corrugated metal pipe culverts. Inlet protection will be installed while the outlet will use the existing rock channel as erosion protection. An approximately 50-foot length of road just east of the existing culvert will be widened 6 to 10 feet by adding a rock embankment and backfilling to widen the road on the south slope of the Burr Canyon drainage.

A cattle guard will be placed at the park boundary by the National Park Service to prevent cattle from entering the park from adjacent Bureau of Land Management-administered lands, and the existing cattle guard at mile point 0.55 will be removed when the current grazing allotment expires.

This course of action and three alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Albert J. Hendricks, Superintendent, Capitol Reef National Park, HC70, Box 15, Torrey Utah 84775, 435–425–3791.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov.*

Dated: October 23, 2006.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. E6–22113 Filed 12–26–06; 8:45 am]

BILLING CODE 4312–DL–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of January 29, 2007 meeting.

SUMMARY: This notice sets forth the date of the January 29, 2007 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, January 29, 2007 from 3 p.m. to 4:30 p.m. Additionally, the Commission will attend the Flight 93 Memorial Task Force meeting the same day from 1 p.m. to 2:30 p.m., which is also open to the public.

Location: The meeting will be held at the Somerset County Courthouse, Courtroom ı1; 2nd floor; 111 East Union Street, Somerset, Pennsylvania 15501. The Flight 93 Memorial Task Force meeting will be held in the same location.

Agenda:

The January 29, 2007 Commission meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance.

(2) Review and Approval of Minutes from October 7, 2006.

(3) Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.

(4) Old Business.

(6) Public Comments.

(7) Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: December 12, 2006.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 06–9872 Filed 12–26–06; 8:45 am]

BILLING CODE 4312–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held Tuesday, February 20, 2007 at 9 a.m. until 3:30 p.m., at the Lowndes County Interpretive Center located at 7001 Highway 80 West Hayneville Alabama. The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Selma to Montgomery National Historic Trail. This Council was established to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

(A) Welcome New Members.

(B) Walk thru Lowndes County IC.

(C) Update on other Interpretive Sites.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Anyone may file a written statement with Catherine F. Light, Trail Superintendent concerning the matters to be discussed.

Person wishing further information concerning this meeting may contact Catherine F. Light, Trail Superintendent, Selma to Montgomery National Historic Trail, at 334–727–6390 (phone), 334–727–4597 (fax) or mail 1212 Old Montgomery Road, Tuskegee Institute, Alabama 36088.

Catherine F. Light,

Selma to Montgomery National Historic Trail Superintendent.

[FR Doc. 06–9890 Filed 12–26–06; 8:45 am]

BILLING CODE 4310–04–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–48]

William R. Lockridge, M.D. Affirmance of Immediate Suspension of Registration

Introduction and Procedural History

On May 17, 2004, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Notice of Immediate Suspension of the practitioner's Certificate of Registration, BL6779005, held by William R. Lockridge, M.D. (Respondent), of Wayne, N.J. The Notice of Immediate Suspension was based upon my preliminary finding that Respondent was ''responsible for the diversion of large quantities of controlled substances'' by writing prescriptions for controlled substances that were issued on behalf of persons he never physically examined and which thus lacked a ''legitimate medical purpose.'' Order to Show Cause at 9. Based on this finding, I concluded that Respondent's continued registration ''constitute[d] an imminent danger to the public health and safety because of

the substantial likelihood that [he] would continue to divert controlled substances.'' *Id.* at 10.

More specifically, the Show Cause Order alleged that a Pennsylvania State Pharmacy Inspector had conducted an inspection of an Internet pharmacy, CMC Pharmacy (CMC), and determined that a ''significant portion of'' the controlled substances prescriptions dispensed by CMC were issued by Respondent. *Id.* at 5. The Show Cause Order alleged that a DEA Diversion Investigator (DI) had interviewed a drug-dependent person who informed the DI that he had obtained prescriptions for Schedule III and IV controlled substances such as Lortab and Xanax from Respondent based on a telephone interview and a falsified medical record. *See id.* at 5–6. The Order further alleged that this person told the DI that several of his acquaintances had also obtained prescriptions for controlled substances from Respondent and CMC although they had no legitimate medical need for the drugs. *See id.* at 6.

The Show Cause Order also alleged that the DI subsequently contacted CMC regarding the purchase of controlled substances from it, and was told that in order to do so, he was required to register as a patient of the Southwest Medical Group (SMG). *See id.* The Show Cause Order alleged that the DI, using an undercover persona, registered as a patient with SMG and faxed to it a fabricated medical record which stated that he had shoulder pain but did not indicate that he had ever been prescribed controlled substances for the condition. *See id.* at 7.

The Show Cause Order next alleged that the DI subsequently completed an online questionnaire and obtained an appointment for a telephonic consultation with Respondent. *See id.* at 8. The Show Cause Order alleged that the DI called Respondent and that during the conversation Respondent asked him why he was requesting Vicodin. *See id.* The Show Cause Order alleged that the DI told Respondent that he had bought the drug from a friend and that he needed it because he was a truck driver and had to turn his truck's steering wheel. *See id.* The Show Cause Order alleged that Respondent then suggested a prescription for 120 ten mg. tablets of Vicodin with two refills, and ultimately prescribed the drug. *See id.*

The Show Cause Order further alleged that Respondent then asked the DI whether there was anything else he could do for him. *See id.* According to the Show Cause Order, after the DI informed Respondent that he was nervous because he had just been given a contract to haul dynamite, Respondent prescribed 120 two mg. tablets of alprazolam with two refills. *See id.* The Show Cause Order thus alleged that both prescriptions were issued without a legitimate medical purpose and without a legitimate medical examination. *See id.* at 8–9.

Next, the Show Cause Order alleged that Respondent told the DI that the prescription had been forwarded to CMC. *See id.* at 9. The Show Cause Order also alleged that the DI was charged $ 115 for Respondent's services, which was payable to SMG. *See id.* The Show Cause Order alleged that the DI subsequently received 120 tablets of 10 mg. hydrocodone and 120 tablets of 2 mg. alprazolam, for which he paid $ 261. *See id.*

Finally, the Show Cause Order alleged that ''nearly all'' of the controlled substance prescriptions that were filled by CMC were issued by Respondent through the SMG. *See id.* The Show Cause further alleged that over a one year period, Respondent was responsible for dispensing more than 2,316,300 dosage units of hydrocodone-based drugs ''via the Internet, for no legitimate medical purpose and without the benefit of a * * * legitimate medical examination.'' *See id.*

DEA DIs initially attempted to serve the Show Cause Order and Immediate Suspension on Respondent at his registered location of 1777 Hamburg Turnpike, Suite 202, Wayne, N.J. However, upon their arrival at this address, the DIs were told that Respondent had not practiced there for the past four years. See ALJ at 4. Thereafter, DI Conlon, who had conducted the investigation, contacted Respondent using a phone number from SMG's Web site which was for a Florida address. *See id.* The DI instructed Respondent that his registration had been immediately suspended and subsequently, DIs from Florida served Respondent with the Order to Show Cause and Immediate Suspension. *See id.*

Thereafter, Respondent timely requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Gail Randall, who conducted a hearing in Pittsburgh, Pa., on October 26 and 27, 2004. At the hearing, the Government elicited the testimony of six witnesses and introduced numerous exhibits. Respondent rested without putting on a case. Thereafter, both parties submitted post-hearing briefs.

