

August 3, 1999, indicating that his attorney "resigned from the practice of law with charges pending" in 1994.

Respondent also contended in the aforementioned letter that his applications for habeas corpus, coram nobis, and declarative relief were denied, asserting that he was "unable to submit an adequate habeas corpus petition because defense counsel refused to release [Respondent's] criminal file, although [sic] sued for its return in the legal malpractice suit, until given an ultimatum to do so by the state bar, when [Respondent] was no longer in custody."

With respect to the various DEA proceedings described above, the Respondent asserted in his letter that his registration was initially revoked "without notice or hearing based on false, inadmissible hearsay evidence given to the agency by the medical board." The Respondent recited numerous additional allegations with respect to DEA's action against his previous registration, as well as his applications for registration, which are summarized as follows: DEA took action against the Respondent's registration because he advised the agency of the criminal activities taking place at a clinic in Long Beach; an undercover operative gave false information that Respondent supplied Schedule II drugs for weight control when in fact he used Schedule IV drugs; the then-Administrator did not consider all the pleadings and evidence; no other physician has had a registration revoked based on a misdemeanor conviction for improperly prescribing Schedule III drugs; he had three years of training in pharmacology and was familiar with the drugs he handled; hearsay was improperly admitted; and the then-Administrator's decision conflicted with those of the trial judge, the state administrative law judge for the Board, as well as the Board itself.

The Respondent further contended in his letter that the denial of his 1992 application was based on his purported failure "to take unspecified 'rehabilitative' steps." With respect to the denial of his 1996 application, Respondent asserted, *inter alia*, that the then-Deputy Administrator's order conflicted with the opinion of the administrative law judge who heard the evidence, and was made on the "incorrect basis that in [Respondent's] administrative hearing he failed to offer any evidence that [he] has been rehabilitated and can handle restricted substances even on a restricted basis."

The Government also presented the testimony of a second Diversion Investigator from the agency's Los

Angeles office. The investigator testified that on July 13, 2000, DEA personnel seized approximately 13,000 prescriptions from Plaza Pharmacy in Hawthorne, California, in the course of an investigation unrelated to Respondent. Three of the seized prescriptions, which were admitted into evidence as Government exhibits appeared to be written by someone on a preprinted prescription pad with a caption that read, "Robert M.D. Clinic." The prescriptions in question also bore the clinic's address as well as the Respondent's name. One of the prescriptions was issued to a patient hereinafter identified by his initials "FU" and dated January 12, 2000, for promethazine with codeine (a Schedule IV controlled substance); prescriptions were also issued to patient "GB" and dated January 19, 2000, for forty cephalexin (a non-controlled drug) and eight ounces of Phenergan with codeine (a brand name for promethazine); and the third prescription was issued to a "JH" and dated December 27, 1999, for cephalexin and promethazine with codeine. Further review of the third prescription reveals the Respondent's previous DEA registration number, AL0033186, written in the lower left corner of the document. As noted above, the DEA registration number was revoked, effective August 17, 1990.

The second DEA Diversion Investigator further testified at the hearing that the handwriting on each of the Plaza Pharmacy prescriptions appeared to be different, and that the person who signed each prescription appeared to be someone other than the person who wrote the patient's name, the medication to be dispensed, and date. The investigator further testified that the DEA registration number written on these prescriptions did not appear to be in Respondent's handwriting.

Respondent testified that he was retained as a physician in the Robert M.D. Clinic in Hawthorne in December 1999 as a supervisor of physician assistants, that he did not personally see patients or write prescriptions, and that he only went to the clinic once or twice per week to sign charts. The Respondent further testified that he neither wrote the prescriptions at issue nor authorized anyone else to write them, and did not know any of the patients to whom the prescriptions were issued. Respondent also testified that he did not think he signed the prescriptions because he usually wrote out his whole name when signing prescriptions and some letters appeared to be missing from the prescriptions at issue. However, Respondent also acknowledged that "[i]t

might be" his signature on the prescription for GB, and if so, he may have signed the prescription in blank, as he would not have issued the prescription as written. With respect to the prescription to JH, Respondent testified that the physician signature, instructions, and the patient's name and address were not in his handwriting.

DEA's investigation did not reveal whether the Respondent actually issued the above referenced prescriptions. The Deputy Administrator concurs with Judge Bittner's finding that the record is not sufficient to determine whether or not Respondent signed the three prescriptions in evidence. However, Respondent testified that his practice was to sign "a bunch of" blank prescriptions preprinted with his name and make them available to the clinic's physician assistants, with a "proviso that they did not prescribe any restricted substances." Respondent further testified that he told the physician assistants not to issue prescriptions for controlled substances, and that a sign posted in the clinic advised patients that the clinic would not issue controlled substances prescriptions.

In addition, a part time physician assistant employed at the Robert M.D. Clinic for two or three months beginning in early August 2000, testified that she had seen blank pads with prescriptions similar in appearance to the prescriptions issued to GB and FU. The physician assistant added that the DEA and license numbers on the prescriptions were those that the owner of the clinic had told her she would need to provide to pharmacists in order to have prescriptions filled. The DEA and license numbers referenced by the physician assistant belonged to the Respondent. The physician assistant further testified that she was told by both the clinic owner and Respondent that she could use the Respondent's DEA number when calling a pharmacy to authorize prescriptions for medications to treat high blood pressure and diabetes.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal for such registration, if he determines that the continued 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.