



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**[Docket No. 19-21]  
William S. Husel, D.O.; Decision and Order**

On April 9, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to William S. Husel, D.O. (hereinafter, Respondent) of Columbus, Ohio. OSC, at 1. The OSC proposed the revocation of Respondent’s Certificate of Registration No. FH4036667. It alleged that Respondent is without “authority to handle controlled substances in the State of Ohio, the state in which [Respondent is] registered with the DEA.” *Id.* at 2 (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that the State Medical Board of Ohio (hereinafter, Board) summarily suspended Respondent’s certificate to practice osteopathic medicine and surgery on January 25, 2019. *Id.* at 2.

The OSC notified Respondent 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 C.F.R. § 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. OSC, at 1, 3 (citing 21 U.S.C. § 824(c)(2)(C)).

Respondent, through his counsel, timely requested a hearing via an email dated April 30, 2019.<sup>1</sup> Hearing Request, at 1. In his hearing request, Respondent admitted that his Ohio

---

<sup>1</sup> The Hearing Request was filed with the Office of Administrative Law by email after 5pm on April 30, 2019, therefore the ALJ deemed the filing date to be May 1, 2019. Briefing Order, at 1. Respondent’s Hearing Request was also filed by U.S. Mail, received on May 9, 2019.

Medical License was summarily suspended on January 25, 2019, and stated that he was preparing for his hearing before the State Medical Board of Ohio. *Id.* He also stated that “he ha[d] not prescribed any controlled substances while on suspension.” *Id.*

The Office of Administrative Law Judges (hereinafter, OALJ) put the matter on the docket and assigned it to Administrative Law Judge Charles Dorman (hereinafter, ALJ). The ALJ issued a briefing schedule to both parties on May 1, 2019, directing the Government “to file evidence to support its allegation that Respondent lacks state authority to handle controlled substances, or any other grounds upon which it seeks summary disposition,” and any motion for summary disposition, by May 15, 2019. Briefing Schedule for Lack of State Authority Allegations (hereinafter, Briefing Order), at 1. The ALJ directed that “if the Government files a motion for summary disposition, Respondent’s reply is due on May 29, 2019.” *Id.* The ALJ also noted that Respondent’s counsel’s email address was included in Respondent’s Hearing Request, and provided instructions in the event Respondent’s counsel declined to participate in future electronic receipt of orders from the OALJ. *Id.* at 2.

The Government timely complied with the Briefing Order by filing a Motion for Summary Disposition on May 15, 2019. Government’s Motion for Summary Disposition (hereinafter, MSD). In its MSD, the Government stated that Respondent “lacks authority to handle controlled substances in the State of Ohio, the jurisdiction where he is licensed to practice osteopathic medicine and where he is registered with DEA, because his osteopathic medical license is suspended,” and therefore, he “does not have state authority to prescribe, administer, or dispense controlled substances in the State of Ohio.” *Id.* at 3. Thus, the Government contends, “Respondent is not authorized to possess a DEA registration” in Ohio. *Id.* In support of its

assertion, the Government provided a copy of the Board’s “Entry of Order” (hereinafter, Order) dated January 25, 2019, which ordered that “effective immediately,” Respondent’s “certificate . . . to practice osteopathic medicine and surgery in the State of Ohio be summarily suspended,” and that Respondent “shall immediately cease the practice of osteopathic medicine and surgery in Ohio.” MSD, Exhibit (hereinafter, EX) 2, at 7.

The Government’s MSD included the Board’s certification that the Order and Notice 1, dated January 25, 2019, and Notice 2, dated February 13, 2019, are “true and correct copies” of the proceedings of the Board. MSD, EX2, at 1, 6.

Respondent failed to file a response to the MSD by the filing deadline in the ALJ’s Briefing Order, nor did he file a response by the date of the ALJ’s recommended decision, and the ALJ deemed the Government’s motion unopposed. Order Granting Summary Disposition and Recommended Findings of Fact, Conclusions of Law, and Decision (hereinafter, SD), at 4.

The ALJ granted the MSD, finding that “‘there is no factual dispute of substance’” and that the Government “has provided ‘reliable and probative evidence’ of ‘appropriate evidentiary quality’ that Respondent lacks state authority to handle controlled substances in Ohio.” SD, at 8. (Citations omitted). The ALJ also found that “summary disposition is additionally warranted because the Government carried its burden and [Respondent] failed to respond.” *Id.*

The ALJ recommended revocation of Respondent’s registration because “the Government has presented sufficient evidence to establish that [Respondent] lacks state authority to dispense controlled substances in Ohio, the state in which [he] holds his DEA registration.” *Id.* at 9.

By letter dated June 24, 2019, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advised that neither party filed exceptions and that the time period to do so had expired.

I issue this Decision and Order based on the entire record before me. 21 C.F.R. § 1301.43(e). I make the following findings of fact.

### **Findings of Fact**

#### **Respondent's DEA Registration**

On September 10, 2016, Respondent renewed DEA Certificate of Registration No. FH4036667, at the registered address of 793 West State Street, Columbus, Ohio. MSD, EX1 (Certification of Registration History), at 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Respondent's registration expired on October 31, 2019.<sup>2</sup> *Id.* at 1.

