

2019, a second victim saw Registrant as a patient for a physical examination, during which Registrant again made inappropriate sexual comments and unwanted sexual advances on the victim. *Id.* at 3. The Order concluded that Registrant “represents a clear and immediate danger to the public health and safety if allowed to continue to practice as a medical doctor in Indiana.” *Id.* at 4.

Accordingly, the Board ordered that Registrant’s Indiana medical license, which had been suspended for 90 days effective April 22, 2021,<sup>1</sup> be summarily suspended for an additional 90 days, effective June 24, 2021. *Id.* The Board also ordered that the matter would reset on September 23, 2021 for a hearing to occur at which the Board would consider whether the summary suspension of Registrant’s license should be extended for an additional 90 days. *Id.*

According to Indiana’s online records, of which I take official notice, Registrant’s Indiana medical license remains suspended and Registrant’s controlled substances registration remains expired.<sup>2</sup> <http://www.mylicense.in.gov/verification> (last visited date of signature of this Order).

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine nor registered to dispense controlled substances in Indiana, the state in which Registrant 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 (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage

in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also 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, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

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 CSA, the DEA has held repeatedly 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. *See, e.g., James L. Hooper*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

According to Indiana statute, “[e]very person who dispenses or proposes to dispense any controlled substance within Indiana must have a registration issued by the [Indiana Board of Pharmacy] in accordance with the board’s rules.” Ind. Code § 35–48–3–3(b) (2021). Further, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner and includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Ind. Code § 35–48–1–12 (2021).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to dispense controlled

substances in Indiana. As already discussed, a physician must hold a controlled substances registration to dispense a controlled substance in Indiana. Thus, because Registrant lacks authority to handle controlled substances in Indiana, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant’s DEA registration be revoked.

#### Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FH0303292 issued to Darryl L. Henry, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Darryl L. Henry, M.D. to renew or modify this registration, as well as any other pending application of Darryl L. Henry, M.D. for additional registration in Indiana. This Order is effective November 1, 2021.

Anne Milgram,  
Administrator.

[FR Doc. 2021–21425 Filed 9–30–21; 8:45 am]

BILLING CODE 4410–09–P

#### DEPARTMENT OF JUSTICE

##### Membership of the Senior Executive Service and Senior Level Standing Performance Review Boards

**AGENCY:** Department of Justice.

**ACTION:** Notice of Department of Justice’s standing members of the Senior Executive Service and Senior Level Performance Review Boards.

**SUMMARY:** Pursuant to agency regulations, the Department of Justice announces the membership of its 2021 Senior Executive Service (SES) and Senior Level (SL) Standing Performance Review Boards (PRBs). The purpose of the PRB is to provide fair and impartial review of SES and SL performance appraisals; make recommendations to the appointing authority concerning performance ratings, performance awards, and performance-based pay adjustments; and review and revise, as appropriate, executive development plans.

**FOR FURTHER INFORMATION CONTACT:** Shawn Flinn, Director, Human Resources, Justice Management

<sup>1</sup> RFAAX 2, at 2 (the DI’s Declaration). The Government did not provide documentation for the original suspension.

<sup>2</sup> Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

Division, Department of Justice,  
Washington, DC 20530; (202) 514-4350.

**Lee J. Lofthus,**

*Assistant Attorney General for  
Administration.*

**2021 Federal Register**

**List of Names (Alphabetical Order)**

Adan Jr., Angel L.  
Adkins Blanch, Charles K.  
Ainsworth, Peter J.  
Alexander, Samuel C.  
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[FR Doc. 2021-21341 Filed 9-30-21; 8:45 am]

BILLING CODE 4410-CH-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Judgment Under the Clean Air Act

On September 27, 2021, the Department of Justice lodged a proposed consent judgment with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States of America v. The City of New York et al.*, Case No. 21-CV-5338.

The United States filed this lawsuit to seek civil penalties and injunctive relief for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* (“CAA”). The alleged violations concern the New York City Department of Education’s (“NYCDOE”) failure to comply with the Area Source Boiler Rule 40 CFR 63 (the “Rule”) at approximately 1329 boilers located at 566 public school buildings across New York City. The Complaint alleges that NYCDOE failed to conduct timely tune ups and energy assessments under the Rule, and failed to provide required notifications to the Environmental Protection Agency (“EPA”).

The Consent Judgment requires NYCDOE to implement injunctive relief that includes: Conducting and documenting periodic tune-ups that will identify boilers in need of repair; implementing additional levels of quality review for completed tune-up reports; and providing periodic reports to the United States concerning boilers that are achieving less than 83% combustion efficiency. Further, to mitigate excess emissions caused by NYCDOE’s non-compliance, the proposed Consent Judgement requires NYCDOE to convert to natural gas or replace seven large boilers that use number 4 oil prior to March 2023. The Consent Judgment also requires defendants to pay a civil penalty of \$1,000,000.

The publication of this notice opens a period for public comment on the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *The City of New York, New York City Department of Education*, Civil Action No. 21-CV-5338, D.J. Ref. No. 90-5-2-1-11718. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail: