



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

**BHARANIDHARAN PADMANABHAN, M.D., Ph.D.
DECISION AND ORDER**

On October 20, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Bharanidharan Padmanabhan, M.D., Ph.D. (hereinafter, Respondent), of Brookline, Massachusetts. Order to Show Cause (hereinafter, OSC), at 1. The Show Cause Order proposes the revocation of Respondent’s Certificate of Registration on the ground that he does “not have authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which . . . [he is] registered with the DEA.” *Id.* at 1 (citing 21 U.S.C. §§ 823(f) and 824(a)(3)).

Regarding jurisdiction, the Show Cause Order alleges that Respondent holds DEA Certificate of Registration No. BP7993290 at the registered address of 30 Gardner Road #6A, Brookline, Massachusetts 02445. OSC, at 1. This registration authorizes Respondent to dispense controlled substances in schedules II through V as a practitioner. The Show Cause Order alleges that this registration expires on March 31, 2020. *Id.*

The substantive ground for the proceeding, as alleged in the Show Cause Order, is that Respondent is “without authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which . . . [he is] registered . . . with the DEA.” *Id.* at 1. Specifically, the Show Cause Order alleges that the Massachusetts “Board of Registration in Medicine Indefinitely Suspended . . . [Respondent’s] medical license” on May 11, 2017, and that this indefinite suspension “became effective on July 11, 2017 and remains in effect.” *Id.*

The Show Cause Order notifies 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 procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Show Cause Order also notifies Respondent of the opportunity to submit a corrective action plan. OSC, at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

By letter dated November 13, 2017, Respondent requested a hearing. Hearing Request, at 1. According to the Hearing Request, Respondent “wish[es] to show why . . . [he] should retain” Certificate of Registration No. BP7993290. *Id.* Respondent’s Hearing Request refers to the “alleged” action of the Massachusetts Board of Registration in Medicine (hereinafter, Massachusetts Board) “indefinitely suspending . . . [his] license” as “corrupt and legally void,” and states his “position [to be] that DEA must hold all action in abeyance till the federal courts have ruled on the unlawfulness of the racketeers’ action in May 2017.” *Id.* at 2.¹

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Mark M. Dowd (hereinafter, ALJ). I adopt the following statement of procedural history from the ALJ’s Order Denying The Respo[n]dent’s Request for Abeyance, Granting the Government’s Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated January 26, 2018 (hereinafter, R.D.).

On November 20, 2017, this tribunal ordered the Government to file evidence to support the allegations that the Respondent lacked state authority to handle controlled substances.

On December 4, 2017, the Government filed a Motion for Summary Disposition The Government submitted evidence that the Commonwealth of

¹ There is no corrective action plan, or indication that Respondent submitted a corrective action plan, in the record before me.

Massachusetts Board of Registration in Medicine indefinitely suspended the Respondent's medical license on May 11, 2017, in the form of the Final Decision and Order from Commonwealth of Massachusetts Board of Registration Gov't Mot. at Ex. 2, a. The Suspension was stayed for sixty days [a period which has since expired] to allow the Respondent to enter into a probation agreement with the Board and to comply with a series of conditions set out within the Board's Final Decision and Order of Suspension. *Id.* The Government also offered the Declaration of . . . the Lead Diversion Investigator (DI . . .) in the instant investigation, who swore under oath that the Respondent's Massachusetts Medical License remained suspended, as of December 1, 2017. Gov't Mot. at Ex. 2. On the basis of the Respondent's suspended medical license, the Government argued that the Respondent no longer meets the definition of "practi[ti]oner" under the Controlled Substances Act, 21 U.S.C. § 802(21), and under 21 U.S.C. § 823(f), which "sets forth the requirements for obtaining a registration as a practi[ti]oner." Gov't Mot. at 4. As such, the Government argued that Respondent's . . . [registration] should be revoked. *Id.* at 6.

The Respondent . . . timely filed his Opposition to the Government's Submission of Evidence and Request for Summary Disposition on December 15, 2017. In his reply, the Respondent avers three claims. First, "Respondent does indeed possess a Massachusetts medical license."³ [Resp't Reply at 1.] [n.3: The Respondent argues that Merriam-Webster's definition of the term "possess" is controlling and that the Government "consciously mischaracterize[ed] the Respondent's Request for a Hearing," as the Respondent's medical license [] is "still in his possession It still exists. It is owned." Resp't Reply at 1.] Second, that he has not lost state authority to handle controlled substances because his Massachusetts Controlled Substance Registration Certificate (Massachusetts CSR) issued by the Massachusetts Department of Health is still in effect, thus, he argues, there are factual and legal issues in dispute. Resp't Reply at 3-5. Third, this tribunal should not rely on [the] DI . . . affidavit as it "aims to conceal facts and falsely present the party line" and [the] DI . . . has "intentionally, deliberately, consciously [. . .] and in bad faith [. . .] made a concerted effort to mislead the ALJ in order to assist the market actors [to] exclude a competitor from the medical marketplace." *Id.* at 9-10. Thus, the Respondent argued that "[g]ranted the Government's request for a summary taking, euphemistically called here a 'disposition,' would be inequitable, contrary to law and would reward renting of state powers." *Id.* at 10. As such, the Respondent requested this tribunal deny the Government's request for summary disposition and dismiss the instant case. *Id.* at 11.

On December 19, 2017, this tribunal ordered the Government to respond to the Respondent's reply opposing the Government's submission of evidence and summary disposition request. The Order directed the Government to file a copy of the Respondent's Massachusetts CSR Certificate and evidence of its present status, as well as any evidence of official state action that may have been taken

regarding the Registration in 2017. Moreover, the Government was ordered to brief relevant Massachusetts case law, statutory law, and regulations, as well as relevant federal case law, statutory law and regulations.

The Government filed its response in further support of its request for summary disposition on January 5, 2018. The Government argued that “the formal status of Respondent’s Massachusetts CSR Certificate is irrelevant to these proceedings, as any Massachusetts CSR Certificate which Respondent possessed became void as a matter of law the moment that Respondent’s medical license was suspended” pursuant to 105 Code of Massachusetts Regulations § 700.120 and Massachusetts General Laws Ch. 94C §§ 7(f), 9(a). Gov’t Resp. Mot. at 4. On January 26, 2018, the Government filed a copy of Respondent’s Massachusetts CSR Certificate. Gov’t Mot for Leave, at . . . [5]. The Government does not “dispute Respondent’s assertion that he is in [physical] possession of a Massachusetts CSR Certificate and that the Massachusetts Department of Public Health has not yet taken action to revoke his certificate.” . . . [Gov’t Resp. Mot. at 5.] Rather, the Government argues that “it is irrelevant whether formal action has been taken to revoke Respondent’s Massachusetts CSR Certificate as it is already void . . . [for] the pendency of Respondent’s [medical license] suspension.” *Id.* at 6. Thus, while the Respondent does “possess a Massachusetts CSR Certificate, [] he does not possess authority to handle controlled substances.” *Id.*

The Respondent replied to the Government’s Response further supporting summary disposition on January 24, 2018. The Respondent argues that the Government falsely defamed him as a liar, the Government deliberately flouted a clear order from this tribunal, the Respondent’s medical license suspension is void ab initio,⁴ and the controlling legal authority is the Massachusetts statute (Massachusetts General Laws Ch. 94C[]), not the regulation cited by the Government (105 Code of Massachusetts Regulations § 700.120). Resp’t Sur-Reply at 1-6. [n.4: The Respondent cites multiple cases in support of his conclusion that “the May 2017 action by criminal racketeers within the state medical board in violation of the Sherman Act was extra-jurisdictional and legally void, it naturally follows that any action by other actors, state or federal, who claim authority based on a previous action that is void ab . . . [initio], is equally void.” Resp’t Sur-Rely at 5-6. These cases are inapt and irrelevant to Respondent’s argument, and relate to matters way beyond the narrow focus of this inquiry.]²

² The record contains illegible material submitted by Respondent. Chambers staff was contacted to ascertain whether legible versions of Respondent’s submissions are available. The versions that Chambers staff provided are not more legible than the original versions that the ALJ certified and transmitted. I reviewed, analyzed, and considered the legible material in the record. As I am not able to read illegible material, my Decision and Order are based only on the legible material in the record.

R.D., at 2-4.³

The ALJ granted the Government's Motion for Summary Disposition and recommended that Respondent's registration be revoked.

