

responses Applicant provided in her North Carolina-based registration application were not “predictably capable of affecting, that is, had a natural tendency to affect, the official decision” of DEA given Applicant’s un rebutted record evidence of the input and instructions she said she received during her meeting with the DEA investigative team on January 31, 2019.

The Government has the burden of proof in this proceeding. 21 CFR 1301.44. For the above-stated reasons, I find that the Government has failed to meet its burden. The record evidence does not include clear, unequivocal, and convincing evidence that Applicant materially falsified her North Carolina-based registration application. 21 U.S.C. 824(a)(1); *Frank Joseph Stirlacci, M.D.*, 85 FR 45,229 (2020). Accordingly, I am dismissing the OSC.

However, as explained *supra* section II.B., Applicant is not currently “authorized to dispense controlled substances under the laws of the State” of North Carolina, I have no statutory authority to grant Applicant’s North Carolina-based registration application. 21 U.S.C. 823(f); 21 U.S.C. 802(21); *supra* section II.B.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f) and 824(a), I hereby dismiss the Order to Show Cause issued to Lisa Mae Jones, N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), in conjunction with 21 U.S.C. 802(21), I deny Application No. W19018692M. This Order is effective October 20, 2021.

Anne Milgram,
Administrator.

[FR Doc. 2021–20241 Filed 9–17–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Humberto A. Florian, M.D.; Decision and Order

On March 24, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Humberto A. Florian, M.D. (hereinafter, Registrant) of Anaheim, California. OSC, at 1. The OSC proposed the revocation of Registrant’s Certificate of Registration No. FF0235451. *Id.* It alleged that Registrant is “without authority to handle controlled substances in

California, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that the Medical Board of California, Department of Consumer Affairs (hereinafter, the Board) issued a Decision on November 21, 2018, to revoke Registrant’s medical license. *Id.* at 2. On December 21, 2018, the Board issued an Order denying Registrant’s Petition for Reconsideration of the Decision and Registrant’s medical license was revoked. *Id.* The California Medical Board revoked Registrant’s medical license following its findings, *inter alia*, that Registrant was grossly negligent, committed repeated negligent acts, failed to maintain accurate and adequate medical records, and violated the California Medical Practice Act. *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.* (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 August 11, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Riverside District Office, Los Angeles Field Division, attempted to contact Registrant, including at his registered address in Anaheim, California, “to determine if he would voluntarily surrender his [DEA registration] in light of his lack of state authority to prescribe controlled substances.” Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 3 (DI’s Declaration), at 1–2. The DI stated that a receptionist at the registered address said that “[Registrant] had retired, but [the] office still forwarded mail to him.” *Id.* at 2. Following the issuance of the OSC, the DI traveled with another DI on April 2, 2021, to “the last known residence” of Registrant to attempt to serve Registrant with the OSC, but service was unsuccessful as “no one appeared to be at the residence at that time.” *Id.* On April 12, 2021, the Riverside District Office, Los Angeles Field Division mailed a copy of the OSC to Registrant’s last known residence via first-class mail and the mailing was not returned as undeliverable. *Id.* On May 14, 2021, the Los Angeles Field Division mailed a copy of the OSC to Registrant’s registered address via first-class mail with return receipt requested, to which the DEA received “an unsigned return receipt on May 24, 2021, indicating that

the [OSC] had been delivered.” *Id.*; see also RFAAX 3, Appendix (hereinafter, App.) B. Finally, on May 20, 2021, the DI sent a copy of the [OSC] to Registrant via his registered email address and did not receive any error message that indicated that the email was not delivered. RFAAX 3, at 2.; see also RFAAX 3, App. C (copy of email). The DI also stated that a review of the email system showed that the email had been delivered. RFAAX 3, at 2. The DI concluded that, “[t]o date, neither [Registrant] nor any attorney representing [Registrant] has requested a hearing. Neither has [Registrant] nor any attorney for [Registrant] submitted a written statement.” *Id.* at 3.

The Government forwarded its RFAA, along with the evidentiary record, to this office on August 12, 2021. In its RFAA, the Government represents that “[Registrant] has not submitted a timely request for a hearing in this matter.” RFAA, at 1. The Government “seeks to revoke the [DEA registration] of [Registrant] because he lacks authority to handle controlled substances in the State of California, the state where he is registered with DEA.” *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 or before May 20, 2021. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the DI’s Declaration and the Government’s written representations, I find that neither Registrant, nor anyone purporting to represent the 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. FF0235451 at the registered address of 2090 S Euclid St. Ste. 104, Anaheim, CA 92802. RFAAX 1 (DEA Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules III through V as a practitioner.

Id. Registrant's registration expires on September 30, 2021. *Id.*

The Status of Registrant's State License

On June 22, 2018, Administrative Law Judge Abraham M. Levy of the Office of Administrative Hearings, State of California (hereinafter, CA ALJ), issued a Proposed Decision (hereinafter, CA ALJ Decision). RFAAX 3, App. A, at 17 and 30. According to the CA ALJ Decision, Registrant "committed gross negligence and repeated negligent acts, he failed to maintain adequate and accurate records relating to his treatment of Patient A, and he, in turn, violated the Medical Practice Act." *Id.* at 18. The CA ALJ Decision summarizes that Registrant "saw Patient A five times between March 2014 and July 2014, ordered a chest x-ray and a lab work-up, and despite abnormal findings on the x-ray indicating further follow-up was needed, [Registrant] failed to follow up on the x-ray findings or clinically assess Patient A's lung condition." *Id.* at 17. According to the CA ALJ Decision summary, "[o]n August 14, 2014, Patient A died from respiratory failure and interstitial lung disease due to Chronic Obstructive Pulmonary Disease (COPD), pulmonary hypertension, and small cell lung cancer." *Id.* Further, according to the ALJ Decision, "[Registrant] failed to present any evidence of rehabilitation, or evidence showing he is amenable to probation, to justify placing him on probation." *Id.* at 18. The CA ALJ Decision concluded that "public protection requires that [Registrant's] license be revoked." *Id.*

On July 31, 2018, the Board issued an Order of Non-Adoption of Proposed Decision, which ordered that the ALJ Decision was not adopted and that a panel of the Board would decide the case upon the record. *Id.* at 16. On November 21, 2018, the Board issued a Decision after Non-Adoption (hereinafter, Board Decision). *Id.* at 2 and 15. The Board Decision incorporated the factual findings of the CA ALJ. *Id.* at 2–4. The Board Decision ordered that Registrant's medical license be revoked effective December 21, 2018. *Id.* at 15. On December 21, 2018, the Board issued an Order Denying Petition for Reconsideration that denied the Petition filed by Registrant for the reconsideration of the Board Decision. *Id.* at 1.

According to California's online records, of which I take official notice, Registrant's license is still revoked.¹

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

Medical Board of California License Verification, <https://www.mbc.ca.gov/License-Verification> (last visited date of signature of this Order). California's online records show that Registrant's medical license remains revoked and that Registrant is not authorized in California to practice medicine. *Id.*

Accordingly, I find that Registrant is not licensed to engage in the practice of medicine in California, 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 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 . . .

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 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.

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 California statute, "dispense" means "to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery." Cal. Health & Safety Code § 11010 (West, current with urgency legislation through Ch. 115 of 2021 Reg. Sess). Further, a "practitioner" means a person "licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state." *Id.* at § 11026(c). Because Registrant is not currently licensed as a physician, or otherwise licensed in California, he is not authorized to dispense controlled substances in California.

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, 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. FF0235451 issued to Humberto A. Florian, 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 application of Humberto A. Florian to renew or modify this registration, as

well as any other pending application of Humberto A. Florian, for additional registration in California. This Order is effective October 20, 2021.

Anne Milgram,
Administrator.

[FR Doc. 2021-20246 Filed 9-17-21; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Steven P. French, M.D.; Decision and Order

On February 11, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Steven P. French, M.D. (hereinafter, Registrant) of Jackson, Wyoming. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FF5659505. *Id.* It alleged that Registrant is "without authority to handle controlled substances in Wyoming, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that the Wyoming Board of Medicine (hereinafter, the Board) issued a Findings of Fact, Conclusions of Law, and Order on April 17, 2020. *Id.* at 1. According to the OSC, the Board accepted Registrant's voluntary relinquishment of his Wyoming medical license following its finding, *inter alia*, that Registrant was convicted of driving under the influence. *Id.* at 1-2. The Board further found that during Registrant's arrest for driving under the influence, Wyoming authorities "discovered in [Registrant's] possession a prescription bottle of lorazepam 0.5 mg pills belonging to one of [his] patients, but with one pill missing." *Id.* at 2.

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.* (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 July 21, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Cheyenne Resident Office of the Denver Field Division,

stated that on September 21, 2020, prior to the issuance of the OSC, he had communicated via email with Registrant regarding Registrant's DEA registration. Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 3 (DI's Declaration), at 1. The DI stated that the following day, "[Registrant] responded to the email [the DI] had sent him and indicated that he had moved to Alaska and that for any future communications [the DI] should contact him via email." *Id.*; see also RFAAX 3, Appendix (hereinafter, App.) A (email exchange with Registrant). On February 12, 2021, the DI sent a copy of the OSC to Registrant via email. *Id.* at 1. The DI stated that later that day, Registrant "responded to [the] email and indicated that he received a copy of the [OSC]." *Id.* at 1-2; see also RFAAX 3, App. B (email from Registrant). The DI stated that, as of July 21, 2021, "DEA has not received any correspondence from [Registrant] or any attorney acting on his behalf concerning the [OSC]." RFAAX 3, at 2.

The Government forwarded its RFAA, along with the evidentiary record, to me on August 10, 2021. In its RFAA, the Government represents that "[Registrant] has not submitted a timely request for a hearing in this matter." RFAA, at 1. The Government seeks to revoke Registrant's DEA registration because "[Registrant] lacks authority to handle controlled substances in the State of Wyoming, the state where he is registered with DEA." *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 February 12, 2021. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the DI's Declaration and the Government's written representations, I find that neither Registrant, nor anyone purporting to represent the 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. FF5659505 at the registered address of 6605 N Snake River Woods Dr., Jackson, WY 83001. RFAAX 1 (Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expires on September 30, 2021. *Id.*

The Status of Registrant's State License

On January 16, 2020, Registrant submitted a letter to the Board informing it that he was voluntarily relinquishing his Wyoming medical license. RFAAX 3, App. C, at 19. On March 19, 2020, a member of the Board petitioned the Board to accept Registrant's voluntary relinquishment of his Wyoming Physician License. *Id.* at 13. On April 17, 2020, the Board issued its Findings of Fact, Conclusions of Law, and Order Accepting Voluntary Relinquishment of the Wyoming Physician License of Steven P. French, M.D., Wyoming Physician License No. 3068A (hereinafter, Board Order). *Id.* at 1.

According to the Board Order, in September 2018, Registrant's clinical privileges were permanently revoked by Crook County Medical Services District in Sundance, Wyoming based upon an incident in August 2018 where Registrant was allegedly intoxicated and exhibited "disruptive, abusive, and threatening behavior" at the hospital while he was off-duty. *Id.* at 3. When the Wyoming Medicine Board opened a complaint on the matter, Registrant denied any inappropriate behavior and "asserted that he had unilaterally resigned his clinical privileges as opposed to them being revoked." *Id.* On July 2, 2019, while the first complaint was still pending, Registrant applied to renew his Wyoming medical license and indicated on his application that he "was convicted of driving under the influence on November 26, 2018, related to an arrest incident that occurred on July 12, 2018." *Id.*

The Board opened an additional complaint concerning the arrest incident. *Id.* The Board Order states that Registrant was arrested for a DUI at a gas station, and "[d]uring the arrest, sheriff deputies also located a prescription bottle of [l]orazepam 0.5 mg for 30 pills, of which one pill was missing." *Id.* at 4. Further, "[t]he label indicated the prescription was written by [Registrant] for one of his patients" and "[i]t was determined that the prescription was