

extensive as to warrant revocation of a registration but which nonetheless threaten the public interest. Because there is no evidence that Respondent has sold forms of list I products in violation of either State or Federal law, there is no basis to impose the condition.¹⁶

In conclusion, the Government has not established that Respondent has committed any acts which either render its registration inconsistent with the public interest or which would support the imposition of conditions on its registration. Accordingly, the Order to Show Cause will be dismissed.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that the application of M & N Distributors for renewal of its DEA Certificate of Registration be, and it hereby is, granted. I further order that the Order to Show Cause issued to M & N Distributors be, and it hereby is, dismissed. This order is effective immediately.

Dated: May 6, 2010.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. 2010–11951 Filed 5–18–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Christopher Henry Lister, P.A.; Revocation of Registration

On November 3, 2009, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Christopher Henry Lister, P.A. (Respondent), of Hesperia, California. The Order proposed the revocation of Respondent's DEA Certificate of Registration, ML0817900, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that he had committed acts which render his registration inconsistent with the public interest. Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Show Cause Order alleged that Respondent violated Federal law by issuing controlled substance prescriptions “outside [of] the usual course of professional practice,” which lacked a “legitimate medical purpose, and that he violated California law

because he issued the prescriptions “without an appropriate prior examination and a medical indication.” *Id.* at 1–2 (citing 21 CFR 1306.04(a) & Cal. Bus. & Prof. Code § 2242(a)). More specifically, the Order alleged that on June 16, 2009, an undercover agent purchased through an intermediary a prescription for 60 tablets of OxyContin 80 mg., and that Respondent “never met or * * * much less conducted a physical examination” of, the person for whom he wrote the prescription. *Id.* at 2.

Next, the Show Cause Order alleged that on June 25, 2009, an undercover agent purchased though an intermediary prescriptions for 90 tablets of OxyContin 80 mg., which were written in the names of four different persons, and that Respondent had never met or conducted a physical examination of any of these persons. *Id.* Finally, the Show Cause Order alleged that on October 8, 2009, an informant purchased from Respondent prescriptions for OxyContin 80 mg., Xanax 2 mg., Valium 10 mg., and Lortab 10/500 mg., which were post-dated for October 29, 2009, and written in the names of three different persons he never physically examined. *Id.*

Based on the above, I further concluded that Respondent's continued registration during the pendency of the proceeding would “constitute[] an imminent danger to the public health and safety.” *Id.* Therefore, pursuant to my authority under 21 U.S.C. 824(d), I immediately suspended Respondent's registration. *Id.* The Order further explained that Respondent had the right to request a hearing on the allegations, the procedure for doing so, and that if he failed to do so, the scheduled hearing would be cancelled and he would be deemed to have waived his right to a hearing. *Id.*

On November 5, 2009, a DEA Special Agent personally served Respondent with the Order to Show Cause and Immediate Suspension of Registration. Moreover, on November 6, 2009, Government Counsel served a copy of the Order on Respondent by First-Class Mail to him at his registered location.

More than thirty days have now passed since the service of the Order to Show Cause and Immediate Suspension, and neither Respondent, nor anyone purporting to represent him, has requested a hearing. I therefore find that Respondent has waived his right to a hearing, 21 CFR 1301.43(d), and issue this Decision and Final Order without a hearing based on the record submitted by the Government. I make the following findings.

Findings

Respondent is the holder of DEA Certificate Registration, ML0817900. Respondent last renewed his registration on April 2, 2008; the registration does not expire until March 31, 2011.

Respondent also holds a Physician Assistant (PA) License issued by the Physician Assistant Committee of the Medical Board of California. On November 6, 2009, the Executive Officer of the Physician Assistant Committee filed a petition for an interim order of suspension of Respondent's state license. On November 12, 2009, a state Administrative Law Judge (ALJ) granted the petition and immediately suspended Respondent's PA license. The ALJ also ordered that Respondent appear for hearing on November 30, 2009, to show cause why the interim order suspending his license “should not remain in full force and effect pending the issuance of a final decision by the Medical Board of California.” Interim Order of Suspension at 2, *Portman v. Lister* (Cal. Office. of Admin. Hearings, No. 1E–2008–195465).

