personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 7, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–23444 Filed 10–9–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Salman Akbar, M.D.; Decision and Order

On January 27, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Salman Akbar, M.D., of Richmond, Virginia (Applicant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, Attachment E, at 1, 4. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration (registration), Control No. W22109452C, alleging that Applicant has committed acts that would render his registration inconsistent with the public interest. *Id.* at 1, 2 (citing 21 U.S.C. 823(g)(1),[1] 824(a)(4) [2]).

The OSC notified Applicant 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.* at 2 (citing 21 CFR 1301.43). Here, Applicant filed a timely answer and request for hearing on February 28, 2023,[3] but ultimately withdrew his request for hearing on March 27, 2023. *See* RFAAX 1, Attachment F.[4] On March 27, 2023, Chief Administrative Law Judge John J. Mulrooney, II, (the Chief ALJ) issued a Termination Order that terminated the proceedings. 21 CFR 1301.43(c) provides that, ''[i]n the event . . . a person who has requested a hearing fails to plead . . . or otherwise defend, said party shall be deemed to be in default . . . .'' By voluntarily withdrawing his hearing request, Respondent ''fail[ed] to . . . otherwise defend.'' 21 CFR 1301.43(c). Accordingly, Respondent is ''deemed to be in default.'' *Id.;* Default Provisions for Hearing Proceedings Relating to the Revocation, Suspension, or Denial of a Registration, 87 FR 68036 (Nov. 14, 2022).[5] *See* RFAAX 1, Attachment G. ''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).

Further, ''[i]n the event that a [registrant/applicant] . . . 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 Applicant's default pursuant to 21 CFR 1301.43(c), (d), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

I. Findings of Fact

The Agency finds that, in light of Applicant's default, the factual allegations in the OSC are admitted. Applicant is deemed to have admitted that on March 2, 2020, DEA issued Applicant an Immediate Suspension Order and Order to Show Cause that suspended Applicant's previous DEA registration, Control No. BA5092856, and immediately rendered Applicant without authority to issue prescriptions for controlled substances. RFAAX 1, Attachment E, at 1–2; *see also* RFAAX 1, Attachment B. Further, on October 20, 2021, by Order of the then-Acting Administrator, Applicant's DEA registration, Control No. BA5092856, was revoked. RFAAX 1, Attachment E, at 2; *see also* RFAAX 1, Attachment C.

Nonetheless, Applicant is deemed to have admitted, and the Agency finds, that between on or about January 15, 2021, and on or about January 6, 2022, Applicant issued at least 17 prescriptions for controlled substances, including four prescriptions for oxycodone (a Schedule II controlled substance), two prescriptions for hydrocodone (a Schedule II controlled substance), five prescriptions for lorazepam (a Schedule IV controlled substance), two prescriptions for zolpidem (a Schedule IV controlled substance), one prescription for clonazepam (a Schedule IV controlled substance), two prescriptions for pregabalin (a Schedule V controlled substance), and one prescription for diazepam (a Schedule IV controlled substance). RFAAX 1, Attachment E, at 2; *see also* RFAAX 1, Attachment D. Applicant is deemed to have admitted, and the Agency finds, that each of these 17 prescriptions was issued without a DEA registration and outside the usual course of professional practice. *Id.*

II. Discussion

A. The Five Public Interest Factors

Pursuant to section 303(g)(1) of the CSA, ''[t]he Attorney General 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). Section 303(g)(1) further provides that an application for a practitioner's registration may be denied upon a determination that ''the issuance of such registration . . . would be inconsistent with the public interest.'' *Id.* In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(C) The applicant's conviction record under Federal or State laws relating to the

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

[1] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[2] Prior Agency decisions have addressed whether it is appropriate to consider a provision of 21 U.S.C. 824(a) when determining whether to grant a practitioner registration application. For over forty-five years, Agency decisions have concluded that it is. *Robert Wayne Locklear, M.D.,* 86 FR 33738, 33744–45 (2021) (collecting cases); *see also Dinorah Drug Store, Inc.,* 61 FR 15972, 15973–74 (1996).

[3] Based on the Government's submissions in its RFAA dated July 3, 2023, the Agency finds that service of the OSC on Applicant was adequate. Specifically, the included Declaration of a DEA Diversion Investigator indicates that on January 30, 2023, Applicant was personally served with the OSC. RFAAX 1, at 2.

[4] Within the document where Applicant withdrew his request for hearing, Applicant's counsel indicated that Applicant would ''continue with the Corrective Action Plan route that was parallel to the litigation path, but unrelated to the hearing.'' *Id.* at 1.

[5] *See also* 21 CFR 1301.43(f)(3) (''A party held to be in default may move to set aside a default final order issued by the Administrator by filing a motion no later than 30 days from the day of issuance by the Administrator of a default final order. Any such motion shall be granted only upon a showing of good cause to excuse the default.'') Any motion to set aside a default and any 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.*

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).

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),[6] the Government's evidence in support of its *prima facie* case for denial of Applicant's application for registration is confined to Factors B and D. *See* RFAAX 1, Attachment E, at 1. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44. Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Applicant's registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

B. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.,* 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). In the current matter, the Government has alleged that Applicant violated both Federal and State law regulating controlled substances. RFAAX 1, Attachment E, at 2.[7] Specifically, Federal law states that ''[a] prescription for a controlled substance may be issued only by an individual practitioner who is: (1) [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession and (2) [e]ither registered or exempted from registration pursuant to §§ 1301.22(c) and 1301.23 . . . .'' 21 CFR 1306.03(a)(1–2). As for State law, Virginia statute requires that ''[e]very person who manufactures, distributes or dispenses any substance that is controlled in [s]chedules I through V . . . except . . . those persons who are licensed practitioners of medicine . . . shall obtain annually a controlled substances registration certificate issued by the [Board of Pharmacy]. This registration shall be in addition to other licensing or permitting requirements enumerated in [Virginia's Drug Control Act] or otherwise required by law.'' Va. Code. Ann. section 54.1–3422(A).

Here, Applicant has admitted that he repeatedly issued prescriptions for controlled substances while his DEA registration was suspended as well as after his DEA registration was revoked. As such, the Agency finds that Applicant violated 21 CFR 1306.03(a)(1–2) and Virginia Code section 54.1–3422(A).

Accordingly, the Agency finds that Factors B and D weigh in favor of denial of Applicant's application and thus finds Applicant's continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). The Agency further finds that Applicant failed to provide any evidence to rebut the Government's *prima facie* case.

III. Sanction

Where, as here, the Government has established grounds to deny Applicant's application, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). To establish that he can be entrusted with registration, a registrant must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012) (internal quotations omitted); *see also Michele L. Martinho, M.D.,* 86 FR 24012, 24019 (2021); *George D. Gowder, III, M.D.,* 89 FR 76152, 76154 (2024). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR at 33746.

Here, although Applicant initially requested a hearing, he ultimately withdrew his hearing request and did not otherwise avail himself of the opportunity to refute the Government's case. As such, Applicant has made no representations as to his future compliance with the CSA nor demonstrated that he can be entrusted with registration. Moreover, the evidence presented by the Government shows that Applicant violated the CSA, further indicating that Applicant cannot be entrusted. Accordingly, the Agency will order the denial of Applicant's application.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1) and 21 U.S.C. 824(a), I hereby deny the pending application for a Certificate of Registration, Control No. W22109452C, submitted by Salman Akbar, M.D., as well as any other pending application of Salman Akbar, M.D., for additional registration in Virginia. This Order is effective November 12, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 4, 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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BILLING CODE 4410–09–P

[6] As to Factor A, the record contains no evidence of a recommendation from any State licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence ''does not weigh for or against a determination as to whether continuation of [or granting of a] DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Applicant has been convicted of an offense under either Federal or State law ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010). Agency cases have therefore found that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.* Finally, as to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Applicant.

[7] The Agency need not adjudicate the criminal violations alleged in the instant OSC. *Ruan* v. *United States,* 142 S. Ct. 2370 (2022) (decided in the context of criminal proceedings).