

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823(a) and determined that the registration of these registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed persons.

Dated: November 16, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017-25285 Filed 11-21-17; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17-35]

First Choice Surgery Center of Baton Rouge, L.L.C.; Decision and Order

On May 24, 2017, the Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to First Choice Surgery Center of Baton Rouge, L.L.C (Respondent), of Baton Rouge, Louisiana. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. FF4394209, on the ground that "the clinic does not have authority to dispense controlled substances in Louisiana, the [S]tate in which the clinic is located." Show Cause Order, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)). The Show Cause Order also proposed revocation on the ground that Respondent's owner, "Dr. Arnold Feldman, M.D., has been found guilty by the Louisiana State Board of Medical Examiners of misconduct related to controlled substances." *Id.* (citing 21 U.S.C. 823(f) and 824(a)(2); 21 CFR 1306.04).

As to the jurisdictional basis for the proceeding, the Show Cause Order alleged that Respondent is "registered . . . as a hospital/clinic in [s]chedules II-V pursuant to [Registration No.] FF4394209 at 505 East Airport Drive, Baton Rouge, Louisiana." *Id.* at 2. The

Order alleged that this registration does not expire until "September 30, 2019." *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order alleged that Respondent "is without authority to dispense controlled substances in Louisiana." *Id.* The Show Cause Order alleged that while Respondent "previously held" a Louisiana controlled substance license, "[t]his license expired on September 23, 2016 and has not been renewed." *Id.* The Order then asserted that "based upon [Respondent's] lack of [s]tate authority to dispense controlled substances in . . . Louisiana," its registration must be revoked. *Id.*

As to the allegation based on its owner's misconduct, the Show Cause Order alleged that "[o]n August 15, 2016, the Louisiana State Board of Medical Examiners found [Respondent's owner] guilty of violating [state law] by giving his staff pre-signed controlled substance prescriptions and/or allowing his staff to utilize a 'Ghost writer' to affix his signature to controlled substances prescriptions." *Id.* The Order further alleged that its owner's conduct violated 21 U.S.C. 841(a)(1) and 21 CFR 1306.04. *Id.*

The Show Cause Order notified Respondent of its right to request a hearing on the allegations or to submit a written statement while waiving its right to a hearing and the procedure for electing either option. *Id.* (citing 21 CFR 1301.43). In addition, the Order notified Respondent of its right to submit a corrective action plan pursuant to 21 U.S.C. 824(c)(2)(C). *Id.* at 3-4.

On June 15, 2017, Respondent, through its counsel, requested a hearing on the allegations. Letter from Respondent to Hearing Clerk, Office of Administrative Law Judges (June 15, 2017). The matter was assigned to Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ), who, on June 16, 2017, issued an order directing the Government to file evidence supporting the allegations by June 29, 2017 at 2 p.m., as well any motion for summary disposition. Briefing Schedule For Lack Of State Authority Allegations, at 1. The ALJ's order also provided that if the Government moved for summary disposition, Respondent's opposition was due by July 13, 2017 at 2 p.m. *Id.*

On June 20, 2017, the Government filed its Motion for Summary Disposition. In its Motion, the Government argued that Respondent is a "practitioner" under the CSA and that because its "state authority has terminated, [it] no longer meets the statutory definition of a practitioner" and is not entitled to maintain its

registration. Motion, at 3. The Government thus sought a Recommendation that Respondent's registration be revoked. *Id.*

As support for its motion, the Government provided: (1) A copy of Respondent's registration; (2) a letter dated May 22, 2017 from the Assistant Executive Director of the Louisiana Board of Pharmacy to a DEA Diversion Investigator (DI) stating that Respondent's Louisiana Controlled Dangerous Substance (CDS) license expired September 23, 2016; (3) a November 16, 2016 Order of the Louisiana Board of Pharmacy indefinitely suspending the Controlled Dangerous Substance license of Arnold E. Feldman based on the suspension of his Louisiana Medical license; and (4) a declaration of the aforementioned DI that Respondent "currently has no authority to handle controlled substances in Louisiana." Mot. for Summ. Disp., Appendices A, B, and C. The Government did not, however, seek summary disposition based on the allegation that Respondent's owner had been found guilty by the Louisiana Board of misconduct related to controlled substances. *Compare* Mot. for Summ. Disp. with Show Cause Order, at 1-2.

Respondent did not file a Reply to the Government's Motion, and on July 25, 2017, the ALJ granted the Government's Motion. Order Granting Summary Disposition (R.D.), at 3, 6. Noting that the Government had "provided a certified letter from the Louisiana Board of Pharmacy indicating that the Respondent held Louisiana Board of Pharmacy Number CDS.043803-ASC, but that this license expired on September 23, 2016," *id.* at 2, the ALJ found it "undisputed that the Respondent lacks state authorization to dispense controlled substances in Louisiana, where [it] is registered." *Id.* at 5. Applying the Agency's longstanding rule "that a practitioner must be currently authorized to dispense controlled substances by the State in which [it] practices in order to obtain and maintain a registration," *id.* at 4 (citation omitted), the ALJ concluded that "Respondent cannot maintain a DEA registration for any location in" Louisiana and recommended that I revoke its registration.¹ *Id.* at 5-6.