On November 18, 2005, the ALJ issued her decision. The ALJ concluded that the Government had proved by a preponderance of the evidence that the revocation of Respondent's registration was in the public interest and recommended that I revoke Respondent's registration. See ALJ at 42–43. Neither party filed exceptions.

Having carefully reviewed the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's findings of fact and conclusions of law in their entirety. Because Respondent's registration has since expired and Respondent did not submit a renewal application, I do not adopt the ALJ's recommendation that Respondent's registration be revoked. I do, however, affirm the immediate suspension of Respondent's registration and make the following findings.

Findings of Fact

Respondent is a medical doctor who at the time of the hearing held medical licenses in the States of New Jersey and New York. See ALJ at 4. Respondent did not, however, hold a medical license in the State of Florida. See id.

At the time of the hearing, Respondent held DEA Certificate of Registration, BL6779005, with an expiration date of March 31, 2006. I take official notice of the fact that Respondent has not submitted an application to renew his Certificate of Registration.

Respondent's registered location was: Associates in Women's Health, 1777 Hamburg Turnpike, Suite 202, Wayne, N.J. See Gov. Ex. 1. Respondent had not, however, practiced at this location for at least four years prior to the May 2004 service of the Order to Show Cause. ALJ at 4. Moreover, pursuant to 5 U.S.C. 557(e), I take official notice of the records of the New Jersey Division of Consumer Affairs, which indicate that Respondent's N.J. medical license expired on June 30, 2005.[1]

Respondent did not hold a DEA Certificate of Registration for either of the two Florida addresses he used during the 2003 through 2004 time frame. See Tr. 236; Gov. Ex. 2 (printout of registration status); Gov. Ex. 8 (N.J. and N.Y. medical licenses listing Respondent's address as 2555 PGA Blvd., # 157, Palm Beach Gardens, Fl. 33410); Gov. Ex. 10 (Letter of June 28, 2003, from Respondent to Mr. Dave

[1] Under the Administrative Procedure Act (APA), an agency ''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). In accordance with the APA 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). 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 fifteen days, which shall begin on the date of service by placing this order in the mail.

Schwartzenberger of SMG, using 2555 PGA Blvd. address); Gov. Ex. 24 (Rx forms listing Respondent's address as 461 Surfside Lane, Juno, Fl.). Respondent was living in Juno Beach, Florida, when he was finally served with the Order to Show Cause and Immediate Suspension. See Gov. Ex. 6 (Return Receipt Card signed by Respondent on June 2, 2004, using Juno Beach address).

In October 2003, a DI assigned to the Pittsburgh field office received information that CMC and Respondent were using the Internet to distribute controlled substances. ALJ at 5. While CMC was the initial focus of the investigation, at some point thereafter, a Pennsylvania State Pharmacy Inspector informed the DI that a high volume of CMC's prescriptions were for hydrocodone combination drugs (which are Schedule III controlled substances, see 21 CFR 1308.13(e)), and various benzodiazepines such as diazepam and alprazolam (which are Schedule IV controlled substances, see 21 CFR 1308.14(c)), and that ''the vast majority of the prescriptions'' filled by CMC were written by Respondent. Tr. 343, 359.

On March 25, 2004, the DI phoned CMC to find out how the ''scheme worked.'' Tr. 238. During that conversation, the DI was told by an unidentified person at CMC that the pharmacy worked with SMG and that SMG ''set up the doctor consults.'' Tr. 240; see also Gov. Ex. 3. The DI was then given SMG's phone number. See Tr. 240.

Later that day, the DI called SMG and spoke with a person named Sam about obtaining prescriptions from CMC. Id. at 241. Sam told the DI to go to SMG's Web site and follow the posted instructions to register with it. Id. at 241–42.

Thereafter, the DI, using the undercover persona of John Dearing, went to SMG's ''New Patient Registration'' webpage and completed the form. On the form, the DI gave both e-mail and street addresses, his date of birth, phone number and indicated that his medical condition was a ''problem with shoulder.'' Gov. Ex. 12. The webpage stated: ''Before completing this form please make sure you have your medical records or release form and a legible copy of your government issued identification ready to fax upon completion of this registration form.'' Id.

To comply with this requirement, the DI created a false medical record which indicated that he had been treated for neck pain and flu-like symptoms with over-the-counter drugs such as Tylenol and Motrin during several office visits. See Gov. Ex. 14; Tr. 246. The document also contained a reference to spasms and exterior and lateral extension. See Gov. Ex. 14; Tr. 246. Finally, the document did not include the name, address and phone number of a physician. See Gov. Exh. 14. The DI also created a fictitious photo identification by altering his driver's license. Tr. 243. The DI subsequently faxed both items to SMG. See Gov. Ex. 16.

Several hours later, the DI received an e-mail from SMG which congratulated him on his registration and provided him with a patient identification number. See Gov. Ex. 17. The e-mail also instructed the DI to visit the southwestmedicalgroup.com webpage to ''to secure an appointment for a physician consultation.'' Id.

Thereafter, on April 7, 2004, the DI returned to the SMG Web site and completed a ''repeat patient medical history form'' even though ''he was a new customer.'' ALJ at 8, Gov. Ex. 18, at 50. On this form, the DI was asked whether he was ''requesting a specific Medication(s)?.'' Gov. Ex. 18, at 50. The DI indicated ''yes,'' and that he was requesting ''Vicodin 10 mg'' for a ''shoulder'' condition. See id. The DI further indicated that he had ''taken Vikes before with no side effects.'' Id. Vikes is a street name for Vicodin. ALJ at 8.

The DI also selected a time for a ''consultation'' with Respondent; the DI was subsequently instructed to call Respondent at 11:10 AM the next day and was given Respondent's name and a Florida phone number. See Gov. Ex. 18, at 60.

At the appointed time, the DI called Respondent. During this conversation, Respondent asked the DI what he wanted; the DI told Respondent that he wanted Vicodin. While Respondent was aware that the DI had indicated that he had a shoulder problem, he did not ask the DI whether he was in pain and the DI did not say that he ''had any pain.'' Tr. 255–56. The DI also told Respondent that he had been getting Vicodin from friends but had just found out that it was illegal to do so. Gov. Ex. 4. Respondent replied that it was illegal to obtain the drug from friends and that a doctor had to prescribe it. See Tr. 300. Respondent then asked the DI ''how many [he] wish[ed] to purchase?''; the DI replied ''120.'' Id. Respondent then agreed to prescribe 120 Vicodin tablets with two refills. See id.

Respondent then asked whether there was ''anything else [he] could do'' for the DI. Id. at 301. The DI told Respondent that he was ''nervous'' because he was going through a divorce and had just gotten a contract to haul dynamite. Id. Respondent then asked the DI ''[w]hat would you like for your nerves?,'' and offered to prescribe ''either Xanax or Valium.'' Id. The DI eventually asked for Valium and requested that the prescription coincide with the Vicodin so that they would ''run out at the same time.'' Id. at 302. Respondent then told the DI that he would authorize a prescription for 120 Valium tablets with two refills. Id.[2]

Respondent did not take a complete medical history from the DI, and obviously did not perform a physical exam. See ALJ at 12 (citing Tr. 256–58). He did not order medical testing, and did not discuss with the DI either the risks and benefits of taking the drugs he prescribed or the availability of alternative treatments. See id. Moreover, Respondent did not ask the DI whether he was seeing other physicians or using other online pharmacies. See id. Finally, Respondent did not discuss the contents of the ''medical record'' the DI had submitted and did not establish a treatment plan or a timetable for taking the drugs. See id.

On April 22, 2004, the DI faxed to SMG a copy of the postal money order paying for the consultation. See Gov. Ex. 20. Later that day, SMG sent an e-mail to the DI providing him with a United Parcel Service tracking number and instructing him that the drugs were being shipped COD and that the ''total for all pharmacy services (medication, shipping and handling) [was] $ 261.'' See Gov. Ex. 21. The e-mail also gave instructions for ordering refills and stated that: ''You will NOT be able to refill your prescription at any local pharmacy. You must order your refill through the Southwest Medical Group Web site only.'' Id. The ALJ also found that CMC ''did not accept any form of insurance as payment for medications.'' ALJ at 9 (citing Tr. 335).

Thereafter, the DI obtained both drugs from CMC along with an invoice that indicated the details of each prescription and listed Respondent as the prescribing physician. See Gov. Ex. 22. Moreover, on May 19, 2004, during the execution of a search warrant at CMC, copies of the prescriptions which Respondent wrote for the DI were retrieved. See Gov. Ex. 24; Tr. 325. The

[2] The DI attempted to record this conversation, but the recording device did not pick up Respondent's voice. The DI subsequently called Respondent again to recapture the substance of the first conversation. See Tr. 303. The transcript of that conversation confirms that Respondent prescribed 120 tablets of both Vicodin and diazepam, with two refills for each drug, for the DI. See Gov. Ex. 4, at 9–10. In that conversation, Respondent also told the DI that the fee for the consultation (which was $ 115) should be paid to SMG. Id. at 9. The DI subsequently sent a postal money order to SMG. See Gov. Ex. 20, at 66 & 68. Respondent also informed the DI that CMC would bill him separately for the drugs. Tr. 302.

heading of the forms gave Respondent's name and his address as his Juno, Florida residence. See Gov. Ex. 24. The forms also listed Respondent's New Jersey medical license number and the DEA number for his former office in Wayne, N.J. See id., see also Gov. Ex. 8.

During the search of CMC, the Government seized the pharmacy's computer database and retrieved from it patient and prescription information. Tr. 328–29; Gov. Exs. 25–30. The ALJ specifically found that Respondent wrote ''the vast majority of [the] prescriptions filled by CMC.'' See ALJ at 10. This finding is supported by substantial evidence. See Tr. 328; Gov. Exs. 27–30.

Moreover, the Government compiled a list of CMC's customers by their State. CMC filled prescriptions for customers located ''in virtually every [S]tate.'' ALJ at 11, see also Gov. Ex. 25. Indeed, CMC filled prescriptions for customers in such far-off places as Alaska, Hawaii and Washington State. See id. The Government also compiled a 467 page list of the prescriptions filled by CMC between July 1, 2003, and May 11, 2004, which includes the patient's name, the prescribing physician's name, the drug, and the quantity. See Gov. Exhs. 28 & 30; see also Gov. Exhs. 27 & 29. Based on this evidence, I further find that the overwhelming majority of the prescriptions Respondent issued (and CMC dispensed) were for controlled substances.

The Government also submitted into evidence an analysis of the prescriptions Respondent wrote and CMC dispensed for the drugs alprazolam, diazepam, hydrocodone and Lortab (a branded drug that combines acetaminophen and hydrocodone). See Gov. Ex. 65. During the last six months of 2003, Respondent wrote 1,207 prescriptions for alprazolam (for a total of 115,400 dosage units) and 1,140 prescriptions for diazepam (for a total of 71,811 dosage units). See id. During the portion of 2004 in which CMC remained in business,[3] Respondent wrote 2,519 prescriptions for alprazolam (for a total of 245,130 dosage units) and 1,806 prescriptions for diazepam (for a total of 126,925 dosage units). See id.

During the last six months of 2003, Respondent wrote 7,939 prescriptions for hydrocodone (for a total of 1,021,146 dosage units) and 44 prescriptions for Lortab (for a total of 5,730 dosage units). See id. During the period of 2004 in which CMC remained in business, Respondent wrote 14,129 prescriptions for hydrocodone (for a total of 1,840,355 dosage units) and 97 prescriptions for Lortab (for a total of 12,330 dosage units). See id. Finally, the analysis found that on May 10, 2004, and May 11, 2004 (the last two days for which there was data), CMC filled respectively 358 and 242 prescriptions for controlled substances that were written by Respondent. Id.

On October 15, 2004, the Government also executed a search warrant at Respondent's residence. The only documents found were scheduling charts. No patient records were found. Tr. 407.

The Government also called three other persons who testified as to the circumstances surrounding their obtaining prescriptions for controlled substances from Respondent. Mr. A.W. testified that he submitted a medical record, on which he altered the date; the record had been prepared by a physician, who had since died, and contained the physician's name, address and phone number. Id. at 24–26. A.W. gave testimony consistent with that of the DI as to the process required to register with SMG. Id. at 28–33. A.W. further testified that upon receiving his identification number and password, he went to the ''repeat patient medical history form'' and requested a prescription for Xanax (alprazolam) and Norco, a product containing hydrocodone and acetaminophen. Id. at 33–34.

A.W. obtained a time for a phone consultation with Respondent and called him. Id. at 40. As a result of the consultation, which lasted ''no more than four or five minutes,'' Respondent prescribed for A.W. a month's supply of both hydrocodone and Xanax with two refills. Id. at 33–34, 41.

