Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Delta Fuels, Inc. and Knight Enterprises, Inc.,* Civil Action No. 3:13–CV–00455 (N.D. Ohio), D.J. Ref. No. 90–5–1–1–09158.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

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Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–18812 Filed 8–2–13; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–69]

Tyson D. Quy, M.D.; Decision and Order

On March 26, 2012, Administrative Law Judge (ALJ) Gail A. Randall issued the attached Recommended Decision (hereinafter, cited as R.D.). Neither party filed exceptions to the Recommended Decision.

Having reviewed the record in its entirety, I have decided to adopt the ALJ's rulings, findings of fact, and conclusions of law except as discussed below.[1] While I reject two of the ALJ's conclusions of law, I nonetheless agree with her ultimate conclusions of law.[2] I therefore adopt the ALJ's recommended sanction.

Accordingly, Respondent's application to renew his registration will be granted, subject to the following conditions, which shall remain in effect for a period of three years.

1. Respondent shall be restricted to prescribing controlled substances and shall not administer or dispense any controlled substances. Respondent shall not prescribe controlled substances to himself or any family member. Respondent is further prohibited from obtaining controlled substances from a manufacturer, distributor, or pharmacy, whether the controlled substances are obtained by ordering them from a manufacturer, distributor, or pharmacy, or provided to him by a manufacturer, distributor, or pharmacy as a sample.

Respondent shall not, however, be prohibited from obtaining a prescription for a controlled substance from another practitioner for a legitimate medical condition and filling any such prescription at a pharmacy.

2. Respondent shall comply with all terms and conditions of the Order Accepting Voluntary Submittal to Jurisdiction issued by the Oklahoma State Board of Medical Licensure and Supervision. Any violation of the terms of the aforesaid order shall be grounds for the suspension or revocation of Respondent's DEA Certificate of Registration.

3. Respondent shall notify the nearest DEA field office of any violation of the Order Accepting Voluntary Submittal to Jurisdiction within seventy-two (72) hours of committing any such violation and shall also agree to authorize the Oklahoma State Board of Medical Licensure and Supervision to report any violations on his part of the aforesaid order to the nearest DEA field office.

4. Respondent shall consent to unannounced inspections of his registered location by DEA personnel and waives his right to require agency personnel to obtain an Administrative Inspection Warrant prior to conducting an inspection of his registered location.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that the application of Tyson D. Quy, M.D., to

[1] I do not adopt the ALJ's legal conclusion that Respondent's *nolo contendere* plea to the state law offense of driving while under the influence of drugs (DUI), *see* Okla. Stat. tit. 47, § 11–902; constitutes a conviction of an offense under a ''law[] relating to the manufacture, distribution or dispensing of controlled substances.'' R.D. at 20. While DEA has long held that a plea of *nolo contendere* constitutes a conviction even where adjudication is withheld, *see Kimberly Maloney,* 76 FR 60922 (2011) (discussing cases); a DUI conviction, even when it involves the ingestion of a controlled substance, is too attenuated from the acts of manufacture, distribution or dispensing of controlled substances for the underlying offense to be deemed a ''law[] relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). *Cf. Jeffery M. Freesemann,* 76 FR 60873, 60887 (2011) (holding that conviction for state law offense of transporting a controlled substance does not relate to the manufacture, distribution or dispensing of controlled substances); *Alvin Darby,* 75 FR 26993, 27000 n.32 (2010) (holding that conviction for offense of simple possession does not relate to the manufacture, distribution, or dispensing of controlled substances); *Super Rite Drugs,* 56 FR 46014, 46015 (1991) (accord). While there is agency precedent to the contrary, *see Jeffery Martin Ford,* 68 FR 10750, 10753 (2003), interpreting this provision as encompassing offenses such as simple possession, DUI, and transportation effectively reads the ''relating to'' phrase out of the statute. However, as has been made clear in other cases, the Agency can consider a DUI offense, when the underlying facts establish that the registrant was under the influence of a controlled substance, under factor five. *Cf. Tony Bui,* 75 FR 49979, 49989 (2010) (''DEA has long held that a practitioner's self-abuse of a controlled substance is a relevant consideration under factor five and has done so even when there is no evidence that the registrant abused his prescription writing authority) (citing *David E. Trawick,* 53 FR 5326, 5327 (1988)).

The ALJ also concluded that Respondent violated the CSA (and state law) when he purchased Xanax ''from an Internet pharmacy and presumably without a legitimate prescription.'' R.D. at 20 (citing 21 U.S.C. 829(e)(1) & Okla. Stat. tit. 63, § 2–309(B)(1)). As for federal law, section 829(e)(1) provides that ''[n]o controlled substance that is a prescription drug . . . may be *delivered, distributed,* or *dispensed* by means of the Internet without a valid prescription.'' 21 U.S.C. 829(e)(1) (emphasis added). However, no evidence was offered that Respondent committed any of the prohibited acts (such as a dispensing by writing a prescription for himself) which are enumerated in the statute. Nor is there any evidence that Respondent purchased the Xanax from a foreign pharmacy, and therefore, imported the drug in violation of federal law. *See* 21 U.S.C. 957. I therefore do not adopt the ALJ's conclusion that he violated section 829(e)(1). Nonetheless, the evidence shows that while Respondent told two different stories as to how he obtained the Xanax, he never claimed that he obtained it pursuant to a valid prescription. Accordingly, his admitted possession of the drug violated federal law. *See* 21 U.S.C. 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 . . .'').

As for the ALJ's legal conclusion that Respondent violated Oklahoma Stat. tit. 63, § 2–309(B)(l); this provision prohibits only dispensing without a prescription and not the purchasing of a controlled substance. *See id.* (''no controlled dangerous substance included in Schedule III or IV, which is a prescription drug . . . may be dispensed without a written or oral prescription''). Here again, I reject the ALJ's conclusion because there is no evidence that Respondent dispensed the Xanax to himself.

[2] Because there is no evidence that Respondent diverted controlled substances to others and this is a first offense, I conclude that consideration of the Agency's deterrence interests is not warranted. *See Kimberly Maloney,* 76 FR 60922, 60923 (2011).

Finally, with respect to the ALJ's discussion of the amount of time that has elapsed since Respondent's unlawful conduct, *see* R.D. at 21, I have previously expressed my disagreement with the ALJ's apparent view that there is no minimum period of time for which an applicant or registrant must demonstrate his/her sobriety. *See Stephen L. Reitman,* 76 FR 60889, 60890 (2011) (rejecting ALJ's reasoning that ''nine months is not such a short recovery period that it should serve as grounds for revocation'') (other citation omitted). However, in *Reitman,* I noted that additional time had passed since the closing of the record and that no evidence had been presented (through a motion for reconsideration based on newly discovered evidence) that the respondent had relapsed. *Id.* Likewise here, more than two years have now passed since Respondent entered treatment and there is no evidence that he has relapsed. Accordingly, I conclude that Respondent has demonstrated his sobriety for a sufficient period to support continuing his registration, subject to the conditions set forth above.

renew his DEA Certificate of Registration as a practitioner, be, and it hereby is, renewed, subject to the conditions set forth above. This Order is effective immediately.

Dated: July 29, 2013.

Michele M. Leonhart,

Administrator.

Theresa Krause, Esq., for the Government

Robert A. Manchester III, Esq., for the Respondent

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Procedural Background

Administrative Law Judge Gail A. Randall. The Deputy Assistant Administrator, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause (''Order'') dated June 30, 2011, proposing to revoke the DEA Certificate of Registration, No. FQ1513818, of Tyson D. Quy, M.D., (''Respondent''), as a practitioner, pursuant to 21 U.S.C. 824(a)(4) (2006), and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f), because the continued registration of the Respondent would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f). [Administrative Law Judge Exhibit (''ALJ Exh.'') 1 at 1].

The Order stated that Respondent is currently registered with the DEA as a practitioner with authority to handle controlled substances in Schedules II–V, and that his registration is scheduled to expire on April 30, 2012. [*Id.*].

The Order alleged that Respondent had been arrested on September 6, 2010 on the charge of driving under the influence and subsequently pled no contest to the criminal charge on February 24, 2011. [*Id.*]. In relation to this charge, the Order asserted that Respondent had admitted he was impaired, that he had tested positive for illegal controlled substances, and finally that he possessed a loaded firearm. [*Id.*].

Next, the Order asserted that Respondent had admitted to the Oklahoma State Board of Medical Licensure and Supervision (''Oklahoma Medical Board'' or ''the Board''), that he had: (a) Stolen Ambien, TussiCaps w/ Hydrocodone, and Butalbital from his father's locked medical supply cabinet and illegally consumed these controlled substances; (b) consumed his grandmother's Xanax tablets which had been left at his home; (c) ''doctor shopped'' to obtain Ambien prescriptions from three different physicians; and (d) illegally purchased sixty 2 milligram dosage units of Xanax over the Internet. [*Id.*].

Lastly, the Order alleged that Respondent intentionally and repeatedly failed to cooperate with investigators from the Board during the Board's investigation. [*Id.* at 2]. And further that on March 10, 2011, the Board suspended Respondent's Oklahoma state medical license for thirty days and placed him on probation for a period of five years. [*Id.*].

The Deputy Assistant Administrator then gave the Respondent the opportunity to show cause as to why his registration should not be revoked on the basis of those allegations. [*Id.*].

On July 29, 2011, Respondent filed a request for a hearing in the above-captioned matter. [ALJ Exh. 2].

After authorized delays, the hearing was conducted on January 10, 2012, in Oklahoma City, Oklahoma. [ALJ Exh. 4]. At the hearing, counsel for the DEA called three witnesses to testify and introduced documentary evidence. [Transcript (''Tr.'') Volume I]. The Respondent also testified and introduced documentary evidence. [*Id.*].

After the hearing, the Government submitted Proposed Findings of Fact, Conclusions of Law and Argument (''Govt. Brief''). The Respondent also submitted Proposed Findings of Fact and Conclusions of Law (''Resp. Brief'').

II. Issue

The issue in this proceeding is whether or not the record as a whole establishes by a preponderance of the evidence that the Drug Enforcement Administration should revoke the DEA Certificate of Registration Number FQ1513818, of Tyson Quy, M.D., as a practitioner, pursuant to 21 U.S.C. 824(a) (2006), and deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. 823(f), because his continued registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f). [ALJ Exh. 3; Tr. 5–6].

III. Findings of Fact

A. Stipulated Facts

The parties have stipulated to the following facts:

1. Respondent is registered with the DEA as a practitioner in Schedules II through V under DEA registration number FQ1513818 at 3700 North Kickapoo Street, Suite 124, Shawnee, Oklahoma 74804. The Respondent's registration expires by its terms on April 30, 2012.

2. Alprazolam is a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(1).

3. Xanax is a brand of alprazolam, a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(1).

4. Ambien is a brand of zolpidem, a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(51).

5. Zolpidem is a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(51).

6. TussiCaps w/Hydrocodone is a hydrocodone combination product which is a Schedule III controlled substance pursuant to 21 CFR 1308.13(e)(1)(iv).

7. Citalopram is an anti-depressant which is a non-controlled substance.

8. Chlorpheniramine is an anti-histamine which is a non-controlled substance. [ALJ Exh. 3].

B. Respondent's Addiction History

Respondent received an undergraduate degree from the University of Oklahoma and then attended medical school at Ross University School of Medicine. [Tr. 90]. He graduated from medical school in May of 2007. [Tr. 133]. Following medical school, Respondent began a three year residency program in family medicine, which he completed in July of 2010. [Tr. 90–91; Govt. Exh. 6].

Residency proved to be an extremely stressful time for Respondent. [Govt. Exh. 6]. He testified that during his residency training, he would routinely work long hours under difficult conditions, including shifts up to thirty hours at a time. [Tr. 145]. As a result, Respondent developed chronic insomnia, for which he sought treatment. [Govt. Exh. 6]. To treat his sleep issues, Respondent's primary care physician prescribed him Ambien, a sleep aid medication and Schedule IV controlled substances. [Tr. 133; Govt. Exh. 6; FOF 4,5]. Dr. Quy credibly testified that he had never taken a controlled substance prior to receiving this prescription. [Tr. 145].

