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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection; comments requested.

(2) *Title of the Form/Collection:* COPS Non-Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement and public safety agencies, institutions of higher learning and non-profit organizations that are recipients of COPS Non-Hiring grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

It is estimated that approximately 2,975 annual, quarterly, and final report respondents can complete the report in an average of one hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,200 total burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: September 18, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–18780 Filed 9–21–07; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Andrew Desonia, M.D.; Revocation of Registration

On September 16, 2005, the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Andrew Desonia, M.D. (Respondent), of Knox, Indiana. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BD4985531, as a practitioner, on the ground that Respondent's ''continued registration is inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)). The Show Cause Order also proposed to deny any pending applications for renewal or modification of Respondent's registration.

More specifically, the Show Cause Order alleged that Respondent was a participant in a scheme run by Mr. Johar Saran, the owner of Carrington Health System/Infiniti Services Group (CHS/ISG) of Arlington, Texas. *Id.* at 5. According to the allegations, CHS/ISG operated several DEA-registered pharmacies, which obtained their registrations through sham-nominees and which were used to order large amounts of highly abused controlled substances from licensed distributors. *Id.* The Show Cause Order alleged that the controlled substances were then diverted to CHS/ISG, where they were used to fill approximately 3,000 to 4,000 orders per day which had been placed by persons through various Web sites. *Id.*

The Show Cause Order further alleged that Respondent ''participated in [this] scheme by authorizing drug orders under the guise of practicing medicine.'' *Id.* The Show Cause Order alleged that Respondent ''did not see the customers, had no prior doctor-patient relationships with the Internet customers, did not conduct physical exams,'' and did not ''create or maintain patient records.'' *Id.* at 5–6. The Show Cause Order alleged that between October 13, 2004, and January 28, 2005, Respondent issued twenty-three prescriptions for controlled substances ''to [i]nternet customers in at least 13 different states,'' and that ''in a single day,'' Respondent ''issued ten drug orders to [i]nternet customers in ten different states.'' *Id.* at 6.

The Show Cause Order also alleged that a DEA Diversion Investigator (DI) had gone to a Web site and ordered Bontril (phendimetrazine) by completing a questionnaire. *Id.* Subsequently, the DI received the filled prescription, which had been issued by Respondent and filled by Tri-Phasic Pharmacy of Arlington, Texas. *Id.* The Show Cause Order alleged that Respondent issued the prescription without ''contact[ing] the [DI]'' and never ''verif[ied] the information supplied'' by the DI. *Id.*

Finally, the Show Cause Order alleged that Respondent ''did not establish legitimate physician-patient relationships with the [i]nternet customers to whom [he] prescribed controlled substances.'' *Id.* The Show Cause order thus alleged that Respondent had violated 21 CFR 1306.04.

On or about September 21, 2005, the Show Cause Order was personally served on Respondent. On October 20, 2005, Respondent, through his counsel, requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Gail Randall, who proceeded to conduct pre-hearing procedures. The matter was subsequently stayed while Respondent's counsel attempted to locate a witness.

On December 19, 2006, Respondent's counsel moved to withdraw. As grounds for the motion, Respondent's counsel established that he had sent two letters to Respondent by certified mail, which requested that Respondent contact him to discuss the case. Respondent's counsel further showed that Respondent had made no attempt to contact him. Respondent's counsel thus asserted that Respondent had ''cut off all communication with [him] thus breaching the attorney-client relationship'' and violating the retainer agreement between them. Motion to Withdraw at 2. In addition to seeking leave to withdraw, Respondent's counsel asked the ALJ to grant Respondent thirty days to find replacement counsel.

Upon receipt of the motion, the ALJ ordered the Government to respond. On December 28, 2006, the Government filed its response stating that it did not object to the motion.

On December 29, 2006, the ALJ granted the motion. In her order, the ALJ also directed Respondent to notify the hearing clerk by January 29, 2007, whether he intended ''to proceed with a hearing.'' Order Granting Resp. Counsel's Mot. to Withdraw at 3. The ALJ further informed Respondent that if he failed to file notice of his intention to proceed, he may be ''deemed to have waived his right to the hearing,'' and that the hearing, which was already scheduled, could be cancelled. *Id.* (citing 21 CFR 1301.43(e)). The Order was served on Respondent by certified mail sent to his last known address.[1]

[1] Government counsel had earlier served Respondent with a copy of a December 19, 2006 Status Report, at the address of 1547 Ohio Avenue, Anderson, Indiana. In this filing, the Government's counsel noted that Respondent's counsel had informed her that he intended to withdraw. The Government also noted its ''position that all settlement negotiations have failed,'' and that it ''intended to seek the revocation of Respondent's * * * Registration as proposed in the September 16, 2005, Order to Show Cause.''

Thereafter, on December 27, 2006, the Government's counsel received an undated letter

Continued

Respondent did not comply with Order. Accordingly, on February 12, 2007, the Government filed a motion which sought a finding that Respondent had waived his right to a hearing. The Government also requested that the ALJ cancel the hearing.

On February 13, 2007, the ALJ granted the Government's motion. Noting that Respondent had failed to respond to her order, the ALJ found that ''Respondent has effectively waived his right to a hearing in this matter.'' Order Granting Gov. Mot. to Cancel Hearing at 1. The ALJ thus canceled the hearing and ordered that the matter be returned to the Government for further action.

Thereafter, the investigative file was forwarded to me for final agency action. Based on his failure to notify the ALJ of his intent to proceed with the hearing, 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 contained in the investigative file, *see id.* 1301.43(e), and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BD4985531, which authorizes him to handle schedule II through V controlled substances as a practitioner at the registered location of 10530 East Division Road, Knox, Indiana. Respondent's registration does not expire until June 30, 2008.

Respondent came to the attention of DEA during an investigation of Johar Saran, the owner of a majority stake in Carrington Healthcare Systems/Infiniti Services Group (CHS/ISG) of Arlington, Texas. According to the investigative file, CHS/ISG used several Internet facilitation centers (IFCs) to solicit orders for controlled substances, which it then dispensed through numerous DEA registered pharmacies which CHS/ISG controlled. Under the scheme, a person seeking a controlled substance would go to a Web site, complete a questionnaire, and request a particular drug. The information would be forwarded to an IFC, which then sent the information on to a physician who would review the customer's information and authorize a prescription.

Thereafter, an employee of CHS/ISG would access the Web site and download the prescriptions. The prescriptions were then typically filled by CHS/ISG at its Arlington, Texas facility, and sent to the purchaser using either FedEx or UPS.

According to the investigative file, the IFCs that serviced CHS/ISG used at least 59 physicians including Respondent to write controlled substance prescriptions. According to the file, between October 13, 2004, and January 28, 2005, Respondent wrote twenty-three controlled substance prescriptions for persons located in thirteen different states including Alabama, Arizona, California, Georgia, Kansas, Louisiana, New Jersey, Oklahoma, Pennsylvania, South Carolina, and Texas. The prescriptions were for phentermine (12 Rxs), Adipex (5 Rxs), Didrex (4 Rxs), Bontril SR (1 Rx) and phendimetrazine (1 Rx). Most of the prescriptions were filled by Tri-Phasic Pharmacy of Arlington, Texas, an entity which was controlled by Saran.

Moreover, on January 19, 2005, Respondent wrote controlled substance prescriptions for persons located in ten different states including Kansas, Louisiana, Kentucky, Ohio, Arkansas, Georgia, California, Pennsylvania, and Alabama. The drugs prescribed were phentermine (37.5 mg), Adipex (37.5 mg), and Didrex (50 mg). Each of the prescriptions was filled by the Tri-Phasic Pharmacy.

The investigative file further revealed that on November 15, 2004, two DEA Diversion Investigators (DIs) visited the Web site, GiantRx.com, and using a fictitious name, made an undercover buy of 90 phendimetrazine (105 mg.) tablets. After the DIs provided a name and billing/shipping information, they were required to complete a ''Medical History Form.'' This form required the customer to indicate her height, weight, date of birth, sex, and whether she smoked. The form also asked the customer whether she had a physical exam within the last year, whether any diseases ran in her family, whether she was taking any other drugs, whether she was allergic to any medications, and to list any medical conditions she was being treated for and to provide her surgical history.

The form also asked several ''Phendimetrazine Specific Questions.'' These included whether the customer agreed not to take any over-the-counter medicine while taking the drug, to certify that she had a Body Mass Index of at least 25, and to monitor her blood pressure every 14 days and discontinue use of the drug if it exceeded 140/90.

Upon completion of the form and submission of payment information, the DIs received an e-mail from GiantRx.com indicating that the order had ''been submitted to a physician for approval'' and that an e-mail would be sent ''as soon as the doctor has reviewed [your] order.'' The e-mail further stated that ''[t]he doctor may contact you if he/she has any further questions.''

