Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than December 18, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: November 8, 2006.

Joseph T. Rannazzisi,

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

[FR Doc. E6–19446 Filed 11–16–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–12]

Daniel Koller, D.V.M., Denial of Application; Introduction and Procedural History

On November 22, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Daniel Koller, D.V.M. (Respondent) of San Diego, California, and Portland, Oregon. The Show Cause Order proposed to revoke Respondent's DEA Certificate of Registration, BK 5633525, as a veterinary practitioner, which was issued to him at his San Diego address, and to deny his pending application for a registration as a veterinary practitioner at the proposed registered location of 3150 NE 82nd Avenue, Portland, Oregon. As grounds for the action, the Show Cause Order alleged that Respondent's registration would be inconsistent with the public interest. *See* 21 U.S.C. 823(f) and 824(a)(4).

In pertinent part, the Show Cause Order alleged that on December 5, 2001, Respondent submitted an application for a registration as a veterinary practitioner at 3150 NE 82nd Avenue, Portland, Oregon, and that on the application, Respondent had indicated that the State of California had revoked his state license in 1978 for non-drug related conduct but had re-instated his license in 1982. *See* Show Cause Order at 2. The Show Cause Order alleged that on February 13, 2002, DEA Diversion Investigators (DIs) interviewed Respondent at his proposed registered location. *See id.* The Show Cause Order alleged that Respondent told the DIs that he had started over 30 veterinary clinics under the name ''Companion Pet Clinic'' in Oregon, Arizona, Washington and Idaho, and that Respondent obtains a DEA registration for the particular clinic and operates the clinic until he finds a veterinarian to purchase the practice. *See id.* The Show Cause Order also alleged that Respondent ''retain[s] a financial interest in each new clinic.'' *Id.*

The Show Cause Order further alleged that during the interview, Respondent told the DIs that he maintained a law practice in San Diego, California, and that he anticipated hiring temporary veterinarians at the Portland location during the periods in which he returned to San Diego, and that the temporary veterinarians and clinic support staff would have access to the safe in which the controlled substances were stored. *See id.* at 3. The Show Cause Order alleged ''that by affording such access, [Respondent] would not be providing effective controls and procedures against diversion.'' *Id.*

The Show Cause Order alleged that during the on-site inspection, the DIs observed that a partial bottle of Pentobarbital euthanasia solution, a Schedule II controlled substance, was stored in a safe. *See id.* at 3. The Show Cause Order further alleged that Respondent had a bottle of Ketamine, a Schedule III controlled substance, in his laboratory coat pocket. *See id.* The Show Cause Order alleged that Respondent told the DIs that he had brought the Ketamine from his registered location in San Diego, and that he had borrowed the Pentobarbital from the Companion Pet Clinic in Forest Grove, Oregon. *See id.* The Show Cause Order alleged that these acts ''constitute[] a violation of 21 CFR 1301.12, which requires each separate location to be registered.'' *Id.* at 3.

The Show Cause Order next alleged that Respondent had told the DIs that the California Veterinary Board was going to place him in a diversion program because Respondent had self-administered Telazol, a Schedule III controlled substance which is used as a veterinary anesthetic. *See id.* The Show Cause Order further alleged that Respondent explained that he had taken this drug because he had undergone knee replacement surgery and had trouble sleeping. *See id.* The Show Cause Order also alleged that Respondent failed to disclose to the DIs that on December 20, 2001, the California Veterinary Board had ordered the interim suspension of his license as a result of his Telazol abuse and that the order remained in effect on the date of the interview. *See id.*

The Show Cause Order alleged that on October 27, 2001, San Diego police officers and paramedics responded to a 911 call placed by Respondent's daughter which reported that Respondent's wife had suddenly lost consciousness and that Respondent was lying on a bed in a semi-conscious state. *See id.* The Show Cause Order alleged that upon arrival at Respondent's residence, paramedics found that Respondent's wife had fresh puncture wounds with blood oozing from her left arm and that Respondent had fresh puncture wounds with blood oozing from his right arm. *See id.* The Show Cause Order also alleged that the paramedics found a hypodermic needle with fresh blood on it lying near Respondent. *See id.* The Show Cause Order further alleged that Respondent was under the influence of a controlled substance, that Respondent was arrested, and that during a search incident to the arrest, police found a 5 ml. vial of Telazol, a Schedule III controlled substance, in his right front pants pocket, and that the vial's top had been punctured. *See id.*

The Show Cause Order next alleged that the police obtained a warrant and conducted a search of Respondent's residence. *See id.* at 5. The Show Cause Order alleged that during the search, the police did not find any controlled substance dispensing logs, purchasing records, or inventory reports in Respondent's residence, even though federal law requires controlled substance records to be maintained at the registered location. *See id.* at 6. The Show Cause Order also alleged that the police found a variety of controlled substances during the search most of which were not secured in a safe. *See id.* at 5.

The Show Cause Order next alleged that in January 2000, Dr. Parminder Nagra, a friend and business associate of Respondent (who owned a Companion

Pet Clinic located at 8483 SW. Canyon Road, Portland, Oregon, and was a partner in a clinic located at 14292–A SW. Allen Blvd, Beaverton, Oregon) was killed in an automobile accident. *See id.* at 7–8. The Show Cause Order alleged that in March 2000, Respondent contacted DEA's Portland office seeking an application for a registration at the Canyon Road clinic that was inherited by Dr. Nagra's widow and told a DEA investigator that he was seeking to stock the facility with controlled substances to maintain its operational capacity. *See id.* at 8. The Show Cause Order further alleged that Respondent told the DEA investigator that he resided in, and practiced law in, San Diego, and that he did not intend ''to move to Oregon to be a veterinarian at the Canyon Road clinic.'' *Id.*

The Show Cause Order further alleged that during a telephone conversation on May 26, 2000, Respondent told a DEA investigator that he had been ordering controlled substances that were shipped to his San Diego address, which he then mailed to the Canyon Road facility. *See id.* The Show Cause Order alleged that Respondent acknowledged that this was a violation of Federal law, but ''DEA [was] forcing [Respondent] to operate like this.'' *Id.* The Show Cause Order alleged that during the conversation Respondent again stated that while he lived in San Diego, he had opened numerous clinics in California, Oregon, Washington, and Arizona, that Respondent had obtained DEA registrations for the clinics in order to stock them with controlled substances, and that he maintained each registration until he either sold the clinic or found a permanent veterinarian who would work there and obtain his or her own registration. *See id.*

The Show Cause Order further alleged that on July 28, 2000, DEA investigators interviewed Respondent at DEA's San Diego field office to discuss the nature of Respondent's business practices and whether Respondent's activities complied with Federal law. *See id.* at 9. The Show Cause Order alleged that during the interview, Respondent stated that he practiced as a relief veterinarian approximately two weeks per month and also practiced administrative law at his San Diego residence. *See id.*

The Show Cause Order alleged that during the interview, Respondent stated that a potential buyer had been found for the Beaverton, Oregon clinic, who would run the clinic for a six-month trial period, but if the arrangement proved unsatisfactory, Respondent could not guarantee that he would refrain from sending controlled substances to the Beaverton clinic in order to keep it open. *See id.* The Show Cause Order further alleged that Respondent told DEA investigators that during the period in which he was attempting to find a permanent veterinarian for the Beaverton clinic, he had ordered controlled substances that were delivered to his San Diego residence and then shipped them to Beaverton. *See id.* at 9–10. The Show Cause Order alleged that because the Beaverton location was not registered, Respondent's conduct constituted an unlawful distribution of controlled substances. *See id.*

Finally, the Show Cause Order alleged that Respondent's existing registration should be revoked because Respondent lacked authority under California law to handle controlled substances. *Id.* at 10. The Order also alleged that Respondent's conduct in overdosing on veterinary controlled substances and failing to adequately safeguard controlled substances at his San Diego location constituted acts which rendered his registration inconsistent with the public interest. *Id.* As for his pending application for a registration, the Show Cause Order alleged that Respondent ''anticipate[d] permitting temporary veterinarians and unregistered technicians to have access to controlled substances at the proposed registered location * * * despite being told that DEA would not permit such access.'' *Id.* at 11. The Show Cause Order concluded by alleging that Respondent's ''past experience dispensing controlled substances, [his] failure to comply with pertinent laws and regulations regarding controlled substances, and [his] failure to maintain effective controls against diversion, renders [his] registration * * * inconsistent with the public interest.'' *Id.*

Respondent, through his counsel, requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing in Portland, Oregon, on November 4–6, 2003, and May 11, 2004. At the hearing, both parties presented testimonial and documentary evidence; following the hearing, both parties submitted briefs.

On November 15, 2005, the ALJ submitted her decision. The ALJ held that because Respondent's registration had expired on December 31, 2003, and Respondent had not filed a renewal application, the revocation aspect of the proceeding was moot. *See* ALJ at 11 n.2. With respect to his pending application, the ALJ held that Respondent ''is unable or unwilling to accept the responsibilities inherent in a DEA registration'' and therefore recommended that it ''be denied.'' *Id.* at 33. Neither party filed exceptions. The record was then transmitted to me for final agency action.

Having considered the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's findings of fact and conclusions of law except as expressly noted herein. For the reasons set forth below, I concur with the ALJ's recommendation that Respondent's application be denied.

Findings

Respondent holds a D.V.M. degree which he obtained from the University of California at Davis School of Veterinary Medicine in 1974. Respondent also holds a J.D. degree which he obtained from the University of California's Hastings College of Law in 1981. Respondent has maintained practices in both veterinary medicine and the law. *See id.* at 11.

At the time this proceeding commenced, Respondent held a California Veterinarian's License with an expiration date of January 31, 2003. Govt. Exh. 10. Respondent also holds a license to practice veterinary medicine in Oregon.

Respondent also held DEA Registration, BK 5633525, which was issued to him at the registered location of 12897 Corbett St., San Diego, California, and which had an expiration date of December 31, 2003. *Id.* at n. 11. Respondent did not, however, file a timely renewal application of his DEA registration, and thus the registration expired. *Id.*

In April 1982, Respondent and his partner Bill Barnett opened the first Companion Pet Clinic in Tigard, Oregon. Sometime thereafter, Respondent and his partner hired Kevin Knighton, D.V.M., to work as a veterinarian at the Tigard clinic. In 1983, Dr. Knighton bought out Mr. Barnett's interest and became Respondent's partner. Between 1983 and 1990, Respondent and Dr. Knighton established about eighteen to twenty clinics. Under their business plan, Respondent and his partner hired young veterinarians who desired to eventually own their own practices. After a period of several years, Respondent and his partner sold the clinics to the veterinarian for a minimal down payment and financed the balance at ten to twelve percent interest. Dr. Knighton testified that while either he or Respondent held a DEA registration for a clinic, both the full time and relief veterinarians they hired did not have registrations. *See* ALJ at 11–12, Tr. 432–38.

Dr. Knighton testified that at the clinics, controlled substances were maintained in a locked safe, and that only certain personnel had access to the key. Tr. 437. Dr. Knighton also testified that the clinics kept a controlled substances logbook for each controlled substance and that every cc (a volumetric measure) used was logged. *Id.* at 437–38. Dr. Knighton further testified that to his knowledge, no controlled substances were diverted from any of these clinics. *Id.* at 437.

Mrs. Baldev Nagra testified that in 1989, she and her husband, Parminder Nagra, a veterinarian, emigrated to the United States. In 1991, the Nagras purchased the Companion Pet Clinic which was located in West Slope, Oregon, from Respondent and Dr. Knighton. The Nagras also became limited partners in the Veterinary Investment Group, an entity which Respondent established to construct and develop new clinics. *See* ALJ at 13.[1] One of the Veterinary Investment Group's projects was the construction of a new clinic in Beaverton, Oregon, which was built for Dr. Nagra, and which Dr. Nagra would take over after selling his West Slope clinic. Tr. 258–60.

In January 2000, Dr. Nagra was killed in an automobile accident. According to the testimony of Mr. John Madigan, it was essential to find a full time veterinarian for the Beaverton facility because the partnership was incurring expenses of ten to fifteen thousand dollars per month whether it was open or closed. *Id.* at 261. Mr. Madigan further testified that Dr. Nagra had been the DEA registrant at the Beaverton facility, *id.* at 263, and that it took about six months before the partnership could hire a full time veterinarian. *Id.* at 277.

Mrs. Nagra testified that the West Slope clinic was a large investment for the Nagras, and that following her husband's death, the clinic could not obtain controlled substances because the clinic did not have a full time veterinarian with a DEA registration for the location. *Id.* at 221–22. Mrs. Nagra further testified that she contacted Respondent because the clinic needed controlled substances to remain open and that Respondent subsequently ordered controlled substances which he sent to the clinic. *Id.* at 225. Mrs. Nagra testified that she logged the drugs in and that Respondent supplied her with drugs from San Diego for ''probably five months,'' at which point the clinic hired a full time veterinarian who obtained a registration for the facility. *Id.* at 226–27.

Mrs. Nagra testified that there were no shortages of controlled substances during this period. *Id.* at 225. Mrs. Nagra also testified that she was looking for veterinarians for the Beaverton clinic and eventually hired Fredrick Zborowski, D.V.M., who, at some point in the year 2000, obtained a DEA registration for the Beaverton location. *Id.* at 229–30.

With respect to his sending controlled substances to the West Slope clinic, Respondent testified that while ''it might be a violation * * * the purpose was honorable'' because he did it ''to help someone in distress.'' *Id.* at 390. Respondent also testified that it would be ''unjust and unfair'' if the clinic had been closed down and Mrs. Nagra had lost her investment. *Id.* Respondent further testified that he did not regret violating the law and that he ''would do that again because [he] wasn't hurting anyone.'' *Id.*

Pamela Meyer, a DI from the DEA San Diego Field Division testified that on July 28, 2000, Respondent and his wife Ellen Koller met with her, another DI and their Group Supervisor, to discuss whether Respondent's practices complied with DEA regulations and to interview him regarding an application he had submitted for a registration at the Beaverton, Oregon clinic. *Id.* at 68–71. Respondent told the DIs that he worked as a relief veterinarian in California about two weeks per month, and that he also practiced law out of his home. *Id.* at 69. According to the DI, Respondent admitted that he was receiving drugs at his San Diego home and sending them to the Beaverton clinic. *Id.* at 71. The DI further testified that while Respondent had a registration for his California home, the Beaverton location was not registered. *Id.* at 72. One of the DIs then informed Respondent ''that he could only receive drugs at a registered location,'' and the DIs gave Respondent a copy of the Code of Federal Regulations. *Id.* at 73.

The DIs further advised Respondent that if he practiced as a relief veterinarian and took controlled drugs to another location, he had to document the use of the drugs. *Id.* Respondent was cooperative and admitted to the DIs that he knew what he was doing was wrong and that was why he was seeking the registration. *Id.* at 75. The DI also testified that Respondent said he would comply with the regulations and that there was no evidence that Respondent subsequently sent controlled substances to Oregon.[2] *Id.* at 74.

Respondent's Arrest and the California Veterinary Board Proceeding

The record establishes that on October 27, 2001, Respondent's daughter observed her mother, Mrs. Ellen Koller, faint in the doorway of the bedroom of their San Diego residence. Fearing that her mother had overdosed, Respondent's daughter called 911 and requested assistance. When the paramedics arrived, they found Mrs. Koller unconscious and lying on the floor; her right arm had a fresh puncture wound from which blood was oozing. When Mrs. Koller did not respond to first aid, including treatment with Narcan, a drug used to treat opiate overdoses, the paramedics took her to the hospital.[3] *See* ALJ at 15; Gov. Exh. 4, at 3 & 5.

The paramedics found Respondent lying on a bed in a semi-conscious state; his left arm also had a fresh puncture wound from which blood was oozing. The paramedics further observed that there were several hypodermic needles and syringes next to Respondent. *See* ALJ at 15; Gov. Exh. 4, at 5.

While the paramedics were attending Mrs. Koller, Respondent became belligerent and tried to prevent them from treating her. The paramedics called for assistance and the police arrived. Upon their arrival, one of the officers ordered Respondent to place his hands behind himself. Respondent refused. The officer then grabbed Respondent's hands but Respondent resisted, prompting the officer to use pepper spray to restrain him. The officer then arrested Respondent and conducted a search incident to arrest. Govt. Exh. 4, at 6.

During the search, the officer found a small vial containing a liquid in one of Respondent's pants pockets. The vial was labeled Tiletamine. The vial's rubber top had been punctured and three-quarters of the liquid was missing. Tiletamine (Telazol) is a veterinary anesthetic and a Schedule III controlled substance. *See* 21 CFR 1308.13(c). Moreover, the officer found that Respondent displayed several symptoms that are indicative of a person who is under the influence of a controlled substance. Gov. Exh. 4, at 6.

[1] Other members of the partnership were John Madigan and his wife, Sheri Morris, D.V.M., who owned Companion Pet Clinics in West Linn, Clackamas and Tigard, Oregon.

[2] At the hearing, the government did not pursue any potential violations arising out of Respondent's sending controlled substances to the Beaverton clinic.

[3] According to the testimony of Mrs. Koller, Respondent ''had taken some Telazol and gone to sleep, and I decided that I wanted to try it too, but I had been drinking earlier, and so I didn't know the dosage. And I took some* * *.'' Tr. 507.

The police subsequently obtained a warrant, and later that night conducted a search of Respondent's residence. During the search, the police found four uncapped needles and syringes on the headboard of the bed in the master bedroom; another needle and syringe was found under the mattress of this bed. In a bathroom drawer over which Respondent's wife exercised dominion and control, the police found twenty-one tablets of controlled substances that were ''mostly veterinarian narcotics.'' Gov. Exh. 4, at 7. The police also found Dexfenfluramine (a Schedule IV controlled substance, *see* 21 CFR 1308.14(d)), Diphenoxylate (a Schedule V controlled substance, *see* 21 CFR 1308.15(c)), and Diazepam (a Schedule IV controlled substance, *see* 21 CFR 1308.14(c)), in a bathroom vanity drawer over which Respondent's wife exercised dominion and control. Respondent's wife testified, however, that she had a prescription for the Diazepam and that she had purchased Phentermine in Mexico for a neighbor. She also testified that she had obtained the Diphenoxylate in Mexico to treat her dog's diarrhea. ALJ at 16.

The police also found five vials of Nandrolone, an anabolic steroid and Schedule III controlled substance, in Respondent's office. *See id.* at 8. Moreover, the police did not find any logbooks which recorded the purchase, use and storage of the controlled substances recovered from Respondent's residence. *Id.* at 8.

Respondent testified that at the time of this incident, he had undergone knee replacement surgery for his left knee in 2000 and his right knee in 2001, that his recovery from the latter procedure was painful, and he took the Tiletamine because it helped him sleep and the drug prescribed by his physician gave him a bad hangover. Tr. 373–74. Respondent explained that there was ''no excuse for what I did to myself.'' *Id.* at 374. Respondent added that: ''I had to have other reasons. It wasn't just the pain, or it wasn't just the sleep. It had to be other reasons.'' *Id.* at 374.

In his testimony, Respondent disputed the accuracy of the police reports. According to Respondent, when he awoke, he was ''confronted with about a half dozen people in my bedroom,'' and that as he regained his senses, the police ''tried to prevent'' him from checking out his wife and that ''[s]he was doing fine.'' [4] Tr. 375. Respondent also testified that while he was arrested, no charges were ever filed against him. *Id.*

The police did, however, report the incident to the California Veterinary Medical Board. ALJ at 17. According to the testimony of Susan Geranen, the Executive Officer of the California Board, on December 20, 2001, the California Office of Administrative Hearings issued an interim order suspending Respondent's veterinary license.

Subsequently, on August 29, 2002, Ms. Geranen filed an Accusation against Respondent. As relevant here, the Accusation alleged that Respondent had violated Section 4883 of the California Business and Professions Code (Veterinary Medical Practice Act) by illegally using and administering to himself and his wife a controlled substance. *See* Gov. Exh. 10, at 6. The Accusation further alleged that Respondent violated Cal. Health & Safety Code § 11158(a) by ''dispens[ing] a Schedule III controlled substance to himself and his wife without a valid prescription.'' *Id.* at 8. Next, the Accusation alleged that Respondent violated DEA regulations by failing to store in a securely locked and substantially constructed cabinet the various controlled substances that were found in his home by the police on October 27, 2001. *Id.* 8–9. The Accusation further alleged that during the search of Respondent's home, the police did not find any medical records or any of the records required to be maintained under the Controlled Substances Act's (CSA) implementing regulations. *See id.* at 9; *see also* 21 CFR 1304.22(c).

On January 28, 2003, a hearing was held before a state ALJ. The ALJ subsequently found that on October 27, 2001, Respondent had injected himself with Telazol, a drug containing Tiletamine and Zolazepam, a Schedule III controlled substance, and a drug which has been approved only for use in animals. *See* Gov. Exh. 16, at 2. The state ALJ further found that Respondent did not have a prescription for the drug. Moreover, the state ALJ found that Respondent had ''furnished the drug to his wife who injected herself with it.'' *Id.*

The state ALJ found that ''Respondent's daughter knew respondent used drugs and left drugs lying around the house,'' and that ''Respondent's wife knew respondent used Telazol.'' *Id.* at 2. The state ALJ further found that ''Respondent's handling of drugs in his home endangered the health, safety and welfare of his wife and daughter.'' *Id.* The state ALJ also made a finding that during the October 27, 2001 incident, the paramedics found Respondent's wife ''unconscious and not breathing. Her daughter found her in that condition and called paramedics because she was turning blue.'' *Id.* The state ALJ thus concluded that Respondent's conduct violated Cal. Bus. & Prof. Code § 4883(g)(2)(B), ''because he endangered the lives of himself, his wife and his daughter,'' as well as Cal. Healthy & Safety Code § 11171, ''by furnishing Telazol to his wife.'' *Id.* at 2.

The State ALJ further found that Respondent did not have any medical records in his home and also ''did not have any controlling logs indicating the purchase of, use of, or storage of the controlled substances that were recovered in his home.'' *Id.* at 3. The State ALJ found that ''[n]one of the controlled substances were locked in a secure cabinet'' as required by 21 CFR 1301.75(b), that Respondent was ''not authorized to have controlled substances * * * at his home * * * without meeting federal regulations,'' and that Respondent ''did not lawfully possess the controlled substances'' that were found by the San Diego police. *Id.*

Upon reviewing Respondent's evidence as to his rehabilitation, the State ALJ also found that Respondent had ''failed to establish that he no longer represents a threat to the public.'' Gov. Exh. 16, at 5. The state ALJ thus upheld the interim order and suspended Respondent's California veterinary license pending a further hearing. *See* Gov. Exh. 3.

Ms. Geranen testified that a further hearing had been scheduled for September 2003, but was canceled pending the negotiation of a settlement agreement. Respondent introduced into evidence a copy of the agreement. *See* Resp. Exh. 8. In this document, Respondent admitted that on October 27, 2001, he ''illegally used and administered to himself a controlled substance,'' that he ''appeared to be under the influence of a narcotic drug,'' and that the responding officials found that Respondent had ''pin point pupils and blood from a fresh injection site.'' *Id.* at 7. Respondent further admitted that the authorities found a used syringe next to him and a vial of Telazol with its top punctured and ¾ of its contents missing in his pant's pocket. *Id.* Moreover, ''[t]he vial was clearly labeled 'for animal use only' and 'not for human use.' '' *Id.* Respondent admitted that a blood sample that was taken from him by the San Diego Police Department

[4] The ALJ did not specifically credit the testimony that Respondent's wife ''was doing fine.'' As ultimate factfinder, I decline to credit it based on the record as whole including the police reports and Respondent's Exh. 8, in which Respondent admitted that his wife was ''unconscious'' and ''not breathing.'' *Id.* at 6.

tested positive for Zolazepam, a Schedule III controlled substance that is used in Telazol. *Id.* Respondent also admitted that ''he dispensed a Schedule III controlled substance to himself without a valid prescription.'' *Id.* at 8.

Moreover, Respondent admitted that the paramedics found that his wife was ''not breathing,'' that she was ''lying unconscious on the floor in the doorway to the master bedroom'' with ''pin point pupils,'' and that she had a ''fresh injection site in her left arm, which was bleeding.'' *Id.* at 6. Respondent also admitted that his wife ''was under the influence of a narcotic or narcotic type drug and was experiencing a possible narcotic overdose.'' *Id.* at 7.

Respondent further admitted that he ''violated federal statutes regulating controlled substances'' by failing ''to store a controlled substance [Telazol] at his home in a securely locked, substantially constructed cabinet.'' *Id.* at 8. Moreover, Respondent admitted that he ''violated federal statutes regulating controlled substances'' by ''failing to maintain records regarding controlled substances in his possession'' such as medical records and controlling logs. *Id.* at 9.

The settlement agreement proposed to revoke Respondent's California Veterinary License but stay the revocation for a four-year probationary period. The agreement further proposed the suspension of Respondent's State license for a period of two years effective from December 20, 2001, the date of the original Interim Suspension Order. *See id.* at 10. The agreement also further required that Respondent undergo a psychological evaluation, that he participate in a drug rehabilitation program for the length of the probation, that he submit to random drug testing, that he abstain from the use of controlled substances unless lawfully prescribed, and that he surrender his DEA registration. *See id.* at 13–15. While the agreement was signed by Respondent, as well as a State Deputy Attorney General and state ALJ, the agreement apparently was not adopted by the California Board. *See* ALJ at 19. Moreover, the ALJ found that Respondent's California veterinary license expired on January 31, 2005.

Respondent's Application for Registration of the NE 82nd Ave. Clinic

The ALJ found that Respondent opened a new Companion Pet Clinic at 3150 NE 82nd Ave., Portland, Oregon (hereinafter 82nd Avenue), on January 2, 2002. ALJ at 19. Respondent testified that he went to Portland in December 2001 to open the clinic and took with him a bottle of Euthasol, a drug containing pentobarbital which is used to euthanize animals, and a bottle of ketamine, a drug used as an anesthetic. ALJ at 19–20. These drugs are Schedule III controlled substances. *See* 21 CFR 1308.13(c).

According to the testimony of Heidi Lang, D.V.M., who started working at the clinic in August 2002, a controlled substance (euthanasia solution) was then being stored at the facility. Tr. 495–96. Dr. Lang further testified that she obtained a DEA registration at the facility's location shortly after starting work at the clinic. *Id.* at 500. The record does not, however, specify on what date this occurred. *Id.* at 500.

On December 5, 2001, Respondent applied for a registration at the 82nd Avenue location. ALJ at 20. On his application, Respondent was asked whether he had ''ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?'' Gov. Exh. 2, at 2. Respondent answered ''yes.'' *Id.*[5] Respondent explained that his California veterinary license had been ''revoked in 1978 for non drug related conduct'' and ''was reinstated in 1982.'' *Id.*

Because Respondent had given an affirmative answer to two of the liability questions, his application was forwarded to the Portland DEA office for further investigation. Accordingly, on February 13, 2002, two DIs went to the 82nd Avenue clinic to interview Respondent and conduct a pre-registration investigation.

During the meeting, Respondent told the DIs that he was in the business of opening up new clinics to provide affordable veterinary care, getting the practice running, and then selling them off. Tr. 107. Respondent further stated that he worked as a relief veterinarian in California and also practiced law there. *Id.* at 111.

The DIs found that the 82nd Avenue facility provided adequate physical security. *Id.* at 108. During their inspection, however, the DIs found that two controlled substances (euthanasia solution and Ketamine) were being stored on the premises. *Id.* The facility was not a registered location under the CSA. *Id. See also* 21 U.S.C. 822(e).

The DIs discussed with Respondent the issue of who would have access to the controlled substances while he was in California. *Id.* at 113. Respondent told the DIs that he would staff the clinic with relief veterinarians. *Id.* One of the DIs testified that it was DEA's position that the relief veterinarians would have to be employees of Respondent (assuming he obtained a registration) and that if the relief veterinarians were not employees but rather independent contractors, they could not act under Respondent's registration for that facility unless Respondent ''was there to provide adequate security.'' *Id.* at 114. According to the DI, a relief veterinarian who was an independent contractor would have to have their own registration for the location either to dispense or to administer a controlled substance at the location. *Id.* at 114–15. The DI further testified that his investigation did not find any incidents of diversion at other Companion Pet Clinics. ALJ at 22.

On February 19, 2002, Respondent sent a letter to one of the DIs contending that they were misinterpreting 21 CFR 1301.12(a) and 1301.22. In the letter, Respondent wrote:

> The fact is that veterinarians take off one to two days a week and have relief veterinarians work in their hospital. Some owner veterinarians take off for more than a week at a time and either have their associate veterinarian work the hospital or a number of relief veterinarians work the hospital or clinic. In all these situations, there is but one DEA REGISTRATION used, though the other veterinarians use and log the use of the controlled substances. Your concept of having each relief veterinarian have their own registration and their own drugs is not practical nor does it exist in practice. Even the associate veterinarians generally do not have a DEA REGISTRATION for the office they work out of full time.

Govt. Exh. 6, at 1.[6]

In the letter, Respondent argued that the DIs were unwarranted in their ''concerns about tracking the scheduled drugs and having too many people [with] access to the scheduled drugs.'' *Id.* Respondent also maintained that ''the DEA Registrant is responsible for any diversion of the scheduled drugs in his hospital.'' *Id.* at 1–2. Respondent further contended that ''[t]he fact that I am a dual professional, with a law office in San Diego should not have an effect on the certification process either. I am a resident of this state while I am here. I own two homes in this state.'' *Id.* at 2.

[5] The application asked a similar question of applicants that are corporations, associations, and partnerships. Respondent also answered ''yes'' to this question. Gov. Exh. 2, at 2.

[6] The record contains extensive evidence regarding the practices of veterinary clinics with respect to the handling of controlled substances, as well as the need of practice owners to hire relief veterinarians who work under the DEA registration of the owner. *See* ALJ at 23–28. The record also contains extensive testimony on the issue of whether relief veterinarians are properly considered agents of the facility owner and what procedures are in place to protect against the diversion of controlled substances. *See id.*

Finally, Respondent sought to have DEA either give him a registration for his new facility or transfer his California registration to the 82nd Ave. facility. In the event DEA decided not to grant him a new registration, Respondent demanded a hearing.[7]

According to the ALJ's report, Respondent's wife ''testified that as of October 2001, Respondent was planning on opening the 82nd [Ave.] clinic and had been trying for two years to obtain a DEA registration for it.'' ALJ at 22. Moreover, Respondent's wife ''testified that as part of that effort, she and Respondent had met with DEA personnel at the agency's office in San Diego, and that DEA personnel had told them that Respondent could not ship drugs from California to Oregon and that he could not have registrations in both Oregon and California.'' *Id.* at 22–23. Respondent's wife further testified that ''the delay could not be attributed to the October 2001 incident because Respondent's efforts to change his registered address were 'way before that happened.' '' *Id.* at 23 (quoting Tr. 513).

The ALJ did not specifically credit this testimony. As ultimate factfinder, I expressly decline to credit the testimony that asserts that Respondent had been trying to obtain a registration for the 82nd Avenue clinic ''for two years,'' and that Respondent had attempted to obtain a registration at this address ''way before'' the October 27, 2001 incident. While it is clear that the testimony was offered in an attempt to show that DEA officials dragged their feet with respect to Respondent's application for the 82nd Avenue clinic and/or to justify his violations of the CSA, *see* Tr. at 367,[8] the record contains substantial evidence that refutes this claim.

Respondent's application for the 82nd Avenue clinic was dated December 5, 2001, and the date stamp indicates that DEA received the application on December 14, 2001. *See* Gov. Exh. 2, at 2. Furthermore, Respondent submitted a response to the Show Cause Order. In that document, Respondent asserted that he ''first requested'' a modification of his registration ''from California to the 82nd Avenue practice'' on ''December 12, 2001 and again on February 19, 2002.'' ALJ Exh. 2, at 5.; *see also id.* at 1 (''Daniel Koller requested this modification prior to opening this clinic [on] December 12, 2001.''); *id* at 2 (''Dr. Koller requested a registration at the 82nd Location on December 12, 2001.''). Thus, the documentary evidence establishes that Respondent did not apply for the registration until December 2001, shortly before he opened the clinic.

With respect to the opening of the 82nd Avenue facility, Respondent testified that ''I brought up Euthasol * * * because I had a bottle, and I brought up Ketamine.'' Tr. 378. Respondent also testified that ''you don't close down operations. You don't stop businesses and put 12 people on the unemployment line because of a registration that is being withheld at that time unreasonably.'' *Id.* at 379.

Respondent further testified that it was ''an absurdity'' to ''claim that I'm violating the law by taking drugs from California [by] carrying them to Oregon,'' and that ''I can take those drugs anywhere I want as long as I have a valid DEA registration, which I did'' when he transported the drugs to the 82nd Avenue clinic. *Id.* at 393. Respondent then maintained that ''the fact that I'm working out of a non-registered facility with my drugs that I pull from a registered facility and it's registered to me, there's no violation there. It just simply is not a violation of any act or any statute or any regulation.'' *Id.* at 394.

Respondent's Evidence as to His Rehabilitation

In support of his claim that he was no longer abusing controlled substances, Respondent introduced documentary evidence and called Dr. Standish McCleary, his psychologist, to testify. Dr. McCleary testified that he had been seeing Respondent since February 2002 and that he was still treating him at the time of the hearing.

Dr. McCleary testified that Respondent did not have a history of drug and alcohol abuse and had ''conscientiously addressed'' the problems that led to his abuse of controlled substances. Tr. 349. Dr. McCleary testified that Respondent had been ''very direct'' in admitting his abuse of controlled substances, *id.* at 348, and that he had ''no reason to believe that the behavior has repeated itself and will be at all likely to repeat itself.'' *Id.* at 347. Dr. McCleary further testified that ''he saw no danger in [Respondent's] full reinstatement to veterinary practice,'' and that ''there is an extraordinarily low probability that [Respondent] will ever'' re-abuse controlled substances. *Id.* at 349–50. Dr. McCleary further testified that he thought Respondent had been going to AA meetings but did not know whether he had received any other treatment. *Id.* at 352.

Respondent also introduced into evidence a letter from a psychiatrist, Dr. Mark Kalish, which apparently was prepared for the State hearing discussed above. The letter reports the result of a psychiatric examination of Respondent that was performed on January 27, 2003. According to the letter, Respondent reported that he had not used any controlled substances since a previous examination by Dr. Kalish a year earlier, ''and that he [had] submitted to random drug tests, which have confirmed his abstinence.'' Resp. Exh. 2, at 3. Dr. Kalish also conducted a clinical examination and reviewed available documents (although the letter does not state what documents were reviewed). *See id.* The letter concluded with Dr. Kalish's opinion that Respondent ''does not represent a danger to the public should he be allowed to practice veterinary medicine.'' *Id.*

Finally, Respondent submitted a letter documenting a May 7, 2002 examination that was conducted by Dr. Walton E. Byrd, a psychiatrist who examined him at the request of the Oregon Board of Veterinary Medicine. *See* Resp. 4, at 1. The assessment found that Respondent had ''dissociative anesthetic abuse—Telazol, in remission,'' and further noted that a urinalysis conducted that day was free of illicit substances. *Id.* at 4. The letter concluded with Dr. Byrd stating that he ''would support [Respondent's] continued licensure'' subject to his continuing therapy with his psychologist, his attendance at weekly twelve-step meetings, his meeting ''with a monitoring professional designated by the Veterinary Board,'' and his undergoing random urine testing ''over a two- to five-year period.'' *Id.*

Respondent also introduced into evidence ten reports of drug tests conducted at a Kaiser Permanente Facility in Portland, Oregon. *See* Resp. Exh. 5. While all the reports are negative, many of the tests occurred only days apart and there is no evidence in the record establishing how the dates were chosen and whether they were bona fide random tests.[9]

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a

[7] In a subsequent letter dated April 10, 2002, Respondent complained to one of the DIs that DEA's ''delay is causing me and my clients a great deal of inconvenience and harm'' and threatened ''to petition the courts to make [DEA] act one way or the other.'' Gov. Exh. 7.

[8] Respondent testified: ''I asked for that way before I abused drugs. I asked for it a year before.'' I likewise decline to credit this testimony.

[9] The Government did not, however, introduce any evidence rebutting Respondent's assertion of rehabilitation.

determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
(2) The applicant's experience in dispensing * * * controlled substances.
(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are * * * considered in the disjunctive.'' Robert A. Leslie, M.D., 68 FR 15227, 15230 (2003). I ''may rely on any one or combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether * * * an application for registration [should be] denied.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 483 (6th Cir. 2005); *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (DC Cir. 2005).

As an initial matter, I note that the ALJ found that Respondent's Registration, BK5633525, expired on December 31, 2003, and that Respondent did not file a renewal application, let alone a timely one, for this registration. *See* 21 CFR 1301.36(i). DEA precedents establish that where ''a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'' *Ronald J. Riegel, D.V.M.*, 63 FR 67132, 67133 (1998); *see also Cadiz Thrift-T Drug, Inc.,* 64 FR 15803, 15805 (1999). Therefore, the revocation portion of this proceeding is moot and only Respondent's application for a registration at the 82nd Avenue location remains a live controversy.

With respect to Respondent's application, I have carefully considered Respondent's evidence concerning his rehabilitation. But as explained below, even granting that Respondent has proved by a preponderance of the evidence that he is rehabilitated, the record establishes that granting his application would be inconsistent with the public interest. Most significantly, Respondent's record of compliance with the CSA and his testimony at the hearing regarding his past violations demonstrate convincingly that he cannot be entrusted with a new registration. I thus deny his application.

Factor One—The Recommendation of the State Licensing Board

The ALJ found that at the time of the hearing, Respondent's California veterinary license was suspended. It is undisputed, however, that Respondent has a valid veterinary license in Oregon. Therefore, I agree with the ALJ that this factor ''carries little weight,'' ALJ at 32, in the analysis of whether granting Respondent's application would be consistent with the public interest.

Factor Two—Respondent's Experience in Dispensing Controlled Substances

The record established that Respondent administered to himself, Tiletamine, (Telazol), a Schedule III controlled substance which is approved for use only as an anesthetic in animals. Respondent obviously did not have a prescription, let alone a valid one, for the drug. *See* 21 CFR 1306.04.

The ALJ found that Respondent misused this controlled substance because of ''a medical condition that has since ameliorated,'' and that Respondent had proved by a preponderance of the evidence that he was not likely to re-abuse the drug. ALJ at 32. I agree and note in particular the testimony of Respondent's psychologist, Dr. Standish McCleary, that in his opinion, Respondent was unlikely to re-abuse controlled substances. The Government's cross-examination of Dr. McCleary does not lead me to question his conclusion and the Government offered no evidence to rebut it.

The conduct at issue in this case is not, however, limited to Respondent's self-abuse of a controlled substance, and involves a variety of acts which have no nexus to his self-abuse. Therefore, I conclude that Respondent's rehabilitation is entitled to little weight in the public interest analysis.

Factor Three—Respondent's Record of Drug-Related Convictions

It is undisputed that Respondent has never been convicted of a federal or state criminal offense related to the manufacture, distribution, or dispensing of controlled substances. I therefore agree with the ALJ's conclusion that this factor weighs against a finding that granting Respondent application would be inconsistent with the public interest. As the ALJ further concluded, this factor is not dispositive. *See* ALJ at 32.

Factor Four—Respondent's Compliance with Applicable Federal, State and Local Laws

The record in this case establishes multiple instances of Respondent's non-compliance with the Controlled Substances Act. As explained below, Respondent committed serious violations of the Act, which, if tolerated would undermine the statute's carefully crafted scheme for regulating the distribution of controlled substances and preventing the diversion of controlled substances into illegitimate uses and drug abuse.

As the Supreme Court recently explained, the CSA creates ''a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the [Act].'' *Gonzales* v. *Raich*, 545 U.S. 1,—(2005) (citing 21 U.S.C. 841(a)(1) & 844(a)). As relevant here, ''[t]he CSA and its implementing regulations set forth strict requirements regarding registration, * * * drug security, and recordkeeping.'' *Id.*

Under the Act, a veterinarian falls within the definition of a ''practitioner,'' and upon obtaining a registration, a veterinarian has legal authority to prescribe, administer or distribute a controlled substance to an ''ultimate user,'' the latter being a person who has lawfully obtained a controlled substance ''for an animal owned by him or a member of his household.'' 21 U.S.C. 802(21); *id.* § 802(27). The Act provides that ''[p]ersons registered * * * to manufacture, distribute, or dispense controlled substances * * * are authorized to possess, manufacture, distribute, or dispense such substances * * * to the extent authorized by their registration and in conformity with the other provisions of the [Act].'' *Id.* § 822(b).

Under the CSA's implementing regulations, the various controlled substance activities recognized by the Act ''are deemed to be independent of each other.'' 21 CFR 1301.13(e). Moreover, ''[a]ny person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities'' unless the activity is a permitted coincident activity under a particular category of registration.[10] *Id.* Furthermore, the CSA requires that a registrant obtain ''a separate registration * * * at each principal place of

[10] The regulations impose different security requirements based on the activity. Thus, distributors are subject to more extensive requirements than practitioners. See generally 21 CFR 1301.71—1301.76.

business or professional practice where the applicant, manufactures, distributes, or dispenses controlled substances.'' *Id.* § 822(e). Having provided this background, I next address the various instances in which Respondent's conduct violated the CSA.

The record establishes that on October 27, 2001, paramedics found Respondent's wife unconscious and lying on the floor; her right arm had a fresh puncture wound with blood oozing from it. According to the police report, Respondent's daughter ''believed that her mother was dead from a drug overdose,'' Gov. Exh. 4, at 3, and Respondent's wife did not respond to first aid. At the hearing, Respondent's wife testified that she had taken Telazol. Tr. 507. Moreover, Respondent's own evidence (the proposed California stipulation) includes the admission that his wife ''was under the influence of a narcotic or narcotic type drug and was experiencing a possible narcotic overdose.'' Resp. Exh. 8, at 6–7.

I do not have to find that Respondent dispensed Telazol to his wife to conclude that Respondent violated the CSA. Even crediting the testimony of Respondent's wife that she decided to try the Telazol on her own initiative, it is clear that she would not have been able to do so if Respondent had complied with the requirement that the drug be ''stored in a securely locked, substantially constructed cabinet.'' 21 CFR 1301.75(b). Indeed, in the stipulated agreement which Respondent entered into evidence he admitted as much.

Moreover, notwithstanding that Respondent stored controlled substances at his San Diego residence/registered location, Respondent failed to maintain the required records. 21 CFR 1304.22(c). Specifically, Respondent was required to maintain a record of each substance received, the date of receipt, the number of units, and the name, address and registration number of the person that distributed the substance to him. *Id.* Respondent was also required to maintain a record naming the substance, indicating the number of units or volume dispensed, and the name and address to whom the substance was dispensed. *Id.* The record clearly establishes that none of these records were being maintained and thus Respondent violated these provisions of the CSA as well.

Respondent also violated the CSA when, at the request of Mrs. Nagra, he ordered controlled substances on her behalf, had them shipped to his registered location, and then redistributed them to the Nagras' clinic. According to Mrs. Nagra's testimony, this activity occurred over a five month period following her husband's death.

Under the CSA's regulations, Mr. Nagra's registration terminated with his death. 21 CFR 1301.52(a). Respondent's distribution of controlled substances to the clinic violated federal law for two reasons: 1) Respondent was not registered as a distributor, *See id.* 1301.13(e), and 2) the Nagras' facility was no longer registered. *Id.* 1307.11(a). (requiring separate registrations for independent activities). While DEA regulations allow a practitioner to distribute a limited amount of a controlled substance to another practitioner, the practitioner who receives the distribution must be ''registered under the Act to dispense that controlled substance.'' *Id.*[11] Respondent therefore cannot avail himself of this exemption.

The record establishes that Mrs. Nagra contacted Respondent because the clinic did not have a veterinarian with a registration at its location and no distributor would sell controlled substances to it. Tr. 221–22. Moreover, it is also clear that Respondent undertook to supply the clinic to circumvent the law.

To justify his violation of the CSA, Respondent asserted that his purpose in distributing the drugs was ''honorable,'' and that it would have been ''unjust and unfair'' if the clinic had closed down and Mrs. Nagra had lost her investment. Respondent's reasons are not a valid excuse for his violations of the Act.

Nationwide, there are thousands of solo practitioners who administer controlled substances in the course of their professional practices.[12] Unfortunately, some die while they are still actively practicing medicine. In enacting the CSA, Congress did not, however, recognize the prevention of economic loss to the heirs of a registrant as grounds for an exemption from the Act's requirements. *See* 21 U.S.C. 822(c); *Cf. United States* v. *Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 491 (2001) (rejecting medical necessity exception to the CSA and noting that a defense of legal necessity ''cannot succeed when the legislature itself had made a determination of values'') (citation omitted). Excusing Respondent's distribution to an unregistered location would undermine the closed system of distribution and the principle that at each registered location, there is an individual registrant who is accountable for the proper security, record keeping and use of controlled substances.

Respondent further violated the CSA when he took controlled substances from California to the 82nd Avenue Portland, Oregon facility, which was not registered, and stored them there. At the hearing, Respondent admitted that he brought two controlled substances, Euthasol and Ketamine, from San Diego to the 82nd Avenue clinic, in December 2001, prior to his opening of this clinic in January 2002, and that these substances were being administered to patients. A DI testified that during the February 13, 2002 on site inspection, both controlled substances were being stored at the 82nd Avenue clinic. Moreover, Dr. Heidi Lang testified that in August 2002, when she began working at the clinic, euthanasia solution was being stored there. The clinic did not become a registered location until Dr. Lang obtained a registration for it at some point after commencing her employment.

As to these events, Respondent testified that it was ''an absurdity'' to claim that he violated the law by taking controlled substances from California to Oregon, and that because he had a DEA registration for his San Diego residence he could ''take those drugs anywhere [he] want[ed].'' Tr. 393. Respondent further contended that ''the fact that I'm working out of a non-registered facility with my drugs that I pull from a registered facility and it's registered to me, there's no violation there. It just simply is not a violation of any * * * statute or regulation.'' *Id.* at 394.

Contrary to the understanding of Respondent, the CSA expressly prohibits this conduct. Section 302(e) provides that ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant * * * distributes[] or dispenses controlled substances.'' 21 U.S.C. 822(e); *see also* 21 CFR 1301.12(a). Respondent's 82nd Avenue clinic was a ''principal place of business or professional practice'' where he ''dispensed controlled substances.'' Respondent clearly failed to comply with the Act by storing controlled substances at the clinic for approximately eight months without first obtaining a registration for the location. *See* 21 U.S.C. 841(a)(1).

[11] The security requirements applicable to non-practitioners expressly require that ''[b]efore distributing a controlled substance to any person who the registrant does not know to be registered to possess the controlled substance, the registrant shall make a good faith inquiry with [DEA] or with the appropriate State controlled substances registration agency, if any, to determine that the person is registered to possess the controlled substance.'' 21 CFR 1301.74(a). A practitioner who distributes under 21 CFR 1307.11(a), must comply with this regulation. *See id.* 1301.76(c).

[12] According to testimony in this case, there are 24,000 veterinary clinics in the United States and more than half of them are run by solo practitioners. *See* ALJ at 23.

Respondent's testimony regarding his various violations is especially disturbing. With respect to his conduct in distributing controlled substances to the Nagras' clinic, Respondent testified that he didn't ''have any regrets'' and that he ''would do that again because I wasn't hurting anyone.'' Tr. at 390. As for his conduct at the 82nd Avenue clinic, Respondent explained that ''you don't close down operations. You don't stop businesses and put 12 people on the unemployment line because of a registration that is being withheld at that time unreasonably.'' [13] *Id.* at 379.

Respondent's statements reflect a stunning disregard for the requirements of Federal law. The CSA's implementing regulations expressly provide that ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued * * * to such person.'' 21 CFR 1301.13(a). Contrary to Respondent's understanding, he was required to comply with the Act and its regulations even if it interfered with his business plan or violated his sense of fairness.

In sum, Respondent's repeated violations of the CSA provide ample grounds to deny his application. Moreover, Respondent's attitude leaves me with the firm impression that, if given the opportunity, he will violate the Act again. Moreover, Respondent's rehabilitation from drug abuse does not mitigate the violations of the Act he committed by distributing controlled substances to the Nagras' clinic, an unregistered location, and commencing operations at the 82nd Avenue clinic without obtaining a registration. I thus conclude that this factor is dispositive and compels a finding that granting Respondent a new registration would be inconsistent with the public interest.[14]

[13] As I have previously found, the evidence in the record establishes that Respondent did not apply for a registration for this location until December 2001, shortly before opening the clinic. Furthermore, Respondent indicated on his application that his state license had previously been suspended thus triggering a more detailed investigation. DEA personnel subsequently determined that Respondent had previously been investigated for distributing controlled substances to the Nagras' clinic, that he was storing controlled substances at the 82nd Ave. clinic, and became aware of the events surrounding Respondent's abuse of Telazol and the State of California's suspension of his license. As this proceeding has established, it was not unreasonable to withhold Respondent's registration. What was unreasonable was Respondent's commencement of operations without obtaining a registration in violation of Federal law.

[14] In light of Respondent's numerous violations of the CSA discussed above, it is unnecessary to decide whether Respondent's practice of employing relief veterinarians to run his clinic in Oregon while living in San Diego (more than 1,000 miles away) complied with the CSA. I note, however, that at the hearing, the Government asserted that if a relief veterinarian is an independent contractor, the relief vet. cannot act as an agent of the clinic owner/registrant under 21 CFR 1301.22. According to the Government, the relief vet. must be an employee of the clinic owner in order to comply with the regulation.

This position is incorrect. Neither the CSA nor the regulation precludes a relief veterinarian who is an independent contractor from acting as the agent of the registrant. In the CSA, Congress defined the term ''agent'' to mean ''an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.'' 21 U.S.C. 802(3). Moreover, the CSA further exempts from registration ''[a]n agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance * * * if such agent or employee is acting in the usual course of his business or employment.'' *Id.* § 822(c). The plain language of the statute thus demonstrates that Congress did not limit the exemption to the employees of a practitioner. Furthermore, in appropriate circumstances, an independent contractor may act as an agent. *See, e.g.*, I Restatement of the Law (Second) Agency § 14 N, at 80 (1958) (''One who contracts to act on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also an independent contractor.''). The status of the person acting under the registration as an employee or independent contractor is thus not determinative of compliance with the CSA.

What is relevant for purposes of compliance is that the registrant must exercise effective control of the agent. Doing so requires that a registrant properly supervise and monitor its agents to protect against the diversion of controlled substances; reliance solely on the CSA's existing recordkeeping requirements does not necessarily establish that a registrant is exercising effective control of its agents.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f), and 28 CFR 0.100(b) and 0.104, I hereby order that the pending application of Respondent, Daniel Koller, D.V.M., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective December 18, 2006.

Dated: November 3, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–19400 Filed 11–16–06; 8:45 am]

BILLING CODE 4410–09–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 22, 2006 via conference call. The meeting will begin at 2 p.m. (EST), and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

STATUS OF MEETING: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. Members of the public wishing to listen to the meeting by telephone may obtain call-in information by calling LSC's FOIA Information line at (202) 295–1629.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of April 1, 2006 through September 30, 2006.
3. Consider and act on other business.
4. Public comment.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: November 15, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06–9283 Filed 11–15–06; 3:31 pm]

BILLING CODE 7050–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–19]

Report on the Selection of Eligible Countries for Fiscal Year 2007

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report is provided in accordance with Section 608(d)(2) of the Millennium Challenge Act of 2003, Pub. L. 108–199, Division D, (the ''Act''), Report on the Selection of Eligible Countries for Fiscal Year 2007.

Summary

This report is provided in accordance with Section 608(d)(2) of the Millennium Challenge Act of 2003, Pub. L. 108–199, Division D, (the ''Act'').

The Act authorizes the provision of Millennium Challenge Account (MCA) assistance under Section 605 of the Act to countries that enter into Compacts with the United States to support