

characterized by his criminal behavior in issuing numerous fraudulent prescriptions for such highly abused controlled substances as oxycodone and Percocet. While the record contains no information as to whether under Utah law and regulations, a physician can ever lawfully prescribe a controlled substance to a family member or himself, it is clear that Respondent issued numerous fraudulent prescriptions because the prescriptions were written in the names of persons who had no medical need for the controlled substance, and who were, after filling the prescription, to turn the drugs over to him.

Moreover, the stories that Respondent told to induce others to assist him were so implausible (e.g., that no doctor would write a prescription for, or perform surgery on, his wife) or were consistent with classic scams engaged in by persons who seek controlled substances for illicit purposes (e.g., that his wife's prescription had been stolen or lost down the drain), that it is clear that the prescriptions were written with fraudulent intent. See *Randi M. Germaine*, 72 FR 51665, 61666 (2007) (noting expert testimony regarding use of scams by drug abusers seeking additional drugs such as early refill attempts and claiming that one's drugs have been stolen).

This conduct violated Federal law. See 21 U.S.C. 843(a)(3) (rendering it "unlawful for any person knowingly or intentionally * * * to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge"); *id.* § 844(a) ("It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter * * *"). Indeed, it is particularly disturbing that Respondent was aided in his schemes by several health care professionals.

There is also substantial evidence that Respondent was personally abusing the drugs he obtained through his various schemes. The urinalysis results indicated that Respondent was using both hydrocodone and oxycodone. Moreover, when one of the PA students commented about his seeking oxycodone, Respondent told her to "chill out," because it was Percocet with Tylenol. Moreover, when the student commented about the strength of the pills, Respondent stated that "you'd think if you double the strength you get double effect, but that isn't the

case," and also said that the 120 pills "would last him all year." It is thus clear that Respondent was once again abusing controlled substances.

Respondent's experience in dispensing controlled substances and his record of non-compliance with Federal controlled substance laws is thus characterized by his issuance of numerous fraudulent prescriptions and his personal abuse of controlled substances. These findings amply demonstrate that Respondent cannot be entrusted with a new registration and that granting his application would be "inconsistent with the public interest." 21 U.S.C. 823(f).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Randall Relyea, D.O., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective August 13, 2008.

Dated: June 27, 2008.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Armando B. Figueroa, M.D.; Revocation of Registration

On November 14, 2007, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Armando B. Figueroa, M.D. (Respondent), of Washington, DC. The Order immediately suspended and proposed the revocation of Respondent's DEA Certificate of Registration, BF0128810, as a practitioner, on the grounds that his continued registration was "inconsistent with the public interest" and "constitute[d] an imminent danger to public health and safety." Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Show Cause Order alleged that Respondent had "repeatedly issued controlled substance prescriptions to [two individuals, S.S. and G.R.] for other than a legitimate medical purpose or while acting outside the usual course of professional practice in violation of 21 CFR 1306.04(a)." Show Cause Order at 1. More specifically, the Show Cause Order alleged that on October 17, 2007, law enforcement authorities had searched a hotel room occupied by S.S.

and found 500 dosage units of oxycodone, 630 dosage units of OxyContin, 400 dosage units of methadone, 180 dosage units of diazepam, and 30 dosage units of phentermine. *Id.* at 2. The Order also alleged that S.S. had in her possession eleven undated prescriptions for OxyContin and three prescriptions for methadone which Respondent had issued in the names of S.S. and G.R., two additional prescriptions for Oxycontin issued by Respondent on October 15, 2007 to S.S. and G.R., and "\$7,475.00 in cash." *Id.* Finally, the Order alleged that S.S. told law enforcement officers that she paid Respondent \$100 for each prescription he issued and that Respondent had not physically examined her in years. *Id.*

Based on the above, I found that Respondent had "repeatedly issued controlled substance prescriptions outside the usual course of professional practice, and for other than a legitimate medical purpose, [and was] thereby facilitating the diversion of controlled substances." *Id.* Accordingly, I further found that Respondent's "continued registration during the pendency of these proceedings would constitute an imminent danger to public health and safety," and ordered the immediate suspension of his registration. *Id.* (citing 21 U.S.C. 824(d)).

On November 14, 2007, DEA Investigators served the Order to Show Cause and Immediate Suspension¹ by leaving it at Respondent's office and registered location. Later that same day, Respondent telephoned a DEA Investigator to complain about the suspension of his registration. Subsequently, DEA Investigators learned that on the days that Respondent worked at his Washington office, Respondent stayed at his daughter's house. Accordingly, on November 29, 2007, DEA Investigators also delivered a copy of the Order to Show Cause and Immediate Suspension to Respondent's daughter at her residence.

Since the service of the Order to Show Cause and Immediate Suspension, neither Respondent, nor any one purporting to represent him, has requested a hearing. Because (1) more than thirty days have passed since the Order was served, 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

¹ The Order also fully explained that Respondent had a right to a hearing, the scheduled date of the hearing, the procedures for requesting a hearing, and that his failure to timely request a hearing would be deemed a waiver of his right. Show Cause Order at 2-3.

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, BF0128810, which authorized him (before I suspended the registration) to handle controlled substances in schedules II through V as a practitioner at his registered location in Washington, DC. Respondent's registration does not expire until September 30, 2010.

During 2007, a DEA Investigator (DI) acquired physician prescribing profiles from several Washington, DC area pharmacies. The profiles showed that Respondent was prescribing large quantities of schedule II narcotic controlled substances including Percocet and OxyContin (80 mg), both of which contain oxycodone. 21 CFR 1308.12(b)(1).² Several pharmacists advised that a large number of young and seemingly healthy individuals were presenting the prescriptions, that these persons always paid cash for the prescriptions, and that they were traveling large distances to fill the prescriptions.

In April 2007, an Inspector with the South Carolina Bureau of Drug Control notified the DI that G.R. and S.S., who were residents of Conway, South Carolina and who lived together, were presenting to local pharmacies a large number of prescriptions for OxyContin and Percocet that were issued by Respondent. The Inspector related that when local pharmacists called Respondent to verify the prescription, Respondent would tell them to fill the prescription without even waiting to hear the patient's name or the drug that was prescribed. Moreover, most of the prescriptions were paid for with cash. The Inspector further advised that she had obtained from area pharmacies approximately 100 OxyContin prescriptions which Respondent had issued to S.S. between December 2005 and September 2006.

The DEA Investigator further determined that S.S. and G.R. had previously lived in La Plata, Maryland, but had moved to South Carolina in 2001. S.S. would nonetheless make the twelve-hour round trip from South Carolina to Washington periodically to obtain prescriptions from Respondent. The investigation further showed that while unemployment taxes had not been paid on either S.S. or G.R. since

2001, between January 17 and October 16, 2007, S.S. and G.R. had paid a total of more than \$42,000 in cash to various pharmacies in South Carolina and Maryland to obtain oxycodone (80 mg), OxyContin (80 mg), oxycodone/acetaminophen (5/325 mg) and methadone (40 mg), based on prescriptions issued by Respondent. The record further establishes that OxyContin (80 mg) has a street value of \$70 to \$80 a pill and that the total street value of the OxyContin prescribed by Respondent to S.S. and G.R. during this period was between \$352,800 and \$403,200.

On October 16, 2007, a Waldorf, Maryland pharmacy contacted the DI and informed her that S.S. had presented a prescription for ninety tablets of OxyContin (80 mg) issued by Respondent. The DI asked the pharmacist not to fill the prescription and to tell S.S. to come back later.

The DI then contacted three other Waldorf pharmacies which S.S. and G.R. had previously used. At each of the pharmacies, the DI was told that S.S. had presented a prescription issued by Respondent for 90 tablets of OxyContin (80 mg). At two of the pharmacies, S.S. had also told the pharmacists that she would pay cash, notwithstanding that the cost of the prescription was in excess of \$1,000, and would pick up the prescription the following day. At the third pharmacy, S.S. had already picked up the prescription for which she paid \$1,134 in cash.

Thereafter, the DI requested the assistance of narcotics officers with the Charles County Sheriff's Office to conduct surveillance of S.S. The Detectives agreed and went to one of the pharmacies. There, they observed S.S. arrive in a vehicle with South Carolina license plates and enter the pharmacy. The Detectives observed S.S. as she picked up the prescription and paid for it with \$985.70 in cash. The Detectives then followed S.S. to a local hotel, which she entered. The Detectives contacted the hotel and determined that S.S. was scheduled to depart on October 19. The Detectives were also told that S.S. had paid cash for her room.

The next day, the Detectives obtained warrants to search S.S.'s hotel room and vehicle, as well as to arrest her on state charges of possession of Oxycodone with intent to distribute and possession of a control dangerous substance. Shortly thereafter, the Detectives executed the search warrants and arrested S.S.

The Detectives found that S.S. had in her possession \$7,475 in cash, 500 dosage units of oxycodone/acetaminophen (5/325 mg), 630 dosage units of OxyContin (80 mg), 180 dosage

units of diazepam (10 mg), 30 dosage units of phentermine (37.5 mg), six dosage units of phentermine (30 mg), and 400 dosage units of methadone. Moreover, S.S. had in her possession seventeen prescriptions from Respondent, including fifteen which were undated. Nine of the prescriptions were in S.S.'s name; the other eight were written in G.R.'s name.

