



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

Isaac J. Hearne, M.D.; Decision and Order

On September 12, 2019, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Isaac J. Hearne, M.D. (hereinafter, Registrant) of Reno, Nevada. OSC, at 1. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BH7844500. *Id.* It alleged that Registrant does “not have authority to handle controlled substances in Nevada, the state in which . . . [he is] registered with the DEA.” *Id.* (citing 21 U.S.C. §§ 823(f) and 824(a)(3)).

Specifically, the OSC alleged that, “on August 16, 2018, the . . . [Board of Medical Examiners of the State of Nevada (hereinafter, NBME)] issued its Order of Summary Suspension whereby . . . [Registrant’s] Nevada license to practice medicine . . . was suspended indefinitely.” OSC, at 2. The OSC further alleged that “[a]s of the date of this Order, . . . [NBME] has not in any way modified, or lifted its suspension order concerning . . . [Registrant’s] medical license.” *Id.* The OSC concluded that “DEA must revoke . . . [Registrant’s registration] based on . . . [his] lack of authority to handle controlled substances in the State of Nevada.” *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 C.F.R. § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. OSC, at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated February 11, 2020, a DEA Task Force Officer (hereinafter, TFO) assigned to the Las Vegas District Office of the Los Angeles Division stated that he, a DEA Diversion Investigator (hereinafter, DI), a DEA Special Agent (hereinafter, SA), and “other DEA investigative personnel responded to a residential address . . . to serve” the OSC on Registrant on December 10, 2019. Request for Final Agency Action dated February 13, 2020 (hereinafter, RFAA), Exhibit (hereinafter, EX) 10 (Declaration of DEA Task Force Officer dated February 11, 2020), at 3. TFO stated that, upon arrival at Registrant’s residence, the DI gave him and the SA a photograph of Registrant and the OSC. *Id.* TFO stated that he “knocked on the door of the residence and made contact with an elderly unknown female (hereinafter, UF).” *Id.* TFO “asked the UF if . . . [Registrant] was home . . . [and UF] responded that she was not certain . . . but would check . . . to see if he was there.” *Id.* UF invited TFO and SA “into the home and . . . [they] accepted.” *Id.*

TFO stated that as he was “standing in the living room at the base of the stairs leading to the second floor, . . . [he] observed the UF as she went up the stairs and approached a closed bedroom door.” *Id.* According to TFO, “UF knocked on the closed bedroom door . . . [and a]lmost immediately, . . . [he] saw the door partially open.” *Id.* TFO stated that he “positively identified . . . [Registrant] visually from the photo.” *Id.* Then, according to TFO, Registrant “whispered[ed] to the UF to tell DEA personnel that he was not there.” *Id.* TFO, “at that point . . . yelled up the stairs . . . ‘I can see you!’” *Id.* According to TFO, Registrant “then opened the bedroom door and greeted . . . [TFO] as he walked down the stairs.” *Id.* TFO reported that he handed the OSC to Registrant “and explained to him that DEA was seeking revocation of his DEA certificate of registration.” *Id.* at 4. When Registrant “began arguing his case,” TFO

“explained that . . . [he] was only there to serve” the OSC on him. *Id.* TFO and SA “asked . . . Registrant if he understood and he replied that he did.” *Id.* TFO and SA then left Registrant’s residence. *Id.*

The Government forwarded its RFAA, along with the evidentiary record, to this office on February 14, 2020. In its RFAA, the Government represented that “Registrant has not requested a hearing within 30-days of his receipt of the . . . [OSC], nor has he corresponded in writing or otherwise with regard to his position on a hearing before DEA.” RFAA, at 2. The Government requested that Registrant’s registration be revoked.” *Id.* at 6.

Based on TFO’s Declaration, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on December 10, 2019. I also find that more than thirty days have now passed since the Government accomplished service of the OSC on Registrant. Further, based on the Government’s written representations and my review of the record, I find that neither Registrant, nor anyone purporting to represent Registrant, requested a hearing, submitted a written statement while waiving Registrant’s right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 C.F.R. § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 C.F.R. § 1301.43(e).

Findings of Fact

Registrant’s DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BH7844500 at the registered address of 294 E. Moana Lane, Suite 22, Reno, NV 89502. RFAA, EX 1 (Facsimile

of DEA Certificate of Registration Number BH7844500), at 1; RFAA, EX 2 (Certification of Registration History dated October 11, 2019), at 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules 2, 2N, 3, and 3N as a practitioner. RFAA, EX 2, at 1. Registrant's registration expires on October 31, 2020 and is in an "active pending status." *Id.*

The Status of Registrant's State License and Registration

The Government submitted evidence that the Investigative Committee of the NBME filed an Order of Summary Suspension of Registrant's medical license on August 16, 2018. *Id.* at EX 3 (NBME, Order of Summary Suspension dated August 16, 2018), at 2. According to the Declaration of DI, the online records of the NBME showed that Registrant's medical license was "revoked." *Id.* at EX 9 (Declaration of DEA Diversion Investigator dated January 28, 2020), at 3. According to the printout that DI obtained from her research on January 22, 2020, Registrant's medical license was revoked on or about September 23, 2019. *Id.* at EX 7 (Online Licensing Printout entitled "Details – Nevada State Board of Medical Examiners" for License No. 10767, dated January 22, 2020), at 1. According to the online records of the NBME, of which I take official notice, Registrant's medical license remains revoked.¹ Nevada State Board

¹ 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 of finding of fact 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 e-mail (dea.addo.attorneys@dea.usdoj.gov) or by mail to Office of the Administrator, Attn: ADDO, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

of Medical Examiners Licensee Details, <https://nsbme.mylicense.com/verification> (last visited April 28, 2020). As such, I find that Registrant’s Nevada medical license is currently revoked.

The Government also submitted evidence that Registrant’s Nevada controlled substance registration is no longer active. RFAA, EX 9, at 3. According to the online records of the Nevada State Board of Pharmacy queried by DI, Registrant’s state controlled substance registration was “[s]uspended by other agency.” *Id.*; RFAA, EX 8 (Online Licensing Printout entitled “Nevada State Board of Pharmacy – Verify License” for controlled substance License No. CS12295, dated January 22, 2020), at 1. According to the online records of the Nevada State Board of Pharmacy, of which I take official notice, Registrant’s controlled substance registration remains “[s]uspended by other agency.”² Nevada State Board of Pharmacy Verify License, <https://online.nvbop.org/#/verifylicense> (last visited April 28, 2020). As such, I find that Registrant is not currently authorized to handle controlled substances in Nevada.

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, 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 Fed. Reg. 71,371 (2011), *pet.*

² *See* footnote 1. If Registrant disputes this finding, he may do so according to the terms stated in footnote 1.

for rev. denied, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 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, 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 practices. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. at 27,617.

According to Nevada statute, “[e]very person desiring to practice medicine must, before beginning to practice, procure from the Board a license authorizing the person to practice.” NEV. REV. STAT. § 630.160(1) (Westlaw, current through the end of the 80th Regular Session (2019)). Further, the phrase “practice medicine” includes prescribing “for any human disease.” NEV. REV. STAT. § 630.020(1) (Westlaw, current through the end of the 80th Regular Session (2019)). As already discussed, Registrant’s medical license is currently revoked. Thus, Registrant

currently is not authorized to practice medicine, including to prescribe controlled substances, in Nevada.

Nevada statute requires that “[e]very practitioner . . . who dispenses any controlled substance within this State . . . shall obtain biennially a registration issued by the Board in accordance with its regulations.” NEV. REV. STAT. § 453.226(1) (Westlaw, current through the end of the 80th Regular Session (2019)). “Practitioner” means “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) (Westlaw, current through the end of the 80th Regular Session (2019)). “Dispense” means “to deliver a controlled substance to an ultimate user . . ., including the prescribing . . . for that delivery.” NEV. REV. STAT. § 453.056(1) (Westlaw, current through the end of the 80th Regular Session (2019)). As already discussed, Registrant’s Nevada medical license is currently revoked. Thus, Registrant is not a “practitioner” under Nevada law and, therefore, he is not eligible to dispense or prescribe a controlled substance in Nevada.

Here, the undisputed evidence in the record is that Registrant is not currently authorized to practice medicine or to prescribe controlled substances in Nevada. Registrant, therefore, is not currently eligible to maintain a DEA registration. Accordingly, I will order that Registrant’s DEA registration be revoked.

Order

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. BH7844500 issued to Isaac J. Hearne, M.D. This Order is effective **[insert Date Thirty Days From the Date of Publication in the Federal Register]**.

Uttam Dhillon,
Acting Administrator.

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