

specifically relates “to ‘registration’ and ‘control,’ and ‘for the efficient execution of his functions’ under the statute.” *Gonzales*, 546 U.S. at 259. “Because ‘past performance is the best predictor of future performance, *ALRA Labs, Inc. v. Drug Enf’t Admin.*, 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [the registrant’s] actions and demonstrate that [registrant] will not engage in future misconduct.” *Jayam Krishna-Iyer*, 74 FR at 463 (quoting *Medicine Shoppe*, 73 FR 364, 387 (2008)); *see also Jackson*, 72 FR at 23853; *John H. Kennedey, M.D.*, 71 FR 35705, 35709 (2006); *Prince George Daniels, D.D.S.*, 60 FR 62884, 62887 (1995). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant; therefore, the Agency looks at factors, such as the acceptance of responsibility, and the credibility of that acceptance as it relates to the probability of repeat violations or behavior, and the nature of the misconduct that forms the basis for sanction, while also considering the Agency’s interest in deterring similar acts. *See Arvinder Singh, M.D.*, 81 FR 8247, 8248 (2016).

Here the Registrant failed to respond to the Government’s Order to Show Cause and Immediate Suspension Order and did not avail itself of the opportunity to refute the Government’s case. PIC Johnson did arguably accept responsibility on two occasions, one by admitting to the DI that he was diverting controlled substances, and the other when he admitted to the state investigator that he “shouldn’t have done that.” GX 3, at 3; GX 4, Appendix 5. However, he also told the DI that “it would be more dangerous to have a new pharmacist who does not know the community operating [Registrant] tha[n] it would be for [him] to continue operating the Pharmacy notwithstanding his regular diversion, abuse, and impairment.” GX 3, at 3. This statement undercuts any acceptance of responsibility and also highlights PIC Johnson’s lack of judgment in believing that it would benefit the community to have a pharmacist under the influence of controlled substances. Furthermore, because neither PIC Johnson nor anyone else testified nor presented any evidence on behalf of the Registrant in this proceeding, the Registrant has not provided any assurances that it has implemented remedial measures to

ensure such conduct is not repeated. Such silence weighs against the Registrant’s continued registration. *Zvi H. Perper, M.D.*, 77 FR at 64142 (citing *Medicine Shoppe*, 73 FR at 387); *see also Samuel S. Jackson*, 72 FR at 23853.

Accordingly, I find that the factors weigh in favor of sanction and I shall order the sanctions the Government requested, as contained in the Order below.

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. AB6785161 issued to Brewster Drug, Inc. 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 Brewster Drug, Inc. to renew or modify this registration, as well as any other pending application of Brewster Drug, Inc. for additional registrations in Washington. Pursuant to the authority vested in me by 21 U.S.C. 824(f), as well as 28 CFR 0.100(b), I further order that all controlled substances seized pursuant to the Order of Immediate Suspension of Registration are forfeited to the United States. This Order is effective May 4, 2020.

Dated: March 13, 2020.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2020-07017 Filed 4-2-20; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 19–35]

Gregory L. Molden, M.D.; Decision and Order

On June 28, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Gregory L. Molden, M.D. (hereinafter, Respondent) of New Orleans, Louisiana. OSC, at 1. The OSC proposed the revocation of Respondent’s Certificate of Registration No. BM0671481. *Id.* It alleged that Respondent is mandatorily excluded from participation in Medicare, Medicaid, and all Federal health care programs for a minimum period of fifteen years. *Id.* at 1–2 (citing 21 U.S.C. 824(a)(5)). The OSC further alleged that Respondent is without “authority to practice medicine or handle controlled substances in the State of Louisiana, the

state in which [Respondent is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on or about September 25, 2018, Respondent was convicted in the United States District Court for the Eastern District of Louisiana on one count of “Conspiracy to Commit Health Care Fraud,” in violation of 18 U.S.C. 1349, one count of “Conspiracy to Pay and Receive Illegal Health Care Kickbacks,” in violation of 18 U.S.C. 371, and eleven counts of “Health Care Fraud,” in violation of 18 U.S.C. 1347. *Id.* According to the OSC, based on Respondent’s conviction, the U.S. Department of Health and Human Services, Office of Inspector General, by letter dated March 29, 2019, mandatorily excluded Respondent from participation in Medicare, Medicaid and all Federal health care programs for a minimum period of fifteen years effective April 18, 2019, pursuant to 42 U.S.C. 1320a-7(a). *Id.*

Additionally, the OSC alleged that the Louisiana State Board of Medical Examiners issued an Interim Consent Order for Suspension of Medical License on May 13, 2019. OSC, at 2. This Order, according to the OSC, indefinitely suspended Respondent’s Louisiana medical license leaving Respondent without authority to practice medicine or handle controlled substances in Louisiana—the state in which Respondent is registered with DEA. *Id.*

The OSC notified Respondent 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.* at 2–3 (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. OSC, at 3 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated August 7, 2019, Respondent timely requested a hearing.¹ Request for Hearing, at 1. According to the Hearing Request, Respondent sought to “reset/delay” any action on the OSC for a period of six months to allow Respondent time to appeal his criminal conviction. *Id.* Respondent stated that the criminal conviction, which he was appealing, was the basis for revoking his

¹ The Hearing Request was filed on August 7, 2019. Order Denying Continuance Request and Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule, at 1. I, thus, find that the Government’s service of the OSC was adequate.

