

forementioned time limits upon receipt of a timely request to do so.

#### Written Submissions

In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violations (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on July 8, 1982; written submissions on the questions of remedy, bonding, and the public interest must be filed not later than the close of business on July 12, 1982. During the course of the hearing, the parties may be asked to file posthearing briefs.

#### Notice of Appearance

Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by July 12, 1982.

#### Additional Information

The original and 14 true copies of all briefs on violation must be filed with the Office of the Secretary not later than July 8, 1982; the original copy and 14 true copies of all briefs on remedy, bonding, and the public interest must be filed with the Office of the Secretary not later than July 12, 1982. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request in camera treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for in camera treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the *Federal Register* of November 12, 1981, 46 FR 55797.

**FOR FURTHER INFORMATION CONTACT:**  
Eliza R. Patterson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

By order of the Commission.

Issued: July 7, 1982.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 82-18918 Filed 7-9-82; 9:23 am]

**BILLING CODE 7020-02-M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 82-3]

#### Faunce Drug Store; Revocation of Registration and Denial of Application

On February 8, 1982, the Acting Administrator of the Drug Enforcement Administration (DEA) directed an Order to Show Cause to Faunce Drug Store, 3473 Frankford Avenue, Philadelphia, Pennsylvania 19134 (Respondent), seeking to revoke DEA Certificate of Registration AF 9165374, issued to Respondent pursuant to 21 U.S.C. 823. The statutory predicate for the Order was the conviction on October 30, 1981, in the United States District Court for the Eastern District of Pennsylvania, of Raymond Barnett, the owner and managing pharmacist of Respondent, of one count of distribution of Desoxyin in violation of 21 U.S.C. 841(a)(2), and two counts of omitting material information from a report required to be kept by the Controlled Substances Act in violation of 21 U.S.C. 843(a)(4), felonies relating to controlled substances.

The matter was placed on the docket of Administrative Law Judge, Francis L. Young. The Acting Administrator publishes this Final Order pursuant to 21 CFR 1316.67.

Following a motion by Respondent, Judge Young found that Barnett was convicted of a felony relating to a controlled substance. Judge Young found that a conviction is final even though the trial court suspends execution of sentence and stated the issue is whether Barnett has been "convicted"; the finality of such a conviction is irrelevant. The Acting Administrator adopts the well reasoned conclusion of the Administrative Law Judge. In an earlier proceeding under this statute, *In Re Leonard S. Cohen, et al.*, Docket No. 72-5, 38 FR 9522 (1973), the Director of the Bureau of Narcotics and Dangerous Drugs, DEA's predecessor agency, said: "Also it would appear that under an administrative hearing it is not necessary that sentence be imposed or

that judgment on a verdict be rendered to satisfy the requirement of a 'conviction.'" The Acting Administrator finds that the finality of a conviction is irrelevant in determining whether a registrant has been convicted of a felony relating to controlled substances under 21 U.S.C. 824(a)(2). A registrant is convicted of a controlled substance related felony if there is a judgment of guilt, plea of guilty or nolo contendere, or some other indication that he has been found guilty of a controlled substance related felony. See *Berman v. United States*, 302 U.S. 211, 58 S. Ct. 164 (1937) and *Korematsu v. United States*, 319 U.S. 432, 63 S. Ct. 1124 (1943). See also *United States v. Rosenstengel*, 323 F. Supp. 499 (E.D. Mo. 1971), where the court looked at the purpose of Congress in enacting 18 U.S.C. 1202(d) (relating to possession of firearms by convicted felons) and concluded "there is no doubt in our mind that the word 'convicted' was used in the statute in its broadest sense. To narrowly equate the term 'convicted' with the final judgment of conviction thereafter entered would clearly frustrate the congressional purpose \* \* \*". The court held that once guilt has been established either by plea or by verdict and nothing remains to be done except pass sentence, the defendant has been convicted within the intent of Congress. The Acting Administrator adopts the cogent reasoning of Judge Young and the *Rosenstengel* court in construing 21 U.S.C. 824(a)(2). It is clear that Congress intended the term "conviction" to have the broadest meaning in 21 U.S.C. 823 and 824. The Acting Administrator finds that Raymond Barnett was convicted of a controlled substance related felony.

The Acting Administrator rejects Respondent's argument that DEA should not entertain the action against Faunce Drug Store since it was Barnett and not Faunce Drug Store that was convicted of a controlled substance related felony. This Administration has consistently held that the conviction of a natural person whose relation to a registered pharmacy gives him such control over its affairs as its owner and managing pharmacist provided ample grounds for revocation of the pharmacy's DEA registration. See *In Re Lynnfield Drug Inc.*, Docket No. 78-6, 42 FR 8435 (1977), *In Re Woodfield Drugs Inc. et al.*, Docket No. 80-20, 46 FR 35397 (1981).

