

(2004); Prescriptionline.com, 69 FR 5,583 (2004).

In the instant case, Dr. Avello and other physicians associated with the Internet scheme, authorized prescriptions for controlled substances without the benefit of face-to-face physician-patient contact, physical exam or medical tests. Beyond occasional phone calls to some customers or their family members, there is no information in the investigative file demonstrating that Dr. Avello and other issuing physicians associated with Pharmacon even took time to corroborate response to questionnaires submitted by the customers. Here, it is clear the issuance of controlled substance prescriptions to persons whom Dr. Avello had not established a valid physician-patient relationship is a radical departure from the normal course of professional practice and he knowingly participated in this scheme.

With regard to factor three, Dr. Avello's conviction record under Federal or State laws relating to the dispensing of controlled substances, the record does not reflect that he has been convicted of a crime related to controlled substances.

Regarding factor five, such other conduct which may threaten the public health or safety, the Deputy Administrator finds this factor relevant to Dr. Avello's continued prescribing to Internet customers after issuance of policy statements designed to assist licensed practitioners and pharmacists in the proper prescribing and dispensing of dangerous controlled drugs.

The Deputy Administrator has previously expressed her deep concern about the increased risk of diversion which accompanies Internet controlled substance transactions. Given the nascent practice of cyber-distribution of controlled drugs to faceless individuals, where interaction between individuals is limited to information on a computer screen or credit card, it is virtually impossible to insure that these highly addictive, and sometimes dangerous products will reach the intended recipient, and if so, whether the person purchasing these products has an actual need for them. The ramifications of obtaining dangerous and highly addictive drugs with the ease of logging on to a computer and the use of a credit card are disturbing and immense, particularly when one considers the growing problem of the abuse of prescription drugs in the United States. See, EZRX, *supra*, 69 FR at 63181; Mark Wade, M.D., *supra*, 69 FR 7018.

The Deputy Administrator has also previously found that in a 2001 report, the National Clearinghouse for Alcohol and Drug Information estimated that 4 million Americans ages 12 and older had acknowledged misusing prescription drugs. That accounts for 2% to 4% of the population—a rate of abuse that has quadrupled since 1980. Prescription drug abuse—typically of painkillers, sedatives and mood altering drugs—accounts for one-third of all illicit drug use in the United States. See EZRX, *supra*, 69 FR at 63181–82, Mark Wade, M.D., *supra*, 679 FR 7018.

The Deputy Administrator finds that with respect to Internet transactions involving controlled substances, the horrific untold stories of drug abuse, addiction and treatment are the unintended, but foreseeable consequence of providing highly addictive drugs to the public without oversight. The closed system of distribution, brought about by the enactment of the Controlled Substances Act, is completely compromised when individuals can easily acquire controlled substances without regard to age or health status. Such lack of oversight describes Dr. Avello's practice of issuing prescriptions for controlled substances to indistinct Internet customers which are then filled by pharmacies participating in the scheme. Such conduct contributes to the abuse of controlled substances by Dr. Avello and Pharmacon's customers and is relevant under factor five, further supporting revocation of his DEA Certificate of Registration.

Motivated purely by profit and in pursuit of financial gain, Dr. Avello has demonstrated a cavalier disregard for controlled substance laws and regulations and a disturbing indifference to the health and safety of individuals who purchased dangerous drugs through the Internet. Such demonstrated lack of character and adherence to the responsibilities inherent in a DEA registration show in no uncertain terms that Dr. Avello's continued registration with DEA would be inconsistent with the public interest.

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 AA0105747, issued to Mario Avello, M.D., be, and is 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 April 8, 2005.

Dated: January 14, 2005.

**Michele M. Leonhart,**  
*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Samuel Lee Steel, M.D.; Revocation of Registration

On August 20, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Samuel Lee Steel, M.D. (Dr. Steel) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS5024865, pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications under 21 U.S.C. 823(f), on the ground that he lacked state authority to handle controlled substances in the State of California. The Order to Show Cause also notified Dr. Steel that should no request for a hearing be filed with 30 days, his hearing right would be deemed waived.

The order to Show Cause was sent by certified mail to Dr. Steel at his registered address of 1150 North Canyon Drive, Palm Springs, California 92263. According to the return receipt of the Order, it was accepted on Dr. Steel's behalf on September 1, 2004. DEA has not received a request for hearing or any other reply from Dr. Steel or anyone purporting to represent him in this matter.

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. Steel 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. Steel is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V under Certificate of Registration BS5024865, expiring on February 29, 2005. According to information in the investigative file, following an Interim Order of Suspension, on April 1, 2004, the Medical Board of California (Board)

revoked Dr. Steel's Physician and Surgeon's Certificate, effective as of May 3, 2004. The revocation was based on the Board's finding that Dr. Steel was mentally impaired to a degree that he was unable to safely practice medicine.

There is no evidence before the Deputy Administrator to rebut a finding that Dr. Steel's California medical license has been revoked. Therefore, the Deputy Administrator finds Dr. Steel is currently not authorized to practice medicine in the State of California. As a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that State.

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. See Richard J. Clement, M.D., 68 FR 12103 (2003); Dominick A. Ricci, M.D., 68 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Steel's state medical license was revoked after being initially suspended and there is no information before the Deputy Administrator which points to that revocation having been lifted or stayed. As a result, Dr. Steel is not authorized to practice medicine or handle controlled substances in California, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

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, BS5024865, issued to Samuel Lee Steel, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and hereby are, denied. This order is effective April 8, 2005.

Dated: January 14, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Proposed Extension of Information Collection Request Submitted for Public Comment; Consent To Receive Employee Benefit Plan Disclosure Electronically

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of an information collection request (ICR) incorporated in the Final Rules relating to the use of electronic communication and recordkeeping technologies by employee pension and welfare benefit plans (29 CFR 2520.104b-1).

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office shown in the Addresses section on or before May 9, 2005.

**ADDRESSES:** Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693-8410, Fax (202) 693-4745 (these are not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Department established a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may use electronic media to satisfy disclosure obligations under Title I of ERISA (29 CFR 2520.104b-1). Employee benefit plan administrators will be deemed to satisfy their disclosure obligations when

furnishing documents electronically only if a participant who does not have access to the employer's electronic information system in the normal course of his duties, or a beneficiary or other person entitled to documents, has affirmatively consented to receive disclosure documents. Prior to consenting, the participant or beneficiary must also be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply, that consent may be withdrawn at any time, procedures for withdrawing consent and updating necessary information, the right to obtain a paper copy, and any hardware and software requirements. In the event of a hardware or software change that creates a material risk that the individual will be unable to access or retain documents that were the subject of the initial consent, the individual must be provided with information concerning the revised hardware or software, and an opportunity to withdraw a prior consent.

##### II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

##### III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on May 31, 2005. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Comments submitted in response to this notice will be summarized and/or