''relevant hauling assets'' that may be used in the small commercial waste collection business. The assets primarily include routes, capital equipment trucks and other vehicles, containers, interests, permits, supplies, customer lists, contracts, accounts, and if requested by the purchaser of the assets, garages, used to service customers along the routes in the following locations:

A. Akron, OH

Allied front-end and rear-end loader truck small container routes (hereinafter, ''commercial routes'') that serve the cities of Akron and Canton and Summit, Stark and Portage counties, Ohio.

B. Boston, MA

Allied's commercial routes and any commercial routes acquired by BFI from Allied or any other person since January 1, 1999 that serve the City of Boston and Bristol, Essex, Middlesex, Norfolk, Suffolk, and Worcester counties, MA.

C. Charlotte, NC

BFI's commercial routes that serve the City of Charlotte and Mecklenburg County, NC.

D. Chicago, IL

BFI's commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry, and Lake counties, IL.

E. Dallas, TX

BFI's commercial routes that serve any nonfranchised or open competition areas of the City of Dallas and Dallas County, TX.

F. Davenport, IA and Moline, IL

BFI's commercial routes that serve the cities of Davenport and Bettendorf, IA; Moline, East Moline, and Rock Island, IL; and Rock Island County, IL and Scott County, IA.

G. Denver, CO

Allied's commercial routes that serve the City of Denver and Denver, Arapahoe, Adams, Douglas and Jefferson counties, CO.

H. Detroit, MI

BFI's commercial routes that serve the City of Detroit, Wayne, Oakland and Macomb counties, MI.

I. Evansville, IN

Allied's commercial routes that serve the City of Evansville, IN and Vanderburgh County, IN, including all of its commercial routes that operate out of Allied's Evansville and Huntingburg garage facilities.

J. Kalamazoo/Battle Creek, MI

BFI's commercial routes that serve the cities of Kalamazoo and Battle Creek and Kalamazoo and Calhoun counties, MI.

K. Oklahoma City, OK

BFI's commercial routes that serve Oklahoma City and Oklahoma County, OK.

L. Rock Falls/Dixon, IL

Allied's commercial routes that serve the cities of Rock Falls and Dixon and Lee and Whiteside counties, IL.

M. Rockford, IL

Allied's commercial routes that serve the City of Rockford, IL, and Ogle and Winnebago counties, IL; and

N. Springfield, MO

Allied's commercial routes that serve the City of Springfield and Greene and Christian counties, MO.

Appendix B—Agreement Regarding Routes that Partially Serve an Area in the Judgment or Obtain Revenues From Commercial and Other Types of Customers

July 19, 1999.

By Facsimile and U.S. Mail

Tom D. Smith, Esquire,
Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005–2088.

David M. Foster, Esquire,
Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Re: Proposed Final Judgment in *United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.*

Dear Messrs. Smith and Foster: I write regarding several issues not explicitly resolved by language in the proposed Final Judgment.

Section II(D) of the Judgment defines ''Relevant Hauling Assets'' and does so by reference to whether a defendant's route: (a) is a front-end loader or rear-end loader small container route; (b) ''serves'' a city or county listed in the Judgment; and (c) solely with respect to Dallas, Texas [Judgment, Section II (D)(5)], serves a nonfranchised or ''open competition'' area.

The United States and the defendants agree that a defendant's waste collection route is a front-end loader or rear-end loader small container route, which must be divested pursuant to the terms of the Final Judgment, if the route, in its most recent year of operation, generated ten percent or more of its revenues from: (a) front-end loader and rear-end loader small container commercial customers; (b) whose businesses are located in a city or county listed in Section II of the Judgment; or (c) with respect to Section II(D)(5), whose businesses are located in a nonfranchised or open competition area of the Dallas area.

Please sign below if this letter accurately sets forth our agreements with respect to the Final Judgment and you agree that the terms set forth herein are enforceable pursuant to the terms of the Final Judgment.

Sincerely yours,

Anthony E. Harris,

Attorney, Litigation II Section.

On Behalf of Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113

For Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 26, 1999, I caused a copy of the foregoing Competitive Impact Statement to be served on the defendants Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. by facsimile and by mailing it first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esquire,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113

Counsel for Defendant Browning-Ferris Industries, Inc.

David M. Foster, Esquire,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615.

