submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. However, should the Commission publish a public version of this report, such confidential business information will not be published in a manner that would reveal the operations of the firm supplying the information.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: November 30, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–20671 Filed 12–5–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–062]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 15, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–444–446 and 731–TA–1107–1109 (Preliminary)(Coated Free Sheet Paper from China, Indonesia, and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on December 15, 2006; Commissioners' opinions are currently scheduled to transmit its determination to the Secretary of Commerce on or before December 22, 2006.).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 4, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9578 Filed 12–4–06; 11:43 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–060]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 12, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–891 (Review)(Foundry Coke from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 29, 2006.).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 4, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9579 Filed 12–4–06; 11:43 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–061]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 14, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. AA1921–197, 701–TA–319, 320, 325–327, 348, and 350); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review) (Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 17, 2007.).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 4, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9580 Filed 12–4–06; 11:43 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mario Alberto Diaz, M.D.—Denial of Application

On June 27, 2005, the Deputy Assistant Administrator, Office of

Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mario Alberto Diaz, M.D. (Respondent) of Miami, Florida. The Show Cause Order proposed to deny Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the ground that granting Respondent a registration would be inconsistent with the public interest. See Show Cause Order at 1; see also 21 U.S.C. 824(a)(4), *id.* § 823(f).

More specifically, the Show Cause Order alleged that in May 2003, Respondent, who had previously been registered as a practitioner, entered into a contract with Pharmacom, an Internet pharmacy, under which he agreed to issue prescriptions online. Show Cause Order at 5. The Show Cause Order alleged that Respondent issued approximately 100 prescriptions per day, and that Respondent admitted having issued approximately twenty to twenty-five thousand prescriptions during the period of his employment with Pharmacom. See *id.*

The Show Cause Order further alleged that Respondent issued prescriptions for controlled substances based on questionnaires submitted by customers over the Internet. See *id.* The Show Cause Order alleged that the questionnaire solicited from the customer information regarding the drugs the customer wished to purchase and obtained the customer's payment information and was then electronically transmitted to Respondent. See *id.* The Show Cause Order alleged that based on the questionnaire, Respondent would issue a prescription for a controlled substance and that the principal drugs he prescribed were hydrocodone, a Schedule III controlled substance, and Valium, a Schedule IV controlled substance. See *id.*

The Show Cause Order also alleged that Respondent never saw the customers and did not perform a physical exam on them, that he did not have a pre-existing doctor-patient relationship with them, and that he did not create or maintain patient records for them. See *id.* The Show Cause Order further alleged that Respondent never consulted with the customers' primary care physicians or obtained from them the customers' medical records, and that the only information he reviewed was the questionnaires submitted by the customers. See *id.* at 5–6.

The Show Cause Order additionally alleged that many of the prescriptions written by Respondent were for minors. See *id.* at 6. The Show Cause Order also alleged that during its investigation of Pharmacom, the Iowa Board of Pharmacy contacted approximately 20 customers who had received prescriptions for controlled substances that were issued by Respondent. See *id.* The Show Cause Order alleged that each of these customers told investigators that before receiving controlled substances, they had had no contact with Respondent other than by e-mail. *Id.* The Show Cause Order thus concluded by alleging that Respondent was ''responsible for the diversion of large quantities of controlled substances,'' and that he had ''indiscriminately dispensed large volumes of controlled substances to persons'' he had never seen or physically examined. *Id.*

On July 15, 2005, the Show Cause Order was served on Respondent by certified mail as evidenced by the Return Receipt Card. Thereafter, on July 23, 2005, Respondent submitted a letter to me in which he waived his right to a hearing and submitted a written statement setting forth his position on the matters of fact and law involved. See 21 CFR 1301.43(c). The investigative file was then forwarded to me for final agency action.

Based on Respondent's letter to me, I conclude that Respondent has waived his right to a hearing. Moreover, having considered the record as a whole including Respondent's statement, I conclude that granting Respondent's application for a new registration would be inconsistent with the public interest and make the following findings.

Findings

Respondent, a medical doctor with a specialty in anesthesiology, formerly held a DEA certificate of registration as a practitioner under which he was authorized to prescribe Schedule II through Schedule V controlled substances. On May 20, 2004, Respondent surrendered his registration during the execution of a search warrant at his residence/registered location, which was located in Miami, Florida.

On September 12, 2003, two DEA Diversion Investigators from the Des Moines, Iowa office, DEA Task Force Officers, and investigators from the Iowa Board of Pharmacy Examiners executed a federal search warrant at the Union Family Pharmacy, 2541 Central Avenue, Dubuque, Iowa. The search was initiated based on information that the Union Family Pharmacy was engaged in filling purported prescriptions that it downloaded from an Internet site and that it distributed the drugs to persons nationwide.

During the search, investigators seized approximately twenty thousand prescriptions that the pharmacy had filled and dispensed from March 2003 through September 12, 2003, the date the warrant was executed. Of these twenty thousand prescriptions, approximately five thousand of them had been filled and dispensed on behalf of Pharmacom. All of the Pharmacom prescriptions were filled between August 18, 2003, and September 12, 2003.

The investigation determined that Pharmacom was located in Miami, Florida, and that it owned the domain name Buymeds.com and operated the Web site *http://www.buymeds.com*. Approximately 1,240 of the controlled substance prescriptions downloaded by Union Family Pharmacy from the Pharmacom web site and filled by the pharmacy were issued by Respondent.

Because of unusual banking activity, Pharmacom had previously come to the attention of the Internal Revenue Service (IRS) and, on September 2, 2003, two IRS special agents interviewed Mr. Orlando Birbragher, Pharmacom's President and CEO. During the interview, the IRS special agents determined that Pharmacom operated multiple on-line pharmacy Web sites including Buymeds.com. The interview determined that Pharmacom's customers submitted on-line questionnaires to purchase Schedule III and IV controlled substances, and that Pharmacom's doctors evaluated the questionnaires to determine whether to approve or reject the order. Pharmacom's doctors did not, however, conduct a physical exam of the customer. Instead, the questionnaires required the patient to indicate whether they had been examined by a physician within the past year. Mr. Birbragher further maintained that Pharmacom's doctors contacted the customers and their physicians when evaluating the questionnaires. Those prescriptions which were approved were then sent to a pharmacy, which filled the prescriptions and shipped them to the customers. Pharmacom paid both the doctor who issued the prescription and the pharmacy which filled it.

Mr. Birbragher told the IRS agents that Respondent had started working for Pharmacom in March 2003. Respondent's duties involved reviewing the questionnaires and determining whether a prescription should be issued. Pharmacom initially paid Respondent $20 for evaluating a request for a new prescription and $10 for evaluating a request for a refill. Because of the volume of business it attracted, Pharmacom subsequently cut its payment rates in half. Even at this reduced payment rate, Pharmacom paid Respondent $218,586 between April and August 2003. Mr. Birbragher further

told the IRS agents that Respondent used physician assistants (PA's) to assist him in evaluating the patient questionnaires. Mr. Birbragher did not know, however, whether Respondent or the PA's actually reviewed the questionnaires.

Thereafter, one of the DIs reviewed prescription data obtained during the search of the Union Family Pharmacy. More specifically, the DI reviewed the prescription data that the pharmacy downloaded from the buymeds.com website and filled on September 7, 2003. On that date, the pharmacy filled 583 Buymeds' prescriptions. Of the 583 prescriptions, only 29 (4.9%) were for non-controlled substances. The remaining prescriptions were for controlled substances such as hydrocodone, codeine, propoxyphene, and Ambien (zolpidem). Respondent issued 146 of the 583 prescriptions that were filled that day. While the investigative file does not indicate how many of these prescriptions were for controlled substances, even if Respondent issued all of the non-controlled substance prescriptions, he still would have issued 117 controlled substance prescriptions that were filled on that day.[1]

On May 20, 2004, investigators executed a search warrant at Respondent's residence in Miami. While Respondent was not home when the search commenced, his son contacted him by cell phone. Respondent spoke with a DEA Special Agent and agreed to return to his residence. Upon his return, a DI and IRS special agent interviewed him.

Respondent told the investigators that he began working for Pharmacom in April 2003 and quit in November 2003. Respondent stated that another physician had told him about Pharmacom's business and had recommended him to Marshall Kanner, one of the owners. Thereafter, Respondent interviewed with Kanner for a position with Pharmacom. Kanner told him that the position would involve authorizing medication over the Internet to patients who were seeing or had seen a doctor in the past year. Respondent claimed that he expressed to Kanner his concerns regarding prescribing medicine in this manner, but Kanner told him it was legal. According to Respondent, Kanner also told him he could authorize prescriptions for customers throughout the United States.

