

if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.”); 21 U.S.C. 802(21) (“[t]he term ‘practitioner’ means 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”).²⁵

While the Show Cause Order did not assert this as a ground for denial of his application (because it occurred subsequent to the issuance of the Order), the Government did serve a copy of its Addendum which presented this development to me, on Respondent. In response to this filing, Respondent has raised no objection.²⁶ In any event, there are two other independent and legally sufficient bases to deny his application. Accordingly, I will deny his application.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Richard J. Settles, for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This Order is effective immediately.

Dated: September 13, 2016.

Chuck Rosenberg,
Acting Administrator.

[FR Doc. 2016–22680 Filed 9–20–16; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Nanosyn, Inc.

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 in

²⁵ See also *Rezik A. Saqer*, 81 FR 22122, 22125–27 (2016); *Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988).

²⁶ DEA has previously held that “[t]he rules governing DEA hearings do not require the formality of amending a show cause order to comply with the evidence. The Government’s failure to file an amended Show Cause Order alleging that Respondent’s state CDS license has expired does not render the proceeding fundamentally unfair.” *Roy E. Berkowitz*, 74 FR 36758, 36759–60 (2009); see also *Hatem M. Ataya*, 81 FR 8221, 8245 (2016) (collecting cases).

accordance with 21 CFR 1301.33(a) on or before November 21, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her 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 Deputy Assistant Administrator of the DEA Office of Diversion Control (“Deputy Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on December 18, 2015, Nanosyn, Inc., Nanoscale Combinatorial Synthesis, 3331–B Industrial Drive, Santa Rosa, California 95403 applied to be registered as a bulk manufacturer the of following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Oxymorphone	9652	II
Fentanyl	9801	II

The company is a contract manufacturer. At the request of the company’s customers, it manufactures derivatives of controlled substances in bulk form.

Dated: September 15, 2016.

Louis J. Milione,
Deputy Assistant Administrator.

[FR Doc. 2016–22737 Filed 9–20–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kevin L. Lowe, M.D.; Decision and Order

On May 18, 2016, Chief Administrative Law Judge John J. Mulrooney, II (CALJ), issued the attached Recommended Decision

(R.D.).¹ Therein, the CALJ found that it is undisputed that Respondent is currently without authority to handle controlled substances in New York, the State in which he holds DEA Registration FL2580163. R.D. at 4. The CALJ thus granted the Government’s Motion for Summary Disposition and recommended that I revoke Respondent’s registration and deny any pending applications.

Neither party filed exceptions to the Recommended Decision. Having reviewed the record, I adopt the CALJ’s finding that Respondent lacks state authority to handle controlled substances in New York, the State in which he is registered. “State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.” *Frederick Marsh Blanton*, 43 FR 27616, 27617 (1978). See also *Rezik A. Saqer*, 81 FR 22122, 22124–127 (2016). Thus, once the Government establishes that an applicant for a practitioner’s registration or a practitioner-registrant does not possess state authority, there are no further facts to be considered and revocation is the mandatory sanction that must be entered under the Controlled Substances Act. Accordingly, I will also adopt the CALJ’s recommendation that I revoke Respondent’s registration and deny any pending application to renew or modify his registration.

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 FL2580163 issued to Kevin L. Lowe, M.D., be, and it hereby is, revoked. I further order that any pending application of Kevin L. Lowe, M.D., to renew or modify the above registration, be, and it hereby is, denied. This Order is effective immediately.²

¹ All citations to the Recommended Decision are to the slip opinion issued by the CALJ.

² Based on Respondent’s acknowledgment that he has been convicted of conspiring to unlawfully distribute controlled substances, see Resp.’s Hrng. Req., at 1–2, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

Dated: September 14, 2016.

Chuck Rosenberg,

Acting Administrator.

