requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted) [3] In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 1, 2006.
Respectfully submitted,
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[FR Doc. 06–7090 Filed 8–24–06; 8:45 am]
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[3] *Cf* BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally *Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Peter A. Ahles, M.D.; Revocation of Registration

On August 15, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and further ordered the immediate suspension of DEA Certificate of Registration, AA0092558, issued to Peter A. Ahles, M.D. (Respondent), of Anaheim, California. The Show Cause Order proposed to revoke Respondent's registration as a practitioner and to deny any pending applications for renewal or modification of the registration, on the ground that Respondent's continued registration would be inconsistent with the public interest. *See* 21 U.S.C. 823(f) and 824(a)(4). The Show Cause Order also immediately suspended Respondent's registration based on my preliminary finding that his continued registration ''would constitute an immediate danger to the public health and safety because of the substantial likelihood that [he would] continue to acquire large amounts of narcotic controlled substances and * * * illegally distribute these narcotic controlled substances to potential abusers and other unauthorized persons in exchange for cash.'' Show Cause Order at 3.

The Show Cause Order specifically alleged that based on a review of transaction reports filed by DEA registrants, Respondent, during the period March 2004 to March 2005, had received ''nearly 570,000 tablets of Schedule III hydrocodone and codeine tablets, most of which were packaged in 500 and 1000 count bottles.'' *Id.* at 1–2. The Show Cause Order alleged that ''[t]hese are excessive amounts of narcotics to be legitimately dispensed or administered from a single practitioner's office in a one-year period.'' *Id.* The Show Cause Order further alleged that in the thirteen month period ending in April 2005, Respondent ''had purchased over one million dosage units of Schedule II through V controlled substances, [which were] predominately narcotic tablets.'' *Id.* at 2.

The Show Cause Order also alleged that on three occasions during May 2005, a DEA Special Agent and a cooperating source (CS) had visited Respondent's office and made undercover buys of hydrocodone, a Schedule III controlled substance. *Id.* The Show Cause Order alleged that on two occasions, the Special Agent observed the CS pay Respondent $500 in cash and receive a plastic bag containing approximately 500 tablets of hydrocodone. *Id.* The Show Cause Order alleged that on the other occasion, the Special Agent observed the CS pay Respondent $600 and receive a plastic bag containing 500 tablets of Norco, another hydrocodone product. *Id.* The Show Cause Order further alleged that Respondent made each of the dispensings without asking the CS for his medical complaint, taking a medical history, or conducting a physical examination. The Show Cause Order thus alleged that the distributions were made ''without any legitimate medical purpose and [were] not in the course of legitimate medical practice'' and violated 21 U.S.C. 841(a)(1). *Id.*

Finally, the Show Cause Order alleged that Respondent had, in submitting his DEA renewal application, answered

''No'' the question whether his state license had ever been revoked, suspended, or placed on probation. *Id.* The Show Cause Order alleged that the Medical Board of California had, in fact, placed Respondent's state license on probation three different times and that Respondent had thus ''materially falsified [his] application for registration in violation of 21 U.S.C. 843(a)(4)(A).'' *Id.* at 2–3. Based on evidence in the investigative file supporting the above allegations, I further made the preliminary finding that Respondent had ''grossly avoided [his] responsibilities as a registrant and [had] been responsible for the actual diversion of controlled substances into other than legitimate channels in violation of 21 U.S.C. 841(a)(1).'' [1]

On August 16, 2005, a DEA Diversion Investigator (DI) personally served the Show Cause Order on Respondent. Since that time, neither Respondent, nor anyone purporting to represent him, has responded. Because (1) more than thirty days have passed since Respondent's receipt of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. *See* 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on information contained in the investigative file.

Findings

Respondent is the holder of DEA Certificate of Registration No. AA0092588, which expired on June 30, 2005. On May 5, 2005, Respondent applied for a renewal of his registration and sought authority to prescribe Schedule II through V controlled substances including Schedule II and III narcotics. On his renewal application, Respondent answered ''No'' the question: ''Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?''

According to the Medical Board of California's records, at the time Respondent filed his renewal application, he had been the subject of three separate disciplinary proceedings. In each of these cases, the California Board placed Respondent on probation.[2] I also take official notice of the records of the California Board which indicate that on February 24, 2006, Respondent surrendered his state license.

