registration. As a basis for revocation, the Order to Show Cause alleged that Respondent had been mandatorily excluded from participating in Federal health programs pursuant to 42 U.S.C. 1320–7(a).

By letter dated March 18, 2004, Respondent, through legal counsel, requested a hearing. On April 20, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order for Prehearing Statements, requiring the Government and Respondent to file prehearing statements by May 12 and June 2, 2004, respectively. The Government filed a timely prehearing statement, however, Respondent failed to file his prehearing statement by the deadline.

On June 29, 2004, Judge Randall issued a *sua sponte* Notice and Order to Respondent allowing him a limited extension of time, until July 21, 2004, to file his prehearing statement. The Notice and Order cautioned Respondent that if he failed to meet this deadline, Judge Randall would deem his inactivity to be a waiver of his hearing entitlement and that she would issue an order terminating the case. Respondent did not file a prehearing statement and on August 10, 2004, Judge Randall issued her Order terminating the proceedings. On August 26, 2004, the Office of Chief Counsel forwarded the record to the Deputy Administrator for entry of a final order based on the investigative file.

Therefore, the Deputy Administrator finds that Respondent, having requested a hearing but having failed to participate in the matter after being apprised of the consequences, is deemed to have waived his hearing right. *See Bill Lloyd Drug*, 64 FR 1823–01 (1999); *Vincent A. Piccone, M.D.*, 62 FR 62074 (1997). After considering material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration BP3441475. The Deputy Administrator further finds that as a result of Respondent's fraudulent activities, pursuant to his guilty plea, he was convicted in the United States District Court, District of Puerto Rico of one count of conspiring to solicit and receive kickbacks in relation to Medicare referrals for durable medical equipment, in violation of 18 U.S.C. 371, in addition to one count of providing false declarations before the grand jury, in violation of 18 U.S.C. 1623.

As a result of Respondent's conviction of the Medicare related count, on March 31, 2003, he was notified by the Department of Health and Human Services of his five-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Exclusion from Medicare is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5); *see Johnnie Melvin Turner, M.D.*, 67 FR 71203 (2002). The underlying conviction forming the basis for a registrant's exclusion from participating in federal health care programs need not involve controlled substances for revocation under 21 U.S.C. 824(a)(5). *See KK Pharmacy*, 64 FR 49507 (1999); *Stanley Dubin, D.D.S.*, 61 FR 60727 (1996).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BP3441475, issued to Juan Pillot-Costas, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John A. Cronk, D.O.; Revocation of Registration

On January 5, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John A. Cronk, M.D. (Dr. Cronk),[1] proposing to revoke his DEA Certificate of Registration, BC2204131, pursuant to 21 U.S.C. 824(a)(2) and (a)(4) and 823(f). Specifically, the Order to Show Cause alleged in relevant part, the following:

1. On May 21, 2003, in the Criminal District of Dallas County Texas, pursuant to a plea agreement, Dr. Cronk entered a plea of guilty to unlawfully possessing methamphetamine, a third degree felony under Texas state law. Dr. Cronk was placed on unsupervised probation for a period of five years, ordered to enroll in an inpatient drug treatment at a treatment center in Atlanta, Georgia and to pay a $1500 fine. The court directed that further proceedings be deferred in the case without entering an adjudication of guilt. The conviction was premised on Dr. Cronk's arrest for possession of methamphetamine which took place at the Dallas/Fort Worth Airport on November 28, 2002.

2. During April 2003, DEA diversion investigators received information from former and current employees of Dr. Cronk's medical office that he failed to maintain accountability of controlled substances or maintained a controlled substance log book for an extensive period. The employees further divulged that they suspected Dr. Cronk of abusing drugs during office hours and had also found on his office desk a vial containing a substance later tested and identified by a field test as methamphetamine. This test was conducted by a long-term patient of Dr. Cronk, who was also a former law enforcement officer. When confronted by that patient, Dr. Cronk admitted methamphetamine use.

3. On May 7, 2003, at the request of DEA investigators, officers of the Northeast Area Interdiction Task Force (NADITF) recovered three bags of trash from Dr. Cronk's residence in Heath, Texas. Among the items recovered were a syringe with a brown liquid substance later determined to be methamphetamine, an attached needle, and discarded pieces of mail bearing Dr. Cronk's name and address.

4. A state search warrant obtained to search Dr. Cronk's residence was then executed by NADITF officers and DEA investigators on May 9, 2003. Recovered in that search were several vials containing residual amounts of methamphetamine; forty-five tabs of methadone; two vials of testosterone; ninety-five tabs of alprazolam; thirty-six tabs of Ambien; eight tabs of Vicoprofen; six bottles of Lortab elixir; five bottles of Histex; six tabs of ecstasy; several marijuana cigarette butts; $9,911.00 in cash; and, over 200 blood collection vials which had been converted to methemphetamine pipes, along with other drug paraphernalia.

