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Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Peter John Ulbrich, M.D.; Decision and Order

On March 4, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause to Peter John Ulbrich, M.D., (hereinafter, Registrant), of Peachtree City, Georgia. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposes the revocation of Registrant's Certificate of Registration No. FU2662523 on the ground that Registrant does "not have authority to handle controlled substances in Georgia, the state in which [Registrant is] registered with the DEA." *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleges that the Georgia Composite Medical Board (hereinafter, Board) issued an Initial Decision indefinitely suspending Registrant's medical license on February 9, 2018. *Id.* at 1.

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the 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 OSC also notified 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 June 24, 2019, a Diversion Investigator (hereinafter, DI) assigned to the Atlanta Division Office stated that on May 7, 2019, he and another DI met with Registrant at an agreed location and he personally served him with the OSC. Government's Request for Final Agency Action (hereinafter, RFAA), GX 10 (Declaration of the Diversion Investigator (hereinafter DI's Declaration)), at 2-3. Registrant signed a DEA Form 12, Receipt for Cash or Other Items, to acknowledge his receipt of the Show Cause Order. *Id.* at 3; *see also* GX 6.

In its RFAA, the Government represents that "more than [thirty] days have passed since Registrant received the [OSC]; however, Registrant has not submitted to DEA a request for a hearing . . . nor has he corresponded in writing or otherwise" regarding a hearing. RFAA at 2. The Government requests the issuance of a revocation order on the basis that "Registrant has waived his opportunity for a hearing" and his registration should be revoked pursuant to 21 U.S.C. 802(21), 823(f) and 824(a)(3). *Id.* at 2.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on May 7, 2019. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, 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 the right to a hearing and the 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. FU2662523 at the registered address of Cosmedical, 401 Highway 74 North, Peachtree City, Georgia 30269. RFAA, GX 1 (Facsimile of Registrant's DEA Certificate of Registration); GX 2 (Certification of Registration Status). 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 May 31, 2020, and is "in an active pending status." GX 2 (Certification of Registration Status) at 1.

The Status of Registrant's State License

On May 17, 2018, the Georgia Composite Medical Board (hereinafter, Board) issued a Final Decision and Order (hereinafter, Order) indefinitely suspending [Registrant's] license to practice medicine in the State of Georgia, effective on that date. RFAA,

GX 4 (Order), at 2. The Order provided that after two years the "[Registrant] may request his suspension be lifted following treatment by a Board-approved physician and advocacy from a physician." *Id.* The Order upheld an Initial Decision (hereinafter, Initial Decision) issued after a hearing by a state administrative law judge (hereinafter, ALJ) on February 9, 2018. The ALJ's Initial Decision found that, based on un rebutted expert testimony, "[Registrant's] history of sexual misconduct, receipt of intensive inpatient and outpatient treatment, 'relapse' behaviors, lack of transparency, poor insight and judgment demonstrates that, without further treatment, he cannot practice with reasonable skill and safety." *Id.* at 18. Therefore, the ALJ recommended Registrant's "license to practice medicine in the State of Georgia be indefinitely suspended until [Registrant] undergoes any treatment ordered by the Board and it is determined that he can practice with reasonable skill and safety." RFAA, GX 3 (Initial Decision), at 19.

According to the website of the Georgia Composite Medical Board, of which I take official notice, Registrant's license is still indefinitely suspended. <https://gcmb.mylicense.com/verification/> (last visited August 5, 2019).¹ The State of Georgia online records show that Registrant's medical license remains suspended and that Registrant is not authorized in the State of Georgia to prescribe controlled substances. *Id.*

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

¹ 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 15 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 15 calendar days to file a response.

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 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.

The Georgia Controlled Substances Act requires that “every person who manufactures, distributes, or dispenses any controlled substances within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state must obtain annually a registration issued by the State Board of Pharmacy in accordance with its rules.” Ga. Code Ann. § 16–13–35(a) (West 1982). The Act exempts from separate controlled substance registration requirements, “persons licensed as a physician, dentist, or veterinarian under the laws of the state to use, mix, prepare, dispense, prescribe, and administer drugs in connection with medical treatment to the extent provided by the laws of this state.” *Id.* at 16–13–35(g)(2).

According to the Medical Practice Act of the State of Georgia, the definition of a “physician” is a “person licensed to practice medicine under this article,” and the definition of “to practice medicine” is “to hold oneself out to the public as being engaged in the diagnosis or treatment of disease, defects, or injuries of human beings; or the suggestion, recommendation, or prescribing of any form of treatment for the intended palliation, relief, or cure of any physical, mental, or functional ailment or defect of any person.” Ga. Code Ann. §§ 43–34–21(2), (3) (West 1981).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Georgia. As already discussed, a person must be registered to dispense a controlled substance in Georgia, unless he is licensed as a physician. Thus, because Registrant is no longer a licensed physician in Georgia and, therefore, is no longer registered to or authorized to dispense controlled substances in Georgia, I 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. FU2662523 issued to Peter John Ulbrich, M.D. This Order is effective September 16, 2019.

Dated: August 2, 2019.

Uttam Dhillon,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Brent E. Silvers, M.D.; Decision and Order

On May 9, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Brent E. Silvers, M.D. (hereinafter, Registrant) of Irvine, California. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BS2811392 on the ground that Registrant “is without authority to handle controlled substances in the State of California, the state in which [Registrant is] registered with the DEA.” *Id.* at 1–2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on January 11, 2019, the Medical Board of California (hereinafter, Board) issued a Decision revoking Registrant’s California medical license, effective February 8, 2019. *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement while waiving the 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 OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated June 19, 2019, a Diversion Investigator (hereinafter, DI) assigned to the Riverside District office, Los Angeles Field Division, stated that he and another DI traveled to Registrant’s registered address located at 2 Hughes, Suite 150, Irvine, California 92618 on May 10, 2019. Request for Final Agency Action dated July 10, 2019 (hereinafter, RFAA), Government Exhibit (hereinafter, GX) GX 4 (DI’s Declaration). The DI stated that upon arrival at the registered address, “Registrant identified himself . . . as Dr. Silvers” to the DIs. *Id.* The DI then “personally served the [OSC] on Registrant by handing it to him.” Registrant signed a DEA Form 12, Receipt for Cash or Other Items, to acknowledge his receipt of the Show Cause Order. *Id.*; *see also* GX 4B.

In its RFAA, the Government represents that “at least [thirty] days have passed since the time the [OSC] was served on Registrant” and he “has not requested a hearing and has not otherwise corresponded or communicated with DEA.” RFAA, at 1. The Government requests that “Registrant’s DEA Registration [] be revoked based on 21 U.S.C. 824(a)(3) because Registrant has no valid medical license in California . . . [and] is without state authority to handle controlled substances in California.” *Id.* at 2–3.

Based on the DI’s Declaration, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on May 10, 2019. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government’s written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant’s