Diversion Control Act of 1993 (DCDCA)) to add a requirement that ''A regulated person that manufactures a listed chemical shall report annually to the Attorney General, in such form and manner and containing such specific data as the Attorney General shall prescribe by regulation, information concerning listed chemicals manufactured by the person.''

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 respondents at 1 response per year at 4 hours per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 400 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: July 11, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–15720 Filed 6–13–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Craig K. Alhanati, D.D.S. Revocation of Registration

On June 25, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Craig K. Alhanati, D.D.S., of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AA2387721, under 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California.

The Order to Show Cause was not served on Dr. Alhanati until sometime in December 1996. By letter dated December 21, 1996, Dr. Alhanati responded to the Order to Show Cause. In his response, Dr. Alhanati did not request a hearing, but instead set forth his position on the issues raised by the Order to Show Cause. Therefore, the Acting Deputy Administrator, finding that Dr. Alhanati has waived his right to a hearing, hereby enters his final order without a hearing and based upon the investigative file and Dr. Alhanati's letter dated December 21, 1996, pursuant to 21 CFR 1301.43 (c) and (e) and 1301.46.

The Acting Deputy Administrator finds that by a decision dated April 17, 1994, the Board of Dental Examiners for the State of California revoked Dr. Alhanati's license to practice medicine based upon a finding that he committed a lewd act upon a child. The Acting Deputy Administrator finds that in light of the fact that Dr. Alhanati is not currently licensed to practice dentistry in the State of California, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

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 *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

Here it is clear that Dr. Alhanati is not currently authorized to handle controlled substances in the State of California. Therefore, Dr. Alhanati is not entitled to a DEA registration in that state.

In his letter dated December 21, 1996, Dr. Alhanati admitted that he was not currently authorized to practice dentistry in California, but stated that he was licensed ''in the state of Illinois, among other states.'' He further contended that ''to revoke my DEA Certificate of Registration might forever preclude me from prescribing analgesics requisite following treatment of my patients following surgery.'' Dr. Alhanati argued that his state license was erroneously revoked because he ''was non-culpable of the allegation,'' and that the reason that it was revoked was non-drug related. Finally, Dr. Alhanati indicated that he was seeking relicensure with the State of California.

The Acting Deputy Administrator concludes that the fact that Dr. Alhanati is licensed to practice dentistry in states other than California is irrelevant since he is not authorized to practice in the state where he is registered with DEA and he has not sought to modify his current registration to another state. The Acting Deputy Administrator notes that revocation of Dr. Alhanati's DEA Certificate of Registration will not forever preclude him from prescribing controlled substances. Dr. Alhanati is certainly free to apply for a new DEA registration in a state where he is authorized to practice dentistry and handle controlled substances or to reapply for a DEA registration in California, if he is relicensed in that state. The fact that Dr. Alhanati is seeking relicensure in California is not persuasive. There is no evidence in the record that he has been granted a new license to practice dentistry in California, and therefore the Acting Deputy Administrator concludes that Dr. Alhanati is not currently authorized to practice or handle controlled substances in that state, Finally, Dr. Alhanati's arguments that his state revocation was erroneous and not drug-related are immaterial. No matter what the basis was for the state action, the fact remains that he is not currently authorized to practice and handle controlled substances in California.

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 AA2387721, previously issued to Craig K. Alhanati, D.D.S., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 16, 1997.

Dated: June 9, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–15640 Filed 6–13–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–43]

Dennis Robert Howard, M.D. Grant of Restricted Registration

On May 24, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Dennis Robert Howard, M.D., (Respondent) of Macon, Georgia, notifying him of an opportunity to show cause as to why DEA should not deny his applications for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated June 21, 1995, Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Atlanta, Georgia on April 23 and 24, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties

called witnesses to testify and introduce documentary evidence. After the hearing, both sides submitted proposed findings of fact, conclusions of law and argument and reply briefs. On February 28, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent be granted a DEA Certificate of Registration subject to several restrictions that would remain in effect for three years from the issuance of the registration. On March 20, 1997, Government counsel filed exceptions to the Recommended Ruling of the Administrative Law Judge, and on April 7, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting 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 Acting Deputy Administrator adopts, except as specifically noted, the findings of fact, conclusions of law, and recommended ruling of the Administrative Law Judge. 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 or law.

