

admission of the allegations. Thus, the Government had the burden of proving its claim that Ms. Fuller-McMahan was likely to trade Respondent's methadone for cocaine.

However, the Government's evidence as to the alleged proposal of Ms. Fuller-McMahan to trade methadone to M.K. in exchange for cocaine is so lacking in indicia of reliability that it does not support the requisite finding under section 823(g)(1). Notably, M.K.'s statement is hearsay,⁶ and there is no evidence that M.K., who has not been identified, was under oath when she provided the statement. Also, the MDEA Agent acknowledged that M.K. had offered "to speak to [him] in exchange for consideration with M.K.'s pending drug charges." GX 15, at 2. Notwithstanding that the MDEA Agent further explained that "no promises were made to M.K. in exchange for any information she might divulge," informants typically do not provide information without some expectation of receiving favorable treatment and have ample motive to shade their statements. Nor did the MDEA Agent's affidavit provide any additional facts tending to establish that M.K. had provided reliable information in other matters, or that the information M.K. provided regarding Ms. Fuller-McMahan was otherwise corroborated.⁷

In short, this type of statement has been traditionally viewed by the courts as inherently unreliable, and as such, M.K.'s statement cannot be given any weight in this decision. *See, e.g., Carlos Gonzales*, 76 FR 63118, 63119–20 (2011). And even if the Government had established that M.K.'s statement was reliable, this interview, which occurred more than nine months prior to the issuance of the Immediate Suspension Order, could not support a finding of imminent danger and the subsequent seizure of the drugs.⁸ *See, e.g., Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 829 (5th Cir. 1976).

Thus, the only evidence which arguably supports the Immediate Suspension Order and seizure of Respondent's methadone stock is the arrest of Ms. Fuller-McMahan for the possession of cocaine and the syringes, which she had received from J.R., a

patient at Respondent, and which Ms. Fuller-McMahan admitted she intended to provide to C.G., a counselor at Respondent. Yet even here, there is no evidence that Ms. Fuller-McMahan either traded methadone for the cocaine she received from J.R. or that she intended to provide the cocaine to C.B. for methadone.

Moreover, notwithstanding M.K.'s allegation, there is no evidence that the Government ever audited Respondent's recordkeeping to determine whether Respondent's methadone was missing or that it developed any reliable evidence that Ms. Fuller-McMahan was diverting methadone. *See* 21 U.S.C. 823(g)(1)(B). Nor did the Government produce any evidence that Respondent's recordkeeping was inadequate.⁹ *Id.* In short, while the Government has established that Ms. Fuller-McMahan violated the MOA and this would have supported the issuance of an Order to Show Cause, the Government's principal justification for immediately suspending Respondent's registration and seizing the drugs is not supported by substantial evidence but rests on a hunch. Accordingly, I hold that the Immediate Suspension Order is *ultra vires* and the resulting seizure of Respondent's methadone was unlawful. *See Norman Bridge*, 529 F.2d at 828 ("Such a suspension, or such a seizure, may be invoked *only* to avoid imminent danger to the public health and safety. In the absence of that factor there can be no suspension and no seizure without notice and an opportunity to be heard.").¹⁰

⁹ The Government also argues that "there was no evidence that Respondent's employees . . . were taking any steps to minimize that risk," *i.e.*, the risk that Ms. Fuller-McMahan was diverting Respondent's methadone. Second Req. for Final Agency Action, at 14. However, the Government has the burden of proving that Respondent's methadone was being diverted. Moreover, it bears noting that under the Maine Board of Pharmacy's rules, Respondent was required to have a licensed pharmacist overseeing its pharmacy, and "[t]he pharmacist in charge is responsible legally and professionally for all activities related to the practice of pharmacy within the opioid treatment program for which the licensee is registered as pharmacist in charge, and for the opioid treatment program's compliance with . . . federal and state laws and rules," including the CSA and DEA regulations. 02–392 CMR 36 § 4; *see also* 02–392 CMR 29 § 1.

¹⁰ In a June 29, 2015 letter, the Special Agent in Charge of the New England Field Division wrote to Ms. Fuller-McMahan that "[a]lthough the controlled substances were seized pursuant to an Immediate Suspension Order, they are also being held by virtue of the fact that your registration expired on November 30, 2010, resulting in your not having any authority to handle controlled substances." However, to the extent the Government retained possession of the controlled substances based on the expiration of Respondent's registration, 21 U.S.C. 824(g) provides that: [s]uch controlled substances . . . shall be held for

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and (d), I hereby declare the Order of Immediate Suspension issued to Turning Tide, Inc., *ultra vires*. This Order is effective immediately.

