relied on an interpretation involving a legal loophole to fill the prescriptions in the first place, and then continued to argue that the behavior was lawful in spite of the state's assertions to the contrary, not only demonstrates no remorse, but also demonstrates a willingness to push the boundaries of the law to maximize business. Such a willingness does not inspire optimism about Respondents' future compliance with the CSA.

I agree with the ALJ that the egregiousness of Respondent Pharmacy's conduct and the interests of specific and general deterrence support a sanction of revocation. RD, at 99. ''Specifically, pharmacists employed by the Pharmacy, as well as [Respondents' Owner and PIC], dispensed numerous prescriptions of controlled substances in violation of their corresponding responsibility.'' *Id.*

There is nothing in the record that lends support to the proposition that Respondent Pharmacy's future behavior will deviate in any positive respect from its past behavior. Due to the fact that Respondent Pharmacy has accepted no responsibility nor offered any remedial measures, it has given me no reassurance that I can entrust it with a registration and no evidence that it will not repeat its egregious behavior.

Regarding general deterrence, the Agency bears the responsibility to deter similar misconduct on the part of others for the protection of the public at large. *David A. Ruben,* 78 FR at 38,385. Based on the number and egregiousness of the established violations in this case, a sanction less than revocation would send a message to the regulated community that compliance with the law is not a condition precedent to maintaining registration.

A balancing of the statutory public interest factors, coupled with consideration of Respondent Pharmacy's failure to accept responsibility, the absence of any evidence of remedial measures to guard against recurrence, and the Agency's interest in deterrence, support the conclusion that Respondent Pharmacy should not continue to be entrusted with a registration. Further, the ALJ found, and I agree, that if I revoke Respondent Pharmacy's registration, Respondent LLC ''could pick up where the Pharmacy left off without missing a beat. Accordingly, due to that commonality, it is appropriate to treat the Pharmacy and Suntree Medical as one integrated enterprise.'' RD, at 101. Due to the commonality of ownership and procedures, I cannot entrust Respondent LLC with a registration any more than I can entrust Respondent Pharmacy with one.

Therefore, I shall order the sanctions the Government requested, as contained in the Order below.

V. 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 Certificates of Registration Nos. BS7384174 and FS2194289 issued to Suntree Pharmacy and Suntree Medical Equipment LLC. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Suntree Pharmacy and Suntree Medical Equipment to renew or modify these registrations, as well as any other pending application of Suntree Pharmacy and Suntree Medical Equipment for registration in Florida. This order is effective December 21, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–25531 Filed 11–18–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

ECO Apothecary, LLC; Decision and Order

On December 2, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Eco Apothecary, LLC (hereinafter, Registrant or Registrant Pharmacy), of Salt Lake City, Utah. Government's Request for Final Agency Action Exhibit (hereinafter, RFAAX) 2 (OSC), at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FE7288497. It alleged that Registrant is without ''authority to handle controlled substances in the State of Utah, the state in which [Registrant] is registered with the DEA.'' *Id.* (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that Registrant's Utah pharmacy license is expired. *Id.* The OSC further alleged that, because Registrant's Utah pharmacy license is expired, Registrant lacks the authority to handle controlled substances in Utah, and is, therefore, ineligible to maintain a DEA registration. *Id.* at 1–2.

The OSC notified Registrant of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

I. Adequacy of Service

A DEA Diversion Investigator declared that he personally served James Ammon, Rph, with the OSC at the Registrant Pharmacy on December 10, 2019. RFAAX 4 (Declaration of Diversion Investigator). James Ammon signed Registrant's online application for a DEA registration on November 23, 2017. RFAAX 1 (Certification of Registration History). The DEA Diversion Investigator declared that he recognized James Ammon because the Diversion Investigator had previously met with him. RFAAX 4.

The Government forwarded its RFAA, along with the evidentiary record, to this office on May 19, 2020. In its RFAA, the Government represents that ''Registrant has not requested a hearing . . . .'' RFAA at 1. DEA did receive a letter from Registrant dated February 25, 2020, which stated that the purpose of the letter was ''to complete its duty, and report to the DEA the record of the pharmacy's final inventory, as well as report to the DEA its disposition and transfer of control of the controlled substances previously in the pharmacy's control.'' RFAAX 6, at 1. Registrant's February 25 letter did not request a hearing and was sent more than thirty days after Registrant received the OSC. *See id.*

Based on the Diversion Investigator's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on December 10, 2019. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

II. Findings of Fact

A. Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. FE7288497 at the registered address of 3702 S. State Street, Suite 117, Salt Lake City 84115. RFAAX 2 (Certification of Registration History). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II–V as a retail pharmacy. *Id.*

B. The Status of Registrant's State License

Registrant was previously the holder of a Utah Pharmacy—Class B license. RFAAX 3 (Verification of Utah Licensure). Registrant's Utah pharmacy license expired on September 30, 2019. *Id.* A certified Verification of Utah Licensure dated November 13, 2019, from the State of Utah, Department of Commerce, Division of Occupational and Professional Licensing, shows the status of Registrant's Utah pharmacy license as ''Denied.'' *Id.*

According to Utah's online records, of which I take official notice, Registrant's pharmacy license status is still listed as ''Denied.'' [1] *https://secure.utah.gov/llv/search/index.html* (last visited October 27, 2020). Utah's online records further show that Registrant's Controlled Substance License also expired on September 30, 2019, and the license status is also listed as ''Denied.'' *Id.*

Accordingly, I find that Registrant does not have a valid pharmacy license or controlled substance license in Utah, the state in which Registrant is registered with DEA.

III. 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 (hereinafter, 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.'' A pharmacy is a ''practitioner'' under the CSA. 21 U.S.C. 802(21). 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., Palafox Pharmacy,* 84 FR 18,320 (2019); *James L. Hooper, M.D.,* 76 FR 71,371 (2011), pet. for rev. denied, 481 Fed. Appx. 826 (4th Cir. 2012); *Roots Pharmaceuticals, Inc.,* 76 FR 51,430 (2011); *Bourne Pharmacy, Inc.,* 72 FR 18,273 (2007); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician, . . . pharmacy, . . . 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(f). 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., Palafox Pharmacy,* 84 FR at 18,321; *James L. Hooper,* 76 FR at 71,371–72; *Roots Pharmaceuticals, Inc.,* 76 FR at 51,430; *Bourne Pharmacy,* Inc., 72 FR at 18,274; *Frederick Marsh Blanton,* 43 FR at 27,617.

As found above, Registrant's state pharmacy and controlled substance licenses have expired, and thus, it no longer holds authority in Utah, the state in which it is registered with DEA, to dispense controlled substances. *See* Utah Code Ann. §§ 58–17b–302(1) (requiring a license to act as a pharmacy); 58–37–6(2)(a)(i) (requiring a license to dispense controlled substances) (West 2020). As such, Registrant is not qualified to dispense controlled substances as a ''practitioner.'' I will, therefore, order that Registrant's DEA registration be revoked.

IV. 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. FE7288497 issued to Eco Apothecary, LLC. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Eco Apothecary, LLC to renew or modify this registration, as well as any pending application of Eco Apothecary, LLC for registration in Utah. This Order is applicable December 21, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–25533 Filed 11–18–20; 8:45 am]

BILLING CODE 4410–09–P

[1] 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 my finding by filing a properly supported motion for reconsideration within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email (*dea.addo.attorneys@dea.usdoj.gov*).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20–11]

Monica Ferguson, F.N.P., R.N.; Decision and Order

On February 20, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Monica Ferguson, F.N.P., R.N., (hereinafter, Respondent) of Lake Oswego, Oregon. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration No. MF1358298. *Id.* It alleged that Respondent is without ''authority to handle controlled substances in Oregon, the state in which [Respondent is] registered with DEA.'' *Id. See also* 21 U.S.C. 823(f) and 824(a)(3).

Specifically, the OSC alleged that the Oregon State Board of Nursing (hereinafter, Board) revoked Respondent's RN license number 099000287RN and her NP–PP Family license number 200650008NP effective on December 31, 2019. *Id.* This revocation, according to the OSC, demonstrated that Respondent lacks authority to handle controlled substances in Oregon. *Id.* (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing