



**U.S. Department of Justice
Drug Enforcement Administration**

www.dea.gov

Springfield, Virginia 22152

IN THE MATTER OF

Muhamad Aly Rifai, MD
241 N. 13th Street
Easton, Pennsylvania 18042

ORDER TO SHOW CAUSE

PURSUANT to Sections 303 and 304 of the Controlled Substances Act, Title 21, United States Code, Sections 823 and 824,

NOTICE is hereby given to afford you an opportunity to Show Cause before the Drug Enforcement Administration (DEA), at the DEA Hearing Facility, at 700 Army Navy, 2nd Floor, Arlington, VA 22202, on January 23, 2024, or on such a subsequent date designated by the Administrative Law Judge (if you request such a hearing), as to why DEA should not revoke your DEA Certificate of Registration (COR) Number BR7552272, pursuant to 21 U.S.C. § 824(a)(4), and deny any applications for renewal or modification of such registrations and any applications for any other DEA registrations pursuant to 21 U.S.C. § 824(a)(4), because your continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(g)(1).

As detailed below, this Order states DEA's basis to revoke the above-referenced DEA registration, including a summary of the matters of fact and law at issue, as well as citations to laws and regulations that you have violated. In order to preserve your rights in this proceeding, you may appear in these revocation proceedings by filing a notice of appearance or request for hearing and an answer in the manner prescribed by regulations within 30 days from the receipt of this Order. On or before the date of your appearance, you may submit a corrective action plan that will be considered by DEA in accordance with 21 U.S.C. § 824(c).

LEGAL REQUIREMENTS

Federal law proscribes any person from distributing or dispensing a controlled substance except as authorized by the Controlled Substances Act (CSA). *See* 21 U.S.C. §§ 841(a)(1), 842(a)(1). A prescription for a controlled substance is legitimate only if "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 C.F.R. § 1306.04(a); *see, e.g., MacKay v. DEA*, 664 F.3d 808, 815-16 (10th Cir. 2011) (applying state law to determine if a prescription complied with 21 C.F.R. § 1306.04(a)); *Marcia L. Sills, M.D.*, 82 Fed. Reg. 36,423, 36,443-44 (2017) (discussing 21 C.F.R.

§ 1306.04(a)). “A [practitioner] who engages in the unauthorized practice of [his profession] is not a ‘practitioner acting in the usual course of professional practice.’” *United Prescription Servs., Inc.*, 72 Fed. Reg. 50,397, 50,407 (2007).

In addition to complying with the above-cited federal statutes and regulations, as a Commonwealth of Pennsylvania medical doctor, you are also required to comply with applicable Pennsylvania laws and regulations, including, but not limited to, 28 Pa. Code § 25.52(a) (Purpose of a Controlled Substance Prescription); 63 Pa. Cons. Stat. § 422.41(8), (9) (Reasons for Refusal, Revocation, Suspension or Other Corrective Actions Against a Licensee); 49 Pa. Code § 16.92(b) (Prescribing, Administering and Dispensing); 49 Pa. Code § 16.95 (Medical Records); 35 Pa. Cons. Stat. § 780-111(d) (Professional Prescription, Administration, and Dispensing); and 35 Pa. Cons. Stat. § 780-112(b) (Records of Distribution of Controlled Substances). As pertinent here, these authorities provide as follows:

- 28 Pa. Code § 25.52(a) recognizes a valid prescription as only one that is issued “for a legitimate medical purpose by a licensed practitioner in the usual course of professional practice.”
- 63 Pa. Cons. Stat. § 422.41(8) authorizes disciplinary action for unprofessional conduct, which includes “provid[ing] a medical service at a level beneath the accepted standard of care.”
- 63 Pa. Cons. Stat. § 422.41(9) authorizes disciplinary action for “[a]cting in such manner as to present an immediate and clear danger to public health or safety.”
- 49 Pa. Code § 16.92(b) requires the following minimal standards, among others, to be carried out when prescribing controlled substances, which do not necessarily rise to the standard of acceptable and prevailing medical practice: (1) an initial medical physical history and physical examination that includes an objective evaluation of the heart, lungs, blood pressure, and body functions that relate to the patient’s specific complaint; (2) patient counseling regarding the condition diagnosed and the drug prescribed and specific counseling about dosage levels, instructions for use, frequency and duration of use and possible side effects; and (3) medical records that are accurate, complete, and document the evaluation and care received by patients, which must include: (a) on an initial visit when a controlled substance is prescribed, a specification of the symptoms observed by the medical doctor and reported by the patient, the diagnosis of the condition for which the controlled substance is being given, the directions given to the patient for the use of the controlled substance, and the name, strength, and quantity of the controlled substance and the date it was prescribed; and (b) on a follow-up visit, any changes or additions to the aforementioned information as well as the name, strength, and quantity of the controlled substance and the date it was prescribed.
- 49 Pa. Code § 16.95 mandates that a patient’s medical record must be made in a timely manner that accurately, legibly, and completely reflects the evaluation and treatment of a patient. A patient medical record must contain sufficient information to

clearly identify the patient, the date of the medical record entry, the patient complaints and symptoms, and the person making the entry if not the medical doctor. A patient's medical record must also include clinical information pertaining to the patient; diagnoses, findings, and results of any pathologic or clinical laboratory examination, radiology examination, medical and surgical treatment; and other diagnostic, corrective, or therapeutic procedure. A patient's medical record must be retained for at least seven years from the date of the last medical service required to have been entered into the medical record.

- 35 Pa. Cons. Stat. § 780-111(d) authorizes a practitioner to prescribe a controlled substance only when: (1) in good faith in the course of the practitioner's professional practice; (2) within the scope of the patient relationship; and (3) in accordance with treatment principles accepted by a responsible segment of the medical profession.
- 35 Pa. Cons. Stat. § 780-112(b) requires that a practitioner keep a record of all prescribed controlled substances showing the amount, date, name, and address of the patient for at least two years from the date prescribed.

The falsification of patient medical records to conceal the unlawful prescribing of controlled substances may be considered by the Agency as conduct that threatens the public health or safety and grounds to revoke or deny a DEA Registration. *See Jerry Neil Rand, M.D.*, 61 Fed. Reg. 28,895, 28,897 (1996); *Albert L. Pulliam, M.D.*, 60 Fed. Reg. 54,513, 54,514-15 (1995); *Nelson A. Smith, D.D.S.*, 58 Fed. Reg. 65,403, 65,404 (1993).

BACKGROUND

1. You are registered with DEA to handle controlled substances in Schedules II through V under DEA COR Number BR7552272. Your registered address is 241 N. 13th Street, Easton, Pennsylvania 18042. Your DEA COR expires by its own terms on April 30, 2025.
2. You are the holder of a Pennsylvania State Board of Medicine (Medical Board) medical physician and surgeon license number MD431055, which expires by its own terms on December 31, 2024.

IMPROPER PRESCRIBING

3. As set forth below, between on or about May 17, 2021, and on or about August 9, 2021, in three separate incidents, you violated federal and Pennsylvania law by issuing prescriptions for controlled substances to an undercover Bethlehem Township Police Department Officer (Patient G.D.) outside the usual course of professional practice and not for a legitimate medical purpose. *See* 21 U.S.C. § 841(a)(1); 21 C.F.R. § 1306.04(a); 28 Pa. Code § 25.52(a); 49 Pa. Code § 16.92(b); 35 Pa. Cons. Stat. § 780-111, 112. These visits were recorded via audio and/or video. You also falsified medical records associated with your prescribing of these controlled substances. *See* 49 Pa. Code § 16.95.

