



## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Henry-Norbert O. Ndekwe, M.D.; Decision and Order

On July 3, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Henry-Norbert O. Ndekwe, M.D., of Lawton, Oklahoma (Registrant). Request for Final Agency Action (RFAA), at 6, 8. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BN5794587, alleging that Registrant’s registration should be revoked because Registrant is “currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Oklahoma, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).<sup>1</sup>

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 2.<sup>2</sup> “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).

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<sup>1</sup> According to Agency records, Registrant’s registration expired on October 31, 2024. The fact that a registrant allows his registration to expire during the pendency of an OSC does not impact the Agency’s jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68474, 68476-79 (2019).

<sup>2</sup> Based on the Government’s submissions in its RFAA dated November 5, 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 May 17, 2024, Registrant had requested that he be contacted regarding his DEA registration via his registered email address. RFAA, at 10, 13. On July 17, 2024, the DI emailed a copy of the OSC to Registrant’s registered email address, and the email was not returned as undeliverable. *Id.* at 11, 18. On the same date, the DI also mailed a copy of the OSC via certified mail to Registrant’s registered address, but the mailing was returned as undeliverable. *Id.* at 11, 16, 20. 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 FR 34552, 34552 (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 CFR] § 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(c), (f), 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, Registrant’s Oklahoma medical license expired on June 1, 2023. RFAA, at 7. According to Oklahoma online records, of which the Agency takes official notice,<sup>3</sup> Registrant’s Oklahoma medical license remains expired. Oklahoma Board of Medical Licensure and Supervision Licensee Search, <https://www.okmedicalboard.org/search> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Oklahoma, the state in which he is registered with DEA.<sup>4</sup>

### **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

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<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).

<sup>4</sup> 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 medicine in Oklahoma. 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](mailto:dea.addo.attorneys@dea.gov).

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 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).<sup>5</sup>

Under Oklahoma law, "dispense" means "to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labelling, or compounding necessary to prepare the substance for such distribution." Okla. Stat. tit. 63, section 2-101(14) (2024). Further, a "practitioner" includes "a medical doctor or osteopathic physician . . . or any other person, licensed, registered or otherwise permitted to prescribe, distribute, dispense . . . or administer a controlled dangerous substance in the course of professional practice or research in th[e] state." *Id.* section 2-101(42)(a)(1), (8).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Oklahoma. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in Oklahoma. Thus, because Registrant lacks

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<sup>5</sup> 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, M.D.*, 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, M.D.*, 43 FR 27617.

authority to practice medicine in Oklahoma and, therefore, is not authorized to handle controlled substances in Oklahoma, 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. BN5794587 issued to Henry-Norbert O. Ndekwe, 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 Henry-Norbert O. Ndekwe, M.D., to renew or modify this registration, as well as any other pending application of Henry-Norbert O. Ndekwe, M.D., for additional registration in Oklahoma. 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 April 10, 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.*