Dated: January 18, 2011.
Michele M. Leonhart,
Administrator.
[FR Doc. 2011–1694 Filed 1–26–11; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE
Drug Enforcement Administration
John G. Costino, D.O.; Dismissal of Proceeding

On June 1, 2010, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to John G. Costino, D.O. (Respondent), of North Wildwood, New Jersey. The Show Cause Order proposed the revocation of Respondent’s DEA Certificate of Registration, AC5210480, and the denial of pending applications to renew or modify his registration, on the ground that “[a]s a result of actions by the New Jersey State Medical Board, [Respondent is] currently without authority to handle controlled substances in the State of New Jersey, the state in which [he is] registered with DEA.” Show Cause Order at 1. The Show Cause Order also notified Respondent of his right to request a hearing on the allegations or to submit a written statement in lieu of hearing, the procedures for doing either, and the consequence for failing to do either. Id. at 2 (citing 21 CFR 1301.45(a), (c), (d) & (e)).

On June 17, 2010, Respondent filed a letter with the Hearing Clerk in which he noted that he had filed an appeal of some unspecified action and that he was “requesting reinstatement of [his] medical license among other things.” Letter of Respondent to Hearing Clerk (June 14, 2010). Therein, Respondent also filed a request to waive his right to a hearing. Id.

Thereafter, the Government submitted the record to me for Final Agency Action. Based on Respondent’s letter to the Hearing Clerk, I find that Respondent has waived his right to a hearing. I further find, however, that Respondent’s registration expired on August 31, 2010, and that Respondent has not filed a renewal application.

It is well settled that “[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.” Ronald J. Riegel, 63 FR 67132, 67133 (1998); see also William W. Nucklos, 73 FR 34330 (2008). Because Respondent’s registration has expired and there is no pending application to act upon, I conclude that this case is now moot.

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) and 0.104, I hereby order that the Order to Show Cause issued to John G. Costino, D.O., be, and it hereby is, dismissed.

Dated: January 18, 2011.
Michele M. Leonhart,
Administrator.
[FR Doc. 2011–1694 Filed 1–26–11; 8:45 am]
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DEPARTMENT OF JUSTICE
Drug Enforcement Administration
Algidas J. Krisciunas, M.D.; Revocation of Registration

On January 19, 2010, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration (Order) to Algidas J. Krisciunas, M.D. ("Registrant"), of Lauderdale Lakes, Florida. The Order proposed the revocation of Registrant’s DEA Certificate of Registration, BK4015334, and the denial of any applications for renewal or modification of his registration, on the ground that his “continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f).” Order, at 1. Based on the allegations presented, I also concluded that Registrant’s continued registration during the pendency of this proceeding “constitutes an imminent danger to the public health and safety” and immediately suspended his registration. Id. at 2.

The Order alleged that Registrant was the “owner of Social Medical Center (SMC), a pain clinic located at [his] registered location” and that he “issue[d] many purported prescriptions for controlled substances” from there. Id. at 1. The Order further alleged that Registrant “prescribed and dispensed controlled substances, including oxycodone 1 and alprazolam, 2 to two undercover law enforcement officers on five different occasions from July 13 through September 10, 2009, in violation of 21 U.S.C. §§ 841(a)(1) and 846.” Id. at 2. The Order also alleged that Registrant and his staff “falsified medical records for the two undercover officers” and that Registrant “advised the undercover officers how to falsify medical records to make it appear that they had legitimate medical conditions warranting the use of controlled substances.” Id. The Order next alleged that Registrant and his staff “sold the medical records of others to an undercover officer so that the records could be altered to appear that they were the medical records of the undercover officer.” Id.

The Order further alleged that “[b]ased on [his] consultations with, and examinations of, the two undercover officers,” Registrant “knew, or should have known, that neither of the undercover officers had a legitimate medical condition warranting the prescribing of controlled substances” because the “undercover officers provided inconsistent statements regarding the nature of their alleged injuries and gave negative answers when queried about any pain they were experiencing.” Id. The Order thus alleged that Registrant “issu[ed] [controlled substance] prescriptions outside the usual course of professional practice or for other than a legitimate medical purpose,” in violation of Federal law. Id. (citing 21 U.S.C. 823(f)(4); 21 CFR 1306.04).

Finally, the Order alleged that on July 1, 2009, Registrant’s “office staff sold 53 oxycodone 30 mg pills to an undercover officer for $500, in violation of 21 U.S.C. § [] 841(a)(1),” and that “[t]his transaction occurred at [his] office during regular business hours while [he] was on the premises.” Id. The Order thus alleged that Registrant “failed to exercise proper oversight of [his] office staff or take proper measures to ensure the safeguarding of controlled substances stored at [his] office.” Id.

Based on the above, I made the “preliminary finding that [Registrant’s] continued registration is inconsistent with the public health and safety.” Id. (citing 21 U.S.C. 823(f), 824(a)(4)).

Having concluded that Registrant’s “continued registration while these proceedings are pending constitutes an imminent danger to the public health and safety because [he has] repeatedly displayed a willingness to prescribe widely abused controlled substances for other than a legitimate medical purpose,” I further ordered the immediate suspension of his registration. Id. (citing 21 U.S.C. 824(d); 21 CFR 1301.36(e); 28 CFR 0.100). Id.

On January 20, 2010, the Order, which also notified Registrant of his rights to either request a hearing or submit a written statement in lieu of a hearing, the procedures for doing either, and the consequences for failing to do either, was served on Registrant by a DEA Diversion Investigator. Since the date of service of

1 Oxycodone is a schedule II controlled substance. 21 CFR 1308.12(b)(1)(xiii).
2 Alprazolam is a schedule IV controlled substance. 21 CFR 1308.14(c)(1).
On July 13, 2009, Rix returned to SMC with the altered MRI and an altered pharmacy profile. Aff. of TFO 1, at 3. Rix handed the records to M.L.A. and then met with Registrant in the presence of his wife, Maria Bulich. Id. Registrant examined the records and inquired as to the type of accident that had caused Rix’s pain. Id. Rix responded that he had been in a car accident. Id. With regard to the pharmacy profile, Registrant told Rix that he would have to reduce the amount of Xanax he was taking because it could cause memory loss. Id. Registrant then stated that he could not provide that much oxycodone in 80 mg doses; Rix replied that oxycodone 30 mg would suffice. Id.

After that, M.L.A. gave Rix a form to complete, which included a diagram for specifying the location of his pain and blanks for noting his pain levels. Id. Rix did not complete either of these sections. Id. In the examining room, Registrant noticed the incomplete form and asked Rix to complete it. Id. Although Rix’s MRI indicated that he had back pain, on the diagram Rix noted that he had neck pain. Id. Registrant noticed the discrepancy and changed the marking on the diagram, explaining that the medical record needed to match the MRI to satisfy any inspectors who might examine the records. Id.

Registrant and Rix then discussed the number of oxycodone 30 mg pills Registrant would need to prescribe to provide the equivalent of the dosages noted in Rix’s pharmacy profile. Id.; Tr. 31 (July 13, 2009). While Rix’s profile indicated that he had been taking two 80 mg pills a day (totaling 160 mg per day), Registrant offered to prescribe six tablets of oxycodone 30 mg per day (totaling 180 mg per day). Tr. 31 (July 13, 2009). The conversation then turned to Xanax, with Rix stating that he was not “especially interested” in the drug. Aff. of TFO 1, at 3–4; Tr. 32–33 (July 13, 2009).

Rix then asked Registrant what he should write on the forms so that his medical record would look legitimate to the inspectors. Aff. of TFO 1, at 4. According to Rix, Registrant instructed him to write false information, such as that Rix could not lift more than twenty pounds even though he had told Registrant that he was a personal trainer who frequently lifted weights. Id.; Tr. 36 (July 13, 2009). As to a question regarding whether he exercised, Registrant told Rix that “you don’t want to compromise yourself” and to “just put down swimming and walking” because “any kind of catch word * * * they get hang [sic] up on.” Tr. 37 (July 13, 2009).

Registrant and Rix went through the questions on the form together, and
Registrant conducted a brief physical examination of Rix. Id. at 35–45, 48–49. Rix deliberately followed Registrant’s instructions without complaining of any problems and said that he felt “stiff” but that he had no pain. Aff. of TFO 1, at 4. As to his pain rating, Registrant explained that “nine is after you had an operation, right after.” Tr. 36 (July 13, 2009). After Rix responded, “Okay so I don’t have an operation.” Registrant stated, “I’d say about seven or eight maybe you know * * * Ah without the medicines.” Id.

Rix then read one of the form’s questions to Registrant: “Rate your pain by circling the number that best describes your pain at its worst at the last of the month” and asked “is that where I put seven or eight?” Id. at 38. Registrant stated, “actually no.” Id. He then explained, “you were helped with medication so.” Id. Proceeding to the next question, which asked about his pain level “on average,” Rix asked whether that should be “four.” Id. Registrant answered, “Yeah five or something like that.” Id.

When Registrant asked whether he had pain radiating down his legs, Rix replied “no.” Id. at 40. Registrant then told Rix that “I would not want to put down good or poor, just fair.” Id. Next, Registrant had Rix bend at his waist and said, “Okay this is the important thing, are you on medicines now?”; Rix answered in the affirmative. Id. at 43. Registrant then stated: “Because today you are in no pain bending forward because you are on medicines.” Id.

When Registrant had Rix bend to one side, he stated that he did not have any pain but was “[j]ust tight.” Id. at 44. Registrant had Rix place his arms on his hips and then turn, at which point Rix again reported having “[t]ightness.” Id. Registrant then coached Rix: “No use the correct word, pain,” and explained that tightness “does not qualify pain medicine.” Id. Rix then reported pain, and Registrant commented, “Don’t confuse the inspectors with anything.” Id.

Registrant and Rix then discussed the latter’s occupation as a personal trainer. When Rix asked “Can we scratch that out[?]”, Registrant replied, “No that’s fine * * * but ah you must say that you don’t do anything, any heavy lifting.” Id. at 45. Rix then said “I just instruct,” and Registrant replied, “Yeah you instruct.” Id.

As the appointment neared its end, Rix asked Registrant whether he had a referral program and suggested that he could refer people to him. Id. at 53. Registrant said “sure,” but that “they have to qualify of course.” Id.

At the conclusion of the visit, Registrant issued Rix three prescriptions: One for 180 oxycodone 30 mg, One for 90 oxycodone 15 mg, and one for 30 alprazolam (Xanax) 2 mg. Aff. of TFO 1, at 4. Registrant then gave the prescriptions to his wife, who filled the oxycodone and Xanax. Id. at 3. However, because the clinic did not have Percocet, Anderson was given the prescription to fill elsewhere. Id. Anderson mentioned to both Registrant and his wife that he had been referred by “Bill,” “who ‘should get a kickback’” for the referral; Registrant’s wife noted that she would “take care of it.” Id. Anderson paid a total of $320 for the visit and the controlled substances. Id.

On August 6, 2009, Rix returned to SMC, and noted on the medical form that he “felt no pain and no interference with [his] daily activities.” Aff. of TFO 1, at 4–5; Tr. 1 (Aug. 6, 2009). Rix asked Registrant what he could put on the form to obtain larger quantities of the drugs. Aff. of TFO 1, at 5. Registrant told him that his timing was bad because DEA was increasing its scrutiny of pain clinics and even sending in undercover operatives. Id.

