

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

Vernon A. Williams,
Secretary.

[FR Doc. 95-2228 Filed 1-27-95; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94-60]

Diane E. Shafer, M.D.; Revocation of Registration Denial of Application

On June 27, 1994 the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Diane E. Shafer, M.D. (Respondent). The Order to Show Cause proposed to revoke Dr. Shafer's DEA Certificate of Registration, AS7495624, issued to her in the Commonwealth of Kentucky, and deny her July 29, 1993, application for registration as a practitioner in the State of West Virginia.

The Order to Show Cause alleged that: In November 1987, the Commonwealth of Kentucky, Board of Medical Licensure (Kentucky Board) filed a complaint against Respondent charging her with giving false testimony in a deposition, falsely billing insurance carriers, and excessively and improperly prescribing controlled substances, and although in 1990 the presiding officer recommended that the charges against Respondent be dismissed, Respondent failed to disclose to the Kentucky Board the fact that she married the presiding hearing officer ten days prior to his recommendation; in May 1990, the Kentucky Board brought a second complaint against the Respondent, alleging that she gave false testimony in a sworn deposition, and as a result, Respondent's Kentucky medical license was placed on probation for five years, and she was fined \$2,500; on July 16, 1992, the Kentucky Board reinstated the 1987 charges against Respondent based in part on her improper billing of the West Virginia workers' compensation fund, ordered Respondent's medical license be placed on probation for five years, fined her \$2,500, and filed a complaint against Respondent for unprofessional and unethical conduct based upon her failure to disclose her relationship with the Kentucky Board's hearing officer and providing him with money; on July 14, 1993, Respondent was convicted of bribery in the Jefferson Circuit Court, sentenced to five years imprisonment, and is currently

appealing the conviction; on June 17, 1993, the Kentucky Board ordered the temporary suspension of Respondent's medical license, and on April 23, 1994, the Kentucky Board revoked her license to practice medicine; Respondent continued to prescribe controlled substances to patients several months after her Kentucky license was suspended; on June 12, 1993, Respondent untimely filed an application for renewal of her DEA Certificate of Registration that had expired on February 28, 1993, falsified her address, and provided false information regarding her practice at a West Virginia Hospital; and effective November 12, 1993, the West Virginia Board of Medicine suspended Respondent's license to practice medicine.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. On August 9, 1994, the Government filed a motion for summary disposition, alleging that Respondent was not authorized to handle controlled substances in Kentucky or West Virginia. On September 6, 1994, Respondent responded to the Government's motion, and filed her motion for summary disposition.

On September 16, 1994, in her opinion and recommended decision, the administrative law judge granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration, AS7495624, issued to her in the Commonwealth of Kentucky, be revoked and that her pending application for registration in West Virginia be denied. On September 26, 1994, Respondent filed exceptions to the opinion and recommended decision of the administrative law judge. On October 18, 1994, the administrative law judge transmitted the record to the Deputy Administrator. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Government's motion for summary disposition alleged that Respondent is not authorized to handle controlled substances in Kentucky or West Virginia. The Government's motion was based on the April 23, 1994 revocation of Respondent's medical license in Kentucky and the November 12, 1993 suspension of her medical

license in West Virginia. The administrative law judge also found that Respondent's response to the Government's motion did not deny that she was without authority to handle controlled substances in either Kentucky or West Virginia, but simply alleged that Respondent's West Virginia medical license was temporarily suspended, and that she was licensed to practice medicine in Pennsylvania. The administrative law judge concurred with the Government's motion regarding Respondent's lack of state authorization to handle controlled substances in Kentucky and West Virginia.

The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See James H. Nickens, M.D., 57 FR 59847 (1992); Elliott Monroe, M.D., 57 FR 23246 (1992); Bobby Watts, M.D., 53 FR 11919 (1988).

The administrative law judge properly granted the Government's motion for summary disposition. It is well-settled that when no question of fact is involved, or when the facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. Philip E. Kirk, M.D., 48 FR 32887 (1983), *aff'd* sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); Alfred Tennyson Smurthwaite, N.D., 43 FR 11873 (1978); see also, *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); *United States v. Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

Consequently, the administrative law judge recommended that Respondent's DEA Certificate of Registration, AS7495624, issued to her in the Commonwealth of Kentucky, be revoked and that her pending application for registration in West Virginia be denied. In her exceptions to the opinion and recommended decision of the administrative law judge, the Respondent argued, *inter alia*, that matters alleged in the Government's Order to Show Cause, and restated in the administrative law judge's recommended decision were in error or on appeal. Respondent urged that the grounds alleged in her exceptions be given consideration, and that she be

allowed to present evidence in this regard.

The Respondent acknowledged in her exceptions that she is without authority to handle controlled substances in Kentucky and West Virginia, thus supporting the Government's contention. State authorization to handle controlled substances where Respondent is registered with DEA or seeks registration with DEA is the only relevant issue in this proceeding. As outlined above, DEA cannot register the Respondent to handle controlled substances without such authority. Therefore, the Deputy Administrator has not considered Respondent's other arguments as set forth in her exceptions. The Deputy Administrator hereby adopts the opinion and recommended decision of the administrative law judge in its entirety.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AS7495624, previously issued to Diane E. Shafer, M.D., be, and it hereby is, revoked, and that her pending application for registration in West Virginia be denied. This order is effective March 1, 1995.

Dated: January 24, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-2190 Filed 1-27-95; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Postponement of Commission Meetings

Summary: Due to the scheduling difficulties of participants, the Glass Ceiling Commission meetings have been postponed. The meetings had been announced previously in the **Federal Register** of January 19, 1995, 60 FR 3881. The Commission Meetings were to take place on Monday, January 31, 1995, 4:00 p.m.-7:00 p.m. and Tuesday, February 1, 1995, 1:00 p.m. to 4:00 p.m. at the Department of Labor. The Commission meeting will be rescheduled at a later date.

For Further Information Contact: Ms. René A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C-2313, Washington, DC 20210, (202) 219-7342.

Signed at Washington, DC this 25th day of January, 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95-2198 Filed 1-27-95; 8:45 am]

BILLING CODE 4510-23-M

Pension and Welfare Benefits Administration

[Application No. D-09469, et al.]

Proposed Exemptions; Financial Institutions Retirement Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested

persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Financial Institutions Retirement Fund (the Fund) and Financial Institutions Thrift Plan (the Thrift Plan) Located in White Plains, New York

[Application No. D-09469]

Proposed Exemption

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to employee benefit plans (the Plans) and to their sponsoring employers (the Employers) that participate in the Fund and the Thrift Plan; provided that the following conditions are met: