Respondent as the primary drug and money courier strikes at the heart of the CSA, the very statute that privileged the Respondent to handle controlled substances in his medical practice. The deleterious potential effect that these drugs can have on the human body, the peril in which they put human life when indiscriminately ingested by willing abusers, and the sheer volume by which the Respondent was caught delivering them cannot be overstated. The reckless danger that the Respondent's course of action posed to the public health and safety of his wife, at a minimum, and possibly even the surrounding area and community where the Burning Man Festival was to take place, would not be counterbalanced even if the Respondent had deemed to submit evidence of many years of admirably-conducted medical practice. The offensiveness of his actions, including the duty imposed by his Hippocratic oath to abstain from doing harm, as well as his lack of candor at his hearing in minimizing the extent to which he helped orchestrate this scheme, all militate strongly in favor of revocation.

Even if the Respondent's position regarding the operative facts were embraced, it would not change the outcome of this recommended decision. The Respondent acknowledged during his testimony that he (correctly) suspected that his wife was abusing illicit drugs based on a readily-available set of objective facts that he was even able to catalogue upon request during his testimony. He acknowledged that he was paying a $1,000.00 to a man who made him uneasy at the request of his (likely drug-abusing) spouse. The Respondent even conceded that any reasonable person would have realized that there were illicit drugs in the motor home he was driving that evening,[64] and that ''[a]ll [he] can claim is to be the stupidest doctor at the time'' [65] is (even if credited) wholly unpersuasive, and ''manifests a degree of irresponsibility that is incompatible with what DEA expects of a registrant.'' *Cf. Lynch,* 75 FR at 78753 (registrant's position that it was acceptable for him to prescribe controlled substances in the face of known and obvious diversion risks on the theory that he is not a lawyer or police agent characterized as ''manifest[ing] a degree of irresponsibility that is incompatible with what DEA expects of a registrant''). Reduced to its essence, the Respondent seeks relief from his actions and convictions by a claim that he stubbornly refused to acknowledge what his trained eyes and ears informed him of: that he was giving money to a drug dealer and receiving illicit drugs for his wife that were packaged as if for sale and driving those drugs to an art festival in the Nevada desert. The Respondent's odd theory that turning a blind eye to circumstances that required him to refrain from actions that were repugnant to his responsibilities as a registrant, and whistling past the graveyard of what was obviously a drug transaction where he was playing an integral role, is not a persuasive argument in favor of continuing to entrust him with the responsibilities of a DEA registrant. *Cf. Holloway Distrib.,* 72 FR 42118, 42124 (2007) (in the context of a List I distributer, a policy of ''see no evil, hear no evil'' is fundamentally inconsistent with the obligations of a DEA registrant). In short, his efforts to convince DEA that he is ''the stupidest doctor,'' [66] even if successful, would hardly have inspired sufficient confidence in his ability to continue to execute the responsibilities attendant upon a registrant to fairly merit his continued exercise of that privilege.

Accordingly, the Respondent's Certificate of Registration should be *Revoked* and any pending applications for renewal should be *Denied.*

Dated: January 24, 2011.

John J. Mulrooney, II,

U.S. Administrative Law Judge.

[FR Doc. 2011–25224 Filed 9–29–11; 8:45 am]

BILLING CODE 4410–09–P

[64] Tr. 337.

[65] Tr. 332.

[66] Tr. 332.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–65]

Stephen L. Reitman, M.D.; Decision and Order

On July 20, 2010, Administrative Law Judge Gail A. Randall issued the attached recommended decision.[1] Neither party filed exceptions to the ALJ's decision.

Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law,[2] and recommended order except as discussed below. Accordingly, while Respondent's registration will be continued, I conclude that the record requires that several conditions be placed on it to adequately protect the public interest.

At the time of the hearing, the Medical Board of California (MBC) had filed an accusation against Respondent. ALJ at 31. However, the MBC did not issue a final decision in the matter until December 20, 2010, which became effective on January 19, 2011. *In re Stephen Lee Reitman, M.D.,* Decision at 1 (Cal. Med. Bd. Dec. 20, 2010). I take official notice of the MBC's Decision and the Stipulated Settlement and Disciplinary Order.[3] Therein, the Board revoked Respondent's medical license but stayed the revocation and placed him on probation for five years subject to numerous conditions. Stipulated Settlement, at 4. The conditions include, *inter alia,* that Respondent ''maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by'' him, that he abstain ''from the personal use or possession of controlled substances'' except as ''to medications lawfully prescribed to [him] by another practitioner for a bona fide illness or condition'' and that he ''notify the Board'' within fifteen calendar days of receiving any such prescription, and that he take both a prescribing practices course and an ethics course. *Id.* at 4–10.

Most significantly, the Order requires that Respondent, at his own expense, ''contract with a laboratory or service—approved in advance by the Board or its designee—that will conduct random, unannounced, observed, urine testing a maximum of four times each month.'' *Id.* at 5. Moreover, ''[t]he contract shall require results of the urine tests to be transmitted by the laboratory or service directly to [the] Board or its designee

[1] All citations to the ALJ's decision are to the slip opinion as issued by her.

[2] The ALJ found that Respondent violated California law by obtaining controlled substances from a distributor ''while concealing the fact that he was dispensing to himself.'' ALJ at 33 (citing Cal. Health & Safety Code 11173). The ALJ did not, however, cite any decisional law holding that conduct similar to that engaged in by Respondent violates this provision. *See id.* Moreover, there is no evidence establishing that Moore Medical required Respondent to make any disclosure as to his purpose in purchasing the drugs. *Cf. Lovejoy* v. *AT&T Corp.,* 92 Cal.App.4th 85, 96 (2001) (noting that tort of concealment requires that ''the defendant must have been under a duty to disclose the fact to the plaintiff''). I therefore do not adopt this finding. However, the evidence does establish the other violations of the CSA and State law as discussed by the ALJ.

[3] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding-even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute the facts of which I take official notice by filing a properly supported motion for reconsideration within twenty days of service of this Order, which shall begin on the date it is mailed.

within four hours of the results becoming available'' and that Respondent's ''[f]ailure to maintain this laboratory or service during the period of probation is a violation of [his] probation.'' *Id.* at 5–6. Finally, the Order provides that it is a violation of Respondent's probation if he ''[f]ail[s] to submit to or comply with the time frame for submitting to, or fail[s] to complete the required biological fluid testing.'' *Id.* at 5–6.

In her decision, the ALJ rejected the Government's contention that Respondent's registration should be revoked because he has been sober for only eleven months and that this is an insufficient period to demonstrate that he is not likely to relapse. ALJ at 35 (citing Gov. Br. at 9–10). In so ruling, the ALJ reasoned that '''[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.''' *Id.* (quoting *Leonardo* v. *Lopez, M.D.,* 54 FR 36915 (1989)). However, none of the cases which have invoked this principle involved circumstances similar to those at issue here, where, a registrant has abused controlled substances for seven years and has demonstrated his sobriety for only one year. *See Lopez,* 54 FR 36915; *see also Robert L. Dougherty, M.D.,* 76 FR 16823 (2011); *Robert A. Leslie, M.D.,* 64 FR 25908 (1999); *Mary M. Miller, M.D.,* 63 FR 71157 (1998); *John Porter Richards, D.O.,* 61 FR 13878 (1996); *James W. Shore, M.D.,* 61 FR 6262 (1996).

That being said, I agree with the ALJ's findings that Respondent has accepted responsibility for his misconduct and that he has undertaken substantial efforts at rehabilitation. Indeed, even the Government acknowledges that Respondent had taken ''various and comprehensive steps * * * toward rehabilitation'' and that his efforts were ''entered into voluntarily, which no doubt demonstrates a commitment to staying clean and sober.'' Gov. Br. at 9. However, as the Government noted in its brief, according to the evidence adduced at the hearing, under the terms of Respondent's contract with his treatment program, the program is not obligated to report any relapse to either the MBC or this Agency.[4] *Id; see also* Tr. 91. Given the limited time for which Respondent has demonstrated his sobriety (on the record of the hearing), such an arrangement is manifestly inadequate to support the continuation of a registration. Thus, I am not persuaded by the ALJ's reasoning that ''under the particular circumstances of this case, nine months is not such a short recovery period that it should serve as grounds for revocation.'' ALJ at 36.

However, as found above, subsequent to the closing of the record, Respondent entered into a Stipulated Settlement and Disciplinary Order with the MBC which provides for random biological fluid testing and which requires that the results be reported directly to the MBC. Moreover, since the record closed, additional time has passed during which Respondent has been subject to random biological fluid testing, and during this period, no evidence of a relapse has been presented to this Office.

These developments, when considered along with Respondent's strong showing as to his acceptance of responsibility, his efforts at rehabilitation, as well as the lack of evidence that he harmed anyone other than himself or diverted drugs to others, supports the conclusion that Respondent's continued registration would not ''be inconsistent with the public interest.''[5] 21 U.S.C. 823(f).

Accordingly, Respondent's pending renewal application will be granted. However, to adequately protect the public interest, Respondent's registration will be subject to the conditions set forth below, which shall remain in effect until the same date as the State's probation expires. Any violation of these conditions constitutes an act which renders his registration ''inconsistent with the public interest,'' 21 U.S.C. 824(a)(4), and subject to proceedings under that provision.

(1) Respondent's registration is restricted to authorizing the prescription of controlled substances. Respondent shall not prescribe controlled substances to himself or any family members. 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. This condition does not prohibit Respondent from obtaining a prescription for a controlled substance from another practitioner for a legitimate medical condition and filling such a prescription at a pharmacy.

(2) Respondent shall maintain a log of all controlled substance prescriptions he issues. Respondent shall provide a copy of his log each quarter to the local DEA office within ten business days of the end of each quarter of the calendar year (*i.e.,* March 31st; June 30th; September 30th, and December 31st). If Respondent issues no controlled substance prescriptions during the quarter, a report indicating that no prescriptions were issued must also be filed no later than ten business days following the end of the quarter.

(3) Respondent shall consent to unannounced inspections of his registered location by DEA personnel and waives his right to require that Agency personnel obtain an Administrative Inspection Warrant prior to conducting an inspection of his registered location.

(4) Any violation of the probationary terms imposed pursuant to the MBC's requirement that he contract with a laboratory or service to provide for random biological fluid testing shall constitute grounds for the immediate suspension of his DEA registration.

[4] Respondent did not introduce into evidence a copy of his treatment contract.

[5] In her discussion of whether Respondent had accepted responsibility, the ALJ explained that ''[p]ast DEA cases have involved practitioners whose registrations were either not revoked or their applications were not denied despite more reprehensible conduct than [Respondent's] self-prescribing.'' ALJ at 37. While I agree that in *Judy L. Henderson,* 65 FR 5672 (2000), and *Mary Thomson, M.D.,* 65 FR 75969 (2000), the registrants committed acts which are arguably more egregious than those committed by Respondent, I do not see any meaningful difference between the conduct committed by the registrant in *Jimmy H. Conway, Jr., M.D.,* 64 FR 32271 (1999), and Respondent. As for her discussion of *Robert G. Hallermeier, M.D.,* 62 FR 26818 (1997), suffice it to say that were a case with similar facts presented to me, that individual would receive a sanction that more appropriately reflected the grave harm which that registrant caused the public and the Agency's interest in deterring similar misconduct. *See Joseph Gaudio, M.D.,* 74 FR 10083, 10094 (2009) (citing *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007)). *See also Butz* v. *Glover Livestock Commission Co., Inc.,* 411 U.S. 182, 187–88 (1973).

Finally, the ALJ's discussion that the applicant in *John Porter Richards, D.O.,* 61 FR 13878 (1996), ''continued to maintain that he had not committed the crimes for which he had been convicted,'' ALJ at 38, is simply a misreading of that decision. As the decision makes clear, the text quoted by the ALJ was a paraphrase of a question posed of the applicant by the Government on cross-examination. *See* 61 FR at 13879 (''When asked on cross-examination whether, consistent with his not guilty plea, he continued to maintain that he had not committed the crimes for which he had been convicted, the Respondent testified, ''I accept my conviction[.]''). When the Government then asked ''to what extent he did so,'' the applicant testified: '''In its completeness.''' *Id.* Notably, the decision contains no further discussion suggesting that the applicant acknowledged his conviction but then denied having committed the crime or claimed that he was set up.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(4), as well as 28 CFR 0.100(b), I order that the application of Stephen L. Reitman to renew his DEA Certificate of Registration be, and it hereby is, granted subject to the conditions set forth above. This Order is effective immediately.

Dated: September 20, 2011.

Michele M. Leonhart,

Administrator.

Christine M. Menendez, Esq. *for the Government.*

Robert C. Schlein, Esq. *for the Respondent.*

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

I. Procedural Background

Gail A. Randall, Administrative Law Judge. The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause (''Order'') dated September 10, 2009, proposing to revoke the DEA Certificate of Registration Number AR6012568, of Stephen L. Reitman, M.D. (''Respondent'' or ''Dr. Reitman''), as a practitioner, pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal, modification, or additional registrations, pursuant to 21 U.S.C. 823(f), because the continued registration of the Respondent is inconsistent with the public interest, as that term is defined in 21 U.S.C. 824(a)(4). [Administrative Law Judge Exhibit (''ALJ Exh.'') 1].

On September 25, 2009, the Respondent, through counsel, filed a request for a hearing in the above-captioned matter. [ALJ Exh. 2].

The hearing was held in San Diego, California, on April 13–14, 2010. [ALJ Exh. 4 at 1; Transcript (''Tr.'') Vol. I–II]. At the hearing, Counsel for the DEA and Counsel for the Respondent called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law and Argument.

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 AR6012568 of Stephen L. Reitman, M.D., as a practitioner pursuant to 21 U.S.C. 824(a), and deny any pending applications to renew or modify this registration under 21 U.S.C. 823(f), because to continue Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). [ALJ Exh. 3 at 1; Tr. 5].

III. Findings of Fact

I find, by a preponderance of the evidence, the following facts:

A. Background

1. Respondent is registered with DEA as a practitioner in Schedules II–V pursuant to DEA Registration Number AR6012568. [ALJ Exh. 3 at 1; Government Exhibit (''Govt. Exh.'') 1; Tr. 58].

2. Respondent is licensed as a physician and surgeon in the State of California pursuant to License Number G25924. Respondent's licensure status is renewed and current. [ALJ Exh. 3].

3. Dr. Reitman attended the University of Illinois in Champaign for undergraduate school. Then he studied at the University of Illinois Medical School in Chicago from 1965 to 1969. Dr. Reitman graduated medical school in 1969. [Tr. 55]. He next attended the University of Cincinnati for internship and residency from about 1969 until 1972. From there, he studied at Ann Arbor University of Michigan from 1972 until 1974 for a fellowship in nephrology. In 1974, he and his wife moved to San Diego where he has been in practice since that time. He has been licensed to practice medicine in California since 1973. [Respondent's Exhibit (''Resp. Exh.'') 5; Tr. 55–56].

4. Dr. Reitman is currently working in La Mesa, California. His practice consists mostly of geriatric and internal medicine treating senior citizens, people 60 or older. He sees maybe 15 to 20 patients per day. [Tr. 57]. In his practice, he sees many seniors with chronic pain. He prescribes Vicodin, codeine, and Darvocet, as well as anti-anxiety medications and anti-depressants. He does not dispense. [Tr. 58–59].

B. DEA Investigation

5. Diversion Investigator Ayoma Rudy (''Investigator Rudy'') has been a diversion investigator with the DEA in San Diego, California since November 3, 2005. [Tr. 18–19]. Prior to becoming a diversion investigator, she was a DEA group assistant in 1996. [Tr. 19]. She then became an investigative assistant in approximately 2001. [*Id.*]. She trained for three months at Quantico, where she received specialized training including how to conduct regulatory, financial, and criminal investigations and how to write reports, take affidavits, conduct search warrants, and conduct interviews. [Tr. 20]. Investigator Rudy is now responsible for investigating the illegal diversion of controlled substances and listed chemicals. She is the lead investigator of the issues surrounding the Dr. Reitman case. [Tr. 20–22].

6. Investigator Rudy began investigating Dr. Reitman on May 28, 2009, when Moore Medical submitted a controlled substance report to the San Diego Field Division showing what the DEA considered to be excessive purchases of controlled substances by Dr. Reitman from Moore Medical. [Govt. Exh. 3, 5; Tr. 23]. A DEA registrant has a responsibility to inform the DEA of any excessive purchases or suspicious orders. [Tr. 26]. Investigator Rudy's supervisor, John Partridge, told her to follow up on these purchases, because he considered them excessive. [Tr. 26–27].

7. A Controlled Substance Utilization Review (''CURES'') report is generated by a California Department of Justice database, which tells an investigator what the patient filled, what drugs the patient filled, when, which pharmacies the patient went to, and how many doctors the patient saw within the week or within the day. [Tr. 22].

8. In the case of the report from Moore Medical, the DEA Certificate of Registration Number used to order the controlled substances was AR6012568, which is Dr. Reitman's number. [Govt. Exh. 3; Tr. 25].

9. Dr. Reitman was ordering Butalbital APAP (acetaminophen) Caffeine with codeine[6] and APAP 300mg with codeine 60mg from January 2005 through March 18, 2009. [Govt. Exh. 5; Tr. 27–8]. APAP with codeine is a Schedule V controlled substance. [Tr. 28]. Butalbital APAP with Codeine is a Schedule III controlled substance. [Tr. 28].

10. On July 8, 2009, DEA Diversion Investigators Ayoma Rudy and Kenneth Crouch interviewed Dr. Reitman regarding controlled substances that he purchased from Moore Medical. [ALJ Exh. 3 at 2; Tr. 28].

11. At that time, Dr. Reitman invited them in, asked them to sit down. [Tr. 29]. Investigator Rudy stated that Dr. Reitman was friendly, cooperative and forthright. [Tr. 41–42]. He seemed coherent and rational. [Tr. 42].

12. Dr. Reitman admitted that the report from Moore Medical was correct. [Tr. 30]. He admitted to having an addiction problem. [Tr. 42]. During the

[6] The milligrams are not specified for this drug. [*See* Govt. Exh. 5].

interview, Dr. Reitman stated that he ordered the substances in question for his personal use and that he was not selling the controlled substances or exchanging them for other services. [ALJ Exh. 3 at 2; Tr. 30, 32]. Investigator Rudy said, ''By the third sentence, he put his head down'' and said that he ''ordered [the controlled substances] for personal use.'' [Tr. 30]. Dr. Reitman repeatedly stated that he needs help. [Tr. 32].

13. At that time, Dr. Reitman kept the controlled substances in a locked cabinet at his office location, the contents of which he showed to the two Diversion Investigators. [ALJ Exh. 3 at 2; Tr. 31–32]. He opened the cabinet, and DI Rudy could see about 22 or 23 bottles of the Butalbital and the APAP with codeine. [Tr. 31]. Dr. Reitman told DI Rudy that he was storing the controlled substances at his office, because he did not want his wife to find out. [Tr. 32].

14. Dr. Reitman stated that he had no records (receipts, invoices, log, or dispensing records) related to the controlled substances in Moore Medical's report. [Tr. 30–31].

15. Investigator Rudy asked him if he was trading or selling the drugs, and Dr. Reitman said no. [Tr. 32]. DI Rudy also stated that she believed his explanation. [Tr. 47–48]. At this hearing, Dr. Reitman stated that the drugs were for his personal use. He never sold them or dispensed them to anybody. [ALJ Exh. 3 at 2; Tr. 81].

16. Investigator Rudy asked the Respondent if he realized that he was violating DEA policy, and he said yes. [Tr. 32].

17. At that point, Investigator Rudy left without conducting an inventory, because she wanted to report this unique situation to her supervisor. [Tr. 33, 46]. Investigator Rudy had no way of conducting an inventory, because Dr. Reitman had no records to compare with the number of pills on hand. [Tr. 46, 47]. Her supervisor told her to seek a voluntary surrender of both his registration and the controlled substances, which she did. [Tr. 33, 45]. However, Dr. Reitman refused to voluntarily surrender the controlled substances or his registration until after he had spoken with his attorney. [Tr. 33, 45]. Investigator Rudy stated that she did not think it was unusual for Dr. Reitman to want to speak to an attorney and that he had a right to do so. [Tr. 43–44].

18. However, Investigator Rudy did tell Dr. Reitman to keep the controlled substances locked in the cabinet. [Tr. 41].

19. On July 13, 2009, DI Rudy returned to Dr. Reitman's office, this time with a different investigator, Investigator Theresa Grant, to seek a voluntary surrender of his registration. [Tr. 34–5]. Dr. Reitman, acting pursuant to the advice of his attorney, refused to surrender both the controlled substances and his DEA Certificate of Registration to DEA Diversion Investigators Rudy and Grant. [ALJ Exh. 3 at 2; Tr. 35].

20. On July 15, 2009, Investigator Rudy again met with Dr. Reitman at his office. [Tr. 35]. On this occasion, she was accompanied by Special Agent Rockwell Herron. [Tr. 35]. Dr. Reitman voluntarily surrendered the controlled substances in question to Investigator Rudy and Special Agent Herron. [ALJ Exh. 3 at 2; Tr. 35–36]. Investigator Rudy seized the controlled substances and gave Dr. Reitman a receipt (DEA–12) for the drugs. [Tr. 36, 41, 44].

21. Investigator Rudy and Agent Herron seized the Butalbital and the APAP with codeine, which were being stored in the same locked cabinet. [Tr. 36].

22. Investigator Rudy seized four sealed bottles and one partial bottle of APAP with codeine. [Tr. 36]. These drugs were in both 500- and 100-count bottles. [Tr. 47].

23. Investigator Rudy seized eight sealed bottles and one partial bottle of Butalbital with codeine. [Tr. 36–37]. These drugs were in 100-count bottles. [Tr. 47].

24. Investigator Rudy stated there was a significant difference between what was seized and the amount ordered according to the Moore Medical records. She is unsure of the amount that was in fact seized. [Tr. 47, 48–49]. She stated that he ordered 128 bottles of Butalbital and 32 bottles of APAP with codeine. However, there were only eight bottles of Butalbital and four bottles of APAP with codeine. [Tr. 48–9]. Investigator Rudy could not provide a specific number of the amount of pills he had on hand. [Tr. 49–50]. Therefore, Dr. Reitman had at least 800 dosage units of each controlled substance on hand at this time.

25. Investigator Rudy took these drugs to the San Diego Field Division's evidence room. They are now at the Southwest Lab in Vista, San Diego. [Tr. 37].

26. Investigator Rudy stated that Dr. Reitman told her that he was taking three to six pills per day. [Tr. 53].

27. Sometime in August, Investigator Rudy received an updated report from Moore Medical, which contained information related to controlled substances purchased by Dr. Reitman from Moore Medical from March 19, 2009 through August 27, 2009. [Govt. Exh. 4; Tr. 38, 39]. She received this report from Tracy Lofquist from Moore Medical's Regulatory Affairs department. [Tr. 38]. Again, this document shows that Dr. Reitman ordered Butalbital APAP with codeine and APAP with codeine. [Tr. 39]. Patrick Early, Vice President of Regulations and Operational Affairs at Moore Medical tallied Dr. Reitman's orders of controlled substances from January 1, 2005, through August 27, 2009. [Govt. Exh. 5 at 2–3]. He stated that Dr. Reitman ordered 11,600 dosage units of APAP with Codeine and 12,800 dosage units of Butalbital APAP Caffeine with Codeine in that time (which is four years, seven months, and twenty-seven days, or seventeen-hundred days). However, since Investigator Rudy seized at least 800 dosage units of APAP with Codeine and another 800 dosage units of Butalbital APAP Caffeine with Codeine, Dr. Reitman could have only ingested approximately 10,800 dosage units of APAP with Codeine and approximately 12,000 dosage units of Butalbital APAP with Codeine during that time. [*Compare* Govt. Exh. 5 at 2–3 *with* Tr. 36–37, 47]. This is an approximate average of six APAP with Codeine per day and an average of seven Butalbital APAP Caffeine with Codeine per day for a maximum total of thirteen pills per day. [Govt. Exh. 5 at 2–3].

28. Dr. Reitman's last order was placed on May 22, 2009. He has not ordered any controlled substances from Moore Medical since. [Govt. Exh. 4; Tr. 39–40, 44]. The DEA's ARCOS database, which stands for Automated Reporting and Consolidated Ordering System, tracks controlled substances orders. [Tr. 40]. Investigator Rudy used ARCOS to confirm that Dr. Reitman has made no controlled substances orders since May 22, 2009. [Tr. 40].

29. Dr. Reitman still has the ability to order controlled substances. [Tr. 40, 88]. He has not ordered any, but he has prescribed controlled substances to his patients. [Tr. 88].

30. Dr. Reitman stated that, other than an action related to the events that led to this hearing, Dr. Reitman has only had one prior interaction with the Medical Board of California. [Tr. 81–2]. The Medical Board of California placed Dr. Reitman on probation from 2002 until 2004, because he lost a malpractice case and the Board felt he had improperly treated a patient. The Board has taken no other action on his medical license. [Tr. 56–57, 101–02]. The 2002 probation had nothing to do with his abuse of codeine. [Tr. 102].

C. Dr. Reitman's Addiction

31. Dr. Reitman stated that he considers himself to be a recovered drug addict. He admits to abusing controlled substances, stating that he began to abuse Butalbital with codeine and APAP with codeine in about 2002 or 2003. Initially, he was prescribed these drugs by his private physician to treat headaches. Then, when he was at the point that he was taking more than 100 per month, he began ordering them for himself from Moore Medical. [Tr. 59–60, 77].

32. Dr. Reitman stated that he began getting essentially migraine headaches when he was about five or six years old. [Tr. 77]. They abated until the late 1990s when he was suffering from cervical stenosis and neck pain. [Tr. 78].

33. The Respondent admits that he knew that he ''was taking an ever larger dose of medication,'' but that he needed the medication because he was having the headaches. Dr. Reitman stated, ''I was stupid at the time. I probably should have asked to go to a rehab program or something to get myself off it at that time. I just didn't. I made a tremendous mistake.'' [Tr. 87].

34. Since July of 2009, Dr. Reitman has had few headaches, and he is able to treat these headaches with Imitrex or ibuprofen. [Tr. 78]. Dr. John E. Milner told Dr. Reitman that these headaches are codeine withdrawal headaches that may last from 18 to 24 months. [Tr. 78]. Also, Butalbital is a barbiturate. [Tr. 103]. However, Dr. Milner told Dr. Reitman that he did not think that Dr. Reitman was ever addicted to Butalbital, just the codeine. [Tr. 104]. Today, if he needs a controlled substance, he has two physicians, a neurologist and a primary physician, who can prescribe that for him. [Tr. 79].

35. Dr. Reitman candidly admitted that the Moore Medical report does not paint a clear picture of his self-prescribing practices. [Tr. 60–61]. The document begins with purchases on March 8, 2005. However, the Respondent admits to ordering for himself from Moore Medical since approximately 2002. [Tr. 60–61]. He stated that prior to 2002, he had been receiving his prescriptions from his private physician for about two years. [Tr. 61]. Dr. Reitman also stated that the Moore Medical report reflects all of the kinds of controlled substances he purchased from Moore Medical. [Tr. 81]. He did not purchase controlled substances from any other distributor. [Tr. 63].

36. Dr. Reitman said that he increased the amount of drugs that he was taking to the point that he was ingesting between eight and twelve (approximately 660 mg) per day. [Tr. 61–63].

37. Dr. Reitman states that he kept no records from Moore Medical. [Tr. 63–64]. He states he has no dispensing log, because he didn't dispense to anyone but himself. [Tr. 64].

D. Dr. Reitman's Treatment

1. Dr. Stephen Reitman

38. Dr. Reitman stated that he does not remember telling Investigator Rudy about his problem, but that he did tell Dr. William Friedel on the night of July 8, 2009. Dr. Friedel recommended he speak with an attorney and attend a meeting of the Physician Well-Being Committee at Grossmont Hospital, which occurs once every three months and happened to be the next day, July 9, 2009. Dr. Reitman attended the Well-Being Committee meeting where he told Dr. Calaprete of his drug problem. [Tr. 64–65, 68, 69, 102–03]. He continues to attend these committee meetings. [Tr. 69, 73].

39. Dr. Friedel also told Dr. Reitman about a diversion program. [Tr. 64–65, 74]. Dr. Reitman has also signed a Pacific Assistance Group (''PAG'') contract with Duane Rogers which ''spells out what I will do and what will happen to me if I am found to be positive of substances or alcohol.'' [Tr. 74, 89]. He has to not abuse controlled substances, attend diversion meetings twice a week, and allow random urine tests for a minimum of four to five times per month for three years. [Tr. 74, 90]. All of his urine tests have been negative since he began the program in July of 2009. [Tr. 74, 90]. He hasn't missed any meetings, but has been excused from a few when he was out of town. [Tr. 90–91]. If he breaks a term of the contract, he can be told that he cannot go to work until he has had two negative urine tests. [Tr. 91]. However, if he violates a term of this contract, it is not reported to the California Medical Board or to the DEA. [Tr. 91].

40. Dr. Reitman also attends Alcoholics Anonymous (''AA'') meetings. [Tr. 75]. He completed a 90 in 90 program, which means going to a minimum of 90 meetings in 90 days. Now, he attends AA meetings two to three times a week and meets with his sponsor, Philip Shapiro, on the phone or in person once per week. [Tr. 75]. Dr. Reitman attends AA meetings instead of Narcotics Anonymous (''NA'') meetings, because he did not feel comfortable at NA meetings. He said the participants were all younger, 17 to 30 years old and used four-letter words. Many had been to prison. [Tr. 76]. Several people at the AA meetings are also substance abusers or poly-drug abusers. [Tr. 76].

41. With regards to his addiction to controlled substances, Dr. Reitman also told two of his children who live in the area and his wife the following Monday when she returned from a trip abroad. [Tr. 67–68]. However, he did not admit to anyone that he had a problem until he was confronted by Investigator Rudy. [Tr. 65–66].

42. The last time he ingested a controlled substance was on the morning of July 8, 2009, when he took two tablets of the 60 mg Tylenol with codeine and two tablets of the Butalbital with codeine. He has since been substance free for over nine months. [Resp. Exh. 3 at 1; Tr. 66, 71].

43. On August 3, 2009, Dr. Reitman voluntarily entered an inpatient program at Rancho L'Abri in the East County of San Diego for 30 days. [Resp. Exh. 1, 2, 3; Tr. 70, 71, 72]. The program is run by Dr. John Milner. [Tr. 71]. Dr. Reitman conducted a five-day detoxification period at home prior to entering the program at Rancho L'Abri. [Tr. 72]. Through the program, Dr. Reitman learned that while he was self-prescribing codeine, he was most likely experiencing more headaches as a result of daily codeine withdrawal. [Tr. 73]. He states he has had no desire to take codeine since he stopped and that he feels like a different person. [Tr. 73, 79]. Though he still gets some headaches, he states that they are the result of ongoing changes in the mind and body resulting in his cessation of using codeine. [Tr. 88–89].

44. The Respondent stated that he has had a 100% recovery and that he is 100% committed to sobriety. [Tr. 80, 88]. When asked, he stated, ''Definitely. I never want to go backwards.'' [Tr. 80]. However, he also notes that it is a continuing thing and chemical dependency is something that he has to be worried about for the rest of his life, which is why he states that he will continue to go to AA meetings. [Tr. 88]. Dr. Reitman also states that though he abused codeine for eight years and has only been clean for a little over nine months, he is well on the road to recovery, and in more than just the early stages. [Tr. 89].

45. The Respondent offered into evidence approximately 18 patient comments about Dr. Reitman from August 1, 2009, to December 31, 2009, and from January 1, 2010, to March 23, 2010. [Resp. Exh. 9; Tr. 92–93]. The comments are mostly positive other than a few typical criticisms. [Resp. Exh. 9 at 2]. Additionally, during the time that he was addicted to codeine,

Dr. Reitman said that he did not receive any patient complaints. [Tr. 102].

46. The Respondent offered into evidence a Letter of Compliance from Duane Rogers, Psy.D., MFT, dated March 27, 2010.[7] [Resp. Exh. 7; Tr. 95–6]. Therein, Dr. Rogers states that Dr. Reitman ''has fully participated and complied with the physicians monitoring program from the above date [ ] as a self-referred voluntary participant.'' [Resp. Exh. 7]. The letter also states: ''To date, all tests are negative for all drugs of abuse and alcohol.'' [*Id.*].

47. The Respondent also offered into evidence the office notes from a neurologic evaluation of Dr. Reitman by Dr. Boris Khamishon, Dr. Reitman's treating neurologist who has been helping him with his headaches. [Resp. Exh. 8; Tr. 96–7].

2. Dr. Peter Colaprete

48. Dr. Peter Colaprete is a physician at Grossmont Hospital. [Tr. 108–9]. He began working with Dr. Reitman in 1987. [Tr. 109]. He has known Dr. Reitman for 23 years and considers him to be a friend. [Tr. 113]. Dr. Colaprete has an undergraduate degree in biology and chemistry. He then attended medical school, after which he completed a residency in emergency medicine, a fellowship in critical care medicine, and another residency in hyperbaric medicine. [Tr. 108].

49. Dr. Colaprete has been the chairman of the Grossmont Hospital Wellness Committee for approximately ten years, and has been a member of the committee for approximately twenty years. [Tr. 109]. The committee was mandated by the State of California in the 1970s with the purpose of helping physicians that are addicted to medications or alcohol or are suffering from dementia or psychiatric illness. [Tr. 109–10]. Prior to the establishment of these types of committees, doctors such as Dr. Reitman might have simply lost their license. This is a way to allow troubled doctors to continue to practice if the committee and the State feel that this is an option. There are ten members on the committee, and all have been there for more than five years. [Tr. 114]. At least one member of the committee has to have been a physician with a former addiction problem. [Tr. 119]. The committee meets quarterly, conducts random urine screens, and establishes a contract with the doctors that must be followed. The committee also stays in contact with the doctors as well as *their* physicians. [Tr. 114–15, 116]. The physician usually must attend these meetings for two or three years. [Tr. 116, 118].

50. In approximately July of 2009, it came to Dr. Colaprete's attention that Dr. Reitman would need the assistance of the Wellness Committee. [Tr. 110]. Dr. Reitman has attended three meetings since that time. [*Id.*]. Dr. Reitman told the committee of his recurring headaches, his treatment of those headaches, and his subsequent self-prescribing of codeine in large amounts. [Tr. 111].

51. Dr. Colaprete stated that the committee has not done any urinalysis tests for Dr. Reitman. [Tr. 115].[8] As part of the contract, twice per month, Dr. Reitman has to meet with a clinical psychologist, Duane Rogers, who can also do screening. [*Id.*].

52. If the Committee feels that the physician should not be permitted to work (*i.e.* the doctor fails to attend a meeting, tests positive on a urinalysis, admits to a relapse, *etc.*), then they can recommend this to the hospital's chief of staff who can summarily stop that physician from working. [Tr. 115–16, 117]. This would also be reported to the Medical Board of California, but not the DEA. [Tr. 117, 124].

53. Dr. Colaprete is familiar with Dr. Milner, the director of the Rancho L'Abri program. [Tr. 111–12]. Dr. Colaprete stated that Dr. Milner is very knowledgeable in prescription drugs and has seen many, many patients. [Tr. 112].

54. With regards to Dr. Reitman's recovery, Dr. Colaprete stated that Dr. Reitman was their ''star physician.'' Dr. Colaprete also said, ''He completed the program as we requested. He's followed all our instructions. He's come to every meeting we've asked him to come to, and, again, I've had, you know scores of physicians that have been requested to come to the committee, and I believe Dr. Reitman is at the top of that list of people that have completed and have performed as we requested.'' [Tr. 112–13]. Dr. Colaprete stated he intends to have Dr. Reitman continue to participate in this program. [Tr. 113].

55. In twenty years on the committee, Dr. Colaprete has seen approximately twenty physicians with substance abuse problems. [Tr. 118]. He has never seen a physician relapse who seemed very committed to recovery. [Tr. 119]. He also stated that having access to drugs as well as the ability to write prescriptions could potentially be a problem. [Tr. 120]. However, when asked if he would characterize Dr. Reitman as being recovered, Dr. Colaprete stated, ''* * * he's pretty close.'' [Tr. 120]. He also reiterated that Dr. Reitman is ''on the road to recovery, if not completely recovered,'' and he does not foresee him relapsing. [Tr. 122].

56. Dr. Colaprete stated that Dr. Reitman ''loves his patients,'' is ''very conscientious,'' and was a ''very professional physician.'' [Tr. 122]. At no point did Dr. Colaprete ever note any strange behavior on the part of Dr. Reitman. [Tr. 123–24].

3. Dr. William Friedel

57. Dr. William Friedel is a graduate of Brown University. He attended Albert Einstein College of Medicine, interned at Downstate in Brooklyn, New York, and returned to Albert Einstein for his residency in urology. He has been a practicing urologist in California since 1973. [Tr. 127].

58. Dr. Friedel has known Dr. Reitman as a friend and colleague for over 35 years. [Tr. 126–27, 138–9]. They belong to a religious group. They also worked together at El Cajon Valley Hospital. Dr. Friedel was Dr. Reitman's patient until approximately six or seven years ago when, after Dr. Friedel had a heart attack, he began seeing a cardiologist as his primary physican. [Tr. 127–28].

59. Dr. Friedel stated that, ''as a sophisticated consumer of medical care * * * I certainly would not have seen [Dr. Reitman] if I did not think he was more than competent.'' [Tr. 129]. He also said that his opinion of Dr. Reitman's medical abilities was ''excellent.'' [Tr. 129]. He has observed Dr. Reitman with patients. Dr. Friedel testified that Dr. Reitman is an ''excellent physician'' who ''cares about his patients and takes good care of them.'' [Tr. 134, 141]. During the 2002 to 2009 time frame, he did not suspect that Dr. Reitman was interacting with patients while he was under the influence of a controlled substance. [Tr. 141].

60. In July of 2009, Dr. Reitman told Dr. Friedel of his years of self-prescribing of controlled substances. [Tr. 129, 139]. Dr. Friedel advised Dr. Reitman to meet with Grossmont Hospital's Wellness Committee. [Tr. 130]. Dr. Friedel has been a member of this committee for over 20 years. [Tr. 130–31, 135]. Though he admits he is not an addictologist, he states that from a practical point of view, he is very experienced in addiction issues. [Tr. 131, 135].

[7] Although the letter is dated March 27, 2009, the parties agreed that this was a typographical error and the actual date was March 27, 2010. [Tr. 95–96].

[8] However, Duane Rogers has been conducting urinalysis tests and all have been negative for drugs ''of abuse'' and alcohol. [Resp. Exh. 7]. Rancho L'Abri also conducted urinalysis tests, which have all been negative as well. [Resp. Exh. 4].

61. Dr. Reitman has since met with the committee and will continue to meet with the committee regularly. [Tr. 132, 136]. However, Dr. Friedel stated that the committee does not really ''monitor'' physicians, but rather has the doctors come in and talk with the committee periodically. The committee also assigns a mentor to keep in close contact with the physicians. He is unsure if the committee has appointed a mentor for the Respondent. [Tr. 135–36].

62. Dr. Friedel stated that Dr. Reitman has ''an excellent chance of not abusing codeine in the future. It's crystal-ball-gazing, as you know. There's a certain relapse rate for people who use drugs. I think * * * it's unlikely that he would do that.'' [Tr. 133]. He added that Dr. Reitman ''absolutely'' appears committed to recovery. [*Id.*]. He knows that Dr. Reitman abused controlled substances for several years and that he has only been free of controlled substances for nine months. [Tr. 136]. He could not say that Dr. Reitman is recovered, but used the more general term of ''recovering.'' He compared it to being cured, stating that ''[y]ou only know somebody's cured when they die and they don't have it anymore.'' He later added, ''It's like the alcoholic describing themselves as [a] non-drinking alcoholic.'' [Tr. 136–37, 140].

63. Dr. Friedel stated that the committee only sees about one, new physician with substance abuse problems every three years. [Tr. 137]. He has seen physicians relapse even when they seemed committed to recovery. [Tr. 137].

64. When asked, with regards to a physician who is addicted to controlled substances, whether access to controlled substances would be conducive to recovery, Dr. Friedel said: ''There's no doubt that anybody who has free access to drugs is more likely to abuse drugs, and probably the best example I can use is an anesthesiologist who, as a profession, are more likely to become addicted, because the drugs are poorly accounted for and readily available. With that analogy, of course, anybody who has more access to drugs is probably more likely to abuse that access. On the other hand, I think Dr. Reitman's very committed not to do this.'' [Tr. 138].

65. Dr. Friedel stated that Dr. Milner was ''the guy in addiction medicine * * * he's the guy to go to.'' [Tr. 134].

4. Rabbi Avram Bogopulsky

66. Rabbi Avram Bogopulsky did his initial training in Muncie, New York under the tutelage of Rabbi Wein for eight years, encompassing detailed study, Talmudic study, rabbinical study, and pastoral care. He then served as an assistant rabbi in Charleston, South Carolina for three years. Now he has led the Beth Jacob Congregation in San Diego for the past 14 years. [Tr. 144].

67. Dr. Reitman has attended Beth Jacob for 14 years. [Tr. 144]. Rabbi Bogopulsky considers him ''one of our better congregants as far as he attends daily minion, which is a gathering of a quorum of ten * * * every single morning.'' [Tr. 144]. They talk on a regular basis. [Tr. 145, 148–9]. Dr. Reitman is one of two vice presidents of the congregation. [Tr. 145].

68. Rabbi Bogopulsky, his wife, and his son are all patients of Dr. Reitman. [Tr. 145]. Rabbi Bogopulsky stated that Dr. Reitman is a ''very good doctor.'' [Tr. 146].

69. In July of 2009, Dr. Reitman came to Rabbi Bogopulsky for spiritual guidance related to his years of addiction and self-prescribing of controlled substances. [Tr. 146–7]. Rabbi Bogopulsky stated that this came as a shock, because the Respondent never appeared to be under the influence. [Tr. 148]. He stated that Dr. Reitman ''has an impeccable character with a deep concern for people * * * and is a role model in the community.'' [Tr. 149].

70. Rabbi Bogopulsky testified that Dr. Reitman showed remorse and was ''absolutely regretful.'' [Tr. 150]. He also stated that Dr. Reitman has ''demonstrated to this day, every single day, a commitment'' to recovery. [*Id.*]. He explained that, in Orthodox Judaism, the Sabbath is a day of holiness. On the Sabbath, ''we do not use electricity, we don't answer the phone, drive, computers.'' However, part of the recovery process requires Dr. Reitman to call in on a daily basis. Therefore, he and Rabbi Bogopulsky have an agreement where Rabbi Bogopulsky allows Dr. Reitman to essentially bypass Jewish law and use Rabbi Bogopulsky's office phone to call in on the Sabbath. [Tr. 150–51]. Rabbi Bogopulsky stated that this allows him to maintain his religious faith and still carry out his commitment to recovery. [Tr. 151].

71. Rabbi Bogopulsky also said that he never suspected Dr. Reitman of abusing drugs and that he had no inclination that he was under the influence of any drugs. [Tr. 152]. He admitted that he is neither a medical doctor nor an addiction specialist. However, he testified that in his position as a spiritual leader, he has counseled people with addiction problems before, but he typically finds a more qualified counselor to help addicts. [Tr. 152–3].

5. Dr. John E. Milner

72. Dr. John E. Milner graduated from the University of Texas Medical School in Dallas in 1957. He interned at the Naval Hospital in Camp Pendleton and served as a general duty medical officer until 1961. He was in private practice in La Jolla, California from 1961–66. He began psychiatric training in 1966, eventually completing a child and adolescent fellowship in psychiatry in 1970. In the mid-1970s, he opened an alcohol and drug treatment unit in San Diego, California called Sharp Cabrillo Hospital. He received a certificate in addiction medicine in 1986. He also opened a non-hospital-based treatment program for alcohol or drug dual diagnosis patients called Rancho L'Abri. He has been the medical director at Rancho L'Abri for more than 25 years. He indicated that he has probably treated thousands of patients and hundreds of physicians with drug and alcohol issues. [Resp. Exh. 10; Tr. 181–4, 190].

73. Dr. Reitman came to Rancho L'Abri as an inpatient on August 3, 2009. [Resp. Exh. 1; Tr. 184–5]. Dr. Milner's team, under his direction, created a treatment plan for Dr. Reitman. [Resp. Exh. 2; Tr. 186–7]. In addition, the team also maintains patient progress notes, which are reviewed by Dr. Milner. [Resp. Exh. 3; Tr. 187–8]. The team also conducts urine toxicology screening and keeps records of the results. [Resp. Exh. 4; Tr. 189]. When Dr. Reitman arrived at Rancho L'Abri, his urinalysis results showed him as negative for both opioids and barbituates. [Resp. Exh. 4; Tr. 203]. Dr. Reitman continues to receive urine screens. [Tr. 204].

74. Dr. Milner diagnosed Dr. Reitman with opioid addiction. He did not diagnose Dr. Reitman with barbiturate addiction. He did not know that Dr. Reitman ordered four times as much Butalbital as he did APAP with codeine. [Tr. 200]. Dr. Milner said that Butalbital is a very mild sedative that can cause a person to become ''sort of intoxicated'' in huge doses. [Tr. 201]. He testified that he never saw any barbiturate withdrawal symptoms, and ''a person who's severely addicted is going to manifest them.'' [Tr. 201].

75. By July 2009, Dr. Reitman was taking approximately 660 mg of codeine per day. [Tr. 190–91, 202]. Dr. Milner stated that codeine is very kind on the human brain, ''so it's very, very likely, conceivable, and totally possible that he can function * * * as normally as he did with this dose of codeine in him.'' [Resp. Exh. 6; Tr. 192]. He said that his team looked extensively for any

evidence that Dr. Reitman failed to function as a physician during the period that he was abusing codeine, but could find no such evidence. [Tr. 192].

76. Dr. Milner testified that Dr. Reitman arrived at Rancho L'Abri having already stopped taking codeine. ''He was deeply ashamed, humiliated, aghast that he had been doing this for so long.'' [Resp. Exh. 3 at 1–4; Tr. 192–93].

77. Dr. Milner said that Dr. Reitman has been committed ''since the very beginning'' to stop using the drugs. [Tr. 193]. To the best of his extensive knowledge, he stated that Dr. Reitman has ''rigorously attended all the recommended behaviors and attitudes and processes.'' [Tr. 193–4]. When asked to rate Dr. Reitman's commitment to recovery on a scale of one to ten, Dr. Milner said, ''Nine. Ten. Yeah, he's committed.'' [Tr. 194]. He also stated that ''as long as he continues the process he's involved in, the risks [of relapse] are minimal.'' [Tr. 194]. Dr. Milner believed that it would be in the interest of the public to continue to allow Dr. Reitman to prescribe controlled substances, and he would expect the urine monitoring and continued involvement in his own recovery plan to continue. [Tr. 195–96]. Admitting that it is possible for a person who has demonstrated their commitment to recovery to relapse, Dr. Milner asserted that as long as the individual continues to be monitored and continues to follow recommended processes, the chances of relapse are very slim. [Tr. 196–97]. Dr. Milner knew that Dr. Reitman had abused for several years and had only been clean for approximately nine months. [Tr. 198]. He also stated that the chance of relapse in the earlier period of recovery is increased. [Tr. 199].

78. Dr. Milner testified that if a physician is in the proper monitoring program, then access to ''one's drug of choice'' would not be harmful. [Tr. 199].

79. Dr. Reitman's wife was continuously supportive throughout Dr. Reitman's stay at Rancho L'Abri, providing Dr. Reitman with kosher meals and attending family sessions. [Resp. Exh. 3 at 1–4, 6–7].

6. Dr. Sandra Jassmann

80. Dr. Sandra Jassmann received a medical degree from Medical College of Virginia in 1969. She had three years of internal medicine at Cleveland Clinic in Cleveland, Ohio from 1969 to 1972. She served two years with the United States Navy in Charleston, South Carolina from 1972 to 1974. Then, from July 1, 1974, to June 10, 1976, she participated in a fellowship in endocrinology at Sepulveda VA in Sepulveda, California, an affiliate of UCLA. She began working in San Diego in 1976. [Tr. 207].

81. Dr. Jassmann met Dr. Reitman in 1976 and worked closely with him for 30 years. [Tr. 208]. She considers Dr. Reitman to be a ''very competent, very capable, very professional'' doctor who has ''the interests of his patients at heart.'' [Tr. 208–9, 212].

82. In August of 2009, Dr. Reitman told Dr. Jassmann that he had an addiction problem and would be going into rehab. [Tr. 209]. Dr. Jassmann stated that she was ''astounded, [] had no way of knowing, [and] had not observed anything.'' [Tr. 210]. He was ''never'' lethargic, loopy, or seemed to be under the influence of any medication during the period from 2002 through 2009. [*Id.*]. She had never heard any complaints about Dr. Reitman. [Tr. 211, 212]. Dr. Jassman was aware of the 2002 action by the California Medical Board. However, she stated that this does not change her opinion of Dr. Reitman's abilities. [Tr. 212–3]. She no longer works with Dr. Reitman; however, Dr. Jassmann testified that, if she did, she would allow him to cross-cover her patients. [Tr. 213–4].

83. Dr. Jassmann stated that she felt confident that Dr. Reitman is able to conduct his practice successfully with regards to patients and prescribing. [Tr. 211]. She said that he was an excellent practitioner of internal and geriatric medicine. [Tr. 212].

84. Dr. Jassman testified that Dr. Reitman was remorseful about the fact that he had abused codeine. [Tr. 211].

7. Philip Shapiro, Esq.

85. Philip Shapiro is an attorney in San Diego. He went to college at Southern Illinois for his undergraduate degree. Then, he attended San Diego State for his Master's. For his J.D., he attended Thomas Jefferson School of Law. Prior to becoming an attorney, he served as a special agent with the United States Secret Service. [Tr. 216–17].

86. Mr. Shapiro had been addicted to cocaine. He is currently involved in Alcoholics Anonymous. He has been recovering for a total of 11 years. He has sponsored five people and is currently Dr. Reitman's sponsor. [Tr. 217]. Dr. Reitman is currently undergoing the twelve-step program, and is on step four. He is unsure, but he believes that Dr. Reitman has also completed the 90 in 90 program. Dr. Reitman and Mr. Shapiro had been talking every day, but now they talk three to four times per week on the phone, and 90% of the time, they meet in person on Sundays. [Tr. 218–19, 221].

87. With regards to Dr. Reitman's commitment to recovery, Mr. Shapiro said, ''I honestly would say that I think [Dr. Reitman] has the greatest chance of any person I've ever sponsored.'' [Tr. 219]. However, he also stated that he has seen other AA members relapse, even those that were remorseful about their past addiction and abuse. But, if the addicted person comes to meetings and doesn't abuse between meetings, then ''he or she will make it.'' [Tr. 222]. Also, having easy access to one's drug of choice can make it much tougher to stay sober. [Tr. 223]. Mr. Shapiro has seen individuals with 22 years of sobriety relapse. He stated that it is the individual's level of commitment to sobriety that seems to determine whether or not they are going to relapse. [Tr. 223–24].

88. Mr. Shapiro said that Dr. Reitman has been very open about his problem from the beginning. [Tr. 219]. He does not blame anyone but himself. [Tr. 220].

89. Mr. Shapiro testified that he would feel comfortable going to Dr. Reitman as his personal physician. In fact, he sent his daughter to Dr. Reitman. [Tr. 220].

8. Christine Kuwazaki

90. Christine Kuwazaki has known Dr. Reitman for 26 years. She is his back office assistant and his practice manager, doing billings, claims and charges. She works closely with Dr. Reitman on a daily basis. [Tr. 226–27, 233].

91. Ms. Kuwazaki stated that Dr. Reitman is ''very caring, very ethical, and conscientious with patient care.'' [Tr. 228, 231, 235].

92. However, she did not know that he was using his DEA Registration to order controlled substances for personal use. [Tr. 235].

93. To her knowledge, Dr. Reitman does no dispensing at his practice. No pharmacy representatives leave samples at the practice. [Tr. 236].

94. From the period of 2002 through the present, Dr. Reitman has only had a couple of patient complaints. [Resp. Exh. 9 at 2; Tr. 228]. She described them as ''typical.'' [Tr. 234].

95. Dr. Reitman told Ms. Kuwazaki that he had been abusing codeine on July 8, 2009. Up until that point, she did not see any evidence of him being under the influence of drugs. [Tr. 229–30]. He told her that he was going into rehab. She helped him reschedule patients during this time. [Tr. 230].

96. Prior to that time, she did not know that, at his office, he stored the drugs he self-prescribed. [Tr. 234].

97. Ms. Kuwazaki knew that Dr. Reitman had a problem with headaches.

She could tell when he had a ''really bad'' headache, because he looked ill and would have to go home for the day. [Tr. 230–31]. Now that Dr. Reitman has completed rehabilitation, Ms. Kuwazaki stated that he looks relieved and focused. [Tr. 231].

98. Ms. Kuwazaki does not think that his ability to write controlled substance prescriptions would be a problem for Dr. Reitman. [Tr. 232]. Ms. Kuwazaki stated that she would trust him to be her own personal doctor. [Tr. 232–3].

E. Medical Board of California

99. On March 17, 2010, the Medical Board of California (''Board'') filed an accusation against Dr. Reitman for ''self administering a dangerous drug,'' ''violation of drug statutes and regulations,'' and ''general unprofessional conduct.'' [Govt. Exh. 6]. However, the Record contains no evidence that the Board has conducted a hearing or imposed any restrictions on the Respondent's medical license.

IV. Conclusions of Law and Discussion

A. Position of the Parties

1. The Government

The Government asserts that the Respondent's continued registration is inconsistent with the public interest. [Government's Proposed Findings of Fact and Conclusions of Law (''Govt. Brief'') at 10].

First, the Government states that the Medical Board of California has filed an accusation against the Respondent. [Govt. Brief at 5]. While admitting that no final action has been taken on the accusation, the Government avers that the sanction being sought is revocation or suspension of his medical license. The Government concludes that this action, nonetheless, ''reflects the Board's recommendation as to Respondent's continued ability to practice medicine in the State of California.'' [Govt. Brief at 5–6].

Next, the Government contends that the Respondent's behavior was ''not an isolated incident of misuse, but was a continued pattern of behavior that continued over a seven year period.'' [Govt. Brief at 6]. Further, the Government notes that Respondent ''was not compliant with Federal law or the laws of the State of California.'' [*Id.*]. The Government asserts that the Respondent was indeed a dispenser, because he dispensed to himself, and is thus subject to Federal recordkeeping requirements, with which he did not comply. [Govt. Brief at 6–7]. Respondent's actions in self-prescribing and administering controlled substances also violated California law. [Govt. Brief at 7–8]. The Government contends that these violations ''weigh in favor of finding that Respondent's continued registration would be inconsistent with the public interest.''

Third, the Government notes that the Respondent was initially prescribed the controlled substances he later ordered for his own abuse. According to the Government, this does not negate the fact of his misdeeds. [Govt. Brief at 8]. The Respondent exploited his controlled substances registration and did not ask his physician to continue prescribing, because he knew that his intake of controlled substances was a problem. [Govt. Brief at 8–9].

The Government goes on to argue that though it appears Respondent's addiction never adversely affected his practice, Respondent was merely able to hide his addiction from everyone around him for seven years. [Govt. Brief at 9]. According to the Government, this exemplifies his ability to conceal future abuse. [*Id.*].

The Government next notes that, though the Respondent voluntarily entered a variety of rehabilitative efforts, ''which no doubt demonstrates a commitment to staying clean and sober * * * he has only been sober for a period of approximately eleven months. He abused controlled substances for a period of seven years.'' [*Id.*]. Additionally, the Government notes the chances that the Respondent will relapse could be enhanced, because he is in the ''early stages of recovery,'' and because, if he is permitted to retain his registration, he would have access to controlled substances. [Govt. Brief at 9–10].

In conclusion, the Government states that it ''has met its burden in proving that the Respondent's continued registration is inconsistent with the public interest.'' [Govt. Brief at 10]. Therefore, Dr. Reitman's registration should either be revoked or, alternatively, suspended for one year and subject to conditions for three years upon reinstatement. [Govt. Brief at 10–11].

2. The Respondent

The Respondent argues that his continued registration is not ''inconsistent with the public interest'' pursuant to 21 U.S.C. 824(a). [Respondent's Post-Hearing Proposed Findings of Fact, Conclusions of Law, and Argument (''Resp. Brief'') at 1].

The Respondent notes that Dr. Reitman has been subjected to no adverse recommendation by the state licensing board and also has no convictions under Federal or State laws. [Resp. Brief at 12, 13]. The Respondent further adds that Dr. Reitman is experienced in handling controlled substances and, ''exclusive of the subject at issue in this case, Dr. Reitman has been responsible in his distribution of controlled substances and compliant with DEA laws.'' [Resp. Brief at 13].

The Respondent next avers that, despite his own self-prescribing, his practice during this time period does not indicate that he placed the public at risk. [Resp. Brief at 13–15]. He cites one DEA hearing where a physician was ultimately found guilty of felonious self-prescribing by subterfuge in a manner the Respondent considers more egregious than his own conduct. *Mary Thomson, M.D., Continuation of Registration With Restrictions,* 65 FR 75,969, 75,970 (DEA 2000); [Resp. Brief at 14]. He also notes that one similarity between the two cases is that both doctors harmed no one but themselves. [Resp. Brief at 15]. Therefore, the Respondent argues that since his conduct was not as shocking as the actions taken by Dr. Thomson, Dr. Reitman should also be permitted to continue his registration with restrictions. [Resp. Brief at 14–15].

The Respondent also states that ''patient care was not affected during the time frame that Dr. Reitman was abusing codeine.'' [Resp. Brief at 15–16].

The Respondent then points out that he has fully accepted responsibility for his actions and has minimal risk of relapsing. [Resp. Brief at 16–17]. He cites two DEA cases for the proposition that ''the 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 his past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with [a] DEA registration.'' *John Porter Richard, D.O.,* 61 FR 13,878 (DEA 1996); *Leonardo* v. *Lopez, M.D.,* 54 FR 36,915 (DEA 1989); [Resp. Brief at 18]. Therefore, the Respondent is arguing that he has made the appropriate showing and it is thus reasonable for Dr. Reitman to maintain his DEA Registration at this time. [Resp. Brief at 18].

Lastly, the Respondent concludes by stating that the ''public interest will not be served by revoking Dr. Reitman's DEA registration.'' [Resp. Brief at 18]. ''Although his lifelong battle with headaches resulted in his eventual addiction to codeine, since being approached by the DEA, he has taken every conceivable step toward rehabilitation, and his rehabilitative efforts have paid off.'' [*Id.*].

Thus, the Respondent concludes by stating that he ''respectfully requests

that he be permitted to maintain his DEA Registration, and is open to any conditions that will ensure his continued compliance with DEA registration requirements.'' [Resp. Brief at 19].

B. Statement of Law

Pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator[9] may revoke a DEA Certificate of Registration if she determines that the continuance of such registration would be ''inconsistent with the public interest'' as determined pursuant to 21 U.S.C. 823(f). Section 823(f) requires that the following factors be 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).

The factors may be considered in the disjunctive: The Deputy Administrator may properly rely on any one or a combination of these factors, and may give each factor the weight she deems appropriate, in determining whether a registration should be revoked or an application for registration denied. *David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (DEA 1993); *see also D&S Sales,* 71 FR 37,607, 37,610 (DEA 2006); *Joy's Ideas,* 70 FR 33,195, 33,197 (DEA 2005); *Henry J. Schwarz, Jr., M.D.,* 54 FR 16,422, 16,424 (DEA 1989).

Also, in an action to revoke a registrant's certificate, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e). The burden of proof shifts to the Respondent once the Government has made its prima facie case. *Shatz* v. *U.S. Dept. of Justice,* 873 F.2d 1,089, 1,091 (8th Cir. 1989); *Medicine Shoppe,* 73 FR 364 (DEA 2008); *see also Thomas Johnston,* 45 FR 72,311 (DEA 1980).

1. Factor One: Recommendation of the Appropriate State Licensing Board

The Medical Board of California has not recommended that Dr. Reitman's license be revoked. [FOF 2]. The fact that the Medical Board of California has currently authorized the Respondent to practice medicine is not dispositive in this administrative determination as to whether continuation of a registration is consistent with the public interest. *Patrick W. Stodola, M.D.,* 74 FR 20,727, 20,730 (DEA 2009); *Jayam Krishna-Iyer,* 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,* 72 FR 6,580, 6,590 (DEA 2007), *aff'd, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008), *cert. denied,* __ U.S. __, 129 S.Ct. 1033 (2009). Although not dispositive, state board decisions are relevant on the issue of granting or denying a DEA application. *See Gregory D. Owens, D.D.S.,* 74 FR 36,751, 36,755 (DEA 2009); *see Martha Hernandez, M.D.,* 62 FR 61,145, 61,147 (DEA 1997).

Dr. Reitman is currently licensed to practice medicine in California, License Number G25924. [FOF 2]. The California Medical Board has not taken any formal action to limit Respondent's right to practice medicine nor has it recommended limiting his ability to prescribe controlled substances. [FOF 2]. However, it has filed an accusation against the Respondent. Although, as previously stated, the Board has taken no final action. [FOF 99]. I disagree with the Government's argument that this accusation ''reflects the Board's recommendation as to the Respondent's continued ability to practice medicine in the State of California.'' [Govt. Brief at 6]. Rather, it is the Board's ultimate decision that serves as a recommendation, not merely the investigation.

Thus, I find that this factor falls neither for nor against revocation.

2. Factor Three: Conviction Record

The Record contains no evidence that the Respondent has any convictions relating to the manufacture, distribution, or dispensing of controlled substances. Therefore, this factor also does not fall in favor of revocation.

3. Factors Two and Four: Applicant's Experience in Dispensing Controlled Substances and Compliance With Applicable State, Federal or Local Law

The record revealed that the Respondent committed recordkeeping violations. [FOF 14, 17, 24, 37]. ''Every registrant manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him.'' 21 U.S.C. 827(a)(3), 842(a)(5). Moreover, ''[r]ecordkeeping is one of the CSA's central features,'' and ''a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.'' *Paul H. Volkman, M.D.,* 73 FR 30,630, 30,644 (DEA 2008), *aff'd* 567 F.3d 215, 224 (6th Cir. 2009).

The Respondent did not dispense medication to anyone but himself. [FOF 15]. Regardless, a physician is required to keep accurate records readily available with regards to all controlled substances received and distributed. 21 U.S.C. 827(a)(3), 842(a)(5). According to 21 U.S.C. 827(c), a physician is often exempt from the recordkeeping requirements of 21 U.S.C. 827(a)(3) when the physician is only prescribing ''in the lawful course of their professional practice.'' However, Dr. Reitman's unique situation involves a doctor who ordered 24,400 tablets of controlled substances over approximately four and one-half years, a large portion of which were dispensed for his personal use, and not ''in the lawful course'' of his professional practice, although the rest of the time he was indeed only prescribing. [FOF 4, 27]. Thus, I agree with the DEA that the Respondent was operating as a ''dispenser'' as that term is defined in 21 CFR 1300.01(b)(11).[10] Yet, Dr. Reitman admitted that he kept none of those required records [FOF 14, 37], which is a violation of 21 CFR 1304.21–22.[11] Therefore, the Respondent violated DEA regulations.

The Respondent's administration of a controlled substance to himself is also a violation of both Federal and California law. Under California Business and Professions Code, Section 2239(a), ''the use or prescribing for or administering to himself or herself, of any controlled substance [ ] constitutes unprofessional conduct.'' Cal. Bus. & Prof. Code 2239 (West 2010). Also, ''[n]o person shall prescribe, administer, or furnish a controlled substance for himself.'' Cal. Health & Safety Code 11170 (West 2010). Additionally, ''[n]o person shall obtain or attempt to obtain controlled substances * * * (1) by fraud, deceit,

[9] The Deputy Administrator has the authority to make such determinations pursuant to 28 CFR 0.100(b) and 0.104 (2009).

[10] ''The term dispenser means an individual practitioner, institutional practitioner, pharmacy or pharmacist who dispenses a controlled substance.'' 21 CFR 1300.01(b)(11).

[11] ''(a) Every registrant required to keep records pursuant to 1304.03 shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him/her * * *'' 21 CFR 1304.21. ''Each person registered or authorized [ ] to manufacture, distribute, dispense, import, export or conduct research with controlled substances shall maintain records with the information listed below.'' 21 CFR 1304.22.

misrepresentation, or subterfuge; or [2] by the concealment of a material fact.'' Cal. Health & Safety Code 11173. Here, the Respondent admitted to ordering controlled substances for himself and obtained these controlled substances from Moore Medical while concealing the fact that he was dispensing to himself. [FOF 12, 15]. This is a violation of California law and, by extension, Federal law. Although the Respondent did not use prescriptions, he dispensed controlled substances without a prescription, which violated Federal statutory and regulatory provisions. *See* 21 U.S.C. 829; 21 CFR 1306.04.

Therefore, because the Respondent thus violated DEA record-keeping requirements, and because the Respondent self-administered, I find that this factor falls in favor of revocation, and the Government has thus met its prima facie burden.

4. Factor Five: Such Other Conduct Which May Threaten the Public Health and Safety

While acknowledging that the Government has met its prima facie burden, I find that the inquiry does not end here. Rather, when assessing the appropriate remedy in a particular case, the Deputy Administrator should consider all facts and circumstances at hand. *See Hernandez,* 62 FR at 61,147.

Though Dr. Reitman was self-prescribing, the evidence suggests that, initially, he was doing so to treat a medical condition. [FOF 31]. Though the Government argues that this should not be considered as a mitigating factor [Govt. Brief at 8–9], in the past, the Deputy Administrator *has* considered this to be a mitigating factor. *Dennis Robert Howard, M.D., Grant of Restricted Registration,* 62 FR 32,658, 32,662 (DEA 1997) (The then acting Deputy Administrator noted, ''There is no evidence in the record that any of the drugs were taken for other than a legitimate medical purpose. Also, there is no evidence that Respondent has since taken any medication that was not prescribed for him by another physician.''). Similarly, Dr. Reitman had intense headaches that led to dependence. [FOF 31–33]. The Record contains no evidence that Dr. Reitman was using these controlled substances in order to produce a ''high.'' Now, he has two doctors that can prescribe controlled substances for him if necessary. [FOF 34, 47]. Therefore, I find that Dr. Reitman's desire was to treat a genuine medical problem, and that this should at least serve as a mitigating factor. *See Howard,* 62 FR at 32,661.

There is evidence that, though Dr. Reitman self-prescribed, this did not impair his ability to provide competent care to his patients. [FOF 59, 68–69, 75]. He hurt no one other than himself. Though the Government argues that this simply demonstrates his skills in subversion [Govt. Brief at 9], in *Thomson,* the Deputy Administrator stated: ''Fortunately for Respondent's patients, and for Respondent herself, there is no evidence that Respondent's illicit drug abuse harmed any others than herself, and further, there is no evidence that Respondent's patients failed to receive needed medications.'' *Mary Thomson, M.D., Continuation of Registration,* 65 FR 75,969, 75,972 (DEA 2000). Likewise, Dr. Milner stated that it is ''very likely'' that Dr. Reitman was able to function normally while taking 660mg of codeine per day. [FOF 75]. Dr. Milner also stated that he searched for indications that Dr. Reitman failed to function as a physician during the period that he was addicted to codeine; he could find no such evidence. [*Id.*]. Other health care professionals stated that at no point did Dr. Reitman appear to be under the influence. [FOF 56, 59, 82, 95]. Therefore, I find it to be at least a mitigating factor that Dr. Reitman's self-prescribing did not impair his ability to conduct his duties as a physician.

Despite Dr. Reitman's efforts at rehabilitation, the Government asserts that the Respondent has only been ''clean'' for approximately eleven months, and that this is not enough time to be sure that he will not relapse. [Govt. Brief at 9–10]. 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 (1989). It is clear by the Respondent's actions since being confronted by the DEA that he is dedicated to rehabilitation. [FOF 12, 31, 33, 38, 40, 42–44, 46, 50, 54–55, 62, 64, 73, 77, 86–88]. Specifically, he immediately entered not just one but various treatment programs. [FOF 38, 39, 40, 43, 50, 73]. Numerous urinalysis tests have been conducted; they have all been negative. [FOF 46, 73].

The Government further maintains that Dr. Reitman is more likely to relapse if he has access to his drug of abuse. [Govt. Brief at 10]. Though three witnesses did state that the possibility of relapse was greater in such cases, Dr. Friedel added that any doctor with access to a controlled substance is more likely to abuse the controlled substance. [FOF 64]. The witnesses also emphatically stated their opinion that Dr. Reitman was well on the road to recovery. [FOF 54, 55, 62, 64, 77]. Therefore, I find that, under the particular circumstances of this case, nine months is not such a short recovery period that it should serve as grounds for revocation.

Additionally, the Respondent has demonstrated remorse and a dedication to overcoming his addiction and preventing future mis-judgments. Under Agency precedent, where 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 trusted with the responsibility carried by such a registration.' '' *Samuel S. Jackson,* 72 FR 23,848, 23,853 (DEA 2007) (*quoting Leo R. Miller,* 53 FR 21,931, 21,932 (DEA 1988)). Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs., Inc.,* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), this Agency has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for its actions and demonstrate that it will not engage in future misconduct. *Medicine Shoppe,* 73 FR 364 (DEA 2008); *see Jackson,* 72 FR at 23,853; *John H. Kennedy,* 71 FR 35,705, 35,709 (DEA 2006); *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). An applicant's acceptance of responsibility for his prior misconduct is a highly relevant consideration under this factor. *See Barry H. Brooks,* 66 FR 18,305, 18,309 (DEA 2001); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (DEA 1995); *Carmel Ben-Eliezer, M.D.,* 58 FR 65,400, 65,401 (DEA 1993).

Specifically, Dr. Reitman candidly admitted to his abuse from the moment he was confronted by DEA investigators, even admitting to abuse beyond the Government's proffered evidence. [FOF 12, 15, 26, 31, 35]. He cooperated in almost every way, choosing to follow the advice of his attorney and not to relinquish his registration and controlled substances until the DEA had a warrant, but ultimately did voluntarily surrender the controlled substances. [FOF 17, 19, 20]. Dr. Reitman immediately entered treatment programs. [FOF 38, 39, 40, 43, 50, 73].

The Respondent presented numerous witnesses involved in Dr. Reitman's rehabilitation and medical practice. [FOF 48, 49, 57, 66, 72, 80, 85, 90]. Every witness on the topic of rehabilitation stated that he has excelled and is extremely committed to overcoming his addiction. [FOF 54–55, 62, 64, 70, 77, 87]. Furthermore, he is involved with his synagogue and has the full support of his wife and family. [FOF 67, 69, 70, 79]. Nine months have passed since the day he was confronted by the DEA, and he has not ingested or even ordered a controlled substance since. [FOF 28, 42].

Past DEA cases have involved practitioners whose registrations were either not revoked or their applications were not denied despite more reprehensible conduct than Dr. Reitman's self-prescribing. *See Judy L. Henderson, D.V.M., Grant of Restricted Registration,* 65 FR 5,672 (DEA 2000); *Jimmy H. Conway, Jr., M.D.,* 64 FR 32,271 (DEA 1999) (Respondent was addicted to Lorcet and Soma and used the names and DEA registration numbers of his partners to order the drug for his personal use. He candidly admitted the abuse and began a treatment program. The abuse occurred in 1996, the Order to Show Cause was issued in 1998, and the final order was submitted in 1999. Despite felony convictions, the Respondent was permitted to retain his registration with restrictions.); *Robert G. Hallermeier, M.D.,* 62 FR 26,818 (DEA 1997) (Respondent was an alcoholic with serious prescribing problems; granted a registration with restrictions.); *Thomson,* 65 FR at 75,971 (both DA and ALJ agreed that the physician ''minimized her criminal actions and significant breaches of professional judgment,'' but the evidence of her ''strong efforts to rehabilitate herself'' ultimately warranted granting her a restricted registration); *John Porter Richards, D.O.,* 61 FR 13,878 (DEA 1996) (Applicant had been convicted of two felonies related to controlled substances and subsequently sentenced to thirty years in prison, twenty years of which were suspended. Thereafter, the respondent's license to practice osteopathic medicine was revoked before eventually being reinstated. However, at the application hearing in *Richards,* that applicant ''continued to maintain that he had not committed the crimes for which he had been convicted.'' Nonetheless, in *Richards,* the DA approved the applicant's application without restrictions despite the fact that, at the hearing, the applicant accepted his conviction but did not completely admit to the crimes for which he was convicted.). Here, Dr. Reitman has without a doubt, readily admitted fault and sought treatment, at which he has thrived. [FOF 44, 54–55, 70, 77, 84, 88]. The Respondent testified and was candid and truthful about his past abuse. [FOF 38–47]. Thus, the Deputy Administrator consistently decides each case on its own merits. This case warrants retaining a restricted registration.

I therefore find that Dr. Reitman has presented evidence sufficient to prove that he can be entrusted with a DEA Certificate of Registration.

V. Conclusion and Recommendation

I do not condone nor minimize the seriousness of the Respondent's prior misconduct; however, because the Respondent seems to be well on the road to rehabilitation, I recommend that Dr. Reitman be granted a registration that restricts his handling of controlled substances to merely prescribing and not storing or dispensing such drugs, and requiring that he not issue controlled substance prescriptions to himself or his family members. Further, I recommend the Respondent be subject to quarterly reporting to his local DEA office of his prescribing of controlled substances. I also recommend that Dr. Reitman be ordered to consent to unannounced inspections by DEA personnel without requiring an administrative inspection warrant. I recommend these restrictions apply for three years from the date of the final order so directing this result. In this way, the DEA can assure itself of the Respondent's compliance with DEA regulations and of the protection of the public interest.

Date: July 20, 2010.

Gail A. Randall,

Administrative Law Judge.

[FR Doc. 2011–25227 Filed 9–29–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–14]

Jack A. Danton, D.O.; Decision and Order

On June 17, 2011, Administrative Law Judge (ALJ) Gail A. Randall issued the attached recommended decision.[1] Thereafter, the Government filed exceptions to the ALJ's decision.

Having considered the entire record and the Government's exceptions, I have decided to adopt the ALJ's decision except for her legal conclusions with respect to whether the Respondent issued prescriptions for controlled substances to several undercover officers and several of her findings under factor five. However, because I otherwise agree with the ALJ's findings as to the public interest factors, I adopt her ultimate conclusion that the Government has shown that ''Respondent's continued registration would not be in the public's interest'' and that the Respondent ''has not accepted responsibility for all of her wrongdoing, nor has she adequately assured this tribunal of future compliance.'' ALJ at 64. I will therefore order that Respondent's registration be revoked and that any pending application be denied.

The Government's Exceptions

The ALJ concluded that the Government failed to establish that Respondent's prescriptions to three undercover officers (UC) lacked a legitimate medical purpose. ALJ at 42–51; see *also* 21 CFR 1306.04(a) (''A prescription for a controlled substance * * * must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.''). In so concluding, the ALJ explained that the Government ''provided no expert testimony to support this finding,'' and that while the Government ''introduced the transcripts and recordings of the undercover transactions, and a summary of those transactions via officer testimony[,] * * * the Government ha[d] provided no meaningful lodestar by which this court can measure the legitimacy of the Respondent's medical practice under Florida statutory and regulatory requirements.'' *Id.* at 43. The ALJ noted that ''while the [A]gency has considered over fifty cases concerning the legitimacy of a practitioner's prescriptions since [*Gonzales* v. *Oregon,* 546 U.S. 243 (2006)], the [A]gency has seldom found a violation of 21 CFR 1306.04(a) absent expert testimony[,]'' and that ''where the [A]gency has found such illegitimacy without an expert's testimony, that finding was based on patent violations, where diversion was either unrefuted or unquestionable.'' *Id.* at 43–44 (citing cases).

The ALJ also noted that ''expert testimony may not be required'' where the evidence shows that a registrant ''has acted in a manner that clearly contravened state law governing what constitutes a legitimate medical practice,'' such as where a physician

[1] All citations to the ALJ's decision are to her slip opinion as originally issued.