



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**[Docket No. 17-14]
Emmanuel O. Nwaokocha, M.D.
Decision and Order**

On December 5, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Emmanuel O. Nwaokocha, M.D. (Respondent), of Harwood Heights, Illinois. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. FN5571864 on the ground that he "do[es] not have authority to handle controlled substances in the State of Illinois, the [S]tate in which [he is] registered with the DEA." Order to Show Cause, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is the holder of Certificate of Registration No. FN5571864, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 4740 N. Harlem Ave., Harwood Heights, Illinois. *Id.* The Order also alleged that this registration does not expire until October 31, 2018. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on March 15, 2016, the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation (IDFPR), "indefinitely suspended [his] license to practice medicine due to [his] conviction for Medicaid fraud," and he is therefore "without authority to handle controlled substances in the State of Illinois, the [S]tate in which [he is] registered with the DEA." *Id.* Based on his "lack of authority to [dispense] controlled substances in . . . Illinois,"

the Order asserted that “DEA must revoke” his registration. *Id.* at 2 (citing 21 U.S.C. 823(f) and 824(a)(3)).

The Show Cause Order notified Respondent of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of his right to submit a corrective action plan. *Id.* at 2-3.

On December 13, 2016, a Diversion Investigator from the Chicago Field Division personally handed a copy of the Order to Show Cause to the Respondent at his residence located at 9453 Lorel Ave., Skokie, Illinois 60077. Government’s Submission of Evidence and Request for Summary Disposition (hereinafter, Govt. Mot.), Exhibit (hereinafter, GX) 1, at 1. Following service of the Show Cause Order, Respondent requested a hearing on the allegations. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On January 4, 2017, the CALJ ordered the Government to submit evidence to support the allegation, and any motion for summary disposition, no later than January 17, 2017. Order Directing the Filing of Government Evidence or Lack of State Authority Allegation and Briefing Schedule, at 1. The CALJ also directed Respondent to file his response to any summary disposition motion no later than January 27, 2017. *Id.*

On January 13, 2017, the Government filed its Request for Summary Disposition. In its Request, the Government argued that it is undisputed that Respondent lacks authority to handle controlled substances in Illinois because the IDFPR indefinitely suspended Respondent’s medical license. Govt. Mot. at 2. The Government further argued “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," and that under the DEA's precedents, revocation is warranted even where a State has invoked summary process to suspend a practitioner's state authority and has yet to provide the practitioner with a hearing where he may prevail. Govt. Mot., at 4-5 (citations omitted). As support for its summary disposition request, the Government attached, *inter alia*, a copy of the IDFPR's March 15, 2016 Order placing an "INDEFINITE SUSPENSION" on Respondent's Illinois Physician and Surgeon license, a letter from the Acting Director of the IDFPR confirming that the indefinite suspension "remains in effect as of January 10, 2017," and a January 12, 2017 printout from the IDFPR's website showing that his license status was "SUSPENDED." *Id.* at GX 1, Attachments D-F.

In his responsive pleading, Respondent did not dispute that his medical license had been suspended by the State of Illinois, and that "[t]he order of suspension is in effect." Respondent's Response to Government's Request for Summary Disposition (hereinafter, Resp. Reply), at 2. Instead, he argued that he "anticipated" that his motion to stay the suspension pending his appeal of the IDFPR's suspension order would be decided on February 14, 2017, and that an order granting such motion would enable him to resume practicing medicine. *Id.* He further argued that there was a "likelihood" that his stay motion would be granted by the Illinois Circuit Court because a stay motion had been granted in a prior appeal. *Id.* Respondent also argued that the CALJ should delay ruling because, in Respondent's view, DEA was enforcing a "discretionary" ground for denying his revocation pursuant to 21 U.S.C. 824(a)(3), not a mandatory ground. *Id.* at 3. Lastly, Respondent argued that Due Process required the CALJ to give Respondent "an opportunity to be heard at a meaningful time," and that a "meaningful time"

was after the Illinois Circuit Court had ruled. *Id.* at 3-4. As a result, Respondent requested that the CALJ deny or stay the Government's Request for Summary Disposition "pending a decision by the Circuit Court." *Id.* at 4.

On January 30, 2017, the Government filed its opposition to Respondent's request for a stay with the CALJ. The Government noted that a practitioner's expectation of obtaining state authority in a concurrent legal proceeding is not a basis to stay revocation proceedings against a practitioner who lacks such authority because the Controlled Substances Act (CSA) requires practitioners to hold state authority in order to be registered. Government's Opposition to Dr. Nwaokocha's Request for a Stay at 2-3. In the same vein, the Government contended that, when a practitioner's state license is suspended, then revocation of that practitioner's DEA registration is mandatory. *Id.* at 3-4 (citing 21 U.S.C. 802(21) and 821(f) [sic]).

The CALJ rejected Respondent's request for a stay, noting that "revocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action and at which he . . . may ultimately prevail." Order Denying the Respondent's Request for Stay; Granting the Government's Motion for Summary Disposition; and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (R.D.) at 3 (citing 21 U.S.C. 802(21) and 823(f) (quotations and citations omitted)). While he was "not unmindful of the Respondent's arguments concerning the Agency's expenditure of resources should his state authority be reinstated on February 14, 2017," the CALJ noted that the DEA has previously held "that a stay in administrative enforcement proceedings is 'unlikely to ever be justified' due to

ancillary proceedings involving the Respondent.” *Id.* at 4 (quoting *Grider Drug #1 & Grider Drug #2*, 77 FR 44070, 44104 n.97 (2012)).¹

The CALJ then found that there was no dispute over the material fact that “Respondent currently lacks state authority to handle controlled substances in Illinois due to the IDFPR[’s] Order dated March 15, 2016, which temporarily² suspended his state license to practice medicine.” *Id.* at 6-7. Reasoning that “[b]ecause . . . Respondent lacks state authority at the present time . . . he is not entitled to maintain his DEA registration,” the CALJ granted the Government’s request and recommended that his registration be revoked and that any pending renewal applications be denied. *Id.*

Neither party filed exceptions to the CALJ’s Recommended Decision. Thereafter, the record was forwarded to my Office for Final Agency Action. Having reviewed the record, I adopt the CALJ’s finding that by virtue of the IDFPR’s Order, Respondent is currently without authority to handle controlled substances in Illinois, the State in which he holds his registration with the Agency, and is thus not entitled to maintain his registration. I further adopt the CALJ’s recommendation that I revoke his registration and deny any pending application. I make the following factual findings.

FINDINGS OF FACT

Respondent is a physician who holds Illinois Medical License No. 036067760. *See* GX 1, Attachment E, at 1. However, on March 15, 2016, the IDFPR issued an Order indefinitely

¹ I agree with this statement of the Agency’s precedents. However, the CALJ also cited *Odette L. Campbell*, 80 FR 41062 (2015), as contrary authority. *See id.* The CALJ characterized *Campbell* as “holding revocation proceedings in abeyance at the post-hearing adjudication level for a lengthy period pending the resolution of both criminal fraud charges and concurrent state administrative proceedings against the respondent.” *Id.* For the reasons I have set forth in past decisions, *see e.g., Judson H. Somerville*, 82 FR 21408, 21409 n.3 (2017), I respectfully disagree with the CALJ’s reading of *Campbell*.

² By its terms, the IDFPR’s Order states that Respondent was “placed on INDEFINITE SUSPENSION.” GX 1, Attachment D at 8.

suspending Respondent's medical license. GX 1, Attachment D, at 8. The Panel further ordered that the suspension be "implemented as of the date of the Order." *Id.* 9. Respondent offered no evidence in his Response to the Government's Request or at any time thereafter showing that the IDFPR has lifted the suspension. Based on the above, I find that Respondent does not currently have authority under the laws of Illinois to dispense controlled substances.

Respondent is also the holder of DEA Certificate of Registration No. FN5571864, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the address of 4740 N. Harlem Ave., Harwood Heights, Illinois. GX 1, Attachment A. This registration does not expire until October 31, 2018. *Id.*

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 CSA, "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." Also, DEA has 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*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) ("State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances 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).

Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration “is currently authorized to handle controlled substances in the [S]tate,” *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State’s use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the IDFPR has indefinitely suspended Respondent’s state license and that Respondent may prevail on his appeal to Illinois Cook County Circuit Court.³ What is dispositive is the fact that Respondent is not currently authorized to dispense controlled substances in the State in which he is registered.

Here, there is no dispute over the material fact that Respondent is no longer currently authorized to dispense controlled substances in Illinois, the State in which he is registered.

Accordingly, he is not entitled to maintain his registration. I will therefore adopt the CALJ’s

³ Similarly, and contrary to Respondent’s claim, Due Process does not require the CALJ to delay summary disposition of the case until his motion to stay pending before the Illinois Circuit Court had been decided. Resp. Reply at 3-4. Rather, Due Process required the CALJ to provide Respondent the opportunity to respond to the Order to Show Cause and the Government’s Request for Summary Disposition. The CALJ did provide Respondent such an opportunity, and the Respondent did so respond. Respondent provided no authority for the notion that the CALJ violated Respondent’s right to Due Process by, in fact, providing Respondent an “opportunity to be heard” instead of delaying such opportunity. Respondent’s claim that the CALJ should have delayed his recommended decision is particularly unavailing where, as here, there are no controlling facts in dispute.

recommendation that I revoke Respondent's registration and deny any pending applications to renew or modify his registration. R.D. at 7.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3) and 28 CFR 0.100(b), I order that DEA Certificate of Registration No. FN5571864 be, and it hereby is, revoked.

Pursuant to the authority vested in me by 21 U.S.C. 823(f), I order that any applications to renew or modify the above registration be, and they hereby are, denied. This Order is effective immediately.⁴

Dated: May 30, 2017.

Chuck Rosenberg,

Acting Administrator.

⁴ For the same reasons which led the IDFPR to order the indefinite suspension of Respondent's medical license, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

[FR Doc. 2017-11797 Filed: 6/6/2017 8:45 am; Publication Date: 6/7/2017]