Dated: July 15, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–17245 Filed 7–20–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 16–12]

James Dustin Chaney, D.O.; Decision and Order

On November 13, 2015, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to James Dustin Chaney, D.O. (Respondent), of Hazard, Kentucky. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration BC8483430, pursuant to which he is authorized to dispense controlled substances in schedules II through V, and the denial of any pending applications to renew or modify his registration or for any other registration, on the ground that he does not have authority to handle controlled substances in Kentucky, the State in which he holds his DEA registration. Show Cause Order, at 1 (citing 21 U.S.C. 823(f); 824(a)(3)).

The Show Cause Order alleged that Respondent is registered as a practitioner with authority to dispense schedule II through V controlled substances at the registered location of 1908 North Main Street, Hazard, KY. *Id.* The Order further alleged that while Respondent's registration was due to expire on August 31, 2015, on August 25, 2015, he filed a timely renewal application and thus, his registration

the benefit of the registrant, or his successor in interest. The Attorney General shall notify a registrant, or his successor in interest, who has any controlled substance . . . seized or placed under seal of the procedures to be followed to secure the return of the controlled substance . . . and the conditions under which it will be returned. The Attorney General may not dispose of any controlled substance . . . seized or placed under seal under this subsection until the expiration of one hundred and eighty days from the date such substance . . . was seized or placed under seal.

21 U.S.C. 824(g). The Government has provided no evidence that it complied with the procedures required by this subsection. Accordingly, the propriety of the seizure must be evaluated under the standards of subsection 824(d) and (f).

⁶ While M.K.'s statement is actually hearsay within hearsay, I have no reason to question the MDEA Agent's recounting of the facts surrounding M.K.'s agreeing to provide the statement or that he has accurately testified as to the substance of M.K.'s statement.

⁷ Likewise, the Government did not produce the entirety of M.K.'s statement and thus, there is no way to evaluate the internal consistency of the statement.

⁸ The record does not establish when the MDEA Agent first told DEA about M.K.'s allegations.

remains in effect until the issuance of this Final Order. *Id.* (citing 5 U.S.C. 558(c); 21 CFR 1301.13(b)).

As for the factual basis for the proposed action, the Show Cause Order alleged that on August 22, 2014, the Kentucky Board of Medical Licensure had affirmed the Emergency Order of Suspension which was issued to Respondent on June 30, 2014. *Id.* While the Show Cause Order acknowledged that the suspension of Respondent's license to practice osteopathic medicine had been subsequently vacated, it further alleged that to the extent the Emergency Order had suspended Respondent's authority to dispense controlled substances, this prohibition remains in effect. *Id.* at 1–2. The Show Cause Order thus alleged that Respondent is currently without authority to dispense controlled substances in Kentucky, and therefore, his registration is subject to revocation. *Id.* at 2 (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

On November 23, 2015, the Show Cause Order, which also notified Respondent of his right to request a hearing on the allegations, was served on Respondent by certified mail, return receipt requested. On December 16, 2015, Respondent, through his counsel, requested a hearing; the matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge (CALJ) John J. Mulrooney, II. The next day, the CALJ ordered the Government to file evidence supporting the allegation and a motion for summary disposition by December 31, 2015; in the event the Government filed a motion, the CALJ directed Respondent to file its reply by January 15, 2016.

On December 21, 2015, the Government filed its Motion for Summary Disposition. As support for its motion, the Government attached a copy of the Board's June 30, 2014 Emergency Order of Suspension and the Board's August 22, 2014 Findings Of Fact, Conclusions Of Law, And Final Order. Thereafter, Respondent filed a "Response [t]o Government's Motion for Summary Judgment."

On January 19, 2016, the CALJ granted the Government's motion, finding that there was no dispute as to the material fact that Respondent is without authority to handle controlled substances in Kentucky, and that therefore, Respondent "is not entitled to maintain his DEA registration." Order Granting Government's Motion for Summary Disposition and Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge, at 5–6. The

CALJ further recommended that Respondent's registration be revoked and that any pending application to renew his registration be denied. *Id.* at 6.

