



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

**LUIS C B GOMEZ, D.D.S.
DECISION AND ORDER**

On May 5, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Luis C B Gomez, D.D.S. (hereinafter, Registrant), the holder of Certificate of Registration No. AG1976971 in Chula Vista, California, pursuant to which he is authorized to prescribe controlled substances in Schedules II through IV.¹ GX 1 (Certification of Registration Status dated May 17, 2017). The Show Cause Order proposed the revocation of Registrant's Certificate of Registration and the denial of any pending application for renewal or modification of Registrant's registration on the ground that Registrant does not have authority to dispense controlled substances in California, the State in which he is registered. GX 3, at 1 (citing 21 U.S.C. § 824(a)(3)).

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that Registrant's registration expires on September 30, 2017. *Id.*

As the substantive grounds for the proceeding, the Show Cause Order alleged that Registrant currently lacks authority to "handle controlled substances in California," voluntarily surrendered his California dental license "on approximately September 8, 2016," and subsequently "signed a Stipulated Surrender of License and Order before the Dental Board of California" on November 7, 2016.² *Id.* at 2. The Government asserted that Registrant's "lack of

¹ The Order to Show Cause stated that Registrant was authorized to prescribe controlled substances in Schedule V.

² The Government submitted the Stipulated Surrender of License and Order before the Dental Board of California (hereinafter, DBC), the Accusation dated May 2, 2012, the Decision and Order of the DBC dated October 4, 2013,

authority to handle controlled substances in the State of California constitutes grounds to revoke ... [his] registration.” *Id.*

Citing 21 CFR 1301.43, the Show Cause Order notified Registrant of his right to request a hearing on the allegation or to submit a written statement while waiving his right to a hearing, the procedure for electing each option, and the consequence for failing to elect either option. *Id.* at 2. Citing 21 U.S.C. § 824(c)(2)(C), it notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3.

The lead DEA Diversion Investigator (hereinafter, DI) assigned to Registrant’s matter executed a Declaration in which she stated that, on May 5, 2017, she personally served Registrant with a copy of the Order to Show Cause at his residence. GX 4, at 1. I find that the Government’s service of the Show Cause Order on Registrant was legally sufficient.

The Government submitted a Request for Final Agency Action dated June 6, 2017 and an evidentiary record to support the Show Cause Order’s allegations. In the RFAA, the Government represented that, “Thirty days passed from the date of service and Respondent requested no hearing on the OTSC, nor has he filed a written statement in lieu of requesting a hearing.” RFAA, at 1.

Based on the Government’s representations and my review of the record, I find that more than 30 days have now passed since the date on which Registrant was served with the Show Cause Order and neither Registrant, 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 Registrant has waived his right to a hearing and his right to submit a written statement.

and the DBC Stipulated Settlement and Disciplinary Order dated July 31, 2013 with its Request for Final Agency Action (hereinafter, RFAA). GX 4 (Appendices).

21 CFR 1301.43(d). I therefore issue this Decision and Order based on the record submitted by the Government. 21 CFR 1301.43(e).

FINDINGS OF FACT

Registrant's DEA Registration

Registrant currently holds DEA practitioner registration AG1976971 authorizing him to dispense controlled substances in Schedules II through IV. GX 1, GX 2. This registration expires on September 30, 2017. *Id.*

DEA practitioner registration AG1976971 is assigned to Registrant at "232 Third Avenue, Ste A, 232 3RD Ave, Chula Vista, CA 91910." *Id.*

The Status of Registrant's State License

On November 15, 2016, the Dental Board of California ordered that Dental License No. 24551 was surrendered and accepted by the DBC. GX 4, Appendix A (Stipulated Surrender of License and Order). Pursuant to that Order, Registrant has lost "all rights and privileges as a dentist in California." *Id.* at 2.

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 Controlled Substances Act (hereinafter, CSA), "upon a finding that the registrant ... has had his State license ... suspended, revoked, or denied 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, 76 FR 71,371 (2011),*

pet. for rev. denied, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton*, 43 FR 27,616 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “‘practitioner’ [to] mean[] a ... physician, dentist, ... 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 is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper*, 76 FR at 71,371-72; *Sheran Arden Yeates*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci*, 58 FR 51,104, 51,105 (1993); *Bobby Watts*, 53 FR 11,919, 11,920 (1988); *Blanton*, 43 FR at 27,616.

Under California law, section 1626 of the Business and Professions Code provides that “[i]t is unlawful for any person to engage in the practice of dentistry in the state ... unless the person has a valid, unexpired license or special permit from the Board.” Cal. Bus. & Prof. Code § 1626 (2017).³ Further, section 11210 of the California Health and Safety Code sets out who may lawfully prescribe controlled substances in California other than for the treatment of addicts.

³ Dentistry and the practice of dentistry are addressed in Cal. Bus & Prof. Code § 1625 which states, among other things, that dentistry is the diagnosis or treatment of diseases and may include the use of “drugs.”

California licensed dentists are among those lawful prescribers.⁴ See Cal. Bus. & Prof. Code § 11024 (2017).

In this case, pursuant to the DBC Stipulated Surrender of License and Order, Registrant has lost all rights and privileges as a dentist in California. *Supra*. Consequently, under California law, Registrant is not currently authorized to handle controlled substances in that State. *Supra*. I, therefore, conclude that the record supports the revocation of Registrant's registration because he does not possess authority to dispense controlled substances under the laws of California, the State in which he is registered. 21 U.S.C. § 824(a)(3). Thus, I find that Registrant is not entitled to maintain his DEA registration. *Blanton, supra*. Accordingly, I will order that his registration be revoked and that any pending application for the renewal or modification of his registration be denied. *Id.*

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 AG1976971 issued to Luis C B Gomez, D.D.S., be, and it hereby is, revoked. I further order that any pending application of Luis C B Gomez, D.D.S., to renew or modify this registration, as well as any other pending application by him for registration in the State of California, be, and it hereby is, denied. This order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register.]

Date: August 2, 2017

Chuck Rosenberg
Acting Administrator

⁴ A physician, surgeon, dentist, veterinarian, naturopathic doctor ..., podiatrist, or pharmacist ..., or registered nurse ..., or physician assistant ..., or an optometrist ... may prescribe for, furnish to, or administer controlled substances to his or her patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance. Cal. Health & Safety Code § 11210 (2017).

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