

Issued: March 17, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-05867 Filed 3-19-21; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lawrence E. Stewart; Decision and Order

On June 12, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Lawrence E. Stewart, M.D. (hereinafter, Respondent), of Summit, Mississippi. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Respondent's application for a DEA Certificate of Registration because Respondent had committed acts that rendered his registration with DEA inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(f) and 824(a)(2), (4)).

On July 27, 2017, Respondent submitted a timely written statement in response to the OSC waiving his right to a hearing. Request for Final Agency Action Exhibit (hereinafter, RFAAX) 3. In lieu of a hearing, Respondent submitted a Statement of Position on the Facts and Law (hereinafter, Statement) regarding the matters alleged in the OSC. *Id.*

The Government filed a Request for Final Agency Action (hereinafter, RFAA) on March 25, 2019. In its RFAA, the Government stated that Respondent is no longer licensed to practice medicine in Mississippi and provided documentation from the Mississippi State Board of Medical Licensure to support this claim. RFAA at 2; see RFAAX 7, Appendices A–C. The Government then requested that I deny Respondent's application for a DEA registration on the grounds that Respondent lacks authority to handle controlled substances in the State of Mississippi, the state where he seeks a DEA registration. RFAA at 5–6. The Government had not alleged that Respondent lacked state authority in the OSC. OSC at 2.

The Government is not required to issue an amended OSC to notice an allegation of a registrant's lack of state authority that arises during the pendency of a proceeding regarding a DEA registration. *Hatem M. Ataya, M.D.*, 81 FR 8221, 8244 (2016). Previous Agency decisions have stated that because the possession of state authority

is a prerequisite for obtaining and maintaining a registration, the issue of state authority can be raised at any stage of a proceeding, even *sua sponte* by the Administrator. See *Ataya*, 81 FR at 8244; *Joe M. Morgan, D.O.*, 78 FR 61,961, 61,973–74 (2013). I issued an Order on February 3, 2021, providing Respondent with notice of the Government's allegation that he currently lacks state authority to handle controlled substances in the State of Mississippi, and providing him with the opportunity to show the contrary. Respondent submitted a response to the Order on February 4, 2021, stating "I am not currently licensed to practice medicine."

I make the following findings of fact based on the record before me.

Findings of Fact

Respondent's Application for a DEA Registration

On January 25, 2017, Respondent filed an application (Application Control No. H17068500C) for a DEA Certificate of Registration as a practitioner in schedules II–V, with a proposed registered location at 1050 Daisy Lane, Summit, Mississippi 39666. RFAAX 1.

The Status of Respondent's State License

At the time Respondent applied for a DEA registration, he held a Mississippi medical license. RFAAX 7, Appendix A (Mississippi State Board of Medical Licensure Determination and Order). On May 18, 2017, the Mississippi State Board of Medical Licensure (hereinafter, the Board) issued a Decision and Order suspending Respondent's medical license. *Id.* The Board suspended Respondent's license after finding him guilty of (1) having been convicted of violating a federal law regulating the distribution of a narcotic drug; (2) prescribing a drug having addiction forming or addiction sustaining liability otherwise than in the course of legitimate professional practice; and (3) unprofessional conduct. *Id.* The Decision and Order stayed Respondent's suspension contingent on his completion of certain requirements, including compliance with the Mississippi Professional Health Program (hereinafter, MPHP). *Id.* at 3–4.

On March 19, 2018, the Board found that Respondent had failed to comply with an MPHP requirement to abstain from alcohol. RFAAX 7, Appendix B (Board Order of Prohibition). The Board, therefore, issued an Order of Prohibition prohibiting Respondent from practicing medicine in Mississippi "until such

time as the Board and MPHP determines that [Respondent] is able to return to the practice of medicine." *Id.*

According to Mississippi's online records, of which I take official notice, Respondent's license is expired.¹ Mississippi State Board of Medical Licensure, Licensee Lookup, <https://gateway.msbml.ms.gov/verification/search.aspx> (last visited date of signature of this Order). Respondent also confirmed in response to my Order that, as of February 4, 2021, he was not licensed to practice medicine.

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 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).

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

¹ 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 (dea.addo.attorneys@dea.usdoj.gov).

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, “except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II . . . may be dispensed without the written valid 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 (b) (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 Respondent currently lacks authority to practice medicine in Mississippi. As already discussed, a physician must be licensed to practice medicine in order to have prescriptive authority for a controlled substance in Mississippi. Thus, because Respondent lacks authority to practice medicine in Mississippi and, therefore, is not authorized to prescribe controlled substances in Mississippi, Respondent is not eligible to receive a DEA registration. Accordingly, I will order that Respondent’s application for a DEA registration be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby order that the pending application for a Certificate of Registration, Control Number H17068500C, submitted by Lawrence E. Stewart, M.D., is denied, as well as any other pending application of Lawrence E. Stewart for additional registration in Mississippi. This Order is effective April 21, 2021.

D. Christopher Evans,

Acting Administrator.

[FR Doc. 2021–05845 Filed 3–19–21; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 11, 2021, the Department of Justice lodged a proposed Modified Consent Decree with the United States District Court for the Western District of Texas in the lawsuit entitled *United States of America and State of Texas v. San Antonio Water System* Civil Action No. 5:13–cv–00666.

The original consent decree requires the San Antonio Water System (SAWS) to implement remedial measures, including construction project, to alleviate capacity constraints on the SAWS sewer system. The proposed Modified Consent Decree extends the deadline for SAWS to complete two sewer main replacement construction projects by less than 10 months. There are no other changes from the original consent decree.

The publication of this notice opens a period for public comment on the proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources

Division, and should refer to *United States of America and State of Texas v. San Antonio Water System*, D.J. Ref. No. 90–5–1–1–09215. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$2.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Kenneth Long,

*Acting Assistant Section Chief,
Environmental Enforcement Section,
Environment and Natural Resources Division.*

[FR Doc. 2021–05824 Filed 3–19–21; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application Nos. L–12000 & L–12001]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving the Electrical Insurance Trustees Insurance Fund and the Electrical Joint Apprenticeship and Training Trust (the Plans or the Applicants) Located in Alsip, IL

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or