5. On May 15, 2003, DEA investigators arrived at Dr. Cronk's office in Quinlan, Texas (which was also Dr. Cronk's DEA registered location) to conduct an audit of controlled substances. Dr. Cronk was not present during, but his office manager nevertheless signed a DEA

[1] While the Order to Show Cause includes ''M.D.'' as part of Dr. Cronk's professional title, DEA investigative reports and other supporting documentation refer to his professional title as ''D.O.'' Given these references to the ''D.O.'' professional designation, the Deputy Administrator will refer to Dr. Cronk in a similar fashion.

Notice of Inspection. Because controlled substance records were not at this registered location Dr. Cronk was requested to come to the office and bring the records. Dr. Cronk responded and brought his remaining records to DEA investigators for their inspection.

6. Among the records provided was Dr. Cronk's controlled substance log, with the last entry in the log dated August 15, 2002. Dr. Cronk also produced an assortment of box tops, sample boxes, and other assorted pieces of paper and notes, including post-its, which he claimed were records of what had been dispensed to patients. Several of those boxes had multiple entries on them.

7. In the estimation of DEA investigators, Dr. Cronk's records were inaccurate, incomplete or irretrievable, thus making it impossible for them to conduct an audit of controlled substances. Dr. Cronk admitted his records were not in compliance with DEA requirements, that he was unaware of the requirement to conduct inventories of all controlled substances on hand every two years, and that he had not accomplished such inventories.

The Order to Show Cause was sent by certified mail to Dr. Cronk at his registered location in Quinlan, Texas and was accepted on his behalf on January 15, 2004. Despite subsequent written and verbal contacts by Dr. Cronk's office to the DEA Dallas Field Division, the agency's Office of Chief Counsel, as well as DEA Office of the Administrative Law Judges, there is no record of any request for a hearing having been received on behalf of Dr. Cronk.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the registrant's address of record, and (2) no request for hearing having been received, concludes that Dr. Cronk is deemed to have waived his hearing right. *See David W. Linder,* 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Cronk is currently registered with DEA as a practitioner. According to information received subsequent to the issuance of the aforementioned Order to Show Cause, on March 15, 2004, Dr. Cronk entered into an Agreed Order with the Texas State Board of Medical Examiners (Board). As recited in the Order to Show Cause, the Board similarly found that on May 21, 2003, Dr. Cronk ''* * * pled guilty to charges of possession of the controlled substance methamphetamine, a third degree felony. Conditions of [Dr. Cronk's plea] agreement included entrance to drug treatment * * *, probation for 5 years, fine of $1,300 and random drug screens.'' The Board cited additional concerns regarding Dr. Cronk's ''* * * unprofessional conduct, disciplinary action by [his] peers, and non-therapeutic prescribing.''

Accordingly, Dr. Cronk and the Board agreed, *inter alia,* that Dr. Cronk's state medical license be suspended until he demonstrated his fitness to safely practice medicine and completed various terms and conditions for reinstatement. Included among the Board imposed conditions was the requirement that Dr. Cronk complete psychological and neuro-psychiatric evaluations conducted by or under the direction of an approved psychiatrist to evaluate Dr. Cronk for substance abuse or an organic mental condition. More importantly, the Board specified that Dr. Cronk was to ''immediately cease from the practice of medicine in Texas.''

There is no evidence before the Deputy Administrator that Dr. Cronk has satisfied the conditions of the Board for reinstatement of his medical license, or that the Board suspension order has been stayed or lifted. In light of the suspension of his authorization to practice medicine in Texas, the Deputy Administrator also finds it reasonable to infer that Dr. Cronk is also without authorization to handled controlled substances in that state. As a result, Dr. Cronk is not entitled to maintain a DEA registration in Texas. *See, Miles J. Jones, M.D.,* 69 FR 40655 (2004); *Saihb S. Halil, M.D.,* 64 FR 33319, 3320 (1999).

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration is she finds that the registrant has had his state license revoked or suspended and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). *Thomas B. Pelkowski, D.D.S.,* 57 FR 28538 (1992). Nevertheless, despite findings of the Board regarding Dr. Cronk's felony conviction with respect to his unlawful possession of controlled substances, and notwithstanding the other public interest factors for the revocation of his DEA registration asserted herein, the more relevant consideration here is the present status of Dr. Cronk's state authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substance 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. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *Daniel A. Maynard, D.O.,* 69 FR 22563 (2004); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1998).

Here, it is clear that Dr. Cronk's Texas medical license has been suspended and by inference, he is currently not authorized under Texas law to handle controlled substances in his medical practice. Therefore, he is not entitled to a DEA registration in that state. As a result of a finding that Dr. Cronk lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See Rory Patrick Doyle, M.D.,* 69 FR 11655 (2004); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BC2204131, issued to John A. Cronk, D.O., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–05]

Express Wholesale Denial of Application

On September 27, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Express Wholesale (Respondent) proposing to deny its application for a DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged in relevant part that granting the