subdivisions authorized to hold property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of conveyance documents.

A successful bid on a parcel constitutes an application for conveyance of those mineral interests offered under the authority of Section 209(b) of the FLPMA. In addition to the full purchase price, a non-refundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

The FLPMA and its implementing regulations (43 CFR subpart 2710) provide that competitive bidding will be the general method of selling public lands. The parcels will be sold through an on-line auction conducted by the GSA. The auction will begin on or about July 12, 2010, via the GSA auction Web site *http://www.auctionrp.com.* A copy of the maps and the Invitation for Bid (IFB) package will be available at the BLM Web site *http://www.blm.gov/or/districts/prineville/plans/fltfa.php.* The IFB contains property information, bidding instructions, bidder qualifications, minimum bid values, bid forms, required bid deposits, and other sale terms. Copies of the IFB will also be available at the BLM Prineville District Office, 3050 NE Third Street, Prineville, Oregon. The bid closing date will be determined by bidding activity. If parcels are not sold using the on-line Web-based auction, a notice may be posted on the GSA Web site, *http://www.auctionrp.com,* directing interested parties to an alternative bidding procedure. The parcels will not be sold until at least July 12, 2010. Comments, including names, street addresses, and other contact information of respondents will be available for public review during regular business hours at the address below. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments will be reviewed by the BLM Prineville District Manager, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Deborah Henderson-Norton,

District Manager.

Authority: 43 CFR 2711.1–2.

[FR Doc. 2010–11483 Filed 5–12–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–6]

Alvin Darby, M.D.; Denial of Application

On June 25, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Alvin Darby, M.D. (Respondent), of Gretna, Louisiana. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner on multiple grounds. ALJ Ex. 1, at 1 (citing 21 U.S.C. 823(f) and 824(a)(1) and (2)).

First, the Government alleged that on April 1, 1998, Respondent had pled guilty in the Criminal Court for Orleans Parish, Louisiana to one felony count of possession of cocaine and one misdemeanor county of carrying a concealed weapon. *Id.* The Order further alleged that Respondent "materially falsified" his application "by failing to disclose [his] * * * felony conviction related to controlled substances." *Id.* at 2.

Next, the Show Cause Order alleged that "[o]n three separate occasions between May 13, and June 24, 2003, [Respondent] issued prescriptions for hydrocodone ([a] schedule III controlled substance) [and] alprazolam ([a] schedule IV controlled substance)," to an undercover agent in exchange for cash, and that the prescriptions lacked a "legitimate medical purpose" and were issued outside of the "usual course of professional practice." *Id.* at 1. Finally, the Show Cause Order alleged that Respondent "committed numerous recordkeeping violations under [his] previous * * * registration," which he had surrendered for cause, including that: (1) He had "fail[ed] to take a[n] initial inventory of stocks of controlled substances," (2) he had "fail[ed] to take and maintain a biennial inventory," and (3) he had failed to "maintain records of controlled substances [which he] dispensed." *Id.* at 2 (citing 21 CFR 1304.11(b), 1304.11(c), 1304.22(c)).[1]

By letter of October 21, 2008, Respondent's counsel requested a hearing on the allegations. ALJ Ex. 2, at 2. According to Respondent, he did not receive the Show Cause Order "in a timely manner because the notice was delivered to an old address." *Id.* Respondent further maintained that he "was notified via facsimile on September 22, 2008 that he has an opportunity to show cause as to why" his application should not be denied and therefore "request[ed] the opportunity to be heard." *Id.* The Government did not object to granting Respondent a hearing.[2]

The case was then assigned to an agency Administrative Law Judge (ALJ), who conducted a hearing on July 14 and 15, 2009, in New Orleans, Louisiana. At the hearing, both parties called witnesses and introduced documentary evidence. After the hearing, both parties submitted briefs containing their proposed findings of facts, conclusions of law, and argument.

On September 10, 2009, the ALJ issued his Recommended Decision (hereinafter, also ALJ). Therein, the ALJ found that "the credible evidence clearly establishes that Respondent prepared and submitted an application that falsely indicated that he had never been convicted of a crime in connection with a controlled substance and that he had never had a state professional license placed on probation." ALJ at 23. The ALJ further found that the falsification was material as it "had the capacity to influence DEA's decision on the application" and, second, that the Government "ha[d] clearly established a prima facie case for the denial of Respondent's application based solely on the material falsifications contained in [Respondent's] application." *Id.* at 24.

The ALJ then addressed the "the public interest" factors under 21 U.S.C. 823(f). As for factor one (the recommendation of the state licensing board), the ALJ noted that the Board had restored Respondent's medical license. ALJ at 26–27. However, he further noted

[1] Moreover, in its Prehearing Statement, the Government notified Respondent that it intended to litigate the question of whether Respondent had also materially falsified his March 10, 2005 application for registration by failing to disclose that on August 18, 1999, he had entered into a Consent Order with the Louisiana State Board of Medical Examiners, which placed his medical license on probation for a five year period. ALJ Ex. 4, at 3, 6–7.

[2] The ALJ did not make any findings as to whether the Government's attempts to serve Respondent were constitutionally adequate, the date when service was initially attempted, and/or whether Respondent had shown good cause for failing to timely file.

that under Agency precedent, a State Board's restoration of a medical license is not dispositive in the public interest inquiry because DEA has an independent responsibility "to determine whether a registration is in the public interest." *Id.* at 27 (citing cases). The ALJ thus concluded that this factor weighed neither for, nor against, a determination that granting Respondent a certificate of registration would be in the public interest. *Id.*

The ALJ next addressed factor three (the applicant's conviction record under Federal and State laws related to the manufacture, distribution and dispensing of controlled substances) and whether Respondent's "state felony" conviction for "criminal possession of crack cocaine" constituted a conviction under this factor. *Id.* at 27–28. While the ALJ concluded that Respondent's conviction for cocaine possession was not relevant under this factor, *id.* at 28, he subsequently noted that it could be considered under factor five as such other conduct which may threaten public health and safety. *Id.* at 34–35.

