ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality.'' Ala. Code § 34–24–50(1). Under Alabama law, ''the practice of medicine * * * across state lines'' as it applies to ''[t]he rendering of treatment to a patient located within [Alabama] by a physician located outside [Alabama] as a result of transmission of individual patient data by electronic or other means from this state to such physician or his or her agent'' constitutes the ''practice of medicine,'' such that ''[n]o person shall engage in the practice of medicine * * * across state lines in [Alabama]'' unless he or she has ''been issued a special purpose license to practice medicine * * * across state lines.'' Ala. Code § 34–24–501 & 34–24–502(a). As Respondent did not possess a special purpose license from Alabama, his prescribing over the internet to these patients constituted violations of Alabama law. In issuing these controlled-substance prescriptions, Respondent acted outside the usual course of professional practice and violated the CSA. *See* 21 CFR 1306.04(a).

Respondent wrote nineteen prescriptions for schedule III drugs containing hydrocodone to residents of North Carolina. Under North Carolina law prior to 2007, ''prescribing medication by use of the internet or a toll-free number,'' was ''regarded as practicing medicine'' in North Carolina. N.C. Gen. Stat. Ann. 90–18(b).[6] As such, it subjected a practitioner to North Carolina law and the regulation of the North Carolina Medical Board. *Id.* North Carolina prohibits the practice of medicine without the appropriate license and registration and makes out-of-state violators guilty of a ''Class I felony.'' N.C. Gen. Stat. Ann. 90–18(a). Respondent's prescribing to North Carolina residents via the internet clearly violated North Carolina law.

Additionally, in February 2001, the North Carolina Medical Board issued its position statement, ''Contact with Patients Before Prescribing,'' which stated that ''prescribing drugs to an individual the prescriber has not personally examined is inappropriate.'' Contact with Patients before Prescribing, at 1 (available at *http://www.ncmedboard.org/position_statements/*). The Board further explained that ''[o]rdinarily, this will require that the physician personally perform an appropriate history and physical examination, make a diagnosis, and formulate a therapeutic plan, a part of which might be a prescription.'' *Id.* As Respondent failed to perform physical examinations of these patients, his conduct was not in the usual course of professional practice. He consequently violated the CSA in writing these prescriptions as well. *See* 21 CFR 1306.04(a).

As the foregoing demonstrates, Respondent repeatedly violated state laws and regulations prohibiting the unlicensed practice of medicine and establishing standards of medical practice by prescribing controlled substances to persons he never physically examined and who resided in States where he was not licensed to practice and prescribe drugs. In issuing the prescriptions, Respondent also acted outside of ''the usual course of professional practice'' and lacked ''a legitimate medical purpose'' and thus repeatedly violated the CSA. I therefore conclude that Respondent has committed acts which render his continued registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Accordingly, Respondent's registration will be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that DEA Certificate of Registration, BA6015158, issued to Mohammed F. Abdel-Hameed, M.D., be, and it hereby is, revoked. I further order that any pending application to renew or modify the registration be, and it hereby is, denied. This order is effective December 24, 2009.

Dated: November 17, 2009

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–28189 Filed 11–23–09; 8:45 am]

BILLING CODE 4410–09–P

[6] This provision was deleted, effective October 1, 2007, by S.L. 2007–346, section 23.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–32]

Harrell E. Robinson, M.D.; Revocation of Registration

On February 26, 2009, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Harrell E. Robinson, M.D. (Respondent), of Santa Ana, California. The Order proposed the revocation of Respondent's DEA Certificate of Registration, AR8613487, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, on the ground that Respondent's continued registration is ''inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f), 824(a)(4).'' Show Cause Order at 1. The Order also proposed the denial of any pending applications for renewal or modification of Respondent's registration. *Id.*

Specifically, the Show Cause Order alleged that from February 2007 through October 2008, Respondent ''purchased approximately 613,000 dosage units of hydrocodone combination products and unlawfully distributed these drugs to an unregistered individual in exchange for $10,000 per month * * * in violation of 21 U.S.C. 841(a)(1).'' *Id.* In addition, the Show Cause Order alleged that from September 2007 through October 2008, Respondent ''purchased approximately 397,000 dosage units of hydrocodone combination products using the DEA registration numbers of two other practitioners in violation of 21 U.S.C. 843(a)(2) and (3).'' *Id.* at 2. Further, Respondent allegedly then ''distributed these drugs to an unregistered individual, in violation of 21 U.S.C. 841(a)(1).'' *Id.*

Based on the above, I further concluded that Respondent's ''continued registration while these proceedings are pending constitutes an imminent danger to the public health and safety.'' Show Cause Order at 2. Consequently, pursuant to my authority under 21 U.S.C. 824(d) and 21 CFR 1301.36(e), I immediately suspended Respondent's registration, with the suspension to remain in effect until the issuance of this Final Order. *Id.*

Respondent requested a hearing on the allegations. The case was placed on the docket of the Agency's Administrative Law Judges (ALJ) and a hearing was scheduled for May 12, 2009. On April 9, 2009, the ALJ ordered Respondent to file a prehearing statement no later than May 4, 2009. ALJ at 2 n.1; ALJ Ex. 3. The same day, the ALJ's law clerk faxed Respondent a letter advising him of his right to counsel. ALJ at 2 n.1; ALJ Ex. 4.

On May 1, Respondent requested an extension of time to file his prehearing statement, advising that he was retaining counsel that afternoon. ALJ at 2 n.1. On May 4, the ALJ granted Respondent an extension of time to May 7, noting that the hearing was set for May 12 and that Respondent had not asked for a postponement of the hearing. *Id.*

On May 6, Respondent filed a request to postpone the hearing; in response, the ALJ's law clerk ''left a telephone message for Respondent advising that

before [the ALJ] could act on his request to postpone the hearing, his attorney must contact [the ALJ's] office and that all communication with [the ALJ's] office should be accomplished through the attorney.'' *Id.* However, no attorney contacted the ALJ's office on Respondent's behalf. Accordingly, on May 7, the ALJ denied Respondent's request to postpone the hearing. *Id.;* ALJ Ex. 6.

On May 12, 2009, the hearing was held as originally scheduled in Arlington, Virginia. ALJ at 2. At the hearing, the Government was represented by counsel. *Id.* By contrast, neither Respondent, nor anyone purporting to represent him, appeared, and thereafter, Respondent ''filed nothing further'' with the office of the ALJ. *Id.* at 2 & 2 n.1; *see also* 21 CFR 1301.43(d) (''If any person entitled to a hearing * * * files [a request for a hearing] and fails to appear at the hearing, such person shall be deemed to have waived the opportunity * * * to participate in the hearing, unless such person shows good cause for such failure.'').

At the hearing, the Government called witnesses to testify and introduced documentary evidence. ALJ at 2. Thereafter, the Government filed proposed findings of fact, conclusions of law, and argument.

On May 29, 2009, the ALJ issued her Opinion and Recommended Ruling. On June 24, noting that neither party had filed exceptions to the opinion, the ALJ forwarded the matter to me for final agency action.

In her discussion of the public interest factors, the ALJ noted that ''[t]here is no indication that Respondent is not fully licensed to practice medicine in California.'' ALJ at 17. She therefore found that ''this factor weighs in favor of a finding that his continued registration would be in the public interest.'' *Id.* The ALJ further explained, however, that because ''state licensure is a necessary but not sufficient condition for DEA registration,'' this factor was ''not dispositive.'' *Id.* As for factors two and four—Respondent's experience in dispensing controlled substances and compliance with applicable laws—the ALJ concluded that Respondent violated 21 U.S.C. 841 by distributing hydrocodone combination products at unregistered locations to unregistered persons who were not legitimate patients and by arranging with other physicians to use their DEA registration numbers to purchase hydrocodone combination products which were also distributed unlawfully. *Id.* at 17–18. She also concluded that Respondent violated 21 U.S.C. 822(a)(1) by distributing the products without a registration to do so. *Id.* at 18. Furthermore, the ALJ concluded that Respondent violated 21 CFR 1301.71(a) by not maintaining effective controls against diversion of controlled substances. *Id.* Finally, the ALJ determined that Respondent had violated California State Business and Professions Code sections 2242 and 2241.5 in that (1) he failed to physically examine the individual to whom he had distributed the drugs and to determine that she had a medical indication for treatment with hydrocodone combination products, and that (2) he failed to maintain records of his handling of controlled substances as required by state law. *Id.* Accordingly, the ALJ found that ''these factors weigh in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.'' *Id.*

Noting that the record did not include any evidence that Respondent had been convicted under any federal or state law relating to the manufacture, distribution, or dispensing of controlled substances, the ALJ concluded that the Respondent's conviction record ''although not dispositive, weighs against finding that Respondent's registration would be inconsistent with the public interest.'' *Id.* at 18–19. Finally, crediting the Diversion Investigator's (DI's) testimony that Respondent had ''told him that Respondent's status as a physician allowed him to order hydrocodone and that his orders were acceptable because the drugs were going to poor people,'' the ALJ concluded that ''[t]his ludicrous attempt to justify his activities indicates that Respondent has neither respect for nor a willingness to accept the responsibilities adherent to a DEA registration.'' *Id.* at 19. Accordingly, she found that factor five—such other conduct which may threaten public health or safety—weighed ''in favor of a finding that Respondent's continued registration would not be consistent with the public interest.'' *Id.*

Considering all the factors together, the ALJ concluded that ''a preponderance of the evidence establishes that Respondent's continued registration with the DEA would be inconsistent with the public interest.'' *Id.* The ALJ therefore recommended that I revoke Respondent's registration and deny any pending applications. *Id.*

On August 6, 2009, the Government filed a Motion to Reopen Record. The basis of the motion was that on June 22, 2009, Respondent, in a proceeding before the Medical Board of California (''the Board''), ''signed a stipulation which acknowledged that the Board could establish a factual basis for a series of allegations contained in a Fourth Amended Accusation, which included twelve (12) causes of action against him.'' Gov't Mot. at 2. In support of its motion, the Government attached a copy of the Fourth Amended Accusation and the Board's Decision and Order of July 20, 2009. *Id.*

The Board's Decision and Order provided that the attached Stipulated Surrender of License and Order of June 22, 2009, was ''adopted by the Medical Board of California * * * as its Decision'' in the matter. Gov't Mot., Exh. A, at 1. The Decision provided that the Stipulated Surrender of License and Order ''shall become effective at 5 p.m. on September 30, 2009.'' *Id.* (emphasis in original).

Because the Board's order is clearly material to the public interest inquiry, *see* 21 U.S.C. 823(f)(1), was not available at the time of the hearing, and therefore could not have been presented at the original hearing, I conclude that the Government has set forth a *prima facie* case for reopening the record. *Cf. INS* v. *Abudu,* 485 U.S. 94, 97 (1988). I therefore grant the Government's motion to reopen the record and admit the Board's order to the record.

Having considered the record in its entirety, I hereby issue this Decision and Final Order. I adopt the ALJ's findings of fact and conclusions of law except as expressly noted herein. I further adopt the ALJ's recommended sanction. I make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, AR8613487, which prior to the issuance of the Order of Immediate Suspension, authorized him to dispense controlled substances in schedules II through V as a practitioner at the registered location of 1523 North Broadway in Santa Ana, California. GX 1; Tr. 110. While the registration certificate indicates that the registration was to expire on April 30, 2008; on March 12, 2008, Respondent submitted a renewal application. GX 9, at 1. Because Respondent timely filed his renewal application, and his registration was not then suspended, Respondent retains a current registration (albeit one which is suspended) pending the issuance of this Final Order. See 5 U.S.C. 558(c); 21 CFR 1301.36(i).

In February 2008, Respondent also applied for registrations at the locations of 145 South Chaparral in Anaheim Hills, California, and 1421 North Broadway in Santa Ana. *Id.* at 111, 134,

136; GX 7. Both the 1523 North Broadway and the 1421 North Broadway locations were owned by a Dr. Joy Johnson, but she ''delegated'' the responsibility for leasing the premises to Ms. Magdalena Annan, an individual identified as having hired Respondent as the medical director of the clinic on 1523 North Broadway. Tr. 100, 141.

At the hearing, an Agency Investigator (DI) testified that he visited the 1523 North Broadway location, which was a house converted into a business premises; on the front of the house was a sign indicating the business name as the Madre Maria Ines Teresa Health Center. Tr. 75. Although the DI observed the property for between two and three hours, he never saw an individual who appeared to be a patient entering or exiting the premises. *Id.* at 75–76.

The DEA Investigation

DEA commenced investigating Respondent in November 2007 because he was the sixth largest purchaser of hydrocodone combination products among California physicians for the year 2007. Tr. 55–56, 63; GX 34. Respondent was known to have purchased controlled substances from four different wholesalers, including Top RX, Inc., the Harvard Drug Group, and A.F. Hauser. Tr. 59–60.

The DI confirmed through a Compliance Officer for Top Rx, Inc. (Top RX), a Tennessee drug wholesaler, that Respondent had purchased 336,000 dosage units [1] of hydrocodone products [2] from Top RX between February 2 and November 12, 2007. Tr. 63–64; GXs 14 & 15. At least one order was paid for with a check in the name of Madre Maria Ines Teresa Health Center, 1523 Broadway Street, Santa Ana, California; the holder of that checking account was Magdalena (''Maggie'') Annan. Tr. 72–73; GX 16, at 96. According to the Compliance Officer, the ''contact name'' on the account was ''Maggee.'' GX 14.

In some cases, Ms. Annan ordered the hydrocodone products, and her name was listed as the accounts payable manager on Respondent's account with Top RX and the Harvard Drug Group. Tr. 64–65; 73–74; 99–100; GXs 16 & 27. On other occasions, Respondent personally ordered the hydrocodone combination products. *Id.* at 10–12, 14.

By January 2008, Respondent ceased to purchase hydrocodone combination products from Top RX. Instead, in December 2007, he started purchasing the same type of drugs from Harvard Drug Group (Harvard), a wholesaler in Michigan. Tr. 8, 79. Mr. S. S., Harvard's Vice President for Regulatory Affairs, testified that Respondent opened an account with Harvard in December 2007, indicating that it was an account for a clinic he owned. Tr. 11. To open the account, on December 26, 2007, Respondent signed an affidavit in which he attested that he was not engaged in business as an Internet pharmacy, that he did not dispense prescriptions by mail to patients, that he was located in an area accessible to the public, and that walk-in customers were welcome. Tr. 29; GX 24. On his credit application to Harvard, Respondent listed the accounts payable manager as ''Maggie.'' GX 27. S.S. testified that he did not know who this individual was. Tr. 43.

In January 2008, Respondent opened a second account with Harvard, indicating that he owned a second medical clinic whose medical director, Scott Bickman, M.D.,[3] would also be purchasing controlled substances under his own DEA registration. Tr. 11; GX 28. While the drugs ordered by Dr. Bickman were to be shipped to the second clinic (145 Chaparral Court in Anaheim Hills), bills were to be sent to Respondent's main office. Tr. 11–12, 20; GX 30, at 9. Respondent was listed on the invoices as the person billed. GX 30, at 9, 20.

At some point, Respondent opened a third account in the name of Thomas Mitchell, M.D. Tr. 14, 30. Both Drs. Bickman and Mitchell provided Harvard with affidavits similar to that provided by Respondent when he opened the account. Tr. 29–30; GXs 25 & 26.

S.S. testified that Harvard sends its local DEA office (Detroit) computer-generated reports of orders that the company considers excessive. Tr. 47. He also testified that Harvard ''reported'' Drs. Robinson and Bickman ''pretty much every month from January 2008 onward.'' *Id.* at 49. He additionally testified that Harvard imposes a quota on the quantity of hydrocodone combination products that a customer may receive in a given month. *Id.* at 48.

The evidence further shows that hydrocodone combination products were the sole products that were purchased from Harvard by Respondent and Drs. Bickman and Mitchell. GX 29; Tr. 25. Respondent ordered the drugs by telephone, a matter confirmed to the DI by G.B., an inside sales representative for Harvard, as well as by e-mail from S.S. to the DI. Tr. 18–19, 116–17; GX 31, at 3.[4]

During the months of March through May 2008, S.S. provided e-mail alerts to the DI regarding Respondent's ordering for the three clinics. *See* GX 31. On March 18, S.S. e-mailed the DI, indicating that ''last night'' Respondent had called and left a message to order more hydrocodone combination products. GX 31, at 9. S.S. wrote: ''We have not shipped this order as account has reached its total quantity allowed for Hydrocodone items for the month.'' *Id.* Again, on March 18, S.S. e-mailed as follows:

> I spoke with [Respondent] this afternoon. I explained our company's policy when his orders get cut off when they order group [sic] of products (Controlled Drugs) which reaches 25,000 tablets a month. He insisted that his other clinic in Anaheim Hills has not reached his monthly limit and wants his order shipped at that location. We ran reports to find out what quantity he has purchased at his Anaheim Hills clinic. We have so far shipped 17,500 tablets of Hydrocodone so since he wants balanced [sic] of order shipped, here is what we have shipped today * * * .
>
> This will be his last shipment for the month. I have explained to him that any additional orders for Hydrocodone must be placed with other wholesale distributors as we will not be able to ship any quantity to either of his clinic [sic] until April 1st.

Id. at 11.

On April 15, S.S. again e-mailed the DI indicating that Respondent had placed an order for his Anaheim Hills clinic and that Respondent ''also asked if we can ship similar order to his other location but we have refused to ship because that location has already reached its monthly purchase limits for above items.'' *Id.* at 20. Similarly, on April 22, S.S. advised the DI by e-mail that Respondent ''called to place additional orders but we refused to fill orders as he has reached his monthly maximum limit that he could get so we have not filled any additional orders since our last shipment.'' *Id.* at 26. S.S. further advised that Respondent ''may be purchasing from other wholesalers.'' *Id.*

[1] The ALJ found that Respondent had purchased only 228,700 dosage units from Top Rx, finding that the Compliance Officer had ''advised'' the DI as to that number. ALJ at 3. The DI did not so testify, and the letter from Compliance Officer did not include any total of drug dosage units, *See* GX 14. Rather, only the letter's attachment provided the data from the orders. *See* GX 15. In totaling those orders, I find that Respondent bought 336,000 dosage units from Top Rx.

