found that ''it is undisputed that the Respondent lacks state authorization to handle controlled substances in Colorado,'' where he is registered. *Id.* at 3.

The ALJ further rejected Respondent's contention that the case is not ripe because he is the subject of two pending criminal cases in Colorado. *Id.* As the ALJ explained, because Respondent's medical license has been revoked, the case was not dependent ''on future events that may not occur'' and ''present[s] a concrete case or controversy.'' *Id.* at 3–4 (citing *Thomas* v. *Union Carbide Agric. Prod. Co.,* 473 U.S. 568, 579 (1985); *Texas* v. *United States,* 523 U.S. 296, 300 (1998)). The ALJ further noted that ''these proceedings are independent from Colorado's criminal proceedings and any factual findings made therein'' and that '' '[i]t is not DEA's policy to stay proceedings . . . while registrants litigate in other forums.' '' *Id.* at 4 (quoting *Newcare Home Health Servs.,* 72 FR 42126, 42127 n.2 (2007)) (other citations omitted). Finally, the ALJ rejected Respondent's argument that the Board's action in revoking his license ''was arbitrary [and] capricious, an abuse of discretion and contrary to law,'' as being a collateral attack on the state proceedings. *Id.* As the ALJ explained, ''a registrant's challenges to the validity of a state action must be litigated in the forums provided by the state.'' *Id.* (citing *Zhiwei Lin,* 77 FR 18862, 18864 (2012); also citing *Kristen Lee Raines,* 81 FR 14890, 14891–92 (2016)).

The ALJ also declined to consider Respondent's CAP, reasoning that he ''does not have the statutory authority to evaluate it.'' *Id.* The ALJ further explained that ''[t]he Administrator will consider the Respondent's corrective action plan.'' *Id.* (citing 21 U.S.C. 824(a)(3)).

On August 3, 2016, the Deputy Assistant Administrator rejected Respondent's CAP. Letter from Deputy Assistant Administrator Louis J. Milione to Respondent. The Deputy Assistant Administrator further explained that he had ''determined [that] there is no potential modification of [it] that could or would alter [his] decision.'' *Id.*

Neither party filed exceptions to the ALJ's decision. Thereafter, on August 23, 2016, the ALJ forwarded the recorded to me for Final Agency Action.

Having considered the record in its entirety, I adopt the ALJ's factual finding that Respondent's medical license has been revoked and his legal conclusion that he does not hold authority under Colorado law to dispense controlled substances and is therefore not entitled to maintain his registration.[4] I also adopt the ALJ's ruling that Respondent was not entitled to appointed counsel, his ruling rejecting Respondent's claim that this proceeding is not ripe for adjudication and his ruling rejecting Respondent's challenge to the lawfulness of the State Board proceedings.

As the ALJ explained, the Controlled Substances Act requires that a practitioner possess state authority to dispense controlled substances in order to maintain his registration. R.D. at 3; *see also* 21 U.S.C. 802(21) (defining ''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''); *id.* § 823(f) (''The Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'').

Because Congress has clearly mandated that a physician possess state authority in order to be deemed a practitioner under the Act, DEA has long held 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 medicine. *See Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978); *see also Hooper* v. *Holder,* 481 Fed. Appx. 826, 828 (4th Cir. 2012); *Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *see also* 21 U.S.C. 824(a)(3). Thus, it is of no consequence that Respondent has sought judicial review of the Board's action. *See Fiaz Afsal,* 79 FR 61651, 61655 (2014) (citing *Calvin Ramsey,* 76 FR 20034, 20036 (2011) (citing *Michael G. Dolin,* 65 FR 5661, 5662 (2000))). Rather, ''[u]nder the CSA, all that matters is that Respondent is no longer currently authorized to dispense controlled substances in'' Colorado, the State in which he is registered. *Afsal,* 79 FR at 61655.

As for Respondent's CAP, I conclude that there are adequate grounds for denying it. Specifically, while Respondent maintains that he holds a Wyoming medical license and this ''license establishes [his] continued eligibility to hold'' his registration, the online records of the Wyoming Board (of which I take official notice) show that this license has been suspended.[5] Accordingly, Respondent is not eligible to be registered in Wyoming and I therefore reject his CAP. 21 U.S.C. 802(21), 823(f).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3) and 28 CFR 0.100(b), I order that DEA Certificate of Registration No. BH2378025 issued to Thomas Horiagon, M.D., be, and it hereby is, revoked. I further order that any pending application of Thomas Horiagon, M.D., to renew or modify this registration, be, and it hereby is, denied. This Order is effective December 12, 2016.

Dated: November 2, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–27116 Filed 11–9–16; 8:45 am]

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[4] I further find that Respondent's registration does not expire until October 31, 2017. *See* Mot. for Summ. Disp., at Appendix A.

[5] Respondent may refute this finding by filing a properly supported motion with my Office no later than fifteen (15) calendar days from the date of this Order. *See* 5 U.S.C. 556(e).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 16–23]

Waleed Khan, M.D.; Decision and Order

On April 12, 2016, the Deputy Assistant Administrator, of the then Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Waleed Khan, M.D. (hereinafter, Respondent). The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration FK3499058, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, on the ground that he does not have authority to dispense controlled substances in Texas, the State in which he is registered with the Agency. Show Cause Order, at 1. *See also* 21 U.S.C. 824(a)(3).

The Show Cause Order specifically alleged that Respondent is registered as a practitioner, with authority to dispense schedule II through V controlled substances, at the registered address of 5101 Avenue H, Suite 23, Rosenberg, Texas, and that his registration does not expire until December 31, 2018. Show Cause Order, at 1. The Show Cause Order then

alleged that ''[t]he Texas Medical Board issued an order, effective March 11, 2016, which suspended [Respondent's] authority to practice Medicine'' and that he is ''without authority to handle controlled substances in Texas, the [S]tate in which [he is] registered with the'' Agency. *Id.* Based on Respondent's lack of state authority, the Order asserted that Respondent's registration is subject to revocation. *Id.* The Order further advised Respondent of his right to request a hearing on the allegations or to submit a written statement of position on the matters of fact and law at issue, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2.

On May 12, 2016, Respondent, through his counsel, timely requested a hearing. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ). Thereafter, the ALJ ordered the Government to submit evidence to support the allegation as well as an accompanying motion for summary disposition by May 20, 2016; in the event the Government filed such a motion, the ALJ ordered Respondent to file his reply no later than May 27, 2016. Briefing Schedule for Lack of State Authority Allegations, at 1.

On May 17, 2016, the Government filed its motion; as support for the motion, the Government attached a copy of the Texas Medical Board's (hereinafter, Board or TMB) Order of Temporary Suspension (Without Notice of Hearing), pursuant to which the Board's Disciplinary Panel found that ''Respondent's continued practice of medicine would constitute a continuing threat to the public welfare.'' Appendix B to Mot. for Summ. Disp., Order of Temporary Suspension, at 6 (Tex. Med. Bd. Mar. 11, 2016). The Board thus ordered the temporary suspension of Respondent's medical license, effective on the date of the Order. *Id.* at 6–7. Based on the Agency's longstanding interpretation that under the Controlled Substances Act, 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 both obtaining and maintaining a practitioner's registration, the Government argued that revocation of Respondent's registration is warranted. Mot. for Summ. Disp., at 3–4. The Government also argued that under Agency precedent, revocation is warranted even where a State Board has summarily suspended a practitioner's state authority and the State has yet to provide the practitioner with a hearing to challenge the State's action. *Id.* at 4.

Respondent opposed the Government's motion. While Respondent did not dispute that the Board has temporarily suspended his medical license, he argues that ''it is clear that the action of the Texas Medical Board . . . was based on an investigation conducted by DEA'' and that his ''registration should not be revoked by summary disposition where the underlying state action was triggered solely by the DEA, and [he] has been afforded no opportunity to be heard 'at a meaningful time and in a meaningful manner.' '' Resp. Opp., at 5 (quoting *Mathews* v. *Eldridge,* 424 U.S. 319, 333 (1976)).[1] Respondent also noted that the Texas Department of Public Safety had not revoked his state controlled substance registration. *Id.* at 2.

