

show cause as to why DEA should not revoke his DEA Certificate of Registration, AK6455237, under 21 U.S.C. 824(a), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that the Respondent had been excluded from participation in a program pursuant to 42 U.S.C. 1320a-7(a), as evidenced by, but not limited to the following:

(a) Between March 1986 and January 1990, (the Respondent) submitted false or fraudulent medical services claims to the New York State Medical Assistance Program, commonly known as Medicaid, and as a result of such submissions (he) obtained approximately \$150,000.00 in funds to which (he) was not entitled.

(b) On or about April 19, 1991, (the Respondent) was convicted in the County of Rockland, State of New York, of twenty counts of offering a false instrument for filing, in violation of New York Penal Code, Section 175.35. On or about June 28, 1991, (the Respondent) was sentenced to five years probation with the conditions that, *inter alia*, (he) serve six months in jail and pay a \$25,000.00 fine.

(c) Effective on or about March 5, 1992, the Office of the Inspector General, United States Department of Health and Human Services, excluded (the Respondent) from participating in the Medicare program and any State health care program for a period of five years.

On April 11, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Arlington, Virginia, on October 4, 1994, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On February 2, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's DEA registration be revoked and that any pending applications be denied. Neither party filed exceptions to her decision, and on March 6, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and the filings of the parties, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no

manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is a Board-certified psychiatrist in private practice in Riverhead, New York, and is also a part-time consultant for North Fork Counseling, a mental health clinic in Mattituck, New York. On June 28, 1991, the Respondent was sentenced in a New York state court to six months imprisonment, fines totalling \$25,000, and probation for five years as a result of a jury verdict of guilty to 20 counts of offering a false instrument for filing. Specifically, the Respondent was convicted of filing, with the intent to defraud the State of New York, written instruments containing false statements and false information that he had provided services to certain Medicaid recipients, and that he had not been paid for such services, when in fact he was paid a salary to render such services. On January 24, 1994, the Respondent was discharged from probation.

On February 13, 1992, the Director of the U.S. Department of Health and Human Services Health Care Administrative Sanctions Office of Investigations advised the Respondent that, pursuant to 42 U.S.C. 1320a-7(a), he was mandatorily excluded from Medicare and state health care programs because of his conviction for a criminal offense related to the delivery of an item or service under the Medicaid Program. The letter also advised the Respondent that the exclusion would be in effect for five years. The Respondent did not appeal this revocation.

Pursuant to a Notice of Hearing and Statement of Charges dated December 9, 1992, a hearing was held before a Hearing Committee of the New York State Board For Professional Medical Conduct (Medical Board) on January 20, 1993. By order dated February 5, 1993, the Medical Board found that the Respondent had knowingly submitted invoices to Medicaid representing that he had provided certain services that, in fact, he had not rendered as represented on the invoice. The Medical Board suspended the Respondent's medical license for four months and ordered him to perform one hundred hours of community service.

At the hearing before Judge Bittner, the Respondent testified that the conviction he received concerning "false instruments" or Medicaid billings, resulted from "errors in judgment on (his) part," based upon his performing a service on one day and billing for that service as if it had been

performed on another day. He also stated that "I can't tell you how much I regret them," but that "(i)t was an error in thinking. It was a reflection that people would understand and it's not a system that understands and that was at the worst, pathological naivete on my part." He further testified that he needed a DEA registration in order to prescribe benzodiazepines as tranquilizers, and Dexedrine and Cylert for attention deficit disorder. Benzodiazepines and Cylert (trade name for pemoline) are Schedule IV controlled substances, and Dexedrine (trade name for dextroamphetamine), is a Schedule II controlled substance. The Respondent further testified that without a DEA registration, he would feel obliged to leave North Fork because of his inability to render appropriate treatment.

Karen Malcolmsen, Ph.D., the Clinical Director of Family Service League, North Fork Counseling (North Fork), testified that North Fork is the only licensed mental health clinic within a forty-mile radius and is located in a very rural community. Further, North Fork provides counseling and psychiatric services primarily to the poor and working poor in the local community, many of whom are migrant farm workers who cannot afford to pay substantial sums for mental health care.

Dr. Malcolmsen testified that she had known the Respondent for six years, for he had performed his community service at North Fork, plus an additional hundred hours of service, and she had supervised him, worked with him on the treatment team, and referred clients to him when they needed medication or if therapists sought a second opinion.

Dr. Malcolmsen stated that the Respondent is still a consulting psychiatrist for North Fork, that he is paid a "very small salary" by the clinic based on his working seven hours per week, when in fact he actually provided ten to thirteen hours per week of services to the clinic. Dr. Malcolmsen opined that the Respondent's work was excellent, that clients always reported positively about him, and that she found him very caring and honest. Dr. Malcolmsen also testified that the Respondent had told her about the charges against him before the indictment was handed down, that he had told her that he had never intentionally done anything illegal but had made some errors, and that several times in meetings with her he had expressed remorse for his actions and had taken responsibility for them. Finally, Dr. Malcolmsen testified that the Respondent had never abused his authority to handle controlled