The Acting Deputy Administrator finds that Respondent received his Doctor of Medicine degree from the University of Wisconsin in 1962. In 1983, he moved to Georgia and became licensed to practice medicine in that state. He was served on the faculty of several universities and is board-certified in family medicine. In addition, he has held offices in various professional organizations, has served on numerous boards, and has published several articles and portions of books. Respondent testified that he treats many patients for chronic pain.

In November 1992, an agent for the Georgia Secretary of State, in conjunction with DEA and the Georgia Drugs and Narcotics Agency, investigated Respondent's prescribing practices. The investigation included surveying prescriptions at local pharmacies, subpoenaing medical records, and interviewing Respondent. The results of the investigation were submitted to the Georgia Composite State Board of Medical Examiners (Board), which then met on Novebmer 4 and 5, 1992, and unanimously voted to ''issue an Emergency Suspension of [Respondent's] DEA permit and cite for a Formal Hearing.'' It was not until May 10, 1993, that the Board issued an Order of Summary Suspension of Privileges for the Prescribing of Controlled Substances and a Notice of Hearing. The Order specifically charged that ''Respondent has prescribed controlled substances in such a manner as to constitute unprofessional conduct departing from or failing to conform to the minimal standards of acceptable and prevailing medical practice and prescribing for other than legitimate medical purpose. * * *'' The Board ordered the Respondent surrender his DEA registration within 48 hours of service of the Order.

On May 11, 1993, state agents went to Respondent's office to serve the Board's Order. Initially, Respondent was not present, but came to the office at the agents' request. One of the agents at the hearing testified that when Respondent arrived at the office, he appeared to be under the influence of some type of substance. Respondent testified however that he was not under the influence of anything, but instead was in shock over the Board's actions. An insurance biller who worked with Respondent and was present on May 11th, testified that respondent did not appear intoxicated or under the influence when she saw him at the office that day.

Respondent indicated to the agents that he ordered drugs from a wholesaler and then dispensed them to his patients so cost, rather than issuing them prescriptions. He further stated that he had used various controlled substances over the years and had smoke marijuana as recently as three days before the interview, and that his marijuana use was limited to three to four times a month. At the hearing in this matter, Respondent testified that he took aspirin with codeine (Empirin No. 4) twice a day for an ''irritable bowel problem'', and three or four diazepam tablets a week for leg muscle spasm, and that both of these drugs were originally prescribed for him by a physician. Respondent also testified that he had self-prescribed hydrocodone with APAP one to three times a week when he had back pain, and that he took other non-controlled drugs for his back problems and his plood pressure. Respondent further testified that he has not used marijuana since 1993, he has only taken medications that were prescribed for him by his physician.

Following service of the Board's Order, on May 12, 1993, the Medical Coordinator for the Board advised Respondent that he must undergo a 96 hour in-patient medical and psychological evaluation. Thereafter, Respondent checked into an Atlanta hospital, and May 14, 1993, DEA personnel went to the hospital and requested that Respondent surrender his DEA registration. Respondent signed the surrender of registration form, but testified that the surrender was not truly voluntary, since he felt pressured to sign because he was told that ''it would show my good faith in cooperating with this investigation and that it would make it easier for me to get my DEA certification back once I was cleared of the charges.''

On May 17, 1993, the Board issued an Order of Summary Suspension of Medical License stating that it ''has received reliable information that Respondent is unable to practice medicine with reasonable skill and safety'' as a result of his admitted use of marijuana, diazepam, aspirin with codeine and hydrocodone. At the hearing in this matter, Respondent testified that during the summer of 1993, he was evaluated by a psychiatrist and a family practitioner to determine whether or not he was addicted or impaired. Both doctors found that Respondent was fit to practice medicine.

A hearing began on August 9, 1993, regarding the Board's charges against Respondent for the misprescribing of controlled substances. During the hearing, it was discovered that Board personnel had provided its expert witness with incomplete copies of Respondent's patient records. Subsequently, the Board's counsel agreed not to advise the expert, prior to his testimony, that the records were incomplete. However, the Hearing Officer found that the Board's counsel did not adhere to this agreement and therefore, the Hearing Officer dismissed the Notice of Hearing, noting that ''submission of incomplete records to the medical expert was patently unfair * * *.''

