

3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BK5206695 at the registered address of 4476 Legendary Drive, Suite 100, Destin, Florida 32541. *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 Florida, the state in which [he 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 7, 2022.<sup>1</sup>

### Findings of Fact

On February 16, 2022, the Florida Board of Medicine issued a Final Order suspending Registrant's license to practice medicine in the State of Florida. RFAA, Declaration 1, Appendix C (Final Order), at 2; *see also id.* at 7 (Settlement Agreement). According to Florida's online records, of which the Agency takes official notice, Registrant's license is still suspended and Registrant is not authorized to practice medicine in Florida.<sup>2</sup> Florida Department of Health License Verification, <https://mqa-internet.doh.state.fl.us/MQASearch/Services/HealthCareProviders> (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

<sup>1</sup> Based on the Declarations from a DEA Diversion Investigator and a DEA Data Analyst that the Government submitted with its RFAA, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA, Declaration 1, at 2; RFAA, Declaration 2, at 1. 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 1–3; *see also* 21 CFR 1301.43(d)–(e) 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).

Florida, 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>3</sup>

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) (2022). Further, a "practitioner" as defined by Florida statute includes "a physician licensed under chapter 458."<sup>4</sup> *Id.* at § 893.02(23).

Here, the undisputed evidence in the record is that Registrant currently is not a licensed practitioner in Florida, and a physician must be a licensed practitioner to dispense a controlled substance in Florida. Thus, Registrant is not eligible to maintain a DEA

<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.

<sup>4</sup> Chapter 458 regulates medical practice.

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. BK5206695 issued to Endre Kovacs, M.D. 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 Endre Kovacs, M.D. to renew or modify this registration, as well as any other pending application of Endre Kovacs, M.D. for additional registration in Florida.

This Order is effective September 2, 2022.

### 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

### Notice of Lodging of Proposed Consent Decree under the Resource Conservation and Recovery Act

On July 27, 2022, the Department of Justice and the Oklahoma Department of Environmental Quality lodged a proposed Consent Decree with the United States District Court for the Western District of Oklahoma in the lawsuit entitled *United States of America and Oklahoma Department of Environmental Quality v. January Environmental Services, Inc., et al.*, Civil Action No. 5:20–cv–1205. The Complaint, which was docketed on December 1, 2020, alleges that the defendants, January Environmental Services, Inc., January Transport, Inc., and the president of both companies, Cris January, are civilly liable for

multiple violations of the Resource Conservation and Recovery Act (RCRA) and associated regulations at the defendants' used oil transportation and processing facility in Oklahoma City, Oklahoma. The violations were discovered in a series of inspections by the Oklahoma Department of Environmental Quality (ODEQ) and the United States Environmental Protection Agency (EPA).

Under the proposed Consent Decree, the companies and Cris January will pay \$1,900,000 in civil penalties. The penalty payments will be split evenly between the United States and ODEQ. The Consent Decree also requires the defendants to perform corrective measures to bring the facility into compliance with RCRA and applicable regulations and to ensure compliance going forward. These measures include complying with all the regulations applicable to used oil transporters and processors, using proper methods to test for the potential presence of hazardous waste in used oil, characterizing wastes mixed with used oil filters prior to disposal or processing to determine whether the waste is hazardous, properly disposing of hazardous waste, hiring an independent engineer to evaluate the facility's spill prevention and containment preparedness, preparing and updating required reports and plans, training employees, and submitting periodic compliance reports to ODEQ and EPA.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and Oklahoma Department of Environmental Quality v. January Environmental Services, Inc., et al.*, Civil Action No. 5:20-cv-1205, D.J. Ref. No. 90-7-1-12085. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by either email or by mail:

To submit comments:	Send them to:
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>.

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$12.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Thomas Carroll,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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**DEPARTMENT OF LABOR**

**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Pattern of Violations**

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before September 2, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

*Comments are invited on:* (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who

are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Nora Hernandez by telephone at 202-693-8633, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, places the ultimate responsibility on mine operators for ensuring the safety and health of miners. The legislative history of the Mine Act emphasizes that Congress included the pattern of violations (POV) provision for mine operators who demonstrated a disregard for the safety and health of miners through a recurring pattern of significant and substantial (S&S) violations. MSHA was to use the POV provision in situations where other enforcement actions had been ineffective at bringing the mines into compliance with safety and health standards.

Under section 104.2, at least once each year MSHA reviews the compliance and other records of mines to determine whether any mines meet the POV criteria. In determining whether to issue a POV notice, MSHA considers mitigating circumstances facing mine operators, in accordance with section 104.2(a)(8). Specifically, among the items MSHA could consider is any approved corrective action program (CAP) that the mine is implementing to reduce S&S violations, together with any improved results. This information collection is designed to encourage operators to take proactive measures to bring their mines into compliance. MSHA believes that operators who implement CAPs are thereby demonstrating a commitment to complying with MSHA's safety and health standards and to restoring safe and healthful working conditions for miners.

For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 22, 2022 (87 FR 16239).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not