[2] Throughout this Order any reference to hydrocodone products refers to schedule III drugs which combine hydrocodone with another active pharmaceutical ingredient such as acetaminophen.

[3] Dr. Bickman was the sixth largest purchaser of hydrocodone products in California for 2008. Tr. 57; GX 36.

[4] Sometime prior to March 2008, the DI had contacted S.S. and asked him to provide historical information on Respondent's purchases. Tr. 78–79. Starting in March 2008, the DI asked S.S. to provide advanced notice of controlled substance deliveries to Respondent and Drs. Mitchell and Bickman. Tr. 14, 16, 79; GX 31. S.S. complied with this request, typically, by e-mail. *See id.*

In October 2008, Harvard generated computer printouts of the controlled substances orders it had received from Respondent, Dr. Mitchell and Dr. Bickman. The printouts showed that Respondent had ordered 263,500 dosage units [5] of hydrocodone between December 11, 2007 and October 10, 2008; that Dr. Bickman ordered 213,000 dosage units [6] of hydrocodone between December 18, 2007 and October 15, 2008; and that Dr. Mitchell ordered 43,500 dosage units [7] of hydrocodone between July 31 and October 15, 2008. GX 29. Most of the orders were for 10-milligram strength product; others were for 7.5-milligram strength product. *Id.*

The DI testified that Respondent purchased about 800,000 pills using his, Dr. Bickman's, and Dr. Mitchell's DEA registrations. Tr. 113–14.[8] According to DEA's Automated Reports and Consolidated Ordering System (ARCOS), Respondent purchased a total of 641,400 dosage units of hydrocodone products under his name between February 2, 2007 and October 10, 2008 (the period of his ordering from Top RX and Harvard). GX 37. ARCOS data further indicates that 265,500 dosage units of hydrocodone products were purchased under Dr. Bickman's DEA registration between October 8, 2007, and September 29, 2008.[9] GX 38; Tr. 158. Finally, ARCOS data indicates that 51,500 dosage units of hydrocodone products were purchased under Dr. Mitchell's DEA registration between August 22 and October 15, 2008. GX 39; Tr. 158.

Based on the evidence establishing that Respondent had entered into arrangements with Drs. Bickman and Mitchell to use their registration numbers, I find that the purchases made under their registrations are attributable to Respondent. I further find that between February 2, 2007 and October 10, 2008, Respondent purchased a total of 958,400 dosage units of hydrocodone products.

Agency Investigators, with the help of officers from the Costa Mesa, California Police Department, conducted surveillance of the delivery of packages from Harvard to Respondent's clinics on five occasions. Tr. 80–81. In the first such instance, in mid-February 2008, the DHL driver could not complete the delivery. *Id.* at 83.

However, at 9 a.m. on March 12, during a surveillance of the Anaheim Hills clinic, Investigators observed a delivery which was taken into the office. *Id.* Later that morning, at about 11:45 a.m., Respondent arrived in his car and went into the office; fifteen minutes later he emerged with the box, and placed it in the trunk of his car. *Id.* at 83–84. Moments later, Respondent got into another car in the parking lot which was driven by a woman, who then drove him to his car, where he retrieved the box and placed it in the trunk of the woman's car. *Id.* at 84–85, 87. Respondent and the woman then drove approximately twenty miles to pick up two children at a school and then returned with the children to the Anaheim Hills clinic. *Id.* at 86–87. Some ten or fifteen minutes later, the woman and children got back in the car and drove to Respondent's residence at 1880 Seabiscuit Run, Yorba Linda, California. *Id.* at 87. The woman parked the car in the garage, leaving the children and the box in the car. *Id.* at 87–88.

Moments later, the woman emerged, drove to the 1421 North Broadway clinic, and parked at the rear of the building. *Id.* at 88. After going into the office, she returned to the car with another woman, and put the box in a third car. *Id.* The other woman then drove away with the box. *Id.* at 88–89. The second woman drove approximately five miles to another house in Santa Ana where another woman got in the car with her; the two then drove to the Madre Maria Ines Teresa Health Center, where they entered the building and left the box in the car. *Id.* at 89. The surveillance ended at that point. *Id.*

On March 20, Investigators conducted a third surveillance at the Anaheim Hills clinic. *Id.* at 94–95. The surveillance began at approximately 8:45 a.m.; about one hour later, a woman arrived in a Mercedes-Benz and walked into the building. *Id.* at 95. Respondent arrived by car at about 11:15 a.m. and also entered the building. *Id.* DHL delivered a box at 11:40 a.m. *Id.* At 1:30 p.m., two women and a man left the office carrying the box and a flower arrangement, which they placed in the trunk of one of the cars. *Id.* The women drove to a restaurant a few blocks away, dined, and then drove to the 1421 North Broadway location, taking the flower arrangement inside. *Id.* at 96. One of the women returned to the car, driving it to a shopping center in Santa Ana. *Id.* As the car lacked license plates, the officers copied the vehicle identification number (VIN) and determined from the Department of Motor Vehicles that the car was registered in Respondent's name. *Id.* at 96–97. The woman returned to the car, drove elsewhere to pick up two children, went to a pharmacy and then to the Seabiscuit Run address arriving there at about 5:45 p.m. *Id.* at 97. Surveillance terminated some fifteen minutes later. *Id.* The DI testified that the woman driving the car was Alinka Robinson, Respondent's wife. *Id.* at 98.

On May 9, law enforcement officers conducted a fourth surveillance. *Id.* at 104. A box was delivered at 10:12 a.m., and Respondent arrived at his office by car at approximately 12:15 p.m. *Id.* At around 2:15 p.m., Respondent placed the box in his car and returned to the office; at about 4:30 p.m., Respondent again left the office and drove to a bank and a restaurant. *Id.* In the restaurant parking lot, Respondent parked next to a black Humvee that investigators identified as belonging to Ms. Annan. *Id.* at 105–06. Respondent moved three boxes from his car to the Humvee and talked for about fifteen minutes with Ms. Annan in her car; Respondent then returned to his car and drove away. *Id.* at 105. The investigators followed Ms. Annan to her home in Santa Ana, but the boxes remained in her car until the surveillance terminated at 6:30 p.m. *Id.* The DI testified that he had opened this box before it was delivered and that it contained bottles of hydrocodone. *Id.* at 107–08.

On May 14, the fifth and final surveillance was conducted at the 1523 North Broadway location in Santa Ana. *Id.* at 106. At 9:24 a.m., DHL delivered a box. Later, Respondent arrived, and at about 11:20 a.m., Ms. Annan arrived in a black Mercedes-Benz. At around noon, Ms. Annan and another woman put the box in Ms. Annan's car and returned to the building. *Id.* at 106–07. At approximately 12:40 p.m., Ms. Annan left the building and drove to her home, where she stayed until surveillance terminated at 6:30 p.m. *Id.* at 107.

On October 16, 2008, investigators executed search warrants at the 1523 and 1421 North Broadway locations in Santa Ana, at the 145 South Chaparral location in Anaheim Hills, and at Ms. Annan's and Respondent's residences. *Id.* at 110. During the search, the Investigators did not find any records documenting the disposition of the hydrocodone products Respondent had

[5] The ALJ found only 93,000 dosage units. ALJ at 5. The ALJ appears to have multiplied the bottle-count (500) by the number of orders rather than by the number of bottles per order.

[6] The ALJ found only 77,000 dosage units. ALJ at 5. See *supra* note 4 for the explanation of the discrepancy.

[7] The ALJ found only 16,500 dosage units. ALJ at 5. See *supra* note 4 for the explanation of the discrepancy.

[8] This figure includes the approximately 336,000 tablets obtained from Top RX and the approximately 263,500 obtained from Harvard on his own account, plus the approximately 213,000 and 43,500 obtained from Harvard on the accounts of Drs. Bickman and Mitchell. The ALJ's figures are therefore rejected as inconsistent with the evidence.

[9] A comparison of ARCOS data with the Harvard data suggests that Dr. Bickman's account was used to order from an additional wholesaler.

purchased such as dispensing records. *Id.* at 112. While there were some purchase invoices at Ms. Annan's residence, Ms. Annan does not hold a DEA registration. *Id.* at 122–23.

During the search of the 1421 North Broadway location, the Investigators found a box of hydrocodone products which had been delivered that very day. *Id.* at 124–25; GX 40. At the South Chaparral location, which was an operating medical clinic, they found patient records but no records documenting the receipt and dispensing of the hydrocodone products Respondent had purchased. Tr. 126.

The DI interviewed Respondent, who reported that he had given the hydrocodone products to Ms. Annan, who had told him ''that she was taking these pills into Mexico to give them to either the Catholic health clinics or a doctor down there for poor or people who can't get medication on their own.'' *Id.* at 114. Respondent provided the name of a doctor, but no address. *Id.* at 114–15. However, the DIs were unable to verify Respondent's story. *Id.* at 115. Respondent does not hold either a distributor's or an exporter's registration under the Controlled Substances Act. *Id.* at 115; GX 1.

Respondent further stated that Ms. Annan had hired him as medical director of a clinic, for which she paid him $10,000 per month, but that he ''rarely went to the clinic at all as far as seeing patients or to do records.'' *Id.* He indicated that he had given Ms. Annan permission to order drugs and that she would either place the orders or tell him which orders to place. *Id.* at 116. He would then ''transfer the boxes to her, the pills to her.'' *Id.* Respondent paid for the orders with a credit card but then was reimbursed in cash by Ms. Annan. *Id.* at 117. According to the DI, Respondent said that ''because he was a doctor he was allowed to order these pills and that because they were being delivered to Mexico for poor people it was okay.'' *Id.* at 119. At no point did Respondent attempt to confirm Ms. Annan's statements about where the drugs were going. *Id.*

According to Respondent, Ms. Annan approached him in 2007, and requested that he open another clinic through which he could order more pills. *Id.* at 118. At that point, Respondent opened the second clinic at the South Chaparral location in Anaheim Hills and asked Dr. Bickman to serve as the medical director so he could order supplies and drugs under his registration. *Id.* Later, Ms. Annan and Respondent ''approached'' Dr. Mitchell about a third location, the 1421 North Broadway site, ''as a third office to buy pills.'' *Id.* Respondent reportedly paid Drs. Bickman and Mitchell $2,000 per month and $1,000 per month, respectively; both physicians knew that Respondent was ordering controlled substances in their names and using their DEA registration numbers to do so. *Id.* at 120–21.[10]

During the execution of the search warrants, another DI interviewed Ms. Annan at her residence. *Id.* at 145. Ms. Annan denied that she had ever received anything from Respondent, that Respondent had ever put anything in her vehicle, and that he had ever given her money. *Id.* According to Ms. Annan, Respondent paid half the rent for the Madre Maria Ines Teresa Health Center and he also paid her referral fees for patients that she referred to him for plastic surgery. *Id.* at 146. She indicated that she had worked for a number of physicians and that the physicians had always ordered their own drugs. *Id.*

While executing the warrant at Ms. Annan's residence, Investigators found a black garbage bag in her kitchen which contained medications, including some controlled substances. *Id.* at 147–48. Ms. Annan indicated that she was taking them to the Department of Health Services for destruction. *Id.* at 148. Ms. Annan also directed investigators to a hall closet containing miscellaneous drugs which she alleged she had brought home from the office of a Dr. Marini on instructions from the Anaheim Police Department, due to break-ins at the doctor's office. *Id.* at 148–49. Ms. Annan denied that she sold drugs. *Id.* at 150.