The ALJ then turned to factors two, four and five (Respondent's experience in dispensing controlled substances, his compliance with applicable State, Federal or local laws relating to controlled substances, and such other conduct which may threaten the public health and safety). With respect to the allegation that Respondent had sold controlled substance prescriptions to an undercover Agent for cash, the ALJ concluded that the Government "failed to present evidence in sufficient[ly] credible detail to support [the] allegation by a preponderance of the evidence." *Id.* at 30. More specifically, the ALJ noted that the Agent who had made the undercover visits did not testify in the proceeding and that the Investigator who testified regarding them "conceded" that the Agent's vital signs were taken and that he had complained of a medical condition. *Id.* The ALJ also noted that while Respondent had diagnosed the Agent as having a "leg-length disparity," there was "not even evidence from which it could be inferred that [the Agent] did not, in fact have" this condition. *Id.*

However, the ALJ also found that Respondent had pre-signed controlled substance prescriptions and that such prescriptions were not "issued in the usual course of professional practice." *Id.* Moreover, the ALJ concluded that when this practice was coupled with various circumstances surrounding Respondent's practice (including the late night hours he maintained, the lack of specific appointment times, various instances of his patients negotiating drug deals in his parking lot, and the issuance of prescriptions to patients before Respondent even saw them) made it clear that "Respondent's prescribing practices were not designed to issue prescriptions for legitimate medical purposes in the usual course of a professional practice." *Id.* at 30–31. In this regard, the ALJ further noted that Respondent made the same diagnoses of a leg-length discrepancy in each of the 52 patient files that the Government had seized and that "it is patently unreasonable to attribute [this diagnosis] to mere coincidence." *Id.* at 31. Finally, the ALJ noted that while during the execution of a search warrant, Respondent had various controlled substances on the premises, he did not have such required records as an initial inventory, the biennial inventory, and a dispensing log. *Id.* at 32.

The ALJ further noted that it was "remarkable that these actions took place even after * * *. Respondent had been through the criminal justice system * * * and had his medical license placed on probation." *Id.* at 33. Moreover, the ALJ found that Respondent had failed to accept responsibility for his actions and that he "flatly denied preparing and submitting the application" which he materially falsified even though his assertion "was wholly inconsistent with the evidence developed at the hearing." *Id.* at 35.

The ALJ thus concluded that "the Government has established that the Respondent has committed acts that are inconsistent with the public interest" and that Respondent has not "accepted responsibility for his actions, expressed remorse for his conduct at any level, or presented evidence that could reasonably support a finding that the Deputy Administrator should again entrust him with a Certificate of Registration." *Id.* at 36. The ALJ thus recommended that Respondent's application be denied. *Id.*

Neither party filed exceptions to the ALJ's decision. Thereafter, the record was forwarded to me for final agency action.

Having considered the record in its entirety, I adopt the ALJ's findings of fact (including his credibility findings) except as expressly noted otherwise. I further adopt the ALJ's legal conclusion that Respondent's registration would be inconsistent with the public interest. Accordingly, I will adopt the ALJ's recommendation and deny Respondent's application. I make the following findings.

Findings

Respondent is a physician licensed by the Louisiana State Board of Medical Examiners who practices physical medicine. GX 3 at 1. Respondent also previously held a DEA Certificate of Registration, which authorized him to dispense controlled substances as a practitioner at the address of 555 Holmes Boulevard, Gretna, Louisiana. GX 1. However, on June 2, 2004, following an investigation by DEA (the circumstances of which are set forth below), Respondent voluntarily surrendered his registration. *Id.;* GX 6.

On March 9, 2005, Respondent applied for a new DEA registration using the Agency's Web site.[3] GXs 1 & 8. While Respondent denied filing this application, Tr. 309, the Government produced evidence showing that the $390 application fee was charged to a credit card account held by him. GX 13, at 2 & 4.

On the application, Respondent was required to answer four "liability" questions. The first question asked: "Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law, or is any such action pending?" GX 1. Respondent answered: "no." *Id.*

The third question asked: "Has the applicant ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?" *Id.* Respondent again answered: "no." *Id.*

The second question asked: "Has the applicant ever surrendered or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?" *Id.* at 2. Respondent answered:

> On June 02, 2004, my primary office in Louisiana was visited by the Mississippi Division of DEA Diversion Unit. Officers of this unit expressed concerns regarding lack of Mississippi State DEA Registration. Advised to surrender Louisiana DEA Registration to facilitate investigation of other matters regarding patient prescription writing [sic] habits. As of this application submission, am uncertain of status of the investigation.

Id. at 2.[4]

Based on Respondent's "yes" answer to the second question, his application was assigned to a DEA Diversion

[3] As explained below, I agree with the ALJ that Respondent's testimony that he did not submit the March 10, 2005 application is not credible. According to the affidavit of a Diversion Investigator, while the application was submitted via the internet on March 9, 2005, the transaction was not posted until the following day. GX 13, at 2.

[4] The fourth liability question was not applicable.

Investigator with the New Orleans Field Division Office.[5] Tr. 189. However, because there was an open criminal investigation into his activities in Mississippi, no action was taken on the application until after the United States Attorney for the Southern District of Mississippi declined prosecution. *Id.*

During the course of its investigation, DEA obtained a copy of a Consent Order which Respondent entered into with the Louisiana State Board of Medical Examiners (hereinafter, State Board or Board), which the latter approved on August 18, 1999. GX 3, at 11. Therein, Respondent admitted that on April 1, 1998, he had pled guilty to the offense of "simple possession of cocaine," a felony under Louisiana law.[6] *Id.* at 2; *see also* GX 2(2), at 1; GX 2(3), at 1. Respondent was given a suspended sentence of two years in the custody of the Louisiana Department of Correction for this offense, two years of probation, fined $600, and ordered to undergo drug counseling and rehabilitation. GX 3, at 2; GX 2(5).

In the consent order, Respondent further admitted that he had used marijuana on a daily basis, and that he had "used cocaine in 1982, 1985, and 1991," and that during 1991, "he began using cocaine on a more regular and frequent basis [and] developed a dependency on crack cocaine and 'primo,' a mixture of cocaine and marijuana smoked together." GX 3, at 2. However, the State Board found that Respondent had submitted to inpatient treatment and "completed all four phases of residential treatment and made a commitment to long term recovery by establishing a relationship with the Physicians Health program." *Id.* at 2.

Based on the above, the State Board concluded that there was "just cause" to charge Respondent with various violations of the Louisiana Medical Practice Act. *Id.* at 3. However, the Board placed Respondent on probation for a period of five years subject to various conditions. On May 16, 2008, the Board terminated Respondent's probation and fully reinstated his license. RX 1.

At the hearing, the Government presented the testimony of a DEA Diversion Investigator (DI) from the Resident Office (RO) in Gulfport, Mississippi, who was involved in the criminal investigation of Respondent. Tr. 21–23. According to the DI, in 2003, his office received information from law enforcement agencies and "concerned citizens and parents" that Respondent was operating a medical practice in D'Iberville (a suburb of Biloxi, Mississippi) that catered to drug-seeking patients and which was servicing its clientele very late at night. *Id.* at 28–29. The Gulfport RO also received information that Respondent was charging $200.00 for a patient's first visit, $100.00 for subsequent visits, and that the transactions were being conducted in cash.[7] *Id.* at 33. DEA also learned that the Respondent had an office location in Gretna, Louisiana.[8] *Id.* at 25, 33.

Based on this information, DEA conducted an undercover operation which focused on Respondent's practice in Mississippi. According to the DI, a Special Agent (who has since retired), using the name of Reggie Glorioso, made five undercover visits to Respondent's D'Iberville office as well as two undercover visits to a location in nearby Diamondhead, Mississippi, where Respondent eventually moved his office.[9] *Id.* at 50–51, 54, 124. The DI testified that his role was to assemble the surveillance team that would monitor and record the progress of the operation through audio transmitters that the Agent wore. *Id.* at 47. According to DI, he listened to the visits as they were being conducted. *Id.* at 44–48.

The DI testified that the first visit was conducted on May 14, 2003, with the Agent arriving at Respondent's D'Iberville office at about 5 p.m. *Id.* at 57. Respondent finally arrived at approximately 9 p.m. *Id.* Respondent's office staff weighed the Agent, took his pulse and blood pressure, and at approximately 10:40 p.m. led him to an examination room. *Id.* at 57–58, 63. At 11:05 p.m., Respondent finally entered the exam room. *Id.* at 59.

During his interaction with Respondent, the Agent told the Respondent that he had stiffness in his shoulders. *Id.* at 147. According to the DI, the Respondent had the Agent "place one leg on a telephone book" and then "lifted" the Agent's "right hand." *Id.* at 62. Based on this examination, Respondent told the Agent "that he had a pelvic problem in which one foot was 3/4th of an inch lower than his right side, which caused stress to his entire body, [and] therefore caused him pain." *Id.* At approximately 12:22 a.m., Respondent gave the Agent prescriptions for 25 dosage units of Xanax,[10] 50 dosage units of Vicodin,[11] and 30 Soma (carisoprodol, a non-controlled drug). *Id.* at 63–65. The Agent paid a member of the Respondent's office staff $202.00 in cash and was given a follow-up appointment for May 28, 2003, but with no appointment time indicated. *Id.* at 66.

The Government did not offer either the transcript or a recording of the visit (or any of the other visits for that matter). Moreover, it did not call the Agent to testify.

At approximately 5 p.m. on May 28, 2003, the Agent returned to Respondent's D'Iberville office.[12] *Id.* at 72. The Agent signed in and was told by Andre, a member of the office staff that Respondent would not be in until later in the evening. *Id.* at 74. The Agent and Andre agreed that the former would call in and check with the latter to learn when Respondent was in the office. *Id.*

At 9:37 p.m., the Agent called Andre and was told that Respondent was in. *Id.* The Agent returned to the office at 9:45 p.m., where he waited until 1:05 the following morning, when he was finally taken to an examination room. *Id.* at 67, 74. While in the examination room, the Agent was able to look through his patient file and noted that it contained pre-signed prescriptions for 35 dosage units of Xanax, 65 dosage units of Vicodin, and 65 dosage units of Soma.[13] *Id.* at 67–68. While the record is unclear as to what time Respondent entered the exam room, the visit ended at 2:15 a.m. and cost $100. *Id.* at 69, 75. The Agent received the aforementioned prescriptions as well as prescriptions for

[5] According to a DI, an affirmative response to these "liability" questions can trigger the referral of an application to a DEA Investigator, and the opening of an investigation. Tr. 184. Conversely, a negative answer to all "liability" questions results in an application being forwarded to a DEA registration technician for what is an essentially a *pro forma* examination with likely approval. *Id.* at 184–85, 201–04.

[6] In the same proceeding, Respondent pled guilty to carrying a concealed weapon, a misdemeanor under Louisiana law. GX 3, at 2.

[7] According to the DI, in his experience a cash-based medical practice and a cash-based patient base are unusual features of a medical practice and raise investigatory red flags. Tr. at 34–35.

[8] The DI testified that a 2003 query of DEA databases indicates that the Respondent was registered at locations in New Orleans, Louisiana and Biloxi, Mississippi and that the latter registration expired in July 2003. Tr. 24–25, 27–28.

[9] According to the DI, undercover (uc) visits to the D'Iberville office were conducted in 2003 on May 14, May 28, June 24, July 22, and August 22; visits to the Diamondhead office were conducted on November 20 and December 18. Tr. at 50–51. The Government, however, only presented evidence about the first three uc visits. Tr. 55–89.

[10] A Schedule IV controlled substance. ALJ Ex. 6, at 1.

[11] A Schedule III controlled substance. ALJ Ex. 6, at 1.

[12] The DI testified that times were not assigned for appointments at the Respondent's D'Iberville office. Patients would sign in with a staff member and wait around the office, often in the parking lot, for Respondent to arrive.

