



DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jeffrey M. Wolk, M.D.; Decision and Order

On February 14, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Jeffrey M. Wolk, M.D. (hereinafter, Registrant) of Sierra Vista, Arizona. OSC, at 1. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BW2472051. *Id.* It alleged that Registrant is without “authority to handle controlled substances in the State of Arizona, the state in which [Registrant is] registered with DEA.” *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that, on December 3, 2019, the Arizona Medical Board (hereinafter, Arizona Board) issued an “Order for Surrender of License and Consent to the Same.” *Id.* at 2. Pursuant to this Order, Registrant “agreed to the immediate surrender of [his] license to practice allopathic medicine,” and Registrant’s “Arizona license to practice allopathic medicine remains in a surrendered status.” *Id.* Therefore, the OSC alleged that Registrant currently lacks authority to practice medicine in Arizona. *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 CFR 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 May 28, 2020, a Diversion Investigator (hereinafter, the DI) assigned to the Tucson District office, Phoenix Field Division, stated that she spoke with

Registrant on the phone on December 13, 2019, and after verifying his identity, “requested that he voluntarily surrender his DEA Certificate of Registration (‘COR’) because he was no longer authorized to handle controlled substances in the state in which he held a DEA registration.” Request for Final Agency Action, dated June 2, 2020 (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 11 (DI’s Declaration), at 2. The DI stated that she told Registrant that if he decided not to surrender his registration, DEA would issue an OSC, but that “[Registrant] declined to surrender his DEA registration.” *Id.* On February 24, 2020, the DI stated that she and another DI traveled to Registrant’s registered address located at 3410 Canyon De Flores, Suite B, Sierra Vista, Arizona 8650 to serve him with an OSC. *Id.* The DI stated that there was a sign on the door at the registered address stating that the “office was permanently closed.” *Id.* The DI then called Registrant’s business telephone number, but the “number was no longer in service.” *Id.* Later that day, the DIs traveled to Registrant’s last known residence, but there was no answer. The DI also tried to call his cell phone twice and left a voicemail. *Id.* The DI stated, “After multiple unsuccessful attempts at reaching [Registrant] to personally serve him with the [OSC], on April 14, 2020, [she] forwarded a copy of the [OSC] document to [Registrant] at his email address [] and captioned the email ‘OTSC.’” *Id.* She stated that she tracked the email and “obtained a confirmation record from the Internet Mail Delivery system that the OTSC document had been delivered to the recipient on April 14.” *Id.*; RFAAX 5 (Delivery Confirmation). Later that day, Registrant responded to the DI’s email. RFAAX 11; RFAAX 6 (Email from Registrant). Further, on April 17, 2020, Registrant forwarded the email and attachment to DEA attorneys along with a written statement explaining his the circumstances surrounding the underlying state action regarding the surrender of his medical license. RFAAX 7, at 1; RFAAX 11. He stated that he “agreed to the Surrender as [he] had already retired.” RFAAX 7, at 1.

The Government forwarded its RFAA, along with the evidentiary record, to this office on June 3, 2020. In its RFAA, the Government represented that “more than thirty days have passed since Registrant received the [OSC]; however, Registrant has not submitted to DEA a request for

a hearing . . . or otherwise submitted a response with the agency following the issuance of the [OSC].”¹ RFAA, at 2. The Government requested “a DEA Final Order for the revocation” of Registrant’s Certificate of Registration. *Id.* at 6.

Based on the DI’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 April 14, 2020, as demonstrated by Registrant’s specific acknowledgment of receipt of the OSC via reply email to the DI. 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 the Registrant, requested a hearing or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I consider the email that DEA received from Registrant to be a written statement from Registrant in accordance with 21 CFR 1301.43(c). RFAAX 7, at 1. In the email, Registrant confirmed the underlying surrender of his Arizona state license and stated that “it was never [his] intention to maintain a DEA license after retirement.” *Id.* Although I have considered Registrant’s statement, it does not present any issue of fact or law that could affect my final decision, as explained herein. I issue this Decision and Order based on the record submitted by the Government, including Registrant’s statement, which constitutes the entire record before me. 21 CFR 1301.43(e).

FINDINGS OF FACT

Registrant’s DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BW2472051 at the registered address of Arizona Urology Center PLLC, 3410 Canyon de Flores, Suite B, Sierra Vista, Arizona 85650. RFAAX 1. Pursuant to this registration, Registrant is authorized to

¹ It is noted that the Government’s Exhibits included an email from Registrant, which includes statements regarding the underlying surrender as discussed herein.

dispense controlled substances in schedules II-V as a practitioner. *Id.* Registrant’s registration expired on May 31, 2020, and “is in acting pending status until the resolution of administrative proceedings.”² RFAAX 2 (Certification of Registration History).

The Status of Registrant’s State License

On December 3, 2019, the Registrant entered into a Consent to Entry of Order (hereinafter, Consent Order) with the Arizona Board. RFAAX 3, at 2 (Consent Order). On December 11, 2019, the Arizona Board issued an Order for Surrender of License and Consent to the Same (hereinafter, Surrender Order). RFAAX 3, at 1 (Surrender Order). According to the Surrender Order, Registrant “state[d] that he has retired from professional practice and wishe[d] to surrender his license.” *Id.* The Order further stated that “[t]he Board possesses statutory authority to enter into a consent agreement with a physician who admits to committing an act of unprofessional conduct.” *Id.* at 2. The Order therefore ordered the immediate surrender of Registrants License. *Id.*

According to Arizona’s online records, of which I take official notice, Registrant’s license is still surrendered.³

<https://gls.azmd.gov/glsuiteweb/clients/azbom/public/webverificationsearch.aspx> (last visited October 27, 2020).

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

² The fact that a Registrant allows his registration to expire during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68,474 (2019).

³ 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 shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

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 F. App’x 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.

According to Arizona statute, “[e]very person who manufactures, distributes, dispenses, prescribes or uses for scientific purposes any controlled substance within this state or who

proposes to engage in the manufacture, distribution, prescribing or dispensing of or using for scientific purposes any controlled substance within this state must first: 1) Obtain and possess a current license or permit as a medical practitioner as defined in § 32-1901 . . .” Ariz. Rev. Stat. Ann. § 36-2522(A) (2020). Arizona Statute § 32-1901 defines a “[m]edical practitioner” as “any medical doctor . . . or other person who is licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state or any state, territory or district of the United States.” Ariz. Rev. Stat. Ann. § 32-1901 (2020). Arizona regulations further clarify that “[a] physician who wishes to dispense a controlled substance as defined in Ariz. Rev. Stat. § 32-1901(12),⁴ a prescription-only drug as defined in Ariz. Rev. Stat. § 32-1901(65), or a prescription-only device as defined in Ariz. Rev. Stat. § 32-1901(64), shall be currently licensed to practice medicine in Arizona.” Ariz. Admin. Code § R4-16-301(A) (2020).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Arizona, as he no longer retains a medical license in that state. As already discussed, a physician can only dispense controlled substances if he is licensed to practice medicine in Arizona. Thus, because Registrant lacks authority to practice medicine in Arizona and, therefore, is not authorized to dispense controlled substances in Arizona, Registrant is not eligible to maintain a DEA registration in Arizona. Accordingly, I will order that Registrant’s DEA registration be revoked.

⁴ The subsection citations for the referenced sections of the statute moved since the publication of the regulation, but the intent of the regulation is clear.

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. BW2472051 issued to Jeffrey M. Wolk. This Order is applicable **[insert Date Thirty Days From the Date of Publication in the Federal Register]**.

Timothy J. Shea,
Acting Administrator.

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