

During the visit, CS #1 filled out a two-page pain form and CS #1 and UC #1 signed in on the patient sign-in sheet. During the visit, Moyer stood next to the patient sign-in sheet and wrote down names on a prescription pad from the sign-in sheet and she asked some of the individuals for their date of birth and which drug they were prescribed. Moyer entered Kotsonis's office carrying the handwritten prescriptions and exited minutes later. The individuals were provided prescriptions and many did not see Kotsonis. During the visit, Moyer called CS #1 and UC #1 into her office. UC #1 did not see any medical equipment in the office. Moyer asked CS #1 to tell the truth about her current criminal charges. Moyer said she would have to cut CS #1 loose but would give CS #1 a prescription. Moyer said DEA would say what kind of people CS #1 was hanging out with and then "bye bye clinic, bye bye license, bye bye Dr. Steve's career" because DEA would go after the doctor. Moyer said if CS #1's criminal charges were dropped she could come back to the clinic. Moyer said CS #1's friend (who referred CS #1 to the clinic) was dumb because he sold pills to an undercover cop. Moyer asked CS #1 for her name and date of birth and wrote CS #1 a prescription for 90 tablets of Oxycodone 30mg, which Moyer took to Kotsonis to sign. CS #1 paid Moyer \$200 cash for the visit. Moyer asked CS #1 if she knew what people called Moyer. CS #1 said no and Moyer responded "The Oxy Czar." "They call me the gestapo because if you screw up the world will stop, so don't screw up." Moyer then continued to fill out additional prescriptions.

CS #1 asked Moyer if UC #1 could be accepted as a patient and she said everyone who came with CS #1 would have to be rescreened (because of CS #1's criminal charges). Moyer then looked over the MRIs provided by UC #1 and said the second MRI looked a little better than the first. Moyer said she would show the MRIs to the doctor. Moyer opened her desk drawer and pulled out a handful of prescriptions, papers, and cash, then put everything back in the drawer and said "This is a nasty little business we're in." Moyer then said "I own this clinic now, and I don't have to be nice. I don't have to let just anybody in either. It's my clinic, me and the doctor's clinic, I don't have to let anybody in. And I won't, if I think they're a problem. No way, why would I? Are you kidding? This is a big business here." She told UC #1 that the first office visit was \$350 and UC #1 could come alone next time and asked him/her to bring prescription records.

UC #1 was given a longer version of the pain form provided to CS #1 earlier in the visit to bring back with her to the next visit. Moyer exited her office, called out CS #1's name along with five other names and said she would get the prescriptions signed. Moyer then entered Kotsonis's office and approximately four minutes later she exited Kotsonis's office and handed out the prescriptions. CS #1 and UC #1 then made their next appointment with the receptionist.

On July 23, 2013, a search warrant was executed at Compassionate Care Clinic and Kotsonis' patient files were seized along with other evidence. Patient files, computers, Moyer's cellphone and pre-signed prescriptions (containing the doctor's signature only), filled out prescriptions without signature and ripped up prescriptions were recovered from Moyer's office. Agents also recovered a letter from Costco refusing to fill Dr. Kotsonis' prescriptions and an Express Scripts letter regarding excessive medication prescribed to a patient as well as prefilled out monthly evaluation notes. Agents observed minimal medical equipment in the clinic. During the execution of the search warrant Kotsonis agreed to be interviewed and was advised he was not under arrest. Kotsonis admitted to allowing Moyer to prepare prescriptions that he subsequently signs and said she brings in prescriptions 3–4 patients at a time and that he trusts Moyer's advice on what medication should be prescribed and generally agrees with her. Kotsonis stated most of the time he verifies what prescription the patient is receiving. He stated that if Moyer does not bring the patient file to his office with the prescription to verify he trusts what she says the patient is receiving. Kotsonis estimated 20–25 patients per day are follow up patients and Moyer brings 10–12 patient charts to Kotsonis a day and Kotsonis actually sees and examines 1–2 patients per day. Moyer was also interviewed and stated she and Kotsonis discuss patients but he determines what to prescribe. She stated she writes out prescriptions before the patients are seen based upon their last prescription but does not write down a quantity.

[FR Doc. 2020-28676 Filed 12-28-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Annamalai Ashokan, M.D.; Decision and Order

On June 1, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Annamalai Ashokan, M.D. (hereinafter, Registrant). OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BA0859174. *Id.* It alleged 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 Registrant surrendered his medical license pursuant to an agreement he entered into with the Medical Board of California on November 12, 2019, and that his license remains surrendered. *Id.* at 1–2. The OSC further alleged that because Registrant surrendered his medical license, Registrant lacks the authority to handle controlled substances in the State of California. *Id.* at 2.

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

On June 4, 2020, a DEA Diversion Investigator placed a copy of the OSC addressed to the Registrant in his "office's outgoing mail pickup box for pickup by DEA mailroom staff that day. The letter would have been placed in the United States mail by DEA's mailroom staff no later than the following day, June 5, 2020." Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter, RFAAX) 4, at 1 (Declaration of Diversion Investigator). Registrant's attorney sent a letter, dated July 22, 2020, to the Assistant Administrator, Diversion Control Division, stating that Registrant had surrendered his medical license and that "he hereby waives his right to a hearing on this matter." RFAAX 5 (Letter from Registrant's Attorney), at 1. I 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 Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Further, I find that Registrant, through counsel, explicitly waived his right to a hearing. RFAA, at 2; RFAAX 5. 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 1301.46.

I. Findings of Fact

a. Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BA0859174 at the registered address of 581 McCray Street, Suite E, Hollister, CA 95023. RFAAX 1 (Certification of Registration Status). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner-DW/30. *Id.* Registrant's registration will expire on June 30, 2021. *Id.*

b. The Status of Registrant's State License

On November 12, 2019, Registrant and the Medical Board of California entered into a Stipulated Surrender of License and Order, whereby Registrant surrendered his California medical license. RFAAX 3. The accusations surrounding the surrender included unprofessional conduct involving the prescription of controlled substances. *Id.* at 12–14. On November 20, 2019, the Medical Board of California entered an Order adopting the Stipulated Surrender with an effective date of November 27, 2019. *Id.* at 1. The Medical Board of California's online records, of which I take official notice, document that Registrant's license is still surrendered.¹

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 fifteen 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

Medical Board of California License Verification, https://www.mbc.ca.gov/Breeze/License_Verification.aspx (last visited date of signature of this Order).

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

II. 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 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 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*, 76 FR at 71371–72;

served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email (dea.addo.attorneys@dea.usdoj.gov).

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*, 43 FR at 27617.

According to California statute, "[n]o person other than a physician . . . shall write or issue a prescription." Cal. Health & Safety Code § 11150 (West 2020). Further, "physician," as defined by California statute, is a person who is "licensed to practice" in California. *Id.* at § 11024.

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, 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. BA0859174 issued to Annamalai Ashokan, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Annamalai Ashokan, M.D. to renew or modify this registration or for any other registrations in the State of California. This Order is effective January 28, 2021.

**Timothy J. Shea,
Acting Administrator.**

[FR Doc. 2020-28678 Filed 12-28-20; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On December 18, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern of Texas in the lawsuit entitled *United States v. Allied Transportation Company, et al.*, Civil Action No. 3:20-cv-382.

The United States filed a Complaint against the defendants pursuant to Sections 106 and 107 of the Comprehensive Environmental