[13] According to the DI, this combination of drugs is highly sought after by drug abusers and is known on the street as the "holy trinity." Tr. 84. While Soma (carisoprodol) is not controlled, it "enhances the euphoric effect of both the hydrocodone and * * * the Xanax." *Id.*

naprosyn (a non-controlled drug) and for a modified shoe. *Id.* at 82–83.

According to the DI, notwithstanding the hour, "there were still individuals waiting in the parking lot to see" Respondent. *Id.* at 70. Moreover, the DI testified as to the Agent's interaction with several of Respondent's "patients" that took place in his office parking lot. *Id.* at 75–79. One of these individuals, T.B., told the Agent that he was "visiting more than one physician in order to obtain controlled substances." *Id.* at 79. The Agent asked T.B. if he was interested in selling his Xanax; the latter indicated that he might be interested and the two exchanged phone numbers. *Id.* at 78–79. The Agent and T.B. also discussed the latter's selling hydrocodone to the former and agreed on a price of $3 per dosage unit.[14] *Id.* at 79–80.

The Agent also exchanged phone numbers with another individual at the scene, L.H., who told the former that he was seeing multiple physicians to obtain drugs. *Id.* at 80. In response to an inquiry by the Agent, L.H. agreed to sell him 100 Lortab [15] for $300 and some OxyContin 80 mg.[16] for $25 a tablet. *Id.* at 81.

On June 24, 2003, the Agent made his third visit to the D'Iberville office. *Id.* at 85. According to the DI, the Agent arrived a little after 9 p.m. and paid $100 for the visit. *Id.* at 86–87. At approximately 10:43 p.m., while he was still waiting to be see Respondent, a staff member called for Reggie Glorioso (the Agent's assumed name) and handed him an appointment card reflecting his next *appointment* date, a receipt for $100, and prescriptions for Vicodin, Soma, Naprosyn, and Xanax. *Id.* at 88. These prescriptions had been pre-signed by Respondent and were given to the Agent before his interaction with Respondent, which commenced at 10:57 p.m. and ended five minutes later. *Id.* at 85–89.

Following the additional visits [17]—the details of which were not elicited from the DI—the Investigators obtained a warrant to search Respondent's Gretna, Louisiana office, which was executed on June 2, 2004.[18] *See* GX 4 & 5. During the search, the Government seized various controlled substances including 22 tablets of hydrocodone 5 mg., 45 tablets of Percocet 10/325 mg.,[19] 23 tablets of Lorcet 10/650 mg., 10 full vials and one partially full vial of diazepam 10 mg./ml.,[20] 5 vials of diazepam 5 mg./ml., and 1 vial of Stadol 2 mg./ml.[21] GX 5, at 3.

Notwithstanding the presence of these drugs, Respondent did not have various records which he was required to maintain, including an initial and/or biennial inventories, and a dispensing log. Tr. 113–15, 123–24, 158; *see also* 21 CFR 1304.11(b) & (c), *id.* 1304.22(c). At the scene, the Respondent admitted to the agents that he kept no such records. Tr. at 115. The DI also testified that while Respondent had issued prescriptions at his Mississippi office, his DEA registration for this office had expired in July 2003. *Id.* at 28; *see also* 21 U.S.C. 822(e); 21 CFR 1301.12(a) & (b)(3).

The DI further testified that although he was not part of the initial entry team that executed the warrant, he was on the scene after the premises were secured. Tr. 154. According to the DI, he, along with three or four agents and a representative of the State Board of Medical Licensure, met with Respondent and interviewed him while the search was conducted. *Id.* at 176. The ALJ specifically found credible the DI's testimony that during the interview, the Respondent was seated in a chair, no threats or promises were made, and no weapons were brandished.[22] ALJ at 8; *see also* Tr. 130–32, 154–55. The ALJ also found credible the DI's testimony that Respondent was informed that he was not under arrest, and that following some discussion about the status of the investigation, Respondent voluntarily surrendered his DEA registration and executed a DEA Form 104 (Voluntary Surrender of Controlled Substances Privileges). ALJ at 8. The ALJ further credited the DI's testimony that before Respondent signed the surrender form, he read the Respondent his "surrender rights" [23] from the form and Respondent acknowledged that he understood the significance of signing the document. *Id., see also* Tr. at 132–38.

During the interview, Respondent stated that he charged about $200.00 for an initial office visit, $100.00 for subsequent visits, and offered a 10–20% discount for patients who paid in cash. Tr. at 104, 175. Respondent also told the DI that the Internal Revenue Service had a judgment against him for between $180,000.00 and $190,000.00 and that he owed the entire amount. *Id.* at 105.

Pursuant to the warrant, the Government seized fifty-two patient files from Respondent's Gretna, Louisiana office. *Id.* at 116. According to the DI's review of the patient files, Respondent had diagnosed each of the fifty two patients (including that of the Special Agent who used the name of Reggie Glorioso) as having a leg-length discrepancy.[24] *Id.* at 116–17. Moreover,

[14] A Schedule III controlled substance. ALJ Ex. 6, at 1.

[15] A Schedule III controlled substance which contains hydrocodone. ALJ Ex. 6, at 1.

[16] A Schedule II controlled substance. ALJ Ex. 6, at 1.

[17] On cross examination, the DI testified that at the fifth uc visit, the Agent brought the prescribed shoe into the Respondent's office. Tr. 147–48. The cross examination also revealed that during the final uc visit, the Agent was given some exercises to do. *Id.* at 149, 152. Neither the Government nor the Respondent elicited any further details regarding the uc visits.

[18] According to the DI, the investigators sought the warrant to search this office because it was where Respondent kept his patient files. Tr. 90. Tr. at 90.

[19] A Schedule II controlled substance which contains oxycodone. ALJ Ex. 6, at 1.

[20] A Schedule IV controlled substance. ALJ Ex. 6, at 1.

[21] The Officers also seized a .45 caliber pistol from his bedroom, which apparently was located upstairs from the office. Tr. 90–103. According to the DI, Respondent was unable to produce any documentation for the firearm and offered no explanation regarding its presence on the premises. *Id.* at 98–99. Moreover, a serial number check with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) did not return a record showing who owned the gun. *Id.* at 102.

