DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Shannon L. Gallentine, D.P.M.; Denial of Application

On June 25, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Shannon Gallentine, D.P.M. (Respondent), of Maypearl, Texas. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the grounds that he had materially falsified his application and that his ''registration would be inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 824(a)(1) & 823 (f)).

With respect to the material falsification ground, the Show Cause Order alleged that on October 1, 2007, Respondent had surrendered his DEA registration. Show Cause Order at 1. The Order further alleged that on July 16, 2009, Respondent had applied for a new DEA registration, but had failed to disclose that he had surrendered his prior registration. *Id.* The Order thus alleged that Respondent had materially falsified his application by failing to disclose the surrender and that this was ground to deny his application. *Id.* (citing 21 U.S.C. 824(a)(1)).

As for the public interest ground, the Show Cause Order alleged that between various dates beginning in May 2004 through September 2007, Respondent prescribed controlled substances to six patients (M.P., H.G., D.C., P.P., K.B., N.B.), ''without a legitimate medical purpose and/or outside the course of professional practice.'' *Id.* at 1–2. The Order further alleged that on October 1, 2007, a federal search warrant was executed at Respondent's registered location and that ''no records were found to adequately support the prescribing of control substances to'' these patients. *Id.* at 2.

As evidenced by the signed return receipt card, on July 2, 2010, the Show Cause Order, which also notified Respondent of his right to request a hearing or to submit a written statement in lieu of a hearing, the procedures for doing either, and the consequences for failing to do either, was served on him. GX 4. Respondent did not, however, file his request for a hearing [1] with the Office of Administrative Law Judges until August 5, 2010, which was three days [2] after it was due. *See* GX 5, at 1; 21 CFR 1301.43(a); *id.* 1316.45.

On August 12, 2010, the ALJ issued an order, a copy of which was not included in the record submitted to this Office. However, based on a subsequent order of the ALJ, it appears that the Government had previously filed a motion to terminate, and that in the initial order, the ALJ had provided Respondent with until August 23rd to file a response to the Government's motion. *See* GX 7, at 1 (Order Adjusting Deadlines for the Filing of Prehearing Statements).

On August 16, 2010, the Government moved to deny Respondent's request for a hearing on the ground that it was untimely. GX 6. Therein, the Government argued that the ALJ does not have jurisdiction to grant a hearing when a hearing request is not timely filed, and that in any event, Respondent had not established ''good cause'' for his untimely filing. *Id.* at 2.

On August 18, 2010, the ALJ issued a new order extending the deadlines for each party to file its prehearing statement. GX 7, at 1 (Order Adjusting Deadlines for the Filing of Prehearing Statements).

On August 23, 2010, Respondent filed a ''Motion To Establish Proceedings.'' GX 8, at 2. Therein, Respondent stated that he did not receive the Government's Motion to Terminate. Respondent further stated that he had received the Order to Show Cause on July 2, 2010, and asserted that he had ''provided a timely request for hearing, dated August 2, 2010.'' *Id.* Respondent further argued that because he did not receive the Government's Motion to Terminate, he ''was not given [an] opportunity to respond to'' the Motion. *Id.*

On August 24, 2010, the ALJ issued an Amended Order Granting the Government's Motion to Terminate Proceedings. *See* GX 10, at 1 (Order Granting Respondent's Request To Stay Termination Of Proceedings And Consenting To Allowance Of Interlocutory Appeal). However, two days later, Respondent filed a Request To Stay Termination Of Proceedings. *Id.* Therein, Respondent stated that he was ''currently in bankruptcy proceedings'' and was ''unable to afford legal counsel.'' GX 9, at 1 (Request To Stay Termination Of Proceedings). Respondent further argued that because he is not an attorney, he ''understood the due date of the request for hearing as needing to be dated within 30 days'' and ''pray[ed that] the court not terminate the proceedings.'' *Id.*

On August 30, 2010, the ALJ granted Respondent's request. Noting that his ruling terminating the proceeding constituted a departure from a prior Agency decision, the ALJ authorized Respondent to file an interlocutory appeal of his Amended Termination Order. GX 10, at 1–2 (Order Granting Respondent's Request To State Termination Of Proceedings And Consenting To Allowance Of Interlocutory Appeal) (citing *Garth A.A. Clark, M.D.,* 63 FR 54733 (1998)). The ALJ further ordered that Respondent file his interlocutory appeal with my Office no later than September 20, 2010; the ALJ also ordered that Respondent serve a copy of his filing on him and Government counsel. *Id.* at 2 & n.2.

