

In addition, the record includes a July 29, 2016 letter from the Office of Inspector General, Department of Health and Human Services, to Respondent; the letter notified Respondent that he was “being excluded from participation in any capacity in the Medicare, Medicaid, and *all* Federal health care programs as defined in section 1128B(f) of the Social Security Act . . . for the minimum period of 5 years.” GX 12, at 1. The letter explained that Respondent was being excluded based on his “felony conviction[s]” for “a criminal offense related to the delivery of an item or service under the Medicare or a State health care program,” and for “criminal offense[s] related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance as defined under Federal or State law.” *Id.* (citing 42 U.S.C. 1320a–7(a)(1) and (4)).

Discussion

Under Section 304(a) of the Controlled Substances Act, “[a] registration pursuant to section 823 of [the Act] to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant—

* * * * *

(2) has been convicted of a felony under this subchapter . . . or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance . . . ;

(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances . . . ;

* * * * *

(5) has been excluded . . . from participation in a program pursuant to section 1320a–7(a) of Title 42.

21 U.S.C. 824(a).

The Government has “the burden of proving that the requirements for such revocation or suspension pursuant to section 304(a) . . . (21 U.S.C. 824(a) . . .) are satisfied. 21 CFR 1301.44(e). Thus, even where a registrant waives his right to a hearing, the Government is required to produce substantial evidence to support the proposed action. In this matter, having considered the evidence submitted by the Government, I conclude that there are three separate and independent grounds to revoke Respondent’s registration.

First, as found above, on May 26, 2016, the Common Pleas Court of Greene County, Ohio entered a judgment convicting Respondent of four counts of trafficking in drugs (suboxone, zolpidem, and diazepam) under Ohio law, as well as a single count of

knowingly permitting real estate he owned or controlled to be used for drug trafficking. *See* Ohio Rev. Code §§ 2925.03(A); 2925.13(B). Both of these provisions are felony offenses under Ohio law. Thus, I find that Respondent “has been convicted of a felony offense . . . relating to any substance defined in [the CSA] as a controlled substance.” 21 U.S.C. 824(a)(2). This finding provides reason alone to revoke Respondent’s registration and his DATA-Waiver identification number.

Second, the evidence shows that based on his guilty pleas in the criminal case, on May 11, 2016, the Ohio Board immediately suspended Respondent’s license to practice medicine and surgery in the State, and that on October 20, 2016, the Board revoked his license. By virtue of the Board’s actions, Respondent lacks authority to dispense controlled substances under the laws of the State of Ohio, the State in which he is registered with DEA, and thus, he is no longer a practitioner within the meaning of the Act. *See* 21 U.S.C. 802(21) (defining “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice”); *see also id.* § 823(f) (directing that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices”).

As the Agency has long held, “[s]tate authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.” *Frederick Marsh Blanton*, 43 FR 27616 (1978). Because the possession of state authority is a prerequisite to the maintenance of a practitioner’s registration, the Agency has long held that revocation is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR at 27616.⁷ Accordingly, Respondent’s

⁷ Thus, even if Respondent were to credibly accept responsibility for his criminal conduct and put forward sufficient evidence of remedial

registration (and DATA-Waiver number) are subject to revocation for this reason as well. 21 U.S.C. 824(a)(3).

Finally, the evidence shows that Respondent has now been excluded “from participation in any Federal health care program” based on his state conviction for Medicaid fraud, as well as his felony convictions relating to the distribution of controlled substances. *See* 42 U.S.C. 1320a–7(a)(1) & (4); *see also* GX 12. Respondent has thus been excluded pursuant to the mandatory exclusion provisions of 42 U.S.C. 1320a–7(a). Accordingly, his registration (and DATA-Waiver number) are also subject to revocation under 21 U.S.C. 824(a)(5).

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 FM1335353 issued to John P. Moore, III, M.D., be, and it hereby is, revoked. I further order that DATA-Waiver identification number XM1335353 issued to John P. Moore, II, M.D., be, and it hereby is, revoked. This Order is effective immediately.⁸

Dated: February 2, 2017.

Chuck Rosenberg,
Acting Administrator.

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DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–0102]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Prison Population Reports; Summary of Sentenced Population Movement—National Prisoner Statistics

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs,

measures, the revocation of his state authority would still require that I revoke his DEA registration and DATA-waiver number. I further reject Respondent’s contention that I have discretion in the case of a practitioner to not revoke his registration based on his loss of state authority. *See* GX 8, at 2–3; *see Hooper v. Holder*, 481 Fed. Appx. at 827–28; *see also Rezik A. Saqer*, 81 FR 22122, 22124–27 (2016).

⁸ Based on the same reasons that led the Ohio Board to immediately suspend Respondent’s medical license, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 11, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact E. Ann Carson, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: elizabeth.carson@usdoj.gov; telephone: 202-616-3496).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.
2. *The Title of the Form/Collection:* Summary of Sentenced Population Movement—National Prisoner Statistics.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers for the questionnaire are NPS-1b (Summary of Sentenced Population Movement) and NPS-1B(T)

Prisoner Population Report—U.S. Territories. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* For the NPS-1B form, 51 central reporters (one from each state and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in privately operated facilities, county or other local authority correctional facilities, or in other state or Federal facilities on December 31;

(c) Prison admission information in the calendar year for the following categories: New court commitments, parole violators, other conditional release violators returned, transfers from other jurisdictions, AWOLs and escapees returned, and returns from appeal and bond;

(d) Prison release information in the calendar year for the following categories: Expirations of sentence, commutations, other conditional releases, probations, supervised mandatory releases, paroles, other conditional releases, deaths by cause, AWOLs, escapes, transfers to other jurisdictions, and releases to appeal or bond;

(e) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(f) Number of inmates under jurisdiction classified as non-citizens and/or under 18 years of age;

(g) Testing of incoming inmates for HIV; and HIV infection and AIDS cases on December 31; and

(h) The aggregated rated, operational, and/or design capacities, by sex, of the state/BOP's correctional facilities at year-end.

For the NPS-1B(T) form, five central reporters from the U.S. Territories and Commonwealths of Guam, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, and American Samoa will be asked to provide information for the following categories for the calendar year just ended, and, if available, for the previous calendar year:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and

unsentenced inmates; and an assessment of the completeness of these counts (complete, partial, or estimated)

(b) The number of inmates under jurisdiction on December 31 but in the custody of facilities operated by other jurisdictions' authorities solely to reduce prison overcrowding;

(c) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(d) The aggregated rated, operational, and/or design capacities, by sex, of the territory's/Commonwealth's correctional facilities at year-end.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 51 respondents, each taking an average 6.5 total hours to respond to the NPS-1B form. 5 respondents, each taking an average of 2 hours to respond to the NPS-1B(T) form. The burden estimate is based on feedback from respondents in the most recent data collection, and remains the same as the previous clearance.

6. *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 341.5 total burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: February 7, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On February 3, 2017, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Indiana, Hammond Division, in the lawsuit entitled *United States and the State of Indiana v. Sanitary District of*