The investigative file further establishes that between March 2004 and April 2005, Respondent purchased over one million dosage units of Schedule III through Schedule V controlled substances from ANDA Pharmaceuticals. Respondent obtained hydrocodone 7.5 and 10 mg. tablets, codeine #4, Stadol (butorphanol tartrate), and Phenergan with codeine.

The investigative file also establishes that in April 2005, a DEA Special Agent and a DEA Diversion Investigator debriefed a cooperating source (CS). The CS stated that he/she had purchased various controlled substances including hydrocodone, Norco, and Xanax from Respondent. During the interviews, the CS related that Respondent performed little to no medical examination and did not require that the CS give a medical reason before selling the drugs to the CS. The CS further asserted that Respondent charged $500 cash for 500 pills/tablets of controlled substances, but charged $600 for 500 pills/tablets of Norco. The CS also stated that Respondent would prescribe any drug including Schedule II controlled substances such as Oxycontin to persons he knows well. Finally, the CS related that Respondent had few legitimate patients and that most of the people he saw visited him to obtain prescription drugs either for personal use or to resell the drugs on the street.

The investigative file further establishes that following the interviews, a DEA special agent accompanied the CS to Respondent's office on three separate dates. On May 12, 2005, the Special Agent observed as the CS paid Respondent $500 and received a black plastic bag containing approximately 500 hydrocodone tablets. Respondent did not perform a physical examination on the CS and did not discuss with the CS a medical reason for the dispensing. Moreover, Respondent did not give the CS any directions for use of the drugs. The Special Agent further observed that Respondent appeared to be under the influence of some substance.

On May 18, 2005, the same Special Agent and the CS returned to Respondent's office. On this occasion, the CS paid $600 and received from Respondent a black plastic bag containing 500 tablets of Norco. While on this occasion Respondent weighed the CS, the CS offered no medical complaint and Respondent did not perform a physical exam. Respondent also failed to give the CS any directions for use of the drugs.

Finally, on May 19, 2005, the Special Agent and the CS returned to Respondent's office. On this occasion, the Special Agent paid Respondent $500 and requested 500 hydrocodone tablets. Respondent handed the Special Agent a black plastic bag containing approximately 500 Norco tablets. The Special Agent did not complain of any medical symptoms and Respondent did not perform a physical examination.

Discussion

As pertinent here, Section 304 of the Controlled Substances Act (CSA) provides that a registration to:

> Dispense a controlled substance * * * may be suspended or revoked * * * upon a finding that the registrant—
>
> (1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;
>
> * * * * *
>
> (3) 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 * * * distribution, or dispensing of controlled substances * * *;
>
> (4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section[.]

21 U.S.C. 824(a).

In this case, I conclude that each of the above provisions provide independent grounds for revoking Respondent's registration.

First, it is clear that Respondent materially falsified his May 5, 2005 application for renewal of his registration. On that application, Respondent was asked whether he had ''ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, *or placed on probation*?'' (emphasis added). Respondent answered ''No,'' notwithstanding that the Medical Board of California had placed him on probation on three separate occasions. Given that the question specifically asked Respondent whether his medical license had ever been ''placed on probation,'' it is indisputable that Respondent's answer was a material falsification.

The CSA requires DEA to determine whether the issuance of a registration would be consistent with the public interest. *See* 21 U.S.C. 823(f). The provision of truthful information on applications is absolutely essential to effectuating this statutory purpose. *See* 21 U.S.C. 824(a)(1); *see also VI Pharmacy, Rushdi Z. Salem*, 69 FR 5584, 5585 (2004); *Terrance E. Murphy, M.D.*, 61 FR 2841, 2845 (1996). As the

[1] The Show Cause Order also notified Respondent of his right to a hearing and the procedure for requesting one.

[2] The proceedings were commenced in June 1975, September 1992, and October 1996.

Sixth Circuit recently observed: ''Candor during DEA investigations * * * is considered by the DEA to be an important factor when assessing whether a physician's registration is consistent with the public interest.'' *Hoxie* v. *DEA*, 419 F.3d 477, 483 (2005). Our cases accordingly hold that '''falsification cannot be tolerated.''' *VI Pharmacy*, 69 FR at 5585 (quoting *Murphy*, 61 FR at 2845) (other citation omitted). Respondent's failure to truthfully answer the question regarding prior state disciplinary actions is thus reason alone to revoke his registration.

