to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on March 2, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 15, 2022 (87 FR 14574).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–12606 Filed 6–10–22; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 19–24]

Gary A. Matusow, D.O.; Decision and Order

An official of the Drug Enforcement Administration (''Government'') issued an Order to Show Cause (OSC) seeking to deny the pending application for a Drug Enforcement Administration (DEA) Certificate of Registration of Gary Matusow, D.O. (''Respondent'').[1] After a hearing, the Administrative Law Judge (ALJ) recommended that Respondent's application be denied.[2] The Agency agrees with the ALJ's conclusion, and, for the reasons explained below, denies Respondent's application as inconsistent with the public interest under 21 U.S.C. 823(f).

I. Findings of Fact

On November 14, 2018, Respondent submitted an application for a DEA Certificate of Registration. GX 1. Respondent was previously registered with DEA to handle controlled substances but voluntarily surrendered this registration for cause. GX 9.

The Government and Respondent have agreed to fifty-eight stipulations, which are hereby incorporated into the record. *See* RD, at 41–47.

Respondent was previously employed as an osteopathic physician partner at a practice in New Jersey that he shared with a partner, Dr. M.[3] Between August 9, 2015, and January 8, 2017, Respondent filled (or refilled) prescriptions for controlled substances that were issued with Dr. M's DEA registration. Stip. 17–18. Respondent issued each of the prescriptions to himself by calling them into a pharmacy with Dr. M's name. Stip. 19. Respondent picked up each of the prescriptions from the pharmacy. Stip. 20. Respondent is not a patient of Dr. M and was not a patient of his when the prescriptions were issued. Stip. 21.

A. Allegations

The Government argues that Respondent's application for a new DEA registration should be denied because he displayed dishonesty in a number of ways and violated the law.[4] The Government has shown that Respondent obtained controlled substances for his personal use in violation of state law, but the Government's other allegations are not sustained.

1. Respondent Obtained Controlled Substances Without a Valid Prescription in Violation of State Law

The Government has alleged that Respondent violated N.J. Stat. Ann. § 2C:35–10 when he filled the controlled substance prescriptions issued under Dr. M's name and DEA registration number. Under N.J. Stat. Ann. § 2C:35–10, it is ''unlawful for any person, knowingly or purposely, to obtain . . . a controlled dangerous substance . . . unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice . . . .''

Respondent admits that he obtained controlled substances pursuant to prescriptions authorized by Dr. M and under Dr. M's DEA registration despite not being a patient of Dr. M. *See* Stip. 21. Respondent testified that when he asked Dr. M for authorization to call in the prescriptions under Dr. M's name, Respondent knew he should have been a patient of the practice and that the discussion between Respondent and Dr. M about his health issues should have been documented in a patient chart. Tr. 358–59; *see* N.J. Admin. Code § 13:35–7.1A (''[A] practitioner shall not dispense drugs or issue a prescriptions to an individual . . . without first having conducted an examination, which shall be properly documented in the patient record.''). Respondent also admitted that he knew the prescriptions did not comply with state and federal regulations. *See* Tr. 456–59. When asked if he believed Dr. M had taken ''those steps that you have to take before you prescribe controlled substances,'' Respondent responded that he did not and that he thought that he and Dr. M were both negligent. *Id.* at 456. He also testified that he knew the Dr. M prescriptions were ''off the books'' and that they exposed Dr. M to professional and potential criminal liability. *Id.* at 456–57.

Based on Respondent's admissions during the administrative hearing, the Agency finds that he knew the subject prescriptions were not valid prescriptions issued in the usual course of Dr. M's professional practice. Accordingly, the Agency finds that Respondent violated N.J. Stat. Ann. § 2C:35–10.

2. Allegation That Respondent Used Dr. M's DEA Registration To Fraudulently Obtain Controlled Substances

The Government has alleged that Respondent fraudulently obtained controlled substances by using Dr. M's DEA registration number without Dr. M's authorization in violation of federal law (21 U.S.C. 843(a)(3)) and state law (N.J. Stat. Ann. § 2C:35–10). Dr. M and Respondent gave conflicting testimony as to whether Dr. M authorized Respondent's use of Dr. M's registration to obtain these controlled substances. The ALJ was in the best position to observe the demeanor of the witnesses, and having considered his credibility determinations in light of the ''consistency and inherent probability of the testimony,'' the Agency adopts the ALJ's findings regarding Dr. M's and Respondent's testimony on this issue. *See Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951); *see also* Tr. 242–43; RD, at 77–78, 85–88. Accordingly, the Agency finds no violation of these laws.[5]

[1] Administrative Law Judge Exhibit (ALJX) 1 (OSC).

[2] *See* Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (''Recommended Decision'' or ''RD''). Respondent filed Exceptions, but later asked to withdraw them. Resp Notice to Dismiss, at 2–3. The Agency is granting Respondent's request to withdraw his Exceptions, but declining Respondent's request to adopt the Recommended Decision and instead issuing a Final Order based on consideration of the record in its entirety.

[3] Stip. 14. Respondent's partner's name has been replaced with his initial.

[4] Govt Posthearing, at 3. In its Posthearing Brief, the Government also alleged that Respondent issued a prescription for phentermine, a controlled substance, in violation of N.J. Admin. Code § 13.35–7.5A(b) and 21 CFR 1306.04. This allegation is not sustained because its legal grounds were not properly noticed.

[5] The Government has also alleged that Respondent's conduct violated 21 U.S.C. 843(a)(2). Govt Posthearing, at 27. This provision was not fully briefed until after the RD. *See* Resp Exceptions, at 13–15; Govt Response to Resp Exceptions, at 11–15. The Agency declines to make a finding on this criminal violation because the factual record in this case has not been developed sufficiently to determine how section 843(a)(2) applies.

3. Allegation That Respondent Prescribed Controlled Substances After Agreeing To Cease Medical Practice

Respondent entered into a Consent Order with the New Jersey State Board of Medical Examiners (BME). *See* Stip. 32; GX 5. The Government alleges that Respondent prescribed in violation of this Consent Order, illustrating a lack of candor. Govt Posthearing, at 34; OSC, at 4–5. The Agency is not sustaining this allegation: the Government has not proven that Respondent had reached an agreement to cease the practice of medicine when he issued the prescriptions or that Respondent was less than candid with the BME regarding the prescriptions. GX 5, at 2; *see also* RD, at 95–96, 99–100.

4. Allegation That Respondent's Answers to Questions in his Application for Registration Displayed a Lack of Candor

The Government alleges that, on his application to DEA for a new registration, Respondent failed to fully explain the circumstances behind his voluntary surrender for cause of his previous registration, demonstrating an alleged lack of candor. OSC, at 4. After a review of Respondent's written statements in his application, the Agency agrees with the ALJ that the information Respondent disclosed was truthful. *See* RD, at 112–114. The lack of the omitted information does not make his response deceptively incomplete, and the Government's allegation thus is not sustained.[6]

II. Discussion

''The Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). An application for a practitioner's registration may be denied if ''the issuance of such registration . . . would be inconsistent with the public interest.'' *Id.* In making this determination, the following factors are considered:

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

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

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. These factors are considered separately. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (1993).

A. Factor 1

Respondent entered into a Consent Order with the BME. *Supra* I.A.3; GX 5. While this is not a direct recommendation for purposes of Factor 1, it indicates a recommendation by the appropriate state entity on many of the allegations and evidence at issue here. *John O. Dimowo,* 85 FR 15,800, 15,810 (2020). It makes clear that the Board knew Respondent had called in prescriptions for controlled substance for himself using Dr. M's name.[7] It is not clear, however, what details regarding Respondent's self-prescribing were before the Board or the basis for the Board's disciplinary action in the Consent Order—although the multi-year requirement that Respondent be monitored by third parties does not indicate substantial trust in Respondent. For these reasons, the Consent Order is not dispositive of the public interest inquiry in this case, and although the Agency has considered the Order slightly in favor of Respondent, it is also minimized by the circumstances described above. *See John O. Dimowo,* 85 FR at 15,810–11.[8]

B. Factors 2 and 4

Evidence is considered under Public Interest Factors 2 and 4 when it reflects an applicant's compliance (or non-compliance) with laws related to controlled substances and experience dispensing them. Established violations of the Controlled Substances Act (CSA), DEA regulations, or other laws regulating controlled substances at the state or local level are cognizable when considering if a registration is consistent with the public interest. Here, Respondent violated N.J. Stat. Ann. § 2C:35–10. *Supra* I.A.1. This violation is most appropriately considered under Factor 4 and weighs against a finding that Respondent's application for a DEA registration is in the public interest, because the Government has proven that Respondent failed to comply with a state law related to controlled substances.[9]

C. Factor 5

Respondent has admitted to conduct that may threaten the public health and safety and is properly considered under Factor 5. Respondent believed it to be illegal to prescribe controlled substances to himself, Tr. 355, so instead he obtained casual, non-specific permission from his partner to prescribe himself controlled substances under his partner's registration. He did this with the knowledge that he and his partner had not established a legitimate doctor-patient relationship under state law. Respondent's conduct clearly circumvented the closed regulatory system established by the CSA and ''makes questionable [the Respondent's] commitment to the DEA statutory and regulatory requirements designed to protect the public from diversion . . . .'' *Net Wholesale,* 70 FR 24,626, 24,627 (2005). Respondent's admitted conduct is inconsistent with the public interest under Factor Five. 21 U.S.C. 823(f)(5).

D. Balancing of the Public Interest Factors

Respondent violated a state law related to controlled substances and committed other conduct that may threaten the public health and safety, weighing against finding that his registration would be in the public interest under Factors 4 and 5. The other public interest factors are inapplicable or do not weigh significantly for or against finding that Respondent's registration would be in the public interest. Thus, the Government established a *prima facie* case that Respondent's registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

III. Sanction

Where, as here, the Government has established grounds to deny an

[6] The Government also alleged that Respondent's answers on his registration application displayed a failure to accept responsibility for fraudulent use of Dr. M's registration, but, as explained, the record does not support a finding that Respondent fraudulently used Dr. M's registration to obtain controlled substances.

