

(OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FO7776644 at the registered address of 300 Pasteur Dr., Stanford, CA 94305-2295. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "without authority to handle controlled substances in the State of California, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA,<sup>1</sup> which was received on January 5, 2023.<sup>2</sup>

### Findings of Fact

On May 26, 2022, the Medical Board of California issued a Notice of Automatic Revocation of License that revoked Registrant's California medical license. RFAAX 2, Attachment C, at 1-3. According to California's online records, of which the Agency takes official notice, Registrant's California medical license is revoked.<sup>3</sup> Medical Board of California License Verification, <https://www.mbc.ca.gov/License-Verification> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to engage in the practice of medicine in California, 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).<sup>4</sup>

According to California statute, "dispense" means "to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery." Cal. Health & Safety Code § 11010 (West 2022). Further, a "practitioner" means a person "licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in [the] state." *Id.* at § 11026(c).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in California. As discussed above, 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, the Agency 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. FO7776644 issued to Dylan E. O'Connor, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Dylan E. O'Connor, M.D., to renew or modify this registration, as well as any other pending application of Dylan E. O'Connor, M.D., for additional registration in California. This Order is effective March 6, 2023.

### Signing Authority

This document of the Drug Enforcement Administration was signed on January 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Heather Achbach,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2023-02120 Filed 2-1-23; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Fernando Mendez, P.A.; Decision and Order

On August 9, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Fernando Mendez, P.A. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 1 (OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. MM3333109 at the registered address of 1001 East Tyler

<sup>1</sup> The Government's RFAA is dated November 29, 2022. RFAA, at 5.

<sup>2</sup> Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 2, at 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 1-2; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

<sup>3</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 the Agency's finding by filing a properly supported motion for reconsideration of findings 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.gov](mailto:dea.addo.attorneys@dea.gov).

<sup>4</sup> 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(g)(1) (this section, formerly § 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117-215, 136 Stat. 2257 (2022)). 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.

Avenue, Harlingen, Texas 78550. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "currently without authority to handle controlled substances in the State of Texas, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated January 3, 2023.<sup>1</sup>

#### Findings of Fact

On July 20, 2021, the Texas Physician Assistant Board issued an Order of Temporary Suspension that suspended Registrant's Texas physician assistant license. RFAAX 3, Attachment B, at 1, 5–6. According to Texas online records, of which the Agency takes official notice, Registrant's license is still suspended.<sup>2</sup> Texas Medical Board License Verification, <https://profile.tmb.state.tx.us> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Texas, 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

<sup>1</sup> Based on the Declarations from a DEA Diversion Investigator and a DEA Special Agent, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 2, at 1–2; RFAAX 3, at 2–3. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 3; RFAAX 3, at 3; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

<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 the Agency's finding by filing a properly supported motion for reconsideration of findings 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 the DEA Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.gov](mailto:dea.addo.attorneys@dea.gov).

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).<sup>3</sup>

According to Texas statute, "[d]ispense" means "the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery." Tex. Health & Safety Code Ann. section 481.002(12) (2022). Further, a "practitioner" means a "a physician . . . or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state." *Id.* at section 481.002(39)(A).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Texas. As discussed above, a person must be a licensed practitioner to dispense a controlled substance in Texas. Thus, because Registrant lacks authority to practice medicine in Texas and, therefore, is not authorized to handle

<sup>3</sup> 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 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.

controlled substances in Texas, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency 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. MM3333109 issued to Fernando Mendez, P.A. 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 applications of Fernando Mendez, P.A., to renew or modify this registration, as well as any other pending application of Fernando Mendez, P.A., for additional registration in Texas. This Order is effective March 6, 2023.

#### Signing Authority

This document of the Drug Enforcement Administration was signed on January 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Heather Achbach,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 22–22]

#### Ester Mark, M.D.; Decision and Order

On March 12, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Ester Mark, M.D. (hereinafter, Respondent) of California, alleging that Respondent materially falsified both her April 2019 initial application for a DEA Certificate of Registration and her February 2022 renewal application for that same