The State Proceeding

On June 3, 2009, the Executive Director of the Medical Board of California (''the Board'') filed a Fourth Amended Accusation with the Board, citing twelve different causes for discipline against Respondent's state medical license. Gov't Mot. Ex. A, at 10, 18–37. On June 22, 2009, Respondent signed a Stipulated Surrender of License and Order, in which he agreed that the Board ''could establish a factual basis for the First [Cause for Discipline] * * * in the Fourth Amended Accusation and that those allegations constitute cause for discipline.'' Gov't Mot., Ex. A, at 4. Furthermore, Respondent, ''g[a]ve[] up his right to contest that cause for discipline exists based on those charges.''[11] *Id.*

The First Cause for Discipline specifically alleged that between February 2007 and October 2008, Respondent ''purchased approximately 613,000 dosage units of hydrocodone and unlawfully distributed them to an unregistered individual in exchange for $10,000.00 per month in violation of 21 U.S.C. 841(a)(1).'' *Id.* at 10. It further alleged that ''[f]rom September 2007 through October 2009, [R]espondent purchased approximately 397,000 dosage units[12] of hydrocodone using the DEA registration numbers of two other practitioners in violation of 21 U.S.C. 843(a)(2) and (3),'' and ''then distributed these drugs to an unregistered individual in violation of 21 U.S.C. 841(a)(1).'' *Id.*

The First Cause also alleged that in an interview on or about October 16, 2008, Respondent admitted that he had diverted the aforementioned hydrocodone products to ''Magdalena 'Maggie' Annan''; that he had given Ms. Annan ''permission for her to order drugs'' such that ''Annan would place the orders or would tell [R]espondent what to order and then [R]espondent would give the hydrocodone to her''; that Annan ''was reimbursing [R]espondent for the cost of the narcotics and paying [R]espondent $10,000.00 a month to work as her medical director * * * at 1523 North Broadway in Santa Ana''; and that Respondent ''rarely went to Annan's clinic to see patients and/or review medical records.'' *Id.* at 10–11.

The First Cause further alleged that Annan asked Respondent to open a second medical clinic on South Chaparral so that they could order more pills and that Respondent asked another physician, Dr. Scott Bickman, to be the medical director of this clinic and paid him $2,000.00 per month; that Respondent then approached another physician, Dr. Thomas Mitchell, about opening a third medical clinic at 1421

[10] This is further confirmed by two notes written by Dr. Bickman to Harvard. A note dated February 21, 2008, signed by Scott Bickman, M.D., requested that Harvard ''[p]lease change the previous ordering arrangement for my account to holding all orders until I have been notified and give verbal authorization for them to be honored by The Harvard Group.'' GX 22, at 2. Then, in a note dated February 27, 2008, Dr. Bickman requested that Harvard ''DISREGARD *ALL* PREVIOUS FAXES DEMANDING MANAGEMENT OF MY ACCOUNT AND ALLOW DR. ROBINSON'S OFFICE TO PLACE ORDERS AS NEEDED.'' GX 23, at 2.

[11] The Stipulated License Surrender further stated that the ''admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceeding in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal, civil, administrative, or other proceeding.'' Id. DEA is not, however, bound by the stipulation. *See Edmund Chein,* 72 FR 6580, 6590 (2007), *aff'd Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008) (stipulated settlement agreed to by a state board does not bind DEA). In any event, in enforcing the registration provisions of the CSA, DEA acts as a professional licensing agency.

[12] This figure is even larger than the ARCOS figures of 265,500 dosage units for Dr. Bickman and 51,500 dosage units for Dr. Mitchell.

North Broadway, Santa Ana, and paid him for ''$1,000.00 per month for permission to use [his] DEA registration to purchase narcotics and have them shipped to the 1421 North Broadway office''; and that while Annan ''claimed she was taking the hydrocodone to Mexico to give to either the Catholic health services or a doctor for poor people who could not get medication on their own,'' Respondent ''did not know the name of the organization that Annan was allegedly giving the narcotics to and made no efforts to verify Annan's claim.'' *Id.* at 11.

In the Stipulated Surrender, Respondent agreed to surrender his California Physician's and Surgeon's Certificate and that he would ''lose all rights and privileges as a Physician and Surgeon in California as of September 30, 2009.'' Stipulated Surrender and Order at 4. On July 20, 2009, the Medical Board of California adopted the Stipulated Surrender of License and Order as its decision. The Board further ordered that its decision would become effective at 5:00 p.m. on September 30, 2009. Gov't Mot. Ex. A, at 1.

Discussion

As an initial matter, I note that Respondent initially requested a hearing in this matter. ALJ Ex. 2. While Respondent was provided with notice of the date, time and place of the hearing, he failed to appear. ALJ Ex 1, at 1. Accordingly, pursuant to 21 CFR 1301.43(d), I conclude that Respondent has waived his right to a hearing.

Section 304(a) of the Controlled Substances Act (CSA) 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)(2). Moreover, section 303(f) of the CSA provides that ''[t]he Attorney General may deny an application for a [practitioner's] registration if he determines that the issuance of such a registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

(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.

''[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 to revoke an existing registration or to deny an application either to renew an existing registration or for a new registration. *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *see also Morall* v. *DEA, 412 F.3d 165, 173–74 (D.C. Cir. 2005).*[13]

Factor One—The Recommendation of the State Licensing Board

At the time the ALJ rendered her recommended decision, Respondent had yet to sign the Stipulated Surrender of License, and the Board had not entered its Decision rendering the surrender of Respondent's state medical license effective at 5 p.m. on September 30, 2009. Based on her finding that ''[t]here is no indication that Respondent is not fully licensed to practice medicine in California,'' the ALJ concluded that this factor weighed ''in favor of a finding that [Respondent's] continued registration would be in the public interest.'' ALJ at 17.

However, subsequent to the ALJ's decision, Respondent agreed to surrender his state medical license and that he would ''lose all rights and privileges as a Physician and Surgeon in California as of September 30, 2009.'' Stipulated Surrender and Order at 4. Accordingly, I conclude that Respondent no longer holds authority to dispense controlled substances in California, the State in which he practiced medicine. Because the possession of authority under state law to dispense controlled substances is an essential condition for holding a registration under the CSA, Respondent is not entitled to maintain his DEA registration.[14] *See* 21 U.S.C. 823(f), 824(a)(3), 802(21). In accordance with long settled Agency precedent, Respondent's loss of his state authority requires that his CSA registration be revoked. *See John B. Freitas,* D.O., 74 FR 17524, 17525 (2009) (collecting cases). While this provides reason alone to revoke Respondent's registration, see 21 U.S.C. 824(a)(3), because Respondent is not permanently barred from seeking reinstatement of his State license, I conclude that a discussion of the remaining and relevant public interest factors is warranted.

Factors Four and Five—Respondent's Compliance With Applicable Controlled Substances Laws and Such Other Conduct Which May Threaten Public Health and Safety

Under the CSA, a registered practitioner is authorized to dispense, 21 U.S.C. 823(f), which is defined as ''to deliver a controlled substance to an ultimate user * * * by, or pursuant to the lawful order of, a practitioner.'' *Id.* § 802(10). *See also Rose Mary Jacinta Lewis,* 72 FR 4035, 4040 (2007) (''A practitioner's registration * * * grants its holder authority to obtain controlled substances for the limited purposes of conducting research or dispensing them to an ultimate user.'') (citing 21 U.S.C. 802(10) & (21), 822(b)).

The CSA further defines the ''[t]he term 'distribute' [as] mean[ing] to deliver (other than by administering or dispensing) a controlled substance.'' *Id.* § 802(11). Moreover, ''[p]ersons registered * * * under [the CSA] to * * * dispense controlled substances * * * are authorized possess * * * or dispense such substances [only] to the extent authorized by their registration and in conformity with the other provisions of'' the Act. 21 U.S.C. 822(b); see also 21 CFR 1301.13(e) (''Any person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities''); compare 21 U.S.C. 823(e) (requiring registration ''to distribute controlled substances in schedules'' III–V), with id. § 823(f) (requiring registration ''to dispense'' controlled substances'' in schedules III–V). Except for when distributing to another registered practitioner in accordance with 21 CFR 1307.11(a), a practitioner may only engage in dispensing. 21 U.S.C. 822(b).

Accordingly, a practitioner who delivers a controlled substance to a non-

[13] The CSA further provides that ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d).

[14] I therefore reject the ALJ's findings as to factor one. Having also considered factor two (Respondent's experience in dispensing controlled substances) and factor three (Respondent's conviction record under laws relating to controlled substances), I conclude that it is not necessary to make findings as to either factor.

registered person outside of the course of professional practice and without a legitimate medical purpose in doing so violates Federal law. *See* 21 U.S.C. 841(a) (''Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally * * * to * * * dispense * * * a controlled substance.''). *Cf. id.* § 844(a) (''It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice[.]'').

The evidence clearly establishes that Respondent violated Federal law by distributing controlled substances to Ms. Annan. *See id.* § 841(a). As found above, in a period just exceeding twenty months, Respondent ordered 640,000 dosage units of schedule III controlled substances containing hydrocodone on his own account, or allowed his co-conspirator Ms. Annan to do so.

During an interview with a DI, Respondent admitted that that he had distributed the drugs to Ms. Annan, who does not hold a DEA registration. Moreover, Respondent did not maintain that he had dispensed the drugs to Ms. Annan in the course of his professional practice and pursuant to the rendering of legitimate medical treatment.[15] *See* 21 U.S.C. 802(21) (defining the term ''practitioner'' as meaning ''a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to dispense * * * a controlled substance in the course of professional practice''); *id.* § 822(c) (authorizing ''an ultimate user'' to possess a controlled substance'' for purposes of legitimate medical treatment without holding a registration); *id.* § 802(27) (''The term 'ultimate user' means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.''). Moreover, Respondent admitted that he was paid $10,000 a month by Ms. Annan in exchange for his obtaining the drugs for her. Undoubtedly, the drugs found their way into the illicit market, either here or in Mexico.[16]

The evidence further shows that Respondent ordered more than 300,000 dosage units using the DEA registrations of Drs. Bickman and Mitchell (which drugs were also distributed to Ms. Annan), and did so in furtherance of a conspiracy with Ms. Annan to enable her to circumvent the maximum order ceilings of several drug wholesalers. In addition to constituting violations of 21 U.S.C. 841(a), this conduct was unlawful for the further reason that federal law prohibits a person from ''knowingly or intentionally'' using ''in the course of the * * * distribution * * * of a controlled substance, or * * * us[ing] for the purpose of acquiring or obtaining a controlled substance, a registration number which is * * * issued to another person.'' 21 U.S.C. 843(a)(2).

Respondent also violated Federal law and DEA regulations because he failed to maintain records documenting the receipt, sale, delivery, and disposition of controlled substances. See 21 U.S.C. 827(a)(1) (requiring that ''every registrant * * * shall * * * as soon * * * as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand'') & (a)(3) (''every registrant under this subchapter * * * distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance * * * received, sold, delivered, or otherwise disposed of by him'').

Moreover, Respondent was required to maintain these records for at least two years. *Id.* § 827(b) (''every inventory or other record required under this section * * * shall be kept and be available, for at least two years, for inspection and copying''). *See also* 21 CFR 1304.03 (''Each registrant shall maintain the records and inventories and shall file the reports required by this part, except as exempted by this section.''); *id.* § 1304.04 (mandating that records be maintained for at least two years and be available for inspection and copying).[17]

As found above, during the execution of the search warrants, the Investigators did not find any of the required records at either Respondent's registered location or at the two other clinics. *See* 21 CFR 1304.04.[18] I thus conclude that Respondent violated Federal law and DEA regulations for this reason as well. *See* 21 U.S.C. 842(a)(5) (''It shall be unlawful for any person * * * to refuse or negligently fail to make, keep, or furnish any record, * * * statement, invoice, or information required under this subchapter.'').