Respondent did not, however, file an interlocutory appeal. Instead, on September 20, 2010, Respondent filed a Request for Extension of Time to File an Interlocutory Appeal [and] Request for Appointment of Legal Counsel Due to Financial Hardship. GX 12. Therein, Respondent noted that because he is not an attorney, he ''does not know how to file an interlocutory appeal,'' and sought the appointment of counsel ''because of the financial inability'' to retain counsel. *Id.* Respondent also sought ''an extension of time after appointment of legal counsel in which to file an interlocutory appeal.'' *Id.*

Thereafter, the ALJ denied Respondent's motion for appointed counsel, noting that he lacked authority to do so. GX 11, at 1–2 (Order Denying Respondent's Request for An Extension Of Time To File An Interlocutory Appeal And His Motion For Appointment Of Legal Counsel). The ALJ also denied Respondent's request for an extension, noting that the sole basis for it was to obtain appointed counsel. *Id.* The ALJ further held that because Respondent had failed to file an interlocutory appeal, the stay of the Amended Termination Order ''ha[d] expired by its own terms'' and the Order had ''become[] immediately effective.'' *Id.* at 2.

The Government then filed a Request for Final Agency Action with my Office and submitted various documents as evidence in support of its request. Having considered the record, I conclude that Respondent did not submit a timely request for a hearing as required by 21 CFR 1301.43(a), and that he has not established good cause for his failure to do so. *Id.* 1301.43(d). I therefore find that Respondent has waived his right to a hearing. *Id.*

[1] Respondent's request was dated August 2, 2010.

[2] The thirty-day period for filing a request for a hearing ended on August 1, 2010. However, because that day fell on a Sunday, Respondent's request was not due until August 2, 2010, when the Office of Administrative Law Judges was open for business.

As to the merits, I find that Respondent materially falsified his application for registration; I also find that Respondent's registration ''would be inconsistent with the public interest'' because he issued numerous prescriptions for controlled substances which lacked a legitimate medical purpose and thus violated 21 CFR 1306.04(a). 21 U.S.C. 823(f). Accordingly, Respondent's application will be denied. I make the following findings of fact.

Findings

Respondent is a podiatrist licensed by the Texas State Board of Podiatric Medical Examiners (TSBPME). Respondent previously held DEA Certificate of Registration BG6902919, which authorized him to dispense controlled substances in schedules II through V, as a practitioner, at the registered location of 2700 Pleasant Run Road, Suite 360, Lancaster, Texas.

According to the Affidavit of a DEA Diversion Investigator (DI), on November 6, 2006, DEA received information from the TSBPME which prompted it to investigate Respondent's prescribing practices. During the course of the investigation, Respondent was found to have authorized numerous prescriptions to six patients for narcotics such as codeine with acetaminophen (apap) and hydrocodone/apap, both of which are schedule III controlled substances. 21 CFR 1308.13(e)(1). More specifically, the Investigators obtained records from various pharmacies and found that Respondent had prescribed to: (1) M.P., a total of 4,230 dosage units [hereinafter, d.u.] of codeine/apap from January 3, 2005 through September 14, 2007; (2) H.G., a total of 3,180 d.u. of codeine #4/apap from May 29, 2004 through November 27, 2006; (3) D.C., a total of 2,260 d.u. of hydrocodone/apap from April 4, 2005 through September 18, 2007; (4) P.P., a total of 3,330 d.u. of hydrocodone/apap from January 24, 2005 through January 9, 2007; (5) K.B., a total of 1,500 d.u. of hydrocodone/apap from February 21, 2005 through December 4, 2006; (6) N.B., a total of 1,515 d.u. of hydrocodone/apap from October 4, 2004 through May 3, 2006. GXs 13–18.

On October 1, 2007, federal and state Investigators executed a search warrant at Respondent's registered location of 2700 Pleasant Run Road, Suite 360, Lancaster, Texas. During the course of the search, Respondent stated that no other person had access to his prescription pad and that he personally signed all of his prescriptions. Respondent also stated that he only prescribed hydrocodone to patients who had a traumatic injury.

