physicians on almost every other day it was open for business.

As recognized in other cases, the sheer volume of prescriptions thus establishes that it more likely than not that Respondent's owner knew that the prescriptions were illegitimate and intentionally ignored this. *See, e.g., Bertolino*, 55 FR 4729, 4730. Beyond that, the prescriptions were being sent to persons in every part of the country. Moreover, there is also some evidence that the iPharmacy physicians performed their reviews in rapid-fire fashion. Yet none of this prompted Respondent's owner to question the legality of the prescriptions. Contrary to Mr. Enemchukwu's assertion that ''everything we are looking at now is from hindsight,'' Tr. 850, shortly into the relationship with iPharmacy, Mr. Enemchukwu was receiving abundant evidence—on a nearly daily basis—to know that iPharmacy (and its doctors) were engaged in illegal activity.[12]

I thus conclude that Respondent is responsible for the dispensing of more than 43,000 illegal prescriptions and the diversion of more than two million dosage units of various controlled substances. Not only is this a violation of federal law, *see* 21 U.S.C. 841(a), and appears to be a violation of Florida law,[13] *see* Fla. Stat. 465.016(s), it is manifest that diversion on this scale creates an extraordinary threat to the public health and safety. Respondent's experience in dispensing controlled substances and its record of compliance with applicable laws thus provide abundant reason to conclude that Respondent committed acts which rendered its registration ''inconsistent with the public interest'' and thus warranted the suspension of its registration under section 304(a). 21 U.S.C. 824(a)(4).[14]

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100(b) & 0.104, the order of immediate suspension of DEA Certificate of Registration, BT2863668, issued to Trinity Health Care Corporation, d/b/a/ Oviedo Discount Pharmacy, is hereby affirmed.

Dated: May 21, 2007,

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–10627 Filed 6–1–07; 8:45 am]

BILLING CODE 4410–09–P

[12] Respondent's owner makes no claim that it was reasonable for him to rely on the representations made by Mr. Butler both orally and in the contract regarding the legality of internet prescribing and dispensing. This is rightly so for three reasons: (1) Mr. Enemchukwu is a licensed professional and is responsible for knowing the rules applicable to the practice of his profession, (2) in April 2001, nearly three years before he entered into the contract with Mr. Butler, DEA published guidance which explained the application of existing federal laws and regulations to the proposed arrangement, and (3) other bodies such as the AMA and Federation of State Medical Boards had published information regarding the invalidity of internet prescribing under both ethical and legal standards. *See* Gov. Exs. 3 & 4.

[13] The Government also argues that Respondent violated various state laws by dispensing to persons in States where it was not licensed to do so. *See* Gov. Br. at 48. In its brief, the Government did not, however, cite to specific laws establishing the licensure requirements of various States. Moreover, the Government's proof was largely confined to an e-mail in which Respondent sought reimbursement for the fees it paid to obtain the permits. The Government's evidence did not cite to specific instances in which Respondent dispensed in violation of a particular State's law. *See* Tr. 361–62.Therefore, I conclude that this allegation had not been proved with substantial evidence.

[14] Based on Mr. Enemchukwu's insistence that he did not know and had no reason to believe that the iPharmacy prescriptions were unlawful, the ALJ further concluded that he had failed to acknowledge his wrongdoing and thus was not ''willing to accept the responsibilities inherent in a DEA registration.'' ALJ at 31. While I agree with the ALJ's view of the evidence, there is neither an existing registration to revoke nor a pending application to deny. As this case is now limited to a review of the validity of the suspension, there is no need to considerer this finding and weigh it against the slight mitigating evidence in the case.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dale L. Taylor, M.D.; Revocation of Registration

On February 2, 2007, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Dale L. Taylor (Respondent) of Winter Haven, Florida. The Order immediately suspended Respondent's Certificate of Registration, BT8732631, as a practitioner, based on my preliminary finding that Respondent was diverting large quantities of controlled substances through an internet-prescribing scheme. Show Cause Order at 2. I therefore concluded that Respondent's ''continued registration during the pendency of these proceedings would constitute an imminent danger to the public health and safety because of the substantial likelihood that [he would] continue to divert controlled substances to drug abusers.'' *Id.* at 3.

The Show Cause Order also alleged that Respondent's ''continued registration is inconsistent with the public interest.'' *Id.* at 1. More specifically, the Show Cause Order alleged that beginning in May 2004, Respondent had been issuing prescriptions for controlled substances over the Internet ''without the benefit of a legitimate doctor-patient relationship and outside the course of professional practice.'' *Id.* The Show Cause Order alleged that Respondent had admitted to DEA investigators that he had done such prescribing for three different internet entities including Pacific MD, Norco Worldwide, and *BestRxCare.com. Id.* at 1–2.

The Show Cause Order further alleged that Respondent had admitted that he would log onto a Web site and view a list of customers, review their medical records, and then contact each person by telephone. *Id.* at 2. The Show Cause Order alleged that Respondent had admitted that his ''role was simply to make sure that the type of medication, strength and quantity were consistent with the online customers' alleged medical need,'' and he had ''never called patients after authorizing their drug orders to provide aftercare.'' *Id.* Relatedly, the Show Cause Order alleged that Respondent told investigators that he took ''the on-line patient's word when determining their need for hydrocodone.'' *Id.*

The Show Cause Order alleged that BestRxCare.com's orders were filled by CRJ Pharmacy and that the pharmacy's records for the period from July 3, 2006, to January 22, 2007, showed that it had dispensed ''approximately 6,000 [i]nternet drug orders that [Respondent] authorized.'' *Id.* The Show Cause Order alleged that ''approximately 85% of these [i]nternet drug orders were for hydrocodone combination products.'' *Id.*

Finally, the Show Cause Order alleged that Respondent had admitted to investigators that he had ''authorized controlled substance [prescriptions] for online customers throughout the United States'' even though he acknowledged that he was ''only licensed to practice medicine in'' Florida. *Id.* The Show Cause Order thus alleged that Respondent had violated various state laws that prohibit ''unlicensed, out-of-state physicians issuing controlled substance prescriptions to state residents.'' *Id.*

On February 6, 2007, DEA Investigators served the Show Cause Order and Immediate Suspension, which notified Respondent of his right to a hearing, by leaving it at his residence with his wife. *Cf.* F.R.C.P. 4(e). Since that time, neither Respondent, nor anyone purporting to represent him, has responded. Because (1) more than thirty days have passed since service of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. *See* 21

CFR 1301.43(d). I therefore enter this final order without a hearing based on relevant material in the investigative file and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BT8732631, as a practitioner, with an expiration date of November 30, 2006. On October 11, 2006, Respondent, however, applied for a renewal of his registration via the Internet. Therefore, in accordance with the Administrative Procedure Act, Respondent's registration remains in existence pending the issuance of a final order in this matter. *See* 5 U.S.C. 558(c).

According to the investigative file, on January 26, 2007, DEA investigators interviewed Respondent regarding his participation in various schemes involving the dispensing of controlled substance over the Internet. Respondent told the investigators that in early to mid 2004, he answered an advertisement placed by an entity known as Pacific MD in a Gainesville, Florida newspaper which sought physicians to perform internet consultations. In May 2004, Pacific MD engaged Respondent to review patient records and if the records were not more than two years old, contact the ''patient'' and authorize a prescription which was typically for either combination products containing hydrocodone, a schedule III controlled substance, *see* 21 CFR 1308.13(e), or Xanax (alprazolam), a schedule IV controlled substance. *See* 21 CFR 1308.14(c). Respondent related that in June 2005, he quit working for Pacific MD because it owed him money.

At some date not specified in the investigative file, Respondent submitted his credentials to a temporary employment service that specialized in medical staffing. Thereafter, Respondent was contacted by another entity, Norco Worldwide, and began working for it. Norco gave Respondent a password which enabled him to review medical records submitted by Norco's customers. According to Respondent, a physician's assistant would contact and talk to the patients and authorize a prescription for a controlled substance using his DEA registration. Respondent further admitted that he wrote prescriptions on a computer program, which were then submitted electronically to a pharmacy which filled them. Respondent stated that he worked for Norco from October 2004 through December 2004 and authorized approximately forty prescriptions per day. Respondent further told investigators that he quit Norco because he wasn't comfortable with the fact that a physician's assistant was authorizing controlled substance prescriptions using his DEA registration.

Shortly thereafter, Respondent was contacted by one Chris Larson. Larson had also formerly worked for Norco and had started two Web sites, BestRx.com, and your painmanagement.com, which allowed persons to order controlled substances over the Internet by completing a questionnaire and submitting their ''medical records.'' Larson also owned several pharmacies that filled prescriptions for his Web sites.

Respondent told investigators that he would log onto the *BestRx.com* Web site and obtain a list of ''patients'' with ''appointments.'' Respondent would then review the ''patient's'' medical records before telephoning the person. Respondent asserted that he required the records to be on the previous physician's letterhead and be signed. Respondent further maintained that he reviewed the records to determine whether the drug sought was consistent with the customer's medical condition.

When asked by investigators whether he had ever contacted any of the customer's prior physicians, Respondent claimed that he had but could not recall their names. Respondent further admitted that he was not authorized to require that a customer undergo additional testing and that the customer had to go to their original physician to obtain such tests.

Respondent admitted that he simply trusted that the records submitted by the website's customers were not fraudulent and took the customer's word during the phone consultation. Based on the medical records and the phone conversation, Respondent would prescribe controlled substances. Respondent further admitted that he never called a customer to follow up. Respondent also admitted that on numerous occasions, customers would call him seeking more drugs.

One of the investigators then asked Respondent if he maintained any patient files. Respondent claimed that he kept meticulous record for all of his ''patients'' at his residence in a plastic storage bin located in his office. Respondent's wife, however, told investigators that the bin did not contain any medical records but merely the names and addresses of persons Respondent had spoken with.

Respondent admitted that he had authorized controlled substances prescriptions for persons located throughout the United States even though he held only a Florida medical license. Respondent further admitted that he authorized as many as twenty to twenty-five prescriptions a day while working for *BestRxCare.com.*

The investigators asked Respondent to voluntarily surrender his DEA registration. Respondent refused and stated that he intended to continue authorizing prescriptions through the Internet because on-line medicine is the wave of the future. Respondent acknowledged that absent use of a webcam, it was not possible to verify the validity of a ''patient'' and his or her medical needs. Respondent stated that until then, he would continue to take online patients at their word and accept their records as authentic.

On January 22, 2007, DEA personnel executed an Administrative Inspection Warrant at CRJ Pharmacy and YPM Total Care Pharmacy, two of the businesses owned by Chris Larson. During the search, DEA obtained each pharmacy's dispensing records; the records were then reviewed by a DEA intelligence analyst. According to the records of CRJ Pharmacy, between July 2006 and January 2007, Respondent authorized 6,069 prescriptions for 1,098 persons who resided in forty-six States and the District of Columbia. Of the prescriptions, 5,156 were for hydrocodone-combination products, and 526 were for alprazolam.

The records for YPM showed that from November 27, 2006, through January 17, 2007, Respondent authorized prescriptions for another 171 patients who resided in thirty-six States. More specifically, Respondent authorized 367 orders for hydrocodone-combination products and thirty-three orders for alprazolam. The records also showed that on a single day, Respondent had written as many as fifty-six orders which were filled by YPM.

Discussion

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.

• ''[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, 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).

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 and Four establish that allowing Respondent to continue to dispense controlled substances would be inconsistent with the public interest and therefore will order the revocation of Respondent's registration and the denial of his pending application for renewal.

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

The central issue in this case is whether the prescriptions Respondent issued pursuant to his employment with the Web sites *BestRx.com* and *yourpainmanagement.com* 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 the customers of the aforementioned websites.

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.'' Under the State of Florida's regulations, a physician ''shall not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless the following elements have been met:

(a) A documented patient evaluation, including history and physical examination to establish the diagnosis for which any legend drug is prescribed.

(b) Discussion between the physician * * * and the patient regarding treatment options and the risks and benefits of treatment.

(c) Maintenance of contemporaneous medical records meeting the requirements of [Florida regulations].

Fla. Admin. Code R. 64B8–9.014.

Relatedly, the American Medical Association's *Guidance for Physicians on Internet Prescribing* has explained that to establish a bonafide doctor-patient relationship, 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.

(quoted in *William R. Lockridge*, 71 FR 77791,77798 (2006)).

To similar effect are the guidelines issued by the Federation of State Medical Boards of the United States, Inc. *See 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.'').[1]

Under the Florida rule and standards of the medical profession, it is clear that Respondent did not prescribe controlled substances pursuant to a bonafide doctor-patient relationship and thus did not comply with federal law. Respondent did not physically examine the ''patients.'' Nor did he ever act in a consultative capacity ''with another physician who ha[d] an ongoing relationship with the patient, and who ha[d] agreed to supervise the patient's treatment, including the use of any prescribed medications.'' Fla. Admin. Code R. 64B8–9.014(4).

