

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, Registrant's Nevada medical license is inactive. RFAAX 1, at 1. Further, on January 17, 2024, Registrant's Nevada controlled substance registration was revoked. *Id.* at 2. According to Nevada online records, of which the Agency takes official notice, Registrant's Nevada medical license and Nevada controlled substance registration are currently listed as "Inactive-Probation" and "Inactive" respectively.<sup>2</sup> Nevada State Board of Medical Examiners Licensee Search, <https://nsbme.us.thentiacloud.net/webs/nsbme/register> (last visited date of signature of this Order); Nevada State Board of Pharmacy License Verification, <https://online.nvbop.org/#/verifylicense> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine nor to handle controlled substances in Nevada, the state in which he 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. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21)."). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).<sup>3</sup>

According to Nevada statute, "[e]very practitioner or other person who dispenses any controlled substance within th[e] State or who proposes to engage in the dispensing of any controlled substance within th[e] State shall obtain biennially a registration issued by the [Nevada State Board of Pharmacy] in accordance with its regulations." Nev. Rev. Stat. § 453.226(1) (2023). Further, according to Nevada statute, "dispense" means "to deliver a controlled substance to an ultimate user, patient 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." *Id.* at § 453.056(1).

Here, the undisputed evidence in the record is that Registrant lacks authority to dispense controlled substances in Nevada because his Nevada controlled substance registration is inactive. As discussed above, an individual must

<sup>3</sup> 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(g)(1). 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, M.D.*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR at 27,617.

hold a Nevada controlled substance registration to dispense a controlled substance in Nevada. Thus, because Registrant lacks authority to handle controlled substances in Nevada, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

### 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. FO4173845, issued to Matthew Okeke, M.D. 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 Matthew Okeke, M.D., to renew or modify this registration, as well as any other pending application of Matthew Okeke, M.D., for additional registration in Nevada. This Order is effective January 29, 2025.

### Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 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.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Kevin Petersen, M.D.; Decision and Order

On November 22, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Kevin Petersen, M.D., of Las Vegas, Nevada (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BP0967818, alleging that Registrant's registration should be revoked because

<sup>2</sup> 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 the DEA Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.gov](mailto:dea.addo.attorneys@dea.gov).

Registrant is “currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Nevada, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).<sup>1</sup>

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 3.<sup>2</sup> “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),

<sup>1</sup> According to Agency records, Registrant’s registration expired on March 31, 2024. The fact that a registrant allows his registration to expire during the pendency of an OSC does not impact the Agency’s jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68474, 68476–79 (2019).

<sup>2</sup> Based on the Government’s submissions in its RFAA dated March 15, 2024, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from the DEA Diversion Investigator (DI) indicates that on November 27, 2023, under the belief that Registrant no longer lived in Nevada, the DI sent a copy of the OSC to DEA’s California Riverside Office for DEA investigators from that office to attempt to personally serve Registrant with a copy of the OSC at two California addresses associated with Registrant. RFAAX 1, at 1. Registrant was not present at either California address. *Id.* On November 30, 2023, the DI sent copies of the OSC, via certified mail, to three different addresses associated with Registrant, including two in California and one in Nevada. *Id.* at 2. On or about December 13, 2023, the DI received all three certified mailings back as undeliverable. *Id.* Finally, on or about January 30, 2024, the DI sent a copy of the OSC via email to two email addresses Registrant previously provided to DEA. *Id.* The Agency finds that Registrant was successfully served the OSC by email and that the DI’s efforts to serve Registrant by other means were “reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action.” *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); see also *Mohammed S. Aljanaby, M.D.*, 82 FR 34552, 34552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful). Therefore, due process notice requirements have been satisfied.

(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, Registrant’s Nevada medical license expired on June 30, 2023. RFAAX 1, at 2. Further, according to the OSC, Registrant’s Nevada controlled substance license was suspended and set to expire on October 31, 2024. *Id.* According to Nevada online records, of which the Agency takes official notice,<sup>3</sup> Registrant’s Nevada medical license is revoked. Nevada State Board of Medical Examiners Licensee Search, <https://nsbme.us.thenticcloud.net/webs/nsbme/register/#> (last visited date of signature of this Order).<sup>4</sup>

Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Nevada, the state in which he 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

<sup>3</sup> 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 the DEA Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.gov](mailto:dea.addo.attorneys@dea.gov).

