Stat. Ann. § 30–31–12(A) (West, current through the end of the First Regular Session and First Special Session, 55th Legislature (2021)). In turn, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery.'' *Id.* at § 30–31–2(H). Further, a ''practitioner'' means ''a physician . . . dentist . . . or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act.'' *Id.* at § 30–31–2(P).

Here, the undisputed evidence in the record is that Respondent's New Mexico controlled substance license is expired; therefore, he cannot dispense controlled substances in New Mexico. Further, Respondent's New Mexico dental license has been revoked. As such, he is not a ''practitioner'' licensed or certified to prescribe and administer a controlled substance under New Mexico law. Thus, because Respondent lacks authority to handle controlled substances in New Mexico, Respondent is not eligible to maintain a DEA registration. Accordingly, I 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. BG9826427 issued to William C. Gardner, D.D.S. 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 William C. Gardner to renew or modify this registration, as well as any other pending application of William C. Gardner, D.D.S. for additional registration in New Mexico. This Order is effective November 1, 2021.

**Anne Milgram,**

*Administrator.*

[FR Doc. 2021–21424 Filed 9–30–21; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Darryl L. Henry, M.D.; Decision and Order

On June 4, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Darryl L. Henry, M.D. (hereinafter, Registrant) of Elkhart, Indiana. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FH0303292. *Id.* at 1. It alleged that Registrant is ''without authority to handle controlled substances in the State of Indiana, the state in which [Registrant is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that Registrant's Indiana medical license was suspended for 90 days by Order of the Medical Licensing Board of Indiana, effective April 22, 2021. *Id.* The OSC also alleged that Registrant's Indiana controlled substances license expired on October 31, 2019. *Id.*

The OSC notified Registrant 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 to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

### Adequacy of Service

In a Declaration dated September 2, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Merrillville, Indiana District Office stated that on or about June 8, 2021, the OSC was mailed to both Registrant's registered address and his mail-to address by the DEA Office of Chief Counsel. Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter, RFAAX) 2 (the DI's Declaration), at 1–2. The DI stated that on June 8, 2021, she and a DEA Task Force Officer attempted to contact Registrant at his mother's residence and spoke with Registrant's mother. *Id.* at 2. According to the DI, Registrant's mother stated that Registrant did not live there and offered to take the OSC and to have Registrant's sister contact Registrant regarding the OSC. *Id.* The DI stated that she then left her contact information with Registrant's mother. *Id.* The DI also stated that on June 8, 2021, she emailed the OSC to Registrant at the email address listed in the DEA's registration database. *Id.* According to the DI, Registrant never responded to the OSC nor did he request a hearing. *Id.*

The Government forwarded its RFAA, along with the evidentiary record, to this office on September 2, 2021. In its RFAA, the Government represents that ''more than thirty days have passed since the [OSC] was served on [Registrant] and no request for hearing has been received by DEA.'' RFAA, at 1. The Government requests that Registrant's DEA registration ''be revoked and any application for renewal, or any other applications, [be] denied, based on [Registrant's] lack of state authority.'' *Id.* at 5.

Based on the DI'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 or about June 8, 2021. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the DI's Declaration, the Government's written representations, and my review of the record, I find that neither Registrant, nor anyone purporting to represent the 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).

### Findings of Fact

*Registrant's DEA Registration*

Registrant is the holder of DEA Certificate of Registration No. FH0303292 at the registered address of 3100 Windsor Ct, Elkhart, IN 46514. RFAAX 3 (DEA's online registration database printout), at 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expires on October 31, 2021 and is in an ''active pending'' status. *Id.*

*The Status of Registrant's State License*

On September 1, 2021, the Medical Licensing Board of Indiana (hereinafter, the Board) issued a Summary Suspension Order (hereinafter, Order) against Registrant. RFAAX 4, at 1 and 4. According to the Order, on August 21, 2019, Registrant was charged with two counts of sexual battery in Elkhart Superior Court I. *Id.* at 2. The probable cause affidavit alleged that on May 7, 2019, the first of two victims saw Registrant as a patient for a physical examination, during which Registrant made inappropriate sexual comments and unwanted sexual advances on the victim. *Id.* at 2–3. Further, the probable cause affidavit alleged that on May 13,

2019, a second victim saw Registrant as a patient for a physical examination, during which Registrant again made inappropriate sexual comments and unwanted sexual advances on the victim. *Id.* at 3. The Order concluded that Registrant ''represents a clear and immediate danger to the public health and safety if allowed to continue to practice as a medical doctor in Indiana.'' *Id.* at 4.

Accordingly, the Board ordered that Registrant's Indiana medical license, which had been suspended for 90 days effective April 22, 2021,[1] be summarily suspended for an additional 90 days, effective June 24, 2021. *Id.* The Board also ordered that the matter would reset on September 23, 2021 for a hearing to occur at which the Board would consider whether the summary suspension of Registrant's license should be extended for an additional 90 days. *Id.*

According to Indiana's online records, of which I take official notice, Registrant's Indiana medical license remains suspended and Registrant's controlled substances registration remains expired.[2] *http://www.mylicense.in.gov/everification* (last visited date of signature of this Order).

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine nor registered to dispense controlled substances in Indiana, the state in which Registrant 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 (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.'' 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).

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(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., 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.

According to Indiana statute, ''[e]very person who dispenses or proposes to dispense any controlled substance within Indiana must have a registration issued by the [Indiana Board of Pharmacy] in accordance with the board's rules.'' Ind. Code § 35–48–3–3(b) (2021). Further, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner and includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Ind. Code § 35–48–1–12 (2021).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to dispense controlled substances in Indiana. As already discussed, a physician must hold a controlled substances registration to dispense a controlled substance in Indiana. Thus, because Registrant lacks authority to handle controlled substances in Indiana, Registrant is not eligible to maintain a DEA registration. Accordingly, I 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. FH0303292 issued to Darryl L. Henry, M.D. 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 Darryl L. Henry, M.D. to renew or modify this registration, as well as any other pending application of Darryl L. Henry, M.D. for additional registration in Indiana. This Order is effective November 1, 2021.

**Anne Milgram,**

*Administrator.*

[FR Doc. 2021–21425 Filed 9–30–21; 8:45 am]

**BILLING CODE 4410–09–P**

[1] RFAAX 2, at 2 (the DI's Declaration). The Government did not provide documentation for the original suspension.

[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, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding 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.usdoj.gov.*

## DEPARTMENT OF JUSTICE

### Membership of the Senior Executive Service and Senior Level Standing Performance Review Boards

**AGENCY:** Department of Justice.

**ACTION:** Notice of Department of Justice's standing members of the Senior Executive Service and Senior Level Performance Review Boards.

**SUMMARY:** Pursuant to agency regulations, the Department of Justice announces the membership of its 2021 Senior Executive Service (SES) and Senior Level (SL) Standing Performance Review Boards (PRBs). The purpose of the PRB is to provide fair and impartial review of SES and SL performance appraisals; make recommendations to the appointing authority concerning performance ratings, performance awards, and performance-based pay adjustments; and review and revise, as appropriate, executive development plans.

**FOR FURTHER INFORMATION CONTACT:** Shawn Flinn, Director, Human Resources, Justice Management