

authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Barbara D. Marino, M.D. to renew or modify this registration, as well as any pending application of Barbara D. Marino, M.D. for registration in Texas. This Order is effective November 6, 2020.

Timothy J. Shea,
Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jacqueline G. Curtis, M.D.; Decision and Order

On December 18, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Jacqueline G. Curtis, M.D. (hereinafter, Registrant) of Jackson, Mississippi. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FC8151475. It alleged that Registrant is without "authority to handle controlled substances in the State of Mississippi, the state in which [Registrant is] registered with the DEA." *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that the Mississippi State Board of Medical Licensure (hereinafter, MSBML) issued an Order of Temporary Suspension on November 6, 2019. *Id.* at 2. This Order, according to the OSC, suspended Registrant's license to practice medicine. *Id.* at 2. The OSC further stated that Registrant's license to practice medicine had expired on November 8, 2019, and remained expired; therefore, the OSC concluded that Registrant "currently lack[s] authority to handle controlled substances in Mississippi." *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.* at 2 (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 April 24, 2020, a Diversion Investigator (hereinafter, DI 1) stated that her investigation revealed

that although Registrant was registered with DEA to handle controlled substances in Mississippi, Registrant was separately licensed to practice medicine in the State of Texas and also resides in that state. Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter, RFAAX) 11 (Declaration of DI 1), at 2–3. As a result, and shortly after the December 18th issuance of the OSC, DI 1 contacted another Diversion Investigator (hereinafter, DI 2) of the agency's Dallas Field Division to request that office's assistance with service of the OSC on Registrant. *Id.*

In a Declaration dated April 24, 2020, DI 2 stated that he and DEA Special Agent travelled to 4834 Worth Street, Dallas, Texas 75246 to meet with Registrant and serve her with the OSC on December 30, 2019. RFAAX 12 (Declaration of DI 2), at 2. Once at the above location, DEA personnel displayed their credentials and introduced themselves. *Id.* Based on a previous interaction, DI 2 stated that he recognized the individual who answered the door as the Registrant. *Id.* Registrant signed a DEA Form 12, Receipt for Cash or Other Items, to acknowledge her receipt of the Show Cause Order. *Id.*; see also RFAAX 6 (DEA Form 12).

The Government forwarded its RFAA, along with the evidentiary record, to this office on May 14, 2020. In its RFAA, the Government represents that it "has not received any written correspondence, telephonic communication, or any other communication from Registrant, or any representative on her behalf in response to the [OSC]." RFAA, at 4 (citing RFAAX 7, 8, and 9). The Government requests that Registrant's Certificate of Registration be revoked pursuant to 21 U.S.C. 823(f) and 824(a)(3). *Id.*

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 December 30, 2019. I also 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, 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. 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. FC8151475 at the registered address of the Clarity Clinic, 2500 N State Street, Jackson, Mississippi 39216. RFAAX 2 (Certification of Registration History). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II, IIN, III, IIIN, IV and V as a practitioner. *Id.*

The Status of Registrant's State License

On November 6, 2019, the MSBML issued a Determination of Need for Temporary Suspension (hereinafter, Suspension). RFAAX 3, at 3–4. According to the Suspension, Registrant's "continued practice o[f] unrestricted of medicine . . . would constitute an immediate danger to the public," and the Suspension suspended Registrant's license to practice medicine effective immediately. *Id.*

After receiving the Suspension, Registrant agreed in writing to "voluntarily surrender her medical license [] to practice medicine in the State of Mississippi . . . effective immediately upon execution." ¹ RFAAX 4 (Surrender of Medical License (hereinafter, Surrender)), at 1.

According to Mississippi's online records, of which I take official notice, Registrant's license remains "inactive" and provides links to the Suspension and Surrender.² Mississippi State Board of Medical Licensure, <https://>

¹ The Surrender was signed by Registrant and dated December 2019. DI 1 stated in her declaration that she "learned that it was accepted by the MSBML with an effective date of January 16, 2020." RFAAX 11, at 2. Based on the assertions of the DI and the evidence on the MSBML website, I find that the facts support that the Surrender was executed and is currently in effect.

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 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 to dea.addo.attorneys@dea.usdoj.gov.

gateway.msbsml.ms.gov/verification.results.aspx (last visited September 24, 2020).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Mississippi 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 Mississippi statute, “no controlled substance in Schedule II . . . may be dispensed without the written prescription of a practitioner,” and “except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV . . . shall not be dispensed without a written or oral valid prescription of a practitioner.” Miss. Code Ann. § 41–29–137(a)(1) and (a)(2) (West 2020). Further, “a practitioner” is defined as “a physician, dentist, veterinarian, scientific investigator, optometrist . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.” Miss. Code Ann. § 41–29–105(y)(1) (West 2020). Mississippi regulations define a “physician” to be “any person licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.” 30–2640 Miss. Code R. § 1.2(C). The regulations further state that “‘prescriptive authority’ means the legal authority of a professional licensed to practice in the state of Mississippi who prescribes controlled substances and is registered with the U.S. Drug Enforcement Administration in compliance with Title 21 CFR, Part 1301 Food and Drugs.” 30–2640 Miss. Code R. § 1.2(F).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Mississippi. As already discussed, a physician must be a licensed to practice medicine to have prescriptive authority for a controlled substance in Mississippi. Thus, because Registrant lacks authority to practice medicine in Mississippi and, therefore, is not authorized to prescribe controlled substances in Mississippi, 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. FC8151475 issued to Jacqueline G. Curtis, M.D. This Order is effective November 6, 2020.

Timothy J. Shea,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stacey Lynne Schirmer, M.D.; Decision and Order

On February 14, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Stacey Lynne Schirmer, M.D. (hereinafter, Applicant), of Angels Camp, California. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Applicant’s application for a DEA Certificate of Registration. It alleged that Applicant is without “authority to handle controlled substances in California, the state in which [Applicant] seek[s] registration with DEA.” *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that the Medical Board of California (hereinafter, Board) issued a Cease Practice Order on January 7, 2020, which prohibits Applicant from “engaging in the practice of medicine.” *Id.* at 1–2. The OSC further alleged that, because Applicant’s California medical license is suspended, Applicant lacks the authority to handle controlled substances in California, and is, therefore, ineligible to obtain a DEA registration. *Id.* at 2.

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)).

A DEA Diversion Investigator personally served Applicant with the OSC on May 21, 2020. Government’s Request for Final Agency Action Exhibit (hereinafter, RFAAX) 9, at 3 (Declaration of Diversion Investigator); RFAAX 5 at 1 (Service Receipt). 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, I find that neither Applicant, nor anyone purporting to represent Applicant, requested a hearing, submitted a written statement while waiving Applicant’s right to a hearing, or submitted a corrective action plan. *Id.*; RFAAX 6. Accordingly, I find that Applicant has waived the right to a hearing and the right to submit a written statement and