As to the fourth factor, compliance with State and Federal law and regulations, Dr. Gibbs violated Arizona law by (1) failing to conduct physical examinations before prescribing controlled substances, (2) failing to maintain adequate records on these patients and (3) engaging in conduct that is or might be harmful or dangerous to the health of the patient or the public. See A.R.S. § 32–1401(26)(e), (q) and (ss). Dr. Gibbs also violated Federal regulations by prescribing controlled substances outside the usual scope of his professional practice. See 21 CFR 1306.04(a). Accordingly, the Acting Deputy Administrator finds that factor four weighs against continued registration.

With regard to the fifth public interest factor, such other conduct which may threaten the public health and safety, the Acting Deputy Administrator finds the conduct of Dr. Gibbs discussed under factors two and four, is also applicable under factor five. The large amounts of controlled substance medications prescribed by Dr. Gibbs to individuals without physical examination or adequate consideration of the possibilities for diversion, abuse or adverse effects upon the recipients, all lead to the inevitable conclusion that his activities presented significant risk to public health and safety.

The Acting Deputy Administrator has considered the matters addressed in Dr. Gibbs' written submission but, in determining the weight to be attached to the matters of fact asserted therein, has done so in light of the absence of cross-examination. See 21 CFR 1301.43(d). While his efforts to educate himself regarding ethical and professional responsibilities and the dangers of internet prescribing are laudable, they are mitigated by the fact they were initiated only after Dr. Gibbs became aware of DEA and Board investigations into his conduct and taken in anticipation of or pursuant to state disciplinary proceedings.

The Acting Deputy Administrator is troubled by Dr. Gibbs' apparent continuing assertion that his underlying intent in engaging in internet prescribing was to care for patients who suffered from chronic pain and were unable financially to consult with a physician. This smacks of self-serving and rationalization. To the contrary, the record clearly infers that his prime motivation, from the beginning to the end, was financial gain. At a time when he had just lost accreditation at the hospital where ninety percent of his patient volume was being generated, he readily agreed to associate with two then-strangers who owned an auto parts business. After that relationship terminated, Dr. Gibbs affiliated himself with a second Internet Web site company, which increased his consultation fee from the $20 he had been receiving from Myprivatedoc, to $70 per consult with Medsworldwide. Even this increase was not sufficient, as Dr. Gibbs then formed his own Web site where, until his computers were seized by DEA, he charged $100 to $125 per consult. In sum, given the investigative record, Dr. Gibbs' assertion that his underlying motivation was to serve the public good and relieve pain and suffering, rings hollow.

After considering the totality of the investigative record and Dr. Gibbs' written submission, the Acting Deputy Administrator concludes his continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AG7790644, issued to Marvin L. Gibbs, Jr., M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–5484 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stephen J. Graham, M.D. Revocation of Registration

On August 11, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stephen J. Graham, M.D. (Dr. Graham) of Ketchum, Idaho, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BG0868971 under 21 U.S.C. 824(a) and deny any pending application for renewal or modification of that registration. As a basis for revocation, the Order to show Cause alleged that Dr. Graham is not currently authorized to practice medicine or handle controlled substances in Idaho, his state of registration and practice.

The Order to Show Cause further alleged that Dr. Graham's continued registration was inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). This was based on Dr. Graham's employment by Prescibus, an internet company selling controlled substances and other drugs over the Internet. During the period Dr. Graham worked for Prescibus he issued at least four or five thousand prescriptions over the internet, the majority of which were for controlled substances and not issued in the usual course of professional medical practice. He was alleged to have issued controlled substance prescriptions to individuals with whom he did not have a prior doctor-patient relationship, failed to conduct physical examinations of those customers and did not create or maintain records on them. The only information usually reviewed prior to issuing prescriptions was a questionnaire completed by the customer. Dr. Graham would then have a brief telephone conversation with the customer and did not consult with the customer's primary care physician. Undercover investigators were alleged to have obtained controlled substances prescriptions from Dr. Graham under these circumstances on three occasions. The order notified Dr. Graham that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Graham at his address of record at 180 First Street West, No. 21, Ketchum, Idaho 83340 and to P.O. Box 83340, Ketchum, Idaho 83340–5860. According to the return receipts, the order was accepted on Dr. Graham's behalf on or around August 21 and August 22, 2003. DEA has not received a request for hearing or any other reply from Dr. Graham or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Graham is deemed to have waived his hearing right. *See* Samuel S. Jackson, D.D.S., 67 FR 65145 (2002); David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Graham possesses DEA Certificate of Registration BG0868971. The Acting Deputy Administrator further finds that on or about May 27, 2003, the Idaho Board of Medicine

(Board) was scheduled to initiate a Formal Hearing into the internet prescribing practices of Dr. Graham, who held Idaho Medical License Number M7224 and Idaho Controlled Substances License Number CS7265. On June 6, 2003, in lieu of proceeding with the Formal Hearing, the Board and Dr. Graham entered into a Stipulation and Order in which Dr. Graham agreed to surrender his Idaho medical and controlled substance licenses and to not practice medicine or write prescriptions in Idaho for a minimum of five years.

The investigative file contains no evidence that the Stipulation and Order has been modified or lifted or that Dr. Graham's medical license has been reinstated or returned to him. Therefore, the Acting Deputy Administrator finds that Dr. Graham is not currently authorized to practice medicine in the State of Idaho. As a result, coupled with surrender of his controlled substances license, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* James F. Graves, M.D., 67 FR 70968 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D. 53 FR 11919 (1998).

Here, it is clear that Dr. Graham's medical license has been surrendered and he is currently not licensed to handle controlled substances in the State of Idaho, the state where he maintains a DEA controlled substance registration. Therefore, Dr. Graham is not entitled to a DEA registration in that state. Because Dr. Graham is not entitled to a DEA registration in Idaho due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes it is unnecessary to address whether or not his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See* Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikins-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BG086971, issued to Stephen J. Graham, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administratorr.

[FR Doc. 04–5480 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 7, 2003, and published in the **Federal Register** on October 29, 2003, (68 FR 61699), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to bulk manufacture the phenylacetone for manufacture of the amphetamine. The bulk, 2,5-dimethoxyamphetamine will be used for conversion into non-controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated ISP Freetown Fine Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: March 3, 2004.

William J. Walker,

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

[FR Doc. 04–5471 Filed 3–10–04; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 17, 2003, and published in the **Federal Register** on October 7, 2003, (68 FR 57929), National Center for Natural Products Research—NIDA MProject, University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to cultivate marijuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of National Center for Natural Products Research—NIDA MProject to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated National Center for Natural Products Research—NIDA MProject to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.