submitted by not later than *May 15, 1995*, in order to be considered by the Commission. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked

"Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. S.W., Washington, D.C. 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission. Issued: February 14, 1995.

Donna R. Koehnke,

Secretary.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration [Docket No. 94–67]

Barry S. Gleken, D.M.D.; Denial of Application

On June 27, 1994, the Deputy Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Barry S. Gleken (Respondent), of Methuen, Massachusetts, proposing to deny his application for a DEA Certificate of Registration, as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated, inter alia, on Respondent's lack of authorization to handle controlled substances in the Commonwealth of Massachusetts. 21 U.S.C. 824(a)(3). The Order to Show Cause also alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) based on a number of other allegations, including that Respondent materially falsified his present application by indicating that he was currently authorized to handle controlled substances in the state he was proposing to operate, when, in fact, he was not so authorized.

The Order to Show Cause was sent to Respondent by registered mail.

Respondent, through counsel, timely filed a request for a hearing. On August 18, 1994, the Government filed a motion for summary disposition based upon documentation that Respondent did not possess a valid Massachusetts Controlled Substances Registration and that such a registration was necessary before DEA could issue Respondent a registration to handle controlled substances in the Commonwealth of Massachusetts.

Respondent filed a response which did not deny that Respondent was not currently authorized to handle controlled substances in Massachusetts. Respondent, however, urged the administrative law judge to recommend that Respondent be allowed to withdraw his application without prejudice and that no further action be taken by DEA. Respondent maintained that such action be taken because he intended to apply for a Massachusetts Controlled Substances Registration in the future.

Respondent, in support of his response, asserted that Massachusetts recently enacted regulations requiring all dentists to be registered with the State Department of Health for authorization to handle controlled substances and that Respondent had just become aware of this requirement.

On September 6, 1994, in his opinion and recommended decision, the administrative law judge found that Respondent was not currently authorized to handle controlled substances in Massachusetts. The administrative law judge also found that Respondent wanted to properly apply for a Massachusetts registration, thereby eliminating the "procedural" defect to obtaining a DEA registration. Consequently, he concluded that no prejudice would accrue to DEA if Respondent were allowed to withdraw his application rather than denying the application based upon his lack of state authorization to handle controlled substances in Massachusetts. The administrative law judge recommended that Respondent be permitted to withdraw his application without prejudice.

On September 26, 1994, the Government filed exceptions to the opinion and recommended decision of the administrative law judge, contending that Respondent's application should be denied based upon the lack of state authorization rather than allowing Respondent to voluntarily withdraw his application. The Government argued in the alternative, that the Deputy Administrator remand the case back to the administrative law judge to allow the Deputy Assistant Administrator,

Office of Diversion Control, to decide whether to permit Respondent to withdraw his application, as provided under 21 CFR 1301.37 and 28 CFR 0.104 Appendix to Subpart R, Section 7(a). Respondent did not file a response to the Government exceptions.

The Deputy Administrator finds that, pursuant to 28 CFR 0.104 Appendix to Subpart R, Section 7(a), it is within the discretion of the Deputy Assistant Administrator, Office of Diversion Control, to permit Respondent to withdraw his application after an Order to Show Cause has been filed. However, the Deputy Administrator has concluded that rather than remand the matter for consideration of a withdrawal of the application, the application should be denied based on Respondent's current lack of authorization to handle controlled substances in Massachusetts.

As detailed in the Order to Show Cause, Respondent is alleged to have committed numerous wrongful acts, one of which is the falsification of the present application. Permitting the withdrawal of this application would be prejudicial to the Government and potentially the public. It would eliminate an important factor, the alleged falsification of an application, which should be considered in determining whether future applications

should be granted.

The Deputy Administrator finds that Respondent does not currently have state authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which he proposes to be registered with the DEA. The Deputy Administrator concludes that 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. See 21 U.S.C. 823(f). The Deputy Administrator and his predecessors have consistently so held. See Howard J. Reuben, M.D., 52 FR 8375 (1987); Ramon Pla, M.D., Docket No. 86-54, 51 FR 41168 (1986); Dale D. Shahan, D.D.S., Docket No. 85-57, 51 FR 23481 (1986); and cases cites therein. Since there is no disagreement that Respondent was not currently authorized to handle controlled substances in Massachusetts when he filed his application, the Deputy Administrator concludes that the Government's motion for summary disposition should be granted.

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