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DEPARTMENT OF JUSTICE
Drug Enforcement Administration

Ajumobi Agu, M.D.; Decision and Order

I. INTRODUCTION

On November 14, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Ajumobi Agu, M.D., of Las Vegas, Nevada (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1. The OSC/ISO informed Registrant of the immediate suspension of his DEA Certification of Registration, Control No. FA4195459, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes "'an imminent danger to the public health or safety.'" *Id*. (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant's registration, alleging that Registrant's registration should be revoked because Registrant lacks state authority to handle controlled substances and Registrant's continued registration is inconsistent with the public interest. *Id*. (citing 21 U.S.C. 823(g)(1), 824(a)(3), 824(a)(4)).

Specifically, the OSC/ISO alleged that Registrant continued to dispense controlled substances after his state medical and controlled substances licenses were suspended. *Id*. at 3. The OSC/ISO alleged that Registrant's misconduct violated both the implementing regulations of the Controlled Substances Act (CSA) and Nevada state law. *Id*. at 2.

The OSC/ISO notified Registrant of his right to file a written request for hearing and an answer, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id*. at 4-5 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.[1] "A default, unless excused, shall be deemed to constitute a

[1] Based on the Government's submissions in its RFAA dated August 22, 2024, the Agency finds that service of the OSC/ISO on Registrant was adequate. Specifically, the included Declaration from a DEA Diversion Investigator indicates that Registrant was personally served with a copy of the OSC/ISO at his residential address on November 17, 2023. RFAAX 2, at 1-2, *see also* RFAAX 3.

waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC/ISO]." 21 CFR 1301.43(e); *see also* RFAAX 1, at 4-5 (providing notice to Registrant).

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 C.F.R.] § 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(a), (c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

II. LACK OF STATE AUTHORITY

A. Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC/ISO are admitted. Accordingly, Registrant admits that on July 14, 2023, the Nevada State Board of Pharmacy suspended Registrant's Nevada controlled substance license. RFAAX 1, at 3. Further, on September 19, 2023, the Nevada Board of Medical Examiners suspended Registrant's Nevada medical license. *Id*. at 2-3.

According to Nevada's online records, of which the Agency takes official notice, Registrant's Nevada controlled substance license is now revoked.[2] Nevada State Board of Pharmacy License Verification, https://online.nvbop.org/#/verifylicense (last visited date of signature of this Order). Further, Registrant's Nevada medical license remains suspended. Nevada State Board of Medical Examiners Licensee Search, https://nsbme.us.thentiacloud.net/webs/nsbme/register/# (last visited date of signature of this Order).

[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).

Accordingly, the Agency finds that Registrant is not licensed to practice medicine nor to handle controlled substances in Nevada, the state in which he is registered with DEA.[3]

B. 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. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense … controlled substances under the laws of the State in which he practices.' … The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21)."). The Agency has applied these principles consistently. *See*, *e.g.*, *James L. Hooper, M.D.*, 76 Fed. Reg. 71,371, 71,372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).[4]

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[3] 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." The material fact here is that Registrant, as of the date of this decision, is not licensed to practice medicine and/or handle controlled substances in Nevada. Registrant may dispute these facts 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 Office of the Administrator, Drug Enforcement Administration, at dea.addo.attorneys@dea.gov.

[4] 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(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, M.D.,* 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeats, M.D.*, 71 Fed. Reg.

According to Nevada statute, "[e]very practitioner or other person who dispenses any controlled substance within th[e] State or who proposes to engage in the dispensing of any controlled substance within th[e] State shall obtain biennially a registration issued by the [Nevada State Board of Pharmacy] in accordance with its regulations." Nev. Rev. Stat. § 453.226(1) (2024). Further, according to Nevada statute, "dispense" means "to deliver a controlled substance to an ultimate user, patient or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery." *Id*. § 453.056(1).

Here, the undisputed evidence in the record is that Registrant lacks authority to dispense controlled substances in Nevada because his Nevada controlled substance license is now revoked. As discussed above, an individual must hold a Nevada controlled substance license to dispense a controlled substance in Nevada. Thus, because Registrant lacks authority to handle controlled substances in Nevada, the state in which he is registered with the DEA, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

III. PUBLIC INTEREST

A. Applicable Law

As discussed above, the OSC/ISO alleges that Registrant violated provisions of the CSA and its implementing regulations. As the Supreme Court stated in *Gonzales v. Raich*, "the main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. . . . To effectuate these goals, Congress devised a closed regulatory system making it unlawful to . . . dispense[ ] or possess any controlled substance except in a manner authorized by the CSA." 545 U.S. 1, at 12-13 (2005). In maintaining this closed regulatory system, "[t]he CSA and its implementing regulations set forth strict

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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.

requirements regarding registration, . . . drug security, and recordkeeping." *Id.* at 14. Here, the OSC/ISO's allegations concern the CSA's "strict requirements regarding registration . . . " and, therefore, go to the heart of the CSA's "closed regulatory system" specifically designed "to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." *Id*.

Dispensing After State Authority Suspended (21 CFR 1306.04(a); Nev. Rev. Stat. §§ 453.226(1), 630.160(1), 630.020)

The OSC/ISO alleges that Registrant continued to dispense controlled substances after his state medical and controlled substances licenses were suspended. RFAAX 1, at 3. Under the CSA, a prescription for a controlled substance is valid only if "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a). Similarly, Nevada regulations prohibit the dispensing of controlled substances without a Nevada controlled substance license and prohibit the practice of medicine, which includes prescribing, without a Nevada medical license. Nev. Rev. Stat. §§ 453.226(1), 630.160(1), 630.020 (2024).

B. Findings of Fact

Registrant is deemed to have admitted that following the initial suspension of Registrant's Nevada medical license on June 30, 2023, Registrant went on to issue approximately 22 prescriptions for controlled substances, including oxycodone (a Schedule II opioid), alprazolam (a Schedule IV benzodiazepine), and carisoprodol (a Schedule IV muscle relaxant). RFAAX 1, at 3. Registrant prescribed these medications to 14 patients from June 30, 2023, through at least September 11, 2023.[5] *Id*. As noted in *supra* II.A., Registrant's Nevada controlled substance license was also suspended beginning on July 14, 2023. *Id*.

[5] Registrant's Nevada medical license was briefly reinstated on August 10, 2023, but then suspended again on September 19, 2023, based on findings that Registrant engaged in the practice of medicine after the initial June 30, 2023 suspension of his Nevada medical license. RFAAX 1, at 3. There is no evidence that Registrant's controlled substance license was reinstated after it was suspended on July 14, 2023.

Accordingly, the Agency finds substantial record evidence that Registrant issued at least 22 controlled substance prescriptions while his Nevada medical and/or controlled substance license(s) were suspended. *Id*.

C. Discussion

The Controlled Substances Act's Public Interest Factors

When the CSA's strict requirements are not met, the Attorney General "may deny, suspend, or revoke [a] registration if . . . the [registrant's] registration would be 'inconsistent with the public interest.'" *Gonzales v. Oregon*, 546 U.S. 243, 251 (2006) (quoting 21 U.S.C. 824(a)(4)). In the case of a "practitioner," Congress directed the Attorney General to consider five factors in making the public interest determination. *Id.*; 21 U.S.C. 823(g)(1)(A-E).[6]

The five factors are considered in the disjunctive. *Gonzales v. Oregon*, 546 U.S. at 292-93 (Scalia, J., dissenting) ("It is well established that these factors are to be considered in the disjunctive," quoting *In re Arora*, 60 Fed. Reg. 4447, 4448 (1995)); *Robert A. Leslie, M.D.*, 68 Fed. Reg. 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *David H. Gillis, M.D.*, 58 Fed. Reg. 37,507, 37,508 (1993); *see Morall v. Drug Enf't Admin.*, 412 F.3d 165, 181 (D.C. Cir. 2005) (describing the Agency's adjudicative process as "applying a multi-factor test through case-by-case adjudication," quoting *LeMoyne-Owen Coll. v. N.L.R.B.*, 357 F.3d 55, 61 (D.C. Cir. 2004)). Any one factor, or combination of factors, may be decisive, *David H. Gillis, M.D.,* 58 Fed. Reg. at 37,508, and the Agency "may give each factor the weight . . . deem[ed] appropriate in determining whether a registration should be revoked or an

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[6] The five factors are:

> (A) The recommendation of the appropriate State licensing board or professional disciplinary authority.
> (B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.
> (C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
> (D) Compliance with applicable State, Federal, or local laws relating to controlled substances.
> (E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1)(A-E).

application for registration denied." *Morall*, 412 F.3d. at 185 n.2 (Henderson, J., concurring) (quoting *Robert A. Smith, M.D.*, 70 Fed. Reg. 33,207, 33,208 (2007)); *see also Penick Corp. v. Drug Enf't Admin.*, 491 F.3d 483, 490 (D.C. Cir. 2007).

Moreover, while the Agency is required to consider each of the factors, it "need not make explicit findings as to each one." *MacKay v. Drug Enf't Admin.*, 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman v. U. S. Drug Enf't Admin.*, 567 F.3d 215, 222 (6th Cir. 2009)); *Jones Total Health Care Pharmacy, LLC v. Drug Enf't Admin.*, 881 F.3d 823, 830 (11th Cir. 2018); *Hoxie v. Drug Enf't Admin.*, 419 F.3d 477, 482 (6th Cir. 2005). "In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct." *Jayam Krishna-Iyer, M.D.*, 74 Fed. Reg. 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, Agency decisions have explained that findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

In this matter, while all of the 21 U.S.C. 823(g)(1) factors have been considered,[7] the Agency finds that the Government's evidence in support of its *prima facie* public interest revocation case regarding Registrant's violations of the CSA's implementing regulations is confined to Factors B and D. *See* RFAAX 1, at 2-3. Moreover, the Government has the burden of proof in this proceeding. 5 U.S.C.A. § 556(d); 21 CFR 1301.44.

Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Registrant's continued registration would be "inconsistent with the public interest." 21 U.S.C. 823(g)(1).

[7] As to Factor A, there is evidence in the record that Registrant's state medical license was suspended on September 19, 2023, after Registrant engaged in the practice of medicine between June 30, 2023 and August 9, 2023 while his state license was suspended. RFAAX 1, at 3. Here, the Government has established that Registrant prescribed controlled substances after his Nevada medical license was suspended on June 30, 2023. *See supra* I. Prescribing is part of the practice of medicine, but does not make up the entire practice of medicine. *See* Nev. Rev. Stat. § 630.020. Accordingly, the Agency finds that Factor A does not weigh for or against Registrant's continued registration.

Factors B and/or D – Registrant Experience in Dispensing Controlled Substances and Compliance with Applicable Laws Related to Controlled Substances

Evidence is considered under Public Interest Factors B and D when it reflects compliance or non-compliance with federal and local laws related to controlled substances and experience dispensing controlled substances. 21 U.S.C. 823(g)(1)(B) and (D); *see also Kareem Hubbard, M.D.*, 87 Fed. Reg. 21,156, 21,162 (2022).

Here, the Registrant's conduct reflects negative experience in prescribing with respect to controlled substances. *See supra* III.B. Moreover, the Agency found substantial record evidence that Registrant issued at least 22 controlled substance prescriptions while his Nevada medical and/or controlled substance license(s) were suspended. *Id.* Accordingly, there is substantial record evidence that Registrant violated 21 CFR 1306.04(a) and Nev. Rev. Stat. §§ 453.226(1), 630.160(1).

The Agency further finds that after balancing the factors of 21 U.S.C. 823(g)(1), Respondent's continued registration would be "inconsistent with the public interest." 21 U.S.C. 824(a)(4). Accordingly, the Government satisfied its *prima facie* burden of showing that Respondent's continued registration would be "inconsistent with the public interest." 21 U.S.C. 824(a)(4). The Agency also finds that there is insufficient mitigating evidence to rebut the Government's *prima facie* case. Thus, the only remaining issue is whether, in spite of the public interest determination, Respondent can be trusted with a registration.

D. SANCTION

Here, the Government has met its *prima facie* burden of showing that Registrant's continued registration is inconsistent with the public interest due to his violations pertaining to controlled substance prescribing. Accordingly, the burden shifts to Registrant to show why he can be entrusted with a registration. *Morall*, 412 F.3d. at 174; *Jones Total Health Care Pharmacy, LLC v. Drug Enf't Admin.*, 881 F.3d 823, 830 (11th Cir. 2018); *Garrett Howard Smith, M.D.*, 83 Fed. Reg. 18,882, 18,904 (2018).

The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant. *Jeffrey Stein, M.D.*, 84 Fed. Reg. 46,968, 46,972 (2019); *see also Jones Total Health Care Pharmacy*, 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, DEA Administrators have required that a registrant who has committed acts inconsistent with the public interest must accept responsibility for those acts and demonstrate that it will not engage in future misconduct. *Jones Total Health Care Pharmacy*, 881 F.3d at 833; *ALRA Labs, Inc. v. Drug Enf't Admin.*, 54 F.3d 450, 452 (7th Cir. 1995). A registrant's acceptance of responsibility must be unequivocal. *Jones Total Health Care Pharmacy*, 881 F.3d at 830-31. In addition, a registrant's candor during the investigation and hearing has been an important factor in determining acceptance of responsibility and the appropriate sanction. *Id.* Further, the Agency has found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* at 834 & n.4. The Agency has also considered the need to deter similar acts by the registrant and by the community of registrants. *Jeffrey Stein, M.D.*, 84 Fed. Reg. at 46,972-73.

Here, Registrant failed to answer the allegations contained in the OSC/ISO and did not otherwise avail himself of the opportunity to refute the Government's case. As such, there is no record evidence that Registrant takes responsibility, let alone unequivocal responsibility, for the founded violations, meaning, among other things, that it is not reasonable to believe that Registrant's future controlled substance-related actions will comply with legal requirements. Accordingly, Registrant did not convince the Agency that he can be entrusted with registration.

Further, the interests of specific and general deterrence weigh in favor of revocation. Given the foundational nature of Registrant's violations, a sanction less than revocation would send a message to the existing and prospective registrant community that compliance with the law is not a condition precedent to maintaining a registration.

Accordingly, the Agency will order the revocation of Registrant's registration.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificate of Registration No. FA4195459 issued to Ajumobi Agu, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Ajumobi Agu, M.D., to renew or modify this registration, as well as any other pending application of Ajumobi Agu, M.D., for additional registration in Nevada. This Order is effective **[insert Date Thirty Days From the Date of Publication in the Federal Register].**

SIGNING AUTHORITY

This document of the Drug Enforcement Administration was signed on April 10, 2025, by Acting Administrator Derek Maltz. 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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