



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

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

**Docket No. 16-34  
FRANK D. LI, M.D.  
DECISION AND ORDER**

On August 22, 2016, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Frank D. Li, M.D. (hereinafter, Respondent), of Tukwila, Washington and Beverly Hills, California. The Show Cause Order proposed the revocation of four separate Certificates of Registration held by Respondent (three of which are for locations in Washington State and one which is for a location in California), pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a practitioner, on the ground that he does hold authority to dispense controlled substances in these States. *Id.* at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent holds three registrations in Washington State: 1) No. FL0680947, for the location of 1536 N 115th St., Suite 310, Seattle, which does not expire until March 31, 2017; 2) No. FL1688235, for the location of 801 SW 16th St., Suite 121, Renton, which does not expire until March 31, 2018; and 3) No. FL2601335, for the location of 3624 Colby Ave., Suite B, Everett, which does not expire until March 31, 2017. Show Cause Order, at 2. The Show Cause Order also alleged that Respondent holds registration No. BL7067261, for the location of 8641 Wilshire Blvd., Suite 200, Beverly Hills, California, and that this registration does not expire until March 31, 2019. *Id.*

As for the substantive basis of the proposed action, the Show Cause Order alleged that the State of Washington, Department of Health, issued an *ex parte* order, which suspended Respondent's authority to practice medicine and surgery in that State effective on July 14, 2016.

*Id.* at 2. The Show Cause Order also alleged that the Medical Board of California issued an order which suspended his authority to practice medicine in that State effective on August 5, 2016. *Id.* The Show Cause Order thus alleged that Respondent is currently without authority to handle controlled substances in Washington and California, the States in which he is registered with the Agency, and subjecting his DEA registrations to revocation.<sup>1</sup> *Id.* at 2 (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

On September 20, 2016, Respondent, through his counsel, requested a hearing on the allegations. Resp. Hrng. Req. The matter was then placed on the docket of the Office of Administrative Law Judges, and assigned to ALJ Charles Wm. Dorman.

On September 21, 2016, the ALJ issued an order directing the Government to submit evidence supporting the allegation and an accompanying dispositive motion by October 5, 2016. Briefing Schedule For Lack Of State Authority Allegations, at 1. The ALJ also ordered that if the Government filed such a motion, Respondent was to file his reply by October 12, 2016. *Id.*

On September 22, 2016, the Government filed its Motion for Summary Disposition. *See* Gov. Mot. for Summ. Disp. As support for its Motion, the Government provided a copy of Respondent's registration information for each registration in Washington State and California, an affidavit from a Diversion Investigator (DI), and certified copies of the Suspension Orders the DI obtained from the Washington Department of Health, Medical Quality Assurance Commission (MQAC) and the Medical Board of Californian (MBC). *Id.*, at Appendices A – G. Based on the suspensions of his medical licenses by the MQAC and the MBC, the Government

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<sup>1</sup> The Show Cause Order also notified Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, and the procedure for electing either option. Show Cause Order, at 2-3 (citing 21 CFR 1301.43). It also notified Respondent of his right to submit a corrective action plan. *See* 21 U.S.C. § 824(c)(2)(C).

moved for summary disposition and a recommendation by the ALJ that Respondent's DEA certificates of registration as a practitioner be revoked. Govt. Mot., at 4.

On October 12, 2016, Respondent filed his Reply. Respondent's Reply, at 1. While Respondent admitted that his licenses to practice medicine in Washington and California had been suspended, he stated that "he has challenged the Boards' suspension and has every confidence that the current suspensions will be lifted and [that he] will have his medical license restored." *Id.* at 2. Respondent further stated that he has "provided a detailed rebuttal to the Boards' unfounded allegations" and provided a copy of this document (which was his answer in the MQAC proceeding). Resp's Reply, at 1-2; *see also* Resp's. Appendix A.

Respondent also argued that the authority contained in 21 U.S.C. § 824(a)(3) is discretionary with respect to a practitioner's registration and that "[t]here are numerous factors that the [Agency] should consider prior to summarily revoking [his] [r]egistration." Resp's Reply, at 3 (citing *Bio-Diagnostic International*, 78 FR 39327 (2013)). And he maintains that the Agency is required to consider that he is appealing the state suspensions and that the DEA proceeding should be resolved "through a suspension . . . and not a full revocation . . . given the many serious shortcomings that have been identified in the Boards' actions." *Id.* at 3-4.

On October 20, 2016, the ALJ granted the Government's motion and recommended that Respondent's registrations be revoked. Order Granting Summary Disposition And Recommended Rulings, Findings Of Fact, Conclusions Of Law, And Decision, at 5. The ALJ noted various authorities holding that a practitioner must possess state authority in order to maintain a DEA registration. *Id.* at 3 (citations omitted). The ALJ then rejected Respondent's contention that *Bio-Diagnostic International* requires the Agency to consider various factors prior to ordering the revocation of his registration, noting that *Bio-Diagnostic* did not involve a

practitioner, but rather a list I chemical distributor, and that the Agency has made clear “that both the [CSA’s] ‘definition of the term “practitioner” and the registration provision applicable to practitioners make clear that a practitioner must be currently authorized to dispense controlled substances by the State in which he practices in order to obtain and maintain a registration.’” R.D. 4 (quoting *Rezik A. Saqer*, 81 FR 22122, 22125 (2016)). The ALJ then explained that even though Respondent has not yet been provided with a hearing to challenge the MQAC’s action, revocation of his DEA registration was still warranted based on his lack of state authority. *Id.* (citing cases). Because “the disposition of the Government’s Motion depends only on whether the Respondent possess states authority to handle controlled substances,” and “it is undisputed that [he] lacks state authorization to handle controlled substances in” both the States of Washington and California, the ALJ granted the Government’s motion and recommended that his registrations be revoked. *Id.* at 4-5.

Neither party filed exceptions to the ALJ’s Recommended Decision. Thereafter, the record was forwarded to my Office for Final Agency Action. Having considered the record and the Recommended Decision, I adopt the ALJ’s Recommended Decision. I make the following factual findings.

## **FINDINGS**

Respondent holds four separate certificates of registration, pursuant to which he is authorized to dispense controlled substances in schedules II-V as a practitioner:

1. Certificate of Registration FL0680947, at the registered address of 1536 N 115th St., Suite 310, Seattle, Washington, which does not expire until March 31, 2017.
2. Certificate of Registration FL1688235, at the registered address of 801 SW 16th St., Suite 121, Renton, Washington, which does not expire until March 31, 2018.
3. Certificate of Registration FL2601335, at the registered address of 3624 Colby Ave., suite B, Everett, Washington, which does not expire until March 31, 2017.

4. Certificate of Registration BL7067261, at the registered address of 8641 Wilshire Blvd., Suite 200, Beverly Hills, California, which does not expire until March 31, 2019.

Govt. Mot., at Appendices A-D.

On July 14, 2016, the State of Washington, Department of Health, MQAC, issued an *ex parte* order which summarily suspended Respondent's physician's and surgeon's license; the order alleged that Respondent violated Washington statutes and regulations regarding professional conduct and pain management in his treatment of patients at the Seattle Pain Center clinics he operated. Govt. Mot., at Appendix E, 1-2. The MQAC reviewed a statement of charges and supporting evidence submitted by an investigator and physician, and concluded that its factual findings "establish an immediate danger to the public health, safety or welfare," and that "summary suspension of the Respondent's medical license is necessary and adequately addresses the danger to the public health, safety or welfare." *Id.* at 1-4. According to the online records of the Washington Department of Health, of which I take official notice,<sup>2</sup> Respondent's Washington physician's and surgeon's license remains suspended as of the date of this Decision and Order. See <https://fortress.wa.gov/doh/providercredentialsearch/SearchCriteria.aspx>.

On August 5, 2016 the Medical Board of California issued a Notice of Out of State Suspension Order to Respondent, summarily suspending his California medical license on the basis of the suspension ordered by the MQAC. Govt. Mot. Appendix F, at 1. According to the online records of the MBC, Respondent's California Physician's and Surgeon's license remains

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<sup>2</sup>In accordance with the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. § 556(e); see also 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within 15 calendar days of the date of service of this Order which shall commence on the date this Order is mailed.

suspended as of the date of this Decision and Order. *See*  
<https://www.breeze.ca.gov/datamart/detailsCADCA.do>.

## **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 (CSA), “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.” Moreover, DEA has 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*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton*, 43 FR 27616 (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 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 practices

medicine. *See, e.g., Hooper*, 76 FR at 71371-72; *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 27616.

In his reply to the Government's Motion for Summary Disposition, Respondent argued that the authority contained in 21 U.S.C. § 824(a)(3) is discretionary with respect to a practitioner's registration and that "[t]here are numerous factors that the [Agency] should consider prior to summarily revoking [his] [r]egistration." Resp's Reply, at 3 (citing *Bio-Diagnostic*, 78 FR 39327). He maintains that the Agency is required to consider that he is appealing the state suspensions and that the DEA proceeding should be resolved "through a suspension . . . and not a full revocation . . . given the many serious shortcomings that have been identified in the Boards' actions." *Id.* at 3-4.

