doing, and [that he] failed to adequately document ongoing examinations and treatment planning . . . and/or he failed to perform these professional functions altogether.'' GX 33, at 6 (D.S.), 8 (A.L.), 11 (R.H.).

With respect to D.S., Dr. Chambers found that over the two-year period between January 2014 and February 2016, there was no evidence in the patient file that Registrant performed physical exams other than to take vital signs and that his treatment plan was essentially non-existent. He also found that D.S.'s chart contained multiples notations that she was suffering from addiction but no evidence that Registrant addressed this with her. Most significantly, as Dr. Chambers observed, D.S. provided multiple aberrational drug tests which included: (1) The presence of controlled substances which he did not prescribe on six occasions, including methadone, buprenorphine, cocaine, and amphetamines; (2) the non-presence of controlled substances (oxycodone and morphine) which he had prescribed on two occasions; and (3) the presence of oxycodone above the recommended therapeutic range on four occasions. Yet there is no evidence that Registrant addressed any of these aberrational test results with D.S.

As for A.L., Dr. Chambers found that ''for the most part,'' Registrant did not document the performance of a physical exam and there is no documentation in the patient file to support Registrant's prescribing of the combinations of narcotics, benzodiazepines, and carisoprodol that he did. GX 33, at 7. Moreover, A.L.'s MAPS report showed that she had seen eight other providers in the year prior to her first visit with Registrant and that she had obtained controlled substances on 50 occasions [15] which included hydrocodone, oxymorphone, oxycodone, morphine, diazepam, alprazolam and amphetamine based on prescriptions issued by these providers. Moreover, at her first visit with Registrant, A.L. reported that she was taking the Trinity of oxycodone, Xanax, and Soma, and while at one point, Registrant even documented that A.L. stated that she was buying drugs off the street, Registrant did not address this aberrant behavior. Moreover, as Dr. Chambers observed, her chart is devoid of evidence that she was monitored through the use of urine drug screens. *See* GXs 18–20.

With respect to R.H., Dr. Chambers found that ''[f]or the most part there are no physical exams documented in the medical records'' and ''[t]here is no documentation in R.H.'s medical records demonstrating a legitimate medical justification . . . for [Registrant's] prescribing'' the ''dangerous combination[s]'' of narcotics, benzodiazepines, and carisoprodol to R.H. GX 33, at 10. Dr. Chambers also found that R.H.'s urine drug screens showed the presence of controlled substances including amphetamines and benzodiazepines that Registrant did not prescribe to him and that Registrant had also documented that R.H. was overmedicating with respect to Valium. However, R.H.'s medical record contains no indication that Registrant resolved these red flags.

Accordingly, I agree with Dr. Chambers that Registrant lacked a legitimate medical purpose and acted outside of the usual course of professional practice when he issued the various controlled substance prescriptions identified above to D.S., A.L., and R.H. 21 CFR 1306.04(a); 21 U.S.C. 841(a)(1). I also agree with Dr. Chambers that Registrant's prescribing to D.S., A.L. and R.H. violated Mich. Comp. Laws § 333.7401(1) and did not comply with the Michigan Guidelines.

I thus conclude that Registrant's multiple violations of 21 CFR 1306.04 (a), 21 U.S.C. 841(a)(1), and Mich. Comp. Laws § 333.7401(1) are egregious and support the conclusion that he ''has committed such acts as would render his registration . . . inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).[16] I therefore conclude that the Government's evidence with respect to Factors Two and Four makes out a *prima facie* case for revoking his existing registration and denying any applications for a new registration. As Registrant has waived his right to a hearing or to submit a written statement of position, there is no evidence to refute the conclusion that his registration is inconsistent with the public interest. I will therefore order that Registrant's remaining registration be revoked and that any pending application be denied.

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 No. FS6457407 issued to Bernard Wilberforce Shelton, M.D., be, and it hereby is, revoked. I further order that any pending application of Bernard Wilberforce Shelton to renew or modify the above registration, as well as any other pending application for registration be, and it hereby is, denied. This Order is effective immediately.[17]

Dated: March 24, 2018.

Robert W. Patterson,

Acting Administrator.

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[15] In some instances, she obtained the controlled substances through a refill of a previously issued prescription. *See, e.g.,* GX 18, at 32 (alprazolam refill); *id.* at 33–34 (refills of hydrocodone).

[16] This provides a separate and independent ground from the finding that he does not currently possess state authority for revoking his registration and denying his application.

[17] Based on the egregious nature of Respondent's prescribing violations, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Angela L. Lorenzo, P.A.: Decision and Order

On December 18, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Angela L. Lorenzo, P.A. (Registrant), of Las Vegas, Nevada. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration No. ML0901985 on the ground that she lacks ''authority to handle controlled substances in the State of Nevada, the State in which [she is] registered with the DEA.'' Order to Show Cause, Government Exhibit (GX) A–3, at 1 (citing 21 U.S.C. 824(a)(3)).[1] For the same reason, the Order also proposed the denial of any of Registrant's ''pending applications for a new registration or for renewal.'' *Id.*

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is registered as a practitioner in schedules II through V, pursuant to DEA Certificate of Registration No. ML0901985, at the address of 811 N Buffalo Road, Suite 113, Las Vegas, Nevada. *Id.* at 1–2. The Order also alleged that this registration

[1] The Show Cause Order also proposed that Registrant's DEA registration should be revoked because she ''committed acts which render [her] registration inconsistent with the public interest.'' GX 3, at 1 (citing 21 U.S.C. 823(f), 824(a)(4)). However, the Government did not include evidence to support this allegation with its Request for Final Agency Action (RFFA). Instead, the Government requested ''leave to supplement its [R]equest to include the grounds for revocation under 21 U.S.C. 823(f), 824(a)(4)'' should Registrant ''regain her Nevada state license during the pendency of this Request for Final Agency Action.'' RFFA at 1 n.1. The Government has not filed a request to supplement its RFFA, apparently because Registrant has not regained her Nevada state medical license. Accordingly, I do not consider the Government's public interest allegation.

does not expire until March 31, 2018. *Id.*at 2.

As substantive grounds for the proceeding, the Show Cause Order alleged that on September 29, 2017, the Nevada State Board of Medical Examiners (hereinafter NSBME) ''issued an Order of Summary Suspension immediately and indefinitely suspending [her] license to practice medicine in the State of Nevada.'' *Id.* The Order alleged that, ''[a]s a result, [she is] currently without authority to practice medicine or handle controlled substances in the State of Nevada, the [S]tate in which [she is] registered with the DEA.'' *Id.* Based on her ''lack of authority to handle controlled substances in the State of Nevada,'' the Order asserted that ''DEA must revoke'' her registration. *Id.* (citing 21 U.S.C. 823(f), 824(a)(3)).

The Show Cause Order notified Registrant of her right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* at 4 (citing 21 CFR 1301.43). The Show Cause Order also notified Registrant of her right to submit a corrective action plan. *Id.* at 4–5 (citing 21 U.S.C. 824(c)(2)(C)).

The Government states that on December 19, 2017, a Data Analyst in DEA's Office of Chief Counsel sent a copy of the Show Cause Order by first-class mail to (1) the post office box address provided by Registrant as the ''mail to'' address on her DEA registration, P.O. Box 36190, Las Vegas, Nevada, and (2) her registered address of 911 N Buffalo Road, Suite 113, Las Vegas, Nevada. Government's ''Request for Final Agency Action'' (RFFA), at 2 n.2, 3; GX B (Declaration of Data Analyst) at 1–2. The Government also states that only the mailing to the registered address was returned as undeliverable. *See id.* Also, on December 19, 2017, a Diversion Investigator (DI) ''emailed a copy of the [Show Cause Order] to'' the ''contact email'' address that Registrant had provided to the Agency on her DEA registration without receiving ''any error messages indicating that the email was not successfully sent'' or ''any notifications that the email was undeliverable.'' RFFA, at 3; GX A (Declaration of the Diversion Investigator), at 2.[2] Based on these facts, I find that the Government's attempts to serve Registrant with the Show Cause Order satisfied its obligation under the Due Process Clause ''to provide 'notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Emilio Luna, M.D.,* 77 FR 4829, 4829 (2012) (quoting *Jones* v. *Flowers,* 547 U.S. 220, 226 (2006) (quoting *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950))).

On February 1, 2018, the Government forwarded its Request for Final Agency Action and an evidentiary record to my Office. Therein, the Government represents that it has received neither a hearing request nor a written statement from Registrant regarding the Show Cause Order. RFFA, at 2. Based on the Government's representation and the record, I find that more than 30 days have passed since the Order to Show Cause was served on Registrant, and she has neither requested a hearing nor submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(d). Accordingly, I find that Registrant has waived her right to a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government. I make the following findings.

Findings of Fact

Registrant is a physician's assistant who is registered as a practitioner in schedules II–V pursuant to Certificate of Registration No. ML0901985,[3] at the address of 911 N Buffalo Rd., Ste. 113, Las Vegas, Nevada.[4] Her registration does not expire until March 31, 2018. *See supra* footnote 3.

