The last notification was filed with the Department on June 3, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 24, 2024 (89 FR 52509).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael Berman, D.O.; Decision and Order

On July 6, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Michael Berman, D.O., of Rancho Mirage, California (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, Attachment A, at 1, 10. The OSC proposed the revocation of Registrant's DEA Certificate of Registration (registration) No. BB3337905, alleging that Registrant has committed such acts as would render his registration inconsistent with the public interest. *Id.* at 2–3 (citing 21 U.S.C. 823(g)(1), 824(a)(4)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 8–9 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.[1] ''A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Further, ''[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.'' *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

I. Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted.[2] Registrant is deemed to have admitted, and the Agency finds, that from at least January 12, 2021, through at least August 26, 2021, Registrant issued numerous controlled substance prescriptions to undercover DEA Task Force Officers without first conducting an appropriate evaluation, performing a physical examination, taking a patient history, establishing a proper medical justification, or obtaining informed consent. RFAAX 1, Attachment A, at 2–8. Registrant further admits, and the Agency finds, that after prescribing, Registrant failed to properly monitor the undercovers by appropriately addressing red flags of abuse and diversion. *Id.*

A. Prescribing to UC1

Between January 12, 2021, and August 26, 2021, Registrant issued prescriptions for mixed amphetamine salts 30 mg, a Schedule II stimulant, and hydrocodone/acetaminophen 10/325 mg, a Schedule II opioid, to an undercover DEA Task Force Officer (UC1). RFAAX 1, Attachment A, at 3.

On January 12, 2021, February 18, 2021, April 2, 2021, and June 24, 2021, Registrant prescribed UC1 mixed amphetamine salts 30 mg to treat Attention Deficit Hyperactivity Disorder (ADHD), but repeatedly did so without conducting an appropriate evaluation. *Id.* at 3–5. Specifically, Registrant: (1) failed, during the initial visit, to address UC1's ADHD questionnaire, despite UC1 reporting minimal symptoms of ADHD; (2) repeatedly failed to perform adequate physical examinations of UC1; and (3) repeatedly failed to take a patient history. *Id.* Accordingly, Registrant repeatedly failed to establish a proper medical justification for prescribing mixed amphetamine salts to UC1. *Id.* Registrant also repeatedly failed to obtain UC1's informed consent by informing UC1 of the benefits, risks, and reasons for prescribing mixed amphetamine salts. *Id.*

On July 23, 2021, and August 26, 2021, Registrant prescribed UC1 mixed amphetamine salts 30 mg and hydrocodone/acetaminophen 10/325 mg, but in both instances did so without conducting an appropriate evaluation. *Id.* at 5–6. In both instances, Registrant again failed to perform an adequate physical examination of UC1 and failed to take a patient history. *Id.* Accordingly, Registrant failed in both instances to establish a proper medical justification for prescribing mixed amphetamine salts and hydrocodone/acetaminophen to UC1. *Id.* Registrant also failed in both instances to obtain UC1's informed consent by informing UC1 of the benefits, risks, and reasons for prescribing mixed amphetamine salts and hydrocodone/acetaminophen. *Id.*

Throughout Registrant's treatment of UC1, Registrant failed to properly monitor UC1's medication compliance and failed to appropriately address red flags of abuse and/or diversion. *Id.* at 3–6. Specifically, when UC1 tested negative for all drugs on a urine drug test, despite reporting that he/she was taking mixed amphetamine salts and hydrocodone/acetaminophen, Registrant failed to discuss the test results with UC1. *Id.* at 3. Further, Registrant repeatedly failed to address UC1's regular receipt of the highest dosages of oxycodone, hydrocodone/, alprazolam, carisoprodol, and mixed amphetamine salts from different physicians, as indicated on the California Controlled Substance Utilization, Review and Evaluation System (CURES). *Id.* at 3–6.[3] Finally, when provided with UC1's prior medical file, Registrant failed to address the diversion red flag that UC1 tried hydrocodone/acetaminophen and carisoprodol (''Soma'') that he/she had obtained from a friend. *Id.* at 5.

