

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Kirk A. Hopkins, M.D.; Decision and Order**

On December 2, 2021, a former Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Kirk A. Hopkins, M.D. (hereinafter, Registrant) of Chicago, Illinois. Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter RFAAX) 2 (OSC), at 1 and 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BH9069205. *Id.* at 1. It alleged that Registrant is "without authority to handle controlled substances in Illinois, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on December 10, 2020, the Illinois Department of Financial and Professional Regulation entered an Order, effective December 24, 2020, indefinitely suspending Registrant's state medical license after finding that Registrant "had been convicted of wire fraud, in violation of 18 U.S.C. 1343, as a result of a scheme [he] conducted to defraud Medicare and Medicaid." *Id.* According to the OSC, the Order also required Registrant to immediately surrender his state medical license. *Id.* Further, according to the OSC, because Registrant's state medical license was suspended, his Illinois controlled substance license was placed on "inoperative" status. *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 2–3 (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)).

Adequacy of Service

In a Declaration dated March 8, 2022, a Diversion Investigator (hereinafter, the DI) assigned to the Chicago Field Division stated that on December 9, 2021, she sent a copy of the OSC via certified mail to Registrant at the address where he is presently incarcerated. RFAAX 3, at 1–2. The DI stated that on December 15, 2021, DEA received a signed return receipt indicating that the OSC had been delivered. *Id.* at 2; *see also id.* at

Appendix (hereinafter, App.) B. Further, the DI stated that on December 16, 2021, she spoke with the mail room receptionist at Registrant's place of incarceration and confirmed that Registrant had received the copy of the OSC. *Id.* at 2.

The Government forwarded its RFAA, along with the evidentiary record, to this office on March 15, 2022. In its RFAA, the Government represents that neither Registrant nor any attorney representing Registrant has requested a hearing or submitted a written statement. RFAA, at 2; *see also* RFAAX 3 (DI's Declaration), at 2. The Government requests that Registrant's DEA registration be revoked and that any applications for renewal of Registrant's DEA registration be denied because Registrant does not have state authority to handle controlled substances. RFAA, at 5.

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 or before December 16, 2021. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the DI's Declaration, the Government's written representations, and my review of the record, 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. BH9069205 at the registered address of 4426 S King Drive, Chicago, Illinois 60653. RFAAX 1 (DEA Certificate of Registration). 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, 2022. *Id.*

The Status of Registrant's State License

On June 17, 2020, Registrant entered into a Plea Agreement in the United

States District Court for the Northern District of Illinois, Eastern Division, in which Registrant agreed to enter a voluntary plea of guilty to two counts of wire fraud. RFAAX 3, App. A, at 7–8 and 24. By entering into the Plea Agreement, Registrant admitted that "[b]eginning in or around 2008, and continuing through in or around May 2014 . . . [he] knowingly devised, intended to devise, and participated in a scheme to defraud and to obtain money from Medicare and Medicaid by means of materially false and fraudulent pretenses, representations[,] and promises." *Id.* at 8. Registrant also admitted that as a result of the false claims that he submitted and caused to be submitted to Medicare and Medicaid, he received approximately \$3,365,616. *Id.* at 11.

As the Plea Agreement details, Registrant owned and controlled a facility that "purported to provide psychotherapy services to Medicaid and Medicare beneficiaries [who] were bused from group and nursing homes to the clinic to participate in a day program." *Id.* at 8. However, Registrant "submitted, and caused to be submitted, false claims to Medicare and Medicaid for psychiatric services purportedly provided to the participants in the day program, when such services were not provided . . ." *Id.* at 8–9. Specifically, "[Registrant] purportedly provided individual psychotherapy sessions when, in fact, the services were not provided" and "purportedly provided, or [purportedly] supervised another therapist providing, group psychotherapy sessions when, in fact, the services were not provided either by [Registrant] or under his supervision." *Id.* at 9. Notably, "[n]umerous dates of services on the false claims included dates on which [Registrant] was traveling [outside of Illinois] and dates on which the beneficiaries were themselves unavailable to have received the purported services because they were admitted into a hospital facility or deceased." *Id.*

Moreover, Registrant "also paid, and caused his employees to pay, cash to certain beneficiaries in order to entice them to attend the day program" when "[i]n reality, rather than receive psychotherapy services[,] the participants of the day program were placed in a large holding room to watch television and, on occasion, received group therapy from unsupervised and often-unlicensed counselors." *Id.* As for the submission of the false claims, Registrant "directed his employees to delay submission of the false claims until after beneficiaries' deductibles had been exhausted[] in order to insure [sic]

that [Registrant's facility] received payment because [Registrant] did not collect deductibles." *Id.*

In addition, Registrant "also purportedly provided psychotherapy services to Medicare and Medicaid beneficiaries residing at nursing home facilities" and "submitted, and caused to be submitted, false claims to Medicaid or Medicare for payment for services purportedly rendered to such nursing home residents when, in fact, [Registrant] had not provided the services because [he] was traveling [outside of Illinois] or the beneficiaries were themselves unavailable to have received the purported services because they were admitted into a hospital facility or deceased." *Id.* at 9–10.