Certificate of Registration (hereinafter, DEA registration).² *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, Chief ALJ). Order Denying Continuance Request and Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule dated August 9, 2019 (hereinafter, Briefing Schedule), at 1. In the Briefing Schedule, the Chief ALJ denied the Respondent's request for a continuance³ and directed the Government to file evidence regarding its lack of state authority allegation. *Id.* The Government timely complied with the Briefing Schedule by filing the Government's Motion for Summary Disposition on August 16, 2019 (hereinafter, Government's Motion or GX). Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated August 30, 2019 (hereinafter, Recommended Decision or RD), at 2.

In its motion, the Government argued that there is "no dispute as to a material fact" and that "it is appropriate for the [Chief ALJ] to grant summary disposition." GX, at 1. The Government stated that Respondent lacks authority to handle controlled substances in Louisiana, the state in which he is registered with the DEA, because his medical license is suspended. *Id.* at 3. Therefore, the Government argued, DEA does not have statutory authority to maintain Respondent's registration and recommended that Respondent's registration be revoked. *Id.*

Respondent filed "Molden[s] Response to Government's Motion for Summary Disposition," dated August 29, 2019 (hereinafter, Response).⁴ Notably, Respondent did not dispute the fact that he lacks state authority to handle controlled substances. Response, at 1 ("The underlying . . . state regulatory decisions in this matter which gives rise to the pending matter

is not in dispute . . ."). Instead, Respondent argued that he is appealing his criminal conviction, that therefore his criminal conviction lacks finality, and that without finality the Agency's action is premature. *Id.* at 1–3. Respondent further argued that, as he is detained in a federal prison in Florida, he "presents no threat to the general public concerning his DEA license." *Id.* at 3.

The Chief ALJ granted the Government's Motion finding that "summary disposition of an administrative case is warranted where, as here, there is no factual dispute of substance." RD, at 4 (citing *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987)). The Chief ALJ also recommended, "based upon the Respondent's current lack of state authority, that his DEA registration be revoked, and any pending applications for renewal be denied." *Id.* at 5 (emphasis omitted).

The Chief ALJ made no findings on the OSC's mandatory federal program exclusion allegation. *Id.* Instead the Chief ALJ interpreted the Government's Motion as "convey[ing] [the Government's] preference to have this case forwarded to the Acting Administrator based exclusively on the [loss of state authority allegation⁵] without expending the time and resources required for a full merits hearing." *Id.* The Chief ALJ further stated, "to remove any ambiguity in this regard, to the extent the Government seeks to go forward on its Mandatory Federal Program Exclusion allegation, it may file a request to do so . . ." *Id.* at n.5.

By letter dated October 15, 2019, the Chief ALJ certified and transmitted the record to me for final Agency action. The certified record did not include a request from the Government to proceed on the mandatory federal program exclusion allegation. Accordingly, I find that the Government has abandoned the mandatory federal program exclusion allegation. In the October 15, 2019, letter, the Chief ALJ advised that neither party filed exceptions. I find that the time period to file exceptions has expired. See 21 CFR 1316.66.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.46. I make the following findings of fact.

⁵ In the RD, the Chief ALJ mistakenly typed MFPE. But it is clear from the context that he meant LSA or loss of state authority.

Findings of Fact

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. BM0671481 at the registered address of 2300 S Galvez St., New Orleans, LA 70125–3102. GX 1, at 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Respondent's registration expires on January 31, 2021, and is "in an active pending status." *Id.*

The Status of Respondent's State License

On May 13, 2019, the Louisiana State Board of Medical Examiners issued an Interim Consent Order for Suspension of Medical License (hereinafter, Suspension of Medical License). GX 3, at 1. According to the Suspension of Medical License, Respondent "was criminally convicted in the United States District Court for the Eastern District of Louisiana on twelve felony counts related to the practice of medicine." *Id.* The Suspension of Medical License also stated that Respondent has reported to prison. *Id.* According to the Suspension of Medical License, Respondent waived his right to notice and formal adjudication of the Louisiana State Board of Medical Examiner's administrative proceedings against him and consented to the Suspension of Medical License. *Id.* at 2.

Therefore, the Louisiana State Board of Medical Examiners ordered that Respondent's license to practice medicine in Louisiana be placed on an indefinite suspension effective on the date of signature, May 13, 2019. *Id.* at 2–3. According to Louisiana's online records, of which I take official notice, Respondent's medical license is still suspended.⁶ Louisiana State Board of

⁶ 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, Respondent 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 served on the Government. In the event Respondent 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) or by mail to Office of the Administrator, Attn: ADDO, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, VA 22152.

