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By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

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Susan Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–13885 Filed 6–13–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Roy S. Schwartz; Decision and Order

On October 7, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Roy S. Schwartz, D.D.S. (hereinafter, Registrant), of Tacoma, Washington. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, which authorizes him to dispense controlled substances as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that his ''continued registration is inconsistent with the public interest.'' GX 1, at 1.

More specifically, the Show Cause Order alleged Registrant had procured controlled substances for one Dr. Raymond Wilkinson, who had previously held a DEA registration but which he had surrendered for cause, and that Registrant distributed controlled substances to Dr. Wilkinson who used them to sedate a patient at Registrant's registered address. *Id.* at 1–2. The Show Cause Order also alleged Dr. Wilkinson removed the controlled substances from Registrant's registered address and administered them ''to individuals with whom [Registrant] did not establish a doctor patient relationship.'' *Id.* at 2 (citations omitted).

Next, the Show Cause Order alleged that Registrant had made ''material false and misleading statements to investigators during the initial phase of the investigation, including denying [that he knew] where Dr. Wilkinson obtained the controlled substances, denying ordering controlled substances, and stating that [he was] unfamiliar with DEA Forms–222.'' *Id.* The Order then set forth various statements Registrant allegedly made including that on November 2, 2012, he told Washington Department of Health Investigators that he ''did not know where Dr. Wilkinson obtained controlled substances and that [he] never ordered controlled substances.'' *Id.* Based on various statements Registrant made to both Washington State and DEA Investigators, the Government also alleged that Registrant had ''turned a willful blind eye to the diversion of controlled substances you obtained using your own DEA Certificate of Registration.'' *Id.* at 3.

The Show Cause Order further alleged that during an on-site inspection of his registered location, DEA Investigators found that Registrant: (1) Did not have an initial or biennial inventory of controlled substances; (2) failed to properly document the receipt of controlled substances on DEA Form 222s; (3) failed to maintain all invoices of schedule II through V controlled substances and/or ''failed to maintain . . . records in readily retrievable form''; and 4) failed to maintain effective controls against diversion by ''allowing Dr. Wilkinson to maintain controlled substances in a locked suitcase in an unlocked cabinet at an unregistered location.'' *Id.* at 3–4 (citations omitted). Finally, the Show Cause Order alleged DEA Investigators conducted an audit, which found that Registrant had overages of two ampules of 2 ml. fentanyl 50mcg/ml., ten ampules of 5 ml fentanyl 50mcg/ml., and 131 vials of 2 ml. midazolam 1mg/ml. *Id.* at 4.

On October 8, 2013, a DEA Diversion Investigator (DI) personally served the Show Cause Order on Registrant. GX 4. While the Show Cause Order explained that Registrant had the right to request a hearing on the allegations, the procedure for requesting a hearing (by sending his request to the Hearing Clerk, DEA Office of Administrative Law Judges, at a Springfield, Va., mailing address) and that if he failed to do so within 30 days of receipt of the Order, he would ''be deemed to have waived [his] right to a hearing,'' GX 1, at 4; Registrant did nothing until November 20, 2013, when he wrote the DI (who was located in Seattle, Washington) requesting a continuance of the time for him to respond to the Order. GX 5, at 3. On December 4, 2013, after the letter to the DI was returned undelivered, Registrant wrote the Hearing Clerk requesting a continuance; this letter was received on December 9, 2013, and the matter was assigned to an Administrative Law Judge (ALJ).

Thereafter, pursuant to the ALJ's order, the Government filed a notice of service and a motion to terminate the proceeding on the ground that Registrant had neither timely requested a hearing nor demonstrated good cause for failing to do so. GX 8. While Registrant claimed that he had inadvertently mailed his letter to the DI (as well as attached his previous letter in which he asserted that he had encountered difficulty finding an attorney to represent him), GX 7, the ALJ found that this did not establish good cause. GX 9, at 9. The ALJ therefore granted the Government's motion to terminate the proceeding.

Thereafter, the Government submitted a Request for Final Agency Action to my Office. Having reviewed the record, I find that Registrant failed to timely request a hearing and has failed to demonstrate good cause to excuse his untimely filing. Accordingly, I find that Registrant has waived his right to a hearing and issue this Decision and Order based on the Investigative Record submitted by the Government. I make the following findings of fact.

Findings

Registrant is the holder of DEA Certificate of Registration, pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a practitioner, at the registered location of: 1901 S. Union Ave, Suite B4008, Allenmore Medical Center Building B, Tacoma, WA 98405–1804. GX 3. His registration does not expire until February 28, 2015. *Id.*

According to the affidavit of an Investigator with the Washington Department of Health (hereinafter, DOH), the DOH received complaints that one Dr. Raymond Wilkinson had used expired fentanyl and ketamine to perform conscious sedation on patients at the University of Washington's Periodontics Clinic. GX 10, at 1. However, the drugs (which are schedule II and schedule III controlled substances

respectively [1]) were not stocked at the clinic. *Id.* Moreover, years ago, Dr. Wilkinson had surrendered his DEA registration for cause. GX 18, at 6.

On November 2, 2012, DOH Investigators went to Dr. Wilkinson's dental practice, which was in the same office as that of Registrant. GX 10, at 2. Upon arriving, they met Registrant who told them that Dr. Wilkinson was not present and only worked at the office on Mondays and did so as an independent contractor. *Id.*

Registrant agreed to an interview, during which he stated that neither he nor Wilkinson provided conscious sedations at Registrant's office. *Id.* Registrant admitted, however, that he knew that Wilkinson was providing conscious sedation at other offices. *Id.* Moreover, Registrant stated that he had no idea as to how Wilkinson had obtained the drugs he used to sedate patients and ''that he did not order or use sedation drugs in his practice.'' *Id.* However, Registrant then admitted knowing that Wilkinson kept controlled substance in a briefcase at Registrant's office and that Wilkinson took the drugs offsite to perform conscious sedation. *Id.* He also stated that he was unfamiliar with the DEA Form which is used to order schedule II controlled substances (Form-222).

Three days later, DOH Investigators returned to Registrant's office and interviewed Dr. Wilkinson. *Id.* at 3. During the interview, Wilkinson admitted to bringing controlled substances from Registrant's office to the University of Washington's Periodontics Clinic, as well as that he provided sedation services for multiple dentists including Registrant. *Id.* He also stated that Registrant had purchased the controlled substances for him from a local pharmacy, that Registrant completed the Form 222s, and that the latter's office manager would pick up the orders. *Id.*

Dr. Wilkinson then showed the DOH Investigators his ''sedation kit,'' which according to the DOH Investigator, ''he kept in a locked file-box within an unlocked cabinet.'' *Id.* Upon opening the kit, the Investigator found the following items: (1) A cash receipt for a prescription for Registrant for 50 midazolam 2mg/ml injectable; (2) an un-opened box of 25 midazolam 2mg/ml vials; (3) an opened box which contained 11 midazolam 2mg/ml vials; (4) a blister pack of 10 ampules of fentanyl citrate 250mcg; and (5) a blister pack with one ampule remaining of fentanyl citrate 100mcg; and (6) a hand-written drug log. *Id.*

On November 9, 2012, DEA Investigators went to Registrant's practice. GX 2, at 3. Registrant admitted that ''he did not make, maintain, or review any of the controlled substance records.'' *Id.* Registrant acknowledged that he knew that Wilkinson did not have a DEA registration and yet was providing sedation to patients at other offices; he also asserted that Wilkinson ''did not provide sedation for his . . . patients.'' *Id.* at 4. Registrant also admitted that he used his DEA registration to obtain the controlled substances that Wilkinson needed to perform sedation and acknowledged having signed several Form 222s. *Id.* at 4. Registrant further stated that the controlled substances belonged to Wilkinson and that he was ''doing a favor for a friend.'' *Id.*

On December 10, 2012, two DIs returned to Registrant's practice and conducted an on-site inspection. *Id.* While Registrant consented to the inspection, he declined to participate in it. *Id.* However, Dr. Wilkinson was present and assisted the DIs, who asked him to provide various records. *Id.*

Dr. Wilkinson stated that Registrant ''never had access to the controlled substances or records'' and stated that all of the drugs were ordered from a local pharmacy. *Id.* at 5. Wilkinson also stated that 90 percent of the sedations he did were done at the practices of other dentists. *Id.*

The DIs further determined that Registrant did not have either an initial or biennial inventory of the controlled substances. *Id.* According to a DI, while Dr. Wilkinson produced a dispensing log, which contained twenty-six records, ''[a]ll of the entries failed to record'' the ''patient address, finished form and initials of [t]he dispenser.'' *Id.* Moreover, only three of the entries ''noted the volume of the finished form'' which was dispensed. *Id.* The DI further asserted that ''the dispensing log did not contain at least two years' worth of records.'' *Id.*

The DI, who had previously obtained copies of the Form-222s from the pharmacy where Registrant purchased the drugs, determined that Registrant was missing at least one such form. *Id.* at 6. Moreover, Registrant had failed to record the actual number of containers received and the dates of receipt. *Id.* The DI further asserted that Registrant was unable to identify who had prepared several of the forms. *Id.* In addition, the DI found that Registrant ''failed to maintain . . . any Schedule III–V acquisitions invoices'' and that while the controlled substances were kept ''in a locking briefcase,'' they were kept in an unlocked cabinet in Wilkinson's office. *Id.*

Subsequently, the DI conducted an audit ''utilizing the closing inventory assembled during the on-site inspection, [the] dispensing log entries, and the Form-222s.'' *Id.* The DI did not, however, ''record the acquisition of any [s]chedule III–V controlled substances due to the lack of invoices.'' *Id.* The DI further stated that he ''used an initial inventory date of January 1, 2012, beginning of business, and noted that the initial inventory was 'zero' due to lack of an initial or biennial inventory.'' *Id.*

According to the DI's affidavit, the audit found overages of two ampules of 2ml fentanyl 50mcg/ml; ten ampules of 5ml fentanyl 50mcg/ml; and 131 vials of 2 ml midazolam 1mg/ml. *Id.* at 7. However, the record also includes a computation chart which lists various data that were obtained from Dr. Wilkinson's records as well as the pharmacy which supplied the drugs. *See* GX 12, at 2. Notably, this data includes figures (other than 0) in the ''initial inventory'' column and which are listed in entries that are labeled ''Wilkinson Records,'' as well as data for the midazolam purchases based on both the pharmacy records and Wilkinson's records. *Id.* Moreover, using Wilkinson's figures, the audit found, with respect to both the fentanyl and midazolam, that all of the drugs which were purchased were accounted for. *Id.*

The DI further declared that he had been informed by a DOH Investigator that one of Registrant's patients (J.F.) had received conscious sedation from Dr. Wilkinson at the latter's office. GX 2, at 8. As found above, in November 2012, Registrant had stated to both DOH and DEA Investigators that Wilkinson had not provided conscious sedation at his office. According to the DI, he subpoenaed J.F.'s medical records and determined ''that in July 2012, Dr. Wilkinson utilized controlled substances to provide conscious sedation to'' J.F. at Registrant's practice. *Id.; see also* GX 17 & 20.

As part of the record, the Government included several letters from Registrant to both DOH and the DI. In a letter to DOH, Registrant asserted ''that under the sense of friendship[,] collegiality and economy, I made the decision to let another doctor share my DEA license'' and ''[i]t did not occur to me that sharing the license with a dentist operating in my office and building would be illegal'' as he was told by the

[1] *See* 21 CFR 1308.12(c) (fentanyl) and 21 CFR 1308.13(c) (ketamine).

DI.[2] GX 15, at 7. Registrant further stated that he had known that ''Dr. Wilkinson had taught [iv] [s]edation at the University of Washington Dental School for years,'' and that he ''had complete confidence that he would be well versed in the proper procedures for ordering and using the drugs for [iv] [s]edation.'' *Id.* Registrant then stated that Wilkinson told him ''that he would use the drugs in 'neighboring practices' where dental sedation was required in the treatment of patients'' and that it was his ''understanding'' that this meant only ''dental practices in our immediate locality.'' *Id.*

Registrant then explained that Dr. Wilkinson arranged with his secretary ''to order the drugs he needed'' and that he ''would sign off on the order.'' *Id.* Registrant further stated that he ''never saw, received or handled the drugs that were ordered by Dr. Wilkinson,'' and that the ''drugs were given directly to Dr. Wilkinson for his use and maintenance'' on patients that were unknown to Registrant. *Id.; see also id.* at 9. Registrant further stated that ''Dr. Wilkinson was responsible for maintaining the required paperwork for using these drugs including receipts, dispensing, and inventory of what amount of the drugs remained in his possession.'' *Id.* at 7.

