

practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (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., James L. Hooper, M.D.*, 76 FR at 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR at 27617.

Pennsylvania law defines a "practitioner" as a "(i) a physician . . . licensed, registered or otherwise permitted to distribute, dispense . . . or to administer a controlled substance . . . in the course of professional practice or research in the Commonwealth of Pennsylvania." 35 Pa. Stat. and Cons. Stat. Ann. § 780–102 (West 2019). Pennsylvania law further defines a "physician," as a "medical doctor," and a "medical doctor," as an "individual who has acquired" a license "to practice medicine and surgery issued by the board." 63 Pa. Stat. and Cons. Stat. Ann. § 422.2 (West 2019). State law prohibits "[t]he administration, dispensing, delivery, gift or prescription of any controlled substance by any practitioner . . . unless done (i) in good faith in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical

profession." 35 Pa. Stat. and Cons. Stat. Ann. § 780–113(14). Additionally, the statute prohibits "knowingly or intentionally possessing a controlled . . . substance by a . . . practitioner not registered or licensed by the appropriate state board." *Id.* at § 780–113(15). Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine and surgery in Pennsylvania. A practitioner, who is a physician and a medical doctor, must be licensed and cannot prescribe controlled substances in his professional practice or possess controlled substances without a license to practice medicine and surgery. *Id.* at § 780–113(14), (15). Because Registrant lacks authority to practice medicine in Pennsylvania and, therefore, is not authorized to possess or prescribe controlled substances in Pennsylvania, Registrant is not eligible to maintain a DEA registration. Accordingly, 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. BZ6248199, issued to Andrzej Kazimierz Zielke, M.D. Further, I hereby deny any pending application of Andrzej Kazimierz Zielke, M.D. to renew or modify this registration, as well as any pending application of Andrzej Kazimierz Zielke, M.D., for registration in the Commonwealth of Pennsylvania. This Order is effective March 4, 2020.

Dated: January 3, 2020.

**Uttam Dhillon,**

*Acting Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Kambiz Haghighi, M.D.; Decision and Order

On May 22, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause to Kambiz Haghighi, M.D. (hereinafter, Registrant) of Long Beach, California. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BH6439714 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 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on April 20, 2018, the Medical Board of California (hereinafter, Board) issued a Decision and Order directing that, effective May 18, 2018, Registrant "shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances." *Id.* (quoting Board's Order). The OSC further alleged that "on July 23, 2018, [Registrant] surrendered [his] Physician's and Surgeon's Certificate to the Board in accordance with an 'Agreement for Surrender of License' that [he] entered into with the Board on that same date." *Id.* at 1–2.

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 1, 3 (citing 21 U.S.C. 824(c)(2)(C)).

#### Adequacy of Service

In a Declaration dated July 17, 2019, a Diversion Investigator (hereinafter, DI) assigned to the Los Angeles Field Division stated that on May 29, 2019, she and a Special Agent (hereinafter, SA) traveled to Registrant's home address, which she had obtained during a prior telephone conversation with Registrant. Request for Final Agency Action (hereinafter, RFAA), EX 4 (DI's Declaration), at 1. The DI stated Registrant was not at home when they arrived at the home address, but she spoke with him on his cell phone and he arrived several minutes later. *Id.* Registrant identified himself, the DI verified his identity by looking at his driver's license, and the DI then personally served the OSC on Registrant. RFAA, EX 4, at 1–2. Registrant signed a DEA–12, Receipt for Cash or Other Items, acknowledging his receipt of the OSC, which the SA signed as a witness. *Id.* at 2, *see also* RFAA, EX 4B (DEA–12).

The Government forwarded its RFAA, along with the evidentiary record, to this office on July 26, 2019. Therein, 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 1–2. 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, the state where he is registered with DEA.” *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 accomplished service of the OSC on Registrant on May 29, 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. BH6439714 at the registered address of 4401 N. Atlantic Ave., 101, Long Beach, California 90807. RFAA, EX 1 (Certification of Registration History). 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 October 31, 2020, and is “in an active pending status.” *Id.*

### *The Status of Registrant’s State License*

On July 23, 2018, Registrant surrendered his California Physician’s and Surgeon’s Certificate pursuant to an Agreement for Surrender of License (hereinafter, Agreement) that he entered into with the Board.<sup>1</sup> RFAA, EX 3 (Agreement). According to the Agreement, Registrant surrendered his medical license following a Board Decision effective on May 18, 2018,

“wherein [Registrant’s] license was revoked, with the revocation stayed, and placed on seven [ ] years’ probation with various standard terms and conditions.” *Id.* at 2. The Board Decision provided that “‘if [Registrant] ceases practicing due to retirement, health reasons, or is unable to satisfy the terms and condition of probation, [Registrant] may request to surrender his . . . license.’” *Id.* Pursuant to the Agreement, Registrant agreed that he “understands he will no longer be permitted to practice as a physician and surgeon in California.” *Id.* The Agreement further provided that should Registrant ever file an application for relicensure or reinstatement in California, the Board would treat it as a petition for reinstatement of a revoked license. *Id.*

According to the website of the California Department of Consumer Affairs, of which I take official notice, Registrant’s license remains surrendered.<sup>2</sup> <https://search.dca.ca.gov/details/8002/A/68934/f0e886931951cf8f0b2f2099fecad44b> (last visited January 3, 2020).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in California, the state in which he is registered with the DEA.

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 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Blanton, supra*, 43 FR at 27617.

According to the California Uniform Controlled Substances Act, “No person other than a physician . . . shall write or issue a prescription.” Cal. Health & Safety Code section 11150 (West 2019). Further, “physician,” as defined by California statute, is a person who is “licensed to practice” in California. Cal. Health & Safety Code section 11024 (West 2019).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, 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. BH6439714 issued to Kambiz Haghighi, M.D. Further, I hereby deny any pending application of Kambiz Haghighi, M.D., to renew or modify this registration, as well as any pending application of Kambiz Haghighi, M.D., for registration in California. This Order is effective March 4, 2020.

Dated: January 3, 2020.

**Uttam Dhillon,**

*Acting Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Solomon Adu-Beniako, M.D.; Decision and Order

On September 12, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement

<sup>1</sup> The Government’s evidence includes a letter of certification submitted by the Executive Director of the Medical Board of California, certifying the surrender of Registrant’s Physician’s and Surgeon’s Certificate. RFAA, EX 3, at 1. The letter also certifies prior disciplinary action against Registrant, including an Order Restricting the Practice of Medicine issued by the Superior Court of Riverside County on November 23, 2015, and an Accusation and First Amended Accusation filed against Registrant in May and July, 2017. *Id.*

<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 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.