DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 24–12]

Phong H. Tran, M.D.; Decision and Order

On October 4, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Phong H. Tran, M.D. (Respondent). OSC, at 1, 3. The OSC proposed the denial of Respondent's application for a DEA Certificate of Registration (registration), Control No. W22138631C, in California, alleging that Respondent has been mandatorily excluded from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a). *Id.* at 1–2 (citing 21 U.S.C. 824(a)(5)).

A hearing was held before DEA Administrative Law Judge (ALJ) Teresa A. Wallbaum who, on August 9, 2024, issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD). The RD recommended that Respondent's application be denied. RD, at 29. Neither party filed exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, credibility findings,[1] findings of fact, conclusions of law, sanctions analysis, and recommended sanction in the RD, and summarizes and expands upon portions thereof herein.

The Agency also adopts the ALJ's conclusion that ''Respondent lacks state authority to handle controlled substances in the State of California, the state in which he is registered. . . .'' RD, at 29.[2]

I. Loss of State Authority

A. Findings of Fact

On August 2, 2024, the Medical Board of California revoked Respondent's California medical license. RD, at 2, 4; ALJ Exhibit (ALJX) 34.[3] According to California's online records, of which the Agency takes official notice, Respondent's California medical license remains revoked.[4] California DCA License Search, *https://search.dca.ca.gov/* (last visited date of signature of this Order). Accordingly, the Agency finds substantial record evidence that Respondent is not licensed to practice medicine in California, the state in which he is registered with DEA.[5]

B. 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 State law to engage in the . . . dispensing of controlled substances.''

With respect to a practitioner, 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. *Gonzales* v. *Oregon,* 546 U.S. 243, 270 (2006) (''The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21).''). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371, 71372 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[6]

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 section 11010 (2024). 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.* section 11026(c).

Here, the undisputed evidence in the record is that Respondent currently 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

[1] The Agency adopts the ALJ's summary of the witnesses' testimonies as well as the ALJ's assessment of the witnesses' credibility. RD, at 5–29. The Agency agrees with the ALJ that the testimony from the DEA Diversion Investigator (DI), which was primarily focused on the introduction of the Government's documentary evidence, was ''sufficiently plausible, internally consistent, and corroborated by the documentary evidence to be afforded full credibility.'' *Id.* at 8.

[2] The lack of state authority allegation was not noticed in the OSC. However, DEA has consistently held that because the possession of state authority is a prerequisite for obtaining and maintaining a registration, the issue of state authority can be raised at any stage of a proceeding. *See, e.g., Hatem M. Ataya, M.D.,* 81 FR 8221, 8244 (2016) (noting that ''because the possession of state authority is a prerequisite for obtaining a registration and for maintaining a registration, the issue can be raised *sua sponte* even at this stage of the proceeding''); *Joe W. Morgan, D.O.,* 78 FR 61961, 61973–74 (2013); *see also Gonzales* v. *Oregon,* 546 U.S. 243, 270 (2006) (finding 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). Neither the CSA nor DEA's implementing regulations requires that the Government amend the OSC to add a lack of state authority allegation if the Government obtains evidence during the pendency of a proceeding of a registrant's lack of state authority. Here, Respondent raised the issue of his lack of state authority in his Post-Hearing Brief, ALJX 31, at 2 n.2, and the ALJ afforded both parties notice and an opportunity to be heard on the issue before issuing the RD. RD, at 2; ALJX 33.

[3] *See also* Respondent's Post-Hearing Brief, at 2 n.2 (''The court is hereby notified that Respondent's California medical license was revoked by the Medical Board, effective August 2, 2024.'').

[4] 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).

[5] 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.'' The material fact here is that Respondent, as of the date of this decision, is not licensed to practice medicine in California. Accordingly, Respondent 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.*

[6] This rule derives from the text of two provisions of the Controlled Substances Act (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). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, 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 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 27617.

Respondent currently lacks authority to practice medicine in California and, therefore, is not currently authorized to handle controlled substances in California, Respondent is not eligible to obtain or maintain a DEA registration. Accordingly, the Agency will order that Respondent's application for a DEA registration be denied.

II. Mandatory Exclusion From Federal Health Care Programs [7]

A. Findings of Fact

In 2018, Respondent pled guilty to one count of conspiracy to commit honest services mail fraud and healthcare fraud in violation of 18 U.S.C. 1349. RD, at 3; Government Exhibit (GX) 5, 7. As a result of Respondent's criminal conviction based on his guilty plea, the U.S. Department of Health and Human Services, Office of Inspector General (HHS/OIG), excluded Respondent, effective September 20, 2022, from participation in Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a–7(a) for a period of twelve years.[8] RD, at 3; GX 8. Accordingly, the Agency finds substantial record evidence that Respondent has been, and continues to be, excluded from participation in federal healthcare programs.

B. Discussion

Pursuant to 21 U.S.C. 824(a)(5), the Attorney General is authorized to suspend or revoke a registration upon finding that the registrant ''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* section 824(a)(5).[9] The Agency has consistently held that it may also deny an application upon finding that an applicant has been excluded from a federal health care program. *Arvinder Singh, M.D.,* 81 FR 8247, 8248 n.3 (2016) (quoting *Kwan Bo Jin, M.D.,* 77 FR 35021, 35021 n.2 (2012)) (''[W]here a registration can be revoked under [21 U.S.C.] 824, it can, *a fortiori,* be denied under [21 U.S.C.] 823 since the law would not require an agency to indulge in the useless act of granting a license on one day only to withdraw it on the next.''); *Robert Wayne Locklear, M.D.,* 86 FR 33745 (citing *South Corp.* v. *United States,* 690 F.2d 1369, 1374 (Fed. Cir. 1982)) (''A statutory construction which would impute a useless act to Congress will be viewed as unsound and rejected.'').

The Agency agrees with the ALJ and finds substantial record evidence that Respondent has been, and remains, mandatorily excluded from federal health care programs pursuant to 42 U.S.C. 1320a–7(a),[10] and Respondent has admitted to the same. RD, at 4, 14–16; GX 5–9; Respondent's Post-Hearing Brief, at 3. Accordingly, the Agency finds that substantial record evidence establishes the Government's *prima facie* case for denying Respondent's application under 21 U.S.C. 824(a)(5). *See also* 21 U.S.C. 823(g)(1).

C. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's application for a registration should be denied, the burden shifts to Respondent to show why he can be entrusted with a registration. *Morall* v. *Drug Enf't Admin.,* 412 F.3d. 165, 174 (D.C. Cir. 2005); *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018); *Garrett Howard Smith, M.D.,* 83 FR 18882 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent. *Jeffrey Stein, M.D.,* 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy,* 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, DEA Administrators have required that a registrant who has committed acts inconsistent with the public interest must accept responsibility for those acts and demonstrate that he will not engage in future misconduct. *Jones Total Health Care Pharmacy,* 881 F.3d at 833. A registrant's acceptance of responsibility must be unequivocal. *Id.* at 830–31. In addition, a registrant's candor during the investigation and hearing has been an important factor in determining acceptance of responsibility and the appropriate sanction. *Id.* Further, DEA Administrators have found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* at 834 & n.4. DEA Administrators have also considered the need to deter similar acts by the respondent and by the community of registrants. *Jeffrey Stein, M.D.,* 84 FR 46972–73.

The Agency agrees with the ALJ that Respondent failed to unequivocally accept responsibility for his misconduct. Respondent testified that following his criminal conviction in 2018, he volunteered with the Buddhist Meditation Center and stayed in the temple for at least two one-week periods so that he could ''learn about the right thing to do in life, and then meditate [himself] to stay in control.'' Tr. 79–80; *see* RD, at 10. Respondent also testified that he volunteered with several nonprofit organizations in his community and generally stated that he ''help[ed] out the seniors.'' Tr. 80–83; *see* RD, at 10. In 2021, Respondent received a Juris Doctor from Pacific Coast University so that he could ''learn more about what's right and what's wrong.'' Tr. 104; *see* RD, at 10; RX 4.

[7] Although DEA lacks authority to grant Respondent's registration application because he lacks state authority, DEA considers Respondent's mandatory exclusion from federal healthcare programs as a separate, independent ground to deny Respondent's application.

[8] The HHS/OIG initially excluded Respondent from participating in federal health care programs for a period of 17 years. GX 8. However, the HHS/OIG later reduced the exclusion period to 12 years. RD, at 7; *see also* Transcript (Tr.) 58–59.

[9] In its OSC, the Government relies upon grounds Congress provided to support revocation/suspension, not denial of an application. Prior Agency decisions have addressed whether it is appropriate to consider a provision of 21 U.S.C. 824(a) when determining whether or not to grant a practitioner registration application. For over forty-five years, Agency decisions have concluded that it is. *Robert Wayne Locklear, M.D.,* 86 FR 33738, 33744–45 (2021) (collecting cases).

