II. Findings of Fact

The Agency finds that, in light of Applicant's default, the factual allegations in the OSC are admitted. 21 CFR 1301.43(e). Accordingly, Applicant is deemed to have admitted that in 2018 he was convicted of one count of conspiracy to make false statements in connection with health care benefits programs in violation of 18 U.S.C. 371 and two counts of making false statements in connection with health care benefits programs or aiding and abetting in violation of 18 U.S.C. 1035.[4] RFAA, Attach. A, at 2. Applicant further admits that, as a result of his conviction,[5] the U.S. Department of Health and Human Services, Office of Inspector General (HHS/OIG), mandatorily excluded Applicant from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a), for a minimum of 15 years. *Id.* The exclusion became effective on August 30, 2019. *Id.*

Accordingly, the Agency finds substantial record evidence that Applicant has been excluded from participation in Medicare, Medicaid, and all Federal health care programs.

III. Discussion

The OSC's sole allegation is that Applicant's application should be denied as a result of his mandatory exclusion ''from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a).'' RFAA, Attach. A, at 1 (citing 21 U.S.C. 824(a)(5)). Here, the Agency found above that HHS/OIG mandatorily excluded Applicant from participation in Medicare, Medicaid, and all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a), for a minimum of 15 years. *Id.* at 2. Accordingly, the Agency finds that the Government established a *prima facie* case for denying Applicant's registration, that Applicant did not rebut that *prima facie* case, and that there is substantial record evidence supporting the denial of Applicant's application. 21 U.S.C. 824(a)(5).

III. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Applicant's application for a registration should be denied, the burden shifts to the Applicant to show why he can be entrusted with the responsibility carried by a registration. *Morall,* 412 F.3d. at 174; *Jones Total Health Care Pharmacy,* 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 registrant. *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 it 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 and n.4. DEA Administrators have also considered the need to deter similar acts by the specific registrant and by the community of registrants. *Jeffrey Stein, M.D.,* 84 FR 46972–73.

Here, although Applicant initially requested a hearing, he failed to ''plead . . . or otherwise defend'' and was deemed to be in default. 21 CFR 1301.43(c)(3). To date, Applicant has not filed any motion to set aside the default with the Office of the Administrator. 21 CFR 1301.43(c). Applicant has thus failed to answer the allegations contained in the OSC and has not otherwise availed himself of the opportunity to refute the Government's case. As such, Applicant 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 Applicant was convicted of charges related to making false statements in connection with health care benefits programs, further indicating that Applicant cannot be entrusted.

Accordingly, the Agency will order the denial of Applicant's application.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny the pending application for a DEA Certificate of Registration, Control No. W23147064C, submitted by Moustafa M. Aboshady, M.D., as well as any other pending application of Moustafa M. Aboshady, M.D., for additional registration in Utah. This Order is effective May 16, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 10, 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.

[FR Doc. 2025–06426 Filed 4–15–25; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Empire Pharmacy Inc.; Skyline Pharmacy Inc.; Decision and Order

I. Introduction

On October 31, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registrations (OSC/ISO) to Empire Pharmacy, Inc., and Skyline Pharmacy, Inc., of Philadelphia, Pennsylvania (collectively, Registrants). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 18. The OSC/ISO informed Registrants of the immediate suspension of their DEA Certificates of Registration, Nos. FE8167733 and FS0903840, pursuant to 21 U.S.C. 824(d), alleging that Registrants' continued registration constitutes '''an imminent danger to the public health or safety.''' *Id.* at 1 (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrants' registrations, alleging that Registrants' continued registration is inconsistent with the

[4] Applicant further admits that his conviction was upheld on appeal in 2020. RFAA, Attach. A, at 2.

[5] The underlying conviction forming the basis for mandatory exclusion from participation in federal health care programs need not involve controlled substances to provide the grounds for revocation or denial pursuant to section 824(a)(5). *Jeffrey Stein, M.D.,* 84 FR 46,968, 46,971–46,972 (2019); *see also Narciso Reyes, M.D.,* 83 FR 61678, 61681 (2018); *KK Pharmacy,* 64 FR 49507, 49510 (1999) (collecting cases).

public interest. *Id.* (citing 21 U.S.C. 823(g)(1), 824(a)(4)).[1]

Specifically, the OSC/ISO alleged that between February 20, 2019, and August 30, 2023, Registrants failed to maintain accurate records of their purchasing, dispensing, and physical inventory of controlled substances, in violation of federal and Pennsylvania state law. RFAAX 2, at 4–6 (citing 21 CFR 1304.04(a), 1304.11(a)–(c), 1304.21(a); 35 Pa. Cons. Stat. Ann. sections 780–112(a)–(c), and 780–113(a)(21)).

The OSC/ISO notified Registrants of their right to file with DEA a written request for hearing and that if they failed to file such a request, they would be deemed to have waived their right to a hearing and be in default. RFAAX 2, at 7 (citing 21 CFR 1301.43). Here, Registrants did not request a hearing. RFAA, at 2.[2] ''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/ISO].'' 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 Registrants' default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

[1] According to Agency records, Empire Pharmacy's registration expired on August 31, 2024, and Skyline Pharmacy's registration expired on February 29, 2024. The fact that a registrant allows its registration to expire during the pendency of an administrative enforcement proceeding does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC/ISO to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68474, 68476–79 (2019).

[2] Based on the Government's submissions in its RFAA dated February 9, 2024, the Agency finds that service of the OSC/ISO on Registrants was adequate. Specifically, the included Declaration from a DEA Special Agent asserts that on November 1, 2023, the OSC/ISO was personally served at both of Registrants' registered addresses during the execution of simultaneous search warrants at both locations. RFAAX 3, at 1–2. The Special Agent noted in the Declaration that an individual who serves as the owner and/or controlling officer at both Empire Pharmacy and Skyline Pharmacy was physically present at the location of Empire Pharmacy during the execution of the search warrant and service of the OSC/ISO. *Id.* at 2. This individual received a copy of the OSC/ISO as well as instructions from DEA personnel. *Id.*

II. Applicable Law

A. The Alleged Statutory and Regulatory Violations

As discussed above, the OSC/ISO alleges that Registrants violated multiple provisions of the Controlled Substances Act (CSA) and its implementing regulations. As the Supreme Court stated in *Gonzales* v. *Raich,* ''the main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. . . . To effectuate these goals, Congress devised a closed regulatory system making it unlawful to . . . dispense[ ] or possess any controlled substance except in a manner authorized by the CSA.'' 545 U.S. 1, at 12–13 (2005). In maintaining this closed regulatory system, ''[t]he CSA and its implementing regulations set forth strict requirements regarding registration, . . . drug security, and recordkeeping.'' *Id.* at 14.

Here, the OSC/ISO's allegations concern the CSA's ''strict requirements regarding registration[,] . . . drug security, and recordkeeping'' and, therefore, go to the heart of the CSA's ''closed regulatory system'' specifically designed ''to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.'' *Id.*

B. Improper Dispensing, Recordkeeping, and Unaccounted for Controlled Substances

According to DEA's implementing regulations, pharmacies must maintain ''a complete and accurate record of each controlled substance . . . sold . . . .'' 21 CFR 1304.21(a). This includes conducting and maintaining an ''initial inventory . . . of all stocks of controlled substances on hand on the date [the pharmacy] first engages in the . . . dispensing of controlled substances,'' as well as a ''biennial inventory . . . of all stocks of controlled substances on hand.'' 21 CFR 1304.11(a)–(c). Pharmacies must retain these inventories ''for at least 2 years from the date of such inventory or records, for inspection and copying.'' 21 CFR 1304.04.

Pennsylvania law also requires pharmacies to keep accurate records and maintain proper inventories regarding the purchase, sale, or dispensing of any controlled substances. 35 Pa. Cons. Stat. Ann. section 780–112(a)–(c). In Pennsylvania, it is unlawful for a pharmacy to fail to ''make, keep or furnish any record, notification, order form, statement, invoice or information'' relating to the purchasing or dispensing of a controlled substance. *Id.* section 780–113(a)(21).

III. Findings of Fact

The Agency finds that, in light of Registrants' default, the factual allegations in the OSC/ISO are deemed admitted.[3] Registrants are deemed to have admitted that from February 20, 2019, until at least August 30, 2023, Empire Pharmacy failed to maintain accurate records of its purchasing and dispensing of controlled substances. RFAAX 2, at 6. For example, Registrants admit that there were significant discrepancies between the dispensing/order data that Empire submitted to its distributors and the dispensing data that Empire reported to Pennsylvania's PDMP. *Id.* at 4. Registrants admit that a comparison of Empire's PDMP data to Empire's distributor order data from February 20, 2019, through July 14, 2022, revealed discrepancies of: (1) approximately 404,106 dosage units of alprazolam 1 mg, (2) approximately 822,700 dosage units of alprazolam 2 mg, and (3) approximately 1,969 bottles of promethazine with codeine. *Id.* at 5. These discrepancies amounted to an approximately 99% variance between the PDMP data and Empire's distributor order data. *Id.* Registrant admits that there were also significant discrepancies for Skyline Pharmacy,[4] and that both pharmacies failed to maintain accurate records of their purchasing and dispensing of controlled substances. *Id.* at 4–6. Registrants further admit that Empire Pharmacy failed to adequately maintain an initial and biennial inventory, and that Skyline Pharmacy failed to maintain an initial inventory of controlled substances. *Id.* at 4.

