

Having considered the record, I adopt the ALJ's finding of fact that Respondent's Louisiana CDS license has expired and his of conclusion of law that Respondent lacks state authorization to dispense controlled substances in Louisiana. I will therefore adopt the ALJ's recommendation that I revoke Respondent's registration. I make the following findings.

### Findings of Fact

Respondent is the holder of DEA Certificate of Registration No. FF4394209, pursuant to which it is authorized to dispense controlled substances in schedules II through V as a Hospital/Clinic, at the registered address of: First Choice Surgery Center of Baton Rouge, L.L.C., 505 East Airport Drive, Baton Rouge, Louisiana. Mot. for Summ. Disp., Appendix A. This registration does not expire until September 30, 2019. *Id.* Respondent is owned by Arnold E. Feldman, M.D. Resp.'s Hrng. Req. at 1.

Respondent also previously held Louisiana Controlled Dangerous Substance License No.043803-ASC. *Id.*, at Appendix B. However, Respondent allowed this license to expire on September 23, 2016. *Id.*

Accordingly, I find that Respondent currently lacks authority to dispense controlled substances under the laws of the State of Louisiana.

### 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 (CSA), "upon a finding that the registrant . . . has had [its] 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." With respect to a practitioner, which includes a hospital or clinic, *see* 21 U.S.C. 802(21), 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 practitioner's registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton*, 43 FR 27616 (1978).

This rule derives from the text of two other provisions of the CSA, section 802(21), which defines the term

is a sufficient independent ground to recommend the revocation of [its] registration." *Id.*

"practitioner," and section 823(f), which sets forth the registration requirements for practitioners. Notably, in section 802(21), Congress defined "the term 'practitioner' [to] mean[ ] a . . . physician . . . hospital, 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) (emphasis added). The text of this provision makes clear that a hospital is not a practitioner within the meaning of the CSA if it is not "licensed, registered or otherwise permitted, by the jurisdiction in which [it] practices . . . to dispense [or] administer . . . a controlled substance in the course of professional practice." *Id.*

To the same effect, Congress, in setting the requirements for obtaining a practitioner's registration, 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 [it] practices." 21 U.S.C. 823(f). Based on these provisions, the Agency held nearly forty years ago that "[s]tate authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance *and maintenance* of a Federal controlled substances registration." *Blanton*, 43 FR at 27617 (revoking physician's registration based on one-year suspension of his state license) (emphasis added).

Having allowed its Louisiana CDS license to expire, Respondent is no longer authorized to dispense controlled substances in the State.<sup>2</sup> Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, and Respondent is no longer authorized to dispense controlled substances under the laws of Louisiana, the State in which it is registered, I adopt the ALJ's recommended order and will order that its registration be revoked. *See, e.g., Hooper*, 76 FR at 71371-72; *Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR at 27616.

### Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of

<sup>2</sup> Subsequent to the ALJ's issuance of his Recommended Decision, Respondent has not filed a motion supported by any evidence that its CDS license has been reinstated with either the ALJ or my Office.

Registration No. FF4394209 issued to First Choice Surgery Center of Baton Rouge, L.L.C., be, and it hereby is, revoked. This *order* is effective immediately.<sup>3</sup>

Dated: November 13, 2017.

**Robert W. Patterson,**

*Acting Administrator.*

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 17- 087]

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

**DATES:** Thursday, December 7, 2017, 1:00-5:00 p.m.; and Friday, December 8, 2017, 9:00 a.m.-12:00 noon, Local Time.

**ADDRESSES:** NASA Headquarters, Program Review Center (PRC), Room 9H40, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358-1148 or [marla.k.king@nasa.gov](mailto:marla.k.king@nasa.gov).

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the Toll Number 1-630-395-0139 or Toll Free Number 1-888-603-9606 and then the numeric passcode 8148619, followed by the # sign, on both days. **Note:** If dialing in, please "mute" your phone. To join via WebEx, the link is <https://nasa.webex.com/>. The meeting number on December 7 is 996 950 837 and the meeting password is NACDEC717! (case sensitive); the meeting number on December 8 is 997 757 737 and the meeting password is NACDEC817@(case sensitive).

