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WHEN: Tuesday, October 22, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Relating to Afshin (''Sean'') Naghibi

In the Matter of:

Afshin (''Sean'') Naghibi, 9426 Blessing Drive, Pleasanton, CA 94588, Respondent.

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), has notified Afshin (''Sean'') Naghibi of Pleasanton, California (''Naghibi''), of its intention to initiate an administrative proceeding against Naghibi pursuant to Section 766.3 of the Export Administration Regulations (the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the ''Act''),[2] through the issuance of a Proposed Charging Letter to Naghibi that alleges that Naghibi committed seventeen violations of the Regulations. Specifically, the charges are:

Charge 1 15 CFR 764.2(d)—Conspiracy

Beginning at least in November 2008 and continuing through in or about April 2010, Naghibi conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations. The purpose of the conspiracy was to bring about the export of ultrasound equipment and related accessories, items designated as EAR99[3] and valued at $1,468,950, by United Medical Instruments, Inc., a San Jose, California company, from the United States through Belgium, to Iran. The items were also subject to the Iranian Transaction Regulations (''ITR'')[4] maintained by the Department of the Treasury's Office of Foreign Assets Control (''OFAC''). Pursuant to Section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transactions described herein.

Specifically, in furtherance of the conspiracy, Naghibi, through UMI, for which Naghibi served as Chief Operational Officer and International Sales Manager, participated in a scheme to export medical equipment to Iran without a license. The object of this conspiracy remained the same, even though the conspirators changed their method of accomplishing this objective during the related U.S. Government investigation. In furtherance of the conspiracy, Naghibi and Taban Saar, an Iranian individual, asked Bart Coppers (''Coppers''), who is the owner and President of Belgian company BVBA Coppers (''BVBA'') and administrator and part owner of Belgian company Raytec SA (''Raytec''), to ship ultrasound units for UMI to Taban Saar in Iran for a small commission, according to statements made by Coppers during a Department of Commerce Post-Shipment Verification of Raytec. Coppers reported to the Department of Commerce that he met individuals representing UMI and Taban Saar at a conference in the United Arab Emirates, and that UMI and Taban Saar indicated at that time to Coppers that they had a problem selling directly from the United States to Iran.

Between November 2008 and February 2009, in furtherance of the conspiracy, Asghar Naderpour a/k/a Nader Naderpour (''Naderpour''), an Iranian individual affiliated with Taban Saar, used a personal email account and sent purchase orders directly to Naghibi of UMI for medical equipment. To assist UMI in filling these orders, Naghibi arranged to transship the exports through BVBA in Belgium to Taban Saar in Iran. At times, UMI included in its order forms the note ''BVBA c/o Taban,'' which indicated that the shipment was going through the Belgian company BVBA for Iranian co-conspirator Taban Saar. Naghibi, through UMI, also attempted to conceal Taban Saar's address by only identifying the Iranian company's street address on shipping and invoice documents. On such documents, UMI did not include the country of ultimate destination, which was Iran. The street address, however, was the same one in Iran that was listed on Taban Saar's Web site. On the same invoices and shipping documents, UMI listed Taban Saar's Iranian phone number.

On February 13, 2009, OFAC issued an administrative subpoena to UMI seeking documents and information related to certain funds transfers, dated between January 3, 2007 and June 30, 2008, that appeared to be in violation of the ITR. Despite the OFAC subpoena, from February 2009 until April 2009, for approximately two and a half months, Naghibi, on behalf of UMI, continued to take orders directly from Naderpour from Naderpour's personal email account, and BVBA continued to transship the ordered items through Belgium to Iran once it received them from UMI. During this period, however, UMI again took steps to attempt to conceal the fact that it knew the exports were intended for Iran. In furtherance of the scheme, in an email dated March 13, 2009, the Iranian party Naderpour told Coppers, ''UMI requested me to ask you to send an email to them with the following text. '*The coppers bvba [sic] sell all ultrasound machines to the belgium [sic] market which order to UMI company in the USA.''* (Emphasis in original.) With this email, Taban Saar, at the direction of UMI and Naghibi, attempted to create a written record suggesting that UMI was unaware that the orders actually were intended for Iran. Furthermore, as the International Sales Manager, Naghibi knew or had reason to know that transshipments to Iran were prohibited because, *inter alia,* UMI began including a specific notice of the prohibition on its shipping and invoice documents beginning in February 2009. Specifically, on its invoices, UMI included a statement to its customers that the shipped items were intended for the ''ship to'' country and that, ''[d]iversion contrary to US law prohibited. US law currently prohibits sale of products without appropriate export license to the following countries: Iran, Lybia [sic], Syria, N. Korea, Cuba and Sudan.''

Additionally, in furtherance of the conspiracy, from August 2009 to April 2010, the conspirators changed the structure of the scheme by using Raytec to place orders with UMI rather than BVBA to further conceal the fact that Naghibi and UMI knew that the items were intended for Iran. Naghibi no longer took orders directly from Taban Saar from Naderpour's personal email account. Instead, Naghibi took steps to conceal the business relationship between Taban Saar and UMI by having Taban Saar use Coppers of BVBA and Raytec to place orders with and make payments to UMI on behalf of Taban Saar. Specifically, Iranian purchaser Taban Saar would provide order requests to Coppers in his capacity with BVBA or

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2013). The violations alleged occurred in 2008–2010. The Regulations governing the violations at issue are found in the 2008–2010 versions of the Code of Federal Regulations, 15 CFR Parts 730–774 (2008–2010). The 2013 Regulations govern the procedural aspects of this case.

[2] 50 U.S.C. app. §§ 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (2006 & Supp. IV 2010).

[3] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2008–2010).

[4] 31 CFR Part 560 (2008–2010).

Raytec, and the Belgian companies would then issue purchase orders to UMI on Taban Saar's behalf. At times, Taban Saar used the same arrangement to pay UMI, and would send payment to BVBA or Raytec, which then transferred Taban Saar's funds to UMI. To further conceal the fact that it knew the items were intended for Iran, UMI and Naghibi also had both BVBA and Raytec sign a ''Customer Assurance Letter'' that stated that the Belgian companies understood that: 1) ''[a]ll products delivered . . . by United Medical Instruments (UMI) are for distribution exclusively in Belgium;'' 2) prior to any reexport, the customer will notify UMI and assure that the company ''will abide by the Export Administration Regulations as issued by the United States Government, Bureau of Industry and Security;'' and 3) ''[s]pecific countries to which no shipment will be made are Cuba, Iran, North Korea, Sudan and Syria.''

Despite efforts to conceal UMI's and Naghibi's involvement with the Iranian transactions, in furtherance of the conspiracy, Naderpour of Taban Saar and Naghibi of UMI continued to communicate regarding the purchase orders and payments. In an email dated December 17, 2009, Naderpour stated, ''UMI has not received the P/O yet,'' and asked Coppers to ''send again.'' In another email communication, Coppers referenced receiving a bank transfer from Naderpour for payment for items ordered by Taban Saar, via Belgium, from UMI. Because there was a discrepancy between the amount of the wire transfer and the amount listed on the purchase order, Coppers asked Naderpour to confirm the amount with Naghibi on Coppers's behalf, stating, ''Please, ask Mr. Sean [Naghibi of UMI] if 12000 USD is oke [sic]. I can phone to the bank tomorrow and sent [sic] the wire transfer.'' In addition, in an email dated January 8, 2010, Coppers asked whether Naderpour had spoken to Sean Naghibi of UMI regarding ''our relation between Coppers BVBA and UMI.'' Naderpour responded in an email dated January 14, 2010, stating, ''I talked to Sean [Naghibi] [f]or coppers [sic] business with UMI'' and stated, ''No problem Go ahead with him.'' These emails indicate that co-conspirators Taban Saar and Naghibi, on behalf of UMI, coordinated to ensure that shipments and payments were handled pursuant to their instructions through the Belgian middle parties.

At all times during the conspiracy, Naghibi knew or had reason to know that the transactions required a license. In 2003, UMI had applied for an OFAC license for medical equipment, but OFAC sent a letter stating that the application was deficient because UMI had not submitted, among other things, the full name and addresses of all parties involved in the transaction and their roles and a description of all items to be exported. The 2003 application to OFAC was signed by Naghibi, who identified himself as the Chief Operational Officer for UMI. Later, on July 26, 2007, BIS's Office of Export Enforcement conducted an outreach visit to UMI and spoke with Chief Financial Officer Naghibi and UMI's office manager regarding transactions with Iran. Although UMI's representatives claimed limited knowledge of the Regulations, they acknowledged familiarity with the Shipper's Export Declaration. In an email dated August 7, 2007, following the outreach visit, Naghibi stated to an OEE agent that he was aware that ''none of our shipments can eventually end up in a boycotted country.''

In so doing, Naghibi committed one violation of Section 764.2(d) of the Regulations.

Charges 2–17 15 CFR 764.2(h)—Evasion of the Regulations by Selling Medical Equipment to Iran Without a License

On or about November 28, 2008, through in or about April 3, 2010, Naghibi took actions to evade the Regulation. Specifically, Naghibi, as Chief Operational Officer and International Sales Manager of U.S. company UMI, exported without a license from the United States to Iran, through Belgium, ultrasound equipment and related accessories, items designated as EAR99 [5] and valued at $1,468,950, by UMI, from the United States through Belgium, to Iran. The items were also subject to the Iranian Transaction Regulations (''ITR'') [6] maintained by the Department of the Treasury's Office of Foreign Assets Control (''OFAC''). Pursuant to Section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein.

Specifically, Naghibi, acting on behalf of UMI, took actions to evade the Regulations by asking Bart Coppers of Belgian companies BVBA and Raytec to ship ultrasound units for UMI to Iran for a small commission, according to statements made by Coppers during a Department of Commerce Post-Shipment Verification of Raytec. Coppers reported to the Department of Commerce that he met individuals representing UMI and Taban Saar at a conference in the United Arab Emirates, and that UMI and Taban Saar indicated at that time to Coppers that they had a problem selling directly from the United States to Iran.

Using the arrangement agreed to with Coppers, between November 2008 and February 2009, Naghibi, through UMI, sold medical equipment directly to Asghar Naderpour a/k/a Nader Naderpour (''Naderpour''), an Iranian affiliated with Taban Saar, which was exported through BVBA in Belgium, to Iran. Later, from August 2009 to April 2010, Naghibi, through UMI, continued to sell to Iran but changed the structure of the transaction to conceal the fact that UMI and Naghibi knew the ultimate destination of the items. Naghibi and UMI took steps to conceal the business relationship between Taban Saar and UMI by having Taban Saar use Coppers of BVBA and Raytec to place orders with and make payments to UMI. Specifically, Naghibi and UMI received order requests from Raytec and sold ultrasound equipment and accessories to Coppers in his capacity with BVBA or Raytec, which acted on behalf of Iranian purchaser Taban Saar. At times, Taban Saar used the same arrangement to pay UMI, and would send payment to BVBA or Raytec, which then transferred the funds provided by Taban Saar to UMI.

In so doing, Naghibi committed sixteen violations of Section 764.2(h) of the Regulations.

Whereas, BIS and Naghibi have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement; *It is therefore ordered:*

First, Naghibi shall be assessed a civil penalty in the amount of $800,000. Naghibi shall pay the U.S. Department of Commerce in six installments of: $7,000 not later than October 31, 2013; $6,000 not later than January 31, 2014; $6,000 not later than April 30, 2014; $6,000 not later than July 31, 2014; $6,000 not later than October 31, 2014; and $6,000 not later than January 30, 2015. Payment shall be made in the manner specified in the attached instructions. If any of the six installment payments is not fully and timely made, any remaining scheduled installment payments and any suspended penalty may become due and owing immediately. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining $763,000 shall be suspended for a period of two years from the date of the Order, and thereafter shall be waived, provided that during this two-year payment probationary period under the Order, Naghibi has committed no violation of the Act, or any regulation, order, license or authorization issued thereunder and has made full and timely payment of $37,000 as set forth above.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due dates specified herein, Naghibi will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

[5] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2008–2010).

[6] 31 CFR Part 560 (2008–2010).

Third, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Naghibi.

Fourth, that for a period of six (6) years from the date of this Order, Naghibi, with a last known address of 9426 Blessing Drive, Pleasanton, California 94588, and when acting for or on his behalf, his successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fifth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Sixth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Seventh, Naghibi shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Naghibi's testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

Eighth, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

Ninth, that this Order shall be served on Naghibi, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 26th day of September, 2013.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2013–24402 Filed 10–7–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Making Denial of Export Privileges Applicable to a Related Person

In the Matter of:

Chan Heep Loong, 95 Havelock Road, #14–583, Singapore, 160095 SG, San Jose, CA 95131; Respondent.

Tysonic Enterprises, 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG; Related Person.

Pursuant to Section 766.23 of the Export Administration Regulations (''EAR'' or ''Regulations''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the denial order that issued against Respondent Chan Heep Loong (''Loong'') on July 21, 2013, and was published in the **Federal Register** on July 29, 2013, and will remain in effect until July 29, 2023 (hereinafter the ''Denial Order''), applicable to the following entity as a person related to Loong:

Tysonic Enterprises, 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG.

I. Background

A. The Denial Order

The Denial Order issued as part of the Final Decision and Order issued by the Under Secretary of Commerce for Industry and Security (''Under Secretary'') concluding a formal BIS administrative proceeding against Loong. *In the Matter of Chan Heep Loong,* 10–BIS–0002 (Final Decision and Order dated July 21, 2013, and published in the **Federal Register** on July 29, 2013 (78 FR 45497)). The Under Secretary affirmed the findings and conclusions contained in the Recommended Decision and Order issued by an Administrative Law Judge (''ALJ''), in which the ALJ found Loong in default, found the facts to be as alleged in the Charging Letter issued against Loong, and concluded that

[1] The Regulations currently are codified at 15 CFR Parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the ''Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of Notice of August 8, 2013 (78 FR 49107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 and Supp. IV 2010)).

Loong had committed the three (3) violations alleged in the Charging Letter.

BIS served the Charging Letter on Loong at his last known address in Singapore. As described in the Final Decision and Order issued by the Under Secretary, BIS engaged in communications with Loong through his representative, while never receiving an answer to the charges. Thus, BIS moved for a default order against Loong.

As alleged in the Charging Letter, determined by the ALJ, and affirmed by the Under Secretary, Loong engaged in the following conduct in violation of the Regulations:

Charge 1 15 CFR 764.2(b)—Causing an Export to Iran Without Authorization

From on or about February 14, 2005, through on or about February 24, 2005, Loong caused the doing of an act prohibited by the Regulations. Specifically, Loong caused the export from the United States to Iran, via transshipment through Singapore, of GPS engines, items subject to the Regulations and the Iranian Transaction Regulations [2] (''ITR'') of the Department of the Treasury's Office of Foreign Assets Control (''OFAC''), without the required U.S. Government authorization. Specifically, Loong, in his capacity as Owner/Operator of Tysonic Enterprises (''Tysonic''), of Singapore, ordered and/or bought the GPS engines, items that are classified under Export Control Classification Number (''ECCN'') 7A994 and are controlled for anti-terrorism reasons, from a U.S. company without informing that company of the intended final destination of the items. Loong then instructed the U.S. company to ship the items from the United States to Tysonic in Singapore, and, following arrival in Singapore, the items were then forwarded to Iran. Pursuant to Section 734.2(b)(6) of the Regulations, the export of an item from the United States to a second country intended for transshipment to a third country is deemed to be an export to that third country. Under Section 746.7 of the Regulations, a license from either BIS or OFAC is required to export to Iran items subject to control for anti-terrorism reasons, including items listed under ECCN 7A994. Neither BIS nor OFAC authorized the export of the items described above to Iran. In engaging in the activity described herein, Loong committed one violation of Section 764.2(b) of the Regulations.

Charge 2 15 CFR 764.2(b)—Causing an Export to Iran Without Authorization

From on or about April 22, 2005, through on or about May 12, 2005, Loong caused the doing of an act prohibited by the Regulations. Specifically, Loong caused the export from the United States to Iran, via transshipment through Singapore, of a peak power meter, an item subject to the Regulations and the Iranian Transaction Regulations (''ITR'') of the Department of the Treasury's Office of Foreign Assets Control (''OFAC''). without the required U.S. Government authorization. Specifically, Loong, in his capacity as Owner/Operator of Tysonic, ordered and/or bought the peak power meter, an item classified under ECCN 3A992 and is controlled for anti-terrorism reasons, from a U.S. company, from a U.S. company. Loong then instructed the U.S. company to ship the items from the United States to Tysonic in Singapore, and, following arrival in Singapore, the items were then forwarded to Iran. Pursuant to Section 734.2(b)(6) of the Regulations, the export of an item from the United States to a second country intended for transshipment to a third country is deemed to be an export to that third country. Under Section 746.7 of the Regulations, a license from either BIS or OFAC is required to export to Iran items subject to control for anti-terrorism reasons, including items listed under ECCN 3A992. Neither BIS nor OFAC authorized the export of the items described above to Iran. In engaging in the activity described herein, Loong committed one violation of Section 764.2(b) of the Regulations.

Charge 3 15 CFR § 764.2(k)—Violation of Terms of an Order Temporarily Denying Export Privileges

On or about August 29, 2006, Loong engaged in conduct prohibited by an Order issued by the Assistant Secretary of Commerce for Export Enforcement on April 12, 2006 pursuant to Section 766.24 of the Regulations, and effective upon publication in the **Federal Register** on April 19, 2006, temporarily denying the export privileges of Loong and Tysonic for 180 days (71 FR 20074, April 19, 2006) (the ''TDO''). Under the terms of the TDO, Loong was prohibited from ''directly or indirectly, participat[ing] in any way in any transaction involving any [item] exported or to be exported from the United States that is subject to the Regulations, or in a[n]y other activity subject to the Regulations, or in any other activity subject to the Regulations, including . . . [c]arrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations.'' On or about August 29, 2006, Loong, acting through Rosen Enterprises, ordered and/or bought 30 inverters, items subject to the EAR and designated as EAR99, from a company located in the United States for export from the United States. Rosen Enterprises is owned and operated by Loong and co-located with Tysonic in Singapore. On or about August 29, 2006, the 30 inverters were exported from the United States to Singapore. The TDO continued in force at the time of the aforementioned actions taken by Loong. In engaging in the conduct described herein, Loong committed one violation of Section 764.2(k) of the Regulations.

As noted in Final Decision and Order, the ''ALJ also recommended that the Under Secretary deny Loong's export privileges for a period of ten years, citing, inter alia, Loong's 'clear disregard for the Regulations and U.S. export control law, including the long-standing U.S. trade embargo against Iran and the TDO issued against him in April 2006.''' Final Decision and Order, at 45,498 (quoting Recommended Decision and Order at 8).

The Under Secretary agreed with this recommendation and imposed the Denial Order given, *inter alia,* the nature and number of the violations and the importance of deterring Loong and others from acting to evade the Regulations and otherwise knowingly violate the Regulations. *Id.*

B. Related Person's Notice Letter

This matter is now before me upon BIS's request to add Tysonic Enterprises (''Tysonic'') to the Denial Order as a related person to Loong.[3]

Pursuant to the Regulations, BIS notified Tysonic of its intent to add Tysonic as a person related to Loong by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, in light of Loong's position as owner/operator of Tysonic. This notice was provided by letter on September 10, 2013, in accordance with Sections 766.5(b) and 766.23(b) of the Regulations.

Tysonic never responded.

II. Application of Section 766.23 (Related Persons)

A. Legal Standard

Section 766.23(a) of the Regulations provides, in pertinent part, that:

> In order to prevent evasion, certain types of orders under [Part 766] may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BIS.

15 CFR 766.23(a). Thus, a denial order may be made applicable to related persons, by adding them to the denial order at issue, in order to prevent evasion of the order. *Id.*

B. Findings

Based on the record here, I find that Tysonic is a related person to Loong and that Tysonic should be added to the Denial Order in order to prevent its

[2] 31 CFR Part 560 (2005).

[3] I have been designated by the Under Secretary as the authorized official to consider BIS's request under Section 766.23 of the Regulations. *See* 15 CFR 766.23(b).

evasion. Tysonic is owned and operated by Loong.

In addition, Tysonic was involved in two of the transactions and violations that led to the issuance of the Denial Order against Loong. As alleged in the violations set forth in Charges 1 and 2 of the Charging Letter, determined by the ALJ, and affirmed by the Under Secretary, Loong, in his capacity as owner and operator of Tysonic, ordered and/or bought GPS engines and peak power meter from the United States and had the items shipped to Tysonic in Singapore. Following the arrival of the items in Singapore, the items were then shipped on to Iran. As a result of these transactions, on April 12, 2006, BIS temporarily denied the export privileges of both Loong and Tysonic for a period of 180 days. *In the matter of Tysonic Enterprises and Chan Heep Loong,* 71 FR 20074 (April 19, 2006).

Furthermore, while subject to this temporary denial order (''TDO''), Loong continued to procure items subject to the EAR from the United States, in clear violation of the terms of the TDO, and did so by evasively using another company, Rosen Enterprises, which he also owned and operated and which was co-located with Tysonic. *See* Charge 3. Thus, Loong has already demonstrated his willingness to use companies related to him to contravene and evade a denial order issued against him.

Based on the foregoing and the record as a whole in this matter, I find that Tysonic is a person related to Loong by ''ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' pursuant to Section 766.23 of the Regulations, and that the Denial Order against Loong, which will remain in effect until December July 29, 2023, should be made applicable to Tysonic in order to prevent evasion of that order.

III. Order

It is therefore ordered:

First, that from the date this Order is published in the **Federal Register**, until July 29, 2023, Tysonic Enterprises, located at 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG, and its successors and assigns, and when acting for or on its behalf, its directors, officers, employees, representatives, or agents (hereinafter referred to as ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register.**

This Order is effective upon publication in the **Federal Register** and shall remain in effect until July 29, 2023.

Entered this 30th day of September, 2013.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2013–24401 Filed 10–7–13; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of:

Timothy Gormley, Inmate Number—68687–066, USP Lewisburg, US Penitentiary, P.O. Box 1000, Lewisburg, PA 17837.

On January 17, 2013, in the U.S. District Court, Eastern District of Pennsylvania, Timothy Gormley (''Gormley''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, Gormley was convicted on five counts of violating IEEPA by engaging in transactions relating to exporting amplifiers to China and India without obtaining the required licenses. Gormley was sentenced to 42 months of imprisonment, five years of supervised release, a $500 assessment and a $1,000 criminal fine.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic

Continued

part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Gormley's conviction for violating the IEEPA, and have provided notice and an opportunity for Gormley to make a written submission to BIS, as provided in Section 766.25 of the Regulations. Through his defense counsel, Gormley has indicated that he does not intend to contest BIS's decision to deny his export privileges under the Regulations.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Gormley's export privileges under the Regulations for a period of 10 years from the date of Gormley's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Gormley had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until January 17, 2023, Timothy Gormley, with a last known address at: Inmate Number #68687–066, USP Lewisburg, US Penitentiary, P.O. Box 1000, Lewisburg, PA 17837, and when acting for or on behalf of Gormley, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Gormley by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 17, 2023.