B. Prescribing to UC2

Between February 9, 2021, and April 20, 2021, Registrant issued prescriptions for mixed amphetamine salts 30 mg to an undercover DEA Special Agent (UC2). *Id.* at 6.

On February 9, 2021, March 10, 2021, and April 20, 2021, Registrant prescribed UC2 mixed amphetamine

[1] Based on the Government's submissions in its RFAA dated October 16, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Declaration from a DEA Diversion Investigator (DI) indicates that on July 12, 2023, the DI personally left a copy of the OSC along with her business card at Registrant's registered address. RFAAX 1, at 1–2. The DI also stated in her Declaration that on August 22, 2023, Registrant's attorney contacted her and noted that Registrant received the OSC and business card. *Id.* at 2. Additionally, the Declaration from a DEA Group Supervisor (GS) indicates that on July 14, 2023, the GS sent a copy of the OSC via certified mail to Registrant's registered address and emailed a copy of the OSC to Registrant's registered email address. RFAAX 2, at 2; *see also id.,* at Attachment A.

[2] The Agency need not adjudicate the criminal violations alleged in the instant OSC. *Ruan* v. *United States,* 142 S. Ct. 2,370 (2022) (decided in the context of criminal proceedings).

[3] Registrant also failed to address that: (1) UC1 received hydrocodone/acetaminophen from a different physician between the January 12, 2021, and February 18, 2021 visits; (2) UC1 received alprazolam, hydrocodone/acetaminophen, and mixed amphetamine salts from different physicians between the February 18, 2021, and April 2, 2021 visits; and (3) UC1 received alprazolam, hydrocodone/acetaminophen, and mixed amphetamine salts from different physicians between the April 2, 2021, and June 24, 2021 visits. *Id.* at 4–5.

salts 30 mg to treat ADHD. *Id.* at 6–8.[4] As with UC1, Registrant repeatedly issued the mixed amphetamine salts prescriptions without conducting an appropriate evaluation. *Id.* Specifically, Registrant: (1) failed, during the initial visit, to address UC2's ADHD questionnaire, despite UC2 reporting minimal symptoms of ADHD; (2) repeatedly failed to perform adequate physical examinations of UC2; and (3) repeatedly failed to take a patient history. *Id.* Accordingly, Registrant repeatedly failed to establish a proper medical justification for prescribing mixed amphetamine salts to UC2. *Id.* Registrant also repeatedly failed to obtain UC2's informed consent by informing UC2 of the benefits, risks, and reasons for prescribing mixed amphetamine salts. *Id.*

Throughout Registrant's treatment of UC2, Registrant failed to properly monitor UC2's medication compliance and failed to appropriately address red flags of abuse and/or diversion. *Id.* at 6–8. For example, Registrant failed to appropriately address UC2's negative urine drug screen, UC2's admission that he/she diverted drugs to his/her boyfriend, and UC2's CURES report, which showed that UC2 filled controlled substance prescriptions at multiple pharmacies and regularly received the highest dosages of hydrocodone/acetaminophen, alprazolam, mixed amphetamine salts, oxycodone, and diazepam. *Id.* at 7.

DEA consulted with an independent medical expert who reviewed recordings of the undercover visits with Registrant described above. *Id.* at 8. The medical expert concluded that Registrant's prescribing ''violated the minimum medical standards applicable to the practice of medicine in California.'' *Id.* Registrant is deemed to have admitted, and the Agency finds, that the controlled substance prescriptions described above were not issued for a legitimate medical purpose or in the usual course of professional practice. *Id.*

II. Discussion

A. The Five Public Interest Factors

Under the Controlled Substances Act (CSA), ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under [21 U.S.C. 823] inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

> (A) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> (B) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.
>
> (C) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> (D) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> (E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),[5] the Government's evidence in support of its *prima facie* case for revocation of Registrant's registration is confined to Factors B and D. *See* RFAAX 1, Attachment A, at 2–3. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.,* 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). In the current matter, the Government has alleged that Registrant violated both federal and state law regulating controlled substances. RFAAX 1, Attachment A, at 1–2. Specifically, under federal regulations, a prescription for a controlled substance is valid only if ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). As for state law, California regulations also require that ''[a] prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.'' Cal. Health & Safety Code sec. 11153(a). Additionally, California regulations define unprofessional conduct to include, as relevant here: violating or attempting to violate any provision of the Medical Practice Act; gross negligence; repeated negligent acts; incompetence; and ''[p]rescribing, dispensing, or furnishing [controlled substances] without an appropriate prior examination and a medical indication.'' Cal. Bus. & Prof. Code secs. 2234, 2242(a).

