(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.,* 54 FR 16,422 (1989).

Regarding factor one, the Medical Board of California severely restricted Dr. Blakely's ability to handle controlled substances. Dr. Blakely's physician's and surgeon's certificate was revoked, but the revocation was stayed and he was placed on probation until February 2004.

As to factors two and four, Dr. Blakely issued over 400 controlled substance prescriptions for a total of more than 11,000 dosage units to his friend/roommate for no legitimate medical purpose in violation of state law and 21 U.S.C. 841(a)(1) and 21 CFR 1306.04.

Regarding factor three, Dr. Blakely was convicted in May 1995 of three misdemeanor counts involving the improper dispensing of controlled substances.

Finally under factor five, such other conduct which may threaten the public health and safety, the Acting Deputy Administrator considers Dr. Blakely's arrest for the unlawful possession of crack cocaine in 1994.

The Acting Deputy Administrator concludes that Dr. Blakely's continued registration would be inconsistent with the public interest. He diverted over 11,000 dosage units of controlled substances over a four-year period. In addition, he was arrested for possession of crack cocaine. Such conduct demonstrates a severe disregard for the tremendous responsibility that accompanies a DEA registration. Dr. Blakely did not respond to the Order to Show Cause and therefore did not offer any explanation or mitigating evidence regarding his misconduct.

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 AB7704871, previously issued to G. Wayman Blakely, Jr., M.D., 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 September 17, 1998.

Dated: August 11, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–22096 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–23]

Merritt Matthews, M.D.; Continuation of Registration With Restrictions

On February 22, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Merritt Matthews, M.D., (Respondent) of San Diego, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AM0006571, and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for reason that pursuant to 21 U.S.C. 824(a)(4), his continued registration would be inconsistent with the public interest.

By letter dated March 15, 1996, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Diego, California on January 15–16, 1997, and April 22–24, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On December 3, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's registration be continued subject to two conditions. On January 23, 1998, the Government filed Exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on February 12, 1998, Respondent submitted a response to the Government's exceptions. On March 9, 1998, Judge Randall 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 issued his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the opinion of the Administrative Law Judge, and adopts, with one modification, the 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 medical degree in 1965 from Howard University. In 1970 Respondent moved to San Diego, California and ultimately joined the Western Medical Group, a multi-specialty practice in a low income area of San Diego. In 1994, Respondent left the Western Medical Group and went to work for a large health maintenance organization (HMO). Respondent is board certified by the American Board of Family Physicians and is a member of the American Academy of Family Physicians. To maintain his certification, Respondent must complete an oral and a written examination every seven years, which covers at least four different areas concerning pharmaceuticals. According to Respondent, the examination process includes a peer review of his patient charts. Respondent was last recertified in 1995.

In 1991, the California Bureau of Narcotic Enforcement and the Bureau of MediCal Fraud initiated an investigation of Respondent after an inmate at a local detention facility indicated that anyone with $100.00 cash could get a controlled substance prescription for Valium or Doriden from Respondent for no legitimate medical reason. As a result of this information, undercover operatives went to Respondent's office to attempt to obtain controlled substance prescriptions for no legitimate medical purpose. Each of the undercover operatives wore a concealed transmitting device. The visits were monitored and recorded by agents located in Respondent's office parking lot.

The first undercover visit occurred on May 7, 1991. The transcript of the visit reveals that the undercover agent told Respondent that she ''was here to get a prescription,'' specifically asking for Valium, a Schedule IV controlled substance. Respondent told the undercover agent that he would give her ''some Valium this time, but no more. And don't come back here for no more Valium.'' The undercover agent indicated that she was not nervous and that nothing was wrong with her, but she needed something to ''help (her) out once and awhile.'' The undercover agent asked for 50 dosage units of Valium, yet Respondent nonetheless wrote her a

prescription for 100 dosage units. Respondent asked the agent a series of medical history questions, and performed a physical examination. Notations in the patient chart for the undercover agent indicate that the agent was there for a check up, and that there were to be ''no more refills.''

An expert, called as a witness by the Government, testified that he evaluated all of the undercover visits conducted during this investigation. In arriving at his conclusions, he reviewed the reports written by the undercover agents, the tape recordings and transcripts of the visits and the patient charts. It was his opinion that this Valium prescription was not issued for a legitimate medical purpose.

Respondent testified that he had diagnosed the undercover agent with anxiety neurosis, however this diagnosis was not noted in the patient chart. Respondent testified that he felt that he had enough information to make the diagnosis and to prescribe a one month supply of Valium. However, Respondent further testified that he told the undercover agent to see someone else because he did not think that he had good rapport with her.

A second undercover agent went to Respondent's office on June 24, 1991, claiming to be new to the area and indicating that she was looking for a doctor in San Diego. Respondent asked a series of medical history questions and performed a physical examination. The undercover agent asked for a refill of a Tylenol with codeine prescription stating that she ''had a doctor (in the Bay area) who, uh, I could get it from, uh, I don't take street drugs or anything like that. I'm in good health, uh, I just take it every once in awhile * * * just to kinda get met through.'' Respondent issued the undercover agent a prescription for 35 dosage units of Tylenol with codeine, a Schedule III controlled substance.

This undercover agent made another visit to Respondent's office on July 9, 1991, however she was refused a refill of the prescription because it had not been a month since her last visit. On August 5, 1991, the undercover agent did receive a prescription from Respondent for 45 Tylenol with codeine. The patient chart for this visit indicated that the agent suffered from menses pain and back pain. The transcript of the visit did not reflect any conversation between Respondent and the undercover agent regarding pain. However, the undercover agent did have a conversation with Respondent's nurse which was not transcribed verbatim. The expert concluded that both of these prescriptions were not issued for a legitimate medical purpose.

On September 27, 1991, a third undercover agent went to Respondent's office claiming to have a doctor in another city and requesting a refill on a Vicodin prescription. Respondent refused to issue this agent a prescription and inquired about any payment made by her to ensure that she had not paid for services he had not provided.

A fourth undercover agent went to Respondent's office on November 21, 1991, claiming to be looking for a new doctor since she was from Cleveland, Ohio. Respondent asked the agent a series of medical history questions and performed a physical examination. The undercover agent specifically asked for a prescription for Vicodin, a Schedule III controlled substance, which she used to get ''back home.'' Respondent informed the agent that MediCal would not cover Vicodin, but that Tylenol with codeine or aspirin with codeine would be covered. The undercover agent indicated that she wanted Tylenol with codeine and Respondent issued her a prescription for 30 dosage units. The expert witness indicated that it was his opinion that there was no legitimate medical reason for the issuance of this prescription.

Respondent testified at the hearing in this matter that he prescribed to this undercover agent based upon a continuity of care determination, and that he did not believe that she was a drug abuser. Physicians testified at the hearing that continuity of care means either a physician taking continuous care of a patient, or a physician continuing a new patient on the care provided by a prior physician. However, Respondent did not identify or contact the undercover agent's previous doctor. Respondent admitted at the hearing that his patient chart for this agent was incomplete since it did not reflect the prescription issued nor the results of the physical examination. Respondent testified that he did not know why he gave the agent a prescription for Tylenol with codeine since there was no indication of pain, however, it may have been for continuity of care and because he believed her.

On December 30, 1991, a fifth undercover agent went to Respondent's office claiming to have moved from Cleveland, Ohio and stating that his girlfriend wanted him to get a check up. Respondent asked the agent a series of medical history questions during which the agent told Respondent that he smoked ''marijuana, now and then, a little bit.'' Respondent testified that it was not uncommon in his practice for patients to admit to smoking marijuana. Respondent performed a physical examination and referred the agent to the laboratory for an electrocardiogram and chest x-ray. The agent asked for and received a prescription for Tylenol, however, he did not receive a prescription for any controlled substance. The undercover agent subsequently telephoned Respondent's office and attempted to obtain a prescription for Tylenol with codeine, but this request was refused.

