

limited. Five other defendants in this action are performing work pursuant to a consent decree entered by the Court on June 21, 1994, designed to address conditions at the Site which may present an imminent and substantial endangerment to health or the environment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation of settlement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States v. Dale Valentine, et al.*, DOJ Ref. #90-7-1-692. In accordance with Section 7003(d) of RCRA, commenters can also request a public meeting in the affected area.

The proposed stipulation may be examined at the Office of the United States Attorney for the District of Wyoming, 3rd Floor, Federal Building, 111 South Wolcott, Casper, Wyoming 82601; the United States Environmental Protection Agency, Region 8, 999 18th Street—Suite 500, Denver, Colo. 80202-2466; and at the Consent Decree Library, 1120 "G" Street NW., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of \$1.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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**Drug Enforcement Administration**

[Docket No. 93-74]

**Richard C. Matzkin, M.D. Grant of Continued Registration**

On July 27, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard C. Matzkin, M.D. of Bethesda, Maryland (Respondent), proposing to revoke his DEA Certificate of Registration, AM2532631, and deny any pending applications for such

registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(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, a hearing was held in Arlington, Virginia on March 14, 1994.

On November 3, 1994, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA Certificate of Registration not be revoked subject to his compliance with several requirements. No exceptions to Judge Bittner's decision were filed by either party.

On December 6, 1994, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator. After careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that Respondent obtained a license to practice medicine in Maryland in 1984 and maintained a practice in Bethesda. Respondent subsequently became licensed in Virginia and the District of Columbia. In the summer of 1989, Respondent began a general practice in Virginia, but continued to maintain a practice in Bethesda which, by Respondent's testimony, was limited to treating members of his immediate family and three close friends.

The administrative law judge found that, in 1986, a detective from the Pharmaceutical Unit of the Montgomery County, Maryland, Police Department was informed by several pharmacists that they had received prescriptions written by Respondent which they felt were not within a legitimate prescribing pattern, and that most of the prescriptions were for Percocet, a Schedule II controlled substance. The detective further testified that he found approximately 50 prescriptions for Percocet issued by Respondent at various area pharmacies, and that most of these prescriptions had been issued for five individuals, several of whom had been targets of prior investigations and/or had been arrested on drug charges.

The administrative law judge further found that a former investigator for the Virginia Department of Health (the Virginia investigator) investigated a complaint that Respondent was prescribing controlled substances to persons living outside of the state. The investigator found that most of these prescriptions were written for Percocet and that they had been written for Respondent's father, brother and then-wife, as well as two of the individuals identified by the Montgomery County, Maryland investigation.

The Virginia investigator testified that Respondent had prescribed controlled substances, primarily Percocet, to a number of individuals without a legitimate medical need and without conducting medical examinations prior to issuing controlled substances prescriptions. In one such instance, Respondent prescribed controlled substances to an individual who he knew to be drug and alcohol dependent.

The Virginia investigator further testified that several of the pharmacists who filled Respondent's prescriptions had complained that he often picked up the filled prescriptions for his out-of-state patients, and subsequently mailed the drugs to these patients. The Virginia investigator acknowledged that this practice was not unlawful.

The Virginia investigator also interviewed Respondent who informed her that he did not perform physical examinations on these patients prior to issuing prescriptions for them, and that his mother had disposed of the medical records that he had maintained on these patients. She further testified that, although Respondent had stated that all of the people who received the prescriptions at issue had complained of some type of pain or medical condition, Respondent's conduct was in violation of Virginia law because he did not maintain medical records for these patients, nor conduct physical examinations prior to prescribing controlled substances.

The administrative law judge found that on March 29, 1991, the Virginia Board of Medicine notified Respondent that it would conduct an informal conference on allegations that he had violated provisions of Virginia law pertaining to the practice of medicine. On June 21, 1991, Respondent entered into a consent order pursuant to which he voluntarily surrendered his Virginia license in lieu of further administrative proceedings.

The administrative law judge further found that, on January 20, 1992, the Montgomery County state's attorney office executed information charging Respondent with two counts of

unlawfully prescribing Schedule II drugs and that Respondent was arrested on these charges on January 30, 1992. The charges against Respondent eventually were nolle-prossed.