Order Granting the Government's Motion for Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

Chief Administrative Law Judge John J. Mulrooney, II. The Deputy Assistant Administrator, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OSC), dated March 28, 2016, proposing to revoke the DEA Certificate of Registration (COR), Number FL2580163,³ of Kevin L. Lowe, M.D. (Respondent), pursuant to 21 U.S.C. 824(a)(3) and 21 U.S.C. 823(f). In the OSC, the DEA avers that the Respondent's lack of "authority to handle controlled substances in the State of New York, the state in which [the Respondent is] registered with the DEA," is a basis for revocation of the Respondent's COR.⁴

The Respondent, *pro se*, timely filed a Request for Hearing dated April 3, 2016,⁵ wherein he conceded that he is currently without state authority to handle controlled substances. *See* Req. for Hr'g at 1 (stating that his "imprisonment has prevented [him] from renewing his state license"). The Respondent also maintained that he is innocent of the crime for which he was convicted and is in the process of appealing his conviction. *Id.* at 1, 3.

On April 22, 2016, the Government filed a Motion for Summary Disposition, seeking a Recommended Decision granting the Government's Motion because Respondent is currently without authority to handle controlled substances in New York. Gov't Mot. at 1. Appended to its Motion, the Government provided a Certification by Cathy Hanczaryk, legal custodian of the official records of the Division of Professional Licensing Services of the New York State Education Department, in which Ms. Hanczaryk attests that the Respondent "is not currently registered to practice the profession [of medicine] in New York" and has not been so registered since October 31, 2015. Gov't Mot. App'x B. Ms. Hanczaryk's Certification further states that the

Respondent "has not filed a registration renewal application for the period of" November 1, 2015 to October 31, 2017. *Id.* According to a supporting Declaration by Diversion Investigator (DI) Chante Jones, also appended to the Government's Motion, DI Jones personally obtained the Certification by Ms. Hanczaryk after learning that the Respondent, who had been convicted in federal district court, did not have an active license to practice medicine in New York and has been without one since October 31, 2015. Gov't Mot. App'x C at 1–2.

The Respondent's reply to the Government's motion was due on May 11, 2016.⁶ Having afforded an additional week of time in the event that the Respondent's reply was mailed but not timely, the Government's motion would appropriately be granted as unopposed. Even without doing so, however, the Government's motion must be granted on the existing record.

In order to revoke a registrant's DEA registration, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e). Once the DEA has made its *prima facie* case for revocation of the registrant's DEA COR, the burden of production then shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's COR would not be appropriate. *Morall v. DEA*, 412 F.3d 165, 174 (D.C. Cir. 2005); *Humphreys v. DEA*, 96 F.3d 658, 661 (3d Cir. 1996); *Shatz v. U.S. Dep't of Justice*, 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston*, 45 FR 72311, 72312 (1980).

The Controlled Substances Act (CSA) requires that, in order to maintain a DEA registration, a practitioner must be authorized to handle controlled substances in the state in which he practices. *See* 21 U.S.C. 823(f) ("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."); *see also* 21 U.S.C. 802(21) (the CSA defines "practitioner" as "a physician . . . licensed, registered, or otherwise permitted, . . . by the jurisdiction in which he practices . . . to . . . dispense [or] administer . . . a controlled substance in the course of professional practice"). DEA has long held that possession of authority under state law to dispense controlled substances is not

only a prerequisite to obtaining a registration, but also an essential condition for maintaining one. *Serenity Café*, 77 FR 35027, 35028 (2012); *David W. Wang, M.D.*, 72 FR 54297, 54298 (2007); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988). Because "possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration," this Agency has consistently held that "the CSA requires the revocation of a registration issued to a practitioner who lacks [such] authority." *John B. Freitas, D.O.*, 74 FR 17524, 17525 (2009); *see James Alvin Chaney, M.D.*, 80 FR 57391, 57391 (2015); *Scott Sandarg, D.M.D.*, 74 FR 17528, 17529 (2009); *Roy Chi Lung, M.D.*, 74 FR 20346, 20347 (2009); *Roger A. Rodriguez, M.D.*, 70 FR 33206, 33207 (2005); *Stephen J. Graham, M.D.*, 69 FR 11661, 11662 (2004); *Abraham A. Chaplan, M.D.*, 57 FR 55280, 55280–81 (1992); *see also Harrell E. Robinson, M.D.*, 74 FR 61370, 61375 (2009) (Agency revoked a registration based on loss of state authority after hearing before an ALJ, but also considered the public interest factors in its analysis); *but see* 21 U.S.C. 824(a)(3) (loss of state authority constitutes a discretionary basis for sanction, not a mandatory basis). The Agency has deemed this rule to be applicable "not only where a registrant's state authority has been suspended or revoked, but also where a practitioner with an existing DEA registration has lost his state authority for reasons other than through formal disciplinary action of a State board," such as "expiration of [a] state license." *Freitas*, 74 FR at 17525 (citing *William D. Levitt, D.O.*, 64 FR 49822, 49823 (1999)); *see Mark L. Beck, D.D.S.*, 64 FR 40899, 40900 (1999); *Charles H. Ryan, M.D.*, 58 FR 14430, 14430 (1993).

Congress does not intend for administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom. Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth. v. EPA*, 35 F.3d 600, 605 (1st Cir. 1994); *NLRB v. Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); *United States v. Consol. Mines & Smelting Co.*, 455 F.2d 432, 453 (9th Cir. 1971). Thus, it is well-settled that, where no genuine question of fact is involved or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required. *See Jesus R. Juarez, M.D.*, 62 FR 14945 (1997);

³ The Respondent's DEA COR is current and expires by its terms on March 31, 2017. Gov't Mot. App'x A.

⁴ The OSC also alleges that the Respondent was convicted of one count of conspiracy to distribute narcotics involving oxycodone in violation of 21 U.S.C. 846. OSC at 1.

⁵ Respondent apparently filed the Request for Hearing with the Office of Diversion Control, and Government counsel forwarded the request to the Office of Administrative Law Judges on April 11, 2016.

⁶ The Government requested additional time to file its Motion, which was granted, and the Respondent's original due date was likewise extended.

Dominick A. Ricci, M.D., 58 FR 51104 (1993). Here, the supplied Certification by Ms. Hanczaryk establishes, and the Respondent concedes,⁷ that the Respondent is currently without authorization to handle controlled substances in New York, the jurisdiction where the Respondent holds the DEA COR that is the subject of this litigation.

Summary disposition of an administrative case is warranted where, as here, “there is no factual dispute of substance.” *Veg-Mix, Inc. v. U.S. Dep’t of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (“[A]n agency may ordinarily dispense with a hearing when no genuine dispute exists.”). At this juncture, no genuine dispute exists over the fact that the Respondent lacks state authority to handle controlled substances in New York. Because the Respondent lacks such state authority, Agency precedent dictates that he is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that would, in the Agency’s view, provide authority to allow the Respondent to continue to hold his COR.⁸

Accordingly, I hereby *Grant* the Government’s Motion for Summary Disposition; and further *Recommend* that the Respondent’s DEA registration be *Revoked* forthwith, and any pending applications for renewal be *Denied*.

Dated: May 18, 2016.

John J. Mulrooney, II
Chief Administrative Law Judge.

[FR Doc. 2016–22751 Filed 9–20–16; 8:45 am]

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DEPARTMENT OF JUSTICE

[Docket No. ODAG 165]

National Commission on Forensic Science Solicitation of Applications for Additional Commission Membership To Support Medicolegal Death Investigation

AGENCY: Department of Justice.

ACTION: Solicitation of Applications for Additional Commission Membership for the National Commission on Forensic Science specifically to fill a current forensic pathologist Commissioner vacancy to support medicolegal death investigation.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, this notice announces the solicitation of applications for additional Commission membership specifically to fill a current forensic pathologist Commissioner vacancy to support medicolegal death investigation.

DATES: Applications must be received on or before October 21, 2016.

ADDRESSES: All applications should be submitted to: Jonathan McGrath, Designated Federal Official, 810 7th Street NW., Washington, DC 20531, by email at Jonathan.McGrath@usdoj.gov.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Designated Federal Official, 810 7th Street NW., Washington, DC 20531, by email Jonathan.McGrath@usdoj.gov, or by phone at (202) 514–6277.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. App.), this notice announces the solicitation of applications for additional Commission membership on the National Commission on Forensic Science to fill a current vacancy. The National Commission on Forensic Science was chartered on April 23, 2013 and the charter was renewed on April 23, 2015. There is currently a forensic pathologist Commissioner vacancy to support medicolegal death investigation. This notice announces the solicitation of applications for Commission membership to fill this vacancy.

The Commission is co-chaired by the Department of Justice and National Institute of Standards and Technology. The Commission provides recommendations and advice to the Department of Justice concerning national methods and strategies for: Strengthening the validity and reliability of the forensic sciences (including medico-legal death investigation); enhancing quality assurance and quality control in forensic science laboratories and units; identifying and recommending scientific guidance and protocols for evidence seizure, testing, analysis, and reporting by forensic science laboratories and units; and identifying and assessing other needs of the forensic science communities to strengthen their disciplines and meet the increasing demands generated by the criminal and civil justice systems at all levels of government. Commission membership includes Federal, State, and Local forensic science service providers; research scientists and academicians; prosecutors, defense attorneys, and judges; law enforcement; and other relevant backgrounds. The Commission

reports to the Attorney General, who through the Deputy Attorney General, shall direct the work of the Commission in fulfilling its mission.

The duties of the Commission include: (a) Recommending priorities for standards development; (b) reviewing and recommending endorsement of guidance identified or developed by subject-matter experts; (c) developing proposed guidance concerning the intersection of forensic science and the courtroom; (d) developing policy recommendations, including a uniform code of professional responsibility and minimum requirements for training, accreditation and/or certification; and (e) identifying and assessing the current and future needs of the forensic sciences to strengthen their disciplines and meet growing demand.

Members will be appointed by the Attorney General in consultation with the Director of the National Institute of Standards and Technology and the vice-chairs of the Commission. Additional members will be selected to fill vacancies to maintain a balance of perspective and diversity of experiences, including Federal, State, and Local forensic science service providers; research scientists and academicians; Federal, State, Local prosecutors, defense attorneys and judges; law enforcement; and other relevant stakeholders. DOJ encourages submissions from applicants with respect to diversity of backgrounds, professions, ethnicities, gender, and geography. The Commission shall consist of approximately 30 voting members. Members will serve without compensation. The Commission generally meets four times each year at approximately three-month intervals. Additional information regarding the Commission can be found at: <http://www.justice.gov/ncfs>.

Applications: Any qualified person may apply to be considered for appointment to this advisory committee. Each application should include: (1) A resume or curriculum vitae; (2) a statement of interest describing the applicant’s relevant experience; and (3) a statement of support from the applicant’s employer. Potential candidates may be asked to provide detailed information as necessary regarding financial interests, employment, and professional affiliations to evaluate possible sources of conflicts of interest. The application period will remain open through October 21, 2016. The applications must be sent in one complete package, by email, to Jonathan McGrath (contact information above) with the subject line of the email entitled, “NCFS

⁷ The Respondent conceded his lack of state authority in his Request for Hearing. Req. for Hr’g at 1 (stating that his “imprisonment has prevented [him] from renewing his state license”).

⁸ However, should the Respondent’s state authority be renewed, he may apply for a new DEA COR. See *Franklyn Seabrooks, M.D.*, 79 FR 44196, 44197 n.1 (2014).