A sixth undercover agent went to Respondent's office on March 19, 1992. The agent told Respondent that she was feeling tired because she was working and attending school full-time. Respondent asked the agent a series of medical history questions, and performed a physical examination noting that the agent's thyroid was large and the inside of her eyelids were pale. The undercover agent asked Respondent for some ''Prelude'' stating that she had been prescribed it by a doctor ''back east.'' The Respondent indicated that Preludin is a diet pill, but that one of its side effects ''is that it peps you up.'' After giving the agent extensive warnings regarding the addictive nature of the drug, Respondent issued her a prescription for 30 dosage units of Preludin, a Schedule II controlled substance. On March 20, 1992, the agent returned to Respondent's office and told him that Preludin had been discontinued. Respondent had her read excerpts from the *Physicians' Desk Reference* regarding diet pills. He then issued the agent a prescription for 30 dosage units of Desoxyn, a Schedule II controlled substance, with two refills. Thereafter, on March 23, 1992, the undercover agent telephoned Respondent and told him that the Desoxyn prescription was not on a triplicate form as required. Respondent informed the agent that he did not issue triplicate prescriptions. However, he would issue her a prescription for Ionamin, a Schedule IV controlled substance, which she picked up on March 24, 1992. The expert witness concluded that none of these prescriptions were issued for a legitimate medical purpose. In addition, he testified that the refills on the Desoxyn prescription were not proper since Schedule II prescriptions cannot be refilled.

Respondent testified that he saw no problem with his prescribing for this agent, as long as she took the medication as it had been prescribed. Respondent stated that he does not believe that amphetamines are physically addictive.

Finally, a seventh undercover agent went to Respondent's office on April 9,

1992. Ultimately the undercover agent received a prescription for Prelu-II, a Schedule III controlled substance. However, Judge Randall found that ''(t)he actual events of the undercover operation and the transactions between (the undercover agent) and the Respondent and his staff are unclear.'' At the hearing, it was discovered that part of the agency's visit to Respondent's office was not reflected in the tape recording nor the transcript of the visit. Judge Randall ruled that the tape recording was inadmissible due to the possibility of taint to the exhibit, since after the tape had been admitted into evidence, the Government removed if for analysis without her permission or notice to Respondent. In addition, Judge Randall found that the transcript was incomplete since it did not reflect the undercover agent's conversations while in the waiting room for approximately 30 minutes. The agent monitoring the undercover visit testified that she turned the tape recorder off while the undercover agent was in the waiting room.

The Acting Deputy Administrator agrees with Judge Randall's rulings and findings. It is important to know what if anything was discussed while the undercover agent was in the waiting room because there is a discrepancy between the transcript of the visit and the patient chart for the undercover agent. The transcript does not indicate that the undercover agent gave any medical need for the Prelu-II prescription, while the patient chart indicates that the agent stated that she wanted to ''lose weight—modeling.'' In addition, the Acting Deputy Administrator finds that even though the undercover agent testified at the hearing, no testimony was elicited as to what if any reason was given for wanting the prescription. Accordingly, the Acting Deputy Administrator agrees with Judge Randall that a determination cannot be made as to the legitimacy of the prescription issued to this undercover agent.

The United States Attorney's Office was provided with the results of the investigation of Respondent. A determination was made not to bring any charges against Respondent. In addition, no complaints have been filed against Respondent with the California Medical Board.

Two of Respondent's employees at the Western Medical Group testified at the hearing in this matter, indicating that there were a maximum of two employees assisting Respondent at any one time. One of the employees had worked for Respondent for 10 years in various positions performing both administrative and clinical functions. She would screen patients to determine whether they were drug seekers. She testified that if she thought an individual was only seeking drugs, she would either send him/her away or she would warn Respondent about her suspicions. The other employee had worked for Respondent for seven years as of the date of the hearing, first at the Western Medical Group and now at the HMO where Respondent is currently employed. This employee testified that while at the Western Medical Group, she was trained in how to handle drug seeking individuals.

A physician testified on behalf of Respondent who practiced in the same neighborhood as the Western Medical Group. He described his and Respondent's practice as in a community with very low incomes, high crime rates, a lack of physicians, and a serious drug abuse problem among the patient population. The physician testified that he had the opportunity to observe Respondent's prescribing practices since he and Respondent covered for each other in the care of patients. He stated that he had never seen Respondent improperly prescribe controlled substances.

A physician who was part of the Western Medical Group also testified on behalf of Respondent. He testified as to the problem of drug seeking patients in the practice. This physician served on the Board of Medical Quality, a committee that provides quality review of medical services in response to patient complaints. he testified that he would routinely cover Respondent's patients and therefore had the opportunity to review Respondent's patient charts. He stated that he had never seen any inappropriate prescribing or care by Respondent.

Respondent testified at the hearing in this matter regarding the nature of his practice with the Western Medical Group. The practice was located in a low income area. Some of the problems his patients faced were illiteracy, single parent status, domestic violence, and drug abuse.

Respondent testified that since 1994 he has been employed by an HMO. As an employee, he must adhere to the HMO's medical and administrative practices, which include specific requirements for patient charts. In addition, he now has more support staff, his patient load has decreased, and there are fewer walk-in patients than at Western Medical Group.

Pursuant to 21 U.S.C. 832(f) and 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such 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.*, 54 FR 16, 422 (1989).

As to factor one, it is undisputed that the California Medical Board (Board) has not only taken no action against Respondent's medical license, but no complaints have ever been filed against Respondent with the Board.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws related to the handling of controlled substances, are relevant to the public interest determination in this proceeding. The Government asserts that the prescriptions issued by Respondent to the undercover agents were not issued for a legitimate medical purpose as required by 21 U.S.C. 829 and 21 CFR 1306.04(a). The Government's expert reviewed the reports, tapes, transcripts, and patient charts of each visit and determined that in his opinion, none of the prescriptions in question were issued for a legitimate medical purpose.

The Respondent asserts that if a finding is made that the prescriptions were not issued for a legitimate medical purpose, he should not be held responsible because he was entrapped by the undercover agents. Respondent does not cite to any Federal court cases or DEA administrative cases to support his position that an entrapment defense is available to him in his proceeding. Conversely, the Government argues that such a defense is not available to Respondent as a matter of law, since this is an administrative adjudication to determine the public interest and not a

punitive proceeding. In support of its position, the Government cites two analogous cases where Federal courts have held that the entrapment defense is not applicable to administrative proceedings. *See Yousef* v. *United States,* 647 F. Supp. 127, 131 (M.D. Fla. 1986; *Tyer* v. *United States,* 645 F. Supp. 1528, 1532 (N.D. Miss. 1986).

The Administrative Law Judge recommended that the Acting Deputy Administrator find that the entrapment defense is not applicable, as a matter of law, to DEA administrative proceedings. The Acting Deputy Administrator recognizes that DEA has allowed the entrapment defense to be raised in proceedings such as these in the past, but has ruled that the defense has failed on a factual basis. *See, e.g., Lowell O. Kirk, M.D.,* 58 FR 15,378 (1993). However, the Acting Deputy Administrator finds the Government's argument compelling. The entrapment defense is not appropriate in DEA administrative proceedings where the protection of the public health and safety is at issue.

In evaluating the circumstances surrounding the issuance of the prescriptions to the undercover agents, the Acting Deputy Administrator agrees with the Administrative Law Judge. The evidence is not as clear cut as the Government argues that all of the prescriptions were issued for no legitimate medical purpose.

As to the first undercover visit on May 7, 1991, Judge Randall found that ''a preponderance of the evidence does not support a conclusion that this prescription was issued without a legitimate medical purpose.'' In support of this conclusion, Judge Randall found it significant that Respondent told the undercover agent not to return, and indicated ''no more refills'' on the agent's chart. Respondent admitted at the hearing that the patient chart did not reflect his diagnosis of anxiety neurosis. However, Judge Randall found ''that the Respondent's testimony concerning his diagnosis and the basis of this diagnosis credible.'' Judge Randall concluded that while ''Respondent was lax in his recordkeeping practices, the preponderance of the evidence in this instance does not support a conclusion that the Respondent lacked a legitimate medical purpose in issuing this prescription in 1991.'' The Acting Deputy Administrator agrees with Judge Randall's conclusion that a finding cannot be made as to the legitimacy of this prescription. However, the Acting Deputy Administrator is troubled by Respondent's lax recordkeeping and by the fact that Respondent issued the undercover agent a prescription for 100 dosage units of Valium even though the agent only asked for 50 dosage units.

