membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new non-voting members of POSC: Information Dimensions (France), Puteaux, FRANCE; Codd and Date Ltd., Cheshan, Bucks, UNITED KINGDOM; Pt. ELNUSA Geosains, Jakarta, INDONESIA.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notifications pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on January 24, 1996. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on April 3, 1996, (61 FR 14817).

Constance K. Robinson,

Director of Operations, Antitrust Division.

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BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–59]

Robert M. Golden, M.D.; Revocation of Registration

On May 25, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert M. Golden, M.D., (Respondent) of Roswell, Georgia, notifying him of an opportunity to show cause as to why DEA should not revoke his Certification of Registration, AG6243125, under 21 U.S.C. 824(a), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for the reason that his continued registration would be inconsistent with the public interest.

On July 18, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Atlanta, Georgia, on April 4–6, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On August 4, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's registration be suspended for one year, and after the one-year period of suspension, that the registration be limited to prescribing Schedules IV and V controlled substances only, ''perhaps in an institutional setting.'' Both parties filed exceptions to his decision, and on September 13, 1995, the record of these proceedings and Judge Tenney's opinion were transmitted to the Deputy Administrator. On February 26, 1996, the Respondent filed with the Deputy Administrator a Motion to Reopen Evidence. By letter dated February 27, 1996, the Deputy Administrator afforded the Government an opportunity to respond to the Respondent's motion, and on March 27, 1996, the Government filed a response to the motion.

The Deputy Administrator has fully considered the record, to include the Respondent's Motion to Reopen, 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 Deputy Administrator adopts the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law Judge, with specifically noted exceptions, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that on September 6, 1990, the Respondent was issued a DEA Certificate of Registration, number AG6243125, authorizing him to handle controlled substances in Schedules IV and V as a practitioner. This registration was due to expire on September 30, 1993, and on August 17, 1993, the Respondent filed an application to renew his registration. In block 2b of that application, the Respondent wrote that in 1986 his Georgia license had been acted upon concerning his handling of Schedules II and III controlled substances, but that he was ''currently off probation.''

Further investigation disclosed that disciplinary action was taken against the Respondent by the Georgia State Board of Medical Examiners (Board) pursuant to a Consent Order dated April 1, 1987. Although the order noted that ''[t]his agreement is not an admission of wrongdoing for any purpose other than resolving the matters pending before the Board,'' and noted that the ''Respondent waives any further findings of fact,'' the matters resolved included, among other things, allegations of recordkeeping violations, the prescribing or dispensing of controlled substances while not acting in the usual course of professional practice, and the prescribing or ordering of controlled substances for an illegitimate medical purpose. As a result of the consent order, the Respondent's medical license was placed on probation for a period totalling four years, with terms and conditions of probation to include: (1) That the Respondent would not prescribe, administer, or dispense, in the course of his office practice, any Schedule II, IIN, III, or IIIN controlled substances; (2) that the Respondent would personally maintain a daily log of all Schedule IV controlled substances prescribed, administered, or dispensed in his office for at least one year; (3) that the Respondent participate in a program of continuing education with at least 100 hours focusing on drug abuse and/or pharmacology; (4) that the Respondent abide by all State and Federal laws relating to drugs with the Respondent's license subject to revocation; and (5) that the Respondent pay a fine of $5,000.00.

Before Judge Tenney, the Respondent testified that his state probation ended in 1990 or 1991, but that he had never requested reinstatement of his authorization to handle Schedule II or III controlled substances. No evidence to the contrary was presented by the Government. Therefore, the Deputy Administrator finds that the Respondent is currently authorized by the State of Georgia to handle only controlled substances in Schedules IV and V.

A Special Agent (Agent) for the DEA testified before Judge Tenney concerning an undercover operation he conducted involving the Respondent in 1985. Specifically, the Agent described three visits he made to the Respondent's office between April 9, 1985, and May 7, 1985. The parties do not dispute that the Respondent refused to prescribe Percodan for the Agent during the first visit. However, during the second visit the Respondent prescribed Halcion 0.5 mg, and during the third visit the Respondent prescribed Valium, 10 mg, with one refill. Both Halcion and Valium are Schedule IV controlled substances. The Government asserted that the Respondent issued these prescriptions to the Agent without a legitimate medical purpose.

