

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–11]

Tiffani D. Shelton, D.O.; Decision and Order

On October 25, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Tiffani D. Shelton, D.O. (Respondent). OSC, at 1, 3. The OSC proposed the revocation of Respondent's registration¹ because Respondent is "without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Florida—the state in which [she is] registered with DEA." *Id.* at 2.

Respondent requested a hearing;² thereafter, the Government filed and the Administrative Law Judge (hereinafter, ALJ) granted a Motion for Summary Disposition recommending the revocation of Respondent's registration. RD, at 5–6. 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.

Findings of Fact

On July 19, 2022, Respondent entered into a voluntarily agreement to withdraw from the practice of medicine in Florida. RD, at 6; ALJX 6, Exhibit B. According to Florida online records, of which the Agency takes official notice, Respondent's Florida medical license is listed as "VOLUN. WITHDRAW," indicating that "[l]icensee may not practice in Florida while the licensee is under a voluntary withdrawal agreement with the department."³

¹ Certificate of Registration No. FS5332818 at the registered address of 5017 Glenn Drive, New Port Richey, Florida. *Id.* at 1.

² The Government argued that the Respondent's request for a hearing was untimely; Respondent argued that the OSC was not properly served and, in the alternative, that the request for a hearing was timely. Administrative Law Judge Exhibit (ALJX) 6, at 3–4; ALJX 7. The ALJ determined, among other things, that Respondent was properly served and that there was good cause to accept the request for a hearing as timely filed. 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 (Recommended Decision or RD), at 2–5.

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

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 Respondent is not currently licensed to engage in the practice of medicine in Florida, 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).⁴

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 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 at 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58

According to Florida statute, "A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance." Fla. Stat. section 893.05(1)(a) (2022). Further, a "practitioner" as defined by Florida statute includes "a physician licensed under chapter 458." ⁵ *Id.* at section 893.02(23).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Florida. RD, at 8. As discussed above, a person must be a licensed practitioner to dispense a controlled substance in Florida. *Id.* Thus, because Respondent lacks authority to practice medicine in Florida and, therefore, is not authorized to handle controlled substances in Florida, 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. FS5332818 issued to Tiffani D. Shelton, 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 Tiffani D. Shelton, D.O., to renew or modify this registration, as well as any other pending application of Tiffani D. Shelton, D.O., for additional registration in Florida. This Order is effective May 11, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 4, 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

FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR at 27617.

⁵ Chapter 458 regulates medical practice and applies to Respondent; it defines a "physician" as a person who is licensed to practice medicine in this state." *Id.* at section 458.305(4).

document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Richard Washinsky, M.D.; Decision and Order

On August 11, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, OSC/ISO) to Richard Washinsky, M.D., (hereinafter, Registrant) of Las Vegas, Nevada. Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 2, at 1. The OSC/ISO informed Registrant of the immediate suspension of his DEA Certificate of Registration, Control No. BW3227318, 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 has "committed such acts as would render [his] registration inconsistent with the public interest" and that Registrant is "without authority to handle controlled substances in the State of Nevada, the state in which [he is] registered with DEA." ¹ *Id.* at 1, 3 (citing 21 U.S.C. 824(a)(4), 823(g)(1),² 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated February 6, 2023.³

¹ The registered address of Registrant's DEA Certificate of Registration, Control No. BW3227318, is 9010 West Cheyenne Avenue, Las Vegas, Nevada 89129. *Id.* at 2.

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, 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 Based on the Declarations from two DEA Group Supervisors, the Agency finds that the Government's service of the OSC/ISO on Registrant was adequate. RFAAX 3, at 2-3; RFAAX 4, at 1-2. 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

I. Findings of Fact

On March 2, 2022, the Nevada State Board of Pharmacy issued an Order on Show Cause Hearing that immediately suspended Registrant's Nevada controlled substance license. RFAAX 3, Attachment C, at 1-2. On September 7, 2022, the Nevada State Board of Pharmacy issued a Stipulation and Order on Second Order to Show Cause that revoked Registrant's Nevada controlled substance license.⁴ RFAAX 3, Attachment F, at 1-2. According to Nevada's online records, of which the Agency takes official notice, Registrant's Nevada controlled substance license is still revoked.⁵ Nevada State Board of Pharmacy License Verification, https://bop.nv.gov/resources/ALL/License_Verification (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to handle controlled substances in Nevada, the state in which he is registered with the DEA.

The Agency further finds that the Government's evidence shows that Registrant continued to prescribe controlled substances after his Nevada controlled substance license was suspended, with Registrant issuing at least three prescriptions for controlled substances from at least March 4, 2022, through at least July 15, 2022. RFAAX 5, at 3-6, 9-12.

II. Discussion

A. 21 U.S.C. 824(a)(3): Loss of State Authority

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

a hearing nor submitted a corrective action plan and therefore has waived any such rights. RFAA, at 3; see also 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

⁴ The September 7, 2022 Stipulation Order further states "[Registrant] may not possess (except pursuant to the lawful order of a practitioner), administer, prescribe or dispense a controlled substance until . . . the Board reinstates his certificate of registration." *Id.*, at 2-3.

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.

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 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).⁶

According to Nevada statute, "[e]very practitioner or other person who dispenses any controlled substance within this State or who proposes to engage in the dispensing of any controlled substance within this State shall obtain biennially a registration issued by the [State Board of Pharmacy] in accordance with its regulations." Nev. Rev. Stat. § 453.226(1) (2022). Further, Nevada statute defines a "practitioner" as a "physician . . . who holds a license to practice his or her profession in this State and is registered pursuant to [the Uniform Controlled Substances Act]." *Id.* at § 453.123(1). Finally, under Nevada statute, "dispense" means "to deliver a controlled substance to an ultimate user, patient 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." *Id.* at § 453.056(1).

Here, the undisputed evidence in the record is that Registrant's Nevada

⁶ 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). 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 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.