

observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <https://www.uscourts.gov/rules-policies/records-rules-committees/agenda-books>.

DATES: April 28, 2022.

FOR FURTHER INFORMATION CONTACT:

Bridget Healy, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Phone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

(Authority: 28 U.S.C. 2073.)

Dated: February 8, 2022.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

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JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Evidence Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Evidence Rules; notice of open meeting.

SUMMARY: The Advisory Committee on Evidence Rules will hold a meeting on May 6, 2022 in Washington, DC. The meeting is open to the public for observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <https://www.uscourts.gov/rules-policies/records-rules-committees/agenda-books>.

DATES: May 6, 2022.

FOR FURTHER INFORMATION CONTACT:

Bridget Healy, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Phone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

(Authority: 28 U.S.C. 2073.)

Dated: February 8, 2022.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20-03]

John X. Qian, M.D.; Decision and Order

On November 18, 2019, a former Acting Administrator, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, OSC/ISO) to John X. Qian, M.D. (hereinafter, Respondent). Administrative Law Judge Exhibit (hereinafter, ALJX) 1 (Order to Show Cause), at 1. The OSC proposed the revocation of Respondent's Certificates of Registration Nos. FQ7186174, FQ7906968, and BQ7364970, and denial of the pending application for a new DEA Certificate of Registration (hereinafter, COR or registration), Application No. W18124091C, pursuant to 21 U.S.C. 824(a)(4) "because [his] continued registration is inconsistent with the public interest. . . ." *Id.* (citing 21 U.S.C. 823(f)).

I. Procedural History

The OSC alleged that "from at least early 2017, through at least April 29, 2019,¹ [Respondent] unlawfully issued or approved the issuance of prescriptions for controlled substances" to three patients "that were not for a legitimate medical purpose, were beneath the standard of care for the practice of medicine in the State of California, and were not issued in the usual course of professional medical practice." *Id.* at 5. The OSC alleged violations of 21 U.S.C. 841(a) and 842(a); 21 CFR 1306.04(a); Cal. Health & Safety §§ 11153(a), 11154(a); and Cal. Bus. § Prof. §§ 725(a), 22334, and 2242(a). *Id.*

Pursuant to 21 U.S.C. 824(d) and 21 CFR 1301.36(e), the former Acting Administrator immediately suspended Respondent's Certificate of Registration, found "that [Respondent's] continued registration [was] inconsistent with the public interest" and that "continued registration while [the] proceedings are pending constitutes an imminent danger to the public health or safety." *Id.* at 13. Pursuant to 21 U.S.C. 824(f) and 21 CFR 1301.36(f), the former Acting Administrator authorized DEA Special Agents (hereinafter, SA) and Diversion Investigators (hereinafter, DI) serving the OSC on Respondent to place under seal or to remove for safekeeping all

controlled substances that Respondent possessed pursuant to the suspended registrations and to take the registrations themselves. *Id.*

The OSC notified Respondent of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 13 (citing 21 CFR 1301.43).

By letter dated November 21, 2019, Respondent timely requested a hearing.² ALJX 2 (Request for Hearing), at 1. The matter was placed on the docket of the Office of Administrative Law Judges and was assigned to Mark M. Dowd (hereinafter, ALJ). In addition to the traditional procedural history, the parties filed robust Joint Stipulations of Facts, ALJX 10 (Joint Stipulations of Facts), and the Government filed several Motions in Limine, which I will briefly summarize here. The first, a Motion in Limine to Exclude Second Expert Witness, ALJX 11, sought to exclude the testimony of a second expert witness identified a week before the hearing in this matter was scheduled to begin. *Id.* at 1. The ALJ found good cause for the Respondent's delay and agreed to permit both of Respondent's experts to testify so long as the testimony was not cumulative or repetitive. ALJX 12 (Order Granting in Part Government's Motion in Limine to Exclude Evidence). Respondent ended up calling only the later-added expert witness to testify. The second was a Motion in Limine to Exclude Character Witnesses, ALJX 13, which alleged that the dozen character witnesses that Respondent proposed could only offer testimony that was either irrelevant or duplicative. ALJX 13. The ALJ did not grant the Government's motion, but he did limit the number of witnesses who could discuss Respondent's character and dispensing experience to three patients and four medical professionals and limited the scope of the testimony to what was relevant to the hearing. Transcript of Proceedings in the Matter of John X. Qian, M.D. (hereinafter, Tr.), 7-10. In the end, Respondent did not call any witnesses for these purposes but instead presented documentary evidence. During the hearing, the Government filed a Motion in Limine to Strike Testimony and Evidence, ALJX 18, related to Respondent's treatment of E.N. that predated the medical records provided to the Government in response to a subpoena (which began in July 2012). ALJX 18, at 1. The ALJ

¹ In the Prehearing Statement, the Government clarified the relevant time period to be between early 2017 and "late 2019." ALJX 4, at 15.

² I find that the Government's service of the OSC was adequate.