Dr. John Koontz served as Respondent's primary care physician during this period. [Tr. 10–11]. He testified that he treated Respondent as a patient from approximately 2009 to July 22, 2010. [Tr. 11–12]. While Dr. Koontz could not recall how many Ambien prescriptions he issued to Respondent, Respondent's prescription history report and copies of his prescriptions indicate that Dr. Koontz issued at least eight prescriptions for Ambien or its generic equivalent, zolpidem, from approximately August 18, 2009, to July 22, 2010. [Tr. 24; Govt. Exh. 4; Govt. Exh. 2]. Dr. Koontz also approved numerous refill requests on these prescriptions at the request of Dr. Quy. [Govt. Exh. 2; Govt. Exh. 4].

Respondent testified that during this period he developed an addiction to Ambien. [Tr. 145]. To feed his addiction, he primarily obtained Ambien from the prescriptions that Dr. Koontz issued him. [Tr. 129–130]. Dr. Quy also testified that he obtained Ambien from prescriptions written to him by other doctors. [*Id.;* Govt. Exh. 2; Govt. Exh. 4]. While Ambien remained Dr. Quy's primary substance of abuse during this period, he also admitted to obtaining and abusing additional controlled substances. [Tr. 162]. These included alprazolam, which he purchased from the Internet, and butalbital and TussiCaps, both of which he stole from his father's locked prescription samples closet. [Tr. 130–31].

C. The July 22, 2010 Prescription From Dr. Koontz

On July 22, 2010, Dr. Koontz issued Respondent a prescription for thirty 10 milligram units of Ambien. [Tr. 13; Govt. Exh. 3]. Shortly after this July 22, 2010 visit, Dr. Koontz obtained Respondent's prescription medical profile report and discovered that Respondent had been seeing other doctors and receiving controlled substances prescriptions from them. [Tr. 24–25]. Respondent did not inform Dr. Koontz that he was seeing other doctors or that he was receiving additional controlled substances prescriptions. [Tr. 16]. After this discovery, Dr. Koontz refused to see Respondent as a patient. [Tr. 12].

Dr. Koontz was shown the July 22, 2010 prescription by a DEA investigator on August 5, 2011. [Tr. 15]. At the hearing, Dr. Koontz testified that the prescription contained a notation for four refills, which Dr. Koontz claimed he did not write. [Tr. 14]. The ''x4'' was not written on the prescription at the place where Dr. Koontz enters refills. [Tr. 15]. I credit Dr. Koontz's testimony that he did not write the refill notation on the prescription. Dr. Koontz, however, did not see Respondent personally on that July 22, 2010 office visit. [Tr. 29]. Instead Dr. Koontz's physician assistant saw Dr. Quy and only had Dr. Koontz sign the prescription. [*Id.*]. Dr. Koontz also could not recall whether he handed the prescription directly to Dr. Quy after he signed it or whether he gave it to his office staff to hand to Respondent. [Tr. 35–36]. In fact, Dr. Koontz visibly struggled at the hearing to recall the events of the July 22, 2010 office visit.

On the other hand, Dr. Quy testified that he did not forge the refill notation, and I find his testimony credible. [Tr. 95]. As a physician, if he would have forged the prescription, he would have placed the refill number at the appropriate place on the prescription for annotating refills. [Tr. 96, 128]. The ''x4'' was not located in the appropriate refill place on the prescription. I also find his account of the visit to Dr. Koontz's office credible. He readily recalled details of the visit, identified the physician's assistant he saw, and proffered a plausible explanation for the refill notation, namely that a member of Dr. Koontz's office staff may have approved these refills to spare a busy resident an additional office visit. [Tr. 137–138; 95; 142–143]. Dr. Quy's testimony was also supported by documentary evidence which confirmed his ready access to refills from Dr. Koontz's office upon request, along with prescriptions that he obtained from other physicians. [Govt. Exh. 2; Govt. Exh. 4]. He had no need to forge refills on the prescription.

In light of the Government's failure to proffer any additional evidence that Dr. Quy was responsible for the refill notation on the prescription, I find that the Government has failed to prove, by a preponderance of the evidence, that Dr. Quy forged the refill notation on the July 22, 2010 prescription.

D. Respondent's DUI Arrest

On September 6, 2010, Respondent was scheduled to work a shift beginning at 6:00 a.m. at Purcell Hospital. [Govt. Exh. 5]. When Respondent went to work that morning, other hospital employees observed that he appeared to be in an impaired state. [*Id.*]. These employees reported Respondent to his supervisor, Dr. Berry Winn. [*Id.*]. Dr. Winn instructed Respondent not to see patients and to sleep in a room at the hospital. [*Id.*]. Respondent slept until approximately 12:45 p.m. when he attempted to drive himself home from the hospital. [*Id.*].

While driving home, Respondent was stopped by a Purcell police officer on suspicion of driving under the influence. [*Id.*]. Respondent performed poorly on the field sobriety test and agreed to submit to a drug test at Purcell Hospital. [*Id.*]. During the search of Respondent's car, the officer found Dr. Quy's loaded nine millimeter pistol, along with additional rounds of ammunition and a hunting knife. [*Id.*]. Dr. Quy possesses an active concealed carry license from the state of Oklahoma. [Resp. Exh. 7].

The officer then arrested Respondent for driving under the influence of drugs and for possession of a loaded weapon while under the influence of narcotics. [Govt. Exh. 5]. Dr. Quy's sample tested positive for Ambien, alprazolam, butalbital, chlorpheniramine, and citalopram. [*Id.*]. The next day, September 7, 2010, Respondent was charged with one count of driving under the influence of drugs. [*Id.*]. He was arraigned in the District Court of McClain County, Oklahoma. [*Id.*].

On February 24, 2011, Respondent entered a plea of nolo contendere to the charge. [Govt. Exh. 7; Tr. 55]. The Court sentenced Dr. Quy to six months imprisonment, all of which were deferred, pending his satisfactory completion of the probationary conditions. [Govt. Exh. 7]. Respondent successfully completed his probation by attending a DUI school, paying a fine and court costs, obtaining a substance abuse evaluation, and attending a victims impact panel. [*Id.*]. After Dr. Quy satisfied these probationary conditions, the case was dismissed on August 23, 2011. [Govt. Exh. 7; Tr. 115–116].

E. Oklahoma Medical Board Investigation

On September 7, 2010, Steve Washbourne, the Director of Investigations for the Oklahoma Medical Board, received a phone call from Dr. Winn about Respondent. [Tr. 38–39]. Dr. Winn informed Mr. Washbourne that Dr. Quy had reported to work at Purcell Hospital in an impaired state and had been subsequently instructed not to see patients. [Tr. 39]. Dr. Winn provided Mr. Washbourne with Respondent's telephone number. [*Id.*].

That same day, Mr. Washbourne contacted Respondent via telephone. [Tr. 40]. During their conversation Respondent admitted to taking Ambien prior to reporting for his shift at the hospital and that he had been instructed not to see patients that day. [*Id.*]. Respondent further admitted that he had been stopped while driving home from the hospital and had been arrested by a Purcell police officer. [Tr. 40–41]. Mr. Washbourne directed Respondent to contact Dr. Lanny Anderson, the head of the Oklahoma Health Professionals Program (''HPP''), and obtain a substance abuse evaluation. [Tr. 41–42].

On September 8, 2010, Mr. Washbourne conducted an interview with Respondent at the Board's office. [Tr. 43]. I find Mr. Washbourne's testimony consistent with the documentary exhibits and credible. Mr. Washbourne testified that Respondent's demeanor at the meeting was ''a little subdued.'' [Tr. 45]. During this interview, Mr. Washbourne questioned Respondent on the events of September 6, 2010. Dr. Quy told Mr. Washbourne that he had taken three Ambien pills prior to his shift, two on the evening of

September 5, 2010, and one at 2:30 a.m. on the morning of September 6, 2010. [Tr. 43]. Respondent also admitted to taking TussiCaps, butalbital, and Xanax prior to the start of his shift. [Tr. 43–44]. In response to Mr. Washbourne's questioning, Dr. Quy told him, untruthfully, that he had obtained the TussiCaps from samples stored at the offices where he worked and the Xanax from his grandmother. [Tr. 43–44, 60–61, 94]. Dr. Quy also told Mr. Washbourne that he received other controlled substances pursuant to prescriptions written by other physicians. [Tr. 44–45]. Mr. Washbourne then directed Dr. Quy to obtain an assessment from the HPP. [Tr. 45].

F. Respondent's Inpatient Treatment at Pine Grove

On September 27, 2010, Dr. Quy went for a three-day evaluation at Pine Grove, which is a comprehensive addiction treatment center located in Hattiesburg, Mississippi. [Resp. Exh. 2]. Following his preliminary evaluation, Respondent entered Pine Grove on October 5, 2010 for an intensive ninety-day addiction treatment program. [*Id.*]. At Pine Grove, Dr. Quy fully participated in a variety of treatment activities, including educational lectures, group and individual therapy, weekly 12-step meetings, specialized programs for impaired professionals, and written assignments. [*Id.*]. And throughout the ninety-day treatment program, Dr. Quy was subject to random urinalysis screening, all of which he passed. [*Id.*].

Respondent's treating physician and clinical therapist prepared a report that detailed his treatment at Pine Grove. [*Id.*]. Although Dr. Quy apparently initially struggled with denial and confusion about his addiction, they acknowledged he ''made steady progress'' during his stay and ultimately ''became forthcoming about his use of chemicals.'' [*Id.*]. They highlighted his positive attitude to and compliance with his treatment plan. [*Id.*]. Lastly, they noted that Dr. Quy's wife was supportive of his treatment and recovery efforts and that she maintained frequent contact with the Pine Grove staff during his stay. [*Id.; see also* Resp. Exh. 8 for evidence of Mrs. Quy's current support].

On December 31, 2010, Pine Grove discharged Respondent after he successfully completed the treatment program. [*Id.,* Resp. Exh. 3]. His discharge diagnosis was sedative/hypnotic dependence. [Resp. Exh. 2]. Pine Grove recommended that Dr. Quy be allowed to return to work as a physician beginning on January 3, 2011, and that he follow the restrictions set forth in his monitoring contract with the Oklahoma Medical Board. [*Id.*].

Dr. Quy credibly testified that he benefitted from his treatment at Pine Grove. [Tr. 102]. Specifically he testified that his treatment at Pine Grove allowed him to recognize and acknowledge his addiction. [Tr. 102]. He further testified that the Pine Grove program taught and reinforced techniques and behaviors to help him manage his addiction. [*Id.*]. Respondent noted that since his treatment at Pine Grove, he has used these tools on a daily basis to address his addiction and continue his recovery. [Tr. 102–03].

G. Respondent's Post-Treatment Interview With the Medical Board

Mr. Washbourne conducted a post-treatment interview with Respondent on January 25, 2011. [Tr. 46]. During this interview, Respondent initially maintained that he obtained the TussiCaps and butalbital from his employer and the Xanax from a family member. [Tr. 46–47]. When pressed by Mr. Washbourne, Dr. Quy admitted that he had actually stolen the TussiCaps and butalbital from his father's drug cabinet. [Tr. 47, 49]. And when asked about the Xanax, Respondent gave Mr. Washbourne a blister pack of the medication, which he claimed was left at his house by his grandmother who had visited from Laos. [Tr. 47–48; Govt. Exh. 8]. Mr. Washbourne discovered the manufacture date on the blister pack did not match the information provided by Respondent and asked him about the discrepancy. [Tr. 48]. At that point, Respondent admitted that he had obtained the Xanax by purchasing the blister packs over the internet. [Tr. 48–49]. At the conclusion of the interview, Mr. Washbourne instructed Respondent that the Medical Board would subsequently issue a complaint and citation against him. [Tr. 51].

H. Medical Board Action Against Respondent

On January 28, 2011, the Board issued a Complaint and Citation against Respondent. [Govt. Exh. 5]. On March 10, 2011, Respondent voluntarily submitted to the Board's jurisdiction and entered into an Order Accepting Voluntary Submittal to Jurisdiction with the Board. [*Id.*]. This Order found that Dr. Quy had committed several violations of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act. [*Id.*]. As a result of these violations, the Board suspended Dr. Quy's medical license for thirty days, until April 9, 2011, and placed him on probation for five years. [*Id.*]. The Board ordered, among other probationary conditions, that Dr. Quy sign a contract with the HPP and abide by all terms of that contract. [*Id.*].

Dr. Quy's Oklahoma medical license is currently active and subject to a five year probationary period scheduled to end on April 9, 2016. Currently Respondent's probationary conditions include: (a) Not supervising allied health professionals that require the surveillance of a licensed physician; (b) submitting biological fluid specimens for analysis upon request of the Oklahoma State Board of Medical Licensure and Supervision; (c) not prescribing, administering or dispensing any medications for personal use or for use by a family member; (d) not using any medication except as authorized by his treating physician for a legitimate medical need and informing any treating physician of the Board's Order; (e) not ingesting any substances, including alcohol, which would cause a body fluid sample to test positive for prohibited substances; (f) releasing any and all medical and psychiatric records to the State Board including his treatment records at Pine Grove; (g) abiding by the recommendations of Pine Grove and comply with his postcare contract with Pine Grove; (h) signing a contract with the Health Professionals Recovery Program and abiding by its terms; (i) obtaining individual therapy from a Board approved therapist and providing quarterly reports from his therapist to the Board; (j) obtaining individual treatment from a Board approved psychiatrist and providing quarterly reports from his psychiatrist to the Board; (k) attending four 12-Step meetings per week, including one Health Professionals Recovery Program meeting; (l) promptly notifying the Board of any relapse or arrest or citation for traffic or criminal offenses involving substance abuse; and (m) keeping the Board informed of his current address. [Govt. Exh. 5].

I. Respondent's Current Situation

Respondent credibly testified that he has been clean and sober since October 5, 2010. [Tr. 162]. He is currently employed as a family medicine physician with Midwest Physicians in Shawnee, Oklahoma. [Tr. 90]. Dr. Quy possesses an active DEA registration, Number FQ1513818, which was issued on July 13, 2009 and is not scheduled to expire until April 30, 2012. [Govt. Exh. 1; FOF 1]. Without a DEA registration, Respondent testified that he would not be able to have a meaningful medical practice. [Tr. 119–120]. Respondent's current employer, like most hospitals, requires physicians to

maintain full DEA registration privileges. [Tr. 123].

Dr. Quy's state controlled substances registration is likewise active and subject to a probationary period supervised by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (''OBNDD''). [Tr. 92–93]. Currently OBNDD's probationary conditions include: (a) Dr. Quy must follow the stipulations outlined in the Medical Board's order; (b) he must not physically handle any controlled substances; and (c) that Dr. Quy may only write prescriptions in an office with a supervising physician. [*Id.* at 93]. If Dr. Quy violates his probation, he faces a minumum fine of five thousand dollars and the loss of his state controlled substances registration. [*Id.*].

Respondent is currently in full compliance with the conditions of the Board's order and his probation with the Medical Board. [Tr. 54]. In addition, he is in full compliance with the probationary conditions of OBNDD. [Tr. 82, 92–93]. All of his alcohol and drug screens have tested negative. [Resp. Exh. 1; Resp. Exh. 9; Tr. 54]. Respondent began these drug testing screens on January 5, 2011, three months prior to receiving probation from the Board. [Tr. 66]. Mr. Washbourne testified that the Board and HPP are closely monitoring Dr. Quy's recovery and his continued compliance with the probationary conditions. [Tr. 62–63]. Similarly, Dr. Anderson, the head of the HPP, reported that ''all steps are in place to allow [Dr. Quy] to practice safely and maintain a good recovery plan.'' [Resp. Exh. 4].

IV. Statement of Law and Discussion

A. Position of the Parties

1. Government's Position

The Government asserts that the appropriate remedy in this matter is revocation of the Respondent's registration. [Govt. Brief at 22]. Specifically in addressing the Section 823(f) public interest factors, the Government argues that all five factors support the revocation of Respondent's registration. [Govt. Brief at 15]. Under the first factor, the Government asserts that the imposition of probationary conditions on Respondent's state licenses, namely his medical license and OBNDD registration, ''weighs against a finding that Dr. Quy's registration is consistent with the public interest.'' [Govt. Brief at 16]. Next the Government cites Respondent's history of violating federal and state law by illegally obtaining and using controlled substances as relevant conduct under factors two and four which supports the revocation of his registration. [Govt. Brief at 17–18]. The Government also notes that the Controlled Substances Act has a ''carefully crafted scheme for regulating the distribution of controlled substances and preventing the diversion of controlled substances into illegitimate uses and drug abuse.'' The Government argues that the Respondent's conduct violated this closed regulatory system. [Govt. Brief at 17].

For factor three, the Government argues that Respondent's DUI arrest and subsequent no contest plea constitutes a relevant conviction under Agency precedent and further supports the requested revocation of his registration. [Govt. Brief at 18–19].

Lastly under factor five, the Government makes several arguments. First the Government cites Dr. Quy's history of abusing controlled substances as relevant conduct that threatens the public health and safety. [Govt. Brief at 19]. Further, the Government asserts that the Respondent ''permitted the drug diversion of controlled substances by illegally purchasing, stealing, and using controlled substances.'' [Govt. Brief at 20]. The Government also argues that Dr. Quy has not accepted responsibility or shown any remorse for his previous unlawful conduct. [Govt. Brief at 21–22]. In conclusion, the Government claims that Dr. Quy's continued registration with the DEA would be inconsistent with the public interest and that his registration should be revoked. [Govt. Brief at 22–23].