VI. In accordance with Part 756 of the Regulations, Gormley may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Gormley. This Order shall be published in the **Federal Register**.

Issued this 26th day of September, 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–24399 Filed 10–7–13; 8:45 am]

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Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–550–000; RP13–1362–000]

ONEOK, Inc.; ONE Gas, Inc.; Notice of Application and Petition

Take notice that on September 27, 2013, ONEOK, Inc. (ONEOK) and ONE Gas, Inc. (ONE Gas), 100 West Fifth Street, Tulsa, Oklahoma 74103, jointly filed in Docket No. CP13–550–000 an application pursuant to sections 7(b), 7(c), and 7(f) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations for authorizations required to implement the transfer certain natural gas distribution assets located in Kansas, Oklahoma, and Texas from ONEOK to

ONE Gas pursuant to a corporate reorganization. ONEOK's natural gas distribution operating divisions to be transferred are Oklahoma Natural Gas Company, Texas Gas Service, and Kansas Gas Service. In the same document, ONEOK and ONE Gas jointly petition in Docket No. RP13–1362–000, pursuant to section 385.207(a)(5) of the Commission's rules of practice and procedure, for the grant of temporary waiver of the Commission's capacity release rules.

The authorizations requested by the applicants include: (1) Authorization pursuant to Section 7(b) of the NGA for ONEOK to abandon by transfer: (a) its Part 284 authority for interruptible interstate service; (b) its Section 7(c) limited jurisdiction certificate to transport natural gas on a no-fee basis; and (c) its Section 7(f) service area determination; and contemporaneously with such abandonment, (2) the necessary authorizations for ONE Gas to perform the same services as ONEOK's successor in interest, including: (a) Part 284 authority for interruptible interstate service; (b) a limited jurisdiction certificate pursuant to Section 7(c) of the NGA for ONE Gas to transport natural gas pursuant to a No-Fee Gas Exchange Agreement; (c) a limited service area determination pursuant to Section 7(f) of the NGA.

In addition, ONE Gas requests: (1) Commission determination that the limited jurisdiction certificate will not affect the non-jurisdictional status of the remainder of the natural gas distribution facilities it shall receive from ONEOK pursuant to the reorganization; and (2) Commission waiver of the requirements of part 154 of the Commission's regulations for as long as no fee is charged in connection with the No-Fee Exchange Agreement. Applicants also petition for a temporary waiver of the Commission's capacity release rules in order to permit the release of pipeline transportation service agreements from ONEOK to ONE Gas as necessary to implement orderly corporate restructuring and reorganization. Applicants request that the Commission consider the application and petition together and grant the authorizations, effective upon the closing of the transaction between ONEOK and ONE Gas, in an order issued by November 21, 2013.

Any questions regarding the joint application should be directed to Vicky C. Benedict, Vice President and Associate General Counsel, 100 West Fifth Street, Tulsa, Oklahoma 74103, by phone at (918) 588–7949 or by email at *Vicky.Benedict@oneok.com;* or Lawrence G. Acker, Counsel for ONEOK, Inc. and ONE Gas, Inc., Van Ness Feldman, LLP, 1050 Thomas Jefferson Street NW., 7th Floor, Washington, DC 20007, by phone at (202) 298–1915, or by email at *lga@vnf.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit an original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: October 16, 2013.

Dated: October 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–24395 Filed 10–7–13; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No PF13–7–000]

Columbia Gas Transmission, LLC; Notice of Additional Public Scoping Meetings for the Planned East Side Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will hold additional public scoping meetings in Chester County, Pennsylvania and Gloucester County, New Jersey to receive comments on the alternative pipeline routes under consideration for the Line 1278 Loop and Line 10345 Loop of the Columbia Gas Transmission, LLC's (Columbia) planned East Side Expansion Project (Project). The dates, times, and locations of the meetings are detailed in the table below.

FEDERAL ENERGY REGULATORY COMMISSION PUBLIC SCOPING MEETINGS EAST SIDE EXPANSION PROJECT

[FERC Docket No. PF13–7–000]

October 15, 2013, 7:00 PM*	Woolwich Township Hall, 120 Village Green Drive, Swedesboro, NJ 08085.
October 16, 2013, 7:00 PM*	Wyndham Garden Exton Valley Forge, 815 North Pottstown Pike, Exton, PA. 19341

*Columbia representatives will be available starting at 6:30 to answer questions interested parties may have about the project.

On March 8, 2013 the Commission's staff began a pre-filing environmental review of Columbia's East Side Expansion Project. On June 6, 2013 the Commission issued a *Notice of Intent To Prepare an Environmental Assessment, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings.* Scoping meetings were held on June 18, 2013 in Chester County, Pennsylvania and on June 19, 2013 in Gloucester County, New Jersey. The pre-filing environmental review is ongoing and to date, Columbia has completed surveys of potentially affected lands and has prepared information required for the Commission's environmental review of the project. Based on its review of the project, comments provided by staff, and public concerns expressed about the project, Columbia is considering numerous project alternatives including pipeline route variations in Pennsylvania and an alternative pipeline route in New Jersey. Implementing an alternative could affect the environment, affect new landowners, and/or affect landowners differently than previously expected. To ensure that the public has an opportunity to comment on the alternatives being considered, staff has determined that additional public scoping meetings are necessary.

You have been identified as a landowner or an interested party that may be affected by the alternatives being considered. Information in this notice was prepared to familiarize you with Columbia's project, the Commission's environmental review process, how you can comment on the project, and stay informed about project developments.

In addition to commenting at a public scoping meeting, you may submit comments in writing. Further details on how to submit written comments are provided in the Public Participation section of this notice. Ultimately, your comments will help the Commission's staff with its environmental review of the project. The Commission will consider all comments submitted on or before October 31, 2013.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a Columbia representative may have already contacted you or may contact you in the near future about the acquisition of an easement to construct, operate, and maintain the planned facilities or request permission to perform environmental surveys on your property. Some landowners may not be contacted if the alternative across their property is found to be either not feasible or not environmentally preferable to other alternatives being considered. If the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Summary of the Planned Project

Columbia plans to expand and improve its existing natural gas transmission pipeline system to increase operational flexibility and efficiency, provide bi-directional flow capabilities, and an additional 310,000 dekatherms per day of natural gas service to mid-Atlantic markets. Specifically, Columbia plans to construct, modify, install or abandon and replace, and operate certain natural gas transmission pipeline facilities. The general location of the project facilities is shown in Appendix 1.[1] This notice addresses alternative pipeline routes for two of the proposed facilities: the Line 1278 Loop in Chester County, Pennsylvania and the Line 10345 Loop in Gloucester County, New Jersey.

The Line 1278 Loop would involve constructing and operating approximately 8.9 miles of 26-inch-diameter natural gas transmission pipeline, generally running parallel to the existing Line 1278 pipeline in Chester County, Pennsylvania.

The Line 10345 Loop would involve constructing and operating approximately 7.4 miles of 20-inch-diameter natural gas transmission pipeline, generally running parallel to the existing 10345 pipeline in Gloucester County, New Jersey.

Project Alternatives

The following alternatives are being considered by Columbia. Staff is also considering these alternatives in its pre-filing environmental review of Columbia's project. Illustrations of these alternatives are provided in Appendix 1A.

• *Blakely Road-Rock Raymond Alternatives for the Line 1278 Loop:* These alternatives (5C and 5D) are variations of the Route 10A Alternative considered in the Sparrows Point LNG Terminal and Pipeline Project Final Environmental Impact Statement (CP07–63–000).

Alternative 5C would depart from the planned Line 1278 pipeline route in a wooded area behind the residences at the end of Helm Way, progressing southeast through a wooded area approximately 0.2 mile to the back side of the residential lots at the end of Blakely Road, then turning south for approximately 0.2 mile. The route would then turn westward passsing behind two residential subdivisions for approximately 0.6 mile, and then rejoin the Line 1278 pipeline route.

Alternative 5D would follow the planned route 0.1 mile further south than Alternative 5C before deviating southeastward to the property lines behind the residences at the end of Blakely Road. Alternative 5D would then follow a route similar to Alternative 5C until deviating to the southeast to Highway 282, then parallel the west side of Highway 282. This route would cross Highway 30 parallel to Highway 282. The route would then turn west paralleling Highway 30 to Rock Raymond Road where it would turn south to rejoin the Line 1278 pipeline route.

• *Lloyd Avenue Alternative for the Line 1278 Loop:* Beginning at the intersection of Rock Raymond Road and Highway 30, this route alternative would follow Rock Raymond Road, use a horizontal directional drill to cross lands east and west of Lloyd Avenue, and then follow Veteran's Drive before rejoining the Line 1278 pipeline route.

• *Oldman's Creek Road Alternative for the Line 10345 Loop:* This alternative would follow the Center Square Road route until the intersection of Center Square Road and Pedricktown Road. At this point, the alternative route would parallel the north side of Pedricktown Road in a southwesterly direction for about 0.7 mile to its intersection with Highway 602 (variously called Harrisonville Road, Pedricktown-Harrisonville Road, and Oldmans Creek Road). At this intersection, the route would generally parallel Highway 602 for about 3.5 miles where it would turn cross country through farmland for about 2.0 miles, where it would turn to parallel the north side of the New Jersey Turnpike. The Oldmans Creek Road route would then parallel the New Jersey Turnpike for the last 1.5 miles to its terminus at the Swedesboro Station.

• *High Hill Road Alternative for the Line 10345 Loop:* This alternative would follow the Center Square Road route

[1] The appendices referenced in this notice will not appear in the **Federal Register.** Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

until the intersection of Center Square Road and Pedricktown Road. At this point, the alternative route would turn northwest and parallel Pedricktown Road approximately 0.7 mile to its intersection with High Hill Road. The alternative would then parallel High Hill Road in a southeasterly direction for approximately 3.4 miles to its intersection with Auburn Avenue where it would turn southwest, paralleling Auburn Avenue for 0.5 mile before rejoining the Center Square Road route.

In its application, Columbia will propose a preferred pipeline route. The preferred route and alternatives considered will be reviewed by the Commission's staff. As described in the following section, the findings of the staff's review will be reported in an Environmental Assessment (EA) which will be issued for public review.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the alternative pipeline routes currently under consideration. We will consider all filed comments including any additional alternatives that are suggested during the preparation of the EA.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have contacted federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record, published and distributed to the public for comments. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before October 31, 2013.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF13–7–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Columbia files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF13–7). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–24393 Filed 10–7–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14550–000]

New England Hydropower Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 20, 2013, the New England Hydropower Company, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Hanover Pond Dam Project (proposed project) to be located on Quinnipiac River, near the city of Meriden, in New Haven County, Connecticut. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 25-foot-high, 430-foot-long earth embankment dam with four low-level, sluice gates and a 242-foot-long concrete spillway; (2) the existing 67.6-acre Hanover Pond with a storage capacity of 1,800 acre-feet at a normal operating elevation of about 87.9 feet above mean sea level; (3) an existing 175-foot-long, 4.0-foot-wide fish ladder; (4) a new 6-foot-high, 10.65-foot-wide hydraulically-powered sluice gate equipped with a new 14-foot-high, 12-foot-wide trashrack with 6-inch bar spacing; (5) a new 115-foot-long, 12-foot-diameter buried precast concrete penstock; (6) a new 50.7-foot-long, 10.65-foot wide Archimedes screw generator unit, with an installed capacity of 165 kilowatts; (7) a new 10-foot-high, 15-foot-long, 15.5-foot-wide concrete powerhouse containing a new gearbox, generator, and electrical controls; (8) a new 55-foot-long, 13.5-foot-wide tailrace; (9) a new 530-foot-long, 35-kilovolt above ground transmission line connecting the powerhouse to Connecticut Light and Power's distribution system; and (10) appurtenant facilities. The estimated annual generation of the proposed Hanover Pond Dam Project would be about 749 megawatt-hours. The existing Hanover Pond Dam, fish ladder, and property on both sides of the river are owned by the city of Meriden.

Applicant Contact: Mr. Michael C. Kerr, New England Hydropower Company, LLC, P.O. Box 5524, Beverly Farms, Massachusetts 01915; phone: (978) 360–2547.

FERC Contact: John Ramer; phone: (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14550) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 30, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–24396 Filed 10–7–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD13–4–000]

San Juan County Historical Society; Notice of Preliminary Determination of A Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On September 20, 2013, San Juan County Historical Society filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The 11 kW Silverton Mayflower Mill Hydro Project would utilize excess flow from the six-inch-diameter Arrastra Gulch Pipeline, which serves the Mayflower Mill treatment plant, located in San Juan County, Colorado.

Applicant Contact: Beverly Rich, San Juan County Historical Society, P.O. Box 154, Silverton, CO 81433, Phone No. (970) 387–5488.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A new ''y'' valve into the existing 3,850-foot-long, six-inch-diameter raw water Arrastra Gulch Pipeline just below the existing valve house; (2) a new 50-foot-long, six-inch diameter intake pipeline; (3) an existing powerhouse building, containing one new 11-kilowatt generating unit; (4) a new 50-foot-long, eight-inch diameter discharge pipeline leading to an existing 300-foot-long, six-inch diameter discharge pipeline that returns water to the Animas River; and (5) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 80 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (e.g., CD13–4–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: September 30, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–24394 Filed 10–7–13; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–385.2005 (2013).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statement and approved collection of information instrument are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Savings Association Holding Company Report.

Agency form number: FR H–(b)11.

OMB control number: 7100–0334.

Frequency: Quarterly, event-driven, and annually.

Reporters: Savings and loan holding companies (SLHCs).

Estimated annual reporting hours: 264.

Estimated average hours per response: 2.0 hours.

Number of respondents: 33.

General description of report: This information collection is mandatory (12 U.S.C. 1467a(b)(2)(A)). The FR H–(b)11 covers 6 different items. However, the Federal Reserve has determined that supplemental information in response to a yes answer for the Quarterly Savings and Loan Holding Company Report (FR 2320; OMB No. 7100–0345) FR 2320's questions 24, 25, and 26 may be protected from disclosure under exemption 4 of the Freedom of Information Act (FOIA), which covers ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential'' (5 U.S.C. 522(b)(4)). Disclosure of this type of information is likely to cause substantial competitive harm to the SLHC providing the information and thus this information is protected from disclosure under FOIA exemption 4 (5 U.S.C. 522(b)(4)).

With regard to the supplemental information for other FR 2320 questions that would be provided in item 3 of the FR H–(b)11, as well as all other items of the FR H–(b)11, respondents may request confidential treatment of such information under one or more of the exemptions in the FOIA. All such requests for confidential treatment will be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Abstract: The FR H–(b)11 collects from most top-tier SLHCs information on filings with the Securities and Exchange Commission, reports provided by the nationally recognized statistical rating organizations and securities analysts, supplemental information for select questions from the FR 2320, financial statements, and other materially important events and exhibits. The Federal Reserve uses the FR H–(b)11 data to analyze the overall financial condition of SLHCs to ensure safe and sound operations.

Current Actions: On July 29, 2013, the Federal Reserve published a notice in the **Federal Register** (78 FR 45534) requesting public comment for 60 days on the proposal to extend for three years, with revision, the Savings Association Holding Company Report. The comment period for this notice expired on September 27, 2013. The Federal Reserve received one comment letter of support from an SLHC. The revisions will be implemented as proposed and are effective with the September 30, 2013, report date.

Board of Governors of the Federal Reserve System, October 2, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–24397 Filed 10–7–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 22, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Robert T. Strong and Kathleen M. Strong,* both of Southampton, Pennsylvania; to retain voting shares of Quaint Oak Bancorp, Inc., and thereby indirectly retain voting shares of Quaint Oak Bank, both of Southampton, Pennsylvania.

Board of Governors of the Federal Reserve System, October 2, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–24391 Filed 10–7–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Dairy State Bancorp, Inc.,* Rice Lake, Wisconsin; to acquire 100 percent of the voting shares of Bank of Turtle Lake, Turtle Lake, Wisconsin.

Board of Governors of the Federal Reserve System, October 2, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–24392 Filed 10–7–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be

available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *C1 Financial, Inc.,* St. Petersburg, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of C1 Bank, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, October 3, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–24398 Filed 10–7–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–46]

Joe W. Morgan, D.O.; Decision and Order

On September 13, 2012, Chief Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached Recommended Decision (hereinafter, cited as R.D.). Therein, the ALJ recommended that I revoke Respondent's Certificate of Registration and deny any pending application to renew or modify his registration on two independent grounds. R.D. at 47.[1] First, the ALJ found that Respondent currently lacks authority to dispense controlled substances in Tennessee, the State in which he holds his DEA registration, and therefore no longer satisfies the Controlled Substances Act's prerequisite for holding a practitioner's registration. *See id.* at 26 (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)). Second, the ALJ found that Respondent had committed acts which render his registration inconsistent with the public interest. *Id.* at 35–47; *see also* 21 U.S.C. 824(a)(4).

Neither party filed timely exceptions to the Recommended Decision. However, on November 13, 2012, Respondent filed a pleading entitled: ''Motion and Request to Add Information Relevant to the Order to Show Cause Hearing Process.'' This pleading has been made a part of the record and treated as a Motion for Reconsideration.[2] As explained below, while I grant Respondent's motion in part and reject the ALJ's conclusion that Respondent's lack of state authority supports the revocation of his registration, I nonetheless adopt the ALJ's finding that Respondent has committed acts, which render his registration inconsistent with the public interest and that he has not rebutted the Government's *prima facie* case.

Respondent's Motion for Reconsideration

Therein, Respondent contends that his Tennessee medical license was re-instated on November 7, 2012, and that he therefore meets the requirement for registration ''found at 21 U.S.C. 824(a)(3).'' Mot. for Recon. at 1. As support for his motion, Respondent attached a copy of a November 7, 2012 Order of Compliance, which was issued by the Tennessee Board of Osteopathic Examination. The Order states that Respondent's state license was suspended ''until he submitted to an assessment by the Vanderbilt Comprehensive Assessment Program'' and that Respondent ''has satisfactorily complied with the requirement by obtaining the required assessment.'' Order of Compliance, at 1. The Board further ordered that ''the suspension of [Respondent's] license is lifted'' and placed his license ''on probation for a period of not less than five (5) years.'' *Id.* at 1–2.

A motion for reconsideration is properly considered when it is based on newly discovered evidence. *See National Ecological Found.* v. *Alexander,* 496 F.3d 466, 475 (6th Cir. 2007). Because the Board's Order reinstating Respondent's medical license clearly constitutes evidence, which was not available to Respondent at the time of the hearing, I grant Respondent's motion to reconsider. I thus conclude that Respondent now holds authority in the State of Tennessee, the State in which he is registered, to dispense controlled substances, subject to the condition prohibiting him from prescribing schedule II and III controlled substances, ''with the exception of testosterone for hormone replacement therapy under an approved practice plan.'' Gov't Mot. for Summary Disposition, Ex. A., at 5. This finding thus precludes reliance on the ALJ's conclusion that Respondent's registration should be revoked in its entirety under 21 U.S.C. 824(a)(3), the provision which authorizes the Attorney General to revoke a registration ''upon a finding that the 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.''

However, in his motion, Respondent further argues that I should reject the ALJ's finding incredible, his testimony that he planned to take courses in prescribing controlled substances and recordkeeping several months subsequent to the hearing, when, as he testified, he ''hopefully [would] be financially able to'' do so.[3] Tr. 126; *see* Mot. for Recon., at 2. Respondent further argues that he has completed an intensive course in medical recordkeeping and argues that his having done so, ''gives credibility that [he] spoke the truth and is credible, [and] that he has done what he said he intends to do.'' Mot. for Recon. at 2. Respondent also argues that he has registered for a course in controlled-substance management, which was offered in December 2012. In support of his assertions, Respondent provided a copy of a Certificate of Completion for the medical recordkeeping course and an email from the registrar/coordinator of continuing medical education at the Case Western University School of Medicine forwarding to him ''a confirmation packet'' for the latter course. Mot. for Recon. Attach., at 1.

Even assuming that these documents constitute newly discovered evidence,[4] the evidence is only probative on the issue of what remedial measures Respondent has undertaken to

[1] All citations to the R.D. are to the ALJ's slip opinion.

[2] The Government did not respond to Respondent's motion.

[3] The hearing was held on August 1, 2012; Respondent testified that he planned to take the course in the November/December timeframe. Tr. 126.

[4] The evidence showed that in a March 16, 2011 order, the Florida Board of Osteopathic Medicine ordered Respondent to take both courses within a twenty-four month period. GX 7, at 29, 36. While Respondent was given two years to comply, certainly, Respondent could have taken both courses before the August 1, 2012 hearing in this matter. And while these courses may only be offered twice a year, Tr. 126, his evidence regarding his completion of the recordkeeping course and registering for the controlled-substance management course hardly seems to constitute ''newly discovered evidence.''

demonstrate why he can be entrusted with a registration. *See Dewey C. MacKay,* 75 FR 49956, 49977 (2010), *pet. for rev. denied, MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011); *Jeri Hassman,* 75 FR 8194, 8236 (2010). Even in this regard, it should be noted that Respondent did not take these courses [5] until after the ALJ issued his Recommend Decision, wherein he found that ''Respondent abjectly failed to demonstrate any corrective measures he has taken to prevent reoccurrence'' of his misconduct and recommended the revocation of his registration and the denial of his pending application. R.D. at 46. Under these circumstances, Respondent's evidence of his corrective measures is entitled to substantially less weight than it would have been had it been undertaken prior to the hearing.

Most significantly, the ALJ made extensive findings that Respondent failed to accept responsibility for his misconduct. R.D. at 45–46. More specifically, the ALJ found that ''Respondent has wholly failed to'' acknowledge his failure to comply ''with applicable laws and regulations.'' *Id.* at 45. Regarding his unlawful prescribing of controlled substances, the ALJ specifically noted that while Respondent admitted that he had prescribed medication in quantities that were ''dangerous and excessive'' and potentially lethal, he then attempted to excuse this conduct by asserting that ''he was attempting to taper the patients off [of] high doses of medication.'' *Id.* For example, the evidence showed that on April 15, 2009, Respondent prescribed to KF 1200 tablets of oxycodone 30mg for a fourteen-day period, a total of nearly 86 tablets a day, as well as 120 tablets of OxyContin 80mg. GX 7, at 11.

Regarding KF, Respondent testified that ''it staggered me that anybody could take this much medicine and live, and in fact I think he was diverting a good portion of this medicine.'' Tr. 114. Respondent then testified that his ''thinking was I'm not sure how much to cut this patient's dose[] down, but I am going to cut it down, and I did this as a routine, systematic practice in this practice.'' *Id.* at 116. However, notwithstanding his statement that he thought KF was diverting, Respondent then attempted to justify his prescribing, contending that ''[m]y fear was if he's really taking this medicine I don't want to push him into withdrawal.'' *Id.* at 119. However, when pressed by the ALJ how he could continue to prescribe to KF, even at reduced levels, given that he ''had a sense'' that KF ''could not realistically be taking all that and was likely diverting it,'' Respondent testified that his ''acquaintance with the word diversion and what it meant didn't occur until after I'd been seeing this patient because . . . I was new in pain management and I did not think about diversion as an activity.'' *Id.* at 119–20.

While Respondent did reduce the quantity of oxycodone he prescribed to KF in the prescriptions he issued on April 29 and May 13, 2009 (to 960 and 840 tablets respectively), on May 28, he issued KF prescriptions for 960 tablets of oxycodone 30mg for an eleven-day period (for 87 tablets per day) as well as 90 tablets of OxyContin 40mg. GX 7, at 11.

As the ALJ found, ''when viewed on a by-day basis, the evidence of record reflects no meaningful reduction in the amount of controlled substances placed into this diverter's hands.'' R.D. at 15. Moreover, Respondent testified that he had no previous medical records for KF (as well as other patients of the Pinellas Park pain clinic) because KF's previous prescriber (Dr. Rew) had been arrested and Rew's patient records had been seized. Tr. 115. While Respondent testified that he was initially unaware of Dr. Rew's arrest and the seizure of his patient records, he then testified that these facts were ''divulged to [him] . . . sometime [during] the second week of my practice.'' *Id.* at 123. When, however, the ALJ questioned him as to why he had prescribed to KF when he knew the patient's medical record had been seized, Respondent acknowledged that he knew about the seizure when he ''asked about the history.'' *Id.* Respondent then explained that it's ''incumbent upon me to do a very detailed history because I need to find out every possible thing about this patient. Why is he having pain? What has happened to him? And I did that.'' *Id.*

Yet, with respect to the patients discussed in the Florida Board's order, the Board found that its ''expert's medical opinion for each of these seven patients confirmed the allegation of inappropriate prescribing of excessive and inappropriate quantities and combinations of controlled substances without medical records justifying these prescriptions.'' GX 7, at 4–5. And with respect to each of the patients including KF, the Board found that ''[n]either prior to nor while prescribing these drugs did Respondent perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.'' *Id.* at 12; *see also id.* at 6 (BR); 8 (FM); 10 (GS); 14 (KW); 16 (LH); 18 (SH). The Board also found that according to its expert, ''Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities of oxycodone[] and OxyContin together with Xanax and Soma.'' *Id.* Similar findings were made by the Board with respect to the other six patients. *See id.* at 4–18.

While the Board found that Respondent committed malpractice in prescribing to the seven patients, the Board went even further. Most significantly, the Board found that ''Respondent prescribed, dispensed, and/or administered controlled substances other than in the course of his professional practice by prescribing, dispensing, and/or administering controlled substances inappropriately, without regard to the patient's best interest or in excessive or inappropriate quantities to [the seven patients] on or about the dates and in the quantities and combinations more particularly described above.'' *Id.* at 20. The Board further found that this conduct constituted a violation of Fla. Stat. § 459.015(1)(t). *Id.*

The Board also found that Respondent violated Florida Administrative Code Rule 64B15–14.005(3), the Board's regulation which sets forth its guidelines for using controlled substances to treat pain, because Respondent prescribed ''one or more of the following controlled substances: oxycodone, Percocet, Soma, morphine, Dilaudid and Xanax to [the seven patients] in the quantities and combinations described above, without conducting or documenting complete physical examinations of'' the seven patients. *Id.* at 23. Based on this finding, the Board found that ''Respondent violated Section 459.015(1)(pp), Florida Statutes (2008–2009), by violating a rule adopted pursuant to Chapter 459 because he failed to document or adhere to the Florida Board of Osteopathic Medicine standards for the use of controlled substances for pain control . . . in his treatment of'' the seven patients. And finally, the Board found that Respondent violated Florida law ''by failing to keep medical records that justified the course of treatment of'' the seven patients. *Id.* at 24 (citing Fla. Stat. § 459.015(1)(o)).

The Board's findings thus also establish that in issuing numerous controlled-substance prescriptions to the seven patients, Respondent repeatedly acted outside of the usual course of professional practice and

[5] For the purpose of addressing his motion, I assume that Respondent actually followed through and took the controlled substance management course.

lacked a legitimate medical purpose. 21 CFR 1306.04(a); *see also* R.D. at 39. In short, the Board's findings (as well as his testimony at the hearing) establish that Respondent knowingly and intentionally diverted controlled substances to the seven patients. 21 U.S.C. 841(a)(1).

Evaluating the entirety of Respondent's testimony, the ALJ concluded that while he did express some regret,[6] ''it was not regret for his below-standard and dangerous controlled substance prescribing, it was remorse that he ever entered the practice of pain management and has had to defend his actions at multiple adjudicatory bodies.'' R.D. at 45. The ALJ's finding is well supported by the evidence.

For example, Respondent testified that he came to the attention of the Florida Board because ''[t]he State of Florida, in their quest to I guess rid themselves of pain doctors, they're looking for anybody they can prosecute literally.'' Tr. 104. In Respondent's view, some of his patients ''were involved with Medicaid, and they would evidently . . . take one prescription and fill it with Medicaid and maybe one for cash'' and this was how he ''came to be known as this doctor [who] is writing two prescriptions, one for the patient and one for Medicaid,'' which he claimed was ''not the case.'' *Id.* at 105. According to Respondent, ''[t]he presumption is always you're guilty and you're a bad person,'' but because he believed in making the patient ''happy'' and ''well,'' he was willing to write two prescriptions for 400 pills each, so his patients did not ''have to pay cash for 800 pills.'' *Id.* Respondent then explained that because he was ''not a Medicaid doctor,'' the authorities could not ''prosecute him under Medicaid.'' *Id.* However, in Respondent's view, because he wrote ''pain prescriptions,'' the authorities said ''[l]et's go ahead and put him through our pain process. So that's how I became involved in the pain prosecution.'' *Id.* at 105–06.

Likewise, while Respondent testified that he ''learned a terrible lesson in Florida'' and ''made a mistake getting into pain management,'' he then made the absurd claim that he ''tried to get out as soon as I could but I was stuck there for 16 weeks, which was a total of 32 days.'' Tr. 170. Respondent offered no further explanation as to why he ''was stuck there,'' which is a remarkable assertion given that on April 20, 2009, Respondent changed his registered address from a location in Florida to a location in Nashville, Tennessee, and that his resume states that he practiced at the Nashville clinic from April 20, 2009 through April 16, 2011. *See* GX 2, at 1; RX 1, at 1.

Moreover, notwithstanding the extensive findings of the Florida Board, Respondent testified that he did not ''know of anyone that was harmed personally or physically in that process, but if there is, I apologize and I'm sorry if there was ever any harm to them. There was certainly no intention. My intention was to take the best care of the patients that I could.'' Tr. 170. Given that Respondent had relocated to Tennessee by April 20, 2009 and yet continued to issue prescriptions to the clinic patients, it seems doubtful that Respondent would be aware of whether any of his patients (or those to whom they were likely diverting the drugs he prescribed) were harmed. Moreover, as the ALJ noted, at the hearing, ''Respondent continue[d] to insist, even in the face of the 'massive doses' of medications that 'staggered' him, that his intention was to take the best care of his patients that he could.'' R.D. 45 (quoting Tr. 115 and 114).[7] Finally, with respect to the findings of the Florida Board, Respondent maintains that ''[n]one of the allegations were proven, they were simply not disputed. Within the final order are many inaccurate statements which Respondent knows are either untrue or inaccurate but due to poor legal representation [he] was not able to confront the allegations.'' Resp. Post-Hrng. Br. 11.

Given Respondent's multiple statements in which he blamed others for his troubles, that he never once acknowledged that he prescribed in violation of the CSA and Florida law, and that he attempted unpersuasively to minimize his culpability, the overwhelming weight of the evidence fully supports the ALJ's conclusion that Respondent is sorry only because he was caught.[8] As the ALJ explained, this Agency places great weight on a respondent's acceptance of responsibility, and where the Government has proved that a respondent has knowingly or intentionally diverted controlled substances, a registrant's acceptance of responsibility is an essential showing for rebutting the Government's *prima facie* case. Accordingly, even giving weight to Respondent's evidence regarding the remedial measures he has undertaken, I conclude that he has still failed to rebut the Government's *prima facie* showing that his continued registration is ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

The ALJ's Discussion of Whether Respondent Violated the Separate Registration Requirement When He Prescribed to Florida Pain Clinic Patients Without Being Registered In Florida

The Government further alleged that Respondent violated federal law because he issued numerous controlled substance prescriptions to patients of the Pinellas Park, Florida pain clinic after he had moved to Tennessee and no longer held a DEA registration in Florida. ALJ Ex. 1, at 2. With respect to this allegation, the evidence showed that the patients were seen by employees of the Pinellas Park clinic, who prepared progress notes, which were then faxed to Respondent in Tennessee; Respondent reviewed the progress notes, wrote out prescriptions for the patients, which he then sent by Fed Ex back to the clinic, whose employees then delivered the prescriptions to the patients.[9]

Construing the Controlled Substances Act's telemedicine provisions, the ALJ concluded that ''when a practitioner is at a location remote from a patient who is not in the presence of another registered practitioner and the practitioner is not communicating with the patient electronically, the practitioner must be registered in the state in which the patient is located.'' R.D. 42 (citing 21 U.S.C. 802(54)(A)). The ALJ then explained that ''in light of this intent,'' the separate registration requirement ''should be read to include a state in which a practitioner communicates electronically with patients who are not in the physical

[6] For example, Respondent testified that were he to see a patient similar to KF today, he ''probably would say I can't see you'' because the dose was ''too big . . . for me to even talk about handling'' and that he would send the patient to ''a professional, experienced pain management doctor.'' Tr. at 124–25.

[7] In his post-hearing brief, Respondent argues that he ''testified truthfully and fully at the hearing.'' Resp. Post-Hrng. Br. 18. Respondent then contended that he ''is aware the statutes of DEA presume the doctor to be guilty, and probably lying, and that Respondent may not be believed even when telling the full truth of the matter.'' *Id.* Contrary to Respondent's understanding, neither DEA's statutes, nor the ALJ in this matter, presumed him to be guilty.

[8] Respondent also takes issue with what he characterizes as the ALJ's ''derisive and demeaning comments about [his] use of Google searches to obtain specific and authoritative information before prescribing medications.'' Mot. for Recon. at 3 (citing R.D. 18). However, Respondent's argument is not based on newly discovered evidence. Because Respondent could have raised this argument in a timely filed brief of exceptions, but did not, I decline to consider it.

[9] It is undisputed that Respondent did not hold a DEA registration in Florida after April 20, 2009. GX 2.

presence of a registered practitioner.'' *Id.* However, noting that subsection b of the definition of ''practice of telemedicine,'' 21 U.S.C. 802(54)(B), ''omit[ted] the state registration requirement,'' the ALJ concluded ''that Congress intended to carve out an exception for such a requirement where a patient is in the physical presence of a properly registered DEA physician at a registered DEA address.'' *Id.* (citing 21 U.S.C. 802(54)(B)). The ALJ ultimately rejected the Government's contention, reasoning that the Government had failed ''to demonstrate that the Respondent was operating outside the bounds of telemedicine'' because it produced no evidence as to whether the patients ''were in the physical presence of a DEA . . . registered practitioner at the . . . Pinellas Park [clinic] when [he] authorized the prescriptions.'' R.D. 43 (citing 21 U.S.C. 802(54)(B)).

I find much of the ALJ's reasoning to be problematic and unnecessary to decide the issue. Rather, based on a straightforward application of the relevant statutes to the evidence, I hold that notwithstanding that Respondent was no longer physically located in Florida, he continued to maintain a principal place of professional practice at the Pinellas Park clinic and that he violated federal law by dispensing controlled substances to the clinic's patients without being registered at this location.

Under the CSA, ''[e]very person who dispenses, or who proposes to dispense, any controlled substance, shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him.'' 21 U.S.C. 822(a)(2). ''Persons registered . . . under [the CSA] to . . . dispense controlled substances . . . are authorized to possess . . . or dispense such substances . . . to the extent authorized by their registration and in conformity with the other provisions of this subchapter.'' *Id.* section 822(b). Moreover, ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant . . . dispenses controlled substances.'' *Id.* section 822(e). *See also* 21 CFR 1301.12(a) (''A separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are manufactured, distributed, imported, exported, or dispensed by a person.''); *but see id.* § 1301.12(b)(3) (exempting from registration ''[a]n office used by a practitioner (who is registered at another location in the same State or jurisdiction of the United States) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained'').

Construing the separate registration rule, the ALJ reasoned that the word ''principal'' is an adjective and that '' '[a]s a rule, a nominative adjective modifies the noun that most closely follows it.' '' R.D. at 40 (quoting *Vaulting & Cash Services* v. *Diebold,* 199 F.3d 440 (5th Cir. 1999)) (unpublished). The ALJ then explained that '' '[w]hen a writer intends an adjective . . . to modify a series of nouns following the adjective[], he so signals by insertion of a colon or other separator between the adjectival and nominative series to indicate the unusual usage.' '' *Id.* at 40–41 (quoting *Vaulting & Cash Services*). ''Applying this rule to the language of 21 CFR 1301.12(a),'' the ALJ reasoned that ''the word 'principal' modifies the proximate noun 'place of business,' and not the more remote noun 'professional practice.' '' *Id.* at 41. The ALJ thus concluded that ''a location falls under the ambit of section 1301.12(a) if it is a general physical location where controlled substances are manufactured, distributed, imported, exported or dispensed, *and* if it is either: (1) A principal place of business; or (2) a professional practice.'' *Id.*

The ALJ's reasoning is not persuasive for several reasons. First, the ''grammatical parsing'' of a statutory text ''is only part of the interpretive process,'' which is to be considered along with the ''reasonableness of the interpretation.'' *United Nat'l Ins. Co.* v. *Hydro Tank, Inc.,* 497 F.3d 445–449 (5th Cir. 2007).[10] Second, even a grammatical parsing of the statute does not lead to the interpretation advanced by the ALJ. Notably, following the term ''each principal place,'' Congress inserted the preposition ''of,'' which is typically used as a function word. *See Merriam-Webster's Collegiate Dictionary* 806 (10th ed. 1998). Its insertion into section 822(e) (and 21 CFR 1301.12, which largely parrots the statute) is more appropriately viewed as ''indicat[ing] a particular example belonging to the class denoted by the preceding noun.'' *Id.*

Thus, the noun ''place'' is modified by either the term ''business'' or ''professional practice,'' and the adjective ''principal'' modifies the noun ''place,'' whether it be a ''place of business'' or a ''place of professional practice.'' Accordingly, a ''place of business'' or a ''place of professional practice'' must be either ''important'' or ''consequential'' to be deemed a ''principal place of business or professional practice.'' *United States* v. *Clinical Leasing Serv., Inc.,* 925 F.2d 120, 123 (5th Cir. 1991) (interpreting the word ''principal'' as used in section 822(e) and 21 CFR 1301.12 to mean '''important [or] consequential''') (citing *Webster's New Collegiate Dictionary* 908 (1979)); *see also Webster's Third New Int'l Dictionary* 1802 (1976) (defining ''principal'' in part as ''consequential'').

Nor can the ALJ's interpretation be squared with the Agency's longstanding interpretation of section 822(e). Since shortly after the enactment of the CSA, the Agency and its predecessor (the Bureau of Narcotics and Dangerous Drugs (BNDD)), have interpreted the statute as requiring ''separate registrations for separate locations.'' *See* BNDD, *Regulations Implementing the Comprehensive Drug Abuse Prevention and Control Act of 1970,* 36 FR 7776, 7779 (1971) (final rule promulgating 21 CFR 301.23).[11] While a ''place of business'' is clearly a ''general physical location,'' 21 CFR 1301.12(a), the term ''professional practice'' does not refer to a place at all, but rather, to ''[t]he use of one's knowledge in a particular

[10] Contrary to the ALJ's reasoning, section 822(e) does not even appear to use an adjectival series, and in any event, it is semantically and syntactically different from the contractual clause construed by the Fifth Circuit in *Vaulting and Cash Services.* In that case, the court considered the meaning of a clause which provided that a party would not be liable to its subcontractor ''for indirect, incidental, consequential or similar damages, lost profits, [sic] lost business opportunities, whether arising under contract, tort, strict liability or other form of action.'' 1999 WL 1068257 at *1. When the prime contractor terminated the contract, the subcontractor sued it for breach of contract and sought lost profits. *Id.* The prime contractor moved for summary judgment, contending that the clause barred the recovery of all lost profits for breach of contract; the subcontractor argued that the clause did not unambiguously deny it from recovering all lost profits but only those that were ''indirect, incidental, consequential or similar,'' and that it should be allowed to introduce parol evidence to determine the clause's meaning. *Id.* The court of appeals held, however, that because there was ''no colon or other separator between'' the words ''indirect, incidental, consequential or similar'' and the entire series of nouns which followed (damages, lost profits, and lost business opportunities), the adjectival series should be read as only modifying the word ''damages.'' In short, the structure of the clause at issue in *Vaulting and Cash Services* is not remotely similar to that found in 21 U.S.C. 822(e).

Subsequent to its decision in *Vaulting and Cash Services,* the Fifth Circuit was required to construe the phrase ''toxic levels of hydrogen sulfide and/or other chemicals and vapors.'' *United National Ins. Co.* v. *Hydro Tank Inc.,* 497 F.3d 445 (5th Cir. 2007). Notably, the court rejected the contention, which was based on dicta in *Vaulting and Cash Services,* that ''the phrase 'toxic levels of' [applied] only to ''hydrogen sulfide,'' and not to the latter phrase ''other chemicals and vapors.'' *Id.*

[11] DEA's regulations were subsequently renumbered; the separate registration rule is now codified at 21 CFR 1301.12(b).

profession'' and ''professional activities related to health care and the actual performance of the duties related to the provision of health care,'' *Definitions.net,*[12] or alternatively, a ''professional business . . . esp[ecially] as an incorporeal property.'' *Webster's Third New International Dictionary* 1780 (1976) (defining ''practice''); *see also id.* (defining ''practice'' as ''the exercise of a profession or occupation''); III *International Dictionary of Medicine and Biology* 2279 (1986) (defining practice as ''[t]he conduct of one's professional activity''). However, as explained above, under section 822(a)(2),''[e]very person who dispenses, or who proposes to dispense'' and is thus engaged in professional practice, is already required to be registered. Construing section 822(e) to require that a practitioner register only his professional practice, and not his principal places of professional practice, would render the words ''professional practice'' as used in section 822(e) surplusage.

The Agency has never taken this view. Indeed, in introducing the exceptions to the separate registration requirement—which includes an office where a practitioner only engages in prescribing—then as now, the regulation used the formulation: ''[t]he following locations shall be deemed not to be places where controlled substances are manufactured, distributed, or dispensed.'' 21 CFR 301.23(b) (1971); *see* 21 CFR 1301.12(b). Thus, the exemption itself provides further evidence that DEA registers practitioners and their principal places of professional practice and not their ''professional practices.'' And as further example, as originally promulgated, the regulation exempted ''[a]n office used by a practitioner (who is registered at another location) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner *at such office,* and where no supplies of controlled substances are maintained.'' 21 CFR 301.23(b)(3) (1971) (emphasis added). With the exception of the language contained in the parenthetical, which now reads ''who is registered at another location in the same State or jurisdiction of the United States,'' the regulation remains unchanged.[13] Id. § 1301.12(b)(3).

Indeed, were it the case that section 822(e) required that a practitioner register only his ''professional practice,'' and not ''each principal place of [his] professional practice,'' this provision (at least as it applies to practitioners) would be rendered meaningless. However, it is not uncommon for practitioners to engage in professional practice at multiple offices, and at which they dispense or administer controlled substances to their patients. In enacting section 822(e), Congress recognized this and thus required that a physician obtain a separate registration for each principal place of professional practice at which he/she dispenses controlled substances. As the Fifth Circuit has explained:

> A physician of ordinary means and intelligence would understand that the federal registration provisions apply to *each* important or consequential place of business where the physician distributes controlled substances. It is sufficiently clear that the application of the provisions is not limited to *a single* important or consequential place of business where controlled substances are distributed.

United States v. *Clinical Leasing Service,* 925 F.2d at 123

This Agency recently confronted this very situation in a case involving a dentist who regularly administered controlled substances to patients in the course of performing dental procedures at two offices but had only obtained a registration for one of them. *See Jeffery J. Becker,* 77 FR 72387 (2012). In *Becker,* I held that the practitioner violated section 822(e) because he regularly stored and administered controlled substances at an unregistered office. *Id.* at 72388. I further noted that the purpose of requiring separate registrations at those locations is ''to ensure that those locations at which controlled substance activities take place have adequate security and procedures in place to prevent the diversion of drugs from their legitimate use.'' *Id.; see also* 21 U.S.C. 822(f) (authorizing the Attorney General to inspect the establishment of a registrant or applicant for registration''). Interpreting section 822(e) as requiring a practitioner to register only his ''professional practice,'' and not his principal places of professional practice, would substantially undermine the Agency's ability to protect the public interest.

That Respondent's activities at the Pinellas Park clinic were limited to prescribing does not excuse his failure to maintain a registration there. As explained above, the Agency has issued a legislative rule which clearly requires that a practitioner must be registered in any State in which he maintains a principal place of professional practice and dispenses controlled substances. *See* 21 U.S.C. 822(a)(2) and (b); *Clarification of Registration Requirements for Individual Practitioners,* 71 FR at 69478.[14]

[12] Definitions.net, STANDS4 LLC, 2013. ''professional practice.'' Accessed April 23, 2013 (*http://www.definitions.net/definition/professional* practice).

[13] In 2006, DEA issued a final rule amending 21 CFR 1301.12(b)(3) to limit the exemption from registration for an office at which a practitioner limits his activities to prescribing, by requiring that the office be located in the same State where a practitioner is registered. DEA, *Clarification of Registration Requirements for Individual Practitioners,* 71 FR 69478, 69478 (2006). After noting that ''[t]he CSA requires that a separate registration be obtained for each principal place of business or professional practice where controlled substances are . . . dispensed,'' the Agency further explained the reason for limiting the exemption:

> DEA individual practitioner registrations are based on a [s]tate license to practice medicine and prescribe controlled substances. DEA relies on [s]tate licensing boards to determine that practitioners are qualified to dispense, prescribe or administer controlled substances and to determine what level of authority practitioners have, that is, what schedules they may dispense, prescribe, or administer. State authority to conduct the above-referenced activities only confers rights and privileges within the issuing State; consequently, the DEA registration based on a [s]tate license cannot authorize controlled substance dispensing outside the State.

Id. (citing 21 U.S.C. 822(e)); *see also* DEA, *Practitioner's Manual* 8 (2006).

Multiple provisions of the CSA manifest that the Act contemplates that a practitioner must be registered in any State in which he dispenses controlled substances if he maintains a principal place of professional practice therein. For example, in section 303(f) of the Act, which sets forth the requirements for registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances in schedules II, III, IV, or V, . . . if the applicant *is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' Id.* section 823(f) (emphasis added). As this provision demonstrates, the issuance of a practitioner's registration ''is predicated, in part, on the practitioner being authorized (e.g., licensed) to dispense controlled substances by the state in which he/she practices.'' DEA, *Clarification of Registration Requirements for Individual Practitioners,* 69 FR 70576 (2004) (notice of proposed rulemaking).