#### **The Status of Respondent's State License**

On January 25, 2019, the Board issued an Order and Notice summarily suspending Respondent's certificate to practice osteopathic medicine and surgery in the State of Ohio, finding that there was "clear and convincing evidence" that Respondent violated Ohio law. MSD, EX2 at 7; *see also* MSD, EX2, at 9-11. In its Order, the Board found that Respondent's "continued practice presents a danger of immediate and serious harm to the public." MSD, EX2, at 7. On the same date, the Board also issued a Notice of Summary Suspension and Opportunity for Hearing (hereinafter, Notice) to Respondent, notifying him that his "certificate/license to practice osteopathic medicine and surgery in the State of Ohio is summarily suspended" and that

---

<sup>2</sup> The fact that Respondent allowed his registration to expire during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 Fed. Reg. 68,474 (2019).

“at this time [he is] no longer authorized to practice osteopathic medicine and surgery in Ohio.” *Id.* at 9. In its Notice, the Board specifically alleged that Respondent’s employer hospital terminated his employment “after determining that the medical treatment [Respondent] provided was below the standard of care and jeopardized the safety of patients” because “at least twenty-seven patients received doses of controlled substances that significantly exceeded the acceptable dose range and were at fatal levels.” *Id.*

The Notice alleged that Respondent’s conduct constituted a “failure to maintain minimal standards applicable to the selection or administration of drugs” and “a departure from . . . minimal standards of care of similar practitioners under the same or similar circumstances,” and his actions “were in bad faith, and/or outside the scope of [his] authority, and/or not in accordance with reasonable medical standards.” *Id.* at 10 (quoting OHIO REV. CODE ANN. §§ 4731.22(B)(2) and (B)(6)).

The Notice also informed Respondent that he was entitled to a hearing on the Board’s allegations. MSD, EX2, at 11. The Government also provided a copy of a second Notice of Opportunity for Hearing (hereinafter, Notice 2) issued by the Board on February 13, 2019, which contained additional allegations of violations of Ohio law and advised Respondent of his right to a hearing before the Board. *Id.* at 2-4. Respondent was ordered to “immediately cease the practice of osteopathic medicine and surgery in Ohio.” *Id.* at 7.

According to Ohio’s online records, of which I take official notice, Respondent’s license is still suspended.<sup>3</sup>

---

<sup>3</sup> 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

[https://elicense.ohio.gov/oh\\_verifylicense?firstName=&lastName=Husel&licenseNumber=&searchType=individual](https://elicense.ohio.gov/oh_verifylicense?firstName=&lastName=Husel&licenseNumber=&searchType=individual) (last visited January 30, 2020).

Accordingly, I find that Respondent currently is not licensed to engage in the practice of medicine in Ohio, the state in which Respondent 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 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 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 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,

---

dispute my finding by filing a properly supported motion for reconsideration 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 Respondent 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 e-mail ([dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov)) or by mail to Office of the Administrator, Attn: ADDO, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, VA 22152.

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 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

Under Ohio law, “No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog,” except<sup>4</sup> pursuant to a “prescription issued by a licensed health professional authorized to prescribe drugs if the prescription was issued for a legitimate medical purpose.” OHIO REV. CODE ANN. §§ 2925.11(A), (B)(1)(d) (West, Westlaw current through File 21 of the 133rd General Assembly (2019-2020)).

Ohio law further states that a “[l]icensed health professional authorized to prescribe drugs’ or a ‘prescriber’ means an individual who is authorized by law to prescribe drugs or dangerous drugs . . . in the course of the individual’s professional practice.” OHIO REV. CODE ANN. § 4729.01(I) (West, Westlaw current through Files 1 to 20 of the 133rd General Assembly (2019-2020)). The definition further provides a limited list of authorized prescribers, the relevant provision of which is “[a] physician authorized under Chapter 4731[] of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine

---

<sup>4</sup> Other irrelevant exceptions omitted.

and surgery.” *Id.* at § 4729.01(I)(4). In addition, the Ohio Uniform Controlled Substances Act permits “[a] licensed health professional authorized to prescribe drugs, if acting in the course of professional practice, in accordance with the laws regulating the professional's practice” to prescribe or administer schedule II, III, IV, and V controlled substances to patients. OHIO REV. CODE ANN. § 3719.06(A)(1)(a)-(b) (West, Westlaw current through Files 1 to 20 of the 133rd General Assembly (2019-2020)).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Ohio. As already discussed, a physician is authorized by law to prescribe or administer drugs in Ohio only when authorized to practice medicine and surgery under Ohio law. Thus, because Respondent lacks authority to practice medicine in Ohio and, therefore, is not authorized to handle controlled substances in Ohio, Respondent is not eligible to maintain a DEA registration. Accordingly, I will order that Respondent’s DEA registration be revoked.

**Order**

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. FH4036667 issued to William S. Husel, D.O. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of William S. Husel to renew or modify this registration, as well as any other applications of William S. Husel for an additional registration in Ohio. This Order is effective **[insert Date Thirty Days From the Date of Publication in the Federal Register]**.

Dated: January 29, 2020.

---

Uttam Dhillon,  
Acting Administrator.

[FR Doc. 2020-04837 Filed: 3/9/2020 8:45 am; Publication Date: 3/10/2020]