Dated: December 6, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1 Portland, Oregon.

[FR Doc. 95–30350 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. The parent corporation and principal office is: ARR–MAZ PRODUCTS, L.P., 621 Snively Avenue, Winter Haven, FL 33880, 941–293–7884.

2. The wholly owned subsidiary which will participate in the operation is: AMP Trucking, Inc., 1001 American Superior Blvd., Winter Haven, FL 33880, 941–293–7884.

States of Incorporation are: Delaware, Florida, Louisiana, North Carolina.

Vernon A. Williams,

Secretary.

FR Doc. 95–30560 Filed 12–14–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32814]

Gateway Western Railway Company; Trackage Rights Exemption; The Atchison, Topeka and Santa Fe Railway Company

The Atchison, Topeka and Santa Fe Railway Company (ATSF) has agreed to grant limited local trackage rights to Gateway Western Railway Company (GWWR) over approximately 8.3 miles of rail line from milepost 1.7 at Santa Fe Junction in Kansas City, MO, to milepost 10.0 at Morris, KS.[1]

GWWR contends that the trackage rights will allow it access to two shippers on ATSF's line in Kansas City, KS. Accordingly, those two shippers will obtain additional rail service options and GWWR will have new potential sources of traffic. The trackage rights were to become effective on December 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission[2] and served on: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 8, 1995.

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

Vernon A. Williams,

Secretary.

[FR Doc. 95–30561 Filed 12–14–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–30]

Harold R. Schwartz, M.D.; Denial of Application

On March 2, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harold R. Schwartz, M.D., (Respondent) of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) In February 1992, a DEA audit of a Houston area pharmacy, and a subsequent review of prescription records, revealed that in 1991 and early 1992, the Respondent routinely prescribed combinations of Tylenol with codeine, Valium, and Phenergan with codeine, to numerous individuals when he knew or should have known that the combination of these drugs was highly abused on the streets.

(2) On March 24, April 7, and April 21, 1992, the Respondent prescribed 24 Tylenol No. 4 and 18 Valium 10 mg. to an undercover officer for no legitimate medical reason.

(3) Following the execution of a Federal search warrant at the Respondent's office of July 7, 1992, the Respondent voluntarily surrendered his DEA Certificate of Registration, AS0873198, as well as his State of Texas Controlled Substances Registration Certificate. However, on February 1, 1993, his Texas Controlled Substances Registration Certificate was reinstated.

On March 31, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Houston, Texas, on November 9, 1994, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On March 2, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's application be denied. Neither party filed exceptions to her decision, and on April 5, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact of law.

The Deputy Administrator finds that on January 19, 1993, the Respondent Prepared an Application for Registration under the Controlled Substances Act of 1970 as a practitioner for handling controlled substances in Schedules II through V. The Respondent has practiced medicine in Houston, Texas, since 1951. At the hearing before Judge Bittner, the Respondent testified that he maintained a solo practice in internal medicine consisting mostly of poor patients, some of whom were covered by Medicare or Medicaid. The Respondent further stated that his wife had died in 1987, and that he resided with his son, who suffered from panic disorder and was unable to leave home.

[1] On December 1, 1995, GWWR filed a corrected statement with regard to the milepost markers and the approximate total mileage involved in this transaction. This notice includes the updated figures.

[2] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

He testified that he was the sole provider for his son.

At the hearing, a DEA Diversion Investigator testified that during an audit of a Houston Pharmacy on January 27, 1992, he discovered that several individuals had received prescriptions from the Respondent for a combination of Tylenol No. 4 or Phenergan with codeine, and Valium or Xanax. The Investigator testified that the prescriptions were unusual because of the combination of substances prescribed, and because many of the prescriptions were written to different patients claiming the same address. Further, the Respondent had issued these prescriptions to individuals who were also receiving prescriptions for controlled substances from other physicians. Tylenol No. 4 with codeine, Phenergan with codeine, Valium, and Xanax are all controlled substances. The investigator also stated that the combination of controlled substances prescribed by the Respondent were popular with crack cocaine users, who take these drugs to ease the ''high'' induced by cocaine.

In February 1992, the Investigator performed surveys of prescriptions issued by the Respondent from March 1991 through April 1992, at seven Houston-area pharmacies, finding that the Respondent wrote seventy-nine prescriptions for a total of 3,851 dosage units of controlled substances. As a result of this information, the Investigator implemented an undercover investigation of the Respondent with the assistance of a Detective from the Harris County, Texas, Sheriff's Department. On all of the detective's undercover visits to the Respondent's office, the Detective wore a transmitter, and transcripts of his conversations with the Respondent were in evidence.

At the hearing, the Detective testified that on March 24, 1992, he went to the Respondent's office, he did not complain of any medical ailments, but that he did tell the Respondent that he wanted Tylenol No. 4 because ''I just kinda chill out, I feel good, it makes me feel real good.'' The Respondent took the Detective's blood pressure and conducted a very brief examination. After providing the Detective with a warning about the use of the controlled substances he had requested, the Respondent gave the Detective a prescription for 24 Tylenol No. 4, 18 Valium 10 mg., and Procardia, a non-controlled substance, for high blood pressure. The Respondent prescribed the Tylenol No. 4 for ''lower back pain,'' although the Detective did not complain of this condition.

On April 7, 1992, the Detective again visited the Respondent, who took his blood pressure, but did not examine him. The Respondent again admonished the Detective about the addictive potential of Valium and Tylenol No. 4, but then issued prescriptions for 18 Valium 10 mg., 24 Tylenol No. 4, and for a non-controlled substance. Also, on April 21, 1992, the Detective visited the Respondent, who again admonished him regarding the use of Tylenol No. 4, asked him if he needed Valium, and prescribed 18 Valium 10 mg., 24 Tylenol No. 4, and a non-controlled substance. The Detective testified that the Respondent did not examine him beyond taking his blood pressure, and when asked, the Detective had told him that he did not have back pain.

On July 7, 1992, the Investigator executed a search warrant and a grand jury subpoena, seizing various records from the Respondent's office, to include the patient chart for the Detective as well as other patients' charts. The Investigator informed the Respondent of the reason for the execution of both the subpoena and the search warrant, and following these discussions, the Respondent voluntarily surrendered his DEA Certificate of Registration, as well as his Texas State controlled substances registration.

At the hearing before Judge Bittner, Dr. Joseph Coppola, an associate professor of emergency medicine and internal medicine at the University of Texas Medical School, testified that on July 22, 1992, he had reviewed several of the Respondent's records, including the Detective's treatment record. Dr. Coppola then testified about his findings as to individual patient's records, concluding that in six instances the Respondent had prescribed controlled substances in ''inappropriate and [in some instances] dangerous'' combinations, and that the Respondent's charts contained incomplete histories and lacked physical examination notations adequate to justify the prescriptions issued to the patients. Dr. Coppola stated that in some charts the patient would make multiple visits, complain of the same symptoms each visit, and yet the Respondent would prescribe controlled substances without conducting tests or using other diagnostic techniques to determine the cause of the patient's continuing condition. Dr. Coppola testified that in some instances the patients' conditions did not justify the controlled substances prescribed over the extended period of time reflected in the patients' records. He observed that in many of the cases he had reviewed, the controlled substances prescribed by the Respondent were not appropriate, ''[b]ecause of their propensity toward habituation, addiction, withdrawal syndromes, harm to the patient, inability to perform normal, everyday functions to include driving an automobile * * * certainly this combination of medications in a person is detrimental and harmful on a long-term basis.'' Dr. Coppola stated that in several instances the patients' records indicated that the patients were exhibiting drug-seeking behavior.

Dr. Coppola, after reviewing the chart entries for the Detective, testified that if he had had a patient who acted in the manner of the Detective, ''[i]n a dignified, professional way, I would throw him out of my office * * * because he is drug-seeking.'' Further, he testified that Tylenol No. 4 and Valium were not substances prescribed to treat high blood pressure, and that the transcripts of the Detective's subsequent visits reinforced his opinion that the Detective was engaging in drug-seeking behavior. Dr. Coppola also testified that the Respondent's prescribing of controlled substances in the combinations prescribed to the Detective, a non-addicted person, could result in symptoms ranging from extreme somnolence, motor inability, respiratory arrest, to even death. Finally, Dr. Coppola concluded that the Respondent did not prescribe controlled substances in the usual course of professional practice, nor for a legitimate medical purpose.

The Respondent testified that he prescribed tranquilizers as stress-reducers for hypertensive patients, and that even if he had known the Detective was a law enforcement officer he would have prescribed Valium and Tylenol, because the Respondent ''found he was a sick man.'' The Respondent also stated that Dr. Coppola was ''right to a degree'' with respect to the Respondent's treatment of the other patients, because the controlled substances he prescribed were addictive, but he ''really didn't know that these were street substances.'' He testified that he had not knowingly treated anyone who used crack concaine, and he averred that he did not use very good judgment: ''I was too trusting. I was taken advantage of.'' Further, the Respondent conceded that he kept poor records, and that he would not repeat his misconduct.

However, he also testified that he ''really didn't agree'' with the Texas State Board of Medical Examiners' finding that he had prescribed controlled substances to the Detective for a nontherapeutic purpose or in a nontherapeutic manner. Further, he

stated that he had surrendered his controlled substances registrations because the Investigator had advised him that he could probably avoid action by a grand jury if he so acted, but that by signing the surrenders, he had not intended to admit to any wrongdoing. Finally, the Respondent testified about his need for his DEA Certificate of Registration in order to continue effectively his medical practice.

The record also demonstrates that on December 15, 1992, the grand jury had advised the Texas court that it had failed to find a bill of indictment against the Respondent, and on February 1, 1993, the Respondent's state privileges to handle controlled substances were restored. Further, on March 18, 1994, the Respondent appeared before the Medical Board, and on April 14, 1994, the Respondent and the Medical Board entered into an Agreed Order. The Agreed Order reflected that the Respondent had practiced medicine in Texas for forty-nine years with no documented problems or disciplinary actions. However, the Medical Board found that the Respondent had prescribed or administered a drug or treatment ''that was nontherapeutic in nature or in the manner in which [it] was administered or prescribed,'' and that he had, thereby, violated the Medical Practice Act of Texas. The Medical Board then ordered that the Respondent's medical license be restricted for three years, and that various conditions be imposed upon his practice, including that he attend at least fifty hours per year of continuing medical education, to include at least six hours pertaining to recordkeeping or risk management. Further, another physician was to monitor or supervise his medical practice.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny a pending application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

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

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

(3) The applicant'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 or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989). In this case, the Deputy Administrator agrees with Judge Bittner that factors one, two, and four are relevant in determining whether granting the Respondent's pending application would be inconsistent with the public interest.

As to factor one, ''recommendation of the appropriate state licensing board,'' relevant evidence includes the agreement signed by the Respondent and the Medical Board, wherein the Medical Board found that the Respondent's conduct in prescribing controlled substances to the Detective violated the Medical Practice Act of Texas. In response, in April 1994, the Medical Board placed restrictions upon the Respondent's license to practice medicine, to include requiring the acquisition of continued medical education. The restrictions are in effect for three years. Further, the record demonstrates that the Texas Department of Public Safety has reissued the Respondent's controlled substances registration, but evidence detailing the circumstances surrounding the reinstatement are not in the record.

As to factor two, ''the applicant's experience in dispensing * * * controlled substances,'' the preponderance of the evidence demonstrates that the Respondent dispensed controlled substances to a Detective without a legitimate medical purpose and outside the usual course of professional practice. Specifically, Dr. Coppola provided that conclusion after reviewing the Detective's medical chart and the transcript of the conversations between the Detective and the Respondent preceding the Respondent's issuing prescriptions to the Detective. Further, after reviewing medical charts and prescription patterns in five other cases, Dr. Coppola also concluded that the Respondent prescribed controlled substances to these patients in ''inappropriate and [in some instances] dangerous'' combinations, despite the fact that these patients were exhibiting drug-seeking behavior.

As to factor four, ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' the record reflects that the Grand Jury declined to issue an indictment seeking criminal prosecution against the Respondent after reviewing evidence of his behavior during the same period as reviewed in this proceeding. However, the Medical Board found that the Respondent's conduct did, in fact, violate the Medical Practice Act of Texas, and it levied discipline under that statute in response to its finding.

The Deputy Administrator has previously found that under Federal law, for a controlled substance prescription to be valid, ''it must be written by an authorized individual acting within the scope of normal professional practice for a legitimate medical purpose.'' Harlan J. Borcherding, D.O., 60 FR 28796, 28798 (1995). Although the Respondent was authorized to prescribe controlled substances at the time he issued prescriptions to the Detective, the preponderance of the evidence demonstrates that the prescriptions of Valium and Tylenol No. 4 were issued without a legitimate medical purpose and outside the scope of normal professional practice. Specifically, the Detective dictated which controlled substances he wanted and ultimately received, rather than the Respondent, as the practitioner, determining the medication appropriate for the clinical condition presented by the Detective. As Dr. Coppola testified, such prescribing lacked a legitimate medical purpose and was not in the usual course of professional medical practice. See Borcherding, supra. Therefore, the Deputy Administrator finds, in light of the foregoing, that the Government has met its burden of proof as to factors one, two, and four.

However, the Respondent provided evidence of rehabilitation, including the Texas Department of Public Safety's reinstatement of his controlled substances registration in February 1993, and the agreement with the Medical Board. Further, he acknowledged his recordkeeping failings, and he requested consideration be given to his full cooperation with the investigation. The Respondent also requested the Deputy Administrator consider his lengthy medical career free of prior disciplinary action, and his need for his DEA Certificate of Registration.

However, even acknowledging the Respondent's rehabilitative efforts, the Deputy Administrator agrees with Judge Bittner's conclusions: ''With respect to the likelihood of a recurrence of misconduct, I realize that Respondent asserted that he would be more careful in the future. However, in light of both the extent of his misconduct and his attempts to rationalize his behavior, I am not persuaded that such conduct will not recur.'' The Respondent's

testimony disagreeing with the Medical Board's findings concerning his past conduct, makes questionable his committment to change in his future medical practices to include his prescribing of controlled substances. Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application at the present time. See, e.g., *Sokoloff* v. *Saxbe,* 501 F.2d 571, 576 (2nd Cir. 1974) (stating that ''permanent revocation'' of a DEA Certificate of Registration may be ''unduly harsh'').

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application of Harold R. Schwartz, M.D., be, and it hereby is, denied. This order is effective January 16, 1996.

Dated: December 11, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–30578 Filed 12–14–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the David-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and State:

Volume VI

OREGON
OR950017 (DEC. 15, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ950003 (FEB. 10, 1995)
NJ950004 (FEB. 10, 1995)
NJ950007 (FEB. 10, 1995)
NJ950015 (FEB. 10, 1995)
New York
NY950003 (FEB. 10, 1995)
NY950009 (FEB. 10, 1995)
NY950039 (FEB. 10, 1995)
NY950040 (FEB. 10, 1995)

Volume II

Pennyslvania
PA950004 (FEB. 10, 1995)
PA950040 (FEB. 10, 1995)

Volume III

Florida
FL950001 (FEB. 10, 1995)
FL950009 (FEB. 10, 1995)
FL950014 (FEB. 10, 1995)
FL950017 (FEB. 10, 1995)
FL950032 (FEB. 10, 1995)
Georgia
GA950032 (FEB. 10, 1995)
GA950039 (FEB. 10, 1995)
Tennessee
TN950005 (FEB. 10, 1995)

Volume IV

Illinois
IL950001 (FEB. 10, 1995)
IL950002 (FEB. 10, 1995)
IL950003 (FEB. 10, 1995)
IL950008 (FEB. 10, 1995)
IL950011 (FEB. 10, 1995)
IL950012 (FEB. 10, 1995)
IL950013 (FEB. 10, 1995)
IL950014 (FEB. 10, 1995)
Illinois
IL950016 (FEB. 10, 1995)
Indiana
IN950024 (FEB. 10, 1995)
Michigan
MI950001 (FEB. 10, 1995)
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MI950012 (FEB. 10, 1995)
MI950017 (FEB. 10, 1995)
MI950030 (FEB. 10, 1995)
MI950031 (FEB. 10, 1995)
MI950034 (FEB. 10, 1995)
MI950046 (FEB. 10, 1995)
MI950049 (FEB. 10, 1995)
MI950062 (FEB. 10, 1995)

Volume V

Iowa