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 1301.43(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. 2011–1692 Filed 1–26–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Algirdas 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 Algirdas 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 personally 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).

the Order, more than thirty days have passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing on the allegations or submitted a written statement. 21 CFR 1301.43(a)–(c). I therefore find that Registrant has both waived his right to a hearing and to submit a written statement, and I issue this Decision and Final Order based on relevant evidence contained in the Investigative Record submitted by the Government.[3] 21 CFR 1301.43(d)–(e). I make the following findings.

Findings

Registrant holds DEA Certificate of Registration, BK4015334, which authorizes him to dispense as a practitioner controlled substances in schedules II through V. Cert. of Reg. Hist. (March 18, 2010). Registrant is registered at the address of 3401 West Oakland Park Blvd., Lauderdale Lakes, Florida 33311; this address was the location of a pain clinic which was owned by his wife, Maria Bulich, and which did business under the name of "Social Medical Center" (SMC). *Id.;* Aff. of Task Force Officer (TFO) 1, at 1, 3.

On July 1, 2009, a Broward County Sheriff's Office detective assigned to a DEA Task Force attempted an undercover buy at SMC. Using the name Bill Rix,[4] the detective posed as a personal trainer who had recently moved to the area and who "needed a supplier of pain medicine due to discomfort from an old auto accident."[5] Aff. of TFO1, at 1.

Immediately on entering SMC, Rix met both Registrant and his receptionist, M.L.A. *Id.* M.L.A told Rix that, to obtain controlled substances from Registrant, he would need an MRI report (to show "the nature and location of chronic pain-causing injuries") and a pharmacy drug profile (to "show the drugs the patient has been receiving"). Registrant stated that this was because state regulations required that a chronic pain patient first undergo a thirty-day regimen with non-controlled pain medications and that controlled substances could only be prescribed upon a determination that the non-controlled medications were not effective. *Id.* at 2; Tr. 3–4 (July 1, 2009). When Rix told Registrant and M.L.A. that his most recent MRI was from 2002, both Registrant and M.L.A. told Rix that he needed a newer MRI and referred him to a mobile MRI, which could probably perform the exam the same day and would charge $250. Tr. 6 (July 1, 2009). Registrant further explained that he needed to have documentation on file to adequately justify his prescribing of controlled substances in the event that DEA investigators inspected the clinic. *Id.* at 9.

After Registrant exited the room, Rix asked M.L.A. and another female, M.R., whether he could just change the date on his old MRI. *Id.* at 11. In response, M.L.A. offered to sell Rix an MRI, on which he could change the name and date, as well as a pharmacy record. *Id.* at 11–12. M.R. then asked Rix whether he currently had controlled substances or needed some, and offered to sell him oxycodone 30 mg pills for $10 per pill; Rix and M.R. agreed that he would buy 50 pills. *Id.* at 13–16. M.R. then counted out 53 oxycodone 30 mg pills, put them in a prescription bottle, and sold them to Rix for $500. Aff. of TFO 1, at 2. Rix confirmed with M.L.A. and M.R. that he would take the MRI and change the date, but then asked whether someone would be calling the radiologist to verify the study. Tr. 17 (July 1, 2009). M.L.A. assured him that there would be no problem with the verification, as she was the individual who verified MRIs. *Id.* She also stated that she would take care of the pharmacy report and that Rix just needed to alter the name and date on the MRI and bring it back. *Id.* at 21.

Rix then stated, "I'm glad you guys came back up here[.] I was like you got to be kidding me with what he was telling me, I'm like to go through all that [b.s.], are you kidding." *Id.* M.L.A. replied: "I know I wish you would have talked to me first, but he was there." *Id.* Later, M.L.A. stated that "[Registrant] knows, he knows. He'll write you whatever you want, but he has to cover his ass too." *Id.* at 22. She then added that Registrant would give Rix up to 240 oxycodone pills. *Id.*

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 then went through the questions on the form together, and

[3] In its Request for Final Agency Action, the Government argues that revocation is warranted under the additional ground that Registrant "has been convicted of a felony under subchapter 1 of chapter 13, Title 21, United States Code." Request for Final Agency Action, at 4. Thereafter, the Government submitted a First Supplement to Request for Final Agency Action which argued that revocation was also warranted because on August 20, 2010, the State of Florida issued an Order of Emergency Suspension, which immediately suspended Registrant's medical license and that he no longer has authority under State law to dispense controlled substances. First Supplement to Request for Final Agency Action, at 1 (citing 21 U.S.C. 824(a)(3)). Attached to the filing was a copy of the State order.

Finally, the Government submitted a Second Supplement to Request for Final Agency Action, which noted that on October 13, 2010, the U.S. District Court for the Southern District of Florida entered a judgment, which adjudicated Registrant guilty of six felony counts under the Controlled Substances Act. Attached to the filing was a copy of the Judgment.

[4] Throughout this decision, each TFO's assumed name is used interchangeably with the titles of TFO 1 and TFO 2.

[5] The officer wore a wire during the visit to record it; the recording was later transcribed.

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 them and collected $740 from Rix for both the examination and the medication. *Id.* Ms. Bulich indicated that she would pay Rix $20 for each new patient he referred. *Id.;* Tr. 61 (July 13, 2009). In his affidavit, the TFO summarized his visit stating that "[t]he entire process was one in which [Registrant] coached or led me into giving answers that would qualify me to receive pain medication, not as an examination oriented toward determining my medical condition and needs." Aff. of TFO 1, at 4.

On July 30, 2009, another TFO visited Registrant using the name of Keith E. Anderson. Aff. of TFO 2, at 1. On entering the clinic, Anderson met M.L.A. and told her that "Bill" had referred him. Aff. of TFO 2, at 1–2. Anderson brought with him an MRI report and a pharmacy profile which were copies of the ones that Rix had received from M.L.A. on July 1, 2009, but which were altered to state that they were Anderson's. *Id.* at 2. Another female employee, whose name is unknown, then gave Anderson a medical form to complete; however, he left much of it blank. *Id.*

While in Registrant's office, Registrant asked Anderson what kind of accident he had had; Anderson stated that he had been in a car accident. *Id.* Anderson then told Registrant that he wanted his help in completing the medical form "so that [they] would not get in trouble with the inspectors." *Id.* As the two discussed the forms, Registrant asked Anderson what drugs he had been taking and advised him to stop taking Soma and to reduce the amount of Xanax. *Id.*

Registrant filled out the form and told Anderson "you do not lift more than 15 pounds" and that "no heavy lifting [was] allowed." *Id.* He also calculated "how many oxycodone 30 mg pills he should prescribe to be equivalent to the 80 mg pills reflected in the pharmacy profile." *Id.* Registrant further "commented about being careful about inspectors who would look at the paperwork." *Id.*

During the visit, Registrant administered several movement tests on Anderson. *Id.* Anderson stated that "[w]hen [he] said [he] had 'a little pain,' or 'no pain,' [Registrant] said that 'if you had no medicines, you would have pain?'" *Id.* According to the TFO, "[t]he effect of the conversation was to coach me on how to respond in order to receive the pain killers I wanted." *Id.*

Registrant issued Anderson prescriptions for 60 oxycodone 30 mg, 30 Xanax 2 mg, and 120 Percocet 10/325 mg. *Id.* at 2–3. 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."[6] *Id.* at 22. As the TFO stated in his Affidavit, "it was obvious that my

[6] 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 "[t]ry next week" 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 [you] look reasonable." *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.

On January 7, 2010, a Federal Grand Jury indicted Registrant. *United States* v. *Algirdas Krisciunas et al.,* No. 10–60007–CR (S.D. Fla. Jan. 7, 2010)

(Indictment). The indictment charged Registrant with one count of conspiring with M.L.A. and M.I.R. (two of the clinic's staff) to distribute oxycodone, a controlled substance, "[f]rom on or before June 29, 2009 to on or about September 9, 2009," in violation of 21 U.S.C. 841(a)(1) and 846. *Id.* 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). *Id.*

On March 11, 2010, a Federal Grand Jury issued a superseding indictment. *United States* v. *Algirdas 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).

Thereafter, Registrant went to trial. On July 6, 2010, a jury found Registrant guilty on all six counts. *U.S.* v. *Algirdas Krisciunas,* Verdict (July 6, 2010). On October 13, 2010, the District Court entered its Judgment adjudicating Registrant guilty on all six counts and sentenced him to 97 months imprisonment to be followed by three years of supervised release. *U.S.* v. *Algirdas Krisciunas,* Judgment (Oct. 13, 2010).

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 "registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has been convicted of a felony under this subchapter or subchapter II of this chapter * * * relating to any substance defined in this subchapter as a controlled substance." 21 U.S.C. 824(a)(2). Section 304(a) 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."[7] *Id.* § 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 in schedule I or II * * * such 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 denied any pending applications. 21 U.S.C. 824(a)(2).

I further conclude that Registrant's registration should be revoked on the ground that the State of Florida has suspended his State medical license and thus, he no longer has authority to dispense controlled substances in the State. 21 U.S.C. 824(a)(3). The CSA defines the term "practitioner" as a person "licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to distribute, dispense * * * [or] administer * * * a controlled substance in the course of professional practice." *Id.* § 802(21). Likewise, the CSA limits registration to an applicant who is "authorized to dispense * * * controlled substances under the laws of the State in which he practices." Id. § 823(f). Based on these provisions, DEA has held repeatedly that a practitioner whose State authority to dispense controlled substances has been suspended or revoked is not entitled to maintain his CSA registration. *See John B. Freitas,* 74 FR 17524, 17525 (2009); *Worth S. Wilkinson,* 71 FR 30173 (2006); *Stephen J. Graham,* 69 FR 11661, 11662 (2004); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988). I therefore conclude that 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, BK4015334, 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.[8]

Dated: January 18, 2011.

Michele M. Leonhart,

Administrator.

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[7] 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.

[8] For the same reason that I ordered the immediate suspension of Registrant's registration, I conclude that the public interest requires that this Order be effective immediately. 21 CFR 1316.67.

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.