A.W. had several additional ''consultations'' with Respondent at three month intervals, each of which lasted approximately four to five minutes. Id. at 41. The conversations typically involved Respondent asking A.W. how he was feeling, whether everything was o.k., whether he wanted the same drugs, and if there was anything else Respondent could do for him. Id. at 42. Respondent never required A.W. to submit any other medical records to him. Id.

Moreover, Respondent never asked A.W. if he had previously been addicted to drugs, never took a medical history, and never asked what drugs he had previously taken or what other drugs he was then taking. See ALJ at 23 (citing Tr. 42–43). Most significantly, Respondent never performed a physical exam on A.W. and did not require that he obtain a physical exam from another physician. Tr. 43. Furthermore, A.W. never saw Respondent ''in person.'' Id. at 43. Respondent also never suggested alternative treatments for A.W.'s condition, and other than to mention that the drugs he prescribed could be addictive, never discussed the benefits and risks of taking controlled substances. Id. at 44.

A.W. further testified that all of the prescriptions written for him by Respondent were filled by CMC, id. at 52, that he was not allowed to have the prescriptions filled at another pharmacy, and that he could not use his insurance to pay for the drugs and instead had to pay with cash. Id. at 97–98. According to the data obtained during the search of CMC, A.W. received from CMC prescriptions for 140 hydrocodone tablets and 60 alprazolam tablets, which were authorized by Respondent on a monthly basis from October 2003 through April 2004. See Govt. Ex. 27, at 5–6. A.W. further testified that the 140 hydrocodone tablets he received each month ''was more than any doctor ever gave'' him in his entire life. Tr. 44. A.W. also testified that he was addicted to drugs when he became a ''patient'' of SMG. Id. at 84. I credit A.W.'s testimony.

The Government also called as a witness Ms. B.B. I, like the ALJ, credit her testimony.

Consistent with the testimony of the DI and A.W., B.B. testified that she registered with SMG by going to its Web site and completing its new patient registration form and submitting a copy of her driver's license and medical records. See ALJ at 25–26. B.B.'s medical record indicated that she had been treated by a chiropractor for ''tennis elbow'' with heat therapy and ''electrolysis.'' Tr. 123, 132. The medical record did not indicate that B.B. had been treated with controlled substances, and the chiropractor had not prescribed controlled substances for her condition. See ALJ at 26 (citing Tr. 131–32).

In completing SMG's ''repeat patient medical history form,'' B.B. requested a prescription for hydrocodone 10/500 to treat her condition. See id. (citing Tr. 135–36). B.B. then selected a time for her consultation with Respondent. See id. (citing Tr. 137). After the first consultation, Respondent prescribed 90 hydrocodone tablets for B.B. See id. at 27 (citing Tr. 140 & 142).[4] B.B. had three

[3] While the document states that the data covered the ''[f]irst 5 months of 2004,'' in fact, the last date that the data was available for was May 11, 2004. See Gov. Ex. 65. CMC was shut down following the execution of the search warrant.

[4] TDI Pharmacy initially filled the prescriptions B.B. obtained from Respondent. ALJ at 28 (citing Tr. 147–48). At some point thereafter, CMC started filling the prescriptions B.B. obtained from Respondent. See id. (citing Tr. 147–48).

consultations with Respondent, each of which lasted for two to ''three minutes tops.'' Tr. 139. According to B.B., the consultations involved Respondent asking her ''what can I do for you, what do you need?'' Id. While Respondent and B.B. did discuss her condition, id. at 144, after B.B. told Respondent what she wanted, Respondent ''always ask[ed] is there anything else I can do for you or get for you?'' Id. at 139. The ALJ further found that ''B.B. credibly testified that every time she talked to the Respondent, she got the controlled substances she requested.'' ALJ at 27 (citing Tr. 147).

B.B. testified that following the first consultation she found out from an Internet message board that Respondent was giving other persons prescriptions for 120 hydrocodone tablets. Id. (citing Tr. 142–43). B.B. subsequently asked Respondent to increase her prescription and Respondent did so. Id. (citing Tr. 142–43).

B.B. testified that she never saw Respondent ''face to face,'' that Respondent never performed a physical exam on her, and never took a complete medical history. Tr. 125. Moreover, Respondent never ordered any medical tests (such as an x-ray or mri) or asked her to submit any previous test results. Id. at 125–26. Respondent also did not discuss with B.B. alternative treatments or the benefits and risks of taking controlled substances. Id. at 126. Nor did Respondent discuss with B.B. a timetable for her use of controlled substances. Id. Respondent also never asked B.B. if she was obtaining prescriptions from another doctor or using other Internet pharmacies. Id. at 180. Finally, Respondent never asked B.B. whether she had previously been addicted. Id.

B.B. paid SMG a fee of $ 120.00 for these consultations. Id. at 133. B.B. further testified that Respondent never gave her a paper prescription that she could take to another pharmacy. Id. at 148–49.

B.B. testified that at the same time that she was obtaining prescriptions from Respondent, she was able to obtain hydrocodone from ten other Internet pharmacies and was taking ''up to 40'' hydrocodone tablets a day. Id. at 145. B.B. became addicted, ''contemplate[ed] suicide,'' and could not function without the drug. Id. at 145–46. She also lost her house and means of transportation and did not have money to care for her children. Id.

The Government also called as a witness Mr. B.H., who at the time was incarcerated for possession of a forged instrument and was about to plead guilty to this offense. Tr. 215–16. B.H. also admitted that he had been convicted of two misdemeanor theft offenses, one misdemeanor drug offense, and one felony drug offense for which he was given youthful offender status. Id. at 216–17. Moreover, B.H. testified that in exchange for his testimony in this proceeding, local law enforcement officials had promised not to prosecute him for conduct related to his obtaining controlled substances over the Internet. Id. at 207. B.H. also testified that he had been drug dependent since 1998. Id. at 188. The ALJ credited B.H.'s testimony and I find no reason to disturb this finding. See *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 494–96 (1951).

B.H. testified that in 2002, he found SMG's Web site while searching the Internet. Tr. 189. B.H. ''filled out the paperwork'' and faxed to SMG a copy of his driver's license and a medical record that he had obtained from another person. Id. at 189–90. B.H. altered the medical record, which indicated that he had a problem with his L–4 & L–5 disk and suffered from severe anxiety, by placing his name, date of birth and social security number on it. Id. at 190. The record also indicated that B.H. had previously been prescribed Lortab and Xanax. Id. at 191.

After obtaining his ''patient ID,'' B.H. logged on to SMG's Web site and requested hydrocodone and Xanax. Id. at 191–92. He also obtained an appointment for a telephone consultation with Respondent. Id. at 192. SMG did not provide B.H. with a choice of physicians, and throughout his association with SMG, B.H. always dealt with Respondent. Id.

B.H. testified that all of his consultations with Respondent followed the same pattern and took ''about three or four minutes, maybe, if that.'' Id. at 194. According to B.H., Respondent would state that ''it says here you need hydrocodone and it said here you need this. He'd write the prescription and you hang up.'' Id. B.H. further testified that ''I would call up at my certain time and tell [Respondent] what I wanted, and he would say okay. That would be it.'' Id. at 196–97.[5]

Indeed, the ALJ specifically found that ''during the initial call, the Respondent and B.H. never discussed B.H.'s medical condition.'' ALJ at 31 (citing Tr. 197). During the first consultation, Respondent gave B.H. a prescription for 150 hydrocodone tablets and either 120 Xanax or its generic equivalent alprazolam; B.H. subsequently received these drugs on a monthly basis. Tr. 193.

Throughout this period, Respondent never took B.H.'s complete medical history, never met with B.H. and performed a physical exam, never asked B.H. about prior medical tests, and never ordered any medical tests. Id. at 194–95. Respondent also never discussed a treatment plan or alternative treatments. Id. at 195. Nor did he ever discuss with B.H. the benefits and risks of taking controlled substances, or a time table for taking the drugs. Id. at 195–96. Finally, Respondent never asked B.H. whether he was seeing any other doctors, if he was obtaining prescriptions from any other online pharmacies, or asked whether he had ever been addicted to controlled substances. Id. at 196. Other than when B.H. asked for a Schedule II drug, Respondent never refused a request by B.H. for a controlled substance. Id. at 195.

B.H. was obtaining controlled substances from other online pharmacies at the same time he was obtaining prescriptions from Respondent. Id. at 208. B.H. sold the hydrocodone he received from Respondent's prescriptions to buy Oxycontin, but took the Xanax. Id. at 207.

B.H. never received from Respondent a prescription form that he could take to a pharmacy. Id. at 209. He also showed several other persons how to obtain prescriptions from SMG; these individuals then obtained controlled substances which were prescribed to them by Respondent. Id. at 198–200. B.H. testified that these individuals had not previously obtained controlled substances from a physician for a medical condition. Id. at 202.

The Government also called Dr. Richard Weinberg, a physician who is board certified in internal medicine, as well as hospice and palliative medicine. Tr. at 383. Dr. Weinberg testified as an expert in internal medicine. See ALJ at 16. I credit all of his testimony which is summarized as follows.

Dr. Weinberg reviewed a list of the prescriptions Respondent issued and that were filled by CMC. See Tr. 386, Gov. Exhs. 28 & 30. He also reviewed various documents related to the DEA DI's obtaining controlled substances prescriptions from Respondent including transcripts of the telephone conversations, the medical ''documentation'' the DI submitted, and the various SMG Web pages that the DI filled out in order to obtain the prescriptions. Tr. 386.

[5] B.H. acknowledged on cross-examination that he ''probably'' asked Respondent to prescribe Oxycontin and Percodan (which contain oxycodone, a Schedule II controlled substance, 21 CFR 1308.12(b)), but Respondent told him he could not prescribe these drugs. Tr. 214–15.

Dr. Weinberg testified that based on the above, Respondent did not establish a valid doctor-patient relationship with the DI and did not conduct an ''adequate assessment'' or ''evaluation'' to justify Respondent's prescribing the controlled substances (hydrocodone and Valium) which he did for the DI. Tr. 389. Dr. Weinberg further testified that to establish a valid doctor-patient relationship, ''[a] physician must have a direct and immediate observation of the patient,'' which ''should be person-to-person.'' Id. at 393.

Dr. Weinberg testified that in treating pain, a physician must obtain a medical history which includes ''what the origin of the pain was, the history of it, previous treatments, attempts at physical therapy, and other modalities for treatment of pain.'' Id. The physician must further do ''a direct physical exam'' and create ''a plan for further evaluation and treatment [with] reassessment at an appropriate interval.'' Id. Moreover, a physician must ''inquire as to whether there is a risk of chemical dependency before initiating the use of drugs that are commonly associated with addiction, including all opiates and benzodiazepines.'' Id. at 400.

As for treating anxiety, Dr. Weinberg testified that the physician must take ''an extensive history to understand the appropriate background, whether the patient is experiencing any depression, any psycho-social stresses, [has] a history of panic disorder, et cetera.'' Id. at 393. According to Dr. Weinberg, this ''can only be done on a face-to-face basis and, again, requires that a patient be followed over time.'' Id.

Dr. Weinberg further testified that he has ''been involved with addiction medicine throughout [his] career,'' id. at 403, that he was currently ''the head of the addiction task force'' at a hospital and that he is familiar with some of the street terminology used by drug dependent persons. Id. at 403–04. More specifically, Dr. Weinberg testified that ''Vikes'' is street talk for Vicodin, id. at 402, and that if he received a questionnaire which indicated that a patient had been taking ''Vikes'' and was told by the patient that he got the drug from a friend (as the DI did in obtaining prescriptions from Respondent), he would not prescribe the drug. Id. at 404. Dr. Weinberg added that ''obtaining controlled substances from acquaintances [or] friends [is] a warning sign that this is someone who is chemically dependent or certainly involved with illicit use.'' Id. Dr. Weinberg further added that a sedating medication such as Valium should not be prescribed to a person who reports that he has anxiety from hauling dynamite. Id. at 405.

Dr. Weinberg also reviewed the prescription data seized from CMC. While acknowledging that there was ''a scattering of other prescriptions,'' Dr. Weinberg noted that ''[i]n every instance in this database, patients [were] prescribed substantial quantities of short-acting opiates * * * and, in most cases, patients are also prescribed benzodiazepine[s], either diazepam or alprazolam.'' Id. at 393–94. According to Dr. Weinberg, ''[i]t would be a highly unusual relationship with a set of patients that every single patient with whom you have an encounter would be prescribed these agents.'' Id. at 394. Moreover, it would also be ''extraordinary to have up to 120 patients receive prescriptions in a single day.'' Id. According to Dr. Weinberg, ''[i]t's impossible for any clinician to have an appropriate evaluation of that volume of patients in any short period of time.'' Id.

The Government also called as a witness Dr. James M. Tolliver, a DEA employee who holds a Ph.D. in Pharmacology. See Gov. Ex. 34. Dr. Tolliver has also served as a scientific advisor to the World Health Organization (WHO) and has been involved in the preparation of various documents used by the WHO in recommending that various drugs of abuse be controlled under international conventions. See id. at 2.

Specific to this case, Dr. Tolliver explained that hydrocodone is ''a narcotic drug similar to morphine,'' which produces euphoria and ''has a potency similar to morphine.'' Tr. 275. Hydrocodone is ''a substitute for heroin'' and ''heroin users like'' the drug. Id. at 275–76. Moreover, over time hydrocodone users develop a tolerance to the drug and thus require increased doses ''to produce the same effect.'' Id. at 277. In 2002, the abuse of hydrocodone combination products resulted in ''over 27,000 emergency room episodes.'' Id. at 279. Hydrocodone was thus among ''the top six to seven controlled substances'' found in persons seeking treatment for drug abuse in emergency rooms. Id.

Dr. Tolliver also testified regarding the abuse of benzodiazepines such as alprazolam (Xanax) and diazepam (Valium). According to Dr. Tolliver, ''[a]lprazolam is the number one prescription drug that is abused by our youth in the United States.'' Id. at 283. Alprazolam was number five on the list of drugs most frequently abused by persons who require treatment in emergency rooms. Id. at 284. Moreover, other benzodiazepines such as diazepam also rank in the top twenty of drugs abused by persons requiring treatment in emergency rooms. Id. Furthermore, benzodiazepines ''severely impact[]'' a user's psychomotor control, thus affecting the ability to drive or operate machinery.[6] Id. at 285.

Discussion

At the outset, this case presents a substantial question as to whether this proceeding is moot. Respondent's registration expired on March 31, 2006, after the hearing in this case and the ALJ's issuance of her decision. Moreover, Respondent apparently has not submitted a renewal application.

Under DEA precedent, ''[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration number expires and there is nothing to revoke.'' *Ronald J. Riegel*, 63 FR 67132, 67133 (1998). In *Riegel*, the registrant sought a hearing upon being served with a Show Cause Order; his registration, however, expired several months before the hearing was held and the registrant did not submit a renewal application. Id. at 67132.

Following the hearing in *Riegel*, the Government discovered that the respondent's registration had expired and moved to either order the respondent to submit a renewal application or to terminate the proceeding as moot. Id. The respondent did not respond to the motion. Id. The ALJ, however, denied the motion concluding that the proceeding was not moot under existing agency precedent. Id. While my predecessor concluded that the matter was ''moot because there [was] no viable registration to revoke,'' he nonetheless reasoned that ''it would be unfair to * * * terminate the proceedings without resolution'' because the Government's position was based on a ''deviation'' from agency precedent and was not raised until after the hearing was held. Id. at 67133. He thus decided the case on the merits and ordered the revocation of the respondent's registration. *See id.* at 67133–35.

Having carefully considered this precedent, as well as authorities discussing the mootness doctrine in both the judicial and administrative settings, I conclude that Riegel is not controlling. '' '[A]n administrative agency is not bound by the constitutional requirement of a ''case or controversy'' that limits the authority of article III courts to rule on moot issues.' '' *RT Communications, Inc.* v.

[6] Respondent neither testified on his own behalf nor put on any witnesses.

FCC, 201 F.3d 1264, 1267 (10th Cir. 2000) (quoting *Climax Molybdenum Co.* v. *Secretary of Labor*, 703 F.2d 447, 451 (10th Cir. 1983)); see also *Metropolitan Council of NAACP Branches* v.*FCC*, 46 F.3d 1154, 1161 (D.C. Cir. 1995) (''case or controversy requirement'' does not apply to an agency). As the Tenth Circuit has explained, ''an agency has 'substantial discretion' to decide whether to hear issues which might be precluded by mootness'' if litigated in an Article III court. *RT Communications*, 201 F.3d at 1267 (quoting *Climax Molybdenum*, 703 F.2d at 451).

Moreover, my decision to issue a final order in this matter finds ample support in the mootness doctrine applied by the courts. Under long settled principles, '' 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice,' '' because '' 'if it did, the courts would be compelled to leave ''[t]he defendant * * * free to return to his old ways.' '' *Friends of the Earth, Inc.*, v. *Laidlaw Env. Servs., Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquit*e v. *Aladdin's Castle, Inc.*, 455 U.S. 283, 289 & n.10 (1982) (quoting United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953))). Most significantly, the standard ''for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: 'A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.' '' *Friends of the Earth*, 528 U.S. at 189 (quoting *United States* v. *Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)).

Finally, a case remains a live dispute when ''collateral consequences'' attach to a proceeding which otherwise would be moot. *In re Surrick*, 338 F.3d 224, 230 (3d Cir. 2003). As several courts have noted in cases involving sanctions against licensed professionals such as attorneys, even a temporary suspension followed by a reinstatement does not moot a challenge to the initial suspension because the action ''is harmful to a [professional's] reputation, and 'the mere possibility of adverse collateral consequences is sufficient to preclude a finding of mootness.' '' Id. (quoting *Dailey* v. *Vought Aircraft Co.*, 141 F.3d 224, 228 (5th Cir. 1998)). See also id. (quoting *Kirkland*v. *National Mortgage Network, Inc.*, 884 F.2d 1367, 1370 (11th Cir. 1989) (''attorney's appeal of the revocation of his pro hac vice status was not moot following dismissal of the underlying case because 'the brand of disqualification on grounds of dishonesty and bad faith could well hang over his name and career for years to come' '').

Relying on these cases for guidance, I hold that this case is not moot. As an initial matter, I note that neither party has moved to dismiss the proceeding on mootness grounds. Moreover, while Respondent has not submitted a renewal application, he has submitted no evidence (such as a declaration) establishing that he intends to permanently cease the practice of medicine. Cf. 21 CFR 1301.52(a) (''Any registrant who * * * discontinues business or professional practice shall notify the Administrator promptly of such fact.''). Indeed, under DEA's regulations, Respondent can apply for a new registration at any time and could re-engage in the practice at issue here. It is thus not '' 'absolutely clear that [Respondent's] allegedly wrongful behavior could not reasonably be expected to recur.' '' *See, e.g., Friends of the Earth*, 528 U.S. at 189 (quoting *Concentrated Phosphate*, 393 U.S. at 203).

Moreover, the Government (as did Respondent) expended substantial resources in litigating this case; the ALJ also committed an extensive amount of time to preparing her decision. To dismiss this proceeding without making the findings which the evidence in this case compels would prejudice the public interest. I thus conclude that Respondent's failure to submit a renewal application does not preclude the entry of a final order in this matter.

Furthermore, this case is not moot because of the collateral consequences that attach to the immediate suspension of Respondent's registration. As explained above, the immediate suspension was imposed based on my preliminary finding that Respondent's continued registration ''would constitute an imminent danger to the public health and safety'' because he was diverting large amounts of controlled substances. Show Cause Order at 10. It is indisputable that when the Agency is forced to take this extraordinary step to protect public health and safety, a registrant's reputation is harmed. Moreover, it is likely that Respondent would be required to report the Immediate Suspension were he to apply for a renewal of his state medical licenses. Finally, were Respondent to apply for a new DEA registration at some point in the future, he would be required to disclose the suspension that is at issue here. See DEA Form-224, Section 5; DEA Form-224A, Section 4.[7]

As the forgoing demonstrates, the issuance of an immediate suspension creates collateral consequences beyond those that are present when the Government serves a Show Cause Order but allows a registrant to continue to handle controlled substances throughout the litigation. Therefore, I conclude that *Riegel* is not controlling and that this case is not moot. I thus proceed to analyze the merits of this case under the standards of section 304.

