DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Responsibility, Compensation and Liability Act

On November 6, 2012 the Department of Justice lodged a proposed Consent Decree for Removal Action and Recovery of Response Costs (''Consent Decree'') with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States* v. *Phillips 66 Pipeline LLC,* Civil Action No. 12–1159–MJR–PMF.

The proposed Consent Decree is related to the property known as the Rogers Cartage Site (the ''Site''), which is owned by Phillips 66 Pipeline LLC (''Defendant'') and located at 3300 Mississippi Avenue, in Cahokia, St. Clair County, Illinois. The United States, on behalf of the United States Environmental Protection Agency (''EPA''), has brought claims against the Defendant under Sections 106 and 107 of the Comprehensive Environmental Responsibility, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, in a Complaint filed in the same lawsuit. The United States alleges that the Defendant is responsible for the implementation of a response action at the Site not inconsistent with the National Contingency Plan (NCP), 40 CFR part 300, which is necessary to abate imminent and substantial risks posed by the presence of hazardous substances at the Site, including polychlorinated biphenyls (PCBs). The United States also seeks recovery of response costs that it has incurred in responding to the release or threatened release of hazardous substances at and from the Site, and a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2).

Under the proposed Consent Decree, the Defendant would implement a response action that was selected by EPA. The response action would consist of the excavation of all soil at the Site that contains concentrations of PCBs exceeding the applicable standards at 40 CFR 761.61(a)(4), and off-site disposal of contaminated soil in accordance with 40 CFR 300.440. The response action would be performed in accordance with EPA's Action Memorandum dated October 11, 2011 and a Statement of Work, which are attached to the proposed Consent Decree. In addition, within 30 days of the entry of the proposed Consent Decree, the Defendant would reimburse EPA $65,224.12, which is approximately 70% of all past costs incurred by the United States in connection with the Site. The Defendant would also reimburse EPA for all future response costs not inconsistent with the NCP.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Phillips 66 Pipeline LLC,* D.J. Ref. No. 90–11–3–10471. 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:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.75 (25 cents per page reproduction cost) payable to the United States Treasury if you wish to receive the complete proposed Consent Decree with all appendices. For a paper copy of the proposed Consent Decree without the appendices and signature pages, the cost is $14.50.

Maureen Katz,

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

[FR Doc. 2012–27502 Filed 11–9–12; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–54]

Wayne D. Longmore, M.D.; Decision and Order

On September 6, 2012, Administrative Law Judge Gail A. Randall issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificate of Registration be revoked and that any pending application to renew or modify his registration be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration Number BL9651250, issued to Wayne D. Longmore, M.D., be, and it hereby is, revoked. I further order that any pending application of Wayne D. Longmore, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective December 13, 2012.

Dated: October 26, 2012.

Michele M. Leonhart,

Administrator.

Brian Bayly, Esq., for the Government.
Debra J. Young, Esq., for the Respondent.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Facts

Administrative Law Judge Gail A. Randall. The Deputy Assistant Administrator, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause (''Order'') dated May 31, 2012, proposing to revoke the DEA Certificate of Registration, No. BL9651250, of Wayne D. Longmore, M.D. (''Respondent''), as a practitioner, pursuant to 21 U.S.C. 824(a)(4) (2006), and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f) (2006), because the continued registration of the Respondent would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f), and because the Respondent lacks the authority to practice medicine or handle controlled substances in the state of New York pursuant to 21 U.S.C. 823(f)

and 824(a)(3) (2006). The Respondent's registration will expire by its own terms on March 31, 2015.

Specifically, the Order alleged that the New York State Department of Health, State Board for Professional Medical Conduct, (''New York Board'') issued an Interim Order, effective April 3, 2012, in which Respondent agreed to the suspension of his medical license while the New York Board and DEA conducted investigations of his prescribing practices. [Order at 1]. The Order further alleged that the Respondent is without authority to handle controlled substances in the state of New York, the state in where the Respondent is registered with the DEA, and thus the DEA must revoke Respondent's DEA registration based on his lack of authority to handle controlled substances in the state of New York. [*Id.*]. Lastly, the Order alleged that between October 20, 2011, and January 27, 2012, three undercover operatives, posing as patients, made a total of ten visits to Respondent's office and at each visit Respondent prescribed hydrocodone to them with no or insufficient medical history, with no relevant physical examinations, without diagnosing any medical conditions warranting such medications, and without monitoring the patients to determine if the patients were diverting the prescribed controlled substances. [Order at 2].

On July 17, 2012, the Respondent, through counsel, filed a request for a hearing in the above-captioned matter. That same day, the Court issued an Order for Prehearing Statements.

On July 20, 2012, the Government filed its Government's Motions for Summary Judgment and to Stay the Proceedings (''Government's Motion''). Therein, the Government requested that the Court summarily revoke Respondent's DEA registration because the Respondent's New York state medical license is under a temporary suspension order. [Government's Motion at 1]. Alternatively, the Government requested that the Court terminate Respondent's DEA registration because Respondent abandoned his DEA registered location and thus, is not in compliance with 21 U.S.C. 822(e) (2006). [*Id.*].

The Government stated that Respondent was no longer authorized to handle controlled substances in New York, the state where the Respondent is registered with the DEA. [*Id.* at 2]. The Government attached to its motion, a Stipulation and Application for an Interim Order of Conditions pursuant to N.Y. Public Health Law § 230 (''Interim Order''), dated March 27, 2012, in which the Respondent agreed to the New York State Board's issuance of an Interim Order of Conditions which precluded the Respondent from practicing medicine in New York. [Government's Motion at Attachment 2]. Additionally, the Government attached the Interim Order from the New York Board, precluding Respondent from practicing medicine in New York, which became effective on April 2, 2012. [*Id.* at Attachment 3]. The Government argues, therefore, that in accordance with Agency precedent, the DEA is barred by statute from continuing the Respondent's registration because his state medical license was suspended. [*Id.* at 2]. In addition, the Government argues that the Respondent's registration terminates as a matter of law under 21 U.S.C. 822(e) because the Respondent is no longer practicing at his DEA registered location. [Government's Motion at 3–4].

On July 24, 2012, the Court issued an Order for Respondent's Response to the Government's Motion for Summary Judgment.

On July 24, 2012, Respondent filed a letter addressed to the Court (''Respondent's Request''). Therein, Respondent requested that ''this matter be stayed entirely pending resolution of the criminal charges.'' [Respondent's Request at 1].

On July 25, 2012, the Court issued an Order Denying Respondent's Request to Stay Proceedings and further ordered Respondent to file a response, if he so chooses, to the Government's Motion for Summary Judgment.

On July 30, 2012, the Respondent filed Respondent's Response to the Government's Motion for Summary Judgment (''Response''). Therein, the Respondent argues that the revocation or termination of Dr. Longmore's DEA registration is ''premature'' because the outcome of the pending criminal matter against Dr. Longmore has not yet been resolved. [Response at 1]. Additionally, Respondent argues that Dr. Longmore has not committed any acts that would render his continued DEA registration to be inconsistent with the public interest. [Response at 2]. Lastly, the Respondent argues that the closing of Dr. Longmore's medical practice, as a result of his consent order with the New York Board, should not form the basis for termination of his DEA registration. [*Id.* at 3].

For the reasons set forth below, I will grant the Government's Motion and recommend that the Administrator revoke the Respondent's DEA Certificate of Registration. But, I note that, pursuant to 21 C.F.R. § 1301.13(a) (2012), the Respondent may apply for a new DEA Certificate of Registration at any time.

II. Discussion

A. Respondent Currently Lacks Authority To Handle Controlled Substances in New York

The DEA will not maintain a controlled substances registration if the registrant is without state authority to handle controlled substances in the state in which the registrant practices. The Controlled Substances Act (''CSA'') provides that obtaining a DEA registration is conditional on holding a state license to handle controlled substances. *See* 21 U.S.C. 802(21) (2006) (defining ''practitioner'' as ''a physician * * * 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. 823(f) (2006) (''the Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices''). The DEA, therefore, has consistently held that the CSA requires the DEA to revoke the registration of a practitioner who no longer possesses a state license to handle controlled substances. *See* 21 U.S.C. 824(a)(3) (2006) (stating ''a registration may be suspended or revoked by the Attorney General upon a finding that the registrant has had his State license or registration suspended, revoked or denied by competent State authority''); *Beverley P. Edwards, M.D.,* 75 FR 49,991 (DEA 2010); *Joseph Baumstarck, M.D.,* 74 FR 17,525 (DEA 2009).

In this case, the Respondent does not dispute that he currently lacks state authority to handle controlled substances. However, the Respondent argues that his temporary discontinuance of practicing medicine in New York, under the Interim Order, is not sufficient to require the revocation of his DEA registration. Respondent argues that his DEA registration should not be revoked because he voluntarily relinquished his right to practice medicine in New York while a criminal investigation is pending against him. [Response at 1–2]. However, the Interim Order effectively suspends the Respondent's license to practice medicine in New York until 30 days after the final disposition of the open criminal investigation against the Respondent. Regardless of the merit of Respondent's pending criminal case, he currently lacks the necessary state authority to practice medicine and to

handle controlled substances in New York. Consequently, his DEA registration must be revoked.

Next, Respondent argues that his continued DEA registration would not be inconsistent with the public interest and therefore, his DEA registration should not be revoked. [Response at 2–3]. Respondent argues that the factors to be considered in determining whether an application for registration should be denied or revoked under 21 U.S.C. 824(a)(4) weigh in favor of maintaining the Respondent's DEA registration because he has not issued any prescriptions that are inconsistent with the public interest. [*Id.*].

