

Therefore, the Deputy Administrator concludes that the Respondent is deemed to have waived his hearing right. After considering the investigative file, the Deputy Administrator now enters his final order in this matter without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that on April 20, 1993, the Respondent completed a DEA Application for Registration as a practitioner. However, the DEA received a copy of a letter from the Medical Board dated March 29, 1993, indicating that the Respondent's application for a license to practice medicine and surgery in Nebraska had been denied.

The DEA does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the state in which he conducts business to dispense controlled substances. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). The DEA has consistently so held. See Lawrence R. Alexander, M.D., 57 FR 22256 (1992); Bobby Watts, M.D., 53 FR 11919d (1988); Robert F. Witek, D.D.S., 52 FR 47770 (1987).

Here, it is clear that the Respondent is not currently authorized to practice medicine in the State of Nebraska. From this fact, the Deputy Administrator infers that since the Respondent is not authorized to practice medicine, he also is not authorized to handle controlled substances. Therefore, because the Respondent lacks state authority to handle controlled substances, he currently is not entitled to a DEA registration.

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 C.F.R. 0.100(b) and 0.104, hereby orders that the Respondent's application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective April 15, 1996.

Dated: March 7, 1996.

Stephen H. Greene,
Deputy Administrator.

[FR Doc. 96-6222 Filed 3-14-96; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Notice of Registration

By Notice dated December 15, 1995, and published in the Federal Register on December 28, 1995, (60 FR 67141), The Binding Site, Inc., 5889 Oberlin Drive, Suite 101, San Diego, California 92121, made application to the Drug Enforcement Administration (DEA) to

be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315) .	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405)	I
Normorphine (9313)	I
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Ecgonine (9130)	II
Ethylmorphine (9190)	II
Meperidine intermediate-C (9234) .	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of The Binding Site, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: March 5, 1996.

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

[FR Doc. 96-6223 Filed 3-14-96; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Notice of Registration

By Notice dated December 22, 1995, and published in the Federal Register on January 22, 1996 (61 FR 1603), Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Knight Seed Company, Inc. to import marihuana is consistent with the public interest and with United States obligations under international

treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 6, 1996.

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

[FR Doc. 96-6226 Filed 3-14-96; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 19, 1995, and published in the Federal Register on October 25, 1995 (60 FR 54708), Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of meperidine (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Nycomed, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. 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 class of controlled substance listed above is granted.

Dated: March 5, 1996.

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

[FR Doc. 96-6224 Filed 3-14-96; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 94-73]

R. Bruce Phillips, D.D.S.; Grant of Application

On August 11, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

to Show Cause to R. Bruce Phillips, D.D.S., (Respondent) of Pineville, Louisiana, notifying him of an opportunity to show cause as to why DEA should not deny his 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 1985, the Louisiana State Police conducted an investigation concerning the Respondent's prescribing practices. The investigation revealed that between January 1980 and September 1985, the Respondent prescribed large amounts of controlled substances to several individuals for no legitimate medical reason.

(2) As a result of this investigation, in August 1986, a one-count Bill of Information was filed in the United States District Court, Western District of Louisiana, charging the Respondent with unlawfully dispensing 1,263 dosage units of controlled substances. On September 2, 1986, the Respondent pled guilty to the Bill of Information. The Respondent was sentenced to a six-month period of confinement, placed on probation for four years, and ordered to pay a fine of \$5,000.00.

(3) Following the Respondent's conviction, he entered into a consent agreement with the Louisiana State Board of Dentistry (Dental Board) on October 28, 1986. As part of the agreement, the Dental Board placed his dental license on probation for five years subject to certain terms and conditions, and the Respondent's State authority to handle controlled substances was revoked permanently. As a result, on October 27, 1986, the Respondent voluntarily surrendered his DEA Certificate of Registration, AP3383685. On July 23, 1992, the Dental Board reinstated the Respondent's State privileges to prescribe controlled substances.

On September 6, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in New Orleans, Louisiana, on June 21, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, 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 August 28, 1995, Judge Tenney issued his Opinion and Recommended Ruling, recommending that the Respondent's application for registration be granted. Neither party filed exceptions to his decision, and on September 28, 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 conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that, pursuant to stipulations made by the parties before Judge Tenney, the following facts are not in dispute: (1) In 1985, the Louisiana State Police conducted an investigation concerning the Respondent's prescribing practices, which covered the period of January 1980 and September 1985; (2) in August 1986, a one-count Bill of Information was filed in the United States District Court, Western District of Louisiana, relating to the Respondent's unlawful dispensing of 1,263 dosage units of controlled substances; (3) on September 2, 1986, the Respondent pled guilty to the Bill of Information, and he was sentenced to a six-month period of confinement, placed on probation for four years, and ordered to pay a fine of \$5,000.00; (4) following his conviction, the Respondent entered into a consent agreement with the Dental Board on October 28, 1986, and as part of the agreement, the Dental Board placed the Respondent's dental license on probation for five years, subject to certain terms and conditions, and his State authority to handle controlled substances was revoked; and (5) on October 27, 1986, the Respondent voluntarily surrendered his DEA Certificate of Registration, but on July 23, 1992, the Dental Board reinstated his State privileges to prescribe controlled substances. The parties also stipulated that Percodan, Demerol, and Mepergan Fortais are Schedule II controlled substances.

The Deputy Administrator also finds that the Respondent is a Board qualified oral and maxillo-facial surgeon who has practiced in that field of specialty since 1958. He is licensed to practice his specialty in the State of Louisiana. On August 5, 1992, he executed an application for registration as a practitioner with the DEA.

The acts underlying the criminal conviction include the Respondent's conduct of issuing prescriptions for controlled substances at the request of two individuals, after he had been

drinking alcohol to excess. One of these individuals was a local resident with widely known criminal ties, and the second individual was a local attorney who was representing the Respondent in a pending court action. The Respondent did not maintain office records for either of these individuals. During an interview with the State police on August 26, 1986, the Respondent admitted that he had issued prescriptions to the first individual as a personal favor, even though this individual suffered ailments outside the Respondent's area of practice.

Before Judge Tenney, a Special Agent with the FBI testified about the investigation he had conducted while employed as a Louisiana State Trooper involving the Respondent. He stated that from May of 1980 to August of 1984, the Respondent had issued 77 prescriptions for almost 1,500 dosage units of controlled substances for the first individual or his wife. During the same interview with the State Trooper, the Respondent admitted that, before prescribing controlled substances to the attorney, he had not conducted an examination, and that, although he had become aware that the attorney was abusing the drugs he prescribed for him, he continued to issue the prescriptions for controlled substances partly out of friendship, and partly out of fear that the attorney would not properly handle his lawsuit should the Respondent cease providing the prescriptions. From 1982 to 1984, the Respondent wrote a total of 36 prescriptions to this attorney for a total of 710 dosage units of Percodan.

Judge Tenney found that the evidence established that "the vast majority, if not all of the unlawful prescriptions were issue[d] while [the Respondent] was under the influence of alcohol." He also found that the "State police investigation revealed that both [of these individuals] took advantage of [the Respondent's] intoxicated state and 'used' him for the purpose of obtaining controlled dangerous substances."

As a result of this conduct, the Respondent entered a guilty plea in Federal court for unlawfully dispensing Percodan. The Court sentenced him to five years imprisonment, but suspended all but six months of this time, and placed him on probation for four years. He was also ordered to pay a fine of \$5,000.00. The Respondent also entered into a consent agreement with the Dental Board. The consent agreement levied conditions upon his continued practice of dentistry, to include placing him on probation for five years and revoking his State registration to handle controlled substances.

The Respondent had an early release from the detention center, he performed 400 hours of community service at the Huey P. Long Medical Center, and he paid his fine. On November 19, 1990, the Respondent's probation was terminated early upon the recommendation of his probation officer. Further, the Respondent voluntarily quit drinking alcohol about ten years ago, a fact corroborated by his co-workers, one of which testified before Judge Tenney that he believed that the Respondent had "quit drinking completely."

Although the consent decree at the Dental Board indicated that the Respondent's certificate to prescribe controlled substances was "revoked" permanently, the Respondent's license to prescribe controlled substances was reissued by the State Department of Health and Hospitals. Further, testimony was received from a representative of the Dental Board, that the Board had not received any complaints concerning the Respondent, and that he as "in good standing." Finally, the record contains a document demonstrating that the Dental Board "strongly recommended the return of [the Respondent's] DEA registration."

Currently, the Respondent is employed at the Huey P. Long Medical Center (Center), and he is performing his dental specialty at the Center's satellite clinic on England Air Force Base. The Center's director submitted an affidavit dated June 19, 1995, writing that he had known the Respondent for nearly 30 years, was aware of his problems which surfaced in the mid-1980's, and that it was his opinion that the Respondent was "a skilled, competent, [and] knowledgeable oral surgeon with a good moral character." He also wrote that the Respondent operated at the clinic daily and saw approximately 2,500 patients annually.

Another dentist working at the Center testified before Judge Tenney, stating that the Respondent was a highly competent oral and maxillo-facial surgeon, and he recommended that the Respondent's DEA Certificate of Registration be reinstated. This colleague also opined that the Respondent had a strong relationship with his wife, children, and grandchildren.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for registration as a practitioner, 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 a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989).

In this case, all five factors are relevant in determining whether the Respondent's registration would be inconsistent with the public interest. As to factor one, "recommendation of the appropriate State licensing board, * * *" the consent decree of record between the Respondent and the Dental Board is relevant, indicating the State licensing board's response to the Respondent's misconduct. However, also relevant is the Dental Board's contribution of the Respondent's license to practice dentistry, for it was never revoked, and the reinstatement of the Respondent's State license to prescribe controlled substances. Finally, the Dental Board, in correspondence to the Respondent, recommended that his DEA registration application be granted.

As to factor two, the Respondent's "experience in dispensing * * * controlled substances," factor four, the Respondent's "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," and factor five, "[s]uch other conduct which may threaten the public health or safety," there is no dispute that in the mid-1980's, the Respondent had engaged in the unlawful prescribing of controlled substances for no legitimate medical purpose. Further, as to factor three, the Respondent's "conviction record under Federal or State laws relating to the * * * distribution, or dispensing of controlled substances," there is no dispute that the Respondent, pursuant to the entry of a guilty plea, was convicted of the unlawful dispensing of 1,263 dosage units of controlled substances. Thus, the Deputy Administrator agrees with Judge Tenney's conclusion that the

Government has made a prima facie case for denying the Respondent's application.

However, the Respondent presented considerable evidence of rehabilitation. The Respondent had engaged in his prior misconduct while under the influence of alcohol. Now, however, the record supports a finding that the Respondent, for approximately ten years, voluntarily has quit drinking alcohol. Judge Tenney also found that the Respondent had demonstrated, and other witnesses had corroborated, that he had experienced a significant life change since he stopped drinking alcohol. His relationship with his wife has improved; he has close relationships with his children and grandchildren; and he was active in his church. Professionally, he is in good standing with the Dental Board, and the Director of the Center where he is employed supports his application.

In light of the above, the Deputy Administrator agrees with Judge Tenney's conclusion that the Respondent "has accepted responsibility for his actions and has suffered the consequences. In balance, it is evident that [the Respondent] has turned his life around and will not repeat the mistakes of the past." Although in no way condoning the Respondent's past misconduct, the Deputy Administrator finds that now the public's interest is best served by issuing a DEA Certificate of Registration to the Respondent.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application of R. Bruce Phillips, D.D.S., for a DEA Certificate of Registration, be, and it hereby is, approved. This order is effective March 15, 1996.

Dated: March 7, 1996.
Stephen H. Greene,
Deputy Administrator.
[FR Doc. 96-6221 Filed 3-14-96; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 94-55]

Service Pharmacy, Inc.; Continued Registration

On June 14, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Service Pharmacy, Inc., (Respondent) of Marion, North Carolina, notifying it of an opportunity to show cause as to why DEA should