the blackout of Dodger games. In my opinion collusion has occurred between DirecTV and Time Warner Cable (TWC) which was apparent in the filing of this case. The sharing of inside, confidential information between the parties has put TWC in the position to control their monopoly for the broadcast of Dodger games by knowing where all the competitors stand, giving them an unfair advantage in their negotiations. A settlement in favor of the public would be punishment of the parties either through a fine or requirement to carry the broadcasts and a separate suit against TWC for unfair business practices.

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[FR Doc. 2017–18091 Filed 8–24–17; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Binh M. Chung, M.D.; Decision and Order

On June 29, 2017, the Acting Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to Binh M. Chung, M.D. (hereinafter, Registrant), of Las Vegas, Nevada. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration and the denial of any pending application to renew his registration or for a new registration, on the grounds that: (1) He ''ha[s] been convicted of a felony relating to a controlled substance''; (2) he ''do[es] not have authority to handle controlled substances in . . . Nevada, the [S]tate in which [he is] registered''; and (3) he ''ha[s] committed acts which render [his] registration inconsistent with the public interest.'' GX 2, at 1 (citing 21 U.S.C. 824(a)(2), (3), & (4)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant holds Certificate of Registration No. BC9308936, which ''is valid for Drug Schedules II–V,'' at the address of ''8785 Warm Springs Rd.[,] Suite 109, Las Vegas, NV.'' *Id.* The Order also alleged that his registration ''expires . . . on August 31, 2017.'' *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order alleged that ''[o]n May 22, 2017, [Registrant was] found guilty of engaging in a scheme related to [his] administering ketamine to sedate patients and then raping them in [his] medical office.'' *Id.* The Order alleged that Registrant was found guilty in state court of ''multiple sexual assault counts and multiple counts of the administering of a controlled substance to aid in the commission of a felony.'' *Id.* The Order then asserted that ''[t]his constitutes a conviction related to controlled substances under 21 U.S.C. 824(a)(2)'' and ''acts which are inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 824(a)(4) & 823(f)(5)).

The Show Cause Order further alleged that on June 23, 2015, Registrant's medical license ''was summarily suspended'' by the Nevada Board of Medical Examiners and that he ''currently lack[s] authority to handle controlled substances in Nevada, the [S]tate in which [he is] registered with the'' Agency. *Id.* The Order thus asserted that Registrant's ''lack of authority to handle controlled substances in Nevada is a separate and independent ground to revoke [his] registration.'' *Id.* (citing 21 U.S.C. 802(21) and 824(a)(3)).

The Show Cause Order notified Registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2–3 (citing 21 CFR 1301.43). Finally, the Show Cause Order notified Registrant of his right to submit a Corrective Action Plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

On June 29, 2017, a DEA Diversion Investigator personally served the Show Cause Order on Registrant who was then incarcerated at the Clark County Detention Center, Las Vegas, Nevada. GX 3, at 2. According to the Government, as of August 15, 2017, Registrant had not requested a hearing nor submitted a written statement in lieu of requesting a hearing. Supplemental Request for Final Agency Action, at 2; *see also* Supplemental Declaration of Diversion Investigator, at 1. The Government further represents that Registrant has not submitted a Corrective Action Plan. *See* Supplemental Request for Final Agency Action, at 2; *see also* Supplemental Declaration of Diversion Investigator, at 1–2.

On July 31, 2017, the Government submitted a Request for Final Agency Action (RFAA) and an investigative record, and on August 16, 2017, it submitted a Supplemental Request for Final Agency Action. Therein, the Government seeks revocation of Registrant's registration pursuant to each of the three grounds set forth above.

Based on the Government's submission, I find that more than 30 days have now passed since the Show Cause Order was served on Registrant, and that neither Registrant, nor anyone purporting to represent him, has requested a hearing on the allegations or submitted a written statement in lieu of hearing. I therefore find that Registrant has waived his right to request a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence in the investigative record. *See* 21 CFR 1301.43(d) & (e). Having reviewed the record, I conclude that the Government is entitled to relief only on the loss of state authority ground. I make the following factual findings.

Findings

Registrant is the holder of DEA Certificate of Registration No. BC9308936, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 8785 W. Warmsprings Rd., Suite 109, Las Vegas, Nevada. GX 1. This Registration expires on August 31, 2017. *Id.*

Registrant also holds a medical license issued by the Nevada State Board of Medical Examiners. GX 3B (Order of Summary Suspension & Notice of Hearing). However, on June 23, 2015, the Board's Investigative Committee immediately suspended his medical license based on ''preliminary findings'' that Registrant ''injected a minor female [patient] with a medication that caused her to become groggy'' and proceeded ''to abuse her.'' *Id.* at 2. While the Board's Order set a hearing for July 27, 2015 ''to determine whether [the] suspension may continue,'' according to the Board's Web site, of which I take official notice, *see* 5 U.S.C. 556(e), the suspension remains in effect as of the date of this Order. I therefore find that Registrant is not currently authorized to dispense controlled substances under the laws of Nevada.

On May 2, 2017, a Third Amended Indictment was issued in the criminal proceeding brought by the State of Nevada against Registrant. GX 3A, at 1. The indictment charged Registrant with, *inter alia,* four counts of sexual assault; one count of battery with intent to commit a sexual assault; one count of attempted sexual assault; and four counts of administering controlled substances including ketamine and/or midazolam, to aid in the commission of a felony (sexual assault and/or a kidnapping). *Id.* at 2–5. On May 22, 2017, following a trial, a jury found

Registrant guilty of each of the counts set forth above with the exception of one count of administering controlled substances to aid in the commission of a felony. *Id.* at 9 (verdict form). The Government did not, however, submit a judgment of conviction, and it is unclear as to whether a judgment of conviction has been entered by the state court.

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, ''upon a finding that the Registrant . . . has had his 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.'' Moreover, DEA has held repeatedly 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).

This rule derives from the text of two provisions of the CSA. First, Congress defined ''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.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress 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 he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a physician possess state authority in order to be deemed a practitioner under the Act, DEA has held that revocation of a practitioner's registration 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., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *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); *see also Hooper* v. *Holder,* 481 Fed. Appx. at 828.

Also, because the CSA makes clear 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 both obtaining and maintaining a practitioner's registration, ''revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action at which he may ultimately prevail.'' *Kamal Tiwari,* 76 FR 71604, 71606 (2011); *see also Bourne Pharmacy, Inc.,* 72 FR 18273, 18274 (2007); *Anne Lazar Thorn,* 62 FR 12847 (1997).

As a result of the Nevada Board's June 2015 Order of Summary Suspension, Registrant is not currently authorized to dispense controlled substances in Nevada, the State in which he is registered. Accordingly, I will order that his registration be revoked and that any pending application to renew his registration, or for any other registration in the State of Nevada be denied.[1]

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. BC9308936 issued to Binh M. Chung, M.D., be, and it hereby is, revoked. I further order that any application of Binh M. Chung, M.D., to renew or modify this registration, or for any other registration in the State of Nevada, be, and it hereby is, denied. This Order is effective immediately.[2]

Dated: August 17, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–18081 Filed 8–24–17; 8:45 am]

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[1] While the Government also sought revocation on the ground that Registrant has been convicted of an offense related to controlled substances, it produced evidence only as to the existence of a jury verdict and not the existence of a judgment of conviction. The Agency has previously noted that the term ''conviction'' could mean either ''a judgment of conviction or simply a finding of guilty which precedes the entry of a final judgment of conviction.'' *Roger A. Pellman,* 76 FR 17704, 17709 n.10 (citing *Deal* v. *United States,* 508 U.S. 129, 131 (1993)). The Government, however, makes no argument as to why, in the context of the CSA's registration provisions, the term includes a finding of guilty even where no final judgment has been entered.

The Government also sought revocation under the public interest standard, arguing that his ''conduct demonstrates [his] negative experience in dispensing controlled substances and non-compliance with state law relating to controlled substances under the public interest factors.'' RFAA, at 5. However, because the Government produced no evidence that the court has entered a judgment of conviction, the jury's findings are not entitled to preclusive effect. *Cf.* Restatement (Second) of Judgments, § 27 (''When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action . . . whether on the same or a different claim.''). Similarly, because the Board's suspension order was based on its preliminary findings, and there is no evidence that the Board has issued a final decision affirming these findings, these findings cannot support revocation under the public interest standard.

[2] For the same reasons which led the Board to immediately suspend Registrant's registration, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995 on the National Science Foundation Proposal and Award Policies and Procedures Guide. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

DATES: Comments regarding these information collections are best assured of having their full effect if received September 25, 2017.

ADDRESSES: Comments should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton, Reports Clearance Officer, 703–292–7556.

SUPPLEMENTARY INFORMATION: This is the second notice for public comment; the