

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[MT-924-1430-01; SDM 87066]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; South Dakota**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The National Park Service proposes to withdraw .25 acre of national Forest System land in Custer County for construction of temporary quarters for summer seasonal employees. The National Park Service would have administrative jurisdiction of this area. This notice closes the land for up to 2 years from surface entry and mining. The land has been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by June 18, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406-255-2949.

SUPPLEMENTARY INFORMATION: On February 17, 1998, a petition was approved allowing the National Park Service to file an application to withdraw the following described National Forests System land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The land is described as follows:

Black Hills Meridian

T. 3 S., R. 4 E.,

Sec. 23, portion of the S½ of lot 19.

The area described contains .25 acre in Custer County.

The purpose of the proposed withdrawal is to enable construction of temporary quarters for summer seasonal employees.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the

proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period, the Forest Service will continue to manage this land.

Dated: March 12, 1998.

John E. Moorhouse,*Acting Deputy State Director, Division of Resources.*

[FR Doc. 98-7312 Filed 3-19-98; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. 96-27]

Anant N. Mauskar, M.D.; Grant of Restricted Registration

On March 27, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anant N. Mauskar, M.D. (Respondent), of Houston, Texas, 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 he is without authority to handle controlled substances in the State of Texas, and that his registration would be inconsistent with the public interest.

By letter dated April 15, 1996, Respondent, through counsel, filed a request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. During prehearing procedures, the Government filed a Motion for Summary Disposition alleging that Respondent was not entitled to a DEA registration in the State of Texas since he was without authority to handle controlled substances in the State. However, on May 29, 1996, the Texas Department of Public Safety reissued Respondent's Department of Public Safety Registration

Certificate enabling him to handle controlled substances in Texas. As a result, Judge Bittner denied the Government's Motion for Summary Disposition on July 25, 1996.

A hearing was then held on November 13, 1996, in San Antonio, Texas on the remaining issue raised in the Order to Show Cause. At the hearing, Respondent testified on his own behalf and both parties introduced documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument. Respondent did not submit a posthearing filing. On January 13, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration should be granted in Schedules II through V, excluding Schedule II narcotic controlled substances, subject to the maintenance of a log of his handling of controlled substances. Neither party filed exceptions to the Opinion and Recommended Ruling of Judge Bittner, and on February 17, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

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, Findings of Fact, Conclusions of Law and Decision 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 of law.

The Acting Deputy Administrator finds that Respondent attended medical school in Pune, India, and as of the date of the hearing had been practicing family medicine in Harris County, Texas for 16 years. Respondent previously possessed DEA Certificate of Registration AM9760338.

On June 18, 1992, an Order to Show Cause was issued to Respondent proposing to revoke his previous DEA Certificate of Registration, alleging that his continued registration would be inconsistent with the public interest. Following a hearing before Administrative Law Judge Paul A. Tenney, the then-Administrator revoked Respondent's DEA registration effective November 1, 1993. See, *Anant N. Mauskar, M.D.*, 58 FR 51,385 (October 1, 1993).

In the prior proceeding, the then-Administrator found that on December 5, 1990, July 22, 1991, and August 29, 1991, Respondent issued prescriptions for the Schedule III controlled substance Tylenol #4 with codeine (Tylenol #4), and the Schedule IV controlled substance Xanax to an undercover law enforcement officer for no legitimate medical purpose. The undercover officer indicated that the Tylenol #4 made him feel good, yet on two occasions, Respondent falsified the patient record indicating that the "patient" was suffering from pain, even though the undercover officer made no such complaint.

Based upon these findings, the then-Administrator concluded that Respondent's continued registration would be inconsistent with the public interest, and revoked Respondent's previous DEA Certificate of Registration. *Id.* Subsequently, Respondent filed a petition for review of the then-Administrator's final order revoking his DEA registration. On August 25, 1994, the United States Court of Appeals for the Fifth Circuit found that the then-Administrator's findings of fact were supported by substantial evidence and affirmed his final order. *Mauskar v. Drug Enforcement Administration*, No. 93-5437, slip op. (5th Cir. Aug. 25, 1994).

On October 21, 1994, Respondent submitted an application for a new DEA registration in Schedules II through V. That application is the subject of these proceedings. At the hearing in this matter, Respondent argued that he should be allowed to relitigate the underlying facts which led to the revocation of his previous DEA registration, since he did not testify at the previous proceeding because there were pending criminal charges against him. Respondent presented evidence that sometime after February 1993, Respondent was found not guilty of some unspecified charge following a bench trial in the 183rd District Court of Harris County, Texas. Also, in June 1995, Respondent was again found not guilty following a July trial on an unspecified charge based on the same facts as those which were addressed in the previous administrative proceeding.

The Administrative Law Judge found however, that the then-Administrator's final order published in the **Federal Register** on October 1, 1993, 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 Acting Deputy

Administrator agrees with Judge Bittner. The then-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 then-Administrator's 1993 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.

At the hearing before Judge Bittner, Respondent maintained that he never prescribed controlled substances for other than legitimate medical purposes, including those prescribed for the undercover officer. Respondent asserted that he is able to identify persons addicted to controlled substances because they "look different," usually ask directly for a controlled substance but do not want to submit to a physical examination, and appear to be in a hurry.

Respondent testified that since the previous proceeding, he has taken various courses to maintain his continuing medical education requirements, including courses in pain management which addressed the proper handling of controlled substances. Respondent testified that these courses instruct physicians, "[d]on't be scared of DEA," and "be very aggressive in treating the pain." However, Respondent stated that if granted a DEA registration, he does not intend to prescribe controlled substances very often, because there are now effective non-controlled pain relievers.

