

file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29³ must be filed by August 14, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 23, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Kelvin J. Dowd, Esq., Slover & Loftus, 1224 17th St., N.W., Washington, D.C. 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

WKR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 8, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94-16]

Barnett J.W. Grier, Jr., M.D., **Revocation of Registration**

On November 1, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Barnett J.W. Grier, Jr., M.D. of Beverly

Hills, California (Respondent), proposing to revoke his DEA Certificate of Registration, BG2764226, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that the continued registration of Respondent was inconsistent with the public interest and that Respondent was no longer authorized to handle controlled substances in the State of California. 21 U.S.C. 823(f) and 824(a) (3) and (4).

On December 9, 1993, Respondent requested a hearing and the proceeding was docketed before Administrative Law Judge Mary Ellen Bittner. Following filing of prehearing statements by both parties, the Government filed a motion for summary disposition on November 30, 1994. No response was filed by Respondent. No evidentiary hearing was held as there were no factual issues involved, only a question of law. The administrative law judge issued her opinion and recommended decision on December 23, 1994. No exception were filed by either party.

On January 23, 1995, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator. After careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on conclusions of law and facts contained in the record which were not disputed, as set forth herein.

On October 24, 1987, the California Medical Board suspended Respondent's state medical license for ninety days and placed him on probation for eight years upon a finding that Respondent failed to supervise a physician's assistant and that such failure constituted an extreme departure from the Standard of medical practice in Southern California. On May 13, 1991, Respondent falsified an application for a new DEA Certificate of Registration by answering "no" to the liability question concerning revocation, suspension, denial, restriction, or probation of state professional license or controlled substance registration.

On October 2, 1992, the California Medical Board petitioned to revoke Respondent's probation because he had violated the terms of his probation by issuing numerous prescriptions for controlled substances, including Promethazine with codeine, Emperin with codeine, Tylenol #3 with codeine, and Phenergan with codeine for other than a legitimate medical purpose. The California Medical Board also found that Respondent had prescribed,

dispensed or furnished dangerous drugs without a good faith prior medical examination; and submitted Quarterly Reports, executed under penalty of perjury, falsely reporting compliance with both Federal and State laws. On February 29, 1993, Respondent pled *nolo contendere* in absentia to six counts of state criminal charges involving controlled substances. On August 3, 1993, the California Medical Board revoked Respondent's license to practice medicine in the State of California effective September 3, 1993.

On October 14, 1992, Respondent requested a modification of his DEA registration from California to Georgia. On November 3, 1994, the Georgia Composite State Board of Medical Examiners revoked Respondent's license to practice medicine in the State of Georgia. Respondent does not deny that he is not licensed in California or Georgia.

DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. *See Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987). In such cases, a motion for summary disposition is properly entertained. There is no need for a plenary evidentiary hearing since there are no questions of fact to be resolved by such a hearing. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom, Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *Floyd A. Santner, M.D.*, 47 FR 51831 (1982). Therefore, because Respondent is no longer authorized to handle controlled substances in the State of California or the State of Georgia, the states in which Respondent proposes to practice, the Deputy Administrator cannot permit him to maintain a DEA Certificate of Registration in either state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BG2764226, previously issued to Barnett J.W. Grier, Jr., M.D., be, and it is hereby, revoked, and any pending application for renewal of such registration be, and they hereby are, denied, and that any request for modification be, and it hereby is, denied. This order is effective September 5, 1995.

Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.