

purpose; his prescribing of controlled substances to treat chronic pain without a legitimate medical purpose; his prescribing of Xanax to JC2; his issuance of prescriptions which lacked his practitioner's registration number; his issuance of post-dated prescriptions; and his issuance of multiple prescriptions after his registration had been suspended. I further conclude that the Government has made a *prima facie* showing that Respondent has committed acts which render his registration "inconsistent with the public interest," 21 U.S.C. 824(a)(4), and that this conduct is sufficiently egregious to warrant the revocation of his registration.²⁴

Sanction

Under Agency precedent, where, as here, the Government has made out a *prima facie* case that a registrant has committed acts which render his "registration inconsistent with the public interest," he must "present[] sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration." *Samuel S. Jackson*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988)). "Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs., Inc. v. DEA*, 54 F.3d 450, 452 (7th Cir. 1995), this Agency has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct." *Medicine Shoppe-Jonesborough*, 73 FR 364 (2008). As the Sixth Circuit has

²⁴ With respect to factor five, the ALJ found that Respondent's "lack of candor * * * threatens public health and safety." ALJ at 49. As support for this conclusion, the ALJ noted that most of the patients who were interviewed by the Investigators had stated that Respondent was treating them for substance abuse, yet Respondent testified that they were being treated for chronic pain but did not realize this. *Id.*

While I agree with the ALJ that Respondent lacked candor, and appreciate that she personally observed his testimony, I do so based on different evidence. First, during the initial interview on Feb. 28, 2010, Respondent told the investigators that he was operating a detox clinic and was using methadone to transfer his patients to Suboxone. Tr. 43. Yet later that day, he claimed that he was prescribing methadone only for pain and had previously misspoken. *Id.* at 54–55. Second, when confronted with evidence that several of his methadone patients had come to him from methadone clinics, he attempted to justify his unlawful prescribing of methadone to them by claiming that the patients had actually gone to these clinics to treat their pain. *See* Tr. 695–96 (testimony regarding JB); *id.* at 699 (testimony regarding JC); *id.* at 716–17 (testimony regarding KI); *id.* at 728 (testimony regarding TP). This factor thus also supports revocation.

recognized, this Agency also "properly consider[s]" a registrant's admission of fault and his candor during the investigation and hearing to be "important factors" in the public interest determination. *See Hoxie*, 419 F.3d at 483.

The ALJ found, and the record supports the conclusion, that Respondent eventually ceased prescribing methadone for maintenance and detoxification purposes. ALJ at 49–50. The record generally supports the conclusion that Respondent stopped writing controlled substance prescriptions which did not include his registration number, as required by DEA regulations. However, as found above, in September 2010, Respondent issued a further Adderall prescription to JB and did not include his registration number.

The ALJ further noted that Respondent expressed remorse for some of his wrongdoing. ALJ at 50. However, while Respondent maintained that he had mistakenly issued the post-suspension prescriptions, and "would never do anything to violate an order," Tr. 509, his testimony is belied by the evidence that upon being served with the Immediate Suspension Order, he stated his intention not to comply with it. Indeed, his testimony is patently disingenuous, given that he wrote the prescriptions only two days after he was served with the Order. In short, Respondent's conduct manifests a deliberate and egregious disregard for his obligations as a DEA registrant.

Finally, while the ALJ noted that "Respondent testified passionately about the prevalence of narcotic abuse in Red Bay and his want to eliminate it," she further concluded that he "likely facilitated some of that abuse." *Id.* The ALJ's conclusion is well supported. Indeed, as found above, in numerous instances, Respondent issued controlled-substance prescriptions for the purported purpose of treating a patient's pain, even though he recorded in the patient's chart that the patient had "NO" pain and/or failed to make the findings required under the State's Guidelines to properly diagnose the patient. Moreover, during one of the interviews by the Investigators, Respondent admitted that he did not follow the State's Guidelines. Tr. 220. Respondent, however, offered no evidence that he now intends to comply with the Guidelines.

Accordingly, I hold that Respondent has not rebutted the Government's *prima facie* case. I will therefore order that Respondent's registration be revoked and that any pending application be denied. For the same reasons that led me to order the

Immediate Suspension of Respondent's registration, I conclude that the public interest requires that this Order be effective immediately.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a)(4), as well as by 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, BC1701184, and Identification Number XC1701184, issued to Morris W. Cochran, M.D., be, and they hereby are, revoked. I further order that any application for renewal or modification of such registration be, and it hereby is, denied. This Order is effective immediately.

Dated: March 16, 2012.

Michele M. Leonhart,
Administrator.

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DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-NEW]

Agency Information Collection Agencies: New Collection; Comments Requested

ACTION: 60-Day notice of information collection under review.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 25, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Ron Malega, 202-353-0487, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, 810 Seventh Street NW., Washington DC 20531 or Ronald.Malega@usdoj.gov.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 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 submission of responses.

Overview of this information:

1. *Type of information collection:* New data collection, Census of Problem-Solving Courts (CPSC), 2012.
2. *The title of the form/collection:* Census of Problem-Solving Courts or CPSC 2012.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form labels are CPSC, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Problem-solving courts at all levels of government. Abstract: The Bureau of Justice Statistics (BJS) proposes to implement a Census of Problem-Solving Courts (CPSC). Problem-solving courts target defendants who have ongoing social and/or psychological conditions that underlie their repeated contact with the criminal justice system. Most of the existing information about problem-solving courts (PSC) consists of court evaluations or outcome analyses. No prior census of these courts has been conducted to date despite the substantial proliferation of such courts during the past thirty years. Hence, the CPSC will allow BJS to provide national level information on problem-solving courts and case processing statistics. The CPSC is designed to provide BJS and other interested stakeholders with the first systematic empirical information on problem-solving courts. A goal of the census is to obtain information on problem-solving court operations, staffing, administration, and to generate accurate and reliable aggregate statistics on offenders who enter problem-solving court programs. Information will be collected for the most recent 12-month period in 2012.

The CPSC will collect information on the following categories:

- a. Court Operations and Staffing
 - i. Provide the number of problem-solving courts by type (e.g., mental health, drug, etc.),
 - ii. Determine PSCs level of government operations (e.g., local, state, etc.), court jurisdiction (e.g., limited, general, other) and intake of felony, misdemeanor, or status offenses,
 - iii. Court session frequency,
 - iv. Number of full- and part-time staff members currently employed by PSCs.
- b. Funding: Types and prevalence of PSC funding (e.g., local government budget, state budget, etc.)
- c. Commonly Used Services:
 - i. Count the types and prevalence of offender/victim services (e.g., anger management), counseling or treatment services (e.g., outpatient mental health treatment), and general supportive services (e.g., life skills)
- d. Participant participation
 - i. Participant inclusionary and exclusionary factors,
 - ii. Participant point of entry (e.g. pre-plea, post-plea/pre-sentence, etc.)
 - iii. Case closure: Benefits of successful participation in PSC program (e.g., case dismissal).
- e. Capacity and Enrollment
 - i. Design Capacity: Total number of active participants PSC can manage at any one time,
 - ii. Current number of active participants.
- f. Data Collection Practices:
 - i. Use of automated case management systems,
 - ii. Ability to share case management information with external agencies,
 - iii. PSCs' ability to track participant outcomes after graduation.
- g. Selected PSC Aggregate Participant information:
 - i. Number of offenders admitted for participation in PSC over a 12 month period,
 - ii. Number of offender participants exiting program over a 12 month period, including type of exit (e.g., successful program completion),
 - iii. Percentage of participants by gender over a 12 month period,
 - iv. Percentage of participants by race/ethnicity over a 12 month period.

5. *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* Estimates suggest 3,800 respondents will take part in the Census of Problem-Solving Courts 2012. Based on pilot testing and in-house review, the average (mean) burden for each completed survey is expected to be approximately 30 minutes per respondent. The estimated range of burden for respondents is expected to be between 15 minutes to 1 hour for completion. The following factors were considered when creating the burden estimate: the estimated total number of

problem-solving courts, the ability of problem-solving courts to access data, and the type of data capabilities generally found in the field. BJS estimates that nearly all of the approximately 3,800 respondents will fully complete the questionnaire.

6. *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this collection is 1,918 hours. It is estimated that respondents will take 30 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to 1,900 hours (3,800 respondents × 0.5 hours = 1,900 hours). In addition to respondents' burden of completing the census questionnaire, the CPSC requires voluntary participation from State Points of Contacts (SPOCs) to develop an initial list of problem-solving court docket contact information. While SPOCs will not complete actual questionnaires, their effort is a necessary first step in identifying the universe of problem-solving courts nationwide. BJS estimates it will take, on average, 20 minutes for each SPOC to provide the requested list of problem-solving courts in their respective state. There are 54 SPOCS (including DC, Guam, Virgin Islands, and Puerto Rico). The total time burden is 18 hours (54 SPOCS × 20 minutes = 18 hours). Therefore the total estimated burden for the entire CPSC 2012 project is 1,918 hours (1,900 hours for respondents + 18 hours for SPOCS = 1,918 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

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DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0111]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested; National Crime Victimization Survey (NCVS)

ACTION: 60-day Notice of Information Collection Under Review.