the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the Call area described in the September 30, 1996 Federal Register notice (Vol. 61, No. 190, pages 51123–5). This study (Call) area could be further defined as a result of the Area Identification procedure indicated in the September 30 notice. Alternatives to the proposal that may be considered are to cancel the sale or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 308, Anchorage, Alaska, 99508–4302. Comments should be enclosed in an envelope labeled ''Comments on the Notice of Intent to Prepare an EIS on the proposed Beaufort Sea Lease Sale 170.'' Comments are due no later than 45 days from publication of this Notice

Dated: November 4, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 96–28790 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–17]

Stanley Alan Azen, M.D.; Grant of Restricted Registration

On January 9, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stanley Alan Azen, M.D. (Respondent) of Sun Valley, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated January 31, 1995, the Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Long Beach, California on November 30, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both sides submitted proposed findings of fact, conclusions of law and argument. On February 22, 1996, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommended Ruling, recommending that the Respondent's application for a DEA Certificate of Registration should be granted subject to his compliance with the terms of his probation with the Medical Board of California. On March 13, 1996, Government counsel filed exceptions to the Recommended Ruling of the Administrative Law Judge, and on March 27, 1996, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator. Subsequently, on March 29, 1996, Respondent filed exceptions to Judge Tenney's Recommended Ruling. However, Respondent's exceptions have not been considered by the Acting Deputy Administrator, since they were not filed within the time period specified in 21 CFR 1316.66, and Respondent did not request an extension of time within which to file his exceptions.

The Acting Deputy Administrator has considered the record in its entirety, excluding Respondent's exceptions, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts the findings of fact, conclusions of law, and recommended ruling of Judge Tenney, except as noted below.

The Acting Deputy Administrator finds that Respondent previously possessed DEA Certificate of Registration, AA8786329. On May 19, 1992, an Order to Show Cause was issued proposing to revoke that Certificate of Registration, alleging that Respondent had been convicted of a controlled substance related felony offense and that his continued registration would be inconsistent with the public interest. Following a hearing before Administrative Law Judge Mary Ellen Bittner, the then-Acting Administrator revoked Respondent's DEA registration effective March 3, 1994. See, Stanley Alan Azen, M.D., 59 FR 10,168 (1994).

In the prior proceeding, the then-Acting Administrator found that Respondent received his medical degree in 1978. Following an internship and two residencies in emergency medicine and internal medicine, Respondent worked since 1981, as an emergency room physician. Respondent admitted that he first experimented with marijuana and cocaine in the 1970's and became a regular cocaine user during the 1980's. He further admitted that he would share cocaine with his friends, and on September 20, 1990, his girlfriend died of a cocaine overdose. During the course of the investigation into his girlfriend's death, allegations were made that Respondent sold cocaine; a cooperating individual attempted to purchase cocaine from Respondent; and a search warrant executed at Respondent's residence revealed 2 ounces of cocaine, 19 grams of marijuana, and drug paraphernalia. Respondent was arrested and on April 16, 1991, in the Municipal Court of Los Angeles, California, a four-count felony complaint was filed against Respondent charging him with the sale and possession of a controlled substance. On November 15, 1991, the Respondent pled *nolo contendere* to one felony count of simple possession of a controlled substance. In the prior proceeding, Respondent testified that as a result of his arrest he terminated his drug habits and sought treatment for his drug abuse.

In his March 3, 1994 final order, the then-Acting Administrator adopted Judge Bittner's finding that the Government had not proved by a preponderance of the evidence that Respondent sold cocaine to the cooperating individual. However, in revoking Respondent's prior DEA Certificate of Registration, the then-Acting Administrator found that Respondent had a long history of drug abuse and had not demonstrated a life-long commitment to drug rehabilitation.

