



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Gary R. Wisner, M.D.
Decision And Order**

On March 1, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Gary R. Wisner, M.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant’s Certificates of Registration (COR) Nos. FW8432471 and AW2971073 at the registered addresses of 621 S. Ham Ln., Ste. A, Lodi, California 95242, and 16246 N. Locust Tree Road, Lodi, California 95240, respectively. *Id.* at 1. The OSC alleged that Registrant’s registrations should be revoked because Registrant was “without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of California, the state in which [he is] registered with DEA.” *Id.* at 2 (citing, *inter alia*, 21 U.S.C. 824(a)(3); 21 CFR 1301.37(b)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to be in default. *Id.* at 2 (citing 21 CFR 1301.43(c)(1)). Here, Registrant did not request a hearing. RFAA, at 1.¹ “A default, unless excused, shall be deemed to constitute a waiver of the [registrant’s] right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] 1316.67.” *Id.* 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(c), (f), and 1301.46. RFAA, at 1.

¹ Based on the Government’s submissions in its RFAA dated August 3, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the included declaration by a DEA Diversion Investigator (DI) indicates that on March 13, 2023, the DI personally “served [Respondent] a copy of the [OSC] by hand delivery.” RFAAX 2, at 1.

FINDINGS OF FACT

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, "[e]ffective January 30, 2023, as part of an agreement with the [Medical Board of California] . . . [Registrant] surrendered [his] license to practice medicine in the State of California." RFAAX 1, at 1-2.

According to California's online records, of which the Agency takes official notice, the status of Registrant's physician and surgeon license (type A) is listed as surrendered, and he is not permitted to practice.² California Department of Consumer Affairs, License Search, <https://search.dca.ca.gov/> (last visited date of signature of this Order). Therefore, the Agency finds that Registrant is not currently authorized to dispense or handle controlled substances in California, the state in which he is registered with DEA.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "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, D.O.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.*, 43 FR 27616, 27617 (1978).³

² 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 the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

³ This rule derives from the text of two provisions of the Controlled Substances Act. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the

According to California statute and relevant to Registrant's COR, "[n]o person other than a physician . . . shall write or issue a prescription."⁴ Cal. Health & Safety Code 11150. Further, "physician," as defined by California statute, is a person who is "licensed to practice" in California. *Id.* 11024.

Here, the evidence in the record is that Registrant currently lacks authority to handle controlled substances in California because his California physician and surgeon license has been surrendered. As already discussed, a person must hold a valid license to dispense a controlled substance in California. Thus, because Registrant lacks authority to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registrations be revoked.

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 Certificates of Registration Nos. FW8432471 and AW2971073 issued to Gary R. Wisner, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Gary R. Wisner, M.D., to renew or modify these registrations, as well as any other pending application of Gary R. Wisner, M.D., for additional registration in California. This Order is effective **[insert Date Thirty Days From the Date of Publication in the Federal Register]**.

SIGNING AUTHORITY

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(g)(1). 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 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 71371-72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR 27617.

⁴ Although additional specified categories of persons are permitted to write or issue prescriptions, none of those practitioner categories are applicable to Registrant.

This document of the Drug Enforcement Administration was signed on December 7 2023, 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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