

## DEPARTMENT OF JUSTICE

## Antitrust Division

**Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association**

Notice is hereby given that, on May 8, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), National Fire Protection Association (“NFPA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NFPA has provided an updated and current list of its standards development activities, related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development and conformity assessment activities are publically available at [nfpa.org](http://nfpa.org).

On September 20, 2004, NFPA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2004 (69 FR 61869).

The last notification was filed with the Department on March 6, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 2018 (83 FR 17852).

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

[Docket No. 18–11]

**Health Fit Pharmacy; Decision and Order**

On November 15, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Health Fit Pharmacy (Respondent), of Houston, Texas. The Show Cause Order proposed the

revocation of Respondent’s DEA Certificate of Registration No. FH1729942 on the ground that he has “no state authority to handle controlled substances.” Order to Show Cause, at 1 (citing 21 U.S.C. 824(a)(3)). For the same reason, the Order also proposed the denial of any of Respondent’s “applications for renewal or modification of such registration and any applications for any other DEA registrations.” *Id.*

With respect to the Agency’s jurisdiction, the Show Cause Order alleged that Respondent is the holder of Certificate of Registration No. FH1729942, pursuant to which it is authorized to dispense controlled substances as a retail pharmacy in schedules II through V, at the registered address of 1307 Yale Street, Suite H, Houston, Texas. *Id.* The Order also alleged that this registration does not expire until October 31, 2018. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on September 15, 2017, the Texas State Board of Pharmacy (TSBP) “suspended” Respondent’s Texas pharmacy license, and Respondent is therefore “without authority to practice pharmacy or handle controlled substances in the State of Texas, the [S]tate in which [it is] registered with the DEA.” *Id.* at 2. Based on its “lack of authority to [dispense] controlled substances in . . . Texas,” the Order asserted that “DEA must revoke” Respondent’s registration. *Id.* (citing 21 U.S.C. 824(a)(3); 21 CFR 1301.37(b)).

The Show Cause Order notified Respondent of (1) its right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Order also notified Respondent of its right to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

On December 4, 2017, Respondent, through counsel, filed a letter requesting a hearing on the allegations. Letter from Respondent’s Counsel to Hearing Clerk (dated Nov. 30, 2017) (hereinafter, Hearing Request). In this letter, Respondent “objects to the cancellation of Health Fit Pharmacy’s DEA controlled substance registration” for two reasons. First, Respondent states that, “although temporar[il]y suspended,” it “maintains an active license.” *Id.* at 1. Second, Respondent “expects to prevail” in a “final contested hearing regarding the temporary suspension of this license on the merits . . . scheduled for February, 2018.” *Id.*

The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On December 4, 2017, the CALJ ordered the Government to file “evidence to support the allegation that the Respondent lacks state authority to handle controlled substances” and file “any Government motion for summary disposition” no later than December 15, 2017. Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule, at 1–2. The CALJ also directed Respondent to file its response to any summary disposition motion no later than December 29, 2017. *Id.* at 2.

On December 15, 2017, the Government filed its Motion for Summary Disposition. In its Motion, the Government argued that it is undisputed that Respondent lacks authority to handle controlled substances in Texas because the TSBP suspended Respondent’s Texas medical license on September 15, 2017. Government’s Motion for Summary Disposition (hereinafter Government’s Motion or Govt. Mot.) at 2–3; TSBP Temporary Suspension Order #A–16–008–BS1 (Government Exhibit (GX) 2 to Govt. Mot. or “Sept. 15, 2017 TSBP Order”). The Government also noted that, in its Hearing Request, Respondent did not dispute that the TSBP had suspended Respondent’s pharmacy license. Govt. Mot. at 3 n.1. The Government further argued that, “[a]bsent authority by the State of Texas to dispense controlled substances, Respondent is not authorized to possess a DEA registration in that state.” *Id.* at 3. Lastly, the Government argued that under Agency precedent, revocation is warranted even where a State has temporarily suspended a practitioner’s state authority with the possibility of future reinstatement. *Id.* at 3–4 (citations omitted). As support for its summary disposition request, the Government attached, *inter alia*, a copy of the TSBP’s September 15, 2017 Order directing that Respondent’s license “is hereby temporarily suspended . . . effective immediately and shall continue in effect, pending a contested hearing on disciplinary action against the suspended license.” GX 2 to Govt. Mot., at 14.

In its responsive pleading, Respondent did not dispute that it “maintains a[n] active suspended license” in the State of Texas. Respondent’s Dec. 29, 2017 Response to Government’s Motion for Summary Disposition (hereinafter, Resp. Br.), at 2. Instead, Respondent argued that “the