your firm's investments, or ability to export, sell, or distribute your products or services, or on the prices that you could obtain for those products. Please indicate whether such problem have been getting worse, improving or staying the same. Did you seek intervention from the local government? If so, please describe the results. If not, why not? Are the foreign anticompetitive business practices undertaken by private firms, state-owned enterprises or public monopolies or joint government-private efforts?

2. Are there markets/market segments abroad that you have not attempted to enter or expand in because of perceive restrictive private practices? If so, please explain, with as much detail as possible.

3. Describe foreign governmental practices, if any, that you believe are encouraging, tolerating or in some way facilitating anticompetitive or exclusionary business practices on the part of local firms. Or, for example, have you encountered joint government-private efforts to restrict you from selling or distributing you products or to limit the prices that you could obtain? Or, have you encountered anticompetitive practices by state-owned enterprises acting in their commercial capacity?

4. Does your firm bid for foreign government contracts? If so, have you discovered that competitors engaged in anticompetitive practices, such as bid rigging, to influence the decision process? If so, have you ever sought intervention from the local government? With what results? If not, why not?

5. Do you believe that your firm's products or services are unable to penetrate foreign markets because of structural barriers—e.g., cross-ownership arrangements; constraints on foreign direct investment, including through acquisitions; conglomerate grouping; etc.—that represent problems accessing foreign markets that cannot be addressed by existing international trade or competition policy instrument? Please describe in detail.

Multijurisdictional Merger Review Issues

In the last five years, if your firm has contemplated or completed an acquisition, merger or joint venture with a U.S. or foreign firm which in turn required or would likely have required antitrust notification to one or more foreign competition authorities, please share your perspectives with respect with respect to the following matters.

1. Describe the problems, if any, that arose because of underlying differences in oversight by competition authorities at home and aboard. Consider both procedural and substantive factors—e.g., divergent timing and filing requirements, confidentiality concerns, transaction costs, differences in substantive law, agency procedures, politicization, and conflicts in law. If applicable, please also describe how your approach to addressing these issues (in the content of competition policy) differed from your approach to addressing analogous issues caused by differences in oversight in other legal contexts, i.e., securities laws, tax laws. etc.

2. Identify and policy measures that could be undertaken by U.S. antitrust authorities, acting on their own or in cooperation with foreign authorities, that you believe would help to reduce sources of friction, conflict or burden that arise in the context of mergers, joint ventures or acquisitions affecting or requiring antitrust merger notification in more that one jurisdiction. What new arrangements, if any, are desirable to facilitate resolution of conflicts between reviewing authorities?

Enforcement Cooperation

1. Have you encountered international cartels that disadvantaged your company at home or aboard? If so, how has your company been harmed? Do you have suggestions on how the United States could more effectively deter and prosecute international cartel arrangements?

2. Please comment on those substantive and procedural differences between U.S. and foreign jurisdictions in their approach to the enforcement of antitrust laws that you believe adversely affect your business, or, more generally, the U.S. economy. Comments should address situations including those with respect to actions against hard-core cartels.

3. What benefits or detriments do you believe can be derived from joint or cooperative antitrust investigations by U.S. and foreign competition authorities? In your experience, have joint or cooperative antitrust investigations resulted in noticeably more or less burdensome investigations than in the absence of such cooperation? In responding, please address concerns you may have had in either or both the investigative or litigation contexts.

Questions or comments can be directed to Merit E. Janow, Executive Director, at telephone number (212) 854–1724 or to ICPAC Counsel: Andrew J. Shapiro (for Trade and Competition issues), at telephone number (202) 353–0012; Cynthia R. Lewis (for Multijurisdictional Merger issues), at telephone number (202) 514–8505; or Stephanie G. Victor (for Enforcement Cooperation issues), at telephone number (202) 616–9705.

