Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: November 4, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–29921 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–5]

Martha Hernandez, M.D.; Reprimand and Continuation of Registrations With Restriction

On January 14, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Martha Hernandez, M.D., (Respondent) of Chicago, Illinois and Gary, Indiana, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificates of Registration, AH2262424 and BH4493475, pursuant to 21 U.S.C. 824(a)(1), and deny any pending applications for renewal of her registrations as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent materially falsified two applications for registration with DEA.

By letter dated February 6, 1997, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Chicago, Illinois on May 27, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On September 5, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's registrations not be revoked, but that Respondent be reprimanded and that she be required to submit certain documentation to DEA on an annual basis for three years. On September 25, 1997, the Government filed exceptions to Judge Randall's Opinion and Recommended Ruling, and on October 6, 1997, the record was transmitted to the Acting Deputy Administrator.

On October 15, 1997, Respondent submitted a request to file a response to the Government's exceptions, as well as her response to the exceptions. Respondent argued that ''[t]he Government filed its exceptions on September 25, 1997 and pursuant to regulation the Respondent has 20 days to request leave and file a response.'' In addition, Respondent stated that the Government does not object to Respondent filing a response to the exceptions. The Acting Deputy Administrator finds that Respondent has misread 21 CFR 1316.66, which provides for the filing of exceptions within 20 days of service of the Administrative Law Judge's Opinion and Recommended Ruling. The regulation further provides that the Administrative Law Judge may grant time beyond the twenty days for the filing of a response to any exceptions filed. Nowhere in the regulations is a party given 20 days from the filing of exceptions to submit a response. However, the Acting Deputy Administrator will nonetheless consider Respondent's response to the Government's exceptions since it has been represented that the Government does not object to the consideration of Respondent's response.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. 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 Acting Deputy Administrator finds that Respondent is a psychiatrist licensed to practice medicine in the states of Illinois and Indiana, with a DEA Certificate of Registration issued to her in each state. On June 15, 1990, the State of Illinois, Department of Professional Regulation (IDPR) refused to renew Respondent's Illinois medical license because she had defaulted on her student loan payments. On December 2, 1991, Respondent entered into a consent order with IDPR, which reinstated her Illinois medical license, but placed her license on probation until such time as she completes repayment of her student loan. The consent order set forth a schedule for repayment of the loan. However, by Order dated January 10, 1994, the IDPR indefinitely suspended Respondent's Illinois medical license due to her failure to abide by the repayment plan.

On October 1, 1994, Respondent submitted a renewal application for DEA Certificate of Registration AH2262424 issued to her in Illinois. On this renewal application, Respondent indicated that she was currently authorized to handle controlled substances ''in the state in which [she is] operating or propos[ing] to operate'', yet she listed her Indiana state medical license number. Also, Respondent answered ''No'' to the liability question which asked, ''Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?''

DEA personnel telephonically contacted Respondent on January 31, 1995, and again on May 3, 1995. During these conversations, the DEA personnel discussed with Respondent the effect of the IDPR's suspension upon Respondent's DEA registration; the possible voluntary surrender of Respondent's Illinois DEA registration in light of the continued suspension of her Illinois medical license; and the need for Respondent to submit a new application for registration with DEA in the State of Indiana. However, the DEA personnel did not indicate to Respondent during these conversations that her answer to the liability question on the October 1, 1994 renewal application was incorrect or questionable.

On May 5, 1995, Respondent submitted a new application for a DEA registration in the State of Indiana. Again, she answered ''No'' to the liability question which asks, ''Has the applicant ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?'' Subsequently, on July 10, 1995, Respondent was issued DEA Certificate of Registration BH4493475, in the State of Indiana.

On June 16, 1995, Respondent submitted an application to renew her Indiana medical license. On that application, Respondent answered ''No'' to a question which asked, ''In the last two years, has disciplinary action been taken regarding any license, certificate, registration or permit you hold or have held?'' As a result of this application, Respondent's Indiana medical license was renewed on June 30, 1995.

Following her conversations with the DEA personnel, Respondent decided not

to surrender her Illinois DEA registration. Judge Randall found that ''Respondent credibly testified [at the hearing in this matter] that she had declined to surrender her DEA Certificate of Registration because she felt that the choices given on the DEA surrender form pertaining to the reason for the surrender implied failure on her part to comply with Federal law in her handling of controlled substances.'' Judge Randall further found that Respondent ''credibly testified that she had believed such form language did not apply to her, since the suspension of her Illinois medical license was due to her inability to repay her Illinois student loan, not due to her failure to comply with Federal law in her handling of controlled substances.''

