assurances at the hearing as to how he would avoid a relapse. It is without question that Respondent exhibited a cavalier attitude towards controlled substances from 1988 to mid-1991, but the evidence in the record supports a finding that Respondent has been diligent in his efforts to correct and control his problem and understands the severity of the consequences should he begin abusing controlled substances again.

In its exceptions, the Government also cites to David W. Bradway, M.D., 59 FR 6297 (1994), arguing that in that case the application was denied even though the applicant presented evidence regarding his rehabilitation from drug abuse, his ability to responsibly handle controlled substances, and the unlikelihood of his relapse into drug abuse. However, the Acting Deputy Administrator concludes that in that case, the underlying circumstances of the applicant's self-abuse were far more serious than the circumstances surrounding Respondent's abuse of controlled substances. In addition, in Bradway, it was determined that the applicant had ''not demonstrated either ethical conduct nor trustworthy behavior to warrant the granting of a DEA Certificate of Registration.'' The Acting Deputy Administrator concludes that Respondent has shown, through this continued rehabilitative efforts even though no longer required by the State of Tennessee, that he can be trusted to responsibly handle controlled substances subject to the restrictions recommended by Judge Bittner.

The Government further argues in its exceptions that the Acting Deputy Administrator should not credit Respondent's explanation that his use of controlled substances caused him to exercise poor judgment. The Government contends that ''[t]he granting of a DEA registration under such circumstances would open the door for future litigants to misuse the substance abuse defense in rationalizing flagrant violations of controlled substances laws and regulations.'' If the Acting Deputy Administrator accepted the Government's argument, no applicant who had abuse controlled substances in the past would ever be granted a DEA registration regardless of any rehabilitative efforts. Instead, the Acting Deputy Administrator is charged with evaluating the facts and circumstances surrounding each application to determine whether registration would be inconsistent with the public interest. In this case, the Acting Deputy Administrator concludes that the record supports a finding that Respondent's behavior was caused by his abuse of controlled substances, and there is no evidence of any wrongdoing by Respondent since he entered treatment in 1991.

The Government alternatively argues in its exceptions that should a registration be issued to Respondent it should be restricted to schedules IV and V for a three year period, thereby allowing Respondent to demonstrate that he can ''properly handle controlled substances in schedules with the least potential for addiction * * *.'' Given Respondent's past behavior, the Acting Deputy Administrator appreciates the Government's argument. However, the Acting Deputy Administrator does not believe that restricting Respondent's registration to Schedules IV and V would better protect the public interest, since the drugs that Respondents abused himself were in Schedule IV. The Acting Deputy Administrator concludes that the restrictions recommended by Judge Bittner are sufficient at this time to monitor Respondent's handling of controlled substances and to protect the public interest. Therefore, the Acting Deputy Administrator finds that it would not be inconsistent with the public interest at this time to grant Respondent's application for registration, provided that for three years after Respondent is granted a DEA registration: (1) Respondent is not to order or dispense controlled substances except in a medical clinic or hospital environment; (2) Respondent is to continue his association with the Tennessee Medical Foundation's Impaired Physicians Program, continue attending Caduceus group meetings, and continue attending Alcoholics Anonymous or a similar program; (3) Respondent is to continue random drug screening at his own expense; and (4) Respondent shall maintain a log of all prescriptions for controlled substances he issues, and is to submit that log for review to the Nashville DEA office at the end of each calendar quarter. The log shall include at a minimum, the name of the patient, the date the prescription is issued, and the name, dosage and quantity of the drug prescribed.

Accordingly, the Acting 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 application, submitted by Joseph S. Hayes, M.D., for a DEA Certificate of Registration in Schedules II through V, be and it hereby is granted subject to the above described restrictions. This order is effective March 10, 1997.

Dated: January 31, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–3084 Filed 2–6–97; 8:45 am]

BILLING CODE 4410–09–M

Kenneth Kleiner, M.D.; Revocation of Registration

On October 20, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Kenneth Kleiner, M.D., of Woodside, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration,AK1048203, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that the State Board for Professional Medical Conduct, State of New York, revoked his license to practice medicine in New York by Order dated December 15, 1994, and consequently, Dr. Kleiner is without state authorization to handle controlled substances in the State of New York.

The Order to Show Cause was ultimately served upon Dr. Kleiner, and by letter dated May 14, 1996, Dr. Kleiner requested ''an adjournment of the hearing'' pending the outcome of civil litigation concerning his state medical license. On May 21, 1996, the Office of Administrative Law Judges sent Dr. Kleiner a letter stating that it is unclear whether or not he is requesting a hearing and advising him to respond by June 5, 1996 to request a hearing, otherwise his right to a hearing will be deemed waived. Dr. Kleiner responded by letter dated June 4, 1996, stating, ''I respectfully request neither a hearing nor a waiver of such hearing, but rather an adjournment until such time as the instant matter may be fairly and justly adjudicated,'' apparently referring to his pending civil action. Thereafter, on June 14, 1996, Administrative Law Judge Mary Ellen Bittner advised Dr. Kleiner that pursuant to 21 C.F.R. 1301.54(d) and (e), he is deemed to have waived his opportunity for a hearing, inasmuch as he has not requested a hearing. Judge Bittner further advised Dr. Kleiner that his letters dated May 14 and June 4, 1996, would be forwarded to the Deputy Administrator for consideration in rendering his decision in this matter.

