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DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

[Docket No. 12-45]

STEPHANIE A. TARAPCHAK, M.D.

DECISION AND ORDER

On May 1, 2012, Administrative Law Judge (ALJ) Timothy D. Wing issued the attached recommended decision. Neither party filed exceptions to the decision. Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, his ultimate conclusion of law, and recommended Order. However, because the ALJ's decision does not adequately explain the legal basis for the Agency's Order, additional clarification is provided below.

As this Agency has repeatedly explained, DEA's longstanding rule that a practitioner may not hold a registration if he lacks authority under state law to dispense controlled substances and that the loss of such authority subjects a practitioner's registration to revocation, is not based solely on 21 U.S.C. § 824(a)(3), which is a grant of authority to either suspend or revoke a registration "upon a finding" that a registrant "has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." See, e.g., Richard H. Ng, 77 FR 29694 (2012); Segun M. Rasaki, 77 FR 29692 (2012); David W. Wang, 72 FR 54297 (2007). Rather, DEA's rule derives primarily from two other provisions of the Controlled Substances Act (CSA), 21 U.S.C. § 802(21), which defines the term "practitioner," and 21 U.S.C. § 823(f), which sets forth the requirements for obtaining a registration as a practitioner.

More specifically, the CSA defines "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). Consistent with this definition, Congress, in setting the requirements for obtaining a practitioner’s registration, provided 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 one cannot obtain a practitioner’s registration unless one holds authority under state law to dispense controlled substances, and because where a registered practitioner’s state authority has been revoked or suspended, the practitioner no longer meets the statutory definition of a practitioner, DEA has repeatedly 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 both obtaining and maintaining a practitioner’s registration. See Hooper v. Holder, 2012 WL 2020079, *2 (4th Cir. 2012) (unpublished) (“Because § 823(f) and § 802(21) make clear that a practitioner’s registration is dependent upon the practitioner having state authority to dispense controlled substances, the [DEA]’s decision to construe § 824(a)(3) as mandating revocation upon suspension of a state license is not an unreasonable interpretation of the CSA.”); see also ALJ at 4 (citing cases).¹

Accordingly, the Agency has consistently held that “the CSA requires the revocation of a registration issued to a practitioner . . . even where a state board has suspended (as opposed to revoked) a practitioner’s authority with the possibility that the authority may be restored at some point in the future.” Hooper, 2012 WL 2020079, at *2 (quoting Calvin Ramsey, M.D., 76 FR 20034, 20036 (2011)). See also Kamal Tiwari, M.D., 76 FR 71604, 71606 (2011) (“revocation is warranted even where a practitioner’s state authority has been summarily suspended and the

¹ This citation is to the slip opinion as issued by the ALJ.

State has yet to provide the practitioner with a hearing to challenge the State's action at which he may ultimately prevail"); Bourne Pharmacy, Inc., 72 FR 18273, 18274 (2007); Anne Lazar Thorn, 62 FR 12847 (1997). I therefore adopt the ALJ's recommended order.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BT9132008, issued to Stephanie A. Tarapchak, M.D., be, and it hereby is, revoked. I further order that any pending application of Stephanie A. Tarapchak, M.D., to renew or modify her registration, be, and it hereby is, denied. This Order is effective [**INSERT DATE THIRTY DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

Dated: December 3, 2012

Michele M. Leonhart
Administrator

Robert W. Walker, Esq., for the Government
Stephanie A. Tarapchak, M.D., Pro Se

**Recommended Ruling, Findings of Fact,
Conclusions of Law and Decision of the
Administrative Law Judge**

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. § 551 et seq., to determine whether Respondent's Certificate of Registration (COR) with the Drug Enforcement Administration (DEA) should be revoked, and any pending applications for renewal or modification of that registration and any applications for additional registrations should be denied. Without this registration, Stephanie A. Tarapchak, M.D. (Respondent) would be unable to lawfully possess, prescribe, dispense or otherwise handle controlled substances.

I. Procedural Posture

On February 10, 2012, the Administrator, Drug Enforcement Administration (DEA or Government), issued an Order to Show Cause and Immediate Suspension of Registration (OSC/IS) relating to Certificate of Registration (COR) BT9132008, and served on Respondent on February 14, 2012. The OCS/IS alleged that Respondent's continued registration constitutes an imminent danger to the public health and safety. The OSC/IS also provided notice to Respondent of an opportunity to show cause as to why the DEA should not revoke Respondent's DEA COR BT9132008, pursuant to 21 U.S.C. § 824(a)(4), on the grounds that Respondent's continued registration would be inconsistent with the public interest under 21 U.S.C. § 823(f).

On April 13, 2012, Respondent, acting pro se, filed an untimely request for hearing with the DEA Office of Administrative Law Judges (OALJ) in the above-captioned matter. Acknowledging that her request for hearing was untimely, she requested an extension of time to

file her request for hearing pursuant to 21 C.F.R. § 1316.47(b). (Req. for Hr'g at 6.) On April 16, 2012, OALJ sent a letter to Respondent informing her of her right to representation under 21 C.F.R. § 1316.50.

