



DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kenneth Pherson, D.O.; Decision and Order

On December 2, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Kenneth Pherson, D.O., of Lakewood Ranch, Florida (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 4. The OSC proposed the revocation of Registrant’s Certificate of Registration No. FP0455142, alleging that Registrant’s registration should be revoked because Registrant is “currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in Florida, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3) and 21 CFR 1301.37(b)).

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).

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

¹ Based on the Government’s submissions in its RFAA dated February 19, 2025, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from a DEA Diversion Investigator (DI) indicates that on December 11, 2024, the DI attempted to personally serve Registrant with a copy of the OSC at Registrant’s DEA registered address but was unsuccessful. RFAAX 2, at 1. Later that day, “another DEA employee” attempted to personally serve Registrant with a copy of the OSC at Registrant’s personal address, but that attempt was also unsuccessful, as there was no answer at the residence. *Id.* On December 16, 2024, the DI mailed a copy of the OSC to Registrant’s personal address through USPS certified mail and was able to ascertain by the mailing’s tracking number that on December 23, 2024, that delivery was successful, as the copy of the OSC was “left with individual.” *Id.* at 1-2; RFAAX 2, Attachment A.

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) and (f). 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 or about August 29, 2024, the State of Florida Board of Osteopathic Medicine suspended Registrant’s Florida osteopathic medical license. RFAAX 1, at 2. According to Florida online records, of which the Agency takes official notice, Registrant’s Florida osteopathic medical license remains suspended.²

<https://mqa-internet.doh.state.fl.us/MQASearchServices/Home> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice as an osteopathic physician in Florida, 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.” 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

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 Order, is not licensed to practice osteopathic medicine in Florida. 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 Office of the Administrator, Drug Enforcement Administration, at dea.addo.attorneys@dea.gov

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

According to Florida statute, “[a] practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance.” Fla. Stat. § 893.05(1)(a) (2025). Additionally, according to Florida statute, “dispense” means “the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.” Fla. Stat. § 893.02(7) (2023). Further, a “practitioner” as defined by Florida statute includes “an osteopathic physician licensed under chapter 459.”⁵ *Id.* at § 893.02(23).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice as an osteopathic physician in Florida because his Florida osteopathic medical license has been suspended. As discussed above, an individual must be a licensed practitioner to dispense a

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). 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.

⁵ Chapter 459 regulates osteopathic medical practice and applies to Registrant; it defines an “osteopathic physician” as “a person who is licensed to practice osteopathic medicine in this state.” Fla. Stat. § 459.003(4).

controlled substance in Florida. Thus, because Registrant lacks authority to practice as an osteopathic physician in Florida and, therefore, is not authorized to dispense controlled substances in Florida, Registrant is not eligible to maintain a DEA registration in Florida. 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. FP0455142, issued to Kenneth Pherson, D.O. 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 Kenneth Pherson, D.O., to renew or modify this registration, as well as any other pending application of Kenneth Pherson, D.O., for additional registration in Florida. 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 August 11, 2025, by Administrator Terrance Cole. 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.