

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

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

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

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

*Id.*

"[T]hese factors are \* \* \* considered in the disjunctive." *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I "may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked." *Id.* Moreover, 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 (D.C. Cir. 2005).<sup>4</sup>

Having considered all of the factors, I conclude that the evidence under factors two and four is dispositive and establishes that Respondent has committed acts which render his continued registration "inconsistent with the public interest." 21 U.S.C. 824(a)(4). Accordingly, Respondent's registration will be revoked.

*Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Laws*

Under DEA regulations, 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.* As the Supreme Court recently 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."

<sup>4</sup> Under section 304(d), the "[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety." 21 U.S.C. 824(d).

*Gonzales v. Oregon*, 126 S.Ct. 904, 925 (2006) (citing *Moore*, 423 U.S. 122, 135 (1975)).

The evidence in this case overwhelmingly demonstrates that Respondent used his prescribing authority to engage in the criminal distribution of controlled substances in violation of 21 U.S.C. 841. The statements of S.S. and the evidence uncovered in the course of the investigation make plain that Respondent was engaged in out-and-out drug pushing and not the legitimate practice of medicine.<sup>5</sup>

More specifically, at a single visit, Respondent issued multiple prescriptions for highly abused schedule II controlled substances, which were undated and thus in violation of DEA regulations for this reason as well. *See* 21 CFR 1306.05.<sup>6</sup> Respondent did not examine S.S.; he also issued multiple prescriptions in the name of G.R., without even seeing him. Finally, S.S. would purchase from Respondent as many as twenty prescriptions at a time and pay cash for which no receipt was provided. In short, Respondent's conduct was not remotely consistent with the legitimate practice of medicine. Rather, it was drug pushing.

I thus conclude that Respondent's experience in dispensing controlled substances and his record of repeatedly violating Federal law and regulations make clear that his continued registration "is inconsistent with the public interest." 21 U.S.C. 823(f). Finally, for the same reasons which led me to find that Respondent posed "an imminent danger to the public health or safety," *id.* § 824(d), I conclude that the public interest requires that his registration be revoked effective immediately and that any pending applications be denied. *See* 21 CFR 1316.67.

**Order**

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate Registration, BF0128810, issued to Armando B. Figueroa, M.D., be, and it hereby is, revoked. I further order that any pending application for renewal or

<sup>5</sup> Given the evidence, this is not a case which requires either expert testimony to support findings regarding whether Respondent prescribed pursuant to a valid doctor-patient relationship or an analysis of state standards pertaining to the practice of medicine. In short, Respondent's conduct does not remotely resemble the legitimate practice of medicine.

<sup>6</sup> The 80 mg strength is the second strongest dosage unit of Oxycodone and typically has a street value of \$80 per tablet.

modification of the registration be, and it hereby is, denied. This order is effective immediately.

Dated: July 2, 2008.

**Michele M. Leonhart,**  
*Deputy Administrator.*

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. 08–8]

**Michael Chait, M.D.; Revocation of Registration**

On October 1, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Michael Chait, M.D. (Respondent), of Amagansett, New York. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BC2825151, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that Respondent is "not authorized to handle controlled substances in New York." Show Cause Order at 1.

More specifically, the Show Cause Order alleged that effective on May 25, 2007, the New York State Department of Health, State Board for Professional Medical Conduct, had, pursuant to an interim non-disciplinary order of conditions, prohibited Respondent from the practice of medicine in the State of New York. *Id.* The Show Cause Order thus alleged that Respondent is "no longer authorized to handle controlled substances in New York, the state in which" he maintains his DEA registration. *Id.* The Show Cause Order further alleged that Respondent "failed to surrender [his] DEA Certificate of Registration as required" under the terms of the State Board's order. *Id.*

Respondent requested a hearing on the allegations and the matter was assigned to Administrative Law Judge (ALJ) Gail Randall. Thereafter, the Government moved for summary disposition on the ground that under the terms of the State Board's order, Respondent was prohibited from practicing medicine and thus could not prescribe a drug. Gov. Mot. at 1–2. The Government therefore argued that there was no dispute that Respondent is not authorized to handle controlled substance in New York, the jurisdiction in which he maintains his DEA registration and that under Federal law, "DEA cannot register a practitioner to

handle controlled substances who is without authority to handle controlled substances in the State in which he practices" medicine. *Id.* at 2 (citing 21 U.S.C. 823(f)).

In support of its motion, the Government attached a copy of the Interim Order. The Interim Order specifically stated that Respondent "shall be precluded from all patient contact and any practice of medicine, clinical or otherwise. Licensee shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition." *In re Chait*, Stipulation and Application for an Interim Non-Disciplinary Order of Conditions Pursuant to N.Y. Pub. Health Law § 230, at 3. The Interim Order also directed Respondent to "surrender [his] Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 15 days of the effective date of this Order." *Id.* at 4.<sup>1</sup>

Although the ALJ ordered Respondent to respond by November 20, 2007, he did not. The ALJ then granted the Government's motion.

The ALJ observed that while the Interim Order did not "make any findings of misconduct as to the matters under investigation, it does prohibit the Respondent from having any patient contact and from practicing medicine." ALJ Dec. at 3. The ALJ also explained that "the Board's Order clearly states that the Respondent is barred from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition, and is required to surrender his DEA Registration \* \* \* within 15 days of the effective date of the Board's Order." *Id.* The ALJ thus "conclude[d] that \* \* \* Respondent currently lacks authority to practice medicine in the State of New York or to prescribe controlled substances in that State." *Id.* Because DEA lacks authority under the Controlled Substances Act to register (and to continue an existing registration of) a practitioner who lacks authority under state law to handle controlled substances, the ALJ recommended that Respondent's registration be revoked. *Id.* at 4–5 (citing cases). The ALJ then

forwarded the record to me for final agency action.

Having considered the record as a whole, I adopt the ALJ's decision in its entirety. I find that Respondent holds a current registration which does not expire until August 31, 2009. I further find that effective May 17, 2007, the New York State Department of Health, State Board for Professional Medical Conduct, issued an Interim Order which precludes Respondent from practicing medicine and prescribing drugs, Interim Order at 3, and that this Order remains in effect. Therefore, even though Respondent's state medical license has not been suspended or revoked, it is clear that he is not permitted to handle controlled substances in the State of New York, the State in which he holds his DEA registration.<sup>2</sup>

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in "the jurisdiction in which he practices" in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) ("[t]he term 'practitioner' means a physician \* \* \* 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"). *See also id.* § 823(f) ("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."). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration.

That the State has not formally revoked or suspended Respondent's state license is not dispositive. Because Respondent is not "authorized under" state law, "or otherwise permitted[]" by \* \* \* the jurisdiction in which he practices" to handle controlled substances "in the course of professional practice," and is in fact currently precluded from engaging in the practice of medicine, he is not entitled to hold a registration under the CSA. *See Julian A. Abbey, M.D.*, 72 FR 10788, 10788–89 (2007) (revoking registration of practitioner who had entered into a voluntary agreement with the State to cease the practice of medicine). Accordingly, Respondent's registration will be revoked.

<sup>2</sup>I further note that there is no evidence that Respondent has surrendered his DEA registration.

## Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BC2825151, issued to Michael Chait, M.D., be, and it hereby is, revoked. I further order that any pending application of Michael Chait, M.D., for renewal or modification of his registration be, and it hereby is, denied. This order is effective August 13, 2008.

Dated: July 2, 2008.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

#### [F.C.S.C. Meeting Notice No. 6–08]

#### Sunshine Act Meetings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

**DATE AND TIME:** Thursday, July 31, 2008, at 10:30 a.m.

**SUBJECT MATTER:** Issuance of Proposed Decisions, Amended Proposed Decisions, and Orders in claims against Albania.

**STATUS:** Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

**Mauricio J. Tamargo,**

*Chairman.*

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<sup>1</sup>The Government also attached a copy of a webpage maintained by the N.Y. Department of Health, entitled "Professional Misconduct and Physician Discipline." This document indicates that the Interim Order precludes Respondent from the clinical practice of medicine in New York State "until the final disposition of the current investigation being conducted by the New York State Office of Professional Medical Conduct."