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DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

MUZAFFER ASLAN, M.D.
DECISION AND ORDER

On December 14, 2011, I, the Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Muzaffer Aslan, M.D. (hereinafter, Respondent), of Los Angeles, California. GX 2. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration AA0044040, which authorizes him to dispense controlled substances as a practitioner, on the ground that Respondent does not possess authority under the laws of the State of California, the State in which he is registered with DEA, to dispense controlled substances. Id. at 1 (citing 21 U.S.C. § 824(a)(3)). The Order further proposed the denial of any applications to renew or modify Respondent's registration, as well as for any additional registration, on the ground that his "continued registration is inconsistent with the public interest." Id. (citing 21 U.S.C. § 823(f)).

The Show Cause Order specifically alleged that on December 2, 2010, the Medical Board of California had revoked Respondent's state medical license and that the Board had found, inter alia, that Respondent had, on multiple occasions, prescribed controlled substances "without performing a prior good faith examination." Id. at 1-2. The Order thus alleged that Respondent is currently without authority to handle controlled substances in California. Id. at 2.

The Show Cause Order further alleged that notwithstanding that Respondent is "prohibited from practicing medicine in . . . California," he has continued to prescribe controlled substances as evidenced by data from the State's prescription monitoring program. Id. Based on the forgoing, I concluded that Respondent's continued registration during the pendency of the

proceedings would constitute an "imminent danger to the public health and safety." Id. (citing 21 U.S.C. § 824(a)(4)). I therefore authorized the immediate suspension of Respondent's registration. Id.

On or about December 15, 2011, a DEA Diversion Investigator personally served the Order on Respondent by hand-delivering a copy to his residence.[1] GX 7, at 2. The DI also mailed a copy of the Order to Respondent. Id.

On December 28, 2011, Respondent submitted a letter to the Hearing Clerk, Office of Administrative Law Judges. GX 3. Therein, Respondent stated that he was waiving his right to a hearing but submitting a written statement of his position regarding the allegations. GX 3. Pursuant to 21 CFR 1301.43(c), Respondent's statement has been made a part of the record of this proceeding and has been considered in this decision.

On February 7, 2012, the Government submitted its Request for Final Agency Action and forwarded the record to me. Having considered the entire record, I find that substantial evidence supports a finding that Respondent no longer possesses authority under the laws of the State of California to dispense controlled substances. I also find that substantial evidence supports a finding that Respondent dispensed controlled substances even after the Medical Board of California revoked his state license, and was no longer lawfully authorized to dispense controlled substances under his CSA registration. I thus conclude that the Government has made out a prima facie case for revocation of Respondent's registration. Finally, because nothing in Respondent's statement refutes the Government's prima facie case, I will order that his

[1] The Order further explained the procedures available to Respondent to contest the allegations. GX 2, at 2-3. These included his right to request a hearing, his right to submit a written statement regarding the matters of fact and law alleged in the Show Cause Order while waiving his right to a hearing, and finally, the consequences for failing to do either within the thirty-day time limit. See id. (citing 21 CFR 1301.43 and 1316.47).

registration be revoked and that any application be denied. I make the following findings of fact.

FINDINGS

Respondent is the holder of DEA Certificate of Registration AA0044040, which authorized him (prior to the Immediate Suspension Order), to dispense controlled substances in schedules II through V as a practitioner at the registered location of 11847 Wilshire Blvd., Suite 303-A, Los Angeles, CA 90025. GX 1. Respondent's registration does not expire until June 30, 2012. Id.

Respondent previously held Physician's and Surgeon's Certificate Number A18999, which was issued by the Medical Board of California (MBC). However, on November 3, 2010, the MBC adopted the Proposed Decision of a state Administrative Law Judge (ALJ) regarding the MBC's Accusation and Petition to Revoke Probation; the MBC's order became effective on December 2, 2010. GX 4, at 1.

As set forth in the Proposed Decision, Respondent and the MBC had previously entered into a Stipulated Settlement and Disciplinary Order, which placed Respondent on probation and required that he comply with various terms and conditions, including that he "maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by him." Id. at 3. While following the MBC's Order, Respondent continued to prescribe controlled substances, he failed to comply with the Order and yet filed reports with the MBC, under the penalty of perjury, stating that he was doing so. Id. at 4-6. Indeed, at the state hearing, he asserted that he was not required to keep the log even though he was warned on various dates by MBC inspectors that he was required to do so. Id.

The state ALJ found that Respondent's "affirmations under penalty of perjury that he had complied with all the terms and conditions of his probation were knowingly false." Id. at 6. The state ALJ further found that Respondent had refused to admit wrongdoing and had provided no assurances that he would comply with the condition in the future. Id. at 6-7. The state ALJ thus concluded that "the public health, safety and welfare cannot be protected by any discipline short of revocation" and thus proposed that Respondent's medical license be revoked. Id. at 7-8.

