1:00 p.m. at the Airport Hilton Hotel in El Paso, Texas.

**FOR FURTHER INFORMATION CONTACT:** Tracy Williams, Public Relations Officer, Border Environment Cooperation Commission, P.O. Box 221648, El Paso, Texas 79913; Tel: (011–52–16) 29–23–95; Fax: (011–52–16) 29–23–97; E-mail: BECC1@itsnet.com. or Mr. M.R. Ybarra, Secretary to the United States Section of the International Boundary and Water Commission (915) 534–6698.

**SUPPLEMENTARY INFORMATION:** The International Boundary and Water Commission, United States and Mexico, announces that the Border Environment Cooperation Commission (BECC) cordially invites all interested persons to attend a special public meeting of the Board of Directors on Wednesday, November 15, 1995, from 9:00 a.m. to 1:00 p.m. at the Airport Hilton Hotel in El Paso, Texas. The primary focus of the meeting will be to clarify the El Paso, Texas Wastewater Reclamation and Reuse Project. A preview of projects which may be considered for certification during the January 18, 1996 public meeting of the Board of Directors will also be presented.

Proposed Agenda

—Report from the General Manager
—Public Comments
—Presentation for Certification of El Paso Water Reclamation and Reuse Project
—Preview of Projects which may be Recommended for Certification at the January 18, 1996 Public Meeting of the Board of Directors
—Status of Technical Assistance Program
—Advisory Council Comments
—Comments by Board of Directors

Projects which could be considered for certification at the January 18, 1996 public meeting, provided they comply with fundamental BECC criteria include:

—Wastewater Treatment Plants, Cd. Juarez, Chihuahua
—Wastewater Treatment Plant for the FINSA Industrial Park, Matamoros, Tamps.
—Increased Water Supply and Sanitation, Nogales, Sonora
—New Water Supply and Wastewater Treatment Project, Naco, Sonora
—Upgrade of Existing Wastewater System, Somerton, Arizona
—Upgrade of Water Distribution and Sewage Collection Systems, Douglas, Arizona
—Tire Recycling Project, Mexicali, Baja California
—Environmental Improvements and Urban Development, Phase III, Tijuana, B.C.

Any member of the public interested in submitting written comments to the Board of Directors on the projects proposed for certification should send written material to the BECC staff 15 days prior to the scheduled public meetings. Anyone interested in making a brief statement to the Board may do so during the public meetings.

Dated: October 16, 1995.

M.R. Ybarra,

*Secretary, US IBWC.*

[FR Doc. 95–26263 Filed 10–23–95; 8:45 am]

**BILLING CODE 4710–03–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 94–63]**

### David D. Miller, M.D.; Grant of Restricted Registration

On June 28, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David D. Miller, M.D., (Respondent) of Bartlesville, Oklahoma, notifying him of an opportunity to show cause as to why DEA should not deny his pending application for registration 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: (1) In September 1992, the Respondent delivered one-eighth ounce of marijuana, a Schedule I controlled substance, to an Oklahoma State undercover officer, and in October 1992, he surrendered two to three ounces of marijuana to the same officer, after admitting that he had been obtaining marijuana locally for several years and had been a user of marijuana since his college days; (2) on October 12, 1992, the Respondent entered a plea of *nolo contendere* to a felony charge of unlawful distribution of a controlled dangerous substance-marijuana, and the Oklahoma Eleventh Judicial District Court deferred the imposition of sentence for five years, placing the Respondent on probation for that period; (3) on October 12, 1992, the Oklahoma Bureau of Narcotic and Dangerous Drugs ordered the suspension of the Respondent's controlled dangerous substances registration, but reinstated it in April 1993; (4) on December 3, 1992, the Oklahoma Board of Medical Licensure determined that the Respondent's conduct violated the State Medical Practice Act and suspended the Respondent's license to practice medicine, but reinstated it and placed the Respondent on five years probation beginning April 8, 1993; and (5) on January 2, 1993, the Respondent voluntarily surrendered his DEA Certificate of Registration; BM0852423, for cause.

On July 25, 1994, the Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Oklahoma City, Oklahoma, on November 29, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, the Respondent was represented by counsel, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On January 17, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that DEA grant the Respondent's application for a DEA Certificate of Registration with certain limitations. Neither party filed exceptions to his decision, and on February 17, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law Judge, and 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 Deputy Administrator finds that during the hearing before Judge Tenney, a Special Agent of the Oklahoma Bureau of Narcotics testified that in 1992, he opened a criminal investigation of the Respondent. With the assistance of a nurse, on September 1, 1992, the Agent received marijuana from the Respondent. The parties stipulated that marijuana is a Schedule I controlled substance pursuant to 21 C.F.R. 1308.11(d). On October 1, 1992, the Agent asked the Respondent to come to the Washington County Sheriff's Office in Bartlesville, Oklahoma, and after being notified of the investigation and the potential charges, the Respondent voluntarily turned over approximately two to three ounces of marijuana to the Agent. After rights advisement, the Respondent also told the Agent that he

had had a problem with marijuana, and that he had smoked it since his student days.