Please send written replies to: ICPAC, U.S. Department of Justice, Antitrust Division, Room 10011, 601 D Street, N.W., Washington, DC 20530, Facsimile: (202) 514–4508, Electronic Mail: icpac.atr@usdoj.gov.

Merit E. Janow,

Executive Director, International Competition Policy Advisory Committee.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–30]

Robert D. Iver, D.D.S. Continuation of Registration With Restrictions

On August 8, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert D. Iver, D.D.S. (Respondent) of Miami Beach, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AI5413404, and deny any pending applications for renewal of such registration, pursuant to 21 U.S.C. 823(f), 824(a)(2) and 824(a)(4).

By letter dated August 21, 1997, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Fort Lauderdale, Florida on February 3, 1998, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and the Government introduced documentary evidence. After the hearing, only the Government submitted proposed findings of fact, conclusions of law and argument. On April 7, 1998, Judge Tenney issued his Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that the Order to Show Cause be vacated. On April 20, 1998, the Government filed Exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on May 11, 1998, Judge Tenney 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 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Acting Deputy Administrator finds that Respondent graduated from

dental school in 1972 and has been in private practice since 1974. Sometime in 1984 or 1985, Respondent began abusing cocaine and became addicted. According to Respondent he used cocaine approximately every six months.

In March 1998, Respondent was arrested as a result of a shooting incident involving his wife. Respondent testified that he was free-basing cocaine at the time of his arrest. Respondent underwent inpatient evaluation and treatment, during which he admitted to prior sporadic use of cocaine. On or about May 23, 1998, Respondent entered into a contract with Florida's Physicians Recovery Network (PRN) which he completed in June 1993. PRN is a program that monitors impaired professionals and requires that individuals be evaluated and possibly enter drug treatment. The program's monitoring includes random drug screens.

On September 21, 1993, the PRN received a number of calls from Respondent's wife indicating that Respondent was free-basing cocaine. Also on this date, the local police were called to Respondent's residence regarding a domestic violence complaint by Respondent's wife who indicated that she and Respondent had been arguing over Respondent's drug use.

At the hearing in this matter, Respondent's wife testified that Respondent had been drug free since 1988, but she told police that Respondent was using drugs because, ''[t]here's nothing worse for an addict * * * to be using alone * * * and when one party is not using and the other party is, there is a constant battle going on. And this was my battle that evening, as I recall. He wouldn't use with me so I implicated him as using. * * *''

The PRN ordered Respondent to submit to a professional evaluation, and on September 24, 1993, he was admitted to a local hospital for an inpatient evaluation. During that evaluation, Respondent tested positive for cocaine and benzodiazepines. Respondent insisted that he had not ingested any drugs, and later his wife admitted that she had covertly added drugs to his food and drink.

The evaluating physician opined that Respondent was in relapse and recommended that Respondent enter into another contract with the PRN. Respondent began attending Alcoholics Anonymous or Narcotics Anonymous meetings and professional support group meetings, but he refused to enter into another contract with the PRN. According to the medical director of the addiction treatment program at the hospital where Respondent was evaluated, Respondent's refusal to sign a new contract with the PRN was based upon the advice of Respondent's attorney.

On August 2, 1995, local police went to Respondent's residence after receiving a call from Respondent's wife that he had suffered a cocaine overdose. According to an incident report in evidence in this proceeding, Respondent's wife told the officers that Respondent has ''gone crazy.'' The officers discovered Respondent naked and covered in blood. In addition, the officers discovered a cocaine pipe, torch and glass beaker, items that are commonly associated with free-basing cocaine. Respondent was arrested and charged with two counts of misdemeanor battery and one count of misdemeanor possession of drug paraphernalia. On October 17, 1995, Respondent was found guilty in the Dade County Court, Florida, of one count of use, possession, manufacture, delivery, or advertisement of drug paraphernalia and one count of battery following his nolo contendere plea. Adjudication was deferred and he was sentenced to 12 months probation. As part of his probation, Respondent was required to continue to participate in the PRN.

At the hearing before Judge Tenney, Respondent explained that ''[o]n the night of August 2nd, my wife and I had been having a series of tremendous fights and my wife was actively using drugs * * * I came out of the shower and I saw her using, I got very, very upset, I ended up getting severely cut on a mirror, that was blood all over the place. * * *'' He further testified that his attorney advised him to plead nolo contendere to the charges against him since, ''my wife was in treatment for her drug addiction [and] that it would be unwise,, after consulting with the people in the drug addiction program, to pull her out, bring her into court. * * *''

On September 15, 1995, the State of Florida, Agency for Health Care Administration issued an emergency order suspending Respondent's license to practice dentistry. Thereafter, on October 20, 1995, Respondent entered into a second PRN contract wherein he agreed that he would be subject to random unannounced urine or blood screens; that he would abstain from using all mood altering substances; that he would be monitored by a physician; that he would attend Alcoholic Anonymous or Narcotics anonymous meetings and professional support group meetings; and that his wife would also enter a recovery program.

In January 1996, a hearing was held regarding Respondent's Florida dental license. At the hearing, the medical director of the addiction treatment center where Respondent was evaluated and the director of the PRN both testified that Respondent is safe to practice dentistry as long as he is monitored by the PRN and that he poses no danger to the public's health, safety or welfare. On March 13, 1996, the State of Florida, Agency for Health Care Administration, Board of Dentistry (Board) issued a final order regarding Respondent's Florida dental license. The Board reprimanded Respondent; ordered that his dental license would remain suspended until September 14, 1996; and fined him $6,000.00. The Board further ordered that upon reinstatement of Respondent's dental license, his license will be on probation as long as he practices dentistry in Florida. As a condition of his probation, Respondent is required to remain under contract with the PRN.

At the hearing in this matter, Respondent's evaluating physician, who is an expert in the field of additionology, testified that Respondent did not have a full commitment to recovery from 1988 to 1993, but that now, ''[Respondent's] prognosis is very good. He has around him a comprehensive support system that he is utilizing.'' According to the physician, Respondent is no longer in denial, he is in the middle stage of recovery, and he has a 90% chance of not relapsing.

Respondent testified before Judge Tenney that in dealing with his addition since August 1995, he has ''put my program back into full swing.'' He attends approximately four to five Alcoholics Anonymous or Narcotics Anonymous meetings per week, as well as his weekly professional support group meeting and his PRN meeting. According to Respondent, ''[b]eing in recovery had just turned my whole life back around.''

Respondent testified that he needs his DEA registration ''for the health and well-being of my patients.'' He further testified that he has become very conservative in his dispensing of controlled substances as a result of his training through the PRN and his recovery groups, but that there are times that he needs controlled substances to treat his patients.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4),[1] the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

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

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

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

As to factor one, it is undisputed that on September 15, 1995, the State of Florida, Agency for Health Care Administration issued an emergency order suspending Respondent's license to practice dentistry as a result of his use of cocaine. Thereafter, the Board issued a final order on March 13, 1996, regarding Respondent's dental license. The Board continued the suspension of Respondent's license until September 14, 1996, reprimanded Respondent and fined him $6,000.00. As of September 14, 1996, Respondent's Florida dental license was reinstated, but it is on probation as long as he practices in the State of Florida. As part of his probation, Respondent is required to remain under contract with the PRN.

Regarding factor two, there is no evidence in the record regarding Respondent's experience in dispensing or conducting research with controlled substances.

As to factor three, on October 17, 1995, Respondent was found guilty in the Dade County Court, following his nolo contendere plea to one misdemeanor count of use, possession, manufacture, delivery, or advertisement of drug paraphernalia. While adjudication was deferred, this is still considered a conviction for purposes of the Controlled Substances Act. *See* David D. Miller, M.D., 60 FR 54,511 (1995); David W. Davis, D.O., 60 FR 45,739 (1995).

