Under the Controlled Substances Act (CSA), ''[a] separate registration [is] required at each principal place of * * * professional practice where the [registrant] dispenses controlled substances,'' 21 U.S.C. 822(e), and a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority to dispense a controlled substance under the laws of the State in which a dentist practices is an essential condition for holding a DEA registration.

Accordingly, DEA has repeatedly held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *See Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3)(authorizing the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances'').

Moreover, DEA has repeatedly held ''that a registrant cannot collaterally attack the results of a state criminal or administrative proceeding in a proceeding under section 304 of the CSA.'' *Brenton D. Glisson, M.D.,* 72 FR 54296, 54297 (2007) (quoting *Sunil Bhasin; M.D.,* 72 FR 5082, 5083 (2007)); *see also Shahid Musud Siddiqui,* 61 FR 14818 (1996); *Robert A. Leslie,* 60 FR 14004 (1995)). Respondent's contention that the state proceeding was fundamentally unfair because the Director was improperly influenced by an *ex parte* communication from a member of the Illinois House of Representatives is not addressable in this forum.

Moreover, while it appears that Respondent is seeking judicial review of the state proceeding in the Illinois courts, the suspension nonetheless remains in effect. Respondent therefore remains without authority under Illinois law to dispense controlled substances in the State in which he is registered. Because possessing authority under state law is an essential condition for holding a registration under the CSA, *see* 21 U.S.C. 802(21) & 823(f), and Respondent's Illinois controlled substance license remains suspended, he is not entitled to a stay of this proceeding. *See Wingfield Drugs,* 52 FR at 27071.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BR5325091, issued to Hicham K. Riba, D.D.S., be, and it hereby is, revoked. I further order that any pending application of Hicham K. Riba, D.D.S., to renew this registration be, and it hereby is, denied.[3] This order is effective January 12, 2009.

December 2, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–29406 Filed 12–11–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Your Druggist Pharmacy; Revocation of Registration

On May 28, 2008, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Your Druggist Pharmacy (Respondent), of Coral Springs, Florida. The Order immediately suspended Respondent's DEA Certificate of Registration, AY1916103, which authorizes it to dispense controlled substances as a retail pharmacy, on the grounds that Stanley Dyen, its owner and pharmacist-in-charge, as well as two of its employees, Ira Friedberg, a pharmacist, and Jennifer Lee-Richards, a pharmacy technician, were diverting large quantities of oxycodone, a schedule II controlled substance, and that Respondent's continued registration during the pendency of the proceedings ''constitutes an imminent danger to public health and safety.'' Show Cause Order at 1–2 (citing 21 U.S.C. 824(d) & 841(a)). The Order also proposed the revocation of Respondent's registration, and the denial of any pending applications to renew or modify its registration, on the ground that Respondent's ''continued registration is inconsistent with the public interest.'' Order at 1 (citing 21 U.S.C. 823(f)).

More specifically, the Show Cause Order alleged that between March and June 2007, pharmacy technician Lee-Richards had ''diverted at least 5,900 dosage units of oxycodone, and at least 500 dosage units of alprazolam.'' *Id.* (citing 21 U.S.C. 841(a)(1)). With respect to pharmacist Friedberg, the Order alleged that in February 2008, he had ''diverted at least 7,500 dosage units of oxycodone.'' *Id.* (citing 21 U.S.C. 841(a)(1)).

As to Stanley Dyen, the Order alleged that in February 2008, he had ''diverted at least 500 dosage units of hydrocodone and at least 500 dosage units of alprazolam,'' and that ''[o]n February 18, 2008, [he] was arrested for trafficking in hydrocodone and delivery of alprazolam.'' *Id.* at 1–2. The Order further alleged that notwithstanding Stanley Dyen's arrest, he ''continues to serve on a daily basis as'' Respondent's pharmacist, and that ''[t]he majority of the time, [he] is the sole pharmacist * * * and operates without the supervision of any other pharmacist or employee.'' *Id.* at 2. Finally, the Order alleged that on March 4, 2008, Stanley Dyen had ''transferred ownership of [Respondent] to * * * his wife, without complying with the requirements of 21 CFR 1301.52.'' *Id.*

On June 2, 2008, DEA Investigators went to Respondent and served the Order by handing it to Stanley Dyen. On June 12, 2008, Respondent requested a hearing on the allegations, and the matter was assigned to an Administrative Law Judge (ALJ), who proceeded to conduct pre-hearing procedures. On July 21, 2008, however, Respondent withdrew its request for a hearing. That same day, the ALJ issued an order terminating the proceeding.

Thereafter, the case file was forwarded to me for final agency action pursuant to 21 CFR 1301.43(e). Based on the letter from Respondent's counsel withdrawing its request for a hearing, I

Procedure Act and DEA's regulation, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Accordingly, Respondent may file a motion for reconsideration within fifteen days of service of this order which shall commence with the mailing of the order.

[3] There is no evidence in the record as to whether Respondent has applied for a registration in Tennessee. Nor is there any evidence that Respondent requested a modification of his registered location from Illinois to Tennessee. Because this proceeding was based solely on Respondent's loss of authority under Illinois law, it is not *res judicata* on the question of whether granting Respondent a registration to dispense controlled substances in Tennessee would be consistent with the public interest.

find that Respondent has waived its right to a hearing. I therefore issue this Decision and Final Order without a hearing based on relevant material contained in the investigative file, *see id.,* and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, AY1916103, which authorized it to dispense controlled substances in schedule II through V as a retail pharmacy at the registered location of 8091 West Sample Road, Coral Springs, Florida. Respondent's registration does not expire until May 31, 2009.

In June 2007, a DEA Task Force Officer (TFO) received an anonymous complaint that Respondent was engaged in the unlawful distribution of controlled substances. Thereafter, investigators observed Jennifer Lee-Richards, a pharmacy technician employed by Respondent, leave the pharmacy carrying a bag which contained several small containers. Local police stopped Lee-Richards and found that she had in her possession 5800 tablets of oxycodone 30 mg., and 100 tablets of Oxycontin 80 mg., both of which are schedule II controlled substances, 21 CFR 1308.12(b)(1), as well as 500 tablets of alprazolam 2 mg., a schedule IV controlled substance. *Id.* 1308.14(c). During an interview, Lee-Richards admitted that she had been taking controlled substances from Respondent for approximately two months and was giving them to her son (Twane Lee), who sold them.

In an interview, Twane Lee admitted that he was selling various controlled substances which he obtained from his mother. Both Lee-Richards and Twane Lee were subsequently indicted by a Federal Grand Jury and charged with conspiracy to possess oxycodone with the intent to distribute.

On February 8, 2008, local police observed C.P. leaving Respondent carrying a white plastic bag which contained several cardboard boxes. The police followed C.P. and initiated a traffic stop, during which they found that C.P. had in his possession 7500 tablets of oxycodone 30 mg., 200 tablets of alprazolam 2 mg., and 100 tablets of oxycodone 80 mg. C.P. told the police he had just purchased the drugs from Ira Friedberg, who worked as a pharmacist at Respondent. C.P. also related that he had paid Friedberg $8000 for the drugs.

C.P. cooperated with the authorities and agreed to attempt to purchase additional drugs from Friedberg. On February 12, 2008, Friedberg agreed to sell C.P. 7500 tablets of oxycodone 30 mg., in exchange for $7,500. Friedberg gave C.P. 7500 tablets and his car keys and told C.P. to place $7500 in his car's center console. Friedberg also gave C.P. an additional 5000 tablets of oxycodone (which Friedberg was to deliver to L.H., a third party) and told C.P. to place it on the passenger side floorboard of Friedberg's car.

Shortly thereafter, Friedberg left Respondent, entered his car, and drove away. The police conducted a traffic stop and recovered the 5000 oxycodone tablets. A TFO told Friedberg that he was aware that the tablets were to be delivered to L.H.; Friedberg then agreed to cooperate and wear a recording device.

Friedberg then met L.H. After a conversation, L.H. went back to his car and retrieved approximately $5000. Friedberg and L.H. then went to the former's car, opened the passenger-side door, and placed the money on the front seat. The police immediately arrested both Friedberg and L.H., and recovered both the drugs and the money. Thereafter, a Federal Grand Jury indicted both Friedberg and L.H., charging each with conspiracy to possess oxycodone with the intent to distribute.

The following day, a confidential source (CS) told the investigators that he had previously bought hydrocodone and alprazolam from Stanley Dyen without a valid prescription. The CS agreed to make a controlled buy of 500 tablets of hydrocodone/apap (10/650 mg.) and 500 tablets of alprazolam 2 mg. from Dyen.

On February 18, the CS was provided $600 of marked currency and went to Respondent. Upon his arrival, the CS entered Respondent and paid the $600 to Dyen, who then gave 500 tablets of hydrocodone/apap (10/650 mg.) and 500 tablets of alprazolam 2 mg. to the CS.

Thereafter, detectives observed Dyen leave Respondent and conducted a traffic stop. Dyen was arrested; during a search incident to his arrest, Dyen was found to have in his possession the $600 of marked currency. Dyen was subsequently charged under state law with trafficking in hydrocodone and delivery of alprazolam.

On March 14, 2008, a state search warrant was executed at Respondent. During the search, investigators interviewed Dyen, who related that his wife owned the pharmacy. Investigators subsequently determined that following his arrest, Dyen had transferred ownership of Respondent to his wife, who was now listed (with the Florida Secretary of State) as Respondent's President.

Investigators subsequently determined that Respondent was the largest purchaser of oxycodone in the State of Florida, with its purchases totaling nearly 754,000 tablets between January 1 and March 22, 2008. Moreover, during the service of the Immediate Suspension Order, investigators received information that Respondent has a large number of out-of-town customers, who had typically traveled from Kentucky to fill prescriptions for such drugs as oxycodone, alprazolam, and carisoprodol.[1] The customers would not show up until after 5 p.m., and the pharmacy would fill the prescriptions even if its employees were unable to verify the prescriptions' legitimacy with the prescribing practitioners because their offices were closed.

Discussion

Section 304(a) of the Controlled Substance Act provides that ''[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). With respect to a practitioner (which includes a retail pharmacy), the Act directs that the Attorney General consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * 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 and safety.

Id. § 823(f).

''[T]hese factors are considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir.

[1]While carisoprodol is not controlled under Federal law, it is controlled under various state laws and is highly popular with drug abusers, especially when taken as part of a drug cocktail that includes an opiate and a benzodiazepine.

2005). Finally, where the Government has made out its *prima facie case,* the burden shifts to the Respondent to show why its continued registration would be consistent with the public interest. *See, e.g., Theodore Neujahr,* 65 FR 5680, 5682 (2000); *Service Pharmacy, Inc.,* 61 FR10791, 10795 (1996).

In this case, having considered all of the factors, I conclude that the evidence with respect to factors two and four establishes a *prima facie* case that Respondent's continued registration is ''inconsistent with the public interest.'' 21 U.S.C. 823(f). Accordingly, Respondent's registration will be revoked and any pending application for renewal of its registration will be denied.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Its Record of Compliance With Applicable Controlled Substance Laws

As found above, the evidence in this matter establishes that Respondent was a supply source for the illicit drug market in such highly abused prescription drugs as oxycodone, a schedule II controlled substance, and alprazolam, a schedule IV controlled substance. As the record shows, at least three individuals including Respondent's owner unlawfully distributed prescription controlled substances which had been obtained by the pharmacy. *See* 21 U.S.C. 841(a)(1).

Even if it was the case that Lee-Richards (the pharmacy technician) and Friedberg (the pharmacist) had stolen the drugs they were distributing, the criminal acts of Stanley Dyen, Respondent's owner and pharmacist-in-charge, in distributing hydrocodone and alprazolam, provide ample support to conclude that its continued registration is ''inconsistent with the public interest.'' *See VI Pharmacy, Rushdi Z. Salem,* 69 FR 5584, 5585 (2004) (''It is well settled that a pharmacy operates under the control of owners, stockholders, pharmacists, * * * and if any such person is convicted of a felony offense related to controlled substances, grounds exists to revoke the pharmacy's registration.''); *Charles J. Gartland, R.Ph., d.b.a. Manoa Pharmacy,* 48 FR 28760, 28761 (1983) (''Pharmacies must operate through the agency of natural persons, owners or stockholders, or other key employees. When such persons misuse the pharmacy's registration by diverting controlled substances obtained there under, and when those individuals are convicted as a result of that diversion, the pharmacy's registration becomes subject to revocation under 21 U.S.C. 824, just as if the pharmacy itself had been convicted.'').

Nor is this rule limited to those instances in which a pharmacy's owner or key employee has been formally convicted of a crime. As explained above, under Federal law, a registration is subject to revocation when a registrant commits acts which render its registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Where a pharmacy's owner/key employee commits criminal acts, the Agency is not required to wait for the judicial process to work its course before revoking a registration. I therefore conclude that Respondent's continued registration ''is inconsistent with the public interest,'' 21 U.S.C. 823(f), and that its registration should be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(4), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, AY1916103, issued to Your Druggist Pharmacy, be, and it hereby is, revoked. I further order that any pending applications to renew or modify the registration be, and they hereby are, denied. This Order is effective immediately.

Dated: December 2, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–29407 Filed 12–11–08; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

State & Regional/Arts Education (State Arts Agency Partnership Agreements/Arts Education review): January 6–7, 2009 in Room 730. This meeting, from 9 a.m. 10:15 a.m. and from 12:30 p.m. to 5:30 p.m. on January 6th and from 9 a.m. to 2:30 p.m. on January 7th, will be open.

Folk & Traditional Arts/National Heritage Fellowships (review of nominations): January 6–9, 2009 in Room 716. This meeting, from 9 a.m. to 6:30 p.m. on January 6th and 7th, 9 a.m. to 5:30 p.m. on January 8th, and 9 a.m. to 3:30 p.m. on January 9th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 9, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E8–29431 Filed 12–11–08; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Licensing Support Network Advisory Review Panel (LSNARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the U.S. Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose was to provide advice on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and on the operation