On November 30, 2009, a hearing was held before another state ALJ. Following the hearing, the ALJ found that:

[o]n October 8, 2009, a Bureau of Narcotics Enforcement confidential informant (CI) met with respondent at the CI's residence. The meeting was monitored by a DEA agent. During the meeting the CI provided respondent with a list of names and asked respondent to prescribe OxyContin, Xanax, Ambien, and Valium to the listed individuals in exchange for \$750 in cash. Respondent did as requested, and took the \$750 cash payment.

Order of Interim Suspension at 2, *In re Lister*.

Based on this finding, the ALJ concluded “that respondent has engaged in acts constituting violations of the Medical Practice Act” and that the State had “show[n] that permitting [him] to continue to engage in the profession for which [his] license was issued will endanger the public health, safety, or welfare.” *Id.* at 3 (citing Cal. Gov. Code § 11529(a)). In a footnote, the ALJ further explained that “[b]y prescribing dangerous drugs and controlled substances to the CI without an appropriate medical examination and without any medical indication * * * Respondent violated [various] provisions of the Medical Practice[] Act” including, *inter alia*, Cal. Bus. & Prof. Code § 2242(a) (“furnishing dangerous drugs without examination”), and Cal. Health & Safety Code § 11153(a) (“prescribing controlled substances without a legitimate medical purpose”). *Id.* at n.6. The ALJ thus granted the

¹⁶For the same reason, there is no basis to impose the ALJ's third condition.

State's petition and ordered that Respondent's license remain "suspended until final resolution of the underlying Accusation." *Id.* at 4.

Discussion

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)(4). With respect to a practitioner, the CSA requires the consideration of 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. 2005).

While I have considered all of the factors, I conclude that it is not necessary to make findings as to factors three and five. As explained below, I conclude that the finding of the state ALJ that Respondent violated California law by prescribing controlled substances without performing an appropriate medical examination and without a legitimate medical purpose is dispositive in assessing his experience in dispensing controlled substances (factor two) and his compliance with State and Federal laws related to controlled substances (factor four). The state ALJ's finding further establishes that Respondent has committed acts which render his continued registration "inconsistent with the public interest." 21 U.S.C. 824(a)(4).

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

Under a longstanding DEA regulation, a prescription for a controlled substance is not "effective" unless it is "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a). This regulation further provides that "an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances." *Id.* *See also* 21 U.S.C. 802(10) (defining the term "dispense" as meaning "to deliver a controlled substance to an ultimate user by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance") (emphasis added).

As the Supreme Court recently explained, "the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Gonzales v. Oregon*, 546 U.S. 243, 274 (2006) (citing *United States v. Moore*, 423 U.S. 122, 135, 143 (1975)).

Under the CSA, it is fundamental that a practitioner must establish and maintain a bona fide doctor-patient relationship in order to act "in the usual course of * * * professional practice" and to issue a prescription for a "legitimate medical purpose." *Laurence T. McKinney*, 73 FR 43260, 43265 n.22 (2008); *see also Moore*, 423 U.S. at 142–43 (noting that evidence established that physician "exceeded the bounds of 'professional practice,' " when "he gave inadequate physical examinations or none at all," "ignored the results of the tests he did make," and "took no precautions against * * * misuse and diversion"). Moreover, the CSA generally looks to state law to determine whether a doctor and patient have established a bona fide doctor-patient relationship. *See Kamir Garces-Mejias*, 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.*, 72 FR 50397, 50407 (2007).

Under California law, except for in circumstances not applicable here, "[p]rescribing, dispensing, or furnishing

dangerous drugs * * * without an appropriate prior examination and a medical indication, constitutes unprofessional conduct." Cal. Bus. & Prof. Code § 2242(a). California law further adopts nearly verbatim the CSA's prescription requirement. *See* Cal. Health & Safety Code § 11153(a) ("A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.").

Here, a state ALJ found that, on October 8, 2009, Respondent violated both of these provisions of California law when he sold prescriptions for OxyContin, a schedule II controlled substance, as well as Xanax, Ambien, and Valium (all of which are schedule IV controlled substances), to a confidential informant working for the California Bureau of Narcotics Enforcement in exchange for \$750 in cash. While Respondent did not appear at the state hearing, the state ALJ found that he "was properly noticed of the date, time and place of the hearing." Order of Interim Suspension, at 1.

Accordingly, I hold that the state ALJ's finding is entitled to preclusive effect in this proceeding. *See University of Tennessee v. Elliot*, 478 U.S. 788, 797–98 (1986) ("When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata*[.]") (int. quotations and citations omitted). Based on the state ALJ's findings, I further conclude that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in issuing each of the prescriptions and thus violated Federal law as well. *See* 21 CFR 1306.04(a); 21 U.S.C. 841(a)(1).

I thus conclude that Respondent has committed acts which render his registration "inconsistent with the public interest." 21 U.S.C. 824(a)(4). Accordingly, Respondent's registration will be revoked.¹

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a)(4), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, ML0817900, issued to Christopher

¹ It is further noted that because the State has imposed an order of interim suspension against Respondent's PA license, he does not have authority to dispense controlled substances and thus does not meet an essential requirement for holding a registration under the CSA. See, e.g., *John B. Freitas*, 74 FR 17524, 17525 (2009); 21 U.S.C. §§ 823(f) & 824(a)(3).

Henry Lister, P.A., be, and it hereby is, revoked. I further order that any pending application of Christopher Henry Lister, P.A., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.

Dated: May 6, 2010.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. 2010-11950 Filed 5-18-10; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Comment Request for Information Collection: "Confidentiality & Disclosure of State Unemployment Compensation Information Final Rule and State Income and Eligibility Verification Provisions of the Deficit Reduction Act of 1984; OMB Control No. 1205-0238;" Extension Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the regulatory requirements of the Confidentiality and Disclosure of State Unemployment Compensation Information final rule and State Income and Eligibility Verification System (IEVS) provisions of the Deficit Reduction Act of 1984 (current expiration date is August 31, 2010).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 19, 2010.

ADDRESSEE: Submit written comments to the Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW., Room C4518, Washington, DC 20210, Attention: Patricia Mertens. Telephone number: 202-693-3182 (this is not a toll-free number). Fax: 202-693-2874. E-mail: mertens.patricia@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background: The Deficit Reduction Act of 1984 established an Income and Eligibility Verification System (IEVS) for the exchange of information among state agencies administering specific programs. The programs include Temporary Assistance for Needy Families, Medicaid, Food Stamps, Supplemental Security Income, Unemployment Compensation and any state program approved under Titles I, X, XIV, or XVI of the Social Security Act. Under the Act, programs participating must exchange information to the extent that it is useful and productive in verifying eligibility and benefit amounts to assist the child support program and the Secretary of Health and Human Services in verifying eligibility and benefit amounts under Titles II and XVI of the Social Security Act.

On September 27, 2006, the Employment and Training Administration of the Department of Labor issued a final rule regarding the Confidentiality and Disclosure of State Unemployment Compensation Information. This rule supports and expands upon the requirements of the Deficit Reduction Act of 1984 and subsequent regulatory changes.

II. Review Focus:

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

III. Current Actions:

Type of Review: Extension without changes.

Title: Confidentiality & Disclosure of State Unemployment Compensation Information Final Rule and State Income and Eligibility Verification provisions of the Deficit Reduction Act of 1984;

OMB Number: 1205-0238.

Affected Public: State governments.

Total Annual Respondents: 53 state agencies.

Annual Frequency: Quarterly.

Total Estimated Annual Responses: 1,437,897.

Average Estimated Response Time: 1 minute.

Estimated Total Annual Burden Hours: 23,964 hours.

Total Annual Burden Cost for Respondents: \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 15th day of May 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010-11943 Filed 5-18-10; 8:45 am]

BILLING CODE 4510-FW-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection: (10-053).

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

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 Brenda J. Maxwell, Office of the Chief Information Officer, Mail Suite 2S71, National Aeronautics and Space