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.

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 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).[11]

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. 893.05(1)(a) (2022). Further, a ''practitioner'' as defined by Florida statute includes ''an [APRN] licensed under chapter 464.'' [12] *Id.* § 893.02(23).[13]

Here, the undisputed evidence in the record is that Registrant lacks authority to practice as an APRN in Florida. As discussed, a person must be a licensed practitioner to dispense a controlled substance in Florida. Accordingly, the Agency finds that because Registrant lacks authority to practice as an APRN in Florida, Registrant is, therefore, unauthorized to handle controlled substances in Florida, the state in which she is registered with DEA.

B. 21 U.S.C. 823(g)(1): The Five Public Interest Factors

Under the Controlled Substances Act (CSA), ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(C) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

The DEA considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),[14] the Government's evidence in support of its *prima facie* case for revocation of Registrant's registration is confined to Factors B and D. *See* RFAA, at 8–11. The Government has the burden of proof in this proceeding. 21 CFR 1301.44. Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a). The Agency further finds that Registrant failed to provide sufficient evidence to rebut the Government's *prima facie* case.

1. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). The Government has alleged that Registrant violated both federal and Florida state law regulating controlled substances. RFAAX 2, at 2–5. According to the CSA's implementing regulations, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). The CSA also requires that all prescriptions for controlled substances ''shall be dated as of, and signed on, the day when issued.'' 21 CFR 1306.05(a). Further, Florida state law lists numerous requirements for the prescribing of controlled substances, including, but not limited to, requirements that the prescriber: conduct a complete medical history and physical examination; document any medical indications for the use of a controlled substance; create a written treatment plan; discuss with the patient the risks and benefits of the use of controlled substances; conduct periodic reviews of the effectiveness of any treatment with controlled

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[11] 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 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.

[12] Chapter 464 regulates nursing and applies to Registrant; it defines an APRN as ''any person licensed in [the] state to practice professional nursing and who is licensed in an advanced nursing practice, including . . . certified nurse practitioners.'' *Id.* § 464.003(3).

[13] A ''practitioner'' as defined by Florida statute does not include a registered nurse. *Id.* Further, Florida statute states that a registered nurse is only authorized to administer ''medications and treatments as prescribed or authorized by a duly licensed practitioner.'' *Id.* § 464.003(19)(b). As such, the ''clear/active'' status of Registrant's Florida registered nurse license, *see supra* at n.5, does not authorize Registrant to handle controlled substances in the state of Florida.

[14] As to Factor A, there is no record evidence of disciplinary action against Registrant's state APRN license. 21 U.S.C. 823(g)(1)(A). Here, Registrant's Florida APRN license expired by its own terms. *See supra* at I. DEA precedent establishes that where the record contains no evidence of a recommendation by a state licensing board, such absence does not weigh for or against revocation. *Ester Mark, M.D.,* 86 FR 16760, 16771 (2021) (citing *Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011)). As to Factor C, there is no evidence in the record that Registrant has been convicted of an offense under either federal or state law ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010). Agency cases have therefore found that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.* As to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against revocation.

substances; assess and monitor the patient's risk for aberrant drug-related behavior; and maintain accurate, current, complete, and accessible records. Fla. Stat. 456.44; Fla. Admin. Code Ann. r. 64B8–9.013. Additionally, Florida state law requires that prescriptions ''must be signed by the prescribing practitioner on the day when issued.'' Fla. Stat. 456.42(1).

Here, the record demonstrates that Registrant issued at least 83 prescriptions for controlled substances in the names of two deceased individuals, as well as pre-signed at least 18 prescriptions for controlled substances. As discussed above, such conduct is in clear violation of Florida state law and thus renders Registrant's prescribing outside the usual course of professional practice. As such, the Agency sustains the Government's allegations that Registrant violated 21 CFR 1306.04(a), 1306.05(a); Florida Statutes 456.44 and 456.2(1); and Florida Administrative Code Rule 64B8–9.013.

In sum, the Agency finds that Factors B and D weigh in favor of revocation of Registrant's registration and thus finds, after considering the factors set forth in 21 U.S.C. 823(g)(1), Registrant's continued registration to be inconsistent with the public interest.

III. Sanction

Where, as here, the Government has established grounds to revoke Registrant's registration, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). When a registrant has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33738, 33746 (2021).

Here, Registrant did not request a hearing, submit a corrective action plan, respond to the OSC/ISO, or otherwise avail herself of the opportunity to refute the Government's case. As such, Registrant has made no representations as to her future compliance with the CSA nor demonstrated that she can be entrusted with registration. Moreover, the Agency has found that Registrant is ineligible to maintain a DEA registration and that the evidence presented by the Government clearly shows that Registrant violated the CSA. *See supra* at II. Accordingly, the Agency orders the revocation of Registrant's registration.

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. MR4236584 issued to Debora Ryder, N.P. 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 Debora Ryder, N.P., to renew or modify this registration, as well as any other pending application of Debora Ryder, N.P., 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.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–23]

Yogeshwar Gill, M.D.; Decision and Order

On December 19, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Yogeshwar Gill, 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 Tennessee, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Respondent timely [2] requested a hearing; thereafter, the Government filed and the CALJ granted a Motion for Summary Disposition recommending the revocation of Respondent's registration. RD, at 9–10. Respondent did not timely file exceptions to the RD.[3] 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 May 25, 2022, the Tennessee Board of Medical Examiners issued an Order of Summary Suspension that suspended Respondent's Tennessee medical license. RD, at 7; *see also* Government's Notice of Filing of Evidence and Motion for Summary Disposition, Exhibit 1, Attachment A, at 1, 6–7. According to Tennessee online records, of which the Agency takes official notice, Respondent's restricted Tennessee medical license expired on

[1] Certificate of Registration No. FG1060603 at the registered address of 1034 McArthur Street, Manchester, Tennessee 37355. *Id.* at 1.

[2] Respondent's Request for Hearing is dated February 17, 2023, *see* Request for Hearing, at 1, but was deemed filed on February 21, 2023. The Government asserted that Respondent's Request for Hearing was untimely. Govt Termination Motion dated February 24, 2023, at 1–2. Ultimately, the Chief Administrative Law Judge (CALJ) found, and the Agency agrees, that ''resolution of this matter is not imperative to issue a recommended decision'' and ''assumed, without deciding[,] that the service ambiguity raised by the Respondent either adjust[ed] the OSC service date to render the [Request for Hearing] timely, or supplie[d] sufficient good cause to consider a late-filed [Request for Hearing].'' 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 4–5.

[3] On April 28, 2023, after the deadline to file exceptions passed and the CALJ certified the record to the Administrator, Respondent submitted a pleading entitled ''Motion to Alter and Amend'' (Respondent's Motion). *See* 21 CFR 1316.66(a), 1316.67. Respondent's Motion requests that the CALJ ''amend his ruling and merely order an ongoing suspension until the [underlying state] case is heard on its merits.'' Respondent's Motion, at 1, 4. As such, Respondent's Motion appears to be an untimely attempt to file exceptions to the RD. Further, even if Respondent's Motion had been timely submitted, it merely reiterates arguments raised by Respondent in earlier filings that were addressed by the CALJ. *See* RD, at 8–9; *see also infra* at n.5. Accordingly, the Agency finds Respondent's Motion to be unpersuasive.