

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Timothy C. Sapp, M.D.; Decision and Order**

On June 7, 2021, a former Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Timothy C. Sapp, M.D. (hereinafter, Registrant) of Phoenix, Arizona. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BS7608396. It alleged that Registrant is without "authority to handle controlled substances in Arizona, the state in which [Registrant is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that the Arizona Medical Board (hereinafter, the Board) issued an Interim Findings of Fact, Conclusions of Law and Order for Summary Restriction of License on April 22, 2020. *Id.* This Order, according to the OSC, summarily restricted Registrant's Arizona state medical license and prohibited Registrant from prescribing controlled substances pending the outcome of a formal hearing following the Board's finding, *inter alia*, that Registrant's treatment of six patients to whom he had prescribed controlled substances deviated from the standard of care. *Id.* On September 4, 2020, the Board issued its Findings of Fact, Conclusions of Law and Order finding, *inter alia*, that Registrant's prescribing of controlled substances to six patients deviated from the standard of care and accordingly, the Board revoked Registrant's Arizona state medical license, effective October 9, 2020. *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.* at 2–3 (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 October 29, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Phoenix Field Division stated that on June 9, 2021, she sent a copy of the OSC via USPS certified mail to four addresses associated with Registrant, including: An address in Hawkinsville,

GA where Registrant registered a new driver's license issued on May 14, 2021; two of Registrant's last-known residential addresses, one in Phoenix, AZ and another in Columbia, SC; and one of Registrant's former residential addresses in Phoenix, AZ. Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 2, at 1–2. The DI stated that she did not mail a copy of the OSC to Registrant's registered address in Phoenix, AZ because she had "previously learned that the address was no longer a medical facility." *Id.* at 2. According to the DI, on April 22, 2021, she had traveled with a DEA Special Agent to Registrant's registered address and "discovered that Registrant's registered address [was] operating as a tutoring facility called 'The Art of Learning.'" *Id.* Further, according to the DI, "[t]he staff at 'The Art of Learning' had no knowledge of [Registrant]." *Id.*

On or around June 30, 2021, the DI discovered that the OSC mailings delivered to Hawkinsville, GA and Columbia, SC were returned as undeliverable. *Id.*; see also RFAAX 2, Appendix (hereinafter, App.) A. On or around July 28, 2021, the DI discovered that the OSC mailed to Registrant's last known residential address in Phoenix, AZ was returned as undeliverable. *Id.* The DI stated that as of the date of the Declaration, she had not received any returned mail in connection with the OSC mailing to Registrant's former residential address in Phoenix, AZ. RFAAX 2, at 2. The DI stated that on October 29, 2021, she checked the status of her mailing to Registrant's former residential address in Phoenix, AZ and the USPS website "showed the status of the mailing as 'Delivered, Front Desk/ Reception/Mail Room' on June 14, 2021 at 12:54 p.m." *Id.* at 2–3; see also RFAAX 2, App. B.

On August 9, 2021, the DI emailed copies of the OSC to three email addresses associated with Registrant, including Registrant's registered email address and two email addresses listed in Registrant's comprehensive LexisNexis report. RFAAX 2, at 3. The DI stated that she received undeliverable confirmations from Registrant's registered email address and one of the email addresses listed in Registrant's comprehensive LexisNexis report. *Id.*; see also RFAAX 2, App. C. As of the date of the Declaration, the DI did not receive any undeliverable message or error message regarding to other email address listed in Registrant's comprehensive LexisNexis report. *Id.* The DI concluded that as of the date of the Declaration, "DEA [had] not received any correspondence or

communication from [Registrant] regarding the [OSC]." RFAAX 2, at 3.

The Government forwarded its RFAA, along with the evidentiary record, to this office on November 2, 2021. In its RFAA, the Government represents that "more than thirty days have passed since the Government both mailed and emailed the [OSC] to [Registrant]" and "[n]either [Registrant] nor his attorney filed any Request for Hearing" "[n]or has DEA received any other response, either from [Registrant] or his attorney, regarding the [OSC]." RFAA, at 2 and 4. The Government requests that Registrant's DEA registration be revoked because "[Registrant] lacks authority to handle controlled substances in the state of Arizona, the state where he is registered with DEA." *Id.* at 1.