On November 29, 2004, the DIs received a package which contained 90 tablets of phendimetrazine (105 mg). The label indicated that Respondent was the prescribing physician and that Tri-Phasic Pharmacy of Arlington, Texas, was the dispensing pharmacy. Respondent did not perform a physical examination on the ''patient'' before issuing the prescription and there was no contact of any sort between Respondent and the DIs.

On September 21, 2005, two DIs and a Special Agent interviewed Respondent at his registered location. During the interview, Respondent admitted that he reviewed questionnaires submitted to Internet sites by persons requesting controlled substances used for weight control purposes. Respondent stated that he would issue a prescription provided the questionnaire was complete, the person had indicated that he/she was between the ages of 27 and 45, and the person had a suitable Body Mass Index. Respondent further maintained that he rejected approximately twenty percent of the requests because the questionnaires were not complete.

Respondent admitted to the investigators that he had been involved in Internet prescribing through two different Internet sites for approximately 13 months at the time of the interview. Respondent further admitted that during his involvement with Internet prescribing, he had approved thousands of prescriptions. Respondent stated that he received on average fifty questionnaires a day and had received as few as four per day and as many as one hundred a day to review. Respondent further told the investigators that while initially he had also prescribed opiates, he eventually decided to stop doing so and would approve only prescriptions for weight loss drugs and Viagra (a non-controlled drug).

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from Respondent which appears to have been written in response to the Status Report.

The Government also served both Respondent's counsel and Respondent with a copy of its response to the motion to withdraw. In that filing, the Government made clear that it objected to any further delays. Moreover, the Government sent its response to Respondent at two separate addresses, including the one used by Respondent in his letter which Government counsel had received the day before.

The ALJ's December 29, 2006 Order, which granted the motion to withdraw and ordered Respondent to notify the hearing clerk if he still intended to proceed with a hearing, was served on Respondent at the 1547 Ohio Ave., Anderson, Indiana. This was the same address which Government counsel had used to serve the Status Report and which had elicited a response from Respondent.

Respondent admitted that he really did not know if the persons requesting the controlled substances were providing truthful information on their questionnaires. Respondent asserted, however, that the situation was not much different than in-person encounters because patients often lie. Respondent further admitted that he had not established a doctor-patient relationship with the persons who had requested controlled substances through the Internet sites.

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.

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, 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).

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. Accordingly, I will order that Respondent's registration be revoked and that any pending renewal application be denied.

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

The central issue in this case is whether the prescriptions Respondent issued through Web sites associated with CHS/ISG complied with Federal law. As explained below, the evidence conclusively demonstrates that Respondent repeatedly violated Federal law by issuing numerous prescriptions for controlled substances without establishing a valid doctor-patient relationship with the customers and which lacked a legitimate medical purpose.

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 *United States* v. *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.'' 21 CFR 1306.04(a); *see also Moore*, 423 U.S. 141–43. Under existing professional standards, 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.

American Medical Association, Guidance for Physicians on Internet Prescribing; see also 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.'').

Consistent with these standards, the State of Indiana has promulgated an administrative rule which provides that ''[t]reatment, including issuing a prescription, based solely on an on-line questionnaire or consultation is prohibited.'' 844 IAC 5–3–3. Indiana has promulgated an additional rule entitled: ''Prescribing to Persons Not Seen by the Physician.'' This rule provides:

> Except in institutional settings, on-call situations, cross-coverage situations, and situations involving advanced practical nurses with prescription authority practicing in accordance with standard care arrangements * * * a physician shall not prescribe, dispense, or otherwise provide, or cause to be provided, any controlled substance to a person who the physician has never physically examined and diagnosed. 844 IAC 5–4–1.

As found above, the evidence establishes that Respondent issued numerous prescriptions to persons he never physically examined and diagnosed. Rather, Respondent issued the prescriptions based solely on the questionnaires the customers had submitted. In issuing the prescriptions, Respondent violated not only existing professional standards, but also, Indiana law.

Moreover, because Respondent failed to establish a valid doctor-patient relationship with the persons he issued

controlled substance prescriptions for, he was not acting ''in the usual course of * * * professional practice,'' and the prescriptions were not ''issued for a legitimate medical purpose.'' 21 CFR 1306.04(a). Respondent thus also repeatedly violated Federal law. *See Moore*, 423 U.S. at 141–43.

As recognized in *Lockridge* and other agency orders, '' '[le]gally 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.' '' 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's involvement in this scheme did not constitute the legitimate practice of medicine, but rather, drug dealing.

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, because Respondent's prescribing practices create an extraordinary threat to public health and safety, *see*, e.g., *Lockridge*, 71 FR at 77798–99 [2]; and it is unclear whether he has ceased engaging in them, I further conclude that this Order shall be effective immediately.

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, BD4985531, issued to Andrew Desonia, M.D., be, and it hereby is, revoked. I further order that any pending application of Respondent for renewal of his registration be, and it hereby is, denied. This order is effective immediately.

Dated: September 14, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–18775 Filed 9–21–07; 8:45 am]

BILLING CODE 4410–09–P

[2] See also National Center on Addiction and Substance Abuse, ''You've Got Drugs!'' Prescription Drug Pushers on the Internet 6 (Feb. 2004) (diversion of controlled substances through the Internet ''threatens the health and safety of millions of Americans—including our children''); National Institute on Drug Abuse, Community Drug Alert Bulletin, Prescription Drugs (Aug. 2005).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Brenton D. Glisson, M.D.; Revocation of Registration

On May 9, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Brenton D. Glisson, M.D. (Respondent), of Seneca, South Carolina. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BG4535641, as a practitioner, on the ground that in August 2005, the South Carolina Bureau of Drug Control suspended his State controlled substances registration and that he was without authority to handle controlled substances in the State in which he practiced medicine. Show Cause Order at 1 (citing 21 U.S.C. 824(a)(2)). The Show Cause Order also advised Respondent of his right to a hearing and the procedures for requesting a hearing and/or submitting a written statement. Show Cause Order at 1–2.

On June 1, 2006, the Show Cause Order was served on Respondent by certified mail, return receipt requested. On June 21, 2006, Respondent submitted a letter in which he admitted that his South Carolina medical license had been revoked based on ''false allegations of sexual misconduct with a patient.'' Respondent further stated that he was ''in the process of appealing [the] decision,'' and that the ''case [was] going before an Administrative Judge.'' Respondent also stated that he would contact the Agency upon the ''renewal'' of his license and requested that the DEA proceeding be held ''off till then.''

Upon receipt of the letter, the matter was assigned to Administrative Law Judge (ALJ) Gail Randall. On July 11, 2006, the ALJ wrote to Respondent stating that she could not tell from his letter whether he was requesting a hearing. The ALJ thus instructed Respondent that if he was ''seeking a hearing, you must clearly tell me so in a letter filed with my office.'' The ALJ also advised Respondent that if his initial letter was intended to request a hearing, his ''request may already be untimely.'' Finally, the ALJ informed Respondent that if he failed to reply by July 25, 2006, he would be deemed to have waived his right to a hearing. Respondent did not comply.

On July 11, 2006, the Government moved for summary disposition on the ground that Respondent was no longer authorized under South Carolina law to handle controlled substances. Motion for Summary Disp. at 1–2. As support for its motion, the Government attached a copy of the South Carolina State Board of Medical Examiners' July 16, 2005, Order of Temporary Suspension of Respondent's medical license. The Government also attached a copy of the South Carolina Bureau of Drug Control's Notice of Indefinite Suspension of Controlled Substances Registration.

The ALJ did not, however, rule on the Government's motion. Instead, on August 7, 2006, the ALJ issued an order *sua sponte* terminating the proceeding on the ground that Respondent had waived his right to a hearing.

On June 7, 2007, the case file was forwarded to my office for final agency action. Based on (1) Respondent's failure to expressly request a hearing in his June 2006 letter, and (2) his failure to respond to the ALJ's July 11, 2006 letter, I conclude that he has waived his right to a hearing. 21 CFR 1301.43(a) & (d). I therefore enter this Final Order without a hearing based on relevant material in the investigative file. *Id.* 1301.43(e). I make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BG4535641, which authorizes him to handle controlled substances as a practitioner at the registered location of 1765 Blue Ridge Blvd., Seneca, South Carolina. Respondent's registration does not expire until September 30, 2007.

On July 16, 2005, the South Carolina State Board of Medical Examiners ordered that Respondent's medical license be temporarily suspended. Thereafter, on August 19, 2005, the Bureau of Drug Control, South Carolina Department of Health and Environmental Control, suspended Respondent's South Carolina Controlled Substances Registration.[1]

On June 7, 2006, following a hearing, the South Carolina Board found that Respondent had violated various State laws and regulations and issued a final order revoking his State medical license. There is no evidence in the investigative file indicating that the Board's final order has been stayed or set aside.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled

[1] According to the notice of suspension, Respondent's South Carolina Controlled Substances Registration is ''conditioned upon [his] license to practice the profession of Medicine with this State.'' Notice of Indefinite Suspension of Controlled Substances Registration at 1.