Likewise, in determining whether to grant a registration under section 823(f), the Agency is required to consider, *inter alia,* ''[t]he recommendation of the appropriate State licensing board or professional disciplinary authority.'' 21 U.S.C. 823(f)(1). And as discussed above, ''[a] registration pursuant to section 823 . . . to dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the 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.'' *Id.* section 824(a)(3).

DEA's interpretation that the CSA requires that a practitioner be registered in any State in which he maintains a principal place of professional practice and dispenses controlled substances (even if he only prescribes them) is fully consistent with, and supported by, these provisions.

[14] It would be mistaken to conclude that the Agency's rule exempting a practitioner, who is otherwise registered in the same State, from having to obtain a registration for an office at which he

Continued

Acknowledging that the Government's evidence showed that Respondent had written prescriptions for patients at the Pinellas Park, Florida pain clinic while he was in Nashville, Tennessee, and after he no longer held a registration in Florida, the ALJ nonetheless rejected the Government's contention that he violated federal law because he did ''not hav[e] a valid DEA registration in'' Florida. R.D. 40 (quoting ALJ Ex. 1). In so concluding, the ALJ reasoned that the Government had failed ''to demonstrate that the Respondent was operating outside the bounds of telemedicine'' because it produced no evidence as to whether the patients ''were in the physical presence of a DEA . . . registered practitioner at the . . . Pinellas Park [clinic] when [he] authorized the prescriptions.'' R.D. 43 (citing 21 U.S.C. 802(54)(B)) (defining ''practice of telemedicine'' to mean ''for purposes of [the CSA], the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1395m(m) of Title 42'').

The Government, however, never alleged that Respondent unlawfully engaged in telemedicine when he issued the prescriptions. *See generally* ALJ Ex. 1 (Order to Show Cause), ALJ Ex. 4 (Gov't Prehearing Statement). Nor did it make any such argument in its post-hearing brief. *See generally* Gov't Proposed Findings of Fact and Conclusions of Law.

Moreover, the mere fact that a practitioner ''prescribed remotely,'' R.D., at 41, does not establish that he engaged in telemedicine. While the CSA provides that ''[n]o controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed, or dispensed by means of the Internet without a valid prescription,'' 21 U.S.C. 829(e), no evidence was offered establishing that the progress notes were faxed to him through networks that used Internet protocols. *See* 21 U.S.C. 802(50) (defining the term ''Internet''). Indeed, here, the evidence showed simply that medical assistants at the Pinellas Park clinic saw the patients, prepared progress notes which they then faxed to Respondent in Tennessee, who reviewed the notes and wrote out the prescriptions, which he then ''overnight[ed]'' by Fed Ex back to the clinic, ''for the patients to pick up.'' Tr. 63–64; 84–85.

Because the Government never maintained that Respondent engaged in the unlawful practice of telemedicine, or that he dispensed controlled substances ''by means of the Internet,'' *id.* section 829(e)(1),[15] but rather only that he issued prescriptions to persons in Florida when he was no longer registered in that State, it was not required ''to establish that no practitioner was physically present when patients were seen [at the Pinellas Park clinic] to demonstrate that the Respondent was operating outside the bounds of telemedicine.'' R.D. 43. Rather, it was simply required to establish that Respondent maintained a principal place of professional practice in the State of Florida at which he engaged in the dispensing of controlled substances and that he did not hold a DEA registration in the State.

Here, the Government has satisfied its evidentiary burden. More specifically, the evidence shows that the patients were being ''evaluated'' by employees of the Pinellas Park clinic, who prepared progress notes on them, which were then faxed to Respondent in Tennessee. Respondent reviewed the progress notes, prepared the prescriptions, and then sent the prescriptions by Fed-Ex to the clinic, whose employees then delivered the prescriptions to the patients. The clinic's employees thus clearly acted as Respondent's agents in the dispensing of controlled substances; their acts in delivering the prescriptions to Respondent's patients are thus properly attributed to Respondent. *See* 21 U.S.C. 802(3) (''[t]he term 'agent' means an authorized person who acts on behalf of or at the direction of a . . . distributor or dispenser''); *id.* section 802(10) (''[t]he term 'dispense' means to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing . . . of a controlled substance''); *id.* section 802(11) (''[t]he term 'distribute' means to deliver (other than by administering or dispensing) a controlled substance'').

The evidence further shows that Respondent was no longer registered in Florida after April 20, 2009, and that over the course of the ensuing three months, Respondent issued several thousand prescriptions to the patients of the Pinellas Park clinic. *See* GX 11.[16] The Pinellas Park clinic thus clearly remained an ''important'' or ''consequential'' place of Respondent's professional practice. *Clinical Leasing Service,* 925 F.2d at 123 (internal quotation and citation omitted). This evidence is more than sufficient to support a finding that Respondent continued to maintain a principal place of professional practice in the State of Florida at which he dispensed controlled substances and that he violated federal law because he was no longer registered in that State.[17] 21

only prescribes and does not maintain any supplies of controlled substances, reflects the Agency's determination that prescribing alone does not render an office a ''principal place . . . of professional practice.'' Rather, the exemption reflects the Agency's determination, under 21 U.S.C. 822(d), that it is ''consistent with public health and safety'' to waive the registration requirement in this limited circumstance. However, the practitioner must still hold a registration in the same State.

[15] *See also* 21 U.S.C. 802(51) (''The term 'deliver, distribute, or dispense by means of the Internet,' refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the Internet.'').

[16] Notwithstanding the problematic nature in which the Government attempted to establish an adequate foundation for admission of the prescriptions, *see* R.D. at 6–7, Respondent acknowledged that the prescriptions contained in GX 11, with the exception of the four prescriptions on page 142 of the exhibit, were his. This exhibit contains 820 pages of copies of Respondent's prescriptions; most of the pages contain multiple prescriptions.

[17] Even if the Government had alleged that Respondent was engaged in telemedicine without the required registration, I would still find the ALJ's reasoning problematic. While 21 U.S.C. 802(54) defines the term ''practice of telemedicine'' and sets forth the requirements for engaging in the lawful practice of telemedicine, it is clear that this is an affirmative defense to a violation of 21 U.S.C. 829(e)(1). Under the latter provision, ''[n]o controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.'' 21 U.S.C. 829(e). However, section 829(e)(3) further provides that ''[n]othing in this subsection shall apply to . . . the delivery, distribution, or dispensing of a controlled substance by a practitioner engaged in the practice of telemedicine.'' *Id.* section 829(e)(3)(A).

Thus, while under 21 U.S.C. 802(54)(B), the lawful practice of telemedicine includes, *inter alia,* where ''a practitioner . . . who is at a location remote from the patient, or health care professional who is treating the patient, using a telecommunications system referred to in [42 U.S.C. 1395m(m)], which practice . . . is being conducted while the patient is being treated by, and in the physical presence of a practitioner . . . registered under section 823(f) . . . in the State in which the patient is located,'' this provision is clearly an exemption or exception to the prohibition of 21 U.S.C. 829(e)(1). However, the CSA further provides that the Government is not required ''to negative any exemption or exception set forth in this subchapter [*i.e.,* the Act] in any complaint, information, indictment, or other pleading or in any trial, *hearing, or other proceeding under* [the Act], and the burden of going forward with the evidence with respect to any such exemption or exception shall be upon the person claiming its benefit.'' 21 U.S.C. 885(a)(1) (emphasis added). Accordingly, had the Government alleged that Respondent unlawfully dispensed controlled substances by means of the Internet (and produced evidence that the Internet was used to dispense), it would have been the Respondent's burden to show that the medical assistants who saw the Pinellas Park clinic patients were registered practitioners and not the Government's burden to show that they were not.

U.S.C. 822(e); *see also United States* v. *Clinical Leasing Service, Inc.,* 930 F.2d 394, 395 (5th Cir. 1991) (''If a physician intends to dispense controlled substances from a particular location several times a week or month, he must first file a separate registration for the location. This aspect of the registration provisions is beyond cavil.'').

I therefore reject the ALJ's conclusion that the Government failed to prove that Respondent violated federal law when he prescribed to Florida patients after he was no longer registered to do so. I also decline to adopt the ALJ's interpretation of the separate registration requirement, as well as his discussion of whether Respondent violated the CSA's telemedicine provisions.[18] However, as explained above, I agree with the ALJ's conclusion that the findings of the Florida Board ''establish that the Respondent prescribed controlled substances, in copious quantities, to seven patients under circumstances where his prescribing practices violated state and federal law and fell well below the standards established by the [S]tate.'' R.D. at 44.

I therefore also agree with the ALJ's conclusion that the Board's findings establish that Respondent violated 21 CFR 1306.04(a) in prescribing to the seven patients identified in its Order and that ''Respondent 'has committed such acts as would render his registration . . . inconsistent with the public interest.' '' *Id.* (quoting 21 U.S.C. 824(a)(4)). The prescribing violations established by the Board's Order are extraordinarily egregious, and by themselves, are sufficient to support the revocation of Respondent's registration; his prescribing to Florida residents when he was no longer registered in the State buttresses this conclusion. And as explained above, even though Respondent has now produced some evidence as to his corrective measures, I agree with the ALJ's finding that Respondent has not accepted responsibility for his misconduct. Indeed, I find much of his testimony regarding his prescribing activities at the Pinellas Park clinic to be utterly implausible. Accordingly, I will adopt the ALJ's recommended sanction and order that Respondent's registration be revoked and that any pending application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AM6648818, issued to Joe W. Morgan, D.O., be, and it hereby is, revoked. I further order that any pending application of Joe W. Morgan, D.O., to renew or modify the above registration, be, and it hereby is, denied. This Order is effective November 7, 2013.

Dated: September 22, 2013.

Michele M. Leonhart,

Administrator.

Anthony Yim, Esq., for the Government

Joe W. Morgan, D.O., pro se, for the Respondent

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

Chief Administrative Law Judge John J. Mulrooney, II. On April 9, 2012, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA or Government), issued an Order to Show Cause (OSC) proposing to revoke the DEA Certificate of Registration (COR), Number AM6648818 [19] of Joe W. Morgan, D.O., (Respondent), pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal or modification. On October 6, 2011, the Respondent timely filed a request for hearing with the DEA Office of Administrative Law Judges (OALJ). The requested hearing was conducted at the DEA Hearing Facility in Arlington, Virginia, on August 1, 2012, at which the Respondent appeared *pro se.*[20] Subsequent to the conclusion of the hearing, but prior to the issuance of this recommended decision, the Government informed this tribunal that the Respondent's authority to handle controlled substances in Tennessee, the registered location of his DEA COR, had been suspended indefinitely by state authorities on August 15, 2012.

The issues ultimately to be adjudicated by the Administrator, with the assistance of this recommended decision, are: (1) Whether the Respondent currently enjoys sufficient state authority to handle controlled substances to allow him to continue to maintain a DEA COR; and (2) whether the substantial evidence of record supports the Government's petition to have the Respondent's COR revoked as inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a).

After carefully considering the testimony elicited at the hearing, the admitted exhibits, the arguments of counsel, and the record as a whole, the former question must be answered in the negative, and the latter in the affirmative. I have set forth my recommended findings of fact and conclusions of law below.

The Allegations

The OSC issued by the Government contends that revocation of the Respondent's COR is appropriate because: (1) ''[o]n March 14, 2011, the Florida Board of Osteopathic Medicine (Florida Board) found that from April through July 2009, [the Respondent] inappropriately prescribed excessive quantities and combinations of controlled substances . . . to seven (7) individuals without medical records justifying these prescriptions;'' and (2) despite changing the address of his DEA registration to Tennessee, the Respondent ''from April 22, 2009 through June 12, 2009 . . . wrote more than one hundred prescriptions for controlled substances from [his] office in Tennessee for patients located in Florida, despite not having a valid DEA registration in that state and based solely on reviewing 'progress notes' sent to [him] from a clinic in Florida.'' OSC at 1–2.

Subsequent to the conclusion of the hearing in this matter, but before the issuance of this recommended decision, the Government furnished evidence that the Respondent's state privileges to handle controlled substances have been suspended indefinitely by state authorities and moved for a summary disposition.

The Stipulations of Fact

The Government and the Respondent have entered into stipulations regarding the following matters:

(1) Respondent currently holds DEA Certificate of Registration # AM6648818 as a practitioner in Schedules II through V at 4535 Harding Pike, Suite 210, Nashville, Tennessee, 37205.

(2) Respondent is licensed as an osteopathic physician in the State of Florida pursuant to license number OS3199.

(3) Respondent is licensed as an osteopathic physician in the State of Tennessee pursuant to license number 85.[21]

(4) On March 14, 2011, the Florida Board issued a Final Order against Respondent. In the Final Order, the Board found that Respondent: prescribed excess and/or inappropriate amounts of opioids and benzodiazepines or failed to show in the medical record the justification for prescribing opioids or benzodiazepines in the dosages prescribed; inappropriately prescribed excessive and inappropriate quantities of controlled substances; failed to document or adhere to standards regarding use of controlled substances for pain control; and failed to keep medical records that justified the course of treatment.

(5) As a result of the Florida Board's Final Order, Respondent's Florida license to practice as an osteopathic physician was reprimanded, he was fined $18,500.00, he was required to complete a drug course and records course, and he was banned from owning, operating, or working in a pain management clinic. The Florida Board also

[18] The portion of the ALJ's recommended decision which I do not adopt begins with the first full paragraph on page 40 and ends with the last full paragraph on page 43 of the slip opinion.

[19] A copy of the Respondent's COR has been admitted as Government Exhibit 1.

[20] The Respondent initially appeared *pro se,* was granted additional time to procure counsel, did procure counsel, and subsequently released his counsel prior to the commencement of the hearing.

[21] As discussed in more detail, *infra,* the uncontroverted post-hearing evidence supports a finding that the Respondent's Tennessee osteopathic license was suspended on August 15, 2012. Gov't Ex. 12. This fact was independently acknowledged by both parties in their post-hearing briefs. Gov't Brief at 2, n.1; Resp't Brief at 2, n.2.

restricted him from practicing in a specialty other than ophthalmology and prescribing Schedule II or III controlled substances. The Florida Board placed his license on probation for a period of four years and required a monitor for supervision. At the conclusion of the probationary period, Respondent could apply to the Florida Board to lift the restriction on his Schedule II and III controlled substance prescribing privileges.

(6) DEA Certificate of Registration AM6648818 was set to expire by its terms on January 31, 2011. Respondent timely filed a renewal application for DEA Certificate of Registration AM6648818.

(7) Respondent's Florida medical license is currently on probation/active.

(8) At all times relevant to this matter, where it is alleged that Respondent wrote prescriptions for controlled substances, Respondent had a clear and active license to practice in the State of Florida.

The Evidence

The Government's Evidence

The Government's case was presented primarily through the testimony of a single witness, Diversion Investigator (DI) Karen Knight. DI Knight testified that she has been a diversion investigator since 2011. Tr. 25.

According to Knight, she became involved with the Respondent's case when his application for COR renewal was flagged due to a response on a renewal application liability question. Specifically, the Respondent supplied an affirmative answer to an inquiry about whether any state had taken action on his professional license. Tr. 25–26. The flag triggered an investigatory referral and Knight was assigned to conduct it. Tr. 26. As part of her initial investigation, DI Knight discovered adverse actions against the Respondent's osteopathic licenses in Florida, as well as Missouri, Michigan, Kentucky and Ohio. Tr. 27; Gov't Exs. 3–7; Stip. of Facts 4–5.

DI Knight testified that as part of her investigation on the renewal application, she arranged an interview with the Respondent. Tr. 60–61. On June 14, 2011 the Respondent voluntarily appeared at the Nashville District Office (NDO) to discuss his application, and was interviewed by Knight and DI Rhonda Phillips in a conference room at that facility. Tr. 61–62, 64. With regard to the Respondent's medical practice in Florida, the Respondent told the DIs that he had worked at a pain clinic in Florida from April 2009 through July 2009. Tr. 63. An exhibit offered by the Respondent during the hearing identified the pain clinic as The Pain and Wellness Clinic (Pain Clinic). Resp't Ex. 7. The Respondent represented that, when he began practicing at the Pain Clinic, he did not have access to any prior medical records for the patients he was treating. Tr. 77. He told the DIs that he obtained patients' previous prescription doses by calling pharmacies. Tr. 70–71. Regarding the sanctions placed on him by the Florida Board, the Respondent told the DIs that although the Florida Board had assessed a fine and mandated remedial classes, he had no intention of complying with either condition. Tr. 67–68. According to DI Knight, the Respondent stated ''that he thought Florida was working in conspiracy and corruption to destroy all doctors and clinics in the State of Florida.'' Tr. 67.

The Respondent also told Knight and Phillips that on April 20, 2009, he transferred his DEA COR to Tennessee in preparation for a job he had secured there. Tr. 63–64. When DI Knight inquired what happened to his patients in Florida after he moved to Tennessee, the Respondent told her that ''[Pain Clinic] personnel had told him they [22] would see the patients, fax him progress notes in Tennessee and that he could write the prescriptions for the controlled substances and overnight the prescriptions back to the clinic for the patients to pick up.'' Tr. 63. The Respondent admitted that he did not perform any physical examinations on his Florida patients after he moved to Tennessee and that ''[h]e relied on the progress notes that the office staff took and forwarded to him or faxed to him.'' Tr. 70.

When asked about disciplinary actions taken by states other than Florida, the Respondent explained that he had been disciplined in Missouri for falsifying continuing education credits on his state license renewal application, and that he had done so because he did not have the money to take the required classes. Tr. 65; *see also* Gov't Ex. 3. The Respondent elaborated that regulatory boards in Michigan, Kentucky, and Ohio took reciprocal actions based on his failure to disclose the action taken by Missouri. *Id.; see also* Gov't Exs. 4–6.

When Knight pressed the Respondent about Ohio's probationary condition that he take a clinical competency (SPEX) exam, he stated that he felt that he had been treated unfairly by the State of Ohio, and that he had no intention of taking the Ohio SPEX exam. Tr. 66–67; Gov't Ex. 6 at 21. The Respondent characterized his treatment by the Ohio authorities as ''unjust.'' Tr. 77.

In response to an inquiry made by DI Knight about the Respondent's numerous relocations, the Respondent allowed that he ''was living off his social security and he needed the income, so . . . he kept moving around to find a practice to work in.'' Tr. 65–66. DI Knight testified that the Respondent was not in custody, that no threats or promises were made during the interview, and she characterized the Respondent's demeanor as ''very cooperative and polite.'' Tr. 68–70. At the conclusion of the interview, Knight asked the Respondent whether he would surrender his registration. Tr. 69. In response, the Respondent asked if he could have until Friday of that week to consider the issue. Tr. 68. In a follow up call made by DI Knight the next day, the Respondent signaled his disinclination to surrender his COR. Tr. 69–70. When DI Knight broached the subject of an administrative action, the Respondent replied ''that even the DEA was out to get him.'' Tr. 70.

While there were admittedly portions of DI Knight's testimony where she lacked a command of details of the investigation that would have been helpful, on the whole, her testimony was sufficiently detailed, plausible, and internally consistent to be deemed fully credible in this recommended decision.

Numerous exhibits were also introduced into evidence through DI Knight's testimony, including a Certificate of Registration History for the Respondent's COR (Registration History). Gov't Ex. 2; Tr. 30–31. The Registration History reflects that, from December 27, 2007, through April 20, 2009, the Respondent's address of registration was Medical Resources LLC, 1981 S. Federal Hwy 1, Ft Pierce, FL 34950. Since April 20, 2009, the Respondent has been registered at 4235 Harding Pike, Suite 210, Nashville, TN 37205. Gov't Ex. 2 at 1. Interestingly, the Pain Clinic is not listed as a registered address on the Registration History. *Id.*

The Government also introduced 820 pages of copies of prescription scrips which bare the Respondent's name, signature, a business address (Pain Management, 6251 Park Blvd. unit 1, Pinellas Park, Florida) [23] and DEA COR number.[24] Gov't Ex. 11; Tr. 40–44. Although disquietingly unsure of the details, DI Knight testified that it was her understanding that agents from the Tampa DEA office seized documents from the Respondent's practice in the Tampa area and that she made a request of the Tampa DEA office for ''copies of any evidence that they had [seized]'' from the Respondent's clinic. Tr. 51–52. Though unable to testify with certainty as to the manner in which her document request was handled (or even the legal vehicle under which it was obtained), DI Knight explained that it was her belief that an agent removed prescriptions from patient files seized at the Respondent's clinic and then sent the documents to her. Tr. 51–52. The copies of the prescriptions, which comprise Government Exhibit 11, were transferred to DI Knight on a CD. Tr. 74. Knight explained that in addition to the disc, which contained Government Exhibit 11, she also received medical records she described as ''[in]complete charts. [She] would get a page here or there that maybe had a blood pressure, a height, or a weight on them. A lot of them were not signed.'' Tr. 73.

Also introduced through the testimony of DI Knight was an exhibit containing two summary charts of the prescriptions contained in Government Exhibit 11—one organized by patient and one organized by date of prescription. Tr. 56–57; Gov't Ex. 10. The data in the charts reflect all prescriptions (including the four scrips improperly included in Government Exhibit 11) which were issued after April 20, 2009, the date the

[22] The record contains no information regarding the identities or qualifications of the personnel who attended to the patients at the Pain Clinic when the Respondent was prescribing for them in Tennessee. Stated differently, there is no way, on the present record, to discern who ''they'' are.

[23] During his testimony the Respondent acknowledged that the scrips were his (Tr. 84), however, the business address on the scrips is different from the Pain Clinic address supplied by the Respondent during his case-in-chief. Resp't Ex. 7. This anomaly was not explained at the hearing.

[24] Page 142 of proposed Gov't Exhibit 11, as initially offered, contained copies of four prescriptions signed by a practitioner other than the Respondent. The Government acknowledged that this page was errantly included in the proposed exhibit. This page was withdrawn by the Government, excluded from the record, and formed no part of the evidence considered in this recommended decision.

Respondent moved his DEA COR from Florida to Tennessee. Tr. 55.

Also received into evidence was a March 14, 2011, Order of the Florida Board (Florida Board Order). Gov't Ex. 7. In its order, the Florida Board adopted the findings of fact and conclusions of law set forth in the charging document filed by the Florida Department of Health (FDOH).[25] *Id.* at 28. The following factual and legal findings were sustained by the Florida Board without objection from the Respondent:

(1) The Board issued reasonable cause subpoenas directed to the Respondent and obtained records for seven patients: BR, FM, GS, KF, KW, LH and SH (''the Seven Patients''). The foregoing records were submitted for review by a medical expert. *Id.* at 4, ¶ 18.

(2) The ''Respondent's medical records show that [from April 3, 2009, through May 12, 2009] he gave patient BR multiple prescriptions for large amounts [26] of oxycodone,[27] Oxycontin,[28] Soma,[29] Xanax [30] and Dilaudid.'' [31] *Id.* at 5, ¶¶ 21–22.

