

supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.”

Gonzales v. Oregon, 546 U.S. 243, 274 (2006) (citing *United States v. Moore*, 423 U.S. 122, 135, 143 (1975)).

Under the CSA, it is fundamental that a practitioner must establish and maintain a bonafide doctor-patient relationship in order to act “in the usual course of * * * professional practice” and to issue a prescription for a “legitimate medical purpose.” *Laurence T. McKinney*, 73 FR 43260, 43265 n.22 (2008); see also *Moore*, 423 U.S. at 142–43 (noting that evidence established that physician “exceeded the bounds of ‘professional practice,’” when “he gave inadequate physical examinations or none at all,” “ignored the results of the tests he did make,” and “took no precautions against * * * misuse and diversion”). While the CSA generally looks to state law to determine whether a doctor and patient have established a bonafide doctor-patient relationship, see *Kamir Garcés-Mejías*, 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.*, 72 FR 50397, 50407 (2007), here, there is no need to analyze the applicable provisions of Colorado law because Respondent admitted in his plea agreement that he acted outside of the usual course of professional practice and lacked a legitimate medical purpose in issuing the prescriptions which he sold to the undercover officer.

As found above, on four different occasions, Respondent sold prescriptions for oxycodone, a schedule II controlled substance, to an undercover police officer. Three of the prescriptions were for either 60 (Oct. 17) or 150 (Nov. 6 & 25) tablets of 30 mg. strength; the remaining prescription was for 320 tablets of 10 mg. strength. In addition, Respondent also physically distributed to the undercover officer 60 tablets of oxycodone 10 mg., three tablets of MDMA/ecstasy, one fentanyl patch, and four tablets of fentanyl 400 mcg., all of which are schedule II controlled substances. In exchange, Respondent received cash payments of \$100 at the first transaction and \$1000 at the remaining three. As Respondent has admitted, his conduct during each of the four transactions bears no semblance to the legitimate practice of medicine. Rather, during each of these transactions, he engaged in a drug deal and violated 21 U.S.C. 841(a)(1).

I thus conclude that Respondent’s experience in dispensing controlled substances and his criminal conduct in violation of Federal law make clear that his continued registration “is

inconsistent with the public interest.” 21 U.S.C. 823(f). Finally, for the same reasons which led me to find that Respondent posed “an imminent danger to the public health or safety,” *id.* section 824(d), I conclude that the public interest requires that his registration be revoked effective immediately and that any pending applications be denied. See 21 CFR 1316.67.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BG2107856, issued to Peter W.S. Grigg, M.D., be, and it hereby is, revoked. This Order is effective immediately.

Dated: July 30, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–20201 Filed 8–13–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–64]

James Stephen Ferguson, D.M.D.; **Revocation of Registration**

On July 24, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Stephen Ferguson, D.M.D. (Respondent), of Pittsburgh, Pennsylvania. The Show Cause Order proposed the revocation of Respondent’s DEA Certificate of Registration, as a practitioner, BF6211762, on the ground that Respondent’s “license to practice dentistry in the state of Pennsylvania expired on March 31, 2009” and that he is “currently without authority to handle controlled substances in Pennsylvania, the state in which [he is] registered with DEA.” Show Cause Order at 1. The Show Cause Order also proposed the denial of “any pending applications for renewal or modification of” Respondent’s registration. *Id.*

The Show Cause Order alleged that Respondent’s DEA registration does not expire until September 30, 2010, but that Respondent’s Pennsylvania dental license had expired on March 31, 2009. *Id.* Next, the Show Cause Order alleged that commencing no later than June 2006, Respondent had issued dozens of prescriptions for schedule III controlled substances containing hydrocodone to his girlfriend L.J. “for no legitimate

medical purpose and not in the course of professional practice, in violation of 21 U.S.C. 841(a) and 21 CFR 1306.04(a).” *Id.* at 2. The Order alleged that while Respondent used his girlfriend’s real name on some prescriptions, on others he used false names to “disguise the true recipient of the controlled substances.” *Id.*

The Show Cause Order further alleged that when DEA Investigators searched his office, Respondent “could not explain the fact that [he] did not have a patient file” on his girlfriend, and that he admitted to investigators that he knew L.J. “was addicted to hydrocodone.” *Id.* Finally, the Order alleged that Respondent “continued to issue controlled substance prescriptions during the month of April 2009” despite the fact that his Pennsylvania dental license expired on March 31, 2009. *Id.*

On September 1, 2009, a Diversion Investigator (DI) went to Respondent’s residence and left a copy of the Order to Show Cause with L.J. and his nephew, who agreed to give it to Respondent. See Gov’t Submission of Evidence of Service of Process, Ex. A (declaration of DI). On September 15, 2009, Respondent requested a hearing and the matter was placed on the docket of the Agency’s Administrative Law Judges (ALJs).

On October 13, 2009, the Government moved for summary disposition. The basis of the motion was that Respondent “is not duly authorized to possess, dispense or otherwise handle controlled substances in the State of Pennsylvania, the jurisdiction in which [he] engages in the practice of dentistry,” and therefore, he is not entitled to hold a DEA registration. Gov’t Mot. Summ. Disp., at 1–2. As support for the motion, the Government submitted a Certificate and Attestation signed by Lisa M. Burns, Board Administrator, Pennsylvania State Board of Dentistry, Bureau of Professional and Occupational Affairs. Therein, Ms. Burns stated that Respondent’s license to practice dentistry in Pennsylvania was issued on February 2, 1999, and had expired on March 31, 2009. *Id.*, Ex. A. Respondent did not file a response to the Government’s motion. Order Granting Gov’t Mot. for Summ. Disp. at 2.

On October 22, 2009, the ALJ granted the Government’s motion. *Id.* at 4. The ALJ found that there was no dispute over the material fact that Respondent no longer holds a state dental license and that he therefore lacks authority under Pennsylvania law to handle controlled substances in the State. *Id.* at 3. In accordance with the CSA and agency precedent, the ALJ held that because Respondent lacks this

authority, he “is not entitled to maintain his DEA registration.” *Id.* at 3–4. The ALJ thus recommended that I revoke Respondent’s registration and deny any pending renewal application. ALJ at 4.

Neither party filed exceptions to the ALJ’s recommended decision. The ALJ then forwarded the record to me for final agency action. Having considered the entire record in this matter, I adopt the ALJ’s recommended decision in its entirety and will revoke Respondent’s registration and deny any pending applications. I make the following findings:

Findings

Respondent obtained his license to practice dentistry in the State of Pennsylvania on February 2, 1999. Gov’t Mot., Ex. A. Respondent’s authority to practice dentistry in Pennsylvania expired on March 31, 2009. *Id.*

Respondent also holds DEA Certificate of Registration, BF6211762, which authorizes him to dispense controlled substances in schedules II through V as a practitioner at the registered address of 2A Old Clairton Road, Pittsburgh, Pa. Respondent’s registration was last renewed on February 4, 2008, and does not expire until September 30, 2010.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in “the jurisdiction in which he practices” in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (“[t]he term ‘practitioner’ means a physician * * * 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”). *See also id.* section 823(f) (“The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.”). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration.

Accordingly, DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *David W. Wang*, 72 FR 54297, 54298 (2007); *Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of

a registration “upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances”).

Moreover, the Agency has interpreted the CSA to require the revocation of a registration upon a practitioner’s loss of state authority “not only where a registrant’s authority has been suspended or revoked, but also where a practitioner * * * has lost his state authority for reasons other than through formal disciplinary action of a State board.” *John B. Freitas*, 74 FR 17524, 17525 (2009). Thus, even when a registrant ceases to possess authority to handle controlled substance in the State in which he practices through the expiration of a dental license or separate state controlled substances registration (when required), the Agency has revoked the practitioner’s registration. *Mark L. Beck*, 64 FR 40899, 408900 (1999); *Charles H. Ryan*, 58 FR 14430 (1993).

Here, there is no dispute over the material fact that Respondent has allowed his Pennsylvania Dental License to expire and that he therefore lacks authority under Pennsylvania law to dispense control substances. Respondent is therefore not entitled to maintain his DEA registration, which will be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, BF6211762, issued to James S. Ferguson, D.M.D., be, and it hereby is, revoked. I further order that any pending application of James S. Ferguson, D.M.D., to renew or modify his registration, be, and it hereby is denied. This Order is effective September 15, 2010.

Dated: July 30, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–20192 Filed 8–13–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–22]

Robert F. Hunt, D.O. Revocation of Registration

On November 25, 2008, I, the Deputy Administrator of the Drug Enforcement

Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to Robert F. Hunt, D.O. (Respondent), of Fort Lauderdale, Florida. The Show Cause Order proposed the revocation of Respondent’s Certificate of Registration, BH1292642, which authorizes him to dispense schedule II through V controlled substances as a practitioner, on the ground that his “continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).” Order to Show Cause at 1. The Order immediately suspended Respondent’s registration based on my conclusion that his continued registration during the pendency of the proceeding would “constitute[] an imminent danger to the public health and safety.” *Id.* at 2 (citing 21 U.S.C. 824(d)).

More specifically, the Show Cause Order alleged that on April 10, 2008, Respondent “issued a prescription for an anabolic steroid, a Schedule III controlled substance,” to a patient without referring “to the patient’s medical file or conduct[ing] a medical examination of this patient.” *Id.* at 1. The Order further alleged that Respondent “issued the prescription solely because [this] patient requested anabolic steroids,” that he had “previously issued numerous prescriptions for controlled substances to this patient,” and that “in some instances,” he had “accepted illicit drugs as payment for these prescriptions.” *Id.* at 1–2. The Order thus alleged that Respondent’s conduct violated 21 U.S.C. 841(a)(1) and 844. *Id.* at 2.

Next, the Show Cause Order alleged that, on April 24, 2008, Respondent “issued two prescriptions for two brands of anabolic steroids to another patient,” who was “a police detective acting in an undercover capacity,” and who “presented no legitimate medical reason to justify the * * * prescriptions.” *Id.* at 2. The Order alleged that neither Respondent, nor his staff, “perform[ed] any medical tests or exams on this patient” and that Respondent “stated that [he] would list a fictitious ailment in [the patient’s] medical record to justify [his] prescribing of anabolic steroids.” *Id.* The Order alleged that “[t]hese prescriptions were not for a legitimate medical purpose in the usual course of professional practice” and that in issuing them, Respondent violated Florida Statute § 893.13(8)(a)(1), which “prohibits a prescribing practitioner from knowingly assisting a patient in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the