In the Fall of 1992, a Roswell Police Department Detective contacted a DEA Division Investigator (Investigator) and requested assistance in investigating the Respondent's prescribing activities. The Investigator testified before Judge Tenney that he was asked to interview a cooperating individual (CI), and he participated in a telephone conversation

with this individual on November 3, 1992. The CI told the Investigator that she was obtaining Xanax prescriptions from the Respondent, but that he would write these prescriptions in the names of other people ''so he wouldn't create suspicion as to over prescribing.'' The parties stipulated that Xanax is a Schedule IV controlled substance. In a subsequent conversation with the CI, she told the Investigator that the prescriptions were issued in the names of two individuals, DT and AP.

Subsequently, a search warrant was obtained, and the patient records of, among others, the CI, AP, DT, and a Roswell Police Officer (Officer), who also participated in the investigation, were obtained from the Responsdent's office. Also, the Investigator visited local pharmacies and obtained prescriptions from them. Specifically, the Investigator testified that he did not locate any prescriptions for Xanax written in the CI's name during the relevant time period. However, he did obtain prescriptions in the name of AP dated in May of 1992, June 2, 1992, June 15, 1992, and September 17, 1992, (this date was stipulated to by the parties before Judge Tenney, for the prescription in question appears to be dated 7–17–92), for 2 mg Xanax, in an amount totalling 180 dosage units. The Investigator also retrieved prescriptions in the name of DT, one dated April 27, 1992, for 30 dosage units of Xanax 1 mg, and three others dated July 21, 1992, July 31, 1992, and August 20, 1992, for a total of 150 dosage units of Xanax, 2 mg.

The Investigator also testified that in March of 1993, he telephonically interviewed DT. DT told the Investigator that he had visited the Respondent one time in April of 1992, and that the CI was with him during that visit. DT stated that his purpose in seeing the Respondent in April of 1992 was to receive a prescription for the CI written in DT's name. He further stated that he had not seen the Respondent since that April 1992 visit to this office. DT told the Investigator that the Respondent ''delivered, hand delivered, [subsequent prescriptions] in his name to [the CI] down at Kroger parking lot.'' DT then told Investigator that the CI would pick him up, ''and they would go get the prescription filled for the [Xanax].'' However, the Investigator testified that he did not ask DT what happened to the pills after the prescriptions were filled, although the Investigator testified that since DT told him the purpose of his visit with the Respondent was to obtain prescriptions for the CI, he assumed the pills were also for the CI. The Investigator was also aware that DT worked for the CI's husband.

The CI testified consistently with DT's testimony concerning this practice. Furthermore, a Roswell Police Officer (Officer) also testified before Judge Tenney, stating that in November of 1992, she had interviewed DT. DT had told her that, after his initial visit, accompanied by the CI, with the Respondent, the CI would hen ''just have to call [the Respondent,] and he would write a prescription in [DT's] name and [the CI] would meet [DT] and they would get the prescriptions filled together.'' DT also told the Officer that after the prescriptions were filled, he ''would take a portion of the prescription, 8 to 10 tablets, and then [the CI] would get the rest of them.''

Further, DT's patient chart obtained from the Respondent's office consisted of a medical history form dated April 27, 1992, on which was noted that the reason for the visit was ''anxiety.'' Attached to the medical history form was a medical evaluation form, also dated April 27, 1992, which noted a medical treatment plan of prescribing Xanax, 1 mg, without refill. The third page of DT's chart contains annotations dated August 20, 1992, and September 23, 1992, noting ''recurrent anxiety.'' On August 20, 1992, a prescription for 30 dosage units of Xanax, 2 mg with one refill was authorized, and on September 23, 1992, the chart notes that a prescription for 30 dosage units of Xanax, 2 mg with one refill was also issued. The August entry also contains a notation of ''130/80.'' However, there are no chart entries dated July 21 or 31, 1992. When asked if he saw DT on those dates, the Respondent answered, ''if I wrote the prescriptions, handwritten, then I did see him.'' However, Judge Tenney noted that ''[t]he testimony of the Respondent concerning [DT's] anxiety is sketchy, and his statement was said with little sincerity.'' The Deputy Administrator agrees that the record supports Judge Tenney's credibility finding on this point. Finally, the Deputy Administrator notes that DT was present and available at the hearing before Judge Tenney, but that neither party called him to be a witness.

The CI testified before Judge Tenney, stating that she had been a patient of the Respondent's since approximately 1986 or 1987. Sometime prior to 1992, she entered a drug rehabilitation program, and she testified that her husband had informed the Respondent that she ''was a drug addict and told him not to ever see [her] again.'' However, the CI testified that she resumed seeing the Respondent, and in April of 1992, she asked the Respondent to write prescriptions for her in the name of other people in order to avoid problems with her husband. Specifically, she asked him to write Xanax prescriptions in DT's name, and later, in AP's name. The CI testified that the Respondent did not maintain a patient chart for her during this time, and he did not do any medical examinations or tests. The CI's patient chart obtained from the Respondent's office contains no entries dated later than July 2, 1991. However she stated that she was present when the Respondent gave her prescriptions in the name of other people, and that the Respondent had written her prescriptions in the name of DT approximately four or five times.

Further, the CI testified about contacts she had made with the Respondent under surveillance by the police on October 1, 1992, and on October 20, 1992. As to the visit on October 20, 1992, the CI testified that she accompanied AP into the Respondent's office, that she wore a concealed transmitter, that a tape and transcript were made of the meeting, and that the transcript offered into evidence was an accurate version of the transaction. The Respondent had no objection to the admission into evidence of the transcript.

Further, a detective with the Roswell Police Department (Detective) testified before Judge Tenney that on October 20, 1992, he monitored through the concealed transmitter AP and the CI enter the Respondent's office. During the course of this visit, the CI remained in the treatment room with AP and the Respondent, and the CI told the Respondent ''I brought [AP] so *we* could get a script.'' The Respondent asked '' * * * uh, so you need like Xanax?'' Then AP stated ''[t]hat would be cool,'' and the CI added ''[y]ea.'' During the course of the conversation AP informed the Respondent, ''I don't have any cash on me today,'' and the CI told the Respondent, ''Umm, well I'm pay'in ya. * * *.'' The CI stated, ''[n]ow you won't have to see [AP] again if you want to give another refill?'' The Respondent replied, ''Well I put a refill on it so you['re] all good with that,'' to which the CI replied, ''OK OK but, alright how much is that[?]''. The Respondent replied, ''uh, thirty.'' The CI asked again, ''[s]o what do I owe you?'' The Respondent then said ''Uh, one hundred even.'' The transaction took approximately 15 minutes, and a prescription for 30 dosage units of Xanax, 2 mg, with one refill authorized, was written in AP's name. The prescription was recorded in AP's patient chart with a notation of ''recurrent anxiety.'' However, the

Detective testified that, after the CI and AP left the Respondent's office, the CI actually gave the Xanax prescription to the police. The CI's testimony concerning these events was consistent with the Detective's testimony. The CI also testified that the Respondent had handed the prescription to her.

On cross-examination, the CI reviewed prescription survey materials presented by the Respondent, including a summary of prescriptions which the CI had received from other physicians or dentists between January of 1991 and October 28, 1992. The CI testified that she had filled these prescriptions and had consumed the medications, denying that she had sold any of the substances. The CI also stated that the prescribing physicians had conducted physical examinations prior to issuing the listed prescriptions, and that the dentists had prescribed the medication because of numerous root canal procedures she had undergone. Finally, she testified that ''[t]he only doctor I ever used was [the Respondent] because he made it easy.''

As to the October 1, 1992 incident, the Detective testified that the CI, wearing a transmitter, met with the Respondent in the parking lot of a Dunkin' Dounuts, as had been prearranged. Although a tape recording was made of this visit, the Detective testified that the tape recording was misplaced. However, the Detective testified that the CI was trying to obtain a prescription for Xanax from the Respondent, and that he had refused to give her such a prescription. The CI's testimony agreed with the Detective's version of these events.

However, the Detective also testified that on that date the CI did obtain a bottle of a non-controlled substance, Fioricet, which she turned over to the Detective's assistant just after the meeting with the Respondent. However, this bottle of pills was also misplaced by the Roswell Police Department. Further, the Respondent testified concerning the Fioricet, denying that he had given the CI this bottle of pills. Unlike Judge Tenney's finding on this point, the Deputy Administrator finds the evidence concerning the Fioricet inconclusive.

The Detective also testified that he had interviewed AP, and that she had agreed to assist the Roswell Police with their investigation. The Detective testified that he was aware that AP was a ''drug dealer'' or ''drug user,'' or ''drug abuser,'' prior to using her in an undercover capacity in this investigation. The Detective also testified that he was aware that AP ''had a previous criminal history.''

The record revealed that AP prepared a patient history form for the Respondent dated May 19, 1992, and that she had received prescriptions for Xanax from the Respondent during the course of her treatment in May, June, and September of 1992. AP's patient chart contains an entry dated September 17, 1992, noting a Xanax prescription and ''anxiety recurrent,'' and an entry dated October 20, 1992, noting a Xanax prescription, and also noting ''recurrent anxiety.''

Further, a Roswell Police Officer (Officer) testified before Judge Tenney, stating that on September 23, 1992, she accompanied AP into the Respondent's office for the purpose of obtaining a prescription for Xanax. AP wore a transmitter during this visit. The Officer testified, and the Respondent's counsel stipulated to, the accuracy of the transcription made of the tape recording of this visit.

Further, although the Officer did not wear a transmitter, she testified concerning her transaction with the Respondent, stating that the Respondent did not ask her questions about her medical condition or history, although this was her first visit to the Respondent's office. The Officer testified that she had told the Respondent that she was ''adjusting to moving back in with [her] parents,'' but that she did not discuss any psychological problems. The Officer also testified that she did not exhibit any behavior such as trembling or shaking, restlessness, or shortness of breath, but rather maintained a calm demeanor. Her blood pressure was taken, and the Respondent told her ''it was good.'' The entire transaction took ''no more than five to ten minutes.'' The Respondent gave the Officer a prescription for Xanax. 1 mg, 30 dosage units, without a refill. The Officer also testified that she paid forty dollars for this visit.

Next, the Officer testified that on October 15, 1992, she returned to the Respondent's office wearing a transmitter. Her transaction with the Respondent was recorded, and a transcription of the recording was entered into the record without objection and stipulated to by the Respondent's counsel. The Officer testified that during this transaction, in which she spent five to seven minutes with the Respondent, she was not exhibiting any signs of nervousness, but rather maintained a calm and relaxed demeanor. The Officer told the Respondent that she was feeling fine. However, she asked that the Xanax dosage be increased to the 2 milligram strength. Without conducting any form of medical examination or test, or without discussing the medical basis for the Officer's request for a stronger dosage (i.e. change in physical or psychological condition that might justify the new dosage), the Respondent gave her a prescription for 30 Xanax, 2 mg. However, when he was asked to put a refill on the prescription, he stated ''um, on this type of drug I generally don't like to because it's a controlled drug. * * * And because you're getting the two, that's like double strength. * * * If you got the one, I would probably refill it. * * * What you could do is just split them in half (inaudible).'' The Officer paid the Respondent forty dollars at the conclusion of this transaction.

The Officer's medical chart retrieved from the Respondent's office showed an entry dated September 23, 1992, noting that the Officer had a history of personal problems, and the Xanax prescription was entered. Further, a second entry for October 15, 1992, noted that she was ''doing well on meds.'', and the Xanax prescription was noted.

The Respondent testified before Judge Tenney. First, as to his treatment of AP, he stated that he had diagnosed AP as being moderately obese and with ''generalized anxiety disorder.'' He also stated that he had no information, when he began treating her, that she might be deceiving him. Rather, he testified that he prescribed Xanax for AP for ''[i]t is clearly the drug of choice for any anxiety.'' He also testified that the prescriptions he gave AP for Xanax were medically necessary, and he denied having any arrangements to give her prescriptions for substances ''without any medical necessity.'' For example, he testified that during the September 23, 1992 visit, AP had described herself as ''a nervous wreck,'' consistent with previous expressions of her condition. Based upon his observation of her behavior and her comments, he prescribed Xanax for her, for it was medically necessary. He also recalled that on one occasion AP came into his office with the CI, but that on that visit, he had given the Xanax prescription to AP, and that that prescription was also medically necessary based on her condition. He denied having any idea that AP was going to give that prescription to the CI or divide the medications with her.

Concerning the visit of October 20, 1992, the Respondent testified that, at the time, he did not question the CI's statement ''I brought [AP] so *we* could get a script,'' and even though the CI paid for AP and herself, the Respondent interpreted that as ''she was paying for her friend also * * * which is not

unusual. I have people paying for other people all the time.'' The Respondent testified that he thought AP was truthful and genuine.

The Respondent also testified about his treatment of DT. He stated that DT had the classic symptoms for generalized anxiety disorder, which was consistent with DT's complaint recorded on his patient intake form. The Respondent also stated that he did not have any knowledge that DT ''was faking his condition,'' or that he was dividing pills with the CI. Rather, the Respondent found DT to be truthful and genuine. The Respondent opined that the prescriptions he had given to DT were medically necessary. However, the Respondent acknowledged that the prescriptions written to DT on July 21, 1992, and July 31, 1992, do not appear in his patient chart. Further, when Government counsel asked him if he could tell whether he actually saw DT on July 21 and July 31, the Respondent replied, ''[i]f I wrote the prescriptions, handwritten, then I did see him.''

The Respondent testified that he had reviewed all of the taped transactions between himself and AP, DT, the CI, and the Officer. He testified that the taped transactions showed that he had not discussed using drugs for recreational purposes with any of these individuals.

Next, the Respondent testified about his treatment of the CI, noting that the CI first became his patient in approximately 1985, that he became aware that the CI had undergone treatment for drug addiction, and that from 1991 to the date of the hearing, he had not written prescriptions for controlled substances for the CI. He denied having any arrangement with the CI or providing her with prescriptions for controlled substances either directly or indirectly.

The Respondent also offered into evidence a prescription profile pertaining to the CI. After he collected the survey from local pharmacies, he contacted two of the doctors concerning their prescribing practices to the CI. The Respondent testified that he wanted to determine whether the doctors were aware that the CI was obtaining controlled substances from various other doctors during this time period. He testified that, prior to 1993, he had assumed the CI was not seeing other doctors. However, other than these two doctors, the Respondent testified he did not contact any of the other doctors listed on the prescription profile.

The Respondent also testified about treating the Officer. He stated that when the Officer presented herself as a patient, he was unaware that she was not telling him the truth. Rather, she appeared to be truthful and genuine. After taking her history and observing her, he diagnosed her with general anxiety disorder. Also, he recalled that she had told him, ''that she either was unemployed or had lost her job. She had a lot of stress at home, a lot of family stress, a lot of job stress. That she was going to be forced to * * * move back home because of her lack of employment. She was very upset, very nervous.''

Further, the Respondent testified that during the visit on October 15, he had no idea that he was giving the Officer a prescription for a drug for other than medical use. The Respondent also opined that, when the Officer told him she was feeling fine, she meant that she was feeling fine on the medication. He denied that the Officer was exhibiting drug seeking behavior, and he opined that her request for a stronger dosage of Xanax, despite ''feeling fine'' on the previous prescription, was not suspect behavior.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke the Respondent's 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) provides the following relevant factors for consideration in determining the public interest:

(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 denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, all five factors are relevant. As to factor one, ''recommendation of the appropriate State licensing board,'' in 1987, the Board took disciplinary action in response to allegations of wrongdoing by the Respondent related to controlled substances. However, under the terms of the consent order between the Respondent and the Board, the agreement was not an admission of wrongdoing, and further fact finding was waived. The probation period ordered by the Board expired in approximately 1991. Further, the Deputy Administrator notes that there is no evidence of any recommendation by the Board responsive to the matters raised in this proceeding.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' and factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' it is significant that, to be effective, a prescription for a controlled substance ''must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(4). Also, a prescription for a controlled substance ''shall bear the full name and address of the patient. * * *'' 21 CFR 1306.05.

