| Basic class | Established 2023 quotas (g) | Proposed revised 2023 quotas (g) |
|---|---|---|
| Piminodine | 25 | no change. |
| Racemethorphan | 5 | no change. |
| Racemorphan | 5 | no change. |
| Remifentanil | 3,000 | no change. |
| Secobarbital | 172,100 | no change. |
| Sufentanil | 4,000 | no change. |
| Tapentadol | 11,941,416 | no change. |
| Thebaine | 57,137,944 | no change. |
| **List I Chemicals** | | |
| Ephedrine (for conversion) | 41,100 | no change. |
| Ephedrine (for sale) | 4,136,000 | no change. |
| Phenylpropanolamine (for conversion) | 14,878,320 | no change. |
| Phenylpropanolamine (for sale) | 7,990,000 | no change. |
| Pseudoephedrine (for conversion) | 1,000 | no change. |
| Pseudoephedrine (for sale) | 174,246,000 | no change. |

The Administrator further proposes that APQ for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Administrator may adjust the 2023 APQ and AAN as needed.

*Conclusion*

After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will issue and publish in the **Federal Register** a final order establishing any adjustment of the 2023 APQ for each basic class of controlled substances in schedules I and II and AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.[15]

*Signing Authority*

This document of the Drug Enforcement Administration was signed on October 25, 2023, by Administrator Anne Milgram. 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**.

**Scott Brinks,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

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**BILLING CODE P**

[15] 21 CFR 1303.13(c) and 1315.13(c).

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Dmitry Anatolevich Shelchkov, M.D.; Decision and Order

On July 21, 2021, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Dmitry Anatolevich Shelchkov, M.D. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Appendix (hereinafter, RFAAX) H, at 1, 4. The OSC proposed the revocation of Registrant's Certificate of Registration No. BS8311502 at the registered address of 1396 Myrtle Avenue, Brooklyn, New York 11237. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to handle controlled substances in New York, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA,[1] which was fully received on July 12, 2023.[2]

[1] The Government's RFAA is dated June 30, 2022. RFAA, at 6.

[2] Based on the Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX F, at 1; *see also* RFAAX A (Form DEA–12 signed by Registrant). Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a corrective action plan and therefore has waived any such rights. RFAA, at 2; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

#### Findings of Fact

On March 2, 2021, the New York State Commissioner of Health ordered that ''effective immediately, [Registrant] shall not practice medicine in the State of New York.'' RFAAX B, at 1, 3. On October 29, 2021, the New York State Board for Professional Medical Conduct issued a Determination and Order revoking Registrant's New York medical license. RFAAX C, at 3–4, 27. According to New York's online records, of which the Agency takes official notice, Registrant's New York medical license is revoked.[3] New York State Department of Health Office of Professional Medical Conduct Physician Search, *https://apps.health.ny.gov/pubdoh/professionals/doctors/conduct/factions/Home.action* (last visited date of signature of this Order).[4] Accordingly,

[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 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 Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov*.

[4] The New York State Education Department Office of the Professions lists the status of Registrant's New York medical license as ''summary suspension'', but notes that because the office does not discipline physicians, the status listed might be impacted by New York State Department of Health action and accordingly provides a link to the New York State Department of Health Office of Professional Medical Conduct Physician Search. New York State Education Department Office of the Professions, Verification Search, *https://www.op.nysed.gov/verification-search*.

the Agency finds that Registrant is not licensed to engage in the practice of medicine in New York, the state in which he is registered with 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 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, 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).[5]

According to the New York Controlled Substances Act (hereinafter, the Act), ''[i]t shall be unlawful for any person to manufacture, sell, prescribe, distribute, dispense, administer, possess, have under his control, abandon, or transport a controlled substance except as expressly allowed by this article.'' N.Y. Pub. Health Law section 3304 (McKinney 2023). Further, the Act defines a ''practitioner'' as ''[a] physician . . . or other person licensed, or otherwise permitted to dispense, administer or conduct research with respect to a controlled substance in the course of a licensed professional practice. . . .'' *Id.* at section 3302(27). Finally, New York regulations state that ''[a] prescription for a controlled substance may be issued only by a practitioner who is . . . authorized to prescribe controlled substances pursuant to his licensed professional practice. . . .'' N.Y. Comp. Codes R. & Regs. tit. 10, section 80.64(a)(1) (2023).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in New York. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in New York. Thus, because Registrant lacks authority to practice medicine in New York and, therefore, is not authorized to handle controlled substances in New York, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency 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. BS8311502 issued to Dmitry Anatolevich Shelchkov, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Dmitry Anatolevich Shelchkov, M.D., to renew or modify this registration, as well as any other pending application of Dmitry Anatolevich Shelchkov, M.D., for additional registration in New York. This Order is effective November 30, 2023.

**Signing Authority**

This document of the Drug Enforcement Administration was signed on October 20, 2023, by Administrator Anne Milgram. 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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**BILLING CODE 4410–09–P**

[5] 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(g)(1) (this section, formerly section 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022)). 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,* 76 FR at 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,* 43 FR at 27,617.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Siamak Arassi, M.D.; Decision and Order

On May 24, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Siamak Arassi, M.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1 at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BA8851809 at the registered address of 19115 W Capitol Dr., Suite 117, Brookfield, Wisconsin 53045. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''currently without authority to handle controlled substances in the State of Wisconsin,'' the state in which he is registered with DEA. *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to be in default. OSC, at 2 (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].'' 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 Registrant's default pursuant to 21 CFR 1301.43(c), (f). *See also id.* § 1316.67.

**Findings of Fact**

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, on February 15, 2023, the State of Wisconsin Medical

[1] On June 1, 2023, a DEA Diversion Investigator (DI) emailed Registrant at his personal email address, attaching a copy of the OSC with a delivery and read receipt request. RFAAX 2, at 2. DI received notification that the email was delivered successfully. *Id.* Registrant responded on the same day by email but did not request a hearing. RFAAX 2, Attachment E. Based on the information in the record, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA, at 2 (citing *Emilio Luna, M.D.,* 77 FR 4829, 4830 (2012) (finding service via email can satisfy due process)).