2. Respondent's Position

Respondent asserts that the Government has failed to establish that Dr. Quy's continued registration would be inconsistent with the public interest. [Resp. Brief at 8]. While acknowledging Dr. Quy's prior substance abuse problem, Respondent argues that he has taken ''positive steps to address and correct this problem.'' [*Id.*]. These rehabilitative steps include completing ninety days of inpatient substance abuse treatment, and agreeing to an aftercare contract that requires, among other conditions, periodic alcohol and drug screens and weekly participation in support group meetings. [Resp. Brief at 5, 8]. Respondent claims that the DEA has ignored Dr. Quy's substantial efforts at rehabilitation and his demonstrated commitment to fully complying with DEA regulations. [Resp. Brief at 8].

Respondent also argues that the public interest will be safeguarded because Dr. Quy is subject to intensive monitoring and oversight mandated by the Oklahoma licensing authorities. [Resp. Brief at 8]. These authorities, the Oklahoma Medical Board and OBNDD, have continued to permit Dr. Quy to prescribe controlled substances. [Resp. Brief at 7]. And the DEA itself, Respondent notes, is fully aware that Dr. Quy remains in active compliance with his probationary conditions. [Resp. Brief at 4]. Respondent concludes by arguing that the DEA has failed to meet its burden to show that Dr. Quy's continued registration is inconsistent with the public interest. [Resp. Brief at 8–9].

B. Statement of Law and Analysis

Pursuant to 21 U.S.C. 824(a)(4) (2006),[1] the Administrator may revoke a DEA Certificate of Registration if she determines that such registration would be inconsistent with the public interest as determined pursuant to 21 U.S.C 823(f). In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to 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.

21 U.S.C. 823(f) (2006).

These factors are to be considered in the disjunctive; the Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked. *See Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (DEA 2003). Moreover, the Administrator is ''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).

The Government bears the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e) (2011). Once the Government has met its burden of proof, the burden of proof shifts to the Respondent to show why his continued registration would be consistent with the public's interest. *See Medicine Shoppe—Jonesborough,* 73 FR 364, 380 (DEA 2008). To this point, the Agency has repeatedly held that the ''registrant must accept responsibility for [his] actions

[1] The Administrator has the authority to make such a determination pursuant to 28 CFR 0.100(b) (2011).

and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe—Jonesborough,* 73 FR at 387; *see also Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (DEA 2007). In short, after the Government makes its *prima facie* case, the Respondent must prove by a preponderance of the evidence that he can be entrusted with the authority that a registration provides by demonstrating that he accepts responsibility for his misconduct and that the misconduct will not re-occur.

1. Factor One: Recommendation of Appropriate State Licensing Board

Although the recommendation of the applicable state medical board is probative to this factor, the Agency possesses ''a separate oversight responsibility with respect to the handling of controlled substances'' and therefore must make an ''independent determination as to whether the granting of [a registration] would be in the public interest.'' *Mortimer B. Levin, D.O.,* 55 FR 8,209, 8,210 (DEA 1990); *see also Jayam Krishna-Iyer, M.D.,* 74 FR 459, 461 (DEA 2009). The ultimate responsibility to determine whether a registration is consistent with the public interest has been delegated exclusively to the DEA, not to entities within state government. *Edmund Chein, M.D.,* 72 FR 6,580, 6,590 (DEA 2007), *aff'd, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008). So while not dispositive, state board recommendations are relevant on the issue of revoking or maintaining a DEA registration. *See Gregory D. Owens, D.D.S.,* 74 FR 36,751, 36,755 (DEA 2009); *Martha Hernandez, M.D.,* 62 FR 61,145, 61,147 (DEA 1997).

In this case, the Oklahoma Medical Board suspended Dr. Quy's medical license for a period of thirty days, from March 10, 2011, to April 9, 2011, and placed him on probation for five years. [Govt. Exh. 5]. At the conclusion of the thirty-day suspension, the Board reinstated Dr. Quy's medical license. Therefore he currently possesses an active Oklahoma medical license, subject to the five year probationary period scheduled to end on April 9, 2016.

The Oklahoma Bureau of Narcotics and Dangerous Drugs Control (''OBNDD''), which issues state controlled substances registrations, also placed Respondent on probation. [Tr. 92–94]. Likewise, Respondent currently possesses an active, in all substances, controlled substances registration in Oklahoma subject to the supervision of the OBNDD. [*Id.*]

Therefore, I find that both the Oklahoma State Medical Board and the OBNDD have allowed Respondent to retain his medical license and state controlled substances registration subject to the Board's and OBNDD's monitoring. Although neither the Board nor OBNDD have made an official recommendation for this proceeding, I find these actions by the Board and OBNDD weigh in favor of continuing the Respondent's registration. *See Vincent J. Scolaro, D.O.* 67 FR 42,060, 42,064 (DEA 2002) (noting that the Agency properly considers ''facts surrounding state licensure'' under this factor). While their recommendations weigh in favor of continuing the Respondent's registration, nevertheless, the Agency has consistently held that a practitioner's possession of State authority, while a prerequisite to maintenance of a registration, is not dispositive of the public interest determination. *Mark De La Lama, P.A.,* 76 FR 20,011, 20,018 (DEA 2011).

2. Factors Two and Four: Applicant's Experience With Controlled Substances and Compliance With Applicable State, Federal, or Local Laws Relating to Controlled Substances

Under the Controlled Substances Act, it is ''unlawful for any person knowingly or intentionally . . . to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.'' 21 U.S.C. 843(a)(3) (2006); *see also* Okla. Stat. tit. 63, § 2–406(3) (2012) (analagous state law requirement). Additionally, Oklahoma law not only proscribes such conduct by physicians, but also sets forth additional restrictions on the handling and usage of controlled substances by Oklahoma doctors. *See* Okla. Stat. tit. 59, § 509 (2012) (defining ''unprofessional conduct'' under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act'') ; Okla. Admin. Code § 435:10–7–4 (2010) (enumerating additional conduct covered by the statutory term ''unprofessional conduct''). These restrictions include prohibitions on purchasing and administering controlled substances for the physician's personal use and using habit-forming drugs.[2]

[2] Okla. Stat. tit. 59, § 509(4) (2012) (defining unprofessional conduct to include''[h]abitual intemperance or the habitual use of habit-forming drugs''); Okla. Admin. Code § 435:10–7–4(5) and (26) (2010) (further defining unprofessional conduct to include ''[p]urchasing or prescribing any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use'' and ''prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself'').