Despite the Respondent's testimony and arguments to the contrary, Judge Tenney found that the ''evidence proves that the Respondent prescribed Xanax in [AP's] name on October 20, 1992, with full knowledge that [the CI] was an intended recipient of that controlled substance.'' Judge Tenney found, and the Deputy Administrator agrees, that the transcript of that transaction revealed the following: (1) That the CI stated, ''I brought April so *we* could get a script''; (2) that both the CI and AP affirmatively responded to the Respondent's question, ''so you need like Xanax. (unintell)?''; (3) that the CI paid for the Xanax prescription; and (4) that the CI inquired as to whether AP would have to be seen again in order for the Xanax prescription to be refilled, with the Respondent explaining that he had put a refill on the prescription ''so you['re] all good with that.'' Further, both the CI and the Detective testified that, after the CI and AP left the Respondent's office, it was the CI who handed the Xanax prescription to the police. Therefore, the Deputy Administrator agrees with Judge Tenney's conclusion that ''[a]ll of these excerpts indicate knowledge on the part of the Respondent that [the CI] was to receive the Xanax,'' not the patient actually named on the prescription. The Deputy Administrator also agrees with Judge Tenney, that such a prescribing practice violates DEA regulations.

However, the Deputy Administrator also finds relevant the Respondent's prescribing practices pertaining to DT and the Officer. The Respondent

testified that his prescribing to DT and the Officer were for legitimate medical purposes responsive to their medical conditions. Assuming, arguendo, that the Respondent prescribed Xanax for DT's use and not the CI's, then the Deputy Administrator makes the following findings. First, after the initial office visit of DT and the Officer, the Respondent prescribed 30 dosage units of Xanax, 1 mg strength, without refill. However, in subsequent instances involving both individuals, the Respondent increased the Xanax strength to the 2 mg strength without providing a medical purpose other than the fact that the patient asked for an increased dosage. Neither patient's chart reflects a contemporaneous entry of a medical indication which would justify the increased strength of the medication, either from medical tests performed, or from a change in medical history provided by the patient. Also, DT testified that the Respondent increased his dosage strength without DT actually seeing him.

When questioned before Judge Tenney, the Respondent failed to provide any medical justification for such prescribing. Although DT's medical chart fails to note any entries on July 21, 1992, or July 31, 1992, the Respondent issued prescriptions to DT on July 21, 1992, July 31, 1992, and August 20, 1992, which, including authorized refills, totalled 150 dosage units of Xanax, 2 mg. Further, the record contains the following dosage information about Xanax from the Physicians' Desk Reference at page 2370:

> Treatment for patients with anxiety should be initiated with a dose of 0.25 to 0.5 mg given three times daily. The dose may be increased to achieve a maximum therapeutic effect, at intervals of 3 to 4 days, to a maximum daily dose of 4 mg, given in divided doses. The lowest possible effective dose should be employed and the need for continued treatment reassessed frequently. The risk of dependence may increase with dose and duration of treatment.

Yet in this 30 day period of time, the Respondent provided DT with prescriptions for 150 dosage units of Xanax 2 mg., which, if consumed in ''divided doses'', would equal 10 mg a day, over twice that recommended.

Although no expert medical evidence was presented to assist the Deputy Administrator in reaching a conclusion concerning the legitimate medical purpose for such prescribing in either the case of DT or the Officer, the Deputy Administrator finds significant that the Respondent has failed to provide any medical purpose for increasing the dosage strength. Thus, the evidence merely demonstrates that the increase is a result of his patients' requests, rather than the result of the application of the physician's medical judgment. Under these circumstances, the Deputy Administrator previously has found that such a prescribing practice, when a patient's demands replace the physician's judgment, equated to issuing prescriptions without a legitimate medical purpose. See Robert L. Dougherty, Jr., M.D., 60 FR 55047 (1995); Harland J. Borcherding, D.O., 60 FR 28796 (1995).

As to factor three, the Respondent's ''conviction record under Federal or State laws relating to the * * * dispensing of controlled substances,'' the Deputy Administrator notes that there is no evidence of any ''conviction record'' pertaining to the Respondent.

Finally, as to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator finds it relevant that the Respondent, knowing that the CI had been treated for drug abuse, facilitated her access to controlled substances. Further, he did not investigate whether the CI had received other prescriptions for controlled substances at the same time that he was providing her access to such medications until 1993, and arguably then only out of his own self-interest. Therefore, the Deputy Administrator agrees with Judge Tenney in concluding that the Government has provided preponderating evidence that a basis exists to find the Respondent's continued registration inconsistent with the ''public interest.''

Yet Judge Tenney found that the Respondent's violations concerning the CI involved isolated misconduct, and he found that the ''limited nature of the Respondent's conduct mitigates in his favor.'' However, the Deputy Administrator disagrees with this conclusion. The Respondent's conduct relating to the CI, a known drug abuser, coupled with his prescribing practices for DT and the Officer, demonstrate cavalier behavior regarding controlled substances. Further, throughout the proceedings before Judge Tenney, the Respondent did not acknowledge any possibility of questionable conduct in his prescribing practices, to include his treatment of the CI, DT, or the Officer. The Deputy Administrator was provided no basis to conclude that the Respondent would lawfully handle controlled substances in the future. Revocation is the appropriate remedy under such circumstances. See Leo R. Miller, M.D., 53 FR 21932 (1988) (noting that the revocation of a DEA Certificate of Registration ''is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused * * * their DEA Certificate of Registration and who have not presented sufficient mitigating evidence to assure the Administrator that they can be trusted with the responsibility carried by such a registration''); see also *Konstantin* v. *DEA,* 1955 U.S. App. Lexis 3005 (9th Cir. 1995) (holding that the Administrator did not abuse his discretion in increasing the sanction imposed on Dr. Konstantin); *River Forest Pharmacy, Inc.* v. *DEA,* 501 F.2d 1202 (7th Cir. 1974), (holding that the Acting Administrator's increase of sanction over that recommended by the Administrative Law Judge was not an abuse of discretion).

Further, the Deputy Administrator notes that he has discretionary authority to request that the Administrative Law Judge reopen the record to receive newly discovered evidence on the basis that a final order must be issued based upon a full and fair record. See 5 U.S.C. 556; 21 U.S.C. 824(c); 21 CFR 1316.67. However, to prevail on such a motion, the moving party must show that the evidence sought to be introduced (1) was previously unavailable and (2) would be material and relevant to the matters in dispute. See, e.g., *I.N.S.* v. *Abudu,* 485 U.S. 94, 108 S.Ct. 904, 99 L.Ed. 2d 90 (1988) (finding that a motion to reopen an administrative record is analogous to ''a motion for a new trial in a criminal case on the basis of newly discovered evidence, as to which courts have uniformly held that the moving party bears a heavy burden''); see generally, Charles H. Koch, Jr., Administrative Law and Practice, 6.74 (1995 & Supp. 1996) and cases cited therein.

Here, the Respondent has requested to reopen the record so that he can submit enumerated items of evidence. Yet he does not assert whether or not any of this evidence was unavailable to him prior to the closing of the record, and he does not provide any assertions as to the relevancy of the proposed evidence. However, the Deputy Administrator has considered these issues and makes the following findings.

As for the request to reopen the record so that the Respondent can explore the credibility of DT and AP, the Deputy Administrator finds that the Respondent had adequate notice and opportunity prehearing to explore their credibility. DT was even available at the hearing, but the Respondent did not call him. As to AP's criminal record, the Detective testified that AP had such a record. Also, the Respondent was notified prehearing that AP could be contacted through her probation officer. Given the

Respondent's prehearing opportunities, the Deputy Administrator finds that the Respondent has failed to satisfy the burden necessary to reopen the record on this basis.

Next, the Respondent seeks to reopen the evidence in order to cross examine a witness, HH, concerning her drug dealing activities during her association with the Respondent in the summer of 1992. However, the facts concerning her involvement, and subissues involving other employees of the Respondent, were not relied upon by Judge Tenney nor by the Deputy Administrator in reaching a determination of this case. Further, the Respondent does not provide a basis for asserting that HH's credibility would be material in resolving this matter. Therefore, the Deputy Administrator concludes that such impeachment evidence would not be relevant so as to provide a basis to reopen the record.

