because there was ''no evidence that [respondent] recognized the extent of his misconduct and was prepared to remedy his prescribing practices''); *see also T.J. McNichol, M.D.,* 77 FR 57,133 (2012) (stating that ''it is appropriate to draw an adverse inference from Respondent's failure to testify.'').

Indeed, the facts on the record irrefutably demonstrate that Respondent cannot be entrusted to amend her behavior. The State of Florida Administrative Complaint, dated January 20, 2017, notified Respondent that she should discontinue prescribing after learning that a patient is diverting. RX 11, at 19. Days later, on January 25, 2017, Respondent prescribed to Y.H. following an admission of diversion. *See supra* II(G)(3). On or about February 8, 2017, Respondent signed a Settlement Agreement (which became a Final Order on April 21, 2017), wherein Respondent agreed to not violate Chapters 456, 458 or 893 of the Florida Statutes or any other state or federal law relating to the practice of medicine. RX 11, at 15. Yet, on both July 18, 2017, and on August 30, 2017, Respondent violated those laws when she again issued prescriptions (this time to L.G.) following an admission of diversion. *See supra* II(H)(2) and (3).

The Agency also looks to the egregiousness and extent of the misconduct which are significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR at 18,910 (collecting cases). In this case, I agree with the ALJ that Respondent's actions can be characterized as ''particularly egregious.'' RD, at 100. On six separate occasions over an eleven-month period, Respondent issued twelve prescriptions to confidential sources without having conducted a physical exam or warning of the potential risks in violation of state law. *Supra* III(A)(2)(a); RD, at 104. Furthermore, Respondent issued prescriptions to the confidential sources immediately after those confidential sources admitted to diverting the medication. *Supra* III(A)(2)(a)(i); Tr. 221. As a separate matter, the medical records that Respondent maintained on the confidential sources not only contained false information, but they did not document any physical examinations, medical history, or periodic reviews. *See supra* II(I). I agree with the ALJ's finding ''that [Respondent's] misconduct of diversion and falsifying records to cover it up, as proven in the Administrative Record, is egregious and supports the revocation of her registration.'' RD, at 104.

In sanction determinations, the Agency has historically considered its interest in deterring similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Joseph Gaudio, M.D.,* 74 FR 10,083, 10,095 (2009); *Singh,* 81 FR at 8248. I agree with the ALJ who found ''that considerations of both specific and general deterrence weigh in favor of revocation in this case.'' RD, at 105. There is simply no evidence that Respondent's egregious behavior is not likely to recur in the future such that I can entrust her with a CSA registration; in other words, the factors weigh in favor of revocation as a sanction.

I will therefore order that Respondent's registration be revoked and that any pending applications be denied 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), I hereby revoke DEA Certificate of Registration No. FG0560765 issued to Jeanne E. Germeil, M.D. 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 Jeanne E. Germeil, M.D. to renew or modify this registration, as well as any other pending application of Jeanne E. Germeil, M.D. for registration in Florida. This Order is effective December 21, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–25528 Filed 11–18–20; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Hil Rizvi, M.D.; Decision and Order

On July 20, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Hil Rizvi, M.D. (hereinafter, Registrant) of Tyrone, Pennsylvania. OSC, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BR4988599. It alleged that Registrant is without ''authority to handle controlled substances in Pennsylvania, the state in which [Registrant is] registered with DEA.'' *Id.* at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that the Pennsylvania State Board of Medicine (hereinafter, the Board) revoked Registrant's license to practice medicine effective October 28, 2018.[1] *Id.* The OSC concluded that ''DEA must revoke [Registrant's] DEA registration based on [his] lack of authority to handle controlled substances in the State of Pennsylvania.'' *Id.* at 2.

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

Adequacy of Service

In a Declaration dated August 20, 2020, the Chief of Police for the Borough of Tyrone Police Department, stated that on July 22, 2020, he, another police officer, and two DEA Diversion Investigators (hereinafter, DIs) traveled to Registrant's registered address located at 910 Pennsylvania Avenue, Tyrone, PA 16686. Request for Final Agency Action dated July 10, 2019 (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 8, at 2 (Chief of Police's Declaration). The Chief of Police stated that upon arrival at the registered address, ''[he] knocked repeatedly on the office door to no response.'' *Id.* The team then proceeded to Registrant's residence and again, ''knock[ed] repeatedly on the front door of the residence,'' but there was no answer. *Id.* The Chief of Police then stated that ''[a]fter unsuccessful attempts at reaching [Registrant] on his landline and cell telephone numbers, [he] left [his] business card in the front door slot of the residence.'' *Id.* Later that afternoon, the Chief of Police received a phone call from Registrant at the telephone number on his business card. *Id.* at 3. The Chief of Police stated that he had a letter to deliver, but Registrant ''insisted'' that he was not in town ''despite placing a call to [the Chief of Police] at the business card [he] left at the residence earlier that day.'' *Id.* Following the phone call, the Chief of Police ''immediately returned to [Registrant's] office location. When [he] knocked on the front door of the office, [Registrant] answered. [He] then handed the envelope containing the [OSC] to [Registrant] and left the premises.'' *Id.*

