

registration. Because Registrant does not meet the CSA's essential requirement for maintaining a practitioner's registration, I will order that his registration be revoked. *See* 21 U.S.C. 824(a)(3), 802(21); *see also id.* § 823(f).

### The Material Falsification Allegation

As found above, effective on February 4, 2013, the State of New York revoked Registrant's Medical License and this Order was still in effect as of June 11, 2015, when Registrant submitted his application. Thus, Respondent materially falsified his application in two ways. First, he falsely represented that he was "currently authorized to prescribe [or] dispense" controlled substances in New York State when he listed his purported license number, indicated that it was issued by New York, and listed the license's expiration date as March 31, 2017. Second, he falsely answered "N" for no to the question which asked if his state medical license had ever been revoked.

Each of these false statements was clearly material because it was capable of affecting or influencing the Agency's decision as to whether to grant his application. *Kungys v. United States*, 485 U.S. 759, 770 (1988) (other citation omitted); *United States v. Wells*, 519 U.S. 482, 489 (1997) (quoting *Kungys*, 485 U.S. at 770). As explained above, the CSA defines the "[t]he term 'practitioner' [to] mean[] a physician . . . 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), and the registration provision applicable to practitioners directs 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." *Id.* § 823(f). As the Agency has long held, "[s]tate authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration." *Blanton*, 43 FR at 27617.

Because the possession of state authority is a prerequisite to obtaining and maintaining a practitioner's registration, Respondent's false representations that he currently possessed a state license and that his state license had never been revoked were capable of influencing the Agency's decision to grant his June 11, 2015 renewal application. I therefore also conclude that Respondent materially falsified his June 11, 2015

application. For this reason as well, I will order that his registration be revoked. 21 U.S.C. 824(a)(1).

### Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AB7719860 issued to Steven Bernhard, D.O., be, and it hereby is, revoked. I further order that any application of Steven Bernhard, D.O., to renew or modify this registration, be denied. This Order is effective immediately.<sup>1</sup>

Dated: May 15, 2017.

**Chuck Rosenberg,**

*Acting Administrator.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Shakeel A. Kahn, M.D.; Decision and Order

On December 20, 2016, the Assistant Administrator, Division of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Shakeel A. Kahn, M.D. (hereinafter, Registrant), of Casper, Wyoming. GX 1. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration, on the ground that he "do[es] not have authority to handle controlled substances in the State of Wyoming, the [S]tate in which [he is] registered with the DEA." *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

As for the jurisdictional basis of the proceeding, the Show Cause Order alleged that Registrant is registered "as a practitioner in [s]chedules II-V pursuant to" Certificate of Registration No. FK5578464, at the address of "301 South Fenway St., Suite 202, Casper, Wyoming." *Id.* The Order alleged that this registration expires "on December 31, 2018." *Id.*

As for the substantive ground for the proceeding, the Show Cause Order alleged that on November 29, 2016, Registrant's "authority to prescribe and administer controlled substances in the State of Wyoming was suspended," and that he is "without authority to handle controlled substances." *Id.* The Show Cause Order thus asserted that his registration is subject to revocation. *Id.*

<sup>1</sup> Based on my finding that Respondent obtained his registration by materially falsifying his application, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

(citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)) (other citations omitted).

The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement on the matters of fact and law at issue while waiving his right to a hearing, the procedures for electing either option, and the consequence of failing to elect either option. *Id.* at 2. Also, the Show Cause Order notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

According to the declaration of a DEA Special Agent, on December 20, 2016, he personally served the Show Cause Order on Registrant at his residence. GX 5. The Government represents that the Agency "has not received a request for hearing or any other reply from" Registrant. Gov. Request for Final Agency Action, at 2. Based on the representation of the Government, I find that more than 30 days have now passed since the Show Cause Order was served on Registrant, and that Registrant has neither requested a hearing nor submitted a written statement while waiving his right to a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement. Based on the evidence submitted by the Government, I make the following factual findings.

### Findings

Registrant is the holder of DEA Certificate of Registration No. FK5578464, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the address of 301 S. Fenway St., Suite 202, Casper, Wyoming. GX 2. His registration does not expire until December 31, 2018. *Id.*

Registrant is also the holder of Wyoming Physician License No. 7633A. GX 3, at 1. However, on November 29, 2016, the Wyoming Board of Medicine ordered the summary suspension of Registrant's Physician License effective the same day, thereby suspending "his authority and ability to practice medicine in the state of Wyoming" pending "the completion of a contested case hearing." *Id.* at 18. According to the online records of the Wyoming Board of Medicine of which I take official notice, Registrant's medical license remains suspended as of the date of this Decision and Order. *See* 5 U.S.C. 556(e), 21 CFR 1316.59(e).

### 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 (CSA), “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Also, DEA has 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*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”).

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(f).

Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration “is currently authorized to handle controlled substances in the [S]tate,” *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State’s use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, for the purposes of the CSA, it is of no consequence that the Wyoming Medical Board has employed summary process in suspending Registrant’s state license.

As found above, on November 29, 2016, the Wyoming Board of Medicine ordered the summary suspension of Registrant’s Physician License effective the same day, thereby suspending “his authority and ability to practice

medicine in the state of Wyoming.” GX 3, at 18. I therefore find that Registrant lacks authority to dispense controlled substances in Wyoming, the State in which he is registered with the Agency and that he is not entitled to maintain his registration. *See Hooper*, 76 FR at 71371; *Blanton*, 43 FR 27616. Accordingly, I will order that his registration be revoked. 21 U.S.C. 824(a)(3).

#### Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. FK5578464 issued to Shakeel A. Kahn, M.D., be, and it hereby is, revoked. I further order that any application of Shakeel A. Khan, M.D., to renew or modify this registration be, and it hereby is, denied. This Order is effective immediately.<sup>1</sup>

Dated: May 15, 2017.

**Chuck Rosenberg,**

*Acting Administrator.*

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## DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

### Agency Information Collection Activities; Request for Comments; Revision of the BJS Confidentiality Pledge

**AGENCY:** Bureau of Justice Statistics, U.S. Department of Justice.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Justice Statistics (BJS), a component of the Office of Justice Programs (OJP) in the U.S. Department of Justice (DOJ), is seeking comments on revisions to the confidentiality pledge it provides to its respondents. These revisions are required by the passage and implementation of provisions of the federal Cybersecurity Enhancement Act of 2015, which requires the Secretary of the Department of Homeland Security (DHS) to provide Federal civilian agencies’ information technology systems with cybersecurity protection for their Internet traffic. More details on this announcement are presented in the **SUPPLEMENTARY INFORMATION** section below. The revisions to the confidentiality pledge were previously published in the **Federal Register** on

<sup>1</sup> For the same reasons that led the Wyoming Board to summarily suspend Registrant’s medical license, I find that the public interest necessitates that this order be effective immediately. 21 CFR 1316.67.

March 20, 2017, allowing for a 60 day comment period. BJS received and responded to one comment.

**DATES:** Comments are encouraged and will be accepted for 30 days until June 21, 2017.

**ADDRESSES:** Questions about this notice should be addressed to the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, ATTN: Devon Adams, 810 7th Street NW., Washington, D.C. 20531; email: [Devon.Adams@usdoj.gov](mailto:Devon.Adams@usdoj.gov); telephone: 202–307–0765 (this is not a toll-free number).

#### FOR FURTHER INFORMATION CONTACT:

Allina Lee by telephone at 202–305–0765 (this is not a toll-free number); by email at [Allina.Lee@usdoj.gov](mailto:Allina.Lee@usdoj.gov); or by mail or courier to the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, ATTN: Allina Lee, 810 7th Street NW., Washington, D.C. 20531. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Federal statistics provide key information that the Nation uses to measure its performance and make informed choices about budgets, employment, health, investments, taxes, and a host of other significant topics. Most federal surveys are completed on a voluntary basis. Respondents, ranging from businesses to households to institutions, may choose whether or not to provide the requested information. Many of the most valuable federal statistics come from surveys that ask for highly sensitive information such as proprietary business data from companies or particularly personal information or practices from individuals. BJS protects all personally identifiable information collected under its authority under the confidentiality provisions of 42 U.S.C. § 3789g. Strong and trusted confidentiality and exclusively statistical use pledges under Title 42 U.S.C. § 3789g and similar statutes are effective and necessary in honoring the trust that businesses, individuals, and institutions, by their responses, place in statistical agencies.

Under statistical confidentiality protection statutes, federal statistical agencies make statutory pledges that the information respondents provide will be seen only by statistical agency personnel or their agents and will be used only for statistical purposes. These statutes protect such statistical information from administrative, law