does not conform in all essential respects to the law and regulations.''

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator gives some weight to the Colleague's opinion concerning the danger the Respondent's practices creates for his patients. Although the Colleague had also experienced professional difficulties, his observations as to the Respondent's impaired abilities to treat his patients were corroborated by other office personnel, by interviewing investigators, and by the Respondent himself in discussing his health problems in 1994. Such impairment, coupled with his past prescribing practices, creates doubt as to the Respondent's ability to comply with DEA regulations in issuing prescriptions for controlled substances. Also, his failure to provide any basis for the Deputy Administrator to believe that his professional practices would be altered in the future, weighs heavily in favor of revoking the Respondent's DEA Certificate of 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 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB2703925, previously issued to Edward L.C. Broomes, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 4, 1996.

Dated: January 29, 1996.

Stephen H. Greene,

*Deputy Administrator.*

[FR Doc. 96–2170 Filed 2–1–96; 8:45 am]

**BILLING CODE 4410–09–M**

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**[Docket No. 94–35]**

## Therial L. Bynum, M.D.; Revocation of Registration

On March 11, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Therial L. Bynum, M.D., (Respondent) of Murfreesboro, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration, BB2042048 and AB8535087, under 21 U.S.C. 824(a), and deny any pending applications for renewal of such registrations as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

> [The Respondent] materially falsified required applications as set forth in 21 U.S.C. 824(a)(1); [the Respondent had] been convicted of a felony relating to controlled substances as set forth in 21 U.S.C. 824(a)(2); [the Respondent had] had a state license suspended or revoked by competent State authority and [is] no longer authorized to handle controlled substances in one of the states that [he is] operating as set forth in 21 U.S.C. 824(a)(3); and [the Respondent has] committed acts which render [his] registrations inconsistent with the public interest as set forth in 21 U.S.C. 824(a)(4).

By letter dated April 8, 1994, the Respondent replied to the show cause order, requesting a hearing. On May 16, 1994, Government counsel filed a prehearing statement, and on June 24, 1994, the Respondent filed his prehearing statement. However, on May 4, 1995, Administrative Law Judge Paul A. Tenney issued an order, Notice of Cancellation of Hearing, noting that the Respondent had failed to reply to several of his previous orders, notifying the Respondent that his inaction was being deemed a waiver of his hearing right and an implied withdrawal of his request for a hearing, and giving the Respondent until May 31, 1995, to request reconsiderations of the matter. However, the Respondent failed to reply, and by order dated June 1, 1995, Judge Tenney closed the case file and removed this matter from his active docket. By letter also dated June 1, 1995, Judge Tenney informed the Deputy Administrator of his actions, and the case file was transmitted for issuance of a final order.

The Deputy Administrator has considered the prehearing statements of the parties and the investigative file. Accordingly, he now enters his final order in this matter, without a hearing and based upon this record, pursuant to 21 C.F.R. 1301.54(e) and 1301.57.

Initially, the Deputy Administrator finds that the Respondent has two active DEA Certificates of Registration as a practitioner: BB2042048 for his practice in Murfreesboro, Tennessee, and AB8535087, for his practice in Omaha, Nebraska.

On November 30, 1988, the Respondent was convicted in the Circuit Court, Cook County, State of Illinois, of conspiracy with intent to commit the offense of ''[k]ickbacks in the amount of more than $10,000.'' Specifically, the Respondent, then a Medicaid provider, acted to accept remuneration from an individual representing a laboratory which was also a Medicaid provider, in exchange for referring specimens to this laboratory. Subsequently, effective April 26, 1991, the Department of Professional Regulation, State of Illinois, indefinitely suspended the Respondent's state medical license. Although the Respondent, in his prehearing statement, wrote that he had appealed this suspension, he did not submit any documentation reflecting the appeal, and the investigative record does not contain any such record.

On June 19, 1991, the Respondent submitted an application to renew his Nebraska DEA Certificate of Registration, and in response to a question on that application, indicated that he had never had a state professional license revoked, suspended, restricted or denied, when, in fact, his Illinois medical license had been suspended effective April 26, 1991. That registration was renewed June 27, 1991. In his prehearing statement, the Respondent wrote that he was living in Tennessee at the time he submitted his renewal application, and that he had not received notification of the Illinois action, although he had been represented by legal counsel before that forum.

In March of 1992, the Division of Health Related Boards, Department of Health, State of Tennessee, suspended the Respondent's medical license, and on June 4, 1992, the Tennessee Board of Medical Examiners (Tennessee Board) revoked the Respondent's state medical license. The Tennessee Board found that the Respondent had been treating patients with a ''secret drug that [he] claimed can 'cure' AIDS.'' He sold this '' 'drug' to patients for an initial payment of $10,000.00, with additional payments of this magnitute (sic.) for treatment of the disease at later stages. * * * Some patients were directed to stop taking AZT while taking the 'drug.' * * * The Respondent[] made representations about the effectiveness of [his] AIDS 'drug' to induce friends and relatives of the AIDS victims to pay for the 'drug.' '' During the course of an undercover operation, a dose of this ''drug'' was obtained and analyzed, and the Tennessee Board found that ''[t]he drug does not cure AIDS. There is no known drug which will have the effect on AIDS that the Respondent[] claim[s] for [his] drug. * * * Precluding an AIDS victim from taking AZT would have a harmful effect on that patient's health. Furthermore, the 'drug' contains medications which could be harmful to the immune system of AIDS patients.'' The Tennessee Board concluded that the Respondent's acts had violated the Tennessee Medical Practice Act. The Respondent appealed the Tennessee Board's action, and the Chancery Court

for the State of Tennessee affirmed the Tennessee Board's order.

On June 26, 1992, the Respondent submitted an application to renew his Tennessee DEA Certificate of Registration, and in response to a question on that application, indicated that he was then authorized to prescribe, dispense, conduct research or otherwise handle controlled substances under the laws of the State in which he was operating or proposing to operate, Tennessee, when in fact his Tennessee medical license had been under suspension effective March 16, 1992, and permanently revoked effective June 4, 1992.

On October 27, 1993, the Respondent was convicted based upon a jury verdict in the U.S. District Court, Middle District of Tennessee, of one count of knowingly or intentionally furnishing false or fraudulent material information in, or omitting material information from, a renewal application for a DEA Certificate of Registration, pursuant to 21 U.S.C. 843(a)(4)(A). On October 5, 1994, his appeal of that decision was dismissed by the U.S. Court of Appeals for the Sixth Circuit.

The Drug Enforcement Administration lacks statutory authority to issue or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his practice. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Charles L. Novosad, Jr., 60 Fed. Reg. 47,182 (1995); Dominick A. Ricci, M.D., 58 Fed. Reg. 81,104 (1993); James H. Nickens, M.D., 57 Fed. Reg. 59,847 (1992); Roy E. Hardman, M.D., 57 Fed. Reg. 49,195 (1992). Here, the Respondent's medical license in the State of Tennessee has been revoked, and he is no longer authorized to practice medicine, to include prescribing controlled substances. Therefore, having considered the facts and circumstances in this matter, the Deputy Administrator concludes that Dr. Bynum's DEA Certificate of Registration for Tennessee should be revoked due to his lack of authorization to handle controlled substances in that state.

As for his Certificate of Registration in Nebraska, there is no evidence in the investigative file or in the Respondent's prehearing statement either proving or disproving that the Respondent is still licensed to handle controlled substances in Nebraska. However, assuming he is, then 21 U.S.C. 824(a)(1) is relevant, stating:

> (a) A registration pursuant to section 823 of this title to . . . distribute, or dispense a controlled substance may be suspended or revoked . . . upon a finding that registrant—
>
> (1) has materially falsified any application filed pursuant to or required by his subchapter . . .

It has been previously noted that the Deputy Administrator may revoke or suspend the Respondent's registration upon a showing that he ''materially falsified'' any application filed pursuant to the applicable Controlled Substances Act provisions. See, e.g., Terrence E. Murphy, M.D., Docket No. 94–19, 61 FR 2841, Jan. 29, 1996. The appropriate test for determining whether the Respondent materially falsified any application is whether the Respondent materially falsified any application is whether the Respondent ''knew or should have known'' that he submitted a false application. See Bobby Watts, M.D., 58 Fed. Reg. 46,995 (1993); accord Herbert J. Robinson, M.D., 59 Fed. Reg. 6,304 (1994).

Here, written on the Respondent's June 1991 DEA renewal application for his Nebraska certificate, was a false answer to the question regarding his state medical licenses. Specifically, the Respondent had failed to acknowledge the adverse action taken in Illinois against his professional license. As has been previously noted, such an omission is material, for ''if the Respondent correctly had checked 'YES' to the question, that would have been a red flag to [the] DEA to go check with the [State] licensing authorities . . . Cf. . . . Gonzales v. United States, 286 F.2d 118, 120 (10th Cir. 1960) (addressing a statute concerning ''material false statements . . . ., i.e., statements that could affect or influence the exercise of a governmental function''), cert. denied, 365 U.S. 878, 81 S. Ct. 1028, 6 L. Ed. 2d 190 (1961).'' Murphy, supra.

The Respondent attempted to mitigate this falsification by writing that he was unaware of the Illinois action at the time he prepared this renewal application. The Deputy Administrator finds this statement, without any corroborating information, incredible, for the Illinois Board order was effective two months before the Respondent's renewal application to DEA was submitted, the Respondent was represented by legal counsel before the Illinois Board, and the Respondent provided no information to show that the Illinois Board failed to provide timely notification of their adverse action.

Further, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

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

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

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

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

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

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 Fed. Reg. 16,422 (1989).

In this case, factors one, three, and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the Deputy Administrator finds it significant that Illinois has indefinitely suspended the Respondent's medical license for cause, and that Tennessee has revoked the Respondent's medical license for cause.

As to factor three, the Respondent's ''conviction record under Federal or State laws relating to the . . . dispensing of controlled substances,'' the Deputy Administrator finds relevant the Respondent's conviction in Federal Court of knowingly or intentionally furnishing false or fraudulent material information in his application to renew his DEA registration. As noted by the Administrator in Bobby Watts, supra: ''Since DEA must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated.''

As to factor five, ''[s]uch other conduct which may threaten the public health or safety, the Respondent's acts of Medicaid fraud are relevant. See, Leonard Merkow, M.D., Docket No. 93–62 60 Fed. Reg. 22,075 (1995). Further, the Respondent's actions in Tennessee in prescribing a 'drug', for the payment of $10,000.00, which he falsely claimed was an AID's cure, creates a threat to the public interest inconsistent with his retaining his DEA Certificates of

Registration. Finally, the Respondent has failed to provide any information which would indicate that his future behavior would not continue to be a threat to the public interest.

Therefore, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's DEA Certificates of Registration and denying any pending applications. 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 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration BB2042048 and AB8535087, previously issued to Therial L. Bynum, M.D., be, and they hereby are, revoked and any pending applications are denied. This order is effective March 4, 1996.

Dated: January 29, 1996.

Stephen H. Greene,

*Deputy Administrator.*

[FR Doc. 96–2239 Filed 2–1–96; 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 work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and State:

*Volume IV:*

Michigan
MI950063 (Feb. 02, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

*Volume I:*

New Jersey
NJ950002 (Feb. 10, 1995)
NJ950003 (Feb. 10, 1995)
NJ950004 (Feb. 10, 1995)
NJ950007 (Feb. 10, 1995)
NJ950015 (Feb. 10, 1995)
New York
NY950010 (Feb. 10, 1995)
NY950013 (Feb. 10, 1995)
NY950017 (Feb. 10, 1995)
NY950041 (Feb. 10, 1995)

*Volume II:*

Pennsylvania
PA950040 (Feb. 10, 1995)
Virginia
VA950015 (Feb. 10, 1995)

*Volume III:*

Florida
FL950008 (Feb. 10, 1995)
FL950009 (Feb. 10, 1995)
FL950011 (Feb. 10, 1995)
FL950044 (Feb. 10, 1995)
FL950045 (Feb. 10, 1995)

*Volume IV:*

Michigan
MI950003 (Feb. 10, 1995)
MI950007 (Feb. 10, 1995)
MI950030 (Nov. 03, 1995)

*Volume V:*

Iowa
IA950001 (Feb. 10, 1995)
IA950002 (Feb. 10, 1995)
IA950016 (Feb. 10, 1995)
IA950031 (Feb. 10, 1995)
IA950037 (Feb. 10, 1995)
Missouri
MO950018 (Feb. 10, 1995)
Nebraska
NE950001 (Feb. 10, 1995)
NE950059 (Apr. 28, 1995)
Texas
TX950018 (Feb. 10, 1995)
TX950057 (Feb. 10, 1995)
TX950114 (Feb. 10, 1995)

*Volume VI:*

Alaska
AK950001 (Feb. 10, 1995)
Arizona
AZ950004 (Feb. 10, 1995)
Idaho
ID950004 (Feb. 10, 1995)