

Lazaro Guerra, 68 FR 15226, 15227 (2003) (“mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a) . . . is an independent ground for revoking a DEA registration” (citing 21 U.S.C. 824(a)(5)). See also *Richard B. Lynch, Jr.*, 50 FR 7844, 7845 (1985) (Agency made findings under section 824(a) (1), 824(a)(2), and 824(a)(3); “The Administrator concludes that there are three independent statutory grounds for denial of the subject application.”).

The Agency’s interpretation is buttressed by the CSA’s legislative history. As originally enacted, the CSA granted the Attorney General authority to suspend or revoke a registration: upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this title [the CSA] or title III [the Controlled Substance Import Export Act (CSIEA), 21 U.S.C. 951–971];

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

(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.

Pub. L. 91–513, § 304, 84 Stat. 1255 (codified at 21 U.S.C. 824(a)).⁷

Describing this provision, the House Report explained that “[s]ubsection (a) of this section empowers the Attorney General to revoke or suspend any registration issued under this title if it is found that the holder has falsified his application, lost his State license, or has been convicted of a felony violation relating to any controlled substance.” H. Rep. No. 91–1444 (1970), as reprinted in 1970 U.S.C.C.A.N. 4566, 4608–09. Absent from this statement is any discussion that in determining the sanction, the Attorney General was required to consider not only whether a registrant had lost his state authority, but also whether he had also materially falsified his application or had been convicted of a felony related to a controlled substance.

Moreover, while in 1984, Congress amended the CSA by granting the Attorney General authority to deny an application for a practitioner’s registration and to revoke an existing registration on public interest grounds, it did so to increase the Agency’s

authority to respond to the “[i]mproper diversion of controlled substances by practitioners,” which Congress explained “is one of the most serious aspects of the drug abuse problem.” H. Rep. No. 98–1030, at 266 (1984), as reprinted in 1984 U.S.C.C.A.N. 3182, 3448. The House Report explained that “effective Federal actions against practitioners has been severely inhibited by the limited authority in current law to deny or revoke practitioner registrations” and that “the current limited grounds for revoking or denying a practitioner’s registration have been cited as contributing to the problem of diversion of dangerous drugs.” *Id.* Finding that “the overly limited bases in current law for denial or revocation of a practitioner’s registration do not operate in the public interest,” Congress amended section 823(f) “to expand the authority of the Attorney General to deny a practitioner’s registration application” based upon a finding “that registration would be ‘inconsistent with the public interest.’” *Id.* (emphasis added).

While Congress also amended section “824(a) to add to the current bases for denial, revocation, or suspension of registration a finding that registration would be inconsistent with the public interest on the grounds specified in [section] 823, which will include consideration of the new factors added by” the amendment, *id.* at 266–67, Congress did not otherwise alter the text of section 824(a), which makes clear that the various paragraphs of this provision are findings, each of which provides an independent and adequate ground to support agency action against a registration, and not discretionary factors to be considered by the Agency. Indeed, Respondent points to nothing in the language of section 824 or the CSA’s legislative history to support his position, which would fundamentally alter the scope of the Agency’s authority under section 824.

Nor is there any merit to Respondent’s contention that denying him “the opportunity to present other evidence supporting [his] continued registration” denies him due process. Exceptions, at 6. As explained above, in a proceeding brought against a practitioner under section 824(a)(3), the only fact that is material is whether the practitioner is currently authorized to dispense controlled substances under laws of the state in which he practices and is registered. Because “other evidence supporting [his] continued registration” is not material to the outcome of this proceeding, and Respondent was provided with the opportunity to put forward evidence disputing the only

material fact at issue, I reject his contention that the use of summary disposition denied him due process. See *Rezik A. Saqer*, 81 FR 22122, 22124 (2016) (citing cases).

I therefore reject each of Respondent’s Exceptions. Based on the ALJ’s finding that Respondent is not currently authorized to dispense controlled substances in Louisiana, the State in which he holds the DEA registration at issue in this proceeding and seeks an additional registration, I will adopt the ALJ’s recommended order that I revoke his registration and deny his application.

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 No. BF4179203 issued to Arnold E. Feldman, M.D., as well as DATA Identification No. XF4179203, be, and they hereby are, revoked. I further order that the Application of Arnold E. Feldman, M.D., for a registration as a Hospital/Clinic, as well any application to renew the above the registration or for any other registration in the State of Louisiana, be, and it hereby is, denied. This ORDER is effective immediately.⁸

Dated: August 14, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–17640 Filed 8–18–17; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Duarte Nursery, Inc. and John Duarte*, Civil Action Number 2:13–cv–02095–KJM–DB, was lodged with the United States District Court for the Eastern District of California, Sacramento District, on August 15, 2017.

This proposed Consent Decree concerns an answer and counterclaim filed by the United States on May 7, 2014, against Duarte Nursery, Inc. and

⁸Based on the Board’s findings with respect to the sixth charge of the Administrative Complaint, which found that he violated state law by prescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification thereof or in other than a legal or legitimate manner, I find that the public interest necessitates that this Order be effective immediately. Mot. for Summ. Disp., Appendix C, at 13, 15; see also 21 CFR 1316.67.

⁷ Cf. *Reiter v. Sonotone Corp.*, 442 U.S.C. 330, 339 (1979) (“Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise[.]”) (citing *FCC v. Pacifica Foundation*, 438 U.S. 726, 739–40 (1978)).

John Duarte, pursuant to Sections 301(a) and 309(d) of the Clean Water Act, 33 U.S.C. 1311(a) and 1319(d), to obtain injunctive relief from and impose civil penalties against the Counterclaim-Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Counterclaim-Defendants to restore the impacted areas and/or perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Andrew Doyle, Senior Attorney, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044, and refer to *United States v. Duarte Nursery, Inc. and John Duarte*, DJ # 90-5-1-4-19984.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of California, Sacramento District, 501 I Street, Room 4-200, Sacramento, CA 95814. In addition, the proposed Consent Decree may be examined electronically at <http://www.justice.gov/enrd/consent-decrees>.

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2017-17634 Filed 8-18-17; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

OMB Sequestration Update Report to the President and Congress for Fiscal Year 2018

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the OMB Sequestration Update Report to the President and Congress for FY 2018.

SUMMARY: OMB is issuing the *OMB Sequestration Update Report to the President and Congress for Fiscal Year 2018* to report on the status of the discretionary caps and on the compliance of pending discretionary appropriations legislation with those caps. For fiscal year 2017, the report finds enacted appropriations to be within the spending limits. For fiscal year 2018, the report finds that, if the current limits remain unchanged, under

OMB's estimates of actions to date by the House of Representatives for the 12 annual appropriations bills would result in a sequestration of approximately \$72.4 billion in defense programs. The report also finds that actions or funding guidance by the Senate would result in a sequestration of approximately \$2.0 billion in defense programs and \$3.8 billion for non-defense programs. Finally, the report also contains OMB's Preview Estimate of the Disaster Relief Funding Adjustment for FY 2018.

DATES: *Date: August 20, 2017.* Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 requires the Office of Management and Budget (OMB) to issue a Sequestration Update Report on August 20th of each year. With regard to this update report and to each of the three required sequestration reports, section 254(b) specifically states the following:

SUBMISSION AND AVAILABILITY OF REPORTS.—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the **Federal Register**.

ADDRESSES: The OMB Sequestration Reports to the President and Congress is available on-line on the OMB home page at: <https://www.whitehouse.gov/omb/public-releases/omb-reports>.

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: ttobasko@omb.eop.gov, telephone number: (202) 395-5745, FAX number: (202) 395-4768. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

Mick Mulvaney,

Director.

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold nine meetings of the Humanities Panel, a Federal advisory committee, during September, 2017. The purpose of the meetings is for panel review, discussion, evaluation,

and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at Constitution Center at 400 7th Street SW., Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., Room, 4060, Washington, DC 20506; (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

- Date:** September 5, 2017
This meeting will discuss applications for the Humanities Initiatives at Historically Black Colleges and Universities grant program, submitted to the Division of Education Programs.
- Date:** September 6, 2017
This meeting will discuss applications for the Humanities Initiatives at Hispanic-Serving Institutions grant program, submitted to the Division of Education Programs.
- Date:** September 6, 2017
This meeting will discuss applications on the subjects of Art and Culture for Digital Projects for the Public: Production Grants, submitted to the Division of Public Programs.
- Date:** September 7, 2017
This meeting will discuss applications on the subject of U.S. History for Digital Projects for the Public: Production Grants, submitted to the Division of Public Programs.
- Date:** September 7, 2017
This meeting will discuss applications for the Humanities Initiatives at Hispanic-Serving Institutions grant program, submitted to the Division of Education Programs.
- Date:** September 8, 2017
This meeting will discuss applications for the Humanities Initiatives at Hispanic-Serving Institutions grant program, submitted to the Division of Education Programs.
- Date:** September 11, 2017