

2/15/85

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Received
2/15/85

In The Matter Of)
)
MDMA SCHEDULING)
)

Docket No. 84-48

MEMORANDUM AND ORDER

Upon consideration of the discussion at the preliminary hearing session on February 1, 1985, this Memorandum And Order is issued.

It appears appropriate that we proceed, generally, in the following manner. Each participant will be provided the opportunity to submit a succinct statement of each issue he perceives in this matter, a list identifying each witness he intends to produce with a brief summary of the nature of the testimony to be offered from each, and to identify every document he intends to offer. Each participant will be required to provide copies of his documents to all other participants who do not have copies and who desire to have them. All participants will then be given the opportunity to amend their lists of witnesses and documents after seeing the initial lists of the others. Then each participant will be required to submit the proposed testimony on direct examination of each of his witnesses in writing and under oath. Each participant will then designate which witnesses of other participants he wishes to cross-examine, if any. At that point a ruling will be made as to where and when hearing sessions for cross-examination will be scheduled. There may be more than one session, in more than one city.

The following potential issues were identified during the February 1 session:

1. What constitutes "currently accepted medical use in treatment in the United States" within the purview of 21 U.S.C. § 812(b)?

2. Is a finding by the Secretary of Health and Human Services that a substance such as MDMA has "no currently accepted medical use in treatment in the United States" binding on the Attorney General (Administrator of the Drug Enforcement Administration, DEA) within the purview of the provisions of 21 U.S.C. § 812?

3. What constitutes "accepted safety for use. . . under medical supervision" within the purview of 21 U.S.C. § 812(b)?

4. Can a substance, such as MDMA, be placed in any Schedule other than Schedule I if it is determined that the substance has a potential for abuse and that it has "no currently accepted medical use in treatment in the United States"?

5. If it should be determined (1) that there is "a currently accepted medical use in treatment in the United States" for MDMA, and (2) that there is no "lack of accepted safety for use of [MDMA] under medical supervision," but that (3) MDMA has a potential for abuse, in which of the Schedules, II through V, should MDMA be placed?

With respect to issue number 4, there was disagreement on February 1 as to whether that issue presents a strictly legal question which can be decided early in the proceeding on written briefs alone, without the necessity of receiving evidence concerning it.

Accordingly, it is

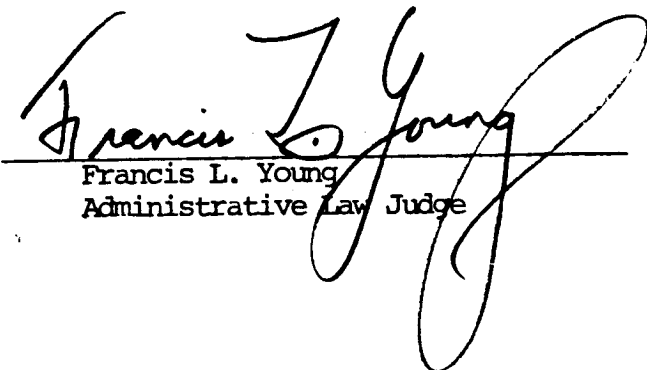
ORDERED that each participant file with the Hearing Clerk, on or before March 11, 1985, the following:

1. A statement whether or not he agrees that the five issues set out above are issues to be considered in this matter, identifying those he does not think ought to be considered and giving his reasons for not thinking so;
2. A succinct statement of any proposed additional issue(s) he believes ought to be considered;
3. A brief statement of his position on each issue;
4. A statement as to whether or not he believes that issue number 4, above, presents a strictly legal question requiring no evidence for decision;
5. A list of witnesses whose testimony he wishes to offer (including himself, if he wishes to testify), giving the name and address of each witness and a brief summary (no more than 250 words) of the nature of the testimony expected from each; and
6. A list of the documents he wishes to offer, identifying each document and briefly describing its contents; and it is

FURTHER ORDERED that each participant serve a copy of his filing, as called for above, by mailing a copy on or before March 11, 1985, postage prepaid, to every other participant listed on the Certification of Service attached hereto, and certify that he has done so; and it is

FURTHER ORDERED that failure to comply fully with this Order will be considered as a waiver of opportunity to participate in the hearing or an implied revocation of request for hearing.

Dated: FEB 18 1985


Francis L. Young
Administrative Law Judge

CERTIFICATION OF SERVICE

This is to certify that the undersigned on February 8, 1985, caused a copy of the foregoing to be delivered to

Stephen E. Stone, Esq.
Charlotte A. Johnson, Esq.
Office of Chief Counsel
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Counsel for the Government

and caused a copy to be mailed, postage paid, to each of the following:

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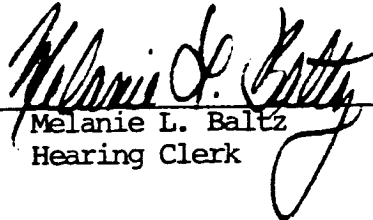
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Melanie L. Baltz
Hearing Clerk