

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Decision and Order: Kenneth C. Beal, Jr., D.D.S.**

On December 22, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Kenneth C. Beal, Jr., D.D.S. (hereinafter, Registrant), of Tutwiler, Mississippi.¹ Order to Show Cause (hereinafter, OSC), at 1. The Show Cause Order proposes the revocation of Registrant's Certificate of Registration on the ground that he has "no state authority to handle controlled substances." *Id.* (citing 21 U.S.C. 824(a)(3)).

Regarding jurisdiction, the Show Cause Order alleges that Registrant holds DEA Certificate of Registration No. FB0508993 at the registered address of Tallahatchie Cty. Correc. Fac. Den. Clin., 415 U.S. Hwy. 49 N, Tutwiler, Mississippi 38963. OSC, at 1. This registration authorizes Registrant to dispense controlled substances in schedules II through V as a practitioner. *Id.* The Show Cause Order alleges that this registration expires on July 31, 2019. *Id.*

The substantive ground for the proceeding, as alleged in the Show Cause Order, is that Registrant is "currently without authority to practice dentistry or handle controlled substances in the State of Mississippi, the state in which . . . [he is] registered with the DEA." *Id.* at 2. Specifically, the Show Cause Order alleges that the Mississippi State Board of Dental Examiners revoked Registrant's "license to practice dentistry" on August 16, 2017. *Id.*

The Show Cause Order notifies Registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Show Cause Order also notifies Registrant of the opportunity to submit a corrective action plan. OSC, at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated March 22, 2018, a Diversion Investigator (hereinafter, DI), who describes himself as being assigned to the New Orleans

Field Division, states that he and another DI "travelled to the residence of Registrant . . . to personally serve the . . . [OSC on him]." Government Exhibit (hereinafter, GX) 4 (DI Declaration), at 1. The DI also states that, "At approximately 11:30 a.m. on January 4, 2018, I personally served Registrant with the [OSC]." *Id.*

In its Request for Final Agency Action dated March 27, 2018, the Government represents that "[a]t least 30 days have passed since the time the . . . [OSC] was served on Registrant . . . [and] Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA regarding the . . . [OSC] served on him, including the filing of any written statement in lieu of a hearing." Request for Final Agency Action (hereinafter, RFAA), at 1. The Government requests the issuance of "a Final Order revoking Registrant's DEA registration." *Id.* at 3.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government served the OSC on Registrant on January 4, 2018. I also find that more than 30 days have now passed since the date the Government served the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent him, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived his right to a hearing and his right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

Findings of Fact*Registrant's DEA Registration*

Registrant is the holder of DEA Certificate of Registration No. FB0508993 at the registered address of Tallahatchie Cty. Correc. Fac. Den. Clin., 415 U.S. Hwy. 49 N, Tutwiler, Mississippi 38963. GX 1 (Certification of Registration History), at 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expires on July 31, 2019. *Id.*

The Status of Registrant's State License

On August 16, 2017, the Mississippi State Board of Dental Examiners revoked Registrant's license to practice

dentistry, Dental License No. 2459–89. RFAA, at 2; GX 3 (Mississippi State Board of Dental Examiners certified letter to Registrant dated August 16, 2017), at 2; GX 5 (Mississippi State Board of Dental Examiners website screen print), at 1.

According to Mississippi's online records, of which I take official notice, Registrant's license to practice dentistry is still revoked.² Mississippi State Board of Dental Examiners website, <http://www.dentalboard.ms.gov> (last visited July 9, 2018). Mississippi's online records show no State controlled substance registration issued to Registrant. *Id.*

Accordingly, I find that Registrant currently is neither licensed to engage in the practice of dentistry nor registered 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 (hereinafter, 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 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, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress

² 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 my finding by filing a properly supported motion for reconsideration within 20 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have 20 calendar days to file a response.

¹ The Show Cause Order also lists a Post Office Box in Itta Bena, Mississippi in reference to Registrant's location.

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 CSA, the 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., Hooper, supra*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Blanton, supra*, 43 FR at 27,617.

According to Mississippi statute, “Every person who desires to practice dentistry . . . in this state must obtain a license to do so.” Miss. Code Ann. § 73–9–1 (West, Westlaw current with laws from the 2018 Regular Session). Further, “[e]very person who . . . dispenses any controlled substance within this state . . . must obtain a registration issued by . . . the State Board of Dental Examiners . . . in accordance with its rules and the law of this state.” Miss. Code Ann. § 41–29–125(1)(a) (West, Westlaw current with laws from the 2018 Regular Session).³ *See also* Miss. Code Ann. § 73–9–53 (West, Westlaw current with laws from the 2018 Regular Session) (authorizing Mississippi pharmacists to fill prescriptions only of “legally licensed and registered dentists of this

state for any drugs to be used in the practice of dentistry”) and Miss. Admin. Code 30–2301:1.35(1) (West, current through the Mississippi Administrative Rules Listing of Filings, dated May 2018) (legally licensed and registered dentists may write prescriptions for any drugs to be used in the practice of dentistry).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice dentistry and handle controlled substances in Mississippi. As already discussed, only a legally licensed and registered dentist may dispense a controlled substance or any drug to be used in the practice of dentistry in Mississippi. Thus, since Registrant lacks authority to practice dentistry in Mississippi, and is not registered in Mississippi to handle controlled substances, I will order that Registrant’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority thus vested in me by 21 U.S.C. 824(a), I order that DEA Certificate of Registration No. FB0508993 issued to Kenneth C. Beal, Jr., D.D.S., be, and it hereby is, revoked. This Order is effective August 22, 2018.

Dated: July 9, 2018.

Uttam Dhillon,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Fresenius Kabi USA, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written

comments on or objections to the issuance of the proposed registration on or before August 22, 2018. Such persons may also file a written request for a hearing on the application on or before August 22, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 21, 2018, Fresenius Kabi USA, LLC, 3159 Staley Road, Grand Island, New York 14072–2028 applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Remifentanyl	9739	II

³ “Dispensing” a controlled substance includes “prescribing” and “administering” it. Miss. Code

Ann. § 41–29–105(j) (West, Westlaw current with laws from the 2018 Regular Session).