Finally, Registrant "also offered and paid remuneration, including kickbacks and bribes" to induce individuals, including employees of "Healthcare Facility A," to refer residents who were insured by Medicare or Medicaid to Registrant for psychotherapy treatment at either Registrant's facility or at Healthcare Facility A. *Id.* at 10. Further, Registrant "submitted, and caused to be submitted, false claims to Medicare and Medicaid for psychiatric services purportedly provided to patients at Healthcare Facility A[] when such services were not provided." *Id.* Again, Registrant "purportedly provided individual psychotherapy sessions when, in fact, the services were not provided" and "purportedly provided, or [purportedly] supervised another therapist providing, group psychotherapy sessions when, in fact, the services were not provided either by [Registrant] or under his supervision." *Id.* Additionally, "dates of services on the false claims for services purportedly provided or supervised by [Registrant] at Healthcare Facility A included dates on which [Registrant] was traveling [outside of Illinois] and dates on which the beneficiaries were themselves unavailable to have received the purported services because they were admitted into a hospital facility or deceased." *Id.*

On October 7, 2020, a Judgment was entered by the United States District Court for the Northern District of Illinois, Eastern District, after Registrant pleaded guilty to two counts of "Fraud By Wire, Radio, Or Television." *Id.* at 25. Registrant was sentenced to 36 months imprisonment followed by a one-year period of supervised release. *Id.* at 26–27. Registrant was also required to pay restitution of \$3,189,007.88. *Id.* at 31–32.

On October 9, 2020, the Illinois Department of Financial and Professional Regulation (hereinafter, the

Department) issued to Registrant a Notice of Intent to Issue Indefinite Suspension Order in which the Department stated its intent to "issue an order indefinitely suspending [Registrant's] license as an Illinois Physician and Surgeon" following Registrant's guilty plea and conviction. *Id.* at 3. On December 10, 2020, the Department issued its Indefinite Suspension Order, effective December 24, 2020, in which Registrant's Illinois Physician and Surgeon License was indefinitely suspended and Registrant was ordered to surrender his license to the Department. *Id.* at 1–2.

According to Illinois online records, of which I take official notice, Registrant's state medical license is still suspended.¹ Illinois Department of Financial and Professional Regulation License Lookup, https://online-dfpr.micropact.com/lookup/license_lookup.aspx (last visited date of signature of this Order). Further, Illinois online records list the status of Registrant's state controlled substance license as "inoperative." *Id.*

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine nor registered to dispense controlled substances in Illinois, 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 71371 (2011), *pet. for rev. denied*, 481 F. App'x 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; *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.

Pursuant to the Illinois Controlled Substances Act, a "practitioner" means "a physician licensed to practice medicine in all its branches . . . or other person licensed, registered, or otherwise lawfully permitted by the United States or this State to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research." 720 Ill. Comp. Stat. Ann. 570/102(kk) (West 2022). Further, the Illinois Controlled Substances Act requires that "[e]very person who manufactures, distributes, or dispenses any controlled substances . . . must obtain a registration issued by the Department of Financial and Professional Regulation in accordance with its rules." *Id.* at 570/302(a). The Illinois Controlled Substances Act also authorizes the Department of Financial and Professional Regulation to discipline a practitioner holding a

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 of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

controlled substance license, stating that “[a] registration under Section 303 to manufacture, distribute, or dispense a controlled substance . . . may be denied, refused renewal, suspended, or revoked by the Department of Financial and Professional Regulation.” *Id.* at 570/304(a).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to handle controlled substances in Illinois as his Illinois medical license is suspended and his Illinois controlled substance license is inoperative. As already discussed, a practitioner must hold a valid controlled substance license to dispense a controlled substance in Illinois. Thus, because Registrant lacks authority to handle controlled substances in Illinois, Registrant is not eligible to maintain a DEA registration. Accordingly, I 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. BH9069205 issued to Kirk A. Hopkins, 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 Kirk A. Hopkins, M.D. to renew or modify this registration, as well as any other pending application of Kirk A. Hopkins, M.D. for additional registration in Illinois. This Order is effective May 11, 2022.