<sup>3</sup> As found above, Respondent is owned by Dr. Arnold E. Feldman. For the same reasons which led the former Acting Administrator to revoke Dr. Feldman's Louisiana registration with an immediate effective date, *see Arnold E. Feldman*, 82 FR 39614, 39618 & n.8 (2017), I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

The agenda for the meeting will include reports from the following:

- Aeronautics Committee
- Human Exploration and Operations Committee
- Science Committee
- Technology, Innovation and Engineering Committee
- Ad Hoc Task Force on STEM Education

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to NASA Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees that are U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days in advance. Information should be sent to Ms. Marla King via email at [marla.k.king@nasa.gov](mailto:marla.k.king@nasa.gov). It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 2017-25201 Filed 11-21-17; 8:45 am]

**BILLING CODE 7510-13-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Overhead Transfer Rate Methodology

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final notice.

**SUMMARY:** In June 2017, the NCUA Board (Board) published a notice and request for comment on proposed changes to its Overhead Transfer Rate (OTR) methodology and sought industry comments on the proposed changes.<sup>1</sup> This Final Notice discusses the comments received and provides the

<sup>1</sup> Request for Comment Regarding Revised Overhead Transfer Rate Methodology, 82 FR 29935 (June 30, 2017).

Board's response to the comments. This Final Notice also sets forth the new OTR methodology the Board has chosen to adopt after consideration of the public comments received.

**FOR FURTHER INFORMATION CONTACT:**

Russell Moore or Julie Decker, Loss/Risk Analysis Officers, Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314 or telephone: (703) 518-6383 or (703) 518-6384.

**SUPPLEMENTARY INFORMATION:**

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**I. Background and Legal Authority**

The NCUA administers the Federal Credit Union Act (the Act), which is comprised of three Titles: Title I—General Provisions, Title II—Share Insurance, and Title III—Central Liquidity Facility. Pursuant to the Act, the NCUA charters, regulates, and insures shares in federal credit unions and insures shares and deposits in federally insured state-chartered credit unions through the National Credit Union Share Insurance Fund (Share Insurance Fund). The NCUA is responsible for ensuring federally insured credit unions operate safely and soundly and comply with all applicable laws and regulations within the NCUA's jurisdiction.<sup>2</sup> In so doing, the agency mitigates risk to the Share Insurance Fund and prevents taxpayer-funded bailouts. The agency's mission is to "provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit."<sup>3</sup> This includes protecting member rights and deposits.

To achieve its statutory mission, the agency incurs various expenses, including those involved in examining and supervising federally insured credit unions. The Board adopts an Operating Budget in the fall of each year to fund the vast majority of the costs of operating the agency.<sup>4</sup> The Act authorizes two primary sources to fund

<sup>2</sup> In coordination with State Supervisory Authorities with respect to federally insured state-chartered credit unions.

<sup>3</sup> <https://www.ncua.gov/About/Pages/Mission-and-Vision.aspx>.

<sup>4</sup> Some costs are directly charged to the Share Insurance Fund when appropriate to do so. For example, costs for training and equipment provided to State Supervisory Authorities are directly charged to the Share Insurance Fund.

the Operating Budget: (1) Requisitions from the Share Insurance Fund "for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper";<sup>5</sup> and (2) "fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act]."<sup>6</sup> Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 U.S.C. 1755 "and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act,] including the examination and supervision of [federal credit unions]." Taken together, these dual primary funding authorities effectively require the Board to determine which expenses are appropriately paid from each source while giving the Board broad discretion in allocating these expenses.

To allocate agency expenses between these two primary funding sources, the NCUA uses the OTR. The OTR represents the formula the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II. Almost all other operating expenses are collected through annual Operating Fees paid by federal credit unions.<sup>7</sup> Two statutory provisions directly limit the Board's discretion with respect to Share Insurance Fund requisitions for the NCUA's Operating Budget and, hence, the OTR. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.<sup>8</sup> Second, the NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.<sup>9</sup> The NCUA has not imposed additional policy or regulatory limitations on its discretion for determining the OTR.

<sup>5</sup> 12 U.S.C. 1783(a).

<sup>6</sup> 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget include interest income, funds from publication sales, parking fee income, and rental income.

<sup>7</sup> Annual Operating Fees must "be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [FCUs] to pay the fee." 1755(b). The Board's methodology for determining the aggregate amount of Operating Fees was discussed in a separate **Federal Register** publication. 81 FR 4674 (Jan. 27, 2016).

<sup>8</sup> 12 U.S.C. 1783(a).

<sup>9</sup> The Act in 12 U.S.C. 1755(a) states, "[i]n accordance with rules prescribed by the Board, each [federal credit union] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed." See also 12 U.S.C. 1766(j)(3).