The Government argues that it has presented a prima facie case for the denial of Respondent's application for registration based upon the previous revocation of his DEA registration and the fact that he has not taken responsibility for the acts which led to the revocation. Nevertheless, the Government notes that Respondent's wrongdoing was limited to three instances of misprescribing in 1990 and 1991, and therefore, it may be appropriate to grant him a restricted registration. Respondent asserts that if granted a DEA registration, he would not prescribe controlled substances very often.

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).

Regarding factor one, the Acting Deputy Administrator notes that Respondent was without authority to handle controlled substances in the State of Texas for a period of time. However, it appears that the state took action against Respondent's Texas registration to handle controlled substances in light of the revocation of his previous DEA registration. On May 29, 1996, the Texas Department of Public Safety reissued Respondent his state controlled substance privileges in Schedules II nonnarcotic, III, IV and V. However, as Judge Bittner noted, "inasmuch as state licensure is a necessary but not sufficient condition for DEA registration, * * * this factor is not dispositive."

As to factors two and four, Respondent's experience in dispensing controlled substances and his compliance with controlled substance laws, it was found in the previous proceeding that Respondent prescribed controlled substance on three occasions in 1990 and 1991 to an undercover officer for no legitimate medical purpose, and therefore violated 21 CFR 1306.04. The Acting Deputy Administrator finds it troubling that Respondent continues to maintain that he did nothing wrong, and as the Government notes, this "calls into question his commitment to comply with controlled substance laws in the future." Respondent testified that since the revocation of his previous DEA registration, he has taken courses that have dealt with the handling of controlled substances. Yet, as Judge Bittner notes, "(it appears that these)

courses did not emphasize regulatory requirements and how to ensure that one's practices comply with them." Instead, Respondent testified that the courses encouraged doctors to not be scared of DEA and to take an aggressive approach to pain management. Nevertheless, Respondent testified that if granted a DEA registration, he would not prescribe controlled substances very often since safer noncontrolled substances are now available.

The Acting Deputy Administrator finds that there was no evidence presented relevant to factor three or factor five.

The Acting Deputy Administrator concludes that in light of Respondent's prescribing of controlled substances for no legitimate medical purpose and his failure to accept responsibility for his actions, the Government has established a prima facie case for the denial of Respondent's application for registration. However, as both Government counsel and Judge Bittner note, Respondent's wrongdoing is limited to three instances of prescribing controlled substances without a valid medical purpose in 1990 and 1991. Therefore, Judge Bittner recommended that Respondent be granted a restricted DEA Certificate of Registration. But, while Respondent has applied for a DEA registration in Schedules II through V, DEA has consistently held that it can only register a practitioner to handle controlled substances to the extent that he is authorized by the state. See, e.g., *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993). Since the record indicates that Texas has not issued Respondent privileges in Schedule II narcotic, Respondent is not entitled to a DEA registration in Schedule II narcotic. Judge Bittner further recommended that Respondent be required to "submit quarterly logs of all his handling of controlled substances to the appropriate DEA Special Agent in Charge or his designee, for the term of his registration."

The Acting Deputy Administrator agrees that a restricted registration is appropriate under the facts and circumstances of this case. While Respondent's wrongdoing occurred a number of years ago and was limited in nature, it is in the public interest to monitor Respondent's handling of controlled substances, in light of his failure to acknowledge responsibility for his actions. Therefore, the Acting Deputy Administrator finds it in the public interest to grant Respondent a DEA registration in Schedules II through

V, excluding Schedule II narcotic, subject to the following condition:

For three years from the date of issuance of the DEA Certificate of Registration, Respondent shall maintain a log of all controlled substances that he prescribes, administers or dispenses. At a minimum, the log shall indicate the date that the controlled substance was prescribed, administered or dispensed, the name of the patient, and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. The log shall be submitted on a quarterly basis to the Special Agent in Charge of the DEA Houston Field Division, or his designee. Should Respondent not prescribe, administer or dispense any controlled substances during a given quarter, he shall so indicate to the Special Agent in Charge of the DEA Houston Field Division, or his designee.

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 orders that the application dated October 2, 1994, submitted by Anant N. Mauskar, M.D., be, and it hereby is, granted in Schedules II through V, excluding Schedule II narcotic, subject to the above described restriction. This order is effective April 20, 1998.

Dated: March 6, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98-7188 Filed 3-19-98; 8:45 am]

BILLING CODE 4410-09-M

written statement concerning the FBI CJIS Division programs or related matters with the Board. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, facsimile, or a hand-delivered note. It should contain the requestor's name, corporate designation, consumer affiliation, or Government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. A non-member requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specifically approved by the Chairman of the Board.

Inquiries may be addressed to the Designated Federal Employee, Mr. Demery R. Bishop, Section Chief, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0149, telephone 304-625-2740, facsimile 304-625-5090.

Dated: March 9, 1997.

Demery R. Bishop,

Section Chief, Programs Development Section, Federal Bureau of Investigation, Designated Federal Employee.

[FR Doc. 98-7202 Filed 3-19-98; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 17, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219-5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219-4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday-Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Service (CJIS) Advisory Policy Board; Meeting

The Criminal Justice Information Services (CJIS) Advisory Policy Board will meet on June 16-17, 1998, from 9 a.m., until 5 p.m., at the Swissôtel, One Avenue de Lafayette, Boston, Massachusetts, telephone 617-422-5528, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI), on the security, policy, and operation of the National Crime Information Center (NCIC), NCIC 2000, the Integrated Automated Fingerprint Identification System (IAFIS), and the Uniform Crime Reporting and National Incident Based Reporting System programs.

The topics to be discussed will include the progress of the NCIC 2000 and IAFIS projects, and other topics related to the operation of the FBI's criminal information systems.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a