The ALJ granted the Government's motion. Order Granting Summary Judgment and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, at 4 (hereinafter, R.D.). The ALJ noted that ''[t]o maintain a DEA registration, a practitioner must be currently authorized to handle controlled substances in the jurisdiction in which [he] is registered.'' *Id.* at 3 (citing 21 U.S.C. 802(21) and 823(f)). Reasoning that ''the disposition of the Government's Motion depends only on whether the Respondent possesses state authority to handle controlled substances'' and finding it ''undisputed that [he] lacks state authorization to handle controlled substances in Texas,'' the State in which he holds his registration, the ALJ held that Respondent was not entitled to maintain his registration. *Id.* at 3–4. The ALJ thus recommended that Respondent's registration be revoked. *Id.* at 4.

I adopt the ALJ's recommended order. While in his Opposition, Respondent asserted that the Texas Department of Public Safety had not revoked his state controlled substances registration, Opp. at 2, and the Government presented no evidence as to the status of his state registration, Respondent subsequently acknowledged that he ''does not possess valid authority to handle controlled substances in the jurisdiction in which he is registered.'' *Id.* at 7–8. However, based on the Board's resort to post-deprivation process in suspending his registration, Respondent raises two challenges to the revocation of his registration.

First, Respondent argues that because the Board's suspension of his license was based on the DEA investigation and he has not had has ''an opportunity to be heard 'at a meaningful time and in a meaningful manner' under the Texas statutory scheme,'' the Agency's use of ''summary disposition in this instance would be a mistake.'' *Id.* at 6–7. Second, in discussing factor one of the public interest standard, Respondent offers an argument which is, in essence, a fleshing-out of his due process claim. Specifically, he argues that because the ''TMB relied almost exclusively on the DEA to suspend his state authority,'' and the TMB's Order ''offers little insight with regard to its own factual findings'' and he ''was given no notice of the proceeding out of which the Order issued[] and . . . has not . . . had an opportunity to address findings or their underlying allegations in a contest case hearing,'' the Board's findings and actions ''do not significantly weigh for or against [him] with regard to the temporary suspension.'' *Id.* at 8.

While it is true that Respondent's state license was suspended prior to the TMB's providing him with a hearing, as the ALJ explained, the Controlled Substances Act requires that a practitioner possess state authority to dispense controlled substances in order to maintain his registration. R.D. at 3; *see also* 21 U.S.C. 802(21) (defining ''the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he

[1] As support for his contention that the Medical Board's action was based on the DEA's investigation, Respondent cites to the transcript of the proceeding conducted by the Disciplinary Panel when it issued the Temporary Suspension Order. Specifically, Respondent asserts that the transcript shows that ''TMB employees first met with Houston DEA before entering the premises,'' that ''the DEA secured the premises,'' and ''the affidavits for the Search . . . and Arrest Warrant[s] were made out by . . . a police officer assigned to the DEA Houston . . . Tactical Diversion Squad.'' Resp. Opp. at 5–6.

In his Opposition, Respondent also argued that his registration is consistent with the public interest. *Id.* at 7–9. However, the sole ground on which the Government seeks revocation is Respondent's lack of state authority. Because the loss of state authority provides an independent and adequate ground for revoking Respondent's registration, I do not address whether Respondent's registration is consistent with the public interest.

Respondent also challenges the Government's motion arguing that the latter is attempting to moot his case. Respondent bases his argument on the Government's purported statement that '''when no question of fact is involved, or when the material facts are agreed upon, an adversarial proceeding is not required.''' Opp. at 6 (citing Mot. for Summ. Disp., at 2). The actual rule is that a plenary hearing (*i.e.,* a trial type hearing) is not required when the material facts are not in dispute. *See NLRB* v. *International Ass'n of Bridge Structural and Ornamental Ironworkers,* 549 F.2d 634, 639 (9th Cir. 1977); *see also Rezik A. Saqer,* 81 FR 22122, 22124 (citing cases). Putting aside that Respondent was allowed to file an opposition to the Government's motion (thus rendering this an adversarial proceeding), the proposition recited by the Government is not an argument for mootness, but rather, for the resolvability of this matter on summary disposition.

practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice''); *id.* § 823(f) (''The Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.''). Because Congress has clearly mandated that a physician possess state authority in order to be deemed a practitioner under the Act, DEA has long held 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 medicine. *See Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978); *see also Hooper* v. *Holder,* 481 Fed. Appx. 826, 828 (4th Cir. 2012); *Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). And because the CSA makes clear that a practitioner must possess state authority to maintain his registration, ''revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action at which he may ultimately prevail.'' *Kamal Tiwari,* 76 FR 71604, 71606 (2011); *see also Bourne Pharmacy, Inc.,* 72 FR 18273, 18274 (2007); *Anne Lazar Thorn,* 62 FR 12847 (1997).

As for Respondent's due process challenge based on the Board's use of an *ex parte* procedure in issuing the Order of Temporary Suspension, the Order specifically provided that ''[a] hearing on the Application for Temporary suspension (WITH NOTICE) will hereby be scheduled before a Disciplinary Panel of the Board at a date to be determined as soon as practicable . . . unless such hearing is specifically waived by Respondent.'' Order of Temporary Suspension, at 7. Whether Respondent availed himself of his right to a hearing to challenge the Suspension Order is not disclosed by the record. DEA, however, presumes that the Board's procedures provide Respondent with a constitutionally adequate means of challenging the Suspension Order. *Cf. Gonzales* v. *Oregon,* 546 U.S. 243, 270 (2006) (''The structure and operation of the CSA presume and rely upon a functioning medical profession regulated under the States' police powers.''); *see also Gary Alfred Shearer,* 78 FR 19009 (2013). Because in this proceeding, Respondent was provided with the opportunity to challenge the only fact which is material for the disposition of this proceeding—whether he currently holds authority under Texas law to dispense controlled substances [2]—the Agency's procedures provided him with due process.[3]

Accordingly, because Respondent is without authority under Texas law to dispense controlled substances, I will adopt the ALJ's recommendation that I revoke his registration.[4] *See* 21 U.S.C. 824(a)(3).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3) and 28 CFR 0.100(b), I order that DEA Certificate of Registration No. FK3499058 issued to Waleed Khan, M.D., be, and it hereby is, revoked. I further order that any application of Waleed Khan, M.D., to renew or modify said registration be, and it hereby is, denied. This Order is effective immediately.[5]

Dated: October 28, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–27117 Filed 11–9–16; 8:45 am]

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[2] Since the ALJ's ruling, Respondent has not submitted any evidence to the Agency showing that the Board's suspension is no longer in effect.

[3] As for Respondent's contention that his lack of state authority should not be given weight under the public interest standard, the Government did not seek revocation based upon a finding that he committed acts which render his registration inconsistent with the public interest. Show Cause Order, at 1. Rather, the Government sought revocation solely based upon a finding that Respondent's state license had been suspended and he is no longer authorized to dispense controlled substances. *Id.* (citing 21 U.S.C. 824(a)(3)). The latter is an independent and adequate ground for revocation. *See* 21 U.S.C. 824(a).

[4] Respondent's registration does not expire until December 31, 2018. Mot. for Summ. Disp., at Appendix A.

[5] For the same reasons that led the Medical Board to order the emergency suspension of Respondent's medical license, I concluded that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 27 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Arts Education (review of applications): This meeting will be closed.

Date and time: December 1, 2016; 1:30 p.m. to 3:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 6, 2016; 1:30 p.m. to 3:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: December 6, 2016; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: December 6, 2016; 3:00 p.m. to 5:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 6, 2016; 11:30 a.m. to 1:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 6, 2016; 2:30 p.m. to 4:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 6, 2016; 2:00 p.m. to 4:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: December 7, 2016; 12:00 p.m. to 2:00 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: December 7, 2016; 3:00 p.m. to 5:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 7, 2016; 11:30 a.m. to 1:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 7, 2016; 2:30 p.m. to 4:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 7, 2016; 2:00 p.m. to 4:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 8, 2016; 11:00 a.m. to 1:00 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: December 8, 2016; 3:00 p.m. to 5:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: December 8, 2016; 11:30 a.m. to 1:30 p.m.