

FINAL APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

PAUL H. VOLKMAN, :
 :
Plaintiff-Appellant, :
 :
vs. :
Ohio State :
STATE MEDICAL BOARD OF OHIO, :
 :
Defendant-Appellee. :

Case No. 08CVF12-18288
Judge Bessey

TERMINATION NO. 10
BY: *[Signature]*
2011 APR 29 11:14 AM
CLERK OF COURTS

DECISION AND FINAL JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD OF OHIO'S PERMANENT REVOCATION OF APPELLANT'S CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

This matter is before the Court upon the December 26, 2008 Notice of Appeal, filed pursuant to R.C. 119.12, by Appellant, Paul H. Volkman (hereinafter "Appellant"). Appellant is appealing the December 10, 2008 Order of Appellee, the State Medical Board of Ohio (hereinafter "the Medical Board"), which permanently revoked his certificate to practice medicine and surgery in the State of Ohio.

On April 8, 2009 and April 17, 2009, Appellant and the Medical Board filed their respective Briefs, and on July 22, 2009, the Court issued a Decision and Final Entry Dismissing Administrative Appeal. The Court specifically found that the Notice of Appeal did not set forth specific factual or legal errors regarding the permanent revocation of Appellant's certificate to practice medicine and surgery in the State of Ohio, and thus did not comply with R.C. 119.12 which mandated that Appellant set forth the "grounds of the party's appeal." See R.C. 119.12 and *Medcorp, Inc. v. Ohio Department of Job & Family Services*, 121 Ohio St.3d 622, 2009-Ohio-2058. As such, the Court further found that it was without jurisdiction to adjudicate this case on its merits, and sua sponte dismissed Appellant's appeal.

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However, on January 22, 2010 the Tenth District Court of Appeals issued a Judgment Entry, which granted the parties' January 8, 2010 Motion for Remand, and based upon the Ohio Supreme Court's Decision in *Medcorp., Inc. v. Ohio Department of Job & Family Services* (2009), 121 Ohio St.3d 622, 2009-Ohio-6425, reversed the July 22, 2009 Decision of this Court, and remanded the case for further proceedings. Therefore, the Court will now address the merits of Appellant's appeal.

Decisions of administrative agencies are subject to a "hybrid form of review" in which a common pleas court must give deference to the findings of an agency, but those findings are not conclusive. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111, 407 N.E.2d 1265. In *Strausbaugh v. Dept. of Commerce, Div. of Real Estate & Professional Licensing* (10th District), Case No. 07AP-870, 2008-Ohio-2456, ¶ 6, the Court of Appeals set forth more comprehensively the standard of review under Ohio's administrative procedure act as follows: "In an administrative appeal pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with the law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, [487 N.E.2d 1248]; *Belcher v. Ohio State Racing Comm.*, 10th District No. 02AP-998, 2003-Ohio-2187, at ¶10." The meaning of reliable, probative and substantial evidence was defined in *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571. The common pleas court conducts a de novo review of questions of law, exercising its independent judgment to determine whether the administrative order is "in accordance with law." *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591.

In the case at hand, Appellant argues that the Medical Board's Order was not supported

by reliable, probative and substantial evidence. Appellant contends that there is not a "scintilla of evidence" in the record which supports an independent state of action against Appellant, and argues that the Medical Board did not have authority under R.C. 4731.22(B)(24) to take action in this matter. The Court finds, however, that the facts developed in the record at the Administrative Hearing as found by the Hearing Examiner and adopted by the Board constitute reliable, probative and substantial evidence that Dr. Volkman's Certificate of Registration from the Drug Enforcement Administration (DEA) had been immediately suspended by the DEA on or before February 10, 2006.

The DEA had ordered the suspension because it found that Dr. Volkman's conduct of diverting large quantities of controlled substances into other than legitimate medical channels (see, DEA Administrator's report, as cited in 6. of the Report & Recommendation of Hearing Examiner Petrucci), constituted an immediate danger to the public health and safety, pursuant to 12 US. Code Section 824(d). See, State's Exhibit 2. Thus, Dr. Volkman's DEA registration was suspended by the DEA. And that decision was entered in the Federal Register. (R&R 10)

Although Dr. Volkman appealed that decision, such action does not abrogate the finding by the Board that Dr. Volkman's DEA registration was suspended. Rather, the appeal merely establishes that the immediate suspension was subject to further review.

Similarly, the fact that Dr. Volkman allowed his registration to expire so that, technically, the further action before the DEA constituted a denial of his application (App. Brief at P. 5), does not negate a finding that his DEA registration had been suspended on or about February 10, 2006. In short, the DEA suspended his registration and that suspension, while subject to further review, was a "suspension" nonetheless. The Board's Order is supported by reliable, probative,

and substantial evidence in the record before it.

The Board's Order is also lawful. R.C. 4731.22(B)(24) allows the Board to take action against Dr. Volkman's license based upon that section's relevant part, which states, "... (for) the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States Department of Justice." The suspension of Dr. Volkman's registration to prescribe drugs is squarely within the conduct for which the Board was authorized to take action against his license.

The penalty imposed was within the Board's authority and the Court sees no reason to modify their decision. *Henry's Café, Inc. v. Bd. Of Liquor Control* (1959), 170 Ohio St. 233, 163 N.E.2d 678.

The Board's Order that **PERMANENTLY REVOKED** his certificate to practice medicine and surgery in the State of Ohio is **affirmed** in all respects.

IT IS SO ORDERED.

Copies to:

Kevin P. Byers, Esq.
Kevin@KPBversLaw.com
Counsel for Appellant, Paul H. Volkman

Kyle C. Wilcox, Esq.
kyle.wilcox@ohioattorneygeneral.gov
Counsel for Appellee, State Medical Board of Ohio


JOHN P. BESSEY, JUDGE

Any attorney or party *pro se* whose e-mail address is noted above has received this document electronically. The original will be filed within 24 hours of the time noted on the e-mail transmittal message.

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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7:10 JAN 22 PM 3:32
CLERK OF COURTS

Paul H. Volkman, M.D., Ph.D., :

Appellant-Appellant, :

v. :

No. 09AP-798

State Medical Board of Ohio, :

(REGULAR CALENDAR)

Appellee-Appellee. :

JUDGMENT ENTRY

The parties' January 8, 2010 motion for remand is granted. Based upon the Decision of the Supreme Court in *Medcorp., Inc. v. Ohio Dept. of Job & Family Services* (2009), 121 Ohio St.3d 622, and reconsidered in ___ Ohio St.3d___, 2009-Ohio-6425 (Slip Opinion), the judgment of the Franklin County Court of Common Pleas is reversed and this matter is remanded to that court for further proceedings. Costs shall be assessed against appellee.



Judge John A. Connor



Judge Susan Brown



Judge G. Gary Wyack



WX

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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CLERK OF COURTS

Paul H. Volkman, M.D., Ph.D.,	:	
Appellant-Appellant,	:	
v.	:	No. 09AP-798
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

JOURNAL ENTRY

This appeal having been stayed and the Ohio Supreme Court having finally determined *Medcorp., Inc. v. Ohio Dept. of Job & Family Servs.*, No. 2009-Ohio-6425, the parties shall, in writing filed with the clerk not later than January 8, 2010, show cause as to whether this appeal should continue or be remanded to the trial court for further proceedings.



JUDGE

cc: Deputy Court Administrator



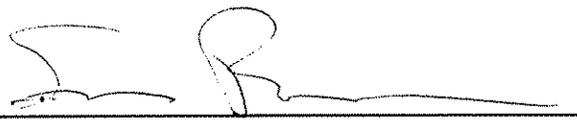
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CLERK OF COURTS

Paul H. Volkman, M.D., Ph.D., :
Appellant-Appellant, :
v. : No. 09AP-798
State Medical Board of Ohio, : (REGULAR CALENDAR)
Appellee-Appellee. :

JOURNAL ENTRY

Following the September 8, 2009 prehearing appellate mediation conference, this matter and proceedings are hereby *sua sponte* stayed. Within thirty (30) days of the determination of the Medcorp reconsideration, the parties shall promptly file a joint motion or agreed motion requesting a briefing schedule. Furthermore, appellant may file a motion for extension of time to file his brief or motion to voluntarily dismiss the appeal, or the parties may file a motion to remand the matter to the trial court for the limited purpose of considering and addressing any pending motions in the trial court filed as a result of the Medcorp determination.



JUDGE



~~COMMON PLEAS~~
IN THE COURT OF APPEALS OF OHIO
~~TENTH APPELLATE DISTRICT~~ CIVIL

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CLERK OF COURTS

Paul H. Volkman, MD, PhD
c/o 107 South High Street, Suite 400
Columbus, Ohio 43215
Appellant-Appellant,

Case No. _____

v.

State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, Ohio 43215-0315
Appellee-Appellee.

Accelerated Calendar
CPC No. 08CVF-18288

Appeal from the Common Pleas Court of Franklin County, Ohio

NOTICE OF APPEAL

Notice is hereby given that Appellant, Paul H. Volkman, MD, PhD, appeals to the Court of Appeals of Ohio, Tenth Appellate District for Franklin County, from the "decision and final entry" (attached hereto) filed in this action by the lower court on July 22, 2009.

Respectfully submitted,

KEVIN P. BYERS CO., LPA

KP BYERS

Kevin P. Byers 0040253
The 107 Building
107 South High Street, Suite 400
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614.228.6283 Facsimile 228.6283
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Attorney for Appellant,
Paul H. Volkman, MD, PhD

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FRANKLIN CO. OHIO
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CLERK OF COURTS

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0798

Certificate of Service

I certify that a true copy of the foregoing Notice of Appeal was deposited in first class US mail this 21st day of August, 2009, addressed to AAG Kyle C. Wilcox, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPBY

Kevin P. Byers

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

PAUL H VOLKMAN,

Appellant,

-vs-

STATE MEDICAL BOARD OF OHIO

Appellee.

FINAL APPEALABLE ORDER

CASE NO. 08 CVF 18288

JUDGE BESSEY

TERMINATION NO. 10	CLERK OF COURTS	2009 JUL 22 AM 11:19
BY: <i>[Signature]</i>		

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO

DECISION AND FINAL ENTRY DISMISSING ADMINISTRATIVE
APPEAL

BESSEY, JUDGE

This matter comes before this court upon an appeal pursuant to R.C. Chapter 124 and R.C. 119.12 from a December 10, 2008, Order of the State Medical Board of Review. Appellant filed an appeal of that Order which permanently revoked his certificate to practice medicine and surgery in the State of Ohio.

On December 26, 2008, Appellant filed a Notice of Appeal. The notice of appeal, filed pursuant to R.C. 119.12, stated, "The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law." Appellant does not identify that sentence as grounds for the appeal. No further elaboration of any grounds for the appeal is set forth in Appellant's Notice of Appeal.

During the time that this case has been pending, the Ohio Supreme Court decided *Medcorp, Inc. v. Ohio Dept. of Job and Family Servs.*, 121 Ohio St.3d 622, 2009-Ohio-2058. In that case, the Court held that "to satisfy the 'grounds of the party's appeal' requirement in R.C. 119.12, parties appealing under that statute must identify specific legal or factual errors in their notices of appeal; they may not simply restate the standard of

review.” *Medcorp* at ¶ 20.

The *Medcorp* Court instructed that because the notice of appeal simply reiterated the statutory standard of review (that the order was “not in accordance with law and [was] not supported by reliable, probative, and substantial evidence”), the notice of appeal did not strictly comply with R.C. 119.12 and, therefore, the trial court lacked jurisdiction to consider *Medcorp*’s appeal. *Medcorp*, at ¶ 21. referring to *Hughes v. Ohio Dept. Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, 868 N.E.2d 246, ¶ 17-18.

The *Medcorp* holding mandates that the appellant cannot merely reiterate the statutory standard of review, but must set forth stated grounds that “must be specific enough that the trial court and the opposing party can identify the objections...much in the same way that assignments of error and issues for review are presented in the courts of appeals and propositions of law are asserted in this court.” *Medcorp*, at ¶20. Thus, in order to comply with the statutory language of R.C. 119.12, “an appealing party must state in its notice of appeal the specific legal and/or factual reasons why it is appealing.” *Medcorp*, at ¶ 20.

Medcorp held that the trial court lacked jurisdiction to consider the appeal because *Medcorp* failed to designate precise errors in its notice of appeal and simply reiterated the statutory standard of review. *Medcorp*, at ¶21. In the case *sub judice*, the notice of appeal does not set forth specific factual or legal errors regarding the permanent revocation of appellant’s certificate to practice medicine and surgery in the State of Ohio. This Court concludes that appellant’s notice of appeal does not comply with R.C. 119.12 which mandates that an appellant set forth the ‘grounds of the party’s appeal.’ See R.C. 119.12. See *Id.*

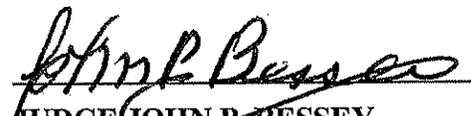
The issue of subject matter jurisdiction cannot be waived and the issue may be raised at any stage of the proceeding. Moreover, a court may address, *sua sponte*, the issue of jurisdiction based on its inherent power to vacate void judgments and orders. See *Total Office Products v. Dept. of Adminis. Serv.*, 2006 Ohio App. LEXIS 3230. A common pleas court has power to review proceedings of administrative agencies and officers only to the extent granted by law. The provisions of R.C. 119.12 are conditions precedent to this court's subject matter jurisdiction. *Id.* at *P11-12.

Upon a review of the record, this Court finds that the appellant did not comply with the R.C. 119.12 by identifying specific legal and/or factual errors in his notice of appeal. The appellant, like the appellant in *Medcorp*, did not comply with the mandates set forth in R.C. 119.12. Accordingly, this Court concludes, as a matter of law, that the appellant has failed to set forth the 'grounds of the party's appeal' in its Notice of Appeal as required by *Medcorp* and *Hughes*. Thus, this Court is without jurisdiction to adjudicate this case on its merits.

DECISION

Upon consideration of the certified record, the Court concludes that it does not have jurisdiction to adjudicate this appeal on its merits based on the holdings in *Medcorp* and *Hughes*. Accordingly, this appeal is hereby **DISMISSED** *sua sponte*.

It is so ordered.


JUDGE JOHN P. BESSEY

Copies to:

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Columbus, Ohio 43215-3456
Counsel for Appellant

Richard Cordray, Esq.
Kyle C. Wilcox, Esq.
Assistant Attorney General
30 E. Broad Street, 26th Floor
Columbus, Ohio 43215-3428
Counsel for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Paul H. Volkman, MD, PhD,
c/o 107 South High Street
Columbus, Ohio 43215
Appellant,

08CVF 12 18 288
CASE NO. _____

v.

State Medical Board of Ohio,
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
Appellee.

JUDGE _____

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to RC §119.12, notice is hereby given that Appellant, Paul H. Volkman, MD, PhD, appeals the order of the State Medical Board dated December 10, 2008, and mailed December 12, 2008, (copy attached as *Exhibit A.*) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KBYERS

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The 107 Building
107 South High Street, Suite 400
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614.228.6283 Fax 228.6425
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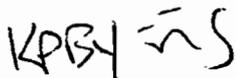
Attorney for Paul H. Volkman, MD, PhD

STATE MEDICAL BOARD
2008 DEC 26 AM 11:27

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FRANKLIN CO. OHIO
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STATE MEDICAL BOARD
OF OHIO
2009 JAN -5 P 12:39

Certificate of Service

I certify that the original of the foregoing document was hand-filed this 26th day of December, 2008, at the State Medical Board, 30 East Broad Street, 3rd Floor, Columbus, Ohio 43215 with a copy filed this same date in the Court of Common Pleas of Franklin County in accord with RC §119.12 and Ohio caselaw¹, with a courtesy copy mailed to Assistant Attorney General Kyle C. Wilcox, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3426.



Kevin P. Byers

STATE MEDICAL BOARD
OF OHIO
2008 DEC 26 A 10:51

STATE MEDICAL BOARD
OF OHIO
2009 JAN -5 P 12:39

¹ Stultz v. Oh. Dept. of Admin. Svcs. 10th Dist. No. 04AP-602, 2005-Ohio-200
KEVIN P. BYERS ♦ ATTORNEY AT LAW

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov



December 10, 2008

Paul H. Volkman, M.D.
5565 US Hwy 23
Chillicothe, OH 45601

Dear Doctor Volkman:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 10, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in black ink that reads "Lance A. Talmage MD". The signature is written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3686 5668
RETURN RECEIPT REQUESTED

CC: 3240 N. Lake Shore Drive
Chicago, IL 60657-3954
CERTIFIED MAIL NO. 91 7108 2133 3934 3686 5675
RETURN RECEIPT REQUESTED
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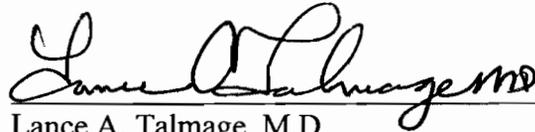
Kevin P. Byers, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3934 3686 5682
RETURN RECEIPT REQUESTED

Mailed 12-12-08

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 10, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Paul H. Volkman, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.



Lance A. Talmage, M.D.
Secretary

(SEAL)

December 10, 2008
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

PAUL H. VOLKMAN, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 10, 2008.

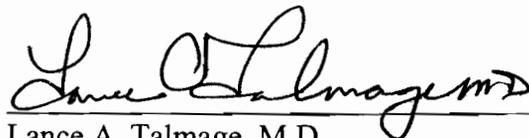
Upon the Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Paul H. Volkman, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

December 10, 2008

Date

STATE MEDICAL BOARD
OF OHIO

**REPORT AND RECOMMENDATION
IN THE MATTER OF PAUL H. VOLKMAN, M.D.**

2008 OCT 21 P 1:00

The Matter of Paul H. Volkman, M.D., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on October 3, 2008.

INTRODUCTION

Basis for Hearing

By letter dated March 8, 2006, the State Medical Board of Ohio [Board] notified Paul H. Volkman, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on an allegation that the Drug Enforcement Administration [DEA] had notified him of the immediate suspension of his DEA Certificate of Registration. The Board further alleged that the DEA immediate suspension constitutes "[t]he revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice," as that language is set forth in Section 4731.22(B)(24), Ohio Revised Code. (State's Exhibit 1A)

On March 31, 2006, Dr. Volkman requested a hearing. (State's Exhibit 1B)

Appearances

Nancy H. Rogers, Attorney General, by Kyle C. Wilcox, Assistant Attorney General, on behalf of the State of Ohio.

Kevin P. Byers, Esq., on behalf of Dr. Volkman.

EVIDENCE EXAMINED

Testimony Heard

None

Exhibits Examined

State's Exhibits 1A through 1N: Procedural exhibits.

State's Exhibit 2: February 10, 2006, Order to Show Cause and Immediate Suspension of Dr. Volkman's DEA Certificate of Registration.

State's Exhibit 3: May 2008 decision of the DEA Deputy Administrator.

PROCEDURAL MATTER

In May 2006, the Board and Dr. Volkman entered into an interim agreement. They agreed that Dr. Volkman will not practice medicine and surgery in Ohio until the allegations contained in the March 8, 2006, Notice of Opportunity for Hearing [Notice] have been examined by the Board and a final order issued. Dr. Volkman admitted that the Board was substantially justified in issuing the Notice. Furthermore, the Board agreed not to object to continuing the hearing on the Notice “until such time as the DEA has issued its final adjudication order related to the Immediate Suspension Order.”

Thereafter, status conferences were held periodically to determine the status of the DEA action. During a status conference on July 8, 2008, counsel for both parties agreed that a final adjudication order related to the Immediate Suspension Order had been issued by the DEA. Later that same day, the Hearing Examiner scheduled the hearing in this matter for October 3, 2008 and it was held that day.

SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background¹

1. Paul H. Volkman, M.D., obtained a medical degree in 1974 from the University of Chicago. He also earned a Ph.D. from the University of Chicago. He practiced in emergency medicine, as well as in family practice and pediatrics. (Ohio E-License Center, <<https://license.ohio.gov/Lookup>> October 3, 2008; State’s Exhibit [St. Ex.] 3 at 3)
2. Following two malpractice settlements, Dr. Volkman was unable to obtain malpractice insurance and looked for a position that did not require malpractice insurance. He accepted a position in April 2003 at Tri-State Health Care [Tri-State], a clinic located in Portsmouth, Ohio. He obtained board certification in pain medicine in June 2003. (St. Ex. 3 at 3, 5)
3. Dr. Volkman was the sole licensed physician and the sole DEA registrant at Tri-State. He remained there until September 2005, after which he continued to practice medicine in Portsmouth and then in Chillicothe, Ohio. (St. Ex. 3 at 4, 9)
4. Dr. Volkman’s Ohio medical certificate expired in October 2007. (Ohio E-License Center, <<https://license.ohio.gov/Lookup>> October 3, 2008)

¹Neither party presented any direct evidence of Dr. Volkman’s background. This background information was obtained from the State of Ohio’s E-License database and from the DEA’s findings as stated in State’s Exhibit 3.

February 2006 Order to Show Cause and Immediate Suspension of Dr. Volkman's DEA Certificate of Registration

5. By letter dated February 10, 2006, the Deputy Administrator of the DEA notified Dr. Volkman that his DEA Certificate of Registration had been immediately suspended because "such registration constitutes an imminent danger to the public health and safety" pursuant to 12 United States Code Section 824(d) [Order]. The Order further stated that the DEA was affording Dr. Volkman the opportunity to show cause why the DEA should not revoke his registration and deny any pending applications for renewal or modification of the registration. (St. Ex. 2)
6. The DEA Deputy Administrator identified the basis for her action in a lengthy recitation of the DEA's investigation. The DEA Deputy Administrator also wrote:

[It] is my preliminary finding that Paul H. Volkman, M.D. has been responsible for the diversion of large quantities of controlled substances into other than legitimate medical channels. This finding is supported by among other factors, reports from DEA-registered distributors of the excessive quantities of controlled substances purchased by Dr. Volkman; Dr. Volkman's prescribing of large quantities of highly abused controlled substances even with information that such prescribing was deleterious to the health of his patients; the alarmingly high rate of deaths involving patients of Dr. Volkman for whom he had prescribed multiple prescriptions for large quantities of potentially lethal combinations of controlled substances shortly before their deaths; the assessments of family members of deceased patients, pharmacists and medical professionals that Dr. Volkman's prescribing practices constitute danger to public health and safety; Dr. Volkman's fee arrangement with patients whereby patients who present[ed] relatively minor pain complaints (and in certain instances, complain[ed] of no pain at all) nevertheless receive[d] prescriptions for large quantities of controlled substances in exchange for cash; reports that Dr. Volkman saw as many as 100 patients in the course of a day, which is more indicative of a physician exchanging controlled substance prescriptions for cash than any indication of a meaningful doctor-patient relationship; and finally, Dr. Volkman's failure to account for over 850,000 dosage units of controlled substances ordered and dispensed under his registration while working at the Tri-State clinic.

(St. Ex. 2 at 11-12) Additionally, the DEA Deputy Administrator authorized and instructed the individuals who served the Order as follows: "to place under seal and to remove for safekeeping all controlled substances that Dr. Volkman possesses pursuant to his registration, which I have herein suspended. The said Agents and Investigators are also directed to take into their possession Dr. Volkman's DEA Certificate of Registration." (St. Ex. 2 at 12)

May 2008 Final Adjudication Order of the DEA Deputy Administrator

7. Dr. Volkman requested a hearing in the DEA action, and the hearing was completed in January 2007. A report and recommendation was issued in June 2007. (St. Ex. 3 at 2)
8. By decision issued in May 2008, the Deputy Administrator of the DEA denied Dr. Volkman's application for renewal and modification of his DEA certificate of registration, which had expired during the pendency of the DEA action. (St. Ex. at 18, 23) The Deputy Administrator of the DEA concluded that a DEA registration would be inconsistent with the public interest because Dr. Volkman had:

repeatedly violated Federal law by prescribing controlled substances without a legitimate medical purpose and outside of the course of professional practice. Moreover the evidence also establishes that [Dr. Volkman] authorized Tri-State personnel to use his registration to order huge quantities of * * * controlled substances and that he failed to ensure the accountability of these drugs by maintaining lawfully required records.

(St. Ex. 3 at 19; see also, St. Ex. 3 at 21-23)

9. In the lengthy decision, the Deputy Administrator of the DEA found the following:
 - On April 17, 2003, which was within the first three weeks of Dr. Volkman's employment at Tri-State, the Ohio State Board of Pharmacy received two complaints from Portsmouth pharmacists regarding Dr. Volkman's prescribing practices. (St. Ex. 3 at 5)
 - In June 2003, Dr. Volkman complained to the Ohio State Board of Pharmacy that local pharmacists were refusing to fill his prescriptions. (St. Ex. 3 at 5)
 - Around June 2003, Dr. Volkman and the owner of Tri-State decided to institute an on-site dispensary and provide pain medicines to the patients. The dispensary was later established. (St. Ex. 3 at 4, 6)
 - Tri-State was a cash-only business (charging \$200 per office visit) and it permitted no third-party billing. (St. Ex. 3 at 4, 8)
 - Dr. Volkman authorized the ordering of large quantities of numerous controlled substances and the disposition of those substances cannot be adequately accounted for because Dr. Volkman failed to maintain accurate records. He became the largest practitioner-purchaser in the nation of Oxycodone and the largest Ohio-based, practitioner-purchaser of combination Hydrocodone/APAP drugs. (St. Ex. 3 at 8, 21-22)

- 900 patient files that were seized by the DEA lacked documentation that Dr. Volkman had performed a physical examination on the patient. (St. Ex. 3 at 9)
 - An expert's review of the medical charts of six patients who died while under Dr. Volkman's care revealed that the medications he had prescribed were the primary cause of death. In particular, it was noted, among other things, that Dr. Volkman "averaged 3.8 controlled substance prescriptions for each 'patient' visit"; "[t]his increased the likelihood of sedation, respiratory depression and death"; and the prescribing practices "greatly increased the chance for drug abuse, diversion, [and]/or addiction." That expert found that Dr. Volkman rarely performed drug screens on these six patients, and found that Dr. Volkman had not established and maintained a valid doctor-patient relationship with these six patients. The expert concluded that Dr. Volkman "knowingly and intentionally distribute[d] prescriptions for oxycodone and other controlled substances not for a legitimate medical purpose and beyond the bounds of medical practice." (St. Ex. 3 at 10, 11, 12, 15)
10. The DEA decision was entered into the Federal Register and, thereafter, Dr. Volkman filed an appeal, which remains pending. (St. Ex. 3; Hearing Transcript at 13)

FINDINGS OF FACT

1. On February 10, 2006, the DEA issued an Order to Show Cause and Immediate Suspension of Dr. Volkman's Certificate of Registration. The DEA took this action because his "registration constitutes an imminent danger to the public health and safety" pursuant to 12 United States Code Section 824(d).
2. In May 2008, the DEA Deputy Administrator issued a decision denying Dr. Volkman's application for renewal and modification of his DEA certificate of registration, which had expired during the pendency of the DEA action. The DEA Deputy Administrator found, among other things, that Dr. Volkman had: (a) "repeatedly violated Federal law by prescribing controlled substances without a legitimate medical purpose and outside of the course of professional practice"; (b) "authorized Tri-State [Health Care] personnel to use his registration to order huge quantities of * * * controlled substances"; and (c) "failed to ensure the accountability of these drugs by maintaining lawfully required records."

CONCLUSION OF LAW

The DEA action as set forth in Finding of Fact 1 constitutes "[t]he revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of

registration to prescribe drugs by the drug enforcement administration of the United States department of justice," as set forth in Section 4731.22(B)(24), Ohio Revised Code.

* * * * *

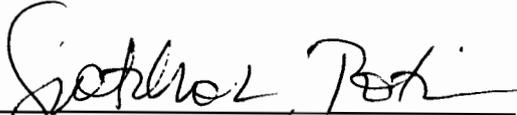
The facts underlying the DEA's immediate suspension of Dr. Volkman's DEA certificate of registration and its later decision to not renew and/or modify that certificate of registration are startling and tragic. Dr. Volkman *knowingly, purposefully* and *repeatedly* prescribed and dispensed controlled substances to many patients in an inappropriate manner. Dr. Volkman failed to obtain adequate patient histories, perform adequate physical examinations, document performance of a physical examination, have patients evaluated by specialists, and rely upon specialists' reports before diagnosing the patients as having intractable pain. He provided prescriptions/medications in a clinic that required patients to pay cash only. Multiple pharmacists and distributors questioned and complained about Dr. Volkman's activities. Multiple patients died from the medications that he had prescribed/dispensed. In addition, Dr. Volkman did not keep proper dispensing records. The Hearing Examiner is convinced that he should be forever ineligible to hold any certificate issued by the Board to practice in Ohio.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Paul H. Volkman, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov



EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 10, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the findings of fact, conclusions and proposed orders; and any objections filed in the matters of: Larry John Little, M.D.; Donald E. Higgs, M.D.; Erica L. Berry; Sara C. Gorbett; Patricia Ann Hale; Leonid Macheret, M.D.; Ruba W. Nijmeh, M.D.; and Paul H. Volkman, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matters of Dr. Higgs and Dr. Nijmeh, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

The original Proposed Findings and Proposed Orders shall be maintained in the exhibits section of this Journal.

.....

Dr. Talmage, Dr. Amato and Dr. Stephens left the meeting during the previous discussion.

.....

Dr. Talmage returned to the meeting at this time.

.....

Dr. Amato returned to the meeting during the previous discussion.

.....

PAUL H. VOLKMAN, M.D.

.....

DR. MADIA MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF PAUL H. VOLKMAN, M.D.. DR. STEINBERGH SECONDED THE MOTION.

.....

A vote was taken on Dr. Madia's motion to approve and confirm:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain

Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

**INTERIM AGREEMENT
BETWEEN
PAUL H. VOLKMAN, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

Paul H. Volkman, M.D., [Dr. Volkman] hereby agrees that he will not practice medicine and surgery in the State of Ohio in any form or manner until the allegations contained in the March 8, 2006, Notice of Opportunity for Hearing [March 2006 Notice] issued by the State Medical Board of Ohio [Board] have been examined by the Board and the Board has issued a Final Order. Dr. Volkman further agrees that any violation of the above-referenced limitation shall subject him to further disciplinary action pursuant to Section 4731.22, Ohio Revised Code. Dr. Volkman admits that the Board was substantially justified in its issuance of the March 2006 Notice which is based upon an Order to Show Cause and Immediate Suspension of Registration [Immediate Suspension Order] issued by the Drug Enforcement Agency [DEA] to Dr. Volkman. Dr. Volkman states that he is requesting a continuance of the Board's proceedings because he intends to contest the allegations contained in the DEA's Immediate Suspension Order.

The Board, by its acceptance of this Interim Agreement, hereby agrees not to object, through its counsel, to continuing the hearing on the March 2006 Notice until such time as the DEA has issued its final adjudication order related to the Immediate Suspension Order.

This Interim Agreement shall not be construed as an admission by Dr. Volkman to the allegations contained in the March 2006 Notice. Nothing in this Interim Agreement shall be construed to limit Dr. Volkman's right to a full hearing on the allegations contained in the Board's March 2006 Notice.

This Interim Agreement shall become effective immediately upon the last date of signature below.



Paul H. Volkman, M.D.

5/5/06

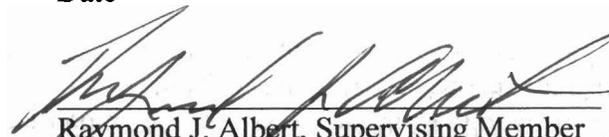
Date



Lance Talmage, M.D., Secretary
State Medical Board of Ohio

5-25-06

Date



Raymond J. Albert, Supervising Member
State Medical Board of Ohio

5/25/06

Date



State Medical Board of Ohio

77 S. HIGH ST., 17th Floor • Columbus, OH 43260-1177 • (614) 466-2922 • Website: www.smb.ohio.gov

March 8, 2006

Paul H. Volkman, M.D.
5565 U.S. Highway 23
Chillicothe, OH 45601

Dear Doctor Volkman:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about February 10, 2006, the Drug Enforcement Administration of the United States Department of Justice [DEA] notified you of the immediate suspension of your DEA Certificate of Registration. A copy of the Order to Show Cause and Immediate Suspension of Registration [Immediate Suspension] is attached hereto and fully incorporated herein.

The Immediate Suspension as alleged in paragraph (1) above, constitutes "[t]he revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice," as that clause is used in Section 4731.22(B)(24), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon

Mailed 3-9-06
Second Mailing 3-29-06

consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4330 4041
RETURN RECEIPT REQUESTED

cc: Deborah R. Lydon, Esq.
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202

CERTIFIED MAIL # 7003 0500 0002 4330 4034
RETURN RECEIPT REQUESTED

Paul H. Volkman, M.D.
Page 3

Second mailing: 3240 Lake Shore Drive, Apt. 9D
Chicago, IL 60657
CERTIFIED MAIL NO. 7003 0500 0002 4329 8494
RETURN RECEIPT REQUESTED

Deborah R. Lydon, Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4329 8487
RETURN RECEIPT REQUESTED



U.S. Department of Justice
Drug Enforcement Administration

Office of the Deputy Administrator

Washington, D.C. 20537

FEB 10 2006

IN THE MATTER OF
Paul H. Volkman, M.D.
1310 Center Street
Portsmouth, Ohio 45662

and

5565 US Hwy 23
Chillicothe, Ohio 45601

**ORDER TO SHOW CAUSE AND
IMMEDIATE SUSPENSION OF REGISTRATION**

PURSUANT to Sections 303 and 304 of the Controlled Substances Act, Title 21, United States Code, Sections 823 and 824,

NOTICE is hereby given (1) to inform you of the immediate suspension of your Drug Enforcement Administration (DEA) Certificate of Registration, AV6952837, because such registration constitutes an imminent danger to the public health and safety pursuant to 21 U.S.C. § 824(d), and (2) to afford you an opportunity to Show Cause before the DEA, at a date and place specified herein, as to why DEA should not revoke such registration pursuant to 21 U.S.C. § 824(a)(4), and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. § 823(f), for reason that your continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. §§ 823(f) and 824(a)(4), as evidenced by, but not limited to, the following:

1. In or around 1986, you were assigned DEA Certificate of Registration, AV6952837, as a practitioner authorized to handle controlled substances in Schedules II through V. On November 19, 2003, your registered location was the Tri-State Health Care Clinic (Tri-State) located at 1219 Findlay Street, Portsmouth, Ohio. During the time of DEA's most recent investigation, the owner and operator of the clinic was Denise Huffman. DEA's investigation revealed that the clinic also had an on-site pharmacy where prescriptions for controlled substances were filled for patients in exchange for a fee. The controlled substances purchased by the Tri-State clinic were ordered under your DEA Certificate of Registration. In or around September 2005, DEA's Cincinnati Resident Office received a telephone message from a female identifying herself as "Alice Huffman" that you had been terminated from your position at Tri-

State and were practicing out of your residence located at 1310 Center Street, Portsmouth, Ohio. DEA has learned that you have since moved your practice to an office location at 5565 US Hwy 23, Chillicothe, Ohio, and have applied to modify your DEA registration to reflect this location. That application is pending approval. Your current DEA registration is not due to expire until May 31, 2006.

2. OxyContin is a Schedule II controlled substance and is a legitimately prescribed, controlled-release oral formulation of oxycodone hydrochloride indicated for the management of moderate to severe pain. OxyContin, as well as other oxycodone products, is also a highly abused drug which, when used improperly, has contributed to criminal activity (e.g., thefts from pharmacies), severe physical and psychological dependence, and even death. OxyContin abuse takes several forms, including, but not limited to, abusers ingesting numerous tablets at one time, grinding up the tablets and snorting its contents, or combining crushed tablets with a liquid solution for injection through the use of intravenous needles.
3. Hydrocodone is a Schedule III controlled substance which can be a legitimately prescribed drug indicated for the management of moderate to severe pain. Hydrocodone is also a highly abused drug which, when used improperly, has contributed to criminal activity, severe physical and psychological dependence, and even death.
4. DEA has developed information that in calendar year 2004, you ranked first in the country among practitioners purchasing oxycodone with your purchase of 438,000 dosage units of the drug. The average purchase of oxycodone in 2004 for other physicians in the United States was only 4,792 dosage units in a calendar year. In 2003, you ranked second in the country among practitioners purchasing oxycodone with your purchase of 135,900 dosage units of the drug. During that same period, the average yearly purchase of oxycodone for Ohio physicians was 11,038 dosage units. For both years, you ranked first in Ohio for practitioners who purchased this controlled substance.
5. With respect to your purchase of hydrocodone, in 2004 you ranked 18th in the nation with the purchase of 263,500 dosage units of the drug. The average purchase of hydrocodone in 2004 for other physicians in the United States was only 2,503 dosage units. In 2003, you ranked 11th in the nation with the purchase of 222,600 tablets of hydrocodone. During that same period, the average yearly purchase of hydrocodone for Ohio physicians was 1,179 dosage units. Again, during both years, you ranked first in Ohio for practitioners who purchased this controlled substance.
6. According to information obtained from the Kentucky Cabinet for Health and Family Services, and based on prescriptions written by you and dispensed at pharmacies in Kentucky, in 2004 you prescribed an additional 647,440 dosage units of oxycodone and 537,691 dosage units of hydrocodone. These figures were over and above your total purchases of oxycodone and hydrocodone for 2004.

7. Starting in June 2003 and through March 2005, DEA offices in Columbus and Cincinnati, Ohio and Louisville, Kentucky received numerous complaints from various pharmacies in these metropolitan areas regarding your prescribing of various combinations of Schedules II through IV controlled substances, specifically OxyContin, oxycodone, Lorcet, Lortab (both hydrocodone products), Xanax (alprazolam), and Soma (carisoprodol), a non-controlled but highly abused substance. Several of the above referenced pharmacies have refused to fill any further combination prescriptions issued by you out of concern for patients' health and safety. DEA has developed information that these drugs in combination are highly favored among individuals who abuse controlled substances or engage in the illicit sale of these drugs for profit.
8. On August 15, 2003, the DEA Fort Worth, Texas Resident Office received a report from a DEA-registered distributor in Grapevine, Texas, regarding excessive purchases of controlled substances under your DEA registration at the Tri-State clinic at 1200 Gay Street, Portsmouth, Ohio. Specifically, on August 7, 2003, Tri-State ordered thirty, 100-count bottles of hydrocodone 10/325. The distributor informed DEA that it considered this volume excessive for a single physician's originating order.
9. On August 15, 2003, Tri-State ordered forty, 100-count bottles of hydrocodone 10/325. The two purchases totaled 7000 dosage units of hydrocodone ordered in one week. On August 22, 2003, the DEA Fort Worth, Texas Resident Office received a second excessive purchase report regarding Tri-State's purchase of twenty, 100-count bottles of hydrocodone and twenty, 100-count bottles of alprazolam.
10. On August 29, 2003, the DEA Columbus, Ohio District Office received a report from a DEA-registered distributor in New Britain, Connecticut, regarding excessive purchases of controlled substances under your DEA registration at the Tri-State facility. Specifically, between July 24 and August 20, 2003, Tri-State ordered approximately 41,000 dosage units of hydrocodone. The distributor further informed DEA that it considered the orders excessive and ceased shipping controlled substances to you and the Tri-State facility in September 2003.
11. On November 10, 2003, the Cleveland District Office of DEA received a complaint from one of your patients, hereinafter referred to as "Patient A." "Patient A" informed DEA personnel that during a scheduled appointment with you at the Tri-State clinic on October 30, 2003, you did not perform a physical examination before prescribing controlled substances. "Patient A" further informed DEA that you instructed him/her not to see any other physicians and that any prescriptions for "Patient A" were to be filled at the Tri-State clinic. During a follow-up interview with DEA personnel on November 20, 2003, "Patient A" spoke of being warned by Denise Huffman not to bring friends with him/her to the clinic because it was "too dangerous." "Patient A" further recounted being warned by Denise Huffman that there had been law enforcement watching the Tri-State clinic location but that she (Denise Huffman) was "one step ahead of them."

12. In response to pharmacists' complaints received by DEA offices in Cincinnati and Columbus, Ohio, and Louisville, Kentucky, as well as information obtained by DEA regarding your reported excessive purchases of Schedule III and IV controlled substances, in 2004 and 2005, DEA conducted interviews of several patients of the Tri-State facility. Several of the patients reported unusual practices at the Tri-State facility, including your prescribing controlled substances without obtaining a medical history or performing a medical examination. These interviews further revealed that you routinely charged from \$200 to \$300 per office visit that was to be paid in cash prior to a patient being seen. If the patients did not have the full cash payment amount, you would not treat them. DEA also learned from patient interviews that it was routine practice at the Tri-State clinic not to accept health insurance, Medicaid/Medicare, workman's compensation, personal checks, credit cards, or any other third party payments.
13. DEA subsequently learned from a detective with the Scioto County (Ohio) Sheriff's Office that individuals arriving at the Tri-State clinic were instructed by the clinic's security officer to remain across the street at an abandoned church "until called" by the officer. DEA received additional information from an investigator with the Ohio Board of Pharmacy that the Tri-State facility maintained items on the premises not typically seen in a physicians' office, such as a handgun in the drug dispensing area, a one foot wooden club with a leather strap at the end of the handle, nightsticks, and bodyguards stationed within the clinic.
14. In or around January 2004, DEA initiated the first of a series of undercover visits to your office by confidential sources familiar with your medical practice. Between January 2004 and late 2005, confidential sources made several undercover visits or placed telephone calls to the Tri-State clinic for the sole purpose of obtaining prescriptions for controlled substances for no legitimate medical purpose. During several of these visits, you performed no physical examinations of the confidential source, spent approximately three to five minutes with the confidential source yet consistently prescribed large quantities of controlled substances.
15. One confidential source informed DEA that you operated on a cash only basis and summed up your treatment approach as "...if you have the money, then you would get whatever medication you ask for..." A second confidential source informed DEA personnel that sometime in 2004, he/she began treatment with Tri-State and noticed on several occasions the clinic treating up to 50, 75, and on some occasions as many as 200 patients in one day. This confidential source reiterated information provided earlier by your patients that the Tri-State clinic did not accept workman's compensation referrals or insurance claim patients and would routinely require a cash payment of \$160 (later increased to \$200) before a patient was seen. The confidential source further disclosed that on his/her first visit to the clinic, you issued prescriptions for 900 tablets of Percocet and 180 tablets of Lorcet and that neither you nor any other person employed by Tri-State performed any examinations of him/her prior to issuing these prescriptions.

16. The undercover operations involving your practice revealed, the following noteworthy events, among others:

a. On January 6, 2004, DEA requested a confidential source to make an undercover visit to your office for the sole purpose of obtaining prescriptions for controlled substances. When the confidential source arrived at your office, your staff accepted a cash payment of \$160 from the confidential source. You spent less than ten minutes with the confidential source and did not perform an examination. You then proceeded to write prescriptions for the following controlled and non-controlled substances:

Oxycodone 30 MG- 75 quantity	Schedule II	Filled on 01-06-04
Oxycodone 30 MG- 75 quantity	Schedule II	Filled on 01-21-04
Norco 10MG/325MG- 180 quantity	Schedule III	Filled on 01-06-04
Xanax 2 MG- 120 quantity	Schedule IV	Filled on 01-06-04
Percocet 5/325 MG- 180 quantity	Schedule II	Filled on 01-06-04
Disalcid 500 MG- 60 quantity	Non-Scheduled	Filled on 01-06-04
Soma 350 MG- 180 quantity	Non-Scheduled	Filled on 01-06-04

b. Again on February 2, 2005, a confidential source was sent to make an undercover visit to your office for the sole purpose of obtaining prescriptions for controlled substances. When the confidential source arrived at your office, your staff accepted a cash payment of \$200 from the confidential source. The confidential source was never examined during his/her visit to the Tri-State clinic and no tests were performed to determine the source's need for controlled substances. During your discussion with the confidential source, you admonished the source about sharing his/her medications with a spouse. The confidential source then asked if you would increase his/her medication. You then issued three prescriptions: one for 180 hydrocodone 10/650 mg. tablets; a second for 90 tablets of diazepam 10mg. (a Schedule IV controlled substance); and a third for 60 tablets of carisprodol 350mg. The confidential source then presented the prescriptions to the Tri-State on-site pharmacist where he/she paid an additional \$142 to have the prescriptions filled.

c. Again on March 1, 2005, a confidential source was sent to make an undercover visit to your office for the sole purpose of obtaining prescriptions for controlled substances. When the confidential source arrived at your office, he/she was escorted to a small waiting room by Ms. Huffman. The confidential source was then asked by Ms. Huffman to give a number from one to ten to describe his/her pain level (one being the least severe pain, ten being the most severe). The confidential source described a pain level of "one or two." The confidential source then paid Ms. Huffman \$200 for the office visit. The confidential source was never examined during his/her visit to the Tri-State clinic nor was any test

performed to determine the source's need for controlled substances. During your subsequent discussion with the confidential source, you asked how he/she was feeling, to which the source responded: "fair." You immediately wrote three prescriptions: one for 180 hydrocodone 10/650 mg. tablets; a second for 90 tablets of diazepam 10mg; and a third for 60 tablets of carisprodol, 350mg. The confidential source then presented the prescriptions to the Tri-State on-site pharmacist where he/she paid an additional \$142 to have the prescriptions filled.

- d. Again on March 28, 2005, a confidential source was sent to make an undercover visit to your office for the sole purpose of obtaining prescriptions for controlled substances. When the confidential source arrived at your office, he/she was escorted to a small waiting room by a female employee of Tri-State. The confidential source was then asked by the employee to give a number from one to ten to describe his/her pain level. The confidential source described a pain level of "zero." The confidential source then paid the employee \$200 for the office visit. The confidential source was never examined during his/her visit to the Tri-State office nor was any test performed to determine the source's need for controlled substances. During your subsequent discussion with the confidential source, you asked how he/she was feeling, to which the source responded: "pretty good." Despite the confidential source's feedback of a "zero" level for pain, you immediately wrote three prescriptions: one prescription for 180 hydrocodone 10/650 mg. tablets; a second for 90 tablets of diazepam 10mg; and a third for 60 tablets of carisprodol 350mg. The confidential source then presented the prescriptions to the Tri-State on-site pharmacist where he/she paid an additional \$153 to have the prescriptions filled.

17. On May 5 and again on May 13, 2005, DEA personnel spoke with another confidential source regarding his/her knowledge of illegal drug activity throughout Scioto County and the City of Portsmouth. The confidential source divulged that he/she had been involved in the diversion of pharmaceutical drugs for several years and that his/her drug use began in high school where the source and his/her friends used OxyContin to "get high." The source described that this practice of drug abuse escalated to a point where the confidential source and others sought out persons who illicitly acquired large quantities of OxyContin tablets for resale on the streets. The confidential source also sought out medical doctors known to write prescriptions for OxyContin and other controlled substances without a medical examination. You were identified by the confidential source as a physician who would issue such prescriptions. The confidential source further informed DEA that he/she and a friend would routinely drive to your office, purchase prescriptions for controlled substances from you and then sell the drugs obtained from these prescriptions on the streets.
18. On June 7, 2005, DEA Special Agents and Diversion Investigators, law enforcement officers from the Scioto County Sheriff's Department and investigators from the Ohio Medical Board executed a search warrant at the Tri-State clinic. During the execution

of the warrant, patient files, financial records, invoices, prescriptions, miscellaneous business records as well as controlled substances were seized. You also consented to an interview with DEA personnel where you stated, among other things, that it was not your practice to consult with other physicians. You further stated that if you were treating a pain patient, you did not consult the patient's primary care physician to coordinate care.

19. In July 2005, the Cincinnati Resident Office of DEA conducted an accountability audit of controlled substances ordered by Tri-State under your DEA Certificate of Registration. DEA was initially unable to complete an accurate audit because of your failure to maintain controlled substance dispensing records as required by 21 C.F.R. §§ 1304.04 and 1304.21. Nevertheless, DEA's audit revealed overages and shortages of various controlled substances. Specifically, the audit revealed that you could not account for more than 850,000 dosage units of controlled substances that were ordered and dispensed under your DEA registration as demonstrated by the following:¹

Controlled Substance	Difference
Alprazolam 0.5mg	+30
Alprazolam 1mg	+50
Lorazepam 1mg	+312
Alprazolam 2mg	-88,862
Butabital/Asprin/Caffeine/Codeine	+200
Codeine/Apap 30/300mg	+600
Demerol 50mg	+356
Diazepam 5mg	+103
Diazepam 10mg	-47,746
Dilaudid 4mg	0
Hydrocodone 5/325mg	0
Hydrocodone 5/500mg	+12
Hydrocodone 7.5/750mg	+1352
Hydrocodone 10/325mg	-66,429
Hydrocodone/Apap 10/500mg	-77,004
Hydrocodone 10/650mg	-126,315
Hydromorphone 4mg	-2,845
Oxycodone 5mg	-49,277
Oxycodone 15mg	-21,450
Oxycodone 30mg	-28,610
Oxycodone/Apap 5/325mg	-48,506

¹ Audit figures that are preceded with the minus (-) symbol represent shortages while those with a plus (+) symbol represent overages. A zero balance represents an accounting for the audited drug.

Roxicodone 15mg	-165,500
Roxicodone 30mg	-130,000
Vicodin ES	+20

20. In July 2005, DEA personnel met with the Assistant Coroner for Scioto County who expressed concern over the “domestic environmental impact” of your medical practice on the Scioto/Portsmouth area. The Assistant Coroner informed DEA that his staff observed an increase in emergency room overdoses and believed that several recent drug-related deaths involving young, otherwise healthy individuals could be attributed to the consumption of large amounts of oxycodone, hydrocodone and alprazolam prescribed and dispensed by you.
21. During the course of its investigation, DEA learned that the Portsmouth Police Department conducted a separate criminal investigation with regard to your prescribing and dispensing practices. As part of the state investigation, Portsmouth authorities executed a search warrant at your residential office at 1310 Center Street in Portsmouth on October 4, 2005, and seized, among other items, several patient files.
22. During the execution of its search warrant, Portsmouth authorities also seized documents pertaining to a Request to Resolve Medical Fee Dispute between Papa John’s Pizza and yourself. The fee dispute documents outlined your treatment of a patient who complained of having sustained a work related injury. A May 9, 2005, physician review of your treatment of the complaining patient found, among other things, the following: “Dr. Volkman’s request for 425 pills of oxycodone per month (14/day), and Valium at 125 pills a month (4/day), is neither medically reasonable nor necessary.” The reviewing physician also found that your use of narcotic medications was not warranted and “...not beneficial in that the [patient] is taking pills around the clock and has now developed a tolerance to his current regimen.”
23. The DEA Cincinnati Resident Office in conjunction with the National Drug Intelligence Center (NDIC) conducted an analysis of seized patient files and other documentation obtained by DEA and the Portsmouth authorities as part of their respective investigations. This analysis revealed that at least seven (7) individuals died within two days after their last office visit with your practice.² While these patient files neither demonstrate nor suggest that your prescribing practices were the proximate cause of the deaths of patients (and such a charge is not alleged herein), the records clearly demonstrate that you continued prescribing controlled substances to your patients with the knowledge that their health could become severely compromised based in part upon their apparent abuse of various controlled substances. In order to further clarify the circumstances involved in these deaths,

² References to “your practice” in this paragraph include both your treatment of patients at the Tri-State facility as well as your later practice at your residential office location.

DEA conducted interviews of local coroners³/medical examiners, local police departments, and family members of the deceased patients. As a result, the following information was obtained:

- a. "Patient B", a 33 year old male patient began treatment with you in April 2003 and died on June 27, 2003. The cause of death as recorded by the coroner was "...intoxication by the combined effects of oxycodone, morphine, diazepam and meprobamate." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient B" had visited your office on at least three (3) separate occasions between April 2003 and the time of his death. "Patient B's" last known visit to your practice was on June 25, 2003, at which time the patient received prescriptions for 90 tablets of OxyContin 80mg, one-hundred eighty 180 tablets of Tylox (oxycodone), and ninety 90 tablets of Xanax 2mg.
- b. "Patient C", a 37 year old male patient began treatment with you in April 2003 and died on November 20, 2003. The cause of death as recorded by the coroner was "...multiple drug intoxication." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient C's" last known visit to your practice was on November 18, 2003, at which time the patient received prescriptions for oxycodone 30mg., Lorcet 10/650mg., Valium (diazepam) 10mg., and Xanax 2mg.
- c. "Patient D", a 32 year old female patient began treatment with you in September 2003 and died on January 10, 2004. The cause of death as recorded by the coroner was "...intoxication by the combined effects of oxycodone and hydrocodone." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient D" visited your practice on at least 13 separate occasions between September 2003 and the time of her death. "Patient D's" last known visit to your practice was on January 8, 2004, at which time she received prescriptions for 60 tablets of oxycodone 30mg., 300 tablets of Norco (hydrocodone) 10/325mg., and 120 tablets of Xanax 2mg.
- d. "Patient E", a 35 year old male patient began treatment with you in May 2003 and died on February 13, 2004. The cause of death as recorded by the coroner was "...atherosclerotic heart disease" and "...hydrocodone, carisoprodol and meprobamate." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient E" had visited your practice on at least 10 separate occasions between May 2003 and the time of his death. "Patient E's" last known visit to your practice was on February 11, 2004, at which time the patient received prescriptions for 360 tablets of Norco 10/325mg., 120 tablets of Xanax 2mg., and 180 tablets of carisoprodol 350mg.

³ All subsequent references to coroners and their reports reference coroner offices in Hamilton, County, Ohio or Greenup County, Kentucky.

- e. "Patient F", a 39 year old female patient began treatment with you in April 2003 and died on March 9, 2004. The cause of death as recorded by the coroner was "drug overdose." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient F" had visited your practice on at least 13 separate occasions between April 2003 and the time of her death. "Patient F's" last known visit to your practice was on March 8, 2004, at which time the patient received prescriptions for 180 tablets of oxycodone 30mg., 180 tablets of Lorcet 10/650mg., 180 tablets of Xanax 2mg., and 180 tablets of carisoprodol 350mg.
- f. "Patient G", a 46 year old male patient began treatment with you in April 2003 and died on August 12, 2004. The cause of death as recorded by the coroner was "...acute oxycodone toxicity." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient G" had visited your practice on at least 20 separate occasions between April 2003 and the time of his death. "Patient G's" last known visit to your practice was on August 11, 2004, at which time the patient received prescriptions for 240 tablets of oxycodone 30mg., 360 tablets of Norco 10/325mg., 120 tablets of Xanax 2mg., and 180 tablets of carisoprodol 350mg.
- g. On November 4, 2005, DEA Diversion Investigators interviewed the sister of "Patient G." The patient's sister informed DEA that on August 2, 2004, "Patient G" had been evaluated at the Cleveland Clinic and diagnosed with a "right ankle sprain." DEA learned that on August 11, 2004, "Patient G" came to you for treatment and was prescribed 240 tablets of oxycodone 30mg., 360 tablets of Norco 10/325mg., 120 tablets of Xanax 2mg., and 180 tablets of Soma (carisoprodol) 350mg.
- h. "Patient H", a 33 year old male patient began treatment with you in April 2003 and died on April 20, 2005. The cause of death as recorded by the coroner was "...acute combined effects of oxycodone, diazepam and alprazolam." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient H" had visited your office on at least 11 separate occasions between April 2003 and the time of his death. "Patient H's" last known visit to your practice was on April 19, 2005, at which time the patient received prescriptions for 360 tablets of oxycodone 15mg., 120 tablets of Valium 10mg., and 120 tablets of Xanax 2mg.
- i. "Patient I", a 35 year old female patient began treatment with you in May 2003 and died on August 18, 2005. The cause of death as recorded by the coroner was "acute mixed drug intoxication." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient I" had visited your practice on at least 11 separate occasions between May 2003 and the time of her death. "Patient I's" last known visit to your practice was on May 14, 2005, at

which time the patient received prescriptions for 240 tablets of Dilaudid (hydromorphone) 4mg., 240 tablets of Lortab 10/500mg., 120 tablets of Xanax 2mg., and 180 tablets of Soma.

- j. "Patient J", a 30 year old female died on September 29, 2005, while being treated by you. The cause of death as recorded by the coroner was "multiple drug intoxication." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient J" had visited your practice on at least five (5) separate occasions. "Patient J's last known visit to your practice was on September 26, 2005, at which time the patient received prescriptions for 405 tablets of oxycodone 30mg., 405 tablets of Percocet (oxycodone) 5/325mg., 60 tablets of Xanax 2mg., and 120 tablets of carisoprodol.
- k. "Patient K", a 39 year old male patient died on October 23, 2005, while being treated by you. The cause of death as recorded by the coroner was "multi-drug death." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient K" had visited your practice on only one (1) occasion, October 21, 2005. At this time the patient received prescriptions for 240 tablets oxycodone 30mg., 240 tablets of hydrocodone 10/500mg., 90 tablets of alprazolam 2mg., and 90 tablets of carisoprodol 350mg. On November 10, 2005, DEA Diversion Investigators from the Cincinnati Resident Office interviewed the widow of "Patient K." The widow of "Patient K" revealed that her deceased husband sought a visit with you for the sole purpose of getting controlled substances so that "Patient K" could "...sell them on the street." "Patient K's" widow further disclosed that after filling the prescriptions, "Patient K" crushed and snorted oxycodone, ingested Xanax and sold some of the remaining drugs before his death.
- l. "Patient L", a 39 year old male patient died on October 2, 2005, while being treated by you. The cause of death as recorded by the coroner was "acute multiple drug intoxication (oxycodone and others)." A review of the patient chart seized during the combined DEA and State investigations revealed that "Patient L's" last known visit to your practice was on September 30, 2005, at which time the patient received prescriptions for 240 tablets of oxycodone 30mg., 240 tablets of Lortab 10/500mg., 90 tablets of Valium 10mg., and 90 tablets of carisoprodol 350mg.

In view of the foregoing, and pursuant to 21 U.S.C. § 824(d), it is my preliminary finding that Paul H. Volkman, M.D. has been responsible for the diversion of large quantities of controlled substances into other than legitimate medical channels. This finding is supported by, among other factors, reports from DEA-registered distributors of the excessive quantities of controlled substances purchased by Dr. Volkman; Dr. Volkman's prescribing of large quantities of highly abused controlled substances even with information that such prescribing was deleterious to the health of his patients; the alarmingly high rate of deaths involving patients of Dr. Volkman for whom he had prescribed multiple prescriptions for large quantities of potentially lethal combinations of controlled substances shortly before their deaths; the

assessments of family members of deceased patients, pharmacists and medical professionals that Dr. Volkman's prescribing practices constitute danger to public health and safety; Dr. Volkman's fee arrangement with patients whereby patients who present relatively minor pain complaints (and in certain instances, complain of no pain at all) nevertheless receive prescriptions for large quantities of controlled substances in exchange for cash; reports that Dr. Volkman saw as many as 100 patients in the course of a day, which is more indicative of a physician exchanging controlled substance prescriptions for cash than any indication of a meaningful doctor-patient relationship; and finally, Dr. Volkman's failure to account for over 850,000 dosage units of controlled substances ordered and dispensed under his registration while working at the Tri-State clinic.

It is my preliminary conclusion that the continued registration of Paul H. Volkman, M.D., during the pendency of these proceedings would constitute an imminent danger to the public health and safety because of the substantial likelihood that Dr. Volkman will continue to divert controlled substances to persons who will abuse these products. Accordingly, pursuant to the provisions of 21 U.S.C. § 824(d) and 21 C.F.R. § 1309.44(a), and the authority granted me under 28 C.F.R. § 0.100, DEA Certificate of Registration AV6952837, is hereby suspended, effective immediately, such suspension to remain in effect until a final determination is reached in these proceedings.

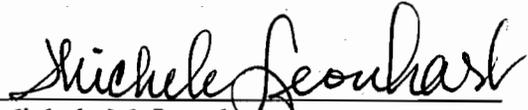
Pursuant to 21 U.S.C. § 824(f) and 21 C.F.R. § 1309.44(b), the Special Agents and Diversion Investigators of the DEA who serve this Order to Show Cause and Immediate Suspension of Registration, are authorized to place under seal and to remove for safekeeping all controlled substances that Dr. Volkman possesses pursuant to his registration, which I have herein suspended. The said Agents and Investigators are also directed to take into their possession Dr. Volkman's DEA Certificate of Registration.

The following procedures are available to you in this matter:

1. Within 30 days after the date of receipt of this Order to Show Cause, you may file with the Deputy Administrator of the Drug Enforcement Administration a written request for a hearing in the form set forth in 21 C.F.R. § 1316.47. (See 21 C.F.R. § 1301.43(a)). If you request an expedited hearing pursuant to 21 C.F.R. § 1301.37(h), such hearing will be held at 600 Army-Navy Drive, Arlington, VA, 22202, thirty (30) days after the date on which your written request is received by the Office of Administrative Law Judges, Drug Enforcement Administration, Washington, D.C. 20537. The date and location may be changed by the Administrative Law Judge responsible for the case, after notice and consultation with the parties, and will be fixed as early as is reasonably possible. (See 21 C.F.R. §§ 1301.36(h), 1301.37(h), and 1301.43(a)).
2. Within 30 days after the date of receipt of this Order to Show Cause you may file with the Deputy Administrator a waiver of hearing together with a written statement regarding your position on the matters of fact and law involved. (See 21 C.F.R. § 1301.43(c)).
3. Should you decline to file a request for a hearing or should you so file and fail to appear at the hearing, you shall be deemed to have waived the hearing and the Deputy

Administrator may cancel such hearing, if scheduled, and may enter her final order in this matter without a hearing and based upon the investigative file and the record of this proceeding as it may then appear. (See 21 C.F.R. §§ 1301.43(d) and 1301.43(e)).

Correspondence concerning the matter of Paul H. Volkman, M.D. should be addressed to the Hearing Clerk, Office of Administrative Law Judges, Drug Enforcement Administration, Washington, D.C. 20537.


Michele M. Leonhart
Deputy Administrator

cc: Hearing Clerk
Office of Administrative Law Judges