Respondent had accepted responsibility. RX 9.*[E]

Although correcting improper behavior and practices is very important to establish acceptance of responsibility, conceding wrongdoing is critical to reestablishing trust with the Agency. *Holiday CVS, L.L.C.,* 77 FR 62316, 62346 (2012); *Daniel A. Glick, D.D.S.,* 80 FR at 74801. Based upon the evidence presented, I find that the Respondent has demonstrated the full measure of acceptance of responsibility, and has fully demonstrated that she is remorseful of her actions and has taken considerable rehabilitative steps to ensure that this conduct will not be repeated.

Loss of Trust

Where the Government has sustained its burden and established that a registrant has committed acts inconsistent with the public interest, that registrant must present sufficient mitigating evidence to assure the Acting Administrator that he can be entrusted with the responsibility commensurate with such a registration. *Medicine Shoppe,* 73 FR at 387.

As demonstrated by the evidence presented in this matter, it is clear to me that the Respondent has unequivocally accepted responsibility for her conduct. She continues to not only improve herself, but works to ensure that current and future practitioners learn from her past criminal conduct and will not make the same choices. [I also find credible Respondent's statement that she would ''never do anything to compromise [her] license ever again.'' Tr. 122.] Her underlying criminal conduct did not relate to her handling of controlled substances and the Government has not alleged any deficiencies by the Respondent related to controlled substances. The Government argues that revocation in this matter is appropriate for its deterrent effect. *[ ]*[Further, although I am not bound by them in this case, I agree with the statements of] U.S. District Court Judge Chesler found that ''in many ways your efforts may have as much, if not more, impact than the prosecutions per se because it sends out a message and it sends out a message from someone who has personally impacted by having made the wrong decision.'' RX 9. It appears the Respondent's outreach to physicians, medical staff and to students has provided and continues to provide valuable deterrence to the medical community. The Respondent's efforts have greatly satisfied the need for deterrence. At sentencing, the AUSA stated that the Respondent's ''efforts have been substantial, including the speaking engagements that she's been involved with. I can tell you, your Honor, that I have heard unsolicited from folks in the medical field about the work that she has been doing and folks who are involved in educating physicians and supervising physicians have reported to me that her efforts have made an impact in educating the community, which is meaningful thing from the government's perspective.'' RX 9. *[In this case,] the Respondent has clearly demonstrated that she can be entrusted to properly maintain her COR.

Recommendation

Considering the entire record before me, the conduct of the hearing, and observation of the testimony of the witnesses presented, I find that the Government has met its burden of proof and has established a *prima facie* case for revocation. However, *[ ] the evidence overwhelmingly suggests that the Respondent has unequivocally accepted responsibility, is remorseful for her conduct, has worked to rehabilitate herself, has taken extraordinary steps to educate medical personnel and students, and has presented convincing evidence demonstrating that the Agency can entrust her to maintain her COR. Therefore, I recommend the Respondent's DEA COR BM9434440 should *Not be Revoked* and any pending applications for renewal or modification of such registration, or for additional DEA registrations, be *Granted*

December 4, 2019

Mark M. Dowd,

U.S. Administrative Law Judge.

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*[E] Removed text. I agree with the Government that the District Court's findings on acceptance of responsibility are not binding on this agency, *see* Govt Posthearing Brief, at 9; however, I also agree with the ALJ that these findings are relevant in that they further support the ALJ's finding of Respondent's credible acceptance of responsibility. *See Mohammed Asgar, MD.,* 83 FR at 29573 n.3.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20–21]

Emmanuel A. Ayodele, M.D.; Decision and Order

On April 29, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Emmanuel Ayodele, M.D. (hereinafter, Applicant) of Compton, California. OSC, at 1. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration. *Id.* It alleged that Applicant is without ''authority to handle controlled substances in California, the state in which [Applicant] seek[s] registration with DEA.'' *Id.* (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that the Medical Board of California (hereinafter, MBC) issued an order on February 3, 2020, revoking Applicant's California Physician's and Surgeon's Certificate. *Id.* at 2. The OSC further alleged that, because the Board revoked Applicant's medical license, Applicant lacks the authority to handle controlled substances in the State of California. *Id.*

The OSC notified Applicant 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. *Id.* at 2–3 (citing 21 CFR 1301.43). The OSC also notified Applicant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

On June 24, 2020, Applicant, through counsel, requested a hearing, stating that Applicant ''has filed a writ of administrative mandate in the Superior Court of California, San Francisco Division . . . for judicial review of the decision of the Medical Board of California'' and that ''DEA should await the final judgment.'' Request for a Hearing, at 1.

The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Law Judge John J. Mulrooney II (hereinafter, Chief ALJ), who issued an Order Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule on June 25, 2020, with which the Government complied by filing a Motion for Summary Disposition (hereinafter, Govt Motion) on July 7, 2020.

In its Motion, the Government submitted evidence that the MBC ''found [Applicant] non-compliant with the probationary terms of its June 2017 order, ultimately resulting in the revocation of his California Physician's and Surgeon's Certificate.'' Govt Motion, at 3–4. Further, the Government noted that the MBC had denied Applicant's Petition for Review of his revocation on April 14, 2020. *Id.* In light of these facts, the Government argued that DEA must deny Applicant's application. *Id.* at 5.

On July 15, 2020, Applicant filed ''Applicant's Reply'' (hereinafter, App

Reply), in which he argued that there are no proceedings to stay, because Applicant is not requesting an action on his application at this time; therefore, he argued that the ''sole issue presented is whether the DEA should withhold action on [Applicant's] application—which was submitted before his [California] medical license was revoked—until a final judgment is entered on his state petition for judicial review of the MBC's decision.'' App Reply, at 1.

On July 21, 2020, the Chief ALJ issued an Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Recommended Decision of the Administrative Law Judge (hereinafter, Summary Disposition or SD). The Chief ALJ noted that, ''[c]ontrary to the [Applicant's] assertions . . . the instant proceedings are, in fact, proceedings.'' SD, at 4 (citations omitted). Further, the ALJ noted that it appeared that Applicant was not contesting the underlying facts surrounding the grounds for the proceedings. *Id.* at 5. Therefore, the Chief ALJ determined that ''in view of the Applicant's current lack of state authority, denial of the Applicant's application stands as the only legally available resolution.'' *Id.* The Chief ALJ further concluded that ''[s]ummary disposition is proper in an administrative enforcement proceeding where no genuine factual dispute exists.'' *Id.* at 6 (citing *Veg-Mix, Inc.* v. *U.S. Dept. of Agriculture,* 832 F.3d 601, 607 (D.C. Cir. 1987) (comparing the standard for summary disposition in an administrative proceeding to summary judgment in a civil proceeding); *Citizens for Allegan County, Inc.* v. *Federal Power Commission,* 414 F.2d 1125, 1128 (D.C. Cir. 1969) (affirming that ''the right of opportunity for hearing does not require a procedure that will be empty sound and show, signifying nothing'')).

By letter dated August 18, 2020, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advised that neither party filed exceptions. I find that the time period to file exceptions has expired. *See* 21 CFR 1316.66.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

Findings of Fact

Applicant's DEA Registration

On or about June 6, 2018, Applicant filed an application (Application Control No. H18074119C) for a DEA Certificate of Registration as a practitioner in schedules II–V, with the proposed registered location of 1406 W 134th Street, Compton, California 90222. Govt Motion Exhibit (hereinafter, GX) 2 (Certification of Registration History), at 1.

The Status of Applicant's California License

On February 3, 2020, the MBC revoked Applicant's medical license. GX 3 (MBC Order), at 19. According to the Order, Applicant was suspended by the MBC following Applicant's October 10, 2013 felony conviction for health care fraud. *Id.* On June 16, 2017, the MBC adopted a Stipulated Settlement and Disciplinary Order, which imposed a period of probation, during which Applicant would be required to complete continuing medical education coursework, perform community service, obtain a psychological evaluation at his own expense, pay all probation costs, and complete a clinical competence assessment program. *Id.* at 3. Applicant failed to meet the terms of his probation and therefore, the MBC revoked Applicant's medical license. GX 3, at 19. The Applicant petitioned the MBC for reconsideration and his petition was denied on April 14, 2020. GX 4 (MBC Order Denying Petition for Reconsideration).

According to the online records of the California Department of Consumer Affairs, of which I take official notice, Applicant's license remains revoked.[1] *https://search.dca.ca.gov/results* (last visited date of signature of this Order). California's online records show that Applicant's medical license remains revoked and that Applicant is not authorized in California to practice medicine. *Id.*

As the Chief ALJ noted, Applicant does not appear to contest the status of his medical license or his state authorization to handle controlled substances. *See* SD, at 5 (citing App Reply, at 2). Based on the entire record before me, I find that Applicant currently is not licensed to engage in the practice of medicine in California.

Discussion

Applicant's application requests registration as a ''practitioner'' in California. GX 1 (Applicant's Application). 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 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).

This rule derives from the text of two provisions of the Controlled Substances Act (hereinafter, CSA). Controlled Substances Act (hereinafter, CSA). Pursuant to section 303(f) of the CSA, a prerequisite to registration as a practitioner is authorization to dispense controlled substances under the laws of the state in which the Applicant seeks to be registered.[2] 21 U.S.C. 823(f) (''The Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the Applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.''). Further, the CSA defines ''practitioner'' as ''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).

The Agency has long interpreted these statutory requirements strictly. The ''controlling question'' is ''whether the Applicant is currently authorized to handle controlled substances in the state.'' *Anne Lazar Thorn, M.D.,* 62 FR 12847, 12848 (1997); *see also Frederick Marsh Blanton, M.D.,* 43 FR 27616 (1978). Accordingly, the Agency has rejected arguments that it should relax these statutory requirements. For example, the Agency rejected as ''of no consequence'' the fact that the MBC summarily suspended a doctor's California medical license. *Robert T. Perez, M.D.,* 84 FR 3247, 3248 (2019). ''What is consequential,'' the Agency

[1] 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, Applicant may dispute my finding by filing a properly supported motion for reconsideration within fifteen 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 Applicant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email (*dea.addo.attorneys@dea.usdoj.gov*).

[2] ''[D]ispense[ ] means to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance. . . .'' 21 CFR 802(10).

determined, ''is my finding that Registrant is no longer currently authorized to dispense controlled substances in California, the State in which he is registered.'' *Id.* Similarly, the Agency rejected as ''of no consequence'' the argument that the MBC had not yet afforded the doctor a hearing to challenge the suspension of his California medical license. *Frank D. Li, M.D.,* 82 FR 11238, 11240 (2017). *See also Miles J. Nelson, M.D.,* 84 FR 3248, 3250 (2019) (summary suspension of state authority or state authority pending a final decision on the merits are of no consequence); *Bourne Pharmacy, Inc.,* 72 FR 18273, 18274 (2007) (''Under the . . . [CSA], it is irrelevant that Applicant's state registration is being held in escrow pending state proceedings. Under the . . . [CSA], a practitioner must be currently authorized to handle controlled substances in 'the jurisdiction in which [it] practices' in order to maintain its DEA registration.'').

According to California statute, ''[n]o person other than a physician . . . shall write or issue a prescription.'' Cal. Health & Safety Code § 11150 (West 2021). Further, ''physician,'' as defined by California statute, is a person who is ''licensed to practice'' in California. *Id.* at § 11024.

Here, the undisputed evidence in the record is that Applicant currently lacks authority to practice medicine in California. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Applicant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, Applicant is not eligible to be granted a DEA registration. Accordingly, I will order that Applicant's application for a DEA registration be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the application submitted by Emmanuel Ayodele, M.D for a Certificate of Registration, Control Number H18074119C, as well as any other pending application of Emmanuel Ayodele, M.D. for additional registration in California. This Order is effective June 4, 2021.

D. Christopher Evans,

Acting Administrator.

[FR Doc. 2021–09461 Filed 5–4–21; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *March 1, 2021 through March 31, 2021.* (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path

(i) The sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services From a Foreign Country Path

(i) (I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));