North Carolina Medical Board Licensee Search, *https://portal.ncmedboard.org/verification/search.aspx* (last visited date of signature of this Order). North Carolina's online records show that Registrant's medical license remains inactive and that Registrant is not authorized in North Carolina to practice medicine. *Id.*

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine in North Carolina, 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 . . . 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 North Carolina 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, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' N.C. Gen. Stat. Ann. § 90–87(8) (West 2021). Further, a ''practitioner'' means a ''physician . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.'' *Id.* at § 90–87(22)(a) (West 2021). Because Registrant is not currently licensed as a practitioner in North Carolina, he is not authorized to dispense controlled substances in North Carolina.

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in North Carolina. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in North Carolina. Thus, because Registrant lacks authority to practice medicine in North Carolina and, therefore, is not authorized to handle controlled substances in North Carolina, 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. BK4940741 issued to Peter S. Klainer, 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 Peter S. Klainer, M.D. to renew or modify this registration, as well as any other pending application of Peter S. Klainer, M.D. for additional registration in North Carolina. This Order is effective January 19, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2021–27430 Filed 12–17–21; 8:45 am]

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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.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Washington Bryan, M.D.; Decision and Order

On June 16, 2021, a former Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Washington Bryan, M.D., (hereinafter, Applicant), of Los Angeles, California. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Applicant's application No. W19097421C for a DEA Certificate of Registration, because the United States Department of Health and Human Services, Office of Inspector General (hereinafter, HHS/OIG) mandatorily excluded Applicant from participation in Medicare, Medicaid, and all Federal health care programs for a minimum period of 10 years pursuant to 42 U.S.C. 1320a–7(a); and such exclusion ''warrants denial of [Applicant's] application for DEA registration pursuant to 21 U.S.C. 824(a)(5).'' *Id.* at 2. The OSC also alleged that Applicant had ''been convicted of a felony relating to controlled substances.'' *Id.* (citing 21 U.S.C. 824(a)(2)).

The OSC alleged that on November 17, 2016, Applicant was ''convicted of twenty-nine felony counts of currency transaction structuring, resulting in a thirty-three month federal incarceration. The funds involved in the illegal structuring transactions were related to [Applicant's] writing of controlled substance prescriptions.'' OSC, at 1. The OSC alleged that as a result of this conviction, Applicant surrendered his then-active DEA registration. *Id.* at 2. It proposed denial of Applicant's application based on 21 U.S.C. 824(a)(2). *Id.* The OSC further alleged that, based on such conviction, HHS/OIG ''mandatorily excluded [Applicant] from participation in Medicare, Medicaid, and all Federal health care programs'' for a minimum period of 10 years pursuant to 42 U.S.C. 1320a–7(a), effective January 18, 2018. *Id.* The OSC additionally proposed denial of Applicant's application based on 21 U.S.C. 824(a)(5).

The Show Cause Order notified Applicant 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 Applicant of the opportunity to submit a corrective action plan. OSC, at 3 (citing 21 U.S.C. 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated October 8, 2021, a Diversion Investigator (hereinafter, DI) assigned to the Orange County District office, Los Angeles Field Division, stated that on July 12, 2021, she sent the OSC to Applicant's proposed registered address via United States Postal Service (USPS) registered mail, but on July 15, 2021, the website indicated that there was ''No Access To Delivery Location,'' and that service would be attempted the next day, July 16, 2021. Request for Final Agency Action dated October 12, 2021 (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 1 (DI's Declaration).[1] The DI stated that there was ''no further tracking information on the USPS website,'' and that she contacted USPS, who attempted delivery again, but it was unclear what occurred thereafter. *Id.* at 2. Therefore, on September 8, 2021, DI herself travelled to the proposed registered address and personally handed the OSC to Applicant. *Id.* at 3.

The Government forwarded its RFAA, along with the evidentiary record, to this office on October 13, 2021. In its RFAA, the Government represents that ''Applicant did not request a hearing.'' RFAA, at 1. The Government requests that Applicant's Certificate of Registration as a practitioner be denied ''due to his federal felony conviction related to controlled substances'' [2] and ''due to his mandatory exclusion from Medicare, Medicaid, and all Federal health care programs by HHS/OIG due to his felony controlled substance conviction.'' *Id.* at 3.

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 Applicant on or before September 8, 2021. 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 Applicant, nor anyone purporting to represent the Applicant, requested a hearing, submitted a written statement while waiving Applicant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Applicant 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

Applicant's DEA Registration

On August 22, 2019, Applicant submitted an application for a DEA Certificate of Registration as a practitioner in Schedules II through V with a proposed registered address at 201 Veteran Avenue, Los Angeles, California 90024. RFAAX 2 (Application). Applicant's application was assigned Control No. W19097421C. RFAAX 1, at 1.

On November 21, 2017, Applicant surrendered his previous DEA registration No. 684743414, ''because [his] California Medical License Physician and Surgeon's Certificate No. A61799, [was] suspended by the Medical Board of California by operation of law effective April 5, 2017.'' RFAAX 5 (email from Applicant surrendering his prior DEA registration).

Applicant's Exclusion

The evidence in the record demonstrates that on March 6, 2017, the United States District Court for the Central District of California issued a ''Judgment and Probation/Commitment Order'' in *U.S.* v. *Washington Bryan, II,* Docket No. Cr–16–00320–RGK (hereinafter, Judgment). RFAAX 4. According to the Judgment, Applicant was found guilty of ''Structuring of Currency Transactions in violation of Title 31 U.S.C. 5324(a)(3), as charged in Counts 1 through 29 of the Indictment.'' *Id.* at 1.

In a decision from an HHS Administrative Law Judge (HHS ALJ), dated September 18, 2018, HHS excluded Applicant from Medicare, Medicaid, and all federal health care programs under 42 U.S.C. 1320a–7(a) for a minimum period 10 years based on Applicant's felony conviction in the United States District Court for the Central District of California. RFAAX 6 (hereinafter, HHS Exclusion), at 1. The HHS ALJ found that Applicant's conviction of ''29 felony counts of structuring cash deposits'' was ''related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance,'' as defined in Section 1128(a)(4) of the Social Security Act, such that Applicant was mandatorily excluded under 42 U.S.C. 1320a–7(a). *Id.* at 5–6. The HHS Exclusion stated that the exclusion would become effective on January 18, 2018. *Id.* at 8.

Accordingly, I find that HHS excluded Applicant from Medicare, Medicaid, and all federal health care programs under 42 U.S.C. 1320a–7(a) for a minimum of 10 years effective January 18, 2018.

Discussion

In its OSC, the Government relied upon grounds Congress provided to support revocation/suspension, not denial of an application. Prior Agency decisions have addressed whether it is appropriate to consider a provision of 21 U.S.C. 824(a) when determining whether or not to grant a practitioner registration application. For over forty-five years, Agency decisions have concluded that it is. *Robert Wayne*

[1] The DI also stated that she emailed a copy of the OSC on July 14, 2021, to the email address Applicant had provided with his application and that she did not receive a ''failure to send'' and therefore believed that the email was received. *Id.* at 2.

[2] It is noted that one of the alleged bases for denial of Applicant's application in the OSC and the RFAA is 21 U.S.C. 824(a)(2) due to Applicant's alleged conviction of a felony related to controlled substances. As evidence of the felony conviction, the Government submitted a ''Judgment and Probation/Commitment Order'' from the United States District Court for the Central District of California in *U.S.* v. *Washington Bryan, II,* Docket No. Cr–16–00320–RGK, which demonstrates that Applicant was convicted of ''Structuring of Currency Transactions in violation of Title 31 U.S.C. 5324(a)(3), as charged in Counts 1 through 29 of the Indictment.'' RFAAX 4, at 1. There is no mention of controlled substances or any other details of the underlying conviction in this document. In its RFAA, the Government cited to the DI's declaration as support for this statement: ''The funds involved in the illegal structuring transactions were related to Applicant's writing of fraudulent controlled substance prescriptions.'' *Id.* The DI similarly stated in her Declaration, ''The funds involved in the illegal structuring transactions were related to Applicant's writing of fraudulent controlled substance prescriptions.'' RFAAX 1, at 1–2 (citing the ''Judgment and Probation/Commitment Order''). Although the Applicant has not contested the OSC, I do not have any direct evidence to support the allegation that this conviction constitutes a felony conviction ''relating to'' controlled substances as those terms are defined in 21 U.S.C. 824(a)(2). The evidence related to mandatory exclusion does contain an indication that the conviction was related to controlled substances as defined under 1128(a)(4) of the Social Security Act; however, according to the HHS decision, the HHS ALJ drew this conclusion based on transcripts of proceedings in District Court, which I do not similarly have in evidence, and furthermore, he drew the conclusion under a different statutory context than the CSA. RFAAX 6, at 4. Due to the limited evidence before me regarding whether Applicant's conviction was relating to controlled substances, and the fact that there are adequate reasons to deny Applicant's registration under 21 U.S.C. 824(a)(5), I decline to consider the felony conviction in this Decision.

