

13.³ According to Tennessee's online records, of which the Agency takes official notice, Respondent's APRN license is revoked.⁴ Tennessee Department of Health License Verification, <https://apps.health.tn.gov/Licensure/default.aspx> (last visited date of signature of this Order). Accordingly, the Agency finds that Respondent is not licensed to practice as an Advanced Practice Registered Nurse in Tennessee, the state in which she is registered with the 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, 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).⁵

³In that Order, the Board went on to state that, "[s]hould Respondent be granted a new advance practice registered nurse certificate by this Board [in the future], Respondent's advance practice registered nurse certificate shall be restricted to prohibit Respondent from prescribing controlled substances." GX D, at 11.

⁴Under 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, 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.

⁵This 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

According to Tennessee 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." Tenn. Code Ann. section 39-17-402(7) (2022). Further, a "practitioner" means "[a] physician . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state." *Id.* at section 39-17-402(23)(A). According to Tennessee nursing regulations, "[c]ertification by the Tennessee Board of Nursing to prescribe and/or issue legend drugs . . . shall authorize a nurse practitioner⁶ to prescribe and/or issue such drugs. Any nurse who prescribes and/or issues drugs without proper certification by the Tennessee Board of Nursing shall be subject to disciplinary action by the Board of Nursing . . ." Tenn. Comp. R. & Regs. 1000-04-.04(1) (2022).

Here, the evidence in the record is that Respondent lacks authority to practice as an Advanced Practice

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 section 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 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, the 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, 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*, 43 FR 27617. Moreover, because "the controlling question" in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration "is currently authorized to handle controlled substances in the [S]tate," *Hooper*, 76 FR 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, it is of no consequence that Respondent is still challenging the underlying action here. *See* Respondent's Reply to the Government's Motion for Summary Disposition, at 4-8; RD, at 6-7. What is consequential is the Agency's finding that Respondent is not currently authorized to dispense controlled substances in Tennessee, the state in which she is registered with the DEA. *Adley Dasilva, P.A.*, 87 FR 69341, 69341 n.2 (2022).

⁶Prior to revocation, Respondent's APRN license designated Respondent as a "Nurse Practitioner with Certificate of Fitness."

Registered Nurse in Tennessee, RD, at 7. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in Tennessee. Thus, because Respondent lacks authority to practice as an Advanced Practice Registered Nurse in Tennessee and, therefore, is not authorized to handle controlled substances in Tennessee, Respondent is not eligible to maintain a DEA registration. RD, at 7-8. Accordingly, the Agency will order that Respondent's application for renewal of her registration be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny the pending application of Christina Collins, APRN, for renewal of her DEA Certificate of Registration No. MC1638696, as well as any other pending application of Christina Collins, APRN, for additional registration in Tennessee. This Order is effective April 21, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on March 15, 2023, 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. 2023-05802 Filed 3-21-23; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23-12]

Karl Kauffman, M.D.; Decision and Order

On November 18, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Karl Kauffman, M.D. (Respondent). OSC, at 1, 3. The OSC proposed the revocation of

Respondent's registration¹ because Respondent is "without authority to handle controlled substance[s] in Texas, the state in which [he is] registered with DEA." OSC, at 2 (citing 21 U.S.C. 824(a)(3)).

Respondent timely requested a hearing; thereafter, the Government filed and the Chief Administrative Law Judge (hereinafter, CALJ) granted a Motion for Summary Disposition recommending the revocation of Respondent's registration. 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 (hereinafter, RD), at 5–6. Respondent did not oppose the Government's Motion or file exceptions to the RD. *Id.* at 2. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the CALJ's rulings, findings of fact, conclusions of law, and recommended sanction and summarizes and expands upon portions thereof herein.

Findings of Fact

On March 30, 2022, the Texas Medical Board issued an Order of Temporary Suspension that suspended Respondent's Texas medical license. RD, at 4; *see also* Government's Notice of Filing of Evidence and Motion for Summary Disposition, Exhibit (GX) A, at 1–2. According to Texas online records, of which the Agency takes official notice, Respondent's license is still suspended.² Texas Medical Board License Verification, <https://profile.tmb.state.tx.us> (last visited date of signature of this Order). Accordingly, the Agency

finds that Respondent is not currently licensed to engage in the practice of medicine in Texas, the state in which he is registered with the 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 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, 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).³

According to Texas statute, "[d]ispense" means "the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery." Tex. Health & Safety Code Ann. § 481.002(12) (2022). Further, a "practitioner" means "a physician . . . or other person licensed,

registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state." *Id.* at § 481.002(39)(A).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Texas. RD, at 4–5. As discussed above, a person must be a licensed practitioner to dispense a controlled substance in Texas. *Id.* at 5. Thus, because Respondent lacks authority to practice medicine in Texas and, therefore, is not authorized to handle controlled substances in Texas, Respondent is not eligible to maintain a DEA registration. *Id.* Accordingly, the Agency will order that Respondent'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. FK0627642 issued to Karl Kauffman, 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 Karl Kauffman, M.D., to renew or modify this registration, as well as any other pending application of Karl Kauffman, M.D., for additional registration in Texas. This Order is effective April 21, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on March 15, 2023, 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. 2023–05805 Filed 3–21–23; 8:45 am]

BILLING CODE 4410–09–P

¹ Certificate of Registration No. FK0627642 at the registered address of 2675 41st Street SE, Paris, Texas 75462. *Id.* at 1. According to Agency records, Respondent's Certificate of Registration No. FK0627642 expired on December 31, 2022. 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 (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68474, 68476 through 68479 (2019).

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, 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.

³ 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) (this section, formerly § 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, the 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 and 71372; *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*, 43 FR 27617.