On April 15, 1994, Respondent submitted an application for a new DEA registration in Schedules IV and V. That application is the subject of these proceedings. The Acting Deputy Administrator concludes that the then-Acting Administrator's March 3, 1994 decision regarding Respondent is *res judicata* for purposes of this proceeding. See, Liberty Discount Drugs, Inc., 57 FR 2788 (1992) (where the findings in a previous revocation proceeding were held to be *res judicata* in a subsequent administrative proceeding.) The then-Acting Administrator's determination of the facts relating to the previous revocation of the Respondent's DEA registration is conclusive. Accordingly, the Acting Deputy Administrator adopts the March 3, 1994 final order in its entirety. The Acting Deputy Administrator concludes that the critical issue in this proceeding is whether the circumstances, which existed at the time of the prior

proceeding, have changed sufficiently to support a conclusion that Respondent's registration would be in the public interest.

According to Respondent, he has not abused drugs since April 1991, when he was admitted to the out-patient program at the Betty Ford Center for treatment of chemical dependency due to cocaine and marijuana abuse. This program required participation in alcohol or cocaine anonymous programs, and random urinalysis. Early in the program, Respondent had two positive drug screens for marijuana and one for cocaine. These results appear to have been from residual amounts of the drugs in his system. From his criminal conviction in November 1991 until his successful completion of probation in November 1994, Respondent has been subjected to approximately 30 random drug screens. All tests have been negative. Since October 1993, Respondent has met approximately once a week with a clinical psychologist, in an effort to cope with the various stresses in his life resulting from the death of his girlfriend, and the loss of professional status and employment opportunities. Respondent testified that he sought this treatment on his own volition and plans to continue the sessions. Respondent continues to be involved with Cocaine Anonymous and Narcotics Anonymous.

Judge Tenney found that in August 1994, the Medical Board of California (Board) revoked Respondent's medical license, stayed the revocation, and placed Respondent on probation for six years subject to, among other things, the following terms and conditions:

(1) Respondent is not to prescribe, administer, dispense, order, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for the drugs in Schedules IV and V. However, Respondent is permitted to prescribe, administer, dispense, or order the drugs listed in Schedules II and III for inpatients in hospital settings, but not otherwise.

(2) Respondent is to abstain completely from personal use or possession of controlled substances and dangerous drugs.

(3) Respondent is to maintain a record of all controlled substances prescribed, dispensed, or administered showing the following information: (a) the name and address of the patient, (b) the date, and (c) the character and quantity of the controlled substance furnished. Respondent shall make these records available for inspection by the Board or its designee.

(4) Respondent is to abstain completely from the use of alcoholic beverages.

(5) Respondent shall submit to biological fluid testing upon the request of the Board.

As support for this finding, Judge Tenney relied upon a document admitted into evidence entitled ''Proposed Decision'' signed by a state administrative law judge. However, Respondent testified at the hearing in this matter, and asserted in his post-hearing filing, that there are no restrictions on his ability to prescribe any drug. Nonetheless, the Acting Deputy Administrator adopts the finding of Judge Tenney, since Respondent did not file exceptions regarding Judge Tenney's characterization of the current status of Respondent's medical license or his recommendation to grant Respondent's application subject to continued compliance with the Board's terms and conditions.

As of the date of the hearing before Judge Tenney, Respondent had been in compliance with the Board's terms of probation for 13 months. In addition, all of Respondent's drug screens requested by the Board have tested negative.

Beginning in 1991, Respondent worked as an emergency services doctor at Pacifica Hospital. Under the hospital's bylaws, physicians are required to possess a valid DEA Certificate of Registration as a condition of employment. On or about March 11, 1994, Respondent's attorney received a letter from DEA notifying him that Respondent's previous DEA Certificate of Registration was revoked ''effective immediately''. A few days after the revocation, Respondent, through counsel, filed an appeal of the revocation order, as well as a request for a stay of the final order pending resolution of the appeal, in the United States Court of Appeals for the Ninth Circuit.[1]

In late April 1994, DEA received information from a local newspaper reporter that Respondent was still employed at Pacifica Hospital in spite of the revocation of his DEA registration. A DEA investigator went to Pacifica Hospital on May 13, 1994, and confirmed that Respondent was in fact employed there. While at the hospital, the investigator first spoke to the Executive Director of the hospital, who was unaware that Respondent's DEA registration was revoked effective March 3, 1994. The investigator then called Respondent's direct supervisor who stated that he thought Respondent's revocation was on appeal and therefore his DEA registration was still valid. While still at the hospital, the DEA investigator received a telephone call from DEA's Office of Chief Counsel advising him that Respondent could use his DEA registration while the revocation was on appeal. This information was relayed to the Executive Director and Respondent's supervisor. Soon thereafter, the DEA investigator received another telephone call from DEA's Office of Chief Counsel informing him that Respondent's DEA registration was in fact revoked effective March 3, 1994, and any use thereafter was invalid. The investigator relayed this information to the Executive Director and left a voice mail message for Respondent's supervisor. About a day and a half later, after speaking to the DEA in Washington, the hospital informed Respondent that his number was not valid pending the outcome of the appeal.

Respondent testified that until on or about May 17, 1994, he was under the impression that his DEA registration was valid. He believed that even though his DEA registration appeared to be expired, it was still valid since a renewal application had been timely filed and not finally acted upon by DEA. It was his understanding that the registration was valid until there was a decision as to whether or not the stay of revocation would be granted by the Court of Appeals. Because of this belief, Respondent did not notify the hospital of the March 3, 1994 revocation. Respondent's supervisor testified that he believed that Respondent was very forthcoming regarding his registration status to the best of his understanding. Respondent sent the Credentials Committee of the hospital a letter indicating that his DEA registration had been revoked, but that it was his understanding that he could still use it pending the outcome of the appeal of the revocation.

It is uncontested that Respondent issued controlled substance prescriptions following the revocation of his previous DEA Certificate of Registration until approximately May 17, 1994, when he was informed that his registration was not valid. There is no evidence that Respondent was trying to hide the fact that he was issuing controlled substance prescriptions during this time period. Respondent has not handled controlled substances since approximately May 17, 1994. Respondent resigned from Pacifica Hospital after learning that he was no

[1] There is no evidence in the record regarding the outcome of Respondent's appeal of the March 3, 1994 revocation of his DEA Certificate of Registration filed in the United States Circuit Court of Appeals for the Ninth Circuit.

longer authorized to handle controlled substances.

On August 7, 1995, the Superior Court of the State of California for the County of Los Angeles, set aside and vacated Respondent's conviction for possession of a controlled substance, in light of his fulfillment of the conditions of probation. The order further stated that, ''[Respondent] is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are 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. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

The Acting Deputy Administrator concludes that all five factors are relevant in determining whether Respondent's registration would be inconsistent with the public interest. As to factor one, in August 1994, the Medical Board of California (Board) placed Respondent's medical license on probation subject to strict terms and conditions for six years. During the probationary period with the Board, Respondent may prescribe, administer, dispense, order, or possess controlled substances in Schedule IV and V, and may only prescribe, dispense, administer or order Schedule II and III controlled substances to inpatients in hospital settings. He must abstain from the use of alcohol and controlled substances, unless prescribed for a bona fide illness by another practitioner. He must maintain a log of his controlled substance handling and must participate in continuing medical education.

As to factor two, Respondent's experience in dispensing controlled substances, it is not disputed that Respondent prescribed controlled substances without a valid DEA registration from on or about March 3 through May 17, 1994. However, Respondent presented credible evidence that he was under the impression that he could use his DEA Certificate of Registration pending the outcome of his appeal of the revocation of his previous DEA registration. There is no evidence in the record that he attempted to hide his use of his DEA registration during that time period. There is also no evidence in the record that Respondent prescribed controlled substances for no legitimate medical purpose. In fact, as Judge Tenney noted, Respondent's former supervisor testified at the earlier proceeding that Respondent's abilities as a doctor were excellent, and that Respondent was one of the best emergency room physicians he has known. At the hearing before Judge Tenney, Respondent's supervisor at Pacifica Hospital testified that he was impressed with Respondent's academic abilities and that Respondent was an invaluable member of his emergency services group.

Unlike Judge Tenney, the Acting Deputy Administrator finds that factor three is relevant in determining the public interest in this matter. Respondent pled *nolo contendere* to one state felony count for possession of a controlled substance. Judge Tenney found that this conviction was set aside and vacated on July 18, 1995, pursuant to California Penal Code § 1203.4, and therefore did not consider the conviction under factor three. The Acting Deputy Administrator concludes however, that Respondent's April 1991 conviction is still a conviction for purposes of determining the public interest. The Acting Deputy Administrator relies upon an earlier case where the then-Administrator of DEA held that a felony conviction dismissed under § 1203.4 is a conviction for purposes of 21 U.S.C. 824. The then-Administrator found:

> that the California court's action under California statute does not ''erase'' the conviction for purposes of 21 U.S.C. 824. This finding is based upon decisions of federal courts interpreting the relationship of California Penal Code section 1203.4 to actions by federal agencies predicated upon dismissed felony convictions, the language of the Penal Code Section itself, and agency precedent affording the term ''conviction'' with the broadest possible meaning. *Donald Patsy Rocco, D.D.S.*, 50 FR 34,210 (1985).

Regarding factor four, the Government contends that Respondent violated 21 U.S.C. 822(a)(1) and 841(a)(1) and 21 CFR 1306.03(a) by prescribing controlled substances without a valid DEA registration. Respondent admits to writing controlled substance prescriptions after the effective date of the revocation of his DEA registration. In his opinion, the Administrative Law Judge cited several cases for the proposition that, ''a physician is exempt from the provisions of the Controlled Substance [sic] Act if dispensing or prescribing controlled substances in good faith to patients in the regular course of professional practice.'' See U.S. v. Carroll, 518 F.2d 187 (1975), U.S. v. DeBoer, 966 F.2d 1066 (1992). These cases dealt with the assessment of criminal liability. The Acting Deputy Administrator agrees that if acting in good faith, a physician would be exempt from criminal liability, because there would be no intent to violate the law. But, this is an administrative proceeding, seeking to protect the public interest, not to assess liability. A physician must possess a valid DEA registration in order to legally prescribe controlled substances. Respondent was not exempt from this requirement when he issued prescriptions using his revoked DEA registration. However, if Respondent issued these prescriptions under the good faith belief that his DEA registration was valid, that certainly is a mitigating factor in determining the public interest.

The evidence clearly shows that Respondent possessed such a good faith belief when he issued controlled substance prescriptions between March 3 and May 17, 1994. Respondent believed that his DEA registration remained valid pending the outcome of the request for a stay and appeal of his earlier revocation. In an attempt to clarify his registration status, Respondent misinterpreted the Federal regulations. He thought that since his renewal application had not been acted upon by the DEA, his expired DEA registration continued pending the outcome of the appeal in the Ninth Circuit. He did not attempt to conceal this belief, and in fact wrote a letter to the Credentials Committee at Pacifica Hospital stating this position. The Acting Deputy Administrator does not find this to be an unreasonable explanation, especially in light of the fact that it appears that DEA was confused as to the status of Respondent's registration pending the outcome of the appeal. The DEA

investigator who testified at the hearing stated that, ''there was some ambiguity.'' Therefore, the Acting Deputy Administrator does not find Respondent's prescribing of controlled substances with his revoked DEA registration to be of significant concern in assessing the public interest. Particularly since Respondent immediately ceased writing controlled substance prescriptions upon being advised that his DEA registration was not valid.

As to factor five, the Acting Deputy Administrator is quite concerned with Respondent's long history of substance abuse. Respondent admitted to using cocaine and marijuana for 20 years. In the prior administrative proceeding, the then-Acting Administrator adopted the Administrative Law Judge's finding that ''there was insufficient evidence to conclude that Respondent has recognized and dealt with the severity of his problem, or that he has progressed in his recovery to the extent that he should be permitted to continue to hold a DEA registration.'' At the time of the hearing in this matter before Judge Tenney, Respondent had been in rehabilitation for five years. He has been randomly drug tested since 1991 and has not tested positive. He continues to participate in Cocaine Anonymous and Narcotics Anonymous and regularly receives psychological counseling. He has successfully completed his criminal probation, and in August 1994, his medical license was placed on probation for six years by the Medical Board of California. As part of this probation, Respondent is subject to random drug testing and his controlled substance handling is restricted. Respondent testified at the hearing before Judge Tenney that, ''I'm extremely remorseful. But I cannot change what happened.''