At this juncture, no dispute exists over the fact that the Respondent currently lacks state authority to handle controlled substances in the Commonwealth of Massachusetts because the Medical Board suspended his medical license, thus voiding his Massachusetts CSR Certificate. Because the Respondent lacks state authority at the present time, Agency precedent dictates that he is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter that could be introduced at a hearing that would, in the Agency's view, provide authority to allow the Respondent to continue to hold his DEA . . . [registration].

Id. at 10. By letter dated February 21, 2018, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advised that neither party filed exceptions and that the time period to do so had expired.

³ I agree with the ALJ's conclusions about the Respondent's following allegations and arguments. First, regarding Respondent's allegations that Government personnel engaged in wrongdoing, I agree with the ALJ that, "There is no evidence before me suggesting [that the] DI . . . or any other Government personnel . . . engaged in any false assertions or misrepresentations to this tribunal." R.D., at 5. I also agree with the ALJ that, "[T]here is no evidence in the record before me that the Government falsely defamed the Respondent as a liar, or even suggested that service at a later date than that of the tribunal was done for unfair advantage." *Id.* Second, concerning Respondent's claim that the Government deliberately violated an ALJ Order, I agree with the ALJ that "the Government has fully complied with this tribunal's order." *Id.* Third, as to Respondent's position that these proceedings should be dismissed or held in abeyance pending the outcome of his federal court litigation, the ALJ's Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule states that, "A review of the docket sheets in the pending law suits cited by the Respondent fail[s] to disclose any order by the District Court to hold the instant proceeding in abeyance." Order Directing the Filing of Government Evidence dated November 20, 2017, at 1 n.2. Against the backdrop of the ALJ's review, I agree with him that Respondent's requests are inconsistent with Agency precedent. As the ALJ notes, "[i]t is not DEA's policy to stay [administrative] proceedings . . . while registrants litigate in other forums." R.D., at 6, citing *Newcare Home Health Servs.*, 72 FR 42,126, 42,127 n.2 (2007). I agree with the ALJ that "the Respondent's request for an abeyance – in essence to stay these proceedings – until the federal courts have ruled on his cases and his request to dismiss the proceedings" should be denied. R.D., at 7. As the Agency has pointed out, "Respondent can always apply for a new registration if [he] prevails" regarding the indefinite suspension of his medical license. *Newcare Home Health Servs.*, 72 FR at 42,127 n.2.

I further note that the ALJ specifically granted Respondent "leave to file notice and proof regarding (but limited to) any restoration of his state medical license prior to the transmission of the matter to the Administrator." R.D., at 7. According to the ALJ's certification and transmittal of the record dated February 21, 2018, the Respondent had not filed notice and proof regarding any restoration of his State medical license by that time. The record, therefore, contains no evidence that Respondent is currently authorized to practice medicine in Massachusetts.

I issue this Decision and Order based on the entire, legible record before me. 21 CFR 1301.43(e). I make the following findings of fact.

FINDINGS OF FACT

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. BP7993290, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 30 Gardner Road #6A, Brookline, Massachusetts 02445. Government's Submission of Evidence and Request for Summary Disposition dated December 4, 2017 (hereinafter, Government Motion), Exh. 01 (Facsimile of Registration No. BP7993290). Respondent's registration expires on March 31, 2020. *Id.*

The Status of Respondent's State License

By Final Decision and Order dated May 11, 2017, the Massachusetts Board indefinitely suspended Respondent's medical license number 209168. According to the Final Decision and Order, "the record demonstrates that the Respondent has rendered substandard care to two patients, maintained substandard medical records for seven patients, and dispensed controlled substances after his Massachusetts Controlled Substances Registration . . . expired." Government Motion, Exh. 02, Attachment A, at 1 [footnotes omitted]. The Massachusetts Board's Final Decision and Order afforded Respondent the opportunity to stay the indefinite suspension by entering into a Board-approved Probation Agreement and complying with its terms. *Id.* at 5-6. There is no evidence in the record that Respondent availed himself of this opportunity. Instead, the DI's Declaration states that Respondent's medical license remained "suspended" as of December 1, 2017. Government Motion, Exh. 02, at 2. Further, according to the online records of the Commonwealth of Massachusetts, of which I take official notice, I find

that Respondent is still not authorized to practice medicine in Massachusetts, initially due to the suspension and, as of May 5, 2018, due to the expiration of license number 209168.⁴

Commonwealth of Massachusetts Board of Registration in Medicine Physician Profiles Website, <http://profiles.ehs.state.ma.us/Profiles/Pages/FindAPhysician.aspx> (last visited July 30, 2018).

Further, according to Massachusetts' online records, of which I also take official notice, Respondent is not listed among those authorized to handle controlled substances in Massachusetts.⁵ Massachusetts Controlled Substances Registration Verification Website, <https://www.mass.gov/service-details/registration-verification-mcsr> (last visited July 30, 2018). Massachusetts' online records show no active Massachusetts Controlled Substance Registration issued to Respondent. *Id.*

Accordingly, I find that Respondent currently is without authority to engage in the practice of medicine or to handle controlled substances in the Commonwealth of Massachusetts, the State in which he is registered.

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 (hereinafter, 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

⁴ 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, Respondent may dispute my finding by filing a properly supported motion for reconsideration within 20 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 Respondent files a motion, the Government shall have 20 calendar days to file a response.

⁵ See footnote 4. If Respondent disputes this finding, he may do so according to the terms stated in footnote 4.

engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the 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 registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 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, the 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., Hooper, supra*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988), *Blanton, supra*, 43 FR at 27,617.

According to the Massachusetts Controlled Substances Act, “every person who . . . dispenses . . . any controlled substance within the commonwealth shall . . . register with the commissioner of public health, in accordance with his regulations.” Mass. Gen. Laws ch. 94C,

§ 7(a) (Westlaw, current through Chapter 122 of the 2018 2nd Annual Session). Further, the automatic issuance of a controlled substances registration to a physician is only required when the physician is “duly authorized to practice his profession in the commonwealth.” Mass. Gen. Laws ch. 94C § 7(f) (Westlaw, current through Chapter 122 of the 2018 2nd Annual Session).

Here, the undisputed evidence in the record is that Respondent’s medical license has been suspended. In addition, as already noted, Respondent’s medical license expired a few months ago. According to Massachusetts law, Respondent is not eligible to be issued a controlled substances registration if he is not authorized to practice medicine. Indeed, as noted above, Respondent is not on the list of those currently authorized to dispense controlled substances. This lack of authorization is consistent with the regulations that implement the Massachusetts Controlled Substances Act: “A registration is void if the registrant’s underlying professional licensure on which the registration is based is suspended or revoked.” 105 Mass. Code Regs. § 700.120 (Westlaw, current through Register No. 1369, dated July 13, 2018).⁶

In sum, Respondent currently lacks authority in Massachusetts to practice medicine and to handle controlled substances. He is not, therefore, eligible for a DEA registration. As such, I will order that Respondent’s DEA registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority thus vested in me by 21 U.S.C. § 824(a), I order that DEA Certificate of Registration No. BP7993290 issued to Bharanidharan

⁶ Regarding the terms of 105 Mass. Code Regs. § 700.120, I agree with the ALJ’s rejection of Respondent’s argument concerning the relationship between the Massachusetts Controlled Substances Act and the regulations implementing that law. As the ALJ notes, the “statute and regulation are not in conflict.” R.D., at 9. In addition, the Massachusetts Controlled Substances Act explicitly authorizes the Public Health Commissioner to “promulgate rules and regulations relative to registration and control of the manufacture, distribution, dispensing and possession of controlled substances within the commonwealth.” Mass. Gen. Laws ch. 94C, § 6 (Westlaw, current through Chapter 122 of the 2018 2nd Annual Session). See *Goldberg v. Bd. of Health of Granby*, 444 Mass. 627, 633-34 (2005) (“That the Legislature . . . did not anticipate the exact factual scenario presented here does not make the administrative regulations and rulings that did anticipate such situations invalid.”).

Padmanabhan, M.D., Ph.D., be, and it hereby is, revoked. This Order is effective [insert Date
Thirty Days From the Date of Publication in the Federal Register].

Date: July 30, 2018

Uttam Dhillon
Acting Administrator

[FR Doc. 2018-17141 Filed: 8/9/2018 8:45 am; Publication Date: 8/10/2018]