It is undisputed that Respondent violated both the CSA and Oklahoma law by obtaining controlled substances for his own use. Likewise by engaging in ''doctor shopping'' to obtain additional prescriptions for Ambien, Dr. Quy violated federal and state law. 21 U.S.C. 843(a)(3) (2006); Okla. Stat. tit. 63, § 2–406(3) (2012). Additionally by stealing and unlawfully consuming TussiCaps, a schedule III controlled substance, and butalbital from his father's drug cabinet, Dr. Quy committed another serious violation of the CSA and Oklahoma law. 21 U.S.C. 829(b) (2006) (''[N]o controlled substance in schedule III or IV . . . may be dispensed without a written or oral prescription''); Okla. Stat. tit. 63, § 2–309(B)(1) (2012) (analgous state law requirement). Finally, his purchase of Xanax, a schedule IV controlled substance, from an Internet pharmacy and presumably without a legitimate prescription also violated both federal and state law. 21 U.S.C. 829(e)(1) (2006) (''No controlled substance that is a prescription drug . . . may be delivered, distributed, or dispensed by means of the Internet without a valid prescription''); Okla. Stat. tit. 63, § 2–309(B)(1) (2012). Such serious violations of federal and state law, coupled with Dr. Quy's unlawful consumption of controlled substances, weigh in favor of revoking the Respondent's DEA registration. Accordingly, under factors two and four, I find that the Government has met its burden and that grounds do exist for revoking the Respondent's DEA certificate of registration.

3. Factor Three: Applicant's Conviction Record Relating to Controlled Substances

Respondent was charged with one misdemeanor count of driving under the influence of drugs in violation of Okla. Stat. tit. 47, § 11–902 (2012). [Govt. Exh. 7]. Dr. Quy pled no contest to the charge and after succesfully complying with the Court's order, the charge was dismissed. [*Id.*]. After his arrest on this charge, Dr. Quy tested postitive for Ambien, alprazolam, butalbital, chlorpheniramine, and citalopram. [Govt. Exh. 5].

The Agency has held that a nolo contendere plea is sufficient to find that the Respondent's conviction record relating to controlled substances weighs against his continued registration. *Clinton D. Nutt, D.O.,* 55 FR 30,992 (DEA 1990). Also, because the evidence in the record indicates that Respondent had abused controlled substances in the hours prior to this arrest, I find that this incident is relevant to factor three. *But see Mark De La Lama, P.A,* 76 FR

20,011, 20,015 n.11 (DEA 2011) (finding that a DUI arrest was not relevant because there was no evidence that the respondent was under the influence of a controlled substance at the time of the incident). Accordingly, I find that consideration of this factor weighs in favor of revoking the Respondent's DEA certificate of registration.

4. Factor Five: Other Factors Affecting the Public Interest

The Agency has long held that a practitioner's self-abuse of controlled substances constitutes ''conduct which may threaten public health and safety.'' 21 U.S.C. 823(f)(5) (2006); *see also Tony T. Bui, M.D.,* 75 FR 49,979, 49,990 (DEA 2010); *Kenneth Wayne Green, Jr., M.D.,* 59 FR 51,453 (DEA 1994); *David E. Trawick, D.D.S.,* 53 FR 5,326 (DEA 1988). Here, the Respondent self-abused Ambien, alprazolam, butalbital, and TussiCaps. Such unlawful ingestion of controlled substances, especially when a physician is caring for patients while under the influence of these drugs, places the public health and safety in jeopardy. Another significant factor in this case is the fact that the Respondent unlawfully consumed controlled substances prior to reporting for duty at Purcell Hospital. Although this record contains no evidence of any harm coming to his patients, thanks to the actions of the staff at Purcell Hospital, the fact that he was willing to risk such harm is inconsistent with the requirements of a DEA registrant.

But the critical consideration in this proceeding is whether the circumstances that existed during Respondent's addiction to controlled substances have changed sufficiently to support a conclusion that maintaining Respondent's registration would be in the public interest. *See Ellis Turk, M.D.,* 62 FR 19,603, 19,604 (DEA 1997). As this Agency has repeatedly held, a proceeding under the Controlled Substances Act '' 'is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused . . . their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be entrusted with the responsibility carried by such a registration.' '' *Jon Karl Dively, D.D.S.,* 72 FR 74,332, 74,334 (DEA 2007) (*quoting Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (DEA 2007)).

In this case, I found the Respondent credible when he testified that he has been drug free since October 5, 2010. He has remained active in his recovery, complied with all terms of his probation, and his drug screens have all tested negative. As the Deputy Administrator has previously determined, ''[t]he paramount issue is not how much time has elapsed since [the Respondent's] unlawful conduct, but rather, whether during that time [the] Respondent has learned from past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with a DEA registration.'' *Leonardo V. Lopez, M.D.,* 54 FR 36,915 (DEA 1989). Even though it has been previously found that time, alone, is not dispositive in such situations, it is certainly an appropriate factor to be considered. *See Robert G. Hallermeier, M.D.,* 62 FR 26,818 (DEA 1997) (four years); *John Porter Richards, D.O.,* 61 FR 13,878 (DEA 1996) (ten years); *Norman Alpert, M.D.,* 58 FR 67,420, 67,421 (DEA 1993) (seven years).