Moreover, of the six patients identified above, Respondent did not have medical records for H.G., M.P., K.B., and N.B. While Respondent had records for D.C. and P.P., the records for D.C. consisted largely of billing records which listed various conditions and their reimbursement codes, as well as progress notes which were blank except for such information as the date, D.C.'s name, his date of birth, and age. P.P.'s record also consisted largely of billing records and progress notes. Moreover, only one of the progress notes (dated February 19, 2007) documented that P.P. had a medical condition and had pain.[3]

Upon reviewing Respondent's records during the search, DEA Investigators asked Respondent if he would voluntarily surrender his DEA registration. Respondent agreed to do so and executed a form DEA–104, Voluntary Surrender of Controlled Substances Privileges. GX 2, at 5. Therein, Respondent acknowledged that he was voluntarily surrendering his Certificate of Registration, ''[i]n view of [his] alleged failure to comply with the Federal requirements pertaining to controlled substances.'' *Id.* According to an Agency Investigator, ''Respondent was fully aware that the surrender of [his registration] was based upon alleged violations of the Controlled Substances Act.'' Declaration of DI, at 4.

On July 14, 2009, Respondent applied for a new DEA registration. On the application form, Respondent was required to answer four questions. The second of these questions asked: ''Has the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?'' Respondent entered ''N'' for no.

Discussion

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

''These factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether * * * 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, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (2005).

Furthermore, under Section 304(a)(1), a registration may be revoked or suspended ''upon a finding that the registrant * * * has materially falsified any application filed pursuant to or required by this subchapter.'' 21 U.S.C. 824(a)(1). Under agency precedent, the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny an application under section 303. *See Anthony D. Funches,* 64 FR 14267, 14268 (1999); *Alan R. Schankman,* 63 FR 45260 (1998); *Kuen H. Chen,* 58 FR 65401, 65402 (1993).

Thus, the allegation that Respondent materially falsified his application is properly considered in this proceeding. *See Samuel S. Jackson,* 72 FR 23848, 23852 (2007). Just as materially falsifying an application provides a basis for revoking an existing registration without proof of any other misconduct, *see* 21 U.S.C. 824(a)(1), it also provides an independent and adequate ground for denying an application. *Cf. Bobby Watts, M.D.,* 58 FR 46995 (1993).

The Material Falsification Allegation

As found above, on October 1, 2007, Respondent voluntarily surrendered his registration upon being questioned by Investigators, who were executing a search warrant, regarding whether he had adequate documentation to support the controlled substance prescriptions he issued to six patients. However, on

[3] The records for D.C. and P.P. also contained medication flow sheets listing each patient's prescriptions and refills, some prescriptions, as well as various refill authorization forms sent to Respondent by the patient's pharmacy. For both D.C. and P.P., there were no such records prior to 2007.

his July 14, 2009 application for a new DEA registration, in answering the application's question which asked whether he had previously surrendered for cause his DEA registration, Respondent answered ''no.''

Respondent's answer was a material falsification of his application. As the Supreme Court has explained, ''[t]he most common formulation'' of the concept of materiality ''is that a concealment or misrepresentation is material if it 'has a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body to which it was addressed.'' *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (quoting *Weinstock* v. *United States,* 231 F.2d 699, 701 (D.C. Cir. 1956)) (other citation omitted); *see also United States* v. *Wells,* 519 U.S. 482, 489 (1997) (quoting *Kungys,* 485 U.S. at 770). The evidence must be ''clear, unequivocal, and convincing.'' *Kungys,* 485 U.S. at 772. However, ''the ultimate finding of materiality turns on an interpretation of substantive law.'' *Id.* at 772 (int. quotations and other citation omitted).

DEA has previously held that ''[t]he provision of truthful information on applications is absolutely essential to effectuating [the] statutory purpose'' of determining whether the granting of an application is consistent with the public interest. *See Peter H. Ahles,* 71 FR 50097, 50098 (2006). More specifically, the public interest inquiry under section 303(f) requires, *inter alia,* that the Agency examine ''[t]he applicant's experience in dispensing * * * controlled substances,'' his ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' and whether he has committed other ''conduct which may threaten public health and safety.'' 21 U.S.C. 823(f). Because Respondent's voluntary surrender was for cause and arose out of an investigation into whether he had violated the Controlled Substance Act by issuing prescriptions outside of the usual course of professional practice and which lacked a legitimate medical purpose, 21 CFR 1306.04(a), his failure to disclose the surrender was capable of influencing the Agency's evaluation of his experience in dispensing controlled substances, his compliance with Federal and State laws relating to controlled substances, and whether he had engaged in other conduct which may threaten public health and safety.

That the Agency did not rely on Respondent's false statement and grant his application does not make the statement immaterial. As the First Circuit has noted with respect to the material falsification requirement under 18 U.S.C. 1001, ''[i]t makes no difference that a specific falsification did not exert influence so long as it had the capacity to do so.'' *United States* v. *Alemany Rivera,* 781 F.2d 229, 234 (1st Cir. 1985). *See also United States* v. *Norris,* 749 F.2d 1116, 1121 (4th Cir. 1984) (''There is no requirement that the false statement influence or effect the decisionmaking process of a department of the United States Government.'').