Next, the Respondent seeks to reopen the evidence in order to present testimony from other physicians, whom he claims will testify about being deceived by the CI when they prescribed controlled substances to her during the relevant period of 1992. The Deputy Administrator notes that the Respondent had access to this information prehearing, for he introduced into the record the prescription survey which identified the prescribing physicians, and he testified concerning his interview of some of these physicians. Further, the Respondent did not assert that the testimony of these physicians was previously unavailable. Therefore, the Respondent has failed to meet the requirements to reopen the record on this basis.

The Respondent also asserted that the Roswell police intentionally destroyed or disposed of exculpatory evidence, to include a tape recording of the CI's and the Respondent's telephone conversations on September 17, 1992, and on October 1, 1992, and the transcript of the transaction that occurred on October 1, 1992, when the Respondent refused to provide the CI with a prescription for Xanax. Yet the Deputy Administrator notes that there is no dispute that the Respondent refused to provide the CI with a Xanax prescription on October 1, 1992. Further, the Respondent presented no evidentiary basis for his belief of intentional destruction of evidence. He also failed to demonstrate how the evidence he now proposes to introduce into the record on this point would be material. Therefore, the Respondent failed to meet his burden in reopening the record on this basis.

Finally, the Respondent asserts that the transcripts of the tape recordings from the September 23, 1992, transaction were not accurate. Yet the Respondent had access to the tape recordings and the transcripts well before the hearing in this matter. Again, the Respondent failed to establish the requisite basis for reopening the record. Accordingly, the Deputy Administrator denies the Respondent's motion to reopen the record.

Both the Respondent and the Government filed exceptions to Judge Tenney's opinion, and the Deputy Administrator has considered these exceptions. The exceptions were extensive, are a part of the record, and accordingly shall not be restated at length herein.

However, the Deputy Administrator finds no merit in the Respondent's exceptions, for the Respondent merely reargued his case and his interpretation of the credibility and sufficiency of the evidence of record. For example, as to the incident on October 20, 1992, involving the Respondent, AP, and CI, the Respondent takes exception to Judge Tenney's conclusion that the Respondent provided a prescription in the name of AP for the CI's use. The Respondent argues that it is significant that the transcript reflects that all of the statements relied upon by Judge Tenney originated from the CI, not the Respondent. What is significant is the Respondent's actions in light of the CI's statements, not his dialogue. Specifically, despite the CI's language indicating her intent regarding the prescription, the Respondent issued the prescription in AP's name, thus providing the CI with the means to facilitate her intention. As previously written, the Deputy Administrator has considered the Respondent's arguments and found that they were not persuasive.

Likewise, the Deputy Administrator finds that the Government's exception to Judge Tenney's finding concerning the Agent in 1985 also lacked merit. The Deputy Administrator notes that the conversations between the Agent and the Respondent, and the interpretation of the meaning of those conversations, were strongly contested issues. Since the transactions occurred over ten years prior to the hearing in this matter, the Record demonstrates that the Agent's recollection and resulting testimony before Judge Tenney understandably lacked precision. Although tape recordings and transcripts were made at the time, the DEA destroyed them in the normal course of business. Therefore, the Deputy Administrator agrees with Judge Tenney, that ''[a] tape or transcript of the undercover visits, revealing the precise language used by [the Agent] and the Respondent would be critical in determining whether the medication was legitimately prescribed.'' Given the state of the record, Judge Tenney concluded, and the Deputy Administrator concurs, that ''a preponderance of the evidence does not support a finding that the medication was prescribed to the Agent for an illegitimate purpose.''

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AG6243125, previously issued to Robert M. Golden, M.D. be, and it hereby is, revoked, and any pending applications are hereby denied. This order is effective June 17, 1996.

Dated: May 10, 1996.

Stephen H. Greene,

Deputy Administrator.

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BILLING CODE 4410–09–M

[DEA # 147F]

Controlled Substances: 1996 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of final revised 1996 aggregate production quotas.

SUMMARY: The interim notice (61 FR 14336, April 1, 1996) which established revised 1996 aggregate production quotas for amobarbital and hydromorphone, Schedule II controlled substances, as required under the Controlled Substances Act (CSA) (21 U.S.C. 826), is adopted without change.

DATES: This order is effective on May 16, 1996.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to