While the DI had previous experience in a local sheriff's office, he was not familiar with Louisiana's firearms laws and did not know whether Respondent's possession of the gun violated either state or federal law. *Id.* at 103, 160–61. The ALJ further noted that later in the hearing, the Government introduced a document entitled "Verification of First Offender Pardon" which was addressed to the Respondent and indicated that the pardon he was granted did not operate to restore any rights he might have regarding receiving, possessing or transporting a firearm. Govt. Ex. 11.

In its brief, the Government argues that "Respondent was found in violation of the First Offender Pardon when he was found in possession of a loaded pistol during [the] execution of [the] search warrant." Gov. Br. at 17. The Government does not, however, cite to any judicial finding that Respondent was in violation of either the terms of his probation or of state law. Nor, as the ALJ noted, does the Government cite any legal authority to support its contention that Respondent was permanently barred from possessing a handgun. I further agree with the ALJ that "no valid legal conclusion can reasonably be drawn from the language of the letter or its issuance to the Respondent." ALJ at 8 n.23. Finally, the issue is of tangential relevance.

[22] The ALJ found that while the weapons may have been drawn by other agents during the initial entry to the premises, there is no credible evidence to support the Respondent's claim that weapons were brandished during the DI's interview of Respondent. ALJ at 20.

[23] Actually, the form contains an explanation of the effects of the executed form, after the following statement: "After being fully advised of my rights, and understanding that I am not required to surrender my controlled substances privileges, I freely execute this document and choose to take the actions described herein." GX 6, at 1.

[24] The Government elicited testimony from the DI that during his investigation he consulted with a physician who is an expert in pain management. Tr. 118–20. The Government, however, did not call the expert to testify nor introduce any documentary evidence setting forth his opinion as to the validity of Respondent's prescribing practices.

According to the DI, the expert told him that leg-length discrepancy is a rare diagnosis, and that there were referrals to particular specialists and other treatment modalities that are customarily

each file contained evidence that Respondent had "prescribed narcotics" and "a modified shoe." *Id.* at 117. While the ALJ noted that the Government "introduced no expert testimony in this regard," he found it "striking * * * that the same ailment and prescribed treatment that the Respondent assigned to SA Price would exist in all the files seized from his practice." ALJ at 9.

While this is true enough, there is no testimony to establish how statistically improbable the condition is in even a single patient. Nor is there any evidence showing the extent and duration of Respondent's prescribing to the other fifty-one persons whose files were reviewed, nor evidence establishing that the prescriptions he issued to these persons lacked a legitimate medical purpose and were issued outside of the usual course of professional practice.

The DI further testified that the patients came from all over the Southeastern United States and included persons from Alabama, Florida, and Louisiana. Tr. 121. According to the DI, he ran a criminal history check on each of the other patients and found that all of them had a history of illegal activity with regard to controlled substances, including such offenses as prescription fraud, offenses based on doctor shopping, as well as unlawful distribution apparently of both prescription and non-prescription controlled substances such as marijuana and cocaine. *Id.*[25] However, as the ALJ noted, the Government did not offer any evidence specific to any of these persons such as their names, the exact nature or recency of the criminal activity, and most significantly, whether any of these persons had been convicted of criminal offenses.[26] ALJ at 9 n.29.

The ALJ further noted that while the Government initially indicated that it intended to call the retired Agent as a witness, it declined, without explanation, to do so at the hearing. ALJ at 9. The ALJ also noted that while the DI indicated that the audio recordings and transcripts of the undercover visits to the Respondent's offices were still in existence, he did not bring these items to the hearing because he was not asked to do so. *Id.* at 9–10.

The ALJ further found that the DI's testimony concerning his recollection of the interaction that took place between SA Price and the Respondent was quite vague and that on several occasions he needed to review his case file and an unsigned copy of an affidavit he had prepared on previous occasion. *Id.* at 10. While the ALJ generally found the DI's testimony to be credible, he noted that it "would have been more helpful if it had been preceded by a higher level of preparation." *Id.* Most significantly, the ALJ found that the DI's testimony regarding the interaction between the Respondent and the Special Agent during the undercover visits "was insufficiently precise to shed significant light on the Respondent's prescribing practices as evidenced in those visits." *Id.*

Respondent's Evidence

In his testimony, Respondent repeatedly denied filing the March 10, 2005 application, and insisted that "there [wa]s no way I could have left all this incomplete." Tr. 309, 313–14. He further asserted that he submitted an application in October or November 2005 after Hurricane Katrina and that he told the Chicago DEA office everything about his 1998 guilty pleas and the probation of his state medical license. *Id.* at 313–15.

As to Respondent's assertion that he never filed the March 10, 2005 application, the ALJ found that it "flies in the face of much of the credible evidence." ALJ at 19. In particular, the ALJ found it difficult to believe that an "unidentified individual would possess [the] level of personally identifiable information [necessary to transact the credit card transaction] and be willing to pay $390.00 to file an application for a DEA Registration in secret, and to the Respondent's detriment." *Id.* (see also *id.* at 20: "Perhaps the least credible in the litany of incredible assertions put forth by the Respondent is the testimony that he never filed the application for the [Certificate of Registration] containing his material falsifications, particularly in light of the fact that his credit card was utilized to pay the application fee.").

Moreover, the nature of the information that was provided in response to question 2 on the application included highly specific information regarding the circumstances surrounding Respondent's surrender of his previous registration. *See* GX 1, at 2. More specifically, the answer stated that "[o]n June 2, 2004, my primary office in Louisiana was visited by" a "DEA Diversion Unit," which advised him to surrender his Louisiana DEA registration. *Id.* This, of course, was the exact date that the warrant was executed and on which Respondent surrendered his registration. This begs the question—which Respondent did not answer—what other individual would have known this information and used it (as well as Respondent's credit card) to file the application? I thus agree with the ALJ that Respondent completed the application and gave false testimony when he denied filing the March 10, 2005 application.