Since Respondent declined to voluntarily surrender her Illinois DEA registration, on November 27, 1995, DEA issued an Order to Show Cause to Respondent proposing to revoke her Illinois DEA Certificate of Registration in light of the fact that she was not then authorized to handle controlled substances in the State of Illinois due to the continued suspension of her Illinois medical license. However, on November 29, 1995, the IDPR entered into another consent agreement with Respondent, which reinstated Respondent's Illinois medical license and placed this license on probation subject to Respondent's adhering to a student loan repayment schedule. As a result of the consent agreement, the November 27, 1995 Order to Show Cause was not pursued.

In July 1996, Respondent submitted an application to renew her Illinois medical license. On this application, Respondent answered ''Yes'' to a question which asked, ''Since July 31, 1993, have you been denied a professional license or permit, or privilege of taking an examination, or had a professional license or permit disciplined in any way by any licensing authority in Illinois or elsewhere?'' Respondent testified that she answered the question in the affirmative, after discussing the interpretation of the question with an Illinois official.

On July 8, 1996, the Indiana Medical Licensing Board (Indiana Board) issued a complaint against Respondent. The complaint alleged that Respondent had falsified her application for renewal of her Indiana medical license dated June 16, 1995, by indicating that in the last two years no disciplinary action had been taken against any licenses that she had held or was currently holding, even though the IDPR had indefinitely suspended her Illinois medical license on January 10, 1994. In a letter dated January 13, 1997, Respondent informed the Indiana Board that ''[a]t the time I reapplied for my Indiana license [June 16, 1995] I was not aware of my Illinois license being resuspended.'' On July 14, 1997, the Indiana board issued its Findings of Fact and Order finding that Respondent's conduct constituted ''knowingly engaging in fraud or material deception in order to obtain a license to practice in violation of Ind. Code. * * *'' Accordingly, the Indiana Board ordered that Respondent be reprimanded, fined $200.00 and assessed costs.

At the hearing in this matter, Respondent contradicated her January 13, 1997 letter to the Indiana Board when she agreed that in January and May of 1995, she had had conversations with DEA personnel concerning the suspension of her Illinois medical license in January 1995.

Judge Randall found that ''Respondent credibly testified [at the hearing in this matter] that during 1994 she had experienced unexpected financial difficulties which contributed to her inability to pay her student loans * * * [and] that the suspension of her Illinois medical license in January of 1994 was not a rememberable event to her, since she was primarily practicing medicine in Indiana in 1994, and given the general turmoil of her life at that time.'' Judge Randall further found that ''Respondent credibly testified that she was unaware of a need for a separate DEA Certificate of Registration to reflect her Indiana place of business.'' In addition, Respondent testified that she answered ''No'' to the liability question on the DEA applications because she thought that since she was applying for a Federal registration to handle controlled substances, the question only pertained to actions taken based upon malpractice, criminal activity, or improper prescribing of controlled substances, and not to the suspension of a medical license due to a failure to repay a student loan.

Pursuant to 21 U.S.C. 824(a)(1), ''A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant—(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter.'' The Government contends that Respondent's DEA Certificates of Registration should be revoked pursuant to 21 U.S.C. 824(a)(1) because she falsified two different DEA applications by indicating that no adverse action had been taken against any of her state professional licenses when in fact such action had been taken against her Illinois medical license. In addition, she improperly answered a similar question on her application for an Indiana medical license. The Government argues that the crucial issues are ''Respondent's credibility and the ability of DEA investigators to ascertain the status of a registrant's or an applicant's past history based upon answers to the applicable liability questions.'' The Government contends that Respondent's testimony regarding her responses to the liability questions was not credible.

Respondent admits that her responses to the liability questions were incorrect. However, Respondent argues that the statements at issue were not ''material'' falsifications. Respondent further contends that revocation would be too harsh a sanction since she had no intent to deceive or mislead DEA; because her underlying misconduct was not related to malpractice in her treatment of patients or the mishandling of controlled substances; and, since once advised by the IDPR of the correct interpretation of the liability questions, she answered the question on her July 1996 state application appropriately.

As Judge Randall notes, ''[a]nswers to the liability question are material, since the DEA relies upon such answers to determine whether an investigation is needed prior to grating the application.'' DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See *Bobby Watts, M.D.*, 58 FR 4699 (1993); *Herbert J. Robinson, M.D.*, 59 FR 6304 (1994).