Following disposition of Respondent's motion, the Administrative Law Judge ordered Respondent and the Government to simultaneously file prehearing statements, with which the Government timely complied. Respondent has not complied with the

Order. Judge Young concluded that Respondent had waived its right to a hearing by failing to file a prehearing statement and terminated the proceedings before him and pursuant to 21 CFR 1316.65 transmitted the record to the Acting Administrator. Judge Young found that Respondent has impliedly waived its right to a hearing and withdrew its request for a hearing by failing to file a prehearing statement as requested. Judge Young pointed out that his call for prehearing statements is clearly authorized by 21 CFR 1316.52(c) and 1316.58(a) and noted that his Order for prehearing statements admonished Respondent that failure to timely file a prehearing statement as directed may be considered a waiver of hearing and an implied revocation of a request for a hearing. The Administrative Law Judge went on to state that the applicable statutes and regulations require only that an agency grant Respondent an opportunity for a hearing. *National Independent Coal Operators v. Kleppe*, 423 U.S. 388 (1976); *Costle v. Pacific Legal Foundation*, 100 S. Ct. 1095 (1980); *United States v. Consolidated Mines and Smelting Co. Ltd.*, 455 F.2d 432 (9th Cir. 1971).

The Acting Administrator fully concurs in the conclusions of the Administrative Law Judge. The law does not require this agency to go through the useless and wasteful exercise of convening a hearing for the presentation of both sides of the controversy when one side has failed to show that it has a case to be heard, particularly after it has been specifically ordered to make such a showing. Respondent has failed to abide by an Order of the Administrative Law Judge. Clearly, the orderly procedures of justice are disrupted when one side of the proceeding decides to ignore an order of the Presiding Official. This Administrator cannot permit the parties that appear before it to choose which orders to obey and which orders to disregard. The actions of the Administrative Law Judge were well taken and appropriate under the facts in this matter.

The Acting Administrator finds that Respondent has waived its right to a hearing and pursuant to 21 CFR 1301.54(d) cancels the hearing in this matter and enters his final order upon the record as it appears. The Acting Administrator finds that on September 8, 1981, Raymond Barnett was charged in a 159 count indictment. Counts 1 through 155 charge that between February 1, 1980, and September 26, 1980, Barnett knowingly and intentionally distributed approximately 4,650 Desoxyn, a Schedule II controlled

substance. The remaining counts of the indictment charge Barnett with failure to retain records required to be kept under the Controlled Substances Act in violation of 21 U.S.C. 843(a)(4). Barnett pled guilty of one count of distribution of Desoxyn and two counts of omitting material information. The Acting Administrator finds that Raymond Barnett trading as Faunce Drug Store dispensed literally tens of thousands of dosage units of Quaalude, Parest, Preludin, Ritalin, Desoxyn, Percocet, Lotusate, Talwin and Brominal illegally. An in-depth investigation of Respondent by DEA compliance investigators revealed tremendous shortages of controlled substances. At least 399 Schedule II prescriptions for 14,430 dosage units that were filled by Barnett were determined to be forgeries. DEA compliance investigators obtained statements from 14 Philadelphia area physicians whose names appeared on these prescriptions that none of these prescriptions were issued by any of the physicians. An informant who frequently filled forged prescriptions at Respondent cooperated with the United States in the criminal investigation. The informant was able to easily obtain controlled substances by submitting a forged prescription to Barnett. Contrary to Respondent's assertions the Acting Administrator finds that Barnett was under no compulsion when he sold the informant the controlled substances.

The Acting Administrator has studied the record in this case and finds ample evidence for the revocation of Respondent's DEA Certificate of Registration and the denial of any subsequent application for reregistration with DEA; there is nothing in the record to mitigate this decision. Accordingly, under the authority vested in the Attorney General by section 304 of the Controlled Substances Act, 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator hereby orders that the DEA registration of Faunce Drug Store be and hereby is revoked and the subsequent application for a DEA certificate of Registration be denied, effective August 11, 1982.

Dated: July 6, 1982.

Francis M. Mullen, Jr.,  
Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-18686 Filed 7-9-82; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-9]

#### Anthony Di Flumeri, M.D.; Modification of Registration; Final Order

On March 8, 1982, the Acting Administrator of the Drug Enforcement Administration (DEA) directed to Anthony Di Flumeri, M.D., c/o Alpha Medical Emergency Services, Bay Harbor Plaza, Bricktown, New Jersey (Respondent) an Order to Show Cause proposing to deny the application for a DEA Certificate of Registration executed by Respondent on October 6, 1981. The statutory predicate was Respondent's conviction in the New Jersey Superior Court, Ocean County, Law Division—Criminal of four counts of obtaining a controlled dangerous substance (Demerol) by fraud in violation of New Jersey Statutes 24:21-22a(3), a controlled substance related felony.

Respondent, through counsel, requested a hearing on the issues raised by the Order and the matter was placed on the docket of Administrative Law Judge Francis L. Young. In lieu of a hearing on the issues raised by the Order, Respondent and DEA entered into an agreement. The Administrative Law Judge approved the agreement and terminated administrative proceedings.

The Acting Administrator has considered the agreement entered into by the parties and pursuant to 21 CFR 1316.67 publishes this Final Order. The Acting Administrator finds that Respondent pled guilty on October 19, 1979, to four counts of obtaining a controlled dangerous substance (Demerol) by fraud in violation of New Jersey Statutes 24:21-22a(3). The Acting Administrator further finds that the parties agreed that Respondent will submit to DEA quarterly reports for a three-year period which will include legible copies of all prescriptions for controlled substances in Schedules III through V written by Respondent and a summary report of all Schedules II through V controlled substances which he administered, dispensed and prescribed. During the same three-year period, Respondent will submit monthly reports to DEA that will include legible copies of all prescriptions for Schedule II controlled substances which he wrote. These monthly reports will include the name and address of any person who receives such a prescription and the controlled substance and amount involved.

The Acting Administrator further finds that the parties have stipulated that Respondent will only administer, dispense or prescribe controlled substances in connection with his position as a physician employed by

Alpha Medical Emergency Services at Bay Harbor Plaza, Bricktown, New Jersey, and his position as an emergency room physician employed by Community Memorial Hospital, Highway 37, Toms River, New Jersey and that Respondent will notify DEA of a change of employer or affiliation. Respondent understands that the agreement is probationary in nature and that any violation of the terms of the agreement will result in summary suspension of his controlled substance privileges by the Acting Administrator.

The Acting Administrator finds that the agreement is an appropriate resolution to the issues raised in the Order to Show Cause, and incorporates the agreement into the final disposition of this case. Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 823 and 824 and redelegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator grants the application of Anthony Di Flumeri, M.D., for registration under 21 U.S.C. 823 and 824 subject to the restrictions imposed by the agreement between Respondent and the Government, effective immediately.

Dated: July 2, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-18689 Filed 7-9-82; 8:45 am]

BILLING CODE 4410-09-M

**Manufacturer of Controlled Substances; Application**

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 8, 1982, SmithKline Chemicals, Division of SmithKline Corporation, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411).....	I.
Amphetamine (1100).....	II.
Phenylacetone (8501).....	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21

CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than August 11, 1982.

Dated: July 2, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-18690 Filed 7-9-82; 8:45 am]

BILLING CODE 4410-09-M

**Manufacturer of Controlled Substances; Registration**

By Notice dated December 28, 1981, and published in the Federal Register on January 5, 1982; (47 FR 363), Syncates Associates, Inc., 9307-M Harwin, Houston, Texas 77036, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments or objections having been received, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301.54(e), the Acting Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 2, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-18688 Filed 7-9-82; 8:45 am]

BILLING CODE 4410-09-M

**NUCLEAR REGULATORY COMMISSION**

**Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under

the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.
2. The title of the information collection: Equal Access to Justice, 10 CFR Part 2.
3. The form number if applicable: None.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: Parties to NRC adversary adjudications.
6. An estimate of the number of responses: 6 responses.
7. An estimate of the total number of hours needed to complete the requirement or request: 150 hours.
8. An indication of whether section 3504(h), Pub. L. 96-511 applies: not applicable.
9. Abstract: Equal Access to Justice Act (Pub. L. 96-48) requires NRC to obtain information from prevailing parties in NRC adversary adjudications.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Gwendolyn W. Pla, (202) 395-6880.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 6th day of July 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Acting Director, Office of Administration.

[FR Doc. 82-18750 Filed 7-9-82; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 50-369]**

**Duke Power Co.; Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. NPF-9, issued to Duke Power Company (licensee) for the McGuire Nuclear Station, Unit 1 (the facility) located in Mecklenburg County, North Carolina.

The amendment was authorized by telephone on June 9, 1982, and was confirmed by letter on June 10, 1982. The amendment exempts McGuire from the requirements of Technical Specification 3.5.2.c. for 72 hours to allow sufficient time to repair the seismic support system associated with the residual heat exchangers. This amendment was