



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Malathy Sundaram, M.D.; Decision and Order**

On November 20, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Malathy Sundaram, M.D. (hereinafter, Registrant) of Dover, New Hampshire. OSC, at 1. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BS8504703. *Id.* It alleged that Registrant is without “authority to handle controlled substances in New Hampshire, the state in which . . . [Registrant is] registered with the DEA.” *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that, “[a]ccording to records of the New Hampshire Medical Board, the current status of . . . [Registrant’s] medical license is listed as ‘suspended’ because on September 6, 2019, . . . [Registrant’s] state medical license (License No. 13607) expired and has not been renewed.” OSC, at 1-2. The OSC concluded that “DEA must revoke . . . [Registrant’s registration] based upon . . . [her] current lack of authority to handle controlled substances in the State of New Hampshire.” *Id.* at 2.

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

## **Adequacy of Service**

In a Declaration dated January 21, 2020, a Diversion Investigator (hereinafter, DI) assigned to the Manchester (New Hampshire) District office, New England Division, stated that she, a second DI, and a DEA Special Agent located Registrant at her place of employment on December 6, 2019. Request for Final Agency Action dated January 28, 2020 (hereinafter, RFAA), Exhibit (hereinafter, EX) 8 (DI's Declaration), at 2-3. The DI stated that the three showed their credentials and presented Registrant with the original OSC. *Id.* DI stated that she explained to Registrant that "she had 30 days to respond" to the OSC and then "asked her to sign a DEA-12 receipt form showing that she had received" the OSC. *Id.* at 3. The DI reported that Registrant "complied with the request and signed the receipt." *Id.*; *see* RFAA EX 4 (DEA-12 receipt dated December 6, 2019).

The Government forwarded its RFAA, along with the evidentiary record, to this office on January 30, 2020. In its RFAA, the Government represented that "neither the DEA . . . [Office of Administrative Law Judges] nor the . . . [Manchester District Office] had received any written correspondence, telephone, or any other communication from Registrant in response" to the OSC since the "passage of more than 30-days since [Registrant's] receipt" of the OSC. RFAA, at 4-5. The Government requested that Registrant's registration be revoked, based on her lack of "authority to handle controlled substances in New Hampshire." *Id.* at 6.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on December 6, 2019. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations and my review of the record, I find that neither Registrant, nor anyone purporting to represent

Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

## **FINDINGS OF FACT**

### **Registrant's DEA Registration**

Registrant is the holder of DEA Certificate of Registration No. BS8504703 at the registered address of 835 Central Ave., Dover, New Hampshire 03820. RFAA, EX 1 (Facsimile of DEA Certificate of Registration Number BS8504703), at 1; RFAA EX 2 (Certification of Registration History), at 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. RFAA EX 2, at 1. Registrant's registration expires on February 28, 2021, and is "in an active pending status." *Id.*

### **The Status of Registrant's State License**

The Government submitted substantial evidence that Registrant's New Hampshire medical license was suspended on September 6, 2019. No evidence in the record refutes this evidence. Further, the records of the New Hampshire Medical Board, of which I take official notice, show the current status of Registrant's medical license to be suspended, effective September 6, 2019, due to a "non-disciplinary remedial action."<sup>1</sup> New Hampshire Online

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<sup>1</sup> 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, Registrant may

Licensing, <https://nhlicenses.nh.gov> (last visited April 14, 2020). Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in New Hampshire, the State in which she 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 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] 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

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dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen 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 Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by e-mail ([dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov)) or by mail to Office of the Administrator, Attn: ADDO, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

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 she is no longer authorized to dispense controlled substances under the laws of the state in which she practices. *See, e.g., James L. Hooper*, 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); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

According to New Hampshire law, “All prescribers and dispensers authorized to prescribe or dispense schedule II-IV controlled substances within the state shall be required to register” with the Controlled Drug Prescription Health and Safety Program. N.H. REV. STAT. § 318-B:33(II) (Current through Chapter 7 of the 2020 Reg. Sess.); *see also* N.H. REV. STAT. § 318-B:31(IX) (Current through Chapter 7 of the 2020 Reg. Sess.) (defining “program”). “Prescriber” means a “practitioner or other authorized person who prescribes a schedule II, III, and/or IV controlled substance.” N.H. REV. STAT. § 318-B:31(VIII) (Current through Chapter 7 of the 2020 Reg. Sess.). In turn, a “practitioner” is a “physician . . . or other person licensed or otherwise permitted to prescribe . . . a controlled substance in the course of licensed professional practice.” *Id.* at § 318-B:31(VI); *see also* N.H. CODE ADMIN. R. MED. 501.02(k) and (l) (Current with amendments received through March 1 2020) (providing deadlines by which “licensees” must register with the Controlled Drug Prescription Health and Safety Program). Thus, under New Hampshire law, only a licensed professional, such as a physician, may be authorized to prescribe a controlled substance in schedules II-IV.

Here, the undisputed evidence in the record is that Registrant is not currently licensed to practice medicine in New Hampshire. As such, she is not qualified to register as a prescriber or dispenser of schedule II-IV controlled substances in New Hampshire. Thus, because Registrant lacks authority to practice medicine in New Hampshire and, therefore, is not authorized to handle schedule II-IV controlled substances in New Hampshire, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked.

**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. BS8504703 issued to Malathy Sundaram, M.D. This Order is effective **[INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**Uttam Dhillon,**

*Acting Administrator.*

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