available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: March 3, 1998.

**Judy Jones,**

*Acting Regional Director.*

[FR Doc. 98–6200 Filed 3–10–98; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–912–08–0777–52]**

### Notice of the Utah Resource Advisory Council Meeting

**SUMMARY:** A meeting of the Utah Resource Advisory Council (RAC) will be held April 3–4, 1998. On April 3, the RAC will discuss the recreational fee issue. Day-long presentations and panel discussions focusing on fee program history, current status, and future direction are planned. Meeting participants and presenters will include representatives from the BLM, other federal agencies, Northern Arizona University, state government, and interest groups. The meeting is being held at the Holiday Inn, 838 Westwood Blvd., Price, Utah. It will begin at 10:00 and conclude at 5:00 with a public comment period scheduled from 5:00–5:30.

On April 4, the Council will focus on the Off-Road-Vehicle travel plan for the San Rafael Swell. The RAC will participate in a field tour of the west side of the San Rafael Swell within the Sids Mountain area. They will be departing from the Holiday Inn at 7:00 a.m. and concluding the tour at approximately 2:30 p.m.

Resource Advisory Council meetings are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

**FOR FURTHER INFORMATION CONTACT:** Anyone interested in attending the meeting or wishing to address the Council during the public comment period, should contact Sherry Foot at the Bureau of Land Management, Utah State Office, 324 South State Street, Salt Lake City, Utah, 84111 or by calling (801) 539–4195 or (801) 539–4021.

Dated: March 3, 1998.

**G. William Lamb,**

*State Director.*

[FR Doc. 98–6198 Filed 3–10–98; 8:45 am]

BILLING CODE 4310–DQ–M

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–400]**

### Certain Telephonic Digital Added Main Line Systems, Components Therefor, and Products Containing Same; Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation on The Basis of a Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 23) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** This investigation was instituted on August 20, 1997, based on a complaint by Raychem Corp. of Menlo Park, California. 62 F.R. 44290. The respondents named in the investigation are ECI Telecom, Ltd, of Petah Tikva, Israel and ECI Telecom, Inc. of Altamonte Springs, Florida (collectively, ECI). Raychem's complaint alleged that ECI was importing and selling within the United States telephonic digital main line systems which infringed claims 1–7 of U.S. Letters Patent 5,459,729, claims 1, 3–11, and 14-16 of U.S. Letters Patent 5,459,730, and claims 1–5 and 7–11 of U.S. Letters Patent 5,473,613. The patents are held by Raychem.

On January 30, 1998, complainant and respondents to the investigation filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. The presiding ALJ issued an ID granting the joint motion on February 10, 1998. He stated that termination based on settlement is generally in the public interest and found no indication that termination of this investigation would have an adverse impact on the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.

Issued: March 5, 1998.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 98–6228 Filed 3–10–98; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 97–15]**

### Cecil E. Oakes, Jr., M.D.; Grant of Restricted Registration

On February 25, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Cecil E. Oakes, Jr., M.D., (Respondent) of Fort Benning, Georgia and Fairfield, California, notifying him of an opportunity to show cause as to why DEA should not deny his applications for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated April 1, 1997, Respondent, proceeding pro se, filed a request for a hearing and following prehearing procedures, a hearing was held in San Francisco, California on August 20, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, the Government called witnesses to testify and introduced documentary evidence. Respondent testified on his own behalf. After the hearing, both sides submitted proposed findings of fact, conclusions of law and argument. On December 15, 1997, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending

that Respondent be granted a DEA Certificate of Registration subject to several conditions. On January 2, 1998, Government counsel filed Exceptions to the Conclusion and Recommended Decision of the Administrative Law Judge, and on January 20, 1998, Judge Randall 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, except as specifically noted below, the Recommended Rulings, 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 or law.

