

(4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”).

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 practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has long 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 engages in professional practice. *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); *Blanton*, 43 FR 27616 (1978).

Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner’s registration “is currently authorized to handle controlled substances in the [S]tate,” *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State’s use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the Virginia Board of Medicine summarily suspended Registrant’s state medical license.

What is consequential is my finding that Registrant is no longer currently authorized to dispense controlled substances in the Commonwealth of Virginia, the State in which he is registered. Specifically, the Virginia Board of Medicine’s decision to suspend

Registrant’s medical license also means that Registrant is currently without authority to dispense controlled substances under the laws of Virginia. *See, e.g., Va. Code Ann. §§ 54.1–2409.1* (2017) (felony to prescribe controlled substances without a current valid license); 54.1–2900 (2017); 54.1–3401 (2016). Accordingly, Registrant is not entitled to maintain his DEA registration, and I will therefore order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. FS4850459, issued to Joel A. Smithers, D.O., be, and it hereby is, revoked. I further order that any pending application of Joel A. Smithers to renew or modify the above registration, or any pending application of Joel A. Smithers for any other DEA registration in the Commonwealth of Virginia, be, and it hereby is, denied. This Order is effective April 17, 2019.

Dated: February 27, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–05013 Filed 3–15–19; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Sharp (Bethlehem), LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 17, 2019. Such persons may also file a written request for a hearing on the application on or before April 17, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and

(2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on January 04, 2019, Sharp (Bethlehem), LLC, 2400 Baglyos Circle, Bethlehem, Pennsylvania 18020 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
3,4-Methylenedioxymethamphetamine.	7405	I
Psilocybin	7437	I

The company plans to import the listed controlled substances for clinical trials. Approval of permit applications will occur only when the registrant’s activity is consistent with what is authorized under to 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: March 5, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–05000 Filed 3–15–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William A. Sanpablo, M.D.; Decision and Order

On December 3, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William A. Sanpablo,

M.D. (Registrant), of Philippi, West Virginia. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration No. AS8766480 on the ground that he "ha[s] no state authority to handle controlled substances." Government Exhibit (GX) 2 (Order to Show Cause) to Government's Request for Final Agency Action (RFAA), at 1 (citing 21 U.S.C. 824(a)(3)). For the same reason, the Order also proposed the denial of "any 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 Registrant is the holder of Certificate of Registration No. AS8766480, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 2 Healthcare Drive, Philippi, West Virginia. *Id.* The Order also alleged that this registration does not expire until February 29, 2020. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on October 10, 2018, Registrant "entered into a Consent Order with the West Virginia Board of Medicine permanently surrendering [his] license to practice medicine and surgery in West Virginia." *Id.* The Show Cause Order alleged that, as a result, he is "currently without authority to handle controlled substances in the State of West Virginia, the [S]tate in which [he is] registered with the DEA." *Id.* Based on his "lack of authority to handle controlled substances in the State of West Virginia," the Order asserted that "DEA must revoke" his registration. *Id.* at 2 (citing 21 U.S.C. 824(a)(3); 21 CFR 1301.37(b)).

The Show Cause Order notified Registrant of (1) his 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 Registrant of his right to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

With respect to service, a Diversion Investigator (DI) in the Clarksburg Resident Office of DEA's Louisville Field Division executed a Declaration on February 6, 2019, stating that he "personally served Registrant with the [Show Cause Order]" on December 6, 2018. GX 4 (Declaration of DI) to RFAA, at 1.

On February 13, 2019, the Government forwarded its Request for

Final Agency Action and evidentiary record to my Office. In its Request, the Government represents that more than 30 days have passed since Registrant had been served with the Show Cause Order and that "Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA regarding the Order served on him." RFAA, at 1. Based on the Government's representation and the record, I find that more than 30 days have passed since the Show Cause Order was served on Registrant, and he has neither requested a hearing nor submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(d). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government and the findings below. *See id.* I make the following findings.

Findings of Fact

Registrant is the holder of DEA Certificate of Registration No. AS8766480 pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner at the registered address of 2 Healthcare Drive, Philippi, West Virginia. GX 1 (Certification of Registration Status) to RFAA, at 1. This registration does not expire until February 29, 2020. *Id.*

On October 10, 2018, the West Virginia Board of Medicine entered into a "Consent Order" with Registrant. GX 3 to RFAA, at 69–76. According to the Consent Order, Registrant "acknowledges that he is unable to practice medicine and surgery with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process and loss of motor skills and that he is ready to retire from the practice of medicine." *Id.* at 70. Registrant agreed to have his "license to practice medicine and surgery in West Virginia . . . PERMANENTLY SURRENDERED to the Board." *Id.* at 74. As a result, he further agreed that he "may not practice medicine and surgery in West Virginia" and that he is "permanently ineligible for licensure by the West Virginia Board of Medicine." *Id.*¹

¹ The DEA registration is under the name "William A. Sanpablo," but the West Virginia Board of Medicine's Consent Order in the administrative record refers to the state registrant as "William Amaro San Pablo." Compare GX 1 to RFAA, at 1 with GX 3 to RFAA, at 1, 70. After reviewing the Agency's registration records, of which I take official notice, and comparing them to the certified copies of the West Virginia Board's

In addition, I take official notice of the results of a search of the West Virginia Board of Medicine's license verification web page showing that, as of the date of this Decision, Registrant's West Virginia medical license remains "[s]urrendered."² Accordingly, I find that Registrant currently does not possess a license to practice medicine in the State of West Virginia, the State in which he is registered with the DEA.

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 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." Also, 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); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) ("State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.").

documents included in the administrative record, I find that this discrepancy appears to be a clerical error for at least two independent reasons. First, the "E-Signature" for the DEA registration in this case is by "William A. San Pablo," which is consistent with the name in the aforementioned West Virginia Board of Medicine records in the case. Second, the Agency's registration records state that Registrant's West Virginia medical license number is "11963," which is identical to the West Virginia medical license number set forth in the Consent Order for William Amaro San Pablo. *E.g.*, GX 3 to RFAA, at 70. Thus, I find that the West Virginia Board's Consent Order's reference to "William Amaro San Pablo" and the DEA registration's reference to "William A. Sanpablo" are to the same practitioner.

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 regulations, Registrant 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). To allow Registrant the opportunity to refute the facts of which I take official notice, Registrant may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed.

² *See* <https://wvbom.wv.gov/public/search/details.asp>. I take official notice of this fact pursuant to the same authority set forth *supra* in footnote 1.

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 practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has long 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 engages in professional practice. 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); *Blanton*, 43 FR 27616 (1978).

Here, there is no dispute over the material fact that Registrant surrendered his West Virginia medical license and is thus no longer authorized to dispense controlled substances in West Virginia, the State in which he is registered. See *Richard Jay Blackburn, D.O.*, 82 FR 18669, 18672 (2017). Accordingly, Registrant is not entitled to maintain his DEA registration, and I will therefore order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. AS8766480, issued to William A. Sanpablo, M.D., be, and it hereby is, revoked. I further order that any pending application of William A. Sanpablo to renew or modify the above registration, or any pending application of William A. Sanpablo for any other DEA registration in the State of West Virginia, be, and it hereby is, denied. This Order is effective April 17, 2019.

Dated: February 27, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019-05014 Filed 3-15-19; 8:45 am]

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NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Higher Education Research and Development Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 17, 2019 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292-7556; 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).

SUPPLEMENTARY INFORMATION:

Title of Collection: Higher Education Research and Development Survey.

OMB Approval Number: 3145-0100.

Expiration Date of Current Approval: September 30, 2019.

Type of Request: Intent to Extend a Current Information Collection.

Abstract: Established within NSF by the America COMPETES Reauthorization Act of 2010 § 505, codified in the NSF Act of 1950, as amended, NCSES—one of 13 principal federal statistical agencies—serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public.

The Higher Education Research and Development (R&D) Survey (formerly known as the Survey of R&D Expenditures at Universities and Colleges) originated in fiscal year (FY) 1954 and has been conducted annually since FY 1972. The survey represents

one facet of the research and development component of NCSES’s statistical program, which also includes R&D surveys on the business, federal government, higher education, state government, and nonprofit sectors.

Use of the Information: The proposed project will continue the annual survey cycle for three years. The Higher Education R&D Survey will provide continuity of statistics on R&D expenditures by source of funding, type of R&D (basic research, applied research, or experimental development), and field of research, with separate data requested on research equipment by field. Further breakdowns are collected on funds passed through to subrecipients and funds received as a subrecipient, and on R&D expenditures by field from specific federal agency sources. As of FY 2010, the survey also requests total R&D expenditures funded from foreign sources, R&D within an institution’s medical school, clinical trial expenditures, R&D by type of funding mechanism (contracts vs. grants), and R&D by cost category (salaries, equipment, software, etc.). The survey also requests headcounts of principal investigators and other personnel paid from R&D funds.

Data are published in NCSES’s annual publication series *Higher Education Research and Development*, available on the web at <http://www.nsf.gov/statistics/srvyherd/>.

Expected respondents: The FY 2019 Higher Education R&D Survey will be administered to approximately 650 institutions. In addition, a shorter version of the survey asking for R&D expenditures by source of funding and broad field will be sent to approximately 300 institutions spending under \$1 million on R&D in their previous fiscal year. Finally, a survey requesting R&D expenditures by source of funds, cost categories, and type of R&D will be administered to the 42 Federally Funded Research and Development Centers.

Estimate of burden: The survey is a fully automated web data collection effort and is handled primarily by administrators in university sponsored programs and accounting offices. To minimize burden, institutions are provided with an abundance of guidance and resources on the web and are able to respond via downloadable spreadsheet if desired. Each institution’s record is pre-loaded with the 2 previous years of comparable data that facilitate editing and trend checking. Response to this voluntary survey has exceeded 95 percent each year.

The average burden estimate is 54 hours for the approximately 650