

license, license no. CS057748, expired on October 31, 2018, *id.*; RFAAX 9 (Printout of Pharmacy Board website dated March 25, 2020), and remains closed.<sup>1</sup> <https://online.nvbop.org/#/verifylicense> (last visited September 24, 2020).

On September 6, 2019, the Nevada State Board of Medical Examiners (hereinafter, Medical Board) revoked Registrant's medical license, license no. 6061, pursuant to a settlement agreement between Registrant and the Investigative Committee of the Medical Board. RFAAX 3 (Settlement Agreement). The Investigative Committee of the Medical Board had filed a Complaint on April 3, 2019, charging Registrant with "violating the Medical Practice Act." *Id.* at 1. Specifically, the Complaint alleged "one (1) violation of NRS 640.306(1)(c), Illegal Dispensing of Controlled Substances (Count 1), one (1) violation of NRS 630.306(1)(p), Unsafe or Unprofessional Conduct (Count II), and one (1) violation of NRS 630.301(9), Disreputable Conduct (Count III)." *Id.* at 1–2. Pursuant to the Settlement Agreement, Registrant admitted to Count 1 of the Complaint and agreed that the Medical Board could issue an order finding that Registrant "engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act." *Id.* at 4. The Settlement Agreement stated that, upon adoption of the Agreement by the Medical Board, Registrant's medical license would be immediately revoked and Registrant would be ineligible to apply for reinstatement for a period of three years. *Id.* The Medical Board adopted the Settlement Agreement on September 6, 2019. *Id.* at 8.

Accordingly, I find that Registrant currently is neither licensed to engage in the practice of medicine nor licensed to dispense controlled substances in

Nevada, the state in which Registrant is registered with the DEA.

### 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 CSA "upon a finding that the registrant . . . has had his State license or registration 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, the DEA has also 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, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

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 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 CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

Nevada law gives authority to "practitioners" to dispense controlled substances, Nev. Rev. Stat. § 453.337 (West 2020), and requires that "[e]very practitioner . . . who dispenses any controlled substance within this State

. . . shall obtain biennially a registration issued by the [Pharmacy] Board," Nev. Rev. Stat. § 453.226(1) (West 2020). Nevada law further defines "practitioner" to mean "a physician . . . who holds a license to practice his or her profession in this State and is registered pursuant to [the Uniform Controlled Substances Act]." Nev. Rev. Stat. § 453.126(1) (West 2020).

Here, the undisputed evidence in the record is that Registrant's license to practice medicine is revoked. As such, he is not a "practitioner," a physician licensed to practice his profession in Nevada and registered to dispense controlled substances, according to Nevada law. Further, under Nevada law, a practitioner who dispenses a controlled substance in Nevada must be registered. The undisputed record evidence is that Registrant's Nevada controlled substance license is expired. Thus, because Registrant lacks authority to dispense controlled substances in Nevada, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked.

### Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BH2498106 issued to Steven A. Holper, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Steven A. Holper, M.D. to renew or modify this registration, as well as any pending application of Steven A. Holper, M.D. for registration in Nevada. This Order is effective November 9, 2020.

**Timothy J. Shea,**

*Acting Administrator.*

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## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. D.R. Horton, Inc.*, Case No. 8:20–cv–02271–CEH–CPT, was lodged with the United States District Court for the Middle District of Florida, Tampa Division, on October 1, 2020.

This proposed Consent Decree concerns a complaint filed by the United States, pursuant to Sections 309 and 404 of the Clean Water Act

<sup>1</sup> I take official notice of the online records of the Nevada State Board of Pharmacy. Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email ([dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov)).

("CWA"), 33 U.S.C. 1319 and 1344, against Defendant D.R. Horton, Inc. ("Defendant") for discharging pollutants into waters of the United States in Manatee County, Florida without authorization, in violation of Section 301(a) of the CWA, 33 U.S.C. 1311(a). The proposed Consent Decree resolves these allegations by requiring the Defendant to perform mitigation and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Martin McDermott, United States Department of Justice, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044-7611, and refer to *United States v. D.R. Horton, Inc.*, DJ #90-5-1-1-21336.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Middle District of Florida, Tampa Division, Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, FL 33602. In addition, the proposed Consent Decree may be examined electronically at <http://www.justice.gov/enrd/consent-decrees>.

**Cherie Rogers,**

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

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## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Information Collection Activities, Comment Request

**AGENCY:** Bureau of Labor Statistics, Department of Labor.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be

properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Quarterly Census of Employment and Wages Program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the Addresses section of this notice on or before December 8, 2020.

**ADDRESSES:** Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to [BLS\\_PRA\\_Public@bls.gov](mailto:BLS_PRA_Public@bls.gov).

**FOR FURTHER INFORMATION CONTACT:** Carol Rowan, BLS Clearance Officer, 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Quarterly Census of Employment and Wages (QCEW) program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Workforce Agencies (SWAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The QCEW data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employers covered by the Unemployment Compensation for Federal Employees program also are included. These data are submitted to the BLS by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas (MSAs), the States, and the nation. The QCEW program provides a virtual census of nonagricultural employees and their wages, with about 54 percent of the workers in agriculture covered as well.

The QCEW program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the six-digit North American Industry Classification System (NAICS) level, and at the national, State, MSA, and county levels. The QCEW series has broad economic

significance in measuring labor trends and major industry developments, in time series analyses and industry comparisons, and in special studies such as analyses of establishments, employment, and wages by size of establishment.

##### II. Current Action

Office of Management and Budget clearance is being sought for the Quarterly Census of Employment and Wages (QCEW) program.

The QCEW program is implementing improvements to the methods used to impute data for missing employer reports starting in October 2020. The current method of imputation estimates the current month's employment or current quarterly wages by applying the change from a year earlier to the previous month's reported employment and/or quarterly wages. A drawback to this procedure is that it uses the data from a year earlier, which may not reflect current economic conditions. BLS anticipates that the number of non-responding employers will be substantially higher than usual in the second quarter of 2020, as a result of the business response to the coronavirus (COVID-19) pandemic. Existing imputation methods would likely understate the impact of the pandemic on the US economy. BLS has conducted research on improvements to its imputation methodology and will implement these improvements with the first release of data for the second quarter of 2020.

The QCEW program is the only Federal statistical program that provides information on establishments, wages, tax contributions and the number of employees subject to State UI laws and the Unemployment Compensation for the Federal Employees program. The consequences of not collecting QCEW data would be grave to the Federal statistical community. The BLS would not have a sampling frame for its establishment surveys; it would not be able to publish as accurate current estimates of employment for the US, States, and metropolitan areas; and it would not be able to publish quarterly census totals of local establishment counts, employment, and wages. The Bureau of Economic Analysis would not be able to publish as accurate personal income data in a timely manner for the U.S., States, and local areas. Finally, the Department of Labor's Employment Training Administration would not have the information it needs to administer the Unemployment Insurance Program.