Western Railway Company, subject to standard labor protective conditions. The line runs from milepost WG–12.0 near Helen, WV, to milepost WG–25.5 at McVey, WV, including access to the CSXT connection at milepost WG–23.6 at Pemberton, WV.

DATES: This exemption will be effective on November 26, 1995. Petitions to stay must be filed by November 13, 1995. Petitions to reopen must be filed by November 21, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32768 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: John W. Humes, Jr., 500 Water Street, J–150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Ave., N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

Decided: October 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and CommissionersSimmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–26688 Filed 10–26–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–63]

Robert L. Dougherty, Jr., M.D.; Revocation of Registration

On July 29, 1993, the Deputy Assistant Administrator (formerly Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert L. Dougherty, Jr., M.D. (Respondent), of Poway, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AD1048861, and deny any pending applications for renewal of such registration as a practitioner, under 21 U.S.C. 823(f) and 824(a)(4), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that: (1) Between January 1990 and March 1992, the Respondent prescribed the following controlled substances, Demerol, Percocet, Percodan, Preludin, Nembutal, Fastin, Tenuate, Valium, and Xanax, to an individual for no legitimate medical purpose and outside the scope of his professional practice; (2) between December 1990 and December 1991, the Respondent prescribed the following controlled substances, Lortab, Vicodin, Darvocet, and other dextropropoxyphene combination products, to an individual for no legitimate medical purpose and outside the scope of his professional practice; (3) between January 1991 and April 1992, the Respondent prescribed the following controlled substances, Lortab, Vicodin, and Oxazepam, to an individual for no legitimate medical purpose and outside the scope of his professional practice; (4) between April 1990 and July 1990, the Respondent ordered the following controlled substances, Demerol, morphine, Lortab, Vicodin, Xanax, and Halcion, without maintaining receipt or dispensing records of such orders; (5) in April 1992, various controlled substances were located at the Respondent's residence although the residence was not a registered location at that time.

On August 18, 1993, the Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Diego, California, on July 26, 27, and 28, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing the Respondent was represented by counsel, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On January 12, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's DEA Certificate of Registration be suspended for a period of one year. On January 23, 1995, the Government filed Exceptions to the Opinion and Recommended Decision of the Administrative Law Judge, and on March 20, 1995, the Respondent filed a Response to the Government's Exceptions.

On March 22, 1995, Judge Tenney transmitted the record of these proceeds to the Deputy Administrator.

The Deputy Administrator has considered the record and the submissions of the parties in their entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the findings of fact and conclusions of law of Judge Tenney, except as noted below, and his adoption is in no manner diminished by any recitation of facts issues and legal conclusions herein, or of any failure to mention a matter of fact or law. However, for reasons explained below, the Deputy Administrator rejects Judge Tenney's recommendation as to the appropriate disposition of this case.

The Deputy Administrator finds that in February 1992, as a result of a call from a local pharmacist, a DEA Diversion Investigator (Investigator) opened a case to investigate allegations that the Respondent was prescribing excessive amounts of controlled substances to a named individual, Patient #1. In March 1992, an employee of the Respondent also called the Investigator concerning the Respondent's prescription practices relevant to Patient #1. Next, an agent from the California Department of Justice, Bureau of Narcotic Enforcement (Agent) obtained a listing of triplicate prescriptions written for Schedule II controlled substances for a two year period under the Respondent's DEA Certificate of Registration number. She testified before Judge Tenney that the overall number was ''fairly modest,'' except for those pertaining to Patient #1, which appeared excessive. The Investigator sent this listing to a medical doctor, Dr. Denes, for review. Without benefit of Patient #1's treatment record, in a letter dated March 18, 1992, Dr. Denes wrote that the prescription pattern for Patient #1 was highly suspect. For example, Dr. Denes wrote that Percodan and Demerol, both Schedule II controlled substances, are typically used on a short term basis and prescribed at a maximum of four doses per day. However, the Respondent has prescribed enough of this substance for Patient #1 to take an average of 3.7 doses per day during all of 1990, and 11.4 doses per day in 1991. Dr. Denes also wrote that the Respondent's practice of prescribing large quantities of both nervous system depressants and nervous system stimulants ''is highly irregular in the medical profession and raises the very strong likelihood of drug abuse. I cannot conceive of any legitimate medical condition which would require the prescribing of these drugs, in these quantities, to any patient.'' Relying upon the information received from Dr. Denes, DEA obtained

a search warrant for the Respondent's office and residence, and executed this warrant on April 24, 1992.

Prior to executing the search warrant, the Investigator had obtained ten DEA Form 222's (official triplicate order forms used by physicians to order scheduled narcotics), showing shipment dates between April 16, 1990, and indicating that a local pharmacy had filled the Respondent's orders for Demerol and Morphine, and had shipped the orders to the Respondent at his office. At both the Respondent's office and home, investigators searched for the Respondent's copies of the previously obtained DEA Form 222's. The Respondent had told the Investigator the documents were on his desk in his office, but after two hours of searching through a disorganized stack of documents on and in the Respondent's desk, the Investigator was unable to locate the forms. She testified before Judge Tenney that after this two hour search she had concluded that the forms were not ''readily retrievable'' and she ended her search. The investigators were also unsuccessful in locating a ''biennial inventory'' at either the Respondent's home or office, and during the hearing before Judge Tenney, the Respondent conceded that he had not maintained a biennial inventory. Investigators were also unable to locate at either the Respondent's home or office receipts for controlled substances that the Respondent had purchased from drug distributors between 1990 and 1992, or receipts for controlled substances that were actually located at the Respondent's office at the time of the search. The Respondent conceded that he did not keep receipts for samples of controlled substances that he had been given from drug company representatives, substances such as Xanax, Valium, and Halcion. During his hearing testimony, the Respondent conceded that he had not directed anyone in his office to keep a record of the actual receipt of controlled substances, although he ''inconsistently, and not most of the time'' placed a note in a notebook. The parties dispute the existence of dispensing records, for the investigators were unable to locate such records at the time of the search, but the Respondent asserted that he maintained dispensing records, that those records were located in the pile of documents on the top of his desk, but that they disappeared in the search. The Respondent testified that the dispensing records were mostly for injectable substances (Demerol and morphine), but that there were ''probably a few, but nothing major'' with respect to ''all the others, the samples, [and] the Xanax.'' The Respondent also testified that he dispensed samples to patients other than Patient #1, that he had an annotation system for the patients' records noting such dispensing, but that he did not use this system in Patient #1's record.

Patient #1 became Respondent's patient in 1974, he is a Vietnam veteran who was injured, and he is a medically retired San Diego Police Officer. He was medically retired after experiencing three back injuries, consulting with at least two neurosurgeons and two orthopedic surgeons in San Diego, being diagnosed with extensive lumbar-spine disease and a herniated disk in the cervical spine, and requiring pain medication pending major surgery. The Respondent testified that he had ''received, to [his] satisfaction, incontrovertible proof that [Patient #1's] pain was real.'' In the early 1980's, Patient #1 received treatment at a pain clinic to try to decrease his reliance upon narcotic pain medication. Also his treatment record contained notations made in the early 1980's as part of an arthritic clinic's treatment, reflecting that Patient #1 believed that he was addicted to pain medicine, and that the planned treatment was ''to decrease the patient's pain-medication addiction.''

At the hearing before Judge Tenney, the Government called Dr. Ling as an expert witness. The parties dispute whether this witness should be regarded as an expert witness in pain management, but Judge Tenney reviewed the witness's Curriculum Vitae (made a part of the record) as well as the witness's testimony concerning his professional education and experience, and determined that Dr. Ling was also qualified as an expert in pain management. After reviewing Patient #1's treatment record, Dr. Ling concluded that generally he had no dispute with the manner or amount of controlled substances the Respondent prescribed to Patient #1 during the 1980's. However, after Patient #1 moved into the Respondent's home in early 1990, the notations in his chart became sporadic, ending on December 3, 1991. Dr. Ling testified that the Respondent's standard of care as to Patient #1, to include a lack of a medical record showing Patient #1's treatment, and the excessive amounts of prescribed medication between January 1990 and February 1992, ''fell below community standards for the average physician.'' He conditioned this opinion by stating that the evidence ''does not support that the doctor was prescribing for an illegitimate purpose,'' or that ''he was doing something dishonest,'' but rather that such prescribing was not ''appropriate treatment'' in this case. The Respondent rebutted Dr. Ling's opinion by testifying that he altered his patient record practices in the case of Patient #1 after he moved into his home because he now saw him regularly and was able to closely observe him on a daily basis. Further, the Respondent testified that between 1990 and 1992 he received samples of Xanax, and gave these to Patient #1, although such dispensing was not recorded in his chart. Further, the Respondent conceded that from April 1991 through March 1992, virtually no Schedule II drugs were recorded on Patient #1's chart, even though the prescription records obtained from the pharmacies recorded that such controlled substances were prescribed and the prescriptions filled.

However, the record also demonstrates that from mid-December 1991 to April 1992, Patient #1 ''rarely ever'' went into an examination room, pursuant to information provided by a member of the Respondent's staff. Patient #1 would visit the office to pick up prescriptions, and he would often call the Respondent's office and leave a message telling the Respondent what controlled substances to bring home. Dr. Ling testified that such patient and physician behavior concerned him, because the patient's demands seemed to replace the physician's judgment. He further testified that he was aware that some chronic pain patients receive less medication than they needed, but that he continued to maintain that it was still the physician's judgment that should control.

Further, the Investigator interviewed approximately 10 local pharmacists, and the names of Patient #2 and Patient #3 were given as patients of the Respondent who also may have been overprescribed. On October 24, 1990, the Respondent issued Patient #2 an original prescription for 30 dosage units of Vicodin, he saw this patient again on November 14, 1990, and although the Respondent did not see this patient again until May 1, 1991, he authorized more than twenty refills from the October 24, 1990, prescription for Vicodin, a medication containing hydrocodone, a Schedule III controlled substance. Following this same pattern, the Respondent also issued Patient #2 an original prescription for Darvocet–N 100 on October 24, 1990, and between that date and May 1, 1991, he authorized more than twenty refills of Darvocet, a medication containing propoxyphene napsylate, a Schedule IV controlled substance.

The parties stipulated that Patient #3 forged prescriptions. Of record is a list of forged prescriptions under the Respondent's name, indicating that on February 3, 1992, February 13, 1992, March 18, 1992, April 17, 1992, April 18, 1992, April 20, 1992, and April 21, 1992, a total of 396 dosages of Lortab were dispensed to Patient #3, a medication which contains a Schedule III controlled substance. The record contains evidence that acts were taken between January 1990 and April 1992, to notify the Respondent of Patient #3's forgeries: (1) In January 1990, a pharmacist contacted the Respondent's office about forged prescriptions from Patient #3, (2) a letter dated February 6, 1992, was written to the Respondent informing him of a suspicious prescription written to Patient #3 despite the Respondent's office's verification of the prescription which the pharmacist had filled, and (3) in April 1992, the Respondent received notification from another pharmacist about forged prescriptions for a controlled substance for Patient #3. However, the Respondent authorized the refills and continued to prescribe Lortab for Patient #3.

Also, Patient #3 was interviewed by the Investigator and the Agent, and a transcript of that interview was made a part of the record. Patient #3 stated that he had been a patient of the Respondent's from July 1990 to about June 1992, that he had told the Respondent of his past drug addiction problems, but that the Respondent continued to prescribe Lortab, a Schedule III controlled substance. He also stated that the Respondent talked to him about forged prescriptions, that he had denied forging the prescriptions, but that the Respondent had told him that he did not believe his denial. However, the Respondent continued prescribing Lortab even after this conversation. Patient #3 stated that in June 1992 he stopped receiving treatment from the Respondent and that he went into a rehabilitation treatment center for 90 days to overcome his addiction to Lortab.

Finally, the Respondent testified that he believed Patient #3 had valid complaints of pain stemming from history of back pain, that he never received a copy of a forged prescription regarding Patient #3, that he did not see such a copy until June 1992, when he then realized Patient #3 had been deceiving him. Further, he stated that on June 1, he told Patient #3 he should see another doctor, but that he gave his a small supply of Lortab to take until he could get into a clinic on June 24th. He testified that Patient #3 returned to his office a week later, but that he merely gave him a non-narcotic pain medication. After reviewing Patient #3's chart, Dr. Ling concluded that the Respondent's prescribing practices were excessive with poor documentation of the need for those narcotics, demonstrating a lack of usual care and precaution in dealing with these kinds of prescriptions.

Pursuant to 21 U.S.C. Sections 824(a)(4) and 823(f), the Deputy Administrator may revoke or suspend a DEA Certificate of Registration if he determines that the continued registration would be inconsistent with the public interest. Pursuant to 823(f), the following factors are to 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 J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, factors two, four, and five are relevant in determining whether the Respondent's retention of his Certificate of Registration would be inconsistent with the public interest. As to factor two, the Respondent's ''experience in dispensing controlled substances,'' the Deputy Administrator finds that both Dr. Denes and Dr. Ling agreed that the Respondent's dispensing of controlled substances to Patient #1 between January 1990 and February 1992, was ''highly irregular in the medical profession,'' and was excessive. To be effective, a prescription for a controlled substance ''must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a); see also Harlan J. Borcherding, D.O., 60 FR 28,796, 28,798 (1995). Here, Dr. Ling observed that the Respondent's management of Patient #1's medical treatment demonstrated behavior such that the patient's demands seemed to replace the physician's judgment. Such actions on the part of the Respondent certainly bring into serious question the legitimacy of his dispensing of controlled substances to Patient #1. The Deputy Administrator has previously found that prescriptions issued under such circumstances were not for a legitimate medical purpose, when an undercover officer dictated the controlled substance to be given, ''rather than Respondent, as a practitioner, determining the medication appropriate for the medical condition presented by the officer.'' Ibid. Here, Judge Tenney concluded, and the Deputy Administrator agrees, that the Respondent's experience included dispensing controlled substances to Patient #1 ''on demand,'' ''virtually upon request,'' with ''virtually no scrutiny,'' and with ''virtually no records or monitoring in the early 1990[']s,'' and such dispensing practices demonstrated the Respondent's ''gross lack of judgment.'' See Borcherding, supra. Further, the Respondent's practice of giving Patient #1 Xanax samples without documenting his record, also leads to the conclusion, as Judge Tenney noted, that the Respondent's prescribing and dispensing to Patient #1 was ''outside the context of the Respondent's usual professional practice.''

Also, the dispensing of a controlled substance in the quantities prescribed to Patient #3, a patient known to the Respondent as an admitted drug abuser, even after receiving warnings of forged prescriptions, demonstrates at least a lack of precaution, and more probably a disregard of the requirements for detailed attention to individual patient behavior necessary for the dispensing of controlled substances. See, e.g., Jay Wheeler Cranston, M.D., Docket No. 92–70, 59 FR 36,786 (1994). Also, the excessive number of refills provided Patient #2 over a six-month period of time without requiring a clinical examination or visit, demonstrates a reckless disregard for medical standards in dispensing controlled substances. Thus, the Deputy Administrator agrees with Judge Tenney that the Government has established a prima facie case under factor two.

As to factor four, ''compliance with applicable State, Federal, or local laws,'' Federal regulations as well as State law established requirements and refill restrictions. The Government's brief provided excerpts of California law dealing with prescription refills and requirements, and the Respondent did

not object to this statement of the State law.

Therefore, as to refills, Federal regulation, 21 CFR 1306.22(a), provides in relevant part that ''[n]o prescription for a controlled substance listed in Schedule III or IV shall be filled or refilled more than six months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times * * *. (4) The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five refill, six-month limitation.'' Further, California Health and Safety Code 11200 states in relevant part that ''[n]o person shall dispense or refill a controlled substance prescription more than six months after the date thereof or cause a prescription for a Schedule III or IV substance to be refilled in an amount in excess of a 120 day supply, unless renewed by the prescriber.'' In this case, the Respondent authorized an original prescription to Patient #2 for Vicodin, containing a Schedule III controlled substance, and Darvocet–N 100, containing a Schedule IV controlled substance, on October 24, 1990, and between that date and May 1, 1991, a time exceeding six months, authorized more than twenty refills each for Vicodin and Darvocet, in violation of both Federal regulation and State law.

As for recordkeeping requirements, 21 U.S.C. 827(a)(3) provides in relevant part: ''* * * on and after May 1, 1971, every registrant under this subchapter dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each substance * * * received, sold, delivered, or otherwise disposed of by him,'' and 827(b) provides that ''Every inventory or other record required under this section (1) shall be in accordance with, and contain such relevant information as may be required by, regulations of the Attorney General, (2) Shall (A) be maintained separately from all other records of the registrant, or (B) alternatively, in the case of non-narcotic controlled substances, be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant, and (3) shall be kept and be available, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General.'' Also, 21 U.S.C. 842(a)(5) provides: ''It shall be unlawful for any person— (5) to refuse or fail to make, keep, or furnish any record, report * * * order or order form, * * * required under this subchapter or subchapter II of this chapter.''

Federal recordkeeping regulations also exist, and 21 CFR 1304.04(a) provides in relevant part: ''Every inventory and other records required to be kept under this part shall be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration.'' Further, 21 CFR 1304.24 requires dispensers to maintain records for each controlled substance reflecting, among other things, the number of commercial containers received, the number of units dispensed, with detailed information concerning the person to whom it was dispensed, and information concerning any other method of disposal of the substance. Finally, 21 CFR 1305.03 dictates that a DEA Form 222 be used for each distribution of a controlled substance listed in Schedule I or II, and 21 CFR 1305.13 requires that these order forms be maintained separately from all other records and ''are required to be kept available for inspection for a period of 2 years.''

Applicable State statues, specifically California Health and Safety Code 11190, require practitioners such as the Respondent, who issue a prescription, dispense, or administer Schedule II controlled substances, to create and maintain a record which identifies the patient, pathology, and purpose for each such transaction. Per Section 11191, the record is to be maintained for three years, and violations may result in criminal prosecution. Further, Section 11192 states that ''proof that a defendant received or has had in his possession at any time a greater amount of controlled substances than is accounted for by any record required by law * * * is prima facie evidence of a violation of [section 11190].''

Here, the Investigator obtained ten DEA 222 order forms showing that a local pharmacy had filled the Respondent's orders for Demerol and morphine, Schedule II substances, and shipped the order between April 16, 1990, and July 23, 1990. Yet on April 24, 1992, the Respondent was unable or unwilling to produce, or make ''readily retrievable,'' the documentation required to be maintained by both Federal and State law as to the DEA Form 222. Also, on the day of the execution of the search warrant, the Respondent had controlled substances at his office and home, and yet the investigators could not find the required biennial inventory documentation, receipts for the controlled substances, either bought by the Respondent or distributed to the Respondent gratis as samples, or his dispensing documentation. In fact, the Respondent conceded that he did not keep receipts for samples of controlled substances that he had been given, substances such as Xanax, Valium, and Halcion, despite the statutory and regulatory requirements to maintain such records. The Respondent argued in his post-hearing brief that the failure to find the required records does not establish by a preponderance of the evidence that he had violated the recordkeeping statutes. However, the Respondent conceded the lack of biennial inventory records, receipts for samples of controlled substances, and a lack of dispensing records meeting the statutory requirements. Further, the evidence established that the Respondent was unable to produce at least seven DEA Form 222's upon request. In total, the preponderance of the evidence established that the Respondent has failed to comply with applicable Federal and State laws relating to controlled substances. Such a blatant disregard for statutory provisions implemented to maintain a record of the flow of controlled substances and to prevent the diversion of controlled substances to unauthorized individuals, would justify revocation of the Respondent's registration. *See, e.g., George D. Osafo, M.D.*, Docket No. 92–75, 58 FR 37,508, 37,509 (1993) (noting ''that Respondent failed to comply with numerous recordkeeping requirements and noted that it is a registrant's responsibility to be familiar with the Federal regulations applicable to controlled substances''). Again, the Deputy Administrator agrees with Judge Tenney that the Government has established a *prima facie* case under factor four.

As to factor five, ''such other conduct which may threaten the public health or safety,'' the Deputy Administrator finds relevant Dr. Ling's testimony that the Respondent's failure to maintain accurate, current, and complete patient treatment records for Patient #1, a fact conceded by the Respondent, Patient #2, and Patient #3, demonstrated a lack of usual care and precaution required of a physician, especially one issuing controlled substance prescriptions supposedly in response to documented patient need. A threat to public health and safety is created by such inaccurate documentation, for, as noted by Judge Tenney, ''[i]n the event that another physician were required to treat either [Patient I or Patient II], i.e., if the Respondent suddenly fell ill, such treatment could be seriously impeded

by the Respondent's shoddy documentation.''

Further, the Respondent's lack of attention to warnings received by him or his staff concerning Patient #3's conduct in forgoing controlled substance prescriptions, coupled with his knowledge of that patient's drug abuse history, creates grave doubt as to the Respondent's prescription practices to known drug abusers. Also, the record lacks any evidence to show that despite such warnings, the Respondent ceased prescribing controlled substances to this patient until he obtained and documented accurate information about the amounts of such substances actually received by Patient #3 through the use of these forged prescriptions. Such conduct shows a carelessness inappropriate for continued registration. The Deputy Administrator finds unconvincing the Respondent's arguments that he should not be accountable for the acts of Patient #3, for it is the inaction of the Respondent which forms the gravamen of the problem warranting revocation of the Respondent's registration: specifically, his failure to insure staff members pass on warnings from local pharmacists, and his failure to heed and respond to written communication received from local pharmacists, especially concerning a patient known to the Respondent as having a history of drug addiction.

The Government filed exceptions, the Respondent filed a Response to the Government's Exceptions, and the Deputy Administrator has reviewed these filings, concluding that only limited comment is required. First, as to the Respondent's exception about the Government's evidence and argument regarding the clinical decisions to be made concerning Patient #3 and referral to a pain clinic, the Deputy Administrator agrees with the Respondent, and such evidence and argument as to the timing of physician treatment decisions pertaining to Patient #3's referral have not been a factor in resolving this case. However, this response does not mitigate the fact that the Respondent was provided notice of Patient's #3 forged prescriptions as early as January 1990, and yet he did not act to investigate or otherwise curtail prescribing controlled substances to this patient, or act to obtain information verifying the exact amount of controlled substances in this patient's possession. Next, the Respondent takes exception to the Government's inferring that the Respondent should be responsible for the acts of Patient #1 in informing the Respondent of a potential undercover investigation. The Deputy Administrator agrees and has not relied upon this fact in analyzing or reaching his decision. The Respondent goes on to note that he has not been charged with illegally prescribing medication to undercover agents and that there was no evidence introduced at the hearing that he participated in such activity. Such a statement is true, but the Deputy Administrator notes that such evidence is not required to justify a revocation. See Richard A. Cole, M.D., Docket No. 90–53. 57 FR 8677, 8680 (1992) (noting that conviction is not the only ground or factor justifying a revocation, but rather finding that the ''Respondent's experience in dispensing controlling (sic) substances, his compliance with laws relating to these drugs[,] and other conduct which may threaten the public health and safety may likewise support the revocation of a registration''). The remainder of the Government's exceptions and the Respondent's response are of record and require no further discussion here.

In conclusion, Judge Tenney wrote that he found ''overwhelming evidence that the Respondent is both a respected physician and member of his community, and that he has served it faithfully for many years. In light of this evidence, I am confident that the Respondent will remedy the deficiencies in his practice.'' Although acknowledging the Respondent's evidence of his lengthy contribution to the community and his status as an admired physician, the Deputy Administrator respectfully declines to adopt Judge Tenney's finding as to the Respondent's future correction of the deficiencies in his practice, or Judge Tenney's resulting recommendation that the Respondent's DEA Certificate of Registration be suspended for one year. Rather, reviewed in total, the Deputy Administrator finds that the Respondent's (1) failure to acknowledge the need for adequate recordkeeping to insure controlled substances are not diverted into the public forum for illegitimate purposes, (2) lack of remorse concerning his own unlawful recordkeeping and refill practices, (3) failure to act in a timely manner upon, and to take responsibility for, receipt of information given to him or to his staff concerning the forged prescriptions of Patient #3 and (4) lack of acknowledgment that the inadequate treatment record of Patient #1 could have ultimately jeopardized that patient's welfare, lead to the conclusion that the revocation of the Respondent's DEA Certificate of Registration is in the public interest. See Leo R. Miller, M.D., Docket No. 86–93, 53 FR 21,932, 21,933 (1988) (noting that the revocation of a DEA Certificate of Registration ''is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused * * * their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be trusted with the responsibility carried by such a registration''). The Deputy Administrator is aware of the substantial impact of the revocation of a physician's controlled substance registration, and it is not a remedy which he orders without due consideration of alternatives. However, the Deputy Administrator is also charged with protecting the public from the harm resulting from the improper handling of legitimately produced controlled substances.

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 21 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD1048861, previously issued to Robert L. Dougherty, Jr., M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and hereby are, denied.

This order is effective November 27, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–26725 Filed 10–26–95; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

Office for Victims of Crime

[OJP NO. 1045]

RIN 1121–AA30

Victims of Crime Act Victim Assistance Grant Program

AGENCY: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Final Program Guidelines.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing Final Program Guidelines to implement the victim assistance grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, et seq. (hereafter referred to as VOCA).

DATES: Federal Fiscal Year 1996 VOCA grant program.

FOR FURTHER INFORMATION CONTACT: Jackie McCann Cleland, Director, State