<sup>4</sup> According to Nevada online records, Registrant’s Nevada controlled substance license referenced in the OSC is revoked; however, there is an additional Nevada controlled substance license, not referenced in the OSC, that is active and is recorded under the same name as Registrant. Nevada State Board of Pharmacy License Verification, <https://online.nvbop.org/#/verifylicense> (last visited date of signature of this Order). Nonetheless, because Registrant’s Nevada medical license is undoubtedly revoked, even if this active Nevada controlled substance license belongs to Registrant, Registrant would still lack authority to handle controlled substances in Nevada. See *infra* (Discussion).

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. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (“The Attorney General can register a physician to dispense controlled substances ‘if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.’ . . . The very definition of a ‘practitioner’ eligible to prescribe includes physicians ‘licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices’ to dispense controlled substances. § 802(21).”). The Agency has applied these principles consistently. See, e.g., *James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).<sup>5</sup>

According to Nevada statute, “dispense” means “to deliver a controlled substance to an ultimate user, patient 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.” Nev. Rev. Stat. § 453.056(1) (2023). Further, a “practitioner” includes a “physician . . . who holds a license to practice his or her profession in [Nevada] and is registered pursuant to [the Nevada Uniform Controlled Substances Act].” *Id.* at § 453.126(1).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Nevada. As discussed above, an individual must be a licensed practitioner to dispense a

<sup>5</sup> 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(g)(1). 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, M.D.*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR at 27617.

controlled substance in Nevada. Thus, because Registrant lacks authority to practice medicine in Nevada, and, therefore, is not authorized to handle controlled substances in Nevada, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

#### 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. BP0967818 issued to Kevin Petersen, M.D. 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 Kevin Petersen, M.D., to renew or modify this registration, as well as any other pending application of Kevin Petersen, M.D., for additional registration in Nevada. This Order is effective January 29, 2025.

#### Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 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.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 24-67]

#### Jason Lee Ray, PA-C; Decision and Order

On August 22, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Jason Lee Ray, PA-C, of Marbleton, Wyoming (Respondent). OSC, at 1, 4. The OSC proposed the revocation of Respondent's DEA Certificate of Registration No. MR4038293, alleging that Respondent's DEA registration should be revoked

because Respondent is "without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Wyoming, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

On September 4, 2024, Respondent requested a hearing and filed an Answer. On September 11, 2024, the Government filed a Motion for Summary Disposition, to which Respondent did not respond. On September 20, 2024, Administrative Law Judge Paul E. Soeffing (the ALJ) granted the Government's Motion for Summary Disposition and recommended the revocation of Respondent's registration, finding that because Respondent lacks state authority to handle controlled substances in Wyoming, the state in which he is registered with DEA, "there is no other fact of consequence for th[e] tribunal to decide." Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD), at 5-6. 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.

#### Findings of Fact

On February 15, 2024, the Wyoming Board of Medicine suspended Respondent's Wyoming physician assistant license. RD, at 3.<sup>1</sup> According to Wyoming online records, of which the Agency takes official notice, Respondent's Wyoming physician assistant license remains suspended.<sup>2</sup>

<sup>1</sup> See also Government's Submission of Evidence and Motion for Summary Disposition (Motion for Summary Disposition), Exhibit 2, Attachment C, at 11. The Agency notes that there is some inconsistency regarding the naming of the attachments included with the Government's Exhibit 2 (the submitted Declaration from a DEA Diversion Investigator) when comparing how the attachments are named in the Declaration versus the Motion for Summary Disposition itself; however, this inconsistency does not appear to be substantive.

<sup>2</sup> 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,

Wyoming Board of Medicine, Physician and PA License Lookup, <https://wyomedboard.wyo.gov/consumers/license-lookup> (last visited date of signature of this Order). Accordingly, the Agency finds that Respondent is not currently licensed to practice as a physician assistant in Wyoming, the state in which he 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 section 823 of the Controlled Substances Act (CSA) "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. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21).") The Agency has applied these principles consistently. See, e.g., *James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).<sup>3</sup>

Respondent 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 Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.gov](mailto:dea.addo.attorneys@dea.gov).

<sup>3</sup> 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

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