held that ''where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility'' for his or her actions and demonstrate that he or she will not engage in future misconduct. *Patrick W. Stodola,* 74 FR. 20,727, 20,734 (DEA 2009).[47] A respondent's acceptance of responsibility must be ''clear and manifest.'' *Mark De La Lama, P.A.,* 76 FR. 20,011, 20,020 n.19 (DEA 2011). A ''[r]espondent's lack of candor and inconsistent explanations'' may serve as a basis for denial of a registration. *John Stanford Noell, M.D.,* 59 FR. 47,359, 47,361 (DEA 1994). Additionally, ''[c]onsideration of the deterrent effect of a potential sanction is supported by the CSA's purpose of protecting the public interest.'' *Joseph Gaudio, M.D.,* 74 FR. 10,083, 10,094 (DEA 2009).

The Government alleged ''other conduct'' relevant to Factor Five during the course of prehearing procedures in the form of a February 24, 2011 Motion to Include Dental Board of California Complaint. The proposed document is entitled: ''In the Matter of the Accusation Against'' [Respondent], brought on behalf of the Dental Board of California, and dated January 31, 2011. (Gov't Ex. 10.) The California Dental Board allegations relevant to Factor Five include obtaining, possessing or administering to oneself, cocaine between May and October 2008, and marijuana between March and April 2010, citing California Health and Safety Code 11054 and 11055; and using alcohol in a dangerous manner in or about January 8, 2010, citing California Business and Professions Code 1681(b). The Government's prehearing notice of evidence to support the above issues consisted of a supplemental prehearing statement dated January 21, 2011, stating in relevant part ''Ms. Murutalla (sic) will testify that she told the DEA that the Respondent had been hospitalized in August 2008 for alcohol and cocaine abuse.'' (Gov't SPHS at 4.)

At hearing, I excluded Ms. Muratalla's proposed testimony on the limited issue of alcohol and cocaine abuse based in part on lack of adequate notice, particularly given the brevity of the noticed testimony and variance from allegations of the California Dental Board. I did allow the Government to proffer in detail Ms. Muratalla's proposed testimony, which produced even greater variance from the alleged conduct.[48] Even if Ms. Muratalla's proposed testimony had been adequately noticed, her proffered testimony at hearing provided no substantive basis to support the allegations by the California Dental Board pertaining to cocaine, alcohol and marijuana. (*See* Tr. 73–74.) I do take note of Respondent's admission in a February 9, 2011 prehearing filing that he used marijuana one time ''during a dark day in April'' of 2010, while intoxicated, which he states he did while unemployed and not seeing patients.[49]

Agency precedent has ''long held that a practitioner's self-abuse of a controlled substance is a relevant consideration under factor five and has done so even when there is no evidence that the registrant abused his prescription writing authority.'' *Tony T. Bui, M.D.,* 75 FR. 49,979, 49,989 (DEA 2010). Respondent's admitted misuse of marijuana while intoxicated is a relevant consideration as to whether granting Respondent a DEA COR would be consistent with the public interest. *See David E. Trawick, D.D.S.,* 53 FR. 5326, 5326 (DEA 1988) (holding that ''offences or wrongful acts committed by a registrant outside of his professional practice, but which relate to controlled substances may constitute sufficient grounds'' for denying relief favorable to respondent, where respondent had history of alcohol and controlled substance abuse).

Although I have considered Respondent's prehearing admission of a single instance of marijuana use while intoxicated in April 2010, I give it little overall weight for purposes of this Recommended Decision, particularly given the absence of any other credible evidence of record to support allegations of other drug or alcohol abuse by Respondent at any other time.

Conclusion and Recommendation

I find by a preponderance of the evidence that the Government has met its burden to establish a prima facie case based on substantial evidence of record. After considering all of the relevant factors, the evidence is fully consistent with a denial of Respondent's application for a DEA COR as a practitioner, because Respondent's registration would be inconsistent with the public interest. *See* 21 U.S.C. 823(f) and 824(a)(4). Because the Government has made out a prima facie case against Respondent, a remaining issue in this case is whether Respondent has adequately accepted responsibility for his past misconduct such that his registration might nevertheless be consistent with the public interest. *See Patrick W. Stodola,* 74 FR. 20,727, 20,734 (DEA 2009).

Respondent has not sustained his burden in this regard. Respondent did not testify and did not accept responsibility for his past misconduct. Moreover, Respondent presented no credible evidence to demonstrate that he has learned from his past mistakes or to demonstrate that he would now handle controlled substances properly if granted a registration.

In light of the foregoing, Respondent's evidence as a whole fails to sustain his burden to accept responsibility for his misconduct and demonstrate that he will not engage in future misconduct. I find that Factor Five strongly weighs in favor of a finding that Respondent's registration would be inconsistent with the public interest.

Accordingly, I recommend denial of Respondent's application for a COR. I find the evidence as a whole demonstrates that Respondent has not accepted responsibility, and Respondent's registration would be inconsistent with the public interest.

Dated: May 19, 2011

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2011–27985 Filed 10–27–11; 8:45 am]

BILLING CODE 4410–09–P

[47] *See also Hoxie* v. *DEA,* 419 F.3d 477, 484 (6th Cir. 2005) (decision to revoke registration ''consistent with the DEA's view of the importance of physician candor and cooperation.'')

[48] *See* Gov't SPHS at 4. At hearing and consistent with Respondent's prehearing objection to the issue, Respondent timely objected to the testimony related to his hospitalization. (Tr. 65.) I requested the Government to proffer the proposed testimony of Ms. Muratalla given the very limited disclosure of proposed testimony contained in the Government's SPHS. The proffer was similarly brief in content and varied somewhat from the SPHS insofar as the proffer lacked a reference to alcohol. (Tr. 69.) Following argument, I excluded the testimony based on notice and relevance issues. (Tr. 71.) At the Government's request, I did allow the Government to question Ms. Muratalla by way of proffer regarding the alleged August 2008 hospitalization. Notably, Ms. Muratalla's proposed testimony made no reference to cocaine, alcohol or any other substance abuse, nor was any other testimonial evidence on the topic offered by the Government at hearing. (Tr. 73–74.)

[49] Respondent's Reply Regarding Government Request for Motion dated February 9, 2011.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 5, 2011, Research Triangle Institute, Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North

Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture marihuana, and cocaine derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by the National Institute on Drug Abuse.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 27, 2011.

Dated: October 20, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–28013 Filed 10–27–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David T. Koon, M.D.; Revocation of Registration

On July 24, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to David T. Koon (hereinafter, Registrant), of Summerton, South Carolina. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BK4092350, as a practitioner, and the denial of any applications to renew or modify the registration, on the ground that he does not ''have authority to practice medicine or handle controlled substance in the [S]tate of South Carolina, the [S]tate in which [he is] registered with DEA'' because ''of actions by the South Carolina Board of Medical Examiners and the South Carolina Bureau of Drug Control.'' *Id.* at 1 (citing 21 U.S.C. 824(a)(3)).

On August 1, 2009, the Show Cause Order, which also advised Registrant of his right to request a hearing on the allegations or to file a written statement in lieu of a hearing, the procedures for doing either, and the consequence for failing to do so, was served by certified mail sent to him at his home address as established by the signed return-receipt card. *Id.* at 2. Since that time, neither Respondent, nor anyone purporting to represent him, has requested a hearing or submitted a statement. Because more than thirty days have passed since service of the Show Cause Order, I conclude that Respondent has waived his right to either request a hearing or to submit a written statement. 21 CFR 1301.43. I therefore issue this Decision and Final Order without a hearing based on relevant material contained in the record submitted by the Government and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BK4092350. Respondent's registration was last renewed on January 2, 2009, and does not expire until December 31, 2011.

On March 31, 2009, the South Carolina Board of Medical Examiners ordered that Respondent's medical license be ''temporarily suspended, effective immediately, until further Order of the Board.'' Order of Temporary Suspension, *In re David Thomas Koon,* OIE# 2009–46, 2008–217 (S.C. Bd. Med. Exam'rs, Mar. 31, 2009). Moreover, according to the Board's Web site, Registrant's medical license expired on September 30, 2009; the Web site also indicates Registrant's ''Credential Status'' as ''Suspended.'' In addition, according to the South Carolina Department of Health and Environmental Control, Bureau of Drug Control, Registrant's South Carolina Controlled Substances Registration expired on May 12, 2009.

Discussion

DEA does not have statutory authority to grant or maintain a DEA registration if the applicant or registrant lacks authority to handle controlled substances under the laws of the State in which he is engaged in professional practice. *See* 21 U.S.C. 802(21) (defining the term ''practitioner'' as a person ''licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to distribute, dispense * * * [or] administer * * * a controlled substance''); *id.* § 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * 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'').

Moreover, the Agency has interpreted the CSA to require the revocation of a registration upon a practitioner's loss of state authority ''not only where a registrant's authority has been suspended or revoked, but also where a practitioner * * * has lost his state authority for reasons other than through formal disciplinary action of a State board.'' *John B. Freitas,* 74 FR 17524, 17525 (2009). Thus, even when a registrant ceases to possess authority to handle controlled substance in the State in which he practices through the expiration of a medical license or separate state controlled substances registration (when required), the Agency has revoked the practitioner's registration. *James Stephen Ferguson,* 75 FR 49994, 49995 (2010); *Mark L. Beck,* 64 FR 40899, 40900 (1999); *Charles H. Ryan,* 58 FR 14430 (1993).

Because Registrant is no longer licensed to practice medicine and to dispense controlled substances in South Carolina, the State in which he is registered with DEA, under the CSA, he is no longer entitled to hold his registration. Accordingly, his 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), I order that DEA Certificate of Registration, BK4092350, issued to David T. Koon, M.D., be, and it hereby is, revoked. I further order that any pending application of David T. Koon, M.D., to renew or modify his registration, be, and it hereby is, denied.