Indiana, New York and California," *id.* at 1, and is only registered by DEA at two addresses in Indiana, *id.* at 2, issued controlled substance prescriptions (and frequently with multiple refills) to residents of Oklahoma, Colorado, Ohio, Illinois, Texas, Georgia, and North Carolina without having performed a physical examination of them. *Id.* at 2–13. Many of the prescriptions were for a combination drug containing 15 milligrams of hydrocodone and 80 milligrams of acetaminophen and were for as many as 360 tablets per each dispensing; other prescriptions were for hydrocodone/acetaminophen (10/325), oxycodone/acetaminophen (7.5/500) and Xanax. *See id.*

Moreover, the State found, with respect to one patient (Patient D), that his wife had called Respondent and told her that he had been using 30–40 pills a day and was in a treatment program for overusing opioids. *Id.* at 6–7. The State found that two weeks after being informed of this, Respondent nonetheless issued Patient D a prescription for 360 tablets of hydrocodone/acetaminophen (15/80) with five refills. *Id.* at 7. Moreover, Respondent issued Patient D additional prescriptions for 360 tablets of hydrocodone/acetaminophen (15/80) on two occasions thereafter, as well as other prescriptions for hydrocodone/acetaminophen (10/325). *Id.*

The State further found that Respondent's conduct constituted multiple violations of Indiana law. *Id.* at 13–17. Among her violations were those of the State's rules which prohibit prescribing a drug without "[a] documented patient evaluation, including history and physical evaluation adequate to establish diagnosis and identify underlying conditions or contraindications to the treatment recommended or provided," 844 Ind. Admin. Code 5–3–2, and prescribing "any controlled substances to a person who the physician has never personally physically examined and diagnosed." 844 Ind. Admin. Code 5–4–1(a); *see also In re Edwards,* at 16–17.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in "the jurisdiction in which he practices" in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) ("[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice"). *See also id.* § 823(f) ("The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices."). As these provisions make plain, possessing authority under State law to handle controlled substances is an essential condition for holding a DEA registration.

Accordingly, DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration "upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances").

As found above, the Medical Licensing Board has issued a final order "permanently revoke[ing]" Respondent's Indiana medical license. *In re Edwards,* at 18. Respondent therefore lacks authority under Indiana law to dispense controlled substances in Indiana, the State in which she holds her DEA registration. Because Respondent is no longer entitled to maintain her DEA registration, her registration will be revoked and any pending applications will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I grant the Government's motion to supplement the record. I order that DEA Certificate of Registration, BE8619667, issued to Beverly P. Edwards, M.D., be, and it hereby is, revoked. I further order that any pending applications of Beverly P. Edwards, M.D., to renew or modify her registration, be, and they hereby are, denied. This Order is effective September 15, 2010.

Dated: July 30, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–20193 Filed 8–13–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Peter W.S. Grigg, M.D.; Revocation of Registration

On January 2, 2009, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Peter W.S. Grigg, M.D. (Respondent), of Colorado Springs, Colorado. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BG2107856, which authorized him to dispense controlled substances as a practitioner, and the denial of any pending application to renew or modify the registration on the ground that his "continued registration is inconsistent with the public interest." Show Cause Order at 1.

More specifically, the Show Cause Order alleged that on four separate occasions beginning on October 17, 2008, and ending on December 5, 2008, Respondent violated Federal law by selling prescriptions for oxycodone, a schedule II controlled substance, to a police officer acting in an undercover capacity, which lacked a "legitimate medical purpose" and were "outside the usual course of professional practice." *Id.* at 1–2 (citing 21 U.S.C. 841(a)(1) and 21 CFR 1306.04(a)). The Show Cause Order further alleged that on November 25, 2008, Respondent post-dated the oxycodone prescription and also "provided three capsules of MDMA, a schedule I controlled substance" and 60 tablets of oxycodone 10 mg. to the undercover officer, and that these distributions also lacked a legitimate medical purpose and were outside of the usual course of professional practice. *Id.* at 2. Finally, the Show Cause Order alleged that, on December 5, 2008, Respondent also unlawfully distributed four fentanyl 400 mg. tablets and one fentanyl transdermal patch 12 mcg./hr. to the undercover officer. *Id.*

Based on the above, I further found that Respondent's continued registration during the pendency of the proceeding would "constitute[] an imminent danger to the public health and safety." *Id.* I therefore immediately suspended Respondent's registration. *Id.* (citing 21 U.S.C. 824(d) & 21 CFR 1301.36(e)). The Order also notified Respondent of his right to request a hearing on the allegations and the procedure for doing so. *Id.* at 3.

On January 8, 2009, a DEA Diversion Investigator personally served the Order to Show Cause and Immediate Suspension of Registration on

Respondent. Affidavit of DI at 12. Since then, neither Respondent, nor anyone purporting to represent him, has either requested a hearing or submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(a) & (c). Accordingly, I find that Respondent has waived his right to a hearing and issue this Decision and Final Order based on the record submitted by the Government. *See id.* at 1301.43(d) & (e). I make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BG2107856, which expires on September 30, 2010. Respondent has not filed a renewal application.

On August 14, 2009, Respondent, who had been criminally charged with multiple counts of violating Federal law, entered into a Plea Agreement, Cooperation Agreement, and Stipulation of Facts with the United States. *See* Plea Agreement at 15, *U.S.* v. *Grigg,* No. 09–CR–00012–REB (D. Col. Aug. 19, 2009). Therein, Respondent admitted to the following:

First, Respondent admitted that on October 17, 2008, he met an undercover police officer in a parking lot in Colorado Springs, Colorado and sold to the officer a prescription for 60 tablets of oxycodone 30 mg., a schedule II controlled substance, in exchange for $100. *Id.* at 10. Respondent further admitted that "[t]he writing of the prescription was not done as part of [his] legitimate medical practice and was not for legitimate medical purposes." *Id.*

Second, Respondent admitted that on November 6, 2008, he met an undercover police officer in Colorado Springs and sold to the officer a prescription for 150 tablet of oxycodone 30 mg., in exchange for $1000. *Id.* Respondent further admitted that "[t]he writing of the prescription was not done as part of [his] legitimate medical practice and was not for legitimate medical purposes." *Id.*

Third, Respondent admitted that on November 25, 2008, he met an undercover police officer in Colorado Springs and sold to the officer a post-dated prescription for 150 oxycodone 30 mg., in exchange for $1,000. *Id.* at 11. Respondent further admitted that "[t]he writing of the prescription was not done as part of [his] legitimate medical practice and was not for legitimate medical purposes." *Id.* Respondent also admitted that on this date, he distributed to the officer 60 tablets of oxycodone 10 mg., a schedule II controlled substance, and that the distribution "was not done as part of legitimate medical practice and was not for legitimate medical purposes." *Id.* In addition, Respondent admitted that on this date, he "supplied the undercover police officer with three doses of 3,4-methylenedioxymethamphetamine (MDMA/ecstasy)," a schedule II controlled substance. *Id.* Based on the affidavit of a DEA Investigator, I further find that Respondent distributed the MDMA as part of the same transaction. Affidavit of DI at 9–10. I thus also find that the distribution was not for a legitimate medical purpose.

Fourth, Respondent admitted that on December 5, 2008, he met an undercover police officer in Colorado Springs and sold to the officer 320 tablets of oxycodone 10 mg., in exchange for $1,000. Plea Agreement at 11–12. Respondent further admitted that the distribution "was not done as part of [his] legitimate medical practice and was not for legitimate medical purposes." *Id.* at 11. Respondent admitted that on this date, he also supplied the undercover officer with one fentanyl transdermal patch and four tablets of fentanyl 400 mcg., both of which are schedule II controlled substances. *Id.* at 12.

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to "dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4). With respect to a practitioner, the Act requires the consideration of the following factors in making the public interest determination:

(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. § 823(f).

"[T]hese factors are * * * considered in the disjunctive." *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I "may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked." *Id.* Moreover, I am "not required to make findings as to all of the factors." *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

The record contains no evidence as to whether the State of Colorado has taken action against Respondent's controlled substance prescribing authority (factor one). Moreover, while the record establishes that Respondent has been charged with multiple felony violations of the CSA and that Respondent has entered into a plea agreement with the United States in which he admitted to multiple violations of the CSA, the record does not contain a judgment of conviction (factor three). However, under Agency precedent, neither of these findings is dispositive. *See Edmund Chein,* 72 FR 6580, 6590 n.22 (2007); *Mortimer B. Levin,* 55 FR 8209, 8210 (1990). Moreover, the evidence with respect to factors two (Respondent's experience in dispensing controlled substances) and four (Respondent's compliance with applicable laws related to controlled substances) establishes that Respondent has committed numerous acts which render his continued registration "inconsistent with the public interest." 21 U.S.C. 824(a)(4).

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

Under a longstanding DEA regulation, a prescription for a controlled substance is not "effective" unless it is "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a). This regulation further provides that "an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances." *Id. See also* 21 U.S.C. 802(10) (defining the term "dispense" as meaning "to deliver a controlled substance to an ultimate user by, or pursuant to *the lawful order of, a practitioner,* including the prescribing and administering of a controlled substance") (emphasis added).

As the Supreme Court recently explained, "the prescription requirement * * * ensures patients use controlled substances under the

supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)).

Under the CSA, it is fundamental that a practitioner must establish and maintain a bonafide doctor-patient relationship in order to act ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *Laurence T. McKinney,* 73 FR 43260, 43265 n.22 (2008); *see also Moore,* 423 U.S. at 142–43 (noting that evidence established that physician ''exceeded the bounds of 'professional practice,'" when ''he gave inadequate physical examinations or none at all,'' ''ignored the results of the tests he did make,'' and ''took no precautions against * * * misuse and diversion''). While the CSA generally looks to state law to determine whether a doctor and patient have established a bonafide doctor-patient relationship, *see Kamir Garces-Mejias,* 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.,* 72 FR 50397, 50407 (2007), here, there is no need to analyze the applicable provisions of Colorado law because Respondent admitted in his plea agreement that he acted outside of the usual course of professional practice and lacked a legitimate medical purpose in issuing the prescriptions which he sold to the undercover officer.

As found above, on four different occasions, Respondent sold prescriptions for oxycodone, a schedule II controlled substance, to an undercover police officer. Three of the prescriptions were for either 60 (Oct. 17) or 150 (Nov. 6 & 25) tablets of 30 mg. strength; the remaining prescription was for 320 tablets of 10 mg. strength. In addition, Respondent also physically distributed to the undercover officer 60 tablets of oxycodone 10 mg., three tablets of MDMA/ecstasy, one fentanyl patch, and four tablets of fentanyl 400 mcg., all of which are schedule II controlled substances. In exchange, Respondent received cash payments of $100 at the first transaction and $1000 at the remaining three. As Respondent has admitted, his conduct during each of the four transactions bears no semblance to the legitimate practice of medicine. Rather, during each of these transactions, he engaged in a drug deal and violated 21 U.S.C. 841(a)(1).

I thus conclude that Respondent's experience in dispensing controlled substances and his criminal conduct in violation of Federal law make clear that his continued registration ''is inconsistent with the public interest.'' 21 U.S.C. 823(f). Finally, for the same reasons which led me to find that Respondent posed ''an imminent danger to the public health or safety,'' *id.* section 824(d), I conclude that the public interest requires that his registration be revoked effective immediately and that any pending applications be denied. *See* 21 CFR 1316.67.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BG2107856, issued to Peter W.S. Grigg, M.D., be, and it hereby is, revoked. This Order is effective immediately.

Dated: July 30, 2010.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–64]

James Stephen Ferguson, D.M.D.; Revocation of Registration

On July 24, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Stephen Ferguson, D.M.D. (Respondent), of Pittsburgh, Pennsylvania. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, as a practitioner, BF6211762, on the ground that Respondent's ''license to practice dentistry in the state of Pennsylvania expired on March 31, 2009'' and that he is ''currently without authority to handle controlled substances in Pennsylvania, the state in which [he is] registered with DEA.'' Show Cause Order at 1. The Show Cause Order also proposed the denial of ''any pending applications for renewal or modification of'' Respondent's registration. *Id.*

The Show Cause Order alleged that Respondent's DEA registration does not expire until September 30, 2010, but that Respondent's Pennsylvania dental license had expired on March 31, 2009. *Id.* Next, the Show Cause Order alleged that commencing no later than June 2006, Respondent had issued dozens of prescriptions for schedule III controlled substances containing hydrocodone to his girlfriend L.J. ''for no legitimate medical purpose and not in the course of professional practice, in violation of 21 U.S.C. 841(a) and 21 CFR 1306.04(a).'' *Id.* at 2. The Order alleged that while Respondent used his girlfriend's real name on some prescriptions, on others he used false names to ''disguise the true recipient of the controlled substances.'' *Id.*

The Show Cause Order further alleged that when DEA Investigators searched his office, Respondent ''could not explain the fact that [he] did not have a patient file'' on his girlfriend, and that he admitted to investigators that he knew L.J. ''was addicted to hydrocodone.'' *Id.* Finally, the Order alleged that Respondent ''continued to issue controlled substance prescriptions during the month of April 2009'' despite the fact that his Pennsylvania dental license expired on March 31, 2009. *Id.*

On September 1, 2009, a Diversion Investigator (DI) went to Respondent's residence and left a copy of the Order to Show Cause with L.J. and his nephew, who agreed to give it to Respondent. *See* Gov't Submission of Evidence of Service of Process, Ex. A (declaration of DI). On September 15, 2009, Respondent requested a hearing and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJs).

On October 13, 2009, the Government moved for summary disposition. The basis of the motion was that Respondent ''is not duly authorized to possess, dispense or otherwise handle controlled substances in the State of Pennsylvania, the jurisdiction in which [he] engages in the practice of dentistry,'' and therefore, he is not entitled to hold a DEA registration. Gov't Mot. Summ. Disp., at 1–2. As support for the motion, the Government submitted a Certificate and Attestation signed by Lisa M. Burns, Board Administrator, Pennsylvania State Board of Dentistry, Bureau of Professional and Occupational Affairs. Therein, Ms. Burns stated that Respondent's license to practice dentistry in Pennsylvania was issued on February 2, 1999, and had expired on March 31, 2009. *Id.,* Ex. A. Respondent did not file a response to the Government's motion. Order Granting Gov't Mot. for Summ. Disp. at 2.

On October 22, 2009, the ALJ granted the Government's motion. *Id.* at 4. The ALJ found that there was no dispute over the material fact that Respondent no longer holds a state dental license and that he therefore lacks authority under Pennsylvania law to handle controlled substances in the State. *Id.* at 3. In accordance with the CSA and agency precedent, the ALJ held that because Respondent lacks this