Even if Respondent had not committed the above violations of Federal law and DEA regulations, I would nonetheless find that he committed acts which constitute ''conduct which may threaten the public health and safety'' and which render his registration ''inconsistent with the public interest.'' *Id.* §§ 823(f)(5) & 824(a)(4). More specifically, even if there had been no conspiracy between Respondent and Ms. Annan to unlawfully acquire and distribute the drugs, he would still be liable for the acts she committed while being allowed to use his registration.

Under DEA precedent, a registrant who entrusts his registration to another person is strictly liable for the latter's misuse of his registration. *See Rose*

[15] Respondent's distributions of hydrocodone to Ms. Annan averaged approximately 47,000 dosage units a month. This quantity would supply a significant number of drug abusers.

[16] While Respondent maintained that Annan claimed that she was taking the drugs to Mexico to give to either ''Catholic health services or a doctor for poor people,'' he did nothing to verify her story, which even if it was true, still implicated her in criminal activity. See 21 U.S.C. 953(a) (prohibiting the exporting of any narcotic drug in schedule * * * III unless'' various requirements are met including that the consignee in the country of import hold ''a permit or license to import such drug [which] has been issued by the country of import''); 957(a) (requiring registration to ''export from the United States any controlled substance''); 960(a) (rendering unlawful the knowing or intentional exportation of a controlled substance in violation of sections 953 or 957). However, as found above, the record amply demonstrates the absurdity and disingenuousness of Respondent's contention.

[17] In her recommended decision, the ALJ concluded that the CSA's recordkeeping provisions ''do not apply'' to Respondent. ALJ at 18–10 n.22. Apparently, the ALJ reasoned that because Respondent was not registered as a distributor, the recordkeeping provisions applicable to distributors did not apply to him, and that while he was registered as a practitioner, because his conduct did not involve dispensing, but rather distribution, the recordkeeping requirements applicable to a practitioner also did not apply. *Id.* Under the ALJ's strange logic, any practitioner who engages in the criminal distribution of controlled substances would be immunized for failing to maintain records documenting his receipt and distribution of controlled substances.

The ALJ did not cite any authority to support her reasoning. Contrary to the ALJ's understanding, the CSA itself requires that ''every registrant * * * manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him.'' 21 U.S.C. 827(a)(3). This provision does not make a registrant's recordkeeping obligations dependent on whether the activities he engages in are permitted by, or exceed, the authority of his registration.

Moreover, as I have previously explained, ''[r]ecordkeeping is one of the CSA's central features,'' and ''a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.'' *Paul H. Volkman,* 73 FR30630, 30644 (2008), *aff'd* 567 F.3d 215, 224 (6th Cir. 2009). Because the ALJ's conclusion is clearly contrary to the text of the CSA and would gut an essential feature of the Act, I reject it.

[18] While the Investigators found some invoices at Ms. Annan's residence, Respondent was not authorized to keep his records there. See 21 CFR 1304.04(a)(1).

Mary Jacinta Lewis, M.D., 72 FR 4035 (2007) (affirming immediate suspension of practitioner's registration when she allowed an unregistered person to use her registration to order controlled substances, supposedly for exportation to HIV–AIDS patients in Nigeria). DEA has repeatedly revoked the registrations of practitioners for such conduct. *See also Paul Volkman,* 73 FR 30630, 30644 & n.42 (2008); *Anthony L. Cappelli,* 59 FR 42288 (1994). Respondent is thus liable for Ms. Annan's acts of unlawful possession, distribution, and/or exportation of the controlled substances that she obtained under his registration.

As the forgoing demonstrates, Respondent engaged in the knowing and intentional diversion of controlled substances and is an egregious violator of the CSA. In essence, he leased his DEA registration to Ms. Annan to enable her to obtain extraordinary quantities of schedule III narcotics containing hydrocodone, a drug which is highly popular with drug abusers and which was undoubtedly distributed through illegitimate channels. Moreover, in furtherance of the conspiracy, Respondent also paid other doctors to obtain their DEA numbers so that he could order even more drugs for her.

Respondent's conduct does not remotely resemble the legitimate practice of medicine. Rather, he engaged in a criminal conspiracy to distribute controlled substances. His conduct clearly constituted ''an imminent danger to the public health or safety,'' 21 U.S.C. 824(d), as well as acts which render his continued registration ''inconsistent with the public interest.'' *Id.* § 824(a)(4). For these reasons (as well as my finding that he lacks authority under California law to dispense controlled substances, *id.* § 824(a)(3)), Respondent's registration will be revoked and his pending applications will be denied.

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 order that DEA Certificate of Registration, AR8613487, issued to Harrell E. Robinson, M.D., be, and it hereby is, revoked. I further order that Respondent's pending applications for the renewal or modification of this registration, as well as for additional registrations, be, and they hereby are, denied.

Dated: November 17, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–28190 Filed 11–23–09; 8:45 am]

BILLING CODE 4410–09–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 10–01]

Notice of the December 11, 2008 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Wednesday, December 9, 2009.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Romell Cummings via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to consider the selection of countries that will be eligible for FY 2010 Millennium Challenge Account (''MCA'') assistance under Section 607 of the Millennium Challenge Act of 2003 (the ''Act''), codified at 22 U.S.C. 7706; discuss proposed restructuring of the Mongolia Compact; and certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: November 20, 2009.

Henry C. Pitney,

(Acting) Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. E9–28268 Filed 11–20–09; 4:15 pm]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

Notice: (09—101).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mrs. Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mrs. Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to 35 U.S.C. 209, applicants for a license under a patent or patent application must submit information in support of their request for a license. NASA uses the submitted information to grant the license.

II. Method of Collection

The current paper-based system is used to collect the information. It is deemed not cost effect to collect the information using a Web site form since the applications submitted vary significantly in format and volume.

III. Data

Title: Application for Patent License.
OMB Number: 2700–0039.
Type of review: Extension of currently approved collection.
Affected Public: Business or other for-profit, and individuals or households.
Number of Respondents: 60.
Responses per Respondent: 1.
Annual Responses: 60.
Hours per Request: 10 hours.
Annual Burden Hours: 600.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.