

a written statement.” Gov. Request for Final Agency Action, at 1.

Based on the record and the Government’s representation, I find that since the date on which Applicant was served with the Show Cause Order, more than 30 days have now passed and neither Applicant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement while waiving his right to a hearing. Accordingly, I find that Applicant has waived his right to a hearing and his right to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Order based on the record submitted by the Government. *Id.* § 1301.43(e). I make the following findings.

Findings of Fact

On December 30, 2013, Applicant applied for a DEA Certificate of Registration, seeking authority to dispense controlled substances in schedules II through V as a practitioner. GX 2A, at 1. Applicant proposed an address in Northridge, California as his registered location, and provided the number of his California license. *Id.*

Applicant was also the holder of Physician’s and Surgeon’s certificate No. G27953 which was issued by the MBC. GX 2B, at 1, 3. However, on July 18, 2016, the MBC adopted the proposed decision of a state administrative law judge (ALJ) which found that Applicant had been “convicted of a criminal offense substantially related to the qualifications, functions, or duties of a physician and surgeon” and that “[s]uch also constituted unprofessional conduct.” *Id.* at 1, 24. The state ALJ also found that Applicant “failed to offer even minimal evidence of rehabilitation and this prevents the Board from giving any consideration to continuing his probation at this time” and that “[p]ublic protection demands that [his] medical license be revoked.” *Id.* at 24.

While the MBC’s Order was to become effective on August 17, 2016, according to the Board’s online records (of which I take official notice ¹), on

¹ I also take official notice that according to the online records of the MBC, Applicant’s medical license has not been reinstated.

In accordance with 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, Respondent 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 Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within 15 calendar days

August 16, Applicant sought reconsideration and the MBC stayed its order to allow it “to review and consider” his petition. However, on August 26, 2016, the MBC denied Applicant’s petition and the revocation became effective at 5 p.m. that day. I therefore find that Applicant does not possess authority under the laws of California to dispense controlled substances. See Cal. Bus. & Prof. Code § 2051 (“The physician’s and surgeon’s certificate authorizes the holder to use drugs . . . in or upon human beings . . . in the treatment of diseases, injuries, deformities, and other physical and mental conditions”); *id.* § 2052 (“any person who . . . prescribes for any . . . deformity, disease . . . injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter . . . is guilty of a public offense”).

Discussion

Under the Controlled Substances Act, a practitioner must be currently authorized to dispense controlled substances “under the laws of the State in which he practices” in order to obtain and maintain a practitioner’s registration. See 21 U.S.C. 823(f) (“[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.”); see also *id.* § 802(21) (defining “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”).

Thus, with respect to a practitioner, 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 registration. See, e.g., *James L. Hooper*, 76 FR 71371 (2011) (collecting cases), *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.”); 21 U.S.C. 824(a)(3) (authorizing revocation “upon

of the date of service of this Order which shall commence on the date this Order is mailed.

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”).

As found above, by virtue of the MBC’s Order, Applicant currently lacks authority to handle controlled substances in California, the State in which he seeks registration, and is not entitled to be registered. Accordingly, I will order that his application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Robert Markman, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective March 24, 2017.

Dated: February 14, 2017.

Chuck Rosenberg,
Acting Administrator.

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DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–0292]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Revision of Currently Approved Collection: 2016 Survey of Sexual Victimization (SSV)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-day notice.

SUMMARY: Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 87957, on December 6, 2016, allowing for a 60 day comment period. No comments were received.

DATES: Comments are encouraged and will be accepted for an additional 30 days until March 24, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or

additional information, please contact Ramona Rantala, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: Ramona.Rantala@usdoj.gov; telephone: 202-307-6170). Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Survey of Sexual Victimization (formerly the Survey of Sexual Violence).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form numbers: SSV-1, SSV-2, SSV-3, SSV-4, SSV-5, SSV-6, SSV-IA, and SSV-IJ. Sponsoring component: Department of Justice, Bureau of Justice Statistics.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Other: Federal Government and business (privately operated correctional institutions, both for-profit and not-for-profit).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* An estimate of the total number of respondents is 1,574 adult and juvenile systems and facilities.

(This estimate assumes a response rate of 100%.) Federal and state systems for adults and juveniles (102 respondents) will take an estimated 60 minutes to complete the summary form; local and privately operated facilities (1,472 respondents) will take an estimated 30 minutes to complete the summary form; and each incident form (we estimate about 2,310 incident forms will be completed, one for each incident that was substantiated) will take about 30 minutes. The burden estimates are based on data from the prior administration of the SSV.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,993 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72-20; NRC-2017-0050]

Department of Energy; Three Mile Island 2 Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application, docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has docketed a license amendment application from the Department of Energy (DOE or the licensee) for amendment of Materials License No. SNM-2508, for the Three Mile Island 2 (TMI-2) independent spent fuel storage installation located at the Idaho National Laboratory in Butte County, Idaho. If granted, the amendment would update the licensee delegation of authority in the license, the technical specifications, and the final safety analysis report. These

documents currently delegate authority under the license to the Manager, DOE Idaho Operations Office. The amendment would replace that reference with the Deputy Manager, Idaho Cleanup Project in each of the documents.

ADDRESSES: Please refer to Docket ID NRC-2017-0050 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0050. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jose R. Cuadrado, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0606; email: Jose.Cuadrado@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated September 8, 2016, DOE submitted to the NRC an application to amend the license, technical specifications, and the final safety analysis report, for the TMI-2 independent spent fuel storage installation located at the Idaho National Laboratory in Butte County, Idaho (ADAMS Accession No. ML16258A191). Materials License No. SNM-2508 authorizes the licensee to receive, store, and transfer canisters