



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Thomas Andr'e Endicott, D.D.S.;
Decision and Order**

On March 26, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Thomas Andr'e Endicott, D.D.S., of Salt Lake City, Utah (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FE3865029, alleging that Registrant's registration should be revoked because Registrant is "currently without authority to handle controlled substances in Utah, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 3.¹ "A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e).

¹ Based on the Government's submissions in its RFAA dated May 24, 2024, the Agency finds that service of the OSC on Registrant was adequate. An included declaration from a DEA Diversion Investigator (DI) indicates that on March 27, 2024, the DI attempted to personally serve Registrant at Registrant's registered address, but Registrant was not present and had not been seen at the premises since November 2023. RFAAX 2, at 2. On March 28, 2024, the DI requested that the Phoenix Field Division perform additional diligence in locating and serving Registrant with the OSC, which was ultimately unsuccessful. *Id.*; see also RFAAX 3, at 1 (attempt by a second Diversion Investigator to personally serve Registrant with the OSC at Registrant's last known address in Arizona on April 5, 2024). On April 8, 2024, the DI emailed a copy of the OSC to Registrant's registered email address, and the email was not returned as undeliverable. *Id.*; see also *id.*, Attachment 1, at 1. On the same date, the DI also mailed copies of the OSC via USPC certified mail and USPS First Class mail to Registrant at his registered address, both of which were returned back to the DI. RFAAX 2, at 2-3; see also *id.*, Attachments 2-3. Here, the Agency finds that Registrant was successfully served the OSC by email and that the DI's efforts to serve Registrant by other means were "reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action." *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); see also *Mohammed S. Aljanaby, M.D.*, 82 Fed. Reg. 34,552, 34,552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful). Therefore, due process notice requirements have been satisfied.

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 C.F.R.] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(d), (e), (f)(1), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

FINDINGS OF FACT

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC are admitted. According to the OSC, on February 22, 2024, both Registrant’s Utah dental license and Utah controlled substance license were revoked. RFAAX 1, at 1-2. According to Utah online records, of which the Agency takes official notice,² both Registrant’s Utah dental license and Utah controlled substance license remain revoked. Utah Division of Professional Licensing License Lookup & Verification System, <https://secure.utah.gov/llv/search/search.html> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice as a dentist nor to handle controlled substances in Utah, the state in which he is registered with DEA.³

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.”

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).

³ 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.” The material fact here is that Registrant, as of the date of this decision, is not licensed to practice as a dentist in Utah. 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 e-mail to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

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. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense ... controlled substances under the laws of the State in which he practices.' ... The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21)."). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371, 71,372 (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).⁴

Under Utah statute, "[e]very person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules I through V within [the] state . . . shall obtain a license issued by the [Division of Professional Licensing]." Utah Code Ann. § 58-37-6(2)(a)(i) (2024).

Here, the undisputed evidence in the record is that Registrant lacks authority to handle controlled substances in Utah because both Registrant's Utah dental license and Registrant's Utah controlled substance license are revoked. As discussed above, an individual must hold a Utah controlled substance license to dispense a controlled substance in Utah. Thus, because Registrant lacks authority to handle controlled substances in Utah, Registrant is not eligible to

⁴ 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 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, M.D.*, 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, M.D.*, 43 Fed. Reg. at 27,617.

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. FE3865029 issued to Thomas Andr'e Endicott, D.D.S. 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 Thomas Andr'e Endicott, D.D.S., to renew or modify this registration, as well as any other pending application of Thomas Andr'e Endicott, D.D.S., for additional registration in Utah. This Order is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Signing Authority

This document of the Drug Enforcement Administration was signed on March 21, 2025, by Acting Administrator Derek Maltz. 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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