



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**[Docket No. 23-52]
Frank A. Hooper, D.V.M.
Decision and Order**

On June 6, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Frank A. Hooper, D.V.M. (Respondent). OSC, at 1, 3. The OSC proposed the revocation of Respondent’s DEA Certificate of Registration No. BH4810518 at the registered address of 100B Old Woodruff Road, POB 123, Greer, South Carolina 29651. *Id.* at 1. The OSC alleged that Respondent’s DEA registration should be revoked because Respondent is “without authority to prescribe, administer, dispense, or otherwise handle controlled substances in South Carolina, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

On July 19, 2023, Respondent requested a hearing. On July 27, 2023, the Government filed a Motion for Summary Disposition, to which Respondent did not respond. On August 14, 2023, the Chief Administrative Law Judge (Chief 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 South Carolina, the state in which he is registered with DEA, “there is no other fact of consequence for this tribunal to decide.” Order Granting the Government’s Motion for Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD), at 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 Chief 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 February 21, 2023, the South Carolina State Board of Veterinary Medical Examiners issued an Order of Temporary Suspension that suspended Respondent's South Carolina veterinary license. RD, at 4.¹ Further, on March 27, 2023, the South Carolina Department of Health and Environmental Control Bureau of Drug Control (SC DHEC Bureau of Drug Control) cancelled Respondent's South Carolina controlled substances registration. RD. at 4 n.3.²

According to South Carolina online records, of which the Agency takes official notice, Respondent's South Carolina veterinary license remains suspended.³ South Carolina Board of Veterinary Medical Examiners, Licensee Lookup, <https://verify.llronline.com/LicLookup/Vet/Vet.aspx?div=40> (last visited date of signature of this Order). Further, Respondent's South Carolina controlled substances registration is listed with an expiration date of March 27, 2023. SC DHEC Bureau of Drug Control, Controlled Substances Registration Verification, <https://apps.dhec.sc.gov/DrugControl/Licensing/Home/Verify> (last visited date of signature of this Order).

Accordingly, the Agency finds that Respondent is not currently licensed to engage in veterinary practice nor to handle controlled substances in South Carolina, the state in which he 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

¹ 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, Exhibit (GX) 2, at 1; Declaration of S.N.R., at 3.

² See also GX 7; Declaration of Diversion Investigator, at 3.

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 e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

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 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 South Carolina statute, “[e]very person who manufactures, distributes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance, shall obtain a registration issued by the [Department of Health and Environmental Control] in accordance with its rules and regulations.” S.C. Code 44-53-290(a) (2023). Further, “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 the delivery.” *Id.* 44-53-110(15).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to dispense controlled substances in South Carolina because his South Carolina controlled substance registration has been cancelled. As discussed above, an individual must hold a controlled substance registration to dispense a controlled substance in South Carolina. Thus, because Respondent lacks authority to handle controlled substances in South Carolina,

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) (this section, formerly 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. No. 117-215, 136 Stat. 2257 (2022)). 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 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.

Respondent is not eligible to maintain a DEA registration. RD, at 5. 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. BH4810518 issued to Frank A. Hooper, D.V.M. 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 Frank A. Hooper, D.V.M., to renew or modify this registration, as well as any other pending application of Frank A. Hooper, D.V.M., for additional registration in South Carolina. This Order is effective **[insert Date Thirty Days From the Date of Publication in the Federal Register]**.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 12, 2023, 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.

[FR Doc. 2023-28015 Filed: 12/20/2023 8:45 am; Publication Date: 12/21/2023]