Anthony E. Harris, Esquire,

Illinois Bar # 1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

[FR Doc. 99–20163 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No 98–8]

Mark Binette, M.D., Grant of Restricted Registration

On September 19, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mark J. Binette, M.D. (Respondent) of Mesa, Arizona, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated January 22, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Phoenix, Arizona on August 4 and 5, 1998, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On January 20, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted without restrictions. Neither party filed exceptions to Judge Bittner's opinion, and on February 22, 1999, Judge Bittner

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 the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, except as specifically noted below. 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 Respondent graduated from medical school in 1989. He previously possessed DEA Certificate of Registration BM3082283, however he let it expire on January 31, 1995, since he did not have an active state license at that time.

According to Respondent, he first smoked marijuana in the 1970s when he was a teenager. He was arrested in 1977 for selling marijuana to an undercover police officer for $25. A search of Respondent's home incident to the arrest revealed lysergic acid diethylamide (LSD); however Respondent testified that the LSD was not his but had been left at his home after a party several weeks earlier. It appears that Respondent was convicted of charges relating to these events, that he was sentenced to a period of probation, and that the record of the conviction was expunged in 1984. Respondent further testified that he occasionally used marijuana between 1977 and 1992, but that he did not believe that he had an addiction problem at that time.

In 1992, Respondent began an extramarital affair with a fellow resident who introduced him to methamphetamine, and who provided him with pharmaceutical methamphetamine. According to Respondent, his fellowship stipend was insufficient to make school loan payments and to support his wife and children, so he worked extra hours at several jobs and used the methamphetamine to help him stay awake. In early 1993, Respondent's relationship with the fellow resident ended when she tested positive for methamphetamine use and was forced to enter a drug treatment program. Respondent then began obtaining street methamphetamine from his cousin, and ultimately smoked methamphetamine several times a day.

On April 10, 1993, while working an overnight shift in an emergency room at an air force base, Respondent was followed to his car by base officers who discovered methamphetamine in Respondent's car. Respondent was not arrested at that time, but blood and urine samples were collected which ultimately tested positive for methamphetamine use. Respondent was subsequently charged with possession of a controlled substance and released on his own recognizance.

In November 1993, Respondent met informally with the executive director of the State of Arizona Board of Medical Examiners (Medical Board) and the co-director of the Medical Board's Monitored Aftercare Program. According to Respondent, he gave assurances that he no longer used amphetamines, and the Medical Board allowed Respondent to retain his medical license.

However, Respondent tested positive for methamphetamine use several times between August 1993 and January 1994. In February 1994, Respondent's recognizance release was revoked due to his continued methamphetamine use and he was incarcerated. Several days later he was released from jail and he went to a drug treatment center in Georgia, which is tailored to health care professionals. Respondent left this facility before completing his treatment because he could not afford the cost of the treatment.

Respondent met with the Medical Board again on April 15, and May 9, 1994, and was told that he could not practice medicine in Arizona until he completed his treatment at the facility in Georgia. On May 13, 1994, the Medical Board issued an order which, among other things, prohibited Respondent from using controlled substances that were not obtained pursuant to a valid prescription of a treating physician.

On May 17, 1994, a postal inspector was conducting a random profile of packages and identified a package that she suspected contained controlled substances. The package was opened pursuant to a search warrant and it contained a half ounce of methamphetamine with a street value of approximately $2,800. The package was then resealed and forwarded to Ohio for a controlled delivery. Law enforcement officers contacted a local prosecutor to review an affidavit for a search warrant to be executed after the controlled delivery of the package. During his conversation with the law enforcement officers, the prosecutor became suspicious because his brother had a friend with the same name as that of the addressee on the package. The prosecutor then learned that his brother's wife, from whom he was separated, lived in an apartment complex at the same address as the return address on the package. Later when the prosecutor saw the package, he recognized the handwriting on the package as his brother's and so informed the officers.

On May 19, 1994, there was a controlled delivery of the package and the recipient was arrested and interviewed. During the interview, he mentioned an individual named ''Russ,'' but eventually told the officers that Respondent had mailed him the package. The individual also stated that Respondent had sent him a package of methamphetamine in April 1994, and that he had written Respondent a check for $500 as payment for the methamphetamine.

On several occasions, Respondent contacted his brother who advised him to cooperate with the authorities. Eventually, on May 27, 1994, Respondent did have a conversation with local law enforcement officers during which he indicated that his cousin was the source of the methamphetamine and that he was willing to cooperate in an investigation of his cousin. He indicated that his cousin had asked him to review a recipe for methamphetamine, and that his cousin moved about 40 pounds of methamphetamine per week.

At the hearing, Respondent testified that he had loaned his cousin approximately $20,000 for a business venture, that by April 1994, his cousin had repaid all but $7,000 or $8,000 of the loan, and that he received methamphetamine from his cousin in lieu of interest payments on the loan. Respondent further testified that in April 1994, Respondent went to his cousin's apartment on several occasions and collected $500 on each of two visits. On the third visit, his cousin paid him another $500 and convinced Respondent to mail a package of methamphetamine to a mutual friend and in return, the friend would send payment for the methamphetamine directly to Respondent. According to Respondent he mailed one package of methamphetamine to the mutual friend in late April 1994 and another package on May 17, 1994.

Respondent had another positive urine and was jailed for several days following his arrest on June 15, 1994. He was then released to go to Valley Hope Treatment Center where he stayed for thirty days. Thereafter, he was transferred to the House of Acceptance, Inc. (the House), a substance abuse treatment center.

On August 11, 1994, Respondent was indicted in the United States District Court for the District of Arizona on one count of conspiracy to distribute a controlled substance in violation of 21 U.S.C. 846, three counts of distribution and possession with intent to distribute a controlled substance in violation of 21 U.S.C. 841(a)(1), three counts of using a communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b), and one count of establishment of a distribution operation in violation of 21 U.S.C. 856(a)(2). On August 12, 1994, an Amended Information charged Respondent with one count of simple possession of a controlled substance in violation of 21 U.S.C. 844(a).

On October 31, 1994, Respondent pled guilty to one felony count of using a communication facility to facilitate the distribution of a controlled substance on May 19, 1994, and to one misdemeanor count of simple possession of a controlled substance. On February 6, 1995, Respondent was convicted of these offenses in the United States District Court for the District of Arizona and sentenced to 15 months incarceration to be served at a drug rehabilitation center, followed by probation for one year.

As part of the plea agreement, Respondent agreed to cooperate in the investigation and prosecution of others. However, Respondent testified that he was never asked to make any monitored telephone calls, asked to provide any additional documentation, or used in any manner in an investigation of his cousin.

On October 20, 1994, the Medical Board placed Respondent's license to practice medicine in Arizona on inactive status after Respondent admitted that he violated the Medical Board's May 1994 Order by continuing to use methamphetamine.

Respondent participated in in-patient treatment at the House from July 1994 until March 10, 1995. Thereafter, in August 1995, Respondent requested that his medical license be reactivated, and on January 18, 1996, the Medical Board reinstated Respondent's medical license and placed it on probation for five years under the condition that he perform at least 150 hours of community service each year. On February 13, 1996, the Medical Board issued a Rehabilitation Stipulation and Order that added conditions to its January 1996 order, including participation in the Medical Board's Monitored Aftercare Program; participation in a 12-step recovery program; obtaining a sole treating physician who was aware of his addiction; not consuming alcohol, poppy seeds, or controlled substances not prescribed by his treating physician; submission to random drug screening; maintenance of a log of all controlled substances prescribed by his treating physician; submission to periodic Medical Board ordered mental, physical, and medical competency examinations; participation in mental health treatment; attending meetings with the Medical Board; and participation in a treatment program in the event of a relapse.

On March 28, 1997, the Medical Board issued an Order terminating the January 1996 Order of Probation, and on April 9, 1997, the Medical Board issued a Stipulation and Order. The April 1997 action is considered a slightly lesser sanction against Respondent's medical license than probation, but it did not change the substantive requirements of the Medical Board's January and February 1996 Orders.

Respondent presented extensive evidence at the hearing regarding his treatment and rehabilitation. Respondent testified that he last used any illegal drug on or about June 10, 1994. As discussed above, he stayed at the House from July 1994 until March 10, 1995. Among other things, the House conducts classes addressing relapse prevention, anger management, life skills, and chemical dependency; requires participation in group therapy and 12-step programs; and provides extensive monitoring. In addition, the House performs drug screens on its participants approximately every four to five days. According to the director, Respondent's stay and performance at the House was ''[a]bove reproach,'' and all of his urine screens were negative. Since his release from the House, Respondent has continued to offer his services there.

Respondent participates in the Medical Board's Monitored Aftercare Program which requires participation in group therapy, random urine testing, and regular attendance at 12-step meetings, such as Alcoholics Anonymous or Narcotics Anonymous. In addition, the medical director of the program meets with individual participants periodically and a staff therapist meets with the participants more regularly.

According to the program's medical director, he has collected between 25 to 30 urine samples from Respondent each year that he has been participating in the program and that they have all been negative. The medical director further testified that Respondent has complied with all of the terms of the program, that the quality of Respondent's recovery is excellent, that Respondent's prognosis for ongoing recovery is also excellent, and that he did not believe that any risk would result from granting Respondent a DEA registration.

Respondent's probation officer testified that Respondent came under his supervision on May 18, 1995, with standard conditions of release as well as special conditions tailored to his substance abuse problem. These special conditions included Respondent's agreement to submit to a search if requested by the probation officer, to participate in a substance abuse treatment program, a mental health treatment program and financial counseling; and to perform 200 hours of community service. According to the probation officer, Respondent complied with all of the standard and special conditions required by his supervised release, and he was released from supervision on May 17, 1996.

Respondent testified at the hearing that he was too proud and embarrassed to ask anyone for help with his addiction, and that had he not been arrested, he might not have received the help that he needed. He testified that upon accepting his addiction, he went to 180 Alcoholics Anonymous meetings in 180 days, followed by five meetings per week for the next year, then about four meetings per week, and now he sponsors others in their recovery programs. In addition to his community service at the House, Respondent testified that he does volunteer counseling at another treatment center.

Respondent further testified that he intends to continue working on his recovery after the conclusion of his five-year probationary period with the Medical Board because ''[addiction]'s a disease that needs to be treated on a daily basis for the rest of your life, because if not, if allowed to go uncontrolled, it will kill you.''

As of the date of the hearing, Respondent was working as an independent contractor for several insurance companies performing physical examinations. He also helped cover several local nursing homes, and worked as a physician in the urgent care department of several medical centers in Tucson, Arizona. Respondent testified that he hopes to work as an internist at a local hospital beginning in the fall of 1999, but that this position is contingent upon him receiving a DEA registration.

Respondent resumed practicing medicine in January 1996, and has experienced some difficulty as a result of not having a DEA registration. He has been unable to obtain staff privileges at some hospitals and to be designated as a provider by insurance companies. Respondent further testified that his

lack of a DEA registration has also affected his ability to treat patients at the urgent care facilities because he cannot prescribe them controlled substances without involving another physician.

The Government contends that Respondent's application for registration should be denied based upon his violation of the laws relating to controlled substances, his criminal convictions, and the relatively short period of time that he has been in recovery. In arguing that his application should be granted, Respondent does not deny that he violated controlled substance laws and that he was convicted of controlled substance related offenses. Instead, Respondent contends that he has overcome his substance abuse problem and that during the course of his controlled substance abuse, he never misused his former DEA registration to obtain drugs illegally.

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 the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(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 conjunctive; the Deputy Administrator may rely on any one or an combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application of registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Regarding factor one, it is undisputed that in May 1994, the Medical Board issued a Rehabilitation Stipulation Order placing a number of probationary conditions on his license to practice medicine in Arizona. Thereafter, his medical license was inactivated in October 1994, and when it was reactivated in January 1996, Respondent was placed on probation for five years. Respondent is currently licensed to practice medicine in Arizona with no restrictions on his ability to handle controlled substances. But as Judge Bittner noted, ''inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative.''

As to Respondent's experience in dispensing controlled substances, there is no evidence in Respondent ever improperly dispensed controlled substances to his patients. Concerning his own abuse of methamphetamine, there is not evidence that Respondent used his DEA registration to obtain the methamphetamine that he abused.

Regardinig factor three, it is undisputed that Respondent was convicted in February 1995 for possession of a controlled substance in violation of 21 U.S.C. 844(a), a misdemeanor, and of the use of communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b), a felony. It also appears that Respondent was convicted of controlled substance related offenses in 1977 and that those convictions were later expunged. The Deputy Administrator agrees with Judge Bittner that as a general rule, convictions that have subsequently been expunged can be considered ''convictions'' for purposes of these proceedings. As Judge Bittner noted, ''[a]ny other interpretation would mean that the conviction could be considered between the date it occurs and date it is expunged, but no thereafter, which is inconsistent with established rule in these proceedings that the lapse of time between conduct and the hearing effects only the weight to be given the evidence'' citing Thomas H. McCarthy, D.O., 54 FR 20938 (1989), *aff'd*, No. 89–3496 (6th Cir. Apr. 5, 1990). However, unlike Judge Bittner, the Deputy Administrator finds that the record is unclear as to exactly what charges Respondent was convicted of in 1977 and therefore declines to consider these convictions is rendering his decision in this matter.

But, the Deputy Administrator does agree with Judge Bittner that convictions for possession of a controlled substance cannot be considered under this factor. Pursuant to 212 U.S.C. 823(f)(3), the Deputy Administrator shall consider an ''applicant's conviction record * * * relating to the manufacture, distribution, or dispensing of controlled substances.'' Therefore, Respondent's 1995 misdemeanor conviction for possession of a controlled substance cannot be considered under this factor. Judge Bittner seems to suggest that this conviction can be considered under 21 U.S.C. 824(a)(2), however the Deputy Administrator disagrees since only felony convictions relating to controlled substances can be considered under 21 U.S.C. 824(a)(2).

However, the Deputy Administrator has considered Respondent's conviction in 1995 of using a communication facility to facilitate the distribution of a controlled substance in violation of 21 U.S.C. 843(b).

As to factor four, Respondent's compliance with applicable laws relating to controlled substances, it is clear that Respondent illegally possessed controlled substances in 1977 and 1993, and that he illegally mailed methamphetamine in 1994. Respondent also admitted that he self-administered methamphetamine between 1992 and 1994 for no legitimate medical purpose and outside the scope of his medical practice.

Regarding factor five, the Deputy Administrator agrees with Judge Bittner that it is significant that Respondent was addicted to methamphetamine between June 1992 and June 1994, and that he abused methamphetamine while performing his duties as a physician. However, the Deputy Administrator also finds it noteworthy that Respondent has not illegally used controlled substances since June 1994, and that he has undergone significant treatment for his addiction, and continues with his recovery efforts.

The Deputy Administrator agrees with Judge Bittner that the Government has established a prima facie case for the denial of Respondent's application based upon Respondent's prior addiction to methamphetamine, his violation of controlled substance laws, his 1995 felony conviction, and his abuse of methamphetamine while performing the duties of a physician. Nonetheless, the Deputy Administrator concurs with Judge Bittner's conclusion that ''[t]he record, however, establishes that Respondent has spent the last four years rehabilitating himself and has successfully remained sober during that time.'' In addition, Judge Bittner found Respondent's evidence regarding this rehabilitation and recovery to be credible. Judge Bittner found that ''Respondent now understands the gravity of his actions and is remorseful.'' Judge Bittner concluded ''that a preponderance of the evidence does not establish that it would be inconsistent with the public interest to grant Respondent's application for a new DEA registration,'' and therefore recommended that Respondent's application be granted.

The Deputy Administrator agrees with Judge Bittner that denial of Respondent's application is not warranted. However, the Deputy Administrator believes that some restrictions on Respondent's registration are necessary to protect the public health and safety in light of Respondent's fairly recent abuse of controlled substances, his violation of controlled substance laws and his felony conviction.

Therefore, the Deputy Administrator concludes that Respondent's application for registration should be granted subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration.

1. Respondent must continue his involvement with the Medical Board's Monitored Aftercare Program and abide by its requirements regardless of whether the Medical Board requires such involvement.

2. Respondent shall consent to periodic inspections by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

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 February 12, 1996 application for registration submitted by Mark Binette, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20232 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Rafael Cappiello, M.D., Revocation of Registration

On April 8, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rafael Cappiello, M.D., of Las Vegas, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC8554354 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada, the state in which he practices. The order also notified Dr. Cappiello that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Cappiello or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Cappiello is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR parts 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Cappiello currently possesses DEA Certificate of Registration AC8554354 issued to him in Nevada. The Deputy Administrator further finds that on June 6, 1998, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Cappiello's license to practice medicine in the State of Nevada.

The Deputy Administrator concludes that Dr. Cappiello is not currently licensed to practice medicine in Nevada, 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. See 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 Dr. Cappiello is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Cappiello is not entitled to a DEA registration in that state.

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 AC8554354, previously issued to Rafael S. Cappiello, M.D., 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 September 7, 1999.

Dated: July 27, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–20237 Filed 8–5–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert S. Chancellor, M.D., Revocation of Registration

On April 8, 1999, the Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert S. Chancellor, M.D., of Las Vegas, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BC2622644 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada, the state in which he practices. The order also notified Dr. Chancellor that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 16, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Chancellor or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Chancellor is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without hearing pursuant to 21 CFR 1391.43 (d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Chancellor currently possesses DEA Certificate of Registration BC2622644 issued to him in Nevada. The Deputy Administrator further finds that on June 6, 1998, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Chancellor's