I further conclude that Respondent's false statement cannot be attributed to a good faith misunderstanding as to whether he had surrendered his registration for cause (as he maintained in his letter requesting a hearing). On the date he completed the application, less than two years had passed since the search warrant was executed and Respondent surrendered his registration. Given the circumstances of the surrender, during which he was confronted with questions by the Investigators about his prescribing practices and lack of documentation to justify his prescriptions, Respondent cannot claim that he did not surrender his registration for cause. Moreover, on the voluntary surrender form, Respondent acknowledged that he was doing so ''[i]n view of [his] alleged failure to comply with the Federal requirements pertaining to controlled substances.'' Accordingly, I conclude that Respondent knew that he had surrendered his registration for cause and that he knowingly materially falsified his July 14, 2009 application for a new Certificate of Registration. This conclusion provides reason alone to deny his application.

The Public Interest Grounds

Having considered all of the public interest factors, I conclude that the evidence with respect to Respondent's experience in dispensing controlled substances (factor two), his compliance with laws related to controlled substances (factor four), and whether he has committed other conduct which may threaten public health and safety (factor five) establishes that Respondent's registration ''would be inconsistent with the public interest.'' [4] 21 U.S.C. 823(f). This conclusion provides an additional ground for denying Respondent's application.

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

As the Supreme Court has explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)). Under the CSA, it is fundamental that a practitioner must establish and maintain a bonafide doctor-patient relationship in order to act ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *Laurence T. McKinney,* 73 FR 43260, 43265 n.22 (2008); *see also Moore,* 423 U.S. at 142–43 (noting that evidence established that physician ''exceeded the bounds of 'professional practice,' '' when ''he gave inadequate physical examinations or none at all,'' ''ignored the results of the tests he did make,'' and ''took no precautions against * * * misuse and diversion''). The CSA, however, generally looks to state law to determine whether a doctor and patient have established a bonafide doctor-patient relationship. *See Kamir Garces-Mejias,* 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.,* 72 FR 50397, 50407–08 (2007).

Under the rules of the Texas State Board of Podiatric Medical Examiners, ''[a]ll podiatric physicians shall make, maintain, and keep accurate records of

[4] I acknowledge that the investigative record contains no evidence that Respondent's state podiatrist's license or state controlled substances registration (factor one) have been suspended or revoked. However, DEA has long held that while possessing state authority is a necessary condition for obtaining and maintaining a DEA registration, the possession of state authority is not dispositive of the public interest. *See Mortimer B. Levin, D.O.,* 55 FR 8209, 8210 (1990). DEA has also held that the absence of a criminal conviction of a Federal or State offense related to the manufacture, distribution, or dispensing of a controlled substance (factor three) is not dispositive. *See Edmund Chein, M.D.,* 72 FR 6580, 6593 n.22 (2007).

the diagnosis made and the treatment performed for and upon each of his or her patients for reference and for protection of the patient for at least five years following the completion of treatment.'' Tex. Admin Code tit. 22, § 375.21(a). When, however, Investigators executed the search warrant at Respondent's registered location, Respondent did not have any medical records for M.P., H.G., K.B., and N.B., even though he had prescribed large quantities of codeine/apap to M.P. (4,230 d.u.) and H.G. (3,180 d.u.) and large quantities of hydrocodone/apap to K.B. (1,500 d.u.) and N.B. (1,515 d.u.). Moreover, Respondent had prescribed to these persons for between a year and a half (in N.B.'s case) and two and a half years (in M.P.'s case). Based on Respondent's failure to maintain any medical records, let alone document a diagnosis to support his prescribing of controlled substances to M.P., H.G., K.B., and N.B., I conclude that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed controlled substances to these patients and thus violated the CSA. 21 U.S.C. 841(a)(1); 21 CFR 1306.04(a). I also conclude that Respondent violated the Texas Board's regulation requiring that he ''make, maintain, and keep accurate records of the diagnosis made and the treatment performed for'' each of these patients. Tex. Admin Code tit. 22, § 375.21(a).

As for D.C., while the Investigators found a medical record, the progress notes did not document a diagnosis and contained no information other than D.C.'s name, date of birth, his age, and the date of the visit. Notwithstanding his failure to document a diagnosis, Respondent issued D.C. prescriptions for 2,260 d.u. of hydrocodone/apap over a nearly two and one half year period. Here again, I conclude that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing hydrocodone/apap to D.C. and violated the CSA in doing so. 21 U.S.C. 841(a)(1); 21 CFR 1306.04(a). Here too, Respondent also violated the Texas Board's rule.