Locklear, M.D., 86 FR 33,738 33,744–45 (2021) (collecting cases); *see also, William Ralph Kincaid, M.D.,* 86 FR 40,636, 40,641 (2021). A provision of section 824 may be the basis for the denial of a practitioner registration application and allegations related to section 823 remain relevant to the adjudication of a practitioner registration application when a provision of section 824 is involved. *See Robert Wayne Locklear, M.D.,* 86 FR at 33,744–45.

Accordingly, when considering an application for a registration, I will consider any actionable allegations related to the grounds for denial of an application under 823 and will also consider any allegations that the applicant meets one of the five grounds for revocation or suspension of a registration under section 824. *Id. See also Dinorah Drug Store, Inc.,* 61 FR 15,972, 15,973–74 (1996).

1. 21 U.S.C. 823(f): The Five Public Interest Factors

Pursuant to section 303(f) of the Controlled Substances Act (hereinafter, the CSA), ''[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . 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). Section 303(f) further provides that an application for a practitioner's registration may be denied upon a determination that ''the issuance of such registration . . . would be inconsistent with the public interest.'' *Id.*

In this case, there is no indication that Applicant does not hold a valid state medical license or is not authorized to dispense controlled substances in the State of California where he practices.

Because the Government has not alleged that Applicant's registration is inconsistent with the public interest under section 823, and although I have considered 823, I will not analyze Applicant's application under the public interest factors. Therefore, in accordance with prior agency decisions, I will move to assess whether the Government has proven by substantial evidence that a ground for revocation exists under 21 U.S.C. 824(a). *Supra* II.C.

2. 21 U.S.C. 824(a)(5): Mandatory Exclusion From Federal Health Care Programs Pursuant to 42 U.S.C. 1320a–7(a)

Under Section 824(a) of the CSA, a registration ''may be suspended or revoked'' upon a finding of one or more of five grounds. 21 U.S.C. 824. The ground in 21 U.S.C. 824(a)(5) requires that the registrant ''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* Here, the undisputed record evidence demonstrates that HHS mandatorily excluded Applicant from federal health care programs. RFAAX 6. Accordingly, I will sustain the Government's allegation that Applicant has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42 and find that the Government has established that a ground exists upon which a registration could be revoked pursuant to 21 U.S.C. 824(a)(5). Although the language of 21 U.S.C. 824(a)(5) discusses suspension and revocation of a registration, for the reasons discussed above, it may also serve as the basis for the denial of a DEA registration application. *Dinorah Drug Store, Inc.,* 61 FR at 15,973 (interpreting 21 U.S.C. 824(a)(5) to serve as a basis for the denial of a registration because it ''makes little sense . . . to grant the application for registration, only to possibly turn around and propose to revoke or suspend that registration based on the registrant's exclusion from a Medicare program''). Applicant's exclusion from participation in a program under 42 U.S.C. 1320a–7(a), therefore, serves as an independent basis for denying his application for DEA registration. 21 U.S.C. 824(a)(5).

Where, in Section 824(a)(5) cases, the applicant offers no mitigating evidence upon which the Administrator can analyze the facts, the agency has consistently held that revocation is warranted. *See, e.g., Sassan Bassiri, D.D.S.,* 82 FR 32,200, 32,201 (2017); *Richard Hauser, M.D.,* 83 FR 26,308, 26,310 (2018) (revocation was sought under Section 824(a)(5) and the registrant's certificate of registration was revoked ''based on the unchallenged basis for his mandatory exclusion.'') When the basis for revocation or suspension is clear and the registrant has had notice and the opportunity to present evidence, whether in a hearing or a written statement in accordance with 21 CFR 1301.43, but has chosen not to present any such evidence that could inform the Administrator's decision, it is reasonable that the Administrator should revoke or suspend. *See KK Pharmacy,* 64 FR 49,507, 49,510 (1999); *Orlando Ortega-Ortiz, M.D.* 70 FR 15,122 (2005); *Lazaro Guerra,* 68 FR 15,266 (2003) (basis for revocation was both (a)(3) and (a)(5)).

In this case, the HHS ALJ found that the evidence in front of him demonstrated that Applicant ''was convicted of structuring cash deposits and both the district court and the court of appeals accepted evidence that those cash deposits were derived from unlawful distribution or prescription of controlled substances.'' RFAAX 6, at 5.[3] The HHS ALJ also applied aggravating factors to extend his exclusion period, because Applicant's illegal activity spanned over a year and Applicant was sentenced to 33 months of incarceration. RFAAX 6, at 7.

Sanction

Here, there is no dispute in the record that Applicant is mandatorily excluded pursuant to Section 1320a–7(a) of Title 42 and, therefore, that a ground for the denial of Applicant's application exists.

Where, as here, the Government has met its *prima facie* burden of showing that a ground for denial exists, the burden shifts to the Applicant to show why he can be entrusted with a registration. *Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases).

In this case, Applicant failed to respond to the Government's Order to Show Cause and did not avail himself of the opportunity to refute the Government's case. *See* RFAA, at 6. Therefore, Applicant has not provided any remorse or assurances that he would implement remedial measures to ensure such conduct is not repeated. Such silence weighs against the Applicant's continued registration. *Zvi H. Perper, M.D.,* 77 FR at 64,142, citing *Medicine Shoppe,* 73 FR at 387; *see also Samuel S. Jackson,* 72 FR at 23,853. Further, due to the lack of a statement or testimony from Applicant, it is unclear whether Applicant can be entrusted with a DEA registration; and therefore, I find that sanction is appropriate to protect the public from a recurrence of Applicant's unlawful actions in the context of his CSA registration. *See Leo R. Miller, M.D.,* 53 FR 21,931, 21,932 (1988).

[3] It is noted that this Agency has concluded repeatedly that the underlying crime requiring exclusion from federal health care programs under Section 1320a–7(a) of Title 42 does not require a nexus to controlled substances in order to be used as a ground for revocation or suspension of a registration. *Narciso Reyes, M.D.,* 83 FR 61,678, 61,681 (2018); *KK Pharmacy,* 64 FR at 49,510 (collecting cases); *Melvin N. Seglin, M.D.,* 63 Red. Reg. 70,431, 70,433 (1998); *Stanley Dubin, D.D.S.,* 61 FR 60,727, 60,728 (1996). Applicant's extensive unlawful activity over the course of over a year demonstrates a severe lack of honesty and a proclivity to prioritize his greed over the public welfare, which also demonstrates the potential for abuse of his CSA registration, and therefore, I need not consider the HHS ALJ's finding that the underlying unlawful activity in this case involved controlled substances under Section 1128(a)(4) of the Social Security Act. The substantial evidence favors revocation.

Consequently, I find that the factors weigh in favor of sanction and I shall order the sanctions the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the pending application for a Certificate of Registration, Control Number W19097421C, submitted by Washington Bryan, M.D., as well as any other pending application of Washington Bryan, M.D. for additional registration in California. This Order is effective January 19, 2022.

Anne Milgram,

Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Cypress Creek Pharmacy, LLC; Order

On October 18, 2019, a former Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Cypress Creek Pharmacy, LLC (hereinafter, Applicant), of Wesley Chapel, Florida. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration because, according to the OSC, Applicant's registration with DEA would be inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(f) and 824(a)(4)).

In a Declaration dated August 3, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Tampa District Office, Miami Field Division, stated that on October 25, 2019, she met with Applicant's Registered Agent and Manager at the DEA Tampa District Office and ''personally served him with a copy of the [OSC].'' Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) B, at 1–2. The DI also stated that since the service of the OSC, she has ''received no communications from anyone acting on behalf of [Applicant] regarding the [OSC].'' *Id.* at 2.

The Government filed a Request for Final Agency Action (hereinafter, RFAA) on September 3, 2021. In its RFAA, the Government stated that Applicant is without authority to handle controlled substances in Florida, because its state pharmacy license recently expired. RFAA, at 1. The Government provided documentation from the Florida Department of Health to support this claim. *See* RFAAX B–1 and B–2. The Government then requested that I deny Applicant's application for a DEA registration based solely [1] on the ground that Applicant lacks authority to handle controlled substances in Florida, the state where Applicant seeks a DEA registration. RFAA, at 1 and 6. The Government did not allege that Applicant lacked state authority in the OSC. *See generally* OSC.

Previous Agency decisions have stated that 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). Additionally, 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 id.; see also Joe M. Morgan, D.O.,* 78 FR 61,961, 61,973–74 (2013). In those matters, however, the registrant had a meaningful opportunity, during at least one stage in the proceeding, to refute the Government's claim that the registrant lacked state authority. *See, e.g., Ataya,* 81 FR at 8245 (Administrator issued order directing parties to address whether registrant possessed state authority); *Lesly Pompy, M.D.,* 84 FR 57,749, 57,749–50 (2019) (notice provided during administrative hearing); *Morgan,* 78 FR at 61,973–74 (Government's post-hearing Motion for Summary Disposition provided adequate notice).

Here, the Government cited to *Lawrence E. Stewart, M.D.,* 86 FR 15,257 (2021), to support the proposition that it was not required to issue a new OSC demonstrating lack of state authority. RFAA, at 3–4. Although *Stewart* is accurately quoted, it also supports the notion that the Agency must give some sort of notice and an opportunity to contest the new allegations. In this case, in spite of changing the grounds for denial two years after issuance of the OSC, the Government had not demonstrated that it had given any such opportunity to the Applicant. Accordingly, on October 15, 2021, I issued an Interim Order to Applicant permitting it to submit a response addressing whether Applicant currently holds state authority to handle controlled substances in Florida within fifteen calendar days from the date that my office served the Order on Applicant. Applicant sent an email in reply to my Interim Order on October 20, 2021, stating, ''I have closed the pharmacy and wish to close out of all matters dealing with the pharmacy and the process of all licensure.'' [2] Email dated October 20, 2021. I have received no further correspondence from Applicant regarding the Government's allegations of its lack of state authority.

Because Applicant has presented no evidence or statements related to its lack of state authority, I consider the evidence submitted by the Government on the lack of state authority allegation to be uncontested.

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

Findings of Fact

Applicant's Application for a DEA Registration

On or about September 6, 2018, Applicant submitted an application for a DEA Certificate of Registration as a retail pharmacy in Schedules II through V with a proposed registered address at 26829 Tanic Drive, Suite 101, Wesley Chapel, Florida 33544. Applicant's application was assigned Control No. W18097945A. RFAAX B, at 1.

The Status of Applicant's State License

In her Declaration, the DI sated that Applicant's state pharmacy license ''expired, without renewal, on February 28, 2021.'' RFAAX B, at 2. The Declaration noted that ''that expiration was automatically extended until June 30, 2021 as part of the State of Florida's COVID–19 response.'' *Id.* at n.3.

According to Florida Department of Health's online records, of which I take official notice, Applicant's state pharmacy registration PH31651 is ''delinquent'' [3] with a ''license expiration date'' of February 28, 2021.[4]

[1] The Government appears to have abandoned its public interest allegations in the RFAA, and therefore, I am not considering them.

[2] In spite of Applicant's statement regarding its discontinuance of business, its application remains pending and I will continue to assess the application under 21 U.S.C. 823. *See Lawrence E. Stewart, M.D.,* 86 FR 15,257 (2021).

[3] According to the state website, ''delinquent'' means ''[t]he license practitioner who held a CLEAR ACTIVE or CLEAR INACTIVE license, but failed to renew the license by the expiration date. The licensed practitioner is not authorized to practice in the [S]tate of Florida.'' *https://mqa-internet.doh.state.fl.us/MQASearchServices//LicStatus.html#DELINQUENT.*

[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

Continued