

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Scott A. Sobiech,

Acting Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2017-25889 Filed 11-30-17; 8:45 am]

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DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Kofi E. Shaw-Taylor, M.D. Decision and Order**

On June 12, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Kofi E. Shaw-Taylor, M.D. (hereinafter, Respondent) of Baltimore, Maryland. GX 1. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration on the ground that Respondent does "not have authority to handle controlled substances in the State of Maryland," the State in which he is registered. GX 1, at 1 (citing 21 U.S.C. 823(f) and § 824(a)(3)).

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent holds DEA Certificate of Registration No. AS2145476 which authorizes him to dispense controlled substances in schedules II through V as a practitioner at the registered address of 4419 Falls Road, Suite C, Baltimore, Maryland 21211. GX 1, at 1. *See also* GX 2 (Controlled Substance Registration Certificate) (including "Westside Medical Group"). The Show Cause Order alleged that this registration expires on February 29, 2020. GX 1, at 1. *See also* GX 2.

As the substantive ground for the proceeding, the Show Cause Order alleged that Respondent is "without authority to handle controlled substances in Maryland, the state in which . . . [he is] registered with the DEA." GX 1, at 1. It further alleged that, on May 9, 2017, Respondent's "authority to prescribe and administer controlled substances in the State of Maryland was suspended." GX 1, at 1. *See also* GX 3 (Maryland State Board of Physicians Order of Summary Suspension of License to Practice Medicine, hereinafter Order of Summary Suspension). The Show Cause Order alleged that "DEA must revoke . . . [his] DEA . . . [registration] based upon . . . [his] lack of authority to

handle controlled substances in the State of Maryland." GX 1, at 1 (citing 21 U.S.C. 802(21), 823(f)(1), and 824(a)(3)).

The Show Cause Order 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 procedures for electing each option, and the consequences for failing to elect either option. GX 1, at 2 (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of the opportunity to submit a corrective action plan. GX 1, at 2 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated July 17, 2017 addressed to the Office of the [DEA] Administrative Law Judges, Respondent, by his counsel, requested a hearing. GX 5, at 1. The letter admitted that the Maryland State Board of Physicians issued an Order of Summary Suspension of Respondent's license to practice medicine on May 9, 2017. *Id.* According to the letter, Respondent was challenging that Order "on grounds of abuse of and lack of due process." *Id.*

On July 24, 2017, the Chief Administrative Law Judge, John J. Mulrooney, II, ordered the Government to file proof of service and evidence in support of its allegation that Respondent lacked State authority to practice medicine. GX 6, at 1 (Order Directing the Filing of Proof of Service and Government Evidence of Lack of State Authority Allegation and Briefing Schedule). The Order also established a briefing schedule "if the Government files a motion based on timeliness of the hearing request and/or a motion for summary disposition based on its allegation that the Respondent lacks state authority to handle controlled substances." *Id.* at 1-2.

By submission dated July 28, 2017, Respondent, by his counsel, submitted an "Order to Show Cause Waiver of Hearing and Statement on the Matter." GX 7. According to that submission, Respondent's counsel stated that Respondent was served with the Show Cause Order on June 20, 2017. GX 7, at 1. He also stated that Respondent was waiving a hearing on the Show Cause Order. *Id.* Further, the submission admitted that the Maryland State Board of Physicians issued an Order of Summary Suspension of Respondent's license to practice medicine, characterizing the Order as being "based on alleged but unproven charges." *Id.* It expressed "our fervent belief that the Respondent shall prevail in this matter and his Medical license reinstated." *Id.* It asked that "the DEA suspend the revocation" of Respondent's registration "pending the restoration of the Medical license to save the Respondent the

inconvenience, trauma and the lengthy process of reapplication of this same license." *Id.*

By Order dated August 2, 2017, the Chief Administrative Law Judge terminated the proceedings based on Respondent's "Order to Show Cause Waiver of Hearing and Statement on the Matter." GX 8, at 1 (Order Terminating Proceedings).

On August 2, 2017, the Government submitted a Request for Final Agency Action and an evidentiary record to support the Show Cause Order's allegation.

I find that the Government's service of the Show Cause Order on Respondent was legally sufficient. I find that, by letter from his counsel dated July 17, 2017, Respondent requested a hearing. I find that, by submission of his counsel dated July 28, 2017, Respondent sought to file an "Order to Show Cause Waiver of Hearing and Statement on the Matter." Respondent was entitled to waive his right to a hearing and to fail to follow up on his request for a hearing. *See* 21 CFR 1301.43(d). DEA regulations, however, limit the time for Respondent to exercise his right to submit a written statement of position to "the period permitted for filing a request for a hearing or a notice of appearance," absent a showing of good cause. 21 CFR 1301.43(c). Respondent's "Statement on the Matter" was not filed within the period specified in the regulation, and Respondent did not make a showing of good cause to excuse the untimeliness. I decline, therefore, to consider any factual assertions or arguments that Respondent raised in the "Statement on the Matter."¹ I issue this Decision and Order based on the record submitted by the Government and on Respondent's request for a hearing. 21 CFR 1301.43(e).

Findings of Fact***Respondent's DEA Registration***

Respondent currently holds DEA practitioner registration AS2145476 authorizing him to dispense controlled substances in schedules II through V at the address of Westside Medical Group, 4419 Falls Road, Suite C, Baltimore, Maryland 21211. GX 1, at 1; GX 2. This registration expires on February 29, 2020. *Id.*

¹ Respondent's "Statement on the Matter" did not claim that Respondent's medical license had been reinstated. To the contrary, it reiterated Respondent's admission that the Maryland State Board of Physicians issued an Order of Summary Suspension of Respondent's medical license.

The Status of Respondent's State License

On May 9, 2017, the Executive Director of the Maryland State Board of Physicians signed a 34-page Order summarily suspending Respondent's license to practice medicine. GX 3. The Order of Summary Suspension discussed numerous complaints against Respondent, including complaints about Respondent's controlled substance prescribing practices, the conclusions of an independent peer review agency that Respondent did not meet quality standards for pain medicine, and allegations concerning Respondent's unprofessional conduct. *Id.* The Order of Summary Suspension concluded that Respondent acted unprofessionally in his pain medicine practice, among other areas, and determined that the public health, safety, or welfare imperatively required the emergency action of the suspension of Respondent's medical license. *Id.* at 31–32. The terms of the Order of Summary Suspension included the requirement that Respondent surrender his original Maryland license D26832 and his current license renewal certificate. *Id.* at 33.

On July 11, 2017, the DEA Diversion Investigator assigned to the investigation of Respondent (hereinafter, DI) signed a Declaration. GX 4. In that Declaration, the DI stated that Respondent's license to practice medicine in Maryland was suspended effective May 9, 2017 and that Respondent “currently has no authority to practice medicine in Maryland.” *Id.* at 1.

Respondent's hearing request admitted that the Maryland State Board of Physicians summarily suspended Respondent's Maryland medical license. GX 5, at 1. Respondent did not submit any evidence that his Maryland medical license was reinstated. Respondent, thus, admitted that he currently is not authorized to practice medicine in Maryland.

Accordingly, I find that Respondent currently is without authority to engage in the practice of medicine in Maryland, 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 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*, 53 FR 11,919, 11,920 (1988); *Blanton, supra*, 43 FR at 27,617.

According to Maryland Department of Health regulations, a “prescription for a controlled dangerous substance may be issued only by an individual practitioner who is . . . [a]uthorized to prescribe controlled dangerous substances in the State of Maryland, in which the practitioner is licensed to practice the practitioner's profession.” MD Code Regs. 10.19.03.07B(1)(a) (2017). The Maryland Department of Health regulations define an “individual practitioner” to be a “physician . . . or other individual licensed, registered, or otherwise permitted by . . . the jurisdiction in which the individual practitioner practices, to dispense a controlled dangerous substance in the course of professional practice.” MD Code Regs. 10.19.03.02C(7)(a) (2017). Under Maryland law, a “physician” is

“an individual who practices medicine,” and a “licensed physician” is a physician “who is licensed by the Board [of Physicians] to practice medicine.” West's MD Code Ann., Health Occupations, § 14–101(m) and (i) (2017). Further, in Maryland, to “practice medicine” means “to engage . . . in medical (i) Diagnosis; (ii) Healing; (iii) Treatment; or (iv) Surgery.” *Id.* at § 14–101(o)(1)(i–iv). Thus, in Maryland, a physician may be authorized to dispense controlled substances only if he is licensed to practice medicine.

In this case, the Maryland State Board of Physicians suspended Respondent's license to practice medicine. Consequently, Respondent is not currently eligible to handle controlled substances in the State of Maryland, the State in which he is registered with the Agency and, therefore, he is not entitled to maintain his DEA registration. *Hooper, supra; Blanton, supra.* Accordingly, I will order that Respondent's registration be revoked and that any pending application for the renewal or modification of his registration be denied. 21 U.S.C. 824(a)(3).

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 AS2145476 issued to Kofi E. Shaw-Taylor, M.D., be, and it hereby is, revoked. I further order that any pending application of Kofi E. Shaw-Taylor, M.D., to renew or modify this registration, as well as any other pending application by him for registration in the State of Maryland, be, and it hereby is, denied. This order is effective immediately.²

Dated: November 20, 2017.

Robert W. Patterson,
Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Nanosyn, Inc.

AGENCY: Drug Enforcement Administration, Department of Justice.

² For the same reasons the Maryland State Board of Physicians of the Maryland Department of Health and Mental Hygiene suspended Respondent's Maryland Medical License summarily, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.