(3) The ''Respondent's medical records show that [from April 9, 2009, through June 2, 2009,] he gave patient FM multiple simultaneous prescriptions for large amounts [32] of oxycodone, OxyContin, Soma and Xanax.'' *Id.* at 7, ¶¶ 30–31.

(4) The ''Respondent's medical records show that [from April 10, 2009, through June 29, 2009,] he gave patient GS multiple simultaneous prescriptions for large amounts [33] of oxycodone, Oxycontin, Methadone,[34] morphine,[35] Soma and Xanax.'' *Id.* at 8, ¶¶ 39–40.

(5) The ''Respondent's medical records show that [from April 15, 2009, through June 8, 2009,] he gave patient KF multiple simultaneous prescriptions for large amounts [36] of oxycodone, Oxycontin, Soma and Xanax.'' *Id.* at 10, ¶¶ 48–49.

(6) The ''Respondent's medical records show that [from April 3, 2009, through June 17, 2009,] he gave patient KW multiple simultaneous prescriptions for large amounts [37] of oxycodone along with Percocet [38] and Xanax.'' *Id.* at 12–13, ¶¶ 57–58.

(7) The ''Respondent's medical records show that [from April 4, 2009, through July 20, 2009,] he gave patient LH multiple prescriptions for large amounts [39] of oxycodone and morphine along with Soma and Xanax.'' *Id.* at 14, ¶¶ 66–67.

(8) The ''Respondent's medical records show that [from April 3, 2009, through July 28, 2009, he gave patient SH multiple prescriptions for large amounts [40] of oxycodone, Dilaudid, and Percocet along with Soma and Xanax.'' *Id.* at 16, ¶¶ 75–76.

(9) The Respondent was subject to discipline pursuant to Fla. Stat. § 459.015(1)(t) (2008) for prescribing ''controlled substances other than in the course of his professional practice by prescribing . . . without regard to the patient's best interests or in excessive or inappropriate quantities to [the Seven Patients].'' *Id.* at 20, ¶¶ 89–90.

(10) The ''Respondent violated Rule 64B15–14.005(3) [of the] Florida Administrative Code, by prescribing . . . controlled substances [to the Seven Patients] without conducting or documenting complete physical examinations.'' *Id.* at 23, ¶95.

(11) The ''Respondent violated [Fla. Stat. §] 549.015(1)(o) . . . by failing to keep medical records that justify the course of treatment of [the Seven Patients].'' *Id.* at 24, ¶100.

Based on the foregoing, the Florida Board: reprimanded the Respondent's Florida license to practice osteopathic medicine; levied a fine of $18,500; mandated that the Respondent complete a drug course and a records course; prohibited the Respondent from owning, operating or working in a pain management clinic; limited the Respondent to the practice of ophthalmology; and prohibited the Respondent from prescribing Schedule II or Schedule III controlled substances. *Id.* at 2–4.

Additionally, the Government introduced into evidence an August 23, 1995, Missouri Administrative Hearing Commission ''Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Board of Registration for the Healing Arts and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law'' (''the Missouri Consent Order''). Gov't Ex. 3 at 5. The Missouri Consent Order found that the Respondent had falsified a continuing medical education certification to reflect that he had completed five more of the required twenty-five hours than he actually had. The Board issued a public reprimand and directed that the Respondent complete fifty hours of CME credits within one year. *Id.* at 7.

Several orders reflecting reciprocal discipline by other states based on the Missouri Order were also admitted into evidence. These included an Administrative Complaint and Consent Order issued by the State of Michigan Board of Osteopathic Medicine and Surgery Disciplinary Subcommittee in the matter of *Joe W. Morgan, D.O.,* (''Michigan Consent Order''). Gov't Ex. 4. The Michigan Board placed the Respondent's license on probation, mandated specified disclosures and levied a fine of five-hundred dollars against the Respondent. Gov't Ex. 4 at 6–7.

Kentucky followed suit. An Administrative Complaint and an Agreed Order of Reprimand, both of which were issued by the Commonwealth of Kentucky State Board of Medical Licensure (Kentucky Board) were received in evidence. Gov't Ex. 5. The Agreed Order of Reprimand, which represents that its contents represent an agreement between the Kentucky Board and the Respondent,[41] wherein the Kentucky Board sustained findings that the Respondent declined to make a required disclosure of professional discipline imposed by other jurisdictions. The Kentucky Board publicly reprimanded

[25] The Order indicates that the Respondent was present at the proceedings, was represented by counsel, but filed no response to the FDOH's Motion for Final Order By Hearing Not Involving Disputed Issues of Material Facts or its Motion for Costs. Gov't Ex. 7 at 27.

[26] The Florida Board found that the Respondent prescribed 3,000 tablets of controlled substances to BR over the course of one and a half months. *Id.* at 6. This amount included two prescriptions for 360 tablets of oxycodone 30 mg, which were issued on the same day. *Id.* at 5.

[27] Oxycodone is a Schedule II controlled substance pursuant to 21 CFR 1308.12(b)(1)(xiii) (2012).

[28] Oxycontin is the trademark name of a sustained-release form of oxycodone. 4–O Attorneys' Dictionary of Medicine O–85597. Oxycodone is a Schedule II controlled substance pursuant to 21 CFR 1308.12(b)(1)(xiii) (2012).

[29] Soma is the brand name of a drug containing carisoprodol. 5–S Attorneys' Dictionary of Medicine S–107381. Carisoprodol is a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(5) (2012).

[30] Xanax is the brand name of a drug containing alprazolam. 6–X Attorneys' Dictionary of Medicine X–125138. Alprazolam is a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(1) (2012).

[31] Dilaudid is the brand name of a drug containing hydromorphone hydrochloride. 3–H Attorneys' Dictionary of Medicine H–56708. Hydromorphone is a Schedule II controlled substance pursuant to 21 CFR 1308.12(b)(1)(vii) (2012).

[32] The Florida Board found that the Respondent prescribed 1,860 tablets of controlled substances to FM over the course of two and a half months. *Id.* at 7. This amount included two prescriptions for oxycodone 30 mg, both issued on April 9, 2009. *Id.*

[33] The Florida Board found that the Respondent prescribed 5,340 tablets of controlled substances to GS over the course of three months. *Id.* at 9. This amount included the following prescriptions: (1) Two separate prescriptions for 360 tablets of oxycodone 30 mg, both issued on April 10, 2009; (2) two separate prescriptions for 300 tablets of oxycodone 30 mg, both issued May 6, 2009; and (3) two separate prescriptions for 300 tablets of oxycodone 30mg, both issued on June 29, 2009. *Id.*

[34] Methadone is a Schedule II controlled substance pursuant to 21 CFR 1308.12(c)(15) (2012).

[35] Morphine is a Schedule II controlled substance pursuant to 21 CFR 1308.12(b)(1)(ix) (2012).

[36] The Florida Board found that the Respondent prescribed 5,640 tablets of controlled substances to KF over the course of two months. *Id.* at 11. This amount included three separate oxycodone 30 mg prescriptions, for 400 tablets each, all three of which were inexplicably issued on the same day. *Id.* Fourteen days later the same patient received two separate 480 tablet prescriptions of oxycodone. To consume twelve-hundred tablets in fourteen days, a patient would have to take 85 tablets per day. During an eleven-day period, the Respondent issued two oxycodone 30 mg prescriptions for 480 tablets each. *Id.* To consume 960 tablets in eleven days would require a patient to take 87 tablets per day. *Id.*

[37] The Florida Board found that the Respondent prescribed 2,130 tablets of controlled substances to KW over the course of one and a half months. *Id.* at 13. In one day the Respondent issued the patient three identical prescriptions for 160 tablets of oxycodone. *Id.*

[38] Percocet is the brand name of a drug containing oxycodone and acetaminophen. 4–P Attorneys' Dictionary of Medicine P–89106. Oxycodone is a Schedule II controlled substance pursuant to 21 CFR 1308.12(b)(1)(xiii) (2012).

[39] The Florida Board found that the Respondent prescribed 4,800 tablets of controlled substances to LH over the course of four months. *Id.* at 14–16. On three separate days the Respondent issued patient LH multiple prescriptions for oxycodone. *Id.*

[40] The Florida Board found that the Respondent prescribed 3,300 tablets of controlled substances to SH over the course of four months. *Id.* at 16–17. On April 13, 2009, the Respondent issued patient SH two prescriptions, each for 120 tablets of oxycodone 30 mg.

[41] Gov't Ex. 5 at 5.

the Respondent and fined him five-hundred dollars. Gov't Ex. 5 at 8, ¶¶ 1–2.

The Respondent's license in Ohio was similarly subjected to sanction based upon his failure to disclose his troubles in Missouri. An Order from the State Medical Board of Ohio (Ohio Board) in the matter of *Joe Wesley Morgan, D.O.* was received into the record. Gov't Ex. 6 at 20. Based on the Respondent's failure to disclose, the Ohio Board suspended the Respondent's osteopathic license for ''an indefinite period of time, but not less than two (2) years.'' [42] Gov't Ex. 6 at 20, ¶¶ 1.

The Government also called the Respondent as a witness in its case-in-chief. Tr. 83. During the brief testimony from the Respondent that was elicited by the Government, he identified the prescriptions in Government Exhibit 11 as ''copies of prescriptions that [he] wrote,'' and stated that, to the best of his knowledge, other than a scrips on page 142 which related to a different practitioner, all the prescriptions in the exhibit were written by him. Tr. 83–85. The Respondent also identified the signatures on the prescriptions (other than those on page 142) as his own. Tr. 84. During the Government's direct case, the Respondent also explained his procedure for writing prescriptions for patients in Florida while he was practicing in Tennessee. After he left the Pain Clinic and began practicing in Tennessee, prescriptions he issued for his patients who continued to visit the Pain Clinic after his departure would be sent via Federal Express back to the Pain Clinic ''to be used by the office staff there for those patients.'' Tr. 84–85. The Respondent remained adamant that each patient who received one of these controlled substance prescriptions emanating from his new location in Tennessee had been subject to an examination and history conducted by the Respondent while he was still at the Pain Clinic. Tr. 121–22. The prescription scrips forwarded back to the Pain Clinic for distribution to his patients were based on the progress notes sent to him about patients with whom he had previously seen in person while at the Pain Clinic. Tr. 85–86.

The Respondent's Evidence

The Respondent presented testimony on his own behalf. A curriculum vitae (CV) introduced by the Respondent indicates that he was awarded a Doctor of Osteopathy from the Kansas City University of Medicine and Bioscience in 1971, acquired a Board Certification from the American Osteopathic Board of Ophthalmology (AOBO) in 1979,[43] and has been practicing medicine for thirty-five years. Resp't Ex. 1. Additionally, the Respondent's CV states that in 2012 he received a Board Certification from the American Board of Integrated Holistic Medicine. *Id.; see also* Resp't Ex. 17; Tr. 163. Also set forth in his CV is a list of numerous scholarly publications related to ophthalmology from 1971 through 1983, and a representation that he has presented lectures to his peers. *Id.* As discussed in more detail, *infra,* the Respondent's medical license in Tennessee is suspended. The Respondent's Florida medical license is active, but on probation,[44] and his medical license in the State of Missouri is ''[r]estricted to practicing Ophthalmology.'' Resp't Ex. 4.

The Respondent testified that after completing his residency in 1975, he founded the Eye Care Center (ECC) (formerly the Paris Eye Clinic) in Memphis, Tennessee, where he practiced as an ophthalmologist. Resp't Ex. 1; Tr. 91–92. Though ECC was owned by the Respondent, he had surgical privileges at a local hospital. Tr. 91–92. The Respondent's ophthalmology practice required him to write controlled substance prescriptions infrequently. Tr. 92. It was the Respondent's perception that financial concerns encountered by the local hospital caused a confidence crisis with the institution in the community and practice there became financially untenable. Tr. 91. The situation resulted in a significant financial loss for the Respondent and he opted to leave the ECC and secured employment working for another doctor. *Id.*

From the end of 1991 (when the Respondent left ECC) through February of 2005, the Respondent embarked on a something of an employment odyssey where he worked at six different facilities in three different states (Tennessee, Kentucky, and West Virginia). Resp't Ex. 1. In explaining his multiple migrations, the Respondent explained that some moves were the result of contractual and personality issues, while others were motivated by family issues and illnesses. *Id.* In the course of elucidating his contractual and personality-based movements, the Respondent offered that ''[w]hen you work for another doctor, you are at the mercy of what he thinks on any given day or what's happening to him personally. If he takes a bias that he doesn't like you, you may not be there very long.'' Tr. 94, 97.

In March of 2005 the Respondent accepted an offer to work for a doctor in the Tallahassee, Florida area. Tr. 95; Resp't Ex. 1 at 1. After accepting the offer and moving to Florida, the Respondent made the disquieting discovery that the hiring doctor had no physical place for the Respondent to work and then sought to cut the Respondent's negotiated salary in half. Tr. 95. Because of this development, the Respondent moved quickly to secure alternative employment. Tr. 97. On May 1, 2005, the Respondent began employment as an eye surgeon at Medical Resources in Fort Pierce, Florida. Resp't Ex. 1 at 1; Tr. 97. Eventually, Medical Resources filed for bankruptcy, but, in November of 2008, the Respondent arranged to open his own practice in the former Medical Resources facility. Tr. 99. When running his own practice became impractical due to credentialing and insurance complications, the Respondent sought to transition into ''a primary care type of practice.'' Tr. 100–01. In March of 2009, the Respondent began to look for ''temporary employment'' to bridge the gap between the close of his ophthalmology practice and his transition into primary care. Tr. 100–01.

After interviewing for a position he found online, the Respondent was hired as a ''pain management doctor'' [45] at the Pain Clinic in Pinellas Park, Florida. Tr. 101–03. The Respondent testified that he planned to use this position practicing pain medicine as a vehicle ''to transition into a general practice in a holistic or natural healing type of practice.'' Tr. 169. According to the Respondent, the practice was owned by ''two businessmen . . . . [i]t was a startup, meaning there's no reference of procedures and policy and guidelines or what you do here, what you do there [and a]ll this was ground up.'' Tr. 101. Thus, the Respondent, by his own account, accepted a position where, notwithstanding the reality that he had no pain management experience or expertise, he was tasked with starting a pain management clinic from scratch and developing correct and appropriate procedures.

Approximately two weeks after he began practicing at the Pain Clinic, the Respondent discovered that Dr. Rew, a previous physician for certain patients being seen at the practice, had been arrested by the DEA and that the patient records from Dr. Rew had been seized. Tr. 45–46, 115, 122–23. The Respondent also learned that the owners of the Pain Clinic had decided to ''take over'' Dr. Rew's patients to ''get some business and make some money.'' Tr. 122–23. Lacking any prior medical charts, the Respondent testified that his ''only alternative was [to] verify [the prescriptions] through the pharmacy.'' Tr. 115. The Respondent obtained between three and eleven months of pharmacy records for Dr. Rew's former patients, and ''based [his initial doses] on those levels.'' Tr. 114–15. In addition to the pharmacy records, the Respondent testified that it was ''incumbent upon me to do a very detailed history'' for Dr. Rew's patients. Tr. 123. The Respondent testified that for new patients, he completed a ''detailed history and physical.'' Tr. 121. By his recollection, the Respondent worked at the Pain Clinic two days a week, for sixteen weeks, with his employment ending in July of 2009. Tr. 101, 104.

The Respondent also introduced a notarized letter from Tom Wynne. The Respondent identified Wynne as ''one of the businessmen who owned the pain clinic when I worked with him in Florida.'' Tr. 149. The letter (Wynne Letter) provides in full:

Dr. Joe Morgan,

This letter is to inform you that I Tom Wynne have been the owner to [sic] the Pain and Wellness Center since March 2009. Dr. Joe Morgan was employed with us for three and a half weeks in the month of April 2009 part time two days a week. The 8 days that you did work for us we saw ten to fifteen patients a day. If you have any questions please contact me at 727–548–1111.

Resp't Ex. 7. The Respondent described the information in the letter as ''fairly accurate'' and stated that he was ''not sure that the number of patients seen is accurate.'' Tr. 150.

[42] This decision was affirmed by the Ohio Court of Common Pleas. Gov't Ex. 6 at 32.

[43] The Respondent's CV also notes that fellow status and permanent certification were awarded by AOBO in 1984 and 1992 respectively. Resp't Ex. 1.

[44] Tr. 134; Resp't Ex. 2.

[45] The Respondent explained that he was not a ''pain management specialist'' because he had not received a certification. Tr. 103.

The Wynne Letter, which is unquestionably hearsay,[46] presents numerous contradictions. First, the Respondent, consistent with the preprinted prescription scrips that he acknowledged as his own,[47] has consistently referred to the pain management practice where he was employed as the ''Pain Management Clinic.'' Tr. 43, 101–02; Gov't Ex. 11. However, the Wynne Letter inconsistently refers to the business as the ''Pain and Wellness Center'' and the ''Pain and Wellness Clinic.'' Resp't Ex. 7. Second, whatever the actual or incorporated name of the business, the Respondent testified that he was employed there for thirty-two days over the course of sixteen weeks, not (as stated in the Wynne Letter) eight days over the course of two months. *Compare* Resp't Ex. 7, *with* Tr. 170. Thus, the utility of the Wynne Letter, beyond muddling the record regarding the true name of the Pain Clinic and how long the Respondent was employed there, contributes little to the record beyond supplying some additional evidence of the uncontroverted fact that the Respondent spent some time in the Spring of 2009 working for a pain management concern in Pinellas Park, Florida.

Through his testimony, the Respondent also introduced prescriber history reports produced by the Tennessee Controlled Substance Monitoring Program. Tr. 138–149; Resp't Exs. 5–6. The reports, which cover the Respondent's prescribing history from July of 2009 through June of 2012, were introduced, by his own account, to show that, after July of 2009, the Respondent ''reverted to a completely reasonable actually below average level of prescribing controlled substances,'' as compared to ''prescribing massive doses of opioids'' while he was at the Pain Clinic. Tr. 139–40. The documents contain a disclaimer that ''[t]he Board of Pharmacy does not warrant the above information to be accurate or complete.'' Resp't Ex. 5–6.

When questioned about his treatment of KF (the patient described in the Florida Board Order who received twelve-hundred tablets of oxycodone 30 mg in a fourteen day period), the Respondent explained that he remembered KF ''because it staggered me that anybody could take this much medicine and live, and in fact I think he was diverting a good portion of this medicine.'' Tr. 114. The Respondent further identified KF as a former patient of Dr. Rew and recalled wondering ''how is this patient alive on this medication?'' Tr. 114. When pressed on how he could have prescribed oxycodone in such staggering numbers, the Respondent explained that before he commenced his employment at the Pain Clinic, he ''spent day and night on the internet pulling off as much information as I could about pain management practice, and I came across something called tolerance. The longer you're on the medicine the higher the dose that's required to maintain pain free.'' Tr. 117. Based on this revelation, the Respondent formulated a ''plan [to] on the first visit give the [patients] what they'd been getting and then reduce thereafter.'' Tr. 117. To this end, the Respondent stated that ''for opioids . . . you must taper these people slowly.'' Tr. 117–18. Looking back at his time at the Pain Clinic, the Respondent testified that he has identified ''many, many times . . . where there is potentially a great diversion [b]ut I had to go by what I call sound medical principle, that is, slow, tapering doses.'' Tr. 120. Later in his testimony the Respondent elaborated that ''I think it's a great mistake that I made here while I'm doing what I think is proper, and yet it seems not to be proper. Tapering doses and discharging those who won't cooperate is part of the way of managing pain management patients, and I felt I was doing that.'' Tr. 123–24.

In support of his assertion that he attempted to taper his pain management patients, the Respondent pointed out that KF's dosages were reduced on each subsequent visit, but he had no explanation for why, on at least one occasion, the number of tablets per day actually increased from one appointment to the next. Tr. 117–18. Even a cursory analysis of the Respondent's position regarding his purported tapering approach raises what presents as an unresolvable inconsistency. On the one hand, the Respondent acknowledges that the doses he prescribed were so enormous that the patient was likely diverting ''a good portion'' of them, and on the other hand, he seeks to justify his actions as an attempt to taper the medication. The Respondent's logic is not merely flawed, it is arguably disingenuous. There is obviously no health benefit that inures to a diverter from reducing the amount of controlled substances placed at his disposal to divert. Furthermore, when viewed on a by-day basis, the evidence of record reflects no meaningful reduction in the amount of controlled substance placed into this diverter's hands. *Id.;* Gov't Ex. 36 at 11. This scenario is even more bracing when viewed in the context of the Respondent's acknowledgment that he knew that the physician who had been ''treating'' this patient previously had been arrested by DEA and had his medical records seized by DEA, a circumstance that would tend to raise the circumspection of a reasonable registrant. Tr. 115, 122. Naturally, this rather circular attempt to justify his prescribing does not enhance the Respondent's credibility.

Further undermining the Respondent's credibility are the juxtaposition of his inconsistent assertions during his testimony that he realized that the controlled substance medications he was prescribing to KF were in such high doses that it was unlikely that KF could survive the medicine in the doses prescribed and that diversion was likely,[48] and his later assertion that ''the prescribing practice at the time I thought was doing the right thing, but since then I've come to realize that the doses were excessively high, possibly lethal and definitely dangerous, and it's certainly not an advisable activity and not one that I would repeat.'' Tr. 181. At the time the Respondent wrote these prescriptions he was chargeable with the knowledge to understand what he was doing. The doses were as high and dangerous when the Respondent wrote the prescriptions as they are now. There is no changed fact. For the Respondent to characterize the danger of his prescribing now as some sort of epiphany that occurred after he was disciplined by the Florida Board is dubious.

As to the issue of splitting of the prescriptions into several scrips simultaneously issued, the Respondent testified that ''there was a shortage of oxycodone in Florida at that time. . . . so both the pharmacist and the patients would ask [doctors to] break that into two prescriptions, which I did.'' Tr. 105. Even putting aside the arguably not-too-speculative notion that controlled substance shortages in Florida were likely due to well-publicized, widespread and rampant diversion in the state, the concept that this Respondent was issuing multiple scrips to prevent any single prescription from clearing out a single pharmacy's inventory, albeit horrifying, is far less persuasive than the more likely reality that the Respondent was issuing multiple prescription scrips to mask the extremely high quantities of controlled substances he was recklessly doling out. Like the Respondent's tapering of diverters argument, this explanation does little to enhance the credibility of his testimony.

