

satisfied the economic prong of the domestic industry requirement with respect to the four asserted patents; (6) the ID's finding that Philips has impliedly waived its rights to assert the four asserted patents; and (7) the ID's finding that Respondents failed to prove either their express/implied license defense or their equitable estoppel defense with respect to any of the four asserted patents. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1422–23 (Fed. Cir. 1984). Chair Johanson and Commissioner Karpel base their decision to review and take no position on the economic prong on the finding that the technical prong is not met. Commissioner Kearns would affirm the ID's finding that the '271 patent is unenforceable under the doctrine of implied waiver (but takes no position on implied waiver for the other three asserted patents), and its findings that Respondents failed to prove both their express/implied license defense and their equitable estoppel defense with respect to the four asserted patents. Commissioner Kearns also notes that his determination to review and take no position regarding satisfaction of the economic prong is independent of his determination regarding the technical prong.

The Commission has determined not to review, and thus adopts, the remaining findings in the ID, including that: (1) the asserted claims of the '935 patent, the '711 patent, the '943 patent, and the '271 patent are not infringed; (2) Philips did not satisfy the technical prong of the domestic industry requirement with respect to any of the four asserted patents; (3) claim 9 of the '711 patent and claim 12 of the '943 patent are invalid as indefinite; and (4) the asserted claims of the '271 patent are invalid as indefinite and for lack of written description. Recognizing the Commission has determined not to review the ID's finding that Philips did not satisfy the technical prong of the domestic industry requirement with respect to any of the four asserted patents, Commissioner Schmidlein would otherwise affirm the ID's analysis concerning whether the asserted economic prong investments were significant under 19 U.S.C. 1337(a)(3)(A) and (B).

The Commission thus affirms the final ID's finding of no violation of Section 337 with respect to each of the four asserted patents. This investigation is hereby terminated.

The Commission voted to approve this determination on July 6, 2022.

The authority for the Commission's determinations is contained in Section 337 of the Tariff Act of 1930, as

amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 6, 2022.

Lisa Barton,

Secretary to the Commission.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Donald J. Murphy, M.D.; Decision and Order

On April 15, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Donald J. Murphy, M.D. (hereinafter, Registrant). OSC, at 1 and 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. AM2605561 at the registered address of 5920 McIntyre St., Golden, Colorado, 80403. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "without authority to handle controlled substances in the State of Colorado, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA) submitted June 23, 2022.¹

Findings of Fact

On September 23, 2021, the Colorado Medical Board issued an Order suspending Registrant's license to practice medicine in the State of Colorado. RFAAX C (Order of Summary Suspension), at 3. According to Colorado's online records, of which the Agency takes official notice, Registrant's license is still suspended.² Colorado

¹ Based on the Declaration from a DEA Diversion Investigator that the Government submitted with its RFAA, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA, Exhibit (hereinafter, RFAAX) B, at 1–2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 1–2; *see also* 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C).

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

Professional or Business License Lookup, <https://apps.colorado.gov/dora/licensing/Lookup/LicenseLookup.aspx> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Colorado, 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 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).³

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 the Agency's 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 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.

³ 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*

Continued

According to Colorado statute, “[e]very person who manufactures, distributes, or dispenses any controlled substance within this state . . . shall obtain . . . a registration, issued by the respective licensing board For purposes of this section and this article [,] ‘registration’ or ‘registered’ means . . . the licensing of physicians by the Colorado medical board” Colo. Rev. Stat. § 18–18–302(1) (2022). Here, the undisputed evidence in the record is that Registrant’s Colorado medical license was suspended by the Colorado Medical Board. As such, Registrant is not authorized to dispense controlled substances in Colorado and thus is not eligible to maintain a DEA registration. Accordingly, 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. AM2605561 issued to Donald J. Murphy, 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 Donald J. Murphy, M.D. to renew or modify this registration, as well as any other pending application of Donald J. Murphy, M.D. for additional registration in Colorado. 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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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.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Alphonsus Okoli, M.D.; Decision and Order

On June 7, 2021, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Alphonsus Okoli, M.D. (hereinafter, Registrant). OSC, at 1 and 4. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BO4917780 at the registered address of 7525 Greenway Center Drive, Suite 110, Greenbelt, Maryland 20770. *Id.* at 1. The OSC alleged that Registrant’s registration should be revoked because Registrant is “without authority to handle controlled substances in Maryland, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).¹

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA).²

Findings of Fact

On March 23, 2021,³ Registrant and the Maryland State Board of Physicians (hereinafter, the Board) entered into a Consent Order suspending Registrant’s Maryland medical license and

¹ The OSC also alleged that Registrant’s registration should be revoked because Registrant has “committed such acts as would render [his] registration inconsistent with the public interest, as that term is defined under the Controlled Substances Act,” based on Registrant’s lack of compliance with a DEA Memorandum of Agreement (MOA). OSC, at 2 (citing 21 U.S.C. 823(f) and 824(a)(4)). However, in its Request for Final Agency Action (RFAA) submitted to this Office on June 22, 2022, the Government noted that while it does not concede that Registrant complied with the MOA, Registrant’s lack of state authority to handle controlled substances is “case dispositive and the Government does not seek a Final Order on the public interest allegations.” RFAA, at n.2.

² By letter dated July 12, 2021, Registrant submitted a written statement in response to the OSC in which he waived his right to a hearing. RFAA, Exhibit (hereinafter, RFAAX) B, at 1–2. As the Government seeks Final Agency Action solely on the ground that Registrant lacks state authority to handle controlled substances, the Agency will not consider Registrant’s explanation in response to the public interest allegations at this time. *See id.* Registrant also argues that his DEA registration should not be revoked for lack of state authority because he still has a North Carolina medical license in “inactive status.” *Id.* at 2.

³ On April 13, 2020, an Administrative Law Judge of the Maryland Office of Administrative Hearings issued a Proposed Decision recommending that Registrant’s Maryland Controlled Dangerous Substances (CDS) license be revoked. RFAAX C–2, at 1, 21. On June 25, 2020, the Designee of the Maryland Secretary of Health issued a Final Decision and Order adopting the Proposed Decision in full and revoking Registrant’s Maryland CDS license. RFAAX C–3, at 1–4.

permanently prohibiting him from prescribing and dispensing Controlled Dangerous Substances (hereinafter, CDS). *See* RFAAX C–4 (Consent Order), at 12–18. On September 29, 2021, the Board issued an Order Terminating Suspension and Imposing Probation that ended the suspension of Registrant’s Maryland medical license, but maintained that, as had been ordered in Registrant’s Consent Order with the Board, Registrant was permanently prohibited from prescribing and dispensing all controlled dangerous substances. RFAAX C–5, at 1–4.

According to Maryland’s online records, of which the Agency takes official notice, Registrant’s Maryland CDS license is still revoked.⁴ Maryland Department of Health CDS Search, <https://health.maryland.gov/ocsa/pages/cdssearch.aspx> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to dispense controlled dangerous substances in Maryland, 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 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

⁴ 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 the Agency’s 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 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.