



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**[Docket No. 2019-10]
John Yolman Salinas, M.D.;
Decision and Order**

On December 18, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to John Yolman Salinas, M.D., (hereinafter, Respondent), of Atlanta, Georgia. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposes the revocation of Respondent’s Certificate of Registration No. BS4014332 on the ground that Respondent does not have “state authority to handle controlled substances” in Georgia, the state in which Respondent is registered with the DEA. *Id.* (citing 21 U.S.C. § 824(a)(3)).

The substantive ground for the proceeding, as alleged in the OSC, is that Respondent has “no state authority to handle controlled substances.” OSC, at 1. Specifically, the OSC alleges that the Georgia Composite Medical Board (hereinafter, GCMB) issued a Final Decision revoking Respondent’s medical license on September 21, 2018. *Id.* This Georgia medical license revocation, according to the OSC, means that Respondent is “currently without authority to handle controlled substances in the State of Georgia” and, “[c]onsequently, DEA must revoke . . . [Respondent’s] DEA registration.” *Id.*

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 C.F.R.

§ 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. OSC, at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

By a document entitled “Request for Hearing” submitted on January 16, 2019, Respondent timely requested a hearing.¹ According to the Hearing Request, Respondent “is interested in continuing the practice of medicine in another state or Territory of the United States . . . and thus maintaining his DEA Registration active.” Hearing Request, at 1. Respondent’s Hearing Request states that he “is not handling any medications or drugs of ANY sort” and “has NEVER had any DEA violations or complaint to the present date.” *Id.* (emphases in original).

Respondent attached a “Corrective Action Plan” (hereinafter, CAP) to his Request for Hearing. *Id.* at 3. The CAP states, among other things, that the “Georgia Medical Board did NOT find any violations against . . . [Respondent] of medication errors or standard of care issues.” *Id.* (emphasis in original). It states that Respondent “is NOT currently practicing medicine in any form . . . [and] wishes to continue the practice of medicine for which he trained for over a 24 years career.” *Id.* (emphasis in original). Respondent’s first proposed CAP concerns his “having submitted current applications for medical licensure in several States and US Territories On procurement of an active state medical license, the DEA Registration will be transferred to the active State licensed.” *Id.* Respondent’s second proposed CAP concerns Respondent’s expressed interest in “actively applying for a position within the DEA with the hopes of procuring a position as an undercover physician to infiltrate pill mills and help in the war against drugs.”² *Id.*

¹ The OSC is dated December 18, 2018. The Hearing Request was e-mailed on January 16, 2019. As such, I find that the Government’s service of the OSC was adequate and that Respondent’s request for a hearing was timely.

² Respondent’s second proposed CAP “further requests any assistance from any DEA personnel in procurement of such a position.” Hearing Request, at 3.

By letter dated January 30, 2019, the Assistant Administrator of the Diversion Control Division “den[ie]d the request to discontinue or defer administrative proceedings” and stated that “there is no potential modification of. . . [Respondent’s proposed CAP] that could or would alter my decision in this regard.” Assistant Administrator CAP Letter, at 1.

The Office of Administrative Law Judges put the matter on the docket and assigned it to the Chief Administrative Law Judge. The matter was subsequently reassigned to Administrative Law Judge Mark M. Dowd (hereinafter, ALJ). The Government timely complied with the “Order Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule” by filing a Motion for Summary Disposition on January 28, 2019 (hereinafter, Government Motion). In its motion, the Government stated that Respondent lacks authority to handle controlled substances in Georgia because of the revocation of his Georgia medical license. Government Motion, at 3. “Because Respondent does not have state authority to prescribe, administer, or dispense controlled substances in the State of Georgia,” the Government Motion continued, “he is not entitled to hold a DEA registration.” *Id.*

Respondent requested, and received, an additional ten business days to respond to the Government Motion.³ Motion for Extension of Time to Respond to Governments [sic] Motion for Summary Disposition dated January 31, 2019, at 1; Order Granting the Respondent’s Request for Extension of Time dated February 4, 2019, at 1-2. According to the ALJ’s “Order Granting the Government’s Motion for Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge” dated February 21,

