Pursuant to the Illinois Controlled Substances Act, a ''practitioner'' means ''a physician licensed to practice medicine in all its branches . . . or other person licensed, registered, or otherwise lawfully permitted by the United States or this State to distribute [or] dispense . . . a controlled substance in the course of professional practice or research.'' 720 Ill. Comp. Stat. Ann. 570/102(kk) (2023). Further, the Illinois Controlled Substances Act requires that ''[e]very person who manufactures, distributes, or dispenses any controlled substances . . . must obtain a registration issued by the Department of Financial and Professional Regulation in accordance with its rules.'' *Id.* 570/302(a).[4]

Here, the evidence in the record is that Registrant currently lacks authority to handle controlled substances in Illinois because both his Illinois medical license and his Illinois controlled substance license are suspended. As already discussed, a practitioner must hold a valid controlled substance license to dispense a controlled substance in Illinois. Thus, because Registrant lacks authority to handle controlled substances in Illinois, 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. FM6860818 issued to David H. Marcowitz, 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 David H. Marcowitz, D.O., to renew or modify this registration, as well as any other pending application of David H. Marcowitz, D.O., for additional registration in Illinois. 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.

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[4] The Illinois Controlled Substances Act also authorizes the Department of Financial and Professional Regulation to discipline a practitioner holding a controlled substance license, stating that ''[a] registration under Section 303 to manufacture, distribute, or dispense a controlled substance . . . may be denied, refused renewal, suspended, or revoked by the Department of Financial and Professional Regulation.'' *Id.* 570/304(a).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–43]

Weise Prescription Shop Inc.; Decision and Order

I. Introduction

On July 7, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Weise Prescription Shop Inc. (Respondent).[1] OSC, at 1–4. Citing 21 U.S.C. 824(a)(2), the OSC proposes the revocation of Respondent's registration, and the denial of ''any applications for renewal or modification of such registration and any applications for any other DEA registration,'' ''because Mr. Gilbert Weise, Jr. has been convicted of a felony offense relating to federal controlled substance laws.'' [2] *Id.* at 1.

II. Summary of Proceedings

Respondent timely requested a hearing. In due course, the Government submitted a Motion for Summary Disposition (MSD). Government's Notice of Filing of Evidence and Motion for Summary Disposition (October 28, 2022) (First MSD). Respondent opposed the MSD. Respondent's Response in Opposition to Government's Motion for Summary Disposition (November 2, 2022) (Resp Opp. to First MSD). Respondent, among other things, argued that the Government's First MSD was meritless because there are ''questions of fact involved,'' there are ''material facts in dispute,'' and there is disagreement as to ''material facts.'' [3] Resp Opp. to First MSD, at 4.

The Administrative Law Judge (ALJ) issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision granting the Government's First MSD on November 16, 2022 (First RD) and transmitted the record to the Office of the Administrator on December 12, 2022. Her transmittal letter states that no evidentiary hearing was held, no factual issues were involved, and neither party filed Exceptions to the First RD.[4]

While it was appropriate for the ALJ to adjudicate the First MSD, the granting of the First MSD should not have ended the proceedings. *See, e.g., Garrett Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). Accordingly, the Agency remanded the matter for further proceedings, encouraging the ALJ to exercise her discretion and to develop the record to allow for the determination of an appropriate sanction. *E.g.,* 21 CFR 1316.50, 1316.65.

On remand, the Government filed another MSD, a Request for Official Notice, and a Request to File a Supplemental Prehearing Statement. The basis of the Government's second MSD (Second MSD) is Respondent's lack of legal authority to operate as a pharmacy in Florida.[5] It is Respondent's

[1] Certificate of Registration No. AW0201474 at the registered address of 4343 Colonial Avenue, Jacksonville, Florida 32210. OSC, at 1.

[2] According to the OSC, Mr. Gilbert Weise, Jr. is an owner of Respondent. OSC, at 2. The OSC alleges that a ''corporate registrant's registration 'may be revoked upon a finding that a natural person who is an owner, officer, key employee, or an individual who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances.' '' *Id.*

In its Prehearing Statement, Respondent named Mr. Weise, Jr. as a proposed hearing witness and stated that he ''has retained counsel to seek to withdraw his [guilty] plea and further seek collateral relief'' due to the Supreme Court's opinion in *Ruan* v. *United States,* 142 S. Ct. 2370 (2022). Resp. Prehearing, at 4; *see also Weise* v. *United States of America,* No. 2:22–cv–00106 (S.D. Ga. filed Oct. 7, 2022).