At the hearing, Respondent did not deny either that he had a felony conviction for possession of cocaine or that his medical license had previously been placed on probation. While Respondent apparently admitted that his answer to the first liability question (which asked if he had "ever been convicted of a crime in connection with controlled substances under state or federal law") was false, he nonetheless insisted that his answer to the third liability question (regarding his state license) was "correct." Tr. 341. He further testified that in answering the latter question, he interpreted the question as if it asked only whether his state prescription writing authority had been placed on probation. *Id.* at 346–47. However, as found above, the question encompasses—in plain English—discipline imposed against an applicant's professional license and not just his state controlled substance registration.[27]

Respondent also disputed that his patients came from other States, Tr. 406, and that he ran a cash-only practice. *Id.* at 401. As for why he saw patients so late at night as well as during the wee hours of the morning, Respondent testified that:

> [t]he only explanation I can give you * * * that makes sense in terms of * * * what I do as a physiatrist, my approach is fairly unique. We address the problems of, if you will, physical disfunction[sic] in a manner that typically required that type of extended, sit down, educational, this is what we're doing, this is how we have to approach it, you know, interacting with the patient to get them to understand what was expected of them in order to accomplish the goal.

Id. at 407.

utilized during a pain practice. *Id.* However, there is no evidence as to how statistically rare this diagnosis is.

The ALJ thus considered this evidence only as background information showing the reasonableness of the DI's continued investigation. The ALJ further noted that during its examination of the DI, the Government clarified that this was the sole purpose for which this portion of his testimony was being offered and that, in any event, the DI's testimony regarding his conversations with the expert "w[as] vague in content and could not even be fixed with an approximate date and time." Given the Government's representation, I agree with the ALJ that testimony is entitled to no weight in determining the lawfulness of Respondent's prescribing practices. ALJ at 10.

[25] Tr. at 169–70.

[26] Tr. at 38, 40, 121.

[27] The Government further showed that on an application that Respondent submitted in June 2000, he had also provided a "no" answer to the question "Has the applicant ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?" GX 12; Tr. 344.

As for the DI's assertion that each of the fifty-one persons whose patient file was seized had some criminal behavior or drug history, Respondent testified that he used a questionnaire which asks various questions to identify problematic patients such as whether the patient had or was using illicit drugs, whether the patient had a psychiatric history, and that he would also do "a general mental status assessment" of each patient. *Id.* at 412–13. He further maintained that he discharged problematic patients, including those who were seeking drugs for self-abuse or to sell. *Id.* at 413–14.

Putting aside the credibility of Respondent's testimony regarding his medical practices, it is notable that he failed to address several material issues that were proved by the Government. More specifically, he offered no testimony as to why he had pre-signed prescriptions, and why he failed to maintain inventories and a dispensing log.

Discussion

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

"These 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 * * * an application for registration [should be] denied." *Id.* Moreover, I am not required to make findings as to all of the factors. *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005).

Under Section 304(a)(1), a registration may be revoked or suspended "upon a finding that the registrant * * * has materially falsified any application filed pursuant to or required by this subchapter." 21 U.S.C. 824(a)(1). Under agency precedent, the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny an application under section 303. *See The Lawsons, Inc.,* 72 FR 74334, 74337 (2007); *Anthony D. Funches,* 64 FR 14267, 14268 (1999); *Alan R. Schankman,* 63 FR 45260 (1998); *Kuen H. Chen,* 58 FR 65401, 65402 (1993). Thus, the allegation that Respondent materially falsified his application is properly considered in this proceeding. *See The Lawsons,* 72 FR at 74337; *Samuel S. Jackson,* 72 FR 23848, 23852 (2007). Moreover, just as materially falsifying an application provides a basis for revoking an existing registration without proof of any other misconduct, *see* 21 U.S.C. 824(a)(1), it also provides an independent and adequate ground for denying an application. *The Lawsons,* 72 FR at 74338; *cf. Bobby Watts, M.D.,* 58 FR 46995 (1993).

Here, the record establishes two separate grounds for denying Respondent's application. First, Respondent materially falsified his March 2005 application for a registration. Second, Respondent has committed numerous acts which demonstrate that the issuance of a registration would be inconsistent with the public interest. Moreover, Respondent has failed to offer sufficient evidence to rebut the Government's *prima facie* showing that his registration would be inconsistent with the public interest.

The Material Falsification Allegation

As found above, on March 9, 2005, Respondent, who had surrendered his DEA registration on June 2, 2004, applied for a new registration. While on the application Respondent acknowledged that he had previously surrendered his DEA registration, he provided a "no" answer to the questions of whether he had "ever been convicted of a crime in connection with controlled substances under state or federal law" and whether he had "ever had a state professional license or controlled substance registration" sanctioned. These statements were clearly false as Respondent had been convicted of possession of cocaine, a felony offense under the laws of Louisiana, and had also had his Louisiana Medical License placed on probation.

Both of these falsifications were material. "The most common formulation" of the concept of materiality "is that a concealment or misrepresentation is material if it 'has a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body to which it was addressed." *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (quoting *Weinstock* v. *United States,* 231 F.2d 699, 701 (DC Cir. 1956)) (other citation omitted); *see* also *United States* v. *Wells,* 519 U.S. 482, 489 (1997) (quoting *Kungys,* 485 U.S. at 770). The evidence must be "clear, unequivocal, and convincing." *Kungys,* 485 U.S. at 772. However, "the ultimate finding of materiality turns on an interpretation of substantive law." *Id.* at 772 (int. quotations and other citation omitted).

Moreover, "[i]t makes no difference that a specific falsification did not exert influence so long as it had the *capacity* to do so." *United States* v. *Alemany Rivera,* 781 F.2d 229, 234 (1st Cir. 1985). *See also United States* v. *Norris,* 749 F.2d 1116, 1121 (4th Cir. 1984) ("There is no requirement that the false statement influence or effect the decision making process of a department of the United States Government.").