³ The ALJ denied Respondent’s request for an extension of forty-five days. Respondent stated that the bases for his request were pending applications for medical licensure in Guam and Mississippi. Respondent suggested that forty-five days would give those jurisdictions time to act on his applications and “thus make moot the Administrative Law Court Summary Disposition.” Respondent’s Motion for Extension of Time to Respond to Governments [sic] Motion for Summary Disposition dated January 31, 2019, at 2. I agree with the ALJ’s denial of Respondent’s request for an extension of forty-five days. The issue presented in the OSC concerns Respondent’s registration in Georgia, not his applications for medical licensure in Guam or Mississippi.

2019 (hereinafter, RD), “[t]o date, the Respondent has not filed any reply to the Government’s allegations.” RD, at 3. After the ALJ issued the RD, Respondent filed a “Motion for Reconsideration and Clarification of Decision of Administrative Law Judge” dated February 22, 2019 (hereinafter, RMRC). The ALJ construed the RMRC to be a motion for leave to file an out of time response to the Government Motion and gave the Government the opportunity to respond to it. The Government timely opposed the RMRC on procedural and substantive grounds. The ALJ denied the RMRC. Order Denying Respondent’s Motion to File an Out of Time Response and Reaffirming the Recommended Order Granting the Government’s Motion for Summary Disposition dated March 19, 2019 (hereinafter, RRD), at 5. Although the ALJ denied the RMRC, he addressed its substance in the RRD. RRD, at 4-5.⁴

The ALJ, in both the RD and the RRD, recommended that “Respondent’s registration be revoked, and any pending applications be denied” because “no dispute exists over the fact that the Respondent currently lacks state authority to handle controlled substances in the state of Georgia because the . . . [GCMB] has revoked his medical license.” RD, at 7-8. By letter dated March 19, 2019, the ALJ certified and transmitted the record to me.

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. BS4014332 at the registered address of 3069 Amwiler Rd., Suite Two, Atlanta, GA 30360. Government Motion, Exh. 1, at 1. Pursuant to this registration, Respondent is authorized to dispense controlled

⁴ I agree with the ALJ’s procedural disposition of the RMRC.

substances in schedules II through V as a practitioner. *Id.* Respondent's registration expires on February 28, 2021, and is "in an active pending status." *Id.*

The Status of Respondent's State License

On June 18, 2018, an Administrative Law Judge at the Georgia Office of State Administrative Hearings (hereinafter, Georgia ALJ) issued her Initial Decision concerning a matter initiated by the GCMB to sanction Respondent's medical license. Government Motion, Exh. 2, at 1. According to the Initial Decision, a "board certified family practice physician with 39 years' experience" completed a peer review of Respondent's treatment and care of two individuals at the request of the GCMB. *Id.* at 12.

Regarding the first individual, the peer reviewer opined that Respondent's treatment fell below the standard of care when he (1) treated the individual as a patient when they were engaged in a sexual relationship; (2) failed to maintain medical records to support his prescription of medications, including controlled substances; (3) failed to maintain a medical record to support the ordering of a breast ultrasound and diagnostic mammogram; (4) failed to maintain a medical record when making a "lumbago" diagnosis; and (5) failed to use proper history, physical, laboratory tests, and radiological procedures to make a diagnosis. *Id.* at 12-13.

As to the other individual, the peer reviewer opined that Respondent's treatment fell below the standard of care when he (1) performed a gynecological examination without a female chaperone present; (2) had sexual relations with the individual after performing a gynecological examination; (3) failed to put a date on the purported record of the injections he gave the individual and the individual's subsequent reaction; and (4) failed to perform a gynecological examination, pap smear, and mammogram before purportedly administering an initial injection of Depo-Provera. *Id.* at 21-22.

