: 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 21-35]

Allan Alexander Rashford, M.D.; Decision and Order

On September 23, 2021, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Allan Alexander Rashford, M.D. (Respondent) of Charleston, South Carolina.[1] OSC/ISO, at 1.

A hearing was held before DEA Administrative Law Judge Paul E. Soeffing (the ALJ) who, on April 5, 2022, issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD).[2] Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, credibility findings, findings of fact, conclusions of law, sanctions analysis, and recommended sanction in the RD and summarizes and expands upon portions thereof herein.

I. FINDINGS OF FACT

Pursuant to 21 U.S.C. 823(f), 824(a)(4), the Government seeks revocation of Respondent's DEA registration because Respondent allegedly committed acts rendering his continued registration inconsistent with the public interest, including: (1) improperly prescribing controlled substances; (2) failing to maintain medical records; and (3) engaging in unlawful electronic prescribing practices. OSC/ISO, at 1.

Respondent issued the controlled substance prescriptions at issue in this case to Patients W.G., P.L., T.E., D.P., N.R., and L.C. without maintaining any medical records. RD, at 28.[3]

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[1] Respondent holds a DEA Certificate of Registration no. AR1001306 at the registered address of 903 Saint Andrews Blvd Suite B, Charleston, SC 29407-7194. OSC/ISO, at 1-2.

[2] Neither party filed exceptions.

[3] The parties entered into 46 stipulations, all of which are incorporated into this Decision. RD, at 2-10. On January 29, 2020, Respondent entered into a memorandum of agreement (MOA) with DEA, which remains in effect for three years, and which prohibited Respondent from prescribing Schedule II controlled substances, required Respondent to maintain proper medical files on all patients to whom Respondent issued controlled substance

According to the credible, unrebutted, expert testimony of Dr. Gene Kennedy, Respondent issued all of these controlled substance prescriptions outside the usual course of professional practice and beneath the applicable standard of care due to Respondent's lack of medical records. *Id.* at 28 (citing Tr. 118-31, 344). The record showed that Respondent could not produce any records for these six patients. RD, at 28 (citing Tr. 249-50; 323). In addition, Dr. Kennedy credibly testified that the controlled substance prescriptions for L.P. and P.B. were issued outside the usual course of professional practice and beneath the applicable standard of care because Respondent's partial medical records did not adequately support his prescribing. RD, at 29-31. Finally, the record established that Respondent permitted his wife and son to access and use his eToken, password, and PIN to electronically submit prescriptions.[4] *Id*. at 33.

II. DISCUSSION

The Government has the burden of proving that the requirements for revocation of a DEA registration in 21 U.S.C. 824(a) are satisfied. 21 CFR 1301.44(e). Having reviewed the record and the ALJ's RD, the Agency agrees with the RD that the Government has proven by substantial evidence that Respondent committed acts which render his continued registration inconsistent with the public interest.

The Agency agrees with the RD that the record established multiple instances where Respondent failed to comply with applicable federal and state law and dispensed controlled substances in a manner inconsistent with the public interest. The Agency finds that, based on the credible, unrebutted testimony of the Government's expert, Dr. Kennedy, the Government established that Respondent issued all of the prescriptions at issue in this case outside the usual

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prescriptions, and required Respondent to maintain medical records in a readily retrievable manner. The Agency agrees with the ALJ's consideration of the violations of the MOA in the Sanctions section. *See* RD, at n.12.

[4] Respondent testified regarding why he could not maintain and produce medical records and the purpose of his treatment of the patients at issue and their circumstances (including that he attempted to move patients away from controlled substance prescriptions for pain and stopped prescribing Schedule II controlled substances after DEA told him to stop in December 2019), but he does not dispute that he could not produce medical records documenting his prescribing. RD, at 27, 29, 30; Tr. 79-82; 240-331. Respondent did not dispute that he had entrusted his electronic credentials to his son and wife. *Id.* (citing Tr. 333-37).

course of professional practice and beneath the standard of care in violation of 21 CFR 1306.04(a) and in violation of several South Carolina laws.[5] *See* RD, at 27-30.

Furthermore, the Agency agrees with the RD that the record established that Respondent improperly issued electronic controlled substance prescriptions by entrusting his secure credentials to his wife and son and allowing them to access and provide his PIN in the issuance of those prescriptions. *Id*. at 32. In so doing, Respondent violated 21 CFR 1311.125(c), 21 CFR 1311.135(a), and 21 CFR 1311.102(a). *See id*. at 32-34.

In sum, the Agency agrees with the RD that these factors militate strongly in favor of the Government's position that Respondent's continued registration is inconsistent with the public interest and, thus, that the Government established a *prima facie* case for revocation. RD, at 34.

III. SANCTION

Where, as here, the Government has established grounds to revoke Respondent's registration, the burden shifts to the respondent to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18,882, 18,910 (2018). When a registrant has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS LLC dba CVS Pharmacy Nos 219 and 5195*, 77 Fed. Reg. 62,316, 62,339 (2012).

Here, the Agency adopts the rationale of the RD that, although Respondent freely admitted that he failed to keep records that were readily retrievable, he did not unequivocally accept responsibility for his misconduct; instead, he downplayed his misconduct and placed blamed on the actions of others. RD, at 34-38 (citing Tr. 246-57, 316-19, 323-24). In addition, the record demonstrates that Respondent's violations of the law were not isolated occurrences, but took place over more than a year, involved multiple patients, and even occurred *after* the

[5] *See* S.C. Code Ann. Regs. 61-4.1002(a), 61-4.1103, 61-4.1204; S.C. Code Ann. 40-47-113(A), 44-53-360(h), 44-115-120; *see* RD, at 27-28.

DEA had specifically notified Respondent of the violations and attempted to bring Respondent into compliance with an MOA, which Respondent then violated.

Having reviewed the record in its entirety, the Agency finds that Respondent cannot be entrusted with a DEA registration and orders that his registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in the Administrator by 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. AR1001306 issued to Allan Alexander Rashford, M.D. Further, pursuant to 28 CFR 0.100(b), 21 U.S.C. 824(a), and 21 U.S.C. 823(f), I hereby deny any pending application of Allan Alexander Rashford, M.D., to renew or modify this registration, as well as any other pending application of Allan Alexander Rashford, M.D., for registration in South Carolina. This Order is effective [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

SIGNING AUTHORITY

This document of the Drug Enforcement Administration was signed on December 12, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Heather Achbach,
Federal Register Liaison Officer,
Drug Enforcement Administration.

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