DEA has previously held that "[t]he provision of truthful information on applications is absolutely essential to effectuating [the] statutory purpose" of determining whether the granting of an application is consistent with the public interest. *See Peter H. Ahles,* 71 FR 50097, 50098 (2006).[28] As a substantive matter, Congress has directed that the Agency consider five factors in determining whether the granting of an application is consistent with the public interest. *See* 21 U.S.C. 823(f). As noted above, the Agency is required to consider the status of the applicant's state authority to dispense controlled substances,[29] the applicant's experience

[28] *Cf. Martha Hernandez, M.D.,* 62 FR 61145, 61146 (1997) (An applicant's answers to the various liability questions are material because this Agency "relies upon such answers to determine whether an investigation is needed prior to granting the application."). A DI explained that, as a procedural matter, when an applicant provides "no" answers to the liability questions, the application is forwarded without further investigation to a registration technician for approval.

It is acknowledged that Respondent truthfully disclosed that he had previously surrendered his registration and thus, his application would have been subjected to an investigation in any case. However, as the Supreme Court has explained, whether a false statement is material depends upon an interpretation of the substantive law. As explained above, Respondent's two false answers are clearly material to several of the factors which the Agency is charged with considering in making the public interest determination.

[29] Not only did Congress direct the Agency to consider "[t]he recommendation of the appropriate State licensing board or professional disciplinary

in dispensing * * * controlled substances," his "conviction record * * * relating to the * * * dispensing of controlled substances," his "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," and whether he has engaged in "such other conduct which may threaten public health and safety." 21 U.S.C. 823(f). Moreover, under the latter factor, DEA has frequently denied applications and revoked the registrations of practitioners who have a history of abusing controlled substances. *See, e.g., Kenneth Wayne Green, Jr.,* 59 FR 51453 (1994); *David E. Trawick,* 53 FR 5326, 5327 (1988).

Congress has also explicitly granted the Agency authority to revoke a registration where a registrant "has been convicted of a felony under [the CSA] or any other law of the United States, or of any State, relating to any substance defined in [the CSA] as a controlled substance." 21 U.S.C. 824(a)(2). As noted above, it has long been settled that the Agency has authority to deny an application on any of the grounds set forth in 21 U.S.C. 824.[30]

Thus, even though Respondent disclosed that he had previously voluntarily surrendered his registration and been the subject of an investigation with respect to his prescribing practices, his failure to disclose the previous state discipline (which was based on his abuse of various controlled substances as well as his conviction for cocaine possession) and this conviction, still had the capacity to influence the Agency's decision as to whether his application should be granted. It makes no difference that the Agency did not rely on the misrepresentations and grant his application. *See United States* v. *Alemany Rivera,* 781 F.2d at 234; *United States* v. *Norris,* 749 F.2d at 1121.

Under DEA precedent, the Government is not required to show that the falsification was intentional but only that the applicant "knew or should have known that the response given to the liability question was false." *The Lawsons,* 72 FR at 74339; *Samuel Arnold,* 63 FR 8687, 8688 (1998). Respondent obviously knew that he had "been convicted of a crime in connection with controlled substances" under Louisiana law. Likewise, he knew that his state license had previously been placed on probation. And contrary to his protestation that he thought the question was only directed at the loss of his prescription-writing authority, the question clearly encompassed the probationary sanction imposed on his Louisiana medical license.

Thus, Respondent cannot credibly claim that the falsifications were the result of mere negligence or misunderstanding. Indeed, that Respondent denied having even submitted the application—an assertion which is patently false given the detailed information that the application included and the fact that the fee was paid for with his credit card—suggests that the falsification was intentional.

I thus hold that Respondent materially falsified his March 2005 application by failing to disclose his conviction for cocaine possession and the State Board's imposition of probation terms on his medical license. I further hold that Respondent—as evidenced by his having denied that he submitted the application—has failed to accept responsibility for his misconduct. *See Samuel Jackson,* 72 FR at 23853. Thus, Respondent's material falsification provides reason alone to deny his application.

In addition, the evidence showed that Respondent, when he was previously registered, committed multiple acts which are properly considered under factors two and four and which render his "registration inconsistent with the public interest." 21 U.S.C. 823(f). As found above, Respondent issued multiple prescriptions for controlled substances including hydrocodone and Xanax to an undercover Agent who visited him at his office in D'Iberville, Mississippi. While there is insufficient evidence to establish that these prescriptions lacked a legitimate medical purpose and were issued outside of the course of professional practice, *see* 21 CFR 1306.04(a), the evidence did show that at the undercover Agent's subsequent visits, Respondent had pre-signed prescriptions for both of the above controlled substances, and that during at least one of these visits, the Agent was given the prescriptions before he even saw Respondent.

DEA has long interpreted the CSA as prohibiting the pre-signing of prescriptions. *See Jayam Krishna-Iyer,* 71 FR 52148, 52159 & n.9 (2006) (collecting cases), *vacated on other grounds,* 249 Fed. Appx. 159 (11th Cir. 2007). *See also Walter S. Gresham,* 57 FR 44213, 44214 (1992); *James Beale,* 53 FR 15149, 15150 (1988) ("It is a violation of 21 CFR 1306.05(a) to pre-sign prescriptions for controlled substances."). Respondent's practice of pre-signing prescriptions is indicative of drug dealing as he clearly had not evaluated the undercover Agent prior to writing the prescriptions to determine whether they were medically necessary to treat his purported condition.[31]

The evidence also showed that during the search of Respondent's Louisiana office, Investigators found various controlled substances including Percocet (a schedule II drug containing oxycodone), hydrocodone and Lorcet (both schedule III drugs containing hydrocodone), diazepam and Stadol (both schedule IV drugs). Respondent makes no claim that these drugs had been lawfully prescribed to him.

Under the CSA, "every registrant * * * shall * * * as soon * * * as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand." 21 U.S.C. 827(a)(1); *see also* 21 CFR 1304.11(b) & (c). Moreover, "every registrant * * * manufacturing, distributing, or dispensing, a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him." 21 U.S.C. 827(a)(3); *see also* 21 CFR 1304.22(c) (requirement for dispensing records). During the search, Respondent admitted to the Investigators that he did not have the required inventories and was not maintaining a dispensing log. I thus further hold that Respondent violated Federal law and DEA regulations by failing to maintain these records.

