

Respondent was also arrested while in possession of marijuana in May 1986 and on June 17, 1987, he tested positive for cocaine pursuant to an Arizona Dental Board Drug test. In addition, the Respondent testified that he procured a small amount of cocaine for his wife while living in Arizona, and admitted to sharing home grown marijuana with his girlfriend while living in South Hadley, Massachusetts. Therefore, the government has established that factors two and four should be weighed in favor of a finding that Respondent's registration would be inconsistent with the public interest.

As to factor three, Respondent's conviction under Federal or State laws relating to controlled substances, it is undisputed that Respondent pled guilty in 1986 to solicitation to possess a narcotic drug in Arizona, and was convicted in 1993 of the felonies of conspiracy to possess with intent to distribute cocaine, possession with intent to distribute cocaine and marijuana, and the use of mail to facilitate a narcotics transaction in Massachusetts.

With respect to factor five, other conduct that may threaten the public health and safety; the Deputy Administrator share the concern of the government regarding the Respondent's inconsistent and evasive testimony during the administrative hearing. The Deputy Administrator further shares the concerns of Judge Bittner and the government regarding the Respondent's apparent lack of respect for laws regulating the use of controlled substances, as reflected by his comments to a probation officer in Arizona that he deserved "no more than a slap on the wrist" and his insistent that "sharing" controlled substances does not constitute "distribution."

Despite the Deputy Administrator's finding regarding evasive and inconsistent testimony by the Respondent, and in particular his testimony during cross-examination by government counsel, in fairness to the Respondent, several of the topics that he was asked about covered statements made, and events that occurred more than ten years prior to testimony at the hearing (*i.e.*, the circumstances involving his 1986 arrest in Arizona, statements attributed to him in the 1987 Presentence Investigative Report, etc.). While this finding does not necessarily mitigate the Respondent's apparent lack of candor, the passage of time between some of the events in question and the Respondent's testimony at the hearing regarding these events should be given some consideration when assessing the depth and clarity of his responses.

The Deputy Administrator is concerned with the Respondent's fairly extensive history of substance abuse. As noted above, the Respondent has used on various occasions, marijuana, LSD, mescaline and cocaine. He not only used drugs in an illicit fashion, but also shared them with friends and at least one family member.

The Deputy Administrator also finds disturbing the Respondent's maintenance of an unregistered firearm in his home in violation of Massachusetts law, his use of the United States mail service to facilitate drug transactions, and the fact that he provided money to Mr. Shatz so the latter could purchase cocaine. In addition, the Deputy Administrator is perplexed by the Respondent's apparent willingness to accept responsibility for past actions on the one hand (*i.e.*, his statement in the PSIR that he learned "the biggest lesson of his life" following his 1986 conviction), and his seeming refusal to acknowledge wrong doing in other respects (*i.e.*, asserting during the hearing that an Arizona law enforcement officer lied about the basis for a traffic stop which led to the Respondent's arrest).

The Deputy Administrator also shares the concern of the Administrative Law Judge and the government that the Respondent has apparently failed to learn from the negative experiences surrounding his drug use. This apparent failure was reflected by the respondent's continued use of drugs following his 1986 arrest, as well as upon his return to Massachusetts. Therefore, the Deputy Administrator finds that the government has presented a *prima facie* case for the denial of the Respondent's application for registration.

Having concluded that there is a lawful basis upon which to deny the Respondent's application, the question remains as to whether the Deputy Administrator should, in the exercise of his discretion, grant or deny the application. Ray Roy, 46 FR 45842 (1981). Like Judge Bitter, the Deputy Administrator concludes that it would be in the public interest to deny the Respondent's pending application.

The Deputy Administrator also agrees with Judge Bittner's finding that the Respondent is now prepared to comply with laws regulating the use of controlled substances. The Respondent began attending drug rehabilitation following his July 24, 1991, arrest, and has not abused controlled substances since that time, the Respondent satisfied all of the conditions for reinstatement of his Massachusetts dental license, including his participation in C-DAD meetings; on November 12, 1998, the

Respondent was issued a Massachusetts Controlled Substance Registration, which was current as of the date of the administrative hearing; and, the Respondent presented letters of support from practitioners, colleagues and a patient attesting to his professionalism, and recommending that his DEA application be granted.

However, given the Deputy Administrator's concerns about the Respondent's past mishandling of controlled substances, a restricted registration is warranted. This will allow the Respondent to demonstrate that he can responsibly handle controlled substances. Accordingly, the Deputy Administrator adopts the following restrictions upon the Respondent's DEA registration as recommended by Judge Bittner:

1. Respondent's controlled substance handling authority shall be limited to the administering of controlled substances in his office and the writing of prescriptions only;

2. Respondent shall not possess or store any controlled substance in his home except by prescribed pursuant to paragraph three below, and shall not dispense, other than by prescribing or administering, any controlled substances from his office;

3. Respondent shall not write any prescription for himself, and shall not obtain or possess for his use any controlled substance except upon the written prescription of another licensed medical professional. In the event that another licensed medical professional prescribes a controlled substance for Respondent, Respondent shall immediately notify the Special Agent in Charge of the DEA's nearest office, or his designee; (a) that he plans to obtain a specified controlled substance for his personal use, and (b) the reasons the controlled substance is being prescribed;

4. For at least two years from the date of the entry of a final order in this proceeding, Respondent shall continue to submit to random drug testing under the auspices of the Massachusetts Dental Board, or of the appropriate state dental board in another state where he practices; he shall continue to participate in Committee on Drug and Alcohol Dependency (C-DAD) meetings if he remains in Massachusetts; and he shall submit to the Special Agent in Charge of the DEA's nearest office or his designee every calendar quarter a log listing all the controlled substances Respondent has prescribed or administered during the previous quarter.

Accordingly, the Deputy Administrator of the Drug Enforcement