It is not just a little telling that when asked if he was aware how he came to the attention of Florida enforcement authorities, the Respondent replied that in his opinion, it was based on attention raised by a suspicion that some physicians were writing multiple prescriptions to enable patients to defraud Medicaid. According to the Respondent:

> The State of Florida, in their [sic] quest to I guess rid themselves of pain doctors, they're looking for anybody they can prosecute literally . . . . The presumption is always you're guilty and you're a bad person, but when the patient—patients have always been at the forefront of my practice. Make the patient happy. Make them well. Keep them healthy. And so when they asked me for this convenience so that they don't have to pay cash for 800 pills—they can pay for 400 and wait a few days and get the other 400—I was willing to oblige that and that's the reason I did that.
>
> Tr. 104. In view of the fact that the Respondent was issuing multiple prescriptions to patients receiving quantities of controlled substances that were indicative (even to the Respondent) of diversion, his protestation that he was merely seeking to ''[m]ake the patient happy'' [49] does little to further his cause here. In a like vein, the Respondent's protestation that he was identified merely because authorities in Florida were ''looking for anyone they can prosecute,'' speaks volumes as to his true view of his own culpability. Similarly, when asked about his current judgment regarding the prescribing practices that are the subject of these proceedings, the Respondent provided the following introspection:
>
> In retrospect, I have to say that going into pain management was the worst mistake of my career. Every day I'm sorry that I did that, that I ever was even involved in it. It was only 32 patient days, but it has cost me basically the remainder of my career. It has

[46] The document was received into evidence in the absence of Government objection. Tr. 150.

[47] Tr. 84.

[48] Tr. 114.

[49] Tr. 104.

cost me credibility in my professional reputation and some friends.

Tr. 123. It is of significant moment that the Respondent's reaction expresses no remorse over his conduct as a prescriber, but merely his regret that he entered the pain management business in the first place. To be sure, when pressed further on the handling of his patients, the Respondent acknowledged, ''today [he] recognize[s]'' that he was handling ''potentially lethal doses,'' and that in the course of his preparation for these proceedings he came to the realization that he ''made a mistake and [is] really sorry about that.'' Tr. 125. But when asked about whether he has sought additional training in the handling of controlled substances, he conceded that he has not. Tr. 126–27. The Respondent offered that he was planning to take courses in the future when he ''hopefully will be financially able to afford that.'' *Id.* The best the Respondent could muster on the issue is that he had secured a brochure on a relevant course for the Florida Board to approve. Tr. 127. In explaining how he now avoids pain management, the Respondent reiterated the nature of how he characterized his past missteps:

So I've learned a terrible lesson in Florida. I made a mistake getting into pain management. I tried to get out as soon as I could but I was stuck there for 16 weeks, which was a total of 32 days. So my time in pain management was short and very enlightening, unfortunately detrimental to me in the long run. And that is a decision that I regret in my career, probably the worst decision I've ever made, and I'm sorry that I made that decision. I don't know of anyone that was harmed personally or physically in that process, but if there is, I apologize and I'm sorry if there was ever any harm to them. There was certainly no intention. My intention was to take the best care of the patients that I could. And under the circumstances of practicing as general practice, not as a pain management doctor, I thought I was doing pretty good. Unfortunately, I was not, and so I've suffered the ramifications of that through multiple financial problems and licensing problems.

Tr. 170. Consistent with the Respondent's entire presentation, this synopsis of his position essentially details his regret at suffering financial and licensing issues, but is bereft of any insight into why his controlled substance prescribing was unlawful and dangerous.

To demonstrate that he complied with that portion of the Florida Board Order, which directed him to procure a practice monitor, the Respondent supplied a letter from Plato E. Varidin, D.O., to the Florida Board's Compliance Management Unit. Resp't Ex. 16; Tr. 161. The letter, which is dated July 6, 2012, asserts that Dr. Varidin was ''requested by the Florida Board of Osteopathic Medicine to monitor the charts of [the Respondent]'' and that Dr. Varidin reviewed eleven primary care charts at the Respondent's office. Resp't Ex. 16. According to the letter, Dr. Varidin found that ''[e]ach chart had above average well documented histories and physicals [and] met the appropriate standard of care of the community.'' *Id.* There is no indication from the letter or the testimony whether any of the eleven medical charts that were reviewed by the Respondent's practice monitor involved controlled substance prescribing in any way. Tr. 162.

As discussed, *supra,* the Respondent testified that he has not taken any classes which would increase his knowledge about controlled substances.[50] Tr. 125–26. However, the Respondent explained that, in November or December, he intends to comply with the course mandates of the Missouri and Florida Boards by taking ''two courses, one on records, [and] one on controlled substances.'' Tr. 126. The Respondent also expressed an intention to take a ''four-day course in controlled substance management.'' Tr. 127. In the interim, the Respondent explained that he has ''done considerable searching and working *on the internet,* and *almost every* prescription that I have written I have done *a Google search* to see what the drug is, the side effects . . . and in particular if it's a controlled substance.'' Tr. 125 (emphasis added). Thus, by his own account, without the benefit of supplemental coursework, the Respondent's current reference tools, even at this late juncture, appear to be limited to Google and the internet.

The Respondent testified that in view of his intent to transition to natural healing and holistic medicine, the primary impact of a revocation of his COR would be his inability to prescribe testosterone.[51] Tr. 171–72. Upon reflection, the Respondent added that:

[O]ne of the most common things I might be asked to do other than testosterone might be an ADD drug or an ADHD, occasionally a sleeping pill or something like that. My experience has already been in Florida that if you can't prescribe this for me what good are you? The patient will leave. They will go seek another doctor.

Tr. 173. Thus, the Respondent, presumably with the aid of Google and the internet, seeks to maintain his capacity to prescribe controlled substances for the treatment of ailments related to mental health and insomnia, so that prospective patients would not leave his care.

The Government evidence related to the 1995 Missouri Consent Order [52] does not reflect well on the Respondent's credibility. According to the Missouri Board, the Respondent intentionally altered numbers on documents he filed with that body to reflect that he completed the required number of CME hours—a fact which was not true. Gov't Ex. 3 at 9, ¶¶ 7–8. This act was deliberate, deceitful, and demonstrated a willingness to place his own interests ahead of the interests of society, and in particular, demonstrated a willingness to provide false information to an administrative body charged with regulating an area uniquely connected with his livelihood—nearly precisely the scenario that exists in these proceedings. Moreover, during his testimony, the Respondent conceded that it was an act borne of financial hardship. According to the Respondent, ''[w]hen your career is financially collapsing, you make decisions that are not good, and one of those decisions was to send [the falsified certification] in. . . .'' Tr. 129. The record gives no indication that the Respondent's financial difficulties are over. In fact, just the opposite seems to be true. Tr. 65–66, 125–26; Gov't Ex. 9 at 5.

While, it must be acknowledged that the ten years that have passed between the Respondent's misconduct in Missouri somewhat attenuates the significance of the Respondent's dishonesty exhibited there, there are other issues that tend to diminish his credibility here. The Respondent's sincerity regarding some areas of his testimony is questionable when viewed in light of the objective facts. For example, his stated intention to seek additional training on the issue of controlled substance prescribing is belied by the fact that he has done practically nothing to secure such training. In addition to his comments to DI Knight that he had no intention of complying with his state-imposed training requirements, the Respondent qualified his newfound intellectual curiosity by representing that he would take classes at a time when he ''hopefully will be financially able to afford'' them. Tr. 126. This is arguably less a persuasive declaration of commitment to remedial efforts than it is an equivocation aimed at securing a favorable decision here.

Similarly, the Respondent's testimony regarding the point at which he realized he was prescribing to the former patients of Dr. Rew, a practitioner who had been arrested in connection with controlled substance diversion, was also sufficiently evasive as to pare down his credibility. Initially, he stated that the information was only known to the owners of the pain clinic, and then reluctantly acknowledged that when he was relegated to ascertaining medication information from pharmacies and not patient files, he did understand that this was a result of the seizure of Dr. Rew's patient charts at the time of his arrest. Tr. 123.

Thus, while there were portions of the Respondent's testimony that were credible, on the whole, the credibility of his testimony was something of a mixed bag.

The Respondent also presented the character testimony of his wife, Susie Morgan.[53] Tr. 188. Mrs. Morgan has been married to the Respondent for sixteen years. Tr. 190. She testified that they met when the Respondent moved to Memphis, Tennessee and was working as a surgeon in a clinic. Tr. 188. Mrs. Morgan was working as an engineer upgrading the clinic's telecommunications systems. Tr. 190. She testified that at the time, the Respondent was hospitalized for stress caused by the actions of the clinic owner, and that the Respondent lost his job and all of his money. Tr. 190–91. After the

[50] The Respondent has, however, completed a one-hour CME on controlled substance dosing. Tr. 127.

[51] Testosterone is used as an anabolic steroid. 1–A Attorneys' Dictionary of Medicine A–6460. Anabolic steroids are Schedule III controlled substances pursuant to 21 CFR 1308.13(f) (2012).

[52] Gov't Ex. 3.

[53] Although this witness was not timely noticed by the Respondent and should have been, he was permitted to present her testimony over Government objection. Tr. 185–87. Good cause was found in the Respondent's pro se representation, and the Respondent's loss of counsel at or near the commencement of the hearing. *Id.*

Respondent and Mrs. Morgan got married, they moved to Wheeling, West Virginia. Tr. 191.

Mrs. Morgan explained that the reason she and the Respondent moved so many times was because the Respondent ''takes the time to see patients.'' Tr. 191. She further explained that because most clinic owners only care about making a profit, the Respondent's efforts to ''listen to patients and try to take the time to do the right thing'' had caused him to lose jobs in the past. Tr. 191. Mrs. Morgan testified that she had worked with the Respondent at his practice and became very involved with integrated medicine by helping patients improve their health through ''proper diet and proper nutrition.'' Tr. 191–92. She affirmed that her opinions about the Respondent were based on her experiences working with him in the clinic. Tr. 192. Mrs. Morgan testified that she had never known the Respondent to use or abuse drugs or alcohol. Tr. 193. She concluded her testimony by stating that the reason she and the Respondent moved so many times was due to housing problems, and not because they were unstable people. Tr. 193.

The testimony presented by Ms. Morgan was sufficiently detailed, consistent, and plausible to be fully credited in this recommended decision.

The Posthearing Evidence

Subsequent to the commencement of these proceedings, the Tennessee Board of Osteopathic Examination (Tennessee Board) instituted charges against the Respondent's state license. Tr. 135. At the hearing, the Respondent represented that a mediation conference in the matter took place on July 30, 2012, and that a hearing was scheduled to occur (two weeks later) on August 15, 2012. Tr. 15–17. On August 21, 2012, the Government filed a Motion for Summary Disposition (''MSD''), in which it represented that ''[o]n August 15, 2012, the Tennessee Board of Osteopathic Examination executed an order summarily suspending Respondent's medical license, effective immediately.'' MSD at 1. Based on the Tennessee Board's order and the Respondent's resultant loss of state authority, the Government's MSD seeks: (1) Summary disposition; (2) a recommendation that the Respondent's ''DEA application for registration be denied;'' [54] (3) the transmission of the instant matter to the Administrator for final agency action; and (4) a stay of administrative proceedings pending the results of the Government's motion for summary disposition. By an August 23, 2012 Order of this tribunal, the request to stay was denied, and the remaining requests for relief were deferred, to be addressed in this recommended decision.

The Tennessee Board's order, which was received into evidence at the unopposed request of the Government, reflects that, on August 15, 2012, the Tennessee Board approved an Agreed Order between the Respondent and the Division of Health Related Boards of the Tennessee Department of Health (''the Tennessee Agreed Order''). Gov't Ex. 12. By signing the Tennessee Agreed Order, the Respondent waived ''the right to a contested case hearing and any and all rights to judicial review.'' Gov't Ex. 12 at 1. The Tennessee Agreed Order contains the following relevant findings of facts and conclusions of law:

(1) ''While employed at a pain management clinic in Florida in 2009, Respondent prescribed a total of about 26,070 tablets of controlled substances to seven patients over the course of three to four months. The specific controlled substances were oxycodone, Oxycontin, Roxicodone,[55] Percoset, Xanax, Dilaudid, methadone, morphine, and Soma.'' Gov't Ex. 12 at 2, ¶ 3.

(2) ''On or about September 11, 2009 . . . Respondent self-prescribed lorazepam,[56] a controlled substance. . . . Respondent continued to order lorazepam refills for himself at least until September 18, 2010.'' *Id.* at 2, ¶ 5.

(3) The Respondent was disciplined in Florida for ''excessive and inappropriate prescribing, without the performance and/or documentation of adequate examinations and without medical justification for the frequency and simultaneous prescription of drugs. . . .'' *Id.* at 3, ¶ 7.

(4) Based on the stipulated facts, the Respondent was found to have ''violated the Osteopathic Medical Practice Act, which gives the Board the power to discipline a Tennessee licensee.'' [57] *Id.* at 4.

(5) The Board identified the following grounds for discipline:

a. The Respondent's prescribing practices in Florida and subsequent disciplinary action by the Florida Department of Health constituted a violation of Tenn. Code Ann. § 63–9–111(b)(21), which allows for disciplinary action based on ''[d]isciplinary action against the licensee to practice medicine by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a licensee licensed in [Tennessee].'' *Id.* at 4, ¶ 9.

b. The Respondent's self-prescribing of lorazepam constituted ''[u]nprofessional, dishonorable or unethical conduct'' under Tenn. Code Ann. § 63–9–111(b)(1), and also was found to be a violation of Tenn. Code Ann. § 63–9–111(b)(11), which prohibits ''[d]ispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering or not to cure an ailment, physical infirmity or disease.'' *Id.* at 4, ¶¶ 10–11.

Based on the foregoing findings, the Tennessee Board permanently barred the Respondent from practicing pain management, and suspended the Respondent's osteopathic license ''until Respondent undergoes an assessment regarding his ability to safely prescribe and his self-prescription of controlled substances with the Vanderbilt Comprehensive Assessment Program (VCAP).'' *Id.* at 5, ¶¶ 13–14. The order further provided that, ''[i]f the assessment finds that [the] Respondent may safely continue to practice . . . then [the] Respondent may present those findings . . . to the Board or its consultant and petition . . . to lift the suspension.'' *Id.* at 5, ¶ 14. In the event that the Respondent's suspension is lifted, his osteopathic license will be on probation for five years, and the Respondent will be prohibited from prescribing Schedule II or Schedule III controlled substances (with the exception of testosterone), and will be ''restricted to the practice of ophthalmology or integrated and holistic medicine.'' *Id.* at 5–6, ¶ 15. The Respondent will also be required to enroll in specified continuing medical education courses, and will have to engage a practice monitor to review the Respondent's patient charts. *Id.* Finally, the Board assessed civil penalties against the Respondent and directed the Respondent to ''pay the actual and reasonable costs associated with the investigation and prosecution of this case.'' *Id.* at 6, ¶¶ 18–19.

The Analysis

The Government alleges two bases for revocation of the Respondent's license: (1) The Respondent's loss of state authority to handle controlled substances; and (2) that the Respondent's continued registration would be inconsistent with the public interest. This opinion will address both contentions.

Summary Disposition Based on Lack of State Authority

Before turning to the merits of the Government's motion for summary disposition, it is important to address the issue of notice. As a general matter, if ''the Government has failed to disclose in its prehearing statements or indicate at any time prior to the hearing that an issue will be litigated, the issue cannot be the basis for a sanction.'' *George Mathew, M.D.,* 75 FR 66138, 66146 n. 20 (2010) (internal quotations omitted). Stated differently, a failure to adequately allege a ground for adverse administrative action must, consistent with due process, serve as a bar to reliance on that ground. Here, it is beyond argument that the Respondent's loss of state authority is a development that came to fruition after the issuance of the OSC and even the conclusion of the hearing in this matter. This issue was addressed by the Agency in *Peter A. Ahles, M.D.,* 71 FR 50097, 50099 n.3 (2006). In *Ahles,* the Agency, in a hearing waiver case where state authority was lost after issuance of the charging document, held that:

Although the [OSC] did not allege [r]espondent's loss of state authority as a ground for this proceeding, the CSA does not authorize DEA ''to maintain a registration if the registrant is without state authority to handle controlled substances in the state in which he practices.'' *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006). DEA has

[54] This is a revocation case, not a denial. Accordingly, the MSD will be construed as seeking revocation and denial of the Respondent's renewal application.

[55] Roxicodone is the brand name of a drug containing oxycodone. 5–R Attorneys' Dictionary of Medicine R–102676. Oxycodone is a Schedule II controlled substance pursuant to 21 CFR 1308.12(b)(1)(xiii) (2012).

[56] Lorazepam is a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(29) (2012).

[57] *See* Osteopathic Medical Practice Act, Tenn. Code Ann. §§ 3–9–101–119 (West 2012).

consistently applied this rule. *Id.; see also Dominick A. Ricci, M.D.,* 58 FR 51101 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988). Because [r]espondent no longer has authority under [state] law to handle controlled substances, he is not entitled to maintain his DEA registration and revocation of his registration is warranted for this reason as well. Furthermore, an allegation that a practitioner has committed acts that render his continued registration inconsistent with the public interest incorporates the statutory factors of 21 U.S.C. 823(f). *See* 21 U.S.C. 824(a)(4). The first factor requires consideration of ''[t]he recommendation of the appropriate State licensing board or professional disciplinary authority. *See id.* section 823(f)(1). An allegation brought under section 824(a)(4) thus provides adequate notice that a loss of a State license may be considered during the proceeding.

Ahles, 71 FR at 50099 n.3. Admittedly, the *Ahles* case was a hearing waiver case where no response was made by the registrant, and not a request for summary disposition. However, on the present procedural posture of this case, the distinction does not undermine the rationale of the Agency holding. Under existing Agency precedent, the Respondent was provided with sufficient notice to satisfy due process.

The procedural history here provides additional justification for the consideration of the Government's petition for summary disposition. The issue of a requirement of state authority to handle controlled substances constituting a necessary condition to continue to hold a DEA COR was discussed at some length during a colloquy between this tribunal and the Respondent at the outset of the hearing. Tr. 14–18. The Respondent was made aware of the Government's intent to rely on lack of state authority to support its petition for revocation by the filing of its MSD. Far from contesting the underlying lack of state authority, the Respondent has acknowledged its veracity. Resp't Post-Hrng Brf. at 2, n.2; Resp't Not. of Action of Tenn. Bd. at 2. The gravamen of the Respondent's reply to the Government's lack-of-state-authority basis for revocation is founded, not on any contest of its underlying factual premise, but on his request to forbear action on his DEA registration until such time as his petition for state license reinstatement has been heard and adjudicated. Resp't Opp. to Gov't Mot. for Sum. Disp. at 1. Under the circumstances presented here, an amendment of the administrative charging document is not required to satisfy due process. The Agency has consistently held that pleadings in administrative proceedings are not held to the standards employed to measure the validity of criminal indictments. *Liddy's Pharmacy, L.L.C,* 76 FR 48887, 48896 n.15 (2011). In *Roy E. Berkowitz, M.D.,* 74 FR 36758, 36760 (2009), the Agency declined to require a modification of the charging document where the Government's lack-of-state-authority theory morphed from a state consent order alleged in the OSC to an expiration established by declaration as part of a motion for summary disposition. The Agency held that the motion practice afforded the parties by the Administrative Law Judge presented ''an ample and meaningful opportunity to present evidence refuting the Government's evidence and creating a triable issue and/or to make argument (were there any viable ones to be made) regarding [the status of his license under state law].'' *Id.* The Agency explained its holding in this way:

> This Agency's proceedings are not . . . governed by the Federal Rules of Civil Procedure. And while those rules (and the judicial decisions interpreting them) may be a useful guide, they are not binding on the Agency. Instead, what is binding on the Agency is the Due Process Clause, the Administrative Procedure Act, and the Agency's regulations. Contrary to the [r]espondent's understanding, to decide this matter on the grounds asserted in the Government's motion [for summary disposition] does not violate his right to due process. As the Federal Courts have recognized, ''[p]leadings in administrative proceedings are not judged by the standards applied to an indictment at common law.'' *Citizens State Bank of Marshfield* v. *FDIC,* 751 F.2d 209, 213 (8th Cir. 1984) (quoting *Aloha Airlines, Inc.,* v. *CAB,* 598 F.2d 250, 262 (D.C. Cir. 1979)). . . . Indeed, the Federal Courts routinely uphold agency adjudications which are based on matters which were not initially raised in a charging document but which were nonetheless litigated in a proceeding. *See, e.g., Pergament United Sales, Inc.* v. *NLRB,* 920 F.2d 130, 137 (2d Dir. 1990) (no due process violation where NLRB did not cite in complaint specific provision of NLRA which Board ultimately relied on its order because the employer ''was not kept in the dark [and] was aware of and actively litigated'' the relevant issue.); *Facet Enters., Inc.,* v. *NLRB,* 907 F.2d 963, 972 (10th Cir. 1990) (''A material issue which has been fairly tried by the parties . . . may be decided by the Board regardless of whether it has been specifically pleaded.''); *Citizens Bank,* 751 F.2d at 213; *Kuhn* v. *CAB,* 183 F.2d 839, 842 (D.C. Cir. 1950) (''If it is clear that the parties understand exactly what the issues are when the proceedings are had, they cannot thereafter claim surprise or lack of due process because of alleged deficiencies in the language of the particular pleadings.'').

Id. at 36759. Hence, under the circumstances presented here, neither Agency precedent nor the requirements of the Due Process Clause compel the amendment of the charging document as a condition precedent to consideration of the Government's MSD on its merits.[58]

Congress does not intend for administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.,* 48 FR 32887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB* v. *Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971). Thus, it is well-settled that, where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required. *See Jesus R. Juarez, M.D.,* 62 FR 14945 (1997); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993). Because, as set forth below, there is no genuine issue of material fact regarding the Respondent's right to maintain his DEA registration, summary disposition on the issue of state authority is appropriate and compelled by Agency precedent.

The Controlled Substances Act (CSA) requires that, in order to maintain a DEA registration, a practitioner must be authorized to handle controlled substances in ''the jurisdiction in which he practices.'' *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice''); *see also id.* section 823(f) (''The Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.''). DEA has long held that possession of authority under state law to dispense controlled substances is an essential condition for obtaining and maintaining a DEA registration. *Serenity Café,* 77 FR 35027, 35028 (2012); *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Because ''possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration,'' this Agency has consistently held that ''the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority].'' *Roy Chi Lung,* 74 FR 20346, 20347 (2009); *see also Scott Sandarg, D.M.D.,* 74 FR 17528, 17529 (2009); *John B. Freitas, D.O.,* 74 FR 17524, 17525 (2009); *Roger A. Rodriguez, M.D.,* 70 FR 33206, 33207 (2005); *Stephen J. Graham, M.D.,* 69 FR 11661 (2004); *Abraham A. Chaplan, M.D.,* 57 FR 55280 (1992); *see also Harrell E. Robinson,* 74 FR 61370, 61375 (2009); *but see* 21 U.S.C. 824(a)(3) (suspension of state controlled substance authorization enumerated in the CSA as an independent basis upon which revocation or other adverse action against an existing registration may be taken as a matter of discretion). Even assuming *arguendo* the possibility raised by the Respondent that his state controlled substances privileges could be reinstated, summary disposition would still be warranted because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement,'' *Rodriguez,* 70 FR at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state

[58] Although the Agreed Order issued by the Tennessee Board refers to a sustained finding that the Respondent improperly self-prescribed lorazepam (Gov't Ex. 12 at 4), that misconduct was not alleged by the Government in its OSC or its Prehearing Statement, and forms no basis in this recommended decision. *See CBS Wholesale Distribs.,* 74 FR 36746, 36750 (2009) (factual parameters of DEA administrative cases fixed by the charging document and prehearing statements).

courts. *Michael G. Dolin, M.D.,* 65 FR 5661, 5662 (2000).