Anne Milgram,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kareem Hubbard, M.D.; Decision and Order

On June 4, 2020, the former Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Kareem Hubbard, M.D. (hereinafter, Applicant) of San Leandro, California. Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter RFAAX) 2 (OSC), at 1 and 12. The OSC proposed to deny Applicant’s application for a DEA Certificate of Registration, as well as to deny any applications for any other registrations, pursuant to 21 U.S.C. 824(a)(1) and (4) because

Applicant “materially falsified [his] application” and because “[Applicant’s] registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).” *Id.* at 1.

The OSC alleged that Applicant’s application contained a materially false statement in which Applicant failed to disclose his previous surrender for cause of his DEA registration. *Id.* at 3. According to the OSC, Applicant had surrendered for cause his previous DEA registration “less than two months before submitting [his] application.” *Id.* Further, the OSC alleged that Applicant “violated federal and California law by issuing prescriptions for controlled substances to four patients outside the usual course of professional practice and not for a legitimate medical purpose.” *Id.* at 4.

The OSC notified Applicant 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 11 (citing 21 CFR 1301.43). The OSC also notified Applicant of the opportunity to submit a corrective action plan. *Id.* at 11–12 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated July 23, 2020, Applicant requested a hearing through counsel. RFAAX 3 (Request for Hearing), at 1. In his Request for Hearing, Applicant requested that his application for DEA registration be granted, because “he applied for it in good faith and did not believe his surrender of [his] previous certificate was ‘for cause.’” *Id.* Additionally, Applicant’s Request for Hearing included an attachment addressing the Government’s allegations in detail. *Id.* at 3–5. On July 23, 2020, Applicant also submitted a Corrective Action Plan in which he offered a “historical perspective, in addition to [his] interim practice activities and corrective action plan.” RFAAX 4, at 5. On August 14, 2020, Applicant submitted a Withdrawal of Hearing Request in which he “with[drew] his request for a hearing in [the] matter” and “with[drew] his pending application for a new DEA Certificate of Registration”¹

¹ After an applicant has received an OSC regarding his or her application for DEA registration, the application may not be withdrawn without the permission of the Administrator. 21 CFR 1309.36(a). Here, Applicant had already received the OSC before attempting to withdraw his application, and he has not demonstrated good cause why his application should be withdrawn, nor do I find that withdrawal would be in the public interest due to the nature and extent of the allegations in front of me and the Applicant’s stated intention that he will reapply for a registration. Adjudicating this matter to finality will create an

without “waiv[ing] his future right to reapply for [the] same.” RFAAX 5, at 1; RFAAX 6 (Order Terminating Proceedings). On August 17, 2020, the Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, the Chief ALJ) terminated the proceedings. RFAAX 6.

On September 23, 2020, the Government forwarded its RFAA, along with the evidentiary record for this matter, to my office. The Government seeks a final order of denial of Applicant’s application for DEA registration because Applicant “materially falsified his application under 21 U.S.C. 824(a)(1), and committed acts which render his continued registration inconsistent with the public interest” under 21 U.S.C. 824(a)(4) and 823(f). RFAA, at 1. I issue this Decision and Order after considering the entire record before me, 21 CFR 1301.43(e); and I make the following findings of fact.

I. Findings of Fact

A. Application for DEA Registration

On or about April 8, 2019, Applicant applied for a DEA Certificate of Registration as a practitioner in Schedules II through V with a proposed registered address of 15035 E 14th St., San Leandro, CA 94578. RFAAX 1 (Certification of Non Registration), at 1. Applicant’s application was assigned Control No. W19032408C and is in a “new pending” status. *Id.* On Applicant’s application, when presented with the question, “Has the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?” Applicant answered, “No.” *Id.* Applicant previously held DEA Certificate of Registration Control No. FH4372859, which expired on October 31, 2016, and DEA Certificate of Registration Control No. FH4334037, which expired on October 31, 2019. *Id.* at 2. Both of Applicant’s previous DEA

official record the Agency can use in any future interactions with Applicant. As additionally noted in *Olsen*, “a final adjudication is a public record of the Agency’s expectations for current and prospective members of that community,” and adjudications inform stakeholders, such as legislators and the public, about the Agency’s work and allow them to provide feedback to the Agency, thereby helping shape how the Agency carries out its responsibilities under the CSA. *Id.* Adjudicating this matter to finality will create a public record to educate current and prospective registrants about the Agency’s expectations regarding the responsibilities of registrants under the CSA and allow stakeholders to provide feedback regarding the Agency’s enforcement priorities and practices. I have not permitted Applicant’s application to be withdrawn. Accordingly, Applicant’s withdrawal is not effective.