Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–16212 Filed 7–23–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Carrie L. Madej, DO; Decision and Order

On May 15, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Carrie L. Madej, D.O. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FM6088997 at the registered address of 527 Luther Bailey Road, Senoia, Georgia 30276. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the state of Georgia,'' the state in which Registrant is registered with DEA. *Id.* at 1–2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of her right to file with DEA a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. *Id.* at 2 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.[1] ''A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Further, ''[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.'' *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, on January 4, 2023, Registrant surrendered her Georgia medical license, with the surrender made effective on January 6, 2023. RFAAX 1, at 1. According to Georgia online records, of which the Agency takes official notice, Registrant's Georgia medical license remains ''Voluntarily Surrendered.'' [2] Georgia Composite Medical Board License Search, *https://gcmb.mylicense.com/verification* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Georgia, the state in which she is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 ''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, 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, D.O.,* 76 FR 71371, 71372 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.,* 43 FR 27616, 27617 (1978).[3]

According to Georgia statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Ga. Code Ann. section 16–13–21(9) (2023). Further, a ''practitioner'' means a ''physician . . . or other person licensed, registered, or otherwise authorized under the laws of [Georgia] to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in [Georgia].'' *Id.* section 16–13–21(23)(A).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Georgia. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in Georgia. Thus, because Registrant lacks authority to practice medicine in Georgia and, therefore, is not authorized to handle controlled substances in Georgia, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

[1] Based on the Government's submissions in its RFAA dated October 12, 2023, the Agency finds that service of the OSC on the Registrant was adequate. Specifically, the submitted Declaration from a DEA Diversion Investigator indicates that Registrant was personally served with the OSC on May 25, 2023. RFAAX 2, at 1.

[2] 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 the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to DEA Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[3] This rule derives from the text of two provisions of the Controlled Substances Act (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(g)(1) (this section, formerly sec. 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. 117–215, 136 Stat. 2257 (2022)). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, 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,* 76 FR 71371–72; *Sheran Arden Yeates, D.O.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.,* 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR 27617.

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. FM6088997 issued to Carrie Madej, D.O. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Carrie Madej, D.O., to renew or modify this registration, as well as any other pending application of Carrie Madej, D.O., for additional registration in Georgia. This Order is effective August 23, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 15, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–16213 Filed 7–23–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–42]

John Qian, MD; Decision and Order

On May 3, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to John Qian, M.D., (Respondent) of San Diego, CA. OSC, at 1, 7. The OSC proposed the denial of Respondent's application for a DEA Certificate of Registration (Registration), Application Control No. W22061401C, alleging that the issuance of the registration would be inconsistent with the public interest. *Id.* at 1 (citing 21 U.S.C. 823(g)(1)).

A hearing was held before DEA Chief Administrative Law Judge John J. Mulrooney (the Chief ALJ), who, on October 19, 2023, issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Recommended Decision or RD), which recommended denial of Respondent's application. RD, at 27. Respondent did not file Exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, findings of fact, conclusions of law, and recommended sanction as found in the RD and summarizes and expands upon portions thereof herein.

I. Findings of Fact

Respondent was previously registered with the DEA to prescribe controlled substances in California. *John X. Qian, M.D. (''Qian I''),* 87 FR 8039, 8058 (2022). The Agency issued an OSC and Immediate Suspension of Registration to Respondent on November 18, 2019 (2019 OSC/ISO), recommending that his previous Registrations be revoked on the grounds that they were inconsistent with the public interest. RD, at 3 (citing 21 U.S.C. 824(a)(4)). Respondent's Registrations were immediately suspended because the Agency determined that there was an imminent danger to the public health or safety from continuing his Registrations during the pendency of the proceeding. RD, at 3 (citing 21 U.S.C. 824(d); 21 CFR 1301.36(e)). On February 11, 2022, following a hearing on the merits (2020 Hearing), the Agency revoked Respondent's previous Registrations. RD, at 3; *Qian I,* 87 FR at 8058.[1]

Approximately three months later, on May 26, 2022, Respondent filed an application for a new registration. RD, at 3. The Agency issued an OSC on May 3, 2023, proposing that the application be denied based on the same conduct alleged in the 2019 OSC/ISO. *Id.* at 2. Following Respondent's request for a hearing, the Government filed a Partial Motion for Summary Disposition (the PMSD), arguing that the Agency's final order in *Qian I* satisfied the Government's prima facie case that it would be inconsistent with the public interest to grant Respondent's application. *Id.* at 2–3; ALJX 8, at 5–17. The Chief ALJ granted the Government's unopposed PMSD and found that the sole remaining issue to determine at the August 2023 Hearing (2023 Hearing) was whether Respondent could be entrusted with a registration. RD, at 2–3. The Chief ALJ also found that the Agency's factual findings, legal conclusions, and credibility determinations in *Qian I* should be afforded preclusive effect in this proceeding.[2] The Agency agrees.

Because the Agency's factual findings in *Qian I* serve as the basis for the Government's prima facie case, they are briefly summarized here.[3] In *Qian I,* the Agency found that Respondent had issued one-hundred and fifteen prescriptions to three patients from 2017 through 2019 in violation of federal and state law and beneath the standard of care for prescribing controlled substances in California. RD, at 4; *Qian I,* 87 FR 8057. The Agency found that Respondent had issued these prescriptions without performing or documenting adequate physical examinations, developing or documenting adequate treatment plans, developing or documenting a justification for prescribing controlled substances, or resolving or documenting resolution of diversion red flags. RD, at 4–5; *Qian I,* 87 FR 8039 n.1, 8040, 8045 n.27, 8050, 8055–57. The Agency also found that Respondent had repeatedly copied language verbatim throughout his medical records, which violated the California standard of care and significantly undermined the medical records' credibility. RD, at 5; *Qian I,* 87 FR 8055. Respondent's recordkeeping errors were egregious; for example, in one medical record, Respondent copied forward his description of a physical examination verbatim over twenty-one visits for fifteen months without adding any new information. *Id.* at 8048. Respondent then added an additional

[1] Following publication of *Qian I* in the **Federal Register**, Respondent filed a Petition for Review with the Court of Appeals. *Qian* v. *DEA,* No. 22–70039 (9th Cir. filed Mar. 2, 2022). After the Court of Appeals extended the initial briefing schedule on four separate occasions, the petition was administratively closed on December 15, 2022. On April 13, 2023, Respondent filed a Motion to Voluntarily Dismiss the Appeal, which the Court of Appeals granted on April 28, 2023.

[2] RD, at 3–4, 4 n.9 (citing *Jose G. Zavaleta, M.D.,* 78 FR 27431, 27434 (2013) (''[T]he Agency's factual findings and legal conclusions are entitled to preclusive effect in a subsequent proceeding.''); *Robert L. Dougherty, M.D.,* 76 FR 16823, 16830 (2011) (''[W]here, as here, an applicant has previously been the subject of an Agency Final Order, the doctrine of *res judicata* bars the relitigation of the factual findings and conclusions of law of the prior proceeding absent the applicant's establishing that he falls within one of the doctrine's recognized exceptions.''); *see also Univ. of Tenn.* v. *Elliott,* 478 U.S. 788, 797 (1986) (''[I]t is sound policy to apply principles of issue preclusion to the factfinding of administrative bodies acting in a judicial capacity.''); *United States* v. *Utah Constr. & Mining Co.,* 384 U.S. 394, 422 (1966) (''When an administrative agency is acting in a judicial capacity and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose.'')).

[3] The Government's only witness at the 2023 Hearing was Diversion Group Supervisor (GS) Ann Malta-Chi, who testified briefly to authenticate and lay foundation for Respondent's Certificate of Non-Registration. RD, at 6; Tr. 21–23; GX. 1. The Agency agrees with the Chief ALJ that the GS presented as an impartial regulator, testifying to matters that were not in serious contention, and that her testimony was sufficiently detailed, plausible, and internally consistent to be fully credited. RD, at 6.