



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

**[Docket No. 12-19]
RICHARD H. NG, D.O.
DECISION AND ORDER**

On December 23, 2011, Administrative Law Judge (ALJ) Timothy D. Wing issued the attached recommended decision. Neither party filed exceptions to the decision. Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

To make clear, DEA's longstanding rule that a practitioner may not hold a registration if he lacks authority under state law to dispense controlled substances and that the loss of such authority subjects a practitioner's registration to revocation is not based solely on 21 U.S.C. § 824(a)(3), which is a grant of authority to either suspend or revoke a registration "upon a finding" that a registrant "has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." As explained in numerous cases, DEA's rule derives primarily from two other provisions of the CSA, 21 U.S.C. § 802(21), which defines the term "practitioner," and 21 U.S.C. § 823(f), which sets forth the requirements for obtaining a registration as a practitioner.

More specifically, the CSA defines "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). Consistent with this definition, Congress, in setting

the requirements for obtaining a practitioner's registration, provided 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). Accordingly, because one cannot obtain a practitioner's registration unless one holds authority under state law to dispense controlled substances, and because where a registered practitioner's state authority has been revoked or suspended, the practitioner no longer meets the statutory definition of a practitioner, DEA has repeatedly held that the possession of authority to dispense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 both obtaining and maintaining a practitioner's registration. See ALJ at 4 (citing cases).¹ So too, "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 at which he may ultimately prevail." Kamal Tiwari, M.D., 76 FR 71604, 71606 (2011); see also Bourne Pharmacy, Inc., 72 FR 18273, 18274 (2007); Anne Lazar Thorn, 62 FR 12847 (1997). Accordingly, I adopt the ALJ's recommended order.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AN1255733, issued to Richard H. Ng, D.O., be, and it hereby is, revoked. I further order that any pending application of Richard H. Ng, D.O., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.²

¹ This citation is to the slip opinion as issued by the ALJ.

² The suspension order of the Illinois Department of Financial and Professional Regulation found that "the public

Dated:
May 4, 2012

Michele M. Leonhart
Administrator

interest, safety and welfare imperatively require emergency action” and that “Respondent’s actions constitute an imminent danger to the public.” Department of Fin. & Prof. Reg. v. Richard H. Ng, D.O., No. 2011-08881 (Ill. Dep’t of Fin. & Prof. Reg. Oct. 25, 2011) (order imposing temporary suspension). Accordingly, I likewise conclude that the public interest necessitates that this order be effective immediately. See 21 CFR 1316.67.

Jonathan P. Novak, Esq., for the Government
Glen D. Crick, Esq., Lillian Walanka, Esq.,
Michael D. Monico, Esq., Jacqueline Jacobson, Esq., for the Respondent

**RECOMMENDED RULING, FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. § 551 et seq., to determine whether a practitioner's Certificate of Registration (COR) with the Drug Enforcement Administration (DEA, Government or Agency) should be revoked. Without this registration, Richard H. Ng, D.O. (Respondent) would be unable to lawfully possess, prescribe, dispense or otherwise handle controlled substances.

I. PROCEDURAL POSTURE

On November 18, 2011, the Deputy Assistant Administrator, DEA, issued an Order to Show Cause (OSC) to Respondent. The OCS provided notice to Respondent of an opportunity to show cause as to why the DEA should not revoke Respondent's DEA COR AN1255733, pursuant to 21 U.S.C. §§ 824(a)(3)-(4) and 823(f), alleging that Respondent's continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. § 823(f), and that Respondent's medical license in the State of Illinois has been suspended.

On December 20, 2011, I issued an Order for Statements Addressing Respondent's State Authority and Order for Prehearing Statements (Order).

On December 20, 2011, the Government filed a Motion for Summary Disposition. On December 21, 2011, I stayed the proceedings pending resolution of the Government's motion. On December 22, 2011, Respondent filed a Motion in Opposition to DEA's Motion for Summary Disposition.

II. THE PARTIES' CONTENTIONS

A. The Government

In support of its Motion for Summary Disposition, the Government asserts that on October 25, 2011, the Illinois Department of Financial and Professional Regulation (IDFPR) executed an order summarily suspending Respondent's medical license, effective immediately. (Gov't Mot. Summ. Disp. at 1.) The Government contends that such state authority is a necessary condition for maintaining a DEA COR and, therefore, asks that I grant its motion and forward the matter to the Administrator.¹ (Id. at 1-2.) In support of its motion, the Government cites Agency precedent and attaches the Notice of Temporary Suspension and Order entered by the IDFPR as Exhibit A.