Seven of S.S.'s prescriptions (including six of the undated ones) were for 90 tablets of OxyContin (80 mg); the other two were for 120 tablets of methadone (40 mg). Five of G.R.'s prescriptions (including four of the undated ones) were for 90 tablets of OxyContin (80 mg), another prescription was for 180 tablets of OxyContin (80 mg), and one was for 90 tablets of methadone (40 mg).³

During the search, the Detectives found in the trash numerous prescription labels which had been torn off the bottles. They also found a piece of paper which according to S.S., was a shopping list of the prescriptions that she had sought from Respondent.

During a post-arrest interview, S.S. stated that Respondent charges \$100 cash for each prescription, that she had purchased as many as twenty prescriptions from him at a time, that the prescriptions were not dated, and that Respondent had not physically examined her in years. She also stated that she could not remember the last time Respondent was examined by Respondent and that G.R. rarely traveled to Washington, DC. S.S. further stated that she would call Respondent to order the prescriptions and that she would pay Respondent's assistant; S.S. did not, however, obtain a receipt. S.S. also stated that Respondent was giving her methadone because she was trying to wean herself off of OxyContin.

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.

³ The remaining prescription issued to G.R. was for a non-controlled drug.

² These drugs are typically prescribed to persons in severe pain but are also highly abused.

(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).⁴

Having considered all of the factors, I conclude that the evidence under factors two and four is dispositive and establishes that Respondent has committed acts which render his continued registration "inconsistent with the public interest." 21 U.S.C. 824(a)(4). Accordingly, Respondent's registration will be revoked.

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

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."

⁴ Under section 304(d), the "[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).

Gonzales v. Oregon, 126 S.Ct. 904, 925 (2006) (citing *Moore*, 423 U.S. 122, 135 (1975)).

The evidence in this case overwhelmingly demonstrates that Respondent used his prescribing authority to engage in the criminal distribution of controlled substances in violation of 21 U.S.C. 841. The statements of S.S. and the evidence uncovered in the course of the investigation make plain that Respondent was engaged in out-and-out drug pushing and not the legitimate practice of medicine.⁵

More specifically, at a single visit, Respondent issued multiple prescriptions for highly abused schedule II controlled substances, which were undated and thus in violation of DEA regulations for this reason as well. *See* 21 CFR 1306.05.⁶ Respondent did not examine S.S.; he also issued multiple prescriptions in the name of G.R., without even seeing him. Finally, S.S. would purchase from Respondent as many as twenty prescriptions at a time and pay cash for which no receipt was provided. In short, Respondent's conduct was not remotely consistent with the legitimate practice of medicine. Rather, it was drug pushing.

I thus conclude that Respondent's experience in dispensing controlled substances and his record of repeatedly violating Federal law and regulations make clear that his continued registration "is inconsistent with the public interest." 21 U.S.C. 823(f). Finally, for the same reasons which led me to find that Respondent posed "an imminent danger to the public health or safety," *id.* § 824(d), I conclude that the public interest requires that his registration be revoked effective immediately and that any pending applications 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, BF0128810, issued to Armando B. Figueroa, M.D., be, and it hereby is, revoked. I further order that any pending application for renewal or

⁵ Given the evidence, this is not a case which requires either expert testimony to support findings regarding whether Respondent prescribed pursuant to a valid doctor-patient relationship or an analysis of state standards pertaining to the practice of medicine. In short, Respondent's conduct does not remotely resemble the legitimate practice of medicine.

⁶ The 80 mg strength is the second strongest dosage unit of Oxycodone and typically has a street value of \$80 per tablet.

modification of the registration be, and it hereby is, denied. This order is effective immediately.

Dated: July 2, 2008.

Michele M. Leonhart,
Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–8]

Michael Chait, M.D.; Revocation of Registration

On October 1, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Michael Chait, M.D. (Respondent), of Amagansett, New York. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BC2825151, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that Respondent is "not authorized to handle controlled substances in New York." Show Cause Order at 1.

More specifically, the Show Cause Order alleged that effective on May 25, 2007, the New York State Department of Health, State Board for Professional Medical Conduct, had, pursuant to an interim non-disciplinary order of conditions, prohibited Respondent from the practice of medicine in the State of New York. *Id.* The Show Cause Order thus alleged that Respondent is "no longer authorized to handle controlled substances in New York, the state in which" he maintains his DEA registration. *Id.* The Show Cause Order further alleged that Respondent "failed to surrender [his] DEA Certificate of Registration as required" under the terms of the State Board's order. *Id.*

Respondent requested a hearing on the allegations and the matter was assigned to Administrative Law Judge (ALJ) Gail Randall. Thereafter, the Government moved for summary disposition on the ground that under the terms of the State Board's order, Respondent was prohibited from practicing medicine and thus could not prescribe a drug. Gov. Mot. at 1–2. The Government therefore argued that there was no dispute that Respondent is not authorized to handle controlled substance in New York, the jurisdiction in which he maintains his DEA registration and that under Federal law, "DEA cannot register a practitioner to