



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

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Tommy L. Louisville, M.D.; Decision and Order**

On June 28, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Tommy L. Louisville, M.D. (hereinafter, Registrant) of Lakeland, Florida. OSC, at 1. The OSC proposed the revocation of Registrant’s Certificate of Registration No. AL9587330. *Id.* It alleged that Registrant does “not have authority to handle controlled substances in Florida, the state in which . . . [he is] registered with the DEA.” *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that, “effective May 31, 2019, the [State of Florida] Board [of Medicine, (hereinafter FBM)] issued its Final Order whereby . . . [Registrant’s] license to practice medicine (License No. ME0037525) was suspended for a period of two years.” OSC, at 1-2. The OSC further alleged that “[a]s of the date of this . . . [OSC], the suspension of . . . [Registrant’s] Florida medical license has not been lifted” and “[a]s a result, . . . [he] currently lack[s] authority to handle controlled substances in Florida.” *Id.* at 2 (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)). The OSC concluded that “DEA must revoke . . . [Registrant’s registration] based upon . . . [his] lack of authority to handle controlled substances in the State of Florida.” OSC, 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 sworn Declaration, dated August 13, 2019, a DEA Diversion Investigator assigned to the Tampa District Office of the Miami Division (hereinafter, TDDI) stated that she attempted personal service of the OSC on Registrant at the request of a DI assigned to the Miami Division (hereinafter, MDDI). Government's Submission Regarding Service of Order to Show Cause Upon Legal Counsel of Respondent and Motion for Termination of Proceedings Based Upon Respondent's Untimely Hearing Request, dated Aug. 15, 2019, filed *In re Tommy L. Louisville, M.D.*, DEA Docket No. 2019-36 (hereinafter, Government Submission), Attachment 3 (hereinafter, TDDI Declaration), at 2. When Registrant was not at his residence, she reached him by telephone, explained that she had the OSC to deliver to him, and learned that he was in Miami. *Id.* at 3. When Registrant asked if DEA could serve the OSC on his attorney, TDDI responded that "this was a permissible arrangement if that was his preference." *Id.* According to the TDDI Declaration, Registrant "reiterated" that service on his attorney was his preference. *Id.* TDDI stated that she informed MDDI of Registrant's preference. *Id.*

In a sworn Declaration, dated August 13, 2019, MDDI stated that he left the OSC with Registrant's attorney on July 8, 2019. Government Submission, Attachment 4 (hereinafter, MDDI Declaration), at 2-3. MDDI stated that later the same day, the attorney sent him written confirmation of receipt of the OSC and of the forwarding of the OSC to Registrant. *Id.* at 3; *see also* Government Submission, Attachment 2, at 1 (attorney's written confirmation).

I agree with Administrative Law Judge Charles Wm. Dorman (hereinafter, ALJ) that service of the OSC was proper. Order Terminating Proceedings, dated Sept. 10, 2019 (hereinafter, OTP), at 6.

### **Hearing Request**

By letter, dated August 8, 2019, the same attorney who accepted service of the OSC for Registrant transmitted a hearing request (hereinafter, Hearing Request) to the Office of Administrative Law Judges (hereinafter, OALJ).<sup>1</sup> The Hearing Request was e-mailed and received on August 8, 2019. It was also sent Federal Express and stamped “received” by OALJ on August 13, 2019. Hearing Request, at 1.

According to the nine-page Hearing Request, Registrant acknowledged the suspension of his Florida medical license, advised that he appealed it, and stated that he “is in the process of filing a Motion to Stay the . . . [FBM] Final Order.” *Id.* “Accordingly,” the Hearing Request concludes, “DEA acted prematurely in issuing an Order to Show Cause in this matter.” *Id.* “We hope this information will be helpful to you in making your decision,” the last paragraph of the Hearing Request states, “and we look forward to a swift resolution of this issue.” *Id.* at 3.

I agree with the ALJ that the Hearing Request was not timely filed. OTP, at 7; *see also* 21 CFR 1301.43 (instructing that a hearing request shall be filed within 30 days after receipt of the OSC). I note that the Hearing Request did not acknowledge its untimeliness, let alone provide good cause for it. Accordingly, I conclude that the ALJ acted properly in terminating the proceeding.

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<sup>1</sup> Among the nine pages comprising the Hearing Request is Form DEA-12 signed by Registrant’s attorney showing his receipt of the OSC “on behalf of” Registrant on July 8, 2019. Hearing Request, at 7.

The Hearing Request states that “[a]ll notices to be sent pursuant to the proceeding in this matter should be addressed to” the attorney and, under “Contact Information for Proceeding,” provides a physical address. *Id.* at 2.

The Government forwarded its Request for Final Agency Action (hereinafter, RFAA), along with the evidentiary record, to my office on January 8, 2020. In its RFAA, the Government represented that “[a]ccording to the most recent information obtained by DEA, [Registrant’s Florida medical license] suspension remains in place and has not been lifted.” RFAA, at 5. Accordingly, the Government requested that Registrant’s registration be revoked. *Id.*

I issue this Decision and Order based on the record submitted by the Government in its RFAA and on the content of Docket No. 2019-36, which constitute 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. AL9587330 at the registered address of 1801 Crystal Lake Dr., Lakeland, FL 33801. RFAA, EX 2 (Facsimile of DEA Certificate of Registration Number AL9587330), at 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant’s registration expired on March 31, 2020.<sup>2</sup> *Id.*

### **The Status of Registrant’s State License and Registration**

The Government submitted evidence that the FBM reprimanded Registrant and suspended his medical license for two years on May 30, 2019. Government’s Motion for Summary Disposition and Argument in Support of Finding that Respondent Lacks State Authorization to Handle Controlled Substances, dated Aug. 23, 2019, filed *In re Tommy L.*

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<sup>2</sup> The fact that a Registrant’s registration expires during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 Fed. Reg. 68,474 (2019).

*Louisville, M.D.*, DEA Docket No. 2019-36, Attachment 2 (Final FBM Order on License No. ME0037525), at 2-3. The FBM’s action was effective May 31, 2019. *Id.* at 1, 3. The FBM Final Order also permanently prohibited Registrant from certifying patients for medical marijuana and from practicing telemedicine. *Id.* at 2.

According to Florida’s online records, of which I take official notice, Registrant’s medical license remains suspended.<sup>3</sup> Florida Department of Health MQA Search Services, Health Care Providers, [https://appsmqa.doh.state.fl.us/MQASearch Services/HealthCare Providers](https://appsmqa.doh.state.fl.us/MQASearch%20Services/HealthCare%20Providers) (last visited July 21, 2020). As such, I find that Registrant’s Florida medical license is suspended.

## **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, 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

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<sup>3</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, Applicant may 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 Applicant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response shall be filed and served by e-mail on the other party at the e-mail address the party submitted for receipt of communications related to this administrative proceeding, and on the Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 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 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, 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.*, 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, M.D.*, 43 Fed. Reg. at 27,617.

According to Florida statute, “A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, [or] dispense . . . a controlled substance.” FLA. STAT. ANN. § 893.05(1)(a) (West, current with chapters from the 2020 Second Regular Session of the 26th Legislature in effect through May 18, 2020). Further, “practitioner,” as

defined by Florida statute, includes “a physician licensed under chapter 458.”<sup>4</sup> FLA. STAT. ANN. § 893.02(23) (West, current with chapters from the 2020 Second Regular Session of the 26th Legislature in effect through May 18, 2020).

Here, the undisputed evidence in the record is that Registrant’s license to practice medicine is currently suspended. As such, he is not a “practitioner” as that term is defined by Florida law. Further, as already discussed, a physician must be a practitioner to dispense a controlled substance in Florida. Thus, since Registrant lacks authority to practice medicine in Florida, he is also not authorized to handle controlled substances in Florida. Accordingly, I will order that Registrant’s DEA registration be revoked.<sup>5</sup>

### **ORDER**

Pursuant to 28 CFR § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. AL9587330 issued to Tommy L. Louisville, M.D. This Order is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**Timothy J. Shea,**

*Acting Administrator.*

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<sup>4</sup> Chapter 458 regulates medical practice.

<sup>5</sup> I note the Hearing Request’s assertion that Registrant appealed the FBM suspension of his medical license. The pendency of such an appeal, however, is irrelevant to my decision. *See, e.g., James Alvin Chaney, M.D.*, 80 Fed. Reg. 57,391, 57,392 (2015) (calling the fact that a state’s suspension order remains subject to challenge “of no consequence” to the Agency’s decision to revoke).