establishment of a valid physician/patient relationship' * * *. The members of the Oklahoma Medical Board have interpreted that a 'sufficient examination' and 'establishment of a valid physician/patient relationship' cannot take place without an initial face to face encounter with the patient.'') (emphasis in original and quoting Okla. Stat. tit. 59, section 509–13).

No more persuasive is Respondent's contention that his prescribings were lawful because the clinic used nurses or paramedics to perform physical examinations. Respondent did not provide any evidence to the Agency that the clinic's purported use of nurses to perform physical examinations was a lawful practice under the exceptions recognized by any State.[4]

Moreover, Respondent admitted to the Investigators that he routinely prescribed before he obtained medical records and in some cases he never reviewed records. Thus, even if some States allowed a physician to prescribe based on an exam performed by a nurse or paramedic in certain defined circumstances, a physical examination is a prerequisite to establishing a valid doctor-patient relationship. *See* Tenn. Comp R. & Regs 0880–2-.14(7). Generally, reviewing an examination conducted after the issuance of a prescription is not the usual course of professional practice.[5] I thus conclude that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in issuing the prescriptions.

Respondent's prescribing practices clearly resulted in the diversion of controlled substances. As Respondent acknowledged in the interview, ''there were quite a few [patients] that [were] just doctor hopping or * * * shopping for medication.''[6] Indeed, as the record establishes, Respondent prescribed to two people who used falsified records and the driver's licenses of other persons, to obtain such highly abused controlled substances as hydrocodone and alprazolam, which they both personally abused and sold to others. Given the thousands of prescriptions he issued in this manner, there were likely numerous other instances in which he prescribed to persons who were seeking the drugs for illicit purposes.

It is therefore clear that Respondent committed acts which establish that granting him a new registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f).[7] Respondent's application will therefore 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) & 0.104, I order that the application of Ladapo O. Shyngle, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective March 6, 2009.

Dated: January 27, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–2331 Filed 2–3–09; 8:45 am]

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[4] Even if some States authorize a physician to prescribe in some circumstances based on a physical exam performed by a nurse, Respondent was required to comply with the law of every State in which his patients resided. In any event, Respondent did not establish that his prescribing was lawful under the law of any State.

[5] It is acknowledged that the States generally allow a practitioner to issue a prescription in an emergency situation before conducting a physical exam. *See* 49 Pa. Code § 16.92(a). Some States also allow a practitioner to issue a short term continuation prescription for a new patient prior to a patient's first appointment, in an order admitting a patient to a hospital, or for a patient of another physician for whom the prescriber is taking calls. Tenn. Comp. R. & Regs. 0880–2-.14(7)(b). None of these exceptions apply here.

[6] I reject as self-serving Respondent's assertion that he believed that ''a good proportion of [the] people [he prescribed to] actually needed help'' because their original doctors had become ''weary'' of continuing to prescribe narcotics to them. Notably, Respondent did not identify a single instance in which he contacted the original physicians of the patients to even determine whether a patient had a legitimate medical condition which required the continued prescribing of a controlled substance. As Respondent himself recognized, internet prescribing invites ''doctor hopping'' and ''medication shopping'' by drug abusers and drug dealers. In short, as this Agency has found in the course of numerous investigations, the risk of diversion inherent in internet prescribing is extraordinary.

[7] In his request for a hearing, Respondent ''disagreed * * * that [the] prescriptions were issued without a legitimate medical purpose and outside the usual course of professional practice.'' While Respondent's counsel further represented that he did not intend to ''practic[e] medicine in any way related to an Internet pharmacy,'' Respondent has not satisfied the Agency's standard for obtaining a new registration, which requires that an applicant accept responsibility for his misconduct and acknowledge his wrongdoing. *See, e.g., Medicine Shoppe—Jonesborough,* 73 FR 364, 387 (2008) (collecting cases), *aff'd, Medicine Shoppe-Jonesborough* v. *DEA,* slip op. at 9–10 (6th Cir. Nov. 13, 2008); *Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir, 2005) (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–72]

Foothills Family Pharmacy (Boulder) and Foothills Family Pharmacy (Lafayette); Declaratory Order Terminating Registrations

On August 14, 2006, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to Foothills Family Pharmacy of Boulder, Colorado, and Foothills Family Pharmacy of Lafayette, Colorado (Respondents). The Order proposed the revocation of each Respondent's DEA Certificate of Registration as a retail pharmacy, and the denial of any applications filed by either Respondent to renew or modify its registration, on the ground that each Respondent's ''continued registration would be inconsistent with the public interest.'' Show Cause Order at 1. More specifically, the Order alleged that each pharmacy had violated its ''corresponding responsibility'' under Federal law by filling prescriptions for controlled substances which were unlawful because they were not '' 'issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.' '' *Id.* at 3 (quoting 21 CFR 1306.04(a)).

Respondents requested a hearing on the allegations, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). Following prehearing procedures, the parties agreed to submit documents and written statements of position to the ALJ in lieu of a trial-type hearing. Subsequent to their filings, the parties also submitted briefs containing their proposed conclusions of law and arguments.

On June 20, 2008, the ALJ issued her recommended decision. In her decision, the ALJ concluded that the Government had established that each ''Respondent's continued registration would be inconsistent with the public interest.'' ALJ at 42. The ALJ thus recommended that each Respondent's registration be revoked and that any pending applications be denied. The record was then forwarded to me for final agency action.

Thereafter, the Government obtained information that each Respondent was closed and no longer conducting business. Gov. Mot. for Declaratory Order at 2. Accordingly, the Government filed a motion seeking an order declaring each Respondent's registration terminated on the ground

that they had gone out of business. *Id.* Attached to the motion was the Affidavit (Dated 10/16/08) of a DEA Diversion Investigator. In her Affidavit, the Investigator stated that on September 4, 2008, she had spoken with the Program Director of the Colorado Board of Pharmacy and had been told that the Foothills Family Pharmacy of Lafayette had been closed since January 2008. Affidavit at 1–2. The Investigator further stated that she had also spoken with an Inspector for the Colorado Board who advised her that Calvin Tyree, the owner of Foothills Family Pharmacy of Boulder, had submitted the document required to close the pharmacy. *Id.* at 2. The Investigator further stated that she had confirmed the latter pharmacy's closing with some of its former employees. *Id.*

On November 18, 2008, I issued an Order granting Respondents fifteen days to respond to the Government's motion. Neither Respondent has filed a response.

Based on the Affidavit, I find that each Respondent has discontinued business or professional practice. Under 21 CFR 1301.52, ''the registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice.'' Accordingly, I will grant the Government's motion and declare that each Respondent's registration has terminated. I will also order that any pending applications submitted by either Respondent be denied.

Order

Pursuant to the authority vested in me under 5 U.S.C. 554(e), as well as 28 CFR 0.100(b) & 0.104, I grant the Government's motion and hereby declare terminated DEA Certificate of Registration, BF8528361, issued to Foothills Family Pharmacy of Boulder, Colorado, and DEA Certificate of Registration, BF8933334, issued to Foothills Family Pharmacy of Lafayette, Colorado. I further order that any pending applications of Foothills Family Pharmacy of Boulder, Colorado, and Foothills Family Pharmacy of Lafayette, Colorado, be, and they hereby are, denied. This Order is effective immediately.

Dated: January 27, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–2330 Filed 2–3–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2009–0039]]

Florida Power Corporation Notice of Receipt and Availability of Application for Renewal of Crystal River Unit 3 Nuclear Generating Plant Facility Operating License No. DPR–72 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC) has received an application, dated December 16, 2008, from Florida Power Corporation, filed pursuant to Section 104b of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 54 (10 CFR Part 54), to renew the operating license for the Crystal River Unit 3 Nuclear Generating Plant (CR–3). Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for CR–3 expires on December 3, 2016. CR–3 is a pressurized-water reactor designed by Combustion Engineering that is located in Citrus County, Florida. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or through the internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML090080053. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*. Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, extension 4737, or by e-mail to *pdr@nrc.gov*.

A copy of the license renewal application for CR–3 is also available to local residents near the site at the Coastal Region Library, 8619 W. Crystal St., Crystal River, FL 34428–4468.

Dated at Rockville, Maryland, this 29th day of January, 2009.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–2323 Filed 2–3–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36545; NRC–2009–0038]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 29–30906–01, for Unrestricted Release of the Signum Biosciences, Inc.'s Facility in Monmouth Junction, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Steve Hammann, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5399; fax number 610–337–5269; or by e-mail: *stephen.hammann@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 29–30906–01. This license is held by Signum Biosciences, Inc. (Licensee), for its facility located at 1 Deer Park Drive in Monmouth Junction, New Jersey (Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated April 14, 2008. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, *Code of Federal Regulations* (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.