17. Nueces River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a 5-year deferment of payments. Received approval of the BON from the Commissioner and a public notice has been printed in the Corpus Christi Caller-Times. Contract amendment for deferment and extension of repayment obligation has been executed.

25. Green Mountain Project, Colorado: Historic user pool surplus water for municipal recreation. This agreement is with the City of Grand Junction, City of Fruita, and the Town of Palisade. Contract has been executed.

32. Virginia L. and Earl K. Sauerwein (Individual), Shoshone Project, Buffalo Bill Dam, Wyoming: Exchange water service contract not to exceed 100 acre-feet of water to service 126 acres. Contract has been executed.

36. Tom Green County and Improvement District No. 1, San Angelo Project, Texas: The District has requested a deferment of its 2001 construction payment. Received approval of the BON and delegation of authority to execute an amendment for deferment of the 2001 construction charge installment from the Commissioner. A public notice has been printed in the San Angelo Times. Contract amendment for deferment of the 2001 repayment obligation has been executed.

Dated: July 31, 2001.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 01–19556 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–448]

Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') in the above-captioned investigation terminating the investigation as to respondent Rain Bird Manufacturing Corporation (''Rain Bird'') on the basis of a settlement agreement reached between complainant L.R. Nelson Corp. (''Nelson'') and Rain Bird.

FOR FURTHER INFORMATION CONTACT: Laurent de Winter, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–708–5452. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-Line) at http://dockets.usitc.gov/eol.public. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain oscillating sprinklers, sprinkler components, and nozzles, on February 9, 2001. 66 FR 9721. On June 26, 2001, Nelson moved, pursuant to 19 U.S.C. 1337(c) and Commission rule 210.21(a), to terminate the investigation with respect to Rain Bird, asserting that it had reached a settlement agreement with Rain Bird regarding the alleged infringement of the patent in controversy, U.S. Letters Patent 6,036,117.

On July 9, 2001, the presiding ALJ issued an ID (Order No. 11) terminating the investigation as to Rain Bird on the basis of the settlement agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission rule 210.42 (19 CFR 210.42).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

Issued: July 31, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–19592 Filed 8–3–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of Rosalind A. Cropper, M.D.; Grant of Application

On June 15, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rosalind A. Cropper, M.D. (Respondent), proposing to deny her pending application for a DEA Certificate of Registration in the State of Tennessee, pursuant to 21 U.S.C. 823(f), and revoke her DEA Certificate of Registration (BC0747381, as a practitioner in the State of Louisiana, under 21 U.S.C. 823(f), 824(a)(1) and 824(a)(4), on the grounds that her registration would be inconsistent with the public interest. The Order to Show Cause alleged, in substance that:

(1) Between September 1991 and May 1992, Respondent dispensed methadone, a Schedule II controlled substance, to drug-dependent persons for detoxification or maintenance treatment without being registered as a narcotic treatment program as required pursuant to 21 U.S.C. 823(g).

(2) Respondent entered into a Memorandum of Agreement (MOA) with DEA, effective between July 11, 1995, and July 10, 1998, in which she agreed to maintain a log of all methadone that she prescribed, dispensed, or administered and to send a copy of such log to the DEA New Orleans Field Division quarterly. In this MOA Respondent also agreed to notify DEA quarterly if she did not prescribe, dispense, or administer any methadone. While and after this MOA was in effect, Respondent failed to send any copies of any log or to otherwise notify DEA of any activity pertaining to her handling or not handling methadone.

(3) On April 22, 1992, the State of Louisiana Methadone Authority, Division of Alcohol and Drug Abuse, Office of Human Services, Department of Health and Hospitals (Methadone Authority) denied Respondent's application of September 12, 1991, to operate a Methadone Treatment Program.

(4) Respondent knew or should have know that DEA, effective May 10, 1995, denied her application, dated September 6, 1991, to be registered as a Narcotic Treatment Program pursuant to a final order issued by the DEA Deputy Administrator, 60 FR 18143 (1995).

(5) Respondent materially falsified an application for a DEA Certificate of Registration dated February 2, 1998, by indicating that she never had a Federal

controlled substance registration denied or restricted and that she never had a State professional license denied, based upon the actions taken by the Methadone Authority and DEA as set forth above.

Respondent filed a timely request for a hearing on the issues raised in the Order to Show Cause. Following pre-hearing procedures, a hearing was held before Administrative Law Judge Mary Ellen Bittner in Memphis, Tennessee, on January 11 and 12, 2000. At the hearing, both parties called witnesses and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument. On May 24, 2000, Judge Bittner issued her Opinion and Recommended Ruling, recommending that Respondent's application for DEA registration be granted. On June 13, 2000, the Government filed Exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge. On July 11, 2000, counsel for Respondent filed a Motion for Leave to Withdraw that was granted by Judge Bittner by a Ruling dated July 24, 2000. On July 17, 2000, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Acting 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 Administrator adopts in full, the Recommended Ruling and Findings of Fact of the Administrative Law Judge. The Acting Administrator adopts the Conclusions of Law set forth by the Administrator Law Judge, except with regard to the evidentiary ruling set forth below. 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 of law.

The first issue that will be addressed is the evidentiary ruling. At the hearing, the Government introduced testimony that two patients from a narcotic treatment program were transferred to Respondent for the treatment of narcotic addiction. Respondent's counsel objected to this testimony on the basis of the ''best evidence rule,'' as codified by Rules 1002, 1003, and 1004 of the Federal Rules of Evidence, arguing that the best evidence of this purported transfer would be the records of the narcotic treatment program. The Acting Administrator finds that Judge Bittner correctly admitted the testimony, but reaches this conclusion for different reasons.

In her analysis regarding the admissibility of this testimony, Judge Bittner found that ''[t]he Federal Rules of Evidence (with the exception of those pertaining to hearsay) generally apply to these proceedings.'' The Acting Administrator disagrees, and finds instead that the Federal Rules of Evidence (FRE) do not apply directly to these proceedings, based on the following analysis.

