



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**[Docket No. 19-3]
Martin A. Barrios, M.D.;
Decision And Order**

On October 22, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Martin A. Barrios, M.D. (hereinafter, Respondent), of Jackson, Kentucky. Order to Show Cause (hereinafter, OSC), at 1. The Show Cause Order proposes the revocation of Respondent's Certificate of Registration on the ground that he does "not have authority to handle controlled substances in the State of Kentucky, the state in which . . . [he is] registered with the DEA." *Id.* (citing 21 U.S.C. §§ 823(f) and 824(a)(3)).

Regarding jurisdiction, the Show Cause Order alleges that Respondent holds DEA Certificate of Registration No. FB0348563 at the registered address of 540 Jett Drive, Jackson, Kentucky 41339. OSC, at 1. This registration is alleged to authorize Respondent to dispense controlled substances in schedules II through V as a practitioner. The Show Cause Order alleges that this registration expires on July 31, 2019. *Id.*

The substantive ground for the proceeding, as alleged in the Show Cause Order, is that Respondent is "without authority to handle controlled substances in the State of Kentucky, the state in which . . . [he is] registered . . . with the DEA." *Id.* at 2. Specifically, the Show Cause Order alleges that, on or about May 18, 2018, the Commonwealth of Kentucky Board of Medical Licensure (hereinafter, Kentucky Board) issued an Amended Emergency Order of Restriction prohibiting Respondent from "prescribing, dispensing, or otherwise professionally utilizing

controlled substances until the Board's hearing panel has finally resolved the Complaint after receipt of the court documents resolving the criminal charges in the [criminal] indictment . . . or until such further Order of the Board." *Id.*

The Show Cause Order notifies Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2-3 (citing 21 C.F.R. § 1301.43). The Show Cause Order also notifies Respondent of the opportunity to submit a corrective action plan. OSC, at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

By letter dated November 12, 2018, Respondent timely requested a hearing.¹ Hearing Request, at 1. According to the Hearing Request, Respondent's "interest in the proceedings is to defend . . . [his] innocence." *Id.* Respondent's Hearing Request "acknowledge[s] . . . the actions taken by both the Kentucky medical board and American Board of [S]urgery." *Id.* at 2. It states that Respondent is "in the process of appealing the American Board of Surgery's action." *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ). The ALJ issued a Briefing Schedule for Lack of State Authority Allegations dated November 16, 2018. The Government timely complied with the Briefing Schedule by filing a Motion for Summary Disposition on November 30, 2018 (hereinafter, Government Motion). Order Granting Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision dated December 20, 2018 (hereinafter, R.D.), at 2. In its motion, the Government stated that Respondent lacks authority to handle controlled substances in Kentucky, the State in which he is

¹ The Hearing Request was filed on November 15, 2018. Briefing Schedule for Lack of State Authority Allegations dated November 16, 2018, at 1. I, thus, find that the Government's service of the OSC was adequate.

registered with the DEA and argued that, therefore, DEA must revoke his registration. *Id.* Respondent did not answer the Government Motion.² *Id.* at 4. He did, however, “address the order to show cause” in his Hearing Request. Hearing Request, at 2. I reviewed and considered the Hearing Request as part of, and along with, the entire record before me.

The ALJ granted the Government Motion finding that “there is no dispute of material fact necessitating an adversarial hearing.” R.D., at 10. The ALJ recommended that Respondent’s registration and DATA-Waiver Identification Number be revoked because “the fact remains that Kentucky has stripped . . . [Respondent] of the ability to handle controlled substances.” *Id.* at 8. By letter dated January 16, 2019, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advised that neither party filed exceptions and that the time period to do so had expired.

I issue this Decision and Order based on the entire record before me. 21 C.F.R. § 1301.43(e). I make the following findings of fact.

FINDINGS OF FACT

Respondent’s DEA Registration

Respondent is the holder of DEA Certificate of Registration No. FB0348563, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner-DW/275, at the registered address of 540 Jett Drive, Jackson, Kentucky 41339. Government Motion, Exh. 1 (Certification of Registration History), at 1. Respondent’s registration expires on July 31, 2019. *Id.*

The Status of Respondent’s State License

² I agree that the Office of Administrative Law Judges properly served Respondent on all occasions. R.D., at 4-5, 11. The Certificate of Service for the Government Motion certifies that the Government served Respondent at the physical and electronic addresses he requested in his Hearing Request. Hearing Request, at 1.

By Amended Emergency Order of Restriction dated May 18, 2018, the Kentucky Board ordered that Respondent's license to practice medicine in the Commonwealth of Kentucky be restricted. Government Motion, Exh. 3 (Amended Emergency Order of Restriction), at 5. The restriction prohibits Respondent "from prescribing, dispensing, or otherwise professionally utilizing controlled substances until the Board's hearing panel has finally resolved the Complaint after receipt of the court documents resolving the criminal charges in the indictment . . . or until such further Order of the Board." *Id.* According to the online records of the Commonwealth of Kentucky, of which I take official notice, I find that Respondent's medical license is still subject to this controlled substances restriction.³ Commonwealth of Kentucky Board of Medical Licensure Physician Profile/Verification of License, <https://kbml.ky.gov/physician/Pages/Physician-Profile-Verification-of-Physician-License.aspx> (last visited March 18, 2019).

Accordingly, I find that Respondent currently is without authority to handle controlled substances in the Commonwealth of Kentucky, the State in which he is registered.

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

³ 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, Respondent may dispute my finding by filing a properly supported motion for reconsideration within 15 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Respondent files a motion, the Government shall have 15 calendar days to file a response.

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 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

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, M.D., supra*, 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, M.D., supra*, 43 FR at 27,617.

According to the Kentucky “Controlled Substances” statute, “No person shall dispense, prescribe, distribute, or administer any controlled substance except as authorized by law.”⁴ Ky. Rev. Stat. Ann. § 218A.1404(3) (Westlaw, current through the end of the 2018 regular session). Here, there is no dispute about the material fact that the Kentucky Board restricted Respondent’s medical license by prohibiting him from prescribing, dispensing, or otherwise professionally utilizing controlled substances. Hearing Request, at 2 (“I first want to acknowledge the indictment in Madison County Kentucky and the actions taken by both the Kentucky medical board and American Board of [S]urgery.”). Based on this uncontroverted fact, Kentucky law, and past Agency decisions, I find that Respondent is currently without authority to dispense controlled substances under the laws of Kentucky, the State in which he is registered. *See Judson J. Somerville, M.D.*, 82 FR 21,408, 21,410 (2017) (revoking the registration of a physician whose Texas Medical License was temporarily suspended by the Texas Medical Board Disciplinary Panel, finding that the physician did not currently have authority under the laws of Texas to dispense controlled substances, and rejecting as “of no consequence” physician’s argument that his license was suspended through summary process and that he may prevail at hearing). I will therefore order that Respondent’s registration be revoked.

In sum, Respondent currently lacks authority in Kentucky to handle controlled substances. He is not, therefore, eligible for a DEA registration in Kentucky. As such, I will order that Respondent’s DEA registration be revoked.

⁴ “Dispenser” is a “person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user.” Ky. Rev. Stat. Ann. § 218A.010(11) (Westlaw, current through the end of the 2018 regular session).

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I order that DEA Certificate of Registration No. FB0348563 issued to Martin A. Barrios, M.D., be, and it hereby is, revoked.⁵ This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

Dated: March 18, 2019.

Uttam Dhillon,
Acting Administrator.

⁵ This revocation Order automatically withdraws XB0348563. See 21C.F.R. § 1301.28.