In *Hooper v. Holder*, 481 Fed. Appx. 826 (4th Cir. 2012), a practitioner challenged the Agency's order which revoked his registration after his state license was suspended for a one-year period. *Id.* at 826. Dr. Hooper argued that the revocation of his registration was "arbitrary and capricious" because the Administrator's "decision . . . failed to recognize the discretion under § 824(a) to revoke or suspend a registration and that it was impermissible for the [Administrator] to conclude that the CSA requires revocation of a practitioner's DEA registration when the practitioner's State license is suspended." *Id.* at 828. He further argued that the Agency's decision had "read[] the suspension option [in § 824(a)] out of the statute." *Id.* (quoting Pet. Br. 11).

The court of appeals rejected Hooper's contentions. While acknowledging that "[s]ection 824(a) does state that the [Agency] may 'suspend or revoke' a registration," the court noted that "the statute provides for this sanction [suspension] in five different circumstances, only one of

which is loss of a State license.” *Id.* Continuing, the court explained that “[b]ecause § 823(f) and § 802(21) make clear that a practitioner’s registration is dependent upon the practitioner having state authority to dispense controlled substances, the [Agency’s] decision to construe § 824(a)(3) as mandating revocation upon suspension of a state license is not an unreasonable interpretation of the CSA.” *Id.* The court further explained that the Agency’s decision did not “read[] the suspension option” out of the statute, because that option may still be available for the other circumstances enumerated in § 824(a). *Id.* See also *Maynard v. DEA*, 117 Fed.Appx. 941 (5th Cir. 2004) (rejecting physician’s contention that DEA could not revoke his registration based on summary suspension of state medical license).

As for Respondent’s contention that *Bio-Diagnostic* requires that the Agency consider various factors before revoking his registration, that case involved a list I chemical distributor and not a practitioner. See 78 FR at 39327, 39330. Unlike a practitioner, which the CSA defines, in relevant part, as “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), neither the definition of a distributor nor the registration provision applicable to a list I chemical distributor explicitly requires that an applicant/registrant holds a state license authorizing the applicant/registrant to engage in such activity. See *id.* § 802(11) (“The term ‘distribute’ means to deliver . . . a controlled substance or a listed chemical. The term ‘distributor’ means a person who so delivers a controlled substance or a listed chemical.”); *id.* § 823(h) (“The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.”).<sup>3</sup> See also

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<sup>3</sup> This is not to say that the Agency cannot deny an application or revoke a registration where an applicant/registrant does not possess authority under state law to engage in the distribution of a list I chemical. What it is to say is that

78 FR at 39330. Thus, as the ALJ recognized, *Bio-Diagnostic* provides no comfort to Respondent.

Finally, Respondent contends that revocation is not warranted “given the many serious shortcomings that have been identified in the Boards’ actions.” Resp. Reply, at 4. DEA, however, has no authority to adjudicate the validity of the decisions of state boards, which are deemed to be presumptively lawful for the purpose of the Controlled Substances Act. *See Kamal Tiwari, et al.*, 76 FR 71604, 71607 (2011) (quoting *George S. Heath*, 51 FR 26610 (1986) (“DEA accepts as valid and lawful the action of a state regulatory board unless that action is overturned by a state court or otherwise pursuant to state law.”)). Rather, Respondent is required to litigate his claims challenging the validity of the suspensions in the administrative and judicial fora provided by the States of Washington and California. *See Tiwari*, 76 FR at 71607 (quoting *Heath*, 51 FR at 26610); *Zhiwei Lin*, 77 FR 18862, 18864 (2012); *Sunil Bhasin*, 72 FR 5082, 5083 (2007).

Here, there is no dispute that by virtue of the suspensions ordered by the MQAC and MBC, Respondent is currently without authority to dispense controlled substances in the States of Washington and California. Because he no longer satisfies the statutory requirement of holding authority to dispense controlled substances under the laws of the States in which he is registered, he is not a practitioner within the meaning of the Act and it is of no consequence that he has yet to be afforded a hearing by the MQAC (or MBC) to challenge the suspensions. *See Saqer*, 81 FR at 22126; *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Accordingly, he is not entitled to maintain his DEA registrations in Washington and California and I will therefore order that his registrations be revoked.

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the loss of such authority does not automatically require the denial or revocation of a registration. *See Bio-Diagnostic*, 78 FR at 39331.

## **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificates of Registration FL0680947, FL1688235, FL2601335, and BL7067261, issued to Frank D. Li, M.D., be, and they hereby are, revoked. Pursuant to the authority vested in me by 21 U.S.C. § 823(f), as well as 28 CFR 0.100(b), I further order that any pending application of Frank D. Li, M.D., to renew or modify any of the aforesaid registrations, be, and it hereby is, denied. This Order is effective immediately.<sup>4</sup>

Date: February 13<sup>th</sup>, 2017

Chuck Rosenberg  
Acting Administrator

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<sup>4</sup> For the same reasons that the MQAC summarily suspended Respondent's medical license, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

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