



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

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JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 139

Herbert R. Domke, M.D., Director
Missouri Division of Health
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Dr. Domke:

You have requested my legal opinion on the following question relating to the Missouri Controlled Substance Act, Chapter 195, RSMo (L. Mo. 1971: House Bill No. 69, 76th General Assembly):

"Does the Division of Health have the authority to institute proceedings to revoke or suspend a controlled substance registration issued pursuant to Section 195.030 (2) R.S.Mo. for reasons other than those set forth in Section 195.040 (7) R.S.Mo?"

"Specifically, may the Division institute such proceedings based upon any of the factors listed in Section 195.040 (3) R.S.Mo?"

Section 195.030, RSMo, requires all manufacturers, suppliers, distributors, dispensers and prescribers of controlled substances to first obtain annually a registration from the Division of Health.

Section 195.040.3, RSMo Supp. 1971, states the criteria to be employed by the Division in granting registrations and reads as follows:

"3. The division of health shall register an applicant to manufacture, distribute or dispense controlled substances unless it determines that the issuance of that registration

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would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of an applicant under any federal or state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material information in any application filed under sections 195.010 to 195.320;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense narcotics or controlled dangerous drugs as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety."

Section 195.040.7, RSMo Supp. 1971, states the grounds for which the Division may suspend or revoke a registration and reads as follows:

"7. A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the division of health upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under sections 195.010 to 195.320;

(2) has been convicted of a felony under any state or federal law relating to any controlled substance; or

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(3) has had his federal registration to manufacture, distribute or dispense suspended or revoked."

Subsection 11 of Section 195.040 confers the right to a hearing upon any applicant or registrant whose registration the Division proposes to deny, suspend, revoke or refuse to renew. Subsections 12 and 13 grant the right of appeal to any person who has been refused registration or has had a registration revoked or suspended by the Division of Health.

We note that all statutory provisions above referred to, except subsections 12 and 13 of Section 195.040, were adopted without significant change from the Uniform Controlled Substance Act as prepared and approved by the National Conference of Commissioners on Uniform State Laws in August, 1970. Subsections 12 and 13, relating to the right of appeal, do not appear in that form in the Uniform Act, but were carried over verbatim from Section 195.040 of the Missouri Narcotic Drug Act, Chapter 195, RSMo 1969. The Narcotic Drug Act was repealed by the Controlled Substance Act.

In our view, the Controlled Substance Act distinguishes between the application for registration and revocation or suspension of the annual registration. We believe that subsection 3 of Section 195.040 states the grounds for consideration of an application for registration, and that subsection 7 of that section states the grounds for revoking or suspending a registration. It appears to us that the legislature intended to allow the Division of Health considerable latitude in determining whether to issue a registration, either initially or annually thereafter, but that the Division should revoke or suspend a registration prior to its annual expiration only for certain limited causes. We are, therefore, of the opinion that the Division of Health does not have the authority to institute proceedings to revoke or suspend a controlled substance registration for reasons other than those contained in subsection 7 of Section 195.040, RSMo Supp. 1971, and that it may not revoke or suspend a registration upon the grounds set forth in subsection 3 of that section.

Since it appears to us that the controlled substance law creates only the right of annual registration, and not the right of indefinite registration, we believe the annual renewal of a registration can be treated on the same basis as an original application for registration. Accordingly, we feel that it would be proper for the Division of Health to consider those factors set forth in subsection 3 of Section 195.040 upon application for renewal of a controlled substance registration.

Yours very truly,



JOHN C. DANFORTH
Attorney General