

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 20, 1995.<sup>3</sup> Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 1, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423-191.

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 14, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 4, 1995.

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

**Vernon A. Williams,**  
Secretary.

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by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 94-82]

#### Earl N. Caldwell, M.D.; Revocation of Registration

On August 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Earl N. Caldwell, M.D. of Highland Park, Illinois (Respondent), proposing to revoke his DEA Certificate of Registration, BC0950104, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f), and that Respondent was no longer authorized to handle controlled substances in the State of Illinois. 21 U.S.C. 824 (a)(3) and (a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, the Government filed a motion for summary disposition on October 11, 1994, alleging that Respondent no longer held state authorization to handle controlled substances on the ground that the Illinois Department of Professional Responsibility, Medical Disciplinary Board, had placed Respondent's medical license on probation for five years and suspended his authority to handle controlled substances for the duration of that probationary term. Respondent filed an opposition to the Government's motion for summary disposition on October 31, 1994, arguing that the Illinois Board's decision had been rendered in error and, therefore, was not final pending administrative review.

On November 2, 1994, the administrative law judge entered her opinion and recommended a decision granting the Government's motion for summary disposition and recommending that the Respondent's DEA Certificate of Registration be revoked. No exceptions were filed by either party.

On December 2, 1994, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter pursuant to 21 CFR 1316.67,

based on findings of fact and conclusions of law as set forth herein.

Effective May 13, 1992, the Illinois Department of Professional Responsibility, Medical Disciplinary Board, suspended Respondent's license to practice medicine for five years and suspended his authority to handle controlled substances for the duration of that period. Respondent does not deny that his state license has been placed on probation for five years. As a result, Respondent is no longer authorized to dispense controlled substances in the State of Illinois.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. See *Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987).

In a case where a practitioner is no longer authorized to handle controlled substances in the state in which he proposes to practice, a motion for summary disposition is properly entertained. It is well settled that where no question of fact exists, or where the material facts are agreed, a plenary administrative proceeding is not required. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

The Deputy Administrator 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, BC0950104, previously issued to Earl N. Caldwell, M.D., be, and it hereby is, revoked, and any pending applications for such registration be, and hereby are, denied. This order is effective May 10, 1995.

Dated: April 3, 1995.

**Stephen H. Greene,**

Deputy Administrator.

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[Docket No. 94-76]

#### Rosalind A. Cropper, Inc.; Denial of Application

On August 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order