

Findings of Fact

Registrant is the holder of DEA Certificate of Registration No. BD3577965, pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a practitioner, at the registered address of Women's Pavilion of South Mississippi, 6524 U.S. Highway 98, Hattiesburg, Mississippi. GX 1 (Certificate of Registration). His registration does not expire until June 30, 2017. *Id.*

On July 8, 2016, Registrant voluntarily surrendered his medical license to the Mississippi State Board of Medical Licensure (Medical Board), stating in a letter to the Board's President that he was relinquishing his right to practice medicine. GX 3, at 2. On July 13, 2016, the Medical Board issued a memorandum to various governmental and private entities informing them that Registrant had voluntarily surrendered his medical license effective July 12, 2016. *Id.* at 3. As Registrant neither responded to the Show Cause Order nor submitted any evidence to show that his state license has been reinstated, I find that he does not possess authority to dispense controlled substances in Mississippi, the State in which he is registered with the DEA.

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 Controlled Substances Act (CSA), "upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." 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*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton*, 43 FR 27616 (1978). Thus, the Agency has further held that "the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather[,] it is whether the Respondent is currently authorized to handle controlled substances in the [S]tate." *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)).

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(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, 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 medicine. *See, e.g., Hooper*, 76 FR at 71371; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR at 27616.

By virtue of the surrender of his medical license, Registrant currently lacks authority to dispense controlled substances in Mississippi, the State in which he holds his DEA registration, and he is not entitled to maintain his registration. Accordingly, I will order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BD3577965, issued to Lee B. Drake, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I further order that any pending application of Lee B. Drake, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective March 20, 2017.

Dated: February 9, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017-03222 Filed 2-16-17; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Paul E. Pilgram, M.D.; Decision and Order

On November 29, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Paul E. Pilgram,¹ M.D. (Registrant), of West Jordan, Utah. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, on the ground that he does not have authority to handle controlled substances in Utah, the State in which he is registered with the Agency. Show Cause Order, at 1 (citing 21 U.S.C. 824(a)(3)).

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that Registrant is registered as a practitioner in schedules II through V under DEA registration No. AP1393038, at the registered address of 1561 West 7000 South, Suite 200, West Jordan, Utah. *Id.* The Order alleged that Registrant's registration does not expire until March 31, 2017. *Id.*

The Show Cause Order then alleged that on October 17, 2016, the State of Utah revoked Registrant's authority to prescribe and administer controlled substances and that he is "without authority to handle controlled substances in . . . the [S]tate in which [he is] registered with the" Agency. *Id.* The Order then asserted that as a consequence of the loss of his state authority, "DEA must revoke" his registration. *Id.* (citing 21 U.S.C. 802(21), 823(f) and 824(a)(3)). The Show Cause Order also notified Registrant of his right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to do elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Order further notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

On December 6, 2016, a Diversion Investigator (DI) from the DEA Salt Lake City District Office effected service by hand-delivery of a copy of the Show Cause Order to Registrant at his registered address of 1561 West 7000 South, Suite 200, West Jordan, Utah. GX 2, at 1-2 (Declaration of Diversion Investigator). According to the Government, since the date of service of

¹ Registrant's name in the Order to Show Cause is spelled "Pilgrim"; however, all other documents in the record, including Registrant's Certificate of Registration, use the correct spelling (Pilgram).

the Show Cause Order, the Agency “has not received a request for hearing or any other reply from” Registrant. Request for Final Agency Action (RFFA), at 2.

On January 10, 2017, the Government forwarded this matter to my Office for final agency action along with an evidentiary record. RFFA, at 1. Based upon the Government’s representation and my review of the record, I find that more than 30 days have now passed since the date of service of the Show Cause Order, and that neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing, and issue this Decision and Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact. *Id.* § 1301.43(e).

Findings of Fact

Registrant is the holder of Certificate of Registration AP1393038, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 1561 West 7000 South, Suite 200, West Jordan, Utah. GX 2. His registration does not expire until March 31, 2017. *Id.*

On October 17, 2016, the Utah Division of Occupational and Professional Licensing, Department of Commerce (the Division), issued an order revoking Registrant’s license to prescribe and administer controlled substances in the State. GX 3, at 2. Therein, the Division adopted the recommended order of the Utah Physicians Licensing Board (Physician’s Board), which the latter issued following a hearing it held on August 24–25, 2016 at which Registrant was represented by counsel. *Id.* at 5.

The Physician’s Board found that Registrant “did not [] meet the standard of care of the profession for pain management patients” and failed to follow the Model Policy for the Use of Controlled Substances for the Treatment of Pain (2004) in his treatment of nine patients. As support for its finding, the Board specifically cited: (1) “[t]he inadequacy of the documented evaluation of the patients,” (2) “[t]he failure to obtain or document informed consent as to major risks of the high opioid regimes,” (3) “[t]he perfunctory consideration or enforcement of agreements for treatment,” (4) “[t]he improperly low level of consultation with other health and mental professionals [sic],” and (5) “[t]he

failure to maintain accurate and complete medical records.” *Id.* at 6–7. The Board further found that Registrant “failed to demonstrate a legitimate medical purpose for his prescribing practices, [that] there was an absence of sound clinical judgment on [his] part . . . and the pattern of prescribing practices was not based on clear documentation of unrelieved pain.” *Id.* at 7. The Board then made detailed findings with respect to nine patients. *Id.* at 8–26.

The Physician’s Board thus concluded that Registrant had engaged in unprofessional conduct:

by failing, as a prescribing practitioner, to follow the Model Policy for the Use of Controlled Substances for the Treatment of Pain, 2004 [], in [his] evaluation of the patient, obtaining or documenting informed consent, giving more than perfunctory consideration to, or enforcement of, agreements for treatment, conducting periodic reviews, consultation with other medical specialists, maintaining accurate and complete medical records, and complying with the state laws referenced in [its] conclusions.

Id. at 27 (citing Utah Admin. Code r. 156–1–501(6)).² The Board further concluded that “[t]he prescribing of controlled substances by [Registrant] on too many occasions did not have a legitimate medical purpose, did not show sound clinical judgment and was not based on clear documentation of unrelieved pain.” *Id.* at 28.³

The Board thus recommended that Registrant’s state “license to prescribe and administer controlled substances . . . be revoked.” *Id.* at 29. On October 17, 2016, the Division adopted the Board’s factual findings, legal conclusions and recommended order “in its entirety.” *Id.* at 2, 4. According to the online records of the Utah Division of Occupational and Professional Licensing of which I take official notice, Registrant’s controlled substance license remains revoked as of the date of this Decision and Order.⁴ *See*

² As for Registrant’s conduct after the Board adopted its 2013 Model Policy on the Use of Opioids Analgesics in the Treatment of Chronic Pain, the Board also found that he engaged in unprofessional conduct. GX 3, at 28 (citing Utah Admin. Code r. 156–1–501(7)).

³ Under the Division’s rules, “unprofessional conduct” includes: “failing, as a prescribing practitioner, to follow the ‘Model Policy for the Use of Controlled Substances for the Treatment of Pain,’ 2004, established by the Federation of State Medical Boards,” and “failing, as a prescribing practitioner, to follow the ‘Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain,’ July 2013, adopted by the Federation of State Medical Boards.” Utah Admin. Code r. 156–1–501(6) and (7) (2016).

⁴ In accordance with the Administrative Procedure Act (APA), an agency “may take official notice of facts at any stage in a proceeding—even

also <https://secure.utah.gov/llv/search/index.html>. I therefore find that Registrant is without authority to dispense controlled substances under the laws of Utah, the State in which he holds his registration.

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 Controlled Substances Act (CSA), “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Moreover, DEA has 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*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton*, 43 FR 27616 (1978).

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(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, 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 the final decision.” U.S. Dept. of Justice, *Attorney General’s Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA’s regulations, Respondent is “entitled on timely request to an opportunity to show to the contrary.” 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within 15 calendar days of the date of service of this Order which shall commence on the date this Order is mailed.

in which he practices medicine. *See, e.g., Hooper*, 76 FR at 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR at 27616.

Because Registrant currently lacks authority to handle controlled substances in Utah, the State in which he holds his DEA registration, he is not entitled to maintain his registration. Accordingly, I will order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AP1393038, issued to Paul E. Pilgram, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I further order that any pending application of Paul E. Pilgram, M.D., to renew or modify this registration, be, and it hereby is, denied. This Order is effective immediately.⁵

Dated: February 9, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–03223 Filed 2–16–17; 8:45 am]

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Currently Approved Collection; Age, Sex, Race, and Ethnicity of Persons Arrested Under 18 Years of Age; Age, Sex, Race, and Ethnicity of Persons Arrested 18 Years of Age and Over

AGENCY: Federal Bureau of Investigation, Department of Justice.

⁵ Based on the extensive findings of the Utah Division of Occupational and Professional Licensing, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 18, 2017.

FOR FURTHER INFORMATION CONTACT: All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mrs. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Information Services Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*,

permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Age, Sex, Race, and Ethnicity of Persons Arrested Under 18 Years of Age; and Age, Sex, Race, and Ethnicity of Persons Arrested 18 Years of Age and Over.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1–708 and 1–708a. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, in the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: City, county, state, tribal and federal law enforcement agencies.

Abstract: Under Title 28, U.S. Code, Section 534, Acquisition, Preservation, and Exchange of Identification Records; and Appointment of Officials, 1930, this collection requests the number of arrests from from city, county, state, tribal, and federal law enforcement agencies in order for the FBI UCR Program to serve as the national clearinghouse for the collection and dissemination of arrest data and to publish these statistics in Crime in the United States.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 11,791 law enforcement agency respondents; calculated estimates indicate 12 minutes for form 1–708a and 15 minutes for form 1–708 per month. The total annual burden hours per respondent is 5 hours and 24 minutes.

Total Annual Hour Burden: 15 minutes + 12 minutes × 12 months = 324 / 60 = 5 hours and 24 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 63,671 hours, annual burden, associated with this information collection.