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. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 2, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Thomas McDermott, Firearms Programs Division, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

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 agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies 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, 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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records of Acquisition and Disposition, Collectors of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. The record keeping requirement is for the purpose of facilitating ATF's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it takes 3 hours per year for line by line entry and that approximately 45,973 licensees will participate.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 137,919 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 25, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–8272 Filed 4–30–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 4–41]

Samuel S. Jackson, D.D.S.; Grant of Application

Procedural History

On April 21, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Samuel S. Jackson, D.D.S. (Respondent) of Nashville, Tennessee. The Show Cause Order proposed to deny Respondent's pending application for a certificate of registration as a practitioner on three grounds: (1) That Respondent had materially falsified his application, *see* 21 U.S.C. 824(a)(1); (2) that Respondent had been convicted of a controlled substances related felony, *see id.* § 824(a)(2); and (3) that Respondent's registration would be inconsistent with the public interest. *See id.* 824(a)(4); *see also* Show Cause Order at 1.

The Show Cause Order alleged that Respondent had entered into a conspiracy with a drug trafficker, who was then wanted on federal charges, and a confidential informant, whom Respondent also believed to be a fugitive, to help them avoid apprehension. Show Cause Order at 2. More specifically, the Show Cause order alleged that Respondent had agreed to perform cosmetic dental work on these individuals and to arrange for plastic surgery on them for the purpose of altering their appearance so that they could evade arrest. *Id.* The Show Cause Order alleged that Respondent further admitted to authorities that he knew that the fugitive was a ''big time hoodlum'' and that Respondent had ''intentionally sought to participate in activity which placed the public at risk for further distribution of illegal controlled substances.'' *Id.*

The Show Cause Order alleged that Respondent subsequently pled guilty in the United States District Court for the Middle District of Tennessee on one count of conspiracy, a crime under 18 U.S.C. 371, and was sentenced to a term of imprisonment for 30 months. *See id.* The Show Cause Order also alleged that on October 1, 2002, Respondent's then-existing DEA registration was revoked by order of the then Deputy Administrator. *Id.* at 1.

The Show Cause Order alleged that on October 20, 2003, Respondent applied for a new DEA registration. *Id.* The Show Cause Order alleged that in completing the application, Respondent stated that he had ''voluntarily surrendered [his] DEA # to prescribe medications,'' when, in fact, his registration had been revoked, and that this constituted a material falsification of his application. *Id.* at 1–2. The Show Cause Order further alleged that, in completing his application, Respondent had also answered ''No'' to the question whether he had ever been convicted of a drug-related felony. *Id.* at 2. The Show Cause Order thus concluded that Respondent's material falsification of his application and his conviction rendered his registration inconsistent with the public interest. *Id.*

Respondent, through his counsel, timely requested a hearing. The case was assigned to Administrative Law Judge (ALJ) Gail Randall, who conducted a hearing in Nashville on May 3 and 4, 2005. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Following the hearing, the Government submitted a brief containing its proposed findings of fact, conclusions of law, and argument.

On May 26, 2006, the ALJ issued her recommended findings of fact, conclusions of law, and decision. In that decision, the ALJ concluded that Respondent did not intentionally falsify his application. ALJ at 28. The ALJ further found that while Respondent ''was less than completely candid and forthcoming'' in his testimony regarding

his criminal conduct, there were several mitigating factors including Respondent's having cooperated with law enforcement officials and his having ''accepted full responsibility for his past conduct.'' *Id.* at 30. The ALJ thus concluded that the denial of Respondent's application ''would be too severe a sanction,'' and that while Respondent should be reprimanded for providing ''less than truthful and complete information,'' his application should be granted. *Id.* at 30–31.

The Government filed exceptions to the ALJ's recommended decision. Specifically, the Government contended that Respondent had not credibly testified ''as to the essential elements of [his] felony conviction,'' and that he had given falsified answers on his application. Gov. Exceptions at 11–12. The Government further maintained that granting Respondent's application would not be consistent with DEA precedents which require that an applicant (or registrant) truthfully testify and accept full responsibility for his misconduct. Respondent did not file exceptions.

Having considered the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's findings of fact except as expressly noted herein. I hold that the Government has not proved by substantial evidence that Respondent materially falsified his application. I further hold that the Government has not proved by substantial evidence that Respondent has failed to accept responsibility for his criminal conduct. I thus conclude that Respondent's registration would not be inconsistent with the public interest and order that his application be granted.

Findings

Respondent is a 1997 graduate of the Meharry Medical College School of Dentistry. Tr. 148. Respondent currently holds a license from the State of Tennessee to practice dentistry. Resp. Exh. 1. Respondent previously held a DEA Certificate of Registration as a practitioner. On October 1, 2002, my predecessor ordered that Respondent's DEA registration be revoked (effective November 22, 2002) on the ground that Respondent had entered into an agreed order with the Tennessee Department of Health which resulted in the revocation of his state license and therefore was not entitled to maintain a DEA registration. *Samuel Silas Jackson*, 67 FR 65145 (2002).[1]

As explained below, the impetus for these actions was Respondent's entering into a conspiracy under which Respondent agreed to help Paul Woods, an indicted drug trafficker who was then at large, as well as a confidential informant (CI) whom Respondent also believed was wanted by the authorities, to avoid apprehension. According to the record, in 1997 a Nashville-based DEA task force began an investigation into the criminal activities of Woods and his organization. Tr. 73. The investigation established that Woods and his organization were involved in the distribution of multi-kilo amounts of cocaine in the Nashville area. *Id.* at 74. The investigation ultimately resulted in the indictments of over thirty persons including Woods, on charges of cocaine distribution, firearms violations, money laundering and conspiracy. *Id.*

Woods was charged in July 1999, in the initial wave of indictments. *Id.* The authorities were, however, unable to arrest Woods who had fled. *Id.* at 83. The authorities then approached an individual who was a lower-tier distributor and a secondary target of the investigation; this person agreed to work as an informant and to assist the authorities in locating Woods. *Id.* at 84.

To gain the confidence of Woods, the authorities portrayed the informant as a fugitive. *Id.* Among other things, the informant specifically agreed to record his telephone calls with Woods and to provide a copy of the tape to the authorities. *Id.* at 81. During one of these phone calls, which occurred in December 1999, Respondent came to the attention of the authorities when Woods and the informant began discussing a scheme to alter their appearance by having dental work and plastic surgery done. *Id.* at 81–82.

At the time of the investigation, Respondent was dating a woman whose niece was Woods' live-in girlfriend and the mother of one of Woods' children. *Id.* at 134–35. Respondent's girlfriend asked him to assist Woods to help him ''avoid apprehension.'' *Id.* at 150. Respondent testified that he was not coerced into helping Woods and that he understood that it was a crime to do so. *Id.*

Respondent agreed to perform cosmetic dental work on both Woods and the informant to alter their appearance and to help them avoid detection. *Id.* at 86–87. Respondent also agreed to arrange for Woods and the informant to obtain plastic surgery in California and to find a secure location at which Woods and the informant could safely recover from the surgery. *Id.*; see also Gov. Exh. 11b at 4. Furthermore, the transcript of a December 15, 1999, three-way phone call between Respondent, Woods, and the informant, establishes that Respondent knew that Woods and the informant were fugitives. Gov. Exh. 11b at 6–7; Tr. at 113–15. Finally, according to an affidavit summarizing one of the recorded conversations between Woods and the informant, the price was to have been $180,000 each. Gov. Exh. 4, at 7.

The ALJ further found that Respondent was aware that Woods and the informant were drug traffickers at the time he agreed to assist them. *See* ALJ at 5 (FOF 16); *id.* 6 (FOF 21). Moreover, the ALJ also found not credible Respondent's testimony that he was unaware that Woods and the Respondent were drug traffickers during this period. *Id.* at 9 (FOF 37). In making these findings, the ALJ relied on what she termed ''the extensive media coverage of these events,'' and the testimony of a Task Force Officer interpreting the street slang of a single transcript of a telephone conversation between Respondent, Woods and the informant. *Id.* I conclude, however, that this evidence does no more than create a suspicion that Respondent knew that Woods and the informant were engaged in drug trafficking at the time he agreed to assist them and that the Government has not proved this fact by substantial evidence. *See NLRB* v. *Columbia Enameling & Stamping Co., Inc.*, 306 U.S. 292, 300 (1939) (''Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established.'')

As for the media coverage of the events, the Lead Task Force Officer testified that the Task Force's inability to arrest Woods following his indictment ''was covered on the three local stations as well as in * * * the paper.'' Tr. 134. That was the extent of the evidence; the Government did not produce any evidence to show how many days the story was covered by TV stations and the paper. Moreover, the

[1] While the final order relied solely on this ground, the order further noted the findings of the state board that Respondent had entered into a conspiracy with a known drug trafficker and fugitive as well as a confidential informant whom Respondent believed to also be a drug trafficker and fugitive for the purpose of assisting these persons to avoid apprehension. Gov. Exh. 2B, at 2. Specifically, the Tennessee board found that Respondent agreed to perform dental work on them and to arrange for them to obtain plastic surgery in California and have a safe place to hide while recovering from the surgery for the purpose of altering their appearance and enabling them to evade apprehension. *Id.* The Tennessee board also found that even after the authorities arrested the fugitive, Respondent nonetheless agreed to provide the services to the confidential informant for a price of $ 150,000. *Id.* at 3. Furthermore, according to the findings of the Tennessee board, Respondent met with the confidential informant and received a piece of luggage which he believed contained $150,000 in cash. *Id.*

Government did not even show that Respondent was in the Nashville area on the days that the media covered the story, let alone that he reads the paper or watches the news on TV. In short, the media coverage is too thin a reed to support the inference that Respondent knew that Woods and the informant were drug dealers.

Nor does Respondent's participation in the December 15, 1999 phone conversation provide substantial evidence that he knew Woods and the informant were drug dealers. At the hearing, the Lead Task Force Officer testified as to his interpretation of the street slang used in the December 15, 1999 conversation between Respondent, Woods and the informant. Specifically, the Task Force Officer testified that Woods' comments that the informant was ''like cool as [expletive [2]] on the street,'' and ''holds a lot of weight,'' establish that the informant was involved in drug dealing. Tr. 113–14.

The Government did not prove, however, that Respondent interpreted the language as a reference to drug dealing as opposed to other forms of criminal activity. Indeed, it bears noting that the Government introduced only this single phone call to support the contention and even the Task Force Officer apparently did not draw the inference that Respondent knew that Woods and the informant were drug dealers. *See id.* at 134 (testimony of Task Force Officer; ''we don't know whether or not [Respondent] knew [that Woods] was under indictment for drug dealing''). Moreover, the Government did not otherwise establish that Respondent was familiar with and understood drug slang. Again, the phone call evidence creates no more than a suspicion that Respondent knew that Woods and the informant were engaged in drug trafficking. *See Columbia Enameling*, 306 U.S. at 300.

Finally, the substantial evidence test requires that the Agency '' 'tak[e] into account contradictory evidence or evidence from which conflicting inferences could be drawn.' '' *Morall* v. *DEA*, 412 F.3d 165, 177 (DC Cir. 2005) (quoting *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 487 (1951)) (int. quotations and other citation omitted). Significantly, the Lead Task Force officer testified that ''we don't know whether or not [Respondent] knew [that Woods] was under indictment for drug dealing. We do know that he knew that Mr. Woods was a bad guy, a thug.'' *Id.* at 134. The same officer subsequently testified that Respondent ''was totally truthful'' during an interview which occurred on the day of his arrest. *Id.* at 141. Of consequence, during that interview, Respondent admitted only to knowing that ''Woods was a 'big time hoodlum' and that he was in big trouble.'' Gov. Exh. 6, at 3. Respondent did not admit to knowing that Woods and the informant were drug traffickers, a position he has consistently maintained.[3] See *Id.* The ALJ's decision ''entirely ignored [this] relevant evidence,'' *Morall,* 366 U.S. at 178, which was part of the Government's case.

On January 13, 2000, Woods was arrested by U.S. Marshals. Gov. Exh. 4 at 7. Thereafter, on January 17, 2000, the informant called Respondent to determine whether he was still willing to assist the informant in evading capture. Tr. 86. Respondent agreed to do so. *Id.* During the conversation, Respondent and the informant again discussed the price for the services and agreed on $150,000. Gov. Exh. 4, at 8.

On January 18, 2000, the informant called Respondent and told him that ''he needed to get his money together.'' *Id.* The informant advised Respondent that he would call him later to make arrangements to pay him. *Id.* Several hours later, the informant called Respondent back and the two agreed to meet in a store parking lot. *Id.*

Later that day, Respondent arrived at the parking lot and entered the informant's car. *Id.* The informant and Respondent drove to a different part of the parking lot where the informant gave Respondent a bag containing $52,000 in cash.[4] *Id.* Task Force officers surrounded Respondent; Respondent threw the bag away claiming that he did not own it. *Id.* Respondent was then arrested and taken to the Nashville DEA office. *Id.*

That evening, Respondent agreed to an interview. The interview was conducted by an Assistant United States Attorney and several law officers. Gov. Exh. 6. During the interview, Respondent fully discussed the circumstances surrounding his involvement with Woods. During the interview, Respondent described Woods as a ''big time hoodlum'' and that he was in trouble. *Id.* at 3. Respondent further stated that his girlfriend had told him that her niece's boyfriend ''was in trouble and that people were after him.'' *Id.* Respondent also stated that while ''he knew Woods was in trouble [he] did not know for sure what kind of trouble.'' *Id.* Respondent further stated to the investigators that while the informant was to pay him $150,000, ''he was not going to make anything off this deal but hoped to get some dental referrals.'' *Id.* at 4. According to the interview report, Respondent contacted an acquaintance in California to find a plastic surgeon; the acquaintance subsequently called Respondent back and told him the cost for the surgery and after-care would be $150,000. *Id.* Later, Respondent acknowledged that ''he was going to do a full mouth reconstruction'' on the informant ''which meant probably 10 to 20 crowns at $650'' each. *Id.* at 5. Respondent also stated that ''he was 'greedy and stupid.' '' *Id.*

At the hearing, the lead Task Force Officer testified that Respondent ''was totally truthful'' with the interviewers and that the information he provided was consistent with other information obtained in the investigation. Tr. 141. Respondent also agreed to cooperate with the investigation by making phone calls to another suspect and wearing a wire. *Id.* at.136–37, 152. Finally, the lead Task Force Officer testified that there was no indication that Respondent was involved in the buying and selling/distribution of cocaine and had no prior criminal record. *Id.* at 130.

The United States Attorney subsequently charged Respondent with one count of conspiring to violate 18 U.S.C. 3, the ''accessory after the fact'' statute. Gov. Exh. 4; *see* 18 U.S.C. 371. The accessory after the fact statute makes it a criminal offense to knowingly provide assistance to an ''offender in order to hinder or prevent his apprehension, trial or punishment.'' 18 U.S.C. 3. The information specifically alleged that Respondent had ''agreed to provide or arrange for plastic surgery and dental work for * * * Woods and others after * * * Woods' indictment on federal drug, money laundering, and firearms felonies.'' Gov. Exh. 4, at 1–2.

On July 20, 2001, Respondent pled guilty and was sentenced to a term of thirty months imprisonment and a term of three years of supervised release. Gov. Exh. 3. Respondent received sentence reduction points for his cooperation with law enforcement officials and for accepting responsibility for his conduct. Tr. 137. Respondent

[2] The expletive is more commonly used to refer to a sex act.

[3] The Government also points to the Agreed Order of Revocation as establishing that Respondent knew that Woods and the informant were drug traffickers at the time he agreed to assist them. See Gov. Exceptions at 5. The ALJ did not rely on this exhibit in making her finding. Respondent was already imprisoned at the time he entered into the Order and did so under the advice of counsel. Tr. 155. Moreover, the information filed by the U.S. Attorney made no such allegation. See Gov. Exh. 4 at 1–2. Considering all the evidence on the issue, I consider the Task Force Officer's testimony that Respondent ''was totally truthful'' regarding his involvement with Woods and the informant to be the most persuasive.

[4] The authorities provided only $52,000 in cash because they did not have the full amount.

subsequently served approximately twenty-two months at the Federal Correctional Institute, Forest City, Arkansas, before being transferred to a halfway house. *Id.* at 158, 160. According to Respondent's unchallenged testimony, prison officials allowed him to attend continuing education classes at the University of Tennessee, College of Dentistry, in Memphis. *Id.* at 158–59.

Following his release from prison, Respondent applied for reinstatement of his state dental license. *Id.* at 161. Respondent appeared before the Tennessee Board of Dentistry, which voted unanimously to reinstate his license. *Id.* at 161–65.

After the Tennessee Board's decision, Respondent contacted the DEA office in Atlanta, Georgia, to determine the status of his registration. *Id.* at 200. During this conversation, Respondent was told that his DEA number had been revoked and that he needed to apply for a new registration. *Id.*

Thereafter, on October 3, 2003, Respondent re-applied for a DEA registration. Gov. Exh. 5, at 2. On the application, Respondent was asked whether he had ''ever been convicted of a crime in connection with controlled substances under state or federal law?'' *Id.* at 1. Respondent answered: ''No.'' *Id.* The application also asked whether Respondent had ''ever surrendered or had a federal controlled substance registration revoked, suspended, restricted or denied?'' *Id.* Respondent answered: ''Yes.'' Finally, Respondent answered ''yes'' to the question of whether he had ''ever surrendered or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?'' *Id.*

The application also requires that an applicant give an explanation for a ''yes'' answer to these questions. In this block, Respondent wrote:

> I voluntarily surrendered my license to practice dentistry in the State of Tennessee as a result of my conviction for accessory after the fact. I also voluntarily surrendered my DEA # to prescribe medications. The board of * * * Tennessee voted unanimously to reinstate my license to practice dentistry in the State of Tennessee on 9/19/03.

Id. at 2.

Respondent's Testimony Regarding the Operative Events

Respondent testified regarding his criminal conduct. When asked by his counsel whether he had committed a crime, Respondent answered: ''Absolutely.'' Tr. 150. Respondent further testified that he ''agreed to help arrange for him [Woods] to avoid apprehension, and as much as I want to blame other people for that, I can't. The onus is firmly and squarely on my shoulders, and I take full responsibility for that.'' *Id.* Respondent also further stated that his girlfriend did not coerce him into committing the act, and acknowledged that he understood he was committing a crime when he did it. *Id.*

Respondent also testified that his conduct in agreeing to help Woods ''was the absolute worst thing—the only thing I could have done worse was actually murder someone. * * * [I]t's just a terrible, terrible thing.'' *Id.* at 184. Later, when asked whether he was ''wrong in [his] actions?,'' Respondent stated: ''I was absolutely wrong. I made a terrible, terrible mistake. I've paid dearly for that, and I make no excuses. * * *'' *Id.* at 188. Finally, when asked by the ALJ why he agreed to assist the informant after Woods was arrested, Respondent answered: ''Stupid. Absolutely stupid.'' *Id.* at 223.

Respondent further testified that at the time he committed the act, he was aware that Woods was a criminal, a ''hoodlum,'' and a ''hustler.'' *Id.* at 151–52. Respondent maintained, however, that he was unaware of Wood's money laundering activities and what firearms offenses he committed. *Id.* at 151. Furthermore, Respondent denied that he was aware that Woods and the confidential informant were cocaine dealers at the time he committed his crime. *Id.* at 190; *see also id.* at 195. Respondent further maintained that while he was familiar with the term ''hustler,'' the term ''doesn't necessarily mean a person who sells drugs,'' but rather, means ''any person that's doing something illegal.'' *Id.* at 210.

During its cross-examination, the Government asked Respondent about his motive. Specifically, the Government asked Respondent whether ''making a lot of money off of this was'' his motive. *Id.* at 208. Respondent initially answered that ''[i]t wasn't a moneymaking scheme for me at all,'' and that he agreed to help because his girlfriend asked him ''to help her niece's boyfriend, and it just kind of snowballed after that.'' *Id.* at 209. Respondent further maintained that the $150,000 cash payment (for the informant) was to be shipped to the person in California who arranged for the plastic surgery. *Id.*

When pressed by the Government as to whether he was to receive any money out of this, Respondent testified that his California contact was ''going to do something nice for'' him. *Id.* Respondent maintained, however, that there was no agreement under which he would receive a particular percentage of the payment. *Id.* at 210.

Respondent also testified regarding his application. Specifically, Respondent testified that he believed that he had voluntarily surrendered his DEA registration because ''at no time did we put up any resistance to the process.'' *Id.* at 180. Respondent further testified that he thought a voluntary surrender and a revocation ''were one [and] the same.'' *Id.* at 181. On cross-examination, however, Respondent admitted that he had not signed any form in which he had agreed to surrender his DEA registration. *Id.* at 207. Respondent further testified that he had ''no'' intent to mislead DEA regarding the status of his previous registration when he made the statement that he had voluntarily surrendered his DEA number. *Id.* at 181.

The ALJ specifically found that ''Respondent credibly testified that at the time he completed his application, he believed he had voluntarily surrendered his previous * * * registration and that he was responding truthfully.'' ALJ Dec. at 15 (FOF 64). I adopt this finding. *See Universal Camera*, 340 U.S. at 496.

Regarding the application's criminal history question, Respondent testified that he answered ''no'' because he did not think that he had committed a drug-related felony. *Id.* at 182. Respondent further testified that he was not ''involved'' in selling drugs, that the prosecutor had not charged him with that, and that the extent of his role was in helping Woods ''evade capture.'' [5] *Id.* at 184. Respondent further stated that he was ''absolutely not'' trying to conceal anything or misrepresent anything from DEA. *Id.*

The ALJ specifically credited Respondent's testimony on both issues. *See* ALJ at 15–16 (FOF 67). In light of the fact that Respondent fully disclosed his ''conviction for accessory after the fact,'' Gov. Ex. 5, at 2, I find no basis to reject the ALJ's findings.

I further note that there is no evidence that Respondent has ever illegally used

[5] On cross-examination, Respondent further explained that he answered ''no'' because he believed ''that I was charged with one count of accessory after the fact, conspiracy to harbor a fugitive. There was no mention of anything as it relates to my involvement with the drug conspiracy. I had absolutely no involvement with the drug conspiracy.'' *Id.* at 196–97. Later, Respondent testified: The question was, [h]as the applicant even been convicted of a crime in connection with a controlled substance? * * * I didn't feel like I was convicted of that crime. I wasn't charged with that crime. I wasn't charged with a drug crime or a drug-related crime. I wasn't involved in any of that activity at any time. I've never been accused of that, ever. *Id.* at 213–14.

controlled substances. Relatedly, there is no evidence that Respondent ever used his previous DEA registration to prescribe a controlled substance for an unlawful purpose.

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

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

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

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

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

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

Id.

''These factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[ ] appropriate in determining whether * * * an application for registration [should be] denied.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall,* 412 F.3d at 173–74.

Furthermore, DEA precedent establishes that the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny an application under section 303. *See Anthony D. Funches,* 64 FR 14267, 14268 (1999); *Alan R. Schankman,* 63 FR 45260 (1998); *Kuen H. Chen,* 58 FR 65401, 65402 (1993). Thus, the allegation that Respondent materially falsified his application is properly considered in this proceeding.

For reasons explained below, I conclude that the Government has not proved that Respondent materially falsified his application. Furthermore, while I am deeply troubled by Respondent's criminal conduct, I am satisfied that he has accepted responsibility for it and reject the Government's assertion to the contrary.

The Material Falsification Allegations

The Government maintains that Respondent materially falsified his application in two respects. First, by answering ''no'' to the application's question as to whether Respondent had ''ever been convicted of a crime in connection with controlled substances,'' and second, by stating that he had ''voluntarily surrendered'' his DEA number. Gov. Exceptions at 7–9. As explained above, the ALJ found that Respondent did not intentionally falsify his application in either instance.

DEA precedents make clear that culpability short of intentional falsification is actionable in these proceedings. *See, e.g., Samuel Arnold,* 63 FR 8687, 8688 (1998) (''[I]n finding that there has been a material falsification for purposes of 21 U.S.C. 824(a)(1), it must be determined that the applicant knew or should have known that the response given to the liability question was false.''). But even if Respondent should have known that his statements were false, the Government must still show that each statement was material. Accordingly, while I hold that Respondent's conviction is a ''a crime in connection with controlled substances'' and that Respondent should have provided a ''yes'' answer on the application, the Government has not established the materiality of the statement because it ignores relevant evidence.

As an initial matter, I conclude that the liability question is not limited to a conviction in which one is directly involved in drug dealing. The ''in connection with * * * controlled substances'' language is broad in its scope; its intent is to provide the Agency with the information necessary to determine whether an applicant/registrant has committed a felony that may preclude his registration under the CSA. *See* 21 U.S.C. 824(a)(2).

The text of section 404(a)(2) makes plain that it is not limited to a felony which directly involves drug dealing. As the provision states, a registration may be revoked based on a ''convict[ion] of a felony under this subchapter [the CSA] or subchapter II of this chapter [the Controlled Substances Import and Export Act] *or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance.*'' *Id.* 824(a)(2) (emphasis added). While it is true that Respondent was not convicted of a felony under the CSA or the Import/Export Act, his conviction for the felony offense of conspiring to be an accessory after the fact is a conviction under ''any other law of the United States.'' *Id.* And his conviction is related to a controlled substance because his criminal conduct involved providing assistance to a person engaged in the unlawful distribution of cocaine which, if successful, would have allowed the drug dealer to evade apprehension and continue his illegal activity. *Cf. Smith* v. *United States,* 508 U.S. 223, 237 (1993) (quoting Webster's New International Dictionary 2102 (2d ed. 1939) (''[t]he phrase 'in relation to' is expansive'' and ''means 'with reference to' or 'as regards') (other citation omitted). Respondent's crime was therefore also—in the words of the application—''in connection with * * * controlled substances.''

Respondent was thus required to provide a ''yes'' answer to the liability question. This conclusion does not, however, close the inquiry because it must also be determined whether Respondent's answer was material.

''The most common formulation'' of the concept of materiality is that ''a concealment or misrepresentation is material if it 'has a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body to which it was addressed.'' *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (quoting *Weinstock* v. *United States,* 231 F.2d 699, 701 (DC Cir. 1956)) (other citation omitted); see also *United States* v. *Wells,* 519 U.S. 482, 489 (1997) (quoting *Kungys,* 485 U.S. at 770). The evidence must be ''clear, unequivocal, and convincing.'' *Kungys,* 485 U.S. at 772.

Taken in isolation, Respondent's answer is material because this Agency ''relies upon such answers to determine whether an investigation is needed prior to granting the application.'' *Martha Hernandez,* 62 FR 61145, 61146 (1997). In almost every case, it is clear that a false answer to the question of whether one has ''been convicted of a crime in connection with controlled substances,'' Gov. Exh. 5., has ''the natural tendency to influence'' the reviewing official to grant the application because most applicants do not provide any further explanation.

This, however, is not such a case. Here, Respondent disclosed his criminal ''conviction for accessory after the fact'' on the application and this description is an accurate representation of the crime he was charged with and pled guilty to. *Id.* at 2. The Government offered no evidence to show how Respondent's ''no'' answer would—in light of his additional disclosure—nonetheless have ''the natural tendency to influence'' agency personnel to grant

his application without further investigation. The Government has thus failed to prove that Respondent materially falsified his application in answering the criminal conviction question.

The Government also alleges that Respondent materially falsified his application by stating that ''I also voluntarily surrendered my DEA # to prescribe medications.'' *Id.* Here, however, Respondent had previously answered ''yes'' to the question whether he had ''ever surrendered or had a federal controlled substances registration revoked, suspended, restricted or denied?'' *Id.* at 1. Again, the information Respondent provided raised a red flag for agency personnel involved in reviewing his application.

The Government argues, however, that Respondent's statement was a material falsification because Respondent's DEA ''number actually was revoked pursuant to a final order.'' Gov. Exceptions at 9. The Government further points to the ALJ's finding that '' 'Respondent's mere failure to request a hearing or to contest the revocation proceedings is insufficient for a finding of a voluntary surrender of his DEA' '' registration. *Id.* (quoting ALJ at 25).

It is true that Respondent's registration was revoked pursuant to a final order and was not voluntarily surrendered. But neither the CSA nor DEA's regulations define the respective terms and no agency precedent explains that there are consequential differences between them.

Most significantly, even if the statement would—if viewed in isolation—be capable of influencing the decision by inducing a more favorable view of Respondent's application—the fact remains that the statement immediately followed Respondent's factually accurate representation that he had surrendered his state license ''as a result of [his] conviction for accessory after the fact.'' Gov. Ex. 5, at 2. In short, viewed in context, Respondent's statements clearly placed agency personnel on notice that his application should not be summarily approved, but rather, subjected to an investigation. I thus hold that even though Respondent's statement was false, it was not capable of influencing the decision and is thus not material. I therefore conclude that the Government's allegations that Respondent materially falsified his application are without merit and turn to the public interest factors.

The Public Interest Factors

As explained above, in Section 303(f), Congress directed that I consider five factors in determining whether granting Respondent's registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). While I consider Respondent's criminal conduct to be outrageous, having considered all of the factors and our precedents, I conclude that he is entitled to be registered.

Factor One—The State Board's Recommendation

As the ALJ found, following his release from prison, the Tennessee Board of Dentistry reinstated Respondent's license without conditions. While this factor is not dispositive, see *John H. Kennedy,* 71 FR 35705, 35708 (2006), in this case it does support the granting of his application.

Factors Two and Three—The Applicant's Experience in Dispensing Controlled Substances and the Applicant's Conviction Record Relating to the Distribution or Dispensing of Controlled Substances

Significantly, there is no evidence in the record that Respondent ever used his previous DEA registration to illegally dispense a controlled substance. Furthermore, there is no evidence in the record that Respondent ever used his registration to divert controlled substances for personal use. Relatedly, Respondent has never been convicted of a crime directly involving the distribution or dispensing of controlled substances. Thus, both factors support the granting of Respondent's application.

Factors Four and Five—Respondent's Record of Compliance With Applicable Laws Relating to Controlled Substances and Such Other Conduct Which May Threaten Public Health and Safety

As explained above, Respondent committed a federal criminal offense in violation of 18 U.S.C. 3 and 371, when he entered into a conspiracy with Woods and an informant in which he agreed to assist them in altering their appearance and thereby help them avoid apprehension. Furthermore, even after Woods was apprehended, Respondent agreed to assist the informant. These are truly outrageous acts of criminality.

Proceedings under sections 303 and 304 of the CSA are, however, non-punitive. *See Leo R. Miller,* 53 FR 21931, 21932 (1988). The purpose of this proceeding is not to impose punishment in addition to the sentence handed down by the federal district court. As previously recognized, this proceeding ''is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused controlled substances or their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be trusted with the responsibility carried by such a registration.'' [6] *Id.*; *see also Robert M. Golden,* 61 FR 24808, 24812 (1996).

As egregious as his conduct is, Respondent committed his crimes more than seven years ago. In the interim, Respondent has served his sentence and there is no evidence that he has violated the terms of his period of supervised release. Respondent pled guilty to the offense, was found by the federal district court to have accepted responsibility, and cooperated with the Task Force in its investigation.

Moreover, in this proceeding, Respondent stated that he had ''absolutely'' committed a crime, that he could not ''blame other people for'' his decision to help Woods avoid capture, and that he took ''full responsibility for that.'' Tr. 150. Of note, Respondent also testified that his conduct ''was the absolute worst thing—the only thing I could have done worse was actually murder someone.'' *Id.* at 184. Respondent added that ''I was absolutely wrong,'' and that ''I made a terrible, terrible mistake.'' *Id.* at 188. Finally, Respondent described his actions in agreeing to assist the informant after Woods' arrest as ''[s]tupid[,] [a]bsolutely stupid.'' *Id.* at 223. That it was.

The Government nonetheless contends that Respondent has not sufficiently accepted responsibility. In the Government's view, Respondent ''has not been candid about the facts surrounding his conviction,'' Gov. Exceptions at 6, because he has maintained in this proceeding that he did not know that Woods and the informant were drug traffickers. The Government also maintains that Respondent was not candid about his motive.

The Government's first contention is disposed of by my finding that the Government's evidence only creates a suspicion that Respondent knew that Woods and the informant were engaged in drug trafficking. Having failed to adduce substantial evidence proving this as a fact, the Government is precluded from arguing that Respondent

[6] This is not to say that the revocation of a registration is limited to those situations where a registrant has either engaged in personal abuse of a controlled substance or illegally dispensed a controlled substance. Both sections 303(f) and 304(a) make clear that Respondent's criminal conduct is properly considered in this proceeding. See 21 U.S.C. 823(f)(4) & (5), id. 824(a)(2).

has not been candid about his knowledge of Woods' and the informant's criminal activities.

The Government further argues that Respondent lacked candor because he ''asserted at the hearing that he had no pecuniary motive.'' *Id.* at 7. Ultimately, however, Respondent did admit that he had a pecuniary motive. Tr. 210. True enough, to obtain this admission, the Government was forced to engage in the legal equivalent of pulling teeth. But the Government offered no evidence to establish the amount that Respondent was to receive.

While I find Respondent's testimony on this point disturbing, the record does not contain sufficient evidence to support a finding that Respondent lacked candor and has not accepted responsibility for his criminal conduct. I thus conclude that factors four and five do not support a finding that Respondent's registration would be inconsistent with the public interest. And having considered all of the factors, I further conclude that Respondent is entitled to be registered.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b) and 0.104, I order that the application of Samuel S. Jackson, D.D.S., for a DEA Certificate of Registration as a practitioner be, and it hereby is, granted. This order is effective immediately.

Dated: April 24, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–8261 Filed 4–30–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 12, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained at *http://www.reginfo.gov/public/do/PRAMain*, or contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

<bullet≤ 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;

<bullet≤ 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;

<bullet≤ Enhance the quality, utility and clarity of the information to be collected; and

<bullet≤ 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.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title: Domestic Agricultural In-Season Wage Report.

OMB Number: 1205–0017.

Frequency: Annually.

Affected Public: Individuals or Households, Farms, State, Local, or Tribal Government.

Type of Response: Reporting.

Number of Respondents: 38,855.

Annual Responses: 38,805 for ETA Form 232–A; 600 for ETA Form 232.

Average Response Time: 15 minutes for ETA Form 232–A and 11 hours for ETA Form 232.

Total Annual Burden Hours: 16,301.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: State Workforce Agencies must collect information on agricultural prevailing wage rates in order to implement Federal regulations governing the intrastate and interstate recruitment of farmworkers for agricultural (crop and livestock) and logging jobs. This information is collected by crop area and crop activity, wage rates paid, total number of domestic and foreign workers, productivity standards, and hourly earnings of piece rate workers.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E7–8239 Filed 4–30–07; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act—Small Grassroots Organizations Connecting With the One-Stop Delivery System; Solicitation for Grant Applications (SGA), SGA/DFA–PY 06–11

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; amendment.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of April 5, 2007, announcing the availability of funds and solicitation for grant applications for small grassroots organizations with the ability to connect to the local One-Stop Delivery System. The document is hereby amended.

FOR FURTHER INFORMATION CONTACT: Linda Forman, Grants Management Specialist, Telephone (202) 693–3416.

In the **Federal Register** of April 5, 2007, in FR Volume 72, Number 65:

—On page 16825, starting in the middle column, Part II (1) Award Information stated the following: The agency expects to award approximately 40 grants. The grant amount for each ''grassroots'' organization will range between $50,000–$75,000.

Amendment

The solicitation is amended to read: The agency expects to award approximately 50 grants. The grant amount for each ''grassroots'' organization will be up to $60,000.

Signed at Washington, DC, this 24th day of April, 2007.

Eric Luetkenhaus,

Grant Officer, Employment & Training Administration.

[FR Doc. E7–8258 Filed 4–30–07; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.