proceedings as to the disposition of these charges.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny and 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 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 a registration should be revoked or an application for registration be denied. see Henry J. Schwartz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

As to factor one, there is no evidence that any action has been taken against Respondent's license to practice medicine or handle controlled substances in California. However, the Acting Deputy Administrator agrees with Judge Bittner's finding that this factor is not dispositive ''inasmuch as state licensure is a necessary but not sufficient condition for DEA registration.''

There is also no evidence regarding Respondent's experience in dispensing or conducting research with Schedule II–V controlled substances, the schedules that he's registered to handle. In addition, there is no evidence that Respondent has ever been convicted of a crime related specifically to the handling of controlled substances.

But, there is more than ample evidence that Respondent failed to comply with Federal and State laws relating to controlled substances. He operated an elaborate and sophisticated marijuana cultivation enterprise on his property in 1993. Then in 1996, following the dismantling of this operation, his arrest and conviction, Respondent continued to cultivate marijuana and was again arrested and charged for this conduct.

Respondent's blatant disregard for the laws relating to controlled substances clearly justifies the revocation of his DEA Certificate of Registration. At the hearing, Respondent offered no explanation for his conduct nor any assurances that he will no longer engage in the illegal manufacture of marijuana. As Judge Bittner and Government counsel note, a negative inference may be drawn from Respondent's silence. See Raymond A. Carlson, M.D., 53 FR 7425 (1988). Therefore, the Acting Deputy Administrator agrees with Judge Bittner's conclusion that Respondent's continued registration would be inconsistent with the public interest.

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 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AA5561243, previously issued to Alan L. Ager, D.P.M., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective November 12, 1998.

Dated: October 5, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–27378 Filed 10–9–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–19]

Garth A.A. Clark, M.D.; Revocation of Registration

On January 8, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Garth A.A. Clark, M.D. (Respondent) of Texas notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BC2334364, and deny any pending applications for registration pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of Texas.

By letter dated March 22, 1998, Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. On April 2, 1998, the Government filed a Motion for Summary Disposition alleging that Respondent's request for a hearing was not timely filed and as a result, Judge Randall does not have jurisdiction over this matter. In addition, the Government alleged that Respondent is no longer authorized by the State of Texas to dispense, prescribe, administer or otherwise handle controlled substances. Judge Randall issued an Order dated April 8, 1998, wherein she provided Respondent until April 27, 1998, to respond to the Government's motion. Respondent did not file such a response.

On May 6, 1998, Judge Randall issued her Opinion and Recommended Ruling, concluding that she did have jurisdiction in this matter; finding that Respondent lacked authorization to handle controlled substances in Texas; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on June 18, 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, in full, the Opinion and Recommended Ruling of the Administrative Law Judge.

The Acting Deputy Administrator finds that the Government argued that Respondent did not file a timely request for a hearing. The Order to Show Cause was served on Respondent on February 20, 1998, and advised Respondent that pursuant to 21 CFR 1301.43(a), he could request a hearing within 30 days from the date of receipt of the order. Respondent's request for a hearing was dated March 22, 1998, but was not filed with DEA until March 26, 1998. Therefore, the Government argues that Respondent's request for a hearing was filed three days late, and as a result Respondent should be deemed to have waived his opportunity for a hearing pursuant to 21 CFR 1301.43(d). Judge Randall agreed with the Government's calculation that the request for a hearing was filed late. She noted however that Respondent was not represented by counsel, and that he prepared the request for a hearing on March 22, 1998, within the allotted time. Judge Randall also found that the Government would not be prejudiced by accepting Respondent's request for a hearing.

Pursuant to 21 CFR 1316.47(b), ''[t]he Administrative Law Judge, upon request and showing of good cause, may grant

a reasonable extension of the time allowed for response to an Order to Show Cause.'' Therefore, Judge Randall found ''(1) that the Respondent's letter dated March 22, 1998, is deemed as a request to accept a late filing, (2) that three days is a reasonable extension of time to file this request, and (3) that the Respondent has subsequently requested a hearing in this matter within that reasonable time.'' The Acting Deputy Administrator agrees with Judge Randall's conclusion that she had jurisdiction in this matter.

As to the merits of this case, the Acting Deputy Administrator finds that on February 11, 1997, the Texas State Board of Medical Examiners (Board) issued an order temporarily suspending Respondent's license to practice medicine in the State of Texas. Subsequently, on February 18, 1997, the Texas Department of Public Safety canceled his state controlled substance registration.

In his request for a hearing, Respondent argued that his medical license was unjustly suspended by the Board. He requested that DEA postpone taking any action against his DEA registration ''until the temporary suspension of [his] Texas license is further adjudicated.'' However, Respondent did not deny that he is not currently authorized to handle controlled substances in Texas.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21) 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See 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).

Here it is clear that Respondent is not currently authorized to handled controlled substances in Texas, where he is registered with DEA. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. It is well settled that where there is no material question of fact involved, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984). As Judge Randall noted, ''[h]ere, there is no dispute concerning the material fact that the Respondent currently lacks state authority to handle controlled substances in Texas.''

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 DEA Certificate of Registration BC2334364, previously issued to Garth A.A. Clark, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective November 12, 1998.

Dated: October 6, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–27379 Filed 10–9–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A–63 and after consultation with the General Services Administration (GSA), the Secretary of Labor has determined that the renewal of the Advisory Council on Employee Welfare and Pension Benefit Plans is in the public interest in connection with the performance of duties imposed on the Department of section 512(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA).

The Advisory Council on Employee Welfare and Pension Benefit Plans shall advise the Secretary of Labor on technical aspects of the provisions of ERISA and shall provide reports and/or recommendations by November 14 of each year on its findings to the Secretary of Labor.

The Council shall be composed of fifteen members appointed by the Secretary. Not more the eight members of the Council shall be of the same political party. Three of the members shall be representatives of employee organizations, at least one whom shall be representative of any organization members of which are participants in a multiemployer plan); three of the members shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); three members shall be representatives appointed from the general public (one of whom shall be a person representing those receiving benefits from a pension plan); and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

The Advisory Council will report to the Assistant Secretary of the Pension and Welfare Benefits Administration. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act, and its charter will be filed under the Act. For further information, contact Sharon K. Morrissey, Executive Secretary, Advisory Council on Employee Welfare and Pension Benefit Plans, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8921.

Signed at Washington, DC, this 5th day of October, 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 98–27377 Filed 10–9–98; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Opportunity To File Amicus Briefs in Bracey v. Office of Personnel Management, MSPB Docket No. DC–831E–97–0643–I–1, and Wilson v. Office of Personnel Management, MSPB Docket No. AT–844E–97–0645–I–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning the interpretation of regulations promulgated by OPM. The Board is providing interested parties with an opportunity to submit amicus briefs on the same questions raised in the request to OPM. The Board's request to OPM is reproduced below:

''Pursuant to 5 U.S.C. 1204(e)(1)(A), the Merit Systems Protection Board requests an advisory opinion concerning the interpretation of regulations promulgated by the Office of Personnel management.

''*Background.* The appellants in the above-captioned cases became unable to perform the duties of their most recently-held positions of record because of medical conditions. In each case the employing agency provided the