In *Anne Lazar Thorn, M.D.,* 62 FR 12847 (1997), the Agency affirmed the Administrative Law Judge's summary disposition recommended decision and specifically rejected the view that a COR could coexist in the face of an absence of state authority to handle controlled substances. In that case, the Agency held that:

the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is *whether the Respondent is currently authorized to handle controlled substances in the state.* In the instant case, it is undisputed that Respondent is not currently authorized to handle controlled substances in the [state where his COR has its listed address].

Therefore . . . Respondent is not currently entitled to a DEA [COR].

Id. at 12848 (emphasis supplied). Similarly, in *Calvin Ramsey, M.D.,* 76 FR 20034, 20036 (2011), the Agency stated its position with such unambiguous precision that little room is realistically left for debate on the matter:

DEA has repeatedly held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *David W. Wang,* 72 [FR] 54297, 54298 (2007); *Sheran Arden Yeates,* 71 [FR] 39130, 39131 (2006); *Dominck A. Ricci,* 58 [FR] 51104, 51105 (1993); *Bobby Watts,* 53 [FR] 11919, 11920 (1988). This is so even where a state board has suspended (as opposed to revoked) a practitioner's authority with the possibility that the authority may be restored at some point in the future.

[*Roger A. Rodriguez,* 70 FR 33206, 33207 (2005)].

Thus, the Agency has held that even without evaluating the specific bases for state administrative action against a medical license, a ''[s]tate's action in suspending [a registrant's] medical license is by itself, an independent ground to revoke [a] registration.'' *James L. Hooper, M.D.,* 76 FR 71371, 71372 (2011).

In its MSD, the Government argues that summary disposition is warranted because ''[a]bsent authority by the State of Tennessee [to handle controlled substances, the] Respondent is not authorized to possess a DEA registration in that state.'' MSD at 1. In opposition to summary disposition, the Respondent contends that he obtained the evaluation required by the Tennessee Board, and that ''[t]he Board will know within 12 days or less from August 17, 2012, whether Respondent has met the 'suitability for practice' evaluation requirements. Once this requirement is known, it is a pre-determined fact that the conditional suspension will be lifted.'' Response to MSD at 1–2.

First, there is no indication that the evaluation the Respondent obtained was favorable. Furthermore, contrary to the Respondent's contention, even if he obtains a favorable evaluation, reinstatement of his license is not automatic. Rather, as described above, the Agreed Order provides that once the Respondent obtains a favorable evaluation, he may petition the Board to lift the suspension and ''must appear in person before the Board to answer any questions the Board has and to present any documentation the Board may require, and must satisfy the Board of his ability to safely and professionally practice.'' Gov't Ex. 12 at 5. Put differently, a favorable evaluation is a necessary, but not in and of itself sufficient, condition for the Respondent to regain controlled substance privileges in Tennessee. Thus, in essence, the Respondent seeks to oppose summary disposition on the basis that his state privileges may be reinstated. However, as discussed, *supra,* the possibility of future reinstatement does not provide sufficient grounds to deny summary disposition. *Rodriguez,* 70 FR at 33207.

Because the Respondent lacks state authority in the State of his registration, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that the Respondent is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that would provide DEA with the authority to allow the Respondent to continue to hold his COR. Therefore, additional proceedings related to the Government's motion for summary disposition are not warranted. *See Veg-Mix, Inc.,* 832 F.2d 601, 607 (D.C. Cir. 1987) (''an agency may ordinarily dispense with a hearing when no genuine dispute exists''); *see also Gregory F. Saric, M.D.,* 76 FR 16821 (2011) (stay denied in the face of Respondent's petition based on pending state administrative action wherein he was seeking reinstatement of state privileges).

Accordingly, the Government's Motion for Summary Disposition on the issue of lack of state authority must be and herein is *granted.* On the basis of the Respondent's lack of state authority to handle controlled substances, it is hereby *recommended* that the Respondent's DEA registration be *revoked* forthwith and any pending applications for renewal be *denied.*

Public Interest

Even if the Respondent possessed sufficient state authority to allow the Agency to continue the privileges he currently enjoys as a DEA registrant, a review of the issue based upon the evidence received at the hearing yields a like result as a matter of discretion. Pursuant to 21 U.S.C. 824(a)(4) (2006), the Administrator [59] is permitted to revoke a COR if persuaded that the registrant ''has committed such acts as would render . . . registration under section 823 . . . inconsistent with the public interest. . . .'' The following factors have been provided by Congress to aid in determining ''the public interest'':

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant'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.

21 U.S.C. 823(f) (2006 & Supp. III 2010).

''[T]hese factors are considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Any one or a combination of factors may be relied upon, and when exercising authority as an impartial adjudicator, the Administrator may properly give each factor whatever weight she deems appropriate in determining whether a registration should be rejected. *Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005); *JLB, Inc., d/b/a Boyd Drugs,* 53 FR 43945, 43947 (1988); *David E. Trawick, D.D.S.,* 53 FR 5326, 5327 (1988); *see also Joy's Ideas,* 70 FR 33195, 33197 (2005); *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993); *Henry J. Schwarz, Jr., M.D.,* 54 FR 16422, 16424 (1989). Moreover, the Administrator is ''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,* 412 F.3d at 173–74. The Administrator is not required to discuss consideration of each factor in equal detail, or even every factor in any given level of detail. *Trawick* v. *DEA,* 861 F.2d 72, 76 (4th Cir. 1988) (the Administrator's obligation to explain the decision rationale may be satisfied even if only minimal consideration is given to the relevant factors and remand is required only when it is unclear whether the relevant factors were considered at all). The balancing of the public interest factors ''is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest. . . .'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009).

In an action to revoke a registrant's COR, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e) (2011). The Government may sustain its burden by showing that the Respondent has committed acts inconsistent with the public interest. *Jeri Hassman, M.D.,* 75 FR 8194, 8235–36 (2010). Once DEA has made its *prima facie* case for revocation of the registrant's COR, the burden of production then shifts to the Respondent to present sufficient mitigating evidence to assure the Administrator that he or she can be entrusted with the responsibility commensurate with such a registration. *Steven M. Abbadessa, D.O.,* 74 FR 10077, 10078, 10081 (2009); *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008); *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23853 (2007);. *Morall,* 412 F.3d at 174; *Humphreys* v. *DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz* v. *U.S. Dept. of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 FR 72311, 72312 (1980). ''[T]o rebut the Government's *prima facie* case, [the Respondent] is required not only to accept responsibility for [the established] misconduct, but also to demonstrate what

[59] This authority has been delegated pursuant to 28 CFR 0.100(b) and 0.104 (2010).

corrective measures [have been] undertaken to prevent the reoccurrence of similar acts.'' *Jeri Hassman, M.D.,* 75 FR at 8236. Normal hardships to the practitioner and even to the surrounding community that are attendant upon the lack of registration are not relevant considerations. *Abbadessa,* 74 FR at 10078; *see also Gregory D. Owens, D.D.S.,* 74 FR 36751, 36757 (2009).

The Agency's conclusion that past performance is the best predictor of future performance has been sustained on review in the courts, *Alra Labs.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), as has the Agency's consistent policy of strongly weighing whether a registrant who has committed acts inconsistent with the public interest has accepted responsibility and demonstrated that he or she will not engage in future misconduct. *Hoxie,* 419 F.3d at 483; *Ronald Lynch, M.D.,* 75 FR 78745, 78749 (2010) (Respondent's attempts to minimize misconduct held to undermine acceptance of responsibility); *George Mathew, M.D.,* 75 FR 66138, 66140, 66145, 66148 (2010); *East Main Street Pharmacy,* 75 FR 66149, 66165 (2010); *George C. Aycock, M.D.,* 74 FR 17529, 17543 (2009); *Abbadessa,* 74 FR at 10078; *Krishna-Iyer,* 74 FR at 463; *Medicine Shoppe,* 73 FR at 387.

While the burden of proof at this administrative level is a preponderance-of-the-evidence standard, *see Steadman* v. *SEC,* 450 U.S. 91, 100–01 (1981), the Administrator's factual findings will be sustained on review so long as they are supported by ''substantial evidence.'' *Hoxie,* 419 F.3d at 481. Thus, ''the possibility of drawing two inconsistent conclusions from the evidence'' does not limit the Administrator's ability to find facts on either side of the contested issues in the case. *Shatz,* 873 F.2d at 1092; *Trawick,* 861 F.2d at 77. However, in rendering a decision, the Administrator must consider all ''important aspect[s] of the problem,'' such as a Respondent's defense or explanation that runs counter to the Government's evidence. *Wedgewood Vill. Pharmacy* v. *DEA,* 509 F.3d 541, 549 (D.C. Cir. 2007); *Humphreys,* 96 F.3d at 663. The ultimate disposition of the case ''must be in accordance with the weight of the evidence, not simply supported by enough evidence to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.'' *Steadman,* 450 U.S. at 99 (internal quotation marks omitted).

Regarding the exercise of discretionary authority, the courts have recognized that gross deviations from past agency precedent must be adequately supported. *Morall,* 412 F.3d at 183. Mere unevenness in application standing alone does not, however, render a particular discretionary action unwarranted. *Chein* v. *DEA,* 533 F.3d 828, 835 (D.C. Cir. 2008) (citing *Butz* v. *Glover Livestock Comm. Co.,* 411 U.S. 182, 188 (1973)), *cert. denied,* 555 U.S. 1139, 1139, 129 S. Ct. 1033, 1033 (2009). It is well-settled that since the Administrative Law Judge has had the opportunity to observe the demeanor and conduct of hearing witnesses, the factual findings set forth in a recommended decision are entitled to significant deference. *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951). Thus, a recommended decision constitutes an important part of the record that must be considered in the Administrator's decision. *Morall,* 412 F.3d at 179. However, any recommendations set forth herein regarding the exercise of discretion are not binding on the Administrator and do not limit the exercise of that discretion. 5 U.S.C. 557(b) (2006); *River Forest Pharmacy, Inc.* v. *DEA,* 501 F.2d 1202, 1206 (7th Cir. 1974); *Attorney General's Manual on the Administrative Procedure Act* 8 (1947).

Factors 1, 3 and 5: The Recommendation of the Appropriate State Licensing Board or Professional Disciplinary Authority; Any Conviction Record Under Federal or State Laws Relating to the Manufacture, Distribution, or Dispensing of Controlled Substances; Such Other Conduct Which May Threaten the Public Health and Safety

Regarding Factor One, it is undisputed that the Respondent does not presently hold a valid license in the State of Tennessee, the state of his DEA COR registered address. It is, however, likewise undisputed that there is no recommendation from any state licensing board regarding the disposition of the Respondent's DEA COR in these proceedings. *See Gilbert Eugene Johnson, M.D.,* 75 FR 65663, 65665 (2010) (Agency declined to deem the action of a state medical board as constituting a recommendation within Factor 1). Thus, contrary to the Government's argument in its Post-Hearing Brief,[60] there is no evidence of record that supports revocation under Factor One. However, the fact that a state has not rendered a DEA COR recommendation is not dispositive in this administrative determination as to whether continuation of a registration is consistent with the public interest. *Patrick W. Stodola, M.D.,* 74 FR 20727, 20730 (2009); *Jayam Krishna-Iyer,* 74 FR at 461.

A ''state license is a necessary, but not a sufficient condition for registration,'' and this is no less true, where a Respondent regains state authority to handle controlled substances. *Leslie,* 68 FR at 15230; *John H. Kennedy, M.D.,* 71 FR 35705, 35708 (2006). The DEA bears an independent responsibility to determine whether a registration is in the public interest. *Mortimer B. Levin, D.O.,* 55 FR 9209, 8210 (1990). The ultimate responsibility to determine whether a registration is consistent with the public interest has been delegated exclusively to the DEA, not to entities within state government. *Edmund Chein, M.D.,* 72 FR 6580, 6590 (2007), *aff'd, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008), *cert. denied,* 555 U.S. 1139, 129 S. Ct. 1033 (2009). Congress vested authority to enforce the CSA in the Attorney General, not state officials. *Stodola,* 74 FR at 20375. Thus, on these facts, the absence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of the Respondent's DEA certification is consistent with the public interest. *See Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011) (''[T]he fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of the Respondent's DEA certification is consistent with the public interest.'').[61]

Regarding the third factor (convictions relating to the manufacture, distribution, or dispensing of controlled substances), the record in this case does not contain evidence that the Respondent has been convicted of (or charged with) a crime related to the manufacture, distribution, or dispensing of controlled substances. DEA administrative proceedings are non-punitive and ''a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused controlled substances or their DEA COR, and who have not presented sufficient mitigating evidence to assure the [Administrator] that they can be trusted with the responsibility carried by such a registration.'' *Jackson,* 72 FR at 23853; *Leo R. Miller, M.D.,* 53 FR 21931, 21932 (1988). Where evidence in a particular case reflects that the Respondent has acquired convictions relating to the manufacture, distribution, or dispensing of controlled substances, those convictions must be carefully examined and weighed in the adjudication of whether the issuance of a registration is in the public interest. 21 U.S.C. 823(f).

Although the standard of proof in a criminal case is more stringent than the standard required at an administrative proceeding, and the elements of both federal and state crimes relating to controlled substances are not always co-extensive with conduct that is relevant to a determination of whether registration is in the public interest, evidence that a registrant has been convicted of crimes related to controlled substances is

[60] Gov't Post-Hrng. Brf. at 9.

[61] As discussed in more detail, *supra,* it would be untrue to say that state regulatory authorities have been without opinions regarding the Respondent's fitness to practice osteopathy. The record establishes 1995 discipline issued by the State of Missouri for falsifying a Continuing Medical Education (CME) compliance report. Gov't Ex. at 11–12. State medical authorities in Michigan, Kentucky, and Ohio imposed their own reciprocal sanctions based on Missouri's action. Gov't Exs. 4, 5, 6. However, inasmuch as the bases underlying these actions present no apparent tie to any issue related to controlled substances, and thus, no rational relationship between these actions and the purposes of the CSA, the relevance of these decisions is restricted to issues related to the Respondent's credibility. *See Judulang* v. *Holder,* 132 S.Ct. 476 (2011) (invalidating Board of Immigration Appeals decision-making practice where the ''rule [was] unmoored from the purposes and concerns of the immigration laws.''); *see also Tony T. Bui, M.D.,* 75 FR 49979, 49988 (2010); *David E. Trawick,* 53 FR 5326, 5327 (1988). The action by the Florida Board, which demonstrated a marked absence of confidence in the Respondent's worthiness to dispense controlled substances in a responsible manner, is clearly within the proper sweep of the CSA, but even if it were conceded, *arguendo,* that the Florida Board is an ''appropriate . . . authority'' to issue a recommendation on the Respondent's Tennessee-registered COR, the fact remains that the record contains no *recommendation* from any state regulatory authority regarding the disposition of the Respondent's registration. *See Johnson,* 75 FR at 65665 (Agency declined to deem the action of a state medical board as constituting a recommendation within Factor One).

a factor to be evaluated in reaching a determination as to whether he or she should be entrusted with a DEA registration. The probative value of the absence of any evidence of criminal prosecution is somewhat diminished by the myriad of considerations that are factored into a decision to initiate, pursue, and dispose of criminal proceedings by federal, state, and local prosecution authorities. *See Robert L. Dougherty, M.D.,* 76 FR 16823, 16833 n.13 (2011); *Dewey C. Mackay, M.D.,* 75 FR 49956, 49973 (2010) (''[W]hile a history of criminal convictions for offenses involving the distribution or dispensing of controlled substances is a highly relevant consideration, there are any number of reasons why a registrant may not have been convicted of such an offense, and thus, the absence of such a conviction is of considerably less consequence in the public interest inquiry''), *aff'd, Mackay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011); *Ladapo O. Shyngle, M.D.,* 74 FR 6056, 6057 n.2 (2009). Therefore, on these facts, the absence of any convictions relating to controlled substances has little probative value in determining whether the Respondent's continued registration is within the public interest.

The fifth statutory public interest factor directs consideration of ''[s]uch *other conduct* which may threaten the public health and safety.'' 21 U.S.C. 823(f)(5) (emphasis supplied). Existing Agency precedent has long held that this factor encompasses ''conduct which creates a probable or possible threat (and not only an actual [threat]) to public health and safety.'' *Dreszer,* 76 FR at 19434 n.3, 19386–87 n.3; *Aruta,* 76 FR at 19420 n.3; *Boshers,* 76 FR 19403 n.4. Agency precedent has generally embraced the principle that any conduct that is properly the subject of Factor Five must have a nexus to controlled substances and the underlying purposes of the CSA. *Terese,* 76 FR at 46848; *Tony T. Bui, M.D.,* 75 FR 49979, 49989 (2010) (prescribing practices related to a non-controlled substance such as human growth hormone may not provide an independent basis for concluding that a registrant has engaged in conduct which may threaten public health and safety); *cf., Paul Weir Battershell, N.P.,* 76 FR 44359, 44368 n.27 (2011) (although a registrant's non-compliance with the Food, Drug, and Cosmetic Act is not relevant under Factor Five, consideration of such conduct may properly be considered on the narrow issue of assessing a respondent's future compliance with the CSA).

Similar ''catch all'' language is employed by Congress in the CSA related to the Agency's authorization to regulate controlled substance manufacturing and List I chemical distribution, but the language is by no means identical. 21 U.S.C. 823(d)(6), (h)(5). Under the language utilized by Congress in those provisions, the Agency may consider ''such *other factors* as are relevant to and consistent with the public health and safety.'' *Id.* (emphasis supplied). In *Holloway Distributors,* 72 FR 42118, 42126 (2007), the Agency held this catch all language to be broader than the language directed at practitioners under ''other conduct which may threaten the public health and safety'' utilized in 21 U.S.C. 823(f)(5). In *Holloway,* the Administrator stated that regarding the List I catch all:

> [T]he Government is not required to prove that the [r]espondent's conduct poses a threat to public health and safety to obtain an adverse finding under factor five. *See T. Young,* 71 [FR] at 60572 n.13. Rather, the statutory text directs the consideration of ''such other factors as are relevant to and consistent with the public health and safety.'' 21 U.S.C. 823(h)(5). This standard thus grants the Attorney General broader discretion than that which applies in the case of other registrants such as practitioners. *See id.* section 823(f)(5) (directing consideration of ''[s]uch other conduct which may threaten the public health and safety'').

72 FR at 42126.[62] Thus, the Agency has recognized that, while the fifth factor applicable to List I chemical distributors—21 U.S.C. 823(h)(5)—encompasses all ''factors,'' the Factor Five applied to practitioners—21 U.S.C. 823(f)(5)—considers only ''conduct.'' Because section 823(f)(5) only implicates ''such other conduct,'' it necessarily follows that conduct considered in Factors One through Four may not ordinarily be considered at Factor Five. Here, the Government has not alleged any conduct, which may be properly considered under Factor Five.

Accordingly, consideration of the evidence of record under the first, third, and fifth factors neither supports the Government's argument for revocation nor militates against it.

Factors 2 and 4: Experience in Dispensing Controlled Substances and Compliance with Applicable State, Federal, or Local Laws Relating to Controlled Substances

In this case, the gravamen of the Government's case seeking revocation relates to its allegations that: (1) The findings of the Florida Board that the Respondent inappropriately prescribed excessive quantities and combinations of controlled substances support a finding that the Respondent prescribed controlled substances for other than a legitimate medical purpose and outside the course of a professional practice; and (2) the Respondent, after moving his COR from Florida to Tennessee, continued to prescribe to patients in Florida without administering physical examinations, in violation of the regulations. ALJ Ex. 1 at 1–2.

Regarding Factor Two, in requiring an examination of a registrant's experience in dispensing controlled substances, Congress acknowledged that the qualitative manner and the quantitative volume in which a registrant has engaged in the dispensing of controlled substances, and how long he or she has been in the business of doing so, are significant factors to be evaluated in reaching a determination as to whether he or she should be entrusted with a DEA COR. In some cases, viewing a registrant's actions against a backdrop of how she has performed activity within the scope of the certificate can provide a contextual lens to assist in a fair adjudication of whether continued registration is in the public interest.

Evidence that a practitioner may have conducted a significant level of sustained activity within the scope of the registration for a sustained period can be a relevant and correct consideration, which must be accorded due weight. The registrant's knowledge and experience regarding the rules and regulations applicable to practitioners also may be considered. *See Volusia Wholesale,* 69 FR 69409, 69410 (2004) (List I case).[63] However, the Agency has taken the reasonable position that this factor can be outweighed by acts held to be inconsistent with the public interest. *Jayam Krishna-Iyer,* 74 FR at 463; *see also Jeri Hassman, M.D.,* 75 FR 8194, 8235 (2010) (acknowledging Agency precedential rejection of the concept that conduct, which is inconsistent with the public interest, is rendered less so by comparing it with a respondent's legitimate activities that occurred in substantially higher numbers); *Paul J. Cargine, Jr.,* 63 FR 51592, 51560 (1998) (''[E]ven though the patients at issue are only a small portion of Respondent's patient population, his prescribing of controlled substances to these individuals raises serious concerns regarding [his] ability to responsibly handle controlled substances in the future.''). The Agency's approach in this regard has been sustained on review. *Mackay,* 664 F.3d at 819.

If alleged misconduct is established by the Government and acknowledged as errant by the Respondent, experience, which occurred prior or subsequent to that malfeasance, may be relevant. Evidence that precedes proven misconduct may add support to the contention that, even acknowledging the gravity of a registrant's transgressions, they are sufficiently isolated and/or attenuated that adverse action against his registration may not be compelled by public interest concerns. Likewise, evidence presented by

[62] In *Bui,* the Agency clarified that ''an adverse finding under [Factor Five did not require a] showing that the relevant conduct actually constituted a threat to public safety.'' 75 FR 49888 n.12.

[63] In *Cynthia M. Cadet, M.D.,* 76 FR 19450, 19450 n.1 (2011), the Agency reasonably ruled that the *Volusia Wholesale* List I analysis of Factor Two experience would not be applied to practitioner cases where intentional diversion allegations were sustained. However, insofar as the CSA requires consideration of ''experience'' in both the List I and practitioner contexts, it is reasonable (and not inconsistent with existing Agency precedent) to apply this measure in practitioner cases where intentional diversion has not been established. *Compare* 21 U.S.C. 823(h) (List I section mandating consideration of ''any past *experience* of the applicant in the manufacture and distribution of chemicals,'') (emphasis added) *with* 21 U.S.C. 823(f) (practitioner section mandating consideration of ''[t]he applicant's *experience* in dispensing, or conducting research with respect to controlled substances.); *see U.S.* v. *Tinklenberg,* 131 S. Ct. 2007, 2019–20 (2011) (''Identical words used in different parts of a statute are presumed to have the same meaning absent indication to the contrary.''). In reaching this conclusion, the word ''past'' in 823(h) is treated as surplusage for the simple reason that all experience is past. *See* Merriam-Webster's Collegiate Dictionary 440 (11th ed. 2007); *c.f. TMW Enterprises, Inc.* v. *Federal Ins. Co.,* 619 F.3d 574, 580 (6th Cir. 2010) (''[A]pplying the rule against surplusage is often overrated.'').

the Government that the proven allegations are congruous with a consistent past pattern of poor behavior can enhance the Government's case.

