such information does not detract from the fact that Respondent provides needed medical services to such an area. However, as will be discussed below, while this provides some support for maintaining registration, under the facts of this case, it also has a negative implication for continued registration.

The Government also took exception to Judge Randall's finding regarding the veracity of the random drug tests administered Respondent, especially as they relate to the detection of methamphetamine. The Government argued in part, that ''[f]rom the factual findings, it would be possible that Respondent could have taken methamphetamine many times in the month, and yet evaded detection.'' The Government further argues that the 24 to 36 hour metabolism rate for methamphetamine, in effect, creates an adequate window for a person to avoid detection when administered a drug test.

The Deputy Administrator is reluctant to apply the Government's arguments to these facts. While it is acknowledged it is ''possible'' Respondent could have taken methamphetamine and avoided detection, to accept the premise that he continued abusing would require assumptions about his conduct that are not supported by the record.

The primary aim of a ''random'' drug test is to create a level of unpredictability as to when the test will be administered. The unpredictable nature of such a test theoretically creates a disincentive for the continued use of drugs on the part of the individual being monitored. Against this backdrop, it is important to point out there is no evidence in the record raising any question as to the efficacy of the PHP drug testing program. Without such evidence, and in light of evidence of Respondent's negative drug tests, the Deputy Administrator concludes that the random nature of the PHP-administered tests served as an effective deterrent to Respondent's further drug use.

The Government also argued it would be unreasonable to reach the conclusion testified to by the PHP medical director that ''a single use of illegal drugs or even three illegal uses in a one-year period'' does not constitute evidence of chemical abuse. This argument is not particularly compelling.

The Deputy Administrator agrees with Respondent that the term ''abuse,'' as being used by the witness, was referring to the diagnosis of chemical abuse under the DSM–4, which requires certain criteria which, in the witness's opinion, were not present in Respondent's case. While the Deputy Administrator agrees with the Government that a single or multiple uses of illegal drugs can be deemed ''abuse'' in non-diagnostic terminology, Judge Randall's findings on this point were primarily credibility findings as to the expert's assessment of Respondent's lack of chemical dependency.

The Deputy Administrator considers Respondent's illicit purchase and use of methamphetamine particularly serious acts of misconduct. As the record demonstrates, Respondent was not chemically dependent. This infers that it was neither addiction nor dependency that motivated his ''street'' purchases of methamphetamine. Instead, he exercised unhindered judgment to illegally obtain and use what he as a physician, well knew to be an insidiously dangerous controlled substance and did so, according to his post-arrest interview, to enhance his sex life. This motivation to violate the law and risk his reputation and livelihood evidences a particularly cavalier and irresponsible attitude toward his responsibilities as a DEA registrant.

There is no evidence in the record that Respondent used illicit drugs while actually engaged in the practice of medicine. However, as a cardiologist, it is inferred that it was possible that he might be subject to being called on unexpectedly to treat patients experiencing serious heart problems on an emergent basis. If this had occurred while Respondent was under the influence of methamphetamine, his patients would either have been placed at risk by Respondent's impairment or, if he declined to treat them because of his drug use, they would not have been able to be seen immediately by another cardiology specialist, as Respondent was the only one in the rural area. These potential risks should have been apparent to Respondent when he elected to use methamphetamine and raise significant questions as to his judgment and ability to use sound professional discretion in treating patients with controlled substances.

Of particular concern to the Deputy Administrator is the finding that Respondent admitted previously purchasing methamhetamine and illicitly distributing it to another individual. This criminal conduct is made even more egregious because the recipient was a fellow physician. The evidence also shows that a portion of the methamphetamine Respondent was purchasing when arrested was destined for distribution to that medical colleague. Thus, in an area already undeserved by medical professionals, Respondent not only placed himself at risk, but, by distributing methamphetamine to another physician, added to the threat posed to his rural community by potentially impaired physicians.

Since his arrest, Respondent's professional practice has continued without blemish and he has avoided illicit drugs. These are commendable and indicate potential for future registration. On the other hand, Respondent's calculated abandonment of his responsibilities and willingness to risk serious criminal and professional sanctions do not auger well for continued registration being in the public interest. As observed by the Seventh Circuit Court of Appeal, ''[a]n agency rationally may conclude that past performance is the best projector of future performance.'' *ALRA Laboratories, Inc.* v. *DEA,* 54 F.3d 450, 451 (7th Cir. 1995).

Based on the foregoing, at this time, the Deputy Administrator does not have sufficient confidence that Respondent can successfully fulfill the responsibilities of a registrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), and 0.104, hereby orders that DEA Certificate of Registration BC4775233, previously issued to Imran I. Chaudry, M.D., be and it hereby is revoked. His pending application for renewal of that registration and his request to modify said registration to reflect a new requested address, are hereby denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

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**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Juan Pillot-Costas, M.D. Revocation of Registration

On February 20, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Juan Pillot-Costas, M.D. (Respondent) of Ponce, Puerto Rico, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BP3441475, as a practitioner, under 21 U.S.C. 824(a)(5) and deny any pending applications for renewal or modification of that

registration. As a basis for revocation, the Order to Show Cause alleged that Respondent had been mandatorily excluded from participating in Federal health programs pursuant to 42 U.S.C. 1320–7(a).

By letter dated March 18, 2004, Respondent, through legal counsel, requested a hearing. On April 20, 2004, Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order for Prehearing Statements, requiring the Government and Respondent to file prehearing statements by May 12 and June 2, 2004, respectively. The Government filed a timely prehearing statement, however, Respondent failed to file his prehearing statement by the deadline.

On June 29, 2004, Judge Randall issued a *sua sponte* Notice and Order to Respondent allowing him a limited extension of time, until July 21, 2004, to file his prehearing statement. The Notice and Order cautioned Respondent that if he failed to meet this deadline, Judge Randall would deem his inactivity to be a waiver of his hearing entitlement and that she would issue an order terminating the case. Respondent did not file a prehearing statement and on August 10, 2004, Judge Randall issued her Order terminating the proceedings. On August 26, 2004, the Office of Chief Counsel forwarded the record to the Deputy Administrator for entry of a final order based on the investigative file.

Therefore, the Deputy Administrator finds that Respondent, having requested a hearing but having failed to participate in the matter after being apprised of the consequences, is deemed to have waived his hearing right. *See Bill Lloyd Drug*, 64 FR 1823–01 (1999); *Vincent A. Piccone, M.D.*, 62 FR 62074 (1997). After considering material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration BP3441475. The Deputy Administrator further finds that as a result of Respondent's fraudulent activities, pursuant to his guilty plea, he was convicted in the United States District Court, District of Puerto Rico of one count of conspiring to solicit and receive kickbacks in relation to Medicare referrals for durable medical equipment, in violation of 18 U.S.C. 371, in addition to one count of providing false declarations before the grand jury, in violation of 18 U.S.C. 1623.

As a result of Respondent's conviction of the Medicare related count, on March 31, 2003, he was notified by the Department of Health and Human Services of his five-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Exclusion from Medicare is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5); *see Johnnie Melvin Turner, M.D.*, 67 FR 71203 (2002). The underlying conviction forming the basis for a registrant's exclusion from participating in federal health care programs need not involve controlled substances for revocation under 21 U.S.C. 824(a)(5). *See KK Pharmacy*, 64 FR 49507 (1999); *Stanley Dubin, D.D.S.*, 61 FR 60727 (1996).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BP3441475, issued to Juan Pillot-Costas, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective November 22, 2004.

Dated: October 5, 2004.

**Michele M. Leonhart,**

*Deputy Administrator.*

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**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### John A. Cronk, D.O.; Revocation of Registration

On January 5, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John A. Cronk, M.D. (Dr. Cronk),[1] proposing to revoke his DEA Certificate of Registration, BC2204131, pursuant to 21 U.S.C. 824(a)(2) and (a)(4) and 823(f). Specifically, the Order to Show Cause alleged in relevant part, the following:

1. On May 21, 2003, in the Criminal District of Dallas County Texas, pursuant to a plea agreement, Dr. Cronk entered a plea of guilty to unlawfully possessing methamphetamine, a third degree felony under Texas state law. Dr. Cronk was placed on unsupervised probation for a period of five years, ordered to enroll in an inpatient drug treatment at a treatment center in Atlanta, Georgia and to pay a $1500 fine. The court directed that further proceedings be deferred in the case without entering an adjudication of guilt. The conviction was premised on Dr. Cronk's arrest for possession of methamphetamine which took place at the Dallas/Fort Worth Airport on November 28, 2002.

2. During April 2003, DEA diversion investigators received information from former and current employees of Dr. Cronk's medical office that he failed to maintain accountability of controlled substances or maintained a controlled substance log book for an extensive period. The employees further divulged that they suspected Dr. Cronk of abusing drugs during office hours and had also found on his office desk a vial containing a substance later tested and identified by a field test as methamphetamine. This test was conducted by a long-term patient of Dr. Cronk, who was also a former law enforcement officer. When confronted by that patient, Dr. Cronk admitted methamphetamine use.

3. On May 7, 2003, at the request of DEA investigators, officers of the Northeast Area Interdiction Task Force (NADITF) recovered three bags of trash from Dr. Cronk's residence in Heath, Texas. Among the items recovered were a syringe with a brown liquid substance later determined to be methamphetamine, an attached needle, and discarded pieces of mail bearing Dr. Cronk's name and address.

4. A state search warrant obtained to search Dr. Cronk's residence was then executed by NADITF officers and DEA investigators on May 9, 2003. Recovered in that search were several vials containing residual amounts of methamphetamine; forty-five tabs of methadone; two vials of testosterone; ninety-five tabs of alprazolam; thirty-six tabs of Ambien; eight tabs of Vicoprofen; six bottles of Lortab elixir; five bottles of Histex; six tabs of ecstasy; several marijuana cigarette butts; $9,911.00 in cash; and, over 200 blood collection vials which had been converted to methemphetamine pipes, along with other drug paraphernalia.

5. On May 15, 2003, DEA investigators arrived at Dr. Cronk's office in Quinlan, Texas (which was also Dr. Cronk's DEA registered location) to conduct an audit of controlled substances. Dr. Cronk was not present during, but his office manager nevertheless signed a DEA

[1] While the Order to Show Cause includes ''M.D.'' as part of Dr. Cronk's professional title, DEA investigative reports and other supporting documentation refer to his professional title as ''D.O.'' Given these references to the ''D.O.'' professional designation, the Deputy Administrator will refer to Dr. Cronk in a similar fashion.