[10] DEA has consistently held that it may deny an application under 21 U.S.C. 824(a)(5) even if the conviction underlying the exclusion does not relate to controlled substances. *Jeffrey Stein, M.D.,* 84 FR 46968, 46,971–72 (2019); *see also Narciso Reyes, M.D.,* 83 FR 61678, 61681 (2018); *KK Pharmacy,* 64 FR 49507, 49510 (1999) (collecting cases); *Melvin N. Seglin, M.D.,* 63 FR 70431, 70433 (1998); *Stanley Dubin, D.D.S.,* 61 FR 60727, 60728 (1996). As the Agency explained in *Jeffrey Stein,* this interpretation is ''well founded in the CSA'' for several reasons. 84 FR 46,971–72. ''First, only one of the four mandatory exclusion categories is related to controlled substances (42 U.S.C. 1320a–7(a)(4)),'' yet ''Congress specifically cited to the entirety of 1320a–7(a) of Title 42 in 21 U.S.C. 824(a)(5), rather than only including Section 1320a–7(a)(4).'' *Id.* at 46,971. Second, the legislative history supports DEA's plain language reading of the statute. *Id.* at 46,971–72. For example, the Senate Report announcing the amendment of the CSA to add this basis for revocation does not signal an intent to exclude any categories of exclusions; it states, ''The bill would amend the Controlled Substances Act to add exclusion from Medicare or a State health care program as a basis for the denial, revocation, or suspension of registration to manufacture, distribute or dispense a controlled substance.'' S. Rep. 100–109, at 22 (1987); *Jeffrey Stein,* 84 FR 46972. Finally, if 21 U.S.C. 824(a)(5) were read to only permit DEA to revoke a registration if the exclusion were based on a controlled substance conviction, this section would be largely duplicative of 21 U.S.C. 824(a)(2), which permits DEA to revoke a registration when the registrant ''has been convicted of a felony . . . relating to any substance defined in this subchapter as a controlled substance or a list I chemical.'' *Jeffrey Stein,* 84 FR 46972. ''To limit the application of Section 824(a)(5) to crimes involving controlled substances would be an impermissible statutory construction, because it would render Congress's amendment superfluous.'' *Id.* (citing *Dept. of Def., Army Air Force Exchange Serv.* v. *Fed. Labor Relations Auth.,* 659 F.2d 1140, 1160 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 945 (1982) (A statute should be read in a ''manner which effectuates rather than frustrates the major purpose of the legislative draftsmen.'')).

Respondent also attended a continuing medical education course about controlled substances and ''basically learn[ed] about opiates.'' Tr. 106–07; *see* RD, at 10. Finally, Respondent stated that he attended an ethics course ''to learn more about ethics and boundaries, unprofessional conduct, and learned [sic] things to avoid so that I don't re-offended [sic] again.'' Tr. 75–76; *see* RD, at 10.

Though Respondent engaged in activities that he believed would help him avoid future violations of the law, he did not unequivocally accept responsibility for his actions. The Agency agrees with the ALJ that ''Respondent's testimony repeatedly minimized the nature, seriousness, and scope of his criminal actions and minimized Respondent's responsibility for *intentionally* entering into a sweeping, complex conspiracy to commit honest services fraud that used his staff, abused the trust of his patients, and cost the state of California millions of dollars.'' RD, at 20–21 (emphasis in original). At the hearing, Respondent failed to acknowledge his specific illegal conduct regarding the charges of honest services mail fraud and healthcare fraud. Instead, he described his misconduct in generalized terms stating: ''I feel that is dishonest conduct, unprofessional conduct, and I accept the responsibility for my misconduct.'' Tr. 72–73. Respondent also failed to demonstrate that he understood how his fraudulent acts impacted his patients, his office staff, the State of California, and the U.S. government. RD, at 20; *see Bernadette U. Iguh, M.D.,* 87 FR 56709, 56711 (2022) (''Respondent's emphasis on her ignorance as the cause of her misconduct, in tandem with Respondent's lack of emphasis on the damages she caused, both serve to downplay the extent to which her own actions and decisions were harmful.'').[11] Respondent's attempts to minimize this egregious misconduct undermine any purported acceptance of responsibility. *Michael A. White* v. *Drug Enf't Admin.,* 626 F. App'x 493, 496–97 (5th Cir. 2015).

The Agency further agrees with the ALJ that ''Respondent never acknowledged *what* he did wrong, *what* his triggers were, or *what* he had done to ensure that his fraudulent behavior would not reoccur.'' RD, at 20 (emphasis in original). Indeed, ''[e]nsuring that a registrant is trustworthy to comply with all relevant aspects of the CSA without constant oversight is crucial to the Agency's ability to complete its mission of preventing diversion within such a large regulated population.'' *Robert Wayne Locklear, M.D.,* 86 FR 33748 (citing *Jeffrey Stein, M.D.,* 84 FR 46974). Ultimately, the ALJ concluded, and the Agency agrees, that Respondent has not demonstrated unequivocal acceptance of responsibility for his actions. RD, at 21.[12]

In addition to acceptance of responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR 74810. Regarding specific deterrence, the Agency agrees with the ALJ that ''Respondent's sentence of one year of probation, with limited restrictions, did not apparently instill in Respondent a full understanding of the scope of his misconduct, in particular, the damage he has done to his victims,'' including his patients and his employees. RD, at 28–29; Tr. 126, 136.[13] Regarding general deterrence, the Agency agrees with the ALJ that the interests of general deterrence also support a denial of Respondent's application, as a lack of sanction in the current matter would send a message to the registrant community that a registrant can commit similar misconduct without consequences. RD, at 28.

The Agency also agrees with the ALJ that ''the egregious nature of Respondent's exclusion from Medicare/Medicaid for more than five years and the egregious nature of the underlying criminal convictions weigh in favor of denial of his application.'' *Id.* The record reflects that Respondent was involved in a ''sophisticated and complex'' fraudulent scheme over a period of three years that involved bribes, kickbacks, sham lease agreements, disguise payments, and coded text messages, which all resulted in millions of dollars of damages. *Id.* at 27; *see id.* at 7–8, 22. Respondent entered a plea agreement with the U.S. government acknowledging that he had violated federal law and that he had ''acted willfully and intended to defraud.'' GX 5; *see* Tr. 37–39, 133–34.[14] The Agency agrees with the ALJ's description that the criminal convictions involved ''the abuse of patients' trust, the creation of straw companies and false salary records, and the use of employees to further the fraud, and millions of dollars of damages.'' *Id.* at 22.

In sum, Respondent has not offered any credible evidence on the record to rebut the Government's *prima facie* case for denial of his application and Respondent has not demonstrated that he can be entrusted with the responsibility of registration. *Id.* at 19. Accordingly, the Agency will order that Respondent's application be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1) and 824(a)(5), I hereby deny the pending application for a DEA Certificate of Registration, Control No. W22138631C, submitted by Phong H. Tran, M.D., as well as any other pending application of Phong H. Tran, M.D., for additional registration in California. This Order is effective [insert Date Thirty Days From the Date of Publication in the **Federal Register**].

Signing Authority

This document of the Drug Enforcement Administration was signed on March 25, 2025, by Acting Administrator Derek Maltz. 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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[11] Respondent stated that he ''realize[d] that [he] hurt a lot of people,'' but he did not discuss his fraudulent activities and its impact on the people that he had served and supervised. Tr. 126.

[12] When a registrant fails to make the threshold showing of acceptance of responsibility, the Agency need not address the registrant's remedial measures. *Ajay S. Ahuja, M.D.,* 84 FR 5479, 5498 n.33 (2019) (citing *Jones Total Health Care Pharmacy, L.L.C. & SND Health Care, L.L.C.,* 81 FR 79188, 79202–03 (2016)); *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74801, 74810 (2015).

[13] Respondent stated that he ''was very remorseful about [his misconduct] and tried to do everything to redeem [him]self.'' Tr. 98. But Respondent also stated that he wanted to redeem himself by ''being an anesthesiologist because [he's] talented at what [he] do[es] as [sic] anesthesiologist.'' Tr. 126–27. Here, Respondent failed to explain how his ability as an anesthesiologist would redeem his prior dishonest misconduct. *See Daniel A. Glick, D.D.S.,* 80 FR 74810.

[14] Respondent even attempted to disguise the unlawful referral payments by covering up the fees as ''basic rent'' and ''salary'' under various shell companies. GX 5; *see* RD, at 6. Respondent also involved his ''office staff and medical professionals at his clinic to act in ways to further his kickback scheme.'' Tr. 133; *see* GX 5.