

believe that Respondent's future controlled substance prescription filling will comply with legal requirements.¹⁰ Indeed, Respondent's owner/PIC's own testimony suggests that he has no intention of complying with the CSA in the future because he believes compliance is unduly burdensome.¹¹

Further, given the foundational nature and vast number of Respondent's violations, a sanction less than revocation would send a message to the existing and prospective registrant community that compliance with the law is not a condition precedent to maintaining a registration.

The Agency finds that it cannot entrust Respondent with a registration.¹² It finds that Respondent's actions were motivated by profiting while avoiding DEA's detection and lacked any genuine care for the health and welfare of its customers. For example, the record evidence shows that Respondent coached customers regarding what to write on their forms in order to get the desired controlled substances, *see, e.g.*, GX 5, at 3, 4, and shows the complete willingness of Respondent's owner/PIC to continue to fill the controlled substance prescriptions that S/A and undercover officer "sponsors" were bringing him. GX 5, at 1, 7.¹³

Respondent's owner/PIC's testimony regarding those matters further erodes the Agency's trust in the truthfulness of Respondent's owner/PIC and in the

¹⁰ The Agency notes the record evidence, in GX 5, of two incidents when Respondent's owner/PIC declined to provide the undercover officers with additional controlled substances without a prescription. GX 5, at 6, 8–9. These incidents do not excuse Respondent's owner/PIC's otherwise laser-focused pursuit of controlled substances sales regardless of legal requirements. *Supra* section II.

¹¹ Respondent's owner/PIC testified that "filling controls is a lot of headache. You have to record it down, you have to go through a lot of process, and nobody wants to deal with that." Tr. 297. Respondent's owner/PIC further testified that when he worked for larger pharmacies in the past, he would tell customers that controlled substances were not in stock because he got paid the same amount whether he filled controlled or non-controlled substances. *Id.* He testified, "why would pharmacies . . . want to fill a control medication for somebody when it can come back to haunt him when he can say I don't have it, I will fill just the non-controls." *Id.*

¹² While only the evidence relating to the found violation, *supra*, was used to determine that the Government made a *prima facie* case, the entire record supports the Agency's determination that Respondent's owner/PIC is not credible and that, therefore, the Agency cannot entrust Respondent with a registration.

¹³ GX 5, at 1 ("S/A: 'Can I drop you some more scripts?' . . . Respondent's owner/PIC: 'How many is there?'"); GX 5, at 7 ("Undercover Officer: 'I got some more people I'm taking to the doc. you good with me bringing them here again? Um next week.' . . . Respondent's owner/PIC: 'Next week, yeah, next week that's fine.'").

ability of Respondent to maintain a registration in compliance with the law.

In sum, the record supports the imposition of a sanction because Respondent did not unequivocally accept responsibility for its egregious and extensive violations, and has not convinced the Agency that it can be entrusted with a registration.

Accordingly, the Agency shall order the sanction the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a)(4), I hereby revoke DEA registration No. FA5493363 issued to APEXX Pharmacy, LLC. 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 application of APEXX Pharmacy, LLC, for a DEA Registration in Florida. This Order is effective January 16, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 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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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Gary R. Wisner, M.D.; Decision and Order

On March 1, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Gary R. Wisner, M.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant's Certificates of Registration (COR) Nos. FW8432471 and AW2971073 at the registered addresses of 621 S. Ham Ln., Ste. A, Lodi,

California 95242, and 16246 N. Locust Tree Road, Lodi, California 95240, respectively. *Id.* at 1. The OSC alleged that Registrant's registrations should be revoked because Registrant was "without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of California, the state in which [he is] registered with DEA." *Id.* at 2 (citing, *inter alia*, 21 U.S.C. 824(a)(3); 21 CFR 1301.37(b)).

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. *Id.* at 2 (citing 21 CFR 1301.43(c)(1)). 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] 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), and 1301.46. RFAA, at 1.

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, "[e]ffective January 30, 2023, as part of an agreement with the [Medical Board of California] . . . [Registrant] surrendered [his] license to practice medicine in the State of California." RFAAX 1, at 1–2.

According to California's online records, of which the Agency takes official notice, the status of Registrant's physician and surgeon license (type A) is listed as surrendered, and he is not permitted to practice.² California

¹ Based on the Government's submissions in its RFAA dated August 3, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the included declaration by a DEA Diversion Investigator (DI) indicates that on March 13, 2023, the DI personally "served [Respondent] a copy of the [OSC] by hand delivery." RFAAX 2, 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

Department of Consumer Affairs, License Search, <https://search.dca.ca.gov/> (last visited date of signature of this Order). Therefore, the Agency finds that Registrant is not currently authorized to dispense or handle controlled substances in California, 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, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.*, 43 FR 27616, 27617 (1978).³

According to California statute and relevant to Registrant’s COR, “[n]o person other than a physician . . . shall

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. 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). 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, 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.

write or issue a prescription.”⁴ Cal. Health & Safety Code 11150. Further, “physician,” as defined by California statute, is a person who is “licensed to practice” in California. *Id.* 11024.

Here, the evidence in the record is that Registrant currently lacks authority to handle controlled substances in California because his California physician and surgeon license has been surrendered. As already discussed, a person must hold a valid license to dispense a controlled substance in California. Thus, because Registrant lacks authority to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registrations 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 Certificates of Registration Nos. FW8432471 and AW2971073 issued to Gary R. Wisner, 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 Gary R. Wisner, M.D., to renew or modify these registrations, as well as any other pending application of Gary R. Wisner, M.D., for additional registration in California. This Order is effective January 16, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 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 Although additional specified categories of persons are permitted to write or issue prescriptions, none of those practitioner categories are applicable to Registrant.

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Request for Nominations

AGENCY: Bureau of Labor Statistics (BLS), Department of Labor.

ACTION: Request for nominations.

SUMMARY: The BLS is soliciting new members for the Technical Advisory Committee (TAC) to address four member terms expiring on April 13, 2024, and any additional vacancies that may occur on the TAC between the date of publication of this notice and April 13, 2024.

DATES: Nominations for the TAC membership should be transmitted by January 16, 2024.

ADDRESSES: Nominations for the TAC membership should be emailed to BLSTAC@bls.gov. Nominations are only being accepted through email as BLS is in maximum telework status pending its relocation to Suitland.

FOR FURTHER INFORMATION CONTACT: Jay Stewart, Senior Research Economist, U.S. Bureau of Labor Statistics. Telephone: 202–691–7376. This is not a toll-free number. Email: BLSTAC@bls.gov.

SUPPLEMENTARY INFORMATION: The TAC provides advice to the Bureau of Labor Statistics on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. On some technical issues, there are differing views and receiving feedback at public meetings provides BLS with the opportunity to consider all viewpoints.

The Committee consists of approximately 16 members who serve as Special Government Employees. Members are appointed by the BLS and are approved by the Secretary of Labor. Committee members are experts in economics, statistics, data science, and survey design. Members typically have Ph.D.s in their field and have significant experience. They are prominent experts in their fields and recognized for their professional achievements and objectivity. The economic experts will have research experience with technical issues related to BLS data and will be familiar with employment and unemployment statistics, price index numbers, compensation measures, productivity measures, occupational and health statistics, or other topics relevant to BLS data series. The statistical experts will have experience with sample design, data analysis,