each new AFPRD member no later than ten (10) days after it is admitted to membership, and thereafter annually until five (5) years after the date of entry of the Final Judgment. Section V(D) requires the AFPRD to distribute within sixty (60) days from the entry of the Final Judgment, a copy of the Final Judgment and this Competitive Impact Statement to all directors and officers of defendant, and Section V(E) requires defendant to distribute in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any successor directors and officers in the future.

Under Section V(F), the defendant must brief annually in writing or orally its directors and officers or their successors on the meaning and requirements of this final Judgment and the antitrust laws, including penalties for violating them, and under Section V(G), obtain from those persons annual written certifications that they (1) have read, understand, and agree to abide by this Final Judgment, (2) understand that their noncompliance with this final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported all violations of this Final Judgment of which they are aware to counsel for defendant. Section V(H) requires defendant to maintain for inspection by plaintiff a record of recipients to whom the Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding the Final Judgment have been received.

Section VI of the proposed Final Judgment requires the defendant to certify its compliance with specified obligations of Section V(A) and (B). Section VII sets forth procedures by which plaintiff may obtain access to information needed to determine or secure defendant's compliance with the proposed Final Judgment. Finally, Section IX provides that the Judgment will expire ten (10) years after the date of its entry.

C. *Effect of the Proposed Final Judgment on Competition*

The relief in the proposed Final Judgment is designed to remedy the violation alleged in the Complaint and prevent its recurrence. The Complaint alleges that the AFPRD violated Section 1 of the Sherman Act by agreeing upon and establishing guidelines to govern resident recruiting that restrained competition among family practice residency programs to employ family practice residents.

The proposed Final Judgment eliminates the restraint on competition among family practice residency programs by enjoining the AFPRD from prohibiting its members from engaging in these competitive recruiting practices, and from adopting any guidelines, code of ethics, or other rules which prohibit these practices or which state or imply that they are unethical. The proposed Final Judgment also requires the AFPRD to withdraw the provisions from its current Guidelines that prohibit these resident recruiting practices and to notify its members that it has done so.

The proposed Final Judgment contains provisions adequate to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy. The proposed Final Judgment's injunctions will restore the benefits of free and open competition to the market for the services of family practice residents.

IV

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. In the view of the Department of Justice, such a trial would involve substantial costs to the United States and defendant and is not warranted because the proposed Final Judgment provides all of the relief necessary to remedy the violation of the Sherman Act alleged in the Complaint.

V

Remedies Available To Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and a reasonable attorney's fee. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent lawsuit that may be brought against the defendant in this matter.

VI

Procedures Available for Modification of the Proposed Final Judgment

As provided by Sections 2 (b) and (d) of the APPA, 15 U.S.C. 16(b) and (d), any person believing that the proposed Final judgment should be modified may submit written comments to Gail Kursh, Chief; Health Care Task Force; United States Department of Justice; Antitrust Division; 325 Seventh Street, NW; Room 400; Washington, DC 20530, within the 60-day period provided by the Act. All comments received, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final Judgment at any time before its entry, if the Department should determine that some modification of the Final Judgment is necessary to protect the public interest. Moreover, Section VIII of the proposed Final Judgment provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the proposed Final Judgment.

VII

Determinative Documents

No materials and documents of the type described in Section 2(b) of the APPA, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Respectfully submitted,

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BILLING CODE 4410–01–M

Drug Enforcement Administration

Jerry Neil Rand, M.D.; Denial of Registration

On September 5, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jerry Neil Rand, M.D., (Respondent) of San Diego, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration, under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged, in relevant part, that in

January of 1995, an investigation by DEA revealed that on numerous occasions the Respondent used prescription blanks presigned by other physicians to treat his patients, falsified patient charts in which he had prescribed controlled substances, and stored controlled substances surrendered by his patients in his desk drawer.