On August 10, 1993, the Superior Court of Fulton County ordered the reinstatement of Respondent's license to practice medicine, finding that the Board had not provided Respondent with a prompt hearing on the charges which led to the suspension. Thereafter, on September 10, 1993, the court ordered that Respondent's license to practice medicine remain in effect until a final determination was made on his alleged impairment Respondent testified that eventually the charges of misprescribing were ''dropped'' by the Board.

On August 16, 1993, Respondent filed his first application for a CEA Certificate of Registration that is the subject of these proceedings. He affirmatively answered question 4(b) on the application which asks if the applicant has ''ever been convicted of a crime in connection with controlled substances

* * * or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?'' In explaining his answer, Respondent indicated that he had ''voluntarily surrendered my controlled substances privileges on May 14, 1993 while cooperating with an investigation * * *.'' Respondent did not mention the Board's summary suspension orders.

Respondent testified that in the midst of the hearing in the fall of 1993 regarding the allegations of his impairment, the Board entered into settlement negotiations with Respondent. On January 6, 1994, Respondent and the Board entered into a consent order reinstating his license to practice medicine and his authority to prescribe controlled substances. The consent order did not state that Respondent had committed any offenses, which according to the testimony of an attorney who had represented the Board and had served as a hearing officer for the Board is unusual for a consent order because it did not contain an ''admission of any kind of allegations.'' The order directed that for five years, Respondent would (1) ''Attend and successfully complete the mini-residency'' on proper prescribing practices of controlled substances within six months of the order; (2) allow the Medical Coordinator to review and inspect his medical records; (3) ''abstain from the consumption of all mood altering substances except as prescribed by a duly licensed practitioner (other than Respondent) for a legitimate medical purpose''; (4) allow the Board to order him to submit to random urine, blood, fluid or hair analysis and/or a mental or physical evaluation; (5) comply with diagnosis, treatment and record keeping rules; (6) report any malpractice suits against him; (7) supply a copy of the Consent Order to any person he was associated with in practice; (8) not use a physician's assistant to perform any of the restricted tasks; (9) notify the Medical Board if he leaves the state for more than thirty days for the purpose practicing medicine; (10) abide by all State and Federal laws regulating the practice of medicine; and, (11) be evaluated by the Medical Board regarding his compliance with the Order sixty days prior to its expiration.

On June 17, 1994, Respondent submitted a second application for a DEA registration. He again affirmatively answered question 4(b), with the following explanation: ''On May 14, 1993, I signed a Voluntary Surrender for my previous DEA certification to cooperate with and facilitate an investigation by the State of Georgia Composite Board of Medical Examines into allegations of misprescribing. My licence [sic] was reinstated on August 10, 1993, and all charges were subsequently dropped * * *.'' Respondent testified that he did not mention the consent order with the Board, because he did not believe that the term ''probation'' in question 4(b) applied to the consent order. The consent order does not specifically state that Respondent's license was placed on probation. The former Board attorney and hearing officer testified that if the Board had intended to impose probation on Respondent, it would have set ''it forth right at the beginning of the order, you know, that a Respondent is placed on probation upon the following terms and conditions * * *.''

On July 14, 1994, Respondent received DEA order forms for the ordering of Schedule I and II controlled substances. These forms were imprinted with a new DEA registration number. Respondent testified that he believed that order forms could not be issued except to holders of a valid registration number, and therefore he believed that his application had been approved. When approximately a week had passed and he had not received his Certificate of Registration, Respondent telephone a DEA supervisory registration specialist on July 22, 1994, and was told that the order forms had been issued in error, that his DEA registration was not valid, and that he should return the order forms. Respondent testified that he was told ''on the phone that it was not good, but I figured if they had issued it, then there was a more proper way that they could withdraw it.''

Respondent then telephoned a member of Senator Sam Nunn's staff, asking for assistance in determining the validity of his DEA registration. Respondent had been working with this staff member for a number of months in trying to obtain a decision regarding his application for DEA registration. The staff member contacted DEA on July 25, 1994, and was told that Respondent did not possess a valid DEA registration. The staff member then left a message for Respondent on his answering machine on the evening of July 25th, but did not actually speak with Respondent until the following morning. Respondent testified that he had been hospitalized and was discharged on the 25th, but did not go into his office where his answering machine was located until the following day, and therefore did not get the message from the staff member until July 26th.