Rix and Registrant continued their discussion of the possibility of increasing the quantity of the drugs. Registrant told Rix to fill in a response to a certain question as “maybe two or three you know some back pain” so it would support an increase at the next visit. Tr. 14 (Aug. 6, 2009). Later, Rix sought to confirm that circling two or three on the form “would give us a reason to increase [the medications] a little bit.” Id. at 19. Registrant responded, “Yeah a little bit but not necessarily * * * and in case, depending on the finding in you [sic] case you know you need.” Id. Registrant then stated that Rix did “have arthritis,” “disk dislocation,” “signs of * * * trauma,” as well as “pressure on the nerves,” specifically an “S1 * * * nerve root abutment” that was “almost a reason for an operation.” Id. at 20.

When Rix asked whether he should have an operation, Registrant said that he “wouldn’t do it,” and added that “general statistics show that you should wait as long as you can before the surgery because even after the surgery some things don’t work out” and that the surgery is done when the “indication is loss of nerve * * * showing muscle atrophy.” Id. at 20–21. When Rix explained that he had not marked that area on the medical form, Registrant replied, “well I’ll put lower back pain.” Id. at 22. As the TFO stated in his Affidavit, “it was obvious that my

* * *

By that point, Registrant had apparently taken over the task of completing the medical form. See Tr. 15 (Aug. 6, 2009), at 15.
medical records would contain false information about fictitious pain.” Aff. of TFO 1, at 5.

The visit concluded with Registrant issuing prescriptions for 180 oxycodone 30 mg pills, 90 oxycodone 15 mg pills, and 30 alprazolam 2 mg pills, which Registrant’s wife filled for Rix. Id. Rix paid Registrant’s wife $600 after deducting $20 for referring Anderson. Id.

On August 19, 2009, Anderson returned to the clinic (eleven days before his prescriptions should have run out) and sought more pain medication. Aff. of TFO 2, at 3; Tr. 1 (Aug. 19, 2009). Registrant advised him to “[l]et’s run out” because if the police caught him with the drugs “they can make a big issue * * * out of it.” Tr. 1 (Aug. 19, 2009). Anderson stated that he would be going to Georgia the next day, to which Registrant stated that “if they catch you on the road to Georgia that’s even worse.” Id. at 2. Registrant referred to the investigation of Michael Jackson’s doctor and stated that there had been two recent overdose deaths in Broward County. Id. Registrant also expressed his concern that the police would follow Anderson from the clinic and stop him. Id. At this visit, Registrant did not write any prescriptions and told Anderson that he could come back a few days early, but he could not come back as early as he had this time. Aff. of TFO 2, at 3; Tr. 4 (Aug. 19, 2009).

Anderson returned to SMC on August 27, 2009. Aff. of TFO 2, at 3; Tr. 1 (Aug. 27, 2009). Anderson stated that he had not gone to Georgia, but that he would be leaving for Georgia imminently and that he wanted to increase his medications. Tr. 18 (Aug. 27, 2009). Registrant replied that it was the “[w]rong time,” and that in the aftermath of Michael Jackson’s death and the two recent overdose deaths in Broward County, “they have * * * extra workers inspecting, they got a lot of money from the government so they’re scrutinizing.” Id. at 19.

Anderson told Registrant that he only wanted oxycodone and Xanax, but not Soma or Percocet. Id. Anderson further stated that he had run out of oxycodone two weeks early and had bought additional oxycodone from a friend. Id. at 20–21.

Notwithstanding Anderson’s statement, Registrant neither counseled him on the danger of addiction and abuse or that his purchase of oxycodone from a friend was illegal. Registrant agreed to give Anderson 90 oxycodone 30 mg, which was 30 more pills than he had given him the previous month, and 60 oxycodone 15 mg, which Anderson had not received at his first appointment. Id. at 22. Although Registrant stated that he would like to reduce Anderson’s consumption of Xanax from 2 mg to 1 mg per day, when Anderson stated that he “would rather have the 2 mill,” Registrant relented and agreed to prescribe the 2 mg strength. Id. at 23–24.