On April 16, 2012, I issued an Order for Prehearing Statements in which I ordered the parties to file statements addressing whether good cause exists for Respondent's untimely request for hearing. Upon receipt of those statements, on April 24, 2012, I issued a Memorandum and Order Regarding Timeliness of Respondent's Request for Hearing. Although I found good cause for Respondent's untimely request for hearing, I stayed the proceedings and ordered the parties to file, no later than May 1, 2012, a statement addressing whether Respondent has state authority to handle controlled substances.¹

On May 1, 2012, the Government filed a Motion for Summary Disposition on the grounds that Respondent currently lacks state authority to handle controlled substances. On May 1, 2012, Respondent filed her Statement Addressing Whether Respondent has State Authority to Handle Controlled Substances, in which she concedes that she lacks state authority.

II. The Parties' Contentions

A. The Government

In support of its motion for summary disposition, the Government asserts that on April 11, 2012, the Pennsylvania State Board of Osteopathic Medicine (Board) issued a Notice of disciplinary action and Preliminary Order indefinitely suspending Respondent's state medical license for no less than three (3) years, and that Respondent consequently lacks authority to

¹ In Respondent's Statement of Good Cause Existing in which she addressed good cause for her untimely hearing request, Respondent noted that her former counsel "received the Order suspending [Respondent]'s license on April 11, 2012 and did not place it in the mail to her until April 16, 2012, with an attendant twenty-day deadline to respond." (Resp't April 23, 2012 Stmt. at 11.)

possess, dispense or otherwise handle controlled substances in Pennsylvania, the jurisdiction in which she maintains her DEA registration. (Mot. at 2.) The Government contends that such state authority is a necessary condition for maintaining a DEA COR and therefore asks that I summarily recommend to the Administrator that Respondent's DEA COR be revoked. (Id. at 2-3.) In support of its motion, the Government cites Agency precedent and attaches the Board's Notice and Preliminary Order referred to above.

B. Respondent

Respondent concedes that "at this time [she] does not have state authority to handle controlled substances." (Resp't May 1, 2012 Stmt. at 1.) Respondent submits that in October 2011, she entered into a Consent Agreement with the Board, which "subjected her to very restrictive and imposing terms and conditions that were not fully disclosed in the Agreement." (Id. at 2.) According to Respondent, on April 11, 2012, the Board filed a Petition for Appropriate Relief, a Preliminary Order, and a Notice of formal disciplinary action, alleging that Respondent violated the terms and conditions of the October 2011 Consent Agreement. (Id. at 3.) The April 11, 2012 Preliminary Order "suspended [Respondent]'s license to practice osteopathic medicine indefinitely pending the disposition of a hearing." (Id.) Respondent also attached the Preliminary Order to her statement.

III. Discussion

At issue is whether Respondent may maintain her DEA COR given that Pennsylvania has suspended her state license to practice medicine.

Under 21 U.S.C. § 824(a)(3), a practitioner's loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration. Accordingly, this agency has consistently held that a person may not hold a DEA

registration if she is without appropriate authority under the laws of the state in which she does business. See Scott Sandarg, D.M.D., 74 Fed. Reg. 17,528 (DEA 2009); David W. Wang, M.D., 72 Fed. Reg. 54,297 (DEA 2007); Sheran Arden Yeates, M.D., 71 Fed. Reg. 39,130 (DEA 2006); Dominick A. Ricci, M.D., 58 Fed. Reg. 51,104 (DEA 1993); Bobby Watts M.D., 53 Fed. Reg. 11,919 (DEA 1988).

Summary disposition in a DEA revocation case is warranted even if the period of suspension of a respondent's state medical license is temporary, or even if there is the potential for reinstatement of state authority because "revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement." Stuart A. Bergman, M.D., 70 Fed. Reg. 33,193 (DEA 2005); Roger A. Rodriguez, M.D., 70 Fed. Reg. 33,206 (DEA 2005).

It is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. See Layfe Robert Anthony, M.D., 67 Fed. Reg. 35,582 (DEA 2002); Michael G. Dolin, M.D., 65 Fed. Reg. 5661 (DEA 2000); see also Philip E. Kirk, M.D., 48 Fed. Reg. 32,887 (DEA 1983), aff'd sub nom. Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984). Accord Puerto Rico Aqueduct & Sewer Auth. v. EPA, 35 F.3d 600, 605 (1st Cir. 1994).

In the instant case, the Government asserts, and Respondent concedes, that Respondent's Pennsylvania medical license is presently suspended. This allegation is confirmed by the attachments to the Government's motion, as well as Respondent's own admission and attachments. I therefore find there is no genuine dispute as to any material fact, and that substantial evidence shows that Respondent is presently without state authority to handle controlled substances in Pennsylvania.

Because “DEA does not have statutory authority under the Controlled Substances Act to maintain a registration if the registrant is without state authority to handle controlled substances in the state in which he practices,” Yeates, 71 Fed. Reg. at 39,131, I conclude that summary disposition is appropriate. It is therefore

ORDERED that the hearing in this case is hereby **CANCELLED**; and it is further

ORDERED that all proceedings before the undersigned are **STAYED** pending the Agency’s issuance of a final order.

Recommended Decision

I grant the Government’s motion for summary disposition and recommend that Respondent’s DEA COR BT9132008 be revoked and any pending applications for renewal or modification of that registration and any applications for additional registrations be denied.

Dated: May 1, 2012

s/ Timothy D. Wing
Administrative Law Judge

[FR Doc. 2012-29815 Filed 12/10/2012 at 8:45 am; Publication Date: 12/11/2012]