



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**[Docket No. 17-28]
Yoon H. Choi, M.D.; Decision and Order**

On April 4, 2017, the Assistant Administrator, Division of Diversion Control, issued an Order to Show Cause to Yoon H. Choi, M.D. (Respondent), of Brockton, Massachusetts. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration as a practitioner, on the ground that he does not have authority to dispense controlled substances in Massachusetts, the State in which he is registered with the Agency. Show Cause Order, at 1.

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent holds DEA Certificate of Registration No. BC6966381, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, at the registered address of Steward Medical Group, One Pearl Street, Suite 2200, Brockton, Massachusetts. *Id.* The Show Cause Order alleged that this registration does not expire until August 31, 2018. *Id.*

As to the substantive ground for the proceeding, the Show Cause Order alleged that "[o]n January 5, 2017, the Commonwealth of Massachusetts Board of Registration in Medicine indefinitely suspended [his] medical license" and that "[t]his order remains in effect." *Id.* The Order thus alleged that Respondent is "without authority to handle controlled substances in . . . Massachusetts, the [S]tate in which [he is] registered," that he is "required to possess authority from a [S]tate in order to obtain or retain a DEA registration," and that the Agency "must revoke [his registration] based upon [his] lack of authority to handle controlled substances in . . . Massachusetts in violation of 21 U.S.C. §§ 823(f) and 824(a)(3)."¹ *Id.* at 1-2.

¹ The Government's allegation erroneously suggests that Respondent's mere holding of a registration when his state authority had been suspended constitutes a violation of these provisions. These provisions are, however, grants of

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, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* at 2. The Show Cause Order also notified Respondent of his right to submit a Corrective Action Plan under 21 U.S.C. § 824(c)(2)(C). *Id.* at 2-3.

On May 8, 2017, Respondent, through his counsel, timely requested a hearing.² Resp.'s Hearing Request, at 1. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to ALJ Charles Wm. Dorman, who issued a scheduling order the following day. Order Granting Summary Disposition, at 2. Under the ALJ's order, the Government was required to file any motion for summary disposition by May 16, 2017 and Respondent was required to file its opposition to the motion by "2:00 p.m. EDT on May 26, 2017." *Id.*

On May 16, 2017, the Government filed its motion for summary disposition. Therein, the Government maintained that it is undisputed that Respondent lacks authority to dispense controlled substances in Massachusetts, the State in which he is registered, and that therefore, he "no longer meets the statutory definition of a practitioner." Mot. for Summ. Disp., at 3-4. As support for the motion, the Government attached a copy of the Final Decision and Order of the Commonwealth of Massachusetts Board of Registration in Medicine, which indefinitely suspended Respondent's medical license, effective January 5, 2017. The Government also attached a printout from the Board's website which it obtained on May 12, 2017 and which

authority to the Attorney General to grant an application or revoke an existing registration. While these provisions (along with 21 U.S.C. § 802(21)) manifest that a practitioner must hold state authority to obtain or maintain a registration, a practitioner does not violate the CSA simply by continuing to hold a registration after a State suspends or revokes his medical license. If, however, a practitioner prescribed controlled substances without holding state authority, he would violate a DEA regulation. *See* 21 CFR 1306.03(a)(1).

² In his hearing request, Respondent also noted that he had filed a Corrective Action Plan with the Assistant Administrator, Diversion Control Division. Hearing Request, at 1 n.1.

shows that Respondent's medical license was still suspended, as well as a copy of Respondent's Corrective Action Plan and his Certificate of Registration.

Respondent did not file any pleading in response to the Government's motion. Order Granting Summary Disposition, at 2. Accordingly, on June 5, 2017, the ALJ granted the Government's motion, finding it undisputed that Respondent's state "medical license is currently suspended" and that he "lacks state authorization to handle controlled substances in Massachusetts," the State in which he is registered. *Id.* at 5. Because "DEA precedent requires that the Respondent cannot maintain a DEA registration for any location in that [S]tate," the ALJ recommended that I revoke his registration. *Id.* at 5-6.

Neither party filed exceptions to the ALJ's Order. Thereafter, on July 11, 2017, the ALJ forwarded the record to my Office for Final Agency Action.

Upon review of the record, the former Acting Administrator noted that while Respondent had filed a Corrective Action Plan the record contained no evidence as to the Assistant Administrator's decision as to the adequacy of Respondent's Corrective Action Plan. Accordingly, on September 22, 2017, the former Acting Administrator issued an Order directing the Government to notify my Office of the status of Respondent's Corrective Action Plan, and in the event the Assistant Administrator had issued a decision on review of the Plan, to provide a copy of that decision. The former Acting Administrator provided Respondent with the right to reply to the Government's submission no later than five business days from the date of receipt of the Government's submission.

On September 25, 2017, the Government submitted a copy of the former Assistant Administrator's letter of June 12, 2017 rejecting Respondent's Corrective Action Plan.³ The

³ A copy of this letter does not appear to have been previously provided to the ALJ.

former Assistant Administrator also explained that “there [was] no potential modification of [Respondent’s Plan] that could or would alter my decision.” Letter from Assistant Administrator, Diversion Control Division, to Respondent’s Counsel (June 12, 2017). Respondent did not file a response to the Government’s submission.

Having considered the record in its entirety, I adopt the ALJ’s factual finding that Respondent’s Massachusetts medical license has been suspended, as well as his legal conclusion that he currently lacks authority to dispense controlled substances in Massachusetts and thus, he “cannot maintain” his DEA registration. I also adopt the ALJ’s recommended Order that I revoke his registration. I make the following factual findings.

FINDINGS

Respondent is the holder of DEA Certificate of Registration No. BC6966381, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of Steward Medical Group Brockton, One Pearl Street Suite 2200, Brockton, MA 02301. GX 1. This registration does not expire until August 31, 2018.

Respondent is also the holder of Medical License No. 206555 issued by the Commonwealth of Massachusetts Board of Registration in Medicine. GX 2, at Attachment B. However, on January 5, 2017, the Board issued a Final Decision and Order which “indefinitely suspended” his medical license. GX 2, at Attachment A. According to the Board’s Physician

Profile web page of which I take Official Notice, *see* 5 U.S.C. § 556(e),⁴ the suspension remains in effect as of the date of this Decision and Order.⁵

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, “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 held repeatedly 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).

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 physician possess state authority in order to be deemed a practitioner under the Act, DEA has held that revocation of a

⁴ Respondent may refute this finding by filing a properly supported motion for reconsideration with the Office of the Administrator within 10 business days of the date of this Decision and Order.

⁵ While the Board’s Order provides that “Respondent may petition to stay [the] suspension upon successful completion of a clinical skills assessment by a board-approved entity and entry into a Probation Agreement,” the suspension remains in effect as of the date of this Order.

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., 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); *see also Hooper v. Holder*, 481 Fed. Appx. at 828.

As a consequence of the Board's Final Decision and Order, Respondent is not currently authorized to dispense controlled substances in Massachusetts, the State in which he is registered. Because the CSA makes clear 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, it is of no consequence that the Board's Order provided that he may petition to stay the suspension upon meeting certain conditions. *Cf. Hooper v. Holder*, 481 F. App'x at 828 (upholding revocation of a physician's registration as based on a reasonable interpretation of the CSA, notwithstanding that the physician's medical license was subject to a suspension of known duration); *see also James L. Hooper*, 76 FR 71371, 71371-72 (2011).⁶ As of this date, Respondent is not currently authorized to dispense controlled substances in Massachusetts, and therefore, he is not entitled to maintain his registration in that State. Accordingly, I will order that his registration be revoked and that any pending application to renew his registration, or for any other registration in the Commonwealth of Massachusetts be denied.

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 Certificate of Registration No. BC6966381 issued to Yoon Choi, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. § 823(f), I further

⁶ By contrast, Respondent's suspension is of unknown duration.

order that any application of Yoon Choi, M.D., to renew or modify this registration, or for any other registration in the Commonwealth of Massachusetts, be, and it hereby is, denied. This Order is effective [INSERT DATE THIRTY DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: October 17, 2017.

Robert W. Patterson,
Acting Administrator.

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