Regarding the two Tylenol with codeine prescriptions issued to the second undercover agent, Judge Randall agreed with the Government's expert witness that the first prescription issued on June 24, 1991, by Respondent was for no legitimate medical purpose. The undercover agent did not indicate that she was in any pain, there is no diagnosis in the patient chart for this visit, and Respondent did not testify about his diagnosis. The Acting Deputy Administrator concurs with the conclusion that this prescription was not issued for a legitimate medical purpose. The undercover agent was refused a prescription on his second visit, since it had not been a month since she had received the first prescription. However, on August 5, 1991, Respondent issued the agent another prescription for Tylenol with codeine. The patient chart indicates that the agent suffered from menses pain and back pain, but the transcript of the conversation between Respondent and the undercover agent does not reflect any discussion regarding pain. Judge Randall found that this lack of discussion between Respondent and the agent is not conclusive as to the issue of the legitimacy of the prescription because the conversation between the undercover agent and Respondent's nurse was not transcribed. In addition, the Government did not present the testimony of the undercover agent nor offer any other evidence to refute the chart entries. Consequently, the Acting Deputy Administrator agrees with Judge Randall's conclusion ''that a preponderance of the evidence does not support a finding that this second prescription for Tylenol with codeine to [the second undercover agent] was issued without a legitimate medical purpose.''

It is undisputed that Respondent refused to issue the third undercover agent a controlled substance prescription. But, on November 21, 1991, Respondent did issue the fourth undercover agent a prescription for Tylenol with codeine. Respondent testified that he did not know why he issued this prescription, because there is no notation in the chart that she had presented any pain symptoms. His only explanation was that he had issued the prescription as a part of her continuing care, since the agent had represented that she had received pain medication ''back home.'' Respondent testified that he believed the undercover agent needed the medication and did not believe that she was a drug abuser. However, there is no evidence in the record that Respondent made any attempt to locate the agent's previous physician to verify that the medication was needed or to independently verify the diagnosis of pain. Judge Randall found that Respondent's ''[f]ailure to take such precautions in handling controlled substances shows a serious disregard for the physician's prescribing practice responsibilities necessary in handling controlled substance prescriptions.''

The Government filed an exception to Judge Randall's conclusion regarding this prescription, because Judge Randall did not specifically find that this prescription was issued without a legitimate medical purpose. The Acting Deputy Administrator is unable to conclude that a preponderance of the evidence presented supports a finding that there was no legitimate medical purpose of this prescription. At the very least however, Respondent's issuance of this prescription indicates extremely lax prescribing practices.

It is undisputed that Respondent refused to issue the fifth undercover agent a controlled substance prescription. However, Respondent did issue the sixth undercover agent three controlled substance prescriptions in March 1992, after the agent requested diet pills to give her more energy. Respondent testified that he saw no problem with prescribing diet medication to help the agent stay more alert; that the agent would not have experienced any adverse effects if she had consumed the medication as prescribed; and that he did not believe that amphetamines were physically addictive. Judge Randall concluded and the Acting Deputy Administrator agrees, that these prescriptions were issued without a legitimate medical purpose. In addition, Respondent's authorization of a refill of the Desoxyn prescription was unlawful since Schedule II prescriptions cannot be refilled pursuant to 21 U.S.C. 829 and 21 CFR 1306.12.

The Government filed an exception to Judge Randall's conclusion regarding these prescriptions arguing that Judge Randall should have specifically found that Respondent falsified the prescription for Ionamin by noting on the prescription that it was to decrease appetite. The Acting Deputy Administrator is extremely troubled by the fact that Respondent made this notation on the prescription knowing that the medication was not going to be used for appetite suppression, and agrees with the Government's contention that this prescription contains false information.

As discussed above, the Acting Deputy Administrator agrees with Judge

Randall's conclusion that a determination cannot be made as to the legitimacy of the prescription issued to the seventh undercover agent.

The Acting Deputy Administrator concludes that Respondent issued four controlled substance prescriptions to the undercover agents for no legitimate medical purpose during the course of the investigation. In addition, at the very least, Respondent's issuance of the prescription to the fourth undercover agent raises serious concerns regarding Respondent's appreciation of the serious nature of controlled substances.

Regarding factor three, it is undisputed that Respondent has not been convicted of any offense related to the manufacture, distribution or dispensing of controlled substances. Further, it is undisputed that the United States Attorney's Office declined to prosecute Respondent following the investigation conducted in 1991 and 1992.

As to factor five, the Acting Deputy Administrator is deeply concerned about Respondent's apparent disregard for the tremendous responsibility that accompanies a DEA registration. His cavalier attitude regarding the addictive quality of amphetamines, as well as his failure to accept any responsibility for any dangers his practices may have created, raise concerns regarding his future prescribing of controlled substances and the risk created to the public health and safety.

The Acting Deputy Administrator concludes that the Government has presented a *prima facie* case and therefore, grounds exist for the revocation of Respondent's DEA Certificate of Registration. However, the Acting Deputy Administrator does not believe that the severe sanction of revocation is warranted in this case. Two physicians who have been in a position to observe Respondent's controlled substance prescribing practices both testified that they have never seen any inappropriate prescribing by Respondent. In addition, as a member of the American Academy of Family Physicians and the American Board of Family Physicians, Respondent's patient charts are periodically reviewed and he must pass an examination that includes four different areas regarding pharmaceuticals. Therefore, like Judge Randall, the Acting Deputy Administrator concludes that the four prescriptions issued for no legitimate medical purpose during the course of the investigation in 1991 and 1992 do not appear to be indicative of Respondent's overall practice.

Additionally, the Acting Deputy Administrator finds it significant that Respondent's practice at the time of the hearing is very different from his practice during the investigation in 1991 and 1992. As an employee of a managed health care organization, Respondent is now subject to routine peer review procedures; his charting and prescribing practices are monitored by his employer; his patient load has decreased; and his number of support staff has increased. As Judge Randall noted, ''common sense leads to the conclusion that the Respondent, now subject to standards established by an employer and conscious of the scrutiny afforded his medical decisions and resulting medical charts, will enhance his attention to detail in his prescribing practices.''

Judge Randall concluded ''that the totality of the circumstances justifies continuing the Respondent's Certificate of Registration with certain requirements.'' Accordingly, Judge Randall recommended that Respondent's registration be continued subject to the following conditions:

''1. Within six months of the effective date of the Deputy Administrator's final order the Respondent [shall] provide to the DEA San Diego Field Division evidence of his successful completion of at least 15 hours of training in the proper handling of controlled substances, to include coverage of the addictive characteristics of such substances.

2. For a period of three years from the effective date of the Deputy Administrator's final order, the Respondent (shall) provide the DEA San Diego Field Division, information of the Respondent's change of employment, if any, thirty days prior to the effective date of the actual change of employment. This requirement is especially necessary for the protection of the public interest should the Respondent choose to leave the HMO setting and return to private practice as a self-employed physician.''

The Acting Deputy Administrator agrees with Judge Randall that Respondent's registration should not be revoked at this time. Based upon the evidence presented, Respondent's inappropriate prescribing in 1991 and 1992 appears to be an aberration from his normal course of practice. Also, since the events in question, Respondent's employment situation has changed dramatically. While these facts lead the Acting Deputy Administrator to conclude that Respondent's registration should be continued, the Acting Deputy Administrator agrees with Judge Randall that some restrictions on Respondent's registration are necessary to protect the public interest. The Acting Deputy Administrator is extremely concerned by Respondent's failure to recognize the addictive nature of amphetamines and by his failure to ensure that controlled substances are only prescribed for a legitimate medical purpose.

The Government filed exceptions to Judge Randall's recommended ruling, arguing that ''if the Acting Deputy Administrator chooses not to revoke (Respondent's) registration * * * then at the very least Respondent's registration should be suspended until and unless he completes the 15 hours of training in the handling of controlled substances as recommended by (Judge Randall).'' The Government argues that suspending Respondent's registration is necessary ''(g)iven the seriousness of the violations and Respondent's total lack of candor in refusing to admit that his conduct violated the law * * *.'' Additionally, the Government argues that a suspension is appropriate because ''(u)nder (Judge Randall's) recommendation, if Respondent did not obtain the required training within 6 months or did not make any attempt to commence this training * * * he would still be registered(,)'' and ''DEA would have to issue another Order to Show Cause based upon Respondent's failure to comply with this condition.'' The Government asserts that with a suspension, the burden of completing the training would be on Respondent and ''the public health and safety would be protected because Respondent would be without a DEA registration unless and until he completed the controlled substance training.'' In support of its contention, the Government cites to *Margaret E. Sarver, M.D.*, 61 FR 57,896 (1996), where DEA previously suspended a DEA registration for at least 120 days or until the registrant demonstrated that she had completed 24 hours of training in pharmacology.

The Acting Deputy Administrator finds that the circumstances of this case are markedly different from those in *Sarver*. In that case there was significantly more evidence than here of a pattern of mishandling of controlled substances. Most notably, Dr. Sarver continued to prescribe a highly abused combination of drugs even after having been warned of the danger and abuse potential of the drugs. The Acting Deputy Administrator does not believe that Respondent's conduct warrants a suspension of his registration.

The Acting Deputy Administrator appreciates the Government's concern that should Respondent not comply with the training requirement, the Government will be forced to issue

another Order to Show Cause to revoke Respondent's registration. In its response to the Government's exceptions, Respondent indicates that ''although disagreeing with portions of the (Administrative Law Judge's) opinion (R)espondent believes that in totality it is an appropriate ruling. Respondent has accepted the ruling and has already completed four hours training in the proper handing (sic) of controlled substances.'' Respondent argues that there were no complaints regarding his prescribing practices before the undercover visits and there has been no complaints since the investigation approximately six years ago. The Acting Deputy Administrator concludes that the public interest would not be served by suspending Respondent's registration. However, the Acting Deputy Administrator hereby orders that should Respondent fail to comply with the training requirement imposed on his registration, all involved in the administrative process to potentially revoke Respondent's registration should act as expeditiously as possible.

In addition, the Government takes exception to Judge Randall's recommended requirement that Respondent merely has to notify DEA of any change in his employment from the HMO. Judge Randall found the oversight offered by the HMO to be significant in recommending that Respondent's registration be continued and she therefore recommended that Respondent be required to notify DEA of any change in employment. The Government makes a compelling argument that ''if no additional sanctions are imposed and Respondent leaves the HMO, gives DEA the required notification and enters into private practice without participating in an HMO, any putative advantages in Respondent's prior participation in an HMO are dissipated. Yet DEA is left with no recourse because Respondent has not violated any conditions.'' Consequently, the Government suggested that Respondent be required to keep a log of his controlled substance handling and to make the log available for inspection. The Acting Deputy Administrator agrees with the Government that mere notification of a change in employment is not enough to monitor Respondent's prescribing practices.

Therefore, the Acting Deputy Administrator finds that Respondent's DEA Certificate of Registration should be continued subject to the following conditions:

(1) Within six months of the effective date of this final order, Respondent shall provide to the Special Agent in charge of the DEA San Diego Field Division, or his designee, evidence of his successful completion of at least 15 hours of training in the proper handling of controlled substances, to include coverage of the addictive characteristics of such substances.

(2) For a period of three years from the effective date of this final order, Respondent shall notify in writing the Special Agent in Charge of the DEA San Diego Field Division, or his designee, of any change in employment. This notification shall be provided at least thirty days prior to the effective date of the actual change of employment.

(3) For three years from the effective date of this final order, Respondent shall maintain a log of all controlled substances that he prescribes. At a minimum, 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. Upon the request of the Special Agent in Charge of the DEA San Diego Field Division, or his designee, Respondent shall submit or otherwise make his prescription log available for inspection.

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, AM0006571, issued to Merritt Matthews, M.D., be continued, and any pending applications for renewal be granted, subject to the above described restrictions. This order is effective September 17, 1998.

Dated: August 11, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–22098 Filed 8–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 13, 1998, and published in the **Federal Register** on March 27, 1998, (63 FR 14975), North Pacific Trading Company, 815 NE Davis Street, Portland, Oregon 97202, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

This application is for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of North Pacific Trading Company to import marihuana is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 7, 1998.

John H. King,

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

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–5]

Michael J. Septer, D.O.; Revocation of Registration

On October 8, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael J. Septer, D.O. (Respondent) of Grand Rapids, Michigan notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS0321430, and deny any pending applications for the renewal of such registration pursuant to 21 U.S.C. 823(f) and 824, for reason that he is not currently authorized to handle controlled substances in the State of Michigan.

By letter dated November 3, 1997, Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 12, 1997, the Government filed a Motion for Summary Disposition, alleging effective August 18, 1997, the Board of Osteopathic Medicine and Surgery for the State of Michigan (Michigan Board) suspended Respondent's license to practice osteopathic medicine and surgery in Michigan for at least six months and one day. The Government