The Administrative Law Judge concluded that Respondent's registration would not be inconsistent with the public interest. But given his background of drug abuse, Judge Tenney recommended that Respondent's application be granted subject to his compliance with all of the terms of his probation with the Board.

The Government filed exceptions to the Administrative Law Judge's recommendation. First, the Government took exception to Judge Tenney's conclusion that Respondent was ''exempt'' from the provisions of the Controlled Substances Act due to his good faith prescribing of controlled substances when he was without a valid DEA registration. The Acting Deputy Administrator is confused by this exception, since the Government raised this same proposition in its post-hearing filing, but argued that Respondent had not acted in good faith. However, the evidence is clear that Respondent did in fact act in good faith, believing that he had a valid DEA registration. As discussed above, the Acting Deputy Administrator considers Respondent's good faith assumption that he was properly registered when he issued controlled substances prescriptions between March 3 and May 17, 1994, to be a mitigating factor when considering his compliance with Federal laws.

The Government also took exception to Judge Tenney's recommendation that Respondent's registration be conditioned upon compliance with the probationary terms imposed by the Board. The Government argued that such a disposition would be difficult to enforce since DEA would be unaware if, or when, the probationary terms were violated or removed. Therefore, the Government urged that ''should Respondent be granted any DEA registration, that it be restricted to terms and conditions established by DEA, and independent of any probationary terms currently imposed by the California Medical Board.'' The Acting Deputy Administrator finds that Respondent's efforts at rehabilitation are commendable and the controls imposed by the Board are sufficient to monitor Respondent's handling of controlled substances. Consequently, the Acting Deputy Administrator finds that it is in the public interest at this time to issue Respondent a DEA registration conditioned upon his continued compliance with the terms imposed upon his California medical license. The Acting Deputy Administrator further concludes, however, that should the Board terminate Respondent's probation before August 5, 2000, Respondent's DEA registration will continue to be subject to the same terms as set forth in the Board's August 5, 1994 decision.

The Acting Deputy Administrator finds that Respondent only applied for a DEA Certificate of Registration in Schedules IV and V. The Board's probationary terms restrict Respondent's handling of Schedules II and III controlled substances to inpatients in hospital settings. However, since Respondent has not applied for Schedules II and III privileges with DEA and no request to modify his application was made at the hearing in this matter, the Acting Deputy Administrator can only issue Respondent a DEA Certificate of Registration in Schedules IV and V at this time. Nonetheless, the Acting Deputy Administrator finds that should Respondent apply for Schedules II and III in the future, the application should be granted and Respondent's Schedules II and III handling should be restricted to inpatients in hospital settings, to include emergency room patients, and be conditioned upon compliance with the Board's terms and conditions.

Accordingly, the Acting 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 the application, submitted by Stanley Alan Azen, M.D., for a DEA Certificate of Registration in Schedules IV and V be granted subject to continued compliance with the terms imposed upon his California medical license. It is further ordered, that should Dr. Azen's probation be terminated early by the Medical Board of California, his DEA Certificate of Registration will continue, until August 5, 2000, to be subject to the same terms imposed by the August 5, 1994 decision of the Medical Board of California. This order is effective December 9, 1996.

Dated: November 4, 1996.

James S. Milford, Jr.,

Acting Deputy Administrator.

[FR Doc. 96–28765 Filed 11–7–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 95–1]

Margaret E. Sarver, M.D., Suspension of Registration; Reinstatement With Restrictions

On September 7, 1994, the Deputy Assistant Administrator (then-Director) of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Margaret E. Sarver, M.D. (Respondent) of Beaver Falls, Pennsylvania, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, AS1667623, and deny any pending applications for registration under 21 U.S.C. 823(f) and 824(a)(4), as being inconsistent with the public interest.

By letter dated October 12, 1994, the Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Pittsburgh, Pennsylvania on August 15 and 16, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both sides submitted proposed findings of fact, conclusions of law and argument. On January 29, 1996, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommended Ruling, recommending