

practice.” 21 U.S.C. 802(21). Likewise, the CSA conditions the granting of a practitioner’s application on his/her possession of authority to dispense controlled substances under state law. See 21 U.S.C. 823(f) (“The Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.”). Of further note, the CSA defines the term “dispense” as meaning “to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner.” *Id.* § 802(10) (emphasis added).

Thus, the Agency has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. See, e.g., *James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed Appx. 826 (4th Cir. 2012). And because a practitioner’s authority under the CSA is based on his/her authority to dispense controlled substances under the laws of the State in which he practices, the Agency has further held that “to the extent a practitioner is not authorized under state law to dispense certain categories or schedules of controlled substances, he can no longer lawfully dispense them under federal law.” *Kenneth Harold Bull*, 78 FR 62666, 62672 (2013).

In *Bull*, a case in which the practitioner’s state board had prohibited him from prescribing narcotics, the Agency explained that “where a state board takes such action, at a minimum, a practitioner’s CSA registration must be limited to authorize the dispensing of only those controlled substances, which he can lawfully dispense under state law.” *Id.* at 62672. Here, the Florida Department of Health has suspended Respondent’s authority to prescribe any medications listed in schedules II, III, or IV of the Florida schedules of controlled substances, and under Florida law, Respondent is limited to prescribing only those controlled substances in schedule V.<sup>4</sup> Accordingly, I will order

<sup>4</sup> Have reviewed the schedules of controlled substances under Florida law, I conclude that they are coterminous with those of the CSA with the exception of buprenorphine, which under Florida law, is a schedule V controlled substance. While buprenorphine was formerly a schedule V drug under the CSA, in 2002, the drug was placed in schedule III following the Department of Health and Human Services’ reevaluation of the drug’s “abuse potential and dependence profile in light of numerous scientific studies and years of human experience with [the] drug.” *Schedules of*

that Respondent’s registration shall be restricted to prohibit him from dispensing controlled substances in schedules II through IV and to authorize only the prescribing of schedule V controlled substances.

The conduct giving rise to the criminal charges for racketeering activity, unlawful distribution of controlled prescription drugs, and manslaughter related to drug overdose deaths could serve as the basis for a request for total revocation based on public interest grounds (or, in the event of a conviction, based upon a conviction of a felony related to controlled substances). 21 U.S.C. 824(a)(2) and (4). The Order to Show Cause before me is based solely upon Respondent’s lack of state authority to handle certain controlled substances. This Order is constrained by the basis set forth in the Order to Show Cause, and I will only consider Respondent’s alleged criminal conduct if and when he is served with an Order to Show Cause why his registration should not be revoked in total based on public interest grounds, and he is given the opportunity to address that allegation.

#### Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BB3166053, issued to Ibem R. Borges, M.D., be, and it hereby is, restricted to prohibit the dispensing of controlled substance in schedules II through IV and to authorize only the prescribing of controlled substances in schedule V of the Controlled Substances Act (21 CFR 1308.15). This Order is effective immediately.

*Controlled Substances: Rescheduling of Buprenorphine From Schedule V to Schedule III*, 67 FR 62354 (2002) (final rule). Thus, this Agency has determined that the drug “has a potential for abuse less than the drugs or other substances in schedules I and II,” that it “has a currently accepted medical use in treatment in the United States,” and most importantly, that “[a]buse of the drug . . . may lead to moderate or low physical dependence or high psychological dependence.” 21 U.S.C. 812(b)(3); see also 67 FR at 62367.

Notably, Florida has adopted the same criteria for placing a drug in its schedule III as the CSA uses, see Fla. Stat. 893.03(3), and the State has determined that Respondent’s “continued, unrestricted practice of medicine poses an immediate serious danger to the public health, safety or welfare,” and concluded, *inter alia*, that he cannot safely prescribe controlled substances in schedule III. GX 8, at 20; see also *id.* at 28. I therefore hold that notwithstanding that buprenorphine remains a schedule V drug under Florida law and that the scope of his federal authority derives from his authority under state law, the placement of the drug in schedule III of the CSA precludes him from lawfully prescribing the drug under his DEA registration.

Dated: April 5, 2016.

**Chuck Rosenberg,**

*Acting Administrator.*

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## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of National Drug Control Policy

#### Designation of Two Counties as High Intensity Drug Trafficking Areas

**AGENCY:** Office of National Drug Control Policy, Executive Office of the President.

**ACTION:** Notice of HIDTA Designations.

**SUMMARY:** The Director of the Office of National Drug Control Policy designated two additional counties as High Intensity Drug Trafficking Areas (HIDTA) pursuant to 21 U.S.C. 1706. The new counties are Austin and Walker Counties in Texas as part of the Houston HIDTA.

**FOR FURTHER INFORMATION CONTACT:**

Questions regarding this notice should be directed to Michael K. Gottlieb, Associate Director, Programs Office, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 395–4868.

Dated: March 23, 2016.

**Michael Passante,**

*Deputy General Counsel.*

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## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 23, 2016. This