Signing Authority

This document of the Drug Enforcement Administration was signed on June 21, 2024, 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.

[FR Doc. 2024–14199 Filed 6–27–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 24–18]

Abdul Naushad, M.D.; Decision and Order

I. Introduction

On November 8, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Abdul Naushad, M.D. (Respondent) of Poplar Bluff, Missouri. OSC, at 1. The OSC proposes the revocation of Respondent's DEA Certificate of Registration (registration) No. BN7853864 on the ground that he has ''no state authority to handle controlled substances.'' [1] *Id.* (citing 21 U.S.C. 824(a)(3)).

By letter dated November 30, 2023, Respondent requested a hearing. The Government requested summary disposition in its ''Submission of Evidence and Motion for Summary Disposition'' dated December 7, 2023 (Government Summary Disposition Motion). Respondent opposed summary disposition arguing, among other things, that Respondent's registration expired before the OSC was filed, Respondent ''has not attempted to renew'' it, and, ''[s]ince there is nothing to revoke,'' summary disposition should be denied and the OSC should be dismissed. (Respondent Opposition), at 1–6. The Chief Administrative Law Judge, John J. Mulrooney II, denied the Government's Motion, ''*sua sponte*'' granted summary disposition for Respondent, and recommended that the OSC ''be dismissed based on the Agency's lack of jurisdiction over the registration.'' Order Denying the Government's Motion for Summary Disposition, Granting a Summary Disposition on Behalf of the Respondent, and Recommending Dismissal of the Order to Show Cause dated January 4, 2024 (RD), at 6.

After considering the entirety of the record, the Agency revokes Respondent's registration because of his undisputed loss of authority to dispense controlled substances in Missouri, the state where he is registered. 21 U.S.C. 824(a)(3); *infra* section III; Respondent Opposition, at 1; Government Motion, at 4; RD, at 2.

II. The Agency's Jurisdiction [2]

To effectuate the goals of combating the international and interstate traffic in illicit drugs, conquering drug abuse, and controlling the legitimate and illegitimate traffic in controlled substances, ''Congress devised a closed regulatory system making it unlawful to . . . dispense . . . any controlled substance except in a manner authorized by the C[ontrolled] S[ubstances] A[ct]'' (CSA). *Gonzales* v. *Raich,* 545 U.S. 1, 12–13 (2005). Among the responsibilities and prerogatives that the CSA assigns to the Attorney General are to register practitioners to dispense controlled substances, and to de-register them. *E.g.,* 21 U.S.C. 823(g)(1) and 824(a). The Attorney General delegated these responsibilities to the DEA Administrator. 28 CFR 0.100.

The CSA provides that the Administrator ''shall register practitioners . . . to dispense . . . controlled substances . . . 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). In 21 U.S.C. 824(a), the CSA also provides that the Administrator may suspend or revoke a registration for several reasons, including upon a finding that the registrant ''has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' 21 U.S.C. 824(a)(3). The CSA does not place a time restriction or constraint on the Administrator's administrative law enforcement investigations, findings, or actions regarding a registrant that may culminate in the suspension or revocation of the registrant's registration, nor is there anything in the record transmitted to the Agency that posits that it does.[3] *Id.*

[1] ''A jury found . . . [Respondent] guilty of health care fraud in 2022. . . . He is currently serving a prison sentence in connection with the crime. Since he cannot practice medicine before his release, he let his Missouri controlled substance license expire on August 31, 2023, and he let his . . . [registration] expire on October 31, 2023.'' Respondent's Memorandum of Law in Opposition to the Government's Motion for Summary Disposition and to the Order to Show Cause dated December 18, 2023 (Respondent Opposition), at 2.

[2] RD, at 6 (''[I]t is herein recommended that the Order to Show Cause dated November 8, 2023, be dismissed based on the Agency's lack of jurisdiction over the registration.'').

[3] Respondent argues that, as Respondent's registration ''expired before the DEA filed an Order to Show Cause, seeking to revoke,'' the ''Tribunal should deny the [revocation] request . . . [s]ince there is nothing to revoke.'' Respondent Opposition, at 1. The RD relies heavily on 21 CFR 1306.36(i) which concerns registrants' options for renewing their DEA registrations. The terms of subsection (i) do not resolve this matter.

The CSA's law enforcement provisions, such as 21 U.S.C. 824(a), including the publication of an Agency Decision and Order in the **Federal Register**, 21 U.S.C. 877, record and memorialize a *registrant's, not the associated registration's,* history under, and compliance with, the CSA, as well as afford the registrant the opportunity to seek judicial review of that Agency Decision and Order, among other things.[4] Put another way, one way that the Administrator carries out the CSA is by investigating and administratively adjudicating *a registrant's* CSA-relevant actions and inactions. When the registrant's actions or inactions call for it, the sanction may be suspension or revocation of the registrant's registration. 21 U.S.C. 824(a). While the sanction involves the registration, the sanction is levied on the registrant and remains in the record throughout the rest of the registrant-Agency relationship, regardless of whether that relationship is either continuous or intermittent. There is good reason for this: otherwise, a registrant who has committed misconduct could thwart law enforcement and avoid accountability simply by not renewing his registration.

The particular instant record facts, such as the date that the OSC was issued and the expiration date assigned to Respondent's registration, do not distinguish this matter from the Agency's constitutional and federal common law analyses in *Jeffrey D. Olsen, M.D.*[5] 84 FR 68474, 68475–479 (2019); *contra* Respondent's Opposition, at 4 and RD, at 5–6 (arguing that *Jeffrey D. Olsen, M.D.* should be distinguished from the instant case). In that watershed Decision revoking a respondent's registration, the Agency rejected the Government's argument that the matter was ''moot'' and should be dismissed because the registrant's registration had expired during the pendency of the proceedings and before a final Decision and Order had been issued. Instead, the Agency adjudicated the matter to finality following its analysis of the constitutional origins of administrative agencies, applicable legal authority, and sound law enforcement policy. Among other things, the Agency discussed differences between Article III courts and adjudications that are not bound by Article III ''case or controversy'' limitations, such as DEA administrative agency adjudications.[6] *Id.* at 84 FR at 68478–79. Those analyses continue to apply.

As with *Jeffrey D. Olsen, M.D.,* the Agency finds that adjudicating this matter to finality supports future interactions between the Agency and Respondent, should they occur, informs current and prospective members of the registrant community about the Agency's expectations of them, provides continuing education to all DEA personnel, helps coordinate law enforcement efforts, and informs stakeholders, such as legislators and the public, about the Agency's work and allows them to provide feedback to the Agency, thereby helping shape how the Agency carries out its CSA responsibilities. *Id.* at 68,475–79; *Steven Kotsonis, M.D.,* 85 FR 85667, 85668–69 (2020). Specifically for Respondent, his filings state that ''he cannot practice medicine before his release,'' indicating that he may resume the practice of medicine after his release. Respondent Opposition, at 1.

Accordingly, the Agency finds that the benefits of adjudicating this matter to finality include memorializing for the Agency's records the circumstances surrounding Respondent's loss of state authority, Respondent's conviction and incarceration, and Respondent's transparency in his communications with the Agency. Additionally, as this investigation and its adjudication to finality are not particularly complex, it is also an efficient and effective use of Agency resources to issue a final Decision and Order to inform Respondent and the current and prospective members of the registrant community about the significant legal principles it implicates. *Jeffrey D. Olsen, M.D.,* 84 FR 68475–79; *Steven Kotsonis, M.D.,* 85 FR 85668–69.

III. Findings of Fact

The Agency finds uncontroverted record evidence that registration number BN7853864 is assigned to Respondent at his registered address in Poplar Bluff, Missouri. Respondent Opposition, at 1; GX 1, at 1. The Agency further finds uncontroverted record evidence that Respondent's Missouri controlled substance registration expired on August 31, 2023. Respondent Opposition, at 1.

According to Missouri online records, of which the Agency takes official notice, Respondent's Missouri controlled substance registration remains expired.[7] Primary Source Verification for Missouri Controlled Substance Registrations, *https://healthapps.dhss.mo.gov/mohworxsearch/RegistrantSearch.aspx* (last visited date of signature of this Order).[8]

Accordingly, the Agency finds uncontroverted record evidence that Respondent is not authorized to handle controlled substances in Missouri, the state in which he is registered with DEA, and has not been since August 31, 2023. *Id.*

IV. Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''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, the Agency has also long held that 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

[4] The brief of Respondent and the RD posit that the Administrator is precluded from carrying out the CSA responsibilities that the Attorney General delegated to her because the OSC was issued after the expiration date assigned to Respondent's registration. *See, e.g.,* RD, at 3 (''The issue in this case and on these facts is whether the Government's OSC legally warrants a sanction against the . . . [registration] that the Respondent previously held where the charging document was issued after the . . . [registration's] expiration (it does not).''). This position views the Administrator's CSA responsibilities as ''sanction[ing]'' a *registration* as opposed to investigating and administratively adjudicating *a registrant's* CSA-relevant actions and inactions pursuant to 21 U.S.C. 824(a).

[5] In *Jeffrey D. Olsen, M.D.,* the doctor did not renew his registration during the Agency's adjudication process. 84 FR 68474–75. The Agency's published Decision is dated just shy of one year after the expiration date assigned to the doctor's registration, rejects the suggestion of mootness, and adjudicates the matter to finality. *Id.* at 68474, 68489.

[6] The Agency recognized, in *Jeffrey D. Olsen, M.D.,* that it has the discretion to adopt so-called ''case or controversy'' limitations. 84 FR 68478–79.

[7] Further, the Missouri ''non-active'' medical license look-up shows the status of Respondent's Missouri Medical Physician & Surgeon license (2002024819) as ''lapsed.'' Missouri Division of Professional Registration, *https://pr.mo.gov/licensee-search-nonactive.asp* (last visited date of signature of this Order).

[8] 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, Respondent 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 email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

registration.[9] *See, e.g., 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).

According to Missouri statute, ''dispense'' means ''to deliver a narcotic or controlled dangerous drug to an ultimate user 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 such delivery.'' Mo. Rev. Stat. section 195.010 (12) (2018). Under the same Missouri statute, ''practitioner'' means a ''physician . . . or other person licensed, registered or otherwise permitted by this state to distribute, dispense, conduct research with respect to or administer . . . a controlled substance in the course of professional practice . . . in this state.'' *Id.* section 195.010 (39). Further, in Missouri, ''[n]o person shall . . . dispense . . . any controlled substance . . . without having first obtained a registration issued by the department of health and senior services.'' *Id.* section 195.030 (2); *see also id.* section 195.030 (3) (''Persons registered by the department of health and senior services pursuant to this chapter to . . . dispense . . . controlled substances are authorized to . . . dispense such substances . . . to the extent authorized by their registration and in conformity with other provisions of this chapter and chapter 579.'').

Here, the undisputed record evidence is that, as of August 31, 2023, and continuing to the present, Respondent is not registered in Missouri to dispense controlled substances. *Supra* section III. As explained above, a physician in Missouri must be registered with the state to dispense controlled substances. *Supra.* Thus, because Respondent lacks authority to dispense controlled substances in Missouri, Respondent is not eligible to maintain his DEA registration addressed in that State. *Supra; see also* RD, at 3. Accordingly, the Agency orders that Respondent's registration 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 Certificate of Registration No. BN7853864 issued to Abdul Naushad, 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 Abdul Naushad, M.D., to renew or modify this registration, as well as any other pending application of Abdul Naushad, M.D., for additional registration in Missouri. This Order is effective July 29, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on June 21, 2024, 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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[9] 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, the Agency 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 71371–72; *Sheran Arden Yeates, 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.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–14]

Arash M. Padidar, M.D.; Decision and Order

On December 5, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Arash M. Padidar, M.D. (Applicant) of San Jose, California. OSC, at 1, 3. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration (COR or registration), Control No. W22106685C, alleging that Applicant materially falsified his application for registration. *Id.* at 1 (citing 21 U.S.C. 824(a)(1)).

A hearing was held before DEA Administrative Law Judge Teresa A. Wallbaum (the ALJ), who on May 24, 2023, issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (RD). The RD recommended denial of Applicant's application for registration. RD, at 26. Applicant did not file exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, credibility findings,[1] findings of fact, conclusions of law, sanctions analysis, and recommended sanction as found in the RD and as summarized herein.

I. Findings of Fact

Search of Applicant's Residence and Surrender of Applicant's Previous COR

On October 7, 2020, at approximately 7:00 a.m., DEA and local law enforcement executed a search of Applicant's residence based on a criminal search warrant.[2] RD, at 8; Tr.

[1] The Agency adopts the ALJ's summary of each of the witnesses' testimonies as well as the ALJ's assessment of each of the witnesses' credibility. *See* RD, at 3–14. The Agency agrees with the ALJ that the Diversion Investigator (DI) ''presented as an objective witness, with no motive to fabricate''; however, as noted by the ALJ, the DI was unable to recall some details regarding the relevant events and at times gave inconsistent answers. The ALJ found, and the Agency agrees, that the DI ''was consistent on key issues and her core testimony was corroborated by the documentary evidence and, in many respects, by [Applicant] himself.'' *Id.* at 4–5. Accordingly, the Agency agrees with the ALJ that the DI was credible and her testimony warrants full weight on the key, corroborated issues. *Id.* at 5. Regarding Applicant, the ALJ found, and the Agency agrees, that Applicant's testimony was acceptable to the extent that it was corroborated by the DI's testimony and documentary evidence; however, the ALJ also found, and the Agency agrees, that Applicant's testimony as to his mental state during the relevant events was self-serving and internally inconsistent. *Id.* at 7. Specifically, the ALJ noted that Applicant's recollection of events tended to be either extremely clear or extremely murky depending on which better suited a particular purpose, and Applicant's various explanations for his false application answer were inconsistent to each other as well as inconsistent to Applicant's other statements and actions. *Id.* at 7–8. Accordingly, the Agency agrees with the ALJ that Applicant's testimony that is consistent with the DI's testimony or documentary evidence warrants acceptance, while Applicant's testimony regarding his mental state during the relevant events warrants only limited weight. *Id.* at 8.

[2] Applicant testified that law enforcement began investigating him after a former employee alleged Applicant was writing codeine prescriptions for himself; Applicant testified that he had been addicted to codeine, which he took to treat pain from knee injuries, but denied ever selling codeine to third parties. RD, at 6; Tr. 145, 211–13, 215. Applicant asserted that the execution of the search warrant was a ''wake-up call'' and the next day he voluntarily entered a treatment program. RD, at 6; Tr. 212–13.