The Agent also testified that during the course of the investigation he had not received any information that the Respondent was growing or selling marijuana, or that he had violated any laws concerning the prescription of narcotics. Further, he testified that the Respondent was very cooperative throughout the investigation.

As a result of the Agent's investigation, the Respondent was charged with unlawful distribution of a controlled dangerous substance—marijuana. On October 14, 1992, the Respondent entered a plea of *nolo contendere* to the charge of unlawful distribution, and on that same day the Court deferred judgment and imposition of sentence, placed the Respondent on five years' probation, ordered him to serve 100 hours of community service, and fined him $500.

On November 21, 1992, the Oklahoma State Board of Medical Licensure and Supervision (the Board) suspended the Respondent's medical license, and on April 8, 1993, the Board terminated the suspension, imposed a five-year probation, and reinstated his license. The Respondent is required to comply with sixteen conditions incident to his probation, to include prohibiting the Respondent from prescribing, administering or dispensing any controlled substances for his personal use, requiring the Respondent to submit blood or urine samples for testing and analysis at the request of any investigator or agent of the Board, requiring the Respondent to provide proof of his continued compliance with his recovery treatment plan, and requiring the Respondent to notify any hospital where he holds staff privileges of the terms and conditions of the Board's probation order. The probationary period was ordered to run from April 8, 1993, until April 8, 1998.

Also, on October 12, 1992, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (Bureau) suspended the Respondent's registration authorizing him to prescribe, administer, and dispense controlled substances, but in April 1993, the Bureau reinstated his registration with limitations that remained in effect until November 1, 1993. His registration subsequently was renewed with the same restrictions as those imposed by the Board. On January 2, 1993, the Respondent voluntarily surrendered, for cause, his DEA Certificate of Registration.

During the hearing before Judge Tenney, the Respondent testified that he was licensed as a physician in 1980, and that he has a sub-specialty in obstetrics and surgical gynecology. The record contains evidence that his level of medical care has been ''excellent,'' that his technical skills are above-average, that he has remained current in his knowledge of the practice of his sub-specialty, and that there have been no adverse reports concerning the quality of his care.

The Respondent also testified that from October 1992 until April 1993, he voluntarily sought and received five months of treatment at the Talbott-Marsh Recovery Campus in Atlanta, Georgia. This treatment center worked primarily with physicians, and the Respondent was discharged with a recommendation that he return to the type of medical practice he had left in Oklahoma. The record contains evidence that such graduates from this treatment center experience a very high success rate with a minimal possibility of relapse. Since his release from the treatment center, the Respondent has submitted to random urinalysis drug screenings multiple times per month, and all screenings have been ''negative'' for controlled substances. Further, the Respondent has complied with the provisions of his Continuing Care Contract, to include filing quarterly monitoring reports and submitting to random urine or blood drug screening tests. The Respondent also participates in counseling, to include support groups and individual counseling from a psychiatrist. Finally, the record contains ten affidavits from individuals such as the Respondent's colleagues, treating healthcare providers, and the District Attorney for the Eleventh Judicial District of Oklahoma, all attesting to their beliefs that the Respondent's receipt of a DEA Certificate of Registration would not be a threat to the public health and safety.

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 granting the 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 professional disciplinary authority.

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

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

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

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

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether an application for registration should be granted or denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989). The issue becomes whether the Government has proven by a preponderance of the evidence that registration of the Respondent by the DEA is inconsistent with the public interest. See Timothy H. Reese, M.D., Docket No. 93–4, 59 FR 39792, 39793–94 (1994) (denying an application for DEA Certificate of Registration because the preponderance of the evidence established ''that it is unlikely that Respondent would competently or reliably discharge the obligations inherent in a DEA registration, and further concluded that it would not be in the public interest to grant his application.''). Here, factors one, three, four, and five are relevant in assessing the public interest.

As to factor one, although the Board suspended the Respondent's license to practice medicine shortly after his court proceedings, and the Bureau also suspended his registration to handle controlled substances, the record also demonstrates that both the Board and the Bureau subsequently reinstated the Respondent's license and certificate, with certain limitations. Therefore, the State licensing boards have reinstated the Respondent's privileges, provided he comply with specified conditions and limitations.

As to factors three and four, the record establishes that the Respondent entered a plea of *nolo contendere* to the charge of unlawful distribution of marijuana in an Oklahoma State court, and such evidence established a *prima facie* case under factor three. See Clinton D. Nutt, D.O., 55 FR 30,992 (1990); see also *Sokoloff* v. *Saxbe,* 501 F2d 571 (2d Cir. 1974) (discussing *nolo contendere* pleas and the Controlled Substance Act). Further, the acts committed by the Respondent which formed the basis of this charge, unlawful possession and distribution of marijuana in September and October 1992, demonstrate his noncompliance with applicable State or Federal laws relating to controlled substances. 823(f)(4).

