environment or the conservation of energy resources.

Decided: August 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21746 Filed 8–31–95; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–7]

David W. Davis, D.O., Revocation of Registration

On October 7, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David W. Davis, D.O., of Houston, Texas (Respondent), proposing to revoke his DEA Certificate of Registration, AD7600631, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that the continued registration of Respondent was inconsistent with the public interest as that term is set forth in 21 U.S.C. 823(f) and 824(a)(4).

On November 5, 1993, Respondent, through counsel, requested a hearing on the issues raised in the order to show cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing proceedings, a hearing was held in Houston, Texas on October 20, 1994. The administrative law judge issued his findings of fact, conclusions of law and recommended ruling on January 17, 1995, recommending that Respondent's registration be revoked. No exceptions to the ruling were filed by either party. On February 17, 1995, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator of DEA. After careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that DEA initiated an investigation of Respondent after receiving reports from Houston area pharmacies that Respondent prescribed large amounts of controlled substances, particularly the combination of Tylenol No. 4 (a Schedule III controlled substance) and Valium or Xanax (Schedule IV controlled substances). DEA additionally was concerned about Respondent's prescribing practices because he was listed as one of the top 1,000 Medicaid prescribers for the period of January 1991 to February 1992.

The administrative law judge further found that an undercover officer from the Houston Police Department visited Respondent's office on three occasions. The undercover officer's conversations with Respondent were recorded and monitored by a DEA Diversion Investigator.

On the undercover officer's first visit, on May 14, 1991, the officer asked Respondent for something ''to mellow out'' with, specifically requesting Tylenol. Respondent asked the undercover officer if he wanted Xanax or Valium and prescribed 30 dosage units of Valium (10 mg) and 30 dosage units of Tylenol No. 4. There was no discussion concerning any pain or anxiety experienced by the undercover officer.

On June 21, 1991, the undercover officer made a second visit to Respondent's office and, again, expressed his need for medication to ''chill out, mellow out.'' Although there was no previous discussion concerning whether the undercover officer had experienced any pain. Respondent, on this visit, inquired whether the officer still experienced pain. The undercover officer responded ''No . . . I'm fine doc.'' Respondent prescribed 30 dosage units of Valium (10 mg) and 30 dosage units of Tylenol No. 4. However, Respondent denied the undercover officer's request for additional medication and warned him against developing a drug habit.

On the third visit, on July 30, 1991, the undercover officer requested Tylenol No. 4 and Valium, and specified that he did not have any pain. Respondent again prescribed 30 dosage units of Valium (10 mg) and 30 dosage units of Tylenol No. 4.

The administrative law judge found that each of the three visits lasted no longer than ten minutes and that during that time the undercover officer's blood pressure was taken on one visit and his weight may have been taken. Respondent also examined the officer's chest with a stethoscope. The undercover officer was in good health at the time of the visits and exhibited no outward manifestations of a drug abuser. At no point during any of the three office visits did the undercover officer complain of any pain.

The administrative law judge found that, subsequent to the execution of a search warrant, Respondent was indicted on three counts of prescribing a Schedule III controlled substance to an undercover officer without a valid medical purpose. On April 23, 1992, Respondent pled *nolo contendere* to the first count, and the remaining two counts were dismissed. An adjudication of guilt was withheld in favor of two years probation and a $2,000 fine, notwithstanding the fact that the District Court of Harris County, Texas, found that the evidence substantiated Respondent's guilt.

Judge Tenney additionally found that DEA obtained copies of Respondent's controlled substance prescriptions from a local pharmacy for the year of 1991. These prescriptions revealed that Respondent frequently prescribed combinations of Valium or Xanax with Tylenol No. 4, and that multiple individuals in the same household would receive similar prescriptions. DEA also obtained written statements from several Houston area pharmacists declaring that they refused to fill prescriptions issued by Respondent.

Pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator of the DEA may revoke the registration of a practitioner upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). In determining the public interest, the following factors will be considered:

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

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

(3) The [registrant]'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 with may threaten the public health and safety. 21 U.S.C. 823(f).

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate in assessing the public interest. *See Mukand Lal Arora, M.D.*, 60 FR 4447 (1995); *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989). The administrative law judge found that factors (2) through (5) were relevant in determining whether to revoke Respondent's registration, and that the Government

had met its burden in establishing these factors.

The administrative law judge found that, notwithstanding the deferred adjudication of guilt, the Government had established a *prima facie* case under factor (3). DEA has previously held that a registrant may be found to have been convicted within the meaning of the Controlled Substances Act despite the withholding of an adjudication of guilt. *See Clinton D. Nutt, D.O.,* 55 FR 30992 (1990); *Eric A. Baum, M.D.,* 53 FR 47272 (1988).

The administrative law judge additionally found that the Government had proven, by a preponderance of the evidence, that Respondent had prescribed controlled substances to the undercover officer on three separate occasions, without a valid medical purpose, thereby establishing a *prima facie* case under factors (2), (4) and (5).

The administrative law judge found that the Government failed to prove that Respondent knew or should have known that the combination of Tylenol No. 4 and Valium or Xanax was highly abused on the streets or that the prescriptions issued to individuals other than the undercover officer were for a non-legitimate purpose. The Government did, however, establish that the combination controlled substances is abused among low-income individuals in the Houston area, a group served by Respondent. The administrative law judge also noted that the ease with which the undercover officer obtained the combination of drugs warrants serious concern by DEA.

The Deputy Administrator adopts the findings of fact, conclusions of law and recommended ruling of the administrative law judge in its entirety. 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, AD7600631, issued to David W. Davis, D.O., be, and it hereby is, revoked, and that any pending applications for such registration as a practitioner be, and they hereby are, denied. This order is effective on October 2, 1995.

Dated: August 28, 1995.

Stephen H. Greene,

Deputy Administrator.

FR Doc. 95–21694 Filed 8–31–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated April 4, 1995, and published in the **Federal Register** on April 12, 1995, (60 FR 18618), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A comment and a request for a hearing with respect to Methylphenidate were filed by two registered manufacturers. However, Mallinckrodt Chemical, Inc., has withdrawn its 1994 and 1995 applications for registration as a bulk manufacturer of Methylphenidate. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted with the exception of Methylphenidate (1724).

Dated: August 28, 1995.

Gene R. Haislip,

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

[FR Doc. 95–21771 Filed 8–31–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated April 7, 1995, and published in the **Federal Register** on April 17, 1995, (60 FR 19306), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below: