

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (RAC) is scheduled to meet as indicated below.

DATES: The Southwest RAC meeting will be held on August 19, 2016, in Gunnison, Colorado.

ADDRESSES: The Southwest RAC will meet August 19 at the Gunnison County Fairgrounds Multi-Purpose Building, 275 S. Spruce St., Gunnison, CO 81230. The meeting will begin at 9 a.m. and adjourn at approximately 4 p.m. A public comment period regarding matters on the agenda will occur at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Shannon Borders, Public Affairs Specialist, 970-240-5300; 2505 S. Townsend Ave., Montrose, CO 81401. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Southwest RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in southwest Colorado. Topics of discussion for all Southwest RAC meetings may include field manager and working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management and other issues as appropriate. These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting also has time, as identified above, allocated for hearing public comments. Depending on the number of people wishing to comment, the time for individual oral comments may be limited.

Ruth Welch,

BLM Colorado State Director.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON05000-L16100000.DU0000-16X]

Notice of Meetings, Northwest Resource Advisory Council White River Field Office Travel Management Subgroup

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Resource Advisory Council's (RAC) White River Field Office (WRFO) Travel Management Subgroup will meet as indicated below.

DATES: The Northwest RAC's WRFO Travel Management Subgroup has scheduled two meetings. The first meeting is August 23, 2016, from 1 p.m. to 3 p.m., with a public comment period regarding matters on the agenda at 2 p.m. The second meeting is September 14, 2016, from 9 a.m. to 12 p.m., with a public comment period regarding matters on the agenda at 11 a.m. A specific agenda for each meeting will be available prior to the meetings at http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.

ADDRESSES: The first meeting (August 23, 2016) will be held at the Meeker Public Library, 490 Main St., Meeker, CO 81641. The second meeting (September 14, 2016) will be held at the BLM WRFO, 220 E. Market St., Meeker, CO 81641.

FOR FURTHER INFORMATION CONTACT: Heather Sauls, Planning and Environmental Coordinator, WRFO, 220 E. Market St., Meeker, CO 81641. Phone: (970) 878-3855. Email: hsauls@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Northwest RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in northwest Colorado, which includes the WRFO, Little Snake Field Office, Grand

Junction Field Office, Colorado River Valley Field Office and Kremmling Field Office. The Northwest RAC has formed a 12-member Travel Management Subgroup to assist with the WRFO's Travel and Transportation Management Resource Management Plan (RMP) Amendment. The purpose of the meetings is to discuss the RMP Amendment's preliminary alternatives. At the first meeting (August 23, 2016), the focus of the discussion will be to explain the alternatives and the rationale behind them to the Subgroup. At the second meeting (September 14, 2016), the discussion will focus on whether the BLM has developed an adequate range of alternatives and if those alternatives address the planning issues. The Subgroup provides recommendations to the RAC but does not directly advise the BLM. The public may make oral comments to the Subgroup or submit written comments for the Subgroup's consideration. Summary minutes for the Northwest RAC's WRFO Travel Management Subgroup meetings will be maintained in the WRFO and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Ruth Welch,

BLM Colorado State Director.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 16-15]

Nicholas J. Nardacci, M.D.; Decision and Order

On December 7, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Nicholas J. Nardacci, M.D. (hereinafter, Respondent), of Albuquerque, New Mexico. Show Cause Order, at 1. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration AN9444592, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, as well as the denial of pending applications, on the ground that Respondent does not have authority to dispense controlled substances in New Mexico, the State in which he is registered with the Agency. *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

As factual support for the proposed actions, the Show Cause Order alleged that Respondent's medical license had expired on July 14, 2014 and had not been reinstated by the New Mexico Medical Board. *Id.* The Show Cause Order also alleged that Respondent's New Mexico controlled substance license had expired on October 31, 2013 and had not been reinstated by the New Mexico Pharmacy Board. *Id.* The Show Cause Order thus alleged that Respondent is currently without authority to handle controlled substances in New Mexico, the State in which he is registered, *id.*, and therefore, his DEA registration is subject to revocation.¹ *Id.* at 2.

On December 18, 2015, the Government accomplished service of the Show Cause Order on Respondent as evidenced by the signed return-receipt card. On January 19, 2016, Respondent requested a hearing on the allegations as well as an extension of time to find an attorney. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to ALJ Charles Wm. Dorman.

On January 20, 2016, the ALJ issued an Order which directed the Government to submit evidence supporting the allegation and an accompanying dispositive motion by February 4, 2016. The ALJ also granted Respondent's request for an extension and ordered that if the Government filed such a motion, Respondent was to file his reply by February 25, 2016. Briefing Schedule For Lack Of State Authority Allegations, at 1.

On February 4, 2016, the Government filed its Motion for Summary Disposition. As support for its Motion, the Government provided a copy of Respondent's registration information, an affidavit from a Diversion Investigator (DI) and printouts she obtained from the New Mexico Medical Board and New Mexico Board of Pharmacy.² The Medical Board printout showed that Respondent's medical license had expired on July 1, 2014 and subsequently lapsed. As for the Pharmacy Board printout, it showed that Respondent's state controlled substance license had expired on October 31, 2013. The Government thus argued that Respondent is without authority to dispense controlled

substances in New Mexico and does not possess the authority required by the Controlled Substances Act to be registered and therefore, his registration should be revoked. Mot. at 5.

On February 18, 2016, Respondent submitted a letter to the ALJ wherein he noted that he was negotiating with the Medical Board over the withdrawal of his application for reinstatement of his state license. Letter from Respondent to Hearing Clerk, OALJ (Feb. 16, 2016). Respondent further requested that the ALJ grant him "a 30 day extension to" allow him "to reach a settlement with the Medical Board" after which he would either withdraw his DEA application or challenge the Show Cause Order. *Id.* Respondent explained that the Board was requiring him to pass a competency exam in order to be reinstated; he also noted that he was having difficulty finding an attorney he could afford. *Id.* at 2. Respondent attached to his letter, a December 31, 2015 letter from the New Mexico Board informing him that the Board was offering him the opportunity to withdraw his application, but that if he chose not to do so, the Board would issue him a Notice of Contemplated Action to deny the reinstatement of his license. *Id.* at 3. Respondent did not, however, dispute the Government's contention that he is currently without state authority to dispense controlled substances in New Mexico.

Thereafter, the ALJ denied Respondent's request for a second extension, finding unpersuasive his contention that he was in negotiations with the Board to reach a settlement and needed more time. Order Denying The Resp.'s Request For An Extension, Order Granting Summary Judgment, And Recommended Rulings, Findings Of Fact, Conclusions Of Law, And Decision, at 3. The ALJ also found unpersuasive Respondent's other justification for needing an extension, *i.e.*, that he needed more time to find a lawyer, noting that Respondent had more than two months to find one. *Id.*

Turning to the Government's Motion, the ALJ found that there was no factual dispute that Respondent does not possess state authority to dispense controlled substances and thus cannot maintain his DEA registration. *Id.* at 4. The ALJ thus granted the Government's Motion and recommended that Respondent's registration be revoked and that any pending application be denied. *Id.*

Neither party filed exceptions to the ALJ's Recommended Decision. Thereafter, the record was forwarded to my Office for Final Agency Action. Having considered the record in its

entirety, I adopt the ALJ's rulings, as well as his findings of fact, legal conclusion and recommended sanction. I make the following finding of fact.

Findings

Respondent was the holder of DEA Certificate of Registration AN9444592, pursuant to which he was authorized to dispense controlled substances in schedules II through V as a practitioner at the registered address of 2919 Commercial Street NE., Albuquerque, New Mexico; this registration had an expiration date of October 31, 2014. Motion for Summ. Disp., Attachment 1, at 1. Because Respondent did not submit a renewal application until November 28, 2014, this registration expired, in accordance with its terms, on October 31, 2014. *Id.* However, because there is a pending application, this case remains a live controversy.

Respondent also formerly held a medical license issued by the New Mexico Medical Board. However, Respondent's license expired on July 1, 2014 and was subsequently deemed by the Board to have lapsed. Moreover, according to the online records of the New Mexico Medical Board of which I take official notice, on February 22, 2016, Respondent entered into a Stipulation And Order For Withdrawal Of Application For Licensure, which the Board approved on February 29, 2016, pursuant to which he agreed to withdraw his Application for Reinstatement.³

Respondent also formerly held a New Mexico Controlled Substances license. However, this license expired on October 31, 2013.

Discussion

Pursuant to 21 U.S.C. 823(f), "[t]he 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." *Id.* § 823(f). Moreover, the Controlled Substances Act defines the term "practitioner" to "mean[] a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in

¹ The Show Cause Order also notified Respondent of his right to request a hearing on the allegations or submit a written statement while waiving his right to a hearing, and the procedure for electing either option. Show Cause Order, at 2 (citing 21 CFR 1301.43).

² The DI averred that during a phone conversation with Respondent, he acknowledged that both of his state licenses had expired. DI Declaration, at 2.

³ Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding-even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulation, Respondent is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. 556(e); see also 21 CFR 1316.59(e). Respondent may dispute my finding by filing a properly supported motion within fifteen calendar days of this Order which shall commence on the date this Order is mailed.

which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” *Id.* § 802(21). See also *id.* § 824(a)(3) (authorizing the revocation of a registration upon a finding that the registrant “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”). Based on these provisions, the Agency has repeatedly held “that a practitioner can neither obtain nor maintain a DEA registration unless the practitioner currently has authority under state law to handle controlled substances.” *James L. Hooper*, 76 FR 71371, 71372 (2011) (collecting cases), *pet. for rev. denied*, *Hooper v. Holder*, 481 F. App’x 826 (4th Cir. 2012).

Here, there is no dispute as to the material fact that Respondent does not hold authority under New Mexico law to dispense controlled substances and is thus not a practitioner within the meaning of the Act. See 21 U.S.C. 802(21). Accordingly, his application must be denied. 21 U.S.C. 823(f).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Nicholas J. Nardacci, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: July 11, 2016.

Chuck Rosenberg,
Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10-71]

Turning Tide, Inc. Decision and Order; Procedural History

On August 17, 2010, the former Administrator of the Drug Enforcement Administration issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, Show Cause Order or Order) to Turning Tide, Inc. (Respondent), of Rockland, Maine. Show Cause Order, at 1. The Show Cause Order proposed the revocation of Respondent’s DEA Certificate of Registration RT0370015,¹ which authorized it to dispense controlled

substances as a Narcotic Treatment Program pursuant to 21 U.S.C. 823(g)(1), and the denial of any pending applications to renew or modify its registration, on the ground that its “continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).” *Id.* at 1.

The Show Cause Order specifically alleged that “Respondent is owned by Angel Fuller-McMahan” and that its “registration is conditioned upon a Memorandum of Agreement (MOA) with DEA which prohibits Ms. Fuller-McMahan from (1) having physical access to Respondent’s premises; (2) ordering controlled substances on behalf of Respondent; and (3) executing any renewal applications . . . on behalf of Respondent.” *Id.* at 1–2. The Order then alleged that Ms. Fuller-McMahan had been arrested on July 13, 2010 and charged with unlawful possession of cocaine, and that at the time of her arrest, she had in her possession approximately 25 grams of cocaine and two hypodermic needles.² *Id.* at 2. The Order further alleged that Ms. Fuller-McMahan had “arranged to purchase cocaine” from both a patient and an employee of Respondent. *Id.* The Order also alleged that “[w]hile serving as Respondent’s Program Director, Ms. Fuller-McMahan approached another patient . . . and offered to trade methadone for cocaine” by “creat[ing] a fraudulent order for methadone,” even though she was then prohibited by the MOA from ordering controlled substances on behalf of Respondent. *Id.* The Order then alleged that Ms. Fuller-McMahan had purchased cocaine in three separate “illegal drug transactions with another of Respondent’s patients.” *Id.*

Next, the Show Cause Order alleged that notwithstanding the MOA’s terms, “Ms. Fuller-McMahan continues to retain control and have supervisory authority over key aspects of Respondent’s operation,” that she had represented to a patient “that she has access to controlled substances which are ordered on behalf of Respondent,” and that she has “repeatedly violated the terms of the MOA by entering the physical premises of [Respondent] and executing a renewal application on [its] behalf.” *Id.* Finally, the Order alleged that Respondent “continued to employ Ms. Fuller-McMahan’s husband, Vance McMahan, despite the fact that Mr. McMahan has been convicted of illegal drug possession and has access to

Respondent’s controlled substances and confidential patient information.” *Id.*

Based on the above allegations, the former Administrator concluded that Respondent’s continued registration during the pending of the proceeding would “constitute an imminent danger to the public health and safety” and therefore ordered that its registration be suspended immediately. *Id.* at 3 (citing 21 U.S.C. 824(d)). The former Administrator also authorized the Special Agents and Diversion Investigators who served the Order to either “place under seal or to remove for safekeeping all controlled substances that [Respondent] possesses pursuant to the registration which [was] suspended.” *Id.* (citing 21 U.S.C. 824(f) and 21 CFR 1301.36(f)).

Thereafter, Respondent requested a hearing on the allegations and the matter was placed on the docket of the Agency’s Administrative Law Judges (ALJ). Following the ALJ’s issuance of an Order for Pre-Hearing Statements, the Government moved for summary disposition on the ground that on September 7, 2010, the Maine Department of Health and Human Services (MDHHS) had temporarily suspended Respondent’s Substance Abuse Treatment license. ALJ Dec., at 3. As support for the motion, the Government attached a letter dated September 7, 2010 from the Director of the MDHHS’s Division of Licenses & Regulatory Services to Ms. Fuller-McMahan. Mot. for Summ. Disp., at Ex. 2. Therein, the Director stated that MDHHS was “revoking on an emergency basis for a period not to exceed thirty days the agency’s licenses to operate an Opioid Treatment Program and . . . Outpatient Substances Abuse Services.” *Id.* (citing 14–118 C.M.R. Ch. 5, § 2.10.9). The letter further stated that “[t]he Department reserves its right to petition the District Court to extend the period of license revocation in accordance with 4 M.R.S.A. § 184(6) and 5 M.R.S.A. § 10003.” *Id.* at 2.

Upon reviewing the motion, the ALJ directed Respondent to file a response to the Government’s motion, which Respondent did after obtaining an extension.³ ALJ Dec., at 3. Thereafter, the Government filed a further pleading in which it noted that MDHHS had filed a complaint in state court seeking the temporary suspension and permanent revocation of Respondent’s Maine

³ Respondent argued that the proposed revocation of its DEA registration would violate its right to due process because it was based on the MDHHS suspension, which in turn, was based on the DEA Order to Show Cause and Immediate Suspension of Registration. See Response In Opposition To The DEA Motion For Summary Disposition, at 2–5.

¹ The Order alleged that Respondent’s registration was due to expire on November 30, 2010.

² The Order also alleged that on August 31, 2001, Ms. Fuller-McMahan had been convicted in state court of unlawful possession of heroin. Show Cause Order, at 2.