Moreover, Respondent admitted that he was not authorized by his employer to order that a customer undergo additional testing. Respondent also admitted that he never called a ''patient'' to follow-up on whether the treatment was successful. Finally, notwithstanding his statement to investigators that he kept meticulous records, the evidence establishes that Respondent did not maintain medical records on his purported patients. Thus, it is clear that under Florida law as well as existing professional standards, Respondent did not establish a bonafide doctor-patient relationship with the persons he prescribed controlled substances for. *See*, *e.g.*, Fla. Admin. Code R. 64B8–9.014.

Moreover, the investigative file establishes that Respondent issued thousands of prescriptions for controlled substances and did so notwithstanding the potential for fraud that was inherent in the scheme and his admission that on numerous occasions, customers called him requesting more controlled substances. As recognized in *Lockridge* and other agency orders, '''[le]gally there is absolutely no

[1] 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.

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.''' 71 FR at 77800 (quoting *Mario Avello, M.D.*, 70 FR 11695, 11697 (2005)). See also *Floyd A. Santner, M.D.*, 55 FR 37581 (1990). In short, Respondent was not engaged in the legitimate practice of medicine, but rather, was dealing drugs.

Accordingly, Respondent's experience in dispensing controlled substances and his record of compliance with applicable laws makes plain that his continued registration would ''be inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Moreover, for the same reasons which led me to find that Respondent posed ''an imminent danger to the public health or safety,'' *id.* section 824(d), I conclude that the public interest requires that his registration be revoked effective immediately and his pending application for renewal be denied. *See* 21 CFR 1316.67.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate Registration, BT8732631, issued to Dale L. Taylor, M.D., be, and it hereby is, revoked. I further order that Respondent's pending application for renewal of his registration be, and it hereby is, denied. This order is effective immediately.

Dated: May 21, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–10622 Filed 6–1–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

May 29, 2007.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures specified in 5 CFR 1320.13, for the Office of Management and Budget (OMB) review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 19, 2007. A copy of this ICR, with applicable supporting documentation, 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 and questions about the ICR listed below should be submitted to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316) (this is not a toll-free number), and received 5 days prior to the requested OMB approval date.

The Office of Management and Budget 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 clarify 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 technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Office of the Assistant Secretary for Administration and Management.

Title: Contractor Data Collection Form.

OMB Number: 1225–0NEW.

Frequency: On occasion.

Affected Public: Individuals.

Number of Respondents: 5,000.

Estimated Time per Respondent: 12 minutes.

Total Burden Hours: 1,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: Under Homeland Security Presidential Directive 12 (HSPD–12), federal agencies are required to comply with a standard for identification issued to Federal employees and contractors known as FIPS–201 Personal Identity Verification (PIV) of Federal Employees and Contractors. In order to comply with the directive and issue the new federal credential to contractor personnel, the DOL must collect certain data required for the creation of an applicant record in its Personal Identity Verification II (PIV–II) system and for issuance of the PIV–II badge.

The information will be used to determine suitability for the issuance of DOL credentials. The information will be used to identity proof and register applicants as part of the Personal Identity Verification process. Providing this information is voluntary; however, failure to submit this information may result in denial of a DOL credential. Without this form, DOL contractors are not reviewed with the same rigor applied to its Federal staff with respect to HSPD–12/PIV–II credentialing standards.

Edward C. Hugler,

Deputy Assistant Secretary for Administration and Management.

[FR Doc. E7–10649 Filed 6–1–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: Under Title I of the Workforce Investment Act (WIA) of 1998 (Pub. L. 105–220), the Secretary of Labor annually determines the Lower Living Standard Income level (LLSIL) for uses described in the law. WIA defines the term ''Low Income Individual'' as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2007 and references the current 2007 Health and Human Services ''Poverty Guidelines.''

DATES: *Effective Date:* This notice is effective on the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to: Mr. Evan Rosenberg, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4464, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Evan Rosenberg, telephone 202–693–3593; fax 202–693–3532 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: It is the purpose of the Workforce Investment Act of 1998 ''to provide workforce investment activities, through statewide and local workforce investment systems,