endanger[s] the public health and safety.'' *George D. Osafo, M.D.,* 58 FR 37508, 37509 (1993).

The Government's evidence does not provide details concerning Dr. Jones's criminal misconduct; however, the District Court's judgment offers sufficient information to find that Dr. Jones committed fraudulent activity related to medical services. Dr. Jones was convicted of seven counts of violating 18 U.S.C. 1347 (''Health care fraud''). Gov't Summ. Disp., Exh. 2, at 1. The elements of this statute require proof that an individual knowingly or willfully executed a scheme ''to defraud any health care benefit program,'' or ''to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program.'' 18 U.S.C. 1347(a). Dr. Jones was further convicted of one count of violating 18 U.S.C. 371 (''Conspiracy to commit offense or to defraud United States''), which subjects persons who conspire ''to commit any offense against the United States, or to defraud the United States,'' to a maximum prison sentence of five years, or to payment of a fine, or both. The District Court's judgment specifies that Dr. Jones's violation of 18 U.S.C. 371 involved conspiracy to pay and receive illegal health care kickbacks. Gov't Summ. Disp., Exh. 2, at 1. The District Court sentenced Dr. Jones to three years' imprisonment, to be served, if practicable, after the term of imprisonment of his co-defendant. *Id.* at 2. The District Court further imposed two years of supervised release after Dr. Jones serves his prison term, and ordered him to pay $347,525 to Medicare in restitution. *Id.* at 3, 6.

Despite the lack of evidence that Dr. Jones's criminal misconduct involved controlled substances, the District Court's judgment shows that Dr. Jones defrauded Medicare of hundreds of thousands of dollars. This type of criminal misconduct raises serious concerns about Dr. Jones's integrity and honesty, especially in his dealings with government agencies, and justifies revocation even if his misconduct did not involve controlled substances. *Anibal P. Herrera, M.D.,* 61 FR at 65078; *Nelson Ramirez-Gonzalez, M.D.,* 58 FR at 52788; *George D. Osafo, M.D.,* 58 FR at 37509; *see also Jeffrey Stein, M.D.,* 84 FR at 46972.

In fact, DEA has previously revoked registrations for misconduct comparable to Respondent's. *See Dan E. Hale, D.O.,* 69 FR 69402, 69406 (2004) (denying application based on material falsification and mandatory exclusion which resulted from fraud convictions); *Johnnie Melvin Turner, M.D.,* 67 FR at 71204 (revocation based on exclusion from Medicare program after federal fraud conviction); *Stanley Dubin, D.D.S.,* 61 FR 60727, 60727 (1996) (revocation for exclusion from federal health care programs after state fraud conviction).

Furthermore, the exclusion letter notes that HHS/OIG deemed Dr. Jones's criminal misconduct to be egregious enough to warrant an exclusion period in excess of the statutory minimum. Gov't Summ. Disp., Exh. 3, at 1–2. The exclusion letter explains that HHS/OIG excluded Dr. Jones for ten years instead of the statutory minimum of five years, because (1) Dr. Jones's fraudulent activity was intended to cause financial loss to a government agency of more than $50,000; (2) he committed the fraudulent activity over a period of six years; and (3) the District Court's sentence included imprisonment. *Id.* at 2.

The DEA ''carefully consider[s] mitigating evidence provided by the respondent'' when deciding the appropriate sanction in a Medicare exclusion case. *Jeffrey Stein, M.D.,* 84 FR at 46970. Dr. Jones, however, has failed to provide any mitigating evidence for the DEA to consider. Dr. Jones's failure to present mitigating evidence is the reason why granting summary disposition in the Government's favor is appropriate. It is also the reason why, in light of the egregiousness of his fraudulent activity, revocation is the appropriate sanction.

In the face of Dr. Jones's exclusion, he has not presented any evidence to convince DEA that it can trust him with the privilege and responsibility to handle controlled substances. Dr. Jones fraudulently obtained hundreds of thousands of dollars from a United States government agency over a period of six years. Based on several aggravating circumstances, HHS/OIG found Dr. Jones's criminal activity to be sufficiently egregious to justify imposing a longer exclusion period than statutorily required. Dr. Jones has not responded with any indication that he intends to accept responsibility at the DEA hearing or that he feels remorse for his misconduct. In fact, Dr. Jones pled not guilty to the criminal charges and his position on appeal is that the prosecution failed to present enough evidence at trial. Gov't Summ. Disp., Exh. 2, at 1; Resp't Opposition, at 1. Pleading not guilty and then attacking the conviction on appeal is inconsistent with a respondent who accepts responsibility and feels remorse for his misconduct. Furthermore, Dr. Jones has not presented any mitigation evidence, to include evidence that he has taken steps to assure DEA that he will not engage in fraudulent activity in the future. In the absence of mitigation evidence demonstrating that DEA can entrust Dr. Jones with a registration, revocation is appropriate.

Recommendation

For these reasons, it is *recommended* that Dr. Jones's DEA Certificate of Registration, Number BJ5665281/XJ5665281, be *revoked,* and that any of Dr. Jones's applications for renewal or modification of such registration, and any application by Dr. Jones for any other DEA registration, be *denied*.[5]

Dated: September 19, 2019.

Charles Wm. Dorman,

U.S. Administrative Law Judge.

[FR Doc. 2021–08169 Filed 4–20–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Javaid A. Perwaiz, M.D.; Decision and Order

On June 1, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Javaid A. Perwaiz, M.D. (hereinafter, Registrant) of Chesapeake, Virginia. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. AP1844287. It alleged that Registrant is without ''authority to handle controlled substances in Virginia, the state in which [Registrant is] registered with DEA.'' *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that according to the records of the Virginia Department of Health Professionals, Registrant's Virginia Medicine & Surgery license expired on March 31, 2020. OSC, at 2. The OSC further alleged that because Registrant's medical license was expired, Registrant no longer held authority to handle controlled substances in Virginia. *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR

[5] Pursuant to 21 CFR 1316.66, a party may file exceptions to this Recommended Decision ''[w]ithin twenty days after the date upon which a party is served a copy of'' this Recommended Decision. * [No exceptions were timely filed.]

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

Adequacy of Service

In a Declaration dated August 5, 2020, a Diversion Investigator (hereinafter, DI) assigned to the Norfolk Resident Office of the Washington Field Division stated that she first attempted service of the OSC by forwarding a copy of the OSC to Registrant's legal counsel via email on June 2, 2020. Request for Final Agency Action (hereinafter RFAA), App. 8 (Declaration of DI), at 2. After nine days with no response, the DI called the office of Registrant's legal counsel and left a message with his staff regarding the OSC. *Id.* On June 19, 2020, the DI called the office of Registrant's legal counsel a second time after having still not received a response to the first phone call or the initial email. *Id.* at 3. According to the DI, Registrant's legal counsel returned the second phone call later that day and ''acknowledged receiving a copy of the [OSC]'' and ''confirmed that [Registrant] had received a copy of the [OSC] (although he could not remember the exact date).'' *Id.* Registrant's legal counsel also said that he ''planned on filing a response to the [OSC] on behalf of [Registrant].'' *Id.* The DI concluded that, following the phone call on June 19, 2020, neither she nor her office ''received any other written correspondence, telephonic communication, or any other communication from [Registrant], or any representative on his behalf in response to the [OSC].'' *Id.*

The Government forwarded its RFAA, along with the evidentiary record, to this office on August 6, 2020. In its RFAA, the Government represents that ''despite [Registrant's legal counsel's] assurances to DEA personnel that a response would filed [sic] in response to the [OSC], more than [thirty days] have passed since Registrant received the [OSC]; however, Registrant has not submitted to DEA a request for hearing.'' [1] RFAA, at 2; *see also* RFAA, Apps. 5 and 6. The Government requests that Registrant's Certificate of Registration be revoked based on Registrant's lack of state authority to handle controlled substances. RFAA, at 5 and 6.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on or before June 19, 2020. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

Findings of Fact

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. AP1844287 at the registered address of 3003 Churchland Boulevard, Chesapeake, VA 23321. RFAA, App. 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expired on March 31, 2021.[2] *Id.*

The Status of Registrant's State License

According to the records of the Virginia Department of Health Professionals, Registrant's Virginia Medicine & Surgery License expired on March 31, 2020. RFAA, App. 3, at 1. Additionally, Registrant's license remained expired as of the date of the OSC. RFAA, App. 7, at 1.

According to Virginia's online records, of which I take official notice, Registrant's license is still expired.[3] *https://dhp.virginia interactive.org/lookup* (last visited date of signature of this Order). Virginia's online records show that Registrant's medical license remains expired and that Registrant is not authorized in Virginia to practice medicine. *Id.*

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine in Virginia, the state in which Registrant is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).

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 71371–72;

[1] The Government also represents that Registrant has not ''otherwise filed a response with the agency following the issuance of the [OSC].'' RFAA, at 2.

[2] The fact that a Registrant allows his registration to expire during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68474 (2019).

[3] 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 my finding by filing a properly supported motion for reconsideration of finding 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.usdoj.gov.*

Sheran Arden Yeates, M.D., 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

Under the Virginia Drug Control Act, a practitioner ''shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.'' Va. Code 54.1–3408. The Virginia Drug Control Act also defines a ''practitioner,'' as ''a physician . . . licensed, registered, or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to a controlled substance in the course of professional practice or research in the Commonwealth.'' Va. Code 54.1–3401. Further, under Virginia state law, a ''physician'' is defined as ''a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.'' Va. Code 54.1–2981; *see also:* Va. Code 54.1–2902 (''It shall be unlawful for any person to practice medicine . . . in the Commonwealth without a valid unrevoked license issued by the Board of Medicine.'').

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Virginia. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in Virginia. Thus, because Registrant lacks authority to practice medicine in Virginia and, therefore, is not authorized to handle controlled substances in Virginia, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AP1844287 issued to Javaid A. Perwaiz. 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 Javaid A. Perwaiz to renew or modify this registration, as well as any other pending application of Javaid A. Perwaiz, for additional registration in Virginia. This Order is effective May 21, 2021.

D. Christopher Evans,

Acting Administrator.

[FR Doc. 2021–08173 Filed 4–20–21; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–816]

Importer of Controlled Substances Application: Research Triangle Institute

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of application.

SUMMARY: Research Triangle Institute has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before May 21, 2021. Such persons may also file a written request for a hearing on the application on or before May 21, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 18, 2021, Research Triangle Institute, 3040 East Cornwallis Road, Hermann Building, Room 106, Research Triangle Park, North Carolina 22709–0000, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3–FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4–FMC)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4–MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR–18 (Also known as RCS–8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB–FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR–144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB–FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
FUB–144 (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)	7014	I
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB–FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I