Respondent told the investigators that customers would contact Pharmacom through the Internet and fill out a questionnaire provided by it. Pharmacom then assigned a list of patients to Respondent. Respondent's job was to review the questionnaires and then interview the customers either by telephone or e-mail to determine whether the customers were eligible to receive the drug they requested.

Respondent stated to the investigators that he told Pharmacom that he was only willing to review 100 customers a day and that he did not issue prescriptions to ten to twenty-five percent of the customers. Respondent also told the investigators that he reviewed approximately 40 to 50 refill prescriptions a day and that he made as much as $14,000 a week.

Respondent further told the investigators that he never saw any of the customers and that he never developed a doctor/patient relationship with any of them as everything was done either via the Internet or by telephone. According to the DI's report, Respondent admitted that the information provided by the customers was never verified and that when he interviewed customers by telephone, he could not verify whom he was talking to.

When the DI asked Respondent whether he knew it violated the law to issue a prescription for a controlled substance without having a legitimate doctor/patient relationship, Respondent did not give a specific answer. Instead, Respondent asserted that whenever he questioned the legality of the practice, Kanner or Birbragher assured him that it was legal. When the DI reminded Respondent that he was the doctor, Respondent stated, ''Yes, I know that.''

Respondent also told the investigators that he quit Pharmacom because sometime in September or October 2003, Birbragher told him that all customers would have to receive a physical exam and that he did not agree with this policy. When questioned as to the basis of his disagreement, Respondent became vague and evasive and would not specifically answer the question. Towards the end of the interview, Respondent was also advised by the DI that having surrendered his DEA registration, he was not authorized to handle controlled substances in any manner and could not possess, dispense, administer or prescribe them.

Subsequently, on September 14, 2004, Respondent agreed to undergo a proffer interview at the DEA Miami field office. During the interview, at which he was represented by counsel, Respondent stated that he was currently employed at a cosmetic surgery center where he provided anesthesia services even though he had previously surrendered his DEA registration.

During this interview, Respondent asserted that he had researched the DEA w Web site and could not find any statute indicating that prescribing over the Internet ''could not be done.'' Respondent further stated that he thought the practice was similar to that in an emergency room where the patients are ''unknown'' to the physician. Respondent again maintained that he had contacted Kanner to determine whether the practice was legal and had been told by Kanner that Pharmacom's attorneys had ''stated that it was legal.'' Respondent further stated that when he met with Kanner and Birbragher, they told him ''they were licensed in all states and [that] he could make a huge amount of money.''

Respondent further admitted that while he limited himself to 100 ''patients'' per day, a general practitioner would normally see thirty to forty patients per day. Respondent asserted that the only difference between his activities and that of a general practitioner was that a ''general practitioner sees the patient.'' Respondent added that he would review the medical history provided by the customer and such other information as the customer's location, age, weight, height, and previous and current medications. Later in this interview, Respondent admitted that he ''felt uncomfortable with the number of patients'' he was assigned, and that when he telephoned patients, ''some appeared to be druggies.'' Respondent also stated that as time went on, he ''felt people were ordering medications for habits or entertainment,'' and that the ''types of people ordering were getting worse and worse.''

Respondent admitted that the customers submitted requests for specific drugs, but that he would ''never ask a patient what drug they wanted'' because doing so would be contrary to ''good medical practice.'' He further stated that the ''best professional care would be face to face.'' He also claimed that he had quit because the physical examinations that Pharmacom had started providing were incomplete.

Respondent admitted that some customers requested multiple drugs such as hydrocodone and alprazolam. Respondent also stated that he approved between twenty and twenty-five thousand prescriptions during the period of his association with Pharmacom and that the highest number of prescriptions he authorized in a day

[1] A further analysis of the computer data seized during the search of the Union Family Pharmacy found that Respondent issued 1,240 prescriptions for controlled substances during the period August 18, 2003, through September 12, 2003.

was about 200. In response to a question regarding the danger of prescribing medication without establishing a doctor/patient relationship, Respondent stated that the ''potential for killing people can happen in a hospital,'' but that ''a bigger potential [exists] over the Internet.''

In his written statement responding to the Show Cause Order, Respondent asserted that he ''attempted to perform my medical functions in a professional and ethical manner.'' Respondent further stated that he ''did call the patient to evaluate them for their prescriptions,'' and that he ''denied a high percentage of the prescriptions requested.''

