

stated that he had surrendered his controlled substances registrations because the Investigator had advised him that he could probably avoid action by a grand jury if he so acted, but that by signing the surrenders, he had not intended to admit to any wrongdoing. Finally, the Respondent testified about his need for his DEA Certificate of Registration in order to continue effectively his medical practice.

The record also demonstrates that on December 15, 1992, the grand jury had advised the Texas court that it had failed to find a bill of indictment against the Respondent, and on February 1, 1993, the Respondent's state privileges to handle controlled substances were restored. Further, on March 18, 1994, the Respondent appeared before the Medical Board, and on April 14, 1994, the Respondent and the Medical Board entered into an Agreed Order. The Agreed Order reflected that the Respondent had practiced medicine in Texas for forty-nine years with no documented problems or disciplinary actions. However, the Medical Board found that the Respondent had prescribed or administered a drug or treatment "that was nontherapeutic in nature or in the manner in which [it] was administered or prescribed," and that he had, thereby, violated the Medical Practice Act of Texas. The Medical Board then ordered that the Respondent's medical license be restricted for three years, and that various conditions be imposed upon his practice, including that he attend at least fifty hours per year of continuing medical education, to include at least six hours pertaining to recordkeeping or risk management. Further, another physician was to monitor or supervise his medical practice.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny a pending 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:

- (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 J. Schwarz, Jr., M.D., 54 FR 16422 (1989). In this case, the Deputy Administrator agrees with Judge Bittner that factors one, two, and four are relevant in determining whether granting the Respondent's pending application would be inconsistent with the public interest.

As to factor one, "recommendation of the appropriate state licensing board," relevant evidence includes the agreement signed by the Respondent and the Medical Board, wherein the Medical Board found that the Respondent's conduct in prescribing controlled substances to the Detective violated the Medical Practice Act of Texas. In response, in April 1994, the Medical Board placed restrictions upon the Respondent's license to practice medicine, to include requiring the acquisition of continued medical education. The restrictions are in effect for three years. Further, the record demonstrates that the Texas Department of Public Safety has reissued the Respondent's controlled substances registration, but evidence detailing the circumstances surrounding the reinstatement are not in the record.

As to factor two, "the applicant's experience in dispensing * * * controlled substances," the preponderance of the evidence demonstrates that the Respondent dispensed controlled substances to a Detective without a legitimate medical purpose and outside the usual course of professional practice. Specifically, Dr. Coppola provided that conclusion after reviewing the Detective's medical chart and the transcript of the conversations between the Detective and the Respondent preceding the Respondent's issuing prescriptions to the Detective. Further, after reviewing medical charts and prescription patterns in five other cases, Dr. Coppola also concluded that the Respondent prescribed controlled substances to these patients in "inappropriate and [in some instances] dangerous" combinations, despite the fact that these patients were exhibiting drug-seeking behavior.

As to factor four, "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," the record reflects that the Grand Jury declined to issue an indictment seeking criminal prosecution against the Respondent after reviewing evidence of

his behavior during the same period as reviewed in this proceeding. However, the Medical Board found that the Respondent's conduct did, in fact, violate the Medical Practice Act of Texas, and it levied discipline under that statute in response to its finding.

The Deputy Administrator has previously found that under Federal law, for a controlled substance prescription to be valid, "it must be written by an authorized individual acting within the scope of normal professional practice for a legitimate medical purpose." Harlan J. Borcharding, D.O., 60 FR 28796, 28798 (1995). Although the Respondent was authorized to prescribe controlled substances at the time he issued prescriptions to the Detective, the preponderance of the evidence demonstrates that the prescriptions of Valium and Tylenol No. 4 were issued without a legitimate medical purpose and outside the scope of normal professional practice. Specifically, the Detective dictated which controlled substances he wanted and ultimately received, rather than the Respondent, as the practitioner, determining the medication appropriate for the clinical condition presented by the Detective. As Dr. Coppola testified, such prescribing lacked a legitimate medical purpose and was not in the usual course of professional medical practice. See Borcharding, *supra*. Therefore, the Deputy Administrator finds, in light of the foregoing, that the Government has met its burden of proof as to factors one, two, and four.

However, the Respondent provided evidence of rehabilitation, including the Texas Department of Public Safety's reinstatement of his controlled substances registration in February 1993, and the agreement with the Medical Board. Further, he acknowledged his recordkeeping failings, and he requested consideration be given to his full cooperation with the investigation. The Respondent also requested the Deputy Administrator consider his lengthy medical career free of prior disciplinary action, and his need for his DEA Certificate of Registration.

However, even acknowledging the Respondent's rehabilitative efforts, the Deputy Administrator agrees with Judge Bittner's conclusions: "With respect to the likelihood of a recurrence of misconduct, I realize that Respondent asserted that he would be more careful in the future. However, in light of both the extent of his misconduct and his attempts to rationalize his behavior, I am not persuaded that such conduct will not recur." The Respondent's