B. Respondent

Although Respondent concedes that his "Illinois Controlled Substances Registration is presently in suspended status," he argues that the suspension is temporary in nature pending an evidentiary hearing before the IDFPR. (Resp't Mot. in Opp'n at 1.) Respondent notes that an evidentiary hearing will be scheduled "in the very near future," and he believes that his license will be restored to active status. (Id. at 1-2.) In support of his motion, Respondent cites Stuart A. Bergman, M.D., 70 Fed. Reg. 33,193 (DEA 2005), and argues that the facts of this case similarly warrant a delay in ruling on the Government's motion until after the conclusion of the evidentiary hearing before the IDFPR. (Id. at 2.)

III. DISCUSSION

¹ The OSC provides Respondent with an opportunity to show cause "as to why DEA should not revoke" Respondent's DEA COR. (OSC at 1.) The OSC then factually alleges that Respondent's DEA COR "expired by its terms on October 31, 2011," and that Respondent filed a timely request to renew his registration. (Id.) The Government requests that I "forward the matter to the Administrator for a Final Order with a recommendation that Respondent's DEA application for registration be denied." (Gov't Mot. Summ. Disp. at 2.) For purposes of this Recommended Decision, I will treat the Government's request as one to revoke Respondent's DEA COR and deny any pending applications for renewal or modification.

At issue is whether Respondent may maintain his DEA COR given that Illinois, the State in which Respondent maintains his DEA COR, has suspended Respondent's Physician and Surgeon License and Controlled Substance License.

Under 21 U.S.C. § 824(a)(3), a practitioner's loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration. Accordingly, this Agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. See Scott Sandarg, D.M.D., 74 Fed. Reg. 17,528 (DEA 2009); David W. Wang, M.D., 72 Fed. Reg. 54,297 (DEA 2007); Sheran Arden Yeates, M.D., 71 Fed. Reg. 39,130 (DEA 2006); Dominick A. Ricci, M.D., 58 Fed. Reg. 51,104 (DEA 1993); Bobby Watts M.D., 53 Fed. Reg. 11,919 (DEA 1988).

Summary disposition in a DEA revocation case is warranted even if the period of suspension of a respondent's state medical license is temporary, or even if there is the potential for reinstatement of state authority because "revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement." Bergman, 70 Fed. Reg. at 33,193; Roger A. Rodriguez, M.D., 70 Fed. Reg. 33,206 (DEA 2005).

It is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. See Layfe Robert Anthony, M.D., 67 Fed. Reg. 35,582 (DEA 2002); Michael G. Dolin, M.D., 65 Fed. Reg. 5661 (DEA 2000); see also Philip E. Kirk, M.D., 48 Fed. Reg. 32,887 (DEA 1983), aff'd sub nom. Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984). Accord Puerto Rico Aqueduct & Sewer

Auth. v. EPA, 35 F.3d 600, 605 (1st Cir. 1994).

In the instant case, the Government asserts, and Respondent concedes, that Respondent's Illinois license to practice medicine and handle controlled substances is suspended. This allegation is confirmed by Government Exhibit A. I therefore find there is no genuine dispute as to any material fact, and that substantial evidence shows that Respondent is presently without state authority to handle controlled substances in Illinois. I decline to delay ruling on the Government's motion, particularly in light of the fact that Respondent does not appear to have a scheduled hearing date before the IDFPR. Compare Bergman, 70 Fed. Reg. at 33,193 (noting that the ALJ delayed ruling on the Government's motion where the respondent had an evidentiary hearing scheduled before the state board). Because "DEA does not have statutory authority under the Controlled Substances Act to maintain a registration if the registrant is without state authority to handle controlled substances in the state in which he practices," Sheran Arden Yeates, M.D., 71 Fed. Reg. 39,130, 39,131 (DEA 2006), I conclude that summary disposition is appropriate. It is therefore

ORDERED that the hearing in this case, scheduled to commence on March 6, 2012, is hereby **CANCELLED**; and it is further

ORDERED that all proceedings before the undersigned are **STAYED** pending the Agency's issuance of a final order.

RECOMMENDED DECISION

I grant the Government's Motion for Summary Disposition and recommend that Respondent's DEA COR AN1255733 be revoked and any pending applications for renewal or modification be denied.²

Dated: December 23, 2011

s/Timothy D. Wing
Administrative Law Judge

[FR Doc. 2012-12121 Filed 05/17/2012 at 8:45 am; Publication Date: 05/18/2012]

² Notably, Respondent requests that I recommend the immediate suspension of his registration, rather than revocation, citing 21 U.S.C. § 824(a)(4). (Resp't Mot. in Opp'n at 3.)