prescription protocol is yet another demonstration of his unwillingness to accept responsibility for his misconduct.

The Deputy Administrator similarly finds no merit in the Respondent's challenge of the applicability of the 21 U.S.C. 829, 841, and 843 as they relate to his providing blank, pre-signed prescriptions to his staff. The referenced statutory provisions address the proper manner in which prescriptions for controlled substances are to be issued (section 829) and/or prohibited acts with respect to the prescribing of controlled substances (sections 841 and 843). Specifically, section 843(a) states in pertinent part:

It shall be unlawful for any person knowingly or intentionally—(2) to use in the course of the * * * dispensing of a controlled substance * * * a registration number which is fictitious, revoked, suspended, expired, or issued to another person.

The Respondent's action in providing to the staff of the Robert M.D. Clinic, presigned prescriptions, his giving