A local pharmacist indicated to DEA that Respondent had telephoned in a prescription for an individual for Tylenol with codeine No. 3 on July 26, 1994, using the DEA number that was listed on the order forms. Respondent and the individual testified that the individual had been Respondent's patient from 1989 until 1992, when Respondent moved out of town. Both testified that the individual had back problems, and that she was under the care of a physician who was out of town when she began experiencing back pain. They testified that she called Respondent in the evening on July 25, 1994, requesting a prescription. Respondent called the prescription in to a local pharmacy, but when a co-worker went to pick up the medication, the pharmacist refused to fill the prescription until the pharmacist could verify Respondent's DEA registration number. The individual called Respondent later that evening and Respondent offered to write a prescription for Tylenol with codeine No. 3 for the individual that she could pick up the following day at office.

Respondent testified that at the time that he wrote the prescription for the individual on the morning of July 26, 1994, he had not yet listened to the message from Senator Nunn's staff member, stating that his DEA registration was invalid. Respondent testified that after talking with the staff member later in the morning on July 26th, he ceased writing any controlled substance prescriptions.

The Government argues that Respondent's registration would be inconsistent with the public interest because he twice issued a prescription for a controlled substance to an individual even though he knew that his DEA number was invalid; he used marijuana; he repeatedly self-prescribed controlled substances; his medical license is currently subject to the terms of a consent order; and he was less than truthful in his explanation of his answers to question 4(b) on his applications for registration. Respondent argues that his application should not be denied because when he received the DEA order forms, he believed that he had been issued a valid DEA registration number; that although a DEA employee told him that the forms had been issued in error, he did not believe the registration number was invalid until the Senator's staff member instructed him not to use the number; and that he self-prescribed controlled substances only for a legitimate medical purpose, and now only takes medication

that is prescribed for him by his physician. Respondent admits that his use of marijuana was illegal, but asserts that he stopped using it in May 1993.

Pursuant to 21 U.S.C. § 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are 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 and 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 be denied. *See* Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, it is undisputed that on May 10, 1993, the Board summarily suspended Respondent's privileges for prescribing controlled substances based upon allegations of misprescribing, and on May 17, 1993, summarily suspended Respondent's license to practice medicine based upon allegations of impairment. However, it is also undisputed that ultimately there were no findings made by the Board or admissions made by Respondent regarding these allegations. Respondent did enter into a consent order with the Board on January 7, 1994. While the consent order imposed certain requirements on Respondent, for the most part, it merely restated powers that the Board already has by virtue of its laws and regulations that apply to all physicians.

As to factors two and four, it is undisputed that Respondent issued two prescriptions for Tylenol with codeine No. 3 while not registered with DEA. The Government argues that Respondent had been verbally informed by a DEA registration specialist several days before he issued the prescriptions that he did not possess a valid registration. Respondent argues that he thought that he was registered when he issued the prescriptions because he had received DEA official order forms indicating a new registration number, and that although he had been orally advised by the registration specialist that his number was not valid, he received no written notification to that effect.

Judge Bittner concluded that ''it would have been more prudent for Respondent to verify his status before issuing any controlled substance prescriptions. However, the agency's failure to notify Respondent in writing that he did not have a valid DEA registration contributed to the misunderstanding, and under these circumstances I cannot say that a preponderance of the evidence establishes that Respondent did not act in good faith in issuing these prescriptions.'' In her opinion, Judge Bittner did not find that Respondent violated provisions of the Controlled Substances Act by issuing controlled substance prescriptions without a valid DEA registration. The Government filed exceptions to Judge Bittner's conclusion arguing that there is no ''good faith '' exemption from liability in administrative proceedings. The Acting Deputy Administrator agrees with the Government. The Controlled Substances Act and its implementing regulations require that a physician possess a valid DEA registration in order to legally prescribe controlled substances. *See, 21 U.S.C. 822(a), and 21 CFR 1301.31(a) and 1306.03(a)(2).* Respondent was not exempt from this requirement when he issued the two prescriptions for Tylenol with codeine No. 3 on July 25 and 26, 1994. However, as DEA has previously held, if Respondent issued these prescriptions with the good faith belief that he was properly registered with DEA, that certainly is a mitigating factor in determining the public interest. *See, Stanley Alan Azen, M.D., FR 57,893 (1996).*

