



DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

James F. Brown, D.P.M.; Default Decision and Order

I. Introduction

On June 26, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to James F. Brown, D.P.M., of Los Angeles, California (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 5. The OSC proposed the revocation of Registrant’s DEA Certificate of Registration No. BB7959731, alleging that Registrant’s registration should be revoked because Registrant materially falsified his application for DEA registration and because Registrant has no state authority to handle controlled substances. *Id.* at 1 (citing 21 U.S.C. 824(a)(1), (3)).¹

The OSC alleged that Registrant materially falsified his application for DEA registration by failing to disclose that his California medical license was previously suspended. *Id.* at 2-3. The OSC also alleged that, due to the terms and conditions of Registrant’s current probation regarding his California medical license, Registrant does not have authority to handle controlled substances in California, the state in which he is registered with DEA. *Id.* at 3.

The OSC notified Registrant of his right to file with DEA a written request for a 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 3 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 3.² “A default, unless excused, shall be deemed to constitute a

¹ In its RFAA, the Government repeatedly uses variations of the term denial (applicable to a decision regarding a DEA registration application) rather than revocation (applicable to a decision regarding a current DEA registration). This appears to be an error, as the conclusion of the RFAA ultimately requests revocation of Registrant’s current DEA registration, not denial of a DEA registration application.

² Based on the Government’s submissions in its RFAA dated October 24, 2024, the Agency finds that service of the OSC on Registrant was adequate. According to the Declaration from a DEA Diversion Investigator (DI), on June 27, 2024, the DI mailed the OSC via First Class mail to Registrant’s registered address, mailing address, and “each of the previously listed addresses in the DEA databases associated with [Registrant].” RFAAX 3, at 2. Further, on July 1, 2024, the DI emailed copies of the OSC to Registrant and Registrant’s attorney. *Id.* On July 31, 2024, the DI traveled to Registrant’s registered address to personally serve him with a copy of the OSC, but was advised by clinic staff on the premises that Registrant had not been at that location for two years. *Id.* On August 5, 2024, the

waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e); *see also* RFAAX 2, at 3 (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 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), 1301.46. RFAA, at 4; *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 are deemed admitted. Accordingly, Registrant admits that on March 15, 2024, the Podiatric Medical Board of California (PMB) revoked Registrant's California medical license, stayed the revocation, and placed Registrant on probation for five years. RFAAX 2, at 3. Registrant also admits that the terms and conditions of his probation prohibit him from handling controlled substances. *Id.* According to California online records, of which the Agency takes official notice,³ Registrant's California medical license is current, but also on probation with limits on his practice. California DCA License Search, <https://search.dca.ca.gov> (last visited date of signature of this Order). Specifically, on the "Licensing Details" page for Registrant's California medical license number 4434, under "Administrative Disciplinary Actions," the online record

DI attempted to personally serve Registrant at an address associated with him in Long Beach, California, but the current tenant at the address advised the DI that she had been living at the address since 2023 and had no knowledge of Registrant or his whereabouts. *Id.* at 2-3. Here, the Agency finds that Registrant was successfully served the OSC by email and that the DI's efforts to serve Registrant by other means were "reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action." *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see also* *Mohammed S. Aljanaby, M.D.*, 82 FR 34552, 34552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful).

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).

states: “Five years’ probation with various terms and conditions. Restrictions: shall not order, prescribe, dispense, administer or possess any controlled substances as defined in the California Uniform Controlled Substances Act; shall not engage in the practice of podiatric medicine until notified by the Board or its designee that [Registrant] is mentally fit to practice podiatric medicine safely; and prohibited from engaging in the solo practice of medicine” *Id.* (capitalization edited). Accordingly, the Agency finds that Registrant is not licensed to handle controlled substances in California, the state in which he is registered with DEA.⁴

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.,*

⁴ 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 authorized to handle controlled substances in California. 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 DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

James L. Hooper, M.D., 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).⁵

According to California statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Cal. Health & Safety Code section 11010 (West 2024). Further, a “practitioner” means a person “licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in [the] state.” *Id.* at section 11026(c).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to handle controlled substances in California because his California medical license, while current, has been limited to prohibit the handling of controlled substances, among other limitations. As discussed above, an individual must be a practitioner licensed to handle controlled substances in order to handle controlled substances in California. Thus, because Registrant is not currently authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

III. Material Falsification

A. Findings of Fact

⁵ 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 Controlled Substances Act (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 FR 71371-72; *Sheran Arden Yeats, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR 27617.

Registrant admits that on May 8, 2023, the PMB issued an Ex Parte Interim Suspension Order that prohibited him from practicing medicine in California based on allegations relating to driving under the influence, practicing medicine while impaired, being convicted of a drug related offense, excessively using drugs or alcohol, and unprofessional conduct. RFAAX 2, at 2. Registrant further admits that on June 5, 2023, the PMB granted an Immediate Suspension Order after a hearing where Registrant was represented by counsel. *Id.*

Registrant admits that on June 20, 2023, he submitted an application for renewal of his DEA registration. *Id.*; *see also* RFAAX 8, at 1. Registrant admits that a DEA application for registration includes liability questions that must be answered either affirmatively or negatively. RFAAX 2, at 2. Registrant admits that Liability Question 3 asks: “Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?” *Id.*; *see also* RFAAX 8, at 1. Registrant admits that on his application, in response to Liability Question 3, he answered “N”, thus concealing that his California medical license had been suspended (as noted above). RFAAX 2, at 3; *see also* RFAAX 8, at 1.

B. Discussion

The Administrator is authorized to revoke a registration if the registrant has materially falsified an application for registration. 21 U.S.C. 824(a)(1). Agency decisions have repeatedly held that false responses to the liability questions on an application for registration are material. *Kevin J. Dobi, APRN*, 87 FR 38184, 38184 (2022) (collecting cases).

In *Frank Joseph Sirlacci, M.D.*, the Agency found that “the falsification of any of the liability questions is ‘material’ under 21 U.S.C. § 824(a)(1) . . . [because] each of the liability questions is connected to at least one of [the] [21 U.S.C. § 823(g)(1)] factors that, according to the CSA, [the Agency] ‘shall’ consider as [it] analyze[s] whether issuing a registration ‘would be inconsistent with the public interest.’ [21 U.S.C. § 823(g)(1)].” *Frank Joseph Sirlacci, M.D.*, 85 FR 45229, 45238 (2020) (footnote omitted). The Decision noted that “[the Agency is] unable

to discharge the responsibilities of the CSA every time [it is] given false information in response to a liability question. Thus, each falsification of a liability question has a natural tendency to influence, or is capable of influencing [the Agency's] decision and is therefore material." *Id.*⁶

The Government must prove an allegation of material falsification "by evidence that is clear, unequivocal, and convincing." *Richard J. Settles, D.O.*, 81 FR 64940, 64946 (2016) (quoting *Kungys v. United States*, 485 U.S. at 772). The Government need not show that an applicant *actually knew* that his response to a liability question was false. Rather, it is sufficient that the Government shows that an applicant *should have known* that his response to a liability question was false. *Narciso A. Reyes, M.D.*, 83 FR 61678, 61680 (2018) (citing *Samuel S. Jackson, D.D.S.*, 72 FR 23848, 23852 (2007)). When the Government has made such a showing, *i.e.*, that an applicant should have known that his response to a liability question was false, an applicant's claim that he actually misunderstood a liability question, or otherwise inadvertently provided a false answer to a liability question, is not a defense. *Id.* (citing *Alvin Darby, M.D.*, 75 FR 26993, 26999 (2010)). Indeed, the applicant bears the responsibility to carefully read the liability questions and to answer them honestly; "[a]llegedly misunderstanding or misinterpreting liability questions does not relieve the applicant of this responsibility." *Zelideh I. Cordova-Velazco, M.D.*, 83 FR 62902, 62906 (2018) (internal citations omitted).

As detailed above, Registrant admits that on June 5, 2023, the PMB suspended Registrant's California medical license following a hearing. *See supra* III.A. Registrant also admits that on his June 20, 2023 application for renewal of his DEA registration, he answered

⁶ *See also JM Pharmacy Group, Inc., d/b/a Farmacia Nueva and Best Pharma Corp.*, 80 FR 28667, 28681 (2015) ("[T]he allegedly false statement must be analyzed in the context of the application requirements sought by DEA and provided by the applicant. The falsification must relate to a ground that could affect the decision, not merely a basis upon which an investigation could be initiated."); *Mark William Andrew Holder, M.D.*, 80 FR 71618, 71624 n.19 (2015) (quoting *Kungys v. United States*, 485 U.S. 759, 771 (1988) ("It has never been the test of materiality that the misrepresentation or concealment would more likely than not have produced an erroneous decision, or even that it would more likely than not have triggered an investigation Instead, the test is whether the misrepresentation or concealment was predictably capable of affecting, *i.e.*, had a natural tendency to affect, the official decision. . . . [T]he ultimate finding of materiality turns on an interpretation of substantive law."); *Scott C. Bickman, M.D.*, 76 FR 17694, 17701 (2011) ("the relevant decision for assessing whether a false statement is material is not the decision to conduct an investigation, but rather the decision as to whether an applicant is entitled to be registered.").

“N” to Liability Question 3, which asked whether he had ever “. . . had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation . . .” *Id.* Accordingly, the Agency finds clear, unequivocal, and convincing evidence that Registrant falsely answered “N” to Liability Question 3 when he knew or should have known that the correct answer was “Y.”

Further, as discussed above, a false answer to liability question 3 is material because the question is directly connected to the analysis the Agency must conduct under 21 U.S.C. 823 and is thus capable of influencing the Agency’s decision. Accordingly, the Agency finds clear, unequivocal, and convincing evidence that Registrant materially falsified his renewal application with regard to Liability Question 3.

Having read and analyzed the record, the Agency finds clear, unequivocal, convincing, and unrebutted evidence that Registrant’s June 20, 2023 application for renewal of his DEA registration contains a material falsification because Registrant gave a false answer to a liability question. Accordingly, the Agency finds that the Government established a *prima facie* case, that Registrant did not rebut that *prima facie* case, and that there is substantial record evidence supporting the revocation of Registrant’s registration. 21 U.S.C. 824(a)(1).

C. Sanction

Here, the Government has met its *prima facie* burden of showing that Registrant materially falsified his application for renewal of his DEA registration. 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 FR 18882, 18904 (2018); *supra* section III.

The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant. *Jeffrey Stein, M.D.*, 84 FR 46968, 46972 (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 he 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 FR 46972-73.

Here, Registrant did not request a hearing 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 a 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.

In sum, Registrant has not offered any evidence on the record that rebuts the Government's case for revocation of his registration due to a material falsification, and Registrant has not demonstrated that he can be entrusted with the responsibility of registration. Accordingly, the Agency will order the revocation of Respondent's registration.⁷

⁷ In this matter there are two separate and distinct grounds by which the Agency proposed revocation, Registrant's loss of state authority and his material falsification; each ground, standing alone, supports the Agency's decision to revoke.

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. BB7959731 issued to James F. Brown, D.P.M. 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 James F. Brown, D.P.M., to renew or modify this registration, as well as any other pending application of James F. Brown, D.P.M., for additional registration in California. This Order is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Signing Authority

This document of the Drug Enforcement Administration was signed on June 6, 2025, by Acting Administrator Robert J. Murphy. 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.

[FR Doc. 2025-10742 Filed: 6/12/2025 8:45 am; Publication Date: 6/13/2025]