

826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).⁵

According to Maryland statute, “a person shall be registered by the Department before the person manufactures, distributes, or dispenses a controlled dangerous substance in the State or transports a controlled dangerous substance into the State.” Md. Code. Ann., Crim. Law § 5–301(a)(1) (West 2022). Maryland law further defines “dispense” to mean “to deliver to the ultimate user or the human research subject by or in accordance with the lawful order of an authorized provider” and states that the term includes “to prescribe, administer, package, label, or compound a substance for delivery.” *Id.* at § 5–101(l)(1)–(2).

Here, the undisputed evidence in the record is that Registrant’s CDS license was revoked. As already discussed, a practitioner must hold a valid controlled substance license to dispense a controlled substance in Maryland.⁶ Thus, Registrant is not eligible to maintain a DEA registration in Maryland and the Agency 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. BO4917780 issued to Alphonsus Okoli, 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 applications of Alphonsus Okoli, M.D.

⁵ 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.

⁶ The Agency finds that Registrant’s inactive North Carolina medical license has no bearing on the issue in this case, which is whether Registrant has authority to handle controlled substances in the Maryland, the state of his DEA registration.

to renew or modify this registration, as well as any other pending application of Alphonsus Okoli, M.D. for additional registration in Maryland. This Order is effective August 11, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 6, 2022, 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. 22–23]

Bhanoo Sharma, M.D.; Decision and Order

On April 4, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Bhanoo Sharma, M.D. (hereinafter, Respondent). OSC, at 1 and 3. The OSC proposed the revocation of Respondent’s Certificate of Registration No. FS3031034 at the registered address of 17577 Kedzie Avenue, Suite 108, Hazel Crest, Illinois 60429. *Id.* at 1. The OSC alleged that Respondent’s registration should be revoked because Respondent is “without authority to handle controlled substances in the State of Illinois, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

By letter dated May 4, 2022, Respondent requested a hearing. On May 4, 2022, Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, the Chief ALJ) issued an Order Directing the Filing of Government Evidence Regarding Its Lack of State Authority Allegation and Briefing Schedule. On May 11, 2022, the Government filed its Submission of Evidence and Motion for

Summary Disposition (hereinafter, Motion for Summary Disposition). On May 20, 2022, Respondent filed his Reply in Opposition to the Government’s Motion for Summary Disposition (hereinafter, Respondent’s Reply).¹

On June 1, 2022, the Chief ALJ granted the Government’s Motion for Summary Disposition and recommended the revocation of Respondent’s DEA registration, finding that because Respondent lacks state authority to handle controlled substances, “there is no other fact of consequence for [the] tribunal to decide in order to determine whether or not [Respondent] is entitled to hold a [DEA registration].” 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 (hereinafter, Recommended Decision or RD), at 6.²

The Agency issues this Decision and Order based on the entire record before it, 21 CFR 1301.43(e), and makes the following findings of fact.

Findings of Fact

On February 19, 2021, the Illinois Department of Financial and Professional Regulation issued an Order suspending Respondent’s Illinois medical license. Government Exhibit 3, at 1–2. According to Illinois online records, of which the Agency takes official notice, Respondent’s state medical license is still suspended.³

¹ In his Reply, Respondent argued that his DEA registration should not be revoked because, although his Illinois medical license was suspended, no specific action had been taken against his Illinois controlled substance license and there have been no allegations against him regarding his controlled substance prescribing. Respondent’s Reply, at 2. Further, Respondent argued that his DEA registration should not be revoked because he is appealing the underlying action that resulted in the suspension of his Illinois medical license. *Id.* at 2–4. Finally, Respondent argued that the plain language of 21 U.S.C. 824(a)(3) does not mandate revocation of a DEA registration upon suspension of a practitioner’s state medical license, but rather, implies that revocation is discretionary. *Id.* at 4–5. In support of his final argument, Respondent asserts that the Government has not put forth any argument indicating why his DEA registration must be revoked. *Id.*

² By letter dated June 28, 2022, the Chief ALJ certified and transmitted the record to the Agency for final agency action, advising that neither party filed exceptions.

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

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Illinois Department of Financial and Professional Regulation, License Lookup, <https://online-dfpr.micropact.com/lookup/licenselookup.aspx> (last visited date of signature of this Order). Further, Illinois online records list the status of Respondent's state controlled substance license as "inoperative." *Id.* Accordingly, the Agency finds that Respondent is not currently licensed to engage in the practice of medicine and his controlled substances license is inoperative in Illinois, the state in which he 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 condition⁴ 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).⁵

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 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.

⁴ As such, the Agency finds Respondent's arguments regarding the permissive nature of 21 U.S.C. 824(a)(3) to be unavailing. *See also John B. Freitas, D.O.*, 74 FR 17,524, 17,525 (2009) ("the CSA requires the revocation of a registration issued to a practitioner who lacks [such] authority.").

⁵ 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

Pursuant to the Illinois Controlled Substances Act, a "practitioner" 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 2022). Further, the Illinois Controlled Substances Act 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).⁶

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, M.D.*, 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, M.D.*, 43 FR at 27,617.

Moreover, 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 [S]tate," *Hooper*, 76 FR at 71,371 (quoting *Anne Lazar Thorn, M.D.*, 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. *Bourne Pharmacy, M.D.*, 72 FR 18,273, 18,274 (2007); *Wingfield Drugs, M.D.*, 52 FR 27,070, 27,071 (1987). Thus, it is of no consequence that the underlying action in this case is being appealed. What is consequential is the Agency's finding that Respondent is no longer currently authorized to dispense controlled substances in Illinois, the state in which he is registered with the DEA.

Further, it is of no consequence the specific manner in which Respondent's state authority was lost. *See, e.g., Alex E. Torres, M.D.*, 87 FR 3,352 (2022) (voluntary surrender of medical license); *Humberto A. Florian, M.D.*, 86 FR 52,203 (2021) (state medical license revoked); *Javaid A. Perwaiz, M.D.*, 86 FR 20,732 (2021) (state medical license expired). Thus, Respondent's argument that his DEA registration should not be revoked because no specific action was taken against his Illinois controlled substance license is without merit. Additionally, it is of no consequence that there have been no allegations against Respondent regarding his controlled substance prescribing. *See, e.g., Kirk A. Hopkins, M.D.*, 87 FR 21,154 (2022) (allegations of wire fraud); *Florian, M.D.*, 86 FR 52,203 (allegations of negligence in medical practice). Once again, what is consequential is the Agency's finding that Respondent is no longer currently authorized to dispense controlled substances in Illinois, the state in which he is registered with the DEA.

⁶ The Illinois Controlled Substances Act also authorizes the Department of Financial and Professional Regulation to discipline a practitioner holding a controlled substance license, stating that "[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 Respondent currently lacks authority to handle controlled substances in Illinois as his Illinois medical license is suspended and his Illinois 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, Respondent is not eligible to maintain a DEA registration in Illinois. 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. FS3031034 issued to Bhanoo Sharma, 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 applications of Bhanoo Sharma, M.D. to renew or modify this registration, as well as any other pending application of Bhanoo Sharma, M.D. for additional registration in Illinois. This Order is effective August 11, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 6, 2022, 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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