

practice to providing free treatment to poor individuals. He testified that he could not treat "MediCal" patients at the present time because he does not have a DEA Certificate of Registration. Also, the Respondent stated that he performs a variety of dental work, the Respondent stated that he performs a variety of dental work, but that he can only perform extractions or root canals when Dr. Leonel Dickey was available in case the patient needed controlled substances for relief from pain. The Respondent stated that his inability to prescribe controlled substances prohibited him from maximizing his patient load, inhibited his earning potential, and prevented him from giving his patients full and complete treatment. Further, in some cases, he is required to refer his patients to other dentists because his inability to prescribe controlled pain medications.

Both the Respondent and Dr. Dickey testified that controlled substances were not stored at the office, but that when a patient required pain medication, Dr. Dickey wrote a prescription. However, the Respondent testified that if he was granted a DEA Certificate of Registration, he would not want to store any controlled substances at his office.

Dr. Leonel Dickey, a dentist licensed to practice in California since 1979, testified that he had known the Respondent since the early 1970's, but that they had lost touch from 1974 until approximately 1987. He also stated that the Respondent had informed him of "[p]roblems he ran into with the law" when he asked him to cover for his practice while he was incarcerated. Based upon his experiences of working with the Respondent since 1990, Dr. Dickey expressed the opinion that the Respondent was a very competent dentist. He also testified that the Respondent provided free dental work to a portion of his patients, but that without a DEA Certificate of Registration, it was difficult for the Respondent to ease the discomfort level of his patients. He also attested to the Respondent's involvement in Christian ministries. Dr. Dickey also stated that he had no "hesitations" about the Respondent receiving a DEA registration, and that he had seen no evidence of "any kind of unusual activity" that would suggest that the Respondent was untrustworthy or incompetent. However, he testified that he had very little knowledge about the details of the Respondent's convictions for selling cocaine, and that he was unfamiliar with the Respondent's problems with Didrex in 1982 and 1983.

De. Lloyd Dickey, an experienced Doctor of Dental Surgery since 1947, testified that he had known the Respondent since approximately 1971, and that he regarded him as "a son." He stated that he believed the Respondent should be granted a DEA registration, for it would benefit his patients. However, he testified that he was not very familiar with the Respondent's cocaine charges, having heard only "street gossip" about the incidents. Dr. Dickey was more familiar with the Respondent's problems with Didrex, because he had testified on the Respondent's behalf before the Dental Board.

Finally, Reverend Kevin West, who holds a Doctor of Divinity degree, testified that he had met the Respondent in late 1989, and that they had decided to form a ministry together, which was incorporated in 1991. The ministry consists of Bible studies, Alcoholics Anonymous/Narcotics Anonymous meetings, and general acts of "[ministry] to the local people at a local church." Reverend West stated that he had observed the Respondent closely, and he attested to the Respondent's ordination as a minister, his work as Reverend West's associate pastor, his visits to prisons, his work with gang members, and various other good deeds performed by the Respondent. He opined that the Respondent was "definitely * * * rehabilitated." However, Reverend West testified that, prior to the hearing before Judge Tenney, he had heard only limited information about the Respondent's involvement with cocaine in May of 1986, and that he was totally unaware of the Didrex prescription problems.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny a pending application for a DEA Certificate of Registration if he determines that the 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 an application for registration should be denied. See *Richard J. Lanham, M.D.*, 57 FR 40,475 (1992); *Henry J. Schwarz, Jr., M.D.*, 54 FR 16,422 (1989).

In this case, although the Government argued that it had established a *prima facie* case under all five factors, the Deputy Administrator agrees with Judge Tenney, and finds that a *prima facie* case has only been established under factors 2 through 5. As to factor one, "recommendation of the appropriate State licensing board," the Dental Board restored all rights and privileges associated with the Respondent's dental license in 1993. Since the record contains no adverse recommendations from the "appropriate State licensing board or professional disciplinary authority," the Deputy Administrator agrees with Judge Tenney and finds that the Government has not established a *prima facie* case under factor one.

As to factor two, "the applicant's experience in dispensing * * * controlled substances," the Deputy Administrator again agrees with Judge Tenney that the Government has established a *prima facie* case under factor two. First, the evidence of the 1982 Didrex prescriptions demonstrated that the Respondent, lacking familiarity with that substance's characteristics, prescribed Didrex to a patient merely at her request, without a legitimate medical purpose, and outside the regular course of his practice. Further, the evidence of the Respondent's participation in May 1986, in the distribution of cocaine and in a conspiracy to distribute cocaine, contributed to the establishment of the Government's case under factor two.

The Deputy Administrator also agrees with Judge Tenney's finding that the Government established a *prima facie* case under factors three and four, "the applicant's conviction record under Federal or State laws relating to the * * * distribution * * * of controlled substances," and "[c]ompliance with applicable State, Federal * * * laws relating to controlled substances," for the Respondent had pled *nolo contendere* to State charges involving Didrex, a controlled substance, and he had pled guilty to two Federal charges involving the distribution of cocaine. Further, the Respondent's conduct underlying these two convictions demonstrate his participation in illegal activities, thus violating applicable State and Federal laws relating to controlled substances.