further stated that ''[t]he Board possesses statutory authority to enter into a consent agreement with a physician who admits to committing an act of unprofessional conduct.'' *Id.* at 2. The Order therefore ordered the immediate surrender of Registrants License. *Id.*

According to Arizona's online records, of which I take official notice, Registrant's license is still surrendered.[3] *https://gls.azmd.gov/glsuiteweb/clients/azbom/public/webverificationsearch.aspx* (last visited October 27, 2020).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Arizona, 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 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 Arizona statute, ''[e]very person who manufactures, distributes, dispenses, prescribes or uses for scientific purposes any controlled substance within this state or who proposes to engage in the manufacture, distribution, prescribing or dispensing of or using for scientific purposes any controlled substance within this state must first: (1) Obtain and possess a current license or permit as a medical practitioner as defined in § 32–1901 . . .'' Ariz. Rev. Stat. Ann. § 36–2522(A) (2020). Arizona Statute § 32–1901 defines a ''[m]edical practitioner'' as ''any medical doctor . . . or other person who is licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state or any state, territory or district of the United States.'' Ariz. Rev. Stat. Ann. § 32–1901 (2020). Arizona regulations further clarify that ''[a] physician who wishes to dispense a controlled substance as defined in Ariz. Rev. Stat. § 32–1901(12),[4] a prescription-only drug as defined in Ariz. Rev. Stat. § 32–1901(65), or a prescription-only device as defined in Ariz. Rev. Stat. § 32–1901(64), shall be currently licensed to practice medicine in Arizona.'' Ariz. Admin. Code § R4–16–301(A) (2020).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Arizona, as he no longer retains a medical license in that state. As already discussed, a physician can only dispense controlled substances if he is licensed to practice medicine in Arizona. Thus, because Registrant lacks authority to practice medicine in Arizona and, therefore, is not authorized to dispense controlled substances in Arizona, Registrant is not eligible to maintain a DEA registration in Arizona. 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. BW2472051 issued to Jeffrey M. Wolk. This Order is applicable December 21, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–25526 Filed 11–18–20; 8:45 am]

BILLING CODE 4410–09–P

[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 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 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.*

[4] The subsection citations for the referenced sections of the statute moved since the publication of the regulation, but the intent of the regulation is clear.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20–13]

Julie I. Dee, M.D.; Decision and Order

On February 26, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Julie I. Dee, M.D. (hereinafter, Respondent) of Mountain Green, Utah. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration No. FD6139491. *Id.* It alleged that Respondent is without ''authority to handle controlled substances in Utah, the state in which [Respondent is] registered with DEA.'' *Id.* at 1–2 (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that on April 9, 2019, the Utah Division of Occupational and Professional Licensing and [Respondent] ''entered into a Disciplinary Limitation Stipulation and Order whereby [Respondent] agreed, *inter alia,* that [Respondent] will not 'engage in activity or employment where [Respondent] will have access to, or prescribe, controlled substance[s]' pending [Respondent's]

completion of certain terms and conditions.'' *Id.* at 1–2. The OSC further alleged that the terms and conditions were still in place and therefore alleged that Respondent lacks authority to handle controlled substances in Utah. *Id.* (citing 21 U.S.C. 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 to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

On March 19, 2020, Respondent through counsel requested an Extension of Time to Respond to the Order to Show Cause, arguing that the OSC was mailed to Respondent on February 18, 2020, but she was not properly served until March 3, 2020, when her counsel received the OSC. Extension of Time to Respond, at 2–3.

The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Judge Law John J. Mulrooney II (hereinafter, Chief ALJ), who granted Respondent's request for an extension of time on March 20, 2020, finding that it was both timely and that Respondent provided good cause. Order Granting Respondent's Request for Extension of Time to Respond to Order to Show Cause, at 1. Respondent timely filed a Request for a Hearing on April 8, 2020, in which she argued that she has a ''temporary limitation'' in Utah, which ''is not a suspension, revocation, or denial as contemplated by 21 U.S.C. 824(a)(3). Upon completion of 2 requirements set forth by DOPL, the temporary limitation will be removed . . . It is anticipated that such temporary limitation will be lifted by November 31, 2020.'' Request for a Hearing, at 2. On April 9, 2020, the Chief ALJ issued an Order Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule, with which the Government complied by filing a Motion for Summary Disposition and Argument in Support of Finding that Respondent Lacks State Authorization to Handle Controlled Substances (hereinafter, Govt Motion) on April 20, 2020.

In its Motion, the Government submitted evidence that Respondent and the Utah Division of Occupational and Professional Licensing entered into a Disciplinary Limitation Stipulation and Order in which ''the parties agreed, *inter alia,* that Respondent would 'not engage in any activity or employment where [she would] have access to, or prescribe, controlled substance[s]', and further, that she would not engage in 'any conduct described in Utah Code Ann. § 58–67–102(17).' '' Govt Motion, at 2 (quoting Utah Disciplinary Limitation Stipulation and Order). In light of these facts, the Government argued that DEA must revoke Respondent's registration. Govt Motion, at 5.

On May 4, 2020, Respondent filed a ''Motion to Enlarge Time for Respondent to Respond to the Government's Motion for Summary Disposition,'' which the Chief ALJ granted on May 5, 2020. On May 18, 2020, Respondent filed an Opposition to Government's Motion for Summary Disposition (hereinafter, Resp Opposition), in which she argued that ''Respondent's Utah Licenses are currently active with a temporary limitation. Because Respondent's Utah licenses have not be [sic] suspended, revoked, or denied, the power of revocation pursuant to 21 U.S.C. 824(a)(3) does not apply.'' Resp Opposition, at 1.

On May 20, 2020, the Chief ALJ issued an Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Recommended Decision of the Administrative Law Judge (hereinafter, Summary Disposition or SD). The Chief ALJ noted that, ''[w]hile the parties disagree as to the legal significance of the Respondent's licensure status, there is no disagreement that at present, the Respondent does not have state authority to handle controlled substances and practice medicine.'' SD, at 7 (citing Govt Motion Exhibit (hereinafter, GX) 2 at 2–5; GX 3; GX 5; Resp Opposition, at 2–4). He further concluded that ''[i]t is her lack of state authority at the present moment, not some speculative moment in the future, that excludes the Respondent from the definition of a 'practitioner' under 21 U.S.C. 823(f).'' *Id.* (citing *John B. Freitas, D.O.,* 74 FR 17,524, 17,525 (2009)). By letter dated June 25, 2020, the ALJ certified and transmitted the record to me for final Agency action. I find that the time period to file exceptions has expired. *See* 21 CFR 1316.66.

A Proposed Corrective Action Plan was received on April 13, 2020. I agree with the decision of the Assistant Administrator of the Diversion Control Division on May 29, 2020, that the Proposed Corrective Action Plan provides no basis for me to discontinue or defer this proceeding. As explained herein, current state authority is necessary to retain a DEA registration.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

Findings of Fact

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. FD6139491 at the registered address of 6496 Fairview Drive, Mountain Green, Utah 84050. GX 1, at 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a ''practitioner.'' *Id.* Respondent's registration expires on June 30, 2022. *Id.*

The Status of Respondent's State License

On April 9, 2019, the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (hereinafter, Utah Licensing Division) entered a Disciplinary Limitation Stipulation and Order. GX 2 (Disciplinary Limitation Order). According to the Disciplinary Limitation Order, Respondent ''admitted to inappropriately taking fentanyl from her work and becoming addicted to the drug.'' *Id.* Respondent agreed in the Order ''not to engage in any activity or employment where she will have access to, or be able to prescribe, controlled substances, and she also agrees to not engage in any conduct described in Utah Code Ann. § 58–67–102(17).'' [1] *Id.* at 3. She further agreed that prior to engaging in such activity, she ''will submit to the Division at least six months of consecutive clean drug testing results before she applies for licensure.'' *Id.* at 4. The Order further stated 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).'' *Id.* at 6.

The Government presented evidence that on, December 8, 2019, a Utah Assistant Attorney informed a DEA Diversion Investigator (hereinafter, DI) that based on conditions set forth in the April 2019 Order, Respondent '' . . . cannot engage in anything that

[1] It is noted that this section of Utah law defines the ''practice of medicine.'' Utah Code Ann. § 58–67–102(17) (2020). Therefore, I find that this provision of the Disciplinary Limitation Order restricted Respondent's practice of medicine.

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