4. On or about May 17, 2021, at an initial patient encounter, you issued to Patient G.D. a prescription for 30 tablets of dextroamphetamine-amphetamine 5 mg, under the brand name Adderall (a Schedule II stimulant), to be taken two times per day for fifteen days.
 - a. You issued this prescription for—what you described as “ADHD” medication—on request of Patient G.D. because Patient G.D. stated it “worked” and made Patient G.D. feel like Patient G.D. “got along better” in general, or words to that effect.
 - b. You issued this prescription without abiding by the minimal standards to be carried out when prescribing controlled substances.
 - c. You ignored evidence of diversion when Patient G.D. was unable to identify Patient G.D.’s purported previous prescriber and falsely claimed to have last been prescribed Adderall “at least two or three years ago.” You were aware of these false claims because you accessed the Pennsylvania Prescription Drug Monitoring Program (PDMP) and observed that no such controlled substance had been prescribed to Patient G.D. in the past five years.
 - d. Your treatment notes associated with this patient encounter were falsified, including the results of a urine drug screen that was not conducted, the results of a Test of Variables of Attention (TOVA) test that was not conducted, an Alcohol Use Disorders Identification Test (AUDIT-C) survey that was not taken, a Patient Health Questionnaire (PHQ-9) that was not taken, a Generalized Anxiety Disorder (GAD-7) questionnaire that was not taken, and an Adult Attention-Deficit/Hyperactivity Disorder (ADHD) Self-Report Scale (ASRS-v1.1) Symptom Checklist that was not taken. Other treatment notes were also falsified, indicating medication, diagnosis, symptom, family, abuse, employment, and drug histories that were in contradiction to what Patient G.D. reported to you, and purported psychotherapy services that you did not provide, among other purported activities that did not transpire. Further, Patient G.D.’s signature was reproduced on numerous forms that Patient G.D. did not sign.
5. On or about June 11, 2021, you issued to Patient G.D. a prescription for 60 tablets of dextroamphetamine-amphetamine 10 mg to be taken two times per day for thirty days.
 - a. You issued this prescription without meeting or speaking with Patient G.D. The only interaction with Patient G.D. was a student working under your supervision who spoke with Patient G.D. over the phone.
 - b. You issued this prescription without abiding by the minimal standards to be carried out when prescribing controlled substances.

- c. You ignored evidence of diversion when it was reported to you that Patient G.D. told your student that Patient G.D. went through Patient G.D.'s previous supply of Adderall "kind of quick," that Patient G.D. consumed it against your instruction in that Patient G.D. took two tablets each morning instead of one tablet twice per day, and that Patient G.D. wanted a longer period of supply.
 - d. Your treatment notes associated with this patient encounter were falsified, including that the visit was by televisit via secure video when it was over the phone, that it was both "30 minutes" and "40-54 minutes" when it was only a few minutes, and that you provided psychotherapy services for "17 minutes" when no such activity occurred, among other purported activities that did not transpire.
6. On or about August 9, 2021, you issued to Patient G.D. a prescription for 60 tablets of dextroamphetamine-amphetamine 15 mg to be taken two times per day for thirty days.
- a. You issued this prescription without meeting or speaking with Patient G.D. You issued this prescription on request of Patient G.D. after Patient G.D. told a student working under your supervision over the phone that Patient G.D. wanted "thirties" because Patient G.D. "just [thought] it didn't last long enough," or words to that effect.
 - b. You issued this prescription without abiding by the minimal standards to be carried out when prescribing controlled substances.
 - c. Your treatment notes associated with this patient encounter were falsified, including the results of a urine drug screen that was not conducted and a patient termination letter based on purported use of medical cannabis that you did not provide to Patient G.D. Other treatment notes were also falsified, including that it was in person when it was over the phone, that it was both "over 30 minutes" and "40-54 minutes" when it was only a few minutes, that you provided psychotherapy services for "17 minutes" when no such activity occurred, and that Patient G.D. admitted to cannabis use to help anxiety when no such conversation occurred, among other purported activities that did not transpire.

THE following procedures are available to you in this matter:

1. Within 30 days after the date of receipt of this Order to Show Cause, you may file with DEA a written request for a hearing in the form set forth in 21 C.F.R. § 1316.47. *See* 21 C.F.R. § 1301.43(a). If you fail to file such a request, you shall be deemed to have waived your right to a hearing and to be in default. *See* 21 C.F.R. § 1301.43(c)(1).
2. Should you request a hearing and fail to timely file an answer, plead, or otherwise defend, or should you request a hearing and then fail to appear at the designated hearing, you shall be deemed to have waived the right to a hearing and to be in

default, and DEA may enter an order terminating the proceeding. *See* 21 C.F.R. §§ 1301.43(c)(2), (c)(3), (d).

3. Default constitutes a waiver of your right to hearing and an admission of the factual allegations of the Order to Show Cause. *See* 21 C.F.R. § 1301.43(e). In the event that you are in default or an order terminating the proceedings has been issued, DEA may enter a default final order pursuant to 21 C.F.R. § 1316.67. *See* 21 C.F.R. § 1301.43(f)(1).

Requests for hearing should be filed by email with the Office of Administrative Law Judges at the following address: ECF-DEA@dea.gov, with a copy simultaneously provided to the Government at the following address: DEA.Registration.Litigation@dea.gov. Except as provided below with respect to a corrective action plan, correspondence concerning this matter, including requests referenced above, should be addressed to the Hearing Clerk, Office of Administrative Law Judges, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, VA 22152. A copy of the same shall also be served on Government Counsels, C. Michelle Venable-Ridley and Edward O. Siclari, and be addressed to the Office of Chief Counsel, Diversion Section, 8701 Morrisette Drive, Springfield, VA 22152. Matters are deemed filed upon receipt by the Hearing Clerk. *See* 21 C.F.R. § 1316.45.

OPPORTUNITY TO SUBMIT CORRECTIVE ACTION PLAN

In addition to the option to request a hearing as set forth above, in accordance with 21 U.S.C. § 824(c)(2)(C), you have the opportunity to submit a corrective action plan, which must be received by the Assistant Administrator, Diversion Control Division, on or before the date of your appearance. You are not required to submit a corrective action plan, nor will any adverse inference be drawn if you choose not to do so. If you wish to submit a corrective action plan, it must be submitted directly to the Assistant Administrator, Diversion Control Division, who will decide whether, in view of the plan and the allegations set forth in this Order to Show Cause, the proceedings to revoke your registration should be discontinued, or deferred for the purposes of modification, amendment, or clarification of such plan. Any corrective action plan should be clearly labeled “Corrective Action Plan” and submitted by email to Thomas W. Prevoznik at the following address: CAPresponse@usdoj.gov.

A copy of the corrective action plan shall also be served on Government Counsels, C. Michelle Venable-Ridley and Edward O. Siclari, and be addressed to the Office of Chief Counsel, Diversion Section, 8701 Morrisette Drive, Springfield, VA 22152.

In the event you submit a corrective action plan and the Assistant Administrator decides not to discontinue or postpone the proceedings, please note that such a decision is not a final determination by the agency regarding your corrective action plan or your registration. In such circumstances, the Administrator may nonetheless consider the corrective action plan in issuing the final order at the conclusion of the proceedings.

Finally, please be advised that the submission of a corrective action plan shall not constitute a request for a hearing. As indicated, if you choose to submit a corrective action plan and also wish to proceed by requesting a hearing, you must separately submit your request for a hearing in accordance with the instructions above.

THOMAS
PREVOZNIK

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THOMAS PREVOZNIK
Date: 2023.11.30
11:09:22 -05'00'

Thomas W. Prevoznik
Assistant Administrator
Diversion Control Division
Drug Enforcement Administration

cc: Hearing Clerk, Office of Administrative Law Judges
C. Michelle Venable-Ridley, Counsel for the Government
Edward O. Siclari, Counsel for the Government