¹ With respect to the allegation that Respondent's owner had been found guilty of misconduct by the Louisiana Board of Medical Examiners, the ALJ noted that [t]he Government did not provide any argument or evidence in its Motion." R.D. 6 n.1. However, as the ALJ observed, "Respondent's lack of state authority to dispense controlled substances

Having considered the record, I adopt the ALJ's finding of fact that Respondent's Louisiana CDS license has expired and his of conclusion of law that Respondent lacks state authorization to dispense controlled substances in Louisiana. I will therefore adopt the ALJ's recommendation that I revoke Respondent's registration. I make the following findings.

Findings of Fact

Respondent is the holder of DEA Certificate of Registration No. FF4394209, pursuant to which it is authorized to dispense controlled substances in schedules II through V as a Hospital/Clinic, at the registered address of: First Choice Surgery Center of Baton Rouge, L.L.C., 505 East Airport Drive, Baton Rouge, Louisiana. Mot. for Summ. Disp., Appendix A. This registration does not expire until September 30, 2019. *Id.* Respondent is owned by Arnold E. Feldman, M.D. Resp.'s Hrng. Req. at 1.

Respondent also previously held Louisiana Controlled Dangerous Substance License No.043803-ASC. *Id.*, at Appendix B. However, Respondent allowed this license to expire on September 23, 2016. *Id.*

Accordingly, I find that Respondent currently lacks authority to dispense controlled substances under the laws of the State of Louisiana.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), "upon a finding that the registrant . . . has had [its] State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, which includes a hospital or clinic, *see* 21 U.S.C. 802(21), DEA has long 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); *Frederick Marsh Blanton*, 43 FR 27616 (1978).

This rule derives from the text of two other provisions of the CSA, section 802(21), which defines the term

is a sufficient independent ground to recommend the revocation of [its] registration." *Id.*

"practitioner," and section 823(f), which sets forth the registration requirements for practitioners. Notably, in section 802(21), Congress defined "the term 'practitioner' [to] mean[] a . . . physician . . . hospital, 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." 21 U.S.C. 802(21) (emphasis added). The text of this provision makes clear that a hospital is not a practitioner within the meaning of the CSA if it is not "licensed, registered or otherwise permitted, by the jurisdiction in which [it] practices . . . to dispense [or] administer . . . a controlled substance in the course of professional practice." *Id.*

To the same effect, Congress, in setting the requirements for obtaining a practitioner's registration, directed 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 [it] practices." 21 U.S.C. 823(f). Based on these provisions, the Agency held nearly forty years ago that "[s]tate authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance *and maintenance* of a Federal controlled substances registration." *Blanton*, 43 FR at 27617 (revoking physician's registration based on one-year suspension of his state license) (emphasis added).

Having allowed its Louisiana CDS license to expire, Respondent is no longer authorized to dispense controlled substances in the State.² Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, and Respondent is no longer authorized to dispense controlled substances under the laws of Louisiana, the State in which it is registered, I adopt the ALJ's recommended order and will order that its registration be revoked. *See, e.g., Hooper*, 76 FR at 71371-72; *Sheran Arden Yeates*, 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.

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

² Subsequent to the ALJ's issuance of his Recommended Decision, Respondent has not filed a motion supported by any evidence that its CDS license has been reinstated with either the ALJ or my Office.

Registration No. FF4394209 issued to First Choice Surgery Center of Baton Rouge, L.L.C., be, and it hereby is, revoked. This *order* is effective immediately.³

Dated: November 13, 2017.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2017-25288 Filed 11-21-17; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 17- 087]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Thursday, December 7, 2017, 1:00-5:00 p.m.; and Friday, December 8, 2017, 9:00 a.m.-12:00 noon, Local Time.

ADDRESSES: NASA Headquarters, Program Review Center (PRC), Room 9H40, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358-1148 or marla.k.king@nasa.gov.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the Toll Number 1-630-395-0139 or Toll Free Number 1-888-603-9606 and then the numeric passcode 8148619, followed by the # sign, on both days. **Note:** If dialing in, please "mute" your phone. To join via WebEx, the link is <https://nasa.webex.com/>. The meeting number on December 7 is 996 950 837 and the meeting password is NACDEC717! (case sensitive); the meeting number on December 8 is 997 757 737 and the meeting password is NACDEC817@(case sensitive).

³ As found above, Respondent is owned by Dr. Arnold E. Feldman. For the same reasons which led the former Acting Administrator to revoke Dr. Feldman's Louisiana registration with an immediate effective date, *see Arnold E. Feldman*, 82 FR 39614, 39618 & n.8 (2017), I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.