

Administrator finds that Dr. Maynard is not currently authorized to practice medicine in the State of Texas. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substances 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. *See Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear Dr. Maynard's medical license has been suspended and he is not currently licensed to handle controlled substances in Texas, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that State.

Accordingly, the Acting 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 AM5672591, issued to Daniel A. Maynard, D.O., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective May 26, 2004.

Dated: March 29, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Timothy Norray; Denial of Application

On June 4, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Timothy Scott Norray (Mr. Norray), proposing to deny his application for DEA Certificate of Registration as a researcher. The Order to Show Cause alleged that granting Mr. Norray's application would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). The show cause order also notified Mr. Norray that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Mr. Norray at his address of record and DEA received a signed receipt indicating that it was received by him on June 11, 2003. DEA has not received a request for hearing or any other reply from Mr. Norray or anyone purporting to represent him in this matter.

Therefore, the Acting 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 Mr. Norray is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 C.F.R. 1301.43(d) and (e) and 1301.46

The Acting Deputy Administrator finds that Mr. Norray submitted a DEA registration application dated December 30, 2001, seeking authorization to handle controlled substances in Schedules I through V as a researcher. Mr. Norray proposed as his registered location an address in Berne, New York. He requested registration for the following Schedules I and II controlled substances: heroin, marijuana, mescaline, peyote, cocaine, methadone and methamphetamine. Mr. Norray attached to his application, a protocol which stated in part, that he "will train and handle Labrador Retrievers to detect narcotics in schools and businesses throughout the New York area. . . with the goal of providing a pro-active program to reduce or eliminate drugs from our school or workplace."

On October 16, 2002, a DEA Diversion Investigator spoke with Mr. Norray by telephone regarding his intended use of a registration with DEA. Mr. Norray outlined his desire to establish a bomb and drug detection business using trained dogs. Mr. Norray stated that he already possessed a dog trained to detect explosives which he had purchased from a North Carolina dog trainer. He further stated that he had completed a course in North Carolina related to handling a bomb detection dog.

Mr. Norray also informed DEA that he had been investigated by the New York State Department of Health, Bureau of Controlled Substances (NYBCS) and had received a controlled substance license from that state agency under the researcher category. Mr. Norray further stated that he had obtained the required safe to store drugs, which was bolted to the floor as advised by a local state investigator.

On October 16, 2002, DEA personnel interviewed a researcher registered with the agency who stated that he trained and sold explosive and drug detection canines. The researcher further explained that he had been responsible for certifying Mr. Norray on a course involving work with dogs trained to detect explosives. The researcher added however, that Mr. Norray was not a dog trainer but had only learned to handle a trained dog.

A review of the investigative file reveals further that on October 17, 2002, DEA personnel spoke with an investigator for the NYBCS. That individual stated that his investigation of Mr. Norray consisted primarily of a criminal background check and a visit to the latter's residence. The NYBCS investigator further stated that in the absence of a criminal record for an applicant or indications of ongoing criminal activity at the proposed licensed location, it was automatic that a controlled substance license would be issued. The NYBCS investigator opined that the state criteria for the licensure of researchers were not stringent. DEA later confirmed that Mr. Norray had obtained state researcher licenses which authorized him to handle controlled substances in Schedules I through V.

On November 5, 2002, DEA personnel spoke with a sergeant from the office of the New York State Police in Albany. The officer informed DEA that he has trained over 250 dogs over the preceding nineteen years, and was at the time of DEA's investigation the officer in charge of the New York State Police K-9 Program (the K-9 Program) located in Cooperstown, New York. The DEA investigative report references a state of the art training facility operated by the K-9 Program, and how that unit is responsible for training explosive and drug detection canines.

The sergeant also informed DEA that the New York State Police have a certification course for police departments who purchase detection dogs from private kennels. The certification is restricted to law enforcement agencies. The sergeant also stated that he was aware of Mr. Norray based on the latter's request to attend the New York State Police certification course. The sergeant further stated that Mr. Norray's request for certification in the area of canine detection was denied because Mr. Norray was not affiliated with law enforcement.

On November 5, 2002, a DEA Diversion Investigator along with an officer from the New York State Police met with Mr. Norray at the latter's home in furtherance of DEA's pre-registration investigation. Mr. Norray showed the

officers his proposed storage area for controlled substances which was Mr. Norray's garage. The garage, a detached wooden structure, was not alarmed, nor was Mr. Norray's residence. DEA also found inside the garage, a metal cabinet and a safe, both bolted to the floor of the garage with concrete anchors and bolts. There was no alarm system for the safe.

Mr. Norray informed the officers that he has no law enforcement experience, and at the time of DEA's inspection he worked at a local plant of the General Electric Corporation in an unspecified capacity in the shipping and receiving department. Mr. Norray further divulged that while he has never been employed as a dog trainer and has no actual experience training dogs, he nevertheless planned to acquire a puppy and train the dog himself for the purpose of detecting illegal drugs.

Mr. Norray also discussed his planned approach for training dogs with controlled substances. Mr. Norray stated that he believed that dogs trained with actual (*i.e.*, controlled) drugs were more effective than dogs trained exclusively with pseudo (simulated) drugs. Mr. Norray was then informed by the state officer that the state police trained detection canines with pseudo drugs because there was no danger of the animal ingesting the actual drug, especially during the initial stages of training. The officer added that dogs trained with pseudo drugs were able to find real drugs after the introduction of genuine drugs later in the training. When asked why he still wanted the DEA Registration if a dog could be effectively trained with pseudo drugs, Mr. Norray replied that it would be better if a detection business could claim to be licensed by the DEA." Mr. Norray further informed law enforcement personnel that he had no prospective customers for his drug detection service, and as of the date of DEA's interview, Mr. Norray had not had a paying customer for the explosive detection business.

Pursuant to 21 U.S.C. 823(f), the Acting Deputy Administrator may deny an application for a DEA Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

- (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 Acting Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she 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 16,422 (1989).

It is clear that granting Mr. Norray's application for DEA Certificate of Registration would be inconsistent with the public interest. Mr. Norray has requested authorization to handle controlled substances in Schedules I through V although his registration application only reference drugs in Schedules I and II. The Acting Deputy Administrator finds that Mr. Norray's request to handle additional controlled substances beyond those set forth in his registration application are arguably in excess of what is required to conduct research involving canines.

The Acting Deputy Administrator also finds that Mr. Norray seeks to engage in an activity that is not needed in the area where he seeks registration. The investigative file reveals that Mr. Norray's place of business is located in the vicinity of both the New York State Police headquarters in Albany, as well as the canine kennels in Cooperstown, New York. The investigative file reveals further that the New York State Police provide canine detection services and have narcotics detection canines of sufficient numbers to service the needs of the law enforcement community, businesses and private citizens. DEA has previously found that anticipated duplication or unnecessarily performed services are relevant factors in determining whether or not an application for registration as a researcher should be denied. See, *e.g.*, *K-Nine Detectives*, 67 FR 76193 (2002); *Albanoski, Broughton & Associates International*, 57 FR 4646 (1992); *K-9 Drug Detection Services of Florida, Inc.*, 56 FR 5238 (1991).

DEA's investigation also revealed that Mr. Norray intends to train his drug detection dog entirely by himself. He is not recognized as a dog trainer in New York, and there is no information that he has ever worked or apprenticed at any organization that trains dogs such as the military, law enforcement or even pet obedience school. DEA has found that grounds exist to deny an

application for registration as a researcher where, as in this matter, the applicant lacks relevant experience in training canines for drug detection purposes. *Angelos Michalatos d/b/a Contraband Searches and Investigations*, 54 FR 48161 (1989).

The Acting Deputy Administrator is also concerned with the apparent lack of security at the location where Mr. Norray proposes to store controlled substances. DEA's investigation revealed that Mr. Norray plans to store controlled substances in a wooden structured garage which is detached from the main residence, and without alarms to secure the doors, windows, or the bolted safe.

Finally, DEA's investigation revealed that the New York State Police has effectively trained drug detection dogs through the use of non-controlled substances, and Mr. Norray has no potential customers for the services he offers. Mr. Norray's statement to law enforcement personnel that a DEA registration would help further his business goals further supports the denial of his pending application.

In reviewing the instant request for DEA registration, and in light of Mr. Norray's failure to request a hearing, the Acting Deputy Administrator has only the benefit of the DEA investigative file in making a determination. No evidence has been submitted on behalf of the applicant. Therefore, the Acting Deputy Administrator concludes that Mr. Norray has failed to demonstrate a need for, or the ability to perform, the activity for which he seeks a registration to handle controlled substances. Based on the above, the Acting Deputy Administrator concludes that Mr. Norray's registration would be inconsistent with the public interest and therefore, his application for registration must be denied.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for DEA Certificate of Registration as a researcher submitted by Timothy Norray be, and it hereby is, denied. This order is effective May 26, 2004.

Dated: March 29, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

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