The Acting Deputy Administrator finds that according to Respondent, he first obtained a DEA Certificate of Registration in the late 1960's. At some point, he became licensed to practice medicine in the state of Ohio and on December 29, 1987, was issued DEA Certificate of Registration AO9640168, for a Columbus, Ohio address bearing an expiration date of December 31, 1990. Respondent was not subsequently issued any other Certificates of Registration by DEA.

Sometime in 1994, DEA was contacted by a credentials coordinator with the Department of the Army, regarding the status of Respondent's DEA Certificate of Registration. The credentials coordinator forwarded a copy of Respondent's credentials file to DEA. Upon reviewing the file, it became apparent that on three separate occasions, Respondent altered the last DEA Certificate of Registration issued to him. First, Respondent changed the date of issuance to December 29, 1988, with an expiration date of December 31, 1991. Then Respondent altered the issuance date to read December 29, 1990, and the expiration date to read December 31, 1993. Finally, Respondent altered the date of issuance to December 29, 1993, with an expiration date of December 31, 1996. On this last altered certificate, Respondent also changed the address to a location in Tulsa, Oklahoma.

Further investigation revealed that at various times between 1991 and 1994, Respondent worked at two different army hospitals in Georgia. Documents supplied by the hospitals show that between January 1993 and January 1994, Respondent prescribed controlled substances to patients at one of the hospitals, and between June 16, 1994 and August 15, 1994, Respondent dispensed controlled substances to patients at the other hospital. Respondent did not possess a valid DEA Certificate of Registration during these time periods.

During the course of the investigation, DEA discovered that Respondent worked for an employment agency for doctors that perform locum tenens work. DEA advised the agency that Respondent was not registered with DEA to handle controlled substances. Subsequently, on August 12, 1994, the employment agency sent a letter to Respondent asking for ''a statement attesting to the fact that you currently possess a current DEA registration and the current expiration date.'' Respondent replied, ''I have a current DEA registration. The expiration date is 1996.''

Respondent then contacted DEA to arrange a meeting. When confronted with the altered Certificates of Registration, Respondent admitted that he knew that they were altered. Respondent was advised that he was not registered with DEA and therefore not authorized to handle controlled substances. Respondent was provided with an application for a new registration.

DEA was advised by officials at Respondent's then-employer at Fort Benning that Respondent was a competent physician; that he was good at his job; and that they would continue employing Respondent. As a result, the DEA Atlanta office decided to register Respondent pursuant to a Memorandum of Agreement that would place certain restrictions on his DEA registration, including that he would abide by all laws and regulations relating to controlled substances; that he would admit that he handled controlled substances knowing that he did not have a current DEA registration; and that he would be restricted to the institutional use of his DEA registration at the hospital at Fort Benning. The terms of the agreement were to remain in effect for three years.

Respondent signed the Memorandum of Agreement on November 4, 1995. The agreement was forwarded to the DEA Atlanta office by letter dated November 4, 1995, in which Respondent also requested that he be allowed to transfer his restricted registration from Fort Benning, Georgia to California. There is no evidence in the record regarding DEA's response to this request, however the DEA Atlanta Diversion Group Supervisor signed the agreement on behalf of DEA on November 15, 1995.

In the midst of the Memorandum of Agreement being negotiated and executed, Respondent applied for a California medical license on August 17, 1995. Thereafter, Respondent was issued a California medical license, however Respondent was subsequently cited and fined by the Medical Board of California for falsely representing his date of birth in both his application materials and to a medical board investigator.

On June 14, 1996, Respondent submitted an application for a DEA Certificate of Registration at an address in California. Regarding this application, Respondent was not offered the opportunity to become registered subject to a Memorandum of Agreement, similar to the one executed by the DEA Atlanta office in 1995.

Respondent testified at the hearing in this matter that at the time he altered his DEA Certificate of Registration, he was contending with the financial and emotional burdens that accompanied his son's diagnosis with Attention Deficit Disorder (ADD). His son attempted suicide on three occasions, he was in the process of divorcing his wife, and he had to file for bankruptcy. Respondent testified that, ''in no way am I using (his son's problems) as an excuse for bad behavior or to try to rationalize it away unduly as being justified. But I also know within myself at least that this would never have happened if there hadn't been accumulating, seemingly never-ending pressures, stresses and all the impact that it had on me during those years.''

Respondent asserted that his son's problems are now under control, and he ''can't think of any circumstance in which those actions would ever be repeated.'' Respondent testified that he had received counseling himself. Respondent recognized that there is no way that he can ever prove totally that his actions will not be repeated without having the opportunity to demonstrate that he can be trusted.

Respondent is currently employed at a clinic in California that only treats patients with ADD. Respondent testified that there are only five specific controlled substances prescribed in the treatment of ADD at the clinic where he works, and no drugs are dispensed. Respondent further testified that he intends to only practice at this clinic. During the course of the hearing, Respondent indicated that he no longer wishes to be registered at the Georgia location listed on his September 1, 1994 application.

The Founder and President of the Haight Ashbury Free Clinics, Inc. submitted a letter on Respondent's

behalf indicating that he had known and worked with Respondent for 25 years. He stated that Respondent ''has high medical standards and a strong code of ethics. He has never abused drugs personally or over-prescribed controlled substances with his patients * * *. I give him the highest recommendation.''

As a preliminary matter, Judge Randall concluded that Respondent has indicated that he no longer wishes to be registered with DEA in Georgia. Accordingly, she recommended that Respondent be granted permission to withdraw his September 1, 1994 application pursuant to 21 CFR 1301.16. The Acting Deputy Administrator agrees with Judge Randall that Respondent should be allowed to withdraw his application. However, Respondent still wishes to be registered with DEA to handle controlled substances in California.

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, it is undisputed that the Medical Board of California cited and fined Respondent for falsely representing his date of birth both in his application materials for a California medical license and to a Medical Board investigator. However, there is no evidence in the record that Respondent's ability to practice medicine and handle controlled substances has been restricted in any way by the Medical Board.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with laws relating to controlled substances, are both relevant in determining whether Respondent's registration would be inconsistent with the public interest. The Acting Deputy Administrator finds that there is no question that Respondent has not been registered with DEA to handle controlled substances since December 31, 1990, yet he continued to use his expired DEA registration to prescribe and dispense those substances in violation of 21 U.S.C. 841(a)(1) and 843(a)(2).

As to factor three, there is no evidence that Respondent has any convictions relating to the handling of controlled substances.

Regarding factor five, Respondent's alteration of his DEA Certificate of Registration on three separate occasions and the misrepresentation of his date of birth on his application for a California medical license raise serious concerns regarding Respondent's trustworthiness. As Judge Randall found, ''these acts would justify denial of the Respondent's application for registration, for it calls into question the Respondent's truth and veracity, two traits the DEA must rely upon in its relationship with registrants.''

Judge Randall concluded that the Government has presented a prima facie case for the denial of Respondent's application based upon the falsification of his DEA Certificate of Registration, his handling of controlled substances without proper authorization and his misrepresentations of his date of birth to the Medical Board of California. However, Judge Randall found it significant that even after knowing about Respondent's alterations of his DEA Certificate of Registration, DEA entered into a Memorandum of Agreement with Respondent concerning his application for registration in Georgia. Judge Randall further found ''it inconsistent that the DEA has since refused to offer a similar Memorandum for the Respondent's California practice,'' particularly since Respondent's handling of controlled substances in his practice in California would be more limited than what was proposed in Georgia. Judge Randall also found significant Respondent's expressions of remorse and his acceptance of responsibility for his serious mistakes, as well as, the letter from the Founder and President of the Haight Ashbury Free Clinics, Inc. who attested to Respondent's high medical and ethical standards.

Judge Randall concluded that while Respondent's acts during 1991 to 1994 warrant concern, the ''totality of the circumstances would justify a remedy less severe than total denial of the Respondent's application.'' Therefore, Judge Randall recommended that the ''[g]ranting of a restricted registration, similar to the registration offered the Respondent in the 1995 Memorandum, would still protect the public interest.'' Judge Randall recommended that the following conditions be placed on Respondent's registration:

1. For a period of three years from the effective date of the Deputy Administrator's final order, the Respondent provide the DEA San Francisco Field Division, information of the Respondent's change of employment, if any, thirty days prior to the effective date of the actual change of employment.

2. For a period of three years from the effective date of the Deputy Administrator's final order, the Respondent file annually with the DEA San Francisco Field Division, evidence of his current California medical license.

3. That the Respondent abide by all Federal, state and local laws and regulations relating to the registration to handle and the actual handling of controlled substances.

The Government filed exceptions to Judge Randall's recommended decision. First, the Government seems to suggest that it is inconsistent for the Administrative Law Judge to find that the Government has presented a prima facie case for the denial of the application, yet recommend that Respondent be granted a restricted registration. The Acting Deputy Administrator finds that by definition, prima facie case means ''such as will prevail until contradicted and overcome by other evidence.'' Black's Law Dictionary (6th ed. 1990). Here, the Government has established that grounds exist to deny Respondent's application for registration given his alterations of his Certificate of Registration, his handling of controlled substances without proper authorization, and his misrepresentations to the Medical Board of California. However, the Acting Deputy Administrator concludes that the evidence in favor of denial of Respondent's application is overcome by the fact that he was not offered a Memorandum of Agreement similar to that offered in 1995, his expressions of remorse and acceptance of responsibility for his actions, and the letter of support submitted on his behalf. Therefore, the Acting Deputy Administrator does not find that Judge Randall's finding and recommendation are inconsistent.

Second, the Government argues that Judge Randall's recommended action is a departure from prior agency practice and policy. The Government cites several cases where the applicant/

registrant ''engaged in conduct which was untruthful and lacking in trustworthiness and integrity,'' and DEA ''found that revocation was the appropriate sanction.'' However, the Acting Deputy Administrator finds that those cases can be distinguished from the facts and circumstances of this case. In those cases the registrant/applicant either continued to deny any wrongdoing or presented no evidence in mitigation. See *Maxicare Pharmacy,* 61 FR 27368; *Stanley Karpo, D.P.M.,* 61 FR 13,876 (1996); *Albert L. Pulliam, M.D.* 60 FR 54,513 (1995); *Richard D. Close, M.D.,* 53 FR 43,947 (1988). The Government also cited *Alra Laboratories, Inc.* v. *DEA,* 54 F.3d 450 (7th Cir. 1995), for the proposition that ''past performance is the best predictor of future performance.'' The Acting Deputy Administrator finds that this case can also be distinguished from the present case, since the registration of a distributor was revoked based upon a long history of non-compliance with controlled substance laws and regulations.

Next, the Government asserts that the 1995 Memorandum of Agreement entered into by the DEA Atlanta office was limited to a very restrictive set of circumstances and has no effect on the DEA Sacramento office's decision to seek an order proposing denial of Respondent's application for registration in California. The Government contends that the Atlanta Memorandum of Agreement limited Respondent to practice at a certain army hospital and did not extend to any other employment by Respondent. Additionally, Government counsel argues that it ''is aware of no policy or regulation which would require any DEA Field Division to accept or offer the same terms of registration as might have been offered from another DEA office * * *.''

The Acting Deputy Administrator disagrees with the Government's suggestion that Respondent's access to controlled substances in Atlanta would have been more restricted than his access at his current place of employment in California. In Atlanta, he would have been working at only one army hospital, but he would have been working in the emergency room with access to a wide variety of controlled substances. In addition, his handling of controlled substances would not have been limited to prescribing only. At his present employment in California, Respondent has testified that he will only prescribe five specific controlled substances in his treatment of ADD patients.

The Acting Deputy Administrator also disagrees with the Government's suggestion that it was improper for Judge Randall to find that it was inconsistent for the DEA Sacramento office not to offer Respondent the same restricted registration as was offered by the DEA Atlanta office in 1995. The Acting Deputy Administrator finds that the only difference in the facts surrounding Atlanta's decision to give Respondent a restricted registration and Sacramento's proposed denial of his application is that Respondent misrepresented his date of birth to the Medical Board of California. While this misrepresentation is troublesome, it does not warrant the denial of Respondent's application in light of his expressions of remorse and acceptance of responsibility for his actions. Therefore, the Acting Deputy Administrator finds it reasonable to register Respondent in California subject to certain terms and conditions.

Finally, the Government argues in its exceptions that the conditions to be placed on Respondent's registration proposed by Judge Randall are of no benefit, since they are either already provided for in the regulations relating to the handling of controlled substances or they would merely provide DEA with advance notice of something that it would ultimately learn from the state. However, the Government did not offer any alternative restrictions.

The Acting Deputy Administrator agrees with the Government that the proposed conditions recommended by Judge Randall are of limited benefit. Serious questions remain regarding Respondent's trustworthiness. But as Respondent testified, he will never be able to totally assure DEA that he can be trusted to responsibly handle controlled substances unless he is given an opportunity to prove himself with a restricted registration. Therefore, the Acting Deputy Administrator agrees with Judge Randall's recommendation to grant Respondent a restricted registration. Such a resolution will provide Respondent with the opportunity to demonstrate that he can responsibly handle controlled substances, while at the same time protect the public health and safety, by providing a mechanism for rapid detection of any improper activity. See *Michael J. Septer, D.O.,* 61 FR 53762 (1996); *Steven M. Gardner, M.D.* 51 FR 12576 (1986). However, the Acting Deputy Administrator concludes that the terms and conditions of Respondent's registration recommended by Judge Randall must be modified as follows:

1. By the effective date of this final order, Respondent shall notify the Resident Agent in Charge of the DEA Sacramento Resident Office, or his designee, of his place of employment at that time. Thereafter, for three years from the date of issuance of the DEA Certificate of Registration, Respondent shall immediately notify the Resident Agent in Charge of the DEA Sacramento Resident Office, or his designee, of any changes in his employment.

2. For three years from the date of issuance of the DEA Certificate of Registration, Respondent's controlled substance handling authority shall be limited to the writing of prescriptions only for the five specific drugs identified by Respondent to be needed in his treatment of Attention Deficit Disorder patients: Ritalin, Dexedrine, Adderall, Desoxyn, all of which are Schedule II controlled substances, and Cylert, a Schedule IV controlled substance.

3. For three years from the date of issuance of the DEA Certificate of Registration, Respondent shall maintain a log of all prescriptions that he issues. At a minimum, the log shall indicate the date that the prescription was written, the name of the patient for whom it was written, and the name and dosage of the controlled substance prescribed. Upon request of the Resident Agent in Charge of the Sacramento Resident Office, or his designee, Respondent shall submit or otherwise make available his prescription log for inspection.

4. For three years from the date of issuance of the DEA Certificate of Registration, Respondent shall consent to periodic inspections by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

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 29 CFR 0.100(b) and 0.104, hereby orders that the application dated September 1, 1994, submitted by Cecil E. Oakes, Jr., M.D., be, and it hereby is, withdrawn. The Acting Deputy Administrator further orders that the application dated June 14, 1996, submitted by Cecil E. Oakes, Jr., M.D., be, and it hereby is, granted in Schedules II nonnarcotic and IV subject to the above described restrictions. This order is effective April 10, 1998.

Dated: March 4, 1998.

**Donnie R. Marshall,**

*Acting Deputy Administrator.*

[FR Doc. 98–6158 Filed 3–10–98; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

### F.C.S.C. Meeting Notice No. 6–98

The Foreign Claims Settlement Commission, pursuant to its regulations