In a similar vein, conduct which occurs after proven allegations can shed light on whether a registrant has taken steps to reform and/or conform his conduct to appropriate standards. Contrariwise, a registrant who has persisted in incorrect behavior, or made attempts to circumvent Agency directives, even after being put on notice, can diminish the strength of his case. *Novelty, Inc.,* 73 FR 52689, 52703 (2008), *aff'd,* 571 F.3d 1176 (D.C. Cir. 2009); *Southwood Pharm., Inc.,* 72 FR 36487, 36503 (2007); *John J. Fotinopoulous,* 72 FR 24602, 24606 (2007).

The Respondent has presented evidence of a lengthy history of osteopathic practice as a registrant without indication of any difficulties in discharging his duties as a registrant. Tr. 90–93; Resp't Ex. 1. He is a board-certified ophthalmologist and has practiced medicine in various capacities, including eye surgery. Consistent with the standard of practice existing at the outset of his surgical career, the Respondent administered local anesthetics to his patients during surgery, and ''very seldom'' prescribed controlled substances to his patients. Tr. 92–93.

In addition to Factor Two (experience in dispensing), Factor Four (compliance with laws related to controlled substances) is also germane to a correct resolution of the present case. Regarding Factor Four, consistent with the maintenance of a closed regulatory system, subject to limited exceptions not relevant here, a controlled substance may only be dispensed upon a prescription issued by a practitioner. The prescription is unlawful 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). Furthermore, ''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 knowingly . . . issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' *Id.*

The findings by the Florida Board regarding the Respondent's controlled substance prescribing are relevant under Factors Two and Four. Florida law provides for disciplinary action against osteopaths for the ''[p]rescribing [of] controlled substances, other than in the course of the osteopathic physician's professional practice.'' Fla. Stat. § 459.015(1)(t) (2008–2009). The Florida statute contains a presumption ''that prescribing . . . controlled substances . . . inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the osteopathic physician's professional practice, without regard to his or her intent.'' *Id.* The Florida Board found that ''the respondent violated Section 459.015(1)(t) . . . (2008–2009), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to the Seven Patients.'' Gov't Ex. 7 at 20–21; Stipulation 4.

During the relevant time period, Florida law also provided for discipline against osteopathic physicians who ''violat[e] any provision of this chapter [459] or chapter 456, or any rules adopted pursuant thereto.'' Fla. Stat. § 549.015(1)(pp) (2008–2009). Also during the relevant time period, the Florida Board, pursuant to Chapter 459, had adopted a rule that, when using controlled substances for pain control:

> A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

Fla. Admin. Code § 64B15–14.005(3).

In its order, the Florida Board found that the Respondent had violated section 64B15–14.005(3) by prescribing controlled substances to the Seven Patients ''without conducting or documenting complete physical examinations.'' Gov't Ex. 7 at 23.

Also during the relevant time, Florida law authorized disciplinary action against an osteopathic physician who:

> Fail[ed] to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed osteopathic physician or the osteopathic physician extender and supervising osteopathic physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

Fla. Stat. § 459.015(1)(o).

The Florida Board, with the benefit of input from its own medical expert,[64] found that the Respondent violated section 459.015(1)(o) ''by failing to keep medical records that justified the course of treatment of [the Seven Patients].'' Gov't Ex. 7 at 24. The Florida Board also found that the Respondent issued ''excessive and inappropriate quantities of controlled substances'' to the Seven Patients. Gov't Ex. 7 at 21. Regarding each patient, the Florida Board Order listed the following findings: That cursory physical examinations were conducted that did not meet minimally acceptable standards; that the Respondent failed to perform and/or document acceptable examinations; and that the combinations and large amounts of dangerous and addictive controlled substances prescribed were excessive and inappropriate. *Id.* at 6, 8, 10, 12–16, 18. In each of the seven cases, the Florida Board specifically found that ''[a] reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities'' of various combinations of controlled substances. *Id.* Under Agency precedent, findings of a state administrative board are given preclusive effect in these proceedings. *Robert L. Dougherty, M.D.,* 76 FR 16823, 16830 (2011). Therefore, the Florida Board's findings are supported herein by substantial evidence. *Id.*

Federal regulations provide that for ''[a] prescription for a controlled substance to be effective[,] [it] must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04. Under current Agency precedent, the Government may establish a violation of section 1306.04 in four different ways: (1) By providing expert testimony; (2) by ''[p]roviding evidence that a practitioner committed a violation of a state medical practice standard which is sufficiently tied to a state law finding of illegitimacy to support a similar finding under Federal law;'' (3) by ''providing evidence showing that [the practitioner] knowingly diverted drugs;'' or (4) by showing ''a violation of a state medical practice standard which has a substantial relationship to the CSA's purpose of preventing substance abuse and diversion.'' *Jack A. Danton, D.O.,* 76 FR 60900, 60901 (2011). Here, the evidence supports a finding that, regarding the seven referenced patients, the Respondent violated the federal proscription against issuing prescriptions that were not for a legitimate medical purpose, and that his controlled substance prescribing practices fell below the standard set by the state.

In his testimony, the Respondent agreed that the amounts of controlled substances he prescribed were excessive. Tr. 181. The Respondent even conceded that, in at least one case, it would have been sufficiently improbable that one patient (KF) could have consumed the amount of Oxycodone the Respondent prescribed[65] in a fourteen-day period that it was likely the medication was being diverted. *Id.* Although the Respondent testified that he believed his actions were justified because he was reducing (the admittedly unreasonable amount) of Oxycodone, he conceded that his subsequent issuance of 960 tablets for an eleven-day (87 tablets per day) period the following month did not present any reduction in dosage level. Tr. 117–18. The Respondent characterized his own controlled substance prescribing as involving ''massive doses of opioids,''[66] and testified that even at the time he was prescribing controlled substances to one patient, he was ''staggered . . . that anybody could take this much medicine and live.''[67] The Respondent admitted he believes that the doses were so high as to be likely diverted. Tr. 181. As a trained doctor, who realized that the doses of controlled substances he was doling out were lethal if the recipients were actually taking them, the Respondent knew or should have known that the controlled substances he was dispensing were flying into the hands of his patients in

[64] Gov't Ex. 7, at 2.

[65] 1,200 tablets/approximately 85 tablets per day.

[66] Tr. 139–40.

[67] Tr. 114.

sufficient numbers and that they were likely being diverted. Through either incompetence or indifference, the Respondent was an active participant in controlled substance diversion. His admission conclusively establishes as much, and to deny it in the face of the numbers found by the Florida Board would have been untenable. The findings by the Florida Board, which have preclusive effect here, demonstrate violations of state and federal law, and prescribing practices that fall below acceptable state standards. Even standing alone, the findings of the Florida Board are sufficient to satisfy the Government's burden to establish acts sufficiently inconsistent with the public interest to warrant revocation.

The Government also alleges that ''[f]rom April 22, 2009 through June 12, 2009, [the Respondent] wrote more than one hundred prescriptions for controlled substances from [his] office in Tennessee for patients located in Florida, despite not having a valid DEA registration in [Florida] and based solely on reviewing 'progress notes' sent to [him] from a clinic in Florida.'' ALJ Ex. 1 (citing 21 CFR 1306.04). Sections 822(e) and 1301.12 require that a registrant maintain ''a separate registration . . . at each principal place of business or professional practice where the [the registrant] manufactures, distributes, or dispenses controlled substances. . . .'' ''Under this requirement, an individual practitioner must have a separate DEA registration, predicated on a separate state license, if he/she practices in offices that are located in different states and administers, dispenses directly, or prescribes controlled substances from both offices.'' *Clarification of Registration Requirements for Individual Practitioners,* 69 FR 70576, 70575 (2004). This separate registration requirement has been called ''an essential requirement of DEA's diversion control program.'' *See Preventing the Accumulation of Surplus Controlled Substances at Long Term Care Facilities,* 70 FR 25462, 25463 (2005) (''*Long Term Care*'').

''As a rule, a nominative adjective modifies the noun that most closely follows it. . . . When a writer intends an adjective . . . to modify a series of nouns following the adjective[ ], he so signals by insertion of a colon or other separator between the adjectival and nominative series to indicate the unusual usage.'' *Vaulting & Cash Services* v. *Diebold,* 199 F.3d 440, 440 (5th Cir. 1999). Applying this rule to the language of 21 CFR 1301.12(a), the word ''principal'' modifies the proximate noun ''place of business,'' and not the more remote noun ''professional practice.'' Put differently, a location falls under the ambit of section 1301.12(a) if it is a general physical location where controlled substances are manufactured, distributed, imported, exported, or dispensed, and if it is either: (1) A principal place of business; or (2) a professional practice.

As an initial matter, insofar as prescriptions written by the Respondent were handed to the Respondent's patients at the Pain Clinic in Pinellas Park, Florida, it is clear that controlled substances were dispensed by the Respondent at the location. *See* 21 U.S.C. 802(10) (defining the term ''dispense'' to mean ''to deliver a controlled substance to an ultimate user . . . pursuant to the lawful order . . . including the prescribing and administering of a controlled substance . . .); and 21 U.S.C. 802(8) (defining ''deliver'' as ''the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship.''). Accordingly, the question becomes whether the Pain Clinic in Pinellas Park, Florida was either a ''principal place of business'' or a ''professional practice,'' within the meaning of the regulation.

While the Agency has not had occasion to interpret the separate registration requirement in situations where, as here, the Respondent prescribed remotely, the CSA defines the ''practice of telemedicine'' as:

> The practice of medicine in accordance with applicable Federal and State laws by a practitioner . . . who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1395m(m) of Title 42,[68] which practice—
>
> (A) is being conducted—
>
> (i) while the patient is being treated by, and physically located in, a hospital or clinic registered under section 823(f) of this title; and
>
> (ii) by a practitioner—
>
> (I) acting in the usual course of professional practice;
>
> (II) acting in accordance with applicable State law; and
>
> (III) registered under section 823(f) of this title in the State in which the patient is located, unless the practitioner—
>
> (aa) is exempted from such registration in all States under section 822(d) of this title; or
>
> (bb) is—
>
> (AA) an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and
>
> (BB) registered under section 823(f) of this title in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 823(f) of this title;
>
> (B) is being conducted while the patient is being treated by, and in the physical presence of, a practitioner—
>
> (i) acting in the usual course of professional practice;
>
> (ii) acting in accordance with applicable State law; and
>
> (iii) registered under section 823(f) of this title in the State in which the patient is located, unless the practitioner—
>
> (I) is exempted from such registration in all States under section 822(d) of this title; or
>
> (II) is—
>
> (aa) an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and
>
> (bb) registered under section 823(f) of this title in any State or is using the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 823(f) of this title;
>
> (C) is being conducted by a practitioner . . . who is an employee or contractor of the Indian Health Service . . .
>
> (D) [I]s being conducted during a public health emergency . . .
>
> (E) is being conducted by a practitioner who has obtained from the Attorney General a special registration under section 831(h) of this title;
>
> (F) is being conducted . . . in a medical emergency situation . . . by a practitioner that . . . is an employee or contractor of the Veterans Health Administration . . . or
>
> (G) is being conducted under any other circumstances that the Attorney General and the Secretary have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.
>
> 21 U.S.C. 802(54) (footnote added).

Based on the CSA's definition of telemedicine, it is apparent Congress contemplated that, but for the limited exceptions set forth in subparts (C) through (G), when a practitioner is at a location remote from a patient who is not in the presence of another registered practitioner and the practitioner is communicating with the patient electronically, the practitioner must be registered in the state in which the patient is located. *See* 21 U.S.C. 802(54)(A). Under such circumstances, it contemplated that the patient be located at an address registered with the DEA. *Id.* Viewing the separate registration requirement in light of this intent, the ''principal place of business'' or ''professional practice'' language should be read to include a state in which a practitioner communicates electronically with patients who are not in the physical presence of a registered practitioner. Conversely, by omitting the state registration requirement from subsection (B), it appears that Congress intended to carve out an exception for such a requirement where a patient is in the physical presence of a properly registered DEA physician at a registered DEA address. 21 U.S.C. 802(54)(B). *U.S.* v. *Sagg,* 125 F.3d 1294, 1294 (9th Cir. 1997) (''We interpret a federal statute by ascertaining the intent of Congress and by giving effect to its legislative will.'').

Here, the Government's evidence in this regard was limited to admissions that the Respondent made to DI Knight, and copies of the Respondent's prescription scrips. Tr. 62–64; Gov't Ex. 11. Although the Respondent was called as a witness by the Government, beyond acknowledging that the Government Exhibit 11 contained some prescription scrips he authorized,[69] he was not asked about the controlled substance prescriptions he issued from Tennessee after leaving the Pain Clinic. There is simply no evidence about the interaction between the Respondent's patients with the Pain Clinic and the staff at that facility.

The Government also introduced photocopies of controlled substance prescriptions written by the Respondent after the date his address was transferred from

[68] 42 U.S.C. 1395m(m) refers to a ''telecommunications system,'' but does not define it.

[69] Tr. 84. *See* footnote 6, *supra.*

Fort Pierce, Florida to Nashville, Tennessee,[70] on scrips that bear his preprinted name and registration number on letterhead that indicates it is from ''Pain Management'' in Pinellas Park, Florida. Gov't Ex. 11. Although the record reflects that the Respondent told DI Knight that he worked at the Pain Clinic in Pinellas Park, Florida, the scrips refer only to ''Pain Management'' and bear a different Pinellas Park address. Gov't Ex. 11. Moreover, the record contains no indication as to whether patients who received controlled substance prescriptions issued by the Respondent while he was in Tennessee were in the physical presence of a DEA–COR-registered practitioner at the Pain Clinic in Pinellas Park when the Respondent authorized the prescriptions. *See* 21 U.S.C. 802(54)(B). It is highly doubtful that the Pain Clinic would task a locally-present physician with conveying information to the Respondent, who was in another state. That said, the burden was on the Government to establish the conduct that it alleges was illegal, and it has not done so here. Even apart from the fact that there is no nexus between the Pain Clinic that was the subject of the Respondent's admissions to DI Knight and the name and address on the prescription scrips, it was incumbent upon the Government to establish that no practitioner was physically present when patients were seen there to demonstrate that the Respondent was operating outside the bounds of telemedicine, and it failed in this regard.

The conduct established by the Florida Board Order, however, is an entirely different matter. The Florida Board's findings, which are herein entitled to preclusive effect,[71] establish that the Respondent prescribed controlled substances, in copious quantities, to seven patients under circumstances where his prescribing practices violated state and federal law and fell well below the standards established by the state. Gov't Ex. 7. The acts established by the Florida Board's Order weigh soundly in favor of the revocation sought by the Government under Factors Two and Four. By the issuance of these controlled substance prescriptions, the Respondent prescribed below the Florida prescribing standards and violated multiple Florida laws[72] and federal law. 21 CFR 1306.04(a). Under the circumstances presented herein, even factoring in the Respondent's years of uneventful practice as a registrant, the Government has satisfied its burden in demonstrating that the Respondent ''has committed such acts as would render his registration . . . inconsistent with the public interest.'' 21 U.S.C. 824(3).

Discretionary Exercise of Public Interest Factors

Based on the foregoing, the Government has certainly established that the Respondent has committed acts that are inconsistent with the public interest. Consideration of the record evidence under the Fourth and Second Factors weighs in favor of revocation. Accordingly, a balancing of the statutory public interest factors as presented by the Government in its case-in-chief is sufficient to sustain a revocation of the Respondent's COR. *Id.*

Because the Government has sustained its burden of showing that Respondent committed acts inconsistent with the public interest, the burden shifts to the Respondent to show that he can be entrusted with a DEA registration. As discussed above, ''to rebut the Government's *prima facie* case, [the Respondent] is required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the reoccurrence of similar acts.'' *Jeri Hassman, M.D.,* 75 FR at 8236; *Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005); *Ronald Lynch, M.D.,* 75 FR 78745, 78749 (Respondent's attempts to minimize misconduct held to undermine acceptance of responsibility); *George Mathew, M.D.,* 75 FR 66138, 66140, 66145, 66148 (2010); *George C. Aycock, M.D.,* 74 FR 17529, 17543 (2009); *Steven M. Abbadessa, D.O.,* 74 FR 10077, 10078 (2009); *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (2009); *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008). This feature of the Agency's interpretation of its statutory mandate has been sustained on review. *Mackay,* 664 F.3d at 822.

When considering whether a registrant has accepted responsibility for proven misconduct, the Agency may consider whether the respondent acknowledged noncompliance with the applicable laws or regulations. *Randall L. Wolff, M.D.,* 77 FR 5106, 5121 (2012). Here, the Respondent has wholly failed to do so. With regard to his wrongful prescribing, the Respondent insisted that he was attempting to taper the patients off high doses of medication, but agreed that he prescribed in dangerous and excessive quantities. Tr. 180–181. To persist in his assertion that he was acting in good faith to taper patients from controlled substances, where he suspected and/or should have known that the ''massive'' doses he was providing them with would have killed them if they had been consumed, undermines any notion that the Respondent accepts responsibility. The Respondent did express regret, but it was not regret for his below-standard and dangerous controlled substance prescribing, it was remorse that he ever entered the practice of pain management and has had to defend his actions at multiple adjudicatory bodies. Tr. 123, 170–71. In short, he is sorry he got caught. The sincerity of any expressed remorse can be well examined in light of the opinion he expressed in his testimony that he attracted the attention of authorities in Florida, not because he did anything wrong, but because state authorities were in a ''quest to . . . rid themselves of pain doctors.'' Tr. 104. Similarly telling is the Respondent's assertion to DI Knight that ''Florida was working in conspiracy and corruption to destroy all doctors and clinics in the [state].'' Tr. 66. Notably absent from the Respondent's testimony was any acknowledgment that his conduct violated the law or endangered the public. The closest that the Respondent came to such an acknowledgement of the potential hazards of his prescribing was when he stated:

> I don't know of anyone that was harmed personally or physically in that process, but if there is, I apologize and I'm sorry if there was ever any harm to them. There was certainly no intention. My intention was to take the best care of the patients that I could.

Tr. 170. Similarly, the Respondent testified that at the time he was prescribing, although the doses were ''potentially lethal,'' he thought he ''was doing a great job tapering [the patients] off.'' Tr. 125. Thus, the Respondent continues to insist, even in the face of the ''massive''[73] doses of medications that ''staggered''[74] him, that his intention was to take the best care of his patients that he could. While not without some positive aspects, the Respondent's expression of regret was hardly the type of acceptance of responsibility contemplated by Agency precedent. *See Wolff,* 77 FR at 5121. As if the issue were not sufficiently clear, the Respondent, in his Post-Hearing Brief, provides assurances that he has fulfilled his obligations under 21 CFR 1306.04(a) regarding his patients. Resp't Post-Hrng. Brf. at 15. The Respondent's Post-Hearing Brief assigns blame to his former attorney for poor legal advice at the state board level,[75] and states that he ''is aware that the statues of DEA presume the doctor to be guilty, and probably lying, and that the Respondent may not be believed even when telling the full truth of the matter.'' Resp't Post-Hrng. Brf. at 18. This is not a registrant who has accepted responsibility in any meaningful way.

Even if a sufficient acceptance of responsibility were conceded, *arguendo,* the Respondent abjectly failed to demonstrate any corrective measures he has taken to prevent reoccurrence. Although directed by the Florida Board to take CME classes, he has taken none, and told DI Knight that he had no intention of doing so. Tr. 67–68. At the hearing, the Respondent indicated that he planned to take courses when he could ''hopefully'' afford to do so in the future. Tr. 126. In his post-hearing brief, the Respondent explains that although he has taken no courses, he is still within the window set by the Florida Board to do so. Resp't Post-Hrng. Brf. at 17. This misses the point. The focus here is not solely whether he has complied with Florida Board mandates, but whether he has, even independent of the Florida Board, taken remedial steps to assure the Administrator that he will not repeat his prescribing missteps. Not only has the Respondent completed no coursework on the subject of controlled substances (other than a one-hour CME of unknown content), but actually offered the astonishing assurance that he now conducts searches regarding his prescriptions on Google and on the internet ''to see what the drug is, the side effects [of the drug and whether] it's a controlled substance.'' Tr. 125. This new approach is presumably offered as an improvement over the Respondent's prior practices. To say that this is not a demonstration of corrective measures is to dapple with gross understatement. Suffice it to say that this testimony does nothing to convince this

[70] Gov't Ex. 2, at 1.

[71] *Dougherty,* 76 FR at 16830.

[72] Fla. Stat. §§ 459.015(1)(o), (t), (x), (pp).

[73] Tr. 115.

[74] Tr. 114.

[75] Resp't Post-Hrng. Brf. at 16.

tribunal that the Respondent can be entrusted with a COR. *Hassman,* 75 FR at 8236.

Simply put, this Respondent has not accepted responsibility, made a plan, or even genuinely realized that there is a problem. The Respondent either did not understand the dangerous nature of the powerful controlled substances he was prescribing or disregarded it. To the extent the former is the case, he has done nothing to acquire the knowledge he needs to safely handle controlled substances. To the extent the latter is the case, he has not acknowledged it. What is clear is that as things stand now, this Respondent should not be entrusted with a registration until he has persuasively demonstrated that he knows what the problem is, and that he has successfully completed sufficient subject-relevant CME to understand the obligations of a DEA registrant.

A careful balancing of the public interest factors militates persuasively and conclusively in favor of the revocation of his COR sought by the Government.

Recommendation

Accordingly, the Government's Motion for a Summary Disposition based exclusively upon the Respondent's lack of state authority to handle controlled substances is sufficiently supported in fact and law to be, and herein is, *granted.* Further, even if the Respondent possessed sufficient state authorization to permit DEA to continue his privileges as a registrant, a careful balancing of the public interest factors enumerated under the CSA compels, as a matter of discretion, the same result required by summary disposition, *to wit,* that the Respondent's Certificate of Registration should be *revoked* and any pending applications for renewal should be *denied.*

Dated: September 13, 2012.

John J. Mulrooney, II,

Chief Administrative Law Judge.

[FR Doc. 2013–24400 Filed 10–7–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF STATE

[Public Notice 8498]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ink Art: The Past as Present in Contemporary China''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition ''Ink Art: The Past as Present in Contemporary China,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about December 11, 2013, until on or about April 6, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 2, 2013.

Evan M. Ryan,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–24403 Filed 10–7–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8499]

Culturally Significant Objects Imported for Exhibition Determinations: ''Anders Zorn: Sweden's Master Painter''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Anders Zorn: Sweden's Master Painter,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA, from on or about November 9, 2013, until on or about February 2, 2014; the National Academy Museum, New York, NY, from on or about February 27, 2014, until on or about May 18, 2014; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 1, 2013.

Evan M. Ryan,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–24404 Filed 10–7–13; 8:45 am]

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