



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**[Docket No. 23-13]
Mert Kivanc, D.O.;
Decision and Order**

On November 28, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Mert Kivanc, D.O., of Dunn Loring, Virginia (Applicant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 5. The OSC proposed the denial of Applicant’s application for DEA registration, Control No. W22078481C, alleging that he “materially falsified [his] application for registration and because [his] registration would be inconsistent with the public interest.”¹ *Id.* at 1 (citing 21 U.S.C. 823(g)(1),² 824(a)(1), (a)(4)).

I. PROCEDURAL HISTORY

The OSC notified Applicant of his right to request a hearing 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. RFAAX 2, at 4-5 (citing 21 CFR 1301.43).

On December 19, 2022, Applicant timely requested a hearing and the case was assigned to an Administrative Law Judge (ALJ) who initiated prehearing proceedings.³ RFAAX 4. On February 16, 2023, the ALJ terminated proceedings. RFAAX 8. The ALJ terminated

¹ Because lack of state authority to handle controlled substances provides a sufficient basis to support denial of Applicant’s application for registration under 21 U.S.C. 824(a)(3), the Agency need not address the material falsification and public interest allegations raised in the OSC.

² Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. No. 117-215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC, as 21 U.S.C. 823(g)(1).

³ Based on the Government’s submissions in its RFAA dated February 26, 2025, the Agency finds that service of the OSC on Applicant was adequate. Specifically, the Declaration from a DEA Group Supervisor (GS) indicates that on November 30, 2022, GS served a copy of the OSC to Applicant’s registered email address and that on December 3, 2022, a copy of the OSC was delivered to Applicant’s registered mailing address. RFAAX 3, at 5-6. Applicant’s timely request for a hearing further demonstrates that he had been properly served a copy of the OSC. RFAAX 4, at 1.

proceedings based in part⁴ on Applicant’s noncompliance with the ALJ’s orders, finding that Applicant’s failure to comply with the ALJ’s “numerous orders” to file a compliant prehearing statement and an answer to the OSC constituted an implied waiver of his hearing request. *See id.* at 1-3 (noting that Applicant filed three noncompliant prehearing statements); *see id.* at 3 (“[G]iven that [Applicant] has failed to file an answer, as required by the [Order for Prehearing Statements] . . . [Applicant] is deemed . . . to have waived his right to a hearing . . .”); *see also* RFAAX 4, at 4 (informing Applicant in the Order for Prehearing Statements that failure to timely file a compliant prehearing statement “may result in . . . a waiver of hearing and an implied withdrawal of a request for hearing”).

The ALJ’s termination of proceedings on this basis was a reasonable exercise of discretion. *See* 5 U.S.C. 556(c) (granting the ALJ power to “regulate the course of the hearing” and “dispose of procedural requests or similar matters”); *see also Robert L. Carter, D.D.S.*, 90 Fed. Reg. 9,631, 9,632 (2025) (finding the ALJ “acted within his authority” and “did not error in using his discretion to find that Respondent’s failure to file a compliant prehearing statement amounted to an implied waiver of his hearing request”); *David H. Betat, M.D.*, 87 Fed. Reg. 21,175, 21,176, 21,180 (2022) (deferring to the ALJ’s finding that the registrant waived his right to a hearing by failing to respond to the ALJ’s orders); *Care Point Pharmacy, Inc.*, 86 Fed. Reg. 40,621, 40,621 n.3 (2021) (“Agency precedent is clear that the unwillingness or inability of a party to comply with the directives of the [ALJ] may support an implied waiver of that party’s right to a hearing.”) (internal quotations removed and collecting cases).

II. NEWLY RAISED ALLEGATION OF LACK OF STATE AUTHORITY

On February 26, 2025, the Government submitted a Request for Final Agency Action (RFAA).⁵ In addition to the material falsification and public interest grounds alleged in the

⁴ The ALJ also terminated proceedings based in part on application of the default regulations. RFAAX 8, at 3 (citing “DEA’s newly amended regulations”). However, as discussed in more detail below, *see infra* n.5, the default regulations were not in effect when the OSC was issued.

⁵ The Government’s initial RFAA, submitted on August 9, 2024, requested that the Agency find Applicant in default under the default provisions of the amended version of 21 CFR 1301.43. RFAAX 9, at 1. The request to find Applicant in default was denied in an “Interim Order Denying Default” (Interim Order) issued by the Agency on

OSC, the RFAA newly alleged that Applicant’s application should be denied because he “is currently without authority to handle controlled substances in the Commonwealth of Virginia.” RFAA, at 8. The Government alleged that “a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business.” *Id.* at n.6 (citing 21 U.S.C. 824(a)(3)).

On July 11, 2025, the Agency served Applicant and the Government with a “Notice of Allegation and Briefing Order” (Order) and a copy of the February 2025 RFAA.⁶ The Order provided due process notice to Applicant of the newly raised allegation that his lack of state authority in Virginia served as an independent basis for denial of his application. The Order provided Applicant with 15 calendar days from the date of service to contest the new allegation.

On July 30, 2025, the Agency received untimely correspondence from Applicant in which Applicant appears to concede that he currently lacks the requisite authority in Virginia. *See* July 30, 2025 Correspondence, at 8 (“My Virginia State Medical and Rheumatology Board Licenses should . . . be restored.”).

On August 5, 2025, the Government timely filed a response, noting that Applicant’s correspondence was untimely and “failed to provide documentary evidence of state authority to handle controlled substances.” *See* August 5, 2025 Government Response, at 1. The Government attached a copy of a March 2023 Order of Mandatory Suspension issued by the Virginia Department of Health Professions and a printout from the Virginia Department of

January 16, 2025. RFAAX 9. The Interim Order explained that the default provisions in the amended version of 21 CFR 1301.43 became effective on December 14, 2022, and applied only to OSCs issued on or after the effective date. *Id.* at 1-2 (citing Default Provisions for Hearing Proceedings Relating to the Revocation, Suspension, or Denial of a Registration, 87 Fed. Reg. 68,036, 68,036, 68,039 (Nov. 14, 2022)). Because the OSC in this matter was issued in November 2022, the Government’s request for default sought “relief based on a regulation, specifically a provision enabling factual allegations to be deemed admitted, that does not apply to this proceeding,” and the request therefore had to be denied. *Id.* at 2. The Interim Order provided that if the Government wished to pursue the matter further, it would be required to “file a new [RFAA] that contains substantial evidence supporting the denial of” Applicant’s application. *Id.* at 3-4.

⁶ The Order and RFAA were served on Applicant by email and U.S. certified mail. The Agency did not receive an “undeliverable” message in response to the email; thus, service by email is deemed successful. *See 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). In addition, tracking information from the U.S. certified mail receipt indicates that the Order and RFAA were successfully delivered to Applicant’s mailing address on July 14, 2025.

Health Professions website showing that as of August 5, 2025, Applicant's Virginia medical license was suspended. *Id.* at Exhibit 1 and 2.

On September 15 and 16, 2025, the Agency received three copies of the same document from Applicant in which Applicant, again, appears to concede that he currently lacks the requisite authority in Virginia. *See* September 2025 Correspondence, at 1, 3 (stating the Virginia Department of Health Professions "took" his license and requesting "[r]estoration of all [his] [l]icenses").⁷

III. FINDINGS OF FACT

The Agency finds substantial record evidence that on June 27, 2022, Applicant submitted an application, Control No. W22078481C, for DEA registration in Virginia. RFAAX 3, Attachment F. According to Virginia online records, of which the Agency takes official notice,⁸ Applicant's Virginia medical license has a current status of "Suspended." Virginia Department of Health Professions License Lookup, <https://dhp.virginiainteractive.org/Lookup/Index> (last visited date of signature of this Order). Accordingly, the Agency finds uncontroverted record evidence that Applicant is not currently licensed as a practitioner in Virginia, the state in which he seeks registration with DEA.⁹

IV. DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General may suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State

⁷ Applicant's July 2025 correspondence also addresses a previous criminal investigation and indictment, and state board action against his state license. Applicant's September 2025 correspondence primarily addresses his medical training and employment history. These arguments are not relevant to the narrow issue of whether Applicant currently possesses the requisite state authority to handle controlled substances in Virginia.

⁸ 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).

⁹ 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 Applicant, as of the date of this Order, is not licensed as a practitioner in Virginia. Accordingly, Applicant 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.

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 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).¹⁰

According to Virginia statute, “dispense” means “to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Va. Code § 54.1-3401 (2025). Additionally, Virginia law defines “practitioner” as “a physician . . . or other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to a controlled substance in the course of professional practice or research in [Virginia].” *Id.* Virginia law further defines a “physician”

¹⁰ 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 or denial of an application 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., Robert Wayne Locklear, M.D.*, 86 Fed. Reg. 33,738, 33,744-45 (2021); *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.

as “a person licensed to practice medicine in [Virginia] or in the jurisdiction where the health care is to be rendered.” Va. Code § 54.1-2982 (2025).

Here, the undisputed evidence in the record is that Applicant’s Virginia medical license is currently in a “Suspended” status. As of the date of signature of this Order, Applicant has not submitted to the Agency evidence that he possesses the requisite authority to handle controlled substances in the Commonwealth of Virginia. As such, the Agency finds that Applicant is not authorized to handle controlled substances in Virginia and thus is not eligible to obtain a DEA registration in Virginia. Accordingly, the Agency will order that Applicant’s application for DEA registration in Virginia be denied.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823 and 824, I hereby deny the pending application for a DEA Certificate of Registration, Control No. W22078481C, submitted by Mert Kivanc, D.O., as well as any other pending application of Mert Kivanc, D.O., for additional registration in Virginia. 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 October 9, 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.

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