practice dentistry in the State of Tennessee and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state 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 16193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

While Respondent indicates that he expects reinstatement of his Tennessee dental license in the near future, this is merely speculation at this point in time and there is nothing in the record from the Board to indicate that Respondent's license will in fact be reinstated. The Deputy Administrator finds that it is clear that Respondent is not currently authorized to handle controlled substances in the State of Tennessee. As a result, Respondent is not entitled to a DEA registration in that state.

Since Respondent's DEA registration cannot be maintained in Tennessee based upon his lack of state authorization to handle controlled substances, the Deputy Administrator finds that it is unnecessary to determine whether Respondent's continued registration would be inconsistent with the public interest as alleged in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD6561307, previously issued to Michael Wayne Dietz, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective May 3, 1999.

Dated: March 15, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7931 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–30]

William Franklin Prior, Jr., M.D. Denial of Application

On April 7, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to William Franklin Prior, Jr., M.D. (Respondent) of South Carolina and New Mexico. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BP5105890 [1] issued to him in New Mexico and deny any pending applications for renewal of that registration, pursuant to 21 U.S.C. 823(f), 824(a)(1) and (a)(4), for reason that he materially falsified an application for registration and his continued registration would be inconsistent with the public interest. The Order to Show Cause also proposed to deny Respondent's pending application, executed on September 21, 1994, for registration as a practitioner with DEA in South Carolina, Pursuant to 21 U.S.C. 823(f) for reason that Respondent's registration would be inconsistent with the public interest.

By letter dated May 19, 1998, Respondent filed a request for a hearing regarding his New Mexico DEA Certificate of Registration and stating that ''[t]he application for renewal in South Carolina has now been withdrawn. * * *'' The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On May 26, 1998, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, on June 16, 1998, the Government filed a Motion to Terminate the Proceedings, Motion for Summary Disposition and Motion to Stay Proceedings. In its filing, the Government contended that pursuant to a criminal plea agreement entered into on April 14, 1998, Respondent agreed to surrender his New Mexico DEA Certificate of Registration and to withdraw any pending applications for registration with DEA. The Government argued that as a result, there is nothing to revoke or deny and therefore these proceedings should be terminated. In addition, the Government contended that Respondent's application for a DEA registration in South Carolina should be denied because he is not authorized to handle controlled substances in that state. In his response to the Government's motions, Respondent requested that his ''credentials be returned,'' and asked Government counsel to help him ''ask the ALJ to allow my placing of credentials with Judge Simons to be temporary.''

On August 14, 1998, Judge Bittner issued her Opinion and Recommended Decision, terminating the proceedings regarding Respondent's New Mexico DEA Certificate of Registration; denying the Motion to Terminate the proceedings regarding Respondent's application for a DEA Certificate of Registration in South Carolina; finding that Respondent lacked authorization to handle controlled substances in the State of South Carolina; granting the Government's Motion for Summary Disposition regarding Respondent's application for a DEA registration in South Carolina; and recommending that Respondent's application be denied. Neither party filed exceptions to her opinion, and on September 14, 1998, Judge Bittner transmitted the record of these proceedings to the Acting 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 Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that pursuant to a plea agreement entered into by Respondent on April 14, 1998, in the United States District Court for the District of South Carolina, Respondent agreed ''to surrender any DEA registration number, especially number BP5105590. * * *'' According to the affidavit of a DEA investigator dated June 12, 1998, Respondent surrendered his DEA Certificte of Registration to the judge who presided over the criminal proceedings against him, and on June 8, 1998, the investigator retrieved Respondent's Certificate of Registration from the judge's office.

Judge Bittner found that in light of the above and the fact that Respondent does not deny that he surrendered his New Mexico DEA registration, ''the issue of whether or not to revoke it is moot.'' Accordingly, Judge Bittner terminated the proceedings with respect to DEA Certificate of Registration BP5105590. The Deputy Administrator agrees with Judge Bittner's conclusion regarding Respondent's DEA Certificate of

[1] While the Order to Show Cause listed BP5105890 as Respondent's DEA registration number in New Mexico, evidence in the record shows that Respondent's New Mexico DEA Certificate of Registration is BP5105590.

Registration issued to him in new Mexico.

The Deputy Administrator further finds that pursuant to the April 14, 1998 plea agreement, Respondent also agreed ''to withdraw any application for a DEA registration number.'' In its motions, the Government asserted that pursuant to 21 CFR 1301.16(a), Respondent needed permission from DEA before he could withdraw his application since the Order to Show Cause had been previously issued on April 7, 1998. Consequently, the Government attached to its motions a copy of a letter from the DEA Deputy Assistant Administrator, Office of Diversion Control which stated that, ''[i]n response to your plea agreement * * * you are hereby granted permission to withdraw your application dated September 21, 1994, for a Drug Enforcement Administration Certificate of Registration.'' As a result, the Government argued that the proceedings regarding Respondent's application for a DEA Certificate of Registration in South Carolina should be terminated in light of Respondent's plea agreement and DEA's granting of permission to withdraw the application.

However, Judge Bittner concluded that the record does not contain any evidence that Respondent in fact withdrew his September 14, 1994 application for registration. Pursuant to the plea agreement Respondent only agreed to withdraw any pending applications for registration. Further, while the letter from the Deputy Assistant Administrator granted Respondent permission to withdraw his application, he indicates that he did so in response to the plea agreement. Judge Bittner noted that in his request for a hearing Respondent stated that ''[t]he application for renewal in South Carolina has now been withdrawn.'' However, Judge Bittner concluded that this is not sufficient evidence to support a finding that Respondent took any action to withdraw his application. As a result, Judge Bittner concluded, and the Deputy Administrator agrees, that Respondent has not withdrawn his September 21, 1994 application and therefore the proceedings regarding this application are not terminated.

With respect to the application for registration in South Carolina, the Government also argued that summary disposition should be granted based on Respondent's lack of authorization to handle controlled substances in South Carolina. The Deputy Administrator finds that by letter dated September 27, 1994, the South Carolina Department of Health and Environmental Control denied Respondent's application for a controlled substance registration. In his response to the Government's motions, Respondent did not deny that he is without authorization to handle controlled substances in South Carolina. Therefore, the Deputy Administrator concludes that Respondent is not currently authorized to handle controlled substances in South Carolina.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state 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 16193 (1997); *Demetris A. Green, M.D.* 61 FR 60728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in South Carolina. Therefore, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition regarding Respondent's application for registration in South Carolina. Here, there is no dispute that Respondent is without authorization to handle controlled substances in South Carolina. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See Phillip E. Kirk, M.D.,* 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.,* 44 F.2d (9th Cir. 1971).

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 the proceedings regarding DEA Certificate of Registration BP5105590, previously issued to William Franklin Prior, Jr., M.D., be, and they hereby are, terminated. The Deputy Administrator further orders that the September 14, 1994 application for registration submitted by William Franklin Prior, Jr., M.D., be, and it hereby is, denied. This order is effective April 1, 1999.

Dated: March 15, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7928 Filed 3–31–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration

By Notice dated December 10, 1998, and published in the Federal Register on December 23, 1998 (63 FR 71156), Irix Pharmaceuticals, Inc., 101 Technology Place, Forence, South Carolina 29501, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for demonstration purposes and for dosage form development and stability studies.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Irix Pharmaceuticals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Irix Pharmaceuticals, Inc. to ensure that the company's registration is consistent with the public interest. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR. 0.100 and 0.104, 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 class of controlled substance listed above is granted.

Dated: March 17, 1999.

John H. King,

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

[FR Doc. 99–7937 Filed 3–31–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 23, 1998, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey