

The Board's conclusions of law that Registrant committed unprofessional conduct by prescribing controlled substances to his wife, as well as by engaging in habitual substance abuse and using controlled substances which were not prescribed to him by another physician in the course of treatment, support the conclusion that he has committed such acts as to render his registration "inconsistent with the public interest." 21 U.S.C. 824(a)(4). These findings provide an additional and independent basis to revoke Registrant's registration.

#### Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and 823(f), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BB7566461 issued to Alaaeldin Babiker, M.D., be, and it hereby is, revoked. I further order that any application of Alaaeldin Babiker, M.D., to renew or modify this registration, or for any other registration, be, and it hereby is denied. This Order is effective immediately.<sup>5</sup>

he acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing to B.S. 21 CFR 1306.04(a). These include that he failed to address B.S.'s positive test for marijuana, that he did not perform additional evaluations or use therapeutic interventions other than prescribing controlled substances, that he dramatically increased B.S.'s pain medications and did not document an explanation for doing so, and that he failed to maintain adequate and legible medical records.

The Board did not, however, find that Registrant engaged in "[p]rescribing, dispensing, or administering any controlled substance . . . for other than accepted therapeutic purposes," Ariz. Rev. Stat. § 32-1401(27)(j), a standard similar to that of 21 CFR 1306.04(a). See GX 3, at 6; see also *Kenneth Harold Bull*, 78 FR 62666, 62674 (2013) (holding that physician's violation of a State's "injunctive prescribing" standard did not establish a violation of 21 CFR 1306.4(a) when the State also had a standard prohibiting "prescribing . . . or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes" but did not find a violation). Instead, the Board found that he committed unprofessional conduct by engaging in "[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public." GX 3, at 6 (citing Ariz. Rev. Stat. § 32-1401(27)(q)).

In its Request for Final Agency Action, the Government did not allege that the Board's findings with respect to B.S. supported a finding that Registrant violated 21 CFR 1306.04(a). Nor did it argue that the Board's findings establish reckless or negligent conduct in the handling of controlled substances, which is a basis to revoke a registration under *Paul J. Caragine*, 63 FR 51592, 51601 (1998).

Moreover, the Government offers no argument as to why the Board's standard of "[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public" is a law related to controlled substances under factor four. I therefore do not consider whether this provision falls within factor four. Nor do I consider the Board's findings with respect to B.S.

<sup>5</sup> For the same reasons which led the Board to order Registrant to immediately surrender his state license, I conclude that this Order should be

Dated: July 22, 2016.

**Chuck Rosenberg,**

*Acting Administrator.*

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## DEPARTMENT OF JUSTICE

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

On July 27, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Tennessee in the lawsuit entitled *United States and Knox County, Tennessee, Ex Rel, Lynne Liddington, Director Of Air Quality Management For Knox County, Tennessee v. Cemex Inc., et al.*, Civil Action No. 3:16-cv-471.

This case involves claims for alleged violations of the Prevention of Significant Deterioration ("PSD") program of the Clean Air Act ("CAA"), CAA's Title V operating permit requirements, and related Tennessee and Texas state law requirements at Portland cement facilities in Knoxville, Tennessee and Odessa, Texas owned or operated by Cemex, Inc. or related corporate entities (collectively, "Cemex"). The complaint seeks injunctive relief for installation of control technology to reduce emissions of nitrogen oxides (NO<sub>x</sub>), civil penalties, and mitigation of past excess NO<sub>x</sub> emissions. The settlement resolves the liability at these facilities and also resolves similar potential liability at additional Cemex cement plants in New Braunfels, Texas, Louisville, Kentucky and Demopolis, Alabama, and requires Cemex to install pollution control equipment, agree to federally enforceable limits for NO<sub>x</sub> and SO<sub>2</sub> emissions, pay \$1,690,000 in civil penalties, and perform an environmental mitigation project.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Knox County, Tennessee, Ex Rel, Lynne Liddington, Director Of Air Quality Management For Knox County, Tennessee v. Cemex Inc., et al.*, D.J. Ref. No. 90-5-2-1-09716. All comments must be submitted no later than thirty (30) days after the publication date of this notice.

effective immediately. GX 9, at 9; see also 21 CFR 1316.67.

Comments may be submitted either by email or by mail:

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

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the 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 \$13.50 (25 cents per page reproduction cost) payable to the United States Treasury.

**Henry Friedman,**

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

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## DEPARTMENT OF JUSTICE

### Parole Commission

#### Sunshine Act Meeting; Record of Vote of Meeting Closure (Pub. L. 94-409) (5 U.S.C. 552b)

I, J. Patricia W. Smoot, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11:00 p.m., on Wednesday, July 27, 2016 at the U.S. Parole Commission, 90 K Street NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss six original jurisdiction cases pursuant to 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: J. Patricia W. Smoot, Patricia Cushwa and Charles T. Massarone.