Regarding Respondent's compliance with laws relating to controlled substances, it is undisputed that prior to 1988, Respondent unlawfully possessed and used cocaine.

As to factor five, the Government contends that Respondent has a history of chemical dependency and drug abuse, and did not sustain his earlier recovery, relapsing in 1993. However, the Acting Deputy Administrator notes that the testimony indicates that Respondent has been drug-free since 1988, and the 1993 relapse resulted from Respondent's wife putting drugs in his food and drink. Respondent himself admits that he suffered an ''emotional relapse'' in 1993, and ''slipped out of [the] program.'' When asked what is different about his recovery now from his recovery in 1998 to 1993, Respondent testified that ''I've committed to a lifetime contract with the PRN, no five years, it goes forever. And it's opened up all new avenues for me for recovery and I think that the first time around was more of, 'Let me have this goal of five years,' because that's what they had set for me. Now it's the rest of my life.'' Respondent's evaluating physician testified that Respondent's prognosis for continued recovery is very good given his strong support system.

Judge Tenney found that given Respondent's prior drug use, the Government has presented a prima facie case for revocation of his DEA registration. However, Judge Tenney found that this case ''is close.'' Judge Tenney noted that Respondent is in the middle of recovery, his expected chance of recovery is in the 90% range, and he is participating in the PRN. Judge Tenney relied heavily on the testimony of Respondent's evaluating physician, who is an expert in the field of addictionology, and ''concluded that the 'public interest' would not be prejudiced by allowing Respondent to continue in practice.'' Judge Tenney recommended that the Order to Show Cause be vacated.

The Government filed exceptions to Judge Tenney's recommendation arguing that ''[i]f the Deputy Administrator decides that the registration of Respondent would be in the public interest[,] * * * 'conditions' upon such registration would be of benefit to the DEA regulatory process.'' The Government contends that ''since Respondent is in the midst of a second recovery, * * * more tangible assurances of his progress ought to be available to the DEA rather than to simply issue an unrestricted registration.''

The Acting Deputy Administrator agrees with Judge Tenney that revocation of Respondent's registration would not be appropriate. But, the Acting Deputy Administrator does not agree with Judge Tenney that the Order to Show Cause should be vacated. The Order to Show Cause notified Respondent of his opportunity to contest the proposed revocation of his DEA registration. Respondent availed himself of this opportunity which resulted in the hearing in this matter, and ultimately this final order. Therefore, since proper administrative procedures have been followed, there is no basis to vacate the Order to Show Cause.

However, the Acting Deputy Administrator agrees that it would be in the public interest to allow Respondent to maintain his DEA registration. According to Respondent's expert witness, Respondent's prognosis for continued recovery is ''very good.'' In addition, as long as he practices in Florida, Respondent will be closely monitored by the PRN.

But, the Acting Deputy Administrator also agrees with the Government. Respondent had a serious drug abuse problem, and by his own admission, will be in recovery for the rest of his life. Subjecting Respondent's registration to some restrictions ''will allow the Respondent to demonstrate that he can responsibly handle controlled substances in his medical practice, yet simultaneously protect the public by providing a mechanism for rapid detection of any improper activity related to controlled substances.'' See Michael J. Septer, D.O. 61 FR 53,762 (1996); Steven M. Gardner, M.D., 51 FR 12,576 (1986).

Therefore, the Acting Deputy Administrator concludes that Respondent's DEA Certificate of Registration should be continued subject to the following conditions for three years from the effective date of this final order.

(1) Respondent shall remain under contract with Florida's Physicians Recovery Network for at least three years from the effective date of this final order. Should Respondent seek to transfer his DEA registration to another state, Respondent shall enter into a similar contract in that state.

(2) Respondent shall submit or cause to be submitted, copies of the reports regarding his random urine and/or blood screens to the Special Agent in

[1] Both the Order to Show Cause and the issue set forth in the Prehearing Ruling cited 21 U.S.C. 824(a)(2) as another ground for revocation in this matter. It appears from testimony at the hearing and the posthearing filings that the Government is no longer pursuing revocation under 21 U.S.C. 824(a)(2).

Charge of the DEA Miami Field Division, or his designee.

(3) Respondent shall not prescribe or otherwise dispense controlled substances for himself or his immediate family members.

(4) Respondent shall maintain a log of his handling of controlled substances. At a minimum, the log shall include the date that the controlled substance is prescribed, administered or dispensed, the name of the patient, and the name, dosage and quantity of the substance prescribed, administered or dispensed. The log shall be sent on a quarterly basis to the Special Agent in Charge of the DEA Miami Field Division, or his designee.

(5) Respondent shall inform the Special Agent in Charge of the Miami Field Division, or his designee, of any action taken by any state regarding his medical license or his authorization to handle controlled substances. This notification must occur within 30 days of the state action.

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 AI5413404, previously issued to Robert D. Iver, D.D.S., be renewed and continued subject to the above described restrictions.

This order is effective November 20, 1998.

Dated: October 14, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–28175 Filed 10–20–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–31]

Sandra J.S. Tyner, M.D.; Revocation of Registration

On August 1, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Sandra J.S. Tyner, M.D. (Respondent) of Grants Pass, Oregon notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration AS9530533, under 21 U.S.C. 824(a)(1) and (a)(4) and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent falsified two DEA renewal applications filed in 1995 by failing to indicate that the Oregon State Board of Medical Examiners (Board) had taken action on several occasions against her license to practice medicine. In addition, the Order to Show Cause alleged that in 1996, the Board suspended her medical license based upon her failure to undergo a psychiatric evaluation and upon her proclivity to abuse controlled substances. The Board subsequently reinstated her medical license and placed it on probation.

By letter dated August 26, 1997, Respondent, through counsel, requested a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. In the midst of prehearing procedures, Respondent's counsel indicated that Respondent's medical license had been suspended since October 21, 1997. Thereafter, on January 30, 1998, the Government filed a Motion for Summary Disposition alleging that Respondent is no longer authorized to handle controlled substances in Oregon, the state where she is registered with DEA. On February 20, 1998, Respondent filed a response to the Government's motion against arguing that the suspension of Respondent's medical license is temporary and that the regulations do not provide for summarily terminating Respondent's DEA registration under these circumstances.

On May 12, 1998, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in Oregon; granting the Government's Motion for Summary Disposition; and recommending the Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on June 22, 1998, 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, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that on October 21, 1997, the Board issued an emergency suspension order regarding Respondent's license to practice medicine in Oregon after it was determined that she had discontinued treatment with a psychiatrist and she was self-prescribing controlled substances in violation of a previous Board order. A letter in the record dated January 22, 1998, from the Chief Investigator of the Board indicates that Respondent's medical license was still suspended as of that date.

While Respondent argues in her response to the Government's motion that her suspension is temporary, she does not deny that she is currently without authorization to handle controlled substances in Oregon. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the state in which she conducts her 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 Respondent is not currently authorized to practice medicine in Oregon. It is reasonable to infer that because Respondent is not authorized to practice medicine, she is also not authorized to handle controlled substances in Oregon. Since Respondent lacks this state authority, she is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. It is well-settled that when no material fact is involved, or when the material facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not required. Congress did not intend administrative agencies to perform meaningless tasks. *Gilbert Ross, M.D.,* 61 FR 8664 (1996); *Philip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.,* 44 F2d 432 (9th Cir. 1971). Here, there is no dispute concerning the material fact that Respondent currently lacks state authority to handle controlled substances in Oregon.

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 AS9530533, previously issued to Sandra J.S. Tyner, M.D., be, and it hereby is revoked. The Acting Deputy Administrator further orders that any pending applications for