While P.P.'s medical record contained a progress note documenting a diagnosis, this note was dated February 19, 2007. However, Respondent had prescribed hydrocodone/apap to her since February 2005, and had authorized the dispensing of more than 3,300 dosage units to her before he even documented a diagnosis. Here again, I conclude that these prescriptions were issued outside of the usual course of professional practice and lacked a legitimate medical purpose and thus violated the CSA. 21 U.S.C. 841(a)(1); 21 CFR 1306.04(a). And here too, Respondent violated the Board's rule by failing to document a diagnosis between February 2005 and February 2007.

I therefore conclude that Respondent's experience in dispensing controlled substances (factor two), his failure to comply with the CSA's prescription requirement, 21 CFR 1306.04(a) (factor four) and his failure to comply with the Texas Board's rule (factor five [5]), establish that Respondent's registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f). This conclusion provides an additional and independent ground for denying Respondent's application. Accordingly, Respondent's application for a new DEA Certificate of Registration will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Shannon L. Gallentine, D.P.M., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: July 22, 2011.

Michele M. Leonhart,

Administrator.

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[5] As the Texas rule states, ''All podiatric physicians shall make, maintain, and keep accurate records of the diagnosis made and the treatment performed for and upon each of his or her patients for reference and *for protection of the patient* for at least five years following the completion of treatment.'' Tex. Admin Code tit. 22, § 375.21(a). DEA has also held that a practitioner's failure to maintain medical records required by state law constitutes such other conduct which may threaten public health and safety. *See Robert L. Dougherty,* 60 FR 55047, 55050–51 (1995).

The Government also asserts that Respondent materially falsified his application for a state controlled substances registration because he failed to disclose the surrender of his DEA registration. Req. for Final Agency Action, at 14. This allegation was not, however, made in the Order to Show Cause, and the ALJ's various orders make clear that the Government did not file a Pre-Hearing Statement, in which it might have provided the requisite notice. *See CBS Wholesale Distributors,* 74 FR 36746, 36749–50 (2009); *see also* 5 U.S.C. § 554(b) (''Persons entitled to notice of an agency hearing shall be timely informed of * * * the matters of fact and law asserted.''). I therefore do not consider it.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–39]

Michael S. Moore, M.D.; Suspension of Registration

On October 4, 2010, Administrative Law Judge John H. Mulrooney, II, issued the attached recommended decision. Neither party filed exceptions to the decision.

Having reviewed the record in its entirety, I have decided to adopt the ALJ's rulings, findings of fact, and conclusions of law except for his conclusion regarding the applicability of factor five.[1] *See* ALJ Dec. at 21–22.[2] For the reasons explained below, I adopt in part and reject in part the ALJ's recommended order that I suspend Respondent's registration for a period of six months and impose various conditions on his registration. Instead, I conclude that Respondent's registration should be suspended for a period of one year and impose two of the four conditions recommended by the ALJ.

The record in this case establishes that Respondent was convicted of a felony offense under Wisconsin law ''relating to any substance defined in [the Controlled Substances Act] as a controlled substance.'' [3] 21 U.S.C. 824(a)(2). More specifically, Respondent has been convicted of the felony offense of unlawful manufacture, distribution or delivery of ''[t]wo hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols,'' in violation of Wis. Stat. § 961.41(1)(h)(1). ALJ Dec. at 4. Moreover, while Respondent was allowed to plead no contest to this charge, the evidence showed that Respondent had in his possession at least 1725 grams of marijuana, plus marijuana seeds, four marijuana plants, and the equipment needed to grow

[1] In light of the conduct proved on the record, a finding under factor five is not necessary to conclude that Respondent has committed acts which render his registration inconsistent with the public interest. *See Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005) (The Agency is ''not required to make findings as to all of the factors[.]'').

[2] All citations to the ALJ's Recommended Decision are to the slip opinion as issued on October 4, 2010.

[3] On July 14, 2011, Respondent's counsel notified this Office that he had completed his probation and that his conviction has been reduced to a misdemeanor. Be that as it may, under the public interest inquiry, DEA is also required to consider Respondent's compliance with applicable Federal and State laws related to controlled substances. *See* 21 U.S.C. 823(f)(4). As explained above, notwithstanding Respondent's completion of his probation and the reduction of his conviction to a misdemeanor, his conduct still constitutes a felony offense under Federal law. *See* 21 U.S.C. 841(a) & (b)(1)(D).