



**BILLING CODE: 4410-09-P**

**UNITED STATES DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION**

**AVI WEISFOGEL, D.D.S.  
DECISION AND ORDER**

On November 2, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Avi Weisfogel, D.D.S. (Registrant), of Old Bridge, New Jersey. GX 1, at 1. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration BW6474580, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, the denial of any application to renew or modify the registration, and the denial of any application for any other DEA registration, on the ground that he "do[es] not have authority to handle controlled substances in New Jersey, the [S]tate in which he is registered with the" Agency. *Id.* (citing 21 U.S.C. §§ 823(f) and 824(a)(3)).

More specifically, the Show Cause Order alleged that Registrant entered into a consent order with the New Jersey State Board of Dentistry (Board), pursuant to which the Board revoked his license to practice dentistry effective November 13, 2014. *Id.* The Show Cause Order thus alleged that Registrant is "without authority to handle controlled substances in New Jersey, the State in which [he is] registered." *Id.* The Order thus advised Registrant that his registration was subject to revocation "based upon [his] lack of authority to handle controlled substances in the State of New Jersey." *Id.* (citing 21 U.S.C. §§ 802(21), 823(f) and 824(a)(3)).<sup>1</sup>

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<sup>1</sup> The Show Cause Order also notified Registrant of his 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. GX 1, at 2 (citing 21 CFR 1301.43).

Having determined that Registrant was no longer practicing at his registered location, a Diversion Investigator obtained his residence address and initially attempted to serve the Show Cause Order on him by Certified Mail, Return Receipt Requested, which was addressed to him at his residence. GX 6, at 1-2 (Declaration of DI). However, the mailing was returned unclaimed. GX 3, at 1. Subsequently, on December 4, 2015, the DI mailed the Show Cause Order to Registrant's residence by regular first class mail. GX 6, at 2. The DI averred that the Order was not returned as undeliverable. *Id.*

In its Request for Final Agency Action, the Government advises that neither Registrant, nor anyone representing him, has requested a hearing or sent any other correspondence to DEA. Request for Final Agency Action, at 6. Accordingly, the Government filed its Request for Final Agency Action seeking the revocation of Registrant's Registration along with the Investigative Record to support its Request. *See* 21 CFR 1301.43(d) & (e).

Based on the Government's submission, I conclude that Registrant has received constitutionally adequate notice of the proceeding. *See Jones v. Flowers*, 547 U.S. 220 (2006). I find that since the date of service of the Order to Show Cause, 30 days have now passed, and neither Registrant, nor anyone purporting to represent him, has either requested a hearing on the allegations or submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(a) & (c). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement. *Id.* § 1301.43(c) & (d). I therefore issue this Decision and Final Order based on the Investigative Record submitted by the Government. *Id.* § 1301.43(e). I make the following findings of fact.

## **FINDINGS**

Registrant is the holder of DEA Certificate of Registration BW6474580, pursuant to which he is authorized to dispense controlled substances in schedules II through V, at the registered address of 30 State Highway 18, Old Bridge, NJ. GX 2. The registration does not expire until May 31, 2017. *Id.*

Registrant previously held a dental license issued by the New Jersey State Board of Dentistry. GX 5, at 1. Registrant also previously held a New Jersey Controlled Dangerous Substance Registration (CDS). However, on November 13, 2014, Registrant entered into a Consent Order with the Board of Dentistry in which he agreed that his dental license “is hereby permanently retired [and this] is to be deemed a revocation of licensure.” GX 5, at 2. As for his New Jersey CDS Registration, it became inactive on the same date that Registrant entered into the Consent Order with the Board and has since expired. According to the online records of the State of New Jersey, as of the date of this Order, Registrant’s New Jersey Dentist license remains revoked. *See also* <https://newjersey.mylicense.com/verification>.

## **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, “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.” Moreover, DEA has repeatedly 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. *James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, *Hooper v. Holder*, 481 Fed. Appx. 826 (4th Cir. 2012).

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 Act, 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 his profession. *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).

Because Registrant no longer holds authority to dispense controlled substances in New Jersey, the State in which he is registered with the Agency, I will order that his registration be revoked and that any pending application to renew or modify his registration be denied.

#### **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 21 CFR 0.100(b), I order that DEA Certificate of Registration BW6474580, issued to Avi Weisfogel, D.D.S., be, and it hereby is, revoked. I further order that any pending application of Avi Weisfogel, D.D.S, to renew or modify his registration, be, and it hereby is, denied. This

Order is effective INSERT DATE THIRTY DAYS FROM THE DATE OF PUBLICATION IN  
THE FEDERAL REGISTER.

Date: March 21, 2016

Chuck Rosenberg  
Acting Administrator

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