

Summary Disposition (hereinafter, Response).<sup>2</sup>

On June 7, 2022, the ALJ granted the Government's Motion for Summary Disposition and recommended the denial of Applicant's application, finding that because Applicant lacks state authority to handle controlled substances, there is no genuine issue of material fact. 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 (hereinafter, Recommended Decision or RD), at 6.<sup>3</sup>

The Agency issues this Decision and Order based on the entire record before it, 21 CFR 1301.43(e), and makes the following findings of fact.

### Findings of Fact

On May 20, 2021, the Medical Board of California entered a Cease Practice Order against Applicant that prohibited him from engaging in the practice of medicine until "a final Decision [had] been issued on an Accusation and/or a Petition to Revoke Probation filed pursuant to [the] [underlying] matter." Government Attachment 1, Exhibit A. According to California's online records, of which the Agency takes official notice, Applicant's state medical license was surrendered.<sup>4</sup> Medical Board of California License Verification, <https://www.mbc.ca.gov/License-Verification> (last visited date of signature of this Order). Accordingly, the Agency finds that Applicant is not licensed to engage in the practice of medicine in California,

<sup>2</sup>In his Response, Applicant did not dispute that he lacks state authority nor did he otherwise oppose the denial of his application, but rather, Applicant indicated that he had "misguidedly applied for a DEA COR during the pendency of disciplinary proceedings before the Medical Board of California" and had "requested a hearing in the instant matter to see if the withdrawal of his application for a COR could be accomplished." Response, at 1.

<sup>3</sup>By letter dated July 5, 2022, the ALJ certified and transmitted the record to the Agency for final agency action and advised that neither party filed exceptions.

<sup>4</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. Gauntt & 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, Applicant may dispute the Agency's finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

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 Controlled Substances Act (hereinafter, CSA) "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, 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 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).<sup>5</sup>

According to California statute, "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, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery." Cal. Health & Safety Code § 11010 (West 2022). Further, a "practitioner" means a person "licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state." *Id.* at § 11026(c).

Here, the undisputed evidence in the record is that Applicant lacks authority

<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(f). 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, M.D.*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

to practice medicine in California. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Applicant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, Applicant is not eligible to receive a DEA registration. Accordingly, the Agency will order that Applicant's application for a DEA registration be denied.

### Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the pending application for a Certificate of Registration, Control Number W20129943C, submitted by Michael Simental, M.D., as well as any other pending application of Michael Simental, M.D., for additional registration in California. 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 July 26, 2022, 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.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Rebecca L. Adams, N.P.; Decision and Order

On March 10, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Rebecca L. Adams, N.P. (hereinafter, Registrant). OSC, at 1 and 3. The OSC proposed the revocation of Registrant's Certificate of Registration

No. MA5778228 at the registered address of 1200 N. State St., Suite 420, Jackson, Mississippi, 39202. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "without authority to handle controlled substances in the State of Mississippi, the state in which [she is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA), submitted July 12, 2022.<sup>1</sup>

### Findings of Fact

On April 15, 2021, the Mississippi Board of Nursing issued an Order revoking Registrant's license to practice medicine in Mississippi. RFAAX C (Final Order), at 3. According to Mississippi's online records, of which the Agency takes official notice, Registrant's license is still revoked.<sup>2</sup> Mississippi Board of Nursing License Verification, <https://gateway.licensure.msbn.ms.gov/verification/search.aspx> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Mississippi, the state in which she 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 Controlled

<sup>1</sup> Based on the Declaration from a DEA Diversion Investigator that the Government submitted with its RFAA, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA, Exhibit (hereinafter, RFAAX) B, at 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 2; *see also* 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C).

<sup>2</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). 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, 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 email to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

Substances Act (hereinafter, CSA) "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, 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 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).<sup>3</sup>

According to Mississippi statute, "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 that delivery." Miss. Code Ann. § 41–29–105(j) (2022). Further, a "practitioner" means a person "licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state." *Id.* at § 41–29–105(y)(i). Because Registrant is not currently licensed as a nurse practitioner, or otherwise licensed in Mississippi, she is not authorized to dispense controlled substances in Mississippi.

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in

<sup>3</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(f). 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 at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

Mississippi. As already discussed, a person must be a licensed practitioner to dispense a controlled substance in Mississippi. Thus, because Registrant lacks authority to practice medicine in Mississippi and, therefore, is not authorized to handle controlled substances in Mississippi, 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. MA5778228 issued to Rebecca L. Adams, N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Rebecca L. Adams, N.P., to renew or modify this registration, as well as any other pending application of Rebecca L. Adams, N.P., for additional registration in Mississippi. 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 July 26, 2022, 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.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Endre Kovacs, M.D.; Decision and Order

On April 12, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Endre Kovacs, M.D. (hereinafter, Registrant). OSC, at 1,