The Government also submitted printouts it obtained from the California Substance Utilization Review & Evaluation System showing Respondent's prescribing history. However, this document does not show the actual date on which the prescriptions were written, but rather, the dates on which they were filled. Even so, because under the CSA, a prescription cannot be filled more than six months after the date on which it was written, see 21 U.S.C. § 829(b), the printouts establish that Respondent issued prescriptions for such drugs as hydrocodone/acetaminophen, a schedule III controlled substance, as well as zolpidem tartrate and diethylproprion hcl, both being schedule IV controlled substances, after his state license was revoked.[2] See GXs 5 & 6; see also 21 CFR 1308.13(e); id. 1308.14(c) & (e).

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 "upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." Moreover, DEA has repeatedly held that the possession of authority to dispense controlled substances under

[2] Because the document does not list the actual date of issuance, but rather, only the fill date of the prescriptions, many of the prescriptions listed as having been filled or refilled after the effective date of the Board's revocation order may have actually been written before the effective date. Accordingly, in making this finding, I have relied only on those prescriptions which were initially filled after June 2, 2011.

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.

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). And because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has repeatedly held that revocation is the appropriate sanction whenever a practitioner is no longer authorized to dispense controlled substances, regardless of whether the practitioner's state authority has been revoked or is subject only to a suspension of fixed duration. See James L. Hooper, 76 FR 71371, 71373 (2011) (collecting cases).

In his written statement, Respondent does not dispute that his state license has been suspended. Rather, he asserts that the MBC's order "is the result of the exaggerated reports of two young inexperienced doctors (who are not internal medicine specialists such as [him]self, but are preventive medicine and family medicine specialists, and are therefore unqualified to make a report) each paid $150 per hour for their work of review of seven of my patients' charts." GX 3, at 1. Respondent further asserts that the MBC's order of revocation "is essentially the result of a disagreement between the Medical Board and myself" and that all the information

regarding his prescriptions "was kept in the Progress Notes of the patients' charts" and "therefore[,] there was no reason to ask me to keep" the log. Id. at 1-2.

Respondent's argument is a collateral attack on the validity of the MBC's Revocation Order. However, DEA has held repeatedly that a registrant cannot collaterally attack the result of a state criminal or administrative proceeding in a proceeding under section 304, 21 U.S.C. § 824, of the CSA. Calvin Ramsey, 76 FR 20034, 20036 (2011) (other citations omitted); Brenton D. Glisson, 72 FR 54296, 54297 n.2 (2007); Shahid Musud Siddiqui, 61 FR 14818, 14818-19 (1996). Rather, Respondent's challenge to the validity of the MBC's Revocation Order must be litigated in the forums provided by the State of California, and his contentions regarding the validity of the MBC's Order are not material to this Agency's resolution of whether he is entitled to maintain his DEA registration in California.

Because it is undisputed that Respondent currently lacks authority to dispense controlled substances in California, the State in which he holds his DEA registration, Respondent no longer meets the definition of a practitioner under the CSA and therefore, he is not entitled to maintain his registration. Accordingly, his registration will be revoked.[3]

[3] The record also supports a finding that Respondent continued prescribing controlled substances following the revocation of his state license. This conduct is actionable under 21 U.S.C. § 824(a)(4), which authorizes the revocation of a registration where a registrant has committed acts which "render his registration . . . inconsistent with the public interest." In determining the public interest, the Agency is required to consider the following factors:

> (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
> (2) The applicant's experience in dispensing . . . controlled substances.
> (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
> (5) Such other conduct which may threaten the public health and safety.

21 U.S.C. § 823(f). The public interest factors are considered in the disjunctive. Robert A. Leslie, 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application for a registration. Id. Moreover, I am "not required to make findings as to all of the factors." Hoxie v. DEA, 419 F.3d 477, 482 (6th Cir. 2005); see also Morall v. DEA, 412 F.3d 165, 173-74 (D.C. Cir. 2005). See also MacKay v. DEA, 664 F.3d 808, 816 (10th Cir. 2011).

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 824(a)(3) & (4), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AA0044040, issued to Muzaffer Aslan, M.D., be, and it hereby is, revoked. I further order that any pending application of Muzaffer Aslan, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[4]

Dated:
June 8, 2012

Michele M. Leonhart
Administrator

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In this matter, I have considered all of the factors. With respect to factor one, the same considerations as set forth above in the discussion of my authority under 21 U.S.C. § 824(a)(3) apply. Furthermore, while there is no evidence that Respondent has been convicted of an offense falling within factor three, under DEA precedent, this is not dispositive. See MacKay, 664 F.3d at 817-18 (quoting Dewey C. MacKay, 75 FR 49956, 49973 (2010)).

However, I further find that evidence, which is relevant under factor two (Respondent's experience in dispensing controlled substances) and factor four (Respondent's compliance with applicable laws related to controlled substances), establishes that Respondent issued controlled substance prescriptions after the State revoked his medical license. This is a violation of 21 U.S.C. 1306.03(a)(1), which provides that "[a] prescription for a controlled substance may be issued only by an individual practitioner who is . . . [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession" and thus constitutes a violation of 21 U.S.C. § 841(a)(1). Moreover, while Respondent stated in his letter that "[t]his is not accurate" and that two MBC investigators "talked to me about it," GX 3, at 1, he offered no probative evidence to refute the allegation.

[4] For the same reason that led me to order the Immediate Suspension of Respondent's registration, I conclude that the public interest necessitates that this Order be effective immediately. See 21 CFR 1316.67.