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) August 9, 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 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*

According to Agency records, Registrant is the holder of DEA Certificate of Registration No. BS7608396 at the registered address of 1130 E Missouri Ave, Ste 206, Phoenix, AZ 85014. See RFAAX 2, at 1 (DI Declaration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. Registrant's registration expires on February 28, 2023 and is currently in an "active pending" status. *Id.*

The Status of Registrant's State License

On April 22, 2020, the Arizona Medical Board (hereinafter, the Board) issued an Interim Findings of Fact, Conclusions of Law and Order for Summary Restriction of License

(hereinafter, Interim Order). RFAAX 2, App. D. According to the Interim Order, the Board initiated a case after receiving a complaint regarding Registrant's care and treatment of patient E.R. that alleged inappropriate prescribing and medication management. *Id.* at 1. Based on the complaint, the Board requested Medical Consultant (hereinafter, MC) review of Registrant's care of patient E.R. and three other patients, which found that Registrant had deviated from the standard of care, including "prescribing Adderall without adequate clinical rationale, prescribing two benzodiazepines concurrently without adequate clinical rationale, [and] prescribing Lamictal for off-label use without adequate clinical rationale." *Id.* at 1–3. The review concluded that "[t]here was the potential for patient harm including that patients were at risk for misuse of controlled substances, dependence and addiction." *Id.* at 3.

The Board initiated a second case after receiving a complaint regarding Registrant's care and treatment of patient W.F. that alleged inappropriate prescribing and failing to obtain drug screens. *Id.* An MC review of Registrant's care and treatment of W.F. "opined that [Registrant] deviated from the standard of care by prescribing high dose benzodiazepines and stimulants without adequate clinical rationale, and by prescribing a stimulant and antidepressant concurrently in a patient with bipolar disorder without a mood stabilizer." *Id.* at 4. The review concluded that "[t]here was the potential for patient harm in that [W.F.] was at risk of a 'manic switch' due to the lack of concurrently prescribed mood stabilizer." *Id.*

Finally, the Board initiated a third case after receiving a complaint regarding Registrant's care and treatment of patient R.P. that alleged inappropriate discharge of a patient. *Id.* An MC review of Registrant's care and treatment of R.P. "opined that [Registrant] deviated from the standard of care by failing to appropriately discharge the patient." *Id.* at 5. The review concluded that "[t]here was actual patient harm in that R.P. experienced withdrawal symptoms from abrupt cessation of benzodiazepines." *Id.*

On April 21, 2020, the Board "voted unanimously to offer [Registrant] an Interim Consent Agreement for Practice Restriction ('ICA'), and if not accepted by 12:00 p.m. on April 22, 2020, to summarily restrict [Registrant's] license, based on a finding that the public health, safety and welfare imperatively required imminent action." *Id.* According to the Interim Order,

"[Registrant] failed to accept the proposed ICA within the time frame specified by the Board," and thus, the Board ordered the summary restriction of Registrant's Arizona medical license and prohibited Registrant "from prescribing controlled substances in the State of Arizona pending the outcome of a Formal Hearing in [the] matter." *Id.* at 5–6. On September 4, 2020, the Board issued its Findings of Fact, Conclusions of Law and Order (License Revocation) and ordered Registrant's Arizona medical license revoked. RFAAX 2, App. E, at 19.

According to Arizona's online records, of which I take official notice, Registrant's license is expired.¹ Arizona Medical Board Licensee Search, <https://azbomprod.azmd.gov/glsuiteweb/clients/azbom/public/WebVerificationSearch.aspx> (last visited date of signature of this Order). Arizona's online records show that Registrant's medical license remains expired. *Id.*

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

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 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.

