convicted of a controlled substance related crime, had ever surrendered a DEA registration or had one revoked, suspended, denied, or had a state professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation. Thereafter, Respondent was issued a Notice of Hearing which alleged that Respondent had been charged with three felony violations of state law and that he had been found guilty of one count of possession of a controlled substance. As Judge Bittner correctly notes, ''[a]s far as this record shows, the Notice of Hearing did not make any reference to Respondent's explanation on his application of his answer to the liability question.''

Respondent then participated in an informal hearing with DEA personnel and a representative from the United States Attorney's Office. Again as Judge Bittner correctly notes, ''there is no evidence about the discussion at that meeting and, more specifically, about whether any of the government personnel advised Respondent that his statements on his [1990] application for DEA registration were inadequate.''

Respondent ultimately entered into a memorandum of understanding in August 1990 wherein he agreed to ''answer fully and truthfully'' the questions on renewal applications. However, there is nothing in the memorandum of understanding that documents that Respondent was told that his previous explanation on the 1990 application was inadequate, nor was there any testimony at the hearing as to whether the parties discussed the meaning of this provision of the memorandum of understanding.

Respondent was then issued a DEA registration. Given the lack of evidence in the record that Respondent was advised that his answer in 1990 was inadequate, it is reasonable to accept Respondent's explanation for giving the same answer on his 1993 renewal application. Respondent testified, ''I figured if this was good enough the first time, it's good enough the second time.'' Therefore, the Acting Deputy Administrator concludes that while Respondent may have technically violated the memorandum of understanding by failing to provide full and truthful answers on future applications, such a violation is understandable given that he was apparently not told his earlier explanation was inadequate.

The Acting Deputy Administrator concurs with Judge Bittner's conclusion that the Government has not established by a preponderance of the credible evidence that Respondent's continued registration would be inconsistent with the public interest. While Respondent handled controlled substances from 1982 to March 1984 without proper state authorization and failed to maintain the required records, these events occurred over 12 years ago, and there is no evidence in the record that Respondent has improperly handled controlled substances since being issued a DEA registration in 1990. In addition, there is no evidence in the record that Respondent was ever advised that the explanation on his 1990 application was not sufficient, and therefore his use of the same explanation on his 1993 application is understandable.

Judge Bittner recommended that Respondent's registration not be revoked, but that it be subject to the following restrictions:

(1) Respondent shall not prescribe, administer or otherwise dispense any controlled substances for any member of his family or himself.

(2) Respondent shall handle controlled substances only in treating podiatric patients, and not for any purpose outside the usual practice of podiatry.

Under the circumstances of this case, the Acting Deputy Administrator finds Judge Bittner's recommended restrictions to be reasonable. Therefore, the Acting Deputy Administrator concludes that Respondent's DEA registration should be continued in Schedules II through V subject to Judge Bittner's recommended restrictions. It should be noted that it is unclear from the record, which schedules Respondent is currently registered to handle. He applied for Schedule II through V in 1990, however, the memorandum of understanding executed in August 1990 states, ''[t]hat Respondent's handling of controlled substances pursuant to his Federal controlled substances registration upon issuance of such registration by the DEA, shall be limited to controlled drugs in Schedules III through V and that Respondent not be allowed to handle any controlled substance found in Schedule II for a period of not less than one (1) year from the date of the execution of the agreement.'' His 1993 renewal application, which is the subject of this proceeding, indicates that Respondent wishes his registration to be renewed in Schedules II through V. Regardless of Respondent's current authorization, the Acting Deputy Administrator concludes that in light of all of the evidence, Respondent should be registered in Schedules II through V subject to the above-referenced restrictions.

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 BB2461604, issued to Mark J. Beger, D.P.M., be continued, and any pending applications be granted in Schedules II through V, subject to the above restrictions. This order is effective March 10, 1997.

Dated: January 30, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–3082 Filed 2–6–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 25, 1996, and published in the Federal Register on July 31, 1996, (61 FR 39986), Guilford Pharmaceuticals, Inc., Attn: Ross S. Laderman, 6611 Tributary Street, Baltimore, Maryland 21224, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. § 823(a) and determined that the registration of Guilford Pharmaceuticals, Inc. to manufacture cocaine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 9, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–3083 Filed 2–6–97; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 95–20]

Jospeh S. Hayes, M.D.; Grant of Restricted Registration

On January 25, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Joseph S. Hayes, M.D. (Respondent) of Bristol, Tennessee, notifying him of an opportunity to show