DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act Of 1993—AI Infrastructure Alliance, Inc.

Notice is hereby given that, on April 18, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AI Infrastructure Alliance, Inc. (''AIIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kognic AB, Gothenburg, SWEDEN; Manot, Inc., Glendale, CA; Fennel AI, Menlo Park, CA; Arthur, New York, NY; and MakinaRocks, Seoul, SOUTH KOREA, have been added as parties to this venture.

Also, Neuro Inc., San Francisco, CA; and DataRobot, Inc., Boston, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AIIA intends to file additional written notifications disclosing all changes in membership.

On January 5, 2022, AIIA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 10, 2022 (87 FR 13759).

The last notification was filed with the Department on January 20, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2023 (88 FR 18179).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David H. Marcowitz, D.O.; Decision and Order

On January 11, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to David H. Marcowitz, D.O. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FM6860818 at the registered address of 17019 County Farm Road, Rushville, Illinois 62681. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''currently without authority to handle controlled substances in Illinois, 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 have waived his right to a hearing and be in default. OSC, at 2 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 1.[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 September 9, 2021, both Registrant's Illinois medical license and Registrant's Illinois controlled substance license were suspended. RFAAX 2, at 1.

According to Illinois' online records, of which the Agency takes official notice, both Registrant's Illinois medical license and Registrant's Illinois controlled substance license remain suspended.[2] Illinois Department of Financial and Professional Regulation, License Lookup, *https://online-dfpr.micropact.com/lookup/licenselookup.aspx* (last visited date of signature of this Order). Therefore, the Agency finds that Registrant is not authorized to practice medicine nor to handle controlled substances in Illinois, 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 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. *See, e.g., James L. Hooper, D.O.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.,* 43 FR 27616, 27617 (1978).[3]

[1] Based on the Government's submissions in its RFAA dated May 2, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the included Declaration of a DEA Diversion Investigator asserts that on January 11, 2023, Registrant was personally served with the OSC at his private residence. RFAAX 3, at 1.

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

[3] 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(g)(1) (this section, formerly section 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. 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 71371–72; *Sheran Arden Yeates, D.O.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.,* 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR 27617.

Pursuant to the Illinois Controlled Substances Act, a ''practitioner'' means ''a physician licensed to practice medicine in all its branches . . . or other person licensed, registered, or otherwise lawfully permitted by the United States or this State to distribute [or] dispense . . . a controlled substance in the course of professional practice or research.'' 720 Ill. Comp. Stat. Ann. 570/102(kk) (2023). Further, the Illinois Controlled Substances Act requires that ''[e]very person who manufactures, distributes, or dispenses any controlled substances . . . must obtain a registration issued by the Department of Financial and Professional Regulation in accordance with its rules.'' *Id.* 570/302(a).[4]

Here, the evidence in the record is that Registrant currently lacks authority to handle controlled substances in Illinois because both his Illinois medical license and his Illinois controlled substance license are suspended. As already discussed, a practitioner must hold a valid controlled substance license to dispense a controlled substance in Illinois. Thus, because Registrant lacks authority to handle controlled substances in Illinois, 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. FM6860818 issued to David H. Marcowitz, D.O. 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 David H. Marcowitz, D.O., to renew or modify this registration, as well as any other pending application of David H. Marcowitz, D.O., for additional registration in Illinois. This Order is effective September 13, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on August 7, 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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[4] The Illinois Controlled Substances Act also authorizes the Department of Financial and Professional Regulation to discipline a practitioner holding a controlled substance license, stating that ''[a] registration under Section 303 to manufacture, distribute, or dispense a controlled substance . . . may be denied, refused renewal, suspended, or revoked by the Department of Financial and Professional Regulation.'' *Id.* 570/304(a).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–43]

Weise Prescription Shop Inc.; Decision and Order

I. Introduction

On July 7, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Weise Prescription Shop Inc. (Respondent).[1] OSC, at 1–4. Citing 21 U.S.C. 824(a)(2), the OSC proposes the revocation of Respondent's registration, and the denial of ''any applications for renewal or modification of such registration and any applications for any other DEA registration,'' ''because Mr. Gilbert Weise, Jr. has been convicted of a felony offense relating to federal controlled substance laws.'' [2] *Id.* at 1.

II. Summary of Proceedings

Respondent timely requested a hearing. In due course, the Government submitted a Motion for Summary Disposition (MSD). Government's Notice of Filing of Evidence and Motion for Summary Disposition (October 28, 2022) (First MSD). Respondent opposed the MSD. Respondent's Response in Opposition to Government's Motion for Summary Disposition (November 2, 2022) (Resp Opp. to First MSD). Respondent, among other things, argued that the Government's First MSD was meritless because there are ''questions of fact involved,'' there are ''material facts in dispute,'' and there is disagreement as to ''material facts.'' [3] Resp Opp. to First MSD, at 4.

The Administrative Law Judge (ALJ) issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision granting the Government's First MSD on November 16, 2022 (First RD) and transmitted the record to the Office of the Administrator on December 12, 2022. Her transmittal letter states that no evidentiary hearing was held, no factual issues were involved, and neither party filed Exceptions to the First RD.[4]

While it was appropriate for the ALJ to adjudicate the First MSD, the granting of the First MSD should not have ended the proceedings. *See, e.g., Garrett Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). Accordingly, the Agency remanded the matter for further proceedings, encouraging the ALJ to exercise her discretion and to develop the record to allow for the determination of an appropriate sanction. *E.g.,* 21 CFR 1316.50, 1316.65.

On remand, the Government filed another MSD, a Request for Official Notice, and a Request to File a Supplemental Prehearing Statement. The basis of the Government's second MSD (Second MSD) is Respondent's lack of legal authority to operate as a pharmacy in Florida.[5] It is Respondent's

[1] Certificate of Registration No. AW0201474 at the registered address of 4343 Colonial Avenue, Jacksonville, Florida 32210. OSC, at 1.

[2] According to the OSC, Mr. Gilbert Weise, Jr. is an owner of Respondent. OSC, at 2. The OSC alleges that a ''corporate registrant's registration 'may be revoked upon a finding that a natural person who is an owner, officer, key employee, or an individual who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances.' '' *Id.*

In its Prehearing Statement, Respondent named Mr. Weise, Jr. as a proposed hearing witness and stated that he ''has retained counsel to seek to withdraw his [guilty] plea and further seek collateral relief'' due to the Supreme Court's opinion in *Ruan* v. *United States,* 142 S. Ct. 2370 (2022). Resp. Prehearing, at 4; *see also Weise* v. *United States of America,* No. 2:22–cv–00106 (S.D. Ga. filed Oct. 7, 2022).

[3] For example, Respondent's opposition argues that (1) Mr. Weise, Jr.'s ''alleged criminal conviction . . . related to events occurring from on or about October 9, 2014 to and including June 13, 2017,'' (2) Mr. Weise, Jr. ''did not have an ownership interest'' in Respondent ''between October 9, 2014 to and including June 13, 2017,'' (3) the OSC ''seeks revocation . . . because . . . [Mr. Weise, Jr.] 'was a co-owner of Weise and the Pharmacist in Charge *at the time of his illegal activity,*' '' and (4) the Exhibits filed with the Government's First MSD are unauthenticated, uncertified, or otherwise inadmissible. Resp Opp. to First MSD, at 2–3.

[4] Though Respondent never filed exceptions, it did file a ''Motion for Extension of Time to File Motion for Reconsideration'' stating that it ''intend[ed] to seek reconsideration or other relief related to this Order.'' That motion was denied, but in so doing, the ALJ pointed out that the deadline for filing exceptions was after the date through which Respondent requested an extension. Order Denying Respondent's Motion for Extension to File a Motion for Reconsideration, at n.1.

[5] The ALJ granted the Second MSD. Order Granting the Government's Second Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (May 4, 2023) (Second RD), at 2, 5.