



**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**[Docket No. 20-24]**

**Jonathan Rosenfield, M.D.; Decision and Order**

On June 18, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Jonathan Rosenfield, M.D. (hereinafter, Respondent) of Houston, Texas, and Grand Forks, North Dakota. OSC, at 1. The OSC proposed the revocation of Respondent's Certificates of Registration Nos. FR7251642 and FR5327285. *Id.* It alleged that Respondent is without "authority to handle controlled substances." *Id.* (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that on "October 10, 2019, the Texas Medical Board issued an Order of Temporary Suspension, suspending [Respondent's] Texas medical license. That order remains in effect." *Id.* at 2. The OSC further stated that "[s]ubsequently, on December 30, 2019, [Respondent] entered into a Stipulation and Non-Practice Agreement with the North Dakota Board of Medicine in which [Respondent] agreed not to practice medicine in the State of North Dakota and in which [Respondent] agreed that [his] North Dakota medical license will be inactive for all purposes." *Id.* The OSC concluded that "DEA must revoke [Respondent's] DEA registrations based on [his] lack of authority to handle controlled substances in the State of Texas and the State of North Dakota." *Id.* (citing 21 U.S.C. § 824(a)(3); 21 C.F.R. § 1301.37(b)).

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

On July 30, 2020, Respondent, through counsel, requested a hearing, stating that his “medical license in Texas is only temporarily suspended” and he “maintains an active medical license in Ohio and Georgia.” Request for a Hearing, at 1.

The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Law Judge John J. Mulrooney II (hereinafter, Chief ALJ), who issued an Order Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule on July 30, 2020, with which the Government complied by filing a Motion for Summary Disposition (hereinafter, Govt Motion) on August 10, 2020.

In its Motion, the Government submitted evidence that the “Texas Medical Board issued an Order of Temporary Suspension, suspending Respondent’s Texas Medical License,” and “Respondent entered into a Stipulation and Non-practice agreement with the North Dakota Board of Medicine in which Respondent agreed not to practice medicine in the State of North Dakota.” Govt Motion, at 3-4. In light of these facts, the Government argued that DEA must revoke Respondent’s registration. *Id.* at 5.

On August 20, 2020, Respondent filed a “Memorandum Contra to the Government’s Motion for Summary Disposition” (hereinafter, Resp Opposition), in which he argued that “[t]he matter in Texas is temporary in nature, as it is a Temporary Suspension.” Resp Opposition, at 1. He also argued that he has active medical licenses in Georgia and Ohio and that Respondent “contends that he does” have state authority in Texas. *Id.* at 2.

On August 25, 2020, the Chief ALJ issued an Order Granting the Government’s Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Recommended Decision of the Administrative Law Judge (hereinafter, Summary Disposition or SD). The Chief ALJ noted that, “Respondent has made the confusing assertion that he ‘has the authority to handle controlled substances’ because the suspension imposed by Texas is temporary and ‘can be lifted at any time’ . . . .” SD, at 4 (quoting Resp Opposition, at 1). However, he also noted that “[t]he Respondent has represented that no superseding order

from the Texas Board has been issued.” *Id.* at 3 (citing Resp Opposition, at 1). Therefore, the ALJ determined that “in view of the Respondent’s current lack of state authority, revocation of the Respondent’s [registrations] stands as the only legally available resolution.” SD, at 5. The Chief ALJ further concluded that “[s]ummary disposition is proper in an administrative enforcement proceeding where no genuine factual dispute exists.” *Id.* at 6 (citing *Veg-Mix, Inc. v. U.S. Dept. of Agriculture*, 832 F.3d 601, 607 (D.C. Cir. 1987) (comparing the standard for summary disposition in an administrative proceeding to summary judgment in a civil proceeding); *Citizens for Allegan County, Inc. v. Federal Power Commission*, 414 F.2d 1125, 1128 (D.C. Cir. 1969) (affirming that “the right of opportunity for hearing does not require a procedure that will be empty sound and show, signifying nothing”)).

