Findings of Fact

On July 22, 2021, Respondent signed a voluntary agreement with the New York State Board for Professional Medical Conduct (the Board),[2] which permanently precluded her from ''ordering, prescribing, administering, distributing and/or dispensing controlled substances.'' RD, at 4; *see also* Govt Motion for Summary Disposition, Exhibit A, at 4. According to New York online records, of which the Agency takes official notice,[3] Respondent is registered to practice medicine. New York State Office of the Professions Verification Search, *https://www.op.nysed.gov/verification-search* (last visited date of signature of this Order). But, the Board ''permanently limited'' her medical license ''to preclude [her] ordering, prescribing, administering, distributing and/or dispensing of controlled substances.'' New York Department of Health Professional Misconduct and Physician Discipline, *https://apps.health.ny.gov/pubdoh/professionals/doctors/conduct/factions/HomeAction.action* (last visited date of signature of this Order). Moreover, Respondent must refer any patient for whom controlled substances may be needed to another physician. *Id.* Accordingly, the Agency finds that Respondent is not currently authorized to engage in the ordering, prescribing, administering, distributing and/or dispensing of controlled substances in the state of New York, 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[4] 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]

According to the New York Controlled Substances Act, ''[i]t shall be unlawful for any person to manufacture, sell, prescribe, distribute, dispense, administer, possess, have under his control, abandon, or transport a controlled substance except as expressly allowed by this article.'' N.Y. Pub. Health Law 3304 (2023). Further, New York defines a ''practitioner'' as ''[a] physician . . . or other person licensed, or otherwise permitted to dispense, administer or conduct research with respect to a controlled substance in the course of a licensed professional practice . . . .'' *Id.* at § 3302(27). Finally, New York regulations state that ''[a] prescription for a controlled substance may be issued only by a practitioner who is . . . authorized to prescribe controlled substances pursuant to his licensed professional practice . . . .'' N.Y. Comp. Codes R. & Regs. tit. 10, 80.64 (2023).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to prescribe controlled substances in New York. RD, at 5. Thus, because Respondent lacks authority to prescribe controlled substances in New York, Respondent is not eligible to maintain a DEA registration. *Id.,* at 6. Accordingly, the Agency orders 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. BW2841446, issued to Olga Wildfeuer, 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 Olga Wildfeuer, M.D., to renew or modify this registration, as well as any other pending application of Olga Wildfeuer, M.D., for additional registration in New York. This Order is effective September 13, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on August 7, 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. 2023–17382 Filed 8–11–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stephen K. Jones, M.D.; Decision and Order

On February 6, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Stephen K. Jones, M.D. (Respondent). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Respondent's Certificate of Registration No. FJ1057430 at the registered address

[2] The agreement was effective August 18, 2021. Govt Motion for Summary Disposition, Exhibit C, at 1.

[3] 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.*

[4] As such, the Agency finds Respondent's arguments regarding the permissive nature of 21 U.S.C. 824(a)(3), *see* Resp Opposition to Summary Disposition, at 7, to be unavailing. RD at 4–5; *see also Bhanoo Sharma, M.D.,* 87 FR 41355, 41356 n.4 (2022).

[5] 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 at 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 at 27617.

of 420 West 1500 South, Suite 100, Bountiful, Utah 84010. *Id.* at 1. The OSC alleged that Respondent's registration should be revoked because Respondent is ''currently without authority to handle controlled substances in the State of Utah, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Respondent that if Respondent ''request[ed] a hearing and fail[ed] to timely file an answer, plead, or otherwise defend, . . . [Respondent] shall be deemed to have waived the right to a hearing and to be in default.'' *Id.* at 2. Here, Respondent made some attempt to request a hearing,[1] *see* RFAAX 3, but repeatedly failed to file an answer, *see* RFAAX 4–6. Ultimately the Administrative Law Judge determined that Respondent was in default and issued an Order Terminating Proceedings. *See* RFAAX 7. ''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 order to show cause.'' 21 CFR 1301.43(e).

Under 21 CFR 1301.43(f)(1), where ''the presiding officer has issued an order terminating the proceeding . . . , 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 § 1316.67 of this chapter.'' Here, the Government has requested final agency action based on Respondent's default pursuant to 21 CFR 1301.43(c), (f). *See also id.* at § 1316.67.

Findings of Fact

The Agency finds that, in light of Respondent's default, the factual allegations in the OSC are admitted. According to the OSC, on or about January 12, 2023, the Division of Professional Licensing of the Department of Commerce of the State of Utah issued an Amended Order of Adjudication suspending Respondent's license to practice as a physician and to administer controlled substances. RFAAX 1, at 2.

According to Utah's online records, of which the Agency takes official notice, both Respondent's Utah physician license and Respondent's Utah controlled substance license are suspended.[2] Utah Division of Occupational and Professional Licensing, Licensee Lookup & Verification System, *https://secure.utah.gov/llv/search/index.html* (last visited date of signature of this Order). Accordingly, the Agency finds that Respondent is not authorized to practice medicine nor to handle controlled substances in Utah, 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 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, 27,617 (1978).[3]

Under the Utah Controlled Substances Act, ''[e]very person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules I through V within [the] state . . . shall obtain a license issued by the [Division of Professional Licensing].'' Utah Code Ann. section 58–37–6(2)(a)(i) (2022). Here, the admitted evidence in the record is that both Respondent's Utah physician license and Respondent's Utah controlled substance license are suspended. As such, Respondent is not authorized to handle controlled substances in Utah and thus is not eligible to maintain a DEA registration. 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. FJ1057430 issued to Stephen K. Jones, 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 Stephen K. Jones, M.D., to renew or modify this registration, as well as any other pending application of Stephen K. Jones, M.D., for additional registration in Utah. This Order is effective September 13, 2023

Signing Authority

This document of the Drug Enforcement Administration was signed on August 7, 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

[1] Based on the Government's submissions, the Agency finds that service of the OSC was adequate. The ''Government Notice of Service of Order to Show Cause'' asserts that Respondent was personally served with the OSC on February 14, 2023; moreover, Respondent timely responded to the OSC via email on February 20, 2023. RFAAX 7, at 1; RFAAX 3. Though Respondent's email did not follow the format required to request a hearing, it did clearly state ''February 20, 2023: Hearing Requested.'' RFAAX 3, at 2; *see also* 21 CFR 1316.47. The email ''provide[d] [Respondent's] perspective of events,'' but did not admit, deny, or otherwise answer the factual allegations in the OSC. *Id.,* at 1; *see also* 21 CFR 1301.37(d)(3).

[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 the 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 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 section 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 71371–72; *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.

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. 2023–17385 Filed 8–11–23; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Debora Ryder, N.P.; Decision and Order

On August 24, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Debora Ryder, N.P. (Registrant) of Tarpon Springs, Florida. Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1. The OSC/ISO informed Registrant of the immediate suspension of her DEA Certificate of Registration, Control No. MR4236584, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes '''an imminent danger to the public health or safety.''' *Id.* The OSC/ISO also proposed the revocation of Registrant's registration, alleging that Registrant's continued registration is inconsistent with the public interest and that Registrant is without authority to handle controlled substances in Florida, the state in which she is registered with DEA.[1] *Id.* at 1 (citing 21 U.S.C. 824(a)(4), 823(g)(1),[2] 824(a)(3)).[3]

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated February 28, 2023.[4]

[1] The registered address of Registrant's DEA Certificate of Registration, Control No. MR4236584, is 900 Beckett Way, Tarpon Springs, Florida 34689. *Id.* at 3.

[2] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC/ISO, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[3] According to Agency records, Registrant's Certificate of Registration No. MR4236584 expired on April 30, 2023. The fact that a registrant allows her registration to expire during the pendency of an OSC does not impact the Agency's jurisdiction or prerogative under the CSA to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68474, 68476–79 (2019).

[4] Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC/ISO on Registrant was adequate. RFAAX 3, at 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC/ISO and Registrant has neither requested a hearing nor submitted a corrective action plan and therefore has waived any such rights. RFAA, at 2; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

I. Findings of Fact

On July 31, 2022, Registrant's Florida advanced practice registered nurse (APRN) license number APRN2943222 expired by its own terms. RFAAX 3, Attachment B. According to Florida online records, of which the Agency takes official notice, Registrant's Florida APRN license number APRN2943222 is listed as ''Delinquent,'' indicating that ''[t]he licensed practitioner is not authorized to practice in the state of Florida.'' [5] Florida Department of Health License Verification, *https://mqa-internet.doh.state.fl.us/MQASearchServices/* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to practice as an APRN in Florida, the state in which she is registered with the DEA.[6]

The Agency further finds that the Government's evidence shows that from June 11, 2021, through July 28, 2022, Registrant issued at least 83 prescriptions for controlled substances in the names of two deceased individuals, Deceased Patient B.K.[7] and Deceased Patient J.R.[8] RFAAX 3, at 2–3. After Deceased Patient B.K.'s death, from at least July 19, 2021 through July 28, 2022, Registrant issued at least 47 prescriptions for controlled substances in Deceased Patient B.K.'s name, including prescriptions for hydromorphone, oxycodone, alprazolam, and promethazine-codeine syrup. *Id.; see also* RFAAX 3, Attachment F. After Deceased Patient J.R.'s death, from at least June 11, 2021 through July 28, 2022, Registrant issued at least 36 prescriptions for controlled substances in Deceased Patient J.R.'s name, including prescriptions for hydromorphone, oxycodone, phendimetrazine, and promethazine-codeine syrup. RFAAX 3, at 2–3; *see also* RFAAX 3, Attachment H.

Additionally, the Agency finds that the Government's evidence shows that on March 1, 2022, during a probable cause search of Registrant's vehicle during a traffic stop on an individual who was driving Registrant's vehicle at the time, law enforcement discovered 14 pre-signed prescriptions for controlled substances dated from March 1, 2022, through March 4, 2022, and issued to multiple individuals, including the driver of the vehicle. RFAAX 4, at 1–2; *see also* RFAAX 4, Attachment I. The prescriptions were signed by Registrant and issued for oxycodone, hydrocodone, and Xanax, a brand name drug containing alprazolam. *Id.*[9]

Further, the Agency finds that the Government's evidence shows that on June 27, 2022, pursuant to a search warrant of a business, law enforcement discovered four prescriptions for promethazine-codeine syrup pre-signed by Registrant.[10] *Id.* at 1; *see also* RFAAX 5, Attachment J. Notably, although the controlled substance portions were filled out on all four prescriptions, ''the patient information portion[s], including the patient name[s] and date[s] of birth[,] were blank.'' *Id.*

[5] 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 Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[6] According to Florida online records, of which the Agency takes official notice, Registrant's Florida registered nurse license number RN2943222 is listed as ''clear/active.'' Florida Department of Health License Verification, *https://mqa-internet.doh.state.fl.us/MQASearchServices/* (last visited date of signature of this Order). Although both the Government's RFAA and an attached Declaration from a DEA Diversion Investigator correctly note that Registrant is a current holder of a Florida registered nurse license number RN2943222, the cited Attachment A of the Diversion Investigator's Declaration appears to be an erroneous printout from the Florida Department of Health License Verification database pertaining to a different practitioner who shares Registrant's first and last name and whose registered nurse license number RN3151242 is listed as null and void. *See* RFAA, at 3; RFAAX 3, at 1; RFAAX 3, Attachment A.

[7] Deceased Patient B.K. died on or about June 21, 2019. RFAAX 3, at 3; *see also* RFAAX 3, Attachment D–E.

[8] Deceased Patient J.R. was found deceased by Registrant on or about October 19, 2018. RFAAX 3, at 3; *see also* RFAAX 3, Attachment G.

[9] As Registrant was not present at the time of the traffic stop, law enforcement called Registrant ''multiple times'' and confirmed her identity as well as that she had written out the 14 pre-signed prescriptions. RFAAX 4, at 1–2. During one of the phone calls, Registrant ''advised she fills out prescriptions for her patients 'ahead of time' '' and that ''she had given her nephew, the driver of the vehicle, permission to bring the prescriptions to her office.'' *Id.* at 2.

[10] During the execution of the search warrant, law enforcement discovered 12 prescriptions in total pre-signed by Registrant. RFAAX 5, at 1.