



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Paul E. Pilgram, M.D.
Decision and Order**

On November 29, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Paul E. Pilgram¹, M.D. (Registrant), of West Jordan, Utah. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, on the ground that he does not have authority to handle controlled substances in Utah, the State in which he is registered with the Agency. Show Cause Order, at 1 (citing 21 U.S.C. § 824(a)(3)).

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that Registrant is registered as a practitioner in schedules II through V under DEA registration No. AP1393038, at the registered address of 1561 West 7000 South, Suite 200, West Jordan, Utah. *Id.* The Order alleged that Registrant's registration does not expire until March 31, 2017. *Id.*

The Show Cause Order then alleged that on October 17, 2016, the State of Utah revoked Registrant's authority to prescribe and administer controlled substances and that he is "without authority to handle controlled substances in . . . the [S]tate in which [he is] registered with the" Agency. *Id.* The Order then asserted that as a consequence of the loss of his state authority, "DEA must revoke" his registration. *Id.* (citing 21 U.S.C. §§ 802(21), 823(f) and 824(a)(3)). The Show Cause Order also notified Registrant of his right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to do elect either option. *Id.* at 2 (citing 21 CFR

¹ Registrant's name in the Order to Show Cause is spelled "Pilgrim"; however, all other documents in the record, including Registrant's Certificate of Registration, use the correct spelling (Pilgram).

1301.43). The Order further notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

On December 6, 2016, a Diversion Investigator (DI) from the DEA Salt Lake City District Office effected service by hand-delivery of a copy of the Show Cause Order to Registrant at his registered address of 1561 West 7000 South, Suite 200, West Jordan, Utah. GX 2, at 1-2 (Declaration of Diversion Investigator). According to the Government, since the date of service of the Show Cause Order, the Agency “has not received a request for hearing or any other reply from” Registrant. Request for Final Agency Action (RFFA), at 2.

On January 10, 2017, the Government forwarded this matter to my Office for final agency action along with an evidentiary record. RFFA, at 1. Based upon the Government’s representation and my review of the record, I find that more than 30 days have now passed since the date of service of the Show Cause Order, and that neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing, and issue this Decision and Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact. *Id.* § 1301.43(e).

FINDINGS of FACT

Registrant is the holder of Certificate of Registration AP1393038, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 1561 West 7000 South, Suite 200, West Jordan, Utah. GX 2. His registration does not expire until March 31, 2017. *Id.*

On October 17, 2016, the Utah Division of Occupational and Professional Licensing, Department of Commerce (the Division), issued an order revoking Registrant's license to prescribe and administer controlled substances in the State. GX 3, at 2. Therein, the Division adopted the recommended order of the Utah Physicians Licensing Board (Physician's Board), which the latter issued following a hearing it held on August 24-25, 2016 at which Registrant was represented by counsel. *Id.* at 5.

The Physician's Board found that Registrant "did not [] meet the standard of care of the profession for pain management patients" and failed to follow the Model Policy for the Use of Controlled Substances for the Treatment of Pain (2004) in his treatment of nine patients. As support for its finding, the Board specifically cited: 1) "[t]he inadequacy of the documented evaluation of the patients," 2) "[t]he failure to obtain or document informed consent as to major risks of the high opioid regimes," 3) "[t]he perfunctory consideration or enforcement of agreements for treatment," 4) "[t]he improperly low level of consultation with other health and mental professionals [sic]," and 5) "[t]he failure to maintain accurate and complete medical records." *Id.* at 6-7. The Board further found that Registrant "failed to demonstrate a legitimate medical purpose for his prescribing practices, [that] there was an absence of sound clinical judgment on [his] part ... and the pattern of prescribing practices was not based on clear documentation of unrelieved pain." *Id.* at 7. The Board then made detailed findings with respect to nine patients. *Id.* at 8-26.

The Physician's Board thus concluded that Registrant had engaged in unprofessional conduct:

by failing, as a prescribing practitioner, to follow the Model Policy for the Use of Controlled Substances for the Treatment of Pain, 2004 [], in [his]evaluation of the patient, obtaining or documenting informed consent, giving more than perfunctory consideration to, or enforcement of, agreements for treatment, conducting periodic

reviews, consultation with other medical specialists, maintaining accurate and complete medical records, and complying with the state laws referenced in [its] conclusions.

Id. at 27 (citing Utah Admin. Code r. 156-1-501(6)).² The Board further concluded that “[t]he prescribing of controlled substances by [Registrant] on too many occasions did not have a legitimate medical purpose, did not show sound clinical judgment and was not based on clear documentation of unrelieved pain.” *Id.* at 28.³

The Board thus recommended that Registrant’s state “license to prescribe and administer controlled substances . . . be revoked.” *Id.* at 29. On October 17, 2016, the Division adopted the Board’s factual findings, legal conclusions and recommended order “in its entirety.” *Id.* at 2, 4. According to the online records of the Utah Division of Occupational and Professional Licensing of which I take official notice, Registrant’s controlled substance license remains revoked as of the date of this Decision and Order.⁴ *See also* <https://secure.utah.gov/llv/search/index.html>. I therefore find that Registrant is without authority to dispense controlled substances under the laws of Utah, the State in which he holds his registration.

DISCUSSION

² As for Registrant’s conduct after the Board adopted its 2013 Model Policy on the Use of Opioids Analgesics in the Treatment of Chronic Pain, the Board also found that he engaged in unprofessional conduct. GX 3, at 28 (citing Utah Admin. Code r. 156-1-501(7)).

³ Under the Division’s rules, “unprofessional conduct” includes: “failing, as a prescribing practitioner, to follow the ‘Model Policy for the Use of Controlled Substances for the Treatment of Pain,’ 2004, established by the Federation of State Medical Boards,” and “failing, as a prescribing practitioner, to follow the ‘Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain,’ July 2013, adopted by the Federation of State Medical Boards.” Utah Admin. Code r. 156-1-501(6) and (7) (2016).

⁴ In accordance with the Administrative Procedure Act (APA), an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” U.S. Dept. of Justice, *Attorney General’s Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA’s regulations, Respondent is “entitled on timely request to an opportunity to show to the contrary.” 5 U.S.C. § 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within 15 calendar days of the date of service of this Order which shall commence on the date this Order is mailed.

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 (CSA), “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Moreover, DEA has 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*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton*, 43 FR 27616 (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 Act, 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 medicine. *See, e.g., Hooper*, 76 FR at 71371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR at 27616.

Because Registrant currently lacks authority to handle controlled substances in Utah, the State in which he holds his DEA registration, he is not entitled to maintain his registration.

Accordingly, I will order that his registration be revoked.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AP1393038, issued to Paul E. Pilgram, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. § 823(f), as well as 28 CFR 0.100(b), I further order that any pending application of Paul E. Pilgram, M.D., to renew or modify this registration, be, and it hereby is, denied. This Order is effective immediately.⁵

Date: February 9, 2017

Chuck Rosenberg
Acting Administrator

⁵ Based on the extensive findings of the Utah Division of Occupational and Professional Licensing, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

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