The Statutory Factors

Section 304(a) of the Controlled Substances Act provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * 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)(4). 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 a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' 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, 482 (6th Cir. 2005); see also *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

[7] Furthermore, pursuant to 21 U.S.C. 824(f), DEA personnel who serve an immediate suspension are directed to seize and place under seal all controlled substances possessed by a registrant. See, e.g., Show Cause Order at 10. Under federal law, title to any such property is dependent upon the outcome of the proceeding. 21 U.S.C. 824(f). Thus, while there is no evidence in the record as to whether DEA investigators seized any controlled substances when they served the order on Respondent, most cases which begin with the issuance of an immediate suspension present this additional collateral consequence.

Finally, section 304(d) provides that ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d). In this case I conclude that Factors Two, Four and Five establish that allowing Respondent to handle controlled substances would be inconsistent with the public interest. Analyzing these factors, I also conclude that Respondent's conduct created ''an imminent danger to public health or safety,'' id., and thus sustain the immediate suspension of his registration.

Factors Two and Four—Respondent's Experience In Dispensing Controlled Substances and Respondent's Compliance With Applicable Laws

As the ALJ noted, the key issue in this case is whether the prescriptions Respondent issued to the persons who were referred to him through the SMG Web site complied with Federal law. As explained below, the evidence conclusively demonstrates that Respondent used his prescribing authority to act as a drug pusher; the only difference between him and a street dealer was that he did not physically distribute the drugs to SMG's clients.

Under DEA regulations, a prescription for a controlled substance is not ''effective'' 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). This regulation further provides that ''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 issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' Id. As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon*, 126 S.Ct. 904, 925 (2006) (citing *Moore*, 423 U.S. 122, 135 (1975)).

It is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to be acting ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' As Doctor Weinberg, the Government's expert explained, existing professional standards require that to establish a bonafide doctor-patient relationship, a physician must first obtain a medical history which establishes the origin of the patient's complaint, its history and previous attempts to treat the condition. Tr. 393, 400. Moreover, the physician must conduct a physical examination which involves the ''direct and immediate observation of the patient'' and should be on an in-person basis. Id. at 393. Furthermore, before prescribing controlled substances, the physician must determine whether there is a risk of chemical dependency or the patient is engaged in the illicit use of drugs. Id. at 400. The physician should also develop ''a plan for further evaluation and treatment [with] reassessment at an appropriate interval.'' Id. at 393.

The American Medical Association's *Guidance for Physicians on Internet Prescribing* explains the ''components'' of a bonafide doctor-patient relationship. Gov. Ex. 48. The AMA instructs that a ''physician shall'':

> i. obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided; ii. have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s); iii. as appropriate, follow up with the patient to assess the therapeutic outcome; iv. maintain a contemporaneous medical record that is readily available to the patient and * * * to his * * * other health care professionals; and v. include the electronic prescription information as part of the patient medical record.

Id .

To similar effect are the guidelines issued by the Federation of State Medical Boards of the United States, Inc. See Gov. Ex. 50 (Model Guidelines for the Appropriate use of the Internet in Medical Practice). According to the Guidelines, ''[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. *Treatment, including issuing a prescription, based solely on an online questionnaire or consultation does not constitute an acceptable standard of care.*'' Id. at 4 (emphasis added). Cf. DEA, Dispensing and Purchasing Controlled Substances over the Internet, 66 FR 21181, 21183 (2001) (guidance document) (''Completing 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.'').[8]

Under the standards of the medical profession, it is clear that Respondent did not establish a bonafide doctor-patient relationship with any of the four material witnesses in this case and thus, none of the prescriptions he issued to them complied with federal law. Respondent never obtained a reliable medical history from these persons—indeed, in this case there is substantial evidence that he simply accepted whatever documents were provided by these individuals without verifying their validity. In doing so, he ignored the potential for fraud inherent in the scheme, which was obvious in light of the fact that SMG allowed its ''patients'' to request a particular drug.

Most significantly, he did not physically examine any of these four persons, direct that they be examined by another physician, or order medical testing to verify their reported medical complaints. Furthermore, he did not discuss with any of these persons the existence of alternative treatments, generally failed to discuss the risks/benefits of taking the various controlled substances he prescribed, never developed a timetable for using controlled substances or a treatment plan, and never attempted to determine whether any of these persons had a history of addiction to the drugs or were obtaining them from other sources. It is thus indisputable that none of the prescriptions Respondent issued for these four persons were for a legitimate medical purpose.

Indeed, there is ample evidence suggesting that Respondent knew that his ''patients'' were seeking the drugs to abuse them. Several witnesses testified that they requested specific drugs. Moreover, at least three of the witnesses stated that during their conversations with Respondent, he would ask them whether there was anything else he could do for them. This is not the type of question that a physician normally asks a patient during the course of providing medical treatment. Indeed, several of the witnesses testified that they interpreted Respondent's question as an offer to supply additional controlled substances. See Tr. 301 (testimony of DI); id. at 140 (testimony of B.B.).

The evidence in this case further demonstrates the danger to public health and safety created by Respondent

[8] The guidance document reflects this Agency's understanding of what constitutes a bonafide doctor-patient relationship under state laws and existing professional standards. 66 FR 21182–83.

and other Internet prescribers. B.B. testified that while she was obtaining controlled substances from Respondent and CMC, she was also able to obtain them from ten other Internet pharmacies. B.B. acknowledged that she was taking as many as 40 hydrocodone tablets a day, that she became addicted, and that she considered suicide. Relatedly, B.H. testified that he sold the hydrocodone he obtained from Respondent's prescriptions in order to buy Oxycontin, a stronger and more addictive controlled substance. He also related that he showed several acquaintances how to obtain controlled substances from SMG, which were prescribed to them by Respondent. B.H. further testified that these persons had not previously been prescribed controlled substances for a medical condition. He (along with the DI) also testified to the ease of obtaining their prescriptions by submitting fraudulent medical records. Obviously, Respondent's prescribing practices invited fraud. Cf. 66 FR at 21183 (''A consumer can more easily provide false information in a questionnaire than in a face-to-face meeting with a doctor.'').

The prescription data further supports the conclusion that Respondent was engaged in drug dealing rather than the legitimate practice of medicine. Among other things, the evidence suggests that in a single day (on or about May 10, 2004), Respondent issued as many as 358 prescriptions for controlled substances. The assembly line nature of this activity refutes any suggestion that Respondent was engaged in the legitimate practice of medicine. See Tr. 394 (testimony of Dr.Weinberg) (noting that it would be ''extraordinary to have up to 120 patients receive prescriptions in a single day'').