The DEA DI assigned to the case stated that ''[s]tarting immediately after his July 22, 2020 receipt of the [OSC], and on several occasions since, [the DI has] received numerous calls and an

[1] It is noted that the effective date of the Order was September 12, 2018. *See* Request for Final Agency Action, at 1 n.1; Exhibit 3, at 12.

email from [Registrant], all with regard to his disagreement with being served with the OTSC.'' RFAAX 12, at 4 (Declaration of DEA DI, dated September 2, 2020). The Government's evidence includes an email from Registrant on July 22, 2020, which was sent to the email address provided for submission of a Corrective Action Plan (hereinafter, CAP). RFAAX 6 (Email from Registrant on July 22, 2020). The Assistant Administrator for Diversion treated the email from Registrant as a proposed CAP and denied the CAP on July 23, 2020. RFAAX 7, at 1 (Letter Denying CAP). Based on all of the above, I find that the OSC was served on July 22, 2020.

The Government forwarded its RFAA, along with the evidentiary record, to this office on September 3, 2020. In its RFAA, the Government represents that ''more than thirty days have passed since Registrant received the [OSC]; however, Registrant has not submitted to DEA a request for a hearing . . . Aside from the aforementioned CAP request, and sporadic, nonpertinent communications with DEA personnel (outlined below), Registrant has not otherwise filed a response with the agency following the issuance of the [OSC].'' RFAA, at 2.

The Government asserts that DEA cannot ''maintain the registration of a practitioner not duly authorized to handle controlled substances in the state in which he conducts business'' and requests revocation. *Id.* at 6.

Based on the DI's and the Chief of Police's Declarations, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on July 22, 2020. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Accordingly, I find that Registrant has waived the right to a hearing and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). Although it is unclear whether the email that DEA received from Registrant is a written statement or a Proposed Corrective Action Plan from Registrant in accordance with 21 CFR 1301.43(c), I have considered it under both. RFAAX 6, at 12. In the email, Registrant stated that the license dispute is pending in Pennsylvania court and that ''the license dispute is NOT about clinical issues or malpractice or drug diversion.'' *Id.* (emphasis in original). Although I have considered Registrant's statement, it does not present any issue of fact or law that could affect my final decision, as explained herein. I also agree with the Assistant Administrator of the Diversion Control Division, that if the email was intended to be a Proposed Corrective Action Plan, it provides no basis for me to discontinue or defer this proceeding. *See* RFAAX 7, at 1. I issue this Decision and Order based on the record submitted by the Government, including Registrant's statement, which constitutes the entire record before me. 21 CFR 1301.43(e).

Findings of Fact

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BR4988599 at the registered address of 910 Pennsylvania Avenue, Tyrone, PA 16686. RFAAX 1 (Registrant's Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner-DW/275. RFAAX 2 (Certification of Registration History). Registrant's registration expires on April 30, 2023, and is ''in an active pending status until the resolution of administrative proceedings.'' *Id.* at 1.

The Status of Registrant's State License

On September 12, 2018, the Commonwealth of Pennsylvania State Board of Medicine issued an Order (hereinafter, Board Order) revoking Registrant's license to practice medicine in Pennsylvania effective immediately. RFAAX 3, at 12. According to the Board Order, Registrant's Ohio license to practice medicine was revoked and his Maine application to practice medicine was denied. *Id.* at 8. The Board stated that those state actions ''indicate that [Registrant] has engaged in a multi-year and multi-state history of providing false, misleading or knowingly incomplete information in association with his applications for licensure and renewal and that he failed to properly advise a board of negative information regarding arrests as required.'' *Id.* The Board therefore concluded that Registrant was ''essentially an individual who cannot be effectively regulated by the Board.'' *Id.* at 9.

According to Pennsylvania's online records, of which I take official notice, Registrant's license is still revoked.[2] Pennsylvania Licensing System Verification Service, *https://www.pals.pa.gov/#/page/search* (last visited October 27, 2020).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Pennsylvania, the state in which Registrant 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 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (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

[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 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 shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any motion and response shall be filed and served by email to the other party and to the Office of the Administrator at *dea.addo.attorneys@dea.usdoj.gov.*

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 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

Pennsylvania law defines a ''practitioner'' as ''(i) a physician . . . licensed, registered or otherwise permitted to distribute, dispense . . . or to administer a controlled substance . . . in the course of professional practice or research in the Commonwealth of Pennsylvania.'' 35 Pa. Stat. and Cons. Stat. Ann. § 780–102 (West 2020). Pennsylvania law further defines a ''physician,'' as a ''medical doctor,'' and a ''medical doctor,'' as an ''individual who has acquired'' a license ''to practice medicine and surgery issued by the board.'' Pa. Stat. and Cons. Stat. Ann. § 422.2 (West 2019). Pennsylvania law prohibits ''[t]he administration, dispensing, delivery, gift or prescription of any controlled substance by any practitioner . . . unless done (i) in good faith in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession.'' 35 Pa. Stat. and Cons. Stat. Ann. § 780–113(14) (West 2019). Additionally, the statute prohibits ''knowingly or intentionally possessing a controlled . . . substance by a . . . practitioner not registered or licensed by the appropriate state board.'' *Id.* at § 780–113(15).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine and surgery in Pennsylvania. A practitioner, who is a physician and a medical doctor, must be licensed and cannot prescribe or possess controlled substances in his professional practice without a license. *Id.* § 780–113(14), (15). Because Registrant lacks authority to practice medicine in Pennsylvania and, therefore, is not authorized to possess or prescribe controlled substances in Pennsylvania, Registrant is not eligible to maintain a DEA registration. Accordingly, I 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. BR4988599 issued to Hil Rizvi, M.D. This Order is effective December 21, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–25527 Filed 11–18–20; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20–24]

Jonathan Rosenfield, M.D.; Decision and Order

On June 18, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Jonathan Rosenfield, M.D. (hereinafter, Respondent) of Houston, Texas, and Grand Forks, North Dakota. OSC, at 1. The OSC proposed the revocation of Respondent's Certificates of Registration Nos. FR7251642 and FR5327285. *Id.* It alleged that Respondent is without ''authority to handle controlled substances.'' *Id.* (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on ''October 10, 2019, the Texas Medical Board issued an Order of Temporary Suspension, suspending [Respondent's] Texas medical license. That order remains in effect.'' *Id.* at 2. The OSC further stated that ''[s]ubsequently, on December 30, 2019, [Respondent] entered into a Stipulation and Non-Practice Agreement with the North Dakota Board of Medicine in which [Respondent] agreed not to practice medicine in the State of North Dakota and in which [Respondent] agreed that [his] North Dakota medical license will be inactive for all purposes.'' *Id.* The OSC concluded that ''DEA must revoke [Respondent's] DEA registrations based on [his] lack of authority to handle controlled substances in the State of Texas and the State of North Dakota.'' *Id.* (citing 21 U.S.C. 824(a)(3); 21 CFR 1301.37(b)).

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)).

On July 30, 2020, Respondent, through counsel, requested a hearing, stating that his ''medical license in Texas is only temporarily suspended'' and he ''maintains an active medical license in Ohio and Georgia.'' Request for a Hearing, at 1.

The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Law Judge John J. Mulrooney II (hereinafter, Chief ALJ), who issued an Order Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule on July 30, 2020, with which the Government complied by filing a Motion for Summary Disposition (hereinafter, Govt Motion) on August 10, 2020.

In its Motion, the Government submitted evidence that the ''Texas Medical Board issued an Order of Temporary Suspension, suspending Respondent's Texas Medical License,'' and ''Respondent entered into a Stipulation and Non-practice agreement with the North Dakota Board of Medicine in which Respondent agreed not to practice medicine in the State of North Dakota.'' Govt Motion, at 3–4. In light of these facts, the Government argued that DEA must revoke Respondent's registration. *Id.* at 5.

On August 20, 2020, Respondent filed a ''Memorandum Contra to the Government's Motion for Summary Disposition'' (hereinafter, Resp Opposition), in which he argued that ''[t]he matter in Texas is temporary in nature, as it is a Temporary Suspension.'' Resp Opposition, at 1. He also argued that he has active medical licenses in Georgia and Ohio and that Respondent ''contends that he does'' have state authority in Texas. *Id.* at 2.

On August 25, 2020, the Chief ALJ issued an Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Recommended Decision of the Administrative Law Judge (hereinafter, Summary Disposition or SD). The Chief ALJ noted that, ''Respondent has made the confusing assertion that he 'has the authority to handle controlled substances' because the suspension imposed by Texas is temporary and 'can be lifted at any time' . . . .'' SD, at 4 (quoting Resp Opposition, at 1). However, he also noted that ''[t]he Respondent has represented that no superseding order from the Texas Board has been issued.'' *Id.* at 3 (citing Resp Opposition, at 1). Therefore, the ALJ determined that ''in view of the Respondent's current lack of state authority, revocation of the Respondent's [registrations] stands as the only legally available resolution.''