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**DEPARTMENT OF JUSTICE**
**Drug Enforcement Administration**

**David Payne, M.D.;**
**Decision and Order**

On November 20, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to David Payne, M.D., of Santa Ana, California (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1. The OSC proposed the revocation of Registrant's DEA Certificate of Registration, No. BP3113963, alleging that Registrant is "currently 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" and has been mandatorily excluded from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a-7(a). *Id*. at 2 (citing 21 U.S.C. 824(a)(3), (5)).[1]

The OSC notified Registrant of his right to file a written request for hearing, 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*. (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 1, 4.[2] "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.

[1] According to the OSC and Agency records, Registrant's registration expired on March 31, 2025. RFAAX 1, at 1. The fact that a registrant allows his registration to expire during the pendency of an administrative enforcement proceeding does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 Fed. Reg. 68,474, 68,476-79 (2019).

[2] The Government's submissions in its RFAA, dated May 1, 2025, include a declaration indicating that a DEA Diversion Investigator (DI) personally served Registrant with the OSC on January 23, 2025. RFAAX 2, at 1-2. The declaration claims that Registrant signed a DEA Form 12, Receipt for Cash or Other Items, confirming receipt; however, the Government failed to include the signed receipt with the RFAA. *Id*. Furthermore, the declaration omits the statutory language: ". . . the foregoing is true and correct." 28 U.S.C. 1746(2). Nevertheless, the declaration begins with the statement, "I, [DI], under penalty of perjury, declare and state the following . . .," and DI's claim of personally serving Registrant is uncontroverted. RFAAX 2, at 1. Thus, the Agency finds that service of the OSC on Registrant was adequate.

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 4-5; *see also* 21 CFR 1316.67.[3]

## I. LOSS OF STATE AUTHORITY

### A. Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. Accordingly, Registrant is deemed to admit that on or about March 2, 2023, Registrant was convicted of one felony count of conspiracy to commit fraud and one felony count of use of interstate facility in the aid of bribery, in violation of 18 U.S.C. 1343, 1346. RFAAX 1, at 2. Pursuant to this conviction, Registrant was sentenced to serve 33 months in federal prison. *Id*. As a result, on January 3, 2024, the State of California placed an automatic suspension on Registrant's medical license. *Id*.

According to California's online records, of which the Agency takes official notice, Registrant's California medical license remains suspended.[4] California DCA License Search, https://search.dca.ca.gov/ (last visited date of signature of this Order). Accordingly, the Agency finds substantial record evidence that Registrant is not licensed to practice medicine in California, the state in which he is registered with DEA.[5]

### B. Discussion

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[3] The RFAA states that "the Administrator is authorized to render the Agency's final order, without . . . making a finding of fact in this matter." RFAA, at 4 (citing 21 CFR 1301.43(c), (f), and 1301.46). However, 21 CFR 1316.67 requires that the Administrator's final order "set forth the final rule and findings of fact and conclusions of law upon which the rule is based." *See JYA LLC d/b/a Webb's Square Pharmacy*, 90 Fed. Reg. 31,244, 31,246 n.7 (2025).

[4] 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).

[5] 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 Order, is not licensed to practice medicine in California. 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 Office of the Administrator, Drug Enforcement Administration, at dea.addo.attorneys@dea.gov.

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).[6]

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 § 11010 (2024). Further, a

[6] This rule derives from the text of two provisions of the Controlled Substances Act (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 Yeates, M.D.*, 71 Fed. Reg. 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.

"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.* § 11026(c).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant currently lacks authority to practice medicine in California and, therefore, is not currently authorized to handle controlled substances in California, Registrant is not eligible to obtain or maintain a DEA registration in California. Accordingly, the Agency will order that Registrant's DEA registration in California be revoked.

## II. MANDATORY EXCLUSION FROM FEDERAL HEALTH CARE PROGRAMS[7]

### A. Findings of Fact

Registrant is deemed to admit that as a result of Registrant's criminal conviction, the U.S. Department of Health and Human Services, Office of Inspector General (HHS/OIG), mandatorily excluded Registrant, effective May 20, 2024, from participation in Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a-7(a) for a period of fourteen years. RFAAX 1, at 2.

### B. Discussion

Pursuant to 21 U.S.C. 824(a)(5), the Attorney General is authorized to suspend or revoke a registration upon finding that the registrant "has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a-7(a) of Title 42." The Agency finds substantial record evidence that Registrant has been, and remains, mandatorily excluded from

[7] Although the Agency may revoke Registrant's DEA registration because he lacks state authority, the Agency considers Registrant's mandatory exclusion from federal health care programs as a separate, independent ground to revoke Registrant's DEA registration.

federal health care programs pursuant to 42 U.S.C. 1320a-7(a).[8] Accordingly, the Agency finds that substantial record evidence establishes the Government's *prima facie* case for revocation of Registrant's registration under 21 U.S.C. 824(a)(5).

### C. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Registrant's registration should be revoked, the burden shifts to Registrant to show why he can be entrusted with a registration. *Morall v. Drug Enf't Admin.*, 412 F.3d. 165, 174 (D.C. Cir. 2005); *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 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent. *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 he will not engage in future misconduct. *Jones Total Health Care Pharmacy*, 881 F.3d at 833. A registrant's acceptance of responsibility must be unequivocal. *Id.* 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, DEA Administrators have found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* at 834 & n.4. DEA Administrators have also considered the need to deter similar acts by the respondent and by the community of registrants. *Jeffrey Stein, M.D.*, 84 Fed. Reg. at 46,972-73.

Here, Registrant failed to request a hearing or answer the allegations contained in the OSC and did not otherwise avail himself of the opportunity to refute the Government's case.

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[8] The underlying conviction forming the basis for mandatory exclusion from participation in federal health care programs need not involve controlled substances to provide the grounds for revocation or denial pursuant to Section 824(a)(5). *Jeffrey Stein, M.D.*, 84 Fed. Reg. 46,968, 46,971-72 (2019); *see also Narciso Reyes, M.D.*, 83 Fed. Reg. 61,678, 61,681 (2018); *KK Pharmacy*, 64 Fed. Reg. 49,507, 49,510 (1999) (collecting cases).

Thus, there is no record evidence that Registrant takes responsibility, let alone unequivocal responsibility, for the misconduct. Accordingly, he has not convinced the Agency that his future controlled-substance-related actions will comply with the CSA such that he can be entrusted with the responsibilities of a registration.

Further, the interests of specific and general deterrence weigh in favor of revocation. Registrant's conduct in this matter concerns the CSA's strict requirements regarding registration, and, therefore, goes 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." *Gonzales v. Raich*, 545 U.S. 1, 12-14 (2005). To permit Registrant to continue to maintain a registration under these circumstances would send a dangerous message that compliance with the law is not essential to maintaining a registration.

In sum, Registrant has not offered any credible evidence on the record to rebut the Government's *prima facie* case for revocation of his registration, and Registrant has not demonstrated that he can be entrusted with the responsibility of 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), I hereby revoke DEA Certificate of Registration No. BP3113963 issued to David Payne, 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 David Payne, M.D., to renew or modify this registration, as well as any other pending application of David Payne, 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

This document of the Drug Enforcement Administration was signed on September 25, 2025, by Administrator Terrance Cole. 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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