

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Avi Weisfogel, D.D.S.; Decision and Order

On November 2, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Avi Weisfogel, D.D.S. (Registrant), of Old Bridge, New Jersey. GX 1, at 1. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration BW6474580, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, the denial of any application to renew or modify the registration, and the denial of any application for any other DEA registration, on the ground that he "do[es] not have authority to handle controlled substances in New Jersey, the [S]tate in which he is registered with the" Agency. *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

More specifically, the Show Cause Order alleged that Registrant entered into a consent order with the New Jersey State Board of Dentistry (Board), pursuant to which the Board revoked his license to practice dentistry effective November 13, 2014. *Id.* The Show Cause Order thus alleged that Registrant is "without authority to handle controlled substances in New Jersey, the State in which [he is] registered." *Id.* The Order thus advised Registrant that his registration was subject to revocation "based upon [his] lack of authority to handle controlled substances in the State of New Jersey." *Id.* (citing 21 U.S.C. 802(21), 823(f) and 824(a)(3)).¹

Having determined that Registrant was no longer practicing at his registered location, a Diversion Investigator obtained his residence address and initially attempted to serve the Show Cause Order on him by Certified Mail, Return Receipt Requested, which was addressed to him at his residence. GX 6, at 1–2 (Declaration of DI). However, the mailing was returned unclaimed. GX 3, at 1. Subsequently, on December 4, 2015, the DI mailed the Show Cause Order to Registrant's residence by regular first class mail. GX 6, at 2. The DI averred that the Order was not returned as undeliverable. *Id.*

In its Request for Final Agency Action, the Government advises that

neither Registrant, nor anyone representing him, has requested a hearing or sent any other correspondence to DEA. Request for Final Agency Action, at 6. Accordingly, the Government filed its Request for Final Agency Action seeking the revocation of Registrant's Registration along with the Investigative Record to support is Request. *See* 21 CFR 1301.43(d) & (e).

Based on the Government's submission, I conclude that Registrant has received constitutionally adequate notice of the proceeding. *See Jones v. Flowers*, 547 U.S. 220 (2006). I find that since the date of service of the Order to Show Cause, 30 days have now passed, and neither Registrant, nor anyone purporting to represent him, has either requested a hearing on the allegations or submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(a) & (c). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement. *Id.* § 1301.43(c) & (d). I therefore issue this Decision and Final Order based on the Investigative Record submitted by the Government. *Id.* § 1301.43(e). I make the following findings of fact.

Findings

Registrant is the holder of DEA Certificate of Registration BW6474580, pursuant to which he is authorized to dispense controlled substances in schedules II through V, at the registered address of 30 State Highway 18, Old Bridge, NJ. GX 2. The registration does not expire until May 31, 2017. *Id.*

Registrant previously held a dental license issued by the New Jersey State Board of Dentistry. GX 5, at 1. Registrant also previously held a New Jersey Controlled Dangerous Substance Registration (CDS). However, on November 13, 2014, Registrant entered into a Consent Order with the Board of Dentistry in which he agreed that his dental license "is hereby permanently retired [and this] is to be deemed a revocation of licensure." GX 5, at 2. As for his New Jersey CDS Registration, it became inactive on the same date that Registrant entered into the Consent Order with the Board and has since expired. According to the online records of the State of New Jersey, as of the date of this Order, Registrant's New Jersey Dentist license remains revoked. *See also* <https://newjersey.mylicense.com/verification>.

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, "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 repeatedly 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. *James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, *Hooper v. Holder*, 481 Fed. Appx. 826 (4th Cir. 2012).

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 his profession. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *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).

Because Registrant no longer holds authority to dispense controlled substances in New Jersey, the State in which he is registered with the Agency, I will order that his registration be revoked and that any pending application to renew or modify his registration be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 21 CFR 0.100(b), I order that DEA Certificate of Registration BW6474580, issued to Avi Weisfogel, D.D.S., be, and it hereby is, revoked. I further order that any pending application of Avi Weisfogel, D.D.S., to renew or modify his

¹ 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 elect either option. GX 1, at 2 (citing 21 CFR 1301.43).

registration, be, and it hereby is, denied. This Order is effective April 29, 2016.

Dated: March 21, 2016.

Chuck Rosenberg,
Acting Administrator.

[FR Doc. 2016-07111 Filed 3-29-16; 8:45 am]

BILLING CODE 4410-09-P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Category Management Policy 16-2: Improving the Acquisition and Management of Common Information Technology: Mobile Devices and Services

AGENCY: Office of Management and Budget.

ACTION: Notice of public comment period.

SUMMARY: The Office of Management and Budget (OMB) is seeking public comment on a draft memorandum titled, “*Category Management Policy 16-2: Improving the Acquisition and Management of Common Information Technology: Mobile Devices and Services.*”

DATES: The 30-day public comment period on the draft memorandum begins on March 30, 2016.

ADDRESSES: Interested parties should provide comments at the following link: <https://mobile.cio.gov/>.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Romley at Meredith_B_Romley@omb.eop.gov or OFCIO@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) and Office of Federal Procurement Policy are jointly proposing the third IT Category Management policy memorandum. This memo is required under the Federal Information Technology Oversight and Reform Act (FITARA). The memo seeks to improve the acquisition and management of mobile devices and services through consolidation of contracts, mandated use of one or more government-wide best-in-class contract solutions, improved demand management, and increased accountability of agency officials. Authority for this notice is granted

under the Clinger-Cohen Act, 40 U.S.C. Subtitle III.

Tony Scott,
Administrator, Office of the Federal Chief Information Officer.

Anne Rung,
Administrator, Office of Federal Procurement Policy.

[FR Doc. 2016-07192 Filed 3-29-16; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

[NARA-2016-023]

National Industrial Security Program Policy Advisory Committee (NISPPAC)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101-6, NARA announces the following committee meeting.

DATES: The meeting will be held on April 14, 2016, from 10:00 a.m. to 12:00 p.m. EDT.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Robert Tringali, Program Analyst, by mail at ISOO, National Archives Building; 700 Pennsylvania Avenue NW., Washington, DC 20408, by telephone number at (202) 357-5335, or by email at robert.tringali@nara.gov. Contact ISOO at ISOO@nara.gov and the NISPPAC at NISPPAC@nara.gov.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss National Industrial Security Program policy matters. The meeting will be open to the public. However, due to space limitations and access procedures, you must submit the name and telephone number of individuals planning to attend to the Information Security Oversight Office (ISOO) no later than Monday, April 11, 2016. ISOO will provide additional instructions for accessing the meeting's location.

Dated: March 23, 2016.

Patrice Little Murray,
Committee Management Officer.

[FR Doc. 2016-07146 Filed 3-29-16; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA-2016-024]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App) and the second United States Open Government National Action Plan (NAP) released on December 5, 2013, NARA announces an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting.

DATES: The meeting will be on April 19, 2016, from 10:00 a.m. to 1:00 p.m. EDT. You must register for the meeting by 5:00 p.m. EDT on April 18, 2016.

Location: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW.; Archivist's Reception Room (Room 105); Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Christa Lemelin, Designated Federal Officer for this committee, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740-6001, by telephone at 202-741-5773, or by email at Christa.Lemelin@nara.gov.

SUPPLEMENTARY INFORMATION: *Agenda and meeting materials:* You may find all meeting materials at <https://ogis.archives.gov/foia-advisory-committee/meetings.htm>. The purpose of this meeting is to discuss the FOIA issues on which the Committee is focusing its efforts: Oversight and accountability, proactive disclosures, and fees. The meeting will include subcommittee status reports and discussion of proposed recommendations to make to the Archivist of the United States. Guest speaker Margaret B. Kwoka, Assistant Professor at the University of Denver Sturm College Of Law, will present her academic study of the commercial use of FOIA at six Federal agencies, and proactive disclosures as a public benefit