

Registrant's Illinois medical license. RFAAX 1, at 1. According to Illinois's online records, of which the Agency takes official notice, Registrant's Illinois medical license remains suspended.² Illinois Department of Financial and Professional Regulation License Search, <https://online-dfpr.micropact.com/lookup/licenselookup.aspx/> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Illinois, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "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, 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, D.O.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.*, 43 FR 27616, 27617 (1978).³

² 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 the Agency's finding by filing a properly supported motion for reconsideration of findings 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.gov.

³ This rule derives from the text of two provisions of the Controlled Substances Act (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(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner

Pursuant to the Illinois Controlled Substances Act, a practitioner in good faith ("the regular course of professional treatment") may dispense a controlled substance. 720 Ill. Comp. Stat. 570/312(a), 570/102(u) (2024).⁴ A "practitioner" means "a physician licensed to practice medicine in all its branches . . . or other person licensed, registered, or otherwise lawfully permitted by the United States or [Illinois] to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research." *Id.* 570/102(kk).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Illinois. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in Illinois. Thus, because Registrant lacks authority to practice medicine in Illinois, and, therefore, is not authorized to handle controlled substances in Illinois, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency 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. AW2016651 issued to Theodore S. Wright Jr., M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Theodore S. Wright Jr., M.D., to renew or modify this registration, as well as any other pending application of Theodore S. Wright Jr., M.D., for additional registration in Illinois. This Order is effective October 28, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 19, 2024, by Administrator Anne Milgram. That

under the CSA, 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 71371–72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR 27617.

⁴ "Dispense" means "to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a prescriber, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery." *Id.* 570/102(p).

document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 24–46]

Wagner Gervais, P.A.; Decision and Order

On May 7, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Wagner Gervais, P.A., of Tucson, Arizona (Respondent). OSC, at 1, 4. The OSC proposed the revocation of Respondent's DEA Certificate of Registration No. MG7845778, alleging that Respondent's DEA registration should be revoked because Respondent is "without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Arizona, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

On May 21, 2024, Respondent requested a hearing and filed an Answer. On June 4, 2024, the Government filed a Motion for Summary Disposition, to which Respondent did not respond.¹ On June 24, 2024, Administrative Law Judge Teresa A. Wallbaum (the ALJ) granted the Government's Motion for Summary Disposition and recommended the revocation of Respondent's registration, finding that because Respondent lacks state authority to handle controlled substances in Arizona, the state in which he is registered with DEA, "[t]here is no genuine issue of material fact in this case." Order Granting the Government's Motion for Summary Disposition, and Recommended

¹ On June 14, 2024, Respondent sought to continue the DEA proceedings while appealing the loss of his state authority; consistent with past precedent, the Administrative Law Judge denied the continuance.

Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD), at 4–5. Respondent did not file exceptions to the RD.

Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, findings of fact, conclusions of law, and recommended sanction as found in the RD and summarizes and expands upon portions thereof herein.

Findings of Fact

On November 29, 2023, the Arizona Regulatory Board of Physician Assistants revoked Respondent's Arizona physician assistant license. RD, at 3.² According to Arizona online records, of which the Agency takes official notice, Respondent's Arizona physician assistant license remains revoked.³ Arizona Regulatory Board of Physician Assistants, Find Your PA, <https://www.azpa.gov/PASearch/PASearch> (last visited date of signature of this Order). Accordingly, the Agency finds that Respondent is not currently licensed to practice as a physician assistant in Arizona, the state in which he is registered with 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 (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, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in

² See also Government's Notice of Filing of Evidence of Lack of State Authority; Service of Order to Show Cause; and Motion for Summary Disposition, Declaration of [Diversion Investigator], Exhibit A, at 8–9.

³ 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, Respondent may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings 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.gov.

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 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).⁴

According to Arizona statute, “[e]very person who manufactures, distributes, dispenses, prescribes or uses for scientific purposes any controlled substance within th[e] state or who proposes to engage in the manufacture, distribution, prescribing or dispensing of or using for scientific purposes any controlled substance within th[e] state must first: (1) [o]btain and possess a current license or permit as a medical practitioner as defined in § 32–1901” *Ariz. Rev. Stat. Ann. section 36–2522(A)(1)* (2024). Section 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 [Arizona] or any state,

⁴ 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(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, 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 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR 27617. Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration “is currently authorized to handle controlled substances in the [S]tate,” *Hooper*, 76 FR 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, it is of no consequence that Respondent is still challenging the underlying action here, see Respondent's Answer, at 1; Respondent's Motion to Continue Show Cause Hearing. Rather, the Agency's finding that Respondent is not currently authorized to dispense controlled substances in Arizona, the state in which he is registered with DEA, is controlling. *Adley Dasilva, P.A.*, 87 FR 69341, 69341 n.2 (2022); see also Order Denying Respondent's Motion to Continue.

territory or district of the United States.” *Id.* section 32–1901.

Here, the undisputed evidence in the record is that Respondent lacks authority to practice as a physician assistant in Arizona. As discussed above, only a licensed medical practitioner can dispense controlled substances in Arizona. Thus, because Respondent lacks authority to practice as a physician assistant in Arizona, and therefore is not a licensed medical practitioner, Respondent is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Respondent'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. MG7845778 issued to Wagner Gervais, P.A. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Wagner Gervais, P.A., to renew or modify this registration, as well as any other pending application of Wagner Gervais, P.A., for additional registration in Arizona. This Order is effective October 28, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 16, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lawrence Rudolph, D.M.D.; Decision and Order

On July 12, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show