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 Arizona statute, "[e]very person who manufactures, distributes, dispenses, prescribes or uses for scientific purposes any controlled substance within this state or who proposes to engage in the manufacture, distribution, prescribing or dispensing of or using for scientific purposes any controlled substance within this state must first: (1) Obtain and possess a current license or permit as a medical practitioner as defined in § 32–1901 . . ." Ariz. Rev. Stat. Ann. § 36–2522(A) (2021). Arizona Statute § 32–1901 defines a "[m]edical practitioner" as "any medical doctor . . . or other person who is licensed and authorized by law to use and prescribe drugs and devices to treat sick and injured human beings or animals or to diagnose or prevent sickness in human beings or animals in this state or any state, territory or district of the United States." Ariz. Rev. Stat. Ann. § 32–1901 (2021). Arizona regulations further clarify that "[a] physician who wishes to dispense a controlled substance . . . a prescription-only drug . . . or a prescription-only device . . . shall be

currently licensed to practice medicine in Arizona.” Ariz. Admin. Code § R4–16–301(A) (2021).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Arizona, as he no longer retains a medical license in that state. As already discussed, a physician can only dispense controlled substances if he is licensed to practice medicine in Arizona. Thus, because Registrant lacks authority to practice medicine in Arizona and, therefore, is not authorized to dispense controlled substances in Arizona, Registrant is not eligible to maintain a DEA registration in Arizona. 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. BS7608396 issued to Timothy C. Sapp, 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 Timothy C. Sapp to renew or modify this registration, as well as any other pending application of Timothy C. Sapp for additional registration in Arizona. This Order is effective January 19, 2022.

Anne Milgram,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Peter S. Klainer, M.D.; Decision and Order

On August 20, 2021, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Peter S. Klainer, M.D. (hereinafter, Registrant) of Morehead City, North Carolina. OSC, at 1 and 3. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BK4940741. It alleged that Registrant is “without authority to handle controlled substances in North Carolina, the state in which [Registrant is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on November 13, 2020, the North Carolina Medical Board issued an Order suspending Registrant’s state medical

license after finding that “there was probable cause to believe [Registrant] committed unprofessional conduct . . . after [he was] arrested and charged with nine felony counts of sexual exploitation of a minor in the second degree.” *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.* at 2 (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 November 10, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the Raleigh District Office of the Atlanta Field Division stated that on August 26, 2021, she “personally served the [OSC] on [Registrant] at the Carteret County Sheriff’s Office.” Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 3, at 1–2. The DI stated that as of the date of the Declaration, “neither [Registrant] nor any attorney representing [Registrant] has requested a hearing or submitted a written statement.” *Id.* at 2.

The Government forwarded its RFAA, along with the evidentiary record, to this office on November 10, 2021. In its RFAA, the Government represents that “[Registrant] has not submitted a timely request for a hearing” and that as of November 10, 2021, “neither [Registrant] nor any attorney representing [Registrant] has requested a hearing or submitted a written statement.” RFAA, at 1–2. The Government “seeks to revoke [Registrant’s] DEA registration because [Registrant] lacks authority to handle controlled substances in the State of North Carolina, the state where [Registrant] is registered with DEA” and “requests that the Administrator revoke [Registrant’s] [DEA registration] and deny any applications for renewal.” *Id.* at 1 and 5.

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 August 26, 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 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. BK4940741 at the registered address of 3700 Symi Cir, Morehead City, NC 28557. 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 December 31, 2022. *Id.*

The Status of Registrant’s State License

On November 13, 2020, the North Carolina Medical Board (hereinafter, the Board) issued an Order of Summary Suspension of License (hereinafter, Order). RFAAX 2, Appendix (hereinafter, App.) A, at 1 and 6. In its Order, the Board found that on or about November 4, 2020, “[Registrant] was arrested and charged with nine felony counts of Sexual Exploitation of a Minor in the Second Degree.” *Id.* at 1. The Board found that probable cause existed that Registrant committed the conduct for which he was arrested and charged and that “such conduct constitutes unprofessional conduct within the meaning of N.C. Gen. Stat. § 90–14(a)(6) and grounds exist under that section of the North Carolina General Statutes for the Board to annul, suspend, revoke, or limit [Registrant’s] license to practice medicine or to deny any application he might make in the future for a license to practice medicine.” *Id.* at 5. As such, the Board found that “the public health, safety, or welfare requires emergency action” and ordered Registrant’s medical license summarily suspended. *Id.* at 6.

According to North Carolina’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 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