Volkman v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009).

Having considered the evidence, I conclude that the record establishes that Respondent materially falsified his 2002, 2005, and 2008 applications for DEA registrations. While there is evidence suggesting that Respondent is still abusing controlled substances, in light of my conclusion with respect to the material falsification allegations, I deem it unnecessary to rule on the Government's alternative ground for seeking the revocation of Respondent's registration.[2]

The Material Falsification Allegations

As found above, on both April 22, 2002 and February 28, 2005, Respondent submitted an application to renew his DEA registration on which he answered ''no'' to the question: ''Has the applicant ever surrendered or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?'' In both instances, Respondent's answer was false because he failed to disclose (1) The Georgia Board's 1985 consent order which placed him on probation for four years, and (2) the Georgia Board's 1990 Consent Order which suspended his license. Moreover, Respondent's statement on his 2005 application was false for the further reason that in 2003, the Florida Board had imposed restrictions on his license which included that he remain in compliance with the PRN contract and was prohibited from writing controlled substance prescriptions ''for any family member.''

As for his January 31, 2008 application, it is true that Respondent gave a ''yes'' answer to the question regarding his state license and included a copy of the Florida Board's June 2007 reinstatement order. However, the statement was still false because Respondent failed to disclose the Georgia Board's 1985 and 1990 consent orders, as well as the 2003 Florida consent agreement.

It is likewise clear that Respondent's failure to disclose the various state proceedings on each of the three applications was a materially false statement under the CSA. A false statement 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) (int. quotation and other citations omitted). While the evidence must be ''clear, unequivocal, and convincing,'' the ''ultimate finding of materiality turns on a substantive interpretation of the law.'' *Id.* at 772 (int. quotations and citations omitted). *See also Craig H. Bammer,* 73 FR 34327, 34328 (2008).

Respondent's false statements were material because, under the public interest standard, the Agency is required to consider, *inter alia,* the applicant's experience in dispensing controlled substances, his compliance with applicable state and federal laws related to controlled substances, and whether his conduct threatens public health and safety. *See* 21 U.S.C. 823(f). Disclosure of each of the state orders would have provided significant information to the Agency showing that Respondent has a significant problem with drug abuse; DEA has long held that a practitioner's self-abuse of a controlled substance is a relevant consideration under factor five of the public interest standard and is grounds for the revocation of an existing registration or the denial of an application for registration even where there is no evidence that a practitioner has abused his prescription-writing authority.[3] *See Kenneth Wayne Green, Jr., M.D.,* 59 FR 51453, 51454 (1994) (registrant's ''continued drug usage and relapses lead[ ] to the conclusion that he cannot be entrusted with the responsibilities of a DEA registrant and that his continued possession of a registration would be contrary to the public interest''); *David E. Trawick,* 53 FR 5326, 5327 (1988) (''offenses or wrongful acts committed by a registrant outside of his professional practice, but which relate to controlled substances may constitute sufficient grounds for the revocation of a'' registration).

Disclosure of the 2003 Florida proceeding (on the 2005 and 2008 applications) would have also provided information that Respondent had been accused of writing unlawful prescriptions for hydrocodone, a schedule III controlled substance. 21 CFR 1308.13(e). This information is material to the Agency's investigation and assessment of Respondent's experience in dispensing controlled substances and his compliance with applicable laws related to the dispensing of controlled substances.[4] *See* 21 U.S.C. 823(f)(2) & (4).

I thus conclude that Respondent materially falsified his 2002, 2005 and 2008 applications to renew his DEA registration.[5] Only one of these material falsifications is necessary to support the revocation of Respondent's registration; that there are three such instances manifests a shocking level of dishonesty on his part. 21 U.S.C. 824(a)(1). Accordingly, Respondent's registration will be revoked and his pending application 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), I order that DEA Certificate of Registration, BS4681979, issued to Harold Edward Smith, M.D., be, and it hereby is, revoked. I further order that the pending application of Harold Edward Smith, M.D., to renew his registration, be, and it hereby is, denied. This Order is effective September 29, 2011.

Dated: August 17, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–22090 Filed 8–29–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dale J. Bingham, P.A.; Revocation of Registration

On February 4, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Dale J. Bingham, P.A. (Registrant), of Ash Fork, Arizona. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration MB1048746, which authorizes him to dispense controlled substances in schedules II through V, as a mid-level practitioner, on the ground that Registrant had entered into a consent agreement with the Arizona Regulatory Board of Physician Assistants, pursuant to which he no longer has ''authority to handle

[2] As found above, while the DOH 2006 complaint makes the allegations that Respondent had admitted to t relapse on crack cocaine and had been diagnosed as being dependent on cocaine and opioids, neither the Board's Final Order nor the Order on Reinstatement contain factual findings establishing the validity of these allegations.

[3] It is also relevant in assessing Respondent's compliance with applicable laws related to controlled substances. *See* 21 U.S.C. 823(f)(4).

[4] That the State did not require Respondent to admit to the allegations in the consent agreement does not make his failure to disclose the proceeding any less material.

[5] While the Agency did not grant Respondent's 2008 application, ''[i]t makes no difference that a specific falsification did not exert influence so long as it had the *capacity* to do so.'' *United States* v. *Alemany Rivera,* 781 F.2d 229, 234 (1st Cir. 1985). Moreover, Respondent's false statements on his 2002 and 2005 applications obviously did influence the Agency's decision to grant them.

controlled substances in * * * Arizona, the [S]tate in which [he is] registered with DEA.'' Show Cause Order at 1 (citing 21 U.S.C. 824(a)(3)). The Show Cause Order also notified Registrant of his right to either request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing either, and the consequences if he failed to do either. *Id.* at 2 (citing 21 CFR 1301.43(a), (c)–(e)).

The Government initially attempted to serve Registrant with the Order to Show Cause by certified mail addressed to him at his registered location. However, this mailing was returned unclaimed with the notations: ''No City Delivery'' and ''Requires PO Box Number.'' GX 3. On March 8, 2011, the Government served the Show Cause Order on Registrant by certified mail addressed to him at an address he had previously provided to the Agency for receiving mail.[1] GX 4. The Investigative Record includes a signed return receipt card establishing service. *Id.*

Since the date of service of the Show Cause Order, neither Registrant, nor anyone purporting to represent him, has either requested a hearing or submitted a written statement in lieu thereof. Because more than thirty days have now passed since service of the Show Cause Order, I find that Registrant has waived his right to either request a hearing or to submit a written statement. I therefore issue this Decision and Final Order based on relevant evidence contained in the Investigative Record submitted by the Government.

Findings

Registrant is the holder of DEA Certificate of Registration MB1048746, which authorizes him to dispense controlled substances in schedules II through V as a mid-level practitioner, at the registered address of 112 Ash Park Drive, Ash Fork, AZ. GX 1. Registrant's registration does not expire until July 31, 2012. *Id.*

Registrant is also the holder of a license issued by the Arizona Regulatory Board of Physician Assistants which formerly authorized him to perform health care tasks in Arizona. GX 6, at 1. However, according to a Consent Agreement which Registrant entered into with the Board on March 26, 2010, Registrant ''has a medical condition that may limit his ability to safely engage in the performance of health care tasks.'' [2] Id. Accordingly, the Board ordered that Registrant's practice be ''limited in that he shall not perform health care tasks in the State of Arizona and is prohibited from prescribing any form of treatment including prescription medication until [he] applies to the Board and receives permission to do so.'' *Id.* at 2. I therefore find that Registrant is without authority to dispense controlled substances under the laws of the State of Arizona, the State in which he holds his DEA registration.

Discussion

The Controlled Substances Act (CSA) grants the Attorney General authority to revoke 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.'' 21 U.S.C. 824(a)(3). Moreover, consistent with the CSA's definition of the term ''practitioner,'' DEA has long held that 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 * * * 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''). *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 dispense controlled substances is an essential condition for holding a DEA registration. *See David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). Here, while Registrant retains an Arizona P.A. license, the evidence establishes that he is no longer authorized under his license to dispense controlled substances. Because Registrant no longer satisfies this requirement, he is not entitled to maintain his registration. Accordingly, I will order that Registrant's registration be revoked and any pending application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(3), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration MB1048746, issued to Dale J. Bingham, P.A., be, and it hereby is, revoked. I further order that any application of Dale H. Bingham, P.A., to renew or modify his registration, be denied. This Order is effective September 29, 2011.

Dated: August 17, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–22091 Filed 8–29–11; 8:45 am]

BILLING CODE 4410–09–P

[1] In its request for final agency action, the Government also stated that it mailed the Show Cause Order to Registrant at his last known address.

[2] The Board noted, however, that ''[t]here has been no finding of unprofessional conduct against'' Registrant. GX 6, at 2.

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1556]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U. S. Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces a meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

Dates and Locations: The meeting will take place at the Gaylord National Hotel and Convention Center, 201 Waterfront Street, National Harbor, MD 20745, on Tuesday, October 11, 2011 from 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, OJJDP, *Robin.Delany-Shabazz@usdoj.gov,* or 202–307–9963. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of