Next the Government argues in its exceptions that ''to the extent any purported 'good faith' on the part of Respondent might be considered as a mitigating factor in this proceeding, the Government takes exception to the Administrative Law Judge's funding that a preponderance of the evidence did not establish a lack of good faith on the part of the Respondent in issuing the two prescriptions.'' The Government argues that Respondent knew that he did not have a valid DEA registration when he issued the prescriptions. The Acting Deputy Administrator concludes that Respondent's belief that he was validly registered with DEA when he issued the prescriptions is not unreasonable. Respondent received DEA official order forms that indicated a new DEA registration. While as a result of his inquiry, he was verbally told by a DEA registration specialist that he did not possess a valid registration, he never received anything in writing from DEA notifying him of this fact, and he had no idea whether the individual he spoke to was in a position to declare a registration invalid. Like Judge Bittner, the Acting Deputy Administrator notes that it probably would have been more prudent for Respondent to not issue any prescriptions until he received clarification from Senator Nunn's staff member. However, upon learning from the staff member that he was not properly registered, Respondent ceased issuing controlled substance prescriptions.

The Acting Deputy Administrator concludes that while Respondent issued two controlled substance prescriptions when he was not authorized to do so, this is not so egregious as to warrant the denial of his application for registration. The prescriptions were issued to a former patient who suffered from back pain and whose regular physician was out of town. In addition, Respondent possessed a good faith belief that he was in fact properly registered with DEA.

As to Respondent's other experience in dispensing controlled substances and compliance with applicable laws and regulations, Respondent admitted that he self-prescribed various controlled substances which is a violation of the Board's rules and regulations. Respondent admitted that he self-prescribed hydrocodone with APAP for back pain. He also admitted to taking aspirin with codeine for an irritable bowel and diazepam for leg spasms, but that these drugs were originally prescribed for him by his physician. Judge Bittner found that while Respondent's self-prescribing was in violation of state rules and regulations, Respondent ceased this practice over three years before the hearing in this matter, there is no evidence that he is likely to resume the practice, and there is no evidence contrary to Respondent's testimony that he now only takes medications prescribed to him by another physician.

The Government argued in its exceptions that Respondent in fact violated state rules and regulations by self-prescribing controlled substances; that the fact that he has not self-prescribed in over three years ''should be considered only in the context of a mitigating factor''; and that the Administrative Law Judge failed to consider that Respondent ceased self-prescribing only after his state medical license and controlled substance

privileges were summarily suspended and he had surrendered his previous DEA registration. The Acting Deputy Administrator concludes that Respondent violated state rules and regulations by self-prescribing controlled substances. The Acting Deputy Administrator notes that it is quite possible that the only reason that Respondent has ceased self-prescribing is because he does not have the authority to prescribe controlled substances. However, with proper restrictions placed on his registration, the Acting Deputy Administrator agrees with Judge Bittner that such conduct is not likely to recur. At least two of the drugs that Respondent had self-prescribed were originally prescribed by another physician. There is no evidence in the record that any of the drugs were taken for other than a legitimate medical purpose. Also, there is no evidence that Respondent has since taken any medication that was not prescribed for him by another physician. Finally, two physicians independently evaluated Respondent and determined that he was not impaired.

The Acting Deputy Administrator also concludes that Respondent's admitted use of marijuana violated both state and Federal law. As the Government noted, Respondent's use of marijuana was not restricted to a one-time activity. In May 1993, Respondent admitted to smoking marijuana three to four times a month. The Acting Deputy Administrator is extremely troubled by his behavior. However, Respondent testified that he has not smoked marijuana since May 1993, and there is no evidence in the record to the contrary.

Regarding factor three, Respondent has not been convicted of any violations of Federal or state laws relating to the manufacture, distribution or dispensing of controlled substances.

As to factor five, the Government argues that Respondent has been misleading, or at least less than candid, by failing to completely explain his affirmative response to question 4(b) on his applications. He failed to state that his state medical license and controlled substance privileges had been suspended or that he was subject to a consent order. Like Judge Bittner, the acting Deputy Administrator finds Respondent's incomplete explanation troubling. In responding to the questions on an application, truthful answers and complete disclosure are necessary for DEA to be able to adequately evaluate whether it is in the public interest to issue a registration. However, given the circumstances in this case, Respondent's failure to provide a complete explanation on the applications does not warrant denial of the applications. Respondent did in fact answer the question affirmatively, and DEA was well aware of the state suspensions since that was the basis for seeking Respondent's voluntary surrender of his DEA registration. In addition, it is understandable that Respondent did not believe that the consent order placed him on probation within the meaning of the phrase in the application. An earlier draft of the consent order included probationary language but the final version did not contain such language. The former Board attorney and hearing officer testified that if the Board intended to place Respondent on probation, the consent order would have specifically so stated.