² The OSC provides that 21 U.S.C. 824(a)(3) and (5) are the grounds for proposing to revoke Respondent's COR, not the criminal conviction. OSC, at 1–2.

³ The Chief ALJ denied the request for a six-month continuance because "the Agency has made it clear that a stay in administrative enforcement proceedings is unlikely to ever be justified due to ancillary proceedings involving the Respondent." Briefing Schedule, at 2 (internal quotations omitted).

⁴ While Respondent did not timely comply with the Briefing Schedule, on August 27, 2019, the Chief ALJ granted a two-day enlargement of time for Respondent to respond. Order Granting Enlargement of Time, at 1. Accordingly, I find that the Response was timely.

Medical Examiners Online Verification, <https://online.lasbme.org/#/verifylicense> (last visited March 13, 2020).

Accordingly, I find that Respondent currently is not licensed to engage in the practice of medicine and, therefore, cannot dispense controlled substances in Louisiana, the state in which Respondent is registered with the DEA (as discussed more fully below).

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 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (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 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993);

Bobby Watts, M.D., 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

According to the Suspension of Medical License, Respondent’s license as a physician is suspended, and he can no longer engage in the practice of medicine in Louisiana. GX 3, at 2–3. Because Respondent cannot engage in the practice of medicine in Louisiana, he cannot prescribe medicine in Louisiana and therefore cannot “dispense” controlled substances under the CSA. 21 U.S.C. 802(10).

Per the Louisiana Medical Practice Act, the “practice of medicine” means “engagement in, the diagnosing, treating, curing, or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being, . . . whether by the use of any drug, instrument or force, . . . or any other agency or means; or the examining, . . . of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied to or used by the patient” La. Stat. Ann. § 37:1262(3) (2019). Because Respondent cannot engage in the practice of medicine as defined above, Respondent clearly cannot “dispense”⁷ or “administer,”⁸ as those terms are defined by the CSA, any drugs in the course of his professional practice. 21 U.S.C. 802(10) and (2).

Similarly, because Respondent is not licensed to practice medicine in Louisiana, he is not a “practitioner” authorized to write “prescriptions” as defined by the Louisiana Pharmacy Practice Act.⁹ LA Stat. Ann.

⁷ “Dispense” under the CSA, “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 and administering of a controlled substance” 21 U.S.C. 802(10). Louisiana’s use of the words “treating, curing . . . by drug” and “whether such drug is . . . used by the patient” appears analogous to the CSA’s use of “dispense.” La. Stat. Ann. § 37:1262(3) (2019).

⁸ “Administer” under the CSA, “refers to the direct application of a controlled substance to the body of a patient . . . by . . . a practitioner” 21 U.S.C. 802(2). Louisiana’s use of the words “whether such drug . . . is applied to . . . the patient” appears analogous to the CSA’s use of “administer.” La. Stat. Ann. § 37:1262(3) (2019).

⁹ According to Louisiana’s Board of Pharmacy online records, of which I take official notice, Respondent also does not currently hold a valid controlled dangerous substance license as a practitioner in Louisiana, which is required to prescribe controlled dangerous substances pursuant to La Stat. Ann. § 40:973(A)(1) (2019). Louisiana’s Board of Pharmacy License Lookup, <https://secure.pharmacy.la.gov/Lookup/LicenseLookup.aspx> (last visited March 13, 2020). Louisiana’s online records show that license Number CDS.017534—MD (license type—CDS License—Physician) assigned to Gregory Louis

§§ 37:1164(45) and (47) (2019). A “practitioner” means “an individual currently licensed, registered, or otherwise authorized by the appropriate licensing board to prescribe and administer drugs in the course of professional practice.” La. Stat. Ann. § 37:1164(45) (2019). Furthermore, a “Prescription” or “prescription drug order” means “an order from a practitioner authorized by law to prescribe for a drug or device that is patient-specific and is communicated by any means to a pharmacist in a permitted pharmacy” La. Stat. Ann. § 37:1164(47) (2019). As discussed above, without a Louisiana medical license, Respondent cannot prescribe or dispense controlled substances.

Here, the undisputed evidence in the record is that Respondent’s license to practice medicine in Louisiana has been suspended; and therefore, Respondent currently lacks authority to manufacture, distribute, prescribe, or dispense controlled substances in Louisiana. Therefore, Respondent is not eligible to maintain a DEA registration. Accordingly, I will order that Respondent’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. BM0671481 issued to Gregory L. Molden. 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 Gregory L. Molden to renew or modify this registration, as well as any other application of Gregory L. Molden, for additional registration in Louisiana. This Order is effective May 4, 2020.

Dated: March 13, 2020.

Uttam Dhillon,
Acting Administrator.

[FR Doc. 2020–07018 Filed 4–2–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Completion of Claims Adjudication Program

AGENCY: Foreign Claims Settlement Commission of the United States, DOJ.

Molden, M.D., expired on 11/03/2019, and that the current status is “Lapsed; not valid for practice.” *Id.* Similarly, license number PMP.006430—CDS assigned to Gregory Louis Molden, M.D., has a current status of “Lapsed; not valid for practice.” *Id.*