Here, the conditions of Respondent's probation with the Oklahoma Medical Board require him to remain compliant with the contract he signed with the Oklahoma Health Professionals Program. [Govt. Exh. 5; Resp. Exh. 4]. Additionally during Dr. Quy's five year probationary period, he is subject to supervised random drug screens from both the HPP and the Board, and in the event of a relapse, Respondent must promptly notify the Board. [*Id.*]. As part of his probation conditions, Respondent must attend support group meetings four times a week, receive counseling, abstain from consuming nonprescribed medication, and see a psychiatrist. [Govt. Exh. 5]. Dr. Quy has successfully complied with all of these conditions, including frequently attending support group meetings. [Resp. Exh. 4; Resp. Exh. 5]. The Medical Director of HPP, Dr. Anderson, has affirmed that the Respondent has been compliant with these requirements, and that all of his drug screens have been negative. [Resp. Exh. 9]. This past conduct demonstrates the Respondent's ability to comply with both his probation and his HPP contract and to continue to perform his daily functions drug-free.

After the Government ''has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.' '' *Medicine Shoppe—Jonesborough,* 73 FR 364, 387 (DEA 2008) (*quoting Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (DEA 2007). ''Moreover, because 'past performance is the best predictor of future performance,' *Alra Labs., Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe—Jonesborough,* 73 FR at 387; *see also Samuel S. Jackson, D.D.S.,* 72 FR 23, 848, 23,853 (DEA 2007); *John H. Kennedy, M.D.,* 71 FR 35,705, 35,709 (DEA 2006); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (DEA 1995). *See also Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005) (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

Here, I find that the Respondent has taken responsibility for his misconduct. The stark contrast between Respondent's pre-treatment letter to the Medical Board, in which he denied having an addiction and his post-treatment statements and testimony is revealing. [Govt. Exh. 6; Tr. 135]. As is common for addicts, it was only after Dr. Quy underwent the intensive inpatient treatment program at Pine Grove that he was able to recognize and began to address his addiction. [Resp. Exh. 2]. Likewise, at the hearing, he testified credibly and candidly about his addiction and its impact on his family and medical practice. [Tr. 104–105, 111, 145, 148–149, 162]. He demonstrated remorse for his behavior and readily acknowledged the severity of his misconduct. [Tr. 130–131; 136–137; 145–147].

As for the troubling false statements that Dr. Quy made to Mr. Washbourne at the January 25, 2011 interview, I note several mitigating factors. First, Dr. Quy quickly recanted his previous statements when questioned by Mr. Washbourne. [Tr. 61]. Next, Respondent's false statements concerned only the source of the controlled substances he abused, he did not attempt to conceal the fact that he abused these controlled substances. Finally, while those false statements were made at the beginning of Dr. Quy's recovery process, I note that Dr. Quy testified truthfully about the January 25, 2011 interview at the hearing and acknowledged that, although he initially made false statements to Mr. Washbourne, he later ''came clean . . . and (has) been totally forthcoming since then.'' [Tr. 94].

Finally, I find that sufficient requirements are in place to ensure the public interest is protected from the possibility of relapse by the Respondent. Dr. Quy is subject to stringent monitoring by both the Oklahoma Medical Board and by OBNDD until

2016. During his probationary period, any relapse will be detected because of the drug screens and the requirement for the Respondent to disclose any violations of his HPP contract to the Board. Second, the DEA can further restrict his registration to the prescribing of controlled substances only, and to prohibit his prescribing to himself or to any other family member. Lastly, the situation that led to his addiction no longer exists. The Respondent has completed his residency program and has been drug free since October 5, 2010. These factors are also appropriate to consider when determining the appropriate use of the Administrator's discretion in this matter. *See Martha Hernandez, M.D.,* 62 FR 61,145 (DEA 1997) (holding that, in exercising his discretion in determining the appropriate remedy, the Administrator should consider all of the facts and circumstances of a particular case).

V. Conclusion and Recommendation

Therefore, I conclude that the DEA has met its burden of proof and has established that grounds exist for revoking the Respondent's DEA registration. I do not condone nor minimize the seriousness of the Respondent's misconduct. However, based on this record, I recommend that the Respondent be afforded an opportunity to demonstrate that he can responsibly handle controlled substance prescriptions by the granting of a restricted registration. *See Cecil E. Oakes, Jr., M.D.,* 63 FR 11,907, 11,910 (DEA 1998) (''Such a resolution will provide Respondent with the opportunity to demonstrate that he can responsibly handle controlled substances, while at the same time protect the public health and safety, by providing a mechanism for rapid detection of any improper activity.'').

Based on this record and the Respondent's actions since December of 2010, I recommend to the Administrator [3] that the Respondent be granted a conditional DEA registration. I suggest that the conditions include: that the registration restricts his handling of controlled substances to merely prescribing and not storing or dispensing such drugs and that he be prohibited from prescribing controlled substances to himself or any family member. Further, I recommend that the Respondent be ordered to continue with his agreement with the Oklahoma HPP and to notify the DEA should a relapse or any positive urinalysis result. I recommend these restrictions apply for three years from the date of the final order so directing this result. In this way, the Respondent may safely continue his return to the full practice of medicine, and the DEA can assure itself of the Respondent's compliance with DEA regulations and of the protection of the public interest.

Dated: March 26, 2012.

Gail A. Randall,

Administrative Law Judge.

[FR Doc. 2013–18712 Filed 8–2–13; 8:45 am]

BILLING CODE 4410–09–P

[3] The Administrator has the authority to make such a determination pursuant to 28 CFR 0.100(b) (2011).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0022]

Requirements for the OSHA Training Institute Education Centers Program and the OSHA Outreach Training Program; Requesting the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits comments concerning its proposal to obtain OMB approval of the information collection requirements contained in the OSHA Training Institute Education Centers Program and the OSHA Outreach Training Program.

DATES: Comments must be submitted (postmarked, sent, or received) by October 4, 2013.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than ten (10) pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0022, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0022). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Jim Barnes, Director, Office of Training and Educational Programs, or Kimberly Mason, OSHA Training Institute Education Centers Program at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Jim Barnes, Director, Office of Training and Educational Programs, or Kimberly Mason, OSHA Training Institute Education Centers Program, Directorate of Training and Education, OSHA, U.S. Department of Labor, 2020 S Arlington Heights Rd., Arlington Heights, IL. 60005–4102; Phone: (847) 759–7781.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. Consistent with the