The Acting Deputy Administrator concurs with Judge Randall's conclusion that Respondent materially falsified her October 1, 1994 renewal application for her Illinois DEA Certificate of Registration and her May 5, 1995 application for a DEA registration in Indiana. Respondent indicated on both of these applications that she had not had a state professional license denied or suspended, even through she knew that the renewal of her Illinois medical license had been denied in 1990, and that after being reinstated, was again suspended in 1994. Respondent does not deny that she incorrectly answered the liability question on the applications, but contends that she did not think that the actions of the IDPR due to her failure to repay her student loan was the type of action that needed to be disclosed in response to the question. The Acting Deputy Administrator concurs with Judge Randall's conclusion that, ''[a]lthough the Respondent credibly

testified concerning her misinterpretation of the question, she was not relieved of her responsibility to carefully read the question and to honestly answer all parts of the question.''

Therefore, the Acting Deputy Administrator concludes that based upon Respondent's material falsification of the two applications, ground exist to revoke her DEA Certificates of Registration pursuant to 21 U.S.C. 824(a)(1). The question now becomes whether the Acting Deputy Administrator, in exercising his discretion, believes that revocation is the appropriate sanction in light of the facts and circumstances of this case.

Judge Randall found that ''Respondent's testimony was credible during her explanation of her confusion concerning the DEA registration requirements for her Indiana practice, and her misunderstanding, albeit unjustified, concerning the phrasing of the liability questions in issue.'' Therefore, Judge Randall concluded that Respondent did not intend to deceive DEA, but that her falsification of the applications was due to her carelessness and negligence. As Judge Randall noted, ''lack of intent is irrelevant to the legal test of material falsification.'' However she suggested that ''such a lack of intent should be considered in fitting the remedy to the situation in this case.''

The Government filed exceptions to Judge Randall's conclusion arguing that Respondent intentionally sought to deceive DEA by incorrectly answering the liability question on the applications. The Government argues that Respondent clearly knew that her Illinois medical license had been suspended, yet she indicated on her applications for registration that no adverse action had been taken against her state professional license.

The Acting Deputy Administrator agrees with Judge Randall that a lack of intent to deceive should be considered in determining whether a registration should be revoked. However, the Acting Deputy Administrator further notes that negligence and carelessness in completing an application could be a sufficient reason to revoke a registration. In determining whether revocation is warranted, the Acting Deputy Administrator looks at the totality of the circumstances in each case.

In this case, it is undisputed that Respondent knew that her Illinois medical license had been suspended. But, the Acting Deputy Administrator does not agree with the Government that Respondent intended to deceive DEA in responding to the liability question. Respondent testified at the hearing in this matter that she thought that since she was applying to handle controlled substances, the question on the applications did not apply to her since her Illinois medical license was suspended due to her failure to repay a student loan, and not due to inadequate patient care or mishandling of controlled substances. While this is clearly an incorrect interpretation of the liability question, the Acting Deputy Administrator concurs with Judge Randall's conclusion that this is a credible explanation for the falsification.

Notwithstanding the foregoing, the Acting Deputy Administrator is troubled by Respondent's carelessness in failing to carefully read the question on the applications. However, the Acting Deputy Administrator finds it significant that prior to receiving the Order to Show Cause in this matter alleging that Respondent materially falsified her applications, Respondent answered a similar liability question correctly on her July 1996 Illinois application. Respondent testified that she gave a different response on this application after discussing the matter with an Illinois official.

In considering the appropriate sanction, Judge Randall also found it significant that ''both the Illinois medical board and the Indiana medical board chose to grant [Respondent's] applications, even in light of her past failures to remain current in the payment of her student loan, and more recently, even in light of the Indiana Board's finding that the Respondent's June 1995 renewal application had been prepared in a fraudulent or materially deceptive manner.'' The Government, in its exceptions, argues that the fact that the IDPR has not currently taken action against Respondent's Illinois medical license should not be considered a mitigating factor, since it has taken significant action against her state license in the past. The Acting Deputy Administrator finds that the actions of the state boards are relevant, although not dispositive, in determining the appropriate sanction in this matter. As stated previously, the Acting Deputy Administrator must look at all of the circumstances surrounding a particular case. The Acting Deputy Administrator concludes that while it is true that Respondent's Illinois medical license was not renewed in 1990 and was suspended in 1994 due to her failure to repay a student loan, the IDPR has seen fit to allow Respondent to continue to practice medicine as long as she continues to repay her loan.

The Government further argues in its exceptions that the action of the Indiana Board should not be considered a mitigating factor, because it was not the result of an adjudicatory proceeding, but rather a settlement conference. The Government contends that in *John W. Copeland, M.D.*, 59 FR 46,063 (1994), DEA previously held that a consent decree between the Respondent and the state in no way detracted from the findings and conclusions found in the DEA's final order. In that case the then-Deputy Administrator found egregious violations regarding the handling of controlled substances and that the consent order of the state board did not change those findings. In this case, the Acting Deputy Administrator has not found similar violations. In fact, as the Government points out, in this case the Indiana Board found that Respondent knowingly engaged in fraud or material deception. The Indiana Board nonetheless allowed her to continue to practice medicine with a reprimand and a fine. As stated previously, unlike the Indiana Board, the Acting Deputy Administrator has found that Respondent did not intend to deceive DEA with her answers to the liability question on the applications.

To not consider a state's action simply because it was reached by agreement, rather than following an adjudicatory proceeding, would be unreasonable. Therefore, the Acting Deputy Administrator disagrees with the Government's contention that consent orders should not be considered as mitigating evidence. Accordingly, the Acting Deputy Administrator agrees with Judge Randall in this case, that while not dispositive, the fact that both the Indiana and Illinois medical licensing authorities have allowed Respondent to continue to practice medicine is a mitigating factor when evaluating all of the circumstances of this case to determine the appropriate sanction.

Judge Randall also found it appropriate to consider that Respondent's falsification of her applications stemmed from her failure to repay a student loan, and that there are no allegations that Respondent improperly handled controlled substances. As Judge Randall noted, ''this lack of connection to controlled substances is not dispositive of the matter,'' however, she suggested that, ''it is relevant in determining the appropriate remedy.'' The Government, in its exceptions, argues that the lack of improper handling of controlled substances ''should not be considered in mitigation,'' and that ''DEA's past policy has been not to distinguish between those falsifications that do and do not

have related controlled substance issues.''

The Acting Deputy Administrator agrees with the Government insofar as DEA has in fact revoked registrations in the past based upon the material falsification of an application that was not related to the mishandling of controlled substances. See *Ezzat E. Majd Pour, M.D.*, 55 FR 47,547 (1990). However, the Acting Deputy Administrator concludes that in exercising his discretion in determining the appropriate remedy, he must consider all of the facts and circumstances of a particular case. Here, it is relevant that Respondent credibly testified that she did not think that the liability question applied to her since the suspension of her Illinois license was to due to the improper handling of controlled substances. The Acting Deputy Administrator also finds it relevant that Respondent correctly answered a similar question on a subsequent state application even before she received the Order to Show Cause from DEA alleging that she had materially falsified two of her applications.

Judge Randall concluded that revocation would be too harsh a sanction in this case, ''[h]owever, the Respondent's failure to pay close enough attention to the administrative details necessary to maintain her credentials in good standing warrants some concern about the Respondent's meeting the responsibilities levied against a person provided the authority to prescribe and to dispense controlled substances.'' Therefore, Judge Randall recommended that Respondent be reprimanded for her failure to properly complete here DEA registration applications; and ''that for a period of three years, that Respondent be ordered to file with the appropriate local DEA resident office, on an annual basis, a copy of a document from both the Illinois and the Indiana medical boards certifying that her medical licenses remain in good standing in both States, and that there is no impediment to her handling controlled substances at the State level.''

The Acting Deputy Administrator concludes that there is no question that Respondent materially falsified two of her applications for DEA registration. This is extremely troubling since DEA relies on accurate information being submitted by its applicants. Further, Respondent's actions indicate a careless disregard for attention to detail. This lack of attention to detail is of great concern to the Acting Deputy Administrator since DEA registrants are tasked with keeping meticulous records regarding the handling of controlled substances in order to prevent the diversion of these dangerous substances. However, the Acting Deputy Administrator agrees with Judge Randall that revocation would be too severe a sanction given the facts and circumstances of this case. The Acting Deputy Administrator concurs with Judge Randall's recommendation that Respondent be reprimanded for her failure to properly complete her applications for registration and that she be required for a period of three years to submit to the DEA Chicago Field Division, on an annual basis, documentation from both the Illinois and the Indiana medical licensing authorities certifying that her medical licenses remain in good standing in both states, and that there is no impediment to her handling controlled substances at the state level. The first such documentation should be forwarded to DEA within thirty days of the effective date of this final order.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby reprimands Martha Hernandez, M.D., for failing to properly complete her DEA registration applications. The Acting Deputy Administrator further orders that DEA Certificates of Registration AH2262424 and BH4493475, issued to Martha Hernandez, M.D., be continued, and any pending applications be granted, subject to the above described restriction. This order is effective December 15, 1997.

Dated: November 4, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–29972 Filed 11–13–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 29, 1997, and published in the **Federal Register** on August 26, 1997, (62 FR 45272), Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, New Jersey 07936, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Novartis Pharmaceuticals Corp. to manufacture methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 6, 1997.

John H. King,

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

[FR Doc. 97–29973 Filed 11–13–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract