

(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.* section 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 maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA 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. AR9231919 issued to Robert Rowen, 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 Robert Rowen, M.D., to renew or modify this registration, as well as any other pending application of Robert Rowen, M.D., for additional registration in California. This Order is effective September 13, 2024.

#### Signing Authority

This document of the Drug Enforcement Administration was signed on August 8, 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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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Irene Kimura, M.D.; Decision and Order

On July 12, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Irene Kimura, M.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 3, at 1, 3. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BK4376112 at the registered address of 1017 W Broadway Ave., Moses Lake, WA 98837. *Id.* at 1. The OSC alleged that Registrant’s registration should be revoked because Registrant is “currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Washington, the state in which [she is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of her right to file with DEA a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 3.<sup>1</sup> “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), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

#### 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, on or about November 9, 2021, the State of Washington Department of Health Washington Medical Commission issued an “Ex Parte Order of Summary Action—Restriction” that restricted

<sup>1</sup> Based on the Government’s submissions in its RFAA dated October 6, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the included email chain from a DEA Diversion Investigator to Registrant indicates that Registrant was successfully served with the OSC by email on July 17, 2023. RFAAX 2, at 1–2.

Registrant from prescribing controlled substances. RFAAX 3, at 2. According to Washington’s online records, of which the Agency takes official notice, Registrant’s Washington medical license is revoked.<sup>2</sup> Washington State Department of Health Provider Credential Search, <https://fortress.wa.gov/doh/providercredentialsearch/> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Washington, the state in which she 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).<sup>3</sup>

<sup>2</sup> 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 email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.gov](mailto:dea.addo.attorneys@dea.gov).

<sup>3</sup> 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

According to Washington statute, “[a] practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner’s profession.” Wash. Rev. Code section 69.50.308(j) (2024). Further, a “prescription” means “an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.” *Id.* section 69.50.101(oo). Finally, a “practitioner” as defined by Washington statute includes “[a] physician under chapter 18.71 RCW.” *Id.* section 69.50.101(nn)(1).<sup>4</sup>

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Washington. As discussed above, a physician must be a licensed practitioner to dispense or prescribe a controlled substance in Washington. Thus, because Registrant currently lacks authority to practice medicine in Washington and, therefore, is not currently authorized to handle controlled substances in Washington, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA 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. BK4376112 issued to Irene Kimura, 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 Irene Kimura, M.D., to renew or modify this registration, as well as any other pending application of Irene Kimura, M.D., for additional registration in Washington. This Order is effective September 13, 2024.

#### Signing Authority

This document of the Drug Enforcement Administration was signed on August 8, 2024, by Administrator

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 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.

<sup>4</sup> Chapter 18.71 regulates physicians.

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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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Thomas M. Fausset, O.D.; Decision and Order

On August 8, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Thomas Fausset O.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 4. The OSC proposed the revocation of Registrant’s Certification of Registration No. MF5263481 at the registered address of 237 N Western Ave., Los Angeles, CA 90004. *Id.* at 1. The OSC alleged that Registrant’s registration should be revoked because Registrant is “currently without authority to handle controlled substances in the State of California, the state in which he is registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

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 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 2.<sup>1</sup> “A default, unless excused, shall be deemed to constitute a 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).

<sup>1</sup> Based on the Government’s submissions in its RFAA dated October 23, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the submitted Declaration from a DEA Diversion Investigator indicates that Registrant was successfully mailed a copy of the OSC at both his last known home address and his registered address on August 11, 2023. RFAAX 3, at 2; *see also* RFAAX 3, Appendix A, at 1–2.

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 2; *see also* 21 CFR 1316.67.

#### 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, effective April 22, 2023, the California State Board of Optometry revoked Registrant’s California optometry license. RFAAX 2, at 2. According to California online records, of which the Agency takes official notice, Registrant’s California optometry license remains revoked.<sup>2</sup> California DCA License Search, <https://search.dca.ca.gov> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice optometry 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

<sup>2</sup> 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 email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.gov](mailto:dea.addo.attorneys@dea.gov).