The administrative law judge found that the Maryland State Board of Physician Quality Assurance (the Board) initiated an investigation of Respondent in November 1991 after the Maryland Division on Drug Control notified the Board that Respondent had surrendered his Virginia license. In February 1992, the Board summarily suspended Respondent's medical license in Maryland based upon the surrender of his Virginia license, his January 1992 arrest and the charges that he had improperly prescribed controlled substances. As a result of the criminal case against Respondent being nolle-prossed, the Board executed a consent order on June 2, 1992, lifting the summary suspension and placing Respondent on a three year probationary period with conditions. Judge Bittner also noted testimony that, at the time of the hearing in this proceeding, Respondent remained in full compliance with the conditions of his probation.

The Government argued that Respondent's DEA Certificate of Registration should be revoked because Respondent: (1) violated 21 CFR 1306.04(b) by prescribing controlled substances to individuals without first conducting physical examinations; (2) had violated 21 U.S.C. 822(e) and 21 CFR 1301.23 by having prescriptions filled for controlled substances and mailing them to individuals; (3) prescribed controlled substances to an individual who was drug and alcohol dependent; and (4) voluntarily surrendered his Virginia medical license because of his inappropriate prescribing of controlled substances.

Respondent argued that: (1) he was never convicted of any criminal activity; (2) he voluntarily surrendered his Virginia license in lieu of further administrative proceedings; (3) his failure to maintain adequate medical records for certain patients was not his usual practice; (4) the patients to whom he mailed controlled substances were longtime friends or family and he acted with good intentions; (5) he has been in good standing with the Maryland State Board of Physician Quality Assurance since he signed the consent order; and (6) he continues to maintain a medical practice in the State of Maryland.

Pursuant to 21 U.S.C. 824(a)(4) the Deputy Administrator of the DEA may revoke the registration of a practitioner upon a finding that the registrant has committed such acts as would render

his registration inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). In determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances.

(4) Compliance with applicable State, Federal or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e. the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate in assessing the public interest. See *Mukand Lal Arora, M.D.*, 60 FR 4447 (1995); *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989). The administrative law judge found that factors (1), (2), (4), and (5) were relevant in considering whether Respondent's DEA registration should be revoked.

The administrative law judge found that testimony by two patients that Respondent had used cocaine and traded other controlled substances for cocaine, were statements made by acknowledged drug abusers who, themselves, were under investigation at the time they raised their allegations against Respondent, and, therefore, their hearsay statements were not sufficiently reliable to warrant a finding that Respondent had engaged in the alleged conduct. Judge Bittner further found that it was not disputed that Respondent had picked up filled prescriptions and mailed the medication to patients, but that such conduct was not illegal in Virginia, the jurisdiction in which Respondent was practicing at that time, and that there was no evidence of any other state or Federal regulation of such practice. Judge Bittner found no merit to the Government's contention that Respondent's practice of retrieving filled prescriptions for certain patients violated 21 CFR 1306.04(b).

The administrative law judge additionally found that it was not disputed that Respondent had prescribed medication to certain patients without first performing a physical examination. It was further undisputed that Respondent did not keep charts on the patients he treated out of his Bethesda location after

December 1989, when, as Respondent contended, his mother disposed of his patient records. Judge Bittner found that Respondent's failure to maintain records on those patients constitutes grounds for revoking his DEA registration. However, the administrative law judge found that the evidence did not establish that revocation of Respondent's registration would be in the public interest and recommended that Respondent's DEA Certificate of Registration not be revoked subject to his compliance with the following conditions for two years from the effective date of the Deputy Administrator's final order: (1) Respondent shall not dispense directly or administer any controlled substances except in a hospital setting; (2) Respondent shall use triplicate forms for all controlled substance prescriptions and shall maintain at his registered location one copy of each form and arrange for another copy to be received by the Special Agent in Charge of DEA's Baltimore District Office or his designee; and (3) Respondent shall consent to inspections of his registered premises pursuant to notices of inspection as described in 21 U.S.C. 880.

The Deputy Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and 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, AM2432631, issued to Richard C. Matzkin, M.D., be, and it hereby is, continued subject to the conditions enumerated by the administrative law judge. This order is effective on July 13, 1995.

Dated: June 6, 1995.

**Stephen H. Greene,**

*Deputy Administrator.*

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## Immigration and Naturalization Service

[INS No. 1722-95]

### Discontinuation of the Nicaraguan Review Process

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** this notice announces the termination of the special review procedures under which the files of Nicaraguan nationals subject to final deportation orders were subject to