

United States Court of Appeals for the Fifth Circuit

No. 25-60023

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2025

Lyle W. Cayce
Clerk

MARIA DEWITT,

Petitioner,

versus

DRUG ENFORCEMENT ADMINISTRATION,

Respondent.

Petition for Review of an Order of the
Drug Enforcement Administration
Agency No. MD7143960

Before ELROD, *Chief Judge*, and CLEMENT and HAYNES, *Circuit Judges*.
JENNIFER WALKER ELROD, *Chief Judge*:

DEA revoked Maria DeWitt’s controlled-substance license in an administrative adjudication. DeWitt petitions for review of that order, arguing that DEA exceeded its statutory authority. We agree and grant the petition for review.

I

DeWitt is an advanced practice registered nurse (APRN) registered in Texas. In Texas, physicians may “delegate to an advanced practice registered nurse . . . acting under adequate physician supervision, the act of

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prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the advance practice registered nurse.” TEX. OCC. CODE ANN. § 157.0512(a). In other words, an APRN may prescribe drugs only if she has an active prescriptive authority agreement with a physician.

Although DeWitt maintains an active APRN license and Prescriptive Authority Number from the Texas Board of Nursing, she has not had a prescriptive-authority agreement with a physician since June 2023. DeWitt is “currently attending an educational program with the intention of transitioning careers.”

Based on DeWitt’s lack of a prescriptive-authority agreement, DEA initiated proceedings to revoke her DEA Certificate of Registration (COR). DEA did not accuse DeWitt of any prescribing misconduct. An administrative law judge (ALJ) within DEA recommended that the agency revoke DeWitt’s COR because she was “without state authority to handle controlled substances.” The Administrator of DEA adopted that decision. DeWitt timely appealed directly to this court. *See* 21 U.S.C. § 877.

II

DEA revoked DeWitt’s license “[p]ursuant to 21 U.S.C. [§] 824(a)(3)” because “the undisputed evidence in the record is that [DeWitt] lacks authority to handle controlled substances in Texas because she does not have a prescriptive authority delegation agreement with a physician.” The trouble for DEA is the text of 21 U.S.C. § 824(a)(3), which provides:

A registration . . . may be suspended or revoked . . . upon a finding that the registrant – . . .

(3) has had his State license or registration suspended, revoked, or denied by competent State authority *and* is

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no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or list I chemicals or has had the suspension, revocation, or denial of his registration recommended by competent State authority[.]

21 U.S.C. § 824(a)(3) (emphasis added). The plain text of the statute thus has two requirements for DEA to revoke a license: (1) loss of a state license, and (2) that the license-holder is not authorized under state law to handle controlled substances. The Fifth Circuit has recognized this. *See Maynard v. DEA*, 117 F. App'x 941, 943 (5th Cir. 2004) (“The DEA may revoke a practitioner’s license upon finding two elements . . .”).

Here, DeWitt still holds all state licenses and registrations, so DEA does not have authority under the statute to revoke her license due to lack of a prescriptive-authority agreement. Although DeWitt does not presently have the authority to prescribe controlled substances, she did not lose a state license. Indeed, if DEA’s theory were correct, a week-long transition between jobs or prescriptive-authority agreements could lead to DEA revoking a license despite no lapse in state licensing or registration.

DEA raises two counterarguments, but neither is persuasive. First, quoting 21 U.S.C. § 823(g)(1), DEA argues that applicants for a DEA “practitioner” license must be “authorized to dispense . . . controlled substances under the laws of the State in which [s]he practices.” And “practitioner” is defined by the Controlled Substances Act to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which [s]he practices . . . to . . . dispense . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). But section 823 establishes criteria to *register* an applicant—not revoke an existing registration.

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Second, DEA argues that “the agency consistently has found 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 registration.” But the cases DEA cites involved DEA registrants who lost or surrendered their state licenses. *See Hooper v. Holder*, 481 F. App’x 826, 826 (4th Cir. 2012) (upholding one-year suspension of medical license by Maryland State Board of Physicians for “prescribing drugs for illegitimate medical purposes,” among other things); *Adam T. Rodman, P.A.*, 87 Fed. Reg. 21215, 21216, 2022 WL 1060926 (Apr. 11, 2022) (noting that pursuant to “Consent Agreement for Probation,” respondent “voluntar[ily] surrender[ed]” state controlled-substances registration). Without passing on the correctness of whether surrender or expiration of a state license falls within 21 U.S.C. § 824(a)(3), we note that in those cases, the registrant lost a state registration. Here, DeWitt maintains both her APRN license and Prescriptive Authority Number with the Texas Board of Nursing.

III

For the foregoing reasons, we GRANT the petition for review and VACATE DEA’s revocation of DeWitt’s Certificate of Registration. This case is remanded to the agency for a prompt disposition of this matter consistent with this opinion.