[3] For example, Respondent's opposition argues that (1) Mr. Weise, Jr.'s ''alleged criminal conviction . . . related to events occurring from on or about October 9, 2014 to and including June 13, 2017,'' (2) Mr. Weise, Jr. ''did not have an ownership interest'' in Respondent ''between October 9, 2014 to and including June 13, 2017,'' (3) the OSC ''seeks revocation . . . because . . . [Mr. Weise, Jr.] 'was a co-owner of Weise and the Pharmacist in Charge *at the time of his illegal activity,*' '' and (4) the Exhibits filed with the Government's First MSD are unauthenticated, uncertified, or otherwise inadmissible. Resp Opp. to First MSD, at 2–3.

[4] Though Respondent never filed exceptions, it did file a ''Motion for Extension of Time to File Motion for Reconsideration'' stating that it ''intend[ed] to seek reconsideration or other relief related to this Order.'' That motion was denied, but in so doing, the ALJ pointed out that the deadline for filing exceptions was after the date through which Respondent requested an extension. Order Denying Respondent's Motion for Extension to File a Motion for Reconsideration, at n.1.

[5] The ALJ granted the Second MSD. Order Granting the Government's Second Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (May 4, 2023) (Second RD), at 2, 5.

lack of state authority that this Decision adjudicates.

Findings of Fact

The record contains uncontroverted evidence that, on February 28, 2023, Respondent's Florida pharmacy license expired. *See, e.g.,* Second MSD, at 1. According to Florida online records, of which the Agency takes official notice, Respondent's pharmacy license is ''delinquent.'' [6] *https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders* (last visited date of signature of this Order). Respondent, therefore, ''is not authorized to practice in the state of Florida.'' *Id.*

Accordingly, the Agency finds that Respondent is currently without authority to operate as a pharmacy in Florida. *See supra* n.6.

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, 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).[7]

Here, the undisputed record evidence is that Respondent currently lacks authority to operate a pharmacy in Florida. Respondent, therefore, is not a ''practitioner'' under federal law. 21 U.S.C. 802(21) (''The term ''practitioner'' means a . . . pharmacy''). The CSA provides for the issuance of a registration to ''practitioners.'' 21 U.S.C. 823(g). It explicitly provides for the revocation of a registration issued to an entity whose ''State license'' has been ''suspended, revoked, or denied by competent State authority.'' 21 U.S.C. 824(a)(3). For these reasons, Respondent is not eligible under the CSA to maintain a DEA registration in Florida. 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. AW0201474 issued to Weise Pharmacy Shop Inc. 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 Weise Pharmacy Shop Inc. to renew or modify this registration, as well as any other pending application of Weise Pharmacy Shop Inc. for additional registration in Florida. 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. 2023–17389 Filed 8–11–23; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–16]

Olga Wildfeuer, M.D.; Decision and Order

On November 21, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Olga Wildfeuer, M.D. (Respondent). OSC, at 1–3. The OSC proposed the revocation of Respondent's registration [1] because Respondent is ''without authority to handle controlled substances in the State of New York, the state in which [she is] registered with DEA.'' *Id.* at 2.

Respondent timely requested a hearing; thereafter, the Administrative Law Judge (ALJ) 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 (RD), at 7. 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 and summarizes and expands upon portions thereof herein.

According to the record transmitted to the Office of the Administrator after remand, Respondent did not oppose the Second MSD. Second RD, at n.3.

The Government's filings included material concerning its First MSD, particularly Mr. Weise, Jr.'s felony conviction.

[6] 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.*

''Delinquent,'' according to the website, means that, pursuant to ''Chapter 456 F.S.—the licensed practitioner who held a CLEAR ACTIVE or CLEAR INACTIVE license, but failed to renew the license by the expiration date. The licensed practitioner is not authorized to practice in the state of Florida. The practitioner is obligated to update his/her profile data.''

[7] 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 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, 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.

[1] Certificate of Registration No. BW2841446 at the registered address of 1400 5th Ave., Apt. 7R, New York, New York 10026. *Id.* at 1.