



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**Robert Markman, M.D.  
Decision and Order**

On September 27, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration, issued an Order to Show Cause to Robert Markman, M.D. (hereinafter, Applicant), of Northridge, California. GX 1, at 1. The Show Cause Order proposed the denial of Applicant's application for a Certificate of Registration as a practitioner, on the ground that he does not hold authority to dispense controlled substances in California, the State in which he seeks registration. *Id.*

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that on December 30, 2013, Applicant applied for a registration as "a practitioner in [s]chedules II-V," at a proposed registered location in Northridge, California. *Id.* As the substantive ground for the proceeding, the Show Cause Order alleged that effective on August 17, 2016, the Medical Board of California (MBC) issued an order revoking Applicant's "authority to practice medicine due to [his] conviction of a criminal offense substantially related to the qualification, functions, or duties of a physician and surgeon." *Id.* at 1-2. The Order then alleged that Applicant is "without authority to handle controlled substances in . . . California, the [S]tate in which [he is] attempting to register with the" Agency, and that as consequence, his application must be denied. *Id.*

The Show Cause Order notified Applicant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2 (citing 21

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

On October 5, 2016, a Diversion Investigator assigned to the Los Angeles Field Division personally served the Show Cause Order on Applicant. GX 3. On January 13, 2017, the Government submitted a Request for Final Agency Action (cited as RFAA) and an evidentiary record to support its proposed action. In its Request, the Government represents that Applicant “has not filed a request for a hearing or a written statement.” Gov. Request for Final Agency Action, at 1.

Based on the record and the Government’s representation, I find that since the date on which Applicant was served with the Show Cause Order, more than 30 days have now passed and neither Applicant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement while waiving his right to a hearing. Accordingly, I find that Applicant has waived his right to a hearing and his right to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Order based on the record submitted by the Government. *Id.* § 1301.43(e). I make the following findings.

#### **FINDINGS OF FACT**

On December 30, 2013, Applicant applied for a DEA Certificate of Registration, seeking authority to dispense controlled substances in schedules II through V as a practitioner. GX 2A, at 1. Applicant proposed an address in Northridge, California as his registered location, and provided the number of his California license. *Id.*

Applicant was also the holder of Physician’s and Surgeon’s certificate No. G27953 which was issued by the MBC. GX 2B, at 1, 3. However, on July 18, 2016, the MBC adopted the proposed decision of a state administrative law judge (ALJ) which found that Applicant had been

“convicted of a criminal offense substantially related to the qualifications, functions, or duties of a physician and surgeon” and that “[s]uch also constituted unprofessional conduct.” *Id.* at 1, 24. The state ALJ also found that Applicant “failed to offer even minimal evidence of rehabilitation and this prevents the Board from giving any consideration to continuing his probation at this time” and that “[p]ublic protection demands that [his] medical license be revoked.” *Id.* at 24.

While the MBC’s Order was to become effective on August 17, 2016, according to the Board’s online records (of which I take official notice<sup>1</sup>), on August 16, Applicant sought reconsideration and the MBC stayed its order to allow it “to review and consider” his petition. However, on August 26, 2016, the MBC denied Applicant’s petition and the revocation became effective at 5 p.m. that day. I therefore find that Applicant does not possess authority under the laws of California to dispense controlled substances. *See* Cal. Bus. & Prof. Code § 2051 (“The physician’s and surgeon’s certificate authorizes the holder to use drugs . . . in or upon human beings . . . in the treatment of diseases, injuries, deformities, and other physical and mental conditions”); *id.* § 2052 (“any person who . . . prescribes for any . . . deformity, disease . . . injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter . . . is guilty of a public offense”).

## DISCUSSION

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<sup>1</sup> I also take official notice that according to the online records of the MBC, Applicant’s medical license has not been reinstated.

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.

Under the Controlled Substances Act, a practitioner must be currently authorized to dispense controlled substances “under the laws of the State in which he practices” in order to obtain and maintain a practitioner’s registration. *See* 21 U.S.C. § 823(f) (“[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.”); *see also id.* § 802(21) (defining “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”).

Thus, with respect to a practitioner, 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 registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011) (collecting cases), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”); 21 U.S.C. § 824(a)(3) (authorizing revocation “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”).

As found above, by virtue of the MBC’s Order, Applicant currently lacks authority to handle controlled substances in California, the State in which he seeks registration, and is not entitled to be registered. Accordingly, I will order that his application be denied.

**ORDER**

Pursuant to the authority vested in me by 21 U.S.C. § 823(f), as well as 28 CFR 0.100(b), I order that the application of Robert Markman, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective [INSERT DATE THIRTY DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: February 14, 2017

Chuck Rosenberg  
Acting Administrator

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