Here, Registrant has admitted, and the Agency finds, that Registrant repeatedly issued prescriptions for controlled substances without conducting appropriate evaluations, establishing a medical justification for the controlled substances prescribed, or obtaining informed consent. RFAAX 1, Attachment A, at 3–8. Further, Registrant has admitted, and the Agency finds, that Registrant repeatedly failed to properly monitor the two undercovers' medication compliance and failed to appropriately address red flags of abuse and/or diversion. *Id.* DEA's medical expert concluded, and thus the Agency finds, that Registrant's prescribing ''violated the minimum medical standards applicable to the practice of medicine in California.'' *Id.* at 8. Registrant has further admitted, and the Agency finds, that none of the above-referenced controlled substance prescriptions were issued for a legitimate medical purpose in the usual course of professional practice. As such, the Agency finds that Registrant violated 21 CFR 1306.04(a); California

[4] The OSC notes that on March 10, 2021, Registrant prescribed UC2 60 tablets of Adderall 30 mg. *Id.* at 7. Adderall is a brand name for amphetamine-dextroamphetamine, a Schedule II controlled substance.

[5] As to Factor A, the record contains no evidence of a recommendation from any state licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence ''does not weigh for or against a determination as to whether continuation of the [registrant's] DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of an offense under either federal or state law ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, Agency cases have found that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010). Finally, as to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

Health & Safety Code sec. 11153(a); and California Business & Professions Code secs. 2234, 2242(a).

Accordingly, the Agency finds that Factors B and D weigh in favor of revocation of Registrant's registration and thus finds Registrant's continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). The Agency further finds that Registrant failed to provide any evidence to rebut the Government's *prima facie* case.

III. Sanction

Where, as here, the Government has established grounds for revocation, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). To establish that he can be entrusted with registration, a registrant must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33738, 33746 (2021).

Here, Registrant failed to answer the allegations contained in the OSC and did not otherwise avail himself of the opportunity to refute the Government's case. As such, Registrant has made no representations as to his future compliance with the CSA nor made any demonstration that he can be entrusted with registration. Moreover, the evidence presented by the Government shows that Registrant violated the CSA, further indicating that Registrant cannot be entrusted.

Accordingly, the Agency will order the revocation of Registrant's registration.

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. BB3337905 issued to Michael Berman, D.O. 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 Michael Berman, D.O., to renew or modify this registration, as well as any other pending application of Michael Berman, D.O., for additional registration in California. This Order is effective November 12, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 2, 2024, 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. 2024–23513 Filed 10–10–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William J. Mack, M.D.; Decision and Order

On March 21, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to William J. Mack, M.D., of Leawood, Kansas (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BM8877473, alleging that Registrant's registration should be revoked because Registrant is ''currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Kansas, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.[1] ''A default, unless excused, shall be deemed to constitute a waiver of the [registrant's] right to a hearing and an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Further, ''[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.'' *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, Registrant's Kansas medical license was suspended on January 30, 2024. RFAAX 2, at 2. According to Kansas online records, of which the Agency takes official notice, Registrant's Kansas medical license is under a ''Previous'' status with the ''License Type'' listed as ''Cancelled—Suspended.'' [2] Kansas Board of Healing Arts Licensee & Registrant Profile Search, *https://www.kansas.gov/ssrv-ksbhada/search.html* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Kansas, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 ''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

[1] Based on the Government's submissions in its RFAA dated May 3, 2024, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Government's Notice of Service of Order to Show Cause indicates that Registrant was personally served with the OSC on March 26, 2024. RFAAX 1, at 1, 3.

[2] 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.*