an active registration and that the Agency has jurisdiction.[4]

Respondent is also the holder of license number DR–36651, pursuant to which he is authorized to practice medicine as a physician by the Medical Board of Colorado. Mot. for Summ. Disp., Ex. 1, at 1. However, effective on July 19, 2016, the Board suspended Respondent's medical license ''pending proceedings for suspension or revocation.'' *Id.* at 2. According to the online records of the Colorado Division of Professions and Occupations, Respondent's suspension remains in effect as of the date of this Decision and Order. *See* 5 U.S.C. 556(e).

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' Moreover, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f).

Because ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy,* 72 FR 18273, 18274 (2007); *Wingfield Drugs,* 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the Colorado Medical Board has employed summary process in suspending Registrant's state license and that Respondent may prevail at the hearing schedule for late June.

Here, there is no dispute over the material fact that Respondent is no longer currently authorized to dispense controlled substances in Colorado, the State in which he is registered. Accordingly, I adopt the ALJ's recommendation that Respondent's registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AM2281688, issued to Robert Clark Maiocco, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), I further order that any pending application of Robert C. Maiocco, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[5]

Dated: April 18, 2017.

Chuck Rosenberg,

Acting Administrator.

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BILLING CODE 4410–09–P

[4] I note that the Government did not submit any evidence regarding the status of Respondent's registration with its Motion for Summary Disposition. DEA's regulations do not require responsive pleading to the allegations of a Show Cause Order. Thus, the failure of a respondent to refute an allegation in his hearing request does not constitute an admission of the allegation and the Government maintains the burden of providing evidence establishing the Agency's jurisdiction as part of its Motion. The Agency has also noted in several decisions that even in those matters which are adjudicated on summary disposition, the ALJ is obligated to make findings as to the Agency's jurisdiction. *See James Alvin Chaney,* 80 FR 57391, 57391 n.1 (2015); *Sharad C. Patel,* 80 FR 28693, 28694 n.3 (2015).

[5] For the same reasons that led the Colorado Board to summarily suspend Registrant's medical license, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David D. Moon, D.O.; Decision and Order

On December 8, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to David D. Moon, D.O. (hereinafter, Registrant), the holder of Certificates of Registration Nos. M9879024, in Tulsa, Oklahoma, and BM2782692, in Las Vegas, Nevada, authorizing him to prescribe controlled substances in Schedules II through V.[1] GX 4. The Show Cause Order proposed the revocation of his Certificates of Registration and the denial of any pending application for renewal or modification of Registrant's registrations on the grounds that: (1) Registrant does not have authority to dispense controlled substances in the States in which he is registered and (2) he has committed acts which render his registrations ''inconsistent with the public interest.'' [2] *Id.* at 1 (citing 21 U.S.C. 824(a)(3) and (4)).

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that both of Registrant's registrations expire on January 31, 2018. *Id.*

As the substantive grounds for the proceeding, the Show Cause Order alleged that on June 18, 2015, the Oklahoma State Board of Osteopathic Examiners revoked his Oklahoma osteopathic license, and that on August 11, 2015, the Nevada State Board of Osteopathic Medicine revoked his Nevada osteopathic license, which resulted in the status of his Nevada State Board of Pharmacy license becoming ''inactive.'' *Id.* at 2. Thus, due to the actions of the two Boards, the Registrant is without authority to handle controlled substances in the States in which he is registered with DEA.

The Show Cause Order alleged that on April 17, 2013, Registrant was arrested at McCarran International Airport while proceeding through a Transportation Security Administration checkpoint. *Id.* It further alleged that law enforcement officers found in his carry-on baggage drugs in pill bottles labeled for other people, drugs in unlabeled pill bottles, and loose drugs. *Id.* Based on the airport

[1] The Registrant is also known in the Government's records as ''David DeWayne Moon.'' Government Exhibit (hereinafter, GX) 13 and 14.

[2] The Show Cause Order also proposed the denial of any applications by Registrant for any other DEA registrations.

arrest, the Show Cause Order alleged that the Registrant possessed controlled substances with the intent to redistribute them to individuals for whom they were not originally dispensed, in violation of 21 U.S.C. 829(a) and (b), 21 U.S.C. 841(a)(1), 21 U.S.C. 842(a), 21 U.S.C. 843(a)(3), 21 U.S.C. 844(a), 21 U.S.C. 844a(a), and Nev. Rev. Stat. §§ 453–337–.338. *Id.* at 4. The Show Cause Order also alleged, based on the airport arrest, that Registrant possessed prescription bottles without a label or with an unreadable or illegible label in violation of 21 U.S.C. 825(a) and 21 U.S.C. 842(a). *Id.*

Based on a subsequent Government investigation and the execution of an Administrative Inspection Warrant (hereinafter, AIW), the Show Cause Order alleged that Registrant accepted controlled substances from non-DEA registered sources (patients) and redistributed those illicitly obtained controlled substances to other patients in violation of 21 U.S.C. 844(a) and 21 U.S.C. 841(a)(1), respectively. *Id.* Based on the execution of the AIW, the Show Cause Order also alleged that Response could not produce 32 controlled substance invoices in violation of 21 U.S.C. 842(a)(5) and 21 CFR 1304.21(a). *Id.* The Show Cause Order also alleged, based on the AIW, that Registrant failed to take a biennial inventory of controlled substances stored at one of his registered locations in violation of 21 U.S.C. 827(a) and (b) and 21 CFR 1304.11(c). *Id.* Also pursuant to the AIW, the Show Cause Order alleged that Registrant had significant shortages of controlled substances at his registered address in Tulsa, Oklahoma and was missing purchase records and that Registrant failed to maintain accurate and complete records and to account for controlled substances in violation of 21 U.S.C. 827(a)(3), 21 U.S.C. 842(a)(5), 21 CFR 1304.03, 21 CFR 1304.04, and 21 CFR 1304.21. *Id.* at 4–5.

Based on another Government investigation, the Show Cause Order alleged that Registrant issued at least 55 controlled substance prescriptions in Nevada under a registration which listed his registered address in Oklahoma in violation of 21 U.S.C. 822(e) and 21 CFR 1301.12(a) and (b)(3). *Id.* at 5.

The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing each option, and the consequence for failing to elect either option. *Id.* at 5–6 (citing 21 CFR 1301.43).

Adequacy of Service and Waiver

According to the ''Affidavit of Service of Order to Show Cause'' submitted by a Diversion Investigator (hereinafter, DI) assigned to the DEA Tulsa Resident Office, on January 7, 2016, ten separate copies of the Show Cause Order were sent to Registrant by certified mail, first-class mail, and electronic mail to his registered addresses, as well as his last-known home and electronic mail addresses. GX 5. Specifically, the DI stated that the Government served the Show Cause Order on Registrant (1) by certified mail, return receipt requested addressed to Registrant's registered address at 11445 East 20th Street, Tulsa, Oklahoma 74128; (2) by regular first-class U.S. mail addressed to Registrant's registered address at 11445 East 20th Street, Tulsa, Oklahoma 74128; (3) by certified mail, return receipt requested addressed to Registrant's registered address at 241 N. Buffalo Drive, Bldg. 1, Las Vegas, Nevada 89145; (4) by regular first-class U.S. mail addressed to Registrant's registered address at 241 N. Buffalo Drive, Bldg. 1, Las Vegas, Nevada 89145; (5) by certified mail, return receipt requested addressed to Registrant's last known home address in Oklahoma at 2136 East 25th Street, Tulsa 74114; (6) by regular first-class U.S. mail addressed to Registrant's last known home address in Oklahoma at 2136 East 25th Street, Tulsa 74114; (7) by certified mail, return receipt requested addressed to Registrant's last known home address in Nevada at 2814 Soft Horizon Way, Las Vegas 89135; (8) by regular first-class U.S. mail addressed to Registrant's last known home address in Nevada at 2814 Soft Horizon Way, Las Vegas 89135; (9) by electronic mail at the email address that appears in DEA's registration database for Registrant's Tulsa registered location; and (10) by electronic mail at the email address that appears in DEA's registration database for Registrant's Las Vegas registered location.[3] *Id.* at 1–2.

According to the ''Supplemental Affidavit of Service of Order to Show Cause'' (hereinafter, Supplemental Affidavit) submitted by the Tulsa Resident Office DI, the certified mail, return receipt and regular first-class mailings addressed to Registrant's registered address in Tulsa, Oklahoma were returned with the notation ''return to sender, vacant.'' GX 6, at 1. The Supplemental Affidavit stated that the mailings addressed to Registrant's registered address in Las Vegas and his last known home address in Oklahoma were not returned and the Government did not receive the certified return receipt green cards for those mailings sent certified mail, return receipt. *Id.* at 2. The Supplemental Affidavit stated that the regular first-class mailing addressed to Registrant's last known home address in Las Vegas was not returned. *Id.* at 3. The Supplemental Affidavit stated that the certified mail, return receipt mailing addressed to Registrant's last known home address in Las Vegas was returned with the notation ''unclaimed.'' *Id.* at 2. According to the Supplemental Affidavit, the electronic mailings did not generate any error message that they were not sent successfully or any notification that they were undeliverable. *Id.* at 3.

I find that the Government's service of the Show Cause Order on Registrant was legally sufficient. According to the Supreme Court, ''due process does not require actual notice.''[4] *Jones* v. *Flowers,* 547 U.S. 220, 225 (2006) (citing *Dusenbery* v. *United States,* 534 U.S. 161, 170 (2002)). Instead, the Court has repeatedly stated that, ''due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Jones* v. *Flowers, supra,* 547 U.S. at 226 (citing *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)). Moreover, ''the Due Process Clause does not require . . . heroic efforts by the Government'' to find Registrant. *Dusenbery, supra.*

Here, the Government mailed the Show Cause Order by certified mail and by regular first-class mail to Registrant's addresses of record and last-known home addresses. The Government also emailed the Order to Show Cause to the email addresses which Registrant had provided to the Government. I find therefore that the Government's efforts were reasonably calculated under all the circumstances to apprise Registrant of the Order to Show Cause and to afford him an opportunity to present his objections.

On November 4, 2016, the Government submitted a Request for Final Agency Action (hereinafter,

[3] In *Mikhayl Soliman,* 81 FR 47826 (2016), I acknowledged that service by email has its limitations. *See Rio Properties, Inc.* v. *Rio Int'l Interlink,* 284 F.3d 1007, 1017–18 (9th Cir. 2002). Here, the Government employed multiple means to serve Registrant and, as in *Soliman,* used the email address Registrant had previously provided it and did not receive either an error or an undeliverable message.

[4] Nevertheless, I note that only three of the Government's ten attempts to provide notice were clearly ineffective; the other seven may very well have been effective.

RFAA) and an evidentiary record to support its proposed action. On March 21, 2017, it updated its RFAA representing that ''because Registrant has not requested a hearing within 30 days of any receipt of the . . . [Order to Show Cause] and has not otherwise corresponded or communicated with DEA regarding the . . . [Order to Show Cause], including the filing of any written statement in lieu of a hearing, he has waived his right to a hearing.'' *Id.* at 4.

Based on the Government's representations and my review of the record, I find that more than 30 days have now passed since the date on which Registrant was served with the Show Cause Order and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement while waiving his right to a hearing. Accordingly, I find that Registrant has waived his right to a hearing and his right to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Order based on the record submitted by the Government. 21 CFR 1301.43(e).

Findings of Fact

Registrant's DEA Registrations

Registrant currently holds DEA practitioner registrations BM9879024 and BM2782692, pursuant to which he is authorized to dispense controlled substances in Schedules II through V. GX 13 and 14. These registrations do not expire until January 31, 2018. *Id.*

DEA practitioner registration BM9879024 is assigned to Registrant at 11445 East 20th Street, Tulsa, OK 74128. GX 14, at 1. DEA practitioner registration BM2782692 is assigned to Registrant at ''Accelerated Rehab & Pain Ctr, 241 N. Buffalo Drive, Bldg. 1, Las Vegas, NV 89145.'' GX 13, at 1. However, from August 11, 2014 until December 15, 2014, the address associated with Registrant's BM2782692 registration was 11445 East 20th Street, Tulsa, OK 74128. *Id.* On December 15, 2014, Registrant changed the address associated with registration number BM2782692 to 241 N. Buffalo Drive, Bldg. 1, Las Vegas, NV 89145. *Id.*

The Status of Registrant's State Licenses

By Order dated June 18, 2015, the Oklahoma State Board of Osteopathic Examiners revoked Registrant's license number 2965 to practice osteopathic medicine in the State of Oklahoma. GX 7.

Effective August 11, 2015, the Nevada State Board of Osteopathic Medicine revoked Registrant's license number 705 to practice osteopathic medicine in the State of Nevada. GX 8, at 4. Also, the status of Registrant's Nevada State Board of Pharmacy license number CS07559 is ''revoked by other agency.'' GX 9.[5]

Arrest of Registrant

On April 17, 2013, Registrant was arrested as he attempted to pass through a McCarran International Airport Transportation Security Administration checkpoint with an unregistered firearm. GX 10, at 2–3. Law enforcement officers found a large quantity of pills in Registrant's carry-on bag along with the firearm. *Id.* According to the Las Vegas Metropolitan Police Department Arrest Report (hereinafter, Arrest Report), Registrant was ''arrested for possession of a controlled substance with intent to sell/distribute schedule three, possession of a controlled substance with intent to sell/distribute schedule four, possession of an unregistered firearm, and possession of hypodermic devices.'' *Id.* at 7.

According to the Arrest Report, Registrant possessed controlled substances with the intent to redistribute them to individuals for whom they were not originally dispensed. *Id.* at 4–7. The Arrest Report contained a list of pills seized from Registrant at the time of his arrest. *Id.* at 4–5. Other than stating that the author of the Arrest Report, ''Detective Shulke (phonetic), and Drug Enforcement Administration Special Agent C. Johnson conducted an inventory of the pharmaceutical products located in Moon's (phonetic) possession,'' the Arrest Report did not include factual support for the officers' conclusions that the seized pills were the controlled substances the Arrest Report stated them to be. *Id.* at 4. It did not, for example, state that the officers submitted the seized pills for lab testing or analyzed them using a resource that identified them based on size, shape, color, and imprint. Thus, I cannot place any weight on the statements in the Arrest Report that the seized pills were, in fact, controlled substances. The Government has produced no other evidence establishing that any of the pills seized from Registrant on the date he was arrested were controlled substances.

Further, while the Arrest Report recounted Registrant ''simply'' stating that ''some of his folks that he had previously treated were simply trying to destroy their medication, and . . . [Registrant] was willing to take possession of those medications again later to distribute to those that are indigent and in need,'' the Arrest Report never stated that Registrant admitted possessing controlled substances not prescribed to himself or intended to redistribute controlled substances to individuals for whom they were not originally dispensed.[6] *Id.* at 6.

Similarly, the record contains scant evidence regarding ''the unreadableness/illegibility of some labels on the prescription bottles and the absence of any label on other prescription bottles.'' GX 4, at 4. However, as stated above, the Arrest Report did not provide a basis for the officers' conclusions that the seized pills were controlled substances. Further, nothing else in the record established that the seized pills were controlled substances. Since the statutory sections cited in the Show Cause Order regarding these allegations only apply to controlled substances, and the record does not contain substantial evidence that the pills seized from Registrant at McCarran International Airport were, in fact, controlled substances, I cannot place any weight on the evidence in the record to support these alleged violations.'' [7]

Investigations of Registrant

After Registrant's arrest, the Government undertook a multi-faceted investigation of Registrant.

According to the affidavit of a DI assigned to DEA's Tulsa Resident Office, on May 2, 2013, she and other Investigators executed an Administrative Inspection Warrant at Registrant's Oklahoma registered address. GX 12, at 1. At that time, she

[5] I take official notice that the online records of the Oklahoma State Board of Osteopathic Examiners and the Nevada State Board of Osteopathic Medicine show Registrant does not currently possess a license issued by the Oklahoma State Board of Osteopathic Examiners or the Nevada State Board of Osteopathic Medicine. Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979).

[6] In this portion of the Arrest Report, Registrant did not admit taking possession of and redistributing controlled substances, only ''medications.'' *Id.* at 6. Also according to the Arrest Report, Registrant ''saw nothing wrong with his possession of the controlled substances.'' *Id.* at 3. However, this statement is imprecise; it could have concerned Registrant's possession of the hydrocodone tablets the Arrest Report stated were in a prescription bottle bearing Registrant's name. *Id.* at 4.

[7] While substantial evidence regarding these allegations may exist due to the Oklahoma State Board of Osteopathic Examiners Order of Probation with Conditions concerning David Moon, D.O., dated December 10, 2014 and effective December 31, 2014, the Order of Probation with Conditions was not submitted as part of the RFAA.

reviewed all pertinent documents and controlled substances records that Registrant was required to keep. *Id.* She found that Registrant failed to maintain a biennial inventory. *Id.*

According to the Tulsa DI's affidavit, she issued administrative subpoenas to five entities for a complete sales history of all of Registrant's controlled substances purchases for the previous two years. *Id.* In comparing the information received from the five administrative subpoenas with the records Registrant provided during the inspection, she identified 32 invoices for controlled substances that Registrant failed to produce during the administrative inspection of May 2, 2013. *Id.* at 2.

While the Government submitted evidence concerning other portions of its AIW investigation of Registrant, GX 11 and 12, the evidence lacked a sufficient foundation. The evidence consisted of a copy of the AIW, a portion of the affidavit of a DI who participated in the execution of the AIW, and ''a complete and accurate copy of the DEA Computation Chart'' prepared as part of the DI's accountability audit. *Id.* These materials did not, however, provide a sufficient foundation or sufficient detail concerning the procedure followed during the audit of Registrant. Thus, I cannot place any weight on this evidence.

Further, no portion of these materials addressed the allegations in the AIW portion of the Show Cause Order that Registrant accepted controlled substances from non-DEA registered sources and redistributed those illicitly obtained controlled substances to other patients. GX 4, at 4. I examined the entire record for evidence concerning these two allegations. The Arrest Report stated that Registrant possessed a ''large quantity'' of ''what appeared to be prescription medication'' that ''belonged to various family members and former patients.'' GX 10, at 3. As I stated above, however, the Arrest Report did not contain factual support that the seized pills were controlled substances. Thus, I cannot place any weight on that evidence in the Arrest Report. For the same reason, the Arrest Report evidence cannot support the AIW-related allegations that Registrant accepted controlled substances from non-DEA registered sources and redistributed those illicitly obtained controlled substances to other patients. I found no other evidence in the record that supports these two AIW-related allegations.

According to the affidavit of a Diversion Group Supervisor assigned to the DEA Las Vegas District Office, on October 30, 2014, she and other Investigators conducted a Scheduled Investigation at a SAV–ON Pharmacy in Las Vegas, Nevada. GX 15, at 1. At that time, the Investigators reviewed six randomly selected bundles of prescriptions and noticed prescriptions written by Registrant during a period when he did not have a DEA registration in the State of Nevada. *Id.* On November 3, 2014, the Investigators obtained copies of Registrant's controlled substance prescriptions filled at that SAV–ON Pharmacy in Las Vegas from August 11, 2014 through October 29, 2014. *Id.*

I examined each of prescriptions the Government obtained from the Las Vegas SAV–ON Pharmacy. Based on my review of this evidence, from August 11, 2014 through October 29, 2014, Registrant issued at least 55 controlled substance prescriptions for drugs including oxycodone (23), morphine (17), adderall (six), tapentadol (six), methadone (two), and hydrocodone (one) on prescriptions showing Registrant's name as well as ''Accelerated Rehabilitation & Pain Center'' and its Las Vegas, Nevada contact information, Registrant's Nevada license number, and DEA registration number BM2782692.

Discussion

Under Section 304 of the Controlled Substances Act (hereinafter, CSA), ''[a] registration . . . to . . . dispense a controlled substance . . . may be . . . revoked by the Attorney General upon a finding that the registrant . . . has had his State license or registration . . . revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances . . . .'' 21 U.S.C. 824(a)(3). Section 304 also provides that a registration may be revoked ''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.'' *Id.* § 824(a)(4).

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, or conducting research with respect to controlled substances.

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

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

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

Id. § 823(f)(1)–(5).

''[T]hese 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'' to revoke a registration. *Id.; see also MacKay* v. *Drug Enforcement Admin.,* 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, supra,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie, supra,* 419 F.3d at 481.[8]

Under DEA's regulation, ''[a]t any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to . . . 21 U.S.C. [§] 824(a) . . . are satisfied.'' 21 CFR 1301.44(e). The Government retains the burden of providing substantial evidence to support the proposed action even when the registrant does not request a hearing.

In this case, I conclude that the record supports two independent grounds for revoking Registrant's registrations. First, Registrant does not possess authority to dispense controlled substances under the laws of Oklahoma or Nevada, the States in which he is registered. 21 U.S.C. 824(a)(3). Second, Registrant violated multiple controlled substances-related regulatory requirements incumbent on registrants, thereby rendering his registrations ''inconsistent with the public interest.'' *Id.* § 824(a)(4).

Registrant's Lack of State Authority

DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental

[8] ''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, M.D.,* 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, supra,* 664 F.3d at 821. Likewise, findings under a single factor can support the denial of an application.

condition for obtaining and maintaining a registration. *Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration''). *See also Rezik A. Saqer,* 81 FR 22122, 22126 (2016) (''DEA has interpreted the CSA in this manner for nearly 40 years.'') and *James Hooper,* 76 FR 71371 (2011) (collecting cases), *pet for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012).

As DEA has repeatedly held, this rule derives from multiple provisions of the CSA. First, in section 802(21), Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice . . . .'' 21 U.S.C. 802(21). Second, Congress directed that the Attorney General ''shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' *Id.* § 823(f). Third, Congress authorized revocation ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' *Id.* § 824(a)(3).

Here, the Government has provided substantial evidence establishing that Registrant no longer possesses authorization to dispense controlled substances in Oklahoma and Nevada, the States in which he is registered. As found above, on June 18, 2015, the Oklahoma State Board of Osteopathic Examiners revoked Registrant's osteopathic license, GX 7, and effective August 11, 2015, the Nevada State Board of Osteopathic Medicine revoked his osteopathic license. GX 8. *See also* GX 9. Accordingly, I find the Government has proved by substantial evidence that Registrant's authorizations to prescribe controlled substances in both Oklahoma and Nevada have been revoked and I take official notice that both States' revocations remain in place as of the date of this Decision and Order. I, therefore, find that Registrant is currently without authority to dispense controlled substances in Oklahoma and Nevada, the States in which he is registered, and he is, therefore, not entitled to maintain his DEA registrations. *Frederick Marsh Blanton, supra.* Accordingly, I will order that his two registrations, BM9879024 and BM2782692, be revoked and that any pending application for the renewal or modification of these registrations be denied. 21 U.S.C. 824(a)(3), *id.* § 823(f).

Acts Inconsistent With the Public Interest

Pursuant to section 304(a)(4), the Attorney General is also authorized to revoke a registration ''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).

In this matter, while I have considered all of the factors, I find the Government's evidence as to factors two and four dispositive.[9] I find that the record taken as a whole provides substantial evidence that Registrant violated provisions of the CSA requiring (1) the holding of a separate registration; (2) the taking of a biennial inventory; and (3) the maintenance of ''complete and accurate'' records.

Factors Two and Four—The Registrant's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

The Dispensing Allegations

The CSA requires a ''separate registration . . . at each principal place of business or professional practice where the applicant . . . distributes . . . or dispenses controlled substances . . . .'' 21 U.S.C. 822(e)(1). *See also* 21 CFR 1301.12(a); Clarification of Registration Requirements for Individual Practitioners, 71 FR 69478 (2006); *Joe W. Morgan,* 78 FR 61961 (2013). The CSA's definition of ''dispense'' explicitly includes the prescribing of a controlled substance. 21 U.S.C. 802(10).

Based on my review of the evidence submitted by the Government, the Registrant issued, from August 11, 2014 through October 29, 2014, at least 55 controlled substance prescriptions on prescriptions showing Registrant's name as well as ''Accelerated Rehabilitation & Pain Center'' and its Las Vegas, Nevada contact information, Registrant's Nevada license number, and DEA registration number BM2782692. *Supra.* Also during this time period, according to the evidence submitted by the Government, the address associated with DEA registration BM2782692 was in Oklahoma. *Supra.*

The Order to Show Cause alleged that, by issuing these 55 prescriptions ''in one state under a DEA registration issued for another state,'' Registrant violated 21 U.S.C. 822(e) and 21 CFR 1301.12(a) and (b)(3). GX 4, at 5. These legal provisions, however, do not concern issuing a prescription ''in one state under a DEA registration issued for another state.'' *Id.* Instead, they require a separate registration at each principal place of business or professional practice where controlled substances are dispensed.

Under 21 CFR 1306.05(a), controlled substance prescriptions are to ''bear . . . the name, address and registration number of the practitioner,'' among other things. Registrant's address on the 55 prescriptions the Government submitted is in Nevada. Thus, I conclude that Registrant maintained a principal place of business or professional practice in Nevada from August 11, 2014 through October 29, 2014 from which he issued at least 55 prescriptions for controlled substances. During this period, however, Registrant was not registered with the DEA in Nevada. *Supra.* Thus, I find that Registrant violated the separate registration requirements of 21 U.S.C. 822(e) and 21 CFR 1301.12(a) and (b)(3).

The Inventory and Recordkeeping Allegations

The CSA requires ''every registrant . . . as soon . . . as such registrant first engages in the . . . dispensing of controlled substances, and every second year thereafter, [to] make a complete and accurate record of all stocks thereof on hand . . . .'' 21 U.S.C. 827(a)(1). *See also* 21 U.S.C. 842(a)(5) (''unlawful acts'' include ''to refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required . . .''). As found

[9] As to factor one, there is no evidence that either the Oklahoma State Board of Osteopathic Examiners or the Nevada State Board of Osteopathic Medicine made a recommendation to DEA; both, however, revoked Registrant's licenses to practice osteopathic medicine.

As to factor three, although the record contains evidence concerning Registrant's arrest at McCarran International Airport, I acknowledge that there is no evidence that Registrant has been convicted of an offense under Federal, Oklahoma, or Nevada law ''relating to the manufacture, distribution or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, there could be any number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone have been prosecuted for one. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *Drug Enforcement Admin.,* 664 F.3d 808 (10th Cir. 2011). The DEA has therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

The Government did not allege in the Show Cause Order any misconduct exclusively with respect to factor five.

above, during the execution of the AIW, Registrant could not produce a biennial inventory. *Supra.* Thus, I find that Registrant violated the CSA by failing to maintain a biennial inventory.

The CSA also requires registrants to maintain, on a current basis, complete and accurate records of each controlled substance received or dispensed. *See* 21 U.S.C. 827(a)(3) and 21 CFR 1304.21(a). *See also* 21 U.S.C. 842(a)(5). According to the DI, during the administrative inspection of May 2, 2013, Registrant failed to produce 32 invoices for controlled substances he had purchased. *Supra.* Thus, I find that Registrant violated the CSA by failing to comply with its recordkeeping requirements concerning controlled substances.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that DEA Certificates of Registration BM9879024 and BM2782692 issued to David D. Moon, D.O., be, and they hereby are, revoked. I further order that any pending application of David D. Moon, D.O., to renew or modify these registrations, as well as any other pending application, be, and it hereby is, denied. This order is effective May 30, 2017.

Dated: April 17, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–08452 Filed 4–26–17; 8:45 am]

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DEPARTMENT OF JUSTICE

National Institute of Justice

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed New Information Collection Activity; Comment Request, Proposed Study Entitled "Tribal Youth Victimization Methods Study"

AGENCY: National Institute of Justice, U.S. Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, National Institute of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 26, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine Crossland, National Institute of Justice, Office of Research & Evaluation, 810 Seventh Street NW., Washington, DC 20531 (overnight 20001) or via email at *Christine.Crossland@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the National Institute of Justice, 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;

—Evaluate whether, and if so how, the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Survey development; Cognitive testing; Pilot testing of survey.

2. *The Title of the Form/Collection:* Tribal Youth Victimization Methods Study.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the U.S. Department of Justice is the National Institute of Justice in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* There has never been a national study of tribal youth regarding their victimization experiences that provides reliable, valid estimates of the scope of the problem. As a result, the incidence, prevalence, and nature of victimization experienced by American Indian and Alaska Native youth living in tribal communities is unknown. As a result, NIJ, in partnership with the Office of Juvenile Justice and Delinquency Prevention and the Office for Victims of Crime has funded this methods study that involves developing and testing a survey instrument, testing different modes of administration that can effectively assess exposure to violence and victimization, and determining the feasibility of using these procedures in tribal communities and settings.

The sample includes tribal youth 12 to 20 years of age. Cognitive testing will be conducted in four tribal settings with between 12–15 youth at each site. The pilot test involves the use of at least two but no more than three different modes of administration modes [*e.g.,* face-to-face interviews, self-administered questionnaire in paper and pencil format, audio computer assisted self-administered interviews (required), computer assisted telephone interviews]. The target sample is 375 completed interviews from three tribal settings (one in Alaska and two in the lower 48.)

Among the key outcomes that will be examined are the response and refusal rates, missing data, interview length, willingness to disclose sensitive information, respondent comfort, cost, ability to provide assistance to respondents, and the ease and adequacy of the human subjects' protocol.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated range of burden for respondents participating in the cognitive interview is 90 minutes. Approximately 48 youth will be recruited to complete a cognitive interview. The estimated range of burden for respondents completing the survey in the pilot phase is expected to be 60 minutes for completion. The following factors were considered when creating the burden estimate: the estimated total number of sites (*i.e.,* 4 cognitive sites and 3 pilot sites), respondents (*i.e.,* 48 cognitive interviews and 375 pilot interviews for a total of 423 respondents), and parental and youth informed consent procedures for each phase.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 447 hours. It is estimated that each of the cognitive interviews will take 90