Accordingly, the Agency finds substantial record evidence that each Registrant failed to maintain accurate records of its purchasing and dispensing

[3] Registrants are deemed to have admitted and the Agency finds that Registrants share common management and control. RFAAX 2, at 3. Registrants admit that S.O. is the owner and/or controlling officer of both Empire Pharmacy and Skyline Pharmacy. Given the fact that the same individual exercises management and control over the entities, the misconduct of any entity is relevant to the determination of whether the others can be entrusted with a DEA registration. *See Morning Star Pharmacy & Med. Supply,* 85 FR 51045, 51062 (2020)) (''Due to the commonality of . . . management, and key employees between Respondent Pharmacy and Ceder Hill [Pharmacy], any misconduct related to controlled substances at Cedar Hill is relevant to the determination of whether Respondent pharmacy can be entrusted with a registration.'').

[4] Registrants admit that when comparing Skyline Pharmacy's PDMP data to Skyline's distributor order data from July 18, 2022, through October 18, 2021, there was a discrepancy of approximately 117,600 dosage units of alprazolam 1 mg, 223,500 dosage units of alprazolam 2 mg, and 789 bottles of promethazine with codeine. *Id.* at 6. These discrepancies amounted to an approximately 100% variance between the PDMP data and Skyline's distributor order data. *Id.*

of controlled substances. The Agency also finds substantial record evidence that each Registrant failed to maintain adequate inventories of all controlled substances on hand.

IV. Discussion

A. The Controlled Substances Act and Implementing Regulations

Under Section 304 of the CSA, ''[a] registration . . . to . . . distribute[ ] or 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 by such section.'' 21 U.S.C. 824(a)(4). In the case of a ''practitioner,'' which is defined in 21 U.S.C. 802(21) to include a ''pharmacy,'' Congress directed the Attorney General to consider five factors in making the public interest determination. 21 U.S.C. 823(g)(1)(A–E).[5]

The five factors are considered in the disjunctive. *Gonzales* v. *Oregon,* 546 U.S. 243, 292–93 (2006) (Scalia, J., dissenting) (''It is well established that these factors are to be considered in the disjunctive,'' citing *In re Arora,* 60 FR 4447, 4448 (1995)); *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. *Penick Corp.* v. *Drug Enf't Admin.,* 491 F.3d 483, 490 (D.C. Cir. 2007); *Morall,* 412 F.3d. at 185 n.2; *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

In this matter, while all of the 21 U.S.C. 823(g)(1) factors have been considered, the Agency finds that the Government's evidence in support of its *prima facie* case is confined to Factors B and D.[6] *See* RFAAX 1, at 4. 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 each Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(g)(1).

A. Allegation That Registrants' Registrations Are Inconsistent With the Public Interest

Factors B and/or D—Registrants' Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

Evidence is considered under Public Interest Factors B and D when it reflects compliance or non-compliance with federal and local laws related to controlled substances and experience dispensing controlled substances. 21 U.S.C. 823(g)(1)(B) and (D); *see also Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). Here, as found above, Registrants are deemed to have admitted and the Agency finds that Registrants failed to maintain accurate records of their purchasing and dispensing of controlled substances. RFAAX 2, at 4–6. Additionally, Registrants are deemed to have admitted and the Agency finds that each pharmacy failed to maintain adequate inventories of all stocks of controlled substances on hand. Therefore, the Agency finds substantial record evidence that Registrants violated federal and state law, namely 21 CFR 1304.04(a), 1304.11(a)–(c), 1304.21(a); and 35 Pa. Cons. Stat. Ann. sections 780–112(a)–(c), 780–113(a)(21).[7]

Accordingly, the Agency finds that Factors B and D weigh in favor of revocation of Registrants' registrations and thus finds Registrants' continued registration to be inconsistent with the public interest. The Agency further finds that Registrants failed to provide any evidence to rebut the Government's *prima facie* case.

V. Sanction

Here, the Government has met its *prima facie* burden of showing that Registrants' continued registration is inconsistent with the public interest due to their numerous violations pertaining to controlled substance dispensing and recordkeeping. Accordingly, the burden shifts to Registrants to show why they can be entrusted with registration. *Morall,* 412 F.3d. at 174; *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, 18904 (2018); *supra* sections III and IV. The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant. *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; *ALRA Labs, Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995). A registrant's acceptance of responsibility must be unequivocal. *Jones Total Health Care Pharmacy,* 881 F.3d 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, the Agency has found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* at 834 & n.4. The Agency has also considered the need to deter similar acts by the registrant and by the community of registrants. *Jeffrey Stein, M.D.,* 84 FR 46972–73.

Here, Registrants did not timely or properly request a hearing and were deemed to be in default. 21 CFR 1301.43(c)(1), (e), (f)(1); RFAA, at 1–2. To date, Registrants have not filed a motion with the Office of the Administrator to excuse the default. 21 CFR 1301.43(c)(1). Registrants have thus failed to answer the allegations contained in the OSC and have not otherwise availed themselves of the opportunity to refute the Government's case. As such, Registrants have made no representations as to their future compliance with the CSA nor made any demonstration that they can be entrusted with registration. Moreover, the evidence presented by the Government shows that Registrants violated the CSA, further indicating that Registrants cannot be entrusted.

[5] The five factors of 21 U.S.C. 823(g)(1)(A–E) are:

(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.

[6] The Agency has carefully considered the entire transmitted record, and this Decision/Order is the result of its adjudication of that record in its entirety.

[7] The OSC/ISO alleges that Registrants violated additional state statutes related to their failure to maintain adequate records and their failure to adequately report their dispensing of controlled substances to the Pennsylvania PDMP. *See* RFAAX 2, at 2 (citing 35 Pa. Cons. Stat. Ann. sections 872.7(a), (c), 780–113(a)(12)). Neither the OSC/ISO nor the RFAA contains sufficient analysis to allow the Agency to adjudicate these allegations. However, the found violations in this decision are more than sufficient to support the Government's requested sanction of revocation under these circumstances.

VI. Conclusion

Accordingly, the Agency will order the revocation of Registrants' registrations.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificates of Registration Nos. FE8167733 and FS0903840 issued to Empire Pharmacy Inc. and Skyline Pharmacy Inc. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Empire Pharmacy Inc. and/or Skyline Pharmacy Inc. to renew or modify the named registrations, as well as any other pending application of Empire Pharmacy Inc. and/or Skyline Pharmacy Inc. for additional registration in Pennsylvania. This Order is effective May 16, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 10, 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.

[FR Doc. 2025–06425 Filed 4–15–25; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ajumobi Agu, M.D.; Decision and Order

I. Introduction

On November 14, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Ajumobi Agu, M.D., of Las Vegas, Nevada (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1. The OSC/ISO informed Registrant of the immediate suspension of his DEA Certification of Registration, Control No. FA4195459, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes '' 'an imminent danger to the public health or safety.' '' *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant's registration, alleging that Registrant's registration should be revoked because Registrant lacks state authority to handle controlled substances and Registrant's continued registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(g)(1), 824(a)(3), 824(a)(4)).

Specifically, the OSC/ISO alleged that Registrant continued to dispense controlled substances after his state medical and controlled substances licenses were suspended. *Id.* at 3. The OSC/ISO alleged that Registrant's misconduct violated both the implementing regulations of the Controlled Substances Act (CSA) and Nevada state law. *Id.* at 2.

The OSC/ISO notified Registrant of his right to file a written request for hearing and an answer, 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 4–5 (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/ISO].'' 21 CFR 1301.43(e); *see also* RFAAX 1, at 4–5 (providing notice to Registrant).

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(a), (c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

II. Lack of State Authority

A. Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC/ISO are admitted. Accordingly, Registrant admits that on July 14, 2023, the Nevada State Board of Pharmacy suspended Registrant's Nevada controlled substance license. RFAAX 1, at 3. Further, on September 19, 2023, the Nevada Board of Medical Examiners suspended Registrant's Nevada medical license. *Id.* at 2–3.

According to Nevada's online records, of which the Agency takes official notice, Registrant's Nevada controlled substance license is now revoked.[2] Nevada State Board of Pharmacy License Verification, *https://online.nvbop.org/#/verifylicense* (last visited date of signature of this Order). Further, Registrant's Nevada medical license remains suspended. Nevada State Board of Medical Examiners Licensee Search, *https://nsbme.us.thentiacloud.net/webs/nsbme/register/#* (last visited date of signature of this Order).

Accordingly, the Agency finds that Registrant is not licensed to practice medicine nor to handle controlled substances in Nevada, the state in which he is registered with DEA.[3]

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

[1] Based on the Government's submissions in its RFAA dated August 22, 2024, the Agency finds that service of the OSC/ISO on Registrant was adequate. Specifically, the included Declaration from a DEA Diversion Investigator indicates that Registrant was personally served with a copy of the OSC/ISO at his residential address on November 17, 2023. RFAAX 2, at 1–2, *see also* RFAAX 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).

[3] 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 Registrant, as of the date of this decision, is not licensed to practice medicine and/or handle controlled substances in Nevada. Registrant may dispute these facts 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.*