constitutes the practice of medicine, including prescribing, administering, dispensing or handling [controlled substances] while her license is limited.'' GX 3 (email), GX 5 (Declaration of DI), at 2.

Respondent does not contest the contents of the documents or the fact that she cannot currently prescribe controlled substances. Resp Opposition, at 2–3; SD, at 7.

According to Utah's online records, of which I take official notice, Respondent's Physician and Surgeon license remains ''Limited Active.'' [2] Utah Division of Occupational and Professional Licensing Licensee Lookup and Verification System, *https://secure.utah.gov/llv/search/index.html* (last visited October 27, 2020).

Based on the entire record before me, I find that Respondent is currently prohibited from dispensing controlled substances in Utah, the state in which Respondent is registered with 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 CSA ''upon a finding that the registrant . . . has had [her] State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing[3] 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 the practitioner is no longer authorized to dispense controlled substances under the laws of the state in which the practitioner 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.

Respondent argues that ''[i]n the present matter, the temporary limitation on Respondent's Utah licenses will be removed once she completes a fitness for duty certification and six months of clean drug tests. Respondent's reinstatement of handling controlled substances in Utah is not speculative, but rather is automatic upon completion of the fore mentioned tasks.'' Resp Opposition, at 6. Therefore, she argues that she has not been ''suspended'' under the terms of the CSA. *Id.* However, the agreement itself is clear that ''practicing medicine without a license is a criminal offense and that engaging in any conduct described in Utah Code Ann. § 58–67–102(17) after the effective date of this Stipulation would, in effect, be practicing medicine without a license (or without a non-restricted license).'' GX 2, at 6.

Furthermore, because ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration ''is currently authorized to handle controlled substances in the state,'' *Hooper,* 76 FR at 71,371 (quoting *Anne Lazar Thorn,* 62 FR 12,847, 12,848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action or where the state action is temporary. *Kambiz Haghighi, M.D.,* 85 FR 5989 (2020); *Bourne Pharmacy,* 72 FR 18,273, 18,274 (2007); *Wingfield Drugs,* 52 FR 27,070, 27,071 (1987). Thus, it is of no consequence that the action is temporary. What is consequential is my finding that Respondent is not currently authorized to dispense controlled substances in Utah, the state in which she is registered.

Here, the undisputed evidence in the record, in accordance with the explicit terms of the Disciplinary Limitation Order, is that Respondent is currently without authority to dispense controlled substance in Utah, the state in which she is registered with DEA, and 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. FD6139491 issued to Julie I. Dee, 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 Julie I. Dee, M.D. to renew or modify this registration, as well as any other pending application of Julie I. Dee, M.D. for additional registration in Utah. This Order is effective December 21, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–25534 Filed 11–18–20; 8:45 am]

BILLING CODE 4410–09–P

[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, Respondent may dispute my 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 shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Respondent files a motion, the Government shall have fifteen calendar days to file a response. Any motion and response shall be filed and served by email to the other party and to the Office of the Administrator at *dea.addo.attorneys@dea.usdoj.gov*.

[3] ''[D]ispense[ ] means to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance. . . .'' 21 CFR 802(10).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Verne A. Schwager, M.D.; Decision and Order

On August 24, 2020, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government or DEA), issued an Order to Show Cause (hereinafter, OSC) to Verne A. Schwager, M.D., (hereinafter, Registrant), of Arlington Heights, Illinois. Government's Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter RFAAX) 4 (OSC), at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. AS2410075. It alleged that Registrant is without ''authority to

handle controlled substances in Illinois, the state in which [Registrant is] registered with the DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that ''[o]n March 12, 2020, the Illinois Department of Financial and Professional Regulation ([hereinafter,] ''IDFPR'') suspended [Registrant's] state Physician and Surgeon license . . . for a period of 12 months following its finding of [his] noncompliance with a February 2019 Consent Order that [he] entered into with IDFPR,'' and the license remains suspended. *Id.* The OSC further alleged that Registrant is not eligible to obtain or retain a DEA registration because he lacks state authority to handle controlled substances in the State of Illinois. *Id.*

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.* (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)).

I. Adequacy of Service

On August 26, 2020, a DEA Diversion Investigator (hereinafter, DI) traveled with another DI to Registrant's registered location at 2025 South Arlington Heights Road, Suite 106, Arlington Heights, Illinois 60005 to serve Registrant with the OSC. RFAAX 7, at 2–3 (Declaration of Diversion Investigator, dated October 6, 2020). At Registrant's registered location, the DIs met with Registrant's office manager, who ''informed [them] that [Registrant] was out of the office, but was expected to return later that afternoon.'' *Id.* at 3. The DI ''provided [the office manager] with a copy of the [OSC] and [the DI's] business card, and asked her to provide both to [Registrant] once he returned to the office. Later in the afternoon of August 26[th], [the DI] contacted the office of [Registrant] by telephone and was informed by [the office manager] that she provided the [OSC] copy to [Registrant].'' *Id.* The DI also ''sent a copy of the [OSC] via email, to [Registrant's] counsel,'' who ''replied to [the] email confirming her receipt of the [OSC].'' *Id.*

On September 25, 2020, Registrant, through counsel, explained that Registrant was ''continu[ing] to negotiate with the IDFPR'' and ''ask[ed] that the DEA forebear from proceeding to revoke his DEA registration pending resolution of this matter.'' RFAAX 5, at 2. Registrant further stated that ''at this time [he] waives his right to a hearing with the DEA.'' *Id.* at 3.

The Government forwarded its RFAA along with the evidentiary record, to this office on October 19, 2020. In its RFAA, the Government represents that ''[Registrant], through his legal counsel, has also informed DEA of [Registrant]'s decision to waive his right to a hearing.'' RFAA, at 6 (citing *Warren B. Dailey. M.D.,* 82 FR 46,525, 56,526 (2017); *David D. Moon, D.O.,* 82 FR 19,385, 19,387 (2017); 21 CFR 1301.43(e)). The Government argues that ''grounds exist for the revocation of [Registrant]'s DEA [registration] pursuant to 21 U.S.C. 823(f) and 824(a)(3)'' and requests ''the issuance of a DEA Final Order for the revocation'' of Registrant's registration. *Id.* at 6.

I 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 and Registrant's own statements, 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. RFAA, at 2. 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 1301.46.

II. Findings of Fact

A. Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. AS2410075 at the registered address of 2025 S Arlington Heights Road, Suite 106, Arlington Heights, Illinois 60005. RFAAX 2 (Certification of Registration History). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expired on its own terms on February 29, 2020, and a renewal application was timely filed on March 4, 2020. *Id.* The registration ''is in a renewal pending status until the resolution of administrative proceedings.'' *Id.*

B. The Status of Registrant's State License

On March 12, 2020, the IDFPR indefinitely suspended Registrant's Illinois Physician and Surgeon license ''for a minimum period of 12 months.'' RFAAX 3 (Suspension Order), at 3. The Suspension Order stated that Registrant's Physician and Surgeon License had been on indefinite probation since February 2019, and as a condition of probation, Registrant ''had agreed to comply with all of [its] terms and conditions,'' and Registrant ''has failed to comply.'' *Id.* at 2. Therefore, in accordance with the terms of probation, IDFPR suspended Registrant's Physician and Surgeon license. *Id.* at 3.

According to Illinois' online records, of which I take official notice, Registrant's medical license is still suspended and his ''Licensed Physician Controlled Substance'' license is ''inoperative.'' [1] IDFPR Search for a License, available at *https://ilesonline.idfpr.illinois.gov/DFPR/Lookup/LicenseLookup.aspx* (last visited October 27, 2020).

Accordingly, I find that Registrant currently is neither licensed to engage in the practice of medicine nor licensed to dispense controlled substances in Illinois, the state in which Registrant is registered with the 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 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 Fed.

[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 of finding of fact 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*).

