practices * * * to * * * dispense * * * 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 [it] practices.'').

State authority is thus an essential prerequisite to maintaining a DEA registration.[2] Moreover, this Agency has repeatedly revoked the DEA registrations of those registrants who no longer hold state authority to handle controlled substances, regardless of whether that authority has been revoked or suspended pending further proceedings. *See Bourne Pharmacy*, 72 FR at 18274; *The Medicine Shoppe*, 71 FR 42878, 42879 (2006); Rx *Network of South Florida, LLC*, 69 FR 62093 (2004); *Wingfield Drugs, Inc.*, 52 FR 27070 (1987). Because Respondent is not currently authorized to handle controlled substances in the State in which it engages in the practice of pharmacy, it is not entitled to maintain its DEA registration.[3] Therefore, its registration will be revoked and any pending applications for renewal or modification of its registration will be denied.

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) and 0.104, I hereby order that DEA Certificate of Registration, BN3795892, issued to Newcare Home Health Services, be and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective August 31, 2007.

Dated: July 20, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–14819 Filed 7–31–07; 8:45 am]

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[2] The ALJ properly rejected Respondent's request for a stay. It is not DEA's policy to stay proceedings under section 304 while registrants litigate in other forums. *See Bourne Pharmacy, Inc.*, 72 FR 18273 (2007); *Oakland Medical Pharmacy*, 71 FR 50100 (2006); *Kennard Kobrin, M.D.*, 70 FR 33199 (2005). As the ALJ explained, Respondent can always apply for a new registration if it prevails in the pending state administrative proceeding.

[3] Based on this Agency's records, I find that Respondent is the holder of DEA Certificate of Registration, BN3795892, which does not expire until October 31, 2008.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Alan H. Olefsky, M.D.; Denial of Application

On May 25, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Alan H. Olefsky, M.D. (Respondent), of Chicago, Illinois. The Show Cause Order proposed to revoke Respondent's DEA Certificate of Registration, BO3661104, as a practitioner, and to deny any pending applications for renewal or modification of his registration, on the ground that the Illinois Department of Financial and Professional Regulation had suspended his state medical license and state controlled substance license. Show Cause Order at 1. The Show Cause Order thus alleged that Respondent was not authorized to handle controlled substances in the State where he was registered and was thus not entitled to maintain his registration. *Id.* (citing 21 U.S.C. 824(a)(3)).

The Show Cause Order also alleged that Respondent had committed acts which rendered his registration inconsistent with the public interest. *Id.* (citing 21 U.S.C. 824(a)(4)). More specifically, the Show Cause Order alleged that from December 2002 through October 2004, Respondent had ''issued false prescriptions for controlled substances in the names of'' three individuals, and that the prescriptions were for his ''personal use.'' *Id.* The Show Cause Order also notified Respondent of his right to request a hearing on the allegations.

On June 8, 2005, the Show Cause Order was served on Respondent by certified mail as evidenced by the signed return receipt card. Neither Respondent, nor anyone purporting to represent him, requested a hearing on the allegations within the time period set forth in 21 CFR 1301.43(a) and the Show Cause Order.

The matter was held in abeyance after the State restored Respondent's medical license. On March 30, 2007, the State again suspended Respondent's medical license. Accordingly, on May 10, 2007, the investigative file was forwarded to my Office for final agency action.

As an initial matter, I find that because Respondent did not request a hearing within thirty days of receipt of the Show Cause order he has waived his right to hearing. *See* 21 CFR 1301.43(d). I therefore enter this Final Order without a hearing based on relevant material in the investigative file and make the following findings.

Findings

Respondent was the holder of DEA Certificate of Registration, BO3661104, which authorized him to handle schedule II through V controlled substances as a practitioner. Respondent's registration expired on December 31, 2004. According to the investigative file, Respondent did not submit a renewal application until February 24, 2005, nearly two months after his registration expired. Accordingly, I find that Respondent's renewal application was not timely submitted and his registration expired on December 31, 2004. *See* 5 U.S.C. 558(c) (requiring submission of a ''timely and sufficient application for a renewal'' in order for a registration to be continued until the Agency makes a ''final determin[ation]'' on the application). I further find, however, that Respondent does have an application pending before the agency.

According to the investigative file, on February 18, 2005, the Illinois Department of Financial and Professional Regulation summarily suspended Respondent's state medical license and controlled substance registrations. In support of the suspension, the State alleged, *inter alia*, that ''Respondent issued false prescriptions for controlled substances under other names for personal use.'' Pet. For Temp. Susp. 1. The petition was supported by the sworn affidavit of Larry G. McClain, M.D., the Chief Medical Coordinator of the Illinois Department of Financial and Professional Regulation. In his affidavit, Dr. McClain averred that ''the Department has learned that Respondent has repeatedly issued false prescriptions for Xanax, Dilaudid and Viagra. He calls in these prescriptions in the names of [M.G., V.G. and T.C.] He obtains these prescriptions for personal use and pays cash to remain untraceable.'' Dr. McClain further averred that ''Respondent was arrested for a DUI in June of 2004 and * * * has an extensive criminal history.''

In September 2006, Respondent and the State entered into a consent order under which his medical license was restored based on his having entered a treatment program and an Aftercare Agreement. Consent Order at 2. In the order, ''Respondent admit[ted] the allegations raised by the Department.'' *Id.* The consent order, which became effective on November 21, 2006, placed Respondent on ''Indefinite Probation,'' and also imposed various conditions including that he comply with the terms

of an Aftercare Agreement and abstain from the use of alcohol and ''mood altering and/or psychoactive drugs'' except as ''prescribed by a primary care and/or treating physician.'' *Id.* at 3.

Thereafter, on March 30, 2007, the State again imposed a summary suspension of Respondent's medical license, which remains in effect. *See* Notice of Temporary Suspension. In the Complaint, the State alleged that in January 2007, Respondent had been hospitalized with ''a blood alcohol level of 327.'' Complaint at 2. The State also alleged that in February 2007, Respondent had been admitted to Rush Behavioral Care to be treated for ''alcohol dependence.'' *Id.* The State further alleged that in February 2007, Respondent had applied for a new state Controlled Substance Registration. *Id.* Finally, the Complaint alleged that Respondent had failed to comply with the conditions of Consent Order.[1]

There is no evidence in the file that the State has granted Respondent a new Controlled Substance Registration. Moreover, the State's summary suspension further ordered Respondent to ''immediately surrender all indicia of licensure to the Department.'' March 30, 2007 Summary Suspension Order at 1–2. I therefore find that Respondent does not hold a current Illinois Controlled Substance Registration.

Discussion

Section 303(f) of the Controlled Substances Act provides that ''[t]he Attorney General shall register practitioners * * * to dispense * * * controlled substances in schedule II, III, IV, or V, 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). Section 303(f) further provides that ''[t]he Attorney General may deny an application for such registration if he determines that the issuance of such registration would be inconsistent with the public interest.'' *Id.* In making the public interest determination, the Act 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.

''[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).

In this case, I conclude that there are two independent grounds for denying Respondent's application. First, Respondent is not currently authorized under Illinois law to handle controlled substances and thus does not meet an essential requirement for a registration under the CSA. Second, Respondent's experience in dispensing controlled substances and his record of compliance with applicable laws make clear that granting him a registration would be inconsistent with the public interest.

Respondent's Lack of State Authority

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.''). Relatedly, DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner who no longer possesses authority under state law to handle controlled substances. *See Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances'').

Here, the investigative file establishes that Respondent's Illinois controlled substance registrations were suspended pursuant to the State's February 18, 2005 order. Moreover, there is no evidence that the State has issued a new controlled substance registration to him, and in any event, the State's March 30, 2007 order directed him to ''immediately surrender all indicia of licensure to the Department.'' Therefore, Respondent is without authority to handle controlled substances in Illinois, the State in which he seeks registration. Respondent thus does not meet an essential prerequisite for a new DEA registration and his application will be denied on that basis. See 21 U.S.C. 823(f).

The Public Interest Analysis

Because the State's summary suspension is not a final order, review of Respondent's application under the public interest factors is also warranted. Here, Dr. McClain's affidavit establishes that Respondent ''repeatedly issued false prescriptions'' in the names of other persons for Xanax (alprazolam), a schedule IV controlled substance, *see* 21 CFR 1308.14(c), and Dilaudid (hydromorphone), a schedule II controlled substance. *See id.* 1308.12(b)(1). Respondent then filled the prescriptions and personally abused the drugs. Respondent admitted to this conduct in the Consent Order. I thus find that Respondent violated Federal law. *See* 21 U.S.C. 843(a)(3) (rendering it ''unlawful for any person knowingly or intentionally * * * to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge'').

Moreover, as noted above, this is not the first time that Respondent has engaged in such criminal behavior. *See Olesky,* 57 FR at 928–29. Accordingly, Respondent's experience in dispensing controlled substances and his record of compliance with Federal law amply demonstrate that granting his application for registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). Therefore, even if the State were to restore his medical license and grant him a new state controlled substance registration, I would still deny his application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Alan H. Olefksy, M.D., for a DEA Certificate of Registration as a

[1] I also take official notice of the fact that on January 9, 1992, the Administrator of this Agency ordered the revocation of Respondent's registration based on his having presented fraudulent prescriptions for Percocet and Halcion to a pharmacy. *See Alan H. Olefsky*, 57 FR 928, 929 (1992).

practitioner be, and it hereby is, denied. This order is effective August 31, 2007.

Dated: July 20, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–14820 Filed 7–31–07; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11324]

Withdrawal of the Notice of Proposed Exemption Involving Deutsche Bank AG (DB); Located in Germany, With Affiliates in New York, NY and Other Locations

In the **Federal Register** dated February 13, 2007, (72 FR 6747), the Department of Labor (the Department) published a notice of pendency (the Notice) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The Notice concerned an application filed on behalf of DB and its affiliates (the Applicants) which would have amended and superseded Prohibited Transaction Exemption 2003–24 (PTE 2003–24) (68 FR 48637, August 14, 2003, as corrected, 68 FR 55993, September 29, 2003) with respect to the Applicants.

By e-mail dated June 19, 2007, the Applicants requested that the application for exemption be withdrawn. Accordingly, the Department has determined to withdraw the above-cited Notice.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Signed at Washington, DC, this 27th day of July 2007.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–14880 Filed 7–31–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption 2007–10 Through 2007–13; Grant of Individual Exemptions involving; D–11393 & D–11394, (PTE 2007–10), Paul Niednagel IRAs and Lynne Niednagel IRAs (Collectively, the IRAs); D–11406, (PTE 2007–11), The Revlon Employees Savings, Investment and Profit Sharing Plan (the Plan); L–11365, (PTE 2007–12), American Maritime Officers Safety & Education Plan (the S&E Plan); and L–11382, (PTE 2007–13), Sheet Metal Workers Local Union 17 Insurance Fund (the Fund)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Paul Niednagel IRAs and Lynne Niednagel IRAs (collectively, the IRAs), Located in Laguna Niguel, California

[Prohibited Transaction Exemption 2007–10; Exemption Application Numbers: D–11393 and D–11394]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) and (E) of the Code, shall not apply to the purchase (the Purchase) by the respective IRAs [1] of Paul and Lynne Niednagel (the Account Holders) of certain ownership interests (the Units) from Pacific Island Investment Partners, LLC. (Pacific Island) (the issuer of the Units), an entity which is indirectly controlled by Daniel and Stephen Niednagel (the Principals), both of whom are lineal descendents of the Account Holders and therefore disqualified persons with respect to the IRAs, provided that the following conditions are satisfied:

Conditions

(a) The Purchase of the Units by each IRA is for cash;

(b) The price paid by each IRA to purchase a Unit ($10,000) is identical to the price paid by other Pacific Island investors to acquire a Unit;

(c) The terms and conditions of each Purchase are at least as favorable as those available in an arm's length transaction with an unrelated third party;

(d) Each IRA does not pay any commissions or other expenses in connection with each Purchase; and

(e) Each IRA does not acquire Units if, after acquisition, the aggregate fair market value of the Units would exceed 25% of the fair market value of such IRA.

[1] Because each IRA has only one participant, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.