Registrant then told Anderson that he needed to complete the medical form, and Anderson asked “[w]hat numbers do I need” to put down for his pain levels. Id. While Registrant told Anderson that he should “[b]e honest,” Registrant then advised him as to the value of the various numbers and agreed to sign after Anderson stated he would put down seven or eight for his pain level in the last week. Id. at 25–26. The visit concluded with Registrant giving Anderson prescriptions for 90 oxycodone 30 mg, 60 oxycodone 15 mg, and 30 alprazolam 2 mg, which were filled by Registrant’s wife and for which he paid $400. Aff. of TFO 2, at 4. In his Affidavit, the TFO stated that Registrant did not do “any physical tests for pain response or movement restrictions” at this visit. Id.

On September 10, 2009, Rix returned to Registrant for the fourth time. Aff. of TFO 1, at 5; Tr. 1 (Sept. 10, 2009). Rix told Registrant that he had been out of town training to become a stunt man, “a job obviously incompatible with chronic pain.” Aff. of TFO 1, at 5; Tr. 16 (Sept. 10, 2009). Registrant laughed and said: “You better keep a secret.” Tr. 16 (Sept. 10, 2009). Rix then told Registrant that he had left the medical form “blank” so that “we can increase the medications because last time I didn’t fill it out right,” to which Registrant did not directly respond. Id. However, shortly thereafter Registrant wrote on the form that Rix stated that he “ran out of medication” and Registrant offered to increase the prescription for oxycodone 30 mg from 180 to 210 pills. Id. at 17. Registrant then stated that while he would increase the oxycodone, he would decrease the Xanax from 2 mg pills to 1 mg pills because “that makes [my] leg feel better.” Id. at 18.

Next, Rix stated that he would refer a female client with knee pain. Id. at 19. Registrant stated that low back pain would be more “substantial” and that she could get an MRI done for just $250 at a couple of places. Id. Registrant told Rix that a new law passed in February would require that she be put on non-controlled substances unless she could present a pharmacy profile that showed she was already receiving controlled substances. Id. at 19–20.

Rix replied that the woman had said she had used controlled substances and that he had given her several of his oxycodone 15 mg pills, which she “tried” and reported feeling “good.” Id. at 20. Registrant did not, however, tell Rix not to share his medication. See id. Rix then stated that he had only given the woman five oxycodone 15 mg pills, that he did not know “how she took em when she did it,” and that “she said they helped.” Id. at 21. Registrant replied, “No of course we will cover you, you know, but the question is does she * * * need that much.” Id.

Registrant then noticed that Rix had left blank a certain question on the medical form and mentioned it to Rix. Id. at 23. Rix responded, “No remember you told me last time to leave that blank because I filled it out incorrectly where you said it couldn’t increase the medicines.” Id. at 24. Registrant replied: “If you could be thinking, insomnia.” Id. Although Rix stated that he absolutely did not have insomnia, Registrant stated, “With Xanax, let’s put down” insomnia. Id.

Registrant then asked Rix to rate numerically how his pain had affected his general activity in the prior week. Id. Rix answered that his pain did not interfere, “but that’s where you told me we had to be careful because we couldn’t increase” the drugs. Id. Continuing, Rix stated that “I put it didn’t interfere at all last time and you said you could not increase [the drugs] because it said it does not interfere [and] I think you said last time to put three or four.” Registrant responded, “Okay so three, mood about two?” Id.

The conversation then returned to Rix’s having gone to a school for stunt men and his purported bad back. Registrant stated, “Oh I’m telling you * * * I shouldn’t even know about it.” Id. at 26. Registrant then said that “sometimes there will be people coming in here,” specifically undercover officers. Id. at 28. Laughing, he stated that the undercover officers were “trying to provoke” him. Id. As they continued to discuss Rix’s work as a stunt man, Rix assured Registrant that he would not do any such work in Florida. Id. Registrant then stated that “they could accuse” Rix of something and that the authorities might say that “your MRI is fake.” Id. at 30.

Registrant then issued Rix prescriptions for 210 oxycodone 30 mg, 90 oxycodone 15 mg, and 30 Xanax (alprazolam) 1 mg, which were dispensed by the former’s wife. Aff. of TFO 1, at 5. Rix paid $678 for the controlled substances and the visit. Id. at 5–6.

