



BILLING CODE: 4410-09-P

**UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

**DONALD W. LAMOUREAUX, M.D.
DECISION AND ORDER**

On September 16, 2016, the Assistant Administrator, Division of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Donald W. Lamoureaux, M.D. (Registrant), of Horseshoe Bend, Arkansas. The Show Cause Order proposed the revocation of his DEA Certificate of Registration, pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a practitioner, on the ground that he “do[es] not have authority to handle controlled substances in Arkansas, the [S]tate in which he is registered with the DEA.” Show Cause Order, at 1.

As grounds for the proceeding, the Show Cause Order alleged that Registrant is registered with the DEA as a practitioner authorized to dispense controlled substances in schedules II through V, pursuant to Certificate of Registration No. FL2413297, at the registered address of 707 Third Street, Horseshoe Bend, Arkansas. *Id.* The Order also alleged that his registration does not expire until March 31, 2017. *Id.*

The Show Cause Order then alleged that Registrant’s Arkansas medical license expired on April 30, 2015, and that he is currently without authority to dispense controlled substances in Arkansas, the State in which he is registered with the DEA. *Id.* at 1-2. Based upon Registrant’s lack of authority to handle controlled substances in the State of Arkansas, the Government asserts that his registration is subject to revocation. *Id.* at 2 (*citing* 21 U.S.C. §§ 802(21), 823(f) and 824(a)(3)).

The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for electing either option, and the consequence for failing to elect either option. *Id.* at 2 (*citing* 21 CFR 1301.43). In addition, the Order notified Registrant of his right to submit a Corrective Action Plan. *Id.* at 2-3.

On September 19, 2016, the Show Cause Order was sent via certified mail to Registrant at his current residence, the Federal Correctional Institution, Butner, North Carolina, 27509. Government Request for Final Agency Action (RFAA), Appendix 4, Declaration, at 1. As evidenced by a copy of the signed return receipt card, service was accomplished on September 22, 2016. *Id.*; *See also* Appendix 4, at 3-4.

On November 1, 2016, the Government forwarded to my Office a Request for Final Agency Action and an evidentiary record. In its Request, the Government represents that it has not received a request for a hearing or any other reply from Registrant. RFAA, at 2. The Government thus seeks the revocation of Registrant's Registration on the ground that he lacks state authority. *Id.* at 4.

Based upon the Government's representation and the record, I find that more than 30 days have now passed since the date of service of the Show Cause Order, and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

FINDINGS

Respondent is the holder of practitioner's registration FL2413297, pursuant to which he is authorized to dispense controlled substances in schedules II through V at the registered address of 707 Third Street, Horseshoe Bend, Arkansas; this registration does not expire until March 31, 2017. Declaration of the Diversion Investigator (DI), at 1. According to the DI, Registrant's license to practice medicine in Arkansas lapsed on April 30, 2015, and he currently has no authority to practice medicine in that State. *Id.* at 1.

As further support for the action, the DI obtained, and the Government submitted, a license verification from the Arkansas State Medical Board along with a Certification from the Board's Executive Secretary that the license verification was true and correct as of September 15, 2016. Appendix 2, at 1; Appendix 3, at 1. This document shows that as of September 14, 2016, the Board listed the expiration date of Registrant's medical license as "April 30, 2015" and the status of his license as "Inactive"; it also includes the notation: "License Category: Felony Conviction." Appendix 3, at 2. Also, the document contains the following Board History notes, which include that:

1. On February 9, 2015, the Board issued an Emergency Order of Suspension to Registrant;
2. On April 10, 2015, the Board voted "to continue the disciplinary hearing until after [Registrant's] [] trial date";
3. On July 2, 2015, the Board voted "to block [Registrant's] access to renew his license should he wish to renew"; and
4. On December 3, 2015, Registrant's "medical license lapsed subsequent to the felony criminal conviction."

Appendix 3, at 4-5. As Registrant did not respond to the Show Cause Order, let alone submit any evidence to show that his state license has been reinstated, I find that he does not possess

authority to dispense controlled substances under the laws of Arkansas, the State in which he is registered with the Agency.

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 Title 21, “upon a finding that the registrant . . . has had his State license . . . 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 repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which he engages in professional practice is a fundamental condition for obtaining and maintaining a registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”).

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 Act, 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 engages in professional practice. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR at 27617.

Accordingly, because Registrant currently lacks authority to dispense controlled substances in Arkansas, the State in which he holds his DEA registration, I will order that his registration be revoked.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a)(3), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FL2413297 issued to Donald W. Lamoureux, M.D., be, and it hereby is, revoked. I further order that any pending application of Donald W. Lamoureux, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective [INSERT DATE THIRTY DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Date: January 17, 2017

Chuck Rosenberg
Acting Administrator

[FR Doc. 2017-01688 Filed: 1/24/2017 8:45 am; Publication Date: 1/25/2017]