On September 28, 2017, the Investigative Committee (IC) of the NSBME issued an ''Order of Summary Suspension'' to Registrant that ''IMMEDIATELY SUSPENDS [her] license to practice medicine.'' GX A–1, at 1. Specifically, the IC suspended Registrant's license to practice medicine in the State of Nevada because ''the health, safety and welfare of the public is at imminent risk of harm by [Registrant's] continued performance of medical services without supervision, including the prescription of controlled substances, . . . her dishonest conduct, and . . . her continued refusal to comply with the lawful Orders of the [NSBME].'' *Id.* at 2.[5] In light of the passage of time since the effective date of the Order, I have queried the NSBME website regarding the status of Registrant's medical license, and I take official notice that Registrant's Nevada medical license remains suspended as of the date of this decision.[6]

Thus, I find that that the IC's Order suspending Registrant from practicing medical services, which it stated includes dispensing controlled substances, independently bars Registrant from dispensing controlled substances in Nevada. *Accord* Nev. Rev. Stat. §§ 630.160 (2015) (''Every person desiring to practice medicine must, before beginning to practice, procure from the [NSBME] a license authorizing the person to practice.''); 630.020 (defining ''[p]ractice of medicine'' to include prescribing). Based on the above, I find that Registrant does not currently have authority under the laws

[2] On December 19, 2017, Government counsel represents that he ''provided'' a copy of the Show Cause Order to the attorney representing Registrant in the underlying NSBME proceeding. RFFA, at 2 n.3. On January 4, 2018, that attorney emailed Government counsel ''to advise [him] that, as of today, I no longer represent Ms. Lorenzo . . . but she is advised of her obligation to respond to the Order to Show Cause.'' RFFA, at 2 n.3; GX C (copy of email from Registrant's former attorney to Government counsel).

[3] The RFFA did not attach a copy of Registrant's DEA Certificate of Registration. However, I take official notice that the Agency's registration records show that Registrant obtained a registration as a mid-level practitioner-physician assistant on December 19, 2002, in schedules II through V, and last renewed her registration on April 15, 2015. According to the Agency's records, she has not submitted an application for renewal of her registration.

Under 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, Registrant 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).

[4] The Show Cause Order states that the registered address is at 811 N Buffalo Road, Suite 113, Las Vegas, Nevada, even though the DEA registration shows a registrant address at 911 N Buffalo Road. In addition, the top of the Show Cause Order was addressed to Registrant at 911 N Buffalo Road, consistent with the registration. Accordingly, I find that Registrant's address is 911 N Buffalo Road, Suite 113, Las Vegas, Nevada, and I deem the Show Cause Order's reference to 811 N Buffalo Road a scrivener's error.

[5] In its Order, the IC found, *inter alia,* that on September 6, 2017, ''IC staff personally notified [Registrant] at her offices located at 911 N Buffalo Drive, Suite 113, Las Vegas, NV'' that she was prohibited under Nevada law ''from performing medical services until she obtained a supervising physician licensed and approved'' by the NSBME. *Id.* at 2. Although Registrant advised the IC on September 6, 2017 ''verbally and in writing that she would cease practicing,'' on September 11, 2017, she nevertheless wrote a prescription for Phentermine, a [s]chedule IV controlled substance.'' *Id.* The IC found that this conduct demonstrated that Registrant ''perform[ed] medical services, including the prescription of controlled substances,'' (1) in violation of Nevada law's requirement of physician supervision and (2) in ''direct contradiction to her prior written statement . . . on September 6, 2017.'' *Id.*

[6] I take official notice under the authority set forth *supra* in footnote 3.

of Nevada to dispense controlled substances.[7]

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 Title 21, ''upon 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.'' 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), *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.'').

This rule derives from the text of two provisions of the CSA. First, Congress defined ''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.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress 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 [s]he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever she is no longer authorized to dispense controlled substances under the laws of the State in which she engages in professional practice. *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *Blanton,* 43 FR 27616 (1978).

Thus, ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)). Here, Registrant is no longer currently authorized to dispense controlled substances in Nevada, the State in which she is registered with the Agency. I will therefore revoke her DEA registration, deny any pending application to modify her registration, or any pending application for any other registration in Nevada.

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 No. ML0901985, issued to Angela L. Lorenzo, P.A., be, and it hereby is, revoked. I further order that any pending application of Angela L. Lorenzo to renew or modify the above registration, or any pending application of Angela L. Lorenzo for any other registration in the State of Nevada, be, and it hereby is, denied. This Order is effective immediately.[8]

Dated: March 24, 2018.

Robert W. Patterson,

Acting Administrator.

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[7] Registrant's DEA registration information states that Registrant had a Nevada Controlled Substance License No. CS12166, but that it expired on October 31, 2016. I have queried the NSBME website regarding the status of Registrant's controlled substance license, and I take official notice (*see supra* footnote 3) that Nevada's online list of holders of active controlled substance licenses does not include Registrant by name or by her Nevada controlled substance registration number.

[8] For the same reasons that led the NSBME to suspend Registrant's license, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Mine Safety and Health Administration Grant Performance Reports Office of the Secretary

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration sponsored information collection request (ICR) proposal titled, ''Mine Safety and Health Administration Grant Performance Reports,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 2, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201711-1219-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Performance Reports for Mine Safety and Health Administration Grants information collection. Mine Safety and Health Administration grantees are required by DOL regulations to submit project and final reports.

A grantee submits a technical project report to the MSHA no later than 30 days after quarterly deadlines. A technical project report provides both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. This includes the current grant progress against the overall grant goals. Between reporting dates, the grantee informs MSHA of significant developments or problems affecting the organization's ability to accomplish the work.