



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Solomon Adu-Beniako, M.D.
Decision and Order**

On September 12, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Solomon Adu-Beniako, M.D. (hereinafter, Registrant), of Southfield, Michigan. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the revocation of Registrant’s Certificate of Registration No. FA7485027 on the ground that Registrant does “not have authority to handle controlled substances in Michigan, the state in which . . . [Registrant is] registered with the DEA.” *Id.* (citing 21 U.S.C. §§ 823(f) and 824(a)(3)).

Specifically, the OSC alleged that the State of Michigan Board of Pharmacy (hereinafter, Board) issued a Final Order effective on July 21, 2019, which revoked Registrant’s Michigan controlled substance and drug control-location licenses (5315023991, 5307004648 and 5307004717). *Id.* at 1-2. The OSC alleged that because the Board had not modified or lifted its revocation order, Registrant lacks authority to handle controlled substances in the State of Michigan. *Id.* at 2, citing 21 U.S.C. §§ 802(21), 823(f) and 824(a)(3).

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. OSC, at 2 (citing 21 CFR § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 4 (citing 21 U.S.C. § 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated November 8, 2019, a Diversion Investigator (hereinafter, DI) assigned to the Detroit Division Office, detailed his investigation in the matter involving Registrant. Request for Final Agency Action (hereinafter, RFAA), EX 8 (DI Declaration), at 1-2. The DI stated that he obtained a copy of the Michigan Board of Pharmacy's Final Order dated June 21, 2019, and as a result of that Final Order, DEA issued an Order to Show Cause on Registrant. *Id.* at 2. He further stated that on September 19, 2019, he and a DEA Special Agent (hereinafter, SA) attempted to serve the OSC on Registrant at Registrant's residence located at 31568 Bridge Street, Livonia, Michigan, but received no answer at that residence. *Id.* at 2. According to the DI, DEA personnel proceeded to Registrant's most recent place of employment, which was also his registered address, located at 20905 Greenfield Road, Suite 702, Southfield, Michigan, but the receptionist at that location "could not recall the last time [Registrant] was in the office or when [Registrant] was expected to report back to that location." *Id.* at 2-3. On the following day, the DI spoke to Registrant on the telephone, identified himself, and arranged to meet with him at a restaurant on that same day. *Id.* The DI stated that he and the same SA met with the Registrant, placed the OSC on the table in front of him, and explained that "he was being served with an [OSC] because he lacked state authority to handle controlled substances in Michigan and that he would not be able to maintain a DEA registration without such authorization." *Id.* at 3. The DI stated that Registrant pushed the document away from him, and the SA "attempted to again explain the Order to Show Cause process" to Registrant, at which point Registrant "stood up and quickly left the restaurant." *Id.* at 3. The DI "mentioned to [Registrant] that his name appeared on the [OSC] document and that he should not leave the

document on the table,” but Registrant “continued on to his automobile and drove away.” *Id.*

The DI and the SA then left the restaurant with the OSC. *Id.*

The Government forwarded its RFAA, along with the evidentiary record, to this office on November 18, 2019. In its RFAA, the Government contends that despite Registrant’s refusal to take possession of the OSC, he is deemed to have been sufficiently served. RFAA, at 6. The Government requests a final order holding that Registrant has waived his opportunity for a hearing and otherwise failed to respond to the Show Cause Order, and revoking Registrant’s DEA registration. *Id.* at 2.

Based on the DI’s Declaration, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on September 20, 2019. I find that the Government has satisfied its obligation under the Due Process Clause “to provide ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). In this case, the Government tried to serve Registrant at his home and his registered address—both of which were locations where the Government reasonably believed Registrant would be located. RFAA, EX 8, at 2-3. When those efforts failed, the DI contacted Registrant by telephone and arranged an in-person meeting, during which the DI explained to Registrant the context of the OSC. *Id.* at 3. Registrant repeatedly refused to take possession of the OSC during this meeting, even after its relevance had been clearly communicated to Registrant, and the DI and SA made reasonable efforts to leave the papers with Registrant. *Id.* Thus, Registrant was reasonably apprised of the pendency of the action and his refusal to take possession of the papers does not mean service was

inadequate. See *United States v Miller*, 2007 WL 3173362 (E.D. Mich. Oct. 29, 2007) (The defendant of an institution of an action against him “cannot claim that the court has not [sic] authority to act when he has willfully evaded the service of process.” (quoting *Ali v. Mid-Atl. Settlement Servs., Inc.*, 233 F.R.D. 32, 36 (D.D.C. 2006) (citation omitted))).¹

I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government’s written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant’s right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, 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. FA7485027 at the registered address of 20905 Greenfield Rd., Ste. 702, Southfield, Michigan. RFAA, EX 2 (Certification of Registration History). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V² as a practitioner.³ Registrant’s

¹ See also *Morgan v. United States*, 304 U.S. 1, 18 (1938) (“The right to a hearing embraces not only the right to present evidence, but also a *reasonable* opportunity to know the claims of the opposing party and to meet them. . . . Those who are brought into contest with the Government in a quasijudicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes.”)(emphasis added).

² It is noted that the OSC mistakenly stated that Registrant was a practitioner in “Schedules II-IIIIN.” I find this to be harmless error in that the Registration was appropriately identified by its number and so the Registrant had adequate notice of the registration subject to the proceeding.

³ Registrant is also authorized as a Data-Waiver practitioner for up to 100 patients pursuant to 21 U.S.C. § 823(g)(2)(a).

registration expires on June 30, 2020, and is “in an active pending status.” RFAA, EX 1 (Copy of Registrant’s Certificate of Registration).

The Status of Registrant’s State License

On January 19, 2018, the Michigan Department of Licensing and Regulatory Affairs “executed an Order of Summary Suspension and an Administrative Complaint charging [Registrant] with violating the Public Health Code, [MICH.COMP.LAWS] § 333.1101 *et seq.*” RFAA, EX 3 (Final Order of the Board of Pharmacy Disciplinary Subcommittee, Bureau of Professional Licensing, Michigan Department of Licensing and Regulatory Affairs), at 1. On June 21, 2019, after an administrative hearing, the Michigan Board of Pharmacy issued a Final Order revoking Registrant’s controlled substance license and drug control-location licenses. *Id.* at 2, 4. The Final Order became effective thirty days from its signature, on July 21, 2019. RFAA, EX 3, at 4.

According to Michigan’s online records, of which I take official notice,⁴ Registrant’s controlled substance license and drug control-location licenses remain revoked. <https://aca3.accela.com/MILARA/GeneralProperty/PropertyLookUp.aspx> (last visited January 3, 2020).

Further, the Final Order states that reinstatement of Registrant’s revoked licenses “is not automatic and shall be in accordance with [MICH.COMP.LAWS] §§ 333.7315-333.7316.” RFAA, EX 3, at 3. It is noted that pursuant to Section 333.7315, Registrant may not apply for

⁴ 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 within 15 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 15 calendar days to file a response.

reinstatement of his revoked licenses before the expiration of five years after the effective date of revocation. MICH.COMP.LAWS § 333.7315.

Accordingly, I find that Registrant currently does not possess a controlled substances license in Michigan, the State in which he 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 Controlled Substances Act (hereinafter, 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 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 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 is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. at 27,617.

Under Michigan law, "a person who manufactures, distributes, prescribes, or dispenses a controlled substance in this state . . . shall obtain a license issued by the administrator." MICH. COMP. LAWS § 333.7303(1). Here, the undisputed evidence in the record is that Registrant currently lacks authority to manufacture, distribute, prescribe, or dispense controlled substances in Michigan. Thus, because Registrant lacks authority to distribute, prescribe, or dispense controlled substances in Michigan, 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. FA7485027 issued to Solomon Adu-Beniako. This Order is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Dated: January 3, 2020.

Uttam Dhillon,
Acting Administrator.

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