The Administrative Law Judge concluded that the Government had not met its burden of proving by a preponderance of the evidence that Respondent's registration would be inconsistent with the public interest. Nonetheless, Judge Bittner stated that she is ''troubled by Respondent's attitude towards regulation and [has] some question as to whether he appreciates the responsibility that accompanies a DEA registration.'' Accordingly, Judge Bittner recommended that Respondent's application be granted subject to the following restrictions to remain in effect for three years after Respondent's Certificate of Registration is issued:

(1) Respondent must agree to periodic inspections of his records based on a Notice of Inspection rather than an Administrative Inspection Warrant.

(2) Respondent is prohibited from self-administering or self-prescribing controlled substances under any circumstances.

(3) Respondent shall maintain a log of all controlled substance prescriptions that he issues and shall send the log quarterly to the local DEA Special Agent in Charge or his or her designee.

(4) Respondent shall not maintain any controlled substances in his office.

The Government filed exceptions to Judge Bittner's recommended ruling arguing that the Government established, at the very least, a prima facie case under 21 U.S.C. 823(f)(2), (4) and (5), and that the record as a whole supports the denial of Respondent's applications for registration as inconsistent with the public interest. The Acting Deputy Administrator agrees with the Government that it established a prima facie case for denial of Respondent's applications. Respondent issued prescriptions for controlled substances while not properly registered with DEA. He self-prescribed controlled substances in violation of state rules and regulations. Up until May 1993, he smoked marijuana three to four times a month. He is currently subject to a consent order with the Board. Finally, he did not give complete explanations on his applications for registration.

However, the Acting Deputy Administrator concludes that in light of the previously discussed mitigating circumstances present in this case, denial of Respondent's applications is not warranted. The Acting Deputy Administrator agrees with Judge Bittner that some restrictions on Respondent's registration are appropriate in light of Respondent's previous violations of Federal and state laws and regulations relating to controlled substances. Therefore,the Acting Deputy Administrator concludes that Respondent should be granted a DEA Certificate of Registration subject to the following conditions for three years from the date of issuance of the registration:

(1) Respondent must agree to periodic inspections by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

(2) Respondent shall not dispense or prescribe controlled substances to himself, and shall only administer to himself those controlled substances legitimately dispensed or prescribed to him by another duly authorized practitioner.

(3) Respondent shall not order or maintain any controlled substances for his practice. He shall only prescribe controlled substances and shall not administer or dispense any controlled substances.

(4) Respondent shall maintain a log of all controlled substances that he prescribes, and shall send the log quarterly to the Special Agent in Charge of the nearest DEA office or his designee. The log shall include, the name of the patient, the date that the controlled substance was prescribed, and the name, dosage and quantity of the controlled substance prescribed. If no controlled substances are prescribed during a given quarter, Respondent shall indicate that fact in writing, in lieu of submission of the log.

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 the application for a DEA Certificate of Registration submitted by Dennis Robert Howard, M.D., be, and it hereby is granted, subject to the above described restrictions. This order is effective July 16, 1997.

Dated: June 5, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–15641 Filed 6–13–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances Application for Radian International LLC; Notice of Correction

In the **Federal Register** (FR Doc. 97–13088) appearing on page 27281 in the issue of Monday, May 19, 1997, the third paragraph should read: ''The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.''

Dated: June 3, 1997.

John H. King,

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

[FR Doc. 97–15642 Filed 6–13–97; 8:45 am]

BILLING CODE 4410–09–M

MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in Fitzgerald et al. versus Department of Defense, MSPB Docket No. PH–0842–94–0200–B–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing interested parties with an opportunity to submit amicus briefs on the following issues: (1) Whether the Board has jurisdiction over an appeal from a final agency decision denying an employee law enforcement officer (LEO) retirement coverage where the employee made no request for such coverage in accordance with 5 CFR 842.807(a); and (2) whether 5 CFR 842.804(c), which creates a rebuttable presumption that an agency head's denial of LEO retirement coverage is correct where a formal, written request is not filed within six months after entering a position or after any significant change in the position, is invalid, unreasonable, or violates due process.

