

sentencing guidelines for the offenses which the Respondent was convicted.

The Respondent subsequently appealed his convictions to the United States Court of Appeals for the First Circuit. The Respondent alleged in his appeal that the district court erred in denying a motion to suppress evidence seized during a warrantless search, that the district court erred in admitting into evidence a book entitled *The Secrets of Methamphetamine Manufacture*, and that there was insufficient evidence to support the conviction of possession of cocaine with intent to distribute since the drug was for his personal use. The Court of Appeals rejected each of the above arguments, and the Respondent's convictions were affirmed.

On July 17, 1992, the Respondent entered into a consent agreement with the Commonwealth of Massachusetts, Board of Registration in Dentistry (Massachusetts Dental Board), which placed his state dental license on probation for five years. The Respondent however voluntarily surrendered his dental license on January 14, 1993, while he was incarcerated. Based on the surrender of his dental license, the Massachusetts Department of Public Health, Division of Food and Drug revoked the Respondent's state controlled substance registration on April 26, 1993.

The record before the Deputy Administrator further reveals that shortly after his July 24, 1991, arrest, the Respondent began attending the Gosnold Drug Rehabilitation Treatment Center in Falmouth, Massachusetts, where he spent approximately 300 hours in group and individuals therapy and counseling over a two year period. In addition, during approximately nine of the 39 months the Respondent spent incarcerated at the Allenwood Federal Prison Camp, he participated in and graduated from the residential treatment program there. The Respondent testified that while at the Allenwood facility, he as well as the other inmates were exposed to comprehensive "twenty-four hour a day" drug treatment program.

The Respondent then spent time at a halfway house in Boston, and in May 1996, he began a three-year period of probation. The Respondent testified that from the date of his arrest in July 1991 until his release from probation in May 1999, he was randomly drug tested "close to a hundred times" and never tested positive for drug use.

In 1996, the Respondent requested the reinstatement of his Massachusetts dental license. In response to his request, the Massachusetts Dental Board required that the Respondent attend remedial education courses at one of the

dental schools in Boston, and pass the Northeast Regional Dental Examination. The Respondent satisfied these requirements. As a result, the Massachusetts Dental Board reinstated the Respondent's dental license on a probationary basis pursuant to a December 3, 1997, consent agreement. The consent agreement required that the Respondent attend Massachusetts Dental Society Committee on Drug and Alcohol Dependency (C-DAD) meetings twice a month, undergo random urinalysis, and refrain from the use of alcohol or drugs of any kind, except those prescribed for a legitimate medical or dental purpose. The Respondent attended the required C-DAD meetings, and also attended on a monthly basis the non-mandatory meetings of C-DAD since the summer of 1999. On November 12, 1998, the Respondent was issued a Massachusetts Controlled Substance Registration, which was current as of the date of the administrative hearing.

In October 1999, the Respondent successfully completed the board-imposed probationary period. A December 8, 1999, letter from the chairman of the Massachusetts Dental Board, which was admitted as evidence during the hearing, revealed that the Respondent remained in full compliance with the terms of the consent agreement. In a separate letter dated March 22, 1999, the Dental Board chairman advised that no complaints had ever been filed against the Respondent regarding dental treatment or his relationship with his patients. The letter further revealed that the Respondent had passed the Northeast Regional Dental Exam with an outstanding score and had served as a mentor to young dental students who were preparing for the exam.

The Deputy Administrator also finds that in January 1998, the Respondent began part-time work in an orthodontic practice in Marshfield, Massachusetts, where he assumed the responsibility for treating approximately 55 orthodontic patients. The Respondent was employed in this capacity as of the hearing date. From November 1998 to March 2000, the Respondent was employed full-time at the Health First Clinic in Fall River, Massachusetts, where his primary responsibilities included general dentistry, oral surgery and urgent care. The Respondent presented written testimony from several of his colleagues who attested to his high degree of competence and care in the field of dentistry, as well as a favorable letter from one of his patients.

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 granting 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 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 T. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the Deputy Administrator finds that the Massachusetts Dental Board has fully reinstated the Respondent's dental license with no restrictions, and the Commonwealth of Massachusetts has also issued Respondent a controlled substance registration. As noted by Judge Bittner, the chairman of the Massachusetts Dental Board has advised that that body supports the Respondent's application for a DEA registration. The Deputy Administrator agrees with Judge Bittner's finding that while Respondent's licensures to practice dentistry and to handle controlled substances in Massachusetts are not determinative in this proceeding, the positive recommendation of the Massachusetts Dental Board, and the reinstatement of his state controlled substance registration weigh in favor of granting the Respondent's application.

As to factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, are clearly relevant in determining the public interest in this matter. While there is no contention that Respondent has ever inappropriately prescribed, administered, or otherwise dispensed controlled substances to any patient, Respondent admitted that he purchased and/or used cocaine, marijuana, LSD and mescaline. The