least, this lack of attention to detail demonstrates Respondent's negligence and carelessness in his compliance with controlled substance laws and regulations. Therefore, the Deputy Administrator finds that Respondent's DEA Certificate of Registration must be revoked based upon the material falsification of his applications for registration and based upon a finding that Respondent's continued registration would be inconsistent with the public interest.

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 BL4788064, issued to James C. LaJevic, D.M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for registration, be, and they hereby are, denied. This order is effective November 15, 1999.

Dated: October 7, 1999.

**Donnie R. Marshall,**

*Deputy Administrator.*

[FR Doc. 99–27004 Filed 10–14–99; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 98–14]**

### Bernard C. Musselman, M.D.; Revocation of Registration

On February 10, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Bernard C. Musselman, M.D. of Ogdensburg, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BM5006540, pursuant to 21 U.S.C. 824(a)(1), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), on the grounds that his continued registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. During prehearing procedures, the cited statutory authority for the proposed action was changed from 21 U.S.C. 824(a)(1) to 21 U.S.C. 824(a)(4). Following prehearing procedures, a hearing was held in Arlington, Virginia on December 9, 1998. 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 June 16, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be revoked, and any pending applications for registration be denied. Neither party filed exceptions to Judge Bittner's opinion and recommended decision, and on July 19, 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, except as specifically noted below, the Opinion and Recommended Ruling, findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. 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 entered the United States Navy in 1958 during his senior year in medical school, graduated from medical school in 1959, and then completed a one-year internship. After leaving the Navy in 1963, he practiced general medicine in Ogdensburg, New York for three years, and then completed a two-year residency in pediatrics at the Mayo Clinic. Thereafter, Respondent returned to Ogdensburg and practiced pediatric medicine until he retired in 1990. While in practice in Ogdensburg, Respondent maintained admitting privileges at a local hospital.

Respondent was issued a provisional registration to handle controlled substances, AM3456680, effective May 1, 1971 through January 31, 1972. It is undisputed that Respondent prescribed controlled substances throughout his medical career, but he was not registered with DEA or its predecessor agencies to handle controlled substances from February 1, 1972 until April 11, 1990. According to Respondent, it was his understanding that a physician only needed a Federal narcotics registration if he was dispensing controlled substances. Respondent testified that he never obtained a DEA registration because he only prescribed controlled substances in his pediatric practice, and did not dispense them. Respondent further testified that he never received a notice that he needed to renew his controlled substance registration. According to Respondent, he even consulted with an attorney who was also his Congressman who told Respondent that he only needed a Federal controlled substance registration if he was dispensing controlled substances. Yet it is also undisputed that during at least most of this period Respondent's prescription pads were preprinted with DEA registration number AM3456680.

In 1987, the local hospital was conducting a review of the medical staff's credentials and discovered that it did not have a copy of Respondent's DEA Certificate of Registration on file. In October 1987, the hospital administrator wrote to Respondent requesting a copy of his DEA registration. Respondent replied that he did not need a DEA registration because he only prescribed controlled substances. The hospital staff verified with DEA that Respondent did not have a DEA registration, but through an oversight, no action was taken by the hospital at that time.

In March 1990, the issue of Respondent's DEA registration was raised again at the hospital. Once again, the hospital staff verified with DEA that Respondent did not have a DEA Certificate of Registration and also that AM3456680 was a non-existent DEA number.

At some point, the hospital administrator obtained a copy of a form memorandum that was sent to Respondent by the hospital's director of pharmacy in January 1989 or 1990 asking for Respondent's signature and DEA registration number. Respondent signed the memorandum and listed his DEA registration as AM3456680. Respondent testified that signing the form was ''an error because I didn't know what I was doing. That's my old BND (sic) number that had been on file there for years. I thought that was the number they wanted.''

On March 26, 1990, the hospital administrator sent a memorandum to the hospital's director of pharmacy, with copies to various other hospital personnel including Respondent, advising that effective immediately, Respondent was not able to write any controlled substance prescriptions because he did not have a DEA registration. After learning of the memorandum, Respondent had a discussion with the hospital administrator. Respondent was told that he was not allowed to write orders for controlled substances, and that if he needed to order controlled substances

he would have to have a consulting physician write the order for him.

Respondent contacted the local DEA office in early April 1990 to obtain an application for registration. he was issued DEA Certificate of Registration BM2219673 on April 11, 1990.

On April 1 or 2, 1990, the hospital's medical director admitted a patient to the hospital who had had a seizure and gave her phenobarbital, a controlled substance. The medical director asked Respondent to take over the patient's care. According to Respondent he expressed concern over treating the patient since he could not write controlled substance orders. On the morning of April 2, 1990, Respondent met with the medical director, the floor nurse and the patient's mother to discus the patient's care. According to Respondent, the medical director agreed to countersign orders for phenobarbital for the patient. Respondent believed that this meant that the medical director would be taking responsibility for the order. Respondent introduced into evidence at the hearing an affidavit from the patient's mother who indicated that the medical director did agree to countersign orders for phenobarbital for her daughter. However, the hospital administrator testified that Respondent wrote the order for phenobarbital that morning and that it was the hospital administrator who asked the medical director to countersign the order.

As a result of this order for phenobarbital, the hospital's executive committee summarily suspended Respondent's hospital privileges because he did not comply with the hospital's directive to not write orders for controlled substances. Respondent appealed the suspension to a fair hearing committee which met on May 12, 1990. At this hearing, the hospital administrator testified that on April 2, 1990, he received a telephone call from the medical director advising that the pharmacist on duty had told the medical director that Respondent had written an order for phenobarbital for a patient. According to the hospital administrator, the medical director did not indicate that he had agreed with Respondent to countersign such an order.

Respondent testified before the fair hearing committee regarding the meeting he had with the medical director and the patient's mother on April 2, 1990 and regarding the medical director's agreement to countersign any order for phenobarbital for the patient. Respondent further testified before the fair hearing committee that he was oblivious to the DEA number on his prescription pads and that ''the reason we hire a CEO of a hospital is to keep abreast of the changes of the rules and regulations of the health department. And when he discovered the rules have changed, he ought to tell me. And when he told me, I acted. * * *''

The fair hearing committee was troubled that no DEA representative nor the hospital's medical director testified. The committee recommended that Respondent's privileges be reinstated once he submits a valid DEA Certificate of Registration to the hospital, he revises his prescription pads to include a valid DEA registration number, and he obtains continuing medical education credits on hospital credentialing and the prescribing of controlled substances.

Notwithstanding the fair hearing committee's recommendation, the hospital's Board of Directors said that Respondent's privileges would not be reinstated at that time but that he could reapply the following spring. Respondent felt that he could not practice medicine without hospital privileges so he decided to retire.

After being advised by a state investigator that Respondent had been issuing controlled substance prescriptions without a valid DEA registration, DEA investigators went to three local pharmacies on April 26, 1990 and retrieved a total of 38 controlled substanced prescriptions that Respondent had issued between 1986 and March 1990 with DEA number AM 3456680 on the prescriptions. No action was taken by DEA at that time.

In March 1991, DEA learned that Respondent had retired from the practice of medicine. In August 1991, two DEA investigators went to see if Respondent would surrender his DEA registration since he was no longer practicing medicine. Respondent signed the voluntary surrender form, and checked the box on the form which stated that ''[i[n view of my desire to terminate handling of controlled substances listed in schedule(s) ____ (schedules 2, 2N, 3, 3N, 4, and 5 were handwritten); I hereby voluntary surrender my Drug Enforcement Administration Certificate of Registration. * * *'' According to both Respondent and the investigator who testified at the hearing, this was a cordial meeting.

In March 1992, the New York Bureau of Professional Medical Conduct issued a statement of charges alleging 11 specifications of professional misconduct. Respondent. filed an application to surrender his license to practice medicine on grounds that he did not contest the specifications, but also stating that nothing in his application was to be construed as an admission of any act of misconduct. Respondent agreed not to apply for restoration of his medical license for at least one year. Respondent's application was granted effective March 25, 1992. On June 14, 1996, Respondent's medical license was restored.

On August 6, 1996, Respondent submitted a new application for DEA registration. On this application, Respondent answered ''No'' to question 4(c): ''Has the applicant ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted, or denied?'' Respondent also answered ''No'' to question 4(d): ''Has the applicant ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?'' These questions are hereinafter referred to as the liability questions. On August 22, 1996, Respondent was issued DEA Certificate of registration BM5006540.

When local DEA investigators learned of Respondent's registration, they requested that Respondent surrender the registration on the basis that he materially falsified his application by his answers to the liability questions. Respondent refused to surrender his registration because he did not believe that he materially falsified his 1996 application since in his opinion, he did not surrender his previous registration in August 1991.

When asked at the hearing whether he considered his actions in August 1991 a surrender of his previous DEA registration, Respondent stated that,

> No, I did not * * * You see, there's a matter of interpretation here. Some people might interest surrender as a gift, you know. The way I interpret surrender means that you're being forced to do it and there is a confrontation when you surrender a license or surrender anything. But if you just give somebody something without a confrontation, that's a gift. I interpreted surrender in the sense of, you know, this is a gift. They want to get it off the street. I'm doing them a favor, and that was my interpretation.

Further according to Respondent he did not consider signing the voluntary surrender form in 1991 a surrender because.

> [W]hen you surrender a license, usually you do it because stress is being put upon you. You're being threatened. Either you surrender your license or we're going to bring criminal charges against you, you see, and I asked these people, the DEA, ''Am I in any trouble with you,'' and they said, ''No, you're in no trouble.''

Respondent also testified that he did not believe that he falsified his 1996 application for registration by answering ''No'' to question 4(d) because he did not think that the question applied to him. He did not feel that his state license had been restricted. According

to Respondent, ''I had an agreement that I would voluntarily surrender my license for one year.''

On October 1, 1997, the New York Bureau of Professional Misconduct issued a statement of charges alleging that Respondent practiced the profession of medicine fraudulently and filed a false report by his response to question 4(c) on his 1996 DEA application, and by answering ''No'' to the following question on his state application executed in October 1990:

> Since you last registered has any hospital or licensed facility restricted or terminated your professional training, employment, privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional conduct, incompetence or negligence?

On March 2, 1998, a Hearing Committee of the Medical Board issued a Determination and Order finding that the specifications in the state of charges were not sustained, dismissing the charges in the statement of charges, and directing that no action be taken against Respondent's license to practice medicine in New York. The Committee found that the factual allegations as to how Respondent answered the questions at issue and that he had been suspended from the local hospital were proven, but that it was not proven that he surrendered his DEA registration in August 1991. The Committee also found that it was reasonable for Respondent to answer the questions as he did because, with respect to his hospital privileges, he reasonably interpreted that his suspension was not based on any of the reasons stated in the question, and he likewise did not consider that he surrendered his DEA registration in 1991.

As of the date of the hearing, Respondent was ''pretty much retired'' but every winter he goes to the Dominican Republic for a month to work in a charity clinic. According to Respondent he wants his DEA registration because he wants all of his credentials to be in order when he works in the Dominican Republic. However, no evidence was presented that a DEA registration is necessary for Respondent's charity work.

When asked at the hearing whether it is incumbent upon an individual who handles controlled substances to keep informed of applicable laws and regulations, Respondent replied.

> No. That's why you hire hospital administrators. I think it's incumbent upon DEA to let doctors know when the law changes and it's incumbent upon hospital administrators to bring doctors up to date.

When asked if he had taken any courses on the proper handling of controlled substances, Respondent testified,

> Doctors don't do that. There are no courses, you know. It's so little to learn. All you need to know is you need a DEA number and the law changes, and that's up to DEA and that's up to a hospital administrator to let you know. You don't have to go take a course for that.

The Deputy Administrator may revoke a DEA Certificate of Registration and deny and pending application pursuant to 21 U.S.C. 823(f) and 824(a)(4), if he determines that the continuance or issuance of such registration would be inconsistent with the public interest. In determining the public interest, the Deputy Administrator is to consider the following factors set forth in 21 U.S.C. 823(f).