The ALJ also reasoned that ''the sheer volume of the Respondent's prescriptions also puts into question his medical practices.'' ALJ at 40–41. As found above, during the first four and half months of 2004 (before CMC was shut down), Respondent issued and CMC filled 14,219 prescriptions for hydrocodone, 2,519 prescriptions for alprazolam, and 1,806 prescriptions for diazepam. According to the ALJ, this Agency has previously held ''that the numbers of prescriptions for controlled substances, alone, do not create a regulatory violation.'' See ALJ at 41 (citing *Paul W. Saxton*, 64 FR 25073 (1999)). I need not decide, however, whether Saxton supports this broad proposition. As the ALJ also noted, there the respondent justified his prescribing by presenting evidence as to the medical needs of his patients. See 64 FR 25075–76.

Here, by contrast, Respondent presented no such evidence. Moreover, the geographical location of SMG's customers demonstrates the substantial likelihood that most, if not all, of the prescriptions were issued by Respondent without the establishment of a bonafide doctor-patient relationship and while acting outside of the usual course of professional practice. Indeed, one of the Government's exhibits (# 25) shows that Respondent prescribed to persons in every State as well as the District of Columbia. Perhaps some of these patients actually visited Respondent at his Florida residence, but given his lack of licensure in that state, as well as the cost and time involved for patients to travel there, the nature of SMG's scheme (which offered the ability to obtain prescriptions based on a short telephone conversation), and the absence of any medical records during the search of his residence, it is most improbable that any ''patients'' did.

Respondent also violated the CSA for the additional reason that he did not possess lawful authority to prescribe controlled substance in Florida, the State in which he was practicing medicine. He also did not hold a DEA registration authorizing him to dispense from his Florida address.

The CSA defines the term ''practitioner'' as ''a physician . . . licensed, registered, or otherwise permitted, by the United States *or the jurisdiction in which he practices* . . ., to distribute, dispense . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21) (emphasis added). Under the CSA, the term ''dispense'' includes the act of ''prescribing'' a controlled substance. Id. § 802(10).

As the ALJ noted, this Agency has consistently interpreted the CSA as prohibiting a practitioner from handling controlled substances unless authorized to do so under the law of the state in which he engages in professional practice. See ALJ at 37–38 (collecting cases). See also Sheran Arden Yeates, 71 FR 39130, 39131 (2006). Also relevant to this case is section 302 of the CSA, which expressly provides that ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant . . . distributes, or dispenses controlled substances.'' 21 U.S.C. 822(e).

Here, there is substantial evidence that Respondent issued the prescriptions from his residence in Florida. This includes the addresses Respondent used in renewing his N.J. and N.Y. medical licenses, the address Respondent used in his June 28, 2003 correspondence to SMG's head, the address used on the Rx forms found during the search of CMC, the Florida phone number which the DI used for his consultation, and the address at which Respondent was living when the Show Cause Order and Immediate Suspension was served on him. Finally, there is also the evidence that Respondent had not practiced at the address of his DEA registered location for at least four years prior to the service of the Show Cause Order. Respondent did not, however, hold a Florida medical license and did not possess a DEA registration for his Florida address. See Tr. 236; Gov. Ex. 1 & 2. His prescribing thus violated the CSA for these reasons as well.

I thus conclude that Respondent's experience in dispensing controlled substances and his history of non-compliance with applicable laws amply demonstrate that Respondent could not be entrusted with a DEA registration. I further affirm the preliminary finding that Respondent's conduct constituted an ''imminent danger to the public health or safety,'' 21 U.S.C. 824(d), and justified the immediate suspension of his registration.

Factor Five—Other Conduct Which Threatens Public Health and Safety

The ALJ also found this factor applicable because Respondent ''failed to maintain adequate patient records.'' ALJ at 41. As the ALJ explained, when the Government executed the search warrant at Respondent's residence, no patient records were found notwithstanding that he issued a substantial number of prescriptions from this address. Id. at 42. I agree with the ALJ's conclusion.

As explained above under Factor Two, under existing professional guidelines, a physician should ''maintain a contemporaneous medical record.'' Gov. Ex. 48. Documenting the prescribing of controlled substances would seem to be essential to a physician's effective monitoring of a patient to ensure that the patient is not abusing the drugs or has become addicted to them. Furthermore, it seems clear that when a patient with a legitimate medical complaint needs to see a specialist, the specialist needs accurate information pertaining to the patient's use of controlled substances before recommending treatment options. Finally, if a person engages in ''doctor shopping,'' accurate records could help the new doctor assess the legitimacy of the person's medical complaint. I thus conclude that Respondent's failure to maintain patient records constitutes conduct that threatens public health and

safety. *See James S. Bischoff*, 70 FR 12734 (2005).

It is not surprising that Respondent did not maintain patient records because he was not engaged in anything remotely bordering on the legitimate practice of medicine. Rather, Respondent was a drug dealer. As I have previously noted, ''[l]egally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription.'' *Mario Avello, M.D.*, 70 FR 11695, 11697 (2005) (citing *Floyd A. Santner, M.D.*, 55 FR 37581 (1990)). The use of a DEA registration to engage in such conduct manifestly creates ''an imminent danger to the public health or safety'' and justifies the immediate suspension of a registration. 21 U.S.C. 824(d).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100 & 0.104, the order of immediate suspension of DEA Certificate of Registration, BL6779005, issued to William R. Lockridge, M.D., is hereby affirmed. The Office of Diversion Control is further directed to cancel Respondent's DEA number. This order is effective January 26, 2007.

Dated: December 8, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–22105 Filed 12–26–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,941 and TA–W–59,941A]

Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, OH, Including Employees of Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, OH, Located in Sprague, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 20, 2006, applicable to workers of Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, Ohio. The notice will soon be published in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Rittman, Ohio facility of Caraustar Mill Group, Inc., Rittman Paperboard Division located in Sprague, Connecticut.

Mr. Tom Loeb and Mr. Bill Clark provided technical service and sales function services for the production of coated recycled boxboard produced by the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Rittman, Ohio facility of Caraustar Mill Group, Inc., Rittman Paperboard Division located in Sprague, Connecticut.

The intent of the Department's certification is to include all workers of Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, Ohio who were adversely affected by increased company imports.

The amended notice applicable to TA–W–59,941 is hereby issued as follows:

''All workers of Caraustar Mill Group, Inc., Rittman Paperboard Division, Rittman, Ohio (TA–W–59,941), and including employees located in Sprague, Connecticut (TA–W–59,941A), who became totally or partially separated from employment on or after August 17, 2005, through September 20, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 18th day of December, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–22130 Filed 12–26–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of December 11 through December 15, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group