The Acting Deputy Administrator concurs with Judge Bittner's conclusion that Dr. Kleiner has waived his opportunity for a hearing. Therefore, after considering relevant material from the investigative file in this matter, as

well as Dr. Kleiner's letters, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that by order dated December 15, 1994, the State Board for Professional Medical Conduct, State of New York (Board) revoked Dr. Kleiner's license to practice medicine and assessed an $80,000 fine against him. This action was based upon findings that Dr. Kleiner prescribed drugs for which there was no medical indication; that he indiscriminately prescribed habit-forming drugs; that he failed to produce medical records for his patients despite being issued a subpoena for the records; that he willfully harassed a patient; and, that he exercised undue influence on a patient.

While Dr. Kleiner has indicated in letters dated May 14 and June 4, 1996, that there is pending civil litigation regarding the Board's action, there is no indication in the record that the Board's revocation has been stayed pending the outcome of the civil proceeding. Consequently, the Acting Deputy Administrator finds that in light of the Board's revocation of Dr. Kleiner's medical license, he is not currently authorized to handle controlled substances in the State of New York.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority 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 Earl G. Rozeboom M.D., 61 Fed. Reg. 60,730 (1996); Charles L. Novosad, Jr., M.D., 60 Fed. Reg. 47,182 (1995); Dominick A. Ricci, M.D., 58 Fed. Reg. 51,104 (1993). Here, Dr. Kleiner is not entitled to a DEA registration.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA certificate of Registration, AK1048203, previously issued to Kenneth Kleiner, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for registration be, and they hereby are, denied. This order is effective March 10, 1997.

Dated: January 28,1 997

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–3051 Filed 2–6–97; 8:45 am]

BILLING CODE 4410–09–M

Keith A. Lasko, M.D.; Revocation of Registration

On March 13, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Keith A. Lasko, MD., of Meridian, Mississippi, proposing the revocation of his DEA Certificate of Registration BL3109940 and denial of any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 824(a)(3), for the reason that he is not currently authorized to handle controlled substances in the State of Mississippi. The order also advised that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to Dr. Lasko by registered mail to his DEA registered address, but was returned to DEA with the notation ''attempted, unkown''. DEA made numerous other attempts to locate Dr. Lasko. Investigators determined through the American Medical Association that he was not currently practicing in any of the other states where he was licensed to practice medicine. A check of drivers' license records in a number of states revealed that Dr. Lasko did not have a current driver's license in any of those states. Earlier attempts to deliver correspondence to Dr. Lasko at various locations via registered mail were unsuccessful, and Dr. Lasko did not leave any forwarding address.

The Acting Deputy Administrator finds that DEA has made numerous attempts to locate Dr. Lasko and has determined that his whereabouts are unknown. It is quite evident that Dr. Lasko is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Acting Deputy Administrator concludes that considerable effort has been made to serve Dr. Lasko with the Order to Show Cause without success. Dr. Lasko is therefore deemed to have waived his opportunity for a hearing. The Acting Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.54 and 1301.57.

The Acting Deputy Administrator finds that in June 1992, the Medical Board of California filed an accusation against Dr. Lasko alleging, among other things, that he excessively used diagnostic procedures; that he committed acts of dishonesty in that he falsely billed for diagnostic procedures; and that he created false medical records. The Medical Board of California then entered a default decision revoking Dr. Lasko's license to practice medicine in the State of California effective January 22, 1992.

Subsequently, on July 24, 1992, the Mississippi State Board of Medical Licensure (Board) issued a summons to Dr. Lasko ordering him to appear before the Board and alleging that grounds exist to take action against his license to practice medicine in the State of Mississippi based upon the revocation of his California medical license. By letter dated October 20, 1992, Dr. Lasko informed the Board that he no longer wishes to practice medicine in the State of Mississippi and ''am hereby revoking my Mississippi medical license.'' Thereafter, on November 23, 1992, the Board issued an Order Accepting Surrender of License finding that Dr. Lasko's letter ''expresses a clear intent to surrender his license to practice medicine in the State of Mississippi.'' A letter in the investigative file dated February 16, 1996, from the Board states that its records indicate that Dr. Lasko's license expired as of June 30, 1992. Consequently, the Acting Deputy Administrator finds that in light of the foregoing, Dr. Lasko is not currently licensed to practice medicine, nor authorized to handle controlled substances, in the State of Mississippi.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority 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 Earl G. Rozeboom, M.D., 61 FR 60,730 (1996); Charles L. Novosad, Jr., M.D., 60 FR 47,182 (1995); Dominick A. Ricci, M.D., 58 FR 51,104 (1993). Here, Dr. Lasko is not currently licensed to practice medicine, and therefore not authorized to handle controlled substances, in the State of Mississippi. Hence, Dr. Lasko is not entitled to a DEA registration.

Accordingly, the Acting 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 BL3109940, previously issued to Keith A. Lasko, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 10, 1997.