

hours, Monday through Friday within 30 days following the meeting.

Dated: January 19, 1996.

Gary Edwards,

*Assistant Director—Fisheries; Co-Chair,  
Atlantic Coastal Fisheries Cooperative  
Management Act Coordination Committee.*

[FR Doc. 96-1126 Filed 1-26-96; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Earl A. Humphreys, M.D.; Revocation of Registration

On April 12, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Earl A. Humphreys, M.D., (Respondent) of Pittsburgh, Pennsylvania, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AH1675252, under 21 U.S.C. 824(a)(4), and deny any pending application under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that "from the early 1980s to mid-1993, [the Respondent] prescribed controlled substances to at least four individuals without a legitimate medical need and with knowledge that these individuals were not the ultimate recipients of the controlled substances."

On May 1, 1995, the Respondent, through counsel, filed a reply to the show cause order (Reply), waiving his hearing right and providing a factual response to the allegations in the show cause order. Accordingly, the Deputy Administrator now enters his final order in this matter pursuant to 21 C.F.R. 1301.54(e), 1301.57, without a hearing and based on the investigative file and the written Reply submitted by the Respondent.

The Deputy Administrator finds that the Respondent is licensed to practice medicine and surgery in the Commonwealth of Pennsylvania, specializing in gastroenterology and internal medicine. He is registered as a practitioner with the DEA, AH1675252, to handle Schedules II through V controlled substances. In his Reply, the Respondent wrote that he had been in practice for thirty-five years, and "I have not had a mark against my record."

The Respondent was the personal physician and friend of Justice Rolf Larsen of the Pennsylvania Supreme Court. Justice Larsen was charged with 27 state felony counts for obtaining

controlled substances by fraud, deceit, and subterfuge. At a pre-trial hearing, the Respondent had testified that beginning in 1981 and continuing until 1993, he had issued prescriptions for Schedule IV controlled substances intended for Justice Larsen's use, but he had issued the prescriptions in the name of third-parties. Specifically, during this time he wrote approximately 34 prescriptions for Valium, diazepam, Ativan, and Serax in the names of two of Justice Larsen's secretaries and one law clerk. The Respondent had never met these individuals, and they were not his patients. The three named individuals testified at the pre-trial hearing that in each instance they had picked up the filled prescription at a local pharmacy, had delivered the medication to Justice Larsen, and in no case had they taken the prescribed medications themselves. The Respondent was not paid for issuing these prescriptions.

During this time, Justice Larsen was being treated by either a psychologist or a psychiatrist, but the Respondent was his family physician. The Respondent testified that he examined Justice Larsen about every six months, but not necessarily prior to issuing each of the prescriptions. Rather, Justice Larsen would telephone the Respondent and tell him what substances he wanted and in whose name to issue the prescription. The Respondent would then comply with his patient's request. The Respondent also testified that he was aware of Justice Larsen's diagnosed condition, to include clinical depression and anxiety, and that it was the Respondent's belief that every medication he prescribed for Justice Larsen was for a legitimate medical purpose. The Respondent testified that he had prescribed the substances in legitimate medical dosage amounts and at appropriate time intervals. He stated that he prescribed these controlled substances in this manner in order to preserve his patient's privacy, for "[t]he public doesn't have to know what medications he's taking. That's my job to provide privacy for him." However, the Respondent was not aware of any prescriptions issued to Justice Larsen by his treating psychiatrist or psychologist, and he had not coordinated his prescribing with any of his patient's other care providers.

In the Reply, the Respondent's attorney wrote that "[t]he facts developed during [Justice Larsen's] trial showed that for a period of many years a local newspaper \* \* \* had carried stories relating not just to Justice Larsen's judicial conduct, but to his family and personal matters \* \* \* So

that, it was not simply the normal need for privacy that all psychiatric patients have, but the enlarged need caused by the political nature of these facts. Testimony at trial showed that psychiatric patients suffer a stigma in society, and that public figures bear [an] even greater burden." The Respondent also wrote that during the trial, Justice Larsen's psychiatrist and neurologist had testified that "they probably would have done the same thing \* \* \* [that] it is common practice, especially in psychiatric patients, to do this. There have been dire consequences where this privacy has been broken." However, the trial transcript from Justice Larsen's trial was not a part of the investigative record, and the Respondent did not attach a copy of the referenced sections to his Reply.

On September 14, 1995, the Pennsylvania Bureau of Professional and Occupational Affairs (Bureau) filed formal disciplinary charges and a show cause order against the Respondent. The Bureau's charges focused upon the Respondent's prescribing practices to Justice Larsen between March 1981 and March 1993, noting that he had prescribed controlled substances to four named individuals who were not his patients and had not received treatment from him. Further, the Bureau alleged that the Respondent had failed to conduct physical examinations and re-evaluations concurrent with the issuing of prescriptions to Justice Larsen, and that the records the Respondent maintained pertaining to Justice Larsen were incomplete and inaccurate. The order also asserts that the Respondent's actions were "unprofessional" and departed from or failed to conform to "an ethical or quality standard of the profession." The order also states that if found, these violations of Pennsylvania law and regulations would result in civil penalties to include fines and the revocation of his medical license. However, the results of this proposed State action are not reflected in the investigative file or in the Respondent's Reply.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke the Respondent's DEA Certificate of Registration and deny any pending applications, 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 an application for registration denied. See Henry J. Schwartz, Jr., M.D., Docket No. 88-42, 54 FR 16,422 (1989).

In this case, factors one, two, four, and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, "recommendation of the appropriate State licensing board," the Pennsylvania Bureau has issued an extensive and comprehensive show cause order alleging that the Respondent has engaged in a twelve year pattern of prescribing controlled substances to individuals who were not his patients. The Bureau asserted that such conduct, if found, would violate state law and regulations, potentially justifying revocation of his medical license and imposition of a fine for each instance of such behavior. However, the result of this show cause order is not contained in the record reviewed at this time by the Deputy Administrator. Therefore, although relevant that the Bureau, after investigating the Respondent's conduct, initiated disciplinary action, the Deputy Administrator has weighed the State's actions accordingly, remaining aware that the Bureau has merely asserted allegations, and that the outcome of the State's actions remains unknown.

As to factor two, the Respondent's "experience in dispensing \* \* \* controlled substances," and factor four, the Respondent's "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," the investigative file clearly alleges, and the Respondent has not denied, that he engaged in a course of conduct over a twelve year period which clearly violated federal regulations promulgated pursuant to the Controlled Substances Act. Specifically, to be effective, a prescription for a controlled substance "must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 C.F.R. 1306.04(a); see also Harlan J. Borchert, D.O., 60 FR 28,796, 28,798

(1995). The Respondent's issuing prescriptions for controlled substances to individuals unknown to him and not under his medical care would not meet this criteria. Further, the Respondent's prescribing of controlled substances to Justice Larsen merely upon his request, without seeing him, examining him, or otherwise making a medical evaluation prior to issuing the prescription, demonstrated behavior such that the patient's demands seemed to replace the physician's judgment. The Deputy Administrator has previously found that prescriptions issued under such circumstances were not a legitimate medical purpose: for example, when an undercover officer dictated the controlled substance to be given, "rather than Respondent, as a practitioner, determining the medication appropriate for the medical condition presented by the officer." *Ibid.* Such uncontroverted actions on the part of the Respondent are preponderating evidence that he has dispensed controlled substances in violation of federal law.

As to factor five, "[s]uch other conduct which may threaten the public health or safety," the Deputy Administrator finds significant that the Respondent, in issuing controlled substance prescriptions for the use of Justice Larsen, failed to coordinate these prescriptions with his patient's other care providers. Although, in the normal course of prescribing, safeguards may exist at pharmacies to prevent over-prescribing of controlled substances to a single patient, in this case, since the prescriptions were not issued in the patient's name, such safeguards would fail to identify this patient as a recipient of multiple, controlled substances prescriptions.

Further, the public was at risk from the potential for diversion of controlled substances by both the patient who could have received, undetected, multiple prescriptions for controlled substances, and the named individuals who were prescribed controlled substances without a legitimate medical need. The very safeguards established to prevent such dangers were circumvented by the Respondent's practice. Although evidence exists to show that diversion, in this case, did not occur, the potential remained over a twelve year period for such abuse, and this potential created a threat to the public interest, as well as to the safety of this individual patient. Therefore, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's DEA Certificate of Registration at this time. The Respondent is certainly free to reapply for a Certificate of Registration

and to provide information which would assure the Deputy Administrator that the Respondent's future prescribing practices would not pose a threat to the public interest.

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, AH1675252, issued to Earl A. Humphreys, M.D. be, and it hereby is, revoked, and any pending applications for renewal of said registration are denied. This order is effective February 28, 1996.

Dated: January 23, 1996.  
Stephen H. Greene,  
Deputy Administrator.  
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[Docket No. 94-19]

**Terrence E. Murphy, M.D.; Revocation of Registration**

On November 30, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Terrence E. Murphy, M.D., (Respondent) of Tulsa, Oklahoma, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AM2822876, under 21 U.S.C. 824(a), and deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f), as being consistent with the public interest. Specifically, the Order to Show Cause alleged that:

1. [The Respondent's] continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), as evidenced by, but not limited to, the following:

a. Effective October 26, 1988, the State of Alabama, Alabama State Board of Medical Examiners, Medical Licensure Commission (Alabama Board) suspended [the Respondent's] medical license for one year and, thereafter, placed [his] medical license on indefinite probation.

b. [The Respondent] materially falsified an application for a controlled substance license to the Oklahoma Board of Narcotics and Dangerous Drugs, submitted by [the Respondent] on June 20, 1990, by indicating on such application that [he] never had a previous registration suspended, when, in fact, [his] Alabama medical license had been suspended by the Alabama Board, effective October 26, 1988. [The Respondent] also materially falsified such application by answering that [he] had never been physiologically or psychologically addicted to controlled dangerous substances, when, in