[7] Additionally, an investigator for the Board was present during the interview the DI had with Respondent and his attorney regarding the DEA's investigation in May 2017. Tr. 97.

[8] There is no evidence on the record that Respondent has a criminal conviction related to controlled substances. Accordingly, Factor 3 does not weigh for or against a finding that his application for registration is in the public interest. *See, e.g., Dewey C. MacKay, M.D.,* 75 FR 49,956, 49,973 (2010).

[9] Respondent has demonstrated substantial experience as a gastroenterologist since 1988. The Agency assumes that Respondent has prescribed legally because the Agency has not sustained allegations related to Respondent's dispensing of controlled substances. Accordingly, the Agency finds that Factor 2 does not weigh against Respondent's application.

application for a registration, the burden shifts to the respondent to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018). When a registrant has committed acts inconsistent with the public interest, they must both accept responsibility and demonstrate they have undertaken corrective measures. *Holiday CVS LLC dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62,316, 62,339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33,738, 33,746 (2021). When a registrant fails to make the threshold showing of acceptance of responsibility, the Agency need not address the registrant's remedial measures.[10] *Daniel A. Glick, D.D.S.,* 80 FR 74,800, 74,810 (2015).

The Agency adopts the ALJ's finding, that while Respondent testified that what he did was inappropriate and that he ''wouldn't do it again,'' Tr. 458, he has not accepted full responsibility for his misconduct. RD, at 116. When asked about Dr. M's responsibility, Respondent answered, ''I think we were both negligent'' and ''it was carelessness on my part to even ask him.'' Tr. 456, 459.[11] The Respondent's characterizations of his misconduct minimized the seriousness of his actions. *See Jeffrey Stein, M.D.,* 84 FR 46,968, 46,972.[12]

Respondent was not ignorant to his misdeeds. He knew self-prescribing using his own DEA registration would raise suspicion at the pharmacy, Tr. 355, so he decided, based on his knowledge as a DEA registrant, to self-prescribe using Dr. M's registration, presumably to evade detection. Respondent's actions also do not reflect a momentary lapse in judgment. He used Dr. M's registration to self-prescribe for over a year and a half. *See Noah David, P.A.,* 87 FR 21,165, 21,174 (2022); *see also Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases) (''The egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction.'') Therefore, as the ALJ stated, ''Respondent has lost a significant amount of trust and has failed to overcome that loss and demonstrate to the Agency that he can now be entrusted to maintain his [registration] in a lawful fashion.'' RD, at 118.[13]

Furthermore, specific and general deterrence weigh in favor of denial of Respondent's application. *Daniel A. Glick, D.D.S.,* 80 FR at 74,810. Given the egregious nature of Respondent's violations, a sanction less than denial would send a message to the current and prospective registrant community that compliance with core controlled-substance legal principles is not a condition precedent to receiving and maintaining a DEA registration.

As discussed above, to receive a registration when grounds for denial exist, a respondent must convince the Agency that his acceptance of responsibility and remorse are sufficiently credible to demonstrate that the misconduct will not reoccur and that he can be entrusted with a registration. Having reviewed the record in its entirety, the Agency finds that Respondent has not met this burden and orders the denial of the application for the certificate of registration at issue in this case, as contained in the Order below.

However, in light of the passage of time since the surrender of his previous registration, if Respondent can demonstrate that he will reliably treat his controlled substances registration with the respect that such a responsibility deserves and requires under the law, the Agency is instructing the Government to consider such facts in assessing any new application.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny DEA registration application No. W18122357C submitted by Gary Matusow, D.O. This Order is effective July 13, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on June 6, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–12612 Filed 6–10–22; 8:45 am]

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[10] Here, although Respondent's Continuing Medical Education efforts were in excess of what New Jersey required, RD, at 38 (citing Tr. 414–15; RX 1), Respondent has not sufficiently convinced the Agency that he has accepted responsibility and can be entrusted with a registration.

[11] Respondent is credited for declining to pass blame to his former partner, given the animosity between the two.

[12] Respondent's actions were not ''negligent,'' nor were they mere ''carelessness''—they constitute criminal misconduct under New Jersey law.

[13] Respondent submitted letters and character testimony. RX 5–18. The letters are of limited weight because the Agency has limited ability to assess their actual credibility. *See Michael S. Moore, M.D.,* 76 FR 45,867, 45,873 (2011). They also do not appear to be written to recommend that Respondent be granted a registration and offer little value in assessing his suitability to discharge those duties. The character testimony is more relevant to the former partners' relationship and is viewed with caution given the ALJ's credibility findings. *See* RD, at 68–70. These references very minimally support Respondent's potential for rehabilitation.

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 13, 20, 27, July 4, 11, 18, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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