

Accordingly, based solely on Respondent's misconduct in retaining Mullen, I conclude that the factors relevant to this misconduct support the outright suspension of Respondent's registration for a period of one year. Moreover, I conclude that Respondent's failure to maintain complete and accurate inventories, as well as his misconduct in directing his unregistered office manager to administer controlled substances to patients, provide additional support for my conclusion that an outright suspension for one year is warranted.

While Respondent's failure to establish an initial inventory occurred sometime ago, his failure to maintain a complete and accurate biennial inventory based on an actual physical count of the controlled substances he had on hand is far more recent. While Respondent testified that he kept the records as he did based on the guidance he received from the state inspector in the 2005 time frame, the requirements to take an actual physical count "either as of the opening of business or as of the close of business on the inventory date" and to indicate this "on the inventory" are clear on the regulation's face. And even if Respondent was given erroneous advice by the state inspector, Respondent is responsible for knowing what is required by DEA's regulations.⁴¹

⁴¹ In his Recommended Decision, the ALJ discussed eight considerations that in his view, "mitigate the egregious of the shortcomings of Respondent's controlled substance inventory." R.D. 50. However, several of these do not mitigate the violation. For example, the ALJ noted that "Respondent kept a thorough and detailed perpetual inventory," that the DI was able to use the perpetual inventory to do an audit, and that "there is no evidence that the Respondent's recordkeeping errors resulted in any diversion." *Id.* These do not mitigate the violation because the CSA and DEA regulations require that a registrant take an actual physical count of the controlled substances on hand, and an accurate actual count, as memorialized in either an initial or biennial inventory, is essential in conducting an accurate audit. Likewise, an accurate audit is essential in determining whether a registrant is maintaining complete and accurate records of both the controlled substances he receives and those he "deliver[s] or otherwise dispose[s] of." 21 U.S.C. 827(a)(3). As for the ALJ's statement that there is no evidence that Respondent's recordkeeping errors resulted in diversion, generally, it is diversion that results in recordkeeping irregularities and not the other way around.

As for the ALJ's observation that Respondent kept receipt records that "showed the number of containers, the number of dosages in the containers, and the strength of the dosages," these records were prepared by Respondent's suppliers, *see, e.g.*, RX 89, at 37-47; and Respondent is required to maintain these records under the CSA and DEA regulations. *See* 21 U.S.C. 827(a)(3); 21 CFR 1304.21(a); *id.* § 1304.22(c). Moreover, because I hold that the violation is based on his failure to have a biennial inventory based on an actual count of the drugs on hand and not on the fact that his inventory did not list the number of containers, the

Moreover, while in response to the DI's instructions Respondent started taking an actual count, the ALJ found that "Respondent did not show remorse for his recordkeeping violations." R.D. 49.

As for his practice of directing his office manager to administer controlled substances to patients who were undergoing procedures when he was running late and not in the office, the ALJ also found that there were several factors that mitigate the egregiousness of these violations. According to the ALJ, these factors include that this happened only "occasionally," that Respondent had previously determined what medications should be administered to the patient based on his assessment of the patient's needs, that there is no evidence that the drugs were diverted, and that Respondent had ceased this practice after a patient questioned it. R.D. 50-51.

I do not take issue with the ALJ's conclusions that these factors mitigate the egregiousness of these violations. However, here again, the ALJ found that "Respondent never acknowledged that [the office manager's] administration of controlled substances violated DEA regulations. . . . Respondent never showed remorse for aiding and abetting dispensations by a non-registrant. Rather, the Respondent denied that these actions were wrongful." *Id.* at 46. The ALJ thus concluded that "Respondent has not accepted responsibility for his conduct, even though he discontinued these practices [and] . . . Respondent has not rebutted the Government's *prima facie* showing that the Respondent violated 21 U.S.C. [§ 841(a)]." *Id.* I agree.

Respondent's violations in failing to take a proper inventory and in directing his unregistered office manager to administer controlled substances, coupled with his failure to acknowledge his misconduct with respect to both violations, provide additional support for my decision to suspend Respondent's registration for a period of one year. As for the state court convictions, because they did not involve distribution to others and occurred 17 years ago, I give them only limited weight in my determination as to the appropriate sanction.

Accordingly, I will order that Respondent's registration be suspended outright for a period of one year. While Respondent testified that he no longer uses controlled substances during his procedures, if, following termination of

number of units or volume of each container, and the drug strength, the fact that he had records showing this information for the various receipts does not mitigate the violation.

the suspension, he intends to resume administering and/or engaging in the direct dispensing of controlled substances, Respondent must provide evidence to the local DEA office that he has completed a course in controlled substance recordkeeping prior to doing so. If Respondent does not provide such evidence, his registration shall be restricted to prescribing controlled substances.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) as well as 21 CFR 0.100(b), I order that DEA Certificate of Registration No. BK0639279 issued to Peter F. Kelly, D.P.M., be, and it hereby is, suspended for a period of one year. I further order that upon termination of the suspension, said registration shall be restricted to prescribing controlled substances, until such date that Peter F. Kelly, D.P.M., provides evidence that he has completed a course in controlled substance prescribing. This Order is effective July 24, 2017.

Dated: June 19, 2017.

Chuck Rosenberg,
Acting Administrator.

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110-0021]

Agency Information Collection Activities; Proposed eCollection eComments; Requested; Extension Without Change, of a Previously Approved Collection; FBI National Academy: End-of-Session Student Course Questionnaire; FBI National Academy: General Remarks Questionnaire

AGENCY: Federal Bureau of Investigation, Department of Justice.
ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 22, 2017.

FOR FURTHER INFORMATION CONTACT:

If you have additional comments especially on the estimated public burden or associated response time,

suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Keith Shirley, Unit Chief, Evaluation and Assessment Unit, Training Division, FBI Academy, Federal Bureau of Investigation, Quantico, Virginia 22135.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* FBI National Academy Post—End-of-Session Student Course Questionnaire—FBI National Academy: General Remarks Questionnaire

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form is unnumbered. The applicable component within the Training Division, Department of Justice (DOJ), Federal Bureau of Investigation (FBI)

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* FBI National Academy students that represent state and local police and sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations.

This collection is requested by the FBI National Academy. These

questionnaires have been designed to collect feedback from National Academy graduates and their supervisors to determine the type of impact the National Academy program had on their organization. The results are used to help determine if the National Academy program is functioning as intended and meeting its goals and objectives. We will utilize the students' comments to improve the current curriculum.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Approximately 1,000 FBI National Academy graduates per year will respond to two types of questionnaires. (1) FBI National Academy; End-of-Session Student Course Questionnaire and (2) FBI National Academy: General Remarks Questionnaire. It is predicted we will receive a 75% response rate for both questionnaires. Each student will respond to seven Student Course questionnaires—one for each course they completed. The average time for reading the questionnaire directions is estimated to be two (2) minutes; the time to complete each questionnaire is estimated to be approximately 13 minutes. Thus the total time to complete one Student Course questionnaire 15 minutes and 105 minutes for all seven questionnaires.

For the FBI National Academy: General Remarks Questionnaire, students will respond to one questionnaire. The average time for reading the questionnaire directions is estimated to be two (2) minutes; the time to complete the questionnaire is estimated to be approximately 10 minutes. Thus the total time to complete the General Remarks Questionnaire is 12 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1462.5 hours given that approximately 75% of those surveyed (or 750) will respond.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: June 20, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

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DEPARTMENT OF JUSTICE

Privacy Act of 1974; System of Records

AGENCY: Foreign Claims Settlement Commission, Department of Justice.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Foreign Claims Settlement Commission of the United States (Commission), Department of Justice, proposes to establish a new system of records to enable the Commission to carry out its statutory responsibility to receive, examine, adjudicate and render final decisions with respect to claims for compensation of individuals pursuant to the Guam World War II Loyalty Recognition Act. The system will include documentation provided by the claimants as well as background material that will assist the Commission in the processing of their claims. The system will also include the final decision of the Commission regarding each claim.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records notice is effective upon publication, with the exception of the routine uses that are subject to a 30-day period in which to comment, described below. Therefore, please submit any comments by July 24, 2017.

ADDRESSES: The public is invited to submit any comments via email at info.fcsc@usdoj.gov or by mail to the Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579.

FOR FURTHER INFORMATION CONTACT:

Jeremy LaFrancois, Chief Administrative Counsel, Foreign Claims Settlement Commission, U.S. Department of Justice, 600 E Street NW., Suite 6002, Washington, DC 20579, or by telephone at (202) 616-6975.

SUPPLEMENTARY INFORMATION: On December 23, 2016, President Obama signed into law the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114-328, 130 Stat. 2000, 2641-2647 (2016) (the "Guam Loyalty Recognition Act" or "Act"). The Act authorizes the Foreign Claims Settlement Commission of the United States (Commission) to adjudicate claims and determine the eligibility of individuals for payments under the Act, in recognition of harms suffered by residents of Guam as a result of the occupation of Guam by Imperial Japanese military forces during World War II.

The system of records covered by this notice is necessary for the Commission's