By letter dated September 22, 2020, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advised that neither party filed exceptions. I find that the time period to file exceptions has expired. *See* 21 C.F.R. § 1316.66.

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**

Respondent is the holder of DEA Certificate of Registration No. FR7251642 at the registered address of 4561 Edfield Street, Houston, Texas 77051. Govt Motion Exhibit (hereinafter, GX) 1 (Certification of Registration History Texas),<sup>1</sup> at 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through

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<sup>1</sup> It is noted that the Government’s Exhibits 1 and 2 list several other registrations held by Respondent that are not subject to these proceedings.

V as a “practitioner.” *Id.* Respondent’s registration expired on April 20, 2020, and is in “a renewal pending status until the resolution of administrative proceedings.” *Id.* Respondent is also the holder of DEA Certificate of Registration No. FR5327285 at the registered address of 1451 44<sup>th</sup> Avenue South, Unit E, Grand Forks, North Dakota 58201. GX 2 (Certification of Registration History North Dakota), 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 expires on April 30, 2021, and is in “an active pending status until the resolution of administrative proceedings.” *Id.*

### **The Status of Respondent’s State Licenses**

#### **Texas**

On October 10, 2019, the Texas Medical Board (hereinafter, Texas Board) entered an Order of Temporary Suspension (hereinafter, Suspension Order) “effective on the date rendered.” GX 4 (Suspension Order), at 4. According to the Suspension Order, Respondent engaged in “unprofessional or dishonorable conduct” and the Texas Board had authority to discipline Respondent for “prescribing, administering, or dispensing in a manner inconsistent with public health and welfare dangerous drugs . . . .” *Id.* at 3. The Texas Board found that Respondent’s “continued practice of medicine would constitute a continuing threat to the public welfare.” *Id.* at 3. The Order further stated that it “shall remain in effect until it is superseded by an Order of the Board.” *Id.* at 4.

According to Texas’s online records, of which I take official notice, Respondent’s registration status is “suspended, active as of 10/10/2019” and his disciplinary restrictions are “suspended by board as of 10/10/2019.”<sup>2</sup> Texas Medical Board Healthcare Provider Search, [https://public.tmb.state.tx.us/HCP\\_Search/SearchNotice.aspx](https://public.tmb.state.tx.us/HCP_Search/SearchNotice.aspx) (last visited October 27, 2020).

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<sup>2</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 dispute my finding by filing a properly supported motion for reconsideration of findings of fact within fifteen

Based on the entire record before me, I find that Respondent currently is not licensed to engage in the practice of medicine in Texas, one of the two states where Respondent maintains a registration subject to this action.

### **North Dakota**

On January 14, 2020, the North Dakota Board of Medicine (hereinafter, North Dakota Board) entered into a Stipulation and Nonpractice Agreement (hereinafter, Nonpractice Agreement) effective “upon execution of [the] agreement.” GX 5 (Nonpractice Agreement), at 1. According to the Nonpractice Agreement, Respondent agreed that “he will immediately cease the practice of medicine in North Dakota” and “he will not practice medicine in the State of North Dakota until such time as the Board finalizes any disciplinary action that may be brought against him based on the information obtained by the Board from the Federation of State Medical Boards Physician Data Center, the Texas Medical Board and the United States District Court for the Southern District of Texas.” *Id.*

According to North Dakota’s online records, of which I take official notice, Respondent’s registration status is “inactive-other” and his disciplinary history is “Entered into a stipulated non-practice agreement.”<sup>3</sup> North Dakota Board of Medicine Find a Practitioner/Verify License Status, [https://www.ndbom.org/public/find\\_verify/verify.asp](https://www.ndbom.org/public/find_verify/verify.asp) (last visited October 27, 2020).

Based on the entire record before me, I find that Respondent currently is not licensed to engage in the practice of medicine in North Dakota, one of the two states where Respondent maintains a registration subject to this action

### **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 . . .

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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 motion and response shall be filed and served by e-mail to the other party and to the Office of the Administrator at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

<sup>3</sup> I take official notice of this fact. *See* n.1

has had [her]State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing<sup>4</sup> 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 F. App’x 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, 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.

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<sup>4</sup> “[D]ispense[] means to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance . . . .” 21 C.F.R. § 802(10).

Respondent argued that “[t]he matter in Texas is temporary in nature, as it is a Temporary Suspension.”<sup>5</sup> Resp Opposition, at 1. He also argued that he has active medical licenses in Georgia and Ohio and that he does have state authority in Texas. *Id.* at 2. However, the Suspension Order issued by the Texas Board clearly states that the suspension is in effect until the Board issues a superseding Order. GX 4, at 4. Further, I agree with the Chief ALJ that “[a]s has been long established by Agency [decisions], state licensure in a state other than a respondent’s [ ] registration state is irrelevant to a DEA enforcement proceeding. SD, at 4-5 (citing *Craig K. Alhanati, D.D.S.*, 62 Fed. Reg. 32,658, 32,658 (1997)).

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 state,” *James L. Hooper*, 76 Fed. Reg. at 71,371 (quoting *Anne Lazar Thorn*, 62 Fed. Reg. 12,847, 12,848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action or where the state action is temporary. *Kambiz Haghighi, M.D.*, 85 Fed. Reg. 5989 (2020); *Bourne Pharmacy*, 72 Fed. Reg. 18,273, 18,274 (2007); *Wingfield Drugs*, 52 Fed. Reg. 27,070, 27,071 (1987). Thus, it is of no consequence that the action is a suspension. What is consequential is my finding that Respondent is no longer currently authorized to dispense controlled substances in Texas and North Dakota, the two states where Respondent maintains the registrations subject to this action.

Under the Texas Controlled Substances Act, a practitioner in Texas “may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner’s direction and supervision except for a valid medical purpose and in the course of medical practice.” Tex. Health and Safety Code Ann. § 481.071 (West 2019). The Texas Controlled Substances Act defines “practitioner,” in relevant part, as “a physician . . . licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of

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<sup>5</sup> It is noted that Respondent presented no arguments about the status of his medical license in North Dakota.

professional practice or research in this state.” *Id.* at § 481.002 (39)(A). Further, under the Texas Medical Practice Act, a person must hold a license to practice medicine in Texas. Tex. Occupations Code Ann. § 155.001 (West 2019) (“A person may not practice medicine in this state unless the person holds a license issued under [the Medical Practice Act].”); *see also id.* at § 151.002 (“‘Physician’ means a person licensed to practice medicine in this state.”). Additionally, “[a] person commits an offense if the person practices medicine in [Texas] in violation of” the Act. *Id.* at § 165.152(a).

Under North Dakota law, “[d]ispense’ 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.D. Cent. Code § 19-03.1-01(10) (West 2019). Further, a “practitioner” is defined as, “A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.” *Id.* at § 19-03.1-01(25)(a). Therefore, because Registrant currently is not licensed by the jurisdiction in which he is practicing, he is not authorized to dispense controlled substances in North Dakota.

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Texas and North Dakota. I, therefore, find that Respondent is currently without authority to dispense controlled substance in Texas and North Dakota, two states in which he is registered with DEA, and I will order that Respondent’s DEA registrations in these states 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 Certificates of Registration Nos. FR7251642 and FR5327285 issued to Jonathan Rosenfield, M.D. 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 Jonathan Rosenfield, M.D. to renew or modify these registrations, as well as any other application of Jonathan Rosenfield, M.D. for additional registrations in Texas and North Dakota. This Order is applicable **[insert Date Thirty Days from the Date of Publication in the Federal Register]**.

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Timothy J. Shea,  
Acting Administrator.

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