The Georgia ALJ concluded that the GCMB established by a preponderance of the evidence that Respondent (1) knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of his profession in a purported medical record and to the GCMB; (2) indicated untrustworthiness and engaged in conduct discrediting the medical profession by his acts and omissions; (3) failed to conform to the minimum standards of acceptable and prevailing medical practice; (4) mistreated both individuals; and (5) failed to timely respond to an investigative subpoena issued by the GCMB. *Id.* at 24-26, 28-29. She found that Respondent “was cavalier in prescribing medications, including controlled substances . . . [and] did not document any objective data to justify the prescriptions. *Id.* at 31. The Georgia ALJ concluded that Respondent’s conduct with regard to the two individuals was “egregious” and “reprehensible,” making revocation the appropriate sanction. *Id.* Thus, she revoked Respondent’s medical license. *Id.*

On September 21, 2018, the GCMB issued a Final Decision (hereinafter, Final Decision). The Final Decision adopted the Findings of Fact and Conclusions of Law set forth in the Initial Decision and revoked Respondent’s medical license No. 38600, effective upon docketing. Government Motion, Exh. 3, at 2. The GCMB also denied Respondent’s Motion for Rehearing after finding that Respondent had not demonstrated that (1) the GCMB overlooked any material fact, controlling authority, or intervening change in controlling authority; (2) the GCMB or the Georgia ALJ made a clear error; (3) there was a manifest injustice; or (4) the legal authority was erroneously construed or misapplied. Order Denying Rehearing dated November 8, 2018, Government Motion, Exh. 4, at 5.

According to Georgia’s online records, of which I take official notice, Respondent’s license is still revoked.⁵ GCMB Search for a Licensee, <https://gcmb.mylicense.com/verification> (last visited September 9, 2019).

Accordingly, I find that Respondent currently is not licensed to practice medicine in Georgia, the state in which he is registered with the DEA.

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 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 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 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]

⁵ 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.

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., Hooper, supra*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Blanton, supra*, 43 Fed. Reg. at 27,617.

According to Georgia statute, “Every person who . . . dispenses any controlled substances within this state . . . must obtain annually a registration issued by the State Board of Pharmacy.” Ga. Code Ann. § 16-13.35(a) (Westlaw, current through acts passed during the 2019 Session of the General Assembly). A person who is licensed as a physician, however, is “registered” and exempt from the statute’s registration fee and application requirements. Ga. Code Ann. § 16-13-35(g)(2) (Westlaw, current through acts passed during the 2019 Session of the General Assembly). The Georgia Code defines “physician” as “a person licensed to practice medicine.” Ga. Code Ann. § 43-34-21(2) (Westlaw, current through acts passed during the 2019 Session of the General Assembly). Under Georgia law, “to practice medicine” includes “attaching the title ‘M.D.’ . . . to one’s name, indicating that such person is engaged in the treatment or diagnosis of disease, defects, or injuries to human beings.” Ga. Code Ann. § 43-34-21(3) (Westlaw, current through acts passed during the 2019 Session of the General Assembly).

Here, the undisputed evidence in the record, including Respondent's admission, is that Respondent currently lacks authority to practice medicine in Georgia. Government Motion, Exhs. 2-4; RMRC, at 2. As already discussed, a "physician," under Georgia law, is a person licensed to practice medicine. Further, under Georgia law, a "physician" is registered to dispense controlled substances. Because Respondent lacks authority to practice medicine in Georgia, he is not registered to handle controlled substances in Georgia according to Georgia law. Accordingly, Respondent is not eligible to maintain a DEA registration and I will order that Respondent's DEA registration be revoked.⁶

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. BS4014332 issued to John Yolman Salinas, M.D. Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of John Yolman Salinas to renew or to modify this registration, and any pending application of John Yolman Salinas to be registered in the state of Georgia. This Order is effective **[insert Date Thirty Days From the Date of Publication in the Federal Register]**.

Dated: September 9, 2019.

Uttam Dhillon,
Acting Administrator.

⁶ Given my findings that Respondent is registered with the DEA in Georgia, that his Georgia medical license is revoked, and that he lacks authority in Georgia to dispense controlled substances, I find that both of Respondent's CAPs – changing his registered address to another state or a Territory of the United States, and "procuring a position as an undercover physician to infiltrate pill mills and help in the war against drugs" – provide no basis for me to discontinue or defer this proceeding. 21 U.S.C. § 824(c)(3).