(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 law 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 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. 54 FR 16,422 (1989).

Regarding factor one, it is undisputed that Respondent is authorized by the State of New York to practice medicine and 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 factor two, there is no allegation or evidence that Respondent handled controlled substances for other than legitimate medical purposes. However, it is undisputed that Respondent handled controlled substances without being registered with DEA to do so. But like Judge Bittner, the Deputy Administrator finds that this conduct is more appropriately considered under factor four.

Regarding factor three, it is undisputed that Respondent has not been convicted of violating any laws relating to the manufacture, distribution, or dispensing of controlled substances.

As to factor four, Respondent prescribed controlled substances and ordered them for hospital inpatients without being registered with DEA to handle controlled substances from February 1, 1972 until April 11, 1990, which is prohibited by 21 U.S.C. 841(a)(1) and 843(a)(2). Respondent knew or should have known that a DEA registration is necessary to handle controlled substances and that he did not possess a valid DEA registration. Particularly troubling to the Deputy Administrator is that Respondent supplied a DEA registration number to the hospital pharmacy when asked for one. It is inconceivable to the Deputy Administrator that Respondent could fill out the form to the hospital's director of pharmacy asking for Respondent's DEA registration and not wonder why the hospital needed this number, if as Respondent through a DEA registration is only needed if a physician dispenses controlled substances. This conduct at the very last demonstrates a careless disregard for the law relating to controlled substances.

However unlike Judge Bittner, the Deputy Administrator does not find that Respondent inappropriately ordered that phenobarbital be given to a patient on April 2, 1990. There is some dispute as to what was agreed to in advance by the medical director and Respondent regarding the providing of phenobarbital for the patient. Given that the medical director did not testify before Judge Bittner or at the hospital's fair hearing committee, the Deputy Administrator is unable to determine whether Respondent did anything improper.

As to factor five, the Government contends that Respondent falsified his 1996 DEA application for registration and that this conduct should be considered under this factor. In August 1991, Respondent signed a form that was clearly entitled ''Voluntary Surrender of Controlled Substances Privileges.'' He checked a box on the form that clearly stated that he was voluntarily surrendering his DEA Certificate of Registration in view of his desire to terminate his handling of controlled substances. Respondent's failure to consider this a surrender of his previous DEA registration and to note it as such on his 1996 application for registration is at the very least careless.

Judge Bittner concluded that Respondent's continued registration would be inconsistent with the public interest and recommended that his

registration be revoked. The Deputy Administrator agrees. Respondent handled controlled substances for over 18 years without a DEA registration. He listed a non-existent DEA number on his prescription pads and provided the number to the hospital pharmacy, but at the same time contended that he did not have a DEA number and did not need one because he did not dispense controlled substances. Further, he was at the very least careless in answering the liability questions on his application for registration. But even more troubling is Respondent's failure to take responsibility for his actions. He blames others for failing to keep him up-to-date on the requirements for handling controlled substances. As Judge Bittner stated, ''[i]n these circumstances, the inference is warranted * * * that Respondent is unwilling or unable to accept the responsibilities inherent in a DEA registration.''

According, 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 BM5006540, issued to Bernard C. Musselman, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for registration, be, and they hereby are, denied. This order is effective November 15, 1999.

Dated: October 7, 1999.

**Donnie R. Marshall,**

*Deputy Administrator,*

[FR Doc. 99–27003 Filed 10–14–99; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Immigration Bond.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 6, 1999 at 64 FR 36403, allowing for a 60-day public comment period. The INS received no comments on the proposed information collection.

The purpose of this notice is to notify the public that INS is reinstating with change this information collection and to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 15, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions form the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–352. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: individuals or households. The data collected on this form is used by the INS to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The form serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond.

(5) *An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond:* 25,000 responses at 30 minutes (.50) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours.

If you have additional comments suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Biggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 8, 1999.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.*

[FR Dos. 99–26911 Filed 10–14–99; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review: Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 21, 1999 at