



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

**UNITED STATES DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**Barbara D. Marino, M.D.  
Decision and Order**

On June 12, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Barbara D. Marino, M.D. (hereinafter, Registrant), of Houston, Texas. Government's Request for Final Agency Action Exhibit (hereinafter, RFAAX) 4 (OSC), at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BD0903244. It alleged that Registrant is without "authority to handle controlled substances in Texas, the state in which [Registrant] is registered with DEA." *Id.* at 1-2 (citing 21 U.S.C. §§ 802(21), 823(f), and 824(a)(3)).

Specifically, the OSC alleged that Registrant's state license to practice medicine in Texas has been temporarily suspended. *Id.* The OSC further alleged that, because Registrant's Texas medical license is suspended, Registrant lacks the authority to handle controlled substances in Texas, and is, therefore, ineligible to maintain a DEA registration. *Id.*

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

## **I. ADEQUACY OF SERVICE**

A DEA Task Force Officer (hereinafter, TFO) declared that he personally served Registrant with the OSC on July 9, 2020. RFAAX 9, at 3 (Declaration of TFO). During the service of the OSC, Registrant signed a Form DEA-12 documenting Registrant's acknowledgement that she had received the OSC. RFAAX 5; RFAAX 9, at 3.

The Government forwarded its Request for Final Agency Action (hereinafter, RFAA), along with the evidentiary record, to this office on August 27, 2020. In its RFAA, the Government represents that "neither the [Houston Field Division] nor the DEA Office of Administrative Law Judges had received any written correspondence, telephonic communication, or any other communication from Registrant, or any representative on her behalf in response to the [OSC]." RFAA, at 4 (citing RFAAX 6 (Email from Office of Administrative Law Judges), 7 (Email from Houston Division Office), 9, and 10 (Declaration of DEA Diversion Investigator)).

Based on the 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 July 9, 2020. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, 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).

## **II. FINDINGS OF FACT**

### **A. Registrant's DEA Registration**

Registrant is the holder of DEA Certificate of Registration No. BD0903244 at the registered address of 8188 Long Point Road, Houston, Texas 77055. RFAAX 1 (Certificate of Registration) and 2 (Certification of Registration History, dated August 10, 2020). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II-V as a practitioner DW/275. RFAAX 2.

### **B. The Status of Registrant's State License**

On February 7, 2020, the Texas Medical Board (hereinafter, Board) issued an Order of Temporary Suspension (hereinafter, Order). RFAAX 3. According to the Order, Registrant failed to meet the standard of care and documentation standards for six patients. *Id.* at 3. Specifically, the Order stated that Registrant “failed to obtain or perform an adequate history or assessment of the patients by neglecting to obtain prior treating provider’s records, a history of prior treatments, and the patient’s response to treatment,” or “conducting and documenting an adequate examination of the patient’s source of pain”; “failed to have or document adequate medical rationale or evidence of therapeutic benefit of the Norco and Soma that [Registrant] prescribed to each of the six patients”; and “failed to monitor the patients for therapeutic benefit, diversion, or abuse of the medications she prescribed, including controlled substances.” *Id.* The Order also stated that Registrant had ten medical malpractice claims/lawsuits between 2005 and 2013, entered into an Agreed Order with the Board in 2006, and entered into a Mediated Agreed Order in 2012, resolving four investigations into Registrant’s cosmetic surgery practice. *Id.* at 1-2. The Order further stated that the Board entered an Order of Temporary Suspension Without Notice suspending Registrant’s license after finding out that Registrant was “arrested and

indicted for conspiracy to unlawfully distribute and dispense controlled substances and aiding and abetting the same . . . in the United States District Court for the Southern District of Texas.”

*Id.* at 2.

In the Order, the Board found that Registrant’s conduct “shows that [Registrant’s] continued practice of medicine would constitute a continuing threat to the public welfare, as defined by Section 151.002(a)(2) of the [Medical Practice] Act.” *Id.* at 7. The Board, therefore, ordered that Registrant’s Texas medical license be temporarily suspended effective February 7, 2020, and stated that the “Order shall remain in effect until it is superseded by an Order of the Board.” *Id.* at 9.

According to Texas’s online records, of which I take official notice, Registrant’s medical license is still suspended.<sup>1</sup> Texas Medical Board, Look Up a License, available at <http://reg.tmb.state.tx.us/page/look-up-a-license> (last visited September 24, 2020).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Texas, the state in which Registrant is registered with DEA.

### **III. 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

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<sup>1</sup> 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](mailto:dea.addo.attorneys@dea.usdoj.gov)).

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 Fed. Reg. 71,371 (2011), *pet. 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, 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 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*, 43 Fed. Reg. at 27,617.

Under the Texas Controlled Substances Act, a practitioner in Texas “may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner’s direction and supervision except for a valid medical purpose and in the course of medical practice.” Tex. Health and Safety Code Ann. § 481.071 (West 2019). The Texas Controlled Substances Act defines “practitioner,” in relevant part, as “a physician . . . licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.” *Id.* at § 481.002 (39)(A). Further, under the Texas Medical Practice Act, a person must hold a license to practice medicine in Texas, Tex. Occupations Code Ann. § 155.001 (West 2019) (“A person may not practice medicine in this state unless the person holds a license issued under [the Medical Practice Act].”); *see also id.* at § 151.002 (“‘Physician’ means a person licensed to practice medicine in this state.”), and “[a] person commits an offense if the person practices medicine in [Texas] in violation of” the Act, *id.* at § 165.152(a).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Texas. I, therefore, find that Registrant is currently without authority to dispense controlled substance in Texas, the state in which she is registered with DEA, and I will order that Registrant’s DEA registration be revoked.

#### **IV. 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. BD0903244 issued to Barbara D. Marino, M.D. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Barbara D. Marino, M.D. to renew or modify

this registration, as well as any pending application of Barbara D. Marino, M.D. for registration in Texas. This Order is effective **[Insert Date Thirty Days From the Date of Publication in the Federal Register]**.

**Timothy J. Shea,**  
*Acting Administrator.*

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