As to factor five, the Respondent readily and candidly acknowledged his

long-term substance abuse problem in 1992. However, he sought in-patient treatment and long-term follow-on outpatient treatment of his problem. The record demonstrates that his treatment program has a high success rate, and that throughout his post-treatment time the Respondent has remained drug-free. Further, both through testimony from colleagues presented at the hearing, and through documentary exhibits provided, the Respondent has shown that his medical competency has been excellent, his technical skills above-average, and no adverse reports have been submitted concerning his quality of care. As noted by Judge Tenney, the record reflects that ''[a] heterogeneous group of individuals from the fields of medicine and law enforcement concluded that the Respondent is no longer any threat to the public health and safety.''

The Deputy Administrator emphasizes that this order should in no way be read to condone any illicit use or distribution of marijuana. As Judge Tenney succinctly noted, ''[t]he use or distribution of marijuana is a criminal act, and should be punished as such. The purpose of this proceeding, however, is not to punish but to protect the public interest. See Denis C. Chan, M.D., 55 FR 8,205 (1990); Leo R. Miller, M.D., 53 FR 21,931 (1988).'' Therefore, consistent with these findings, and the fact that the Oklahoma Board and Bureau have levied limitations upon the Respondent's practice of medicine and handling of controlled substances, the Deputy Administrator finds that granting the Respondent's application for a DEA Certificate of Registration, with the following limitations, would be consistent with the public interest: (1) The Respondent's controlled substance handling authority shall be limited to the writing of prescriptions only, and he shall not dispense, possess, or store any controlled substance, except that the Respondent may administer controlled substances in a hospital and may possess controlled substances which are medically necessary for his own use, and which he has obtained pursuant to a written prescription from another licensed practitioner (unless the substance is legitimately obtainable without a prescription); (2) the Respondent shall not prescribe any controlled substances for his own use; (3) the Respondent shall maintain a log, recording the date the prescription was written, patient's name, name and amount of the controlled substance(s) prescribed, and the pathology for which the prescription was written, of all controlled substance prescriptions he has written, and upon request by the Special Agent in Charge, or his designee, of the nearest DEA office, submit or otherwise make available the log for inspection; (4) the Respondent shall comply with any and all restrictions, limitations, or conditions imposed by the Oklahoma Board of Medical Licensure and Supervision and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control until such authorities remove them; (5) until the Oklahoma Board terminates the Respondent's probationary period on his medical license, the Respondent shall submit, upon the request of the Special Agent in Charge, or his designee, of the nearest DEA office, copies of the results of his random urine or blood screening tests. These restrictions shall remain in place for three years beginning on the date of this order.

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 21 CFR 0.100(b) and 0.104, hereby orders that the application of David D. Miller, M.D., for a DEA Certificate of Registration for a practitioner be, and it hereby is granted subject to the limitations enumerated above. This order is effective November 24, 1995.

Dated: October 13, 1995.

Stephen H. Greene,

*Deputy Administrator.*

[FR Doc. 95–26223 Filed 10–23–95; 8:45 am]

**BILLING CODE 4410–09–M**

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**[Docket No. 94–11]**

## Albert L. Pulliam, M.D.; Denial of Application

On October 26, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Alert L. Pulliam, M.D., (Respondent) of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not deny his pending application for a DEA Certificate of Registration 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: (1) On three separate occasions between September 1988 and December 1988, the Respondent issued controlled substance prescriptions to an undercover DEA Special Agent for other than legitimate medical purposes and outside the scope of his professional practice, and on one of those occasions the Respondent knowingly accepted stolen merchandise in exchange for prescriptions; (2) on December 21, 1988, the Respondent was indicted on nine counts of unlawful dispensing of controlled substances, in violation of 21 U.S.C. 841(a)(1), in the United States District Court for the Southern District of Texas; all of the counts constituted felony offenses relating to controlled substances; (3) on September 18, 1989, the Respondent was convicted, after entering a guilty plea, to three counts of unlawfully dispensing controlled substances, and he was sentenced to thirty days incarceration, five years probation, 100 hours community service, and a $10,000 fine; (4) on October 6, 1989, the Administrator had issued a final order revoking the Respondent's previous DEA registration as inconsistent with the public interest based upon his felony conviction and improper prescribing practices; and (5) on November 6, 1989, the Respondent voluntarily surrendered his Texas Controlled Substance Privileges for an indefinite period, thus resulting in his not being authorized to handle controlled substances in the State of Texas.

On November 22, 1993, the Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Houston, Texas, on October 19, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, the Government called one witness to testify and introduced documentary evidence, and the Respondent, acting without counsel, testified, called no other witnesses, and offered no documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument. The Respondent did not submit a post-hearing brief. On December 14, 1994, Judge Tenney issued his Opinion and Recommended Ruling, recommending that the Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to his decision, and on January 17, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The 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 Deputy Administrator adopts, in full, the Findings of Fact, Conclusions of Law and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and