UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD
Complainant

vs.

JOHN ANTHONY KOCHIS
Respondent

Docket Number 2013-0337
Enforcement Activity No. 4705917

FINAL ORDER
Issued: August 24, 2016

By Administrative Law Judge: Honorable George J. Jordan

Appearances:

LCDR Benjamin M. Robinson
Sector Columbia River
For the Coast Guard

David R. Boyajian, Esq.
For the Respondent

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT

This is a United States Coast Guard (Coast Guard) suspension or revocation proceeding, which was brought under 46 U.S.C. § 7701 et seq. and its underlying regulations, codified at 46 C.F.R. Part 5. It is conducted pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq*. See 46 U.S.C. § 7702(a). The Coast Guard contends John Kochis (Respondent) failed to successfully complete the requirements of a settlement agreement and seeks to implement the

stayed revocation of his Merchant Mariner's Credential (MMC or Credential). Respondent requested a hearing to determine whether or not he complied with the settlement agreement.

This case originally came before me when the Coast Guard filed a Complaint on September 10, 2013, alleging use of or addiction to dangerous drugs. (Docket Item 01).[1] Specifically, the Coast Guard alleged that Respondent took a random drug test on August 14, 2013 which tested positive for marijuana metabolites. The parties simultaneously entered into a settlement agreement, and I issued a Consent Order approving the settlement agreement on September 17, 2013. (Docket Items 05; 08).

On October 1, 2014, the Coast Guard submitted a Notice of Unsatisfactory Settlement, stating that Respondent tested positive for drugs in violation of the agreement. (Docket Item 10). Respondent requested a hearing on October 8, 2014. (Docket Item 12). I held a prehearing conference with the parties on October 15, 2014, at which Respondent requested the ability to complete the cure program again. The Coast Guard agreed, provided Respondent was subject to additional random drug tests under the revised settlement agreement. The Coast Guard filed the revised settlement agreement on November 3, 2014 and I issued a Consent Order on November 6, 2014. (Docket Items 17; 19).[2]

On January 6, 2016, the Coast Guard filed a second Notice of Unsatisfactory Settlement. (Docket Item 21). The Coast Guard stated that "Respondent failed to attend a substance abuse monitoring program at least 4 meetings per month" and "Respondent failed to provide negative random drug tests spread reasonably throughout the year." On January 14, 2016, Respondent requested a hearing to determine whether his evidence of completion was sufficient. (Docket

[1] The pleadings and other filings in this matter will be identified by the Docket Item Number identifier listed in the MISLE database, which is the official record for this proceeding. Recognizing that Respondent and his counsel—as well as any non-parties who may view this decision—do not have access to MISLE, I have included a full listing of the docket filings in this matter as Appendix A for reference purposes.

[2] The revised agreement was filed as a General Motion because the docketing system does not allow multiple settlement agreements to be generated under the same docket number. Likewise, my Consent Order approving that agreement appears in the official docket under the title of General Order.

Item 24). Following this request, the parties submitted numerous filings and evidence and there were three pre-hearing conferences.

The hearing took place at the United States Bankruptcy Court in Portland, Oregon on May 26, 2016. LT Sonha Gomez and LCDR Benjamin Robinson represented the Coast Guard. David Boyajian, Esq. represented Respondent. At the conclusion of the hearing, the Coast Guard requested the opportunity to submit Proposed Findings of Fact and Conclusions of Law, and argument in support thereof. The Coast Guard submitted a post-hearing filing, but Respondent did not. This matter is now ripe for decision.

I have carefully reviewed the entire record in this case, including witness testimony, exhibits, applicable statutes, regulations, and case law. For the reasons set forth below, I find Respondent in substantial compliance with the settlement agreement. Further, I find Respondent provided satisfactory evidence that he meets the requirements of cure as established in the period of stayed revocation will now be considered a period of outright suspension and his MMC shall be returned.

II. FINDINGS OF FACT

1. At all times relevant to the allegations in this matter, Respondent held a Coast Guard-issued MMC.

2. The settlement agreement dated November 3, 2014 required Respondent to enroll in a drug rehabilitation program certified by a governmental agency or accepted by an independent professional association and provide adequate evidence of enrollment by December 1, 2014. (Docket Item 17).

3. Respondent successfully completed the drug rehabilitation program. (Docket Item 34;Tr. p. 142).

4. The settlement agreement dated November 3, 2014 required Respondent to participate in a random, unannounced drug-testing program for a minimum period of one-year following successful completion of the drug rehabilitation program. Respondent was required to take at least 16 random drug tests spread reasonably throughout the year, conducted in accordance with Department of Transportation (DOT) procedures found in Title 49, Code of Federal Regulations (CFR), Part 40. (Docket Item 17).

5. Respondent submitted the results of 16 drug tests to the Coast Guard IO. (Docket Item 34).

6. Each of the urine collections used for testing were given at PeaceHealth in Longview, Washington. (Docket Item 34).

7. Six of the tests (dated 7/16/15, 9/15/15, 10/23/15, 10/28/15, 1/11/16, and 1/20/16) were marked "follow-up" rather than "random." (Docket Item 34).

8. Rhonda Gonzalez of PeaceHealth confirmed that the "follow-up" notation was in error and that the tests were, in fact, random. (Docket Item 61).

9. Ten of the tests (dated 7/6/15, 7/16/15, 8/14/15, 8/25/15, 9/30/15, 10/9/15, 10/23/15, 10/28/15, 11/11/15, 11/16/15, 11/24/15, 12/15/15) were "negative dilute." (Docket Item 34.)

10. Under the DOT rules at 49 C.F.R. Part 40, a dilute test occurs when the creatinine level is greater than 2 mg/dL but less than 20 mg/dL. See 49 C.F.R. § 40.93(a)(1).

11. If a negative drug test shows a creatinine level of greater than 2 mg/dL but less than 5 mg/dL, the Medical Review Officer (MRO) must report the result to the donor's employer, who may order immediate recollection under direct observation. 49 C.F.R. § 40.155(c); see also 49 C.F.R. § 40.197(b)(1).

12. If a negative drug tests shows a creatinine level of greater than 5 mg/dL but less than 20 mg/dL, the employer may—but is not required to—order the employee to take another test immediately but the test shall not be observed unless another basis for observation exists. 49 C.F.R. § 40.197(b)(2).

13. Drug tests with creatinine levels greater than 5 mg/dL but less than 20 mg/dL but no presence of drug metabolites are certified by the MRO as "negative dilute." 49 C.F.R. § 40.155(a)-(b).

14. Respondent was not employed by any marine employer at the time of these drug tests. (Tr. p. 68).

15. All of Respondent's negative dilute drug tests showed a creatinine level above 5 mg/dL but below 20 mg/dL. (Docket Item 34).

16. The negative dilute tests dated 7/6/15, 7/29/15, 8/14/15, 8/25/15, 9/15/15, 9/30/15, 10/9/15, 10/23/15, 10/28/15, 11/11/15, and 12/15/15 were all directly observed by the collector. (Docket Item 34).

17. Dr. Jeremy Buckell is an MRO. (Tr. p. 154).

18. Dr. Buckell issued the Return-to-Work letter in this case on December 17, 2015. (Docket Item 34; Tr. p. 157).

19. The cutoff level for marijuana metabolites in a DOT drug test is fifteen nanograms per deciliter. (Tr. p. 160).

20. Having a fifteen nanogram per deciliter cutoff eliminates the issue of passive exposure causing a positive drug test. (Tr. p. 161).

21. Dr. Buckell testified that "dilution only affects a drug screen if you are right on the border between positive and negative," meaning a person who smoked marijuana and did not drink much might have a positive test at a level of seventeen or eighteen whereas if the same person drank a lot of fluids, the test might be negative at a level of twelve or thirteen. (Tr. p. 159).

22. None of Respondent's tests showed the presence of any drug metabolites. (Docket Item 34).

23. Dr. Buckell did not consider the negative dilute results to be a problem when he wrote the return-to-work letter. (Tr. p. 164).

24. Dr. Buckell did not have any new information since December 17, 2015 that would change his opinion that Respondent's risk of drug use was sufficiently low to justify a return to work. (Tr. p. 163).

25. The settlement agreement dated November 3, 2014 required Respondent to "[a]ttend a substance abuse monitoring program (such as AA/NA) for a minimum period of one-year following successful completion of the drug rehabilitation program. The respondent must attend at least 4 meetings per month." (Docket Item 17).

26. Programs such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) are peer support groups. (Tr. p. 57).

27. Respondent attended some NA meetings. (Docket Item 34).

28. Respondent also received private counseling from Pastor Don Wantland, at pastor at the Northwest Independent Church Extension in Castle Rock, Washington. (Tr. pp. 15-16, 24).

29. Respondent submitted evidence of attendance at a total of 53 NA and private counseling sessions. (Docket Item 34).

30. Respondent attended more NA meetings and private counseling sessions than he documented for purposes of demonstrating compliance with the settlement agreement. (Tr. p. 48).

31. Pastor Wantland worked as a substance abuse counselor at Northern State Hospital in Sedro-Woolley, Washington from approximately 1975 – 1982. (Tr. p. 9).

32. Northern State Hospital provided treatment based on the same twelve-step program used by AA and NA. (Tr. p. 10).

33. Pastor Wantland then provided substance abuse counseling to members of his congregations and other members of the community in small towns including Petersburg, Alaska; Aberdeen, Washington; Cosmopolis, Washington; and Aiden, California. (Tr. pp. 10, 27, 29).

34. During this time, Pastor Wantland utilized the twelve-step program to counsel people with substance abuse problems. (Tr. p. 12).

35. Pastor Wantland has not regularly counseled anyone other than family members and Respondent since the early 2000s. (Tr. p. 29).

36. Since 1968, Pastor Wantland has attended yearly meetings of pastors at which substance abuse issues are often discussed. (Tr. p. 24-25).

37. Respondent and Pastor Wantland are neighbors and friends who have known each other for more than ten years. (Tr. p. 14-15).

38. Respondent began receiving substance abuse counseling from Pastor Wantland approximately three years ago. (Tr. p. 15).

39. Respondent generally attends three or more counseling sessions per week with Pastor Wantland. (Tr. p. 16).

40. These sessions are generally held on an informal, *ad hoc* basis rather than on a formal schedule. (Tr. p. 34-35).

41. These sessions are holistic and do not always focus solely on drug and alcohol issues, but they nevertheless generally implicate Respondent's relationship with alcohol and drugs. (Tr. p. 16-17).

42. Pastor Wantland testified that the counseling relationship between him and Respondent is ongoing, with no end in sight. (Tr. p. 20).

43. Pastor Wantland was aware that Respondent was also attending AA and NA meetings, and encouraged him to keep going. (Tr. p. 36).

44. Jeremy Wekell is a Substance Abuse Professional (SAP). (Tr. p. 87).

45. Mr. Wekell primarily uses the standards of the American Society for Addiction Medicine. (Tr. p. 124).

46. Mr. Wekell was the SAP assigned to Respondent's case. (Tr. p. 87).

47. Mr. Wekell has had four face-to-face meetings and numerous telephone conversations with Respondent. (Tr. p. 100).

48. The American Society of Addiction Medicine does not define a support group in any particular way; rather, the recommended support system should be tailored to the individual client. (Tr. pp. 88, 125-26).

49. Mr. Wekell testified that private counseling is often more effective than peer support groups in helping a person remain free of substance abuse because it is more personalized to the individual's needs. (Tr. pp. 89, 93-94; Docket Item 59).

50. A twelve-step "sponsor" is a peer who may act as a life coach or counselor to a person in recovery, even though sponsors are generally not professional, licensed counselors. (Tr. p. 90).

51. Under the AA or NA model, anytime two people are in a room together talking about addiction, it qualifies as a meeting. (Tr. pp. 90-91).

52. Mr. Wekell also testified that mixing and matching different support groups or programs may be effective for some clients, particularly when the client takes the initiative to evaluate their own needs. (Tr. pp. 109, 118-19).

53. Mr. Wekell testified that a SAP generally makes the determination of whether to recommend support group attendance, but here the Coast Guard made the determination that a self-help support group was necessary. (Tr. p. 110).

54. Mr. Wekell saw Respondent's attendance slips from NA meetings and one-on-one sessions with Pastor Wantland and verified them the same way he does as a state certified counselor for probation. (Tr. p. 115).

55. Mr. Wekell testified that Respondent meets the criteria of full sustained remission of his substance abuse disorder per the American Society of Addiction Medicine, and per the DSM5 Manual. (Tr. pp. 97-98).

56. Michelle Waltz is a SAP. (Tr. p. 51).

57. Ms. Waltz acted as a consultant for Respondent after the Coast Guard filed its Notice of Unsatisfactory Settlement. (Tr. p. 65-66, 70).

58. Ms. Waltz testified that the language used in the settlement agreement does not accurately reflect the terminology currently used by professionals in the field of substance abuse. (Tr. p. 65).

59. Ms. Waltz believed the support Respondent was receiving from Pastor Wantland gave him a better opportunity to deal with different issues affecting his recovery process than NA meetings would. (Tr. pp. 74-75).

60. Ms. Waltz testified that SAPs allow their clients to choose a support program that fits them, and this may include multiple types of support groups. (Tr. pp. 70-71).

III. PRINCIPLES OF LAW

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. 46 U.S.C. § 7701(a). In furtherance of this goal, Administrative Law Judges (ALJs) have the authority to suspend or revoke Coast Guard-issued credentials or endorsements. See 46 C.F.R. § 5.19(b). These proceedings are conducted under the Administrative Procedure Act

(APA), 5 U.S.C. § 551 *et seq*. 46 U.S.C. § 7702(a). Section 7(c) of the APA places the burden of proof on the proponent of a rule or order, unless otherwise provided by statute. The fact-finder must consider the "whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence" before assessing a sanction. 5 U.S.C. § 556(d).

This hearing was held to determine whether or not Responded successfully completed the terms of the settlement agreement. Respondent exercised his right to request a hearing to determine whether the evidence of completion he submitted to the Coast Guard was adequate. Typically, the Coast Guard bears the burden of proof in suspension and revocation proceedings, however, Respondent is the movant here and bears the burden of showing that his evidence of completion satisfies the requirements of the agreement.

A. Standard of Proof

The standard of proof in administrative proceedings is the "preponderance of the evidence" standard, meaning a party must prove that a "fact's existence is more likely than not." Steadman v. SEC, 450 U.S. 91, 98 (1981); Greenwich Collieries v. Dir., Office of Workers' Comp. Programs, 990 F.2d 730, 736 (3d Cir. 1993). Evidentiary rules under the APA are less strict than in jury trials, and only irrelevant, immaterial, or unduly repetitious evidence need be excluded. See 5 U.S.C. § 556(d); Gallagher v. Nat'l. Transp. Safety Bd., 953 F.2d 1214, 1214 (10th Cir. 1992); Sorenson v. Nat'l. Transp. Safety Bd., 684 F.2d 683, 688 (10th Cir. 1982). Moreover, evidence "need not be authenticated with the precision demanded by the Federal Rules of Evidence" in order to be admissible in an administrative proceeding. Gallagher at 1218; Appeal Decision 2664 (SHEA) (2007).

B. Credibility Determination

When evaluating the evidence in the record, an ALJ must make determinations as to its credibility and reliability. The ALJ "is vested with broad discretion in making determinations regarding the credibility of witnesses and in resolving inconsistencies in the evidence." Appeal Decision 2519 (JEPSON) (1991). This is because, as the presiding official, the ALJ "can fully observe the response, character and demeanor of the witnesses in issue." Id. The salient question in determining a witness's credibility is whether the testimony in the record is well-supported and believable; "[t]he presence of evidence which conflicts with the testimony of a witness is not, in itself, enough to conclusively show a lack of credibility of that witness when there is substantial evidence that supports his account." Appeal Decision 2017 (TROCHE) (1975).

Some factors traditionally used in assessing credibility include, but are not limited to, "(1) the demeanor of the witness, (2) the inherent plausibility of the witness's testimony, (3) the consistency of the testimony of the witness with prior statements of the witness, (4) the internal consistency of the witness's statements, (5) the consistency of the testimony with other evidence, (6) the accuracy of the witness's testimony, and (7) the interest of the witness in the outcome of the proceeding." St. Claire Marine Salvage, Inc. v. Bulgarelli, No. 13-10316, 2014 WL 3827213, at *6 (E.D. Mich. Aug. 4, 2014), aff'd (July 22, 2015). A credibility assessment is generally based on the totality of the circumstances, after all relevant factors are taken into account. Id.

C. Principles of Contract Law

This case also implicates general principles of contract law. "An agreement to settle a legal dispute is a contract and its enforceability is governed by familiar principles of contract law." Jeff D. v. Andrus, 899 F.2d 753, 759 (9th Cir. 1989). With limited exceptions, "[f]ederal law controls the interpretation of a contract entered pursuant to federal law when the United States is a party." Kennewick Irrigation Dist. v. United States, 880 F.2d 1018, 1032 (9th Cir.

1989). Here, the United States Coast Guard is a party to the settlement agreement and the dispute stems from the enforcement of federal marine safety laws.

The interpretation of a settlement agreement "begins first with the terms of the agreement, and parole or extrinsic evidence is considered only if the language of the contract is ambiguous." Mariano v. Department of Veterans Affairs, 70 Fed.Appx. 552, 2003 WL 21675118 (Fed. Cir. 2003). If a contract is unclear on any particular point, it "must be interpreted as a whole, giving a reasonable, lawful, and effective meaning to all its terms." 1010 Potomac Assoc. v. Grocery Mfrs. of Am., Inc., 485 A.2d 199, 205 (D.C. Cir. 1984); see also Restatement of Contracts § 236 (1925). However, ambiguous provisions should be construed against the drafter of the contract. Cole v. Burns Int'l Sec. Servs., 105 F.3d 1465, 1485-86 (D.C. Cir. 1997), citing Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 62 (1995). "The reason for this rule is to protect the party who did not choose the language from an unintended or unfair result. Mastrobuono at 63.

Additionally, in assessing compliance with a settlement agreement, "the relevant standard is substantial compliance" with its terms. Jeff D. v. Otter, 643 F.3d 278, 283–84 (9th Cir. 2011). Settlement agreements, like consent decrees, have "many of the attributes of ordinary contracts [and] ... should be construed basically as contracts," thus applying the doctrine of substantial compliance, or substantial performance, is appropriate. Id. (quoting United States v. ITT Cont'l Baking Co., 420 U.S. 223, 236 (1975)). See also Langton v. Johnston, 928 F.2d 1206, 1220–23 (1st Cir.1991) (noting that the consent decrees at issue, "like most such decrees, were susceptible to satisfaction by diligent, good faith efforts, culminating in substantial compliance" and that "'letter-perfect compliance' is not required…"). The phrase "substantial compliance" implies "something less than a strict and literal compliance with the contract provisions but fundamentally it means that the deviation is unintentional and so minor or trivial as not

'substantially to defeat the object which the parties intend to accomplish.'" Wells Benz, Inc. v. United States, 333 F.2d 89, 92 (9th Cir.1964) (internal citations omitted).

Finally, in this decision I must consider whether Respondent provided evidence that he has met all the requirements concerning aftercare and drug testing required under the "cure" standard set out in Appeal Decision 2535 (SWEENEY) (1992) and the NTSB and Coast Guard decisions interpreting it. In Appeal Decision 2667 (THOMPSON) (2007), the Commandant concisely laid out the requirements for establishing cure:

> In Coast Guard suspension and revocation proceedings, the burden of establishing "cure" is on the Respondent. *See* Appeal Decisions 2638 (PASQUARELLA) and 2526 (WILCOX). Prior Commandant Decisions on Appeal make clear that to establish cure under 46 U.S.C. § 7704(c), a mariner must: (1) successfully complete a bona fide drug abuse rehabilitation program, and (2) demonstrate a complete non-association with drugs for a minimum of one year following the successful completion of the drug abuse program. *See* Appeal Decisions 2638 (PASQUARELLA) and 2546 (SWEENEY). In addition, pursuant to 46 C.F.R. § 16.201(f), "[b]efore an individual who has failed a required chemical test . . . may return to work aboard a vessel, the MRO must determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work." Finally, because a mariner is not authorized to sail under the authority of his or her credential until all of the requirements of cure are satisfied, the Coast Guard must retain a mariner's credential during the cure process. *See* Appeal Decisions 2638 (PASQUARELLA) and 2634 (BARETTA); Commandant Decision on Review #18 (CLAY).

I will also consider the provisions of 46 C.F.R § 5.901(d), which permits the Commandant to waive the three-year waiting period during which a person whose credential or endorsement was revoked or surrendered due to simple possession or use of dangerous drugs cannot reapply for an MMC. The conditions for waiving the waiting period are that the person (1) has successfully completed a bona fide drug abuse rehabilitation program; (2) has demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of the

rehabilitation program and; (3) is actively participating in a bona fide drug abuse monitoring program. Id.

D. Jurisdiction

Under the provisions of the settlement agreement, I have jurisdiction to conduct a hearing if, within 10 days after receiving notice from the Coast Guard that it rejected his evidence, Respondent files a written request with the Docketing Center. See Agreement ¶ 3c. Respondent made a timely request, thus jurisdiction exists.

IV. DISCUSSION

A. The Parties' Arguments

Respondent asserts that he has complied with the settlement agreement by (1) completing a outpatient treatment program; (2) being subject to random unannounced drug-testing and having fourteen negative tests; (3) attending NA meeting and receiving drug counseling from a pastor; (4) receiving a MRO return to work letter.

The Coast Guard argues that Respondent failed to comply with the settlement agreement in several respects. First, Respondent failed to prove by a preponderance of evidence that he had participated in a random, unannounced drug-testing program for a minimum period of one-year. Second, Respondent failed to prove by a preponderance of evidence that he remained drug free during a one year period. Third, Respondent's meetings with Reverend Wantland did not meet the requirement in the settlement for participation in a substance abuse monitoring program. Fourth, the records of meetings forming part of the substance abuse monitoring program were inaccurate and do not prove compliance with the Settlement Agreement.

B. Did Respondent prove by a preponderance of evidence that he had participated in a random, unannounced drug-testing program for a minimum period of one-year?

In its post-hearing brief, the Coast Guard argues that Respondent did not specifically offer as evidence the drug tests he had submitted during the prehearing phase. Under Coast Guard procedural rules, the party offering an exhibit must mark it, see 33 C.F.R. § 20.807(a), and must provide advance notice of its intent to offer an exhibit as evidence at hearing, see 33 C.F.R. § 20.601. The Coast Guard contends that "Respondent did not offer the test results as evidence, nor were they marked and included in the record otherwise. Consequently, they cannot be considered." (CG Post-Hearing Brief at 8-9).

At the conclusion of the March 3, 2016 telephonic prehearing conference, I ordered both parties to submit all documents in their possession relevant to the issue of whether Respondent satisfactorily completed the terms of the settlement agreement. On March 4, the Coast Guard submitted copies of the drug tests in question. (EX CG-3). Respondent also supplied copies of those tests. Accordingly, these exhibits are part of the record of this proceeding.

The main purpose of the hearing was to determine whether Respondent's pastor was qualified to provide aftercare support and whether their meetings were adequate for purposes of the settlement agreement; if not for this issue, I likely would have issued a decision on the record instead of holding a hearing. The parties had previously consented to the filing of this Settlement Agreement "without a hearing on any issue of fact or adjudication on any issue of law" and this hearing is pursuant to that agreement. It is not a proceeding on the merits of the Complaint under 33 C.F.R. Part 20. (Docket Item 17, Revised Settlement) Thus, the Coast Guard's procedural argument about the exhibits is extraneous as to the narrow issues the hearing was intended to resolve, and I will not consider it now.

During an April 18, 2016 telephonic prehearing conference, the Coast Guard stated that it was no longer objecting to the drug tests. Further, at this conference both parties agreed the

only issues remaining for the hearing were 1) whether Pastor Wantland had the qualifications to provide appropriate counseling under the settlement agreement, and 2) whether Respondent was permitted to utilize both AA/NA and another type of aftercare. However, despite the parties' agreement to narrow the relevant issues, the Coast Guard subsequently asked me to hear evidence regarding the Settlement Agreements' terms about substance abuse monitoring attendance and random drug tests with dilute negative test results. As a result, I directed the parties to attend another telephonic prehearing conference on May 16, 2016 at which I held that the parties had already limited the scope of the hearing. Notwithstanding that holding, I decided the Coast Guard would be allowed to pose questions to the MRO concerning dilute tests, but the other issues had been waived and the Coast Guard was not permitted to re-raise them.

Following multiple prehearing conferences and the in-person hearing, the Coast Guard has argued for the first time in its post-hearing brief that "the proffered test results do not meet the requirements because they began in July 2015, seven months after the settlement agreement began and six months after Respondent completed ASAM Level 1.0 care on December 1, 2014. . . . Given this seven month gap, Respondent's drug testing cannot be considered "reasonably spread throughout the year" as required by paragraph 2.c. of the Settlement Agreement." (CG Post-Hearing Brief at 9). While I acknowledge that the Settlement Agreement does contain the requirement for reasonable spacing of tests, there are several major problems with the Coast Guard's argument. First, this issue was not before me because the Coast Guard had not previously raised it, and the scope of the hearing was limited based on the parties' agreements during the prehearing conferences.

Additionally, the requirement for drug tests to be both "random" and "reasonably spaced" is problematic. The definition of "random" is "chosen, done, etc., without a particular plan or pattern." See http://www.merriam-webster.com/dictionary/random. To reasonably space the tests implicates some sort of plan or pattern. Moreover, Respondent did not determine when he would

be called to take a drug test and should not be penalized for the testing facility's determinations. The only aspect of testing Respondent controlled was enrolling in an appropriate program to ensure he was subject to random testing. See Appeal Decision 2669 (LYNCH) (2007) ("the term 'random' drug testing contemplates a situation where the mariner does not have any control over when and where drug testing is administered."). Respondent participated in such a program and took the required number of tests to substantially comply with the settlement agreement; he is also clearly in compliance with Sweeney, which only requires the mariner be *subject* to testing.

The Coast Guard also challenges the tests by stating, "Respondent offered no evidence that the tests were random; although some of the test results proffered were marked as such, others were not." (CG Post-Hearing Brief at 9). This argument is wholly inconsistent with the record. During the pre-hearing process, Respondent submitted into the record a letter from PeaceHealth Medical Group, dated March 7, 2016, which confirmed that all tests marked "Follow-up" were done so in error; all the tests Respondent took were random and should have been marked as such. (Docket Item 61). The Coast Guard received and reviewed this letter prior to the April 18, 2016 pre-hearing conference, and agreed during the conference that it was satisfied with the number and randomness of the tests. Even if the Coast Guard had not waived the issue, Respondent's evidence is sufficient to prove that his tests were random, as required by the settlement agreement.

C. Did Respondent prove by a preponderance of evidence that he remained drug free during a one year period?

In the Notice of Failure to Complete, the Coast Guard alleges Respondent did not submit the required number of negative drug tests. The Coast Guard's main contention is that a "negative dilute" drug test is not considered a "negative" test for purposes of the settlement agreement. Respondent disagreed, stating that the DOT drug testing standards at 49 C.F.R. Part 40, which the Coast Guard uses in implementing its drug testing program, consider a negative

dilute to be a negative test. At the May 16, 2016 prehearing conference, I stated that I would allow the Coast Guard to posit questions to the MRO concerning the dilute tests. Accordingly, this issue is within the scope of the hearing.

The Coast Guard contends in its post-hearing brief that the "Medical Review Officer's testimony at the hearing established that a dilute test result may contain drug metabolites. This fact is also reflected in the regulations governing urine sample collection and testing, which allow the marine employer to direct immediate retesting following a negative dilute test result and treat a failure to complete such a test a refusal. 46 C.F.R. §§ 40.155, 40.197. In light of the fact that ten of the 16 tests proffered noted dilute results . . . the record cannot support a finding by a preponderance of evidence that respondent remained drug free for a year." (CG Post-Hearing Brief at 9-10).

The Coast Guard's post-hearing brief misrepresents the MRO's testimony. While Dr. Buckell did testify that a negative dilute drug test could contain drug metabolites, he did not testify that this was true for any of Respondent's tests. Dr. Buckell's testimony established that there is a cutoff level above which a urine sample is classified as positive for drug metabolites. (Tr. pp. 160-61). Any urine sample—whether dilute or not—may contain drug metabolites but be classified as negative if the metabolite level is below the minimum threshold. (Tr. pp. 160, 165). Dr. Buckell testified that it is possible for a person whose drug metabolite level is very close to the threshold to test positive with a concentrated urine sample but negative if the urine is sufficiently diluted. (Tr. pp. 159, 165). However, based on my review of Respondent's drug tests, I note that none of them showed *any* evidence of drug metabolites. (Docket Item 34). If Respondent had attempted to defeat the drug tests by drinking fluids so his samples were dilute, the test results would still have showed a low concentration of drug metabolites. Dr. Buckell also testified that he would not expect a person to be able to defeat multiple tests in a row by way of dilution. (Tr. pp. 165-66).

The Coast Guard's argument is also inconsistent with DOT policy. In scenarios where an MRO informs a marine employer that one of its employees' tests was negative and dilute, the employer must take the following action:

> (1) If the MRO directs you to conduct a recollection under direct observation (i.e., because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL (see § 40.155(c)), you must do so immediately.
> (2) Otherwise (i.e., if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), you may, but are not required to, direct the employee to take another test immediately.
> (i) Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see § 40.67 (b) and (c)).
> (ii) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters.

49 C.F.R. § 40.197. Here, no marine employer was involved and the record contains no evidence that Respondent was ever informed that some of his tests were dilute. Moreover, the settlement agreement is silent as to the effect of a dilute test, so Respondent had no indication that the Investigating Officer would reject an otherwise-compliant drug test until he received the Notice of Failure to Complete.

The mere fact that a negative dilute urine sample *could* contain drug metabolites does not mean that every negative dilute test is automatically suspect or invalid. Here, all of Respondent's dilute tests contained creatinine levels greater than 5 mg/dL, and may therefore be deemed acceptable for purposes of the DOT drug testing program. They were negative for any drug metabolites whatsoever. Additionally, the record establishes that these tests were observed tests. It is clear that these tests are valid and acceptable for DOT and Coast Guard testing purposes, and the Coast Guard cannot refuse to accept them for this reason. If the Coast Guard wishes to adopt a policy that negative dilute samples are not acceptable for purposes of its settlement

agreements, it must use an appropriate method to set out that policy *prior* to entering into such agreements.

Respondent has proved by a preponderance of the evidence that he remained drug-free for the requisite period of time. He submitted the required number of drug tests, all of which were acceptable under DOT and Coast Guard drug testing standards. He has satisfied this requirement of the settlement agreement.

D. Did Respondent's meetings with Reverend Wantland meet the requirement in the settlement agreement for participation in a substance abuse monitoring program?

The Coast Guard's argument is that paragraph 2.d. of the settlement agreement:

> requires participation in "*a* substance abuse monitoring *program* (such as AA/NA)." (emphasis added). Respondent's participation in NA was not sufficient to meet the four monthly meeting requirement. The remaining meetings with Reverend Wantland cannot be considered part of a 'program' under any definition of the word. There was no recognized methodology used by Reverend Wantland.

(CG Post-Hearing Brief at 11). They also argue that the "Settlement Agreement's plain language requires four meetings per month in a single program." (Id.)

Respondent's position is that the Term "Substance Abuse Monitoring Program" as used in the Settlement Agreement is vague and ambiguous, and that AA and NA are not monitoring programs but self-help support groups. Further, Respondent argues that the counseling he received from Pastor Wantland met the requirements of the settlement agreement. (Tr. pp. 5, 217, 220).

1. What Constitutes a Substance Abuse Monitoring Program?

The language of the settlement agreement requires Respondent to "[a]ttend a substance abuse monitoring program (such as AA/NA) for a minimum period of one-year following successful completion of the drug rehabilitation program. The respondent must attend at least 4

meetings per month."[3] The Coast Guard argues that meetings with Reverend Wantland cannot be considered part of a "program" under any definition of the word. Thus, I must consider the meaning of the term *substance abuse monitoring program* to determine whether Respondent complied with the agreement.

I note that the word "program" is very broad. It may be defined as "a plan or system under which action may be taken toward a goal," see http://www.merriam-webster.com/dictionary/program, or "a planned, coordinated group of activities, procedures, etc., often for a specific purpose, or a facility offering such a series of activities: a drug rehabilitation program; a graduate program in linguistics," see http://www.dictionary.com/browse/program. Moreover, the word "program" does not stand alone as a requirement under the settlement agreement. Instead, the agreement requires Respondent to "attend a *substance abuse monitoring program*." (Emphasis added). This entire phrase must be read together in determining what the settlement agreement specifically requires of Respondent.

The settlement agreement is meant to implement the definition of cure found in Sweeney. I find that the best interpretation of the phrase *substance abuse monitoring program* is aftercare, following completion of a drug rehabilitation program, which is intended to monitor individuals for drug use and prevent relapse; it may or may not include additional treatment or counseling. This interpretation is buttressed by Sweeney, which states that an additional element of cure, beyond simply completing a recognized drug treatment program, is that "the respondent must have successfully demonstrated a complete non-association with drugs for a minimum period of one year following successful completion of the rehabilitation program." Id. Additionally, "[t]his includes participation in an active drug abuse monitoring program which incorporates random,

[3] I note that, while the Motion submitted in connection with the Revised Settlement Agreement explains that the random, unannounced drug testing requirement would be increased from the standard 12 tests to 16 in a one-year period, it did not specifically point out that the self-help meeting requirement also increased from two to four per month.

unannounced testing during that year." Id.; see also Appeal Decision 2669 (LYNCH). I also note that the Coast Guard Marine Employers Drug Testing Guide does not use the phrase *substance abuse monitoring program*, instead describing the settlement agreement as including "12 months of aftercare, consisting of documented attendance of support meetings like AA/NA (at least two meetings per month), not less than 12 unannounced random drug tests in 12 months (all must be negative), and obtain a return to work letter from the MRO."

The settlement agreement provides "such as AA/NA" as an example of a substance abuse monitoring program. This introduces confusion and inconsistency, as AA and NA are support groups and are not—in and of themselves—substance abuse monitoring programs. The Commandant has previously acknowledged that AA "is a support group for men and women seeking to maintain sobriety from alcohol. . . . AA does not keep membership records or case histories, make medical or psychiatric prognosis, or provide letters of reference to agencies or employers." Appeal Decision 2657 (BARNETT) (2006). Likewise, "Narcotics Anonymous is not affiliated with other organizations, including other twelve step programs, treatment centers, or correctional facilities. As an organization, NA does not employ professional counselors or therapists nor does it provide residential facilities or clinics. Additionally, the fellowship does not offer vocational, legal, financial, psychiatric, or medical services." See Information about NA, http://www.na.org/?ID=PR-index. Neither AA nor NA monitors drug use or offers random, unannounced drug testing to participants.

Paragraph 2(d) of the settlement agreement is clearly ambiguous, thus I must interpret it "as a whole, giving a reasonable, lawful, and effective meaning to all its terms." 1010 Potomac Assoc. v. Grocery Mfrs. of Am., Inc., 485 A.2d at 205. I must also consider whether Respondent's interpretation is reasonable, to protect him from "an unintended or unfair result." Mastrobuono, 514 U.S. at 63. Reading the settlement agreement as a whole, it appears to require Respondent to participate in a broad-based substance abuse monitoring program, which includes

both random, unannounced testing to demonstrate complete non-association with drugs and sustained attendance at recovery support meetings. In Respondent's case, the agreement required him to attend four such meetings per month.

2. Were the Support Meetings Respondent Attended Adequate?

The agreement does not specifically mandate attendance at AA and/or NA meetings, to the exclusion of any other form of support meeting. The mention of AA/NA merely provides an example; this is the accepted meaning of the term *such as*. See Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/such%20as ("used to introduce an example or series of examples"); Webster's New World Dictionary (3rd coll. ed.1988) 1337 (means "for example" or "like or similar to."). Use of the term *such as* "demonstrates that the [terms] after that phrase are not intended to constitute an exhaustive list, but rather are to serve as examples…" Mauerhan v. Principi, 16 Vet. App. 436, 442 (2002).

The agreement provides examples of two well-known organizations[4] that offer support meetings that comply with the aftercare requirement. An individual who attended other addiction and substance abuse support groups, including but not limited to SOS, SMART, Celebrate Recovery, and/or Rational Recovery would also be in compliance with the agreement.

Moreover, an individual is not limited to attending only one organization or provider's meetings. SAMHSA suggests to practitioners that "Clients should be encouraged to attend different groups until they find one in which they are comfortable." See SAMSHA, An Introduction to Mutual Support Groups for Alcohol and Drug Abuse, Substance Abuse in Brief Fact Sheet, Spring 2008, Vol. 5 Issue 1 http://www.samhsa.gov/shin. Mr. Wekell testified that "forcing somebody to go to a group that they don't want to go to is probably not going to give the best results" and that client input is important. (Tr. p. 110). It would not be consistent with

public policy to hold that a respondent who attended one provider's meeting and saw little value in it could not change programs and still comply with the settlement agreement. As long as each support group or provider a respondent utilizes offers services within the scope of the aftercare requirement, he or she should not be penalized for creating a personalized, effective support system.

The next question is whether Respondent's one-on-one meetings with Pastor Wantland are an adequate form of support under the aftercare requirement in the settlement agreement. I find that they are. Pastor Wantland is sufficiently qualified to offer substance abuse counseling. He had prior experience working as a substance abuse counselor at Northern State Hospital in Sedro-Woolley, Washington. (Tr. p. 9). The counseling he provided there was based on the same twelve-step program used by AA and NA. (Tr. p. 10). As a pastor, he has received at least some additional training in counseling congregants on substance abuse-related issues. (Tr. pp. 24-25). He later provided substance abuse counseling to members of his various congregations, but has not regularly counseled anyone other than family members and Respondent since the early 2000s. (Tr. pp. 15, 29). Respondent began receiving substance abuse counseling from Pastor Wantland approximately three years ago and has continued his sessions beyond the end date of the settlement agreement. (Tr. pp. 15, 20).

The Coast Guard has attempted to argue that only group meetings should qualify, and that one-on-one support is not a valid option under the settlement agreement. (CG Post-Hearing Brief at 10). The Coast Guard also argues that "because Reverend Wantland did not have personal experience with addiction and was himself unfamiliar with the sponsorship model, there is no evidence that their relationship followed this model." (Id.) I do not accept these arguments. Pastor Wantland testified that he used a similar twelve-step program to those found at AA and

[4] I note that an individual cannot attend an "AA/NA" meeting, as described in the settlement agreement, because Alcoholics Anonymous and Narcotics Anonymous are distinct organizations and hold separate meetings.

NA during his work as a drug counselor at Northern State Hospital. Clearly, he was familiar with the basic model utilized in those programs. Moreover, I do not accept that only people who have experienced addiction personally are qualified to offer support to other people in recovery. Mr. Wekell, Respondent's assigned SAP, testified that peer support does not need to come from people with similar addiction problems; "[i]t's not uncommon that people have a positive relationship with other people in the community, you know, maybe a police officer, or it might be a chaplain or a priest, you know, as well as a school teacher." (Tr. p. 107). The main criterion for being supportive is simply that the person is a positive influence and reminds the addict to "live a better life." (Id.)

The substance abuse professionals who testified in this matter supported Respondent's choice to engage in one-on-one counseling in addition to attending NA group meetings. As required by the settlement agreement, Respondent's SAP, Jeremy Wekell, evaluated him and prescribed a course of education and/or treatment. DOT rules require that the SAP:

> Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
> (1) You must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.
> (2) You must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.
> (c) Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
> (d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.

49 C.F.R. § 40.293. Mr. Wekell testified that Respondent complied with the course of treatment he prescribed, and that he included the requirement for attendance at a self-help or peer-support group because it was mandated by the settlement agreement and not because he felt it was

necessarily appropriate for Respondent's recovery. He also said that private counseling is often more effective than peer support groups in helping a person remain free of substance abuse because it is more personalized to the individual's needs. He testified that receiving multiple types of support, such as a mixture of peer support groups and private counseling, may be effective for some individuals. (Tr. p. 109; Docket Item 59). Mr. Wekell was aware that Respondent was receiving counseling from Pastor Wantland and believed it was a valuable tool in Respondent's recovery. (Id.)

Another SAP, Michelle Waltz, acted as a consultant for Respondent. Ms. Waltz believed the support Respondent was receiving from Pastor Wantland was equivalent to or better than the support he would receive at AA/NA meetings. The testimony from Mr. Wekell and Ms. Waltz establishes that one-on-one counseling is an adequate form of support for some people recovering from substance addiction.

After evaluating all the evidence in the record, I find that Respondent has submitted ample evidence to show he complied with the requirement to attend at least four support meetings per month as part of his aftercare, and the Coast Guard's attempts to rebut this are unpersuasive. The settlement agreement did not mandate Respondent to attend only AA or NA meetings, and it did not limit the type of self-help Respondent could seek as part of his aftercare. Respondent clearly believed his one-on-one counseling sessions with Pastor Wantland were a valuable tool in his recovery, and was permitted to combine these sessions with attendance at group meetings run by other organizations like NA. All of Respondent's one-on-one and group meetings, in combination with his participation in random, unannounced drug testing, constitute an adequate substance abuse monitoring program for purposes of the settlement agreement.

3. Are the records of meetings documenting the substance abuse monitoring program accurate and sufficient to prove compliance with the Settlement Agreement?

The Coast Guard argues that the evidence at the hearing indicated that the records provided to the Coast Guard to fulfill paragraph 2.k. were unreliable. This issue was not alleged in the notice of failure to complete or raised prior to hearing. At the pre-hearing conferences, we attempted to identify all issues the parties would be arguing at the hearing. The accuracy of the documentation was not noticed, and was beyond the scope of the hearing and outside the scope of impeachment. Accordingly, I did not allow the Coast Guard to call an unnoticed witness. The Coast Guard proffered that this witness would have testified that one date was inaccurate, and that another witness would have testified that two more dates were inaccurate. However, the Coast Guard was prohibited from calling the second witness because she was one of the investigating officers presenting the case: generally, the Coast Guard does not allow investigating officers to testify in a case that they present. Appeal Decisions 1716 (ROWELL) (1968), 2455 (WARDELL) (1987) and 2571 (DYKES) (1995).

At the hearing, for the first time in this proceeding, the Coast Guard alleged that the records showing attendance at both AA or NA group meeting and one-on-one meetings with Pastor Wantland were created months after the alleged meetings occurred, and were created by Respondent and his wife. This argument, which is unsupported by the evidence, is problematic for other reasons, as well.

First, the Coast Guard does not provide any examples of acceptable forms for documenting attendance at self-help meetings, but requires proof of attendance in the settlement agreement and generally accepts what respondents submit. The NA website states that "[m]embership in Narcotics Anonymous is voluntary; no attendance records are kept either for NA's own purposes or for others." NA Information, supra. Thus, any records generated in connection with these meetings are by nature incomplete and not kept in the ordinary course of

business. The settlement agreement obligated Respondent to document his attendance at self-help meetings in order to demonstrate compliance, and this necessarily required him to create and maintain his own records. Respondent attempted to comply, and should not be held to an impossible standard in doing so.

Similarly, the Coast Guard argued that the records documenting Respondent's one-on-one meetings with Pastor Wantland were improperly documented. Again, I note that either Respondent or Pastor Wantland had to create the attendance slips because no sample forms existed. Moreover, Pastor Wantland testified that he attested the dates of their meetings, and that he and Respondent had more counseling sessions than they documented for purposes of the settlement agreement. I find his testimony credible and find the documentation adequate.

Finally, the Coast Guard attempted to specifically contest Respondent's attendance at three sessions. The documentation Respondent submitted established 51 meetings in less than 12 months.[5] Thus, even if those three meetings were discounted, the record would still show that Respondent attended least 48 meetings within the required time frame.

E. Respondent Meets the Requirements of "Cure"

As discussed above, to establish cure under 46 U.S.C. § 7704(c) a mariner must: (1) successfully complete a bona fide drug abuse rehabilitation program, and (2) demonstrate a complete non-association with drugs for a minimum of one year following the successful completion of the drug abuse program. Further, pursuant to 46 C.F.R. § 16.201(f), "[b]efore an individual who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the MRO must determine that the individual is drug-free and the risk of

[5] Respondent claims that a Coast Guard IO called him in early December 2015 to request all his documentation, even though he had until February 1, 2016 to demonstrate compliance. While I did not reach the merits of his argument, I do note that the Notice of Failure to Complete was served on January 6, 2016, nearly a month before the compliance date in the agreement.

subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work."

It is undisputed that Respondent completed the required drug rehabilitation program. Petitioner has also demonstrated his non-association with drugs for a minimum of one (1) year as evidenced by participation in an active drug abuse monitoring program which incorporated random, unannounced testing. He has provided evidence that he was subject to random, unannounced testing and has provided the results of those random drug tests with no unexcused or missing tests.

Both the SAP and the MRO noted that the observed dilute negative tests are acceptable as random tests under DOT drug testing rules. The SAP also conducted a follow-up evaluation under 49 C.F.R. § 40.301 and found that Respondent meets the criteria for Full Sustained Remission of a substance use disorder and at low risk of re-offense. The MRO has concurred with those finding and has issued a return to work letter finding that Petitioner is drug-free and the risk of subsequent use of dangerous drugs by the Petitioner is sufficiently low to justify his return to work Such a determination by the MRO is an essential factor under Sweeney and the settlement agreement.

The purpose of the regulations for suspension and revocation proceedings is remedial and intended to maintain standards for competence and conduct essential to the promotion of safety at sea. 46 C.F.R. § 5.5. Based on the totality of evidence in record, I find that Respondent has provided sufficient evidence to establish "cure" under Appeal Decision 2535 (SWEENEY) and the NTSB and Coast Guard decisions interpreting it. Further, I find that the Respondent has substantially complied with the settlement agreement. Therefore the Stayed Revocation is converted to an Outright Suspension for the period of deposit and Respondent's merchant mariner credential must be returned.

V. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent and the subject matter of this proceeding are properly within the jurisdiction of the Coast Guard under 46 U.S.C. § 7704(c); 46 C.F.R. Parts 5 and 16; 33 C.F.R. Part 20; and the APA codified at 5 U.S.C. §§ 551-59.

2. Respondent has substantially complied with the requirements of the settlement agreement.

3. Respondent has successfully completed the requirements of cure. Appeal Decision 2535 (SWEENEY). 46 C.F.R. § 16.201.

ORDER

IT IS HEREBY ORDERED THAT Respondent has demonstrated successful completion of the cure process. Respondent's Merchant Credential shall be **RETURNED** and the record will reflect an **outright suspension for the period of deposit.**

PLEASE TAKE NOTICE that a settlement includes a waiver of all rights to seek judicial review, or otherwise challenge or contest the validity, of the decision under 33 C.F.R. § 20.502 and accordingly that this Decision constitutes Final Agency Action in this matter.

SO ORDERED.

George J. Jordan
US Coast Guard Administrative Law Judge

Date: August 24, 2016

Appendix A: Docket Filings

Docket Item ID	Document Description	Document Type	Document Date	Service Date	Filing Date
1	Complaint_4705917_09-09-2013_09Sep2013_102325.doc	Complaint	09/10/2013	09/10/2013	09/09/2013
2	Notice of Filing Enf Activity # 4705917_09092013102517.doc	Notice of Filing	09/09/2013		09/09/2013
3	CertificateofServiceforComplaint_4705917_09-10-2013.dot	Certificate of Service	09/10/2013		09/10/2013
4	ReturnofServiceforComplaint_4705917_09-10-2013.dot	Return of Service	09/10/2013		09/10/2013
5	SettlementDrugs_4705917_09-10-2013_10Sep2013_135904.doc	Settlement(Drugs)	09/10/2013	01/07/2016	09/10/2013
6	Notice_Of_Assignment_Uncontested_12Sep2013_074121.doc	Notice of Assignment	09/12/2013	09/12/2013	09/12/2013
7	CertificateofServiceforNoticeofAssignment_4710435_09-12-2013.dot	Certificate of Service	09/12/2013		09/12/2013
8	Consent Order_17Sep2013_130335.doc	Consent Order	09/17/2013	09/17/2013	09/17/2013
9	CertificateofServiceforConsentOrder_4710435_09-17-2013.dot	Certificate of Service	09/17/2013		09/17/2013
10	Noticeunsatsettlementcomp_4705917_10-01-2014_01Oct2014_095439.doc	Notice of Unsatisfactory Settlement Completion	10/01/2014	10/01/2014	10/01/2014
11	CertificateofServiceforNoticeofUnsatisfactorySettlementCompletion_4705917_10-01-2014.dot	Certificate of Service	10/01/2014		10/01/2014
12	Respondents Request for a Hearing 2013-0337.pdf		10/06/2014		10/06/2014
13	Notice_Of_ReAssignment_Uncontested_09Oct2014_074052.doc	Notice of Assignment	10/09/2014	10/09/2014	10/09/2014
14	CertificateofServiceforNoticeofAssignment_4710435_10-09-2014.dot	Certificate of Service	10/09/2014		10/09/2014
15	Pre-hearing Conf Scheduling Order_14Oct2014_115023.doc	Pre-Hearing Conference Scheduling Order	10/14/2014	10/14/2014	10/14/2014
16	CertificateofServiceforPre-HearingConferenceSchedulingOrder_4710435_10-14-2014.dot	Certificate of Service	10/14/2014		10/14/2014
17	GeneralMotion_4705917_11-03-2014_03Nov2014_112625.doc	General Motion	11/03/2014	11/03/2014	11/03/2014

18	CertificateofServiceforGeneralMotion_4705917_11-03-2014.dot	Certificate of Service	11/03/2014		11/03/2014
19	Order_06Nov2014_120954.doc	General Order	11/06/2014	11/06/2014	11/06/2014
20	CertificateofServiceforGeneralOrder_4710435_11-06-2014.dot	Certificate of Service	11/06/2014		11/06/2014
21	Noticeunsatsettlementcomp_4705917_01-06-2016_06Jan2016_130301.doc	Notice of Unsatisfactory Settlement Completion	01/06/2016	01/07/2016	01/06/2016
22	CertificateofServiceforSettlement(Drugs)_4705917_01-07-2016.dot	Certificate of Service	01/07/2016		01/07/2016
23	CertificateofServiceforNoticeofUnsatisfactorySettlementCompletion_4705917_01-07-2016.dot	Certificate of Service	01/07/2016		01/07/2016
24	Hearing request based on Notice of Failure.docx	Motion for Hearing	01/13/2016		01/13/2016
25	Notice_Of_ReAssignment_Uncontested_14Jan2016_075045.doc	Notice of Assignment	01/14/2016	01/14/2016	01/14/2016
26	CertificateofServiceforNoticeofAssignment_4710435_01-14-2016.dot	Certificate of Service	01/14/2016		01/14/2016
27	Kochis John Case Summary 2.pdf	Filings Other	02/12/2016		02/12/2016
28	Pre-hearing Conf Scheduling Order_25Feb2016_104817.doc	Pre-Hearing Conference Scheduling Order	02/25/2016	02/25/2016	02/25/2016
29	CertificateofServiceforPre-HearingConferenceSchedulingOrder_4710435_02-25-2016.dot	Certificate of Service	02/25/2016		02/25/2016
30	Order_04Mar2016_131514.doc	General Order	03/04/2016	03/04/2016	03/04/2016
31	CertificateofServiceforGeneralOrder_4710435_03-04-2016.dot	Certificate of Service	03/04/2016		03/04/2016
32	GeneralMotion_4705917_03-08-2016_08Mar2016_134552.doc	General Motion	03/08/2016	03/08/2016	03/08/2016
33	CertificateofServiceforGeneralMotion_4705917_03-08-2016.dot	Certificate of Service	03/08/2016		03/08/2016
34	Attachments to General Motion.pdf				03/10/2016
35	Order_14Mar2016_142821.doc	General Order	03/14/2016	03/14/2016	03/14/2016
36	CertificateofServiceforGeneralOrder_4710435_03-14-2016.dot	Certificate of Service	03/14/2016		03/14/2016
37	Pre-hearing Conf Scheduling Order_12Apr2016_134057.doc	Pre-Hearing Conference Scheduling Order	04/12/2016	04/12/2016	04/12/2016

38	CertificateofServiceforPre-HearingConferenceSchedulingOrder_4710435_04-12-2016.dot	Certificate of Service	04/12/2016		04/12/2016
39	MotionforTelephonicTestimony_4705917_04-19-2016_19Apr2016_104057.doc	Motion for Telephonic Testimony	04/19/2016	04/19/2016	04/19/2016
40	CertificateofServiceforMotionforTelephonicTestimony_4705917_04-19-2016.dot	Certificate of Service	04/19/2016		04/19/2016
41	Hearing Scheduling Order_27Apr2016_110519.doc	Hearing Scheduling Order	04/27/2016	04/27/2016	04/27/2016
42	CertificateofServiceforHearingSchedulingOrder_4710435_04-27-2016.dot	Certificate of Service	04/27/2016		04/27/2016
43	GeneralMotion_4705917_05-06-2016_06May2016_130844.doc	General Motion	05/06/2016	05/06/2016	05/06/2016
44	CertificateofServiceforGeneralMotion_4705917_05-06-2016.dot	Certificate of Service	05/06/2016		05/06/2016
45	Pre-hearing Conf Scheduling Order_10May2016_132908.doc	Pre-Hearing Conference Scheduling Order	05/10/2016	05/10/2016	05/10/2016
46	CertificateofServiceforPre-HearingConferenceSchedulingOrder_4710435_05-10-2016.dot	Certificate of Service	05/10/2016		05/10/2016
47	Notice of Appearance.pdf	Notice of Appearance	05/10/2016	05/10/2016	05/10/2016
48	Respondents Notice of Expected Witnesses.pdf	Filings Other	05/23/2016	05/23/2016	05/23/2016
49	Respondents Notice of Expected Exhibits.pdf	Filings Other	05/23/2016	05/23/2016	05/23/2016
50	GeneralNotice_4705917_05-25-2016_25May2016_083009.doc	General Notice	05/25/2016		05/25/2016
51	Order_10Jun2016_151722.doc	General Order	06/10/2016	06/10/2016	06/10/2016
52	CertificateofServiceforGeneralOrder_4710435_06-10-2016.dot	Certificate of Service	06/10/2016		06/10/2016
53	PostHearingBrief_4705917_07-01-2016_01Jul2016_134716.doc	Post Hearing Brief	07/01/2016	07/01/2016	07/01/2016
54	CertificateofServiceforPostHearingBrief_4705917_07-01-2016.dot	Certificate of Service	07/01/2016		07/01/2016
55	Email from Respondent dated March 4 2016.pdf	Filings Other	03/04/2016		08/09/2016
56	Email from Respondent March 9 2016.pdf	Filings Other	03/09/2016		08/09/2016
57	2016-04-18 Telephone conference USCG v Kochis 2015-0337.pdf	Filings Other	04/18/2016		08/09/2016

58	Transcript and ALJ Exhibit 2013-0337.pdf				08/17/2016
59	Kochis Letter03072016.pdf	Filings Other	03/07/2016		08/19/2016
60	Kochis UAs03072016.pdf	Filings Other	03/07/2016		08/19/2016
61	Kochis John letter from Rhonda revised.pdf	Filings Other	03/10/2016		08/19/2016