Respondent's drug dealing provides an additional ground for revoking his registration. Such conduct clearly constitutes acts which ''render his registration * * * inconsistent with the public interest.'' *See* 21 U.S.C. 824(a)(4). Moreover, while the CSA sets forth five factors to be considered in determining the public interest, *see id.* § 823(f), I am ''not required to make findings as to all of the factors, and can give each factor the weight [I] determine[] is appropriate.'' *Hoxie*, 419 F.3d at 482; *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Where, as here, a registrant has engaged in such egregious misconduct as drug dealing, a lengthy analysis of each of the factors is unnecessary.

It is indisputable that Respondent did not comply with applicable State and Federal laws ''relating to controlled substances'' and that his conduct ''threaten[s] public health and safety.'' 21 U.S.C. 823(f)(4) and (5). Furthermore, while the investigative file does not contain evidence establishing what action the Medical Board of California took in response to this investigation, *see id.* § 823(f)(1), I have taken official notice of the fact that on February 24, 2006, Respondent surrendered his California medical license in response to the State Board's accusation that Respondent committed unprofessional conduct for, *inter alia*, violating state and federal drug laws.[3] *See also id.* § 824(a)(3). Thus, it is clear that Respondent ''has committed such acts as would render his registration * * * inconsistent with the public interest as determined under'' section 823(f). Id. § 824(a)(4). The revocation of Respondent's registration is therefore necessary to protect the public interest.

Order

Accordingly, 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) and 0.104, I hereby order that DEA Certificate of Registration, AA0092558, issued to Peter A. Ahles, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective September 25, 2006.

Dated: August 15, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–14050 Filed 8–23–06; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05–27]

Michael's Discount Pharmacy; Revocation of Registration

On April 8, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and further ordered the immediate suspension of DEA Certification of Registration, BM8291572, issued to Michael's Discount Pharmacy (Respondent) of Kenner, Louisiana. The Show Cause Order proposed to revoke Respondent's registration and to deny any pending applications for renewal or modification of its registration on the ground that Respondent's continued registration as a retail pharmacy would be inconsistent with the public interest. *See* 21 U.S.C. 823(f) and 824(a). The Show Cause Order also immediately suspended Respondent's registration based on my preliminary finding that Respondent's continued registration constitutes an imminent danger to public health and safety ''because of the substantial likelihood that [Respondent would] continue to divert controlled substances to drug abusers.'' *See* Show Cause Order at 17; *see also* 21 U.S.C. 824(d). The Order further notified Respondent of its right to a hearing. *See* Show Cause Order at 17–18.

The Show Cause Order specifically alleged that Respondent was purchasing enormous amounts of hydrocodone products, a Schedule III controlled substance, and that its purchases dwarfed the quantities of the same drugs that were bought by other retail pharmacies in the same area. For example, the Show Cause Order alleged that from January 2, 2004, through February 3, 2005, Respondent purchased 2,486,600 dosage units of Hydrocodone 10/650. *Id.* at 3. The Order further alleged that the next largest pharmacy purchaser had bought only 13,500 dosage units in the same time period. *Id.* The Order also alleged that during the year 2004, Respondent was the second largest purchaser of hydrocodone products in the State of Louisiana. *Id.*

The Show Cause Order alleged that Respondent was filling large amounts of combination prescriptions consisting of hydrocodone, either alprazolam or diazepam (both Schedule IV depressants), and carisoprodol, a non-controlled analgesic that metabolizes into meprobamate, a Schedule IV depressant, and which is often used by drug abusers in conjunction with narcotics. *See id.* at 4. The Show Cause Order alleged that these ''combination prescriptions are issued to persons of all types, regardless of their age, weight, height, gender and complaint.'' *Id.* The Order also alleged that an accountability audit had found multiple discrepancies which included large underages of hydrocodone, diazepam, and alprazolam products. *See id.* at 5.

Most significantly, the Show Cause Order alleged that the Kenner Police Department (KPD) had received numerous complaints of persons illegally selling prescription drugs in Respondent's parking lot. *Id.* at 8. The Show Cause Order described the arrests of more than twenty individuals (who were first observed either leaving Respondent's store or in its parking lot) for either the illegal possession of controlled substances or the illegal distribution of controlled substances which had been obtained from Respondent. *See id.* at 9–17. The Show Cause Order further alleged that many of the arrestees had continued to obtain large quantities of combination prescriptions from Respondent even after their arrests. *See id.* The Order also alleged that a number of the arrestees possessed other controlled substances such as marijuana and

[3] Although the Show Cause Order did not allege Respondent'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 consistently applied this rule. *Id.; see also Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988). Because Respondent no longer has authority under California 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.* § 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.