Registrant further wrote that he was unaware that Dr. Wilkinson's state dental license had been suspended and that he had surrendered his DEA registration for cause, as Wilkinson had not informed him of this when they ''discussed the sharing of my DEA license.'' *Id.* at 8. Registrant further noted that he had prescribed controlled substances ''for over fifty years without any incidents.'' *Id.*

Registrant further stated that he always gives his patients a prescription, and that ''[i]n his over fifty years of practice, [he] has never stored any controlled substances in his office.'' *Id.* at 10. He also denied making false and misleading statements to either DOH or DEA Investigators. *Id.* Finally, he stated that he did not employ Dr. Wilkinson. *Id.*

Discussion

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

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

''These factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). It is well settled that I ''may rely on any one or a combination of factors[,] and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked. *Id.; see also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222 (quoting *Hoxie,* 419 F.3d at 482)).[3]

Even where a Registrant fails to request a hearing or to submit a written statement in lieu of a hearing, the Government has the burden of proving, by a preponderance of the evidence, that the requirements for revocation or suspension pursuant to 21 U.S.C. § 824(a) are met. 21 CFR 1301.44(e). In this matter I have considered all of the statutory factors and deem it unnecessary to make findings with respect to factors one, two, three, and five. However, having considered all of the evidence in this matter, including the statements Registrant made to Investigators, I conclude that evidence with respect to factor four is sufficient to establish that Registrant has committed such acts as to render his registration inconsistent with the public interest.

Factor Four—Compliance With Applicable Laws Related to Controlled Substances

Under the CSA, it is ''unlawful for any person [to] knowingly or intentionally . . . distribute . . . a controlled substance,'' ''[e]xcept as authorized by this subchapter.'' 21 U.S.C. § 841(a)(1). The CSA specifically recognizes various categories of registration to include, *inter alia,* manufacturers, distributors and practitioners, *see id.* § 823; and provides that a registrant may possess and engage in controlled substance activities ''to the extent authorized by their registration and in conformity with the other provisions of this subchapter.'' *Id.* § 822(b); *see also* 21 CFR 1301.13(e) (''Any person who is required to be registered and who is not so registered, shall make application for registration for one of the following groups of activities, which are deemed to be independent of each other.''). So too, the CSA limits the circumstances in which a person may lawfully possess a controlled substance to where the substance ''was obtained directly, pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by'' the CSA. 21 U.S.C. § 844(a).

Under the CSA, a practitioner's registration authorizes its holder to dispense controlled substances, 21 U.S.C. § 823(f); *i.e.,* ''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.'' *Id.* § 802(10). Thus, except for in limited circumstances, a practitioner is not authorized to distribute controlled substances.[4]

[2] *See also* GX 5, at 4 (Registrant's letter of Nov. 20, 2013 to DI) (''He [Wilkinson] told me, at the time that we made the agreement, that he had decided to 'give up' his DEA license because of the 'haggle' over it at his Puyallup practice.'').

[3] ''In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

[4] One such exception is found at 21 CFR 1307.11(a). It provides that:

(a) A practitioner who is registered to dispense a controlled substance may (without being registered to distribute) a quantity of such substance to—

(1) Another practitioner for the purpose of general dispensing by the practitioner to patients provided that—

(i) The practitioner to whom the controlled substance is to be distributed is registered under the Act to dispense that controlled substance;

(ii) The distribution is recorded by the distributing practitioner in accordance with § 1304.22(c) of this chapter and by the receiving practitioner in accordance with § 1304.22(c) of this chapter;

Here, the evidence shows that while Registrant did not physically possess the controlled substances, he nonetheless unlawfully distributed them to Dr. Wilkinson. Under the CSA, Wilkinson could not have lawfully obtained the controlled substances because he was not registered. Indeed, the whole purpose of the agreement between Wilkinson and Registrant was—in Registrant's own words—to ''share'' his DEA registration, so that Wilkinson could obtain possession of controlled substances. With Registrant's knowledge and consent, the controlled substances were ordered under Registrant's registration and were then delivered to Wilkinson. This constitutes a distribution under the CSA. *See* 21 U.S.C. § 802(11) (''The term 'distribute' means to deliver (other than by administering or dispensing) a controlled substance . . .''); *id.* § 802(8) (''The terms 'deliver' or 'deliver' mean the actual, constructive, or attempted transfer of a controlled substances . . . whether or not there exists an agency relationship.'').

While Registrant asserted that he was unaware that Wilkinson had surrendered his DEA registration years earlier, he obviously knew that Wilkinson was unregistered as there would have been no reason for Registrant to ''share'' his DEA license if Wilkinson was registered. Moreover, he also knew that Wilkinson was taking the controlled substances from his practice, which was his registered location, to other dental offices. Accordingly, I find that Registrant violated the CSA when he distributed the controlled substances to Wilkinson. *See* 21 U.S.C. § 841(a)(1). However, while this is technically diversion because Dr. Wilkinson was unregistered and thus outside the closed system of distribution established by the CSA, there is no evidence that any of the drugs were administered to patients other than in the course of providing legitimate dental treatment.

The evidence also shows that Registrant failed to comply with various recordkeeping requirements. Under 21 U.S.C. § 827(a)(1), ''every registrant . . . shall . . . as soon . . . as such registrant first engaged in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand.'' Even if Registrant or his Secretary (who apparently prepared the order forms) never physically possessed the drugs, upon the use of his registration for the purpose of enabling Wilkinson to obtain controlled substances, he engaged in the distribution of controlled substances and under DEA regulations, he was still required to prepare an initial inventory. *See* 21 CFR 1304.11(b) (''In the event a person commences business with no controlled substances on hand, he/she shall record this fact as the initial inventory.''). The evidence showed, however, that Registrant had no inventories.

Also, pursuant to 21 U.S.C. § 827(a)(3), ''every registrant . . . manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substances manufactured, received, sold, delivered, or otherwise disposed of by him.'' *See also* 21 CFR 1304.21(a). Thus, Registrant was required to keep records of the purchases he authorized and his subsequent distributions to Wilkinson.

While Registrant had some DEA Form-222s for the fentanyl purchases, the forms were not completed to show the actual quantities received and the dates of receipt. *See* 21 CFR 1305.13(e). Nor could he produce any invoices or other records documenting the purchases for the other controlled substances that were ordered. Likewise, he had no records documenting the subsequent distributions of the controlled substances to Wilkinson. Registrant thus violated the CSA by failing to maintain required records.[5] 21 U.S.C. §§ 827(a)(3) & 842(a)(5); 21 CFR 1304.21(a); 21 CFR 1304.22(b).

Accordingly, I find that Registrant ''has committed such acts as would render his registration . . . inconsistent with the public interest.'' 21 U.S.C. § 824(a)(4).[6] While I have carefully considered Registrant's statements in his letters, I find that Registrant has not acknowledged that he violated federal law by both: (1) Distributing controlled substances to an unregistered person, and (2) failing to maintain CSA-required records.[7] Moreover, Respondent clearly knew that his activities were illegal as there would be no reason to ''share'' his DEA license if Wilkinson was himself registered; indeed, he even knew that Wilkinson had given up ''his DEA license because of the 'haggle' over it at [Wilkinson's] Puyallup practice.'' GX 5, at 4. Registrant also knew that Wilkinson intended to take the controlled substance to other dental offices.

In determining the appropriate sanction, the Agency also considers the egregiousness of the proven misconduct and the need to deter similar misconduct on the part of other registrants. In mitigation of the violations, it is noted that there is no evidence that Wilkinson was personally abusing the drugs or that he dispensed any of the drugs outside of the course of providing legitimate dental treatment. Moreover, the Government produced no evidence that Registrant has engaged in any other misconduct related to controlled substances during the course of his professional career, which has spanned more than fifty years.

On the other hand, Registrant's statements suggest that he does not accept responsibility for his misconduct. Moreover, the Agency has

(iii) If the substance is listed in Schedule I or II, an order form is used as required in part 1305 of this chapter . . . .

21 CFR 1307.11(a).

Respondent did not, however, raise this provision as an affirmative defense, *see* 21 U.S.C. § 885(a)(1), and because Wilkinson was not registered, could not have successfully raised it.

[5] Notwithstanding that the Order to Show Cause alleged that DEA's audit found that Registrant had various overages, GX 1, at 4, in its discussion of the public interest factors, the Government made no reference to the audit results. Accordingly, I do not consider this evidence.

[6] Because Registrant had already distributed the controlled substances to Wilkinson and there is no evidence that Wilkinson acted as Registrant's agent when he performed sedation (other than with the possible exception of when he sedated J.F.), I place no weight on the inadequacies identified by the DI regarding the dispensing log maintained by Dr. Wilkinson. So too, because the controlled substances had been distributed to Wilkinson, I place no weight on the evidence that they were not ''stored in a securely locked, substantially constructed cabinet.'' 21 CRF 1301.75

With respect to factor five, the Government argues that Registrant lacked candor because he made false statements to both Washington DOH as well as DEA Investigators. As for his alleged false statements to the DOH Investigators, I conclude that the State of Washington is the best forum to adjudicate these allegations. As for his alleged false statement to DEA, in its discussion of factor five, the Government simply lumps all of Registrant's putatively false statements together without identifying which of the statements were made to DEA Investigators. While there is evidence that Registrant told DEA Investigators that Dr. Wilkinson did not perform conscious sedation on any of his patients even though Wilkinson had done so on J.F., the Government has provided no explanation as to why Registrant's false statement was material to its investigation. Accordingly, I place no weight on Registrant's false statement to Agency Investigators.

[7] In his May 21, 2013 letter to the DOH Investigator, Respondent stated that ''Dr Wilkinson was responsible for maintaining the required paperwork for using these drugs including receipts, dispensing, and an inventory of what amount of the drug remained in his possession.'' GX 15, at 7. While this may have been his arrangement with Wilkinson, as explained above, because Registrant engaged in the acquisition and distribution of controlled substances he was also required to maintain records.

Moreover, on the issue of whether he allowed controlled substances to be taken from his registered location, Registrant wrote: ''Dr. Wilkinson was given the drugs he ordered. What he did with them after that was done without my knowledge or consent.'' GX 18, at 8. Registrant did, however, know that Wilkinson intended to and did take the controlled substances out of his office.

a strong interest in deterring similar acts on the part of other registrants. Accordingly, while I reject the Government's contention that Registrant's registration should be revoked, I will order that his registration be suspended outright for a period of one year.[8]

I further order that Registrant's registration shall be restricted to allow him only to prescribe controlled substances until such time as he completes a course in controlled substance recordkeeping. During this period, Registrant shall be prohibited from possessing any controlled substances (including those provided as samples by pharmaceutical manufacturers and distributors) other than those that are prescribed to him to treat a legitimate medical condition. Upon the completion of such course, Respondent shall provide a copy of his certificate of completion to the local DEA field office to have said restriction removed.

Order

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a)(4), as well as 28 CFR 0.100(b) and 0.104, I order that the DEA Certificate of Registration issued to Roy S. Schwartz, D.D.S., be, and it hereby is, suspended for a period of one year. The suspension of Dr. Schwartz's registration shall be effective July 16, 2014. I further order that Dr. Schwartz's registration shall be restricted as set forth above; said restrictions shall be, and hereby are, effective immediately.[9]

Dated: June 9, 2014.

Thomas M. Harrigan,

Deputy Administrator.

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[8] This Order does not preclude the Government from seeking revocation of Registrant's registration in the event the State of Washington suspends or revokes Registrant's dental license.

[9] In the event Registrant is in possession of any controlled substances other than those which have been lawfully prescribed to him, he shall contact the DEA field office for instructions on how to dispose of them. Registrant shall have ten (10) business days to dispose of any such controlled substances.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Examination and/or Treatment

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Request for Examination and/or Treatment,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 16, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201403-1240-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Request for Examination and/or Treatment information collection. An employer uses the Request for Examination and/or Treatment, Form LS–1, to authorize medical treatment for an injured worker. A physician uses the form to report findings of physical examinations and any recommended treatment. The Longshore Harbor Workers' Compensation Act authorizes this information collection. *See* 33 U.S.C. 907.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0029.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 4, 2014 (79 FR 12224).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0029. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,