Notably, Respondent offered no testimony addressing either his pre-signing of prescriptions or his failure to maintain required records. Respondent

authority," a practitioner cannot be registered unless he "is authorized to dispense * * * under the laws of the State in which he practices." 21 U.S.C. 823(f). *See also* 21 U.S.C. 802(21) (defining "practitioner" as "a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to dispense * * * a controlled substance in the course of professional practice").

[30] To make clear, the Agency's authority to deny an application is not limited to those convictions enumerated in 21 U.S.C. 823(f)(3), but also includes any conviction meeting the standards of 21 U.S.C. 824(a)(2) such as a conviction for simple possession.

[31] The circumstantial evidence which includes his seeing patients in the wee hours of the morning, where the patients were coming from, the interactions that the Agent had with other "patients," and the uniformity of his diagnoses, create a strong suspicion that Respondent was not engaged in legitimate medical practice but rather drug dealing. However, under the substantial evidence test, the evidence must "do more than create a suspicion of the existence of the fact to be established." *NLRB* v. *Columbian Enameling & Stamping Co.,* 306 U.S. 292, 300 (1939). Given the numerous evidentiary gaps in the record, I do not make any findings regarding the lawfulness of Respondent's prescribing practices with respect to the other 51 patients whose files were seized.

has thus failed to offer any evidence to rebut the Government's showing that he has committed acts which render granting him a registration inconsistent with the public interest.[32] *See Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) ("Where the Government has made out its *prima facie* case, the burden shifts to the Respondent to show why [his] continued registration would nonetheless be consistent with the public interest."). Accordingly, these violations of the CSA and DEA regulations provide a further basis to deny Respondent's application.

Order

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

Dated: April 16, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–11431 Filed 5–12–10; 8:45 am]

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[32] It is acknowledged that Respondent holds a valid state license (factor one) and has not been convicted of an offense related to the dispensing of controlled substances (factor three). However, neither of these factors is dispositive. *See Edmund Chein,* 72 FR 6580, 6590 (2007), *aff'd Chein* v. *DEA,* 533 F.3d 828 (DC Cir. 2008) (The authority to decide whether to grant an application for a DEA registration has been entrusted to the Attorney General and "has been delegated solely to the officials of this Agency.") *See also id.* at 6593 n.22 (absence of criminal convictions not dispositive in public interest inquiry).

I further note the DI's testimony that Respondent violated Federal law because he wrote prescriptions at his Mississippi office and did not have a registration in this State. However, the Government put forward no evidence that identifies specific prescriptions that Respondent issued after the expiration of his Mississippi registration. Moreover, in its brief, the Government does not rely on this conduct. Thus, I do not consider the allegation.

The Government also argues that Respondent's conviction for possession of cocaine can be considered under factor three. However, the conviction was not for an offense related to the manufacture, distribution, or dispensing of controlled substances and is thus not properly considered under factor three. However, as the ALJ reasoned, consistent with Agency precedent, the conviction can be considered under factor five as such other conduct which may threaten public health and safety. *See* ALJ at 34–35. While there is evidence that Respondent underwent treatment, and the Government does not argue that Respondent has a continuing problem with drug abuse, when coupled with the other violations proved on this record, it buttresses the conclusion that Respondent is unwilling to conform to the law and that he cannot be entrusted with a new registration.

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1519]

Hearings of the Review Panel on Prison Rape

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of hearing.

SUMMARY: The Office of Justice Programs (OJP) announces that the Review Panel on Prison Rape (Panel) will hold hearings in Washington, DC on June 3–4, 2010. The hearing times and location are noted below. The purpose of the hearings is to assist the Bureau of Justice Statistics (BJS) in identifying common characteristics of victims and perpetrators of sexual victimization in juvenile facilities, and the common characteristics of juvenile facilities with the highest and lowest incidence of rape, respectively, based on an anonymous survey by the BJS of youth in a representative sample of juvenile facilities. On January 7, 2010, the BJS issued the report *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09.* The report provides a listing of juvenile facilities grouped according to the prevalence of reported sexual victimization, and formed the basis of the Panel's decision about which facilities would be the subject of testimony.

DATES: The hearing schedule is as follows:

1. *Thursday, June 3, 2010, 10 a.m. to 5:45 p.m.:* Bureau of Justice Statistics; Fort Bellefontaine, Missouri, Campus—facility with a low prevalence of sexual victimization; Rhode Island Training School—facility with a low prevalence of sexual victimization; and Pendleton, Indiana, Juvenile Correctional Facility—facility with a high prevalence of sexual victimization.

2. *Friday, June 4, 2010, 8:30 a.m. to 1 p.m.:* Woodland Hills, Tennessee, Youth Development Center—facility with a high prevalence of sexual victimization; and Corsicana, Texas, Residential Treatment Facility—facility with a high prevalence of sexual victimization.

ADDRESSES: The hearings will take place at the Office of Justice Programs Building, Main Conference Room, Third Floor, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Christopher Zubowicz, Designated Federal Official, OJP, *Christopher.Zubowicz@usdoj.gov,* (202) 307–0690 [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Panel, which was established pursuant to the Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. 15601–15609 (2006)), will hold its next hearings to carry out the review functions specified at 42 U.S.C. 15603(b)(3)(A). Testimony from the hearings will assist the Panel in carrying out its statutory obligations. The witness list is subject to amendment; please refer to the Review Panel on Prison Rape Web site at *http://www.ojp.usdoj.gov/reviewpanel/reviewpanel.htm* for any updates regarding the hearing schedule. Space is limited at the hearing location. Special needs requests should be made to Christopher Zubowicz, Designated Federal Official, OJP, *Christopher.Zubowicz@usdoj.gov* or (202) 307–0690, at least one week before the hearings.

Michael Alston,

Office of Justice Programs.

[FR Doc. 2010–11369 Filed 5–12–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LiMo Foundation

Notice is hereby given that, on March 12, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 8 4301 *et sect.* ("the Act"), LiMo Foundation ("LiMo") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Else Limited, Ra'anana, ISRAEL; Teleca Germany GmbH, Neuremberg, GERMANY; Mobi TV, and Emeryville, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of this group research project. Membership in this group research project remains open, and LiMo intends to file additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to Section