While the Respondent may have raised genuine disputes of fact, concerning the allegations in the Government's Order to Show Cause, those disputes are immaterial in light of the Respondent's current lack of state registration. Indeed, the CSA and Agency precedent make clear that as a prerequisite to registration the Respondent must have state authority to handle controlled substances, and that without such authority all other issues before this forum are moot. *See* 21 U.S.C. 802(21); 21 U.S.C. 823(f); *Joseph Baumstarck, M.D.,* 74 FR at 17,527 (DEA 2009). Thus, because there is no dispute that the Respondent lacks state authority to handle controlled substances, the Respondent's registration must be revoked.

B. There Is Insufficient Evidence That Respondent Has Permanently Ceased the Practice of Medicine

A registrant's DEA registration terminates as a matter of law when the registrant ceases to practice at his registered location. *See* 21 U.S.C. 822(e) (2006) (''A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances of list I chemicals''); 21 CFR 1301.52(a) (2012) (''[T]he registration of any person, and any modifications of that registration, shall terminate, without any further action by the Administration, if and when such person dies, ceases legal existence, discontinues business or professional practice, or surrenders a registration''). In addition, a registrant must either request that his DEA registered address be changed or the registrant must notify the DEA that he is no longer practicing at the place of business where he is registered. *See* 21 CFR 1301.51 (2010) (''Any registrant may apply to modify his/her registration to authorize the handling of additional controlled substances or to change his/her name or address, by submitting a letter of request to the Registration Unit, Drug Enforcement Administration''); 21 CFR 1301.52(c) (2011) (''Any registrant desiring to discontinue business activities altogether or with respect to controlled substances (without transferring such business activities to another person) shall return for cancellation his/her certificate of registration, and any unexecuted order forms in his/her possession, to the Registration Unit, Drug Enforcement Administration'').

The Respondent does not dispute that he no longer is working at his DEA registered location. However, the Respondent argues that the closure of his medical practice at 104 Mill Road Woodstock, N.Y. is the result of the consensual Interim Order issued by the New York Board and cannot form the basis for a termination of his DEA registration. [Response at 3].

In this case, there is insufficient evidence to support a finding that the Respondent has permanently ceased the practice of medicine and therefore, the Court declines to address the issue of whether or not the Respondent's DEA registration terminates by operation of law. *See John B. Freitas, D.O.,* 74 FR 17,524, 17,525 (DEA 2009) (finding that a registrant's registration had not terminated because the registrant had not permanently ceased the practice of medicine or returned his registration for cancellation); *William R. Lockridge, M.D.,* 71 FR 77,791, 77,797 (DEA 2006) (interpreting 21 CFR 1301.52(a) to require a registrant to permanently cease the practice of medicine). Therefore, because there is insufficient evidence to determine whether the Respondent intends to permanently cease the practice of medicine, the Court declines to address whether the Respondent's DEA registration has terminated as a matter of law.

C. Respondent Is Entitled To Reapply for Registration With the DEA

Any person who is required to register with the DEA may apply for registration at any time. 21 CFR 1301.13(a) (2012) (''Any person who is required and who is not registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person'').

Respondent requests that he be able to reapply for a Certificate of Registration with the DEA, when, and if, his medical license becomes active. [Response at 3].

The Respondent is permitted to reapply for a Certificate of Registration with the DEA at any time in the future. 21 CFR 1301.13(a). However, the Respondent will not be permitted to engage in activity for which a registration is required until his application is granted by the DEA. *Id.*

III. Conclusion, Order, and Recommendation

Consequently, there is no genuine dispute of material fact regarding the Respondent's lack of state authority to handle controlled substances. Thus, summary judgment for the Government is appropriate. It is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. *See Michael G. Dolin, M.D.,* 65 Fed. Reg. 5,661 (DEA 2000). Here, there is no genuine dispute that the Respondent currently lacks state authority to practice medicine and to handle controlled substances in New York.

Accordingly, I hereby grant the Government's Motion for Summary Judgment.

I also forward this case to the Deputy Administrator for final disposition. I recommend that the Respondent's DEA Certificate of Registration, Number BL9651250, be revoked.[1]

September 6, 2012.

Gail A. Randall,

Administrative Law Judge.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–48]

Larry Elbert Perry, M.D.; Decision and Order

On July 2, 2012, Chief Administrative Law Judge John J. Mulrooney, Jr., issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificate of Registration be revoked and that any pending application to renew or modify his registration be denied.

[1] The sole basis of my recommendation is the loss of Respondent's state licensure. I make no findings or conclusions concerning the other allegations asserted in the Order to Show Cause.