Respondent asserted that he searched the websites of both DEA and the Florida Department of Health to see if there were ''any laws that made this business illegal.'' Respondent also stated that Pharmacom's owners had ''fooled [him] into thinking that their business was legal'' and that he ''would never knowingly violate any laws.'' Respondent further asserted that he was unaware of the statements of DEA, the American Medical Association, the Federation of State Medical Boards, the Food and Drug Administration, and the National Association of Boards of Pharmacy (all of which were recited in the Show Cause Order) and all of which discuss the illegality and/or impropriety of prescribing over the Internet without establishing a bona-fide doctor-patient relationship.

Respondent contended that as an anesthesiologist he had rarely written prescriptions and that while he ''knew that a patient-doctor relationship had to be established,'' he ''honestly believed that having a patient fill out a questionnaire about their health and another dedicated section related to the medication they were requesting would fulfill this criteria.'' Respondent also maintained that he ''would question the patient about any previous prescriptions for the medication they were then requesting,'' and that ''[a] very large percentage of them had already been prescribed the medication by their family physician.'' Respondent further stated that he ''did call a few of their physicians in cases I suspected of problems.''

In his written statement, Respondent added that he resigned when he became aware ''that a physical examination was needed to write a prescription.'' Respondent also stated that he ''will never work for any endeavor of this type ever again.'' Respondent concluded by stating that he ''accept[ed] that the selling of medications over the Internet is not correct and that a prescription should not be written without a physical examination.''

I further take official notice of the fact that on May 17, 2006, the Florida Department of Health issued an order imposing an emergency suspension of Respondent's state medical license. That order remains in effect.

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the Act requires the consideration of the following factors:

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

(2) The applicant's experience in dispensing * * * 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.

''[T]hese factors are * * * considered in the disjunctive,'' Robert A. Leslie, M.D., 68 FR 15227, 15230 (2003). I ''may rely on any one or combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether * * * an application for registration [should be] denied.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' Hoxie v. DEA, 419 F.3d 477, 483 (6th Cir. 2005); see also Morall v. DEA, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

In this matter, I conclude that multiple grounds support the denial of Respondent's application. Specifically, Respondent currently lacks authority under Florida law to practice medicine and therefore is not entitled to a DEA registration. Moreover, even if the State of Florida were to rescind its order of emergency suspension, my analysis of several other factors also demonstrates that granting his application would be inconsistent with the public interest.

Factor One—The Recommendation of the State Licensing Board

It has long been recognized that ''[a]gencies may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Therefore, pursuant to 5 U.S.C. 556(e) and 21 CFR § 1316.59(e), I hereby take official notice of the fact that on May 17, 2006, the Florida Department of Health issued an order imposing an emergency suspension of Respondent's state medical license.[2] Respondent is therefore without authority under state law to handle controlled substances in the state in which he intends to practice medicine.

Our precedents have repeatedly construed the Controlled Substances Act (CSA) as precluding DEA from issuing a registration to an applicant who lacks authority to handle controlled substances in the state where the applicant practices medicine. See 21 U.S.C. 802(21) & 823(f); see also George Thomas, 64 FR 15811, 15812 (1999); Robert E. Hales, 52 FR 17646 (1987). Moreover, denial of an application is appropriate even ''when a State license has been suspended, but [there is] a possibility of future reactivitation.'' Alton E. Ingram, Jr., 69 FR 22562 (2004). Therefore, I conclude that Respondent's lack of state authority is reason alone to deny his application for a registration. But because the Florida Department of Health's order is not a final decision and may be rescinded, an analysis of Respondent's conduct as charged in the Show Cause Order and his defenses is warranted.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and His Record of Compliance With Applicable Laws

The CSA's implementing regulations state 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(a). This regulation further provides that ''[a]n 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 * * * issuing it, shall be subject to the penalties provided for

[2] In accordance with the Administrative Procedure Act and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e). See also 21 CFR 1316.59(e). DEA's regulations contain no provision for requesting reconsideration of a final order. See Robert A. Leslie, M.D., 60 FR 14004, 14005 (1995). To allow Respondent the opportunity to refute the facts of which I am taking official notice, publication of this final order shall be withheld for a fifteen-day period, which shall begin on the date of service by placing this order in the mail.

violations of the provisions of law relating to controlled substances.'' *Id.*

As the Supreme Court has recognized, the CSA reflects Congress's ''intent to limit a registered physician's dispensing authority to the course of his professional practice.'' *United States* v. *Moore*, 423 U.S. 122, 140 (1975). The Court has further explained that the CSA ''reflect[s] the intent of Congress to confine authorized medical practice within accepted limits.'' *Id.* at 141–42. Thus, in Moore, the Court upheld a criminal conviction of a physician for knowingly or intentionally distributing controlled substances in violation of the CSA, explaining that the physician's ''conduct exceeded the bounds of professional practice'' when the physician prescribed controlled substances and ''gave inadequate physical examinations or none at all.'' *Id.* at 142–43.

The evidence in this case establishes that Respondent repeatedly acted outside the course of professional practice and violated the CSA. Respondent, while contracted to Pharmacom, issued between twenty and twenty-five thousand prescriptions to persons with whom he had no bonafide doctor-patient relationship. While the investigative file does not establish the exact number of controlled substance prescriptions issued by Respondent, the analysis of the 583 Buymeds.com prescriptions filled by Union Family Pharmacy on September 7, 2003, establishes that at least 117 (out of a total of 143) prescriptions issued by Respondent and filled on that date were for a controlled substance.[3] Furthermore, the analysis of the prescriptions filled by the Union Family Pharmacy for Pharmacom between August 18, 2003, and September 12, 2003, shows that Respondent issued 1240 controlled substance prescriptions. Given that this represents only a small portion of the period during which Respondent was engaged with Pharmacom, it is reasonable to infer that Respondent issued many more prescriptions for controlled substances.

Respondent issued the prescriptions notwithstanding that he did not perform a physical exam and had no face-to-face interaction with Pharmacom's customers. While Respondent maintained that he called or contacted via e-mail the customers ''on a regular basis'' to discuss their questionnaires and denied some percentage of the requests, Respondent admitted in the interviews that there was generally no way to verify the information provided by the customers.[4]

Furthermore, while Respondent asserts that he asked Pharmacom's owners about the legality of issuing Internet prescriptions (who assured him that the practice was lawful), there were numerous reasons to question its legality. For example, customers were not required to submit any documentation (other than the questionnaire) regarding a medical condition that would demonstrate the need for a drug.[5] Moreover, Respondent did not review the customer's questionnaires and choose a drug to prescribe based on his ''diagnosis'' of the customer's medical condition. Rather, it was the customer who requested a specific drug. Respondent admitted, however, that he would ''never ask a patient what drug they wanted'' because doing so would be contrary to ''good medical practice.''

Finally, Respondent should have questioned why Pharmacom's customers did not submit prescriptions issued by their own doctors but rather required that prescriptions be issued by him and the other Pharmacom doctors. Indeed, Respondent admitted that when he telephoned patients, ''some appeared to be druggies,'' and that as time went on he ''felt people were ordering medications for habits or entertainment.'' In short, Respondent had numerous indications that issuing prescriptions in this manner ''exceeded the bounds of professional practice,'' Moore, 423 U.S. at 142, and violated federal law notwithstanding the comments of Pharmacom's owners.

Respondent maintains that he visited the DEA and Florida Department of Health Web sites but could find no information that the practice of Internet prescribing was illegal. As for his effort to find information on the issue at the DEA Web site, Respondent must not have looked very hard. On April 27, 2001, DEA published a Notice in the **Federal Register** entitled ''Dispensing and Purchasing Controlled Substances over the Internet.'' See 66 FR 21181. To the extent DEA was required to give notice of this policy statement, publication in the **Federal Register** is all that was necessary to comply with the Administrative Procedure Act. See 5 U.S.C. 552(a)(1)(D). DEA, however, took the further step of posting this policy statement on the Office of Diversion Control's Web page and the document is easily found by using the Web page's search engine.

The purpose of the Notice was ''to provide guidance to prescribers * * * and the public concerning the application of current laws and regulations as they relate to the use of the Internet for dispensing [and] purchasing * * * controlled substances.'' *Id.* The Notice further explained that ''[w]ith the advent of Internet pharmacies, DEA registrants and the public have asked how these Internet pharmacies fit into the requirements that currently exist for the prescribing and dispensing of controlled substances.'' Thus, DEA issued this policy statement, which was based on the application of existing law to the new circumstances that arose with the emergence of the Internet as a mechanism to engage in commerce.

The Notice expressly addressed the potential illegality under existing law of prescribing a controlled substance based on an on-line questionnaire. After noting the regulation pertaining to the purpose of a prescription, see 21 CFR 1306.04, the Notice explained that ''[u]nder Federal and state law, for a doctor to be acting in the usual course of professional practice, there must be a bona fide doctor/patient relationship.'' 66 FR at 21182. The Notice further observed that:

> many state authorities, with the endorsement of medical societies, consider the existence of the following four elements as an indication that a legitimate doctor/patient relationship has been established:
> - A patient has a medical complaint
> - A medical history has been taken
> - A physical examination has been performed; and
> - Some logical connection exists between the medical complaint, the medical history, the physical examination, and the drug prescribed.

Id. at 21182–83.

The Notice thus concluded that ''[c]ompleting a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship. * * * It is illegal to receive a prescription for a controlled substance without the establishment of a legitimate doctor/patient relationship, and it is unlikely for such a relationship to be formed through Internet correspondence alone.'' [6] *Id.* at 21183.

[3] The investigative file does not establish the precise date that Respondent issued these prescriptions.

[4] I note, however, that Respondent does not contend that he actually contacted every patient. Moreover, the assembly line nature of his activity begs the question of what Respondent did when a customer did not answer the phone or failed to timely call him back or respond to his e-mail.

[5] This is not to suggest that Respondent would have acted lawfully if he had issued prescriptions on the basis of medical reports submitted directly to him by customers.

[6] As the Notice explained, ''[a] consumer can more easily provide false information in a questionnaire than in a face-to-face meeting with a doctor.'' *Id.* at 21183.

The Notice further stated that doctors who issued prescriptions without establishing a legitimate doctor/patient relationship could be subjected ''to criminal, civil, or administrative actions,'' and that ''[f]or DEA registrants administrative action may include the loss of their DEA registration.'' *Id.* Thus, contrary to Respondent's suggestion that no information was publicly available regarding the potential illegality of the practice, DEA had given fair warning that prescribing a controlled substance based on an on-line questionnaire and without conducting a physical exam could be deemed a violation of the CSA's longstanding requirement that a prescription must be issued for a legitimate medical purpose. DEA also warned that issuing a prescription without such a purpose could subject a physician to criminal, civil and administrative proceedings.

Moreover, in April 2002, the Federation of State Medical Boards adopted its model guidelines for the use of the Internet in medical practice. Section Five of this document states that ''[a] documented patient evaluation, including history and physical evaluation adequate to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided, must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise.'' Federation of State Medical Boards of the U.S., Inc., Model Guidelines for the Appropriate Use of the Internet in Medical Practice 5 (2002) (emphasis added).

The guidelines further state that ''[t]reatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings.'' *Id.* Finally, the guidelines state that ''[t]reatment, including issuing a prescription, based solely on an online questionnaire or consultation, does not constitute an acceptable standard of care.'' *Id.*

Thus, while Respondent may have lacked actual knowledge of DEA's interpretation of the CSA and the position of other entities involved in the regulation of his profession, I conclude that such information was readily available at the time Respondent commenced his contract with Pharmacon and therefore will not excuse his misconduct.[7] Moreover, I find that Respondent's experience in dispensing controlled substances and his record of compliance with applicable laws involve numerous violations of the CSA in that Respondent issued prescriptions without a legitimate medical purpose and that these factors demonstrate that granting Respondent's application (in the event the State were to rescind its order) would be inconsistent with the public interest. Having found so, it is unnecessary to address the remaining factors. See, e.g., Hoxie, 419 F.3d at 483; Morall, 412 F.3d at 165.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f), and 28 CFR 0.100(b) and 0.104, I hereby order that the application of Mario Alberto Diaz for a DEA Certificate of Registration as a Practitioner be, and it hereby is, denied. This order is effective January 5, 2007.

Dated: November 3, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–20630 Filed 12–5–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 10–06]

Sunshine Act Meeting Notice

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, December 14, 2006, at 10 a.m.

SUBJECT MATTER: Issuance of Amended Proposed Decisions and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 06–9568 Filed 12–4–06; 10:10 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 29, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

The Notice also discussed some Internet sites which ''ask[ed] patients to waive the requirement for a physical and to agree to have a physical before taking a drug they purchase via the Internet.'' *Id.* In this regard, the Notice stated: ''[a]n after-the-fact physical does not take the place of establishing a doctor/patient relationship. The physical exam should take place before the prescription is written.'' *Id.*

[7] I do not rely on the fact that Respondent worked as an anesthesiologist after he surrendered his DEA registration. While the administration of anesthesia invariably requires the use of controlled substances and it seems highly probable that Respondent further violated the CSA by administering controlled substances without a registration, this conduct was not alleged in the Show Cause Order.