The Order was mailed in the U.S. Mail, one copy to the Respondent and one copy to his attorney, and a signed receipt dated September 15, 1995, was returned from the Respondent, and a second receipt dated September 11, 1995, was returned from the Respondent's attorney to DEA. However, neither the Respondent nor anyone purporting to represent him has replied to the Order to Show Cause. More than thirty days have passed since the Order was served upon the Respondent. Therefore, pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that the Respondent has waived his opportunity for a hearing on the issues raised by the Order to Show Cause, and, after considering the investigative file, enters his final order in this matter without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that by order dated February 4, 1994, the Acting Administrator of DEA had previously denied the Respondent's application for registration after finding that the Respondent had engaged in conduct inconsistent with the public interest. Jerry Neil Rand, M.D., 59 FR 6302 (1994). Specifically, by a jointly-stipulated decision and order of the Medical Board of California, dated September 25, 1989, the Respondent substantially admitted that he had been diagnosed as drug dependent; that as a result of his usage of controlled substances or dangerous drugs, he had ''become a danger to himself, other persons or the public, or has impaired his ability to practice his profession safely''; that he had treated a patient while intoxicated; that he had failed to adequately supervise physician assistants by signing blank prescription forms; and that between 1985 and 1986 he had provided incompetent and grossly negligent medical care to five patients. As a result of the Medical Board's decision, the Respondent's medical license was revoked, but the revocation was stayed, and his license was placed on probation for five years. Conditions of probation included requirements that the Respondent (1) enter into a drug rehabilitation program, (2) abstain from the personal use or possession of controlled substances unless such substances were lawfully prescribed to him for a bona fide illness by another practitioner, and (3) obey all Federal, State, and local laws. Finally, the DEA's final order noted that:

> Judge Bittner further found that as a result of his personal abuse of controlled substances, the Respondent abrogated his professional responsibilities as a physician and his responsibilities as a DEA registrant; that he was hospitalized three times for substance abuse; voluntarily surrendered his previous DEA registration; and had his State medical license placed on probation for a period of five years. The administrative law judge concluded that there is a lawful basis for denying the Respondent's application.

Id. at 6303. The Acting Administrator substantially concurred with Judge Bittner's findings of fact and conclusions of law, but disagreed with her finding that the Respondent was unlikely to abuse controlled substances or the privileges of a registrant in the future. The Acting Administrator concluded that the Respondent's rehabilitative efforts at that time were not sufficiently complete to ensure that he would not succumb to the pressures of abusing controlled substances, and he denied the Respondent's application. Ibid. The Respondent appealed the Acting Administrator's final decision to the Ninth Circuit Court of Appeals.

While the appeal was still pending, the Respondent again applied for a DEA Certificate of Registration. In response to his application, the local DEA office conducted an inquiry, and a Diversion Investigator served a Notice of Inspection upon a local pharmacy. This inspection and subsequent investigation revealed that from January of 1994 through January of 1995, the Respondent had prescribed Schedule III and Schedule IV controlled substances by using presigned prescription forms belonging to a Dr. S. When interviewed, Dr. S. admitted that he did not see patients at the Respondent's clinic. He stated that he did go there occasionally to review medical charts of the Respondent's patients, noting that these patients had received prescriptions for controlled substances reflecting Dr. S's DEA number. Dr. S. also admitted that he had prescription pads printed up with his name, his DEA Certificate of Registration Number, and the Respondent's clinic's address. He then presigned these prescriptions for the Respondent's use. He also stated that the Respondent would use his DEA registration number for call-in prescriptions as well, but that he believed the Respondent called him every time he used his registration number and told him what he was prescribing. However, Dr. S. admitted that he did not examine or otherwise meet or interact with the Respondent's patients receiving controlled substances in this matter. Further, prescriptions retrieved from two local pharmacies, dated between January 10, 1994, and January 4, 1995, revealed that the Respondent prescribed 570 dosage units of Schedule III controlled substances and 220 dosage units of Schedule IV controlled substances using Dr. S's registration number.

DEA investigators also received information from a former employee of the Respondent's, who stated that some of the Respondent's patients had surrendered controlled substances to the Respondent as part of their treatment, and that the Respondent had stored those substances in his desk drawer. Further, the former employee stated that he/she witnessed the Respondent and his brother alter patients' charts so that both the Respondent's and Dr. S's initials appeared in the chart. Specifically, the employee observed the Respondent and his brother (1) copy Dr. S's initials, (2) cut and paste the copied initials into the charts for patients who had been prescribed controlled substances, (3) recopy the affected pages, and (4) reinsert the copied pages into the chart to replace the original chart page.

When DEA investigators contacted the Respondent's brother, he confirmed that he worked with the Respondent. He also stated that he was aware of the Respondent's use of Dr. S's presigned prescription pads.

The investigative file also contained documentation showing that the Respondent's medical license had been cleared of all restrictions as of September 25, 1994. Further, letters from colleagues demonstrated that the Respondent has continued to successfully recover from his drug addiction problem, and that he has successfully returned to the practice of medicine, with an emphasis on treating patients with addictive disorders and problems. One colleague wrote on June 6, 1995, that, while working in a psychiatric hospital, the Respondent followed all regulations and standards that apply to his privileges, and that he did not prescribe or order controlled substances at that institution, ''as this is currently a restriction upon his practice of medicine.'' He also wrote that he has ''the utmost respect for Dr. Rand as a caring, extremely knowledgeable and competent physician, as well as an individual successfully recovering from the disease of addiction himself.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for registration if he

determines that such registration would be inconsistent with the public interest. In determining the public interest, Section 823(f) requires that the following factors be considered:

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

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

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

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

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

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

In this case, factors one, two, four, and five are relevant in determining whether the Respondent's registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the file does not contain a response from the Medical Board relevant to the Respondent's latest conduct. The file does reflect that the Medical Board reinstated the Respondent's medical license without restrictions on September 25, 1994.

However, the Deputy Administrator also finds it significant that the recent DEA investigation revealed that the Respondent actually violated the terms of the Medical Board's order in 1994. Specifically, the Respondent had agreed to obey all Federal and State laws, and he had agreed not to possess controlled substances unless such substances were prescribed for his personal use by another practitioner. Yet as early as January of 1994, the Respondent prescribed controlled substances to patients by using another physician's DEA registration number, in violation of the Controlled Substances Act. Further, the Respondent took possession of controlled substances from his patients and stored them in his desk, all in violation of the terms of his probation, which did not end until September of 1994.

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,'' the Deputy Administrator finds it significant that in 1994 and 1995, the Respondent engaged in conduct in violation of the Controlled Substances Act. Specifically, 21 U.S.C. 843 (a)(2) provides that ''[i]t shall be unlawful for any person knowingly or intentionally— * * * (2) to use in the course of * * * distribution, or dispensing of a controlled substance * * * a registration number which is * * * issued to another person.'' Here, the Respondent used the registration number of another person, Dr. S., to prescribe controlled substances to patients who were not seen or treated by Dr. S., in violation of the Controlled Substances Act. See also 21 CFR 1306.03 (''A prescription for a controlled substance may be issued only by an individual practitioner who is * * * either registered or exempted from registration * * *''). Further, when he stored controlled substances in his desk, the Respondent violated DEA regulatory provisions governing the permissible methods of storing controlled substances in order to prevent the unlawful diversion of such drugs. See 21 CFR 1301.75, Physical Security Controls for Practitioners. Thus, this unregistered Respondent's total disregard for the statutory and regulatory provisions governing the handling of controlled substances indicates that he cannot be entrusted with a DEA registration. See generally, Jude R. Hayes, M.D., 59 FR 41785 (1994).

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator finds it significant that the Respondent falsified patient records by adding the initials of Dr. S. to the patients' charts, when Dr. S. had neither seen nor treated the patients. Such falsification of records to conceal the Respondent's unlawful prescribing practices also serves as a basis for the Deputy Administrator's conclusion that the public interest is best served by denying the Respondent's application for a DEA Certificate of Registration.

The Deputy Administrator acknowledges that the record contains letters from the Respondent's colleagues, noting his continued sobriety and adherence to his substance abuse treatment program. Such behavior is commendable. However, the Respondent's recent acts of falsifying patients' records and prescribing controlled substances without a DEA Certificate of Registration indicate that the public interest is still better served by denying the Respondent's application for registration at this time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the application of Jerry Neil Rand, M.D., be, and it hereby is, denied. This order is effective July 8, 1996.

Dated: May 31, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–14131 Filed 6–5–96; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on June 20 and 21, 1996, from 9:00 am until 5:00 pm on June 20, 1996, and from 8:00 am until 1:30 pm on June 21, 1996. The meeting will be held at the Financial Center Marriott Hotel, 85 West Street, New York, NY 10006. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a presentation by the American Society of Crime Laboratory Directors' Laboratory Accreditation Board; review and discussion of the National Research Council's Second Report on DNA; Forensic DNA Testing