SUMMARY:

Issue 1

In these consolidated appeals, the appellants, who are covered by the Federal Employees' Retirement System (FERS), 5 U.S.C. chapter 84, did not request a determination of their LEO status. Rather, the agency issued a final decision on its own initiative finding that the appellants' positions were not covered by the special retirement provisions of FERS, and providing the appellants with notice of a right to appeal to the Board.

Under 5 CFR 842.807(a), ''[t]he final decision of an agency denying an individual's request for approval of a position as a rigorous, secondary, or air traffic controller position made under 5 CFR 842.804(c) may be appealed to the * * * Board under procedures prescribed by the Board.'' In adopting this regulation, the Office of Personnel Management (OPM) indicated that it was amending the section ''to clarify that * * * only agency denial decisions made in response to individual requests under § 842.804(c) are subject to appeal * * *.'' 57 FR 32,685, 32,689 (July 23, 1992).

The Board has generally interpreted section 842.807(a) as requiring that an employee who is covered by FERS first formally request a determination on LEO coverage from his or her agency before appealing the agency's LEO determination to the Board. *See, e.g., Fitzgerald* versus *Department of Defense*, 70 M.S.P.R. 152, 155 (1996). The Board, however, is reconsidering this interpretation where, as in these cases, the agency has already issued a final decision on its own initiative. In this regard, the Board notes that under 5 U.S.C. 8461(e)(1), an administrative action or order affecting the rights or interests of an individual under the provisions of chapter 84 administered by OPM may be appealed to the Board.

The Board is inviting interested parties to submit amicus briefs addressing whether an employee request is a jurisdictional requirement where the agency has issued a final decision on its own initiative.

Issue 2

The Board has interpreted 5 CFR 842.804(c) as an additional restriction on its jurisdiction over FERS LEO matters. *See, e.g., DeVitto* versus *Department of Transportation*, 64 M.S.P.R. 354, 357–58 (1994). Section 842.804(c) provides that if an employee is in a position not subject to the higher LEO withholding rate, and the employee does not, within six months after entering the position or after any significant change in the position, formally and in writing seek a determination from the employing agency that his or her position is properly covered by the higher withholding rate, the agency head's determination that the service was not so covered at the time of the service is presumed to be correct. The presumption may be rebutted by a preponderance of the evidence that the employee was unaware of his or her status or was prevented by cause beyond his or her control from requesting that the official status be changed when the service was performed. Thus, under *DeVitto*, if a request for LEO coverage is not made within the time limit set forth in the regulation and neither of the circumstances specified in the regulation is present, an appeal of the agency's denial of LEO coverage must be dismissed for lack of jurisdiction.

The appellants and amicus curiae National Treasury Employees Union argue that section 842.804(c) is invalid because it is contrary to statute and congressional intent. The appellants and amicus curiae assert that the statutory scheme grants special retirement coverage for LEOs, contains no deadlines for challenging adverse agency determinations as to employee status, and provides that an administrative action or order affecting the rights or interests of an individual under the provisions of chapter 84 maybe appealed to the Board under procedures prescribed by the Board.'' 5 U.S.C. § 8461(e)(1). Thus, they contend that the Board's jurisdiction to review the merits of agency head determinations is not qualified by any statutory obligation to presume the correctness of those determinations. Alternatively, they assert that section 842.804(c) is entitled to no deference because it is an arbitrary and unreasonable exercise of OPM's regulatory authority and violates the constitutional guarantees of due process.

The agency, by contrast, argues that the statute is silent on the matters covered in section 842.804(c), and that the section, promulgated pursuant to OPM's authority to prescribe regulations to carry out 5 U.S.C. chapter 84, is a time limit that is not arbitrary, capricious, or contrary to statute because it furthers the intent of the statute to provide LEO retirement coverage when a determination can be made that entitlement to coverage exists. The agency contends that it would be difficult to make these determinations based on the evidence required if employees could wait twenty years, until they believed they were eligible to retire, to request LEO retirement coverage.

The Board is inviting interested parties to submit amicus briefs addressing whether 5 CFR 842.804(c) is