prescriptions for powerful controlled substances at night, in a parking lot, in a manner designed to avoid detection. Both then and now, Respondent has responded with calculated, inconsistent statements designed to escape culpability. In *Gonzales* v. *Oregon,* 546 U.S. 243, 270 (2006), the Supreme Court made clear that DEA has authority under the Controlled Substances Act to bar illicit drug dealing and trafficking as traditionally understood. Respondent, in this case, engaged in conduct that constitutes drug trafficking as traditionally understood, and, accordingly, the appropriate sanction is denial of his application for a DEA registration.

Accordingly, it is herein respectfully recommended that Respondent's application for a DEA registration be *denied*.

Dated: April 9, 2021.

Teresa A. Wallbaum,

Administrative Law Judge.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the pending application for a Certificate of Registration, Control Number W19061136C, submitted by Stephen E. Owusu, D.P.M., as well as any other pending application of Stephen E. Owusu, D.P.M., for additional registration in New York. This Order is effective February 22, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–01108 Filed 1–20–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–1]

Alex E. Torres, M.D.; Decision and Order

On August 11, 2021, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Alex E. Torres, M.D. (hereinafter, Respondent) of San Diego, California. OSC, at 1 and 3. The OSC proposed the revocation of Respondent's Certificate of Registration No. BT1734943. *Id.* at 1. It alleged that Respondent is ''without authority to handle controlled substances in California, 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 March 18, 2021, Respondent entered into a Stipulated Surrender of License and Order (hereinafter, Stipulated Surrender) with the Medical Board of California (hereinafter, the Board) ''whereby [Respondent] agreed to surrender [his] California state medical license.'' *Id.* According to the OSC, Respondent agreed to the Stipulated Surrender after the Board alleged, *inter alia,* that ''[Respondent] negligently treated three patients, failed to maintain adequate and accurate records, and [was] impaired due to mental illness.'' *Id.* The OSC stated that the Board issued its Decision adopting the Stipulated Surrender on March 22, 2021, with the Decision becoming effective on March 29, 2021. *Id.*

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

By letter dated October 12, 2021, Respondent timely requested a hearing.[1] Administrative Law Judge Exhibit (hereinafter, ALJX) 4 (Request for Hearing), at 1. According to the Request for Hearing, ''[Respondent] never agreed to surrender his California DEA license . . . [and] the [Board] didn't make any claim against [Respondent's] DEA license.'' *Id.* at 2. Further, the Request for Hearing states that ''[d]uring [the Board] process [Respondent] denied the allegations against him.'' *Id.* According to the Request for Hearing, ''[n]one of the allegations against [Respondent] were related to drug prescription [sic]'' and ''the patient's [sic] allegations against [Respondent] were made because he refused to prescribe them controlled pain medications.'' *Id.* Finally, the Request for Hearing states that, ''[t]he mental illness claimed by [the Board] was refuted and proved wrong with a psychiatric evaluation performed to [Respondent] after the Board alleged [that] he was mentally ill.'' *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Paul E. Soeffing (hereinafter, the ALJ). The ALJ issued the Briefing Schedule on October 13, 2021. On October 21, 2021, the Government timely filed its Notice of Filing of Evidence and Motion for Summary Disposition (hereinafter, Government's Motion). 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 (hereinafter, Recommended Decision or RD), at 2. In its Motion, the Government ''request[ed] summary disposition and a recommendation that Respondent's DEA Certificate of Registration as a practitioner be revoked based on his lack of authority to handle controlled substances in the State of California, the state in which he is registered with the DEA.'' Government's Motion, at 5. Respondent did not answer the Government's Motion.[2] He did, however, address the OSC and the Government's allegations in his Request for Hearing. Request for Hearing, at 1–2. I have reviewed and considered the Request for Hearing as part of, and along with, the entire record before me.

The ALJ issued his Recommended Decision on November 2, 2021, granting the Government's Motion and finding that ''[a]s the Respondent does not have authority as a practitioner in California, there is no other fact of consequence for [the] tribunal to decide in order to determine whether or not he is entitled to hold a [DEA registration].'' RD, at 6. Further, the ALJ recommended that Respondent's DEA registration be revoked and that any application to renew or modify his registration and any applications for any other DEA registrations in California be denied ''based on [Respondent's] lack of state authority to practice medicine or handle controlled substances in California.'' *Id.* at 6–7. By letter dated November 29, 2021, the ALJ certified and transmitted the record to me for final Agency action. In the letter, the ALJ advised that no exceptions were filed by either party. Transmittal Letter, at 1.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

[1] The Request for Hearing was filed on October 13, 2021. Order for Evidence of Lack of State Authority and Directing the Government to File Evidence Regarding the Service of the Order to Show Cause (hereinafter, Briefing Schedule), at 1. I find that the Government's service of the OSC was adequate and that the Request for Hearing was timely filed on October 13, 2021. *See* RD, at n.1.

[2] I find that the Office of Administrative Law Judges properly served Respondent on all occasions. The Certificate of Service for the Government's Motion certifies that the Government served Respondent's counsel at the email address provided in Respondent's Request for Hearing. Request for Hearing, at 1–2.

Findings of Fact

Respondent's DEA Registration

According to Agency records, Respondent is the holder of DEA Certificate of Registration No. BT1734943 at the registered address of 4982 1/2 Field St. San Diego, CA 92110. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. Respondent's registration expired on November 30, 2021.[3]

The Status of Respondent's State License

On January 31, 2020, the Medical Board of California (hereinafter, the Board) issued an Accusation against Respondent. Government Exhibit (hereinafter, GX) 2, Appendix (hereinafter, App.) A, at 10. The Accusation detailed four causes for discipline against Respondent regarding his treatment of three patients, including repeated negligent acts, failure to maintain adequate and accurate records, unprofessional conduct, and violation of the Medical Practice Act. *Id.* at 13–15. The Accusation also stated that Respondent was ''subject to Board action in that his ability to practice medicine safely [was] impaired because he [was] mentally ill, or physically ill, affecting competency.'' *Id.* at 16. According to the Accusation, in or around December 2018, Respondent received a mental examination in which the examining physician ''concluded that Respondent's ability to practice medicine safely [was] impaired due to mental illness.'' *Id.*

On March 18, 2021, the Board issued its Stipulated Surrender of License and Order (hereinafter, Stipulated Surrender). *Id.* at 3 and 8. According to the Stipulated Surrender, ''Respondent [did] not contest that, at an administrative hearing, [the Board] could establish a *prima facie* case with respect to all of the charges and allegations in [the Accusation].'' *Id.* at 5. Further, according to the Stipulated Surrender, ''Respondent further [agreed] that his [California medical license] [was] subject to disciplinary action and [thereby surrendered] his [California medical license] for the Board's formal acceptance.'' *Id.* The Stipulated Surrender ordered Respondent's medical license surrendered and was signed by Respondent and his attorney. *Id.* at 7–8. On March 22, 2021, the Stipulated Surrender was adopted by the Board, effective March 29, 2021.[4] *Id.* at 2.

According to California's online records, of which I take official notice, Respondent's license is still surrendered.[5] Medical Board of California License Verification, *https://www.mbc.ca.gov/License-Verification* (last visited date of signature of this Order). California's online records show that Respondent's medical license remains surrendered and that Respondent is not authorized in California to practice medicine. *Id.*

Accordingly, I find that Respondent is not licensed to engage in the practice of medicine in California, the state in which Respondent 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; *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.

According to California statute, ''dispense'' 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, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Cal. Health & Safety Code § 11010 (West, current with urgency legislation through Ch. 770 of 2021 Reg. Sess). Further, a ''practitioner'' means a person ''licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.'' *Id.* at § 11026(c). Because Respondent is not currently licensed as a physician, or otherwise licensed in California, he is not authorized to dispense controlled substances in California.

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

[3] The fact that Respondent allowed 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).

[4] On March 30, 2021, the Board issued a correction to a clerical error regarding Respondent's license number in the order adopting the Stipulated Surrender. *See Id.* at 1.

[5] 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.*

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. BT1734943 issued to Alex E. Torres. 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 Alex E. Torres to renew or modify this registration, as well as any other pending application of Alex E. Torres for additional registration in California. This Order is effective February 22, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–01109 Filed 1–20–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Report to Congress and the Office of Management and Budget Regarding the Review Financial Assistance and the Requirements of Buy America

ACTION: Notice of report.

SUMMARY: The report indicates that the Department has not identified any programs that are inconsistent with Buy America requirements of section 70914 of the Act. The report identifies the YouthBuild program as the only Federal financial assistance program related to infrastructure and notes that the grant agreements for that program include the Buy America requirements.

DATES: The Acting Chief Financial Officer approved this report on January 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dylan Sacchetti, 202.693.8105 or at 200 Constitution Ave. NW, Room S–4205, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: The ''Build America, Buy America Act,'' which was included in the Infrastructure Investment and Jobs Act (the Act) (Pub. L. 117–58), requires under section 70913 that each Federal agency submit a report to the Office of Management and Budget (OMB) and to Congress, and publish it in the **Federal Register**, within 60 days of its enactment. In the report, Federal agencies are required to:

(1) Identify and evaluate all infrastructure programs to determine whether a program is inconsistent with section 70914 of the Act;

(2) identify all domestic content procurement preferences applicable to the Federal financial assistance program related to infrastructure;

(3) assess the applicability of the domestic content procurement preference requirements, including: (A) Section 313 of title 23, United States Code; (B) section 5323(j) of title 49, United States Code; (C) section 22905(a) of title 49, United States Code; (D) section 50101 of title 49, United States Code; (E) section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388); (F) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(4)); (G) section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3 3914); (H) any domestic content procurement preference included in an appropriations Act; and (I) any other domestic content procurement preference in Federal law (including regulations);

(4) provide details on any applicable domestic content procurement preference requirement, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement; and

(5) include a description of the type of infrastructure projects that receive funding under the program, including information relating to: (A) The number of entities that are participating in the program; (B) the amount of Federal funds that are made available for the program for each fiscal year; and (C) any other information the head of the Federal agency determines to be relevant.

Report

The Department of Labor (the Department) did not receive appropriated funds under the Infrastructure Investment and Jobs Act (the Act).

The Department reviewed its infrastructure programs and has not identified any programs that are inconsistent with section 70914 of the Act.

The Department identified YouthBuild as a Federal financial assistance program related to infrastructure. YouthBuild is a youth training program that provides training and educational services to youth (16–24 years old) using construction and other techniques. This program receives approximately $90 million in annual funding. The Department's Employment and Training Administration awards approximately 65–80 grants each year. A small percentage of the funds is used by recipients to purchase building supplies for building and/or refurbishing houses. Since at least 2014, grant agreements for this program have contained the domestic content procurement preference requirement (*i.e.,* the Buy American requirement.)

The Department applies the domestic content procurement preference requirement for YouthBuild, by including the following term in all grant agreements:

Pursuant to E.O. 14005, Ensuring the Future Is Made in All of America by All of America's Workers, the grant award recipient agrees to comply with all applicable Made in America Laws (as defined in the E.O.), including the Buy American Act at 41 U.S.C. 8301–8305. For the purposes of this award, the grant recipient is required to maximize the use of goods, products, and materials produced in, and services offered in, the United States, in accordance with the Made in America Laws. No funds may be made available to any person or entity (including as a contractor or subrecipient of the grant recipient) that has been found to be in violation of any Made in America Laws. ''Made in America Laws'' means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to ''Buy America'' or ''Buy American,'' that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Pub. L. 66–261), also known as the Jones Act.

The Department does not have any additional information to provide relating to domestic content procurement preference requirements, including the purpose, scope, applicability and any exceptions and waivers issued under the requirement.

Signed on this day at Washington, DC, on this 14th day of January, 2022.

Kevin L. Brown,

Deputy Chief Financial Officer.

[FR Doc. 2022–01121 Filed 1–20–22; 8:45 am]

BILLING CODE 4510–7C–P