Neither party filed exceptions to the CALJ's decision. Thereafter, the record was forwarded to me for Final Agency Action. Having considered the record in its entirety, I have decided to adopt the ALJ's factual findings, legal conclusions and recommended sanction. I make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration BC8483430, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner at the registered address of Mountain After Hours Clinic, 1908 North Main Street, Hazard, KY 41701. Mot. for Summ. Disp., at Attachment 1. While this registration was due to expire on August 31, 2015, on August 25, 2015, Respondent submitted a renewal application. *Id.* Thus, Respondent's registration remains active pending the issuance of this Decision and Order. 5 U.S.C. 558(c).

Respondent is also the holder of a license to practice osteopathy issued by the Kentucky Board of Medical Licensure. Mot. for Summ. Disp., Attachment 3, at 1. However, "[o]n or about June 5, 2014," Respondent "was indicted on two (2) counts of knowingly and intentionally conspiring to distribute and unlawfully dispense Schedule II and III controlled substances," in violation of 21 U.S.C. 841(a)(1) and 846. *Id.* Respondent was also "indicted on one (1) count of having knowingly open[ed], lease[d], rent[ed], use[d] and maintain[ed] a place (to wit [a pain management clinic]) . . . for the purpose of distributing and unlawfully dispensing controlled substances . . . in violation of 21 U.S.C. 856(a)(1)." *Id.* at 2.

Based on the above, the Board's Inquiry Panel found, *inter alia*, that probable cause existed to believe that Respondent had "[e]ngaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof," and that he "[v]iolated or attempted to violate," abetted, or conspired to violate "any medical practice act, including . . . any other valid regulation of the board." *Id.* (citing Ky. Rev. Stat. § 311.595(9) & (12)). The Inquiry Panel further noted that under the Board's regulations, "[i]f a licensee is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to a

controlled substance, that licensee's practice shall be considered an immediate danger to the public health, safety, or welfare," and that upon "receiv[ing] verifiable information that a licensee has been indicted" for such a felony, "the inquiry panel . . . shall immediately issue an emergency order suspending or restricting that licensee's Kentucky license." *Id.* at 3 (quoting 201 Ky. Admin. Regs. 9:240, § 3). The Inquiry Panel thus ordered that Respondent's license to practice osteopathy be suspended. *Id.* at 4.

Thereafter, Respondent sought judicial review of the Emergency Order of Suspension in state court. Mot. for Summ. Disp., at Attachment 4, at 9. He also requested an administrative hearing to challenge the Emergency Suspension. *Id.* at 1.

On August 11, 2014, the state court issued a temporary injunction which enjoined the Board from enforcing the suspension. *Id.* at 9. The state court, however, "kept in place the prohibition against [Respondent's] prescribing, dispensing, or otherwise utilizing a controlled substance . . . pending the issuance of" the Board's Order. *Id.*

On August 15, 2014, a Hearing Officer conducted a hearing at which Respondent was allowed to challenge the Emergency Suspension. *Id.* at 1. Following the hearing, the Hearing Officer found that "there is probable cause to believe [Respondent] engaged in misconduct in violation of the Board's statutes and that his practice of medicine constitutes a danger to the health, welfare, and safety of his patients or the general practice." *Id.* at 2. However, consistent with the injunction, the Hearing Officer modified the suspension to allow Respondent to "continue to practice osteopathy," while prohibiting him "from prescribing, dispensing, or otherwise utilizing a controlled substance in Kentucky." *Id.*

According to the online records of the Kentucky Board, the prohibition on Respondent's authority to dispense controlled substances remains in effect as of this date. I therefore find that Respondent is without authority to dispense controlled substances in Kentucky, the State in which he holds his DEA registration.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), "[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the 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.” This Agency has further held that notwithstanding that this provision grants the Agency authority to suspend or revoke a registration, other provisions of the Controlled Substances Act “make plain that a practitioner can neither obtain nor maintain a DEA registration unless the practitioner currently has authority under state law to handle controlled substances.” *James L. Hooper*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, *Hooper v. Holder*, 481 F. App’x 826 (4th Cir. 2012).

These provisions include section 102(21), which defines the term “practitioner” to “mean[] a physician . . . 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), as well as section 303(f), which directs that “[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” *Id.* § 823(f). Based on these provisions, the Agency has long held that revocation is warranted even where a state board has summarily suspended a practitioner’s controlled substances authority and the state’s order remains subject to challenge in either administrative or judicial proceedings. See *Gary Alfred Shearer*, 78 FR 19009 (2013); *Carmencita E. Gallora*, 60 FR 47967 (1995).

Respondent nonetheless maintains that the proposed revocation of his registration would violate his right to due process because the Hearing Officer applied the wrong standard of proof when he upheld the Emergency Suspension Order. Response to Govt’s Mot. for Summ. Judgment, at 4–8. According to Respondent, this is so because in holding that the Suspension Order was justified by Respondent’s indictment, the Hearing Officer applied a probable cause standard rather than the substantial evidence standard as required by Kentucky law, and thus, the Hearing Officer’s decision is arbitrary and capricious. *Id.* at 5. Respondent argues that he “established with overwhelming and uncontested evidence that his practice of medicine is NOT a danger to the health, welfare, and safety of his patients or the general public.” *Id.* And he further argues that “the Hearing Officer improperly placed the risk of non-persuasion on [him] and applied the [Board’s] unconstitutional

regulatory provisions allowing an indictment alone to serve as substantial evidence of a violation of law.” *Id.* at 7.

However, “DEA has repeatedly held that a registrant cannot collaterally attack the results of a state criminal or administrative proceeding in a proceeding brought under section 304 [21 U.S.C. 824] of the CSA.” *Calvin Ramsey*, 76 FR 20034, 20036 (2011) (quoting *Hicham K. Riba*, 73 FR 75773, 75774 (2008) (other citations omitted)); see also *Shahid Musud Siddiqui*, 61 FR 14818 (1996); *Robert A. Leslie*, 60 FR 14004 (1995). DEA is not vested with authority to adjudicate either the constitutionality of the Board’s Suspension Order, or whether the Board’s Order is arbitrary and capricious. Respondent must therefore seek relief from the State Board’s Order in those administrative and judicial forums provided by the State.

In a revocation proceeding brought under section 824(a)(3), the only issue is whether a respondent holds current authority to dispense controlled substances. Respondent’s various contentions as to the validity of the Board’s order are therefore not material to this Agency’s resolution of whether he is entitled to maintain his DEA registration. Because it is undisputed that Respondent does not hold authority under the laws of Kentucky to dispense controlled substances, he no longer meets the definition of a practitioner under the CSA and thus, he is not entitled to maintain his registration. See, e.g., *Hooper*, 76 FR at 71372. Accordingly, I will order that Respondent’s registration be revoked and that any pending application to renew or modify this registration be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a) and 823(f), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BC8483430 issued to James Dustin Chaney, D.O., be, and it hereby is, revoked. I further order that any application of James Dustin Chaney, D.O., to renew or modify this registration, be, and it hereby is, denied. This Order is effective August 22, 2016.

Dated: July 11, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–17250 Filed 7–20–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Service Contract Inventory; Notice of Availability

SUMMARY: In accordance with Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117, the Department of Justice is publishing this notice to advise the public of the availability of its FY 2015 Service Contracts Inventory and Inventory Supplement. The inventory includes service contract actions over \$25,000 that were awarded in Fiscal Year (FY) 2015. The inventory supplement includes information collected from contractors on the amount invoiced and direct labor hours expended for covered service contracts. The Department of Justice analyzes this data for the purpose of determining whether its contract labor is being used in an effective and appropriate manner and if the mix of federal employees and contractors in the agency is effectively balanced. The inventory and supplement do not include contractor proprietary or sensitive information.

The FY 2015 Service Contract Inventory and Inventory Supplement is provided at the following link: <https://www.justice.gov/jmd/service-contract-inventory>.

FOR FURTHER INFORMATION CONTACT: Tara M. Jamison, Procurement Policy Review Group, Justice Management Division, U.S. Department of Justice, Washington, DC 20530; Phone: 202–616–3754; Email: Tara.Jamison@usdoj.gov.

Dated: July, 19, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–17248 Filed 7–20–16; 8:45 am]

BILLING CODE 4410–DH–P

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication in Full of All Notices of Systems of Records, Including Several New Systems, Substantive Amendments to Existing Systems, Decommissioning of Obsolete Legacy Systems, and Publication of Proposed Routines Uses

AGENCY: Office of the Secretary, Labor.

ACTION: Notice: Response to Comments on the Department’s April 29, 2016 System of Records Notice.

SUMMARY: This notice announces a response to public comments on the Department’s April 29, 2016 System of