Section 304(a) of the CSA provides that a registration pursuant to section 823 of this title to dispense controlled substances may be suspended or revoked by the Attorney General upon a finding that the registrant has been convicted of a felony under the laws of the State in which he practices or that he has engaged in the dispensing of controlled substances. 21 U.S.C. 824(a)(2). The Attorney General may suspend or revoke a registration if he finds that the registrant has been convicted of a felony under this subchapter or that the registrant has engaged in the dispensing of controlled substances. 21 U.S.C. 824(a)(3). The CSA further provides that a registration may be revoked or suspended where a registrant has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the dispensing of controlled substances. 21 U.S.C. 842(a)(3).

As found above, the United States District Court has adjudicated Registrant guilty of one count of conspiring to unlawfully distribute oxycodone, a schedule II controlled substance, in violation of 21 U.S.C. 846, and five counts of unlawfully dispensing oxycodone, in violation of 21 U.S.C. 841(a)(1). Both provisions are felonies under the CSA. See 21 U.S.C. 841(b)(1)(C) (except as otherwise provided, “[i]n the case of a controlled substance, the person shall be sentenced to a term of imprisonment of not more than 20 years”); id. § 846 (“Any person who conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the * * * conspiracy.”). Registrant’s convictions for these offenses provide reason alone to revoke his registration and deny any pending applications.

On September 9, 2009, Registrant and his wife with five counts of dispensing oxycodone; it also charged Registrant with one count of conspiring to unlawfully distribute oxycodone, a schedule II controlled substance (Indictment). The indictment further charged Registrant with five counts of dispensing oxycodone (on July 13 and 30, August 6 and 27, and September 9, 2009), a controlled substance, in violation of 21 U.S.C. 841(a)(1).

On March 11, 2010, a Federal Grand Jury issued a superseding indictment. United States v. Algirdas K. Krisciunas and Maria Teresa Bulich. Superseding Indictment (S.D. Fla. Mar. 11, 2010), No. 10–60007–CR–HURLEY(s). The new indictment charged Registrant and his wife with conspiring to unlawfully dispense oxycodone; it also charged Registrant and his wife with unlawfully dispensing oxycodone on each of the five dates as charged in the initial indictment. Id. at 1–3 (citing 21 U.S.C. 841(a)(1), 846).


Based on Registrant’s convictions, on August 20, 2010, the Florida Surgeon General ordered the summary suspension of his medical license. Order of Emergency Suspension of License, at 2–3 (citing Fla. Stat. § 456.074(1)).

Discussion

Section 304(a) of the CSA provides that a registrant may be revoked or suspended where a registrant has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the dispensing of controlled substances. 21 U.S.C. 842(a)(3).

Registrant’s loss of his State authority provides a further ground to revoke his registration and to deny any pending application to renew or modify his registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as by 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BK-4015334, issued to Algirdas J. Krisciunas, M.D., be, and it hereby is, revoked. I further order that any pending application of Algirdas J. Krisciunas, M.D., to renew or modify his registration be, and it hereby is, denied. This Order is effective immediately.

Dated: January 18, 2011.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0030]

Ionizing Radiation Standard; Extension of the Office of Management and Budget’s (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Ionizing Radiation Standard (29 CFR 1910.1096). The information collection requirements contained in the Ionizing Radiation Standard protect workers from the adverse health effects that may result from occupational exposure to ionizing radiation including tissue damage and cancer.

DATES: Comments must be submitted (postmarked, sent, or received) by March 28, 2011.

ADDRESSES: Electronically: You may submit comments and attachments electronically at http://www.regulations.gov, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

* * * * *

Section 304(a)(4) also provides for the suspension or revocation of a registration “upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest as determined under * * * section 823(f).” 21 U.S.C. 824(a)(4). In light of my finding that Registrant has been convicted of six felony counts of violating the CSA, I conclude that it is not necessary to discuss the applicability of this provision to his misconduct.

* * * * *