In *Klinestiver* v. *Drug Enforcement Administration,* 606 F.2d 1128 (D.C. Cir. 1979), the court addressed *inter alia* issues concerning the admissibility of evidence in DEA's administrative proceedings. In the context of petitioner's argument that DEA's decision was improperly based exclusively on hearsay testimony, the court found with regard to 21 CFR 1316.59(a), governing the admission of evidence in these proceedings, that ''[t]he history of this regulation convinces us that DEA never intended to bind itself to a higher standard of admissibility than that prescribed by the Administrative Procedure Act, 5 U.S.C. 556(d), which permits the introduction of 'any oral or documentary evidence.' '' The *Klinestiver* court then held ''that nothing in 21 CFR 1316.59(a) requires DEA to limit admissible testimony to that which would be acceptable in a jury trial or under the Federal Rules of Evidence.'' 606 F.2d at 1130. *See also Richardson* v. *Perales,* 402 U.S. 389, 409 (1971); *Calhoun* v. *Bailar,* 626 F.2d 145, 148 (9th Cir. 1980), *cert. denied,* 452 U.S. 906 (1981); *Sinatra* v. *Heckler,* 566 F. Supp, 1354, 1358 (E.D.N.Y. 1983). Thus, unless modified by agency rules, evidence is admitted in administrative proceedings in accordance with 5 U.S.C. 556(d) of the APA, which provides that ''[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.'' 5 U.S.C. 556(d) (2000). *Anderson* v. *United States,* 799 F. Supp. 1198, 1202 (Ct. Int'l Trade 1992). *See, e.g., Puckett* v. *Chater,* 100 F.3d 730, 734 (10th Cir. 1996); *Director of the Office of Thrift Supervision* v. *Lopez,* 960 F.2d 958, 964, n.11 (11th Cir. 1992). The sections governing these proceedings found in 21 Code of Federal Regulations contain no references to the FRE; and 21 CFR 1316.59, governing the submission and receipt of evidence in these proceedings, requires only that admitted evidence be ''competent, relevant, material, and not unduly repetitious.'' The FRE themselves bolster the conclusion that they are inapplicable. FRE Rule 1101, regarding the applicability of the FRE, does not state that the Rules are applicable to proceedings pursuant to the APA. The Acting Administrator therefore finds that the FRE do not apply directly to these proceedings, but may be used for guidance, where they do not conflict with agency regulations. *See Sinatra* v. *Heckler,* 566 F. Supp. 1354, 1358 (E.D.N.Y. 1983).

The Acting Administrator finds as follows. Respondent is a physician. She graduated from MeHarry Medical College (MeHarry) in 1977, completed an internship at a United States Public Health Service Hospital in New Orleans, Louisiana, and then served in the National Health Service Corps for two years. She then returned to New Orleans and completed a residency at the same hospital where she had interned. Following a fellowship at the National Institutes of Health she returned to MeHarry to teach and then studied health policy at Brandeis University. Respondent returned to New Orleans to enter the private practice of internal medicine in 1986, and obtained a DEA registration as a practitioner on December 29, 1986. While in private practice, Respondent was also medical director of Desire Narcotic Rehabilitation Center (Desire), a DEA-registered narcotic treatment program in New Orleans.

Respondent testified that in 1987 or 1988 she became aware of the association between intravenous drug use and HIV/AIDS. At some point, Respondent asked the Desire administration for permission to write a grant application to obtain funding for primary care of HIV-positive substance abusers. Respondent testified that Desire received the funding, but that management decided to spend the money on counseling and other services instead of primary care. As a result, according to Respondent, addicts came to her private practice for medical treatment. Respondent further testified that many of the medical problems these patients presented were associated with HIV/AIDS rather than substance abuse. When Respondent first started treating this population she had 125 patients who were HIV positive; of these, seventy-two had AIDS.

Respondent testified that narcotic treatment centers did not want to become involved in the medical management of patients with HIV. Respondent further testified that there was a reaction between methadone and other medications, and that when she recommended to the management of the center where she worked that HIV-positive patients receive a lower dosage of methadone, ''we began to differ on

how things should be done.'' Consequently, according to Respondent, in 1989 she resigned as medical director, but HIV-positive patients continued to come to her private practice and she needed to treat both their medical conditions and their substance abuse, including withdrawal symptoms. Respondent further testified that she had used methadone as an analagesic to treat patients who were not addicted.

Respondent testified that DEA informed her that it had received anonymous calls from persons who said that she was treating addicts. DEA also informed Respondent that if she was treating these patients she needed to obtain a DEA registration as a narcotic treatment program. Respondent further testified that she no intention of treating addiction, but was willing to obtain the additional license if it was necessary to treat medical patients who were withdrawn.

Respondent also testified that someone from a state agency informed her that she needed to be part of an organization or a corporation in order to become a narcotic treatment program, that she hired an attorney to form a corporation, and that the attorney told her he had formed the corporation Rosalind A. Cropper, Inc. On September 6, 1991, Rosalind A. Cropper, Inc. filed an application for DEA registration as a narcotic treatment program.

A DEA Diversion Investigator (D/I) of DEA's New Orleans Field Division described narcotic treatment programs as facilities that provide methadone or levo-alphacetylmethadol (LAAM) (both of which are Schedule II controlled substances) to persons who are addicted to heroin or morphine-like drugs. The D/I testified that most narcotic treatment programs provide the medications for patients to take home, but that the programs may also administer the medications, i.e. provide them to patients to take while at the clinic.

The D/I testified that DEA coordinates matters concerning narcotic treatment programs with various state agencies because DEA cannot issue a registration without prior state approval. In Louisiana, according to the D/I, DEA coordinates narcotic treatment program registrations with the Department of Health and Hospitals, the State Methadone Authority, and the Division of Narcotics and Dangerous Drugs.

The D/I testified that DEA also works with the federal Food and Drug Administration (FDA), which issues a separate license to narcotic treatment programs; both the FDA license and the state licenses are required for DEA registration. The FDA has also promulgated regulations governing the medical treatment of patients of Narcotic treatment programs with respect to the dosages dispensed to them and the number of ''take home'' doses they are permitted to have. According to the D/I, the only controlled substances that narcotic treatment programs are permitted to use in treating narcotic addiction are methadone and LAAM, and the programs may not dispense these medications by prescription. Methadone is used primarily by narcotic treatment programs to treat narcotic addiction. It is less commonly used to treat severe pain.

The D/I testified that in order to operate as a narcotic treatment program in Louisiana, a physician must have a state medical license, a state controlled dangerous substance number issued by the Department of Health and Hospitals, a separate state controlled dangerous substance number for the narcotic treatment program, and a DEA Registration as a narcotic treatment program. The D/I further testified that the first license required is issued by the Louisiana State Methadone Authority (Methadone Authority), which determines whether it is a need for a narcotic treatment program in the proposed location. According to the D/I, if the Methadone Authority gives its approval, the applicant applies for state controlled substance registration and, after obtaining it, applies to DEA and FDA.

Practitioners who are not registered as narcotic treatment programs may treat addicted patients with methadone only as permitted by 21 CFR 1306.07(b). This provision, known as the ''three-day rule,'' is as follows:

> Nothing in this section shall prohibit a physician who is not specifically registered to conduct a narcotic treatment program from administering (but not prescribing) narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment. Not more than one day's medication may be administered to the person or for the person's use at one time. Such emergency treatment may be carried out for not more than three days and may not be renewed or extended.

Registrants must use official DEA order forms, known as DEA form 222s, to transfer Schedule II or narcotic Schedule III controlled substances to another registrant. A registrant seeking to purchase or otherwise receive these substances must obtain the forms, which are preprinted with that registrant's name, DEA number, and address, from a DEA office. The forms are in triplicate; the receiving registrant fills out the form, send the first two copies to the registrant who is supplying the drugs, and keeps the third copy. When the goods are received, the receiving registrant fills out receipt information on that copy. The supplier lists additional information on the first two copies, keeps the top copy, and send the second one to DEA.

The D/I testified that on August 27, 1991, an anonymous person telephoned the DEA New Orleans office and told her that Respondent was treating him for HIV. The caller also said that Respondent was a drug counselor at the Desire Narcotics Rehabilitation Center, and that Respondent was prescribing medication for Medicaid patients and having the patients fill the prescriptions and then return the medication to her for her to distribute among all her patients. The D/I testified that such a practice would contravene DEA regulations because a prescription may only be authorized for the end user; physicians may not issue prescriptions for general office use.

The D/I testified that the anonymous caller also told her that the prescriptions at issue were being filled at Egle's Pharmacy in New Orleans, gave the name of the pharmacist filling them, and that Respondent had said that the prescriptions must be filled at this pharmacy.

The D/I testified that on September 6, 1991, she received a telephone call from the clinical administrator of the Metropolitan Treatment Center (Metropolitan), a DEA-registered narcotic treatment program in New Orleans. This individual told the D/I that one of the Metropolitan's patients had received a prescription for methadone from Respondent. The D/I testified that patients in narcotic treatment programs are released from the program if they receive methadone from an outside source. That same day the D/I faxed the pharmacist at Egle's Pharmacy a copy of 21 CFR 1306.07, quoted above.

Also on September 6, 1991, as noted above, Respondent executed an application for registration as a narcotic treatment program in the name of Rosalind A. Cropper, Inc. The application requires the applicant to list its FDA approval number; respondent wrote ''pending.'' The applicant also requires the applicant to list the ''Current State License Number for the State in which you are applying for Registration;'' Respondent listed her Louisiana practitioner's controlled substance license number.

On September 20, 1991, two DEA D/I's visited Egle's Pharmacy and spoke to the previously identified pharmacist.

The pharmacist told the investigators that Respondent had faxed him a methadone prescription but that he did not fill it because he had learned that Respondent was not registered to operate a methadone treatment program. The pharmacist also said that Respondent had given him a list of ten patients she intended to treat for narcotic addiction and told him that she believed she could write methadone prescriptions for this purpose.

On October 3, 1991, a D/I sent Respondent a copy of DEA's regulations pertaining to registration of practitioners, security, narcotic treatment programs, recordkeeping, and order forms. On October 28, 1991, Respondent telephoned the D/I and said that her security system had been installed and she was ready for DEA to inspect her office. However, on November 7, 1991, the FDA informed the D/I that neither it nor the Methadone Authority had received an application from Respondent.

On November 12, 1991, Respondent left a message for the D/I asking the status of her DEA application. The D/I returned the call the next day and told Respondent that the FDA and the Methadone Authority did not have applications from her. On November 19, 1991, Respondent called the D/I again and said that she did not need a state license to operate a narcotic treatment program because she was already licensed by the state as a practitioner. The D/I testified that she advised Respondent that her state license as a practitioner could not be used to operate a narcotic treatment program and that she needed a separate state license for that purpose.

The D/I testified that on January 15, 1992, Respondent again called her and said that someone at the Louisiana Department of Health and Hospitals had advised her that she did not need to obtain a state license. The next day, the D/I called both the FDA and the Methadone Authority. According to the D/I, the person she talked to at the FDA told her that it had received an application from Respondent, but that the application was incomplete. The FDA also sent the D/I a copy of a letter that the FDA had sent to Respondent on December 6, 1991, advising her of the omissions in her application. The D/I also spoke with the head of the Methadone Authority, who said that his agency had not received an application from Respondent.

On March 31, 1992, Respondent called the D/I to advise that she had received a state license, a copy of which she faxed to the D/I. This license, in evidence as a Government exhibit, was issued by the State of Louisiana Department of Health and Hospitals to Rosalind Cropper, Inc., ''to operate substance abuse treatment,'' and was effective from March 28, 1992, until March 31, 1993. The D/I testified that this license applied to general substance abuse programs, but that only the Methadone Authority could license an applicant to operate a narcotic treatment program. On April 6, 1992, the D/I confirmed with the Methadone Authority that it had not issued any license to Respondent.

On April 10, 1992, Respondent again telephoned the D/I, who told Respondent that the Methadone Authority, had advised the D/I that it had not issued the March 28, 1992 license. Respondent then sent the D/I a letter dated March 30, 1992, and addressed to Respondent from the Director of the Department of Health and Hospitals. In that letter, the Director advised Respondent that ''our records indicate that you provide the following services: Methadone treatment.''

The D/I contacted the Methadone Authority again on April 20, 1992. In that conversation, the head of the Methadone Authority stated that the March 28, 1992, license had been ''pulled,'' and that he had telephoned Respondent and left a message for her, but she had not returned his call. Also on April 20, the D/I contacted the FDA and advised that Respondent had not received a license from the Methadone Authority and that DEA would therefore not process her application.

By letter dated April 22, 1992, the Assistant Special Agent in Charge of DEA's New Orleans Field Division advised Respondent that the application for registration of Rosalind Cropper, Inc., ''cannot be processed due to your failure to obtain state registration.'' The letter noted that, ''According to the Louisiana Department of Health and Hospital's Office of Mental Health, Alcohol and Drug Abuse, now new narcotic treatment programs will be approved due to the fact that several treatment programs are open in the New Orleans area and these programs are not filled to capacity.'' The letter further requested Respondent to withdraw the application for DEA registration.

On April 22, 1992, the head of the Methadone Authority wrote to both the Director of the Department of Health and Hospitals and to the Program Manager of the Controlled Dangerous Substances section within the Department of Health and Hospitals, that he understood that their office had issued Respondent a license to operate a methadone treatment facility. The head of the Methadone Authority stated that the Standards Manual for Licensing Alcohol and Drug Abuse Programs required Respondent to file an application ''simultaneously and in triplicate to the Food and Drug Administration and to the designated State Methadone Authority,'' but that his office had not received the necessary paperwork. Consequently, the head of the Methadone Authority asked the Department of Health and Hospitals to revoke the license that department had issued.

Also on April 22, the Program Manager wrote to the head of the Methadone Authority advising that he had not issued Respondent a license to operate a methadone clinic. The Program Manager stated that his office had completed its on-site inspection and credential verification procedures, but that ''we were holding [Respondent's] application as pending until we received verification of the required Jurisdictional Approvals.'' He attached a copy of a letter he had written to Respondent, explaining that he was returning her application because her facility was required to be ''Licensed and in good standing with Jurisdictional approvals from all Agencies/Authorities concerned,'' and that she could reapply when she had obtained the necessary approvals.

On April 29, 1992, Respondent called DEA's New Orleans Office and spoke to the D/I and her supervisor. Respondent said she did not want to withdraw her application and so the order to show cause process was explained to her. The D/I's supervisor also explained that DEA sought to deny Respondent's application because she did not have the requisite state licensure. Respondent replied that she would welcome a hearing so that she could publicize the problems of HIV-positive patients who were taking methadone. According to the D/I, Respondent acknowledged in that conversation that she was using methadone to treat narcotic addicts who were suffering from AIDS, and also admitted that she did not have a license to do so. Respondent further admitted that the D/I had advised her not to use the ''three-day rule'' to operate a narcotic treatment program without a license.

On May 4, 1992, the D/I, her supervisor, and the Assistant Special Agent in Charge met with Respondent and Respondent's partner. Respondent and her partner expressed concern about the process Respondent was required to undergo to obtain registration as a narcotic treatment program and about whether DEA was being pressured by outside sources to deny her application. The D/I's

supervisor explained that in order to operate a narcotic treatment program in Louisiana four licenses were required: From the Methadone Authority, the Division of Narcotic and Dangerous Drugs (the agency that issued a state controlled substance registration number), the DEA, and FDA, respectively. The D/I explained that all applicants for registration as a narcotic treatment program would be subject to the same requirements. The Assistant Special Agent in Charge agreed to allow Respondent more time to comply with the various state requirements, and Respondent said that she would not order methadone again until she was authorized to operate a narcotic treatment program.

On May 15, 1992, the D/I served an administrative subpoena on the pharmacist in charge at Eagle's Pharmacy, seeking documents, including order forms, prescriptions, and invoices, reflecting Respondent's transactions involving controlled substances with the pharmacy. The pharmacist responded to the subpoena three days later, providing five order forms for methadone tablets and/or liquid that Respondent executed between November 5, 1991, and January 1992. A sixth form is dated May 5, 1992, and shows that same date as the date shipped.

On June 28, 1992, the D/I again called the Methadone Authority and asked if an application from Respondent had been received; the response was negative.

On September 8, 1992, the D/I was informed by two other DEA D/I's that two patients from the Oscar Carter Memorial Rehabilitation Center (Oscar Carter), a DEA-registered narcotic treatment program in New Orleans, had been transferred to Respondent for treatment of narcotic addiction. The investigators advised that these patients had been transferred on September 6 and October 16, 1991, respectively.

Subsequently, on October 15, 1992, Respondent wrote to the Assistant Special Agent in Charge, enclosing a copy of an application dated September 12, 1991, to operate a methadone clinic. The application is on a preprinted form that states it is addressed to the ''Louisiana DHH, Division of Licensing and Certification, Controlled Dangerous Substances.'' In the letter, Respondent advised that the Department of Health and Hospitals had not responded to the application until October 12, 1992, and that she therefore asked the DEA New Orleans office to keep her DEA application active until the state had time to review her response.

Respondent testified that although she initially thought that the corporation would need a separate DEA number, DEA informed her that this was not the case, but ''that the physician's DEA number needed to be registered with the request to do narcotic treatment.'' Respondent further testified that DEA sent her another application form and that:

> It was not my understanding that the application was to file for a second DEA number. And, in fact, I remember specifically that [the D/I's supervisor] told me that a DEA number is issued for the person and not for the facility. And that a facility would not get a number, but it would be issued to the physician or the practitioner. And because as a practitioner I already had a number, I did not need a second number.

Consequently, Respondent listed her practitioner's number on the form she executed September 6, 1991. Respondent testified that she was told she needed a state controlled substance registration for the corporation and a dispensing license as a medical practitioner from the Medical Board, and that she applied for the dispensing license within a month after she submitted the DEA application. Respondent also testified that it was as not her understanding that the Methadone Authority ''would issue me a license. It was may understanding that they would clear me to get a controlled substance license.'' Respondent further testified that her application to state officials was never denied, but that she stopped pursuing her efforts to open a narcotic treatment program.

Respondent further testified that after she filed the September 1991 application with DEA, she continued to receive calls from DEA claiming that she was operating as a methadone treatment program without being registered to do so. Her response to DEA was that she had filed the application and was waiting to go through the requisite procedures. Respondent testified that later she was informed that she needed to apply to both the FDA and the state, that she filed an application with the FDA, and ''then [the FDA] said, well, everything looks good, but we haven't heard from the state. The state then received a copy of exactly what I sent to the FDA, and then everything went haywire.''

Respondent testified that she recalled receiving and responding to the December 6, 1991, letter from the FDA, and that in reply to her response, FDA told her she had satisfactorily addressed its concerns, but still needed approval from the Methadone Authority. Respondent testified that in consequence she met with the head of the Methadone Authority, two members of the city council, and other state personnel sometime in 1992. According to Respondent, state personnel insisted that ''they'' had not received her application, although the person at the Methadone Authority who took possession of the application confirmed he had in fact received it. Respondent further testified that the head of the Methadone Authority said he would get back to her, but never did. Respondent also testified that although she did not specifically recall receiving the Department of Health and Hospitals' April 22, 1992, letter, she did recall receiving the application back.

With respect to the May 4, 1992, meeting with DEA personnel, Respondent testified that her communication with the D/I had been poor, and Respondent's partner suggested that they meet with the D/I and her supervisor. Respondent testified that at the meeting the parties discussed her suing methadone to treat substance abusers with AIDS, and that she said she understood that unless she obtained a dispensing license she could treat these patients with methadone only for three days and only in her office. Respondent further testified that the D/I's supervisor agreed that there had been some confusion as to how the application should be handled, and that he suggested some additional steps Respondent should take. He also agreed to give Respondent more time to take those steps.

Respondent acknowledged that from November 1991 until perhaps March 1992 she used DEA order forms to obtain methadone from Egle's Pharmacy, testifying that she did so because she needed methadone to treat patients who came to her office needing emergency care. Respondent testified that she never provided methadone to a patient to take home, but that she did administer methadone to patients in her office, with the understanding that she could do so for no more than three days at a time. When asked whether methadone was ''something that you either prescribed or dispensed or administered to [patients] for either HIV and/or their opiate addiction,'' Respondent replied, ''If I did, it would be no more than for three days and under emergency situations in the office.''

Respondent further testified that she had a standing order to purchase methadone from Egle's Pharmacy: Her practice was to advise the pharmacist that she needed enough methadone to care for a specific number of patients and to give him signed forms in blank; when the pharmacist was able to obtain

the methadone, he filled in the form and ordered the methadone. Respondent denied requesting any methadone after the May 4 meeting with DEA personnel, and testified that she would given the order form dated May 5, 1992, to the pharmacist at least a week or two earlier.

On August 31, 1994, the Deputy Assistant Administrator of DEA's Office of Diversion Control issued an Order to Show Cause to Respondent and to Rosalind Cropper, Inc., seeking to revoke Respondent's DEA registration as a practitioner in Louisiana to deny Rosalind Cropper, Inc.'s application for registration as a narcotic treatment program.

On April 3, 1995, the then-Deputy Administrator of DEA issued a final order denying the application of Rosalind Cropper, Inc., on grounds that the applicant did not have authority from the FDA to dispense controlled substances. In the meantime, on December 6, 1994, the Methadone Authority recommended to FDA denial of Respondent's application for approval of a narcotic treatment program, and on December 16, 1994, the FDA wrote to Respondent advising that because the Methadone Authority had denied Rosalind Cropper, Inc.'s application, the FDA could not approve it. Respondent testified that she did not remember receiving this letter.

On July 11, 1995, Respondent and the DEA entered into a Memorandum of Agreement in lieu of further proceedings to revoke Respondent's DEA registration as a practitioner. The agreement provided that DEA would renew Respondent's registration subject to Respondent's agreement to, among other things: (1) Abide by all federal, state, and local statutes and regulations relating to controlled substances, with specific reference to 21 CFR 1306.07; (2) maintain a legible log of all methadone prescribed, dispensed, or administered, including information as to the date, the name and address of the patient, the name of the controlled substance, the strength and dosage, the form, the reason for prescribing, administering, or dispensing the methadone, and refills (if any); (3) send a copy of the log quarterly to the D/I or any of her successors at Diversion Section, New Orleans Field Office, Drug Enforcement Administration, 3838 North Causeway Blvd., Suite 1800, Three Lakeway Center, Metairie, Louisiana 70002; and (4) notify DEA if she did not prescribe, dispense or administer methadone during a particular quarter.

The Memorandum of Agreement also stated that it would remain in effect for three years after the last party to the agreement signed it and that Respondent understood that any violation of its terms could result in proceedings to revoke her DEA registration.

Respondent testified that when she received the 1994 Order to Show Cause she retained counsel, that she did not realize that the order applied to her practitioner registration as well as the application for a narcotic treatment program, and that with respect to the latter, ''in all actuality, after May of '92, because of the problems and situation, I kind of just didn't bother with it anymore.'' Respondent further testified that she was not aware of the final order denying Rosalind Cropper, Inc.'s application until her present counsel told her about in November 1999.

Respondent testified that she understood that because she had not completed all of the necessary applications for the narcotic treatment program, DEA ''closed the case and didn't process that application.'' Respondent testified that she also understood that if she agreed to no longer pursue registration as a narcotic treatment program, DEA ''would go ahead and issue * * * the renewal of my DEA number * * * And that if I had the need to * * * use methadone in any way within my practice, I would document and * * * send that information on or have it made available to [the D/I].''

In support of this testimony, Respondent introduced into evidence an affidavit from Kern Reese, the attorney who represented her in the 1994 show cause proceeding. Mr. Reese stated that he had no recollection of sending Respondent a copy of or discussing with her ''the decision in Docket No. 94–76, denying Rosalind A. Cropper, Inc.'s application for a DEA Certificate of Registration as an NTP.''

One of the issues in this proceeding is whether Respondent submitted the logs required by the 1995 Memorandum of Agreement. There are logs in evidence covering all the calendar quarters encompassed by the Memorandum of Agreement except the third quarter of 1995. As to that quarter, Respondent introduced into evidence a cover page, but testified that she could not find the actual log. The Government contends that DEA never received any of these logs.

The D/I's supervisor submitted an affidavit dated December 13, 1999, in evidence as a Government exhibit. The affidavit states that memoranda of agreement often included a requirement that registrants deliver reports to DEA's New Orleans Field Division. The affidavit further states that such reports were routinely given to the DEA diversion investigator to whom they were addressed or, if the addressee could not readily be determined from the envelope or the face of the report, the New Orleans Field Division's mail unit would open the letter or package and determine the section to which the document should be delivered. The affidavit also states that any correspondence pertaining to a case involving a registrant, whether the case was open or closed, would not be discarded or destroyed, although it might be archived after ten years from the date the case was opened. Finally, the affidavit states that the supervisor had never seen the methadone logs described above until he was asked to review them in the course of making the December 1999 affidavit.

The Diversion Group Supervisor at the New Orleans Field Division as of the date of the hearing also submitted an affidavit, dated December 10, 1999, and in evidence as a government exhibit. The current supervisor stated that he had reviewed files pertaining to Respondent and that these files did not contain any of the logs that Respondent was required to send. The current supervisor further states that he had never seen any of the logs described above.

Similarly, the D/I testified that she had never seen these logs until counsel for the Government faxed them to her on November 17, 1999. The D/I further testified that a review of the New Orleans Field Division's computer records did not disclose any report of the receipt of any of these logs, and that she also reviewed all the files in the office pertaining to Respondent and the logs were not in them.

The D/I testified that in her experience, memoranda of agreement generally required registrants to maintain logs at their offices and that DEA investigators inspected these logs on site, and that she had never before had a registrant mail reports or logs to her.

Respondent testified that she had a computerized reminder for when she was supposed to generate the logs, that she maintained and sent every log that was required, and that she mailed all of them herself. Respondent further testified that she established a system, had all of her prescriptions made in duplicate, and devised a format so that the log would reflect the information she was supposed to provide.

As noted above, some of the log cover sheets were undated. Respondent testified that she failed to date some of the cover sheets because during periods when she did not handle methadone she

did not pay is much attention to the log. Respondent acknowledged, however, that some of the undated cover sheets pertained to logs for periods when she did handle methadone.

Respondent further testified that she understood that if the New Orleans DEA office did not receive her logs, someone from that office would notify her.

Respondent testified that from 1995 through 1998 she was in private practice and saw approximately thirty to fifty patients daily. She had received a grant to do early intervention treatment of patients with HIV/AIDS and worked with a local hospice program and with the state health department on a tuberculosis prevention program. Respondent testified that she did not handle methadone at all after the second quarter of 1998.

In December 1997 Respondent moved to Memphis to work for the Memphis Health Center, a government-subsidized community health center that provides primary medical care to a predominantly poor population. Memphis Health Center operates four facilities, three in Memphis and one in Rossville, Fayette County, Tennessee, about thirty-five miles from Memphis. As of the date of the hearing, Respondent was employed as assistant medical director and director of special programs for the Memphis Health Center, and also practiced as a primary care physician at the Rossville facility.

The chief executive officer of the Memphis Health Center testified that the clinic in Rossville had been in existence for about twenty years and had been operated by Memphis Health Center for about nine years, and that at the time the Rossville clinic opened, Fayette County was one of the poorest counties in the United States. He further testified that Memphis Health Center pays physicians slightly below the market rate and that it is difficult to recruit physicians for clinics located in poor rural areas such as Rossville.

The chief executive officer testified that Memphis Health Center was able to recruit Respondent because she was interested in initiating an AIDS program. He testified that as of the hearing date Respondent's salary was abut $122,000. He further testified that Memphis Health Center is concerned about quality care, productivity, and revenue, that Respondent more than met the health center's productivity and quality standards, and that because Respondent attracted to the practice older people whose care was financed by Medicare, she had also contributed to enhanced revenue.

He testified that Fayette County had a very high incidence of sexually transmitted disease and that the incidence of AIDS was rising. Consequently, Memphis Health Center asked Respondent to help develop an AIDS program. As part of this program, Respondent sees patients in the county jail and also made some home visits. He testified that Respondent had decreased some of her activities in Rossville as a result of her increased responsibilities, but that ''the primary focus for her is Rossville.''

Respondent testified at the hearing that she moved to Memphis because:

> I kind of got tired of fighting. I was the center of almost any controversial issue around HIV/AIDS and substance abusers. The job was becoming very demanding. There was no money hardly because I was in private practice. And * * * a lot of the other programs were going after the grants. And I guess it was battle fatigue. I don't know. I made a decision just to try something else.

Respondent further testified that the Memphis Health Center was trying to develop an HIV/AIDS program and that she could work in that program and not have to manage administrative overhead.

Respondent testified that about twenty-five percent of her patients at the Rossville Health Center were geriatric patients with multiple diseases, that she had fifty-six patients who were in the last stage of HIV/AIDS, and that she worked in an HIV/AIDS intervention program at the Fayette County jail. With respect to the latter group, Respondent testified that since August 1999 she had identified five HIV-positive patients at the jail and had found an additional twelve individuals who were not inmates but became HIV positive from contact with those inmates. Respondent testified that she did not utilize methadone in her work because most of her HIV/AIDS patients derived the virus from sexual contact, not injectable drug use.

On February 2, 1998, Respondent executed an application for registration as a practitioner in Tennessee. Question four of the application form includes line on which the applicant is to list his or her state license number and state controlled substance number: as to both of these queries Respondent checked the box marked ''not applicable.'' Respondent explained at the hearing that she did not fill in a state controlled substance number because Tennessee does not require a separate controlled substance registration. Respondent further testified that she thought the reference to a state license number was to a dispensing license, which she did not need, and not to her medical license.

The application form also includes, among other things, the following questions, each followed by boxes labeled ''yes'' and ''no'' respectively: ''4.(c). Has the applicant ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted, or denied? 4.(d). Has the applicant ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?''

Respondent checked the ''no'' box for both of these questions. The application form also directs the applicant to explain any affirmative answer to these questions on the reverse of the form; Respondent did not do so.

Respondent testified that she had never surrendered a federal controlled substance registration or had one revoked, suspended, restricted or denied. Respondent testified that she did not consider that the denial of her 1991 application came under the purview of question 4.(c). because of ''[t]wo things. It didn't appear to me to be an application for a DEA number. And, secondly, it wasn't for Rosalind Cropper—me as a practitioner. It was for what I thought was permission to do a narcotic treatment on my DEA number, which was not restricted.''

Respondent further testified that as far as state action on that application was concerned, she understood:

> that I needed to resubmit that once I had gone through whatever the Methadone Authority wanted me to do * * * and if that was approved, then they would have no problem giving me an additional number for Rosalind Cropper, Inc. But it was on hold pending completion of some other steps that I later learned I needed to do.

On cross-examination, Respondent testified that she agreed to drop the proceedings on her application for Rosalind, Cropper, Inc., to be registered as a narcotic treatment program. Asked if she ever signed any written indication of that agreement, Respondent testified that she signed an agreement with Mr. Reese that he would act as her agent.

A registration technician in DEA's Atlanta, Georgia, Field Division, stated in an affidavit in evidence as a Government exhibit that on April 3, 1998, Respondent called her and asked the status of her application, and that during this conversation that registration technician was reviewing a databank that revealed derogatory information about Respondent. The registration technician stated that she asked Respondent whether she had had any problems in the past, and Respondent responded in the negative to both questions. Finally, the

registration technician stated that she told Respondent that she would send the application to the DEA Tennessee District Office and that she in fact did so on April 3, 1998.

Respondent testified that in this conversation the registration technician asked if she had any past problems with her DEA number, and that she responded in the negative. Respondent further testified that she did not consider her registration ''restricted'' by the 1995 memorandum of agreement and that she had asked Mr. Reese about the matter and he had said that the requirements to which she agreed were things that every doctor is supposed to do anyway. According to Respondent, she asked Mr. Reese, '''Does this mean that I'm being restricted, denied or should use my license in any different way?' And the answers were 'no.'''' Respondent further testified, ''[a]nd that's the way I interpreted this. That this does not restrict me in any way from doing any other thing other than any other physician could do with a DEA number.''

A diversion group supervisor of DEA's Tennessee District Office testified that on April 6, 1998, Respondent telephoned him and said that the DEA registration clerk in Atlanta had referred her to him to ascertain the status of her DEA registration. The group supervisor told Respondent that applications were not normally forwarded to his office unless there was a problem, and asked her whether she had had any previous difficulties with her DEA registration; Respondent replied in the negative. A D/I of DEA's Tennessee District Office was assigned to investigate the application. The D/I telephoned Respondent on April 29, 1998, and advised her that the Tennessee District Office would recommend denial of her application because she had falsely answered question 4.(c) and thus materially falsified her application. The D/I testified that she explained to Respondent that she should have answered that question in the affirmative because her application for registration as a narcotic treatment program had been denied and because she had entered into a Memorandum of Agreement affecting her registration as a practitioner. According to the D/I, Respondent:

> said that her application was not denied, and that it was a political protest in that the State was requiring here to show a substance abuse problem in the area and that she needed to provide a certificate of need. And she stated that she didn't—she just determined not to proceed with [efforts to obtain the state license for a narcotic treatment program].

Respondent did, however, acknowledge that she had entered into a Memorandum of Agreement with DEA. The D/I testified that she considered the Memorandum of Agreement a restriction on Respondent's registration because it required her to file records with DEA. The D/I acknowledged that she did not receive any information leading her to conclude that Respondent knew that DEA considered this requirement a restriction.

According to the chief executive officer of the Memphis Health Center, revocation of Respondent's DEA registration would have a ''devastating'' impact on Memphis Health Center and its patients. He testified that physicians who work at Memphis Health Center are required to have DEA registrations. Respondent testified that she could not continue her practice in Rossville if her application for DEA registration is denied because she would not be able to provide her patients the care they need.

Pursuant to 21 U.S.C. 824(a)(1) the Acting Administrator may revoke a DEA Certificate of Registration, ''upon a finding that the registrant * * * has materially falsified any application'' for a DEA registration. Pursuant to 21 U.S.C. 824(a)(4), the Acting Administrator may revoke a registration if he determines that the issuance of such registration would be ''inconsistent with the public interest'' as determined pursuant to 21 U.S.C. 823(f). 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 and safety.

As a threshold matter, it should be noted that the factors specified in section 823(f) are to be considered in the disjunctive: The Acting Administrator may properly rely on any one or a combination of those factors, and give each factor the weight he deems appropriate, in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16422 (DEA 1989).

It should be noted that the Acting Administrator may apply the bases of revoking a registration under § 824(a) to the denial of registrations under § 823(f). See Anthony D. Funches, 64 FR 14268 (DEA 1999).

As noted above, 21 CFR 1306.07(b) provides that a physician who is not specifically registered to conduct a narcotic treatment program may administer ''narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment.'' The regulation prohibits administering more than one days' medication at one time and prohibits treating such a person for more than three days.

Certain other regulatory provisions are also relevant in this case: 21 CFR 1306.07(a) generally prohibits registrants from administering or dispensing directly narcotic drugs to treat narcotic addicts unless the registrant is separately registered as a narcotic treatment program; and 21 CFR 1305.06(d) requires that an order form be dated by the person who signed it.

A number of findings in this case turn on credibility determinations: (1) Whether Respondent knew that Rosalind Cropper, Inc.'s application for registration as a narcotic treatment program had been denied; (2) whether Respondent sent methadone logs to DEA's New Orleans office as required by the Memorandum of Agreement; and (3) whether, if so, DEA investigators received those logs.

Based on their demeanor, Judge Bittner found, and the Acting Administrator concurs, that the DEA investigators who testified were credible witnesses. The Acting Administrator therefore concurs with Judge Bittner's finding that none of them received the methadone logs that Respondent purportedly submitted. The Acting Administrator further concurs with Judge Bittner's finding that there is no indication the former Diversion Group Supervisor had any reason to be less than honest in the statements in his affidavit, and that he also did not receive the logs in question.

Although the investigators who should have received the logs did not, the question remains whether Respondent sent them. Judge Bittner found the Respondent a difficult witness who frequently gave nonresponsive answers to questions. Having considered Respondent's demeanor, Judge Bittner found that she was credible. The Acting Administrator finds, however, that there is insufficient evidence in the record to determine whether or not Respondent sent the log

as she testified. Thus, the Acting Administrator finds insufficient evidence in the record to determine whether or not Respondent failed to comply with the terms of the Memorandum of Agreement.

Finally, on the issue of whether Respondent knew about the denial of Rosalind Cropper, Inc.'s application, the Acting Administrator concurs with Judge Bittner's finding that Respondent credibly testified she did not.

It is undisputed that Respondent answered ''no'' to the question on her 1998 application asking whether the ''applicant'' had ever had a Federal controlled substance registration revoked, suspended, restricted, or denied. Based on the record, the Acting Administrator concurs with Judge Bittner's finding that Respondent did not know that her application had been denied. Therefore, Respondent could not have intentionally falsified the application.

A DEA Certificate of Registration may be revoked or an application denied based upon an unintentional falsification of an application, but a lack of intent to deceive is a relevant consideration in determining whether a registrant or applicant should possess a DEA registration. See Anthony D. Funches, 64 FR 14267 (DEA 1999); Samuel Arnold, D.D.S., 63 FR 8687 (DEA 1998); Martha Hernandez, M.D., 62 FR 61145 (DEA 1997).

In this case, the Respondent consistently testified that she believed she had allowed her DEA narcotic treatment program application to lapse. Indeed, the testimony of one of the Government investigator's, regarding her conversation with Respondent April 29, 1998, corroborated Respondent's testimony in this respect. Judge Bittner specifically found credible Respondent's testimony that she unaware of the denial of the DEA application for a narcotic treatment program; and further found the DEA investigators who testified to be credible witnesses. The Acting Administrator concurs with Judge Bittner's finding that Respondent was unaware of the denial of her DEA narcotic treatment program application, and also concurs that, under the circumstances of this case, this misstatement does not disqualify Respondent from holding a DEA registration.

With regard to factor one of 21 U.S.C. 823(f), it is undisputed that Respondent is authorized by the State of Tennessee to handle controlled substances. Inasmuch as State licensure is a necessary but insufficient condition for a DEA registration, the Acting Administrator concurs with Judge Bittner's finding that this factor is not determinative.

With regard to factor two, the only evidence in the record on this factor pertains to Respondent's handling of methadone. Respondent conceded on cross-examination that between November 1991 and January 1992, she administered methadone to treat patients ''for either HIV and/or their opiate addiction'' in her office, although she insisted that she did so for no more than three days. The Acting Administrator concurs with Judge Bittner's finding that does not appear from the record that this treatment was solely in preparation for referring patients to a treatment program. Respondent also admitted that she issued a few prescriptions for methadone.

Respondent did not admit that she ordered methadone after telling DEA representatives that she would not. As discussed above, Respondent testified that the May 5, 1992, date appeared on an order form because the pharmacist filed in the date when he shipped the order, but that she actually provided the order form to him some time earlier. This practice would contravene the requirement in 21 CFR 1305.06(d) that the order form be dated by the person who signed it.

In light of the foregoing, the Acting Administrator concurs with Judge Bittner's finding that this factor weighs in favor of a finding that Respondent's registration would be inconsistent with the public interest. However, the Acting Administrator further concurs with Judge Bittner's finding relevant that there were very few order forms or prescriptions at issue, and that there was insufficient evidence to determine the number of patients Respondent treated with methadone. The Acting Administrator also notes that Respondent has held a DEA registration as a practitioner since 1986, and the record reflects no additional negative allegations or evidence concerning her dispensing or prescribing practices.

With regard to the third factor, there is no evidence that Respondent has been convicted of violating any laws relating to controlled substances.

With regard to the fourth factor, as discussed above under factor two, Respondent violated 21 CFR 1306.07(a), 1306.07(b), and 1305.06(d).

With regard to the fifth and final factor, the Acting Administrator finds the record contains insufficient information to make a finding whether or not Respondent violated the terms of the Memorandum of Agreement by failing to send in the required quarterly methadone logs. As previously mentioned, Judge Bittner specifically found credible both the DEA investigator's testimony that the logs were never received; and Respondent's testimony that the logs were sent.

The Acting Administrator concurs with Judge Bittner's finding that Respondent violated various regulatory provisions in her handling of methadone in 1991 and 1992. Respondent does not admit that she engaged in any misconduct, and as discussed above, Judge Bittner found her a less than responsive witness. Nonetheless, with some reservations, the Acting Administrator concurs with Judge Bittner's recommendation that Respondent's instant application be granted. It appears that Respondent does not handle methadone in her current position and that she has no need to do so. The Acting Administrator concurs with Judge Bittner's conclusion that Respondent has not shown a full understanding of all the responsibilities of a DEA registrant, as evidenced by the findings pursuant to factors two and four, above. The record shows, however, that, other than these noted violations, Respondent has shown herself to have been a responsible DEA registrant since 1986.

Accordingly, the Acting 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 as a practitioner in Tennessee submitted by Rosalind A. Cropper, M.D., be, and it hereby is, granted, contingent upon a satisfactory criminal history and records check conducted by the DEA Office of Diversion Control regarding possible CSA convictions and/or violations to ensure that Respondent's status with regard to her application has not changed since the date Respondent completed the application. The Acting Administrator hereby further orders that Respondent's DEA Certificate of Registration, BC0747381, be continued in accordance with applicable law and regulations. This order is effective September 5, 2001.

Dated: July 26, 2001.

William B. Simpkins,

Acting Administrator.

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