Appx. 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.

Pursuant to the Illinois Controlled Substances Act, a '''[p]ractitioner' 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, dispense, conduct research with respect to, administer or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.'' 720 Ill. Comp. Stat. Ann. 570/102(kk) (West). Illinois law 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.* at 570/302(a).

Further, under Illinois law, the Illinois Controlled Substances Act authorizes the IDFPR to discipline a practitioner holding a controlled substance license. ''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.* at 570/304(a).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to handle controlled substances in Illinois, as his controlled substance license is ''inoperative.'' 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, I 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. AS2410075 issued to Verne A. Schwager, 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 Verne A. Schwager, M.D. to renew or modify this registration, as well as any pending application of Verne A. Schwager, M.D. for registration in Illinois. This Order is effective December 21, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–25523 Filed 11–18–20; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jeanne E. Germeil, M.D. Decision and Order

On March 5, 2018, a former Acting Administrator of the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, collectively OSC) to Jeanne E. Germeil, M.D., (hereinafter, Respondent). Administrative Law Judge Exhibit (hereinafter, ALJX) 1 (Order to Show Cause), at 1. The OSC informed Respondent of the immediate suspension of her Certificate of Registration No. FG0560765 pursuant to 21 U.S.C. 824(d), because her continued registration constituted an imminent danger to the public health and safety. *Id.* The OSC also proposed the revocation of Respondent's Certificate of Registration (hereinafter, registration) pursuant to 21 U.S.C. 824(a)(4), ''because [her] continued registration is inconsistent with the public interest . . . .'' *Id.* (citing 21 U.S.C. 823(f)).

I. Procedural History

Specifically, the OSC alleged that Respondent ''prescribed controlled substances to [two] DEA confidential source[s], Patient Y.H. [and Patient L.G.], that [she] knew or should have known were not for a legitimate medical purpose, in violation of 21 U.S.C. 841(a) and 842(a), 21 CFR 1306.04(a), and Fla. Admin. Code r. 64B8–9.013.'' OSC, at 2; *see also id.* at 6. The OSC alleged that Respondent ''[was] aware that at least a portion of the controlled substances [she was] prescribing to Y.H. [and to L.G.] were being sold, given to third parties, or otherwise diverted, because Y.H. [and L.G.] told [her] so.'' OSC, at 2; *see also id.* at 6. Additionally, the OSC alleged that Respondent ''had been falsifying [her] medical records.'' *Id.* at 9. The OSC alleged that Respondent's ''falsification of the[ ] records violated state law, *see* Fla. Stat. § 458.331(1)(m), and further demonstrate[d] that [Respondent] issued prescriptions for controlled substances to Patients Y.H. and L.G. outside the usual course of professional practice and that these prescriptions were beneath the standard of care for the State of Florida, violating both 21 CFR [1306.04(a) [1]] and Fla. Admin. Code r. 64B8–9.013.'' *Id.*

On March 5, 2018, the former Acting Administrator made a preliminary finding ''that [Respondent had] issued prescriptions for controlled substances that [she] knew were without a legitimate medical purpose and outside the usual course of professional practice, which is inconsistent with the public interest . . . .'' *Id.* And that ''in light of the rampant and deadly problem of prescription controlled substance abuse, that [Respondent's] continued registration . . . would constitute an imminent danger to the public health or safety because of the substantial likelihood that [she would] continue to unlawfully prescribe controlled substances, thereby allowing the diversion of controlled substances unless [her] DEA [registration was] suspended.'' *Id.* The former Acting Administrator concluded that Respondent's ''continued registration . . . [would] constitute[ ] an imminent danger to the public health and safety.'' *Id.*

[1] The citation to 21 CFR 1604(a) throughout the OSC appears to be a typographical error (as no such regulation exists). It is clear from the surrounding text, that where the government typed 21